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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

TANYA GARCIA, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

DSM&T, CO., INC., a California corporation;
and DOES 1-50, inclusive.

Defendants.

CASE NO.: CIVSB2206009

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Tanya Garcia (“Plaintiff”) on behalf of herself, and all other similarly situated non-
2 exempt employees, alleges and complains of defendant DSM&T Co., Inc., and DOES 1 to 50
3 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant DSM&T, Co., Inc. operates a manufacturing facility where it makes AC
6 power cords, electrical plugs and adapters, and electrical receptacles. Plaintiff brings this class action
7 against Defendants for alleged violations of the California Labor Code and Business and Professions
8 Code.

9 2. As set forth below, Plaintiff alleges that Defendants had a uniform payroll
10 practice/policy that unfairly rounded Plaintiff’s and other similarly situated non-exempt employees’
11 time entries and which over time resulted in a failure to pay for all hours worked and failed to include
12 all forms of compensation when calculating the “regular rate of pay” used for payment of overtime
13 wages. Similarly, Plaintiff alleges that Defendants uniformly failed to pay all sick time at “regular
14 rate of pay.”

15 3. Moreover, Plaintiff alleges that Defendants’ meal and rest period policies and practices
16 did not provide him and all other similarly situated employees with all compliant/timely meal and
17 rest periods, or premium wages at the “regular rate of pay” in lieu thereof. As a result of the foregoing,
18 Plaintiff alleges that Defendants failed to provide non-exempt employees with accurate written
19 itemized wage statements and failed to timely pay all final wages upon 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 herself and all others similarly situated.

23 **JURISDICTION AND VENUE**

24 5. Plaintiff, on behalf of herself and all others similarly situated employees hereby brings
25 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
26 203, 204, 210, 221, 226(a), 226(e), 226.3, 246, 510, 516, 1194, 1199, 2698 *et seq.*, and applicable
27 Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking declaratory
28 relief and restitution pursuant to California Business and Professions Code § 17200, *et. seq.*

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

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

8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendants own and/or operate a facility in Fontana, California within the County of San Bernardino, and/or otherwise are found within the County of San Bernardino and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

9. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California.

10. Plaintiff is informed and believes and thereon alleges that defendant DSM&T, Co., Inc. is a corporation authorized to and doing business in California and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 246, 510, 516, 1194, 1194.2, 1199, 2698 *et seq.*, and the California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

11. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of San Bernardino.

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

1 alleged herein.

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

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

15 **COMMON FACTUAL ALLEGATIONS**

16 15. Defendant operates a manufacturing facility where it makes AC power cords, electrical
17 plugs and adapters, and electrical receptacles and other products since 1982. Defendant employed
18 Plaintiff as a non-exempt employee (focused on welding, connecting wires) from approximately June
19 2018, until her separation on or about November 2020 out of its Fontana, California location.

20 16. Plaintiff and other non-exempt employees were responsible for all aspects of
21 Defendants' business operations in California.

22 17. First, at all relevant times, Defendants has had a consistent policy of rounding Plaintiff
23 and other non-exempt employees' time entries to the nearest quarter hour. As a result of this practice,
24 Plaintiff and other non-exempt employees are not compensated for all the hours that they work and
25 all of the overtime hours they work, in violation of Cal. Labor Code §§ 204, 210, 510, 1194, 1197.1,
26 1199, and applicable Wage Orders.

27 18. The Court in *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907,
28 held that rounding time policies can be lawful, "if the rounding policy is fair and neutral on its face

1 and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate
2 the employees properly for all the time they have actually worked,’ (29 C.F.R. § 785.48; see DLSE
3 Manual, supra, §§ 47.1, 47.2.).”

4 19. Here, Defendants’ rounding time policy is not neutral on its face.. Moreover, because
5 Defendants can track the time worked by non-exempt employees to the minute, the policy itself exists
6 not for the convenience or benefit of the employees who are trying to report their time on timecards
7 or otherwise, but for Defendants’ benefit. As a result, the policy is not neutral on its face, and over a
8 period, Plaintiff and other non-exempt employees were not properly paid for all hours worked in
9 violation of Cal. Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

10 20. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
11 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
12 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,
13 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
14 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
15 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
16 underpaid regardless of whether the initial violation is intentionally committed. As set forth above,
17 Defendants failed to compensate Plaintiff and other non-exempt employees for all hours worked.
18 Accordingly, through PAGA and to the extent permitted by law Plaintiff and other non-exempt
19 employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

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

28 22. Under the California Labor Code (as well as the FLSA), courts have consistently held

1 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
2 determining an employee's "regular rate of pay" for purposes of calculating overtime. (*See Haber v.*
3 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
4 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.
5 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
6 California and federal law on the grounds, that Defendant improperly calculated overtime by
7 excluding annual bonuses paid to employees from the "regular rate of compensation"].)

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

12 24. Accordingly, and to the extent permitted by law, Plaintiff and other non-exempt
13 employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204,
14 210, 510, and 1197.1.

15 25. Next, at all relevant times, Defendants failed in their obligation to pay Plaintiff and
16 other non-exempt employees the legally required paid sick days at the legal "regular rate of pay"
17 pursuant to Labor Code §§ 246(a), (b).

18 26. Pursuant to Labor Code § § 246(a),(b), "[a]n employee who, on or after July 1, 2015,
19 works in California for the same employer for 30 or more days within a year from the commencement
20 of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
21 worked, beginning at the commencement of employment."

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

26
27 28. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated
28 by dividing the employee's total wages, not including overtime premium pay, by the employee's total

1 hours worked in the full pay periods of the prior 90 days of employment.”

2 29. Finally, Labor Code §246(i) requires employers to “provide an employee with written
3 notice that sets forth the amount of paid sick leave available, or paid time off leave an employer
4 provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in
5 Section 226 or in a separate writing provided on the designated pay date with the employee’s payment
6 of wages.”

7 30. At all relevant times, Defendants failed in the obligation to pay Plaintiff and other non-
8 exempt employees the legally required paid sick days at the “regular rate of pay” pursuant to Labor
9 Code §§ 246(a), (b). Instead, Defendants paid sick time at the base rate of pay, rather than the “regular
10 rate of pay” as required by Labor Code §§ 246(l)(1-2).

11 31. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
12 compliant and timely 30-minute off-duty meal periods as mandated by California law. Specifically,
13 due to Defendants’ uniform meal period policies/practices and operating requirements, Plaintiff and
14 other non-exempt employees were often unable to take timely and uninterrupted 30-minute first meal
15 periods before the end of the fifth hour of work. Further, when Plaintiff and other non-exempt
16 employees worked in excess of 10.0 hours in a shift, they were not always allowed and permitted to
17 take a mandated second meal period before the end of the tenth hour of work in violation of the Labor
18 Code and applicable Wage Orders. Additionally, for each missed or non-compliant meal period,
19 Defendants failed to maintain a mechanism by which Plaintiff and other non-exempt employees were
20 paid meal period premiums at the “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel,*
21 *LLC* (2021) 11 5th 858 and Labor Code § 226.7.

22 32. Furthermore, 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 and scheduling practices. As a result, Plaintiff
25 and other non-exempt employees were and are often unable to take a net 10-minute duty free rest
26 periods for every major fraction of four hours worked. This includes a second rest period for shifts in
27 excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

28 33. By not relieving all non-exempt employees of all duties during rest periods, Defendants

1 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
2 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
3 duties and relinquish control over how employees spend their time.”]. In *Augustus*, the California
4 Supreme Court expressly rejected the employers’ assertion that it could provide an on-duty rest period
5 to employees who worked as security guards and further explained “that employers [must] relinquish
6 any control over how employees spend their break time and relieve their employees of all duties.” *Id.*
7 at 273.

8 34. Additionally, for each missed or non-compliant rest period, Defendants failed to
9 maintain a mechanism by which Plaintiff and other non-exempt employees were paid rest period
10 premiums at the “regular rate of pay” pursuant to Labor Code § 226.7.

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

16 36. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
17 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
18 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
19 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
20 deduction statement or fails to keep the required in subdivision (a) of Section 226.” Consequently,
21 because Defendants failed to comply with Labor Code § 226(a), Plaintiff and other non-exempt
22 employees would be entitled to recover penalties under Labor Code §§ 226(e).

23 37. Finally, because of Defendants’ failure to pay all overtime wages, sick pay, and
24 premium wages for missed meal and rest periods, Defendants also often failed and continue to fail to
25 pay Plaintiff and other non-exempt employees all wages owed at their time of separation from
26 employment in violation of Labor Code §§ 201-203.

27 **CLASS ACTION ALLEGATIONS**

28 38. Plaintiff brings this action on behalf of herself 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 employ during the three years immediately preceding the filing of the Complaint through the date of trial. (“Waiting Time Penalty Subclass”)
(collectively “the Classes”)

39. **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.

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

1. Whether Defendants’ pay policies/practices resulted in a failure to pay all overtime wages at the “regular rate of pay” because Defendants failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration;

2. Whether Defendants’ payroll policies/practices resulted in a failure to pay all sick pay at the “regular rate of pay”;

1 3. Whether Defendants provided legally compliant meal and rest periods or proper
2 compensation in lieu thereof to members of the Class;

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

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

7 41. **Predominance of Common Questions:** Common questions of law and fact
8 predominate over questions that affect only individual members of the Classes. The common
9 questions of law set forth above are numerous and substantial and stem from Defendants' policies
10 and/or practices applicable to each individual class member, such as Defendants' failure to pay all
11 overtime wages and sick pay at the "regular rate" including all forms of compensation, Defendants',
12 Defendants' practice of failing to provide all compliant meal and rest periods or adequate
13 compensation at the "regular rate of pay" in lieu thereof, Defendants' resulting failure to provide
14 accurate itemized wage statements and to pay for all wages due upon separation of employment. As
15 such, the common questions predominate over individual questions concerning each individual class
16 member's showing as to her or her eligibility for recovery or as to the amount of her damages.

17 42. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
18 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
19 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
20 Plaintiff, like the members of the Classes was deprived of overtime wages and sick pay at the "regular
21 rate," was subject to Defendants' meal and rest period policies/practices, was not provided accurate
22 itemized wage statements, and was not paid all wages owed upon separation of employment.

23 43. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
24 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
25 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
26 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
27 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
28 members of the Classes.

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

11 45. Moreover, requiring each member of the Classes to pursue an individual remedy would
12 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
13 against their former and/or current employer for real and justifiable fear of retaliation and permanent
14 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
15 the individual class members, even if possible, would create a substantial risk of inconsistent or
16 varying verdicts or adjudications with respect to the individual class members against Defendants
17 herein; and which would establish potentially incompatible standards of conduct for Defendants;
18 and/or legal determinations with respect to individual class members which would, as a practical
19 matter, be dispositive of the interest of the other class members not parties to adjudications or which
20 would substantially impair or impede the ability of the class members to protect their interests.
21 Further, the claims of the individual members of the class are not sufficiently large to warrant
22 vigorous individual prosecution considering all of the concomitant costs and expenses attending
23 thereto. As such, the Classes identified in Paragraph 33 are maintainable as Classes under § 382 of
24 the Code of Civil Procedure.

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FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

1 (AGAINST ALL DEFENDANTS)

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

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

9 48. At all relevant times herein, Defendants failed to conform their pay practices to the
10 requirements of the law. This unlawful conduct includes but is not limited to Defendants' rounding
11 non-exempt employees time entries, which resulted in these individuals not being paid for all hours
12 actually worked.

13 49. Accordingly, Plaintiff and members of the Classes were not compensated for all
14 hours worked including, but not limited to, all hours they were subject to the control of Defendants
15 and/or suffered or permitted to work under the California Labor Code and applicable Wage Orders.
16

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

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

27 52. Defendants' practice and uniform administration of corporate policy regarding
28 employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members

1 of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages,
2 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
3 Code §§ 204, 210, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGES**

6 **(AGAINST ALL DEFENDANTS)**

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

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

12 55. At all times relevant herein, Defendants were required to properly pay Plaintiff and
13 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
14 § 1194 and the applicable Wage Orders.

15 56. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
16 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
17 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
18 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
19 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
20 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
21 Plaintiff or members of the Overtime Subclass at one and one-half times their regular rate of pay for
22 such hours.

23 57. Defendants failed to include all forms of compensation, including, but not limited to,
24 shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration when
25 calculating the "regular rate of pay" used in payment of overtime wages, all of which resulted in
26 Plaintiff and the Overtime Subclass not being paid all overtime wages owed.

27 58. The foregoing policies and practices are unlawful and create entitlement to recovery
28 by Plaintiff and the members of the Overtime Subclass in a civil action for the unpaid amount of

1 overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit
2 according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code
3 of Civil Procedure § 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY ALL SICK TIME**

6 **(AGAINST ALL DEFENDANTS)**

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

8 60. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
9 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid at
10 the regular rate, including all forms of compensation/remuneration.

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

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

18 63. The foregoing policies and practices are unlawful and create entitlement to recovery
19 by Plaintiff and the members of the Class in a civil action for the unpaid amount of sick time wages,
20 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
21 Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure
22 § 1021.5,

23 **FOURTH CAUSE OF ACTION**

24 **MEAL PERIOD VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

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

27 65. Labor Code Labor Code § 512(a), in part, provides that employers, including
28 Defendants, may not employ an employee for a work period of more than five (5) hours per day

1 without providing the employee the opportunity to take an uninterrupted meal period of not less than
2 thirty (30) minutes, except that if the total work period per day of the employee is no more than six
3 (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.
4 Employers may not employ an employee for a work period more than ten (10) hours per day without
5 providing the employee with a second meal period of not less than thirty (30) minutes. Furthermore,
6 Labor Code 512(b) requires employers to provide uninterrupted meal periods to employees prior to
7 the commencement of the employees' sixth (6th) hour of work.

8 66. Pursuant to Labor Code § 226(b) and the applicable IWC Wage Order, Defendants
9 shall pay an employee one (1) additional hour of pay at the employee's "regular rate of pay" for each
10 meal period that is missed.

11 67. At all relevant times, Plaintiff and the Class were denied compliant and timely 30-
12 minute off-duty meal periods as mandated by California law. Specifically, due to Defendants'
13 uniform meal period policies/practices and operating requirements, Plaintiff and the Class were often
14 unable to take timely and uninterrupted 30-minute first meal periods before the end of the fifth hour
15 of work. Further, when Plaintiff and the Class worked in excess of 10.0 hours in a shift, they were
16 not always allowed and permitted to take a mandated second meal period before the end of the tenth
17 hour of work in violation of the Labor Code and applicable Wage Orders.

18 68. Additionally, for each missed or non-compliant meal period, Defendants failed to
19 maintain a mechanism by which aggrieved employees were paid meal period premiums at the
20 "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor
21 Code § 226.7.

22 69. Accordingly, as a result of Defendants' failure to provide legally compliant meal
23 periods in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

24 **FIFTH CAUSE OF ACTION**

25 **REST PERIODS VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

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

28 71. During the relevant time period, Plaintiff and the Class were not provided with all 10-

1 minute rest periods for every four hours worked, or major fraction thereof due to Defendants' uniform
2 rest period policies/practices and scheduling practices. As a result, Plaintiff and the Class were and
3 are often unable to take a net 10-minute duty free rest periods for every major fraction of four hours
4 worked. This includes a second rest period for shifts in excess of six hours, and a third rest period for
5 shifts in excess of 10 hours in a workday.

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

14 73. Additionally, for each missed or non-compliant rest period, Defendants failed to
15 maintain a mechanism by which aggrieved employees were paid rest period premiums at the “regular
16 rate of pay” pursuant to Labor Code § 226.7.

17 74. Accordingly, as a result of Defendants' failure to provide legally compliant rest
18 periods in violation of Labor Code 226.7, 512, and applicable IWC Wage Orders.

19 **SIXTH CAUSE OF ACTION**

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

21 **(AGAINST ALL DEFENDANTS)**

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

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

24 “(a) An employer, semimonthly or at the time of each payment of wages,
25 shall furnish to his or her employee, either as a detachable part of the check,
26 draft, or voucher paying the employee's wages, or separately if wages are
27 paid by personal check or cash, an accurate itemized statement in writing
28 showing (1) gross wages earned, (2) total hours worked by the employee,
(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

1 shown as one item, (5) net wages earned, (6) the inclusive dates of the
2 period for which the employee is paid, (7) the name of the employee and
3 only the last four digits of her or her social security number or an employee
4 identification number other than a social security number, (8) the name and
5 address of the legal entity that is the employer, and (9) all applicable hourly
6 rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate by the employee.”

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

11 78. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass for
12 all and overtime wages and sick pay at the regular rate of pay, Defendants failed to include required
13 information on Plaintiff and the Wage Statement Subclass’ wage statements, including, but not
14 limited to, the gross wages earned, the net wages earned in violation of Labor Code section
15 226(a)(1,2,5, and 9).

16 79. Further, during the relevant time period, Defendants’ wage statements also failed to
17 state “all applicable rates of pay and units” in violation of Labor Code 226(a)(9).

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

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

26 **SEVENTH CAUSE OF ACTION**

27 **WAITING TIME PENALTIES**

28 **(AGAINST ALL DEFENDANTS)**

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

83. The actionable period for this cause of action is three years prior to the filing of this

1 Complaint through the present, and on-going until the violation is corrected or the class is certified.

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

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

8 86. Defendants willfully failed to pay all overtime wages, sick pay, and premium wages
9 for missed meal and rest periods prior to or upon termination or separation from employment with
10 Defendants as required by Labor Code §§ 201 and 202.

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

15 **EIGHT CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(AGAINST ALL DEFENDANTS)**

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

19 89. Defendants have engaged and continue to engage in unfair and/or unlawful business
20 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
21 failing to pay all overtime wages, sick pay, and premium wages for missed meal and rest periods.

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

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

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

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

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

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(Labor Code § 2698 *et seq.*)

(AGAINST ALL DEFENDANTS)

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

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

a. Failing to pay Plaintiff and other non-exempt employees for all hours worked, including all minimum and overtime wages in violation of Labor Code §§ 204, 510, 1194, 1197, 1198, and 1182.12;

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

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

2 c. Failing to authorize and permit Plaintiff and other non-exempt employees with all of
3 their statutorily mandated rest periods or compensation at the “regular rate of pay” in lieu thereof in
4 violation of Labor Code §§ 226.7, and 516;

5 d. Failing to pay all sick pay at the “regular rate of pay” in violation of Labor Code §§
6 246, 558, 1194.2, 1197.1, 1198, and 1199;

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

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

11 96. On or about [date], Plaintiff notified DSM&T, Co., Inc., via certified mail, and the
12 California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s
13 violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the California
14 Labor Code identified in Paragraph 51(a)-(f). Now that sixty-five days have passed from Plaintiff
15 notifying Defendant and the LWDA of these violations, Plaintiff will have exhausted her
16 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
17 to these violations.

18 97. Plaintiff was compelled to retain the services of counsel to file this court action to
19 protect their interests and the interests of other non-exempt employees, and to assess and collect the
20 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys’ fees and costs, which he
21 is entitled to receive under California Labor Code § 2699.

22 **PRAYER FOR RELIEF**

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

- 25 1. For an order certifying the proposed Classes;
- 26 2. For an order appointing Plaintiff as representative of the Classes;
- 27 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 28 4. Upon the First and Second Cause of Action, for compensatory, consequential,

1 general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and
2 1198;

3 5. Upon the Third Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199;

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

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

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

11 9. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
12 Labor Code §§ 201-203;

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

16 11. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other non-
17 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
18 § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
19 subsequent violation per employee per pay period for those violations of the Labor Code for which
20 no civil penalty is specifically provided under the Labor Code

21 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
22 § 218.6 and Civil Code §§ 3287 and 3289;

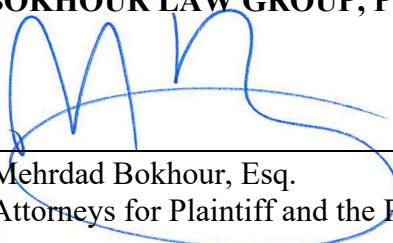
23 13. For attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, and
24 Code of Civil Procedure § 1021.5; and

25 14. For such other relief that the Court may deem just and proper.
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Dated: May 15, 2023

BOKHOUR LAW GROUP, P.C.

By: 

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Classes

1 **PROOF OF SERVICE**

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

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

5 On June 28, 2023, I served the following document(s) described as **FIRST**
6 **AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this
action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

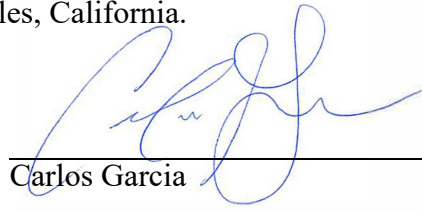
7 Eric J. Gitig, Esq.
8 Eric.Gitig@jacksonlewis.com
Nareg A. Kourouyan, Esq.
9 Nareg.Kourouyan@jacksonlewis.com
JACKSON LEWIS, P.C.
10 725 South Figueroa Street, Suite 2500
Los Angeles, California 90017

11 **Counsel for defendant DSM&T, Col.,**
12 **Inc.**

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

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

17 Executed on June 28, 2023, at Los Angeles, California.

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19
20 
Carlos Garcia