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

MY LE PHAM, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

PLASMA RUGGEDIZED SOLUTIONS,
INC., a Delaware corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 30-2019-01086573-CU-OE-CXC

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

- (1) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (2) FAILURE TO PAY ALL
OVERTIME WAGES OWED
(LABOR CODE §§ 204, 510, 558,
1194, 1198);**
- (3) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) FAILURE TO AUTHORIZE AND
PERMIT ALL REST PERIODS
(LABOR CODE §§ 226.7, 516);**

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- (5) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE §
226 *et seq.*);**
 - (6) **FAILURE TO PAY ALL WAGES
OWED UPON TERMINATION
(LABOR CODE §§ 201-203);**
 - (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
 - (8) **CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE
ATTORNEYS GENERAL ACTION
OF 2004 (LABOR CODE §§ 2698 *et
seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff My Le Pham (“Plaintiff”), on behalf of herself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 Plasma Ruggedized Solutions, Inc., a Delaware corporation, and DOES 1 to 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et seq.*, Labor Code §§ 201-204, 218 *et seq.*, 226, 226.7, 510, 512, 516, 558, 1174,
9 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and Industrial Welfare Commission Wage Order 1
10 (“Wage Order 1”), in addition to seeking declaratory relief and restitution. This FAC is brought
11 pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of Orange. Defendants own, maintain offices, transact business, have agent(s) within the
18 County of Orange, and/or otherwise are found within the County of Orange, and Defendants are
19 within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the Complaint in this action and within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-204, 218 *et seq.*, 226, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198,
28 2698 *et seq.*, and California Business and Professions Code § 17200 *et seq.* (“Unfair Competition

Law”); and Wage Order 1, which sets employment standards for the manufacturing industry, which includes the industry in which Plaintiff worked for Defendants.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continues to do) business by providing conformal coating, potting and encapsulating, plasma etchback/desmar, and testing and laboratory services. Defendants are a self-described leading provider of parylene coating and related specialty engineering services. Defendants employed Plaintiff and other similarly-situated non-exempt employees within Orange County, among other counties, and the state of California and, therefore, were (and are) doing business in Orange County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 14) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

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

8. At all times mentioned herein, Defendants, and each of them, were members of

1 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
2 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
3 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all other
4 aggrieved employees.

5 **GENERAL FACTUAL ALLEGATIONS**

6 9. Plaintiff was employed by Defendants as a non-exempt employee from
7 approximately October 2011 through approximately December 13, 2017, at which time Plaintiff's
8 employment with Defendants was terminated. In her position as a "De-Masker," Plaintiff worked
9 on an assembly line and was responsible for unwrapping plastic wrap on materials.

10 10. During her employment with Defendants, Plaintiff was typically scheduled to
11 work Monday through Friday 5:00 a.m. to 1:30 p.m. Plaintiff was sometimes scheduled to work
12 Saturdays and/or until 5:00 p.m. during the week. However, Plaintiff was not compensated for
13 all hours worked. Specifically, Defendants' time clock policy expressly states, "[e]mployees are
14 expected to arrive to work with sufficient time to put away lunches, go to the bathroom and get
15 dressed with ESD smocks, ESD foot straps, signed in on the ESD log and be prepared to start
16 work on-time." Despite Defendants' directive to arrive prior to her scheduled start time and dress
17 into her uniform prior to clocking in, Plaintiff was not compensated for this additional time under
18 Defendants' direction and control, depriving her of all minimum wages owed. Further, on
19 occasions when Plaintiff worked over eight hours in a day and/or forty hours in a workweek, this
20 practice of Defendants of requiring her to work off the clock also deprived her of all overtime
21 wages owed. As such, Plaintiff and other non-exempt employees were not compensated for all
22 required minimum and overtime wages.

23 11. Throughout Plaintiff's employment with Defendants, Defendants would keep
24 track of Plaintiff's time on an electronic timekeeping system by taking Plaintiff's fingerprint and
25 her picture. However, the timekeeping system would unlawfully round/shave Plaintiff's work
26 time such that Plaintiff would not be fully paid for all time worked. This time-shaving and/or
27 rounding practice utilized by Defendants was not even-handed over time and would almost
28 exclusively round and shave in Defendants' favor such that Plaintiff was routinely underpaid for

her time worked. Additionally, Plaintiff and other non-exempt employees regularly worked in excess of 8.0 hours in a workday and/or 40.0 hours in a workweek. However, as a result of Defendants' time-shaving and/or rounding practice, Defendants routinely failed to pay Plaintiff and other non-exempt employees all overtime compensation for all hours worked.

12. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided all legally required meal periods due to Defendants' meal period policies and practices. Specifically, when Plaintiff was scheduled to work until 1:30 p.m., Defendants did not provide Plaintiff her meal period until 12:30 p.m., which was well after the start of her fifth hour of work. On the occasions Plaintiff worked until 5:30 p.m., Defendants did not provide her meal period until 12:00 p.m., resulting in late or other unlawful meal periods. On the occasions Plaintiff worked a shift on Saturday from 5:00 a.m. to 12:00 p.m., Defendants failed to provide Plaintiff a meal period. Defendants also failed to maintain any policies and practices of accurately recording meal periods taken. Specifically, Defendants' policies and practices required Plaintiff and other non-exempt employees to clock out for meal periods only if they left the work premises. Additionally, Defendants automatically deducted thirty (30) minutes from Plaintiff's work time to account for meal periods irrespective of whether a meal period was provided or not. Further, on the occasions when Plaintiff worked in excess of 10.0 hours, she was not provided with a second 30-minute meal period due to Defendants' meal period policies and practices that fail to provide for a second meal period for shifts over 10.0 hours.

13. Plaintiff was also not authorized and permitted to take all legally required and compliant rest periods due to Defendants' rest period policies and practices. Defendants' rest period policies and practices fail to authorize and permit paid rest periods for every four hours worked, or *major fraction thereof*.

14. On those occasions when Plaintiff was not authorized and permitted to take all legally-compliant rest periods to which she was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which she experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism

1 for the payment of rest period premium payments under Labor Code § 226.7 in the event that a
2 legally compliant rest period was not provided to their non-exempt employees.

3 15. As a result of Defendants' failure to pay all minimum wages, all overtime wages,
4 and all meal period and rest period premium wages, Defendants failed to pay all wages owed to
5 Plaintiff upon her separation of employment from Defendants. As a further result of Defendants'
6 failure to pay all minimum and overtime wages, as well as meal and rest premium wages,
7 Defendants maintained inaccurate payroll records and issued inaccurate wage statements to
8 Plaintiff.

9 **CLASS ACTION ALLEGATIONS**

10 16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
11 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 12 a. The Minimum Wage Class consists of all of Defendants' current and former non-
13 exempt employees in California who were subjected to Defendants' timekeeping
14 policies and practices, during the four years immediately preceding the filing of
15 the Complaint through the present.
- 16 b. The Overtime Class consists of all of Defendants' current and former non-exempt
17 employees in California who worked more than eight hours per day and/or forty
18 hours per week and were subjected to Defendants' timekeeping policies and
19 practices, during the four years immediately preceding the filing of the Complaint
20 through the present.
- 21 c. The Meal Period Class consists of all of Defendants' current and former non-
22 exempt employees who worked at least one shift in excess of 5.0 hours during the
23 four years immediately preceding the filing of the Complaint through the present.
- 24 d. The Rest Period Class consists of all of Defendants' current and former non-
25 exempt employees in California who worked at least one shift in excess of 3.5
26 hours during the four years immediately preceding the filing of the lawsuit through
27 the present.
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e. The Wage Statement Class consists of all of Defendants' current and former non-exempt employees in the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; and/or (iv) Rest Period Class, during the one year immediately preceding the filing of the lawsuit through the present.

f. The Waiting Time Penalty Class consists of Defendants' formerly employed members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; and/or (iv) Rest Period Class in California, during the three years immediately preceding the filing of the Complaint through the present.

g. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Wage Statement Class; and (iv)Waiting Time Penalty Class.

17. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

18. **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 members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

19. **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 employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants properly paid all minimum wages and/or overtime wages to members of the Minimum Wage Class and/or Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, 1197.1 and 1198;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

- 1 iii. Whether Defendants’ policies and/or practices for the timing and amount of
2 payment of final wages to members of the Waiting Time Class at the time of their
3 separation of employment were lawful;
- 4 iv. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive
5 business practices by and through the wage and hour policies and practices
6 described above, and whether as a result Defendants owe the classes restitution;
- 7 v. Whether Defendants authorized and permitted all legally compliant rest periods to
8 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516; and
- 9 vi. Whether Defendants furnished legally compliant wage statements to members of
10 the Wage Statement Class pursuant to Labor Code § 226;

11 20. **Predominance of Common Questions:** Common questions of law and fact
12 predominate over questions that affect only individual members of the Classes. The common
13 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
14 and/or practices applicable to each individual class member, such as Defendants’ uniform
15 timekeeping, minimum wage payment, overtime wage payment, and meal period policies and
16 practices. As such, the common questions predominate over individual questions concerning
17 each individual class member’s showing as to their eligibility for recovery or as to the amount of
18 their damages.

19 21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
20 Plaintiff was employed by Defendants as a non-exempt employee in California during the
21 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As
22 alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required
23 minimum and overtime wages, was not provided with all required meal periods, was not permitted
24 and authorized to take all required rest periods, did not receive meal and rest period premium
25 wages when she was not provided compliant meal and rest periods, was not paid all wages upon
26 separation of her employment with Defendants, and was not provided with accurate, itemized
27 wage statements.

28 22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps

1 to represent fairly and adequately the interests of the members of the Classes. Moreover,
2 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
3 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
4 and-hour class actions in state and federal courts in the past and are committed to vigorously
5 prosecuting this action on behalf of the members of the Classes.

6 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
7 an important public interest in establishing minimum working conditions and standards in
8 California. These laws and labor standards protect the average working employee from
9 exploitation by employers who have the responsibility to follow the laws and who may seek to
10 take advantage of superior economic and bargaining power in setting onerous terms and
11 conditions of employment. The nature of this action and the format of laws available to Plaintiff
12 and members of the Classes make the class action format a particularly efficient and appropriate
13 procedure to redress the violations alleged herein. If each employee were required to file an
14 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
15 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
16 their vastly superior financial and legal resources. Moreover, requiring each member of the
17 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
18 employees who would be disinclined to file an action against their former and/or current employer
19 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
20 employment. Further, the prosecution of separate actions by the individual class members, even
21 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
22 with respect to the individual class members against Defendants herein; and which would
23 establish potentially incompatible standards of conduct for Defendants; and/or legal
24 determinations with respect to individual class members which would, as a practical matter, be
25 dispositive of the interest of the other class members not parties to adjudications or which would
26 substantially impair or impede the ability of the class members to protect their interests. Further,
27 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
28 individual prosecution considering all of the concomitant costs and expenses attending thereto.

As such, the Classes identified in Paragraph 16 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES OWED

(AGAINST ALL DEFENDANTS)

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

25. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for all hours worked, and provide a private right of action for the failure to pay all minimum wage compensation for all work performed.

26. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to California Labor Code §§ 1194, 1197 and 1198, and Wage Order 1. Wage Order 1, Section 4 requires an employer to pay to every employee on the established payday for the period involved not less than the applicable minimum wage for all hours worked in the payroll period. Defendants caused Plaintiff and the members of the Minimum Wage Class to work hours in a workweek but did not properly compensate Plaintiff and the members of the Minimum Wage Class at least minimum wages for such hours.

27. At all times relevant herein, Defendants lacked good faith and had no reasonable grounds for believing that their practices in failing to pay all minimum wages owed at the applicable rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to Labor Code § 1194.2.

28. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, as well as statutory penalties,

liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 1, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES OWED

(AGAINST ALL DEFENDANTS)

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

30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

31. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to California Labor Code §§ 510 and 1194, and Wage Order 1. Labor Code § 510 and Wage Order 1, Section 3 require an employer to pay an employee "one and one-half (1½) times the regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage Order 1, Section 3 also require an employer to pay an employee double the employee's regular rate for work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class at one and one-half their regular rate of pay for such hours.

32. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 1, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed in their affirmative obligation to provide all of their non-exempt employees in California,
7 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
8 in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite
9 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
10 of the Meal Period Class at their respective regular rates of pay, in accordance with California
11 Labor Code §§ 204, 210, 226.7, and 512.

12 35. As a result, Defendants are responsible for paying premium compensation for meal
13 period violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 1, including
14 interest thereon, statutory penalties, civil penalties, and costs of suit.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

17 **(AGAINST ALL DEFENDANTS)**

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

19 37. Wage Order 1, § 12 and California Labor Code §§ 226.7, 516 and 558 establish
20 the right of employees to be authorized and permitted to take a paid rest period of at least ten
21 (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

22 38. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
23 of the Rest Period Class to take all required rest periods.

24 39. The foregoing violations create an entitlement to recovery by Plaintiff and
25 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
26 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
27 to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

3 **(AGAINST ALL DEFENDANTS)**

4 40. Plaintiff re-alleges and incorporates all previous paragraphs.

5 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
7 and members of the Wage Statement Class with complete and accurate wage statements with
8 respect to their actual regular and overtime hours worked, total gross wages earned, and total net
9 wages earned, in violation of Labor Code § 226 *et seq.* Defendants' failures in furnishing Plaintiff
10 and members of the Wage Statement Class with complete and accurate itemized wage statements
11 resulted in actual injury, as said failures led to, among other things, the non-payment of all earned
12 overtime and minimum wages, and meal and rest period premium wages, and deprived them of
13 the information necessary to identify the discrepancies in Defendants' reported data.

14 42. Defendants' failures create an entitlement to recovery by Plaintiff and members of
15 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
16 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
17 costs of suit according to California Labor Code § 226 *et seq.*

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION**

20 **(AGAINST ALL DEFENDANTS)**

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

22 44. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
23 an employer to pay all wages immediately at the time of separation of employment in the event
24 the employer discharges the employee or the employee provides at least 72 hours of notice of
25 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
26 to quit, said employee's wages become due and payable not later than 72 hours upon said
27 employee's last date of employment.

28 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due
2 to them at their separation from employment, including, unpaid minimum wages, overtime wages,
3 and meal period premium wages.

4 46. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
5 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
6 of the Waiting Time Penalty Class all earned wages at the end of employment in a timely manner
7 pursuant to the requirements of Labor Code §§ 201-203.

8 47. Defendants' failure to pay all final wages was willful within the meaning of Labor
9 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
10 Time Penalty Class their earned wages upon separation from employment results in a continued
11 payment of wages up to thirty days from the time the wages were due.

12 48. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled
13 to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

14 **SEVENTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(AGAINST ALL DEFENDANTS)**

17 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs and
18 paragraphs 56-58 as though fully set forth herein.

19 50. Defendants have engaged and continue to engage in unfair and/or unlawful
20 business practices in California in violation of California Business and Professions Code § 17200
21 *et seq.*, by failing to properly pay all minimum and overtime wages, provide all required meal
22 periods, or pay premium payments in lieu thereof.

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

28 52. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged

herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

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

EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

55. Plaintiff re-alleges and incorporates by reference all prior paragraphs.

56. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 1 a) Defendants violated Labor Code §§ 1194, 1194.2, 1197, and 1197.1 by failing
2 to pay Plaintiff and other aggrieved employees the statutory minimum wage and
3 reporting time pay for all hours worked;
- 4 b) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to
5 pay Plaintiff and other aggrieved employees all overtime compensation earned;
- 6 c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all
7 legally required meal periods and failing to pay meal period premiums to
8 Plaintiff and other aggrieved employees;
- 9 d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize
10 and permit all legally required rest periods and failing to pay rest period
11 premiums to Plaintiff and other aggrieved employees;
- 12 e) Defendants violated Labor Code § 1174 by failing to maintain accurate records
13 on behalf of Plaintiff and other aggrieved employees;
- 14 f) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other
15 aggrieved employees with accurate and compliant itemized wage statements;
- 16 g) Defendants violated Labor Code §§ 201-203 by failing to pay Plaintiff and other
17 aggrieved employees all wages upon termination of employment;
- 18 h) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other
19 aggrieved employees all earned wages at least twice during each calendar month.

20 57. On March 10, 2020, Plaintiff notified Defendants via certified mail, and the
21 California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’
22 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
23 under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor
24 Code identified in Paragraph 56 (a)-(h). Now that sixty-five days have passed from Plaintiff
25 notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements
26 for bringing a claim under the Labor Code Private Attorneys General Act with respect to these
27 violations.

28 58. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect her interests and the interests of other aggrieved employees, and to assess and collect the
2 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
3 she is entitled to recover under California Labor Code § 2699(g).

4 **PRAYER**

5 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
6 this suit is brought against Defendants, as follows:

- 7 1. For an order certifying the proposed Classes;
- 8 2. For an order appointing Plaintiff as representative of the Classes;
- 9 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 10 4. Upon the First Cause of Action, for compensatory, consequential, general and
11 special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1197, 1197.1 and
12 1198;
- 13 5. Upon the Second Cause of Action, for compensatory, consequential, general and
14 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 6. Upon the Third Cause of Action, for compensatory, consequential, general and
16 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 17 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
18 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 19 8. Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant
20 to Labor Code § 226 *et seq.*;
- 21 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
22 Labor Code § 203;
- 23 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
24 Class of all money and/or property unlawfully acquired by Defendants by means of any acts or
25 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
26 *seq.*;
- 27 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
28 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§

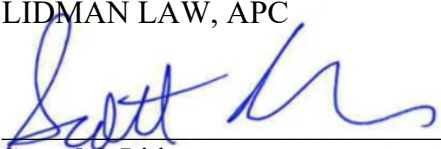
558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections cited in Paragraph 56 (a)-(h) above;

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

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

14. For such other and further relief the Court may deem just and proper.

Dated: June 8, 2020

Respectfully submitted,
LIDMAN LAW, APC

By: _____
Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiff
MY LE PHAM

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Dated: June 8, 2020

By:

Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Attorneys for Plaintiff
MY LE PHAM

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Orange County Superior Court Case No. 30-2019-01086573-CU-OE-CXC

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

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[] (BY MAIL) I am "readily familiar" with Lidman Law, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Dana Joudi