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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 ROBERT SUMNER, on behalf of himself and
17 all others similarly situated,

18 Plaintiff,

19 v.

20 VACCO INDUSTRIES, a California
21 Corporation; and DOES 1-50, inclusive.

22 Defendants.

CASE NO.: 24STCV24575

**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) FAILURE TO PAY ALL VACATION WAGES;
- (6) WAGE STATEMENT VIOLATIONS;
- (7) WAITING TIME PENALTIES;
- (8) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
- (9) UNFAIR COMPETITION; &
- (10) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Robert Sumner (“Plaintiff”), on behalf of himself and all other similarly situated
2 non-exempt employees, alleges and complains of Defendant VACCO Industries (“Defendant”) and
3 DOES 1 to 50 (collectively “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant is a world-class designer and manufacturer of specialty valves, metal
6 filters, and advanced fluid control products.

7 2. Plaintiff brings this class action lawsuit against Defendant for alleged violations of
8 the 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, sick pay, and vested vacation wages due to its failure to correctly calculate the
11 “regular rate of pay,” and its failure to adopt a valid and lawful Alternative Workweek Schedule
12 (“AWS”). Moreover, Plaintiff alleges that Defendant’s meal and rest period policies and practices
13 failed to allow and permit non-exempt employees to take all compliant and timely meal and rest
14 periods or pay premium wages at the “regular rate of pay” in lieu thereof. Plaintiff further alleges
15 that Defendant failed to provide non-exempt employees with accurate written itemized wage
16 statements in violation of Labor Code § 226(a), failed to reimburse all necessary business expenses
17 incurred, and failed to timely pay all final wages upon separation of employment in violation of
18 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 Attorney 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
26 brings this class action for recovery of unpaid wages and penalties under California Labor Code §§
27 201-204, 210, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 246, 510, 511, 512, 516, 1174, 1174.4,
28 1199, 2802-2804, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in

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

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

4 8. This Court has jurisdiction over Defendant's violations of the California Labor Code
5 and 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 Los Angeles, and
9 Defendant is within the jurisdiction of this Court for the service of process.

10 **PARTIES**

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

13 11. Plaintiff is informed, believes, and alleges that Defendants are authorized to do
14 business within the County of Los Angeles 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
16 Defendants' policies and/or practices complained of herein and has been deprived of the rights
17 guaranteed to him by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3,
18 226.7, 227.3, 246, 510, 511, 512, 516, 1174, 1174.4, 1199, 2802-2804, and the California Business
19 and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

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

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,
27 and believes, and thereon alleges, that each of said fictitious Defendants, whether individual,
28 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,

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

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

11 15. 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,
14 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
15 members of the Classes.

16 **COMMON FACTUAL ALLEGATIONS**

17 16. Defendant is a world-class designer and manufacturer of specialty valves, metal
18 filters, and advanced fluid control products.

19 17. Plaintiff was employed by Defendant as a non-exempt employee with the title of
20 “Senior Electrical Engineer Technician” out of El Monte, California beginning on April 12, 2012,
21 until his separation from employment on September 19, 2024.

22 18. Plaintiff and other non-exempt employees (including, but not limited to, Assembly
23 Technician, Machinist, Deburrer, Saw Operator, CNC Programmer, Maintenance Mechanic, Senior
24 Electrical Engineer Technician, Calibration Technician, and all other non-exempt positions) were
25 responsible for all aspects of Defendant’s business in California. However, in these roles, Plaintiff
26 and non-exempt employees were often not afforded all protections and rights conferred under the
27 California Labor Code and applicable Wage Orders.

28 19. At all relevant times, Plaintiff and other non-exempt employees regularly worked

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

5 20. First, at all relevant times, Plaintiff and other non-exempt employees worked regular
6 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 failure to
9 include all forms of compensation/remuneration, including, but not limited to, shift pay,
10 commissions, incentives, non-discretionary bonuses, and all other forms of remuneration in
11 calculating the "regular rate of pay" for purposes of overtime compensation.

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

27 22. Labor Code § 510 requires an employer to compensate an employee who works
28 more than eight (8.0) hours in one workday, forty (40.0) hours in a workweek, and for the first eight

1 (8.0) hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the
2 regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at
3 no less than twice the regular rate of pay when an employee works more than twelve (12.0) hours in
4 a workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to
5 Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than
6 eight (8.0) hours in any workday or more than 40.0 hours in any workweek unless the employee
7 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
8 over 40 hours in the workweek.

9 23. Furthermore, at all relevant times, Defendant also failed to properly pay overtime
10 wages due to its failure to adopt a valid and lawful Alternative Workweek Schedule ("AWS").

11 24. Pursuant to Labor Code § 511, the alternative work schedule ("AWS"), employees
12 under AWS may not work more than 10 hours per day within a 40-hour workweek without
13 overtime compensation. Some common examples of how AWS is implemented are 4/10 schedule
14 (employees work four 10-hour days in a workweek). Under California Labor Code § 511(i), a
15 "work unit" refers to a division, department, job classification, shift, separate physical location, or
16 recognized subdivision thereof.

17 25. Importantly, according to Labor Code § 511(a), AWS must be approved in a secret
18 ballot election by at least two-thirds of the affected employees. Additionally, the Industrial Welfare
19 Commission ("IWC") Wage Orders require that, the proposal must be in writing, a duly noticed
20 meeting must be held at least 14 days prior to the secret ballot vote, a 30-day waiting period must
21 be given between the election and implementation of the AWS, and employers cannot intimidate or
22 force employees to vote for AWS.

23 26. By their policy of requiring Plaintiff and the other non-exempt employees to work in
24 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
25 them at the lawful rate of one-half (1 1/2) their "regular rate of pay," and due to its failure to adopt
26 an Alternative Workweek Schedule ("AWS"), Defendant willfully violated the provisions of Labor
27 Code § 510 and 511 and the applicable Wage Orders.

28 27. Similarly, at all relevant times, Defendant also failed in its obligation to provide

1 Plaintiff and other non-exempt employees the legally required paid sick days at the legal rate
2 pursuant to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1,
3 2015, works in California for the same employer for 30 or more days within a year from the
4 commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour
5 per every 30 hours worked, beginning at the commencement of employment.” Labor Code §
6 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same
7 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
8 whether or not the employee actually works overtime in that workweek.”

9 28. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be
10 “calculated by dividing the employee’s total wages, not including overtime premium pay, by the
11 employee’s total hours worked in the full pay periods of the prior 90 days of employment.” Finally,
12 Labor Code §246(i) requires employers to “provide an employee with written notice that sets forth
13 the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick
14 leave, for use on either the employee’s itemized wage statement described in Section 226 or in a
15 separate writing provided on the designated pay date with the employee’s payment of wages.”

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

20 30. Next, at all relevant times, Defendant utilized a policy and practice through which
21 Plaintiff and other non-exempt employees accrued vacation time and/or Paid Time Off (“PTO”)
22 hours. However, on the occasions when Plaintiff and other non-exempt employees had accrued but
23 unused vacation hours or other PTO upon separation of employment, Defendant failed to pay for
24 these earned wages and, further, failed to pay for vested and unused vacation time and PTO at the
25 “final rate of pay” as required by Labor Code § 227.3.

26 31. Moreover, at all relevant times, Plaintiff and other non-exempt employees were
27 denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due
28 to Defendant’s uniform meal period policies/practices, operational requirements, and work

1 demands, Plaintiff and other non-exempt employees often could not take timely and uninterrupted
2 net 30-minute first meal periods before the end of the fifth hour of work. Further, when Plaintiff
3 and other non-exempt employees worked more than 10.0 hours in a shift, they were not always
4 allowed and permitted to take a mandated second meal period before the end of the tenth hour of
5 work in violation of the Labor Code and applicable Wage Orders. Indeed, Plaintiff's and other non-
6 exempt employees' meal periods were often interrupted and/or lasted fewer than 30 minutes due to
7 Defendant's meal period policies/procedures, operational requirements, and work demands.

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

12 33. Accordingly, due to Defendant's uniform meal period practices, non-exempt
13 employees were also regularly denied legally compliant meal periods in violation of Labor Code §§
14 226.7, 510, 516, and applicable Wage Orders.

15 34. Next, at all relevant times, Plaintiff and other non-exempt employees were not
16 provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof,
17 due to Defendant's uniform rest period policies/practices, operational requirements, and work
18 demands. As a result, Plaintiff and other non-exempt employees were and are often unable to take a
19 net 10-minute duty-free rest period for every major fraction of four hours worked. This includes a
20 second rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0
21 hours in a workday.

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

1 time and relieve their employees of all duties.” *Id.* at 273. Each time non-exempt employees could
2 not take a compliant rest period, Defendant failed and continues to fail to adequately pay rest period
3 premium payments at the “regular rate of pay” as required by Labor Code § 226.7.

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

7 37. As a result of Defendant’s failure to pay Plaintiff and other non-exempt employees
8 for all hours they were subject to the control of Defendant, including all overtime wages, sick pay
9 and vested vacation wages, Defendant’s failure to adequately pay for all overtime/sick pay/vested
10 vacation wages at the appropriate legal rate, and Defendant’s failure to pay all meal and rest period
11 premiums at the “regular rate of pay,” Defendant issued wage statements which failed to identify
12 the gross wages earned accurately, the total hours worked, the net wages earned, and the correct
13 corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1,
14 2, 5, and 9).

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

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

25 40. Furthermore, because Defendant failed to pay all overtime, sick pay and vested
26 vacation wages, and meal and rest period premiums at the “regular rate of pay,” Defendant also
27 failed and continues to fail to pay Plaintiff and other non-exempt employees all wages owed at their
28 time of separation from employment in violation of Labor Code §§ 201-203. Thus, non-exempt

1 employees would be entitled to recover waiting time penalties under Labor Code §§ 201-203.

2 41. Finally, at all relevant times, Defendant required Plaintiff and other non-exempt
3 employees to incur necessary expenses for work-related purposes but did not reimburse non-exempt
4 employees adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804.
5 Here, Defendant uniformly failed to reimburse non-exempt employees for all necessary costs
6 incurred in discharging their duties. (*See Cochran v. Schwan's Home Service, Inc.*, (2014) 228
7 Cal.App.4th 1137, 1144 [“[i]f an employee is required to make work-related calls on a personal cell
8 phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter
9 whether the phone bill is paid for by a third person or at all...To show liability under section 2802,
10 an employee needs only to show that he or she was required to use a personal cell phone to make
11 work-related calls, and he or she was not reimbursed”]). Accordingly, due to Defendant’s uniform
12 failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§
13 2802-2804 and applicable Wage Orders.

14 **CLASS ACTION ALLEGATIONS**

15 42. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
16 § 382 of the Code of Civil Procedure:

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

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

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

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

(collectively “the Classes”)

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

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

1. Whether Defendant failed to properly calculate the “regular rate of pay” for purposes of paying overtime, sick pay and vested vacation wages to the members of the Class;

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

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

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

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

45. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendant’s policies and/or practices applicable to each individual class member, such as without limitation, Defendant’s failure to properly pay overtime, sick pay and vested vacation wages, Defendant’s failure to provide all compliant meal and rest periods or premiums at the “regular rate of pay” in lieu thereof, Defendant’s failure to provide accurate itemized wage statements, Defendant’s failure to reimburse

1 for all necessary business expenses, and Defendant's failure to pay for all wages due upon
2 separation of employment. As such, the common questions predominate over individual questions
3 concerning each class member's showing as to his or her eligibility for recovery or the amount of
4 his or her damages.

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

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

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

1 legal resources.

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

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY ALL OVERTIME WAGES**

18 **(AGAINST ALL DEFENDANTS)**

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

20 51. 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 52. 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
26 Code § 1194 and the applicable Wage Orders.

27 53. Section 3 of the applicable Wage Order requires an employer to pay an employee
28 “one 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
3 twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of
4 work in the workweek. Defendant caused Plaintiff to work overtime and hours but did not
5 compensate Plaintiff or members of the Overtime Subclass at one and one-half times their "regular
6 rate of pay" for such hours.

7 54. At all relevant times herein, Defendant failed to conform their 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, shift pay, commissions, incentive
10 pay, and non-discretionary bonuses in calculating the "regular rate of pay," and its failure to adopt a
11 valid and lawful Alternative Workweek Schedule ("AWS"), which resulted in these individuals not
12 being paid for all overtime hours worked.

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

18 **SECOND CAUSE OF ACTION**

19 **MEAL PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

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

27 58. Despite Defendant's violations, Defendant has not paid an additional hour of pay at
28 the "regular rate of pay" to Plaintiff and Class members at their respective regular rates of pay for

1 each violation, per California Labor Code § 226.7.

2 59. As a result, Defendant is responsible for paying premium compensation at the
3 “regular rate of pay” for meal period violations, including interest thereon, statutory penalties, and
4 costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§
5 3287(b) and 3289.

6 **THIRD CAUSE OF ACTION**

7 **REST PERIOD VIOLATIONS**

8 **(AGAINST ALL DEFENDANTS)**

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

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

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

16 63. Despite Defendant’s violations, Defendant has not paid an additional hour of pay at
17 the “regular rate of pay” to Plaintiff and Class members at their respective regular rates of pay for
18 each violation, per California Labor Code § 226.7.

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PAY ALL SICK TIME**

25 **(AGAINST ALL DEFENDANTS)**

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

27 66. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
28 1198, and 1199 which provide that “[a]n employee who, on or after July 1, 2015, works in

1 California for the same employer for 30 or more days within a year from the commencement of
2 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
3 worked, beginning at the commencement of employment.”

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

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

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

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

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO PAY ALL VACATION WAGES**

27 **(AGAINST ALL DEFENDANTS)**

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

72. This cause of action is brought pursuant to Labor Code § 227.3, which provides that whenever a contract of employment or employer policy provides for paid vacations and an employee is separated without having used his or her vested vacation time, all vested vacation shall be paid as wages at their final rate in accordance with such contract of employment or employer policy respecting eligibility or time.

73. At all relevant times, Defendant maintained such a paid vacation policy, yet Defendant failed to pay all vested and unused vacation time to Plaintiff and the Class members at their respective final rates of pay at their time of separation. As such, the Defendant has violated Labor Code § 227.3.

74. Defendant failed to pay accrued vacation time, failed to pay vacation time at the proper rate, failed to report accrued and paid vacation in wage statements, and failed to keep accurate records of same.

75. Defendant's practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Class in a civil action for the unpaid amount of wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 227.3, 558, 1194 *et seq.*, 1197.1, 1198, 1199 and Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

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

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

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

1 be aggregated and shown as one item, (5) net wages earned, (6) the
2 inclusive dates of the period for which the employee is paid, (7) the name
3 of the employee and only the last four digits of his or her social security
4 number or an employee identification number other than a social security
5 number, (8) the name and address of the legal entity that is the employer,
6 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.”

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

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

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

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

24 **SEVENTH CAUSE OF ACTION**

25 **WAITING TIME PENALTIES**

26 **(AGAINST ALL DEFENDANTS)**

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

28 83. The actionable period for this cause of action is three years before filing this

1 Complaint through the present and ongoing until the violation is corrected, or the class is certified.

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

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

8 86. Defendant willfully failed to pay the Waiting Time Subclass for all hours worked,
9 including all overtime, sick pay, vested vacation wages, and their meal and rest period premiums at
10 the “regular rate of pay” before or upon termination or separation from employment with Defendant
11 as required by Labor Code §§ 201 and 202.

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

16 **EIGHT CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
18 **(AGAINST ALL DEFENDANTS)**

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

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

25 90. As set forth above, Plaintiff and Class members must be compensated for all
26 necessary business expenditures, including, but not limited to, a reasonable portion of their monthly
27 personal cell phone bills and other costs incurred in the discharge of their duties. (See *Cochran v.*
28 *Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“We hold that when employees must

1 use their personal cell phones for work-related calls, Labor Code section 2802 requires the
2 employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes
3 or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”);
4 *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of
5 cell phone reimbursement claim and adopting the logic of *Cochran*).

6 91. At all relevant times, Defendant has failed to comply with Labor Code Section 2802
7 and the applicable Wage Orders by failing to reimburse Plaintiff and the Class for all necessary
8 business expenditures.

9 **NINTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(AGAINST ALL DEFENDANTS)**

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

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

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

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

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

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

8 **TENTH CAUSE OF ACTION**

9 **PRIVATE ATTORNEYS GENERAL ACT**

10 **(AGAINST ALL DEFENDANTS)**

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

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

21 a) Failing to pay Plaintiff and other similarly Aggrieved Employees all overtime, sick
22 pay and vested vacation wages at the appropriate premium rates in violation of Labor Code §§
23 227.3, 246, 510, 511, 1194, 1197;

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

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

28 d) Failing to furnish Plaintiff and other similarly situated employees with complete,

1 accurate, itemized wage statements in violations of Labor Code § 226(a) and applicable Wage
2 Orders;

3 e) Failing to pay final wages in a timely manner in violation of Labor Code §§ 201-
4 203 and applicable Wage Orders; and

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

7 100. On or about September 20, 2024, Plaintiff notified Defendant VACCO Industries
8 (“Defendant”) and the California Labor and Workforce Development Agency (“LWDA”) via email
9 of Defendant’s violations of the California Labor Code § 2698 *et seq.*, with respect to violations of
10 the California Labor Code identified in Paragraph 99 (a)-(f). Now that the sixty-five days have
11 passed from Plaintiff notifying Defendant of these violations, Plaintiff has exhausted his
12 administrative requirements for bringing a claim under the Private Attorneys General Act with
13 respect to these violations.

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

18 **PRAYER FOR RELIEF**

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

21 1. For an order certifying the proposed Classes;
22 2. For an order appointing Plaintiff as representative of the Classes;
23 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
24 4. Upon the First Cause of Action for compensatory, consequential, general, and
25 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 511, 1194, and 1198
26 and reasonable attorneys’ fees and costs;

27 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
28 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, 1197, and 1198

1 and reasonable attorneys' fees and costs;

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

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

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

8 9. Upon the Fifth Cause of Action, for compensatory, consequential, general and
9 special damages according to proof pursuant to Labor Code § 227.3, 1194.2, 1197.1, 1198, and
10 1199

11 10. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and
12 reasonable costs and attorney's fees;

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

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

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

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

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

28 16. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§

1 218.5, 226, 1194, Code of Civil Procedure § 1021.5; and

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

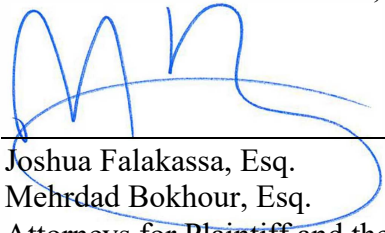
3

4 Dated: April 30, 2025

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

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7 By: 

Joshua Falakassa, Esq.

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Mehrdad Bokhour, Esq.

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Attorneys for Plaintiff and the Putative Classes

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1 **PROOF OF SERVICE**

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

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

6 On April 03, 2025, I served the following document(s) described as **FIRST AMENDED**
7 **CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action:

8 Mia Farber, Esq.
9 Mia.Farber@jacksonlewis.com
10 Trevor R. Witt, Esq.
11 Trevor.Witt@jacksonlewis.com
12 Brittney E. Willis, Esq.
13 Brittney.Willis@jacksonlewis.com
14 JACKSON LEWIS P.C.
15 725 South Figueroa Street, Suite 2500
16 Los Angeles, California 90017-5408

17 **Attorneys for Defendant**
18 **VACCO INDUSTRIES**

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

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

27 Executed on April 30, 2025, at Los Angeles, California.

28 /s/ Carlos Garcia
Carlos Garcia