

BOKHOUR LAW GROUP, P.C.
Mehrddad 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 Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

OSVALDO SALAZAR, on behalf of himself
and all others similarly situated,

Plaintiff,
v.

F.D. THOMAS, INC., an Arizona Corporation;
ASRC INDUSTRIAL SERVICES, LLC, an
Arizona limited liability corporation; and DOES
1-50, inclusive.

Defendants.

CASE NO.: 24CV005999

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Osvaldo Salazar (“Plaintiff”), on behalf of himself and all other similarly situated
2 non-exempt employees, alleges and complains of defendants F.D. Thomas, Inc. and ASRC Industrial
3 Services, LLC, and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants are construction firms that provide waterproofing, roofing, painting,
6 restoration, and specialty contracting services. F.D. Thomas, Inc., is a wholly owned subsidiary of
7 ASRC Industrial Services, LLC.

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

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

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

21 **JURISDICTION AND VENUE**

22 5. Plaintiff, on behalf of himself and all other similarly situated employees hereby brings
23 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
24 204, 210, 226(a), 226(e), 226.3, 226.7, 227.3, 510, 512, 516, 1194, 1197.1, 1199, 2802-2804, and
25 applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking
26 declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et*
27 *seq.*

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

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

8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendants operate in California within the County of Sacramento, 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 Defendants are authorized to do business within the County of Sacramento and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199, 2802-2804, 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 Sacramento.

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 alleged herein.

13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned

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

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

13 **COMMON FACTUAL ALLEGATIONS**

14 15. Defendants is a construction firm that provides waterproofing, roofing, painting,
15 restoration, and specialty contracting services. F.D. Thomas, Inc. is a wholly-owned subsidiary of
16 ASRC Industrial Services, LLC.

17 16. Defendants employed Plaintiff as a non-exempt, non-union employee with the title of
18 "Painter/Sandblaster." Plaintiff began working with Defendants on or about April 11, 2023, until
19 approximately June 27, 2023.

20 17. Plaintiff and other non-exempt employees (including, but not limited to, material
21 handlers, drivers, laborers, administrative assistants, maintenance helpers, apprentices, general staff,
22 and all other non-exempt positions) were responsible for all aspects of Defendants' business in the
23 State of California. However, in these roles, Plaintiff and other non-exempt employees were often
24 not afforded all protections and rights conferred under the California Labor Code and applicable
25 Wage Orders.

26 18. First, at all relevant times, Defendants have had a consistent practice/policy of unfairly
27 and unlawfully rounding/editing Plaintiff's and other non-exempt employees' time entries to the
28 nearest quarter hour. As a result, over a period of time, Plaintiff and other non-exempt employees are

1 not compensated for all the hours that they work or were subject to the control of Defendants in
2 violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

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

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

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

25 22. In addition, Labor Code § 510 obligates employers to compensate employees at no
26 less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
27 workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3
28 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8)

1 hours in any workday or more than 40 hours in any workweek unless the employee receives one and
2 one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the
3 workweek.

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

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

15 25. Accordingly, due to Defendants' uniform meal period policies/practices, non-exempt
16 employees were also regularly denied legally compliant meal periods in violation of Labor Code §§
17 226.7, 510, 516, and applicable Wage Orders.

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

23 27. As a result of this auto deduct practice, over a period of time, Plaintiff and other non-
24 exempt employees were also not properly paid for all hours worked, including all minimum wages
25 and overtime wages, in violation of Labor Code §§ 204, 510, 1194, 1197.1, 1199, and applicable
26 Wage Orders

27 28. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were also
28 not provided with all uninterrupted 10-minute rest periods for every four hours worked, or major

1 fraction thereof due to Defendants' uniform rest period policies/practices and work demands. As a
2 result, other non-exempt employees were and are often unable to take a net 10-minute duty free rest
3 periods for every major fraction of four hours worked. This includes a second rest period for shifts in
4 excess of 7.0 hours, and a third rest period for shifts in excess of 10 hours in a workday. Moreover,
5 Defendants had a rest break policy which required that non-exempt employees remain on premises
6 during rest periods. Despite Defendants' claim that all employees are relieved of all duties during their
7 rest breaks, Defendants still exerts control on employees by requiring them to remain onsite.

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

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

19 31. Accordingly, due to Defendants' uniform rest period policies/practices, non-exempt
20 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
21 512, and applicable Wage Orders.

22 32. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for
23 all hours they were subject to the control of Defendants, including all minimum and overtime wages,
24 and Defendants' failure to adequately pay for all overtime and meal and rest period premiums at the
25 "regular rate of pay," Defendants issued wage statements which failed to identify the gross wages
26 earned accurately, the total hours worked, the net wages earned, and the correct corresponding
27 number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

28 33. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of

1 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
2 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
3 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
4 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

5 34. Thus, Plaintiff is a non-exempt employee, and Defendants have violated Labor Code
6 §226(a) with respect to Plaintiff and other non-exempt employees. Consequently, because Defendants
7 failed to comply with Labor Code § 226(a), Plaintiff and other non-exempt employees would be
8 entitled to recover penalties under Labor Code § 226(e).

9 35. As a result of Defendants’ failure to pay all minimum and overtime, and meal and rest
10 period premiums at the “regular rate of pay,” Defendants also failed and continue to fail to pay
11 Plaintiff and other non-exempt employees all wages owed at their time of separation from
12 employment in violation of Labor Code §§ 201-203. Thus, non-exempt employees would be entitled
13 to recover waiting time penalties under Labor Code §§ 201-203.

14 36. Finally, at all relevant times, Defendants required Plaintiff and other non-exempt
15 employees to incur necessary business expenses associated with using their personal cell phones and
16 home internet for work-related purposes but did not reimburse non-exempt employees adequately for
17 these necessary expenditures in violation of Labor Code §§ 2802-2804. *See Cochran v. Schwan’s*
18 *Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 “[i]f an employee is required to make work-
19 related calls on a personal cell phone, then he or she is incurring an expense for the purposes of
20 section 2802. It does not matter whether the phone bill is paid for by a third person or at all...To show
21 liability under section 2802, an employee need only show that he or she was required to use a personal
22 cell phone to make work-related calls, and he or she was not reimbursed”].

23 37. Here, Defendants uniformly failed to reimburse non-exempt employees for a
24 reasonable portion of their cell phone bill, for mileage, and other necessary costs incurred in the
25 discharge of their duties for those non-exempt employees. Accordingly, due to Defendants’ uniform
26 failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§
27 2800-2802 and applicable Wage Orders.

1 **CLASS ACTION ALLEGATIONS**

2 38. Plaintiff brings this action on behalf of himself and the following Class pursuant to §
3 382 of the Code of Civil Procedure:

4 All current and former non-exempt, non-union hourly employees of
5 Defendants who worked for Defendants in California from September 25,
6 2019, through September 28, 2024, or the date the Court grants preliminary
approval of the Settlement, whichever occurs first. (“Class”)

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

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

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

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

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

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

24 5. Whether Defendants furnished legally compliant wage statements to members of the
25 Class pursuant to Labor Code § 226(a);

26 6. Whether Defendants failed to timely pay Plaintiff and other non-exempt employees in
27 violation of Labor Code § 204; and

28 7. Whether the timing and amount of final wages paid to members of the Class at the time

1 of separation from employment were unlawful.

2 41. **Predominance of Common Questions:** Common questions of law and fact
3 predominate over questions that affect only individual members of the Classes. The common
4 questions of law set forth above are numerous and substantial and stem from Defendants' policies
5 and/or practices applicable to each individual class member, such as without limitation, Defendants'
6 failure to pay for all hours worked, Defendants' failure to provide all compliant meal and rest periods
7 or premiums at the "regular rate of pay" in lieu thereof, Defendants' failure to provide accurate
8 itemized wage statements, Defendants' failure to pay wages timely, Defendants' failure to reimburse
9 for all necessary business expenses, and Defendants' failure to pay for all wages due upon separation
10 of employment. As such, the common questions predominate over individual questions concerning
11 each class member's showing as to his or her eligibility for recovery or the amount of his or her
12 damages.

13 42. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
14 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
15 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
16 Plaintiff, like the members of the Class, was deprived of overtime wages, was deprived of meal and
17 rest period premium wages, was subject to Defendants' uniform meal and rest period
18 policies/practices, was not provided accurate itemized wage statements, was not reimbursed for all
19 necessary business expenses, and was not timely paid all wages owed upon separation of
20 employment.

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

27 44. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
28 important public interest in establishing minimum working conditions and standards in California.

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

9 45. Moreover, requiring each member of the Classes to pursue an individual remedy would
10 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
11 against their former and/or current employer for real and justifiable fear of retaliation and permanent
12 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
13 the individual class members, even if possible, would create a substantial risk of inconsistent or
14 varying verdicts or adjudications with respect to the individual class members against Defendants
15 herein; and which would establish potentially incompatible standards of conduct for Defendants;
16 and/or legal determinations with respect to individual class members which would, as a practical
17 matter, be dispositive of the interest of the other class members not parties to adjudications or which
18 would substantially impair or impede the ability of the class members to protect their interests.
19 Further, the claims of the individual members of the class are not sufficiently large to warrant
20 vigorous individual prosecution, considering all of the concomitant costs and expenses attending
21 thereto. As such, the Classes identified in Paragraph 38 are maintainable as Classes under § 382 of
22 the Code of Civil Procedure.

23 **FIRST CAUSE OF ACTION**

24 **MINIMUM WAGE VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

26 46. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

27 47. Section 4 of the applicable Wage Order(s) and Labor Code §§ 1197 and 1182.12
28 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by

1 state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the
2 legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together
3 with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
4 wages and interest accrued thereon.

5 48. At all relevant times herein, Defendants failed to conform their pay practices to the
6 requirements of the law. This unlawful conduct includes, but is not limited to, Defendants' uniform
7 and unlawful rounding policy/practice, which resulted in these individuals not being paid for all hours
8 they were suffered or permitted to work. Accordingly, Plaintiffs and members of the Classes were
9 not compensated for all hours worked, including, but not limited to, all hours they were subject to the
10 control of Defendants and/or suffered or permitted to work under the Labor Code and applicable
11 Wage Orders.

12 49. Labor Code § 1198 makes unlawful the employment of an employee under conditions
13 that the Industrial Welfare Commission prohibits. Labor Code §§ 1194(a) and 1194.2(a) provide that
14 an employer who has failed to pay its employees the legal minimum wage is liable to pay those
15 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal
16 to the wages due and interest thereon.

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

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

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

9 54. At all times relevant herein, Defendants were required to properly pay Plaintiff and
10 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
11 § 1194 and the applicable Wage Orders.

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

20 56. Defendants failed to conform their pay practices to the law at all relevant times herein.
21 This unlawful conduct includes, but is not limited to, Defendant’s time rounding policy/practice and
22 Defendants’ failure to properly pay for all hours worked, including all overtime hours at the proper
23 overtime rate.

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

1 **THIRD CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

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

10 60. Despite Defendants' violations, Defendants have not paid an additional hour of pay at
11 the "regular rate of pay" to Plaintiff and Class members at their respective regular rates of pay for
12 each violation, per California Labor Code § 226.7.

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

16 **FOURTH CAUSE OF ACTION**

17 **REST PERIOD VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO TIMELY PAY WAGES**

7 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

18 69. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
19 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, §
20 210, subd. (a).)

21 70. Defendants failed to pay all minimum and overtime wages and meal/rest premiums,
22 and They failed to pay the Class Members on a regular and consistent basis within seven calendar
23 days following the close of the weekly payroll in accordance with Labor Code section § 204.
24 Therefore, Plaintiff and members of the Class are entitled to penalties pursuant to Labor Code section
25 210(a).

26 ///

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
3 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

24 74. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass
25 for all overtime wages, and missed meal and rest period premiums at the appropriate legal rate,
26 Defendants failed to include required information on Plaintiff and the Class’s wage statements,
27 including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code
28 section 226(a).

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

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

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

4 **SEVENTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **(AGAINST ALL DEFENDANTS)**

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

8 78. The actionable period for this cause of action is three years prior to the filing of this
9 Complaint through the present and ongoing until the violation is corrected or the class is certified.

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

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

16 81. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked,
17 including all minimum and overtime wages, and their meal and rest period premiums at the "regular
18 rate of pay" prior to or upon termination or separation from employment with Defendants as required
19 by Labor Code §§ 201 and 202.

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

24 **EIGHT CAUSE OF ACTION**

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

26 **(AGAINST ALL DEFENDANTS)**

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

28 84. Labor Code 2802(a) states in pertinent part the following: "(a) An employer shall

indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

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

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

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

88. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay for all hours worked, including overtime wages, by failing to provide all legally required meal and rest periods or pay premium payments at the “regular rate of pay” in lieu thereof, by failing to provide accurate wage statements, by failing to reimburse for all necessary business expenses adequately, and by failing to pay all earned wages at the time of separation from employment.

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

90. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for himself 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.

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

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

TENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT PENALTIES

(AGAINST ALL DEFENDANTS)

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

94. 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 himself and other non-exempt employees, brings 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:

1 a. Failing to provide Plaintiff and other non-exempt employees all minimum and
2 overtime wages in violation of Labor Code § 204, 510, 1194 & 1198;

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

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

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

11 e. Failing to reimburse business expenses in violation of Labor Code §§ 2802-2804;

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

14 95. On or about July 22, 2023, Plaintiff notified Defendants via certified mail and the
15 California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s
16 violations of California Labor Code § 2698 et seq., with respect to violations identified in Paragraph
17 94(a)-(e).

18 96. Plaintiff will have exhausted his administrative requirements for bringing a claim
19 under the Private Attorneys General Act with respect to these violations.

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

24 **PRAYER FOR RELIEF**

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

27 1. For an order certifying the proposed Classes;

28 2. For an order appointing Plaintiff as representative of the Classes;

- 1 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 2 4. Upon the First and Second Cause of Action, for compensatory, consequential,
- 3 general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194,
- 4 1197, 1197.1, and 1198 and reasonable attorneys' fees and costs;
- 5 5. Upon the Third Cause of Action, for compensatory, consequential, general and
- 6 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, 1197, and 1198
- 7 and reasonable attorneys' fees and costs;
- 8 6. Upon the Third Cause of Action, for compensatory, consequential, general and
- 9 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 10 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
- 11 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 12 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
- 13 special damages according to proof pursuant to Labor Code §§ 204 and 210;
- 14 9. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and
- 15 reasonable costs and attorneys' fees;
- 16 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
- 17 Labor Code §§ 201-203;
- 18 11. Upon the Eighth Cause of Action, for unreimbursed expenses, interest and attorney's
- 19 fees and costs pursuant to Labor Code § 2802;
- 20 12. Upon the Ninth Cause of Action, for restitution to Plaintiff and members of the
- 21 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
- 22 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
- 23 13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, other non-
- 24 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
- 25 § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
- 26 subsequent violation per employee per pay period for those violations of the Labor Code for which
- 27 no civil penalty is specifically provided under the Labor Code;
- 28 14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code

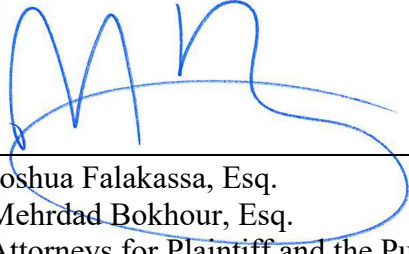
1 § 218.6 and Civil Code §§ 3287 and 3289;

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

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

6 Dated: April 17, 2024

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

7
8
9 By: 

10 Joshua Falakassa, Esq.

11 Mehrdad Bokhour, Esq.

12 Attorneys for Plaintiff and the Putative Class
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 action; my business address is 1901 Avenue of the Stars, Suite
450, Los Angeles, California 90067.

5 On April 17, 2024, I served the following document(s) described as **FIRST AMENDED**
6 **CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action by placing
true copies thereof enclosed in sealed envelopes addressed as follows:

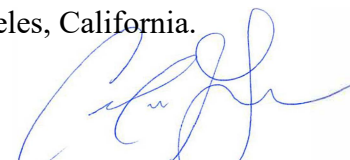
7 Kent J. Sprinkle, Esq.
ksprinkle@cdflaborlaw.com
8 Desiree J. Ho, Esq.
dho@cdflaborlaw.com
9 Taylor Wendland, Esq.
twendland@cdflaborlaw.com
10 CDF LABOR LAW, LLP
4660 La Jolla Village Drive, Suite 740
11 San Diego, California 92122

12 **Counsel for defendants F.D. Thomas,**
13 **Inc. and ASRC Industrial Services, LLC**

14 **BY ELECTRONIC SERVICE:** I transmitted the above-referenced document(s) via
electronic service provider First Legal to the person(s) identified above at the email address(es)
15 indicated and did not, within a reasonable time after transmission, receive any message or
communication indicating that delivery failed or that any other error had occurred which would
16 delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

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

18 Executed on April 17, 2024, at Los Angeles, California.

19 
20 _____
21 Carlos Garcia