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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

MICHAEL PETERSEN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

GOLD BOND BUILDING PRODUCTS, LLC.,
a Limited Liability Company; and DOES 1-50,
inclusive.

Defendant.

CASE NO.: C23-03215

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

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

DEMAND FOR JURY TRIAL

1 Plaintiff Michael Petersen (“Plaintiff”) on behalf of himself and all other similarly situated
2 non-exempt employees, alleges and complains of Defendant Gold Bond Building Products, LLC.
3 (“Defendant”) and DOES 1 to 50 (hereinafter “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant produces drywall gypsum boards, wall board, ceiling board, sheathing,
6 shaftliner, tile backer, prefinished board, and plaster products across the State of California.

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

9 3. As set forth below, Plaintiff alleges that Defendant failed to pay all overtime
10 compensation and sick pay wages at the proper legal rates by failing to properly calculate the “regular
11 rate of pay.” In addition, Plaintiff alleges that Defendant’s meal and rest period policies and practices
12 failed to allow and permit non-exempt employees to take all compliant and timely meal and rest
13 periods or pay premium wages at the “regular rate of pay” in lieu thereof. Plaintiff further alleges that
14 Defendant failed to provide non-exempt employees with accurate written itemized wage statements
15 in violation of Labor Code § 226(a), failed to reimburse all necessary business expenses, and failed
16 to timely pay all final wages upon separation of employment in violation of Labor Code §§ 201-203.

17 4. Plaintiff also brings a claim for civil penalties based on the foregoing Labor Code
18 violations under the Private Attorney General Act (“PAGA”).

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

22 **JURISDICTION AND VENUE**

23 6. Plaintiff, on behalf of himself and all similarly situated employees hereby brings this
24 class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-203,
25 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1199, 2802-
26 2804, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to
27 seeking declaratory relief and restitution pursuant to California Business and Professions Code §
28 17200, *et seq.*

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

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

9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendant operates in California within the County of Contra Costa, and Defendant are within the jurisdiction of this Court for purposes of service of process.

PARTIES

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

11. Plaintiff is informed, believes, and alleges that Defendants are authorized to do business within the County of Contra Costa 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 him by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1199, 2802-2804, and the California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

12. 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 Contra Costa.

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

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. Furthermore, the Defendants, and each of them,
4 were the agents, servants, and employees of each and every one of the other Defendants, as well as
5 the agents of all Defendants, and at all times herein mentioned, were acting within the course and
6 scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
7 otherwise ratified each and every one of the acts or omissions complained of herein.

8 15. 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 16. Defendant is a leading supplier of gypsum board and drywall products, and Defendant
15 *dba* National Gypsum is the exclusive service provider for the above-mentioned products.

16 17. Plaintiff was employed by Defendant as a non-exempt employee titled “Maintenance
17 Mechanic.” Plaintiff began working for Defendant on February 27, 2023, until his separation from
18 employment on December 4, 2023.

19 18. Plaintiff and other non-exempt employees (including, but not limited to, Laboratory
20 Technician, Production Operator, Industrial Electrician, Production Manufacturing Technician, and
21 all other non-exempt positions) were responsible for all Defendant’s business in California. However,
22 in these roles Plaintiff and other non-exempt employees were often not afforded all protections and
23 rights conferred under the California Labor Code and applicable Wage Orders.

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

1 20. First, at all relevant times, Plaintiff and other non-exempt employees worked regular
2 shifts that lasted longer than 8.0 hours in a workday and resulted in non-exempt employees regularly
3 working more than 40 hours in a workweek. However, Defendant uniformly failed to properly
4 calculate and pay overtime wages at the proper legal rate due to Defendant's failure to include all
5 forms of compensation/remuneration, including, but not limited to, stipends, shift pay, non-
6 discretionary bonuses, commissions, incentives, and all other forms of remuneration in calculating
7 the "regular rate of pay" for purposes of overtime compensation.

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

23 22. Labor Code § 510 requires an employer to compensate an employee who works more
24 than eight (8.0) hours in one workday, forty (40) hours in a workweek, and for the first eight (8.0)
25 hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular
26 rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less
27 than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday
28 or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section 3 of the

1 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8.0) hours
2 in any workday or more than 40.0 hours in any workweek unless the employee receives one and one-
3 half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the
4 workweek.

5 23. By their policy of requiring Plaintiff and the other non-exempt employees to work in
6 excess of eight (8.0) hours in a workday and/or forty (40.0) hours in a workweek without
7 compensating them at the lawful rate of one-half (1 1/2) their regular rate of pay, Defendant willfully
8 violated the provisions of Labor Code § 510 and the applicable Wage Orders.

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

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

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

1 27. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
2 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
3 Defendant’s uniform meal period policies/practices, operational requirements, and work demands,
4 Plaintiff and other non-exempt employees often could not take timely and uninterrupted net 30-
5 minute first meal periods before the end of the fifth hour of work. Further, Plaintiff and other non-
6 exempt employees often could not take a second 30-minute uninterrupted and timely meal period for
7 shifts in excess of 10.0 hours. Indeed, Plaintiff’s and other non-exempt employees’ meal periods were
8 often interrupted and/or lasted fewer than 30 minutes due to Defendant’s meal period
9 policies/procedures, operational requirements, and work demands

10 28. In addition, for each missed or non-compliant meal period, Defendant failed and
11 continues to fail to maintain a mechanism by which non-exempt employees were paid meal period
12 premiums at the “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) and
13 Labor Code § 226.7.

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

17 30. Next, at all relevant times, Plaintiff and other non-exempt employees were not
18 provided with all uninterrupted 10-minute rest periods for every four hours worked, or major fraction
19 thereof due to Defendant’s uniform rest period policies/practices, operational requirements, and work
20 demands. As a result, other non-exempt employees were and are often unable to take a net 10-minute
21 duty free rest periods for every major fraction of four hours worked. This includes a second rest period
22 for shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

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

1 [must] relinquish any control over how employees spend their break time and relieve their employees
2 of all duties.” *Id.* at 273. Each time non-exempt employees were unable to take a compliant rest
3 period, Defendant failed and continues to fail to adequately pay rest period premium payments at the
4 “regular rate of pay” as required by Labor Code § 226.7.

5 32. Accordingly, due to Defendant’s uniform rest period policies/practices and work
6 demands, non-exempt employees were regularly denied legally compliant rest breaks in violation of
7 Labor Code §§ 226.7, 512, and applicable Wage Orders.

8 33. As a result of Defendant’s failure to pay Plaintiff and other non-exempt employees for
9 all hours they were subject to the control of Defendant, including all, overtime, sick pay wages, and
10 Defendant’s failure to pay for meal and rest period premiums at the “regular rate of pay,” Defendant
11 issued wage statements which failed to accurately identify the gross wages earned accurately, the
12 total hours worked, the net wages earned, and the correct corresponding number of hours worked at
13 each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

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

19 35. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
20 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendant’s violations of
21 Labor Code § 226(a). Consequently, because Defendant failed to comply with Labor Code § 226(a),
22 Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §
23 226(e).

24 36. Furthermore, because of, Defendant’s failure to pay all overtime, sick pay wages, and
25 meal and rest period premiums at the “regular rate of pay,” Defendant also failed and continues to
26 fail to pay the non-exempt employees all wages owed at their time of separation from employment
27 in violation of Labor Code §§ 201-203. Thus, Plaintiff and other non-exempt employees would be
28 entitled to recover penalties under Labor Code §§ 201-203.

37. Finally, at all relevant times, Defendant required Plaintiff and other non-exempt employees to incur necessary business expenses for work-related purposes, including, but not limited to, expenses for use of personal cell phones, but did not reimburse non-exempt employees adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804. See *Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all...To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed"].

38. Here, Defendant's uniformly failed to reimburse non-exempt employees for the necessary costs incurred, discharging their duties, including, but not limited to, the costs of personal cell phones. Accordingly, due to Defendant's uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802 and applicable Wage Orders.

CLASS ACTION ALLEGATIONS

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

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

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

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

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

(collectively “the Classes”)

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

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

10 1. Whether Defendant failed to properly calculate the "regular rate of pay" for purposes of
11 paying overtime and sick pay wages to the members of the Class;

12 2. Whether Defendant provided legally compliant meal and rest periods or proper
13 compensation at the "regular rate of pay" in lieu thereof to members of the Class;

14 3. Whether Defendant allowed and permitted Plaintiff and the Class to take legally
15 compliant meal periods or pay premium wages at the "regular rate of pay" in lieu thereof;

16 4. Whether Defendant allowed and permitted Plaintiff and the Class to take legally
17 compliant rest periods or pay premium wages at the "regular rate of pay" in lieu thereof;

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

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

22 7. Whether Defendant failed to reimburse Class Members for all necessary business
23 expenses in violation of Labor Code §§ 2802-2804.

24 42. **Predominance of Common Questions:** Common questions of law and fact
25 predominate over questions that affect only individual members of the Classes. The common
26 questions of law set forth above are numerous and substantial and stem from Defendant's policies
27 and/or practices applicable to each individual class member, such as without limitation, Defendant's
28 failure to properly pay overtime and sick pay wages, Defendant's failure to provide all compliant

1 meal and rest periods or premiums at the “regular rate of pay” in lieu thereof, Defendant’s failure to
2 provide accurate itemized wage statements, Defendant’s failure to reimburse for all necessary
3 business expenses, and Defendant’s failure to pay for all wages due upon separation of employment.
4 As such, the common questions predominate over individual questions concerning each class
5 member’s showing as to his or her eligibility for recovery or the amount of his or her damages.

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

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

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

1 resources of each individual plaintiff with their vastly superior financial and legal resources.

2 46. Moreover, requiring each member of the Classes to pursue an individual remedy would
3 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
4 against their former and/or current employer for real and justifiable fear of retaliation and permanent
5 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
6 the individual class members, even if possible, would create a substantial risk of inconsistent or
7 varying verdicts or adjudications with respect to the individual class members against Defendant
8 herein and which would establish potentially incompatible standards of conduct for Defendant; and/or
9 legal determinations with respect to individual class members which would, as a practical matter, be
10 dispositive of the interest of the other class members not parties to adjudications or which would
11 substantially impair or impede the ability of the class members to protect their interests. Further, the
12 claims of the individual members of the class are not sufficiently large to warrant vigorous individual
13 prosecution considering all of the concomitant costs and expenses attending thereto. As such, the
14 Classes identified in Paragraph 39 are maintainable as Classes under § 382 of the Code of Civil
15 Procedure.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY ALL OVERTIME WAGES**

18 **(AGAINST ALL DEFENDANTS)**

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

20 48. 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 49. At all times relevant herein, Defendant was 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 50. 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. Defendant 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 51. At all relevant times herein, Defendant failed to conform its pay practices to the
8 requirements of the law. This unlawful conduct includes but is not limited to, Defendant's failure to
9 include all forms of compensation, including, but not limited to, non-discretionary bonuses and other
10 incentive pay in calculating the "regular rate of pay," which resulted in these individuals not being
11 paid for all overtime hours worked.

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

17 **SECOND CAUSE OF ACTION**

18 **MEAL PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

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

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

26 55. Despite Defendant's violations, Defendant has 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 56. As a result, Defendant is responsible for paying premium compensation for meal
2 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
3 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

4 **THIRD CAUSE OF ACTION**

5 **REST PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

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

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

11 59. Due to its unlawful rest period policy/practices and operational requirements/work
12 demands, Defendant did not authorize and permit Plaintiff and members of the Class to take all rest
13 periods to which they were legally entitled.

14 60. Despite Defendant's violations, Defendant has not paid an additional hour of pay at
15 the "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay
16 for each violation, in accordance with California Labor Code § 226.7.

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

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PAY ALL SICK TIME**

23 **(AGAINST ALL DEFENDANTS)**

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

25 63. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
26 1198, and 1199 which provide that "[a]n employee who, on or after July 1, 2015, works in California
27 for the same employer for 30 or more days within a year from the commencement of employment is
28 entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning

1 at the commencement of employment.”

2 64. At all times relevant herein, Defendant was required to properly pay Plaintiff and
3 members of the Class for all sick time pursuant to California Labor Code § 246 and the applicable
4 Wage Orders.

5 65. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must
6 be “calculated in the same manner as the regular rate of pay for the workweek in which the employee
7 uses paid sick time, whether or not the employee actually works overtime in that workweek.”
8 Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing
9 the employee’s total wages, not including overtime premium pay, by the employee’s total hours
10 worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
11 requires employers to “provide an employee with written notice that sets forth the amount of paid
12 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
13 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
14 on the designated pay date with the employee’s payment of wages.”

15 66. Defendant failed in its obligation to provide Plaintiff and the Class the legally
16 required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b). Plaintiff and the
17 members of the Class were not paid at the correct “regular rate of pay.”

18 67. The foregoing policies and practices are unlawful and create entitlement to recovery
19 by Plaintiff and the members of the Class in a civil action for the unpaid amount of wages, including
20 interest thereon, statutory penalties, attorney’s fees, and costs of suit according to Labor Code §§ 246
21 1192, 1194 *et seq.*, 1197, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

22 **FIFTH CAUSE OF ACTION**

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

24 **(AGAINST ALL DEFENDANTS)**

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

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

27 “(a) An employer, semimonthly or at the time of each payment of wages,
28 shall furnish to his or his employee, either as a detachable part of the check,

1 draft, or voucher paying the employee's wages, or separately if wages are
2 paid by personal check or cash, an accurate itemized statement in writing
3 showing (1) gross wages earned, (2) total hours worked by the employee,
4 (3) the number of piece-rate units earned and any applicable piece rate if the
5 employee is paid on a piece-rate basis, (4) all deductions, provided that all
6 deductions made on written orders of the employee may be aggregated and
7 shown as one item, (5) net wages earned, (6) the inclusive dates of the
8 period for which the employee is paid, (7) the name of the employee and
9 only the last four digits of his or his social security number or an employee
identification number other than a social security number, (8) the name and
address of the legal entity that is the employer, and (9) all applicable hourly
rates in effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee."

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

13 71. Because Defendant failed to pay Plaintiff and the Wage Statement Subclass for all
14 overtime, sick pay wages, and missed meal and rest period premiums at the appropriate "regular rate
15 of pay," Defendant failed to include required information on Plaintiff and the Wage Statement
16 Subclass' wage statements, including, but not limited to, the total hours worked and the correct
17 corresponding number of hours worked at each hourly rate in violation of Labor Code section
18 226(a)(1,2,5 and 9).

19 72. Defendant's failure to comply with section 226(a) of the Labor Code was knowing
20 and intentional.

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

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1 **SIXTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

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

7 76. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing
8 to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or
9 around the time that their employment is or was terminated or ended.

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

13 78. Defendant willfully failed to pay the Waiting Time Subclass for all hours worked,
14 including all overtime, sick pay wages, and their meal and rest period premiums at the “regular rate
15 of pay” before or upon termination or separation from employment with Defendant as required by
16 Labor Code §§ 201 and 202.

17 79. As a result, Defendant is liable to the Waiting Time Subclass for waiting time
18 penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant
19 to Labor Code § 203. *See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon*
20 *termination entitles an employee to recover waiting time penalties).*

21 **SEVENTH CAUSE OF ACTION**

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

23 **(AGAINST ALL DEFENDANTS)**

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

25 81. Labor Code § 2802(a) states in pertinent part the following: “(a) An employer shall
26 indemnify his or his employee for all necessary expenditures or losses incurred by the employee in
27 direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of
28 the employer, even though unlawful, unless the employee, at the time of obeying the directions,

1 believed them to be unlawful.”

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

11 83. At all relevant times, Defendant has failed to comply with Labor Code Section 2802
12 and the applicable Wage Orders by failing to reimburse Plaintiff and the Class for all necessary
13 business expenditures.

14 **EIGHT CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(AGAINST ALL DEFENDANTS)**

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

18 85. Defendant have engaged and continues to engage in unfair and/or unlawful business
19 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
20 failing to pay all overtime and sick pay wages at the proper legal rate, by failing to provide all legally
21 required meal and rest periods or pay premium payments at the “regular rate of pay” in lieu thereof,
22 by failing to provide accurate wage statements, by failing to reimburse for all necessary business
23 expenses adequately, and by failing to pay all earned wages at the time of separation from
24 employment.

25 86. Defendant’s utilization of these unfair and/or unlawful business practices deprived
26 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
27 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
28 Defendant’s competitors who have been and/or are currently employing workers and attempting to

1 do so in honest compliance with applicable wage and hour laws.

2 87. Because Plaintiff is a victim of Defendant's unfair and/or unlawful conduct alleged
3 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
4 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
5 converted by Defendant pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

13 **NINTH CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **(AGAINST ALL DEFENDANTS)**

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

17 91. Defendant has committed several Labor Code violations against Plaintiff and other
18 similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
19 § 2698 *et seq.*, acting on behalf of himself and other similarly aggrieved employees, brings this PAGA
20 representative action against Defendant to recover the civil penalties due to Plaintiff, other similarly
21 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
22 (a) and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each
23 subsequent violation per employee per pay period for those violations of the Labor Code for which
24 no civil penalty is specifically provided based on the following Labor Code violations:

25 a) Failing to pay Plaintiff and other similarly Aggrieved Employees all overtime and
26 sick pay wages at the appropriate premium rates in violation of Labor Code §§ 246, 510, 1194, 1197;

27 b) Failing to provide Plaintiff and other similarly Aggrieved Employees with all of their
28 statutorily mandated meal periods in violation of Labor Code §§ 204, 510, 1194 and 1198;

1 c) Failing to authorize and permit Plaintiff and other similarly Aggrieved employees
2 with all of their statutorily mandated rest periods in violation of Labor Code §§ 226.7 and 516;

3 d) Failing to furnish Plaintiff and other similarly situated employees with complete,
4 accurate, itemized wage statements in violations of Labor Code § 226(a) and applicable Wage Orders;

5 e) Failing to pay final wages in a timely manner in violation of Labor Code §§ 201-203
6 and applicable Wage Orders; and

7 f) Failing to reimburse Plaintiff and other aggrieved employees with all necessary
8 business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders.

9 92. On or about December 19, 2023, Plaintiff notified Defendant Gold Bond Building
10 Products, LLC. (“Defendant”) and the California Labor and Workforce Development Agency
11 (“LWDA”) via email of Defendant’s violations of the California Labor Code § 2698 *et seq.*, with
12 respect to violations of the California Labor Code identified in Paragraph 91 (a)-(f). Now that the
13 sixty-five days have passed from Plaintiff notifying Defendant of these violations, Plaintiff has
14 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
15 Act with respect to these violations.

16 93. Plaintiff was compelled to retain the services of counsel to file this court action to
17 protect his interests and the interests of similarly aggrieved employees, and to assess and collect the
18 civil penalties owed by Defendant. Plaintiff has hereby incurred attorneys’ fees and costs, which he
19 is entitled to receive under California Labor Code § 2699.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
22 this suit is brought against Defendant, as follows:

- 23 1. For an order certifying the proposed Classes;
- 24 2. For an order appointing Plaintiff as representative of the Classes;
- 25 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 26 4. Upon the First Cause of Action, for compensatory, consequential, general and
27 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198 and
28 reasonable attorneys’ fees and costs;

1 5. Upon the Second Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198 and
3 reasonable attorneys' fees and costs;

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

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

8 8. Upon the Fourth Cause of Action, for compensatory, consequential, general and
9 special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1198, and 1199;

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

12 10. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
13 Labor Code §§ 201-203;

14 11. Upon the Seventh Cause of Action, for unreimbursed expenses, interest and
15 attorney's fees and costs pursuant to Labor Code §§ 2802-2804;

16 12. Upon the Eight Cause of Action, for restitution to Plaintiff and members of the
17 Classes of all money and/or property unlawfully acquired by Defendant by means of any acts or
18 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

19 13. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other similarly
20 Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 2699
21 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each
22 subsequent violation per employee per pay period for those violations of the Labor Code for which
23 no civil penalty is specifically provided under the Labor Code, and for reasonable attorneys' fees and
24 costs;

25 14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
26 § 218.6 and Civil Code §§ 3287 and 3289;

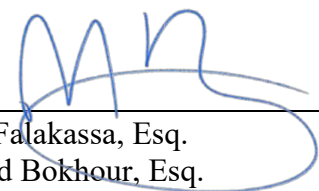
27 15. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
28 218.5, 226, 1194, Code of Civil Procedure § 1021.5; and

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

Dated: August 19, 2025

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

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

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 920, Los Angeles, California 90067.

On August 19, 2025, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested as follows:

Eric Angel
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Matthew M. Sonne, Esq.
msonne@sheppardmullin.com
SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
650 Town Center Drive, 10th Floor
Costa Mesa, California 92626

Counsel for defendant Gold Bond Building Products, LLC

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) 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 delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

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

Executed on August 19, 2025, at Los Angeles, California.

/s/ Carlos Garcia
Carlos Garcia