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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

JONATHAN ESPARZA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

INGENIUM GROUP, LLC, a California
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 24CV428744

**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 PAY ALL SICK TIME;
- (6) WAGE STATEMENT VIOLATIONS;
- (7) WAITING TIME PENALTIES;
- (8) UNFAIR COMPETITION; &
- (9) PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

DEMAND FOR JURY TRIAL

1
2 Plaintiff Jonathan Esparza (“Plaintiff”), on behalf of himself and all other similarly situated
3 non-exempt employees, alleges and complains of Defendant Ingenium Group, LLC. (“Defendant”)
4 and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

5 **INTRODUCTION**

6 1. Defendant is a hazardous waste management provider with various locations across
7 California focusing on sustainability options.

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

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

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

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

24 **JURISDICTION AND VENUE**

25 6. Plaintiff, on behalf of himself and all other similarly situated employees hereby bring
26 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
27 204, 210, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199, and
28 applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking

1 declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et*
2 *seq.*

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

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

7 9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
8 §§ 395(a) and 395.5; Defendant operates in California within the County of Santa Clara, and
9 Defendant is within the jurisdiction of this Court for purposes of service of process.

10 **PARTIES**

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

13 11. Plaintiff is informed and believes and alleges that Defendants are authorized to do
14 business within the County of Santa Clara and is and/or was the legal employer of Plaintiff and the
15 Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants'
16 policies and/or practices complained of herein and has been deprived of the rights guaranteed to her
17 by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510,
18 512, 516, 1194, 1197.1, 1199, and the California Business and Professions Code § 17200 *et seq.*, and
19 applicable Wage Orders.

20 12. Plaintiff is informed and believes, and based thereon alleges, that during the four years
21 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
22 do) business in the State of California, County of Santa Clara.

23 13. Plaintiff does not know the true names or capacities, whether individual, partner, or
24 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
25 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
26 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and
27 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or
28 corporate, were responsible in some manner for the acts and omissions alleged herein and proximately

1 caused Plaintiff and the Classes to be subject to the unlawful employment practices alleged herein.

2 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
3 herein, Defendants were and are the employer of Plaintiff and all members of the Classes. At all times
4 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to
5 have been done by the named Defendants.

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

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

16 **COMMON FACTUAL ALLEGATIONS**

17 17. Defendant is a hazardous waste management provider in various California locations.
18 It specializes in packaging, transportation, recycling, and disposal of hazardous, non-hazardous,
19 biological, universal, and radioactive waste.

20 18. Plaintiff was employed by Defendant as a non-exempt employee with the title of
21 “Environmental Technician” beginning on July 20, 2021, until his separation from employment on
22 December 20, 2023. Plaintiff and other non-exempt employees (including, but not limited to,
23 Environmental Technician, Chemist, Territory Sales Representative, Account Manager, Sales
24 Manager, and all other non-exempt positions) were responsible for all aspects of Defendant’s business
25 in California. However, in these roles, Plaintiff and other non-exempt employees were often not
26 afforded all protections and rights conferred under the California Labor Code and applicable wage
27 orders.

28 ///

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

6 20. First, at all relevant times, Defendant has had a consistent practice of failing to
7 accurately record and pay for all time worked, including, all time under which non-exempt employees
8 were subject to the employer's control. As a result of this company-wide policy/practice, Plaintiff
9 and other non-exempt employees are not compensated for all the hours that they actually work and
10 all of the overtime hours they actually work, in violation of Labor Code §§ 204, 210, 510, 1194,
11 1197.1, 1199, and applicable Wage Orders.

12 21. As a result, over a period of time, Plaintiff and other non-exempt employees were not
13 properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1, 1199,
14 and applicable Wage Orders. Additionally, due to the unlawful timekeeping policy/practices, Plaintiff
15 and other non-exempt employees were also not properly paid at the correct overtime rate for hours
16 worked in excess of eight hours per shift in violation of Labor Code § 510.

17 22. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
18 by an applicable state or local law or by an order of the commission a civil penalty, restitution of
19 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
20 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
21 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
22 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
23 underpaid regardless of whether the initial violation was intentionally committed.

24 23. Labor Code § 510 requires an employer to compensate an employee who works more
25 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
26 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
27 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
28 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or

1 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
2 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
3 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
4 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

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

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

27 26. Labor Code § 510 requires an employer to compensate an employee who works more
28 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours

1 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
2 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
3 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
4 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
5 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
6 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
7 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

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

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

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

28 30. Here, at all relevant times, Defendant failed in its obligation to provide Plaintiff and

1 other non-exempt employees the legally required paid sick days at the legal rate, including all forms
2 of compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendant paid sick time below
3 the “regular rate of pay” as required by Labor Code §§ 246(l) (1-2). Based on the foregoing Labor
4 Code violations, Plaintiff seeks all civil and statutory penalties available and applicable under Labor
5 Code § 2699(f)(2), and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

6 31. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
7 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
8 Defendant’s uniform meal period policies/practices, operational requirements, and work demands,
9 Plaintiff and other non-exempt employees often could not take timely and uninterrupted net 30-
10 minute first meal periods before the end of the fifth hour of work.

11 32. Further, when Plaintiff and other non-exempt employees worked more than 10.0 hours
12 in a shift, they were not allowed and permitted to take a mandated second meal period before the end
13 of the tenth hour of work in violation of the Labor Code and applicable Wage Orders. Indeed,
14 Plaintiff’s and other non-exempt employees’ meal periods were often interrupted and/or lasted fewer
15 than 30 minutes due to Defendant’s meal period policies/procedures, operational requirements, and
16 work demands.

17 33. In addition, for each missed or non-compliant meal period, Defendant failed and
18 continues to fail to maintain a mechanism by which non-exempt employees were paid meal period
19 premiums at the “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11
20 5th 858 and Labor Code § 226.7.

21 34. Accordingly, due to Defendant’s uniform meal period practices, non-exempt
22 employees were also regularly denied legally compliant meal periods in violation of Labor Code §§
23 226.7, 510, 516, and applicable Wage Orders.

24 35. Next, at all relevant times, Plaintiff and other non-exempt employees were not
25 provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due
26 to Defendant’s uniform rest period policies/practices, operational requirements, and work demands.
27 As a result, Plaintiff and other non-exempt employees were and are often unable to take a net 10-
28 minute duty-free rest period for every major fraction of four hours worked. This includes a second

1 rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in
2 a workday.

3 36. By not relieving all non-exempt employees of all duties during rest periods, Defendant
4 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
5 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
6 duties and relinquish control over how employees spend their time.”] (Emphasis added). In *Augustus*,
7 the California Supreme Court expressly rejected the employer’s assertion that it could provide an on-
8 duty rest period to employees who worked as security guards and further explained: “that employers
9 [must] relinquish any control over how employees spend their break time and relieve their employees
10 of all duties.” *Id.* at 273. Each time non-exempt employees were unable to take a compliant rest
11 period, Defendant failed and continues to fail to adequately pay rest period premium payments at the
12 “regular rate of pay” as required by Labor Code § 226.7.

13 37. Accordingly, due to Defendant’s uniform rest period policies/practices, non-exempt
14 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
15 512, and applicable Wage Orders.

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

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

27 40. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
28 non-exempt employees may also recover Labor Code § 226.3 penalties for Defendant violations of

1 Labor Code § 226(a). Consequently, because Defendant failed to comply with Labor Code § 226(a),
2 Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §
3 226(e).

4 41. Finally, because Defendant's failure to pay all minimum, overtime, and sick pay
5 wages, and meal and rest period premiums at the "regular rate of pay," Defendant also failed and
6 continue to fail to pay Plaintiff and other non-exempt employees all wages owed at their time of
7 separation from employment in violation of Labor Code §§ 201-203. Thus, non-exempt employees
8 would be entitled to recover waiting time penalties under Labor Code §§ 201-203.

9 **CLASS ACTION ALLEGATIONS**

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

12 All current and former non-exempt hourly employees who worked for
13 Defendant in California during the four years immediately preceding the
filing of the Complaint through the date of trial. ("the Class");

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

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

19 All employees who work or worked for Defendant in California and who
20 left their employment during the three years immediately preceding the
21 filing of the Complaint through the date of trial. ("Waiting Time Penalty
Subclass")
22 (collectively "the Classes")

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

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1 44. **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 Defendant failed to accurately record and pay for all hours Class Members
6 worked;

7 2. Whether Defendant failed to pay overtime and sick pay wages at the “regular rate of
8 pay” to the members of the Class;

9 3. Whether Defendant provided legally compliant meal and rest periods or proper
10 compensation at the “regular rate of pay” in lieu thereof to members of the Class;

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

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

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

26 46. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
27 Plaintiff was employed by Defendant as a non-exempt employee in California during the statute(s)
28 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,

1 Plaintiff, like the members of the Classes, was deprived of minimum, overtime, and sick pay wages,
2 was deprived of meal and rest period premium wages, was subject to Defendant's uniform meal and
3 rest period policies/practices, was not provided accurate itemized wage statements and was not timely
4 paid all wages owed upon separation of employment.

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

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

21 49. Moreover, requiring each member of the Classes to pursue an individual remedy would
22 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
23 against their former and/or current employer for real and justifiable fear of retaliation and permanent
24 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
25 the individual class members, even if possible, would create a substantial risk of inconsistent or
26 varying verdicts or adjudications with respect to the individual class members against Defendant
27 herein; and which would establish potentially incompatible standards of conduct for Defendant;
28 and/or legal determinations with respect to individual class members which would, as a practical

1 matter, be dispositive of the interest of the other class members not parties to adjudications or which
2 would substantially impair or impede the ability of the class members to protect their interests.
3 Further, the claims of the individual members of the class are not sufficiently large to warrant
4 vigorous individual prosecution considering all of the concomitant costs and expenses attending
5 thereto. As such, the Classes identified in Paragraph 39 are maintainable as Classes under § 382 of
6 the Code of Civil Procedure.

7 **FIRST CAUSE OF ACTION**
8 **MINIMUM WAGE VIOLATIONS**
9 **(AGAINST ALL DEFENDANTS)**

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

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

17 52. At all relevant times herein, Defendant failed to record and pay for all time accurately
18 worked. This includes a practice of failing to properly record and pay non-exempt employees for all
19 time worked off-the-clock before and after their scheduled shifts. Accordingly, Plaintiff and members
20 of the Classes were not compensated for all hours worked, including all hours they were subject to
21 the control of Defendant and/or suffered or permitted to work under the Labor Code and applicable
22 Wage Orders.

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

28 54. As a direct and proximate result of Defendant's unlawful conduct as alleged herein,

1 Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid wages
2 and lost interest, in an amount to be established at trial, and they are entitled to recover economic and
3 statutory damages and penalties and other appropriate relief as a result of Defendant's violations of
4 the Labor Code and applicable Wage Orders.

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

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY ALL OVERTIME WAGES**

12 **(AGAINST ALL DEFENDANTS)**

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

14 57. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194,
15 and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
16 hours worked and provide a private right of action for the failure to pay all overtime compensation
17 for overtime work performed off-the-clock. In addition, Defendant paid an improper overtime rate of
18 less than one and one-half times the regular rate of pay.

19 58. At all times relevant herein, Defendant was required to properly pay Plaintiff and
20 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
21 § 1194 and the applicable Wage Orders.

22 59. Section 3 of the applicable Wage Order requires an employer to pay an employee "one
23 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
24 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
25 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
26 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
27 the workweek. Defendant caused Plaintiff to work overtime and hours but did not compensate
28 Plaintiff or members of the Overtime Subclass at one and one-half times their "regular rate of pay"

1 for such hours.

2 60. Defendant failed to conform their pay practices to the requirements of the law. At all
3 relevant times herein, Defendant failed to conform its pay practices to the requirements of the law.
4 This unlawful conduct includes but is not limited to, Defendant's failure to properly pay for all hours
5 worked off-the-clock and Defendant's failure to include all forms of compensation, including, but
6 not limited to, non-discretionary bonuses and other incentive pay in calculating the "regular rate of
7 pay," which resulted in these individuals not being paid for all overtime hours worked.

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

13 **THIRD CAUSE OF ACTION**

14 **MEAL PERIOD VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

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

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

22 64. Despite Defendant's violations, Defendant have not paid an additional hour of pay at
23 the "regular rate of pay" to Plaintiff and Class members at their respective regular rates of pay for
24 each violation, per California Labor Code § 226.7.

25 65. As a result, Defendant is responsible for paying premium compensation for meal
26 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
27 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

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1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

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

8 68. Due to their unlawful rest period policy/practices and operational requirements/work
9 demands, Defendant did not authorize and permit Plaintiff and Class members to take all rest periods
10 to which they were legally entitled.

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

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

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PAY ALL SICK TIME**

20 **(AGAINST ALL DEFENDANTS)**

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

22 72. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
23 1198, and 1199 which provide that "[a]n employee who, on or after July 1, 2015, works in California
24 for the same employer for 30 or more days within a year from the commencement of employment is
25 entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning
26 at the commencement of employment."

27 73. At all times relevant herein, Defendant were required to properly pay Plaintiff and
28 Class members for all sick time pursuant to California Labor Code § 246 and the applicable Wage

1 Orders.

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

12 75. Defendant failed in their obligation to provide Plaintiff and the Class the legally
13 required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b). Plaintiff and the Class
14 members were not paid at the correct “regular rate of pay.”

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

19 **SIXTH CAUSE OF ACTION**

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

21 **(AGAINST ALL DEFENDANTS)**

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

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

24 “(a) An employer, semimonthly or at the time of each payment of wages,
25 shall furnish to his or her employee, either as a detachable part of the check,
26 draft, or voucher paying the employee’s wages, or separately if wages are
27 paid by personal check or cash, an accurate itemized statement in writing
28 showing (1) gross wages earned, (2) total hours worked by the employee,
(3) the number of piece-rate units earned and any applicable piece rate if the
employee is paid on a piece-rate basis, (4) all deductions, provided that all

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

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

12 80. As a result of Defendant’s failure to pay Plaintiff and the Wage Statement Subclass
13 for all minimum, overtime, sick pay wages, and missed meal and rest period premiums at the
14 appropriate legal rate, Defendant failed to include required information on Plaintiff and the Wage
15 Statement Subclass’ wage statements, including, but not limited to, the gross wages earned, the net
16 wages earned in violation of Labor Code section 226(a), (1,2,5,6 and 9).

17 81. Defendant’ failure to comply with section 226(a) of the Labor Code was knowing
18 and intentional.

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

25 **SEVENTH CAUSE OF ACTION**

26 **WAITING TIME PENALTIES**

27 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

EIGHT CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

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

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

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

2 92. 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 93. The acts complained of herein occurred within the last four years immediately preceding
7 the filing of the Complaint in this action.

8 94. Plaintiff was compelled to retain the services of counsel to file this court action to protect
9 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 95. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 96. Defendants have 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 similarly Aggrieve Employees for all minimum wages for all
26 hours worked or for which they were subject to the control of the employer;

27 b. Failing to pay Plaintiff and other similarly Aggrieved Employees all overtime and sick
28 pay wages at the appropriate premium rates in violation of Labor Code §§ 246, 510, 1194, 1197;

1 c. Failing to provide Plaintiff and other similarly Aggrieved Employees with all of their
2 statutorily-mandated meal periods in violation of Labor Code §§ 204, 510, 1194 and 1198;

3 d. Failing to authorize and permit Plaintiff and other similarly Aggrieved employees with
4 all of their statutorily-mandated rest periods in violation of Labor Code §§ 226.7 and 516.

5 e. Failing to furnish Plaintiff and other similarly situated employees with complete,
6 accurate, itemized wage statements in violations of Labor Code § 226(a) and applicable Wage Orders;
7 and

8 f. Failing to pay final wages in a timely manner in violation of Labor Code §§ 201-203 and
9 applicable Wage Orders.

10 97. On or about January 9, 2024, Plaintiff notified Defendant Ingenium Group, LLC. and the
11 California Labor and Workforce Development Agency (“LWDA”) via email of Defendant’s
12 violations of the California Labor Code § 2698 et seq., with respect to violations of the California
13 Labor Code identified in Paragraph 96 (a)-(g). Now that sixty-five days have passed since Plaintiff
14 notified Defendant of these violations, Plaintiff has exhausted his administrative requirements for
15 bringing a claim under the Private Attorneys General Act with respect to these violations.

16 98. Plaintiff was compelled to retain the services of counsel to file this court action to protect
17 his interests and the interests of similarly aggrieved employees, and to assess and collect the civil
18 penalties owed by Defendant. Plaintiff has hereby incurred attorneys’ fees and costs, which he is
19 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 and Second Cause of Action for compensatory, consequential,
27 general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194,
28 1197, 1197.1, and 1198 and reasonable attorneys’ fees and costs;

1 5. Upon the Third Cause of Action, for compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, 1197, and 1198
3 and reasonable attorneys' fees and costs;

4 6. Upon the Third 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 Fourth 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 Fifth 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 Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and
11 reasonable costs and attorneys' fees;

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

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

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

23 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
24 § 218.6 and Civil Code §§ 3287 and 3289;

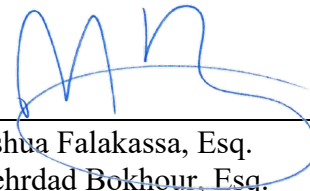
25 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
26 218.5, 226, 1194, Code of Civil Procedure § 1021.5; and

27 15. For such other relief that the Court may deem just and proper.
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Dated: April 5, 2024

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 450, Los Angeles, California 90067.

On April 9, 2024, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Walter M. Stella
wstella@cozen.com
Nicole Herter Perkin
nperkin@cozen.com
COZEN O’CONNOR
101 Montgomery Street, Suite 1400
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Attorneys for Defendant INGENIUM GROUP, 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 April 9, 2024, in Los Angeles, California.

/s/ Carlos Garcia
Carlos Garcia