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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

Attorneys for Plaintiff ALLONA FRAME,
on behalf of herself and all others similarly situated
and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ALLONA FRAME, on behalf of herself
and all others similarly situated, and on
behalf of the general public,

Plaintiff,

v.

LUXOTTICA OF AMERICA, INC. dba
LENSCRAFTERS, LUXOTTICA
RETAIL NORTH AMERICA dba
LENSCRAFTERS, and LUXOTTICA
U.S. HOLDING CORP. dba
LENSCRAFTERS; and DOES 1-100,

Defendants.

Case No. 37-2020-00026895-CU-OE-CTL

**PLAINTIFF ALLONA FRAME'S PAGA
COMPLAINT**

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime and Doubletime Wages (Cal. Lab. Code § 2698, et. seq.)
3. Violation of the PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of the PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of the PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
6. Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)
7. Violation of the PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)
8. Violation of the PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698, et. seq.)
9. Violation of the PAGA for Failure to Provide Vacation Pay (Cal. Lab. Code § 2698, et. seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff ALLONA FRAME (hereinafter “Plaintiff”), on behalf herself and all others similarly
2 aggrieved employees (hereinafter “aggrieved employees”), files this Complaint against Defendants
3 Luxottica of America, Inc. dba LensCrafters, Luxottica Retail North America dba LensCrafters, and
4 Luxottica U.S. Holding Corp. dba LensCrafters (collectively “LensCrafters” or “Defendants”) and/or
5 DOES 1-100.

6 **I. INTRODUCTION**

- 7 1. This is a representative action seeking recovery of penalties under the California Labor Code
8 Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against
9 Defendant LENSCLRAFTERS and/or DOES 1-100. The PAGA permits an “aggrieved
10 employee” to bring a lawsuit on behalf of herself and other current and former employees to
11 address an employer’s violations of the California Labor Code.
- 12 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendants
13 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
14 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
15 break; worked qualifying shifts without receiving second meal periods and second and third
16 rest breaks; were not provided accurate itemized wage statements; were not paid all wages
17 owed twice per month; were not provided paid sick leave, were not properly provided vacation
18 pay, were not paid compensation for all time worked at the straight, overtime, or double time
19 rate; and, were not paid waiting time penalties. Plaintiff seeks penalties on behalf of herself
20 and all other aggrieved employees of Defendant LENSCLRAFTERS and/or DOES as provided
21 herein. This Complaint also seeks attorneys’ fees and costs under the PAGA, Cal. Lab. Code
22 § 2699(g)(1).
- 23 3. At all times mentioned herein, Plaintiff and the other aggrieved employees were not classified
24 as “Exempt” or primarily employed in an executive, professional, or administrative capacity.
25 Thus, under California law, Plaintiff and the aggrieved employees should be: provided meal
26 periods; authorized and permitted to take rest periods; paid one hour of premium pay for all
27 unprovided meal periods; paid one hour of premium pay for all rest periods that were not
28 authorized and/or permitted; paid penalties for not being provided itemized wage statements;

1 paid penalties for not being provided paid sick leave; paid compensation for all time worked
2 at the regular, overtime or double time rate; paid all wages owed twice per month; paid all
3 vacation pay, and paid penalties for not being paid timely at the time of termination.

- 4 4. At all times mentioned herein, Defendants and/or DOES controlled the working conditions of
5 Plaintiff and the aggrieved employees including, but not limited to, having the authority to hire
6 and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and the other
7 aggrieved employees, and instructing Plaintiff and the other aggrieved employees when and/or
8 where to work. In addition, Defendants and/or DOES developed, wrote, dictated, approved
9 and/or authorized wage and hour policies and/or practices that Plaintiff and the aggrieved
10 employees labored under. These policies and/or practices included, but were not limited to,
11 policies and/or practices regarding meal periods, straight time, overtime, double time, rest
12 periods, wage statements, paid sick leave, vacation pay, paying compensation at time of
13 termination, and timing of payment. Further, Defendants and/or DOES had the ability to
14 prevent Plaintiff and the other aggrieved employees from working.

15 **II. JURISDICTION AND VENUE**

- 16 5. Plaintiff ALLONA FRAME is an individual residing in California. Plaintiff was employed by
17 Defendants and/or DOES in California. Plaintiff, and each of the aggrieved employees, were
18 employees of Defendants and/or DOES, and/or its operating divisions and subsidiaries, within
19 the State of California. Plaintiff and each of the aggrieved employees were subject to the
20 unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of
21 California Labor and Workforce Development Agency (LWDA).
- 22 6. Venue as to each Defendants and/or DOE is proper in this judicial district. Each Defendants
23 and/or DOE operates facilities, employs hourly employees, conducts business, and commits
24 *California Labor Code* violations within San Diego County and California. Each Defendant
25 and/or DOE is within the jurisdiction of this Court for service of process purposes. The
26 unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees
27 situated within the State of California which has included within San Diego County.
28 Defendants and/or DOES employ numerous aggrieved employees in California and/or San

Diego County.

7. Plaintiff brings this action on behalf of herself and the other aggrieved employees of and/or DOES pursuant to the PAGA. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.
8. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, *IWC Wage Orders*, *Code of Civil Procedure*, and *Civil Code*.
9. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendants and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of San Diego, California.

III. THE PARTIES

A. Plaintiff

10. Plaintiff ALLONA FRAME, a former employee of Defendants and/or DOES, and similar aggrieved employees were and are entitled to statutory meal periods, statutory rest periods, accurate itemized wage statements, payment of wages owed twice a month, paid sick leave, vacation pay, compensation for all time worked at the regular, overtime, and doubletime rate, and to be paid timely pursuant to California law and/or to receive timely wages at the time of termination from Defendants and/or DOES.
11. Plaintiff and similar aggrieved employees were and are employed in the State of California by the Defendants and/or DOES as non-exempt hourly eyecare advisors, sales associates, team leads, or similar job designations and titles, as non-exempt, hourly employees during the

relevant time period. Plaintiff was employed in a non-exempt capacity.

12. These claims are on behalf of Plaintiff and all non-exempt hourly eyecare advisors, sales associates, team leads, or similar job designations and titles, and all other similarly situated non-exempt hourly employees of Defendants and/or DOES in California.

13. A notice correspondence showing compliance with Cal. Lab. Code § 2699.3 was sent to the LWDA and Defendants on May 13, 2020. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. No notice of cure by Defendants and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by Cal. Lab. Code § 2699.3(a)(2)(C).

B. Defendants

14. Defendants and/or DOES are engaged in the ownership and operation of industrial work sites located within San Diego County and throughout California. Luxottica dba LensCrafters is the largest optical retailer in North America with 1,000+ stores and as part of an eyewear industry leader, Luxottica dba LensCrafters has been a leader in vision care for over 35 years. During the liability period, Defendants and/or DOES employed Plaintiff and similarly situated persons as non-exempt employees within California. On information and belief, each of the Defendants and/or DOES is conducting business in California and engaged in the operation of facilities which are used for eyecare and optometry in the State of California.

15. Although Defendants boast that they recognize their “employees’ productivity and hardwork” and claim their people are their “most valuable asset”, Defendants do not pay these employees for all their time worked or provide them the protections owed under the Labor Code. Luxottica <http://careers.luxottica.com/en/what-we-offer>, <http://careers.luxottica.com/en> (Last visited July 18, 2020).

16. However, Defendants do not pay all these employees for all their time worked or provide them the protections owed under the Labor Code, falling far short of any purported high standards Defendants hold, and wholly contradicting any notion that Defendants truly treats its people as

1 its “most valuable asset.”

2 17. Defendants’ and/or DOES’ principal place of business was/is in the State of California.

3 18. Defendants and/or DOES have numerous offices and/or contracts in the State of California.

4 19. California is the nerve center of Defendants’ and/or DOES’ operations.

5 20. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in
6 the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on
7 information and belief alleges that said Defendants are now, and/or at all times mentioned in
8 this Complaint were doing business in the State of California and/or throughout the United
9 States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is
10 legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this
11 Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

12 21. Plaintiff is informed and believes each Defendants acted, in whole or in part, in all respects
13 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
14 plan or policy in all respects pertinent hereto, and the acts of each Defendants are legally
15 attributable to the other Defendants as each Defendants has ratified, approved, and/or
16 authorized the acts of each of the remaining Defendants.

17 22. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners,
18 agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of
19 Defendants and/or DOES at all times.

20 **IV. GENERAL ALLEGATIONS**

21 23. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims
22 with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendants
23 and/or DOES in the State of California. Plaintiff and the other aggrieved employees are
24 composed of all persons who performed services at Defendants’ stores, facilities, and centers
25 in the State of California as hourly, non-exempt hourly eyecare advisors, sales associates, team
26 leads, or similar job designations and titles, and all other similarly situated non-exempt hourly
27 employees of Defendants and/or DOES in the State of California.

28 24. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that

1 Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal
2 periods in a timely manner or payment of one hour of pay as additional compensation at
3 Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely,
4 uninterrupted meal period.

5 25. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift
6 of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by
7 failing to provide compensation for these unprovided meal periods, Defendants and/or DOES
8 willfully violated the provisions of Cal. Lab. Code § 226.7, IWC Wage Order No. 4-2001, and
9 California Code of Regulations, Section 11040(11). In addition, Defendants and/or DOES
10 failed to provide Plaintiff and the other aggrieved employees another duty-free meal period of
11 not less than thirty (30) minutes for every shift of more than ten (10) hours per day.

12 26. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
13 Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take
14 legally compliant rest periods in a timely manner or payment of one hour of pay as additional
15 compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were
16 not authorized and/or permitted to take a legally compliant rest period.

17 27. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction
18 thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide
19 compensation for these periods, Defendants and/or DOES willfully violated the provisions of
20 *Cal. Lab. Code* § 226.7, IWC Wage Order No. 4-2001, and California Code of Regulations,
21 Section 11040(12).

22 28. At all times mentioned herein, Defendants and/or DOES failed to pay all wages owed to
23 Plaintiff and to other terminated or resigned members of the aggrieved employees and failed
24 to timely pay wages during employment.

25 29. At all times mentioned herein, Defendants and/or DOES failed to pay Plaintiff and the
26 aggrieved employees all wages earned twice per month.

27 30. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
28 Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay

1 statements in accordance with California law.

2 31. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
3 they were not providing complete and accurate pay statements in accordance with California
4 law to Plaintiff and the aggrieved employees.

5 32. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
6 they failed to adopt a sick pay policy for Plaintiff and the aggrieved employees that is compliant
7 with California law.

8 33. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
9 Plaintiff and the aggrieved employees were entitled to receive pay statements itemizing the
10 amount of accrued/available sick leave for Plaintiff and the aggrieved employees in accordance
11 with California law.

12 34. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
13 they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with
14 California law, and that Defendants and DOES had the ability to pay such compensation, but
15 willfully and intentionally failed to do so, and Defendants and DOES falsely represented to
16 Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and
17 the other aggrieved employees.

18 35. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
19 Plaintiff and the other aggrieved employees were entitled to timely wages at the time of
20 termination. Defendants and/or DOES did not pay all timely wages owed, straight-time wages
21 owed, meal period premiums, and/or rest period premiums owed at the time of termination.

22 36. At all times mentioned herein, Defendants and/or DOES failed to pay Plaintiff and the other
23 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours
24 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

25 37. Plaintiff brings this action on behalf of herself and all other aggrieved employees defined as
26 all the non-exempt hourly eyecare advisors, sales associates, team leads, or similar job
27 designations and titles, and all other similarly situated non-exempt hourly employees of
28 Defendants in California, employed beginning one year prior to the date Plaintiff sent Notice

1 to the LWDA.

2 38. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
3 respect to the issues or in any other way.

4 **FIRST CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
5 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages**
6 **for All Work Performed (Cal. Lab. Code §2698 et. seq.).**

7 39. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
8 as if fully plead.

9 40. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab.
10 Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the
11 pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits
12 the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions
13 from wages when the employer is required or empowered to do so by state or federal law or
14 when the deduction is expressly authorized in writing by the employee for specified purposes
15 that do not in effect reduce the agreed upon wage.

16 41. Cal. Lab. Code § 1197.1 of the California Labor Code states “[a]ny employer or other person
17 acting individually as an officer, agent, or employee of another person, who pays or causes to
18 be paid to any employee a wage less than the minimum fixed by an applicable state or local
19 law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
20 liquidated damages payable to the employee, and any applicable penalties pursuant to Section
21 203.”

22 42. Defendants and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved
23 employees for all hours worked. Defendants and/or DOES have not paid for all the time
24 Plaintiff and the aggrieved employees worked throughout the day. Including, but not limited
25 to, time spent working through meal periods, and/or any other time in the day when the
26 employees were performing work tasks, subject to the control of their employer and/or
27 otherwise had work duties.

28 43. Defendants and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved

1 employees for all hours worked. Defendants and/or DOES have not paid for all the time
2 Plaintiff and the aggrieved employees worked throughout the day. Including, but not limited
3 to, time spent working through meal periods, and/or any other time in the day when Plaintiff
4 and all aggrieved employees were performing work tasks, subject to the control of their
5 employer and/or otherwise had work duties. Plaintiff and the aggrieved employees have had
6 to follow Defendants' and/or DOES' policies which subjected them to Defendants' and/or
7 DOES' control while off the clock.

8 44. Plaintiff and the aggrieved employees have not been paid for all time under Defendants' and/or
9 DOES' control. This includes time under Defendants' and/or DOES' control pre-shift, post-
10 shift, and during unpaid lunches, such as time spent clocking in, opening, closing, or
11 undergoing security and bag checks while off the clock.

12 45. Plaintiff and the aggrieved employees were employed by Defendants and/or DOES at all
13 relevant times. Defendants and/or DOES were required to compensate Plaintiff for all hours
14 worked and were prohibited from making deductions that had the effect of reducing the agreed
15 upon wage.

16 46. Plaintiff and the aggrieved employees were entitled to be paid the minimum wage for all time
17 worked. By failing to pay for all work performed, including time spent subject to Defendants'
18 and/or DOES' control, Defendants' and/or DOES' compensation to Plaintiff and the aggrieved
19 employees fell below the applicable minimum wage.

20 47. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
21 wages, and lost interest on such wages, and expenses.

22 48. Defendants and/or DOES committed the acts alleged herein knowingly and willfully, with the
23 wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees.
24 Defendants and/or DOES acted with malice or in conscious disregard of Plaintiff's and the
25 aggrieved employees' rights.

26 49. These claims are on behalf of Plaintiff and all non-exempt hourly eyecare advisors, sales
27 associates, team leads, or similar job designations and titles, and all other similarly situated
28 non-exempt hourly employees of Defendants and/or DOES in California.

1 50. Plaintiff, as a former non-exempt employee of Defendants and/or DOES who Defendants'
2 and/or DOES' failed to pay all wages, is an aggrieved employee with standing to bring an
3 action under the PAGA. Plaintiff satisfied all prerequisites to serve as representatives of the
4 general public to enforce California's labor laws, and the penalty provisions identified in Cal.
5 Lab. Code § 2699.5.

6 51. Plaintiff, as a representative of the people of the State of California, will seek any and all
7 penalties otherwise capable of being collected by the Labor Commission and/or the
8 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as
9 set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any
10 alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

11 52. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself
12 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
14 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
15 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

16 53. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other aggrieved
17 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
18 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
19 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
20 pursuant to Cal. Lab. Code § 558(a).

21 **SECOND CAUSE OF ACTION AGAINST DEFENDANTS AND/DOES: Violation of the**
22 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Double time**
23 **Wages Owed**

24 54. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
25 as if fully plead.

26 55. Cal. Lab. Code § 510 states that eight hours of labor constitutes a day's work. Any work in
27 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek
28 and the first eight hours worked on the seventh day of work in any one workweek shall be

- 1 compensated at the rate of no less than one and one-half times the regular rate of pay for an
2 employee.
- 3 56. Cal. Lab. Code § 510 dictates that any work in excess of 12 hours in one day shall be
4 compensated at the rate of no less than twice the regular rate of pay for an employee. In
5 addition, any work in excess of eight hours on any seventh day of a workweek shall be
6 compensated at the rate of no less than twice the regular rate of pay of an employee.
- 7 57. Defendants and/or DOES failed to pay overtime when employees worked over eight (8) hours
8 per day and when employees worked over 40 hours per week. Plaintiff and the aggrieved
9 employees frequently worked over 8 hours per day or over 40 hours per week.
- 10 58. Defendants and/or DOES failed to pay proper double time when Plaintiff and the aggrieved
11 employees worked seven days in a row or over twelve hours in a day.
- 12 59. Defendants and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved
13 employees for all hours worked. Plaintiff and the aggrieved employees have been subject to
14 Defendants' and/or DOES' control pre-shift, post-shift, and during unpaid meal periods
15 resulting in unpaid overtime where they are not getting paid, which, when working overtime
16 eligible shifts results in underpaid overtime compensation.
- 17 60. Defendants and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved
18 employees for all hours worked. Defendants and/or DOES have not paid for all the time
19 Plaintiff and the aggrieved employees worked throughout the day. Including, but not limited
20 to, time spent working through meal periods, and/or any other time in the day when the
21 employees were performing work tasks, subject to the control of their employer and/or
22 otherwise had work duties. Plaintiff and the aggrieved employees frequently work over eight
23 daily and forty weekly hours, and, therefore, this compensable time is owed at the overtime
24 rates of Plaintiff and the aggrieved employees.
- 25 61. Defendants and/or DOES failed to pay Plaintiff and the aggrieved employees at the appropriate
26 rate of pay, such as overtime pay. Specifically, Defendants and/or DOES failed to incorporate
27 bonuses, split shift premiums, or commissions into overtime pay calculations.
- 28 62. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid

wages, and lost interest on such wages, and expenses.

63. These claims are on behalf of Plaintiff and all non-exempt hourly eyecare advisors, sales associates, team leads, or similar job designations and titles, and all other similarly situated non-exempt hourly employees of Defendants and/or DOES in California.

64. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.

65. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

66. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

67. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANTS AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code §2698 et. seq.).

68. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

69. Under Cal. Lab. Code § 512, and IWC Wage Order 4-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not

less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

70. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

71. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

72. Defendants and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to its hourly, non-exempt employees who worked for work periods of more than five (5) consecutive hours. As such, Defendants and/or DOES non-exempt workers were required to work over five (5) consecutive hours at a time without being provided a thirty (30) minute uninterrupted meal period within that time.

73. Defendants and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to its Non-Exempt employees for every five (5) continuous hours worked.

74. Defendants and/or DOES has a consistent policy and/or practice of not providing meal periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Defendants and/or DOES' business model was such that Plaintiff and the aggrieved employees were assigned too much work that could not be reasonably completed in their assigned shift. The result is that Defendants and/or DOES employees routinely and regularly are forced to eat their meals while working.

75. Defendants and/or DOES have a consistent policy and/or practice of not providing meal periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof.

1 As a matter of policy and practice, Defendants and/or DOES do not provide employees with
2 full 30-minute meal periods for each day worked where they are free from Defendants' and/or
3 DOES' control, such as the time Plaintiff and the aggrieved employees have spent undergoing
4 security measures, bag checks, or clocking in. As a matter of policy and practice, Defendants
5 and/or DOES do not provide 30-minute meal periods before the end of the fifth hour. As a
6 matter of policy and practice, Defendants and/or DOES do not provide a full 30-minute second
7 meal period when employee shifts eclipse 10-hours wherein employees are free from
8 Defendants' and/or DOES' control. Defendants and/or DOES do not provide a second 30-
9 minute meal periods before the end of the tenth hour. Due to the thrust of business, Defendants'
10 and/or DOES' policies and practices encourage employees to stay working on the production
11 floor, as opposed to encouraging the rest and nourishment meal periods are designed to
12 provide. As a matter of policy and practice, Defendants and/or DOES fails to relinquish all
13 control over employees to permit them with reasonable opportunities to take meal periods.

14 76. Moreover, Defendants and/or DOES did not have a policy of providing a second meal period
15 to employees before the end of the tenth hour.

16 77. By failing to provide statutory first and/or second meal periods, and by failing to provide
17 compensation for unprovided meal periods, as alleged above, Defendants willfully violated the
18 provisions of the Cal. Lab. Code §§ 226.7 and 512.

19 78. These claims are on behalf of Plaintiff and all non-exempt hourly eyecare advisors, sales
20 associates, team leads, or similar job designations and titles, and all other similarly situated
21 non-exempt hourly employees of Defendants and/or DOES in California.

22 79. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
23 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
24 has satisfied all prerequisites to serve as a representative of the general public to enforce
25 California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.

26 80. Plaintiff, as a representative of the people of the State of California, will seek all penalties
27 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
28 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that Section

- 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.
81. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
82. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

83. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.
84. Industrial Welfare Commission Order No. 4-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”
85. At all times mentioned herein, Defendants and/or DOES failed to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
86. Defendants and/or DOES has had a consistent policy and/or practice of not providing rest periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Plaintiff and the aggrieved employees work up to twelve (12) hour shifts but did not receive first, second, third, or fourth rest breaks.

1 87. As a matter of policy and practice, Defendants and/or DOES do not authorize and permit
2 employees to take net ten-minute rest breaks every four hours or major fraction thereof.
3 Defendants' and/or DOES' policies and practices encourage production over breaks. Likewise,
4 Defendants' and/or DOES' policies and practices fail to relinquish all control over employees
5 during breaks. In sum, this time is counted as part of Plaintiff, and the aggrieved employees'
6 rest period, even though they remain subject to Defendants' and/or DOES' control, thereby
7 denying Plaintiff and the aggrieved employees of the right to be completely free from employer
8 control under California law.

9 88. Defendants and/or DOES have a consistent policy and/or practice of not providing net ten-
10 minute rest breaks to Plaintiff and all aggrieved employees and/or providing compensation in
11 lieu thereof. Plaintiff and the aggrieved employees are required to work through rest periods
12 to complete the demanding duties required by Defendants and/or DOES, thereby denying them
13 their right to be completely free from employer control under California law.

14 89. Furthermore, Defendants and/or DOES breached the legal duty to provide rest periods to
15 employees by failing to provide Plaintiff and all aggrieved employees with a suitable resting
16 facility in which to take their rest breaks in violation of Industrial Welfare Commission Order
17 No. 4-2001 section 13(B).

18 90. Defendants and/or DOES breached the duty to provide rest periods to employees by imposing
19 a continuous and consistent policy requiring employees undergo security measures and bag
20 checks. Because Defendants and/or DOES subjects employees to security measures and bag
21 checks during breaks it violates Cal. Lab. Code § 226.7's and Wage Order 4-2001's
22 requirement that rest periods, like meal periods, be free of all employer restraints and controls.
23 Employees working time-qualifying shifts, then, have not received compliant rest periods and
24 have been entitled to the Cal. Lab. Code § 226.7 premiums.

25 91. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
26 day by non-exempt employees, and by failing to provide compensation for these unprovided
27 periods, as alleged above, Defendants and/or DOES willfully violated the provisions of Cal.
28 Lab. Code § 226.7.

1 92. These claims are on behalf of Plaintiff and all non-exempt hourly eyecare advisors, sales
2 associates, team leads, or similar job designations and titles, and all other similarly situated
3 non-exempt hourly employees of Defendants and/or DOES in California.

4 93. Plaintiff—a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
5 periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
6 has satisfied all prerequisites to serve as a representative of the general public to enforce
7 California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 and
8 Industrial Welfare Commission Order No. 4-2001 § 20 for violations of Cal. Lab. Code § 226.7
9 and Industrial Welfare Commission Order No. 4-2001 § 12(A).

10 94. Plaintiff, as a representative of the people of the State of California, will seek all penalties
11 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
12 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section
13 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

14 95. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself
15 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
16 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
17 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
18 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

19 96. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other aggrieved
20 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
21 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
22 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
23 pursuant to Cal. Lab. Code § 558(a).

24 **FIFTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
25 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination**
26 **and During Employment (Cal. Lab. Code §2698 *et. seq.*).**

27 97. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
28 as if fully plead.

- 1 98. Defendants and/or DOES and/or their officers and/or managing agents willfully failed to pay,
2 in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left
3 Defendants' and/or DOES' employ or who were terminated.
- 4 99. Plaintiff and/or the other aggrieved employees who ended their employment with Defendants
5 and/or DOES during the last year were entitled to be promptly paid all lawful compensation,
6 and other premiums, as required by Cal. Lab. Code §§ 201 through 203.
- 7 100. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges
8 an employee, the wages earned and unpaid at the time of discharge are due and payable
9 immediately, and if an employee quits his or her employment, his or her wages shall become
10 due and payable no later than seventy-two (72) hours thereafter, unless the employee has given
11 seventy-two (72) hours notice of his or her intention to quit, in which case the employee is
12 entitled to his or her wages at the time of quitting.
- 13 101. During the relevant time period, Defendants and/or DOES intentionally and willfully failed to
14 pay Plaintiff and the other aggrieved employees who are no longer employed by Defendants
15 and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their
16 leaving Defendants' and/or DOES' employ.
- 17 102. During the relevant time period, Defendants and/or DOES intentionally and willfully failed to
18 pay Plaintiff and the aggrieved employees who are no longer employed by Defendants and/or
19 DOES their holiday and vacation pay, that were earned and unpaid, within seventy-two (72)
20 hours of their leaving Defendants' and/or DOES' employ.
- 21 103. Defendants' and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no
22 longer employed by Defendants and/or DOES their wages, that were earned and unpaid, within
23 seventy-two (72) hours of their leaving Defendants' and/or DOES' employ, is in violation of
24 Cal. Lab. Code §§ 201 and 202.
- 25 104. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in
26 accordance with sections 201 and 202, the wages of the employee shall continue as a penalty
27 from the due date thereof at the same rate until paid or until action is commenced; but the
28 wages shall not continue for more than thirty (30) days.

105. Plaintiff, as a non-exempt employee who Defendants and/or DOES failed to pay all wages due at termination, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.

106. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 201 through 203.

107. These claims are on behalf of Plaintiff and all non-exempt hourly eyecare advisors, sales associates, team leads, or similar job designations and titles, and all other similarly situated non-exempt hourly employees of Defendants and/or DOES in California.

108. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

109. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SIXTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 et. seq.).

110. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

1 111. Cal. Lab. Code § 226 subdivision (a) requires Defendants and/or DOES to itemize in wage
2 statements all deductions from payment of wages and to accurately report total hours worked
3 by Plaintiff and the other aggrieved employees. Cal. Lab. Code § 226(a) requires Defendants
4 and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees,
5 either as an detachable part of the check, draft, or voucher paying the employee’s wages, or
6 separately when wages are paid by personal check or cash, an accurate itemized statement in
7 writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the
8 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
9 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
10 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
11 dates of the period for which the employee is paid, (7) the name of the employee and only the
12 last four digits of his or her social security number or an employee identification number other
13 than the social security number, (8) the name and address of the legal entity that is the
14 employer...(9) all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate and the corresponding number of hours worked at
16 each hourly rate by the employee....”

17 112. Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from payment of
18 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day
19 and year, and a copy of the statement and the record of the deductions shall be kept on file by
20 the employer for at least three years at the place of employment or at a central location within
21 the State of California.”

22 113. During the relevant time period, Defendants and/or DOES intentionally and willfully failed to
23 provide Plaintiff and the aggrieved employees with wage statements at the time of each
24 payment.

25 114. Even if the wage statements were provided adequately, Defendants and/or DOES have
26 knowingly and intentionally failed to comply with Cal. Lab. Code § 226(a) on each and every
27 wage statement provided to Plaintiff and the other aggrieved employees.

28 115. Defendants and/or DOES knowingly and intentionally failed to accurately itemize the gross

- wages earned on Plaintiff's and the aggrieved employees' wage statements.
116. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not itemize the total hours worked on wage statements as Cal. Lab. Code § 226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not include the total hours worked on wage statements and failed to include this information accurately. Defendants and/or DOES therefore knowingly and intentionally failed to itemize the total hours worked on Plaintiff's and the aggrieved employees' wage statements.
117. Defendants and/or DOES had a uniform policy of deducting 30-minutes each workday from Plaintiff's and the aggrieved employees' wages for meal periods, despite Plaintiff and the aggrieved employees working during and throughout the time period of the deduction. Defendants and/or DOES violated the Cal. Lab. Code § 226, subdivision (a) requirement of itemizing all deductions from wages. As Defendants and/or DOES knew or had reason to know Plaintiff and the aggrieved employees worked during meal periods, Defendants and/or DOES knowingly and intentionally failed to comply with Cal. Lab. Code § 226, subdivision (a).
118. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not include the name of the legal entity that is the employer thereby failing to furnish accurate itemized statements. *See, e.g.*, Cal. Lab. Code 226(a)(8). Plaintiff and the aggrieved employees could not promptly and easily determine the employer's name from the wage statements alone.
119. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not include the net wages earned on wage statements.
120. In every pay period during the period of the relevant statute of limitations, Defendants and/or DOES knowingly and intentionally did not include Plaintiff's and the aggrieved employees net wages on wage statements and failed to itemize this amount accurately.
121. In every pay period, Defendants and/or DOES have a consistent policy and/or practice of not itemizing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee or providing accurate rates as

- 1 well as the corresponding number of hours worked at each rate.
- 2 122. In every pay period during the period of the relevant statute of limitations, Defendants and/or
- 3 DOES knowingly and intentionally did not include all deductions on Plaintiff's and the
- 4 aggrieved employees' wage statements and/or failed to itemize deductions accurately.
- 5 123. In every pay period during the period of the relevant statute of limitations, Defendants and/or
- 6 DOES knowingly and intentionally did not include the inclusive dates for which the employees
- 7 are paid or the last four digits of the aggrieved employees social security number or an employee
- 8 identification number and/or failed to itemize this information accurately.
- 9 124. In every pay period during the period of the relevant statute of limitations, Defendants and/or
- 10 DOES knowingly and intentionally did not itemize the amount of paid sick leave/paid time off
- 11 Plaintiff and the aggrieved employees have available on Plaintiff's and the aggrieved
- 12 employees' wage statements.
- 13 125. In every pay period during the period of the relevant statute of limitations, Defendants and/or
- 14 DOES knowingly and intentionally did not include the name of the legal entity that is the
- 15 employer thereby failing to furnish accurate itemized statements.
- 16 126. Throughout the statutory period, because of the knowing and intentional failure by Defendants
- 17 and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the
- 18 aggrieved employees have been able to reconstruct only a reasonable estimate of the hours
- 19 worked and have, therefore, not received full compensation.
- 20 127. These claims are on behalf of Plaintiff and all non-exempt hourly eyecare advisors, sales
- 21 associates, team leads, or similar job designations and titles, and all other similarly situated
- 22 non-exempt hourly employees of Defendants and/or DOES in California.
- 23 128. Plaintiff, as a non-exempt employee who Defendants and/or DOES failed to provide accurate
- 24 and itemized wage statements, is an aggrieved employee with standing to bring an action under
- 25 the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public
- 26 to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
- 27 2699.5.
- 28 129. Plaintiff, as a representative of the people of the State of California, will seek all penalties

otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

130. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

131. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month (Cal. Lab. Code § 2698 et. seq.).

132. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

133. Cal. Lab. Code § 204(a) of the *California Labor Code* requires that all wages earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

134. Cal. Lab. Code § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the

following month.”

135. Defendants and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and the aggrieved employees twice per month. By failing to pay employees twice per month, Defendants and/or DOES willfully violated the provisions of Cal. Lab. Code § 204(a).

136. During the relevant time period, Defendants and/or DOES intentionally and willfully failed to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month.

137. Defendants and/or DOES failure to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code § 204.

138. These claims are on behalf of Plaintiff and all non-exempt hourly eyecare advisors, sales associates, team leads, or similar job designations and titles, and all other similarly situated non-exempt hourly employees of Defendants and/or DOES in California.

139. Plaintiff, as a non-exempt employee who Defendants and/or DOES failed pay all wages owed twice per month, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code § 204.

140. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

141. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698 et. seq.)

142. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

143. Section 246(a)(1) of the California Labor Code states: “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

144. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

145. Section 233(c) of the California Labor Code states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

146. Section 233(d) of the California Labor Code provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

147. Section 234 of the California Labor Code further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”

148. Defendants and/or DOES have failed to provide Plaintiff and the aggrieved employees with paid sick days in compliance with Section 246 and Section 246.5. Defendants and/or DOES have had a policy and practice which denied Plaintiff and the aggrieved employees from

1 accruing paid sick days after having been employed by Defendants and/or DOES for 30 or
2 more days. Defendants and/or DOES have a policy and practice which denied Plaintiff and the
3 aggrieved employees of using their paid sick days after having been employed by Defendants
4 and/or DOES for 90 or more days.

5 149. Further, Defendants and/or DOES have adopted a policy and practice that denies Plaintiff and
6 the aggrieved employees the ability to use their sick days in compliance with Labor Code
7 Sections 233 and 246.5. For example, Defendants and/or DOES threaten to discipline or
8 discharge the aggrieved employees for failing to provide Defendants and/or DOES with
9 sufficient advanced notice of their intent to use their paid sick days in clear violation of Labor
10 Code Section 234. Plaintiff and the aggrieved employees were entitled to actual damages or
11 one day's pay pursuant to Labor Code Section 233(d).

12 150. Defendants and/or DOES' sick pay policy has failed to pay sick pay for all appropriate and
13 protected purposes enumerated in Labor Code section 233, 234, 246, and 246.5.

14 151. Defendants and/or DOES fail to itemize the amount of accrued/available sick leave employees
15 have on wage statements each pay period.

16 152. These claims are on behalf of Plaintiff and all non-exempt hourly eyecare advisors, sales
17 associates, team leads, or similar job designations and titles, and all other similarly situated
18 non-exempt hourly employees of Defendants and/or DOES in California.

19 153. Plaintiff, as a non-exempt employee subject to Defendants and/or DOES' unlawful sick pay
20 policy, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
21 has satisfied all prerequisites to serve as a representative of the general public to enforce
22 California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for
23 violations of Cal. Lab. Code §§ 233, 234, and 246.

24 154. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself
25 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
26 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
27 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
28 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

1 155. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other aggrieved
2 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
3 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
4 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
5 pursuant to Cal. Lab. Code § 558(a).

6 **NINTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
7 **Private Attorneys General Act of 2004 (PAGA) for Failing to Provide Vacation Pay (Cal. Lab.**
8 **Code § 2698 *et. seq.*)**

9 156. Pursuant to Section 227.3 of the Labor Code, whenever a contract of employment or employer
10 policy provides for paid vacations, and an employee is terminated without having taken off his
11 or her vested vacation time, all vested vacation shall be paid to him or her as wages at his or
12 her final rate in accordance with such contract of employment or employer policy respecting
13 eligibility or time served; provided, however, that an employment contract or employer policy
14 shall not provide for forfeiture of vested vacation time upon termination.

15 157. Defendants and/or DOES implement a policy and practice that denying Plaintiff and the
16 aggrieved employees of their vacation pay at their final rates of pay at termination. And,
17 Defendants and/or DOES have failed to pay Plaintiff as well as the aggrieved employees their
18 vacation pay at their final rates of pay at termination.

19 158. These claims are for Plaintiff and all the non-exempt hourly eyecare advisors, sales associates,
20 team leads, or similar job designations and titles, and all other similarly situated non-exempt
21 hourly employees of Defendants and/or DOES in California.

22 159. Plaintiff, as a representative of the people of the State of California, will seek all penalties
23 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
24 Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Labor
25 Code section 2699.5 for violations of section 227.3.

26 160. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of herself
27 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
28 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.

Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

161. In the alternative, Plaintiff, as an aggrieved employee, on behalf of herself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief and judgment against Defendants and/or DOES, jointly and severally, as follows:

- A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compliant meal periods;
- C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid meal periods;
- D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide all rest periods;
- E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid rest periods;
- F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to timely pay wages at separation;
- G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compensation at the regular, overtime, and double time rate for all time worked;
- H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compensation at the minimum wage;

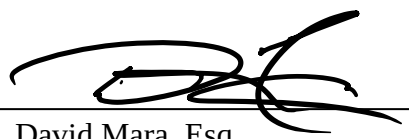
- 1 I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
2 for failure to provide accurate, itemized wage statements;
- 3 J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
4 for failure to pay employees all wages owed twice per month;
- 5 K. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
6 for failure to adopt a sick pay policy compliant with California law;
- 7 L. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
8 for failure to provide vacation pay compliant with California law, and
- 9 M. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff demands a jury trial.

12 **MARA LAW FIRM, PC**

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15 Date: July 31, 2020

Signed: 

David Mara, Esq.
Tony Roberts, Esq.
Attorneys for Plaintiff ALLONA FRAME, on
behalf of herself and all others similarly
situated, and on behalf of the general public