

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq., CA Bar No. 285256

mehrdad@bokhourlaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

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

FALAKASSA LAW, P.C.

Joshua S. Falakassa, CA Bar No. 295045

josh@falakassalaw.com

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

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

Attorneys for Plaintiff and the Putative Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

ELIJAH BROWN, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

VEORIDE, INC., a Delaware Corporation; and
DOES 1-50, inclusive.

Defendants.

CASE NO.: 23CV421642

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Elijah Brown (“Plaintiff”) on behalf of himself, and all other similarly situated non-
2 exempt employees, alleges, and complains of defendant Veoride, Inc. (“Defendant”) and DOES 1 to
3 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Veoride Inc. is a micro-mobility company operating electric scooters and
6 bikes in cities and universities across the State of California. Defendant designs and engineers
7 vehicles, hardware, and software systems to provide a greener, healthier mode of transportation to
8 make the communities we serve more sustainable and livable.

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

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

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

23 **JURISDICTION AND VENUE**

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

25 6. Plaintiff, on behalf of himself and all others similarly situated employees hereby
26 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
27 200-204, 210, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1174, 1174.4, 1194, 1197.1, 1199, 2802,
28 2698 *et seq.*, among others, and applicable Industrial Welfare Commission Wage Orders (“Wage

1 Orders”), in addition to seeking declaratory relief and restitution pursuant to Business and Professions
2 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 San Jose, California and/or otherwise are found within the County of Santa Clara, 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 Santa Clara.

14 10. Plaintiff is informed and believes and thereon alleges that Defendant is a California
15 corporation authorized and doing business in Sacramento 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, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1194, 1197.1, 1199, 2802, 2698 *et*
20 *seq.*, among others, and California Business and Professions Code § 17200 *et seq.*, and applicable
21 Wage Order(s).

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

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

1 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
2 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or
3 corporate, were responsible in some manner for the acts and omissions alleged herein, and
4 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
5 alleged herein.

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

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

19 **COMMON FACTUAL ALLEGATIONS**

20 16. Defendants are a micro-mobility company operating electric scooters and bikes in
21 cities and universities across the State of California. Defendants design and engineer vehicles,
22 hardware, and software systems to provide a greener, healthier mode of transportation to make the
23 communities we serve more sustainable and livable.

24 17. Plaintiff was employed by Defendants as a non-exempt employee with the title of
25 “Mechanic/Technician” beginning on August 11, 2022, until his separation from employment on or
26 about January 14, 2023. Plaintiff and other non-exempt employees (including mechanics, technicians,
27 scooter delivery drivers, operations, staff and all other non-exempt positions) were responsible for all
28 aspects of Defendants’ business in the State of California.

1 18. At all relevant times, Plaintiff and other non-exempt employees regularly worked
2 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
3 Plaintiff alleges that other non-exempt employees were also subjected to the same policies,
4 procedures, and practices, working conditions, and corresponding wage and hour violations to which
5 he was subjected during his employment.

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

13 20. Under the California Labor Code (as well as the FLSA), courts have consistently held
14 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
15 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
16 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
17 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
18 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
19 California and federal law on the grounds, that Defendant improperly calculated overtime by
20 excluding annual bonuses paid to employees from the “regular rate of compensation”].) see *Walling*
21 *v. Youngerman-Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. (“The regular rate by its very
22 nature must reflect all payments which the parties have agreed shall be received regularly during the
23 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an
24 actual fact. Once the parties have decided upon the amount of wages and the mode of payment the
25 determination of the regular rate becomes a matter of mathematical computation, the result of which
26 is unaffected by any designation of a contrary ‘regular rate’ in the contracts.”); see also 29 CFR §§
27 778.110 (“production bonus”) and 778.111 (“piece-rate”).)

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

5 22. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
6 are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204, 210, 510,
7 1197.1.

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

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

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

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

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

15 28. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
16 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
17 to Defendants' uniform rest period policies/practices, operational requirements and work demands.
18 As a result, Plaintiff and other non-exempt employees were and are often unable to take a net 10-
19 minute duty free rest periods for every major fraction of four hours worked. This includes a second
20 rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10.0 hours
21 in a workday. To the extent non-exempt were permitted allowed and permitted to take rest periods,
22 the rest periods were often cut short or interrupted for work reasons. Making matters worse,
23 Defendants implemented a uniform policy that prevented Plaintiff and non-exempt employees from
24 leaving the premises during rest periods.

25 29. By not relieving all non-exempt employees of all duties during rest periods,
26 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*
27 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve
28 employees of all duties and relinquish control over how employees spend their time."]. In *Augustus,*

1 the California Supreme Court expressly rejected the employers' assertion that it could provide an on-
2 duty rest period to employees who worked as security guards and further explained "that employers
3 [must] relinquish any control over how employees spend their break time and relieve their employees
4 of all duties." *Id.* at 273.

5 30. Each time Plaintiff and other non-exempt employees were unable to take a compliant
6 rest period, Defendants failed and continue to fail to adequately pay rest period premium payments
7 at the "regular rate of pay" as required by Labor Code § 226.7.

8 31. Accordingly, due to Defendants' uniform rest period policies/practices and work
9 demands, Plaintiff and other non-exempt employees were also regularly denied legally compliant rest
10 breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

11 32. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for
12 all overtime wages, sick pay wages at the appropriate legal rate, and Defendants' failure to pay for
13 meal and rest period premiums at the "regular rate of pay," Defendants issued wage statements which
14 failed to accurately identify the gross wages earned, the total hours worked, the net wages earned,
15 and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code
16 § 226(a)(1, 2, 5, and 9).

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

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

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

36. Finally, at all relevant times, Defendants required Plaintiff and other non-exempt employees to incur necessary business expenses associated with using their personal cell phones and home internet for work related purposes but did not reimburse non-exempt employees adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804. *See Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all...To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed"]. Here, Defendants uniformly failed to reimburse non-exempt employees for a reasonable portion of cell phone bill, for mileage, and other necessary costs incurred, in the discharge of their duties for those non-exempt employees. Accordingly, due to Defendants' uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802 and applicable Wage Orders.

CLASS ACTION ALLEGATIONS

37. 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 employees who work or worked for Defendants in California, and who left their employment during the three years immediately preceding the filing of the Complaint through the date of trial. (“Waiting Time Penalty Subclass”)

(collectively “the Classes”)

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

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

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

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

14 3. Whether Defendants provided legally compliant meal and rest periods or proper
15 compensation at the "regular rate of pay" in lieu thereof to members of the Classes;

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

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

20 6. Whether Defendants failed to adequately reimburse members of the Class for all
21 necessary business expenses.

22 40. **Predominance of Common Questions:** Common questions of law and fact
23 predominate over questions that affect only individual members of the Classes. The common
24 questions of law set forth above are numerous and substantial and stem from Defendants' policies
25 and/or practices applicable to each individual class member, such as, Defendants' policy/practice of
26 failing to pay overtime and sick pay at the appropriate premium rate, Defendants' uniform policy of
27 failing to provide compliant meal and rest periods or adequate compensation in lieu thereof, and
28 Defendants' resulting failure to provide accurate itemized wage statements, and to pay for all wages

1 due upon separation of employment. As such, the common questions predominate over individual
2 questions concerning each individual class member's showing as to his or her eligibility for recovery
3 or as to the amount of his or her damages.

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

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

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

44. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 37 are maintainable as Classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

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

46. 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.

47. 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.

48. 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

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.

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

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

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY ALL SICK TIME**

15 **(AGAINST ALL DEFENDANTS)**

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

17 52. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
18 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid at
19 the "regular rate of pay", including all forms of compensation/remuneration.

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

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

27 55. The foregoing policies and practices are unlawful and create entitlement to recovery
28 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of sick time wages,

1 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
2 Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure
3 § 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **MEAL PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

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

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

18 **FOURTH CAUSE OF ACTION**

19 **REST PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

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

25 61. Due to their unlawful rest period policy and practices, Defendants did not authorize
26 and permit Plaintiff and members of the Class to take code-compliant rest periods to which they were
27 legally entitled, including, but not limited to, failing to relieve employees of all duties and
28 relinquishing all control over employees during their rest periods. Despite Defendants' violations,

1 Defendants have not paid an additional hour of pay at the “regular rate of pay” to Plaintiff and
2 members of the Class at their respective regular rates of pay for each violation, in accordance with
3 California Labor Code § 226.7.

4 62. The foregoing violations create an entitlement to recovery by Plaintiff and members
5 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
6 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
7 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

8 **FIFTH CAUSE OF ACTION**

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

10 **(AGAINST ALL DEFENDANTS)**

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

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

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

65. 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).

66. As a result of Defendants’ failure to pay Plaintiff and the Wage Statement Subclass

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

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

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

13 **SIXTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

7 **(AGAINST ALL DEFENDANTS)**

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

9 76. Labor Code 2802(a) states in pertinent part the following: “(a) An employer shall
10 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
11 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
12 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,
13 believed them to be unlawful.”

14 77. As set forth above, Plaintiff and members of the Class must be compensated for all
15 necessary business expenditures, including, but not limited to, a reasonable portion of their monthly
16 personal cell phone bills incurred in their discharge of their duties. (See *Cochran v. Schwan’s Home*
17 *Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal
18 cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them.
19 Whether the employees have cell phone plans with unlimited minutes or limited minutes, the
20 reimbursement owed is a reasonable percentage of their cell phone bills.”); *Ritchie v. Blue Shield of*
21 *California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement
22 claim and adopting the logic of *Cochran*). In addition, Defendants systematically failed to properly
23 reimburse Plaintiff and other non-exempt employees for the use their personal vehicles for business
24 purposes.

25 78. At all relevant times, by failing to reimburse Plaintiff and the Class for all necessary
26 business expenditures, Defendants have failed to comply with Labor Code Section 2802 and the
27 applicable Wage Orders.

1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

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

11 81. 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 82. 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 83. The acts complained of herein occurred within the last four years immediately
21 preceding the filing of the Complaint in this action.

22 84. 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.

27 ///

28 ///

1 **NINTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

19 c. Failing to reimburse Plaintiff and other non-exempt employees for all necessary
20 business expenditures in violation of Labor Code §§ 2800 and 2802

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

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

25 87. On or about August 24, 2023, Plaintiff notified Defendant Veoride, Inc. via certified
26 mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website of
27 Defendant’s violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the
28 California Labor Code identified in Paragraph 86(a)-(e). Now that sixty-five days have passed from

1 Plaintiff notifying Defendant and the LWDA of these violations, Plaintiff will have exhausted his
2 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
3 to these violations.

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

8 **PRAYER FOR RELIEF**

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

- 11 1. For an order certifying the proposed Classes;
- 12 2. For an order appointing Plaintiff as representative of the Classes;
- 13 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 14 4. Upon the First Cause of Action, for compensatory, consequential, general and special
15 damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1197, and 1198;
- 16 5. Upon the Second Cause of Action, payment of all unpaid sick pay wages and
17 penalties according to proof pursuant to Labor Code § 246 *et seq.*, and for reasonable attorneys' fees
18 and costs;
- 19 6. Upon the Third Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 21 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
22 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 23 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
24 reasonable costs and attorneys' fees;
- 25 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
26 Labor Code §§ 201-203;
- 27 10. Upon the Seventh Cause of Action, for unreimbursed expenses, interest and
28 attorney's fees and costs pursuant to Labor Code §§ 2802-2804;

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

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

9 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
10 § 218.6 and Civil Code §§ 3287 and 3289;

11 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
12 218.5, 226, and Code of Civil Procedure § 1021.5; and

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

15 Dated: November 6, 2023

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

16
17
18 By: _____

19 Joshua Falakassa, Esq.
20 Mehrdad Bokhour, Esq.
21 Attorneys for Plaintiff and the Putative Classes
22
23
24
25
26
27
28