

ORIGINAL

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

JOSE BAUTISTA, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

PATRIOT ENVIRONMENTAL SERVICES,
INC., a California Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: 2023CUOE014550

**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) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Jose Bautista ("Plaintiff"), on behalf of himself and all other similarly situated non-
2 exempt employees, alleges and complains of defendant Patriot Environmental Services,
3 Inc. ("Defendant"), and DOES 1 to 50 (collectively, "Defendants") and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant specializes in providing environmental-related services, including but not
6 limited to hazardous waste removal, site remediation, and related activities.

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

9 3. As set forth below, Plaintiff alleges that Defendants failed to pay for all hours worked
10 due to its unlawful practice of failing to record and pay for all hours worked. In addition, Defendants
11 also failed and continue to fail to pay all overtime and sick pay wages due to failing to include all
12 forms of remuneration in calculating the "regular rate of pay."

13 4. Moreover, Plaintiff alleges that Defendants' meal and rest period policies and practices
14 failed to allow and permit non-exempt employees to take all compliant and timely meal and rest
15 periods or pay premium wages at the "regular rate of pay" in lieu thereof. Plaintiff further alleges that
16 Defendants failed to provide non-exempt employees with accurate written itemized wage statements
17 in violation of Labor Code § 226(a), failed to reimburse all necessary business expenses, and failed
18 to pay all wages in a timely manner and failed to timely pay all final wages upon separation of
19 employment in violation of Labor Code §§ 201-203.

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

23 **JURISDICTION AND VENUE**

24 6. Plaintiff, on behalf of himself and all others similarly situated employees hereby brings
25 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
26 204, 210, 226(a), 226(e), 226.3, 226.7, 227.3, 510, 512, 516, 1194, 1197.1, 1199, 2802-2804, *et seq*
27 and applicable Industrial Welfare Commission Wage Orders ("Wage Orders").
28

1 || 7. This class action is brought pursuant to the California Code of Civil Procedure § 382.

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

9. 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 Ventura, and Defendants are within the jurisdiction of this Court for purposes of service of process.

8 PARTIES

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

11 11. Plaintiff is informed and believes and thereon alleges that Defendants are authorized to
12 and doing business within the County of Ventura and is and/or was the legal employer of Plaintiff
13 and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of
14 Defendants' policies and/or practices complained of herein and has been deprived of the rights
15 guaranteed to her by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7,
16 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199, 2802-2804, 2698 *et seq.*

12. Plaintiff is informed and believes, and based thereon alleges, that during the three 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 Ventura.

13. 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.

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

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

COMMON FACTUAL ALLEGATIONS

16. Defendants specialize in providing environmental-related services, including but not limited to hazardous waste removal, site remediation, and related activities.

17. Defendants employed Plaintiff as a non-exempt employee with the title of “Field Supervisor.” Plaintiff began working with Patriot Environmental Services on or about November 15, 2021, and remains employed with the company to the present day.

18. Plaintiff and other non-exempt employees (including, but not limited to, field technicians, administrative personnel, and all other non-exempt positions) were responsible for various aspects of Defendants' business in the State of California. However, in these roles, Plaintiff and other non-exempt employees were often not afforded all protections and rights conferred under the California Labor Code and applicable Wage Orders.

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

1 was subjected during his employment.

2 20. First, at all relevant times, Defendants have had a consistent practice of failing to
3 accurately record all hours worked and for all hours which Plaintiff and other non-exempt employees
4 were subject to the control of Defendants.

5 21. Indeed, Defendants had a uniform practice of shaving time from other non-exempt
6 employees' time entries. Plaintiff and other non-exempt employees would consistently perform pre-
7 shift and post-shift duties, which were not accurately recorded and paid for by Defendants. As a result
8 of this practice, Plaintiff and non-exempt employees are not compensated for all the hours that they
9 work and all of the overtime hours they work, in violation of Labor Code §§ 204, 210, 510, 1194,
10 1197.1, 1199, and applicable Wage Orders.

11 22. Here, Defendants' time recording and pays practices failed to account and pay for all
12 hours worked, and instead only paid Plaintiff and other non-exempt employees for their scheduled
13 shifts. Moreover, because Defendants are capable of tracking the exact time worked by non-exempt
14 employees to the minute, the practice itself exists not for the convenience or benefit of the employees
15 who are trying to report their time worked accurately but for Defendants' benefit. As a result of the
16 unlawful practice, Plaintiff and other non-exempt employees were not paid for all hours worked,
17 including all minimum wages and overtime wages for hours worked in excess of eight hours per shift.

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

22 24. Next, at all relevant times, Plaintiff and non-exempt employees were not properly paid
23 at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty
24 (40) hours per workweek. While non-exempt employees regularly worked overtime hours, they were
25 not compensated at one and one-half times their "regular rate of pay" for all overtime hours worked.
26 In this regard, Defendants uniformly failed to include all forms of compensation, including but not
27 limited to, incentive pay, non-discretionary bonuses, and other forms of non-hourly remuneration
28 when calculating the "regular rate of pay used in overtime calculations.

1 25. Under the California Labor Code (as well as the FLSA), courts have held that regularly
2 paid non-discretionary pay, including commissions and bonuses must be included in determining an
3 employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana*
4 *Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be
5 included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042,
6 1055-1057 (C.D. Cal. 2006); See Labor Commissioner's Office FAQ on "Overtime",
7 https://www.dir.ca.gov/dlse/FAQ_Overtime.htm); see *Walling v. Youngerman-Reynolds Hardwood*
8 *Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect all payments which
9 the parties have agreed shall be received regularly during the workweek, exclusive of overtime
10 payments. It is not an arbitrary label chosen by the parties; it is an actual fact. Once the parties have
11 decided upon the amount of wages and the mode of payment the determination of the regular rate
12 becomes a matter of mathematical computation, the result of which is unaffected by any designation
13 of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110 ("production bonus") and
14 778.111 ("piece-rate").)

15 26. At all relevant times, Defendants consistently paid Plaintiff and other non-exempt
16 employees commission pay but failed to pay one and a half times the "regular rate of pay" for all
17 overtime hours worked in violation of Labor Code § 510. Additionally, as it pertains to other non-
18 exempt employees, Defendants also failed to pay overtime at the proper "regular rate of pay" due to
19 its uniform failure to include all commissions, bonuses and other remunerations when calculating
20 non-exempt employees' "regular rate of pay".

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

1 (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

2 28. By their policy of requiring non-exempt employees to work in excess of eight (8)
3 hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of
4 one-half (11/2) their "regular rate of pay," Defendants willfully violated the provisions of Labor Code
5 § 510 and the applicable Wage Orders.

6 29. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
7 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
8 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,
9 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
10 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
11 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
12 underpaid regardless of whether the initial violation is intentionally committed. Additionally, Labor
13 Code § 510 requires an employer to compensate an employee who works more than eight (8) hours
14 in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the
15 seventh consecutive day, no less than one and one-half times (11/2) the regular rate of pay.

16 30. In addition, Labor Code § 510 obligates employers to compensate employees at no
17 less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
18 workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3
19 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8)
20 hours in any workday or more than 40 hours in any workweek unless the employee receives one and
21 one-half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the
22 workweek.

23 31. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were
24 denied compliant and timely 30-minute off-duty meal periods as mandated by California law. As a
25 result of Defendants' uniform meal period policies/practices, operational requirements, and work
26 demands, non-exempt employees were often unable to take timely and uninterrupted 30-minute first
27 meal periods before the end of the fifth hour of work. Further, when other non-exempt employees
28 worked in excess of 10 hours in a shift, they were not allowed and permitted to take a mandated

1 second meal period before the end of the tenth hour of work in violation of the Labor Code and
2 applicable Wage Orders.

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

6 33. Accordingly, due to Defendants’ uniform meal period policies/practices, non-exempt
7 employees were also regularly denied legally compliant meal periods in violation of Labor Code §§
8 226.7, 510, 516, and applicable Wage Orders.

9 34. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were also
10 not provided with all uninterrupted 10-minute rest periods for every four hours worked, or a major
11 fraction thereof, due to Defendants’ uniform rest period policies/practices and work demands. As a
12 result, other non-exempt employees were and are often unable to take a net 10-minute duty-free rest
13 period for every major fraction of four hours worked. This includes a second rest period for shifts in
14 excess of 7.0 hours and a third rest period for shifts in excess of 10 hours in a workday. Moreover,
15 Defendants had a rest break policy requiring non-exempt employees to remain on premises during
16 rest periods. Despite Defendants’ claim that all employees rely on all duties during their rest breaks,
17 Defendants still exert control on employees by requiring them to remain onsite.

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

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

1 37. Accordingly, due to Defendants' uniform rest period policies/practices, non-exempt
2 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
3 512, and applicable Wage Orders.

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

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

15 40. Thus, Plaintiff is a non-exempt employee and Defendants have violated Labor Code
16 §226(a) with respect to Plaintiff and other non-exempt employees. Consequently, because Defendants
17 failed to comply with Labor Code § 226(a), Plaintiff and other non-exempt employees would be
18 entitled to recover penalties under Labor Code § 226(e).

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

24 42. Finally, at all relevant times, Defendants required Plaintiff and other non-exempt
25 employees to incur necessary business expenses associated with using their personal cell phones and
26 home internet for work related purposes but did not reimburse non-exempt employees adequately for
27 these necessary expenditures in violation of Labor Code §§ 2802-2804. *See Cochran v. Schwan's*
28 *Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-

1 related calls on a personal cell phone, then he or she is incurring an expense for the purposes of
2 section 2802. It does not matter whether the phone bill is paid for by a third person, or at all...To show
3 liability under section 2802, an employee need only show that he or she was required to use a personal
4 cell phone to make work-related calls, and he or she was not reimbursed”].

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

10 CLASS ACTION ALLEGATIONS

11 44. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
12 § 382 of the Code of Civil Procedure:

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

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

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

21 All employees who work or worked for Defendants in California, and who
22 left their employ during the three years immediately preceding the filing of
the Complaint through the date of trial. (“Waiting Time Penalty Subclass”)
23 (collectively “the Classes”)

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

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

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

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

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

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

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

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

15 6. Whether Defendants failed to reimburse for necessary business expenses; and

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

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

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

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

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

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

1 the individual class members, even if possible, would create a substantial risk of inconsistent or
2 varying verdicts or adjudications with respect to the individual class members against Defendants
3 herein; and which would establish potentially incompatible standards of conduct for Defendants;
4 and/or legal determinations with respect to individual class members which would, as a practical
5 matter, be dispositive of the interest of the other class members not parties to adjudications or which
6 would substantially impair or impede the ability of the class members to protect their interests.
7 Further, the claims of the individual members of the class are not sufficiently large to warrant
8 vigorous individual prosecution considering all of the concomitant costs and expenses attending
9 thereto. As such, the Classes identified in Paragraph 44 are maintainable as Classes under § 382 of
10 the Code of Civil Procedure.

11 **FIRST CAUSE OF ACTION**

12 **MINIMUM WAGE VIOLATIONS**

13 **(AGAINST ALL DEFENDANTS)**

14 52. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

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

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

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

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

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY ALL OVERTIME WAGES**

18 **(AGAINST ALL DEFENDANTS)**

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

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

24 60. At all times relevant herein, Defendants were required to properly pay Plaintiff and
25 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
26 § 1194 and the applicable Wage Orders.

27 61. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
28 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per

1 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
2 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
3 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
4 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
5 Plaintiff or members of the Overtime Subclass at one and one-half times their "regular rate of pay"
6 for such hours.

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

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

19 **THIRD CAUSE OF ACTION**

20 **MEAL PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

7 **FOURTH CAUSE OF ACTION**

8 **REST PERIOD VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO TIMELY PAY WAGES**

26 **(AGAINST ALL DEFENDANTS)**

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

1 only the last four digits of his or her social security number or an employee
2 identification number other than a social security number, (8) the name and
3 address of the legal entity that is the employer, and (9) all applicable hourly
4 rates in effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.”

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

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

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

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

21 **SEVENTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

23 **(AGAINST ALL DEFENDANTS)**

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

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

27 85. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing
28 to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or

1 around the time that their employment is or was terminated or ended.

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

5 87. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked,
6 including all minimum and overtime wages, and their meal and rest period premiums at the “regular
7 rate of pay”, prior to or upon termination or separation from employment with Defendants as required
8 by Labor Code §§ 201 and 202.

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

13 **EIGHT CAUSE OF ACTION**

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

15 **(AGAINST ALL DEFENDANTS)**

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

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

22 91. As set forth above, Plaintiff and members of the Class must be compensated for all
23 necessary business expenditures, including, but not limited to, a reasonable portion of their monthly
24 personal cell phone bills incurred in their discharge of their duties. (See *Cochran v. Schwan’s Home*
25 *Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must use their personal
26 cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them.
27 Whether the employees have cell phone plans with unlimited minutes or limited minutes, the
28 reimbursement owed is a reasonable percentage of their cell phone bills.”); *Ritchie v. Blue Shield of*

1 *California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement
2 claim and adopting the logic of *Cochran*). In addition, Defendants systematically failed to properly
3 reimburse Plaintiff and other non-exempt employees for using their personal vehicles for business
4 purposes.

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

8 **NINTH CAUSE OF ACTION**

9 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

10 **(AGAINST ALL DEFENDANTS)**

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

12 94. Defendants have committed several Labor Code violations against Plaintiff and
13 other non-exempt employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
14 § 2698 *et seq.*, acting on behalf of himself and other non-exempt employees, brings this representative
15 action against Defendants to recover the civil penalties due to Plaintiff, other similarly non-exempt
16 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
17 including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
18 violation per employee per pay period for those violations of the Labor Code for which no civil
19 penalty is specifically provided based on the following Labor Code violations:

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

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

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

28 d. Failing to timely compensate Plaintiff and other non-exempt employees with all

1 earnings at their separation of employment in violation of Labor Code §§ 201-203.

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

4 95. On or about November 1, 2022, Plaintiff notified Defendant via certified mail and
5 the California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s
6 violations of the California Labor Code § 2698 et seq., with respect to violations of the California
7 Labor Code identified in Paragraph 104(a)-(e).

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

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

14 **PRAYER FOR RELIEF**

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

- 17 1. For an order certifying the proposed Classes;
- 18 2. For an order appointing Plaintiff as representative of the Classes;
- 19 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 20 4. Upon the First and Second Cause of Action, for compensatory, consequential,
21 general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194,
22 1197, 1197.1, and 1198 and reasonable attorneys’ fees and costs;
- 23 5. Upon the Third Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, 1197, and 1198
25 and reasonable attorneys’ fees and costs;
- 26 6. Upon the Third Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 28 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and

1 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

2 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
3 special damages according to proof pursuant to Labor Code §§ 204 and 210;

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

6 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to
7 Labor Code §§ 201-203;

8 11. Upon the Eighth Cause of Action, for unreimbursed expenses, interest and attorney's
9 fees and costs pursuant to Labor Code § 2802;

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

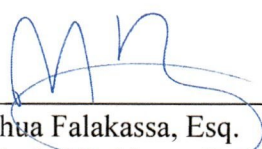
15 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
16 § 218.6 and Civil Code §§ 3287 and 3289;

17 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 218.5, 226, 1194, Code of Civil Procedure § 1021.5; and

19 15. For such other relief that the Court may deem just and proper.
20

21 Dated: June 10, 2024

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

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24 By: 

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Classes
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