

1 **BIBIYAN LAW GROUP, P.C.**
David D. Bibiyan (SBN 287811)
2 *david@tomorrowlaw.com*
Diego Aviles (SBN 315533)
3 *diego@tomorrowlaw.com*
Michael Massmann (SBN 313749)
4 *michael@tomorrowlaw.com*
8484 Wilshire Boulevard, Suite 500
5 Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705
6 Attorneys for Plaintiff, NORMA HERNANDEZ,
7 on behalf of herself and all others similarly situated

FILED
Superior Court of California
County of Riverside
8/28/2020
D. Brown
Electronically Filed

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF RIVERSIDE**

11 NORMA HERNANDEZ, on behalf of herself
12 and all others similarly situated,

13 Plaintiffs,

14 v.

15 KOHL'S, INC., a Delaware Corporation;
16 KOHL'S DEPARTMENT STORES, INC., a
corporation of unknown origin; LE DABNEY,
17 an individual; CORY WILLIAMS, an
individual; DEBORAH PEREZ, an individual;
18 and DOES 1 through 100, inclusive,

19 Defendants.

CASE NO.: RIC2002712

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS
OR COMPENSATION IN LIEU THEREOF;
4. FAILURE TO PROVIDE REST PERIODS
OR COMPENSATION IN LIEU THEREOF;
5. FAILURE TO PAY DUE WAGES AT
TERMINATION;
6. WAGE STATEMENT VIOLATIONS;
7. VIOLATION OF LABOR CODE § 226(c);
8. VIOLATION OF LABOR CODE § 1198.5;
9. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *et seq.*;
10. CIVIL PENALTIES UNDER LABOR
CODE § 210;
11. CIVIL PENALTIES UNDER LABOR
CODE § 226.3;
12. VIOLATION OF LABOR CODE § 558;
13. VIOLATION OF LABOR CODE §
1197.1; and
14. CIVIL PENALTIES UNDER LABOR
CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

COMES NOW plaintiff NORMA HERNANDEZ ("Plaintiff"), on behalf of herself and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure section 382 and Labor Code section 2698, *et seq.*, on behalf of Plaintiff and all other current and former similarly situated and aggrieved employees employed by or formerly employed by KOHL'S INC., a Delaware corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("KOHL'S"); KOHL'S DEPARTMENT STORES, INC., a corporation of unknown origin, and any of its respective subsidiaries or affiliated companies within the State of California ("KOHL'S STORES"); LE DABNEY, an individual ("DABNEY"); CORY WILLIAMS, an individual ("WILLIAMS"), and DEBORAH PEREZ, an individual ("PEREZ" and together with KOHL'S, KOHL'S STORES, DABNEY, WILLIAMS, and DOES 1 through 100, as further defined below, "Defendants").

2. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff and other non-exempt employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and similarly situated employees, at times, working over eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, Defendants, at times, failing to accurately track and/or pay for all minutes actually engaged, suffered, or permitted to work; and failing to include all forms of remuneration, including non-discretionary bonuses and/or incentive pay, into the regular rate of pay for the pay periods where overtime was worked and a non-discretionary bonus and/or incentive pay was earned, for the purpose of calculating the overtime rate of pay, to the detriment of Plaintiff and other similarly situated employees.

///

1 3. For at least four (4) years prior to the filing of this Action and continuing to the
2 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and other non-
3 exempt employees in the State of California in violation of California state wage and hour laws as
4 a result of, among other things, Defendants, occasionally, failing to accurately track and/or pay for
5 all minutes actually engaged, suffered, or permitted to work, to the detriment of Plaintiff and other
6 similarly situated employees.

7 4. For at least four (4) years prior to the filing of this Action and continuing to the
8 present, Defendants have, on occasion, failed to provide Plaintiff and other similarly situated
9 employees or former employees within the State of California a thirty (30) minute uninterrupted
10 meal period for days on which the employees worked more than five (5) hours in a work day and a
11 second thirty (30) minute uninterrupted meal period for days on which employees worked in
12 excess of ten (10) hours in a workday, and failed, at times, to provide compensation for such
13 unprovided meal periods as required by California wage and hour laws.

14 5. For at least four (4) years prior to the filing of this action and continuing to the
15 present, Defendants have, on occasion, failed to provide Plaintiff and similarly situated employees
16 or former employees within the State of California rest periods of at least ten (10) minutes per four
17 (4) hours worked or major fraction thereof and failed, at times, to provide compensation for such
18 unprovided rest periods as required by California wage and hour laws.

19 6. For at least three (3) years prior to the filing of this action and continuing to the
20 present, Defendants have failed, on occasion, to pay Plaintiff and other similarly situated
21 employees the full amount of their wages owed to them upon termination and/or resignation as
22 required by Labor Code sections 201 and 202 as a result of their occasional failure to pay wages as
23 herein mentioned.

24 7. For at least one (1) year prior to the filing of this Action and continuing to the
25 present, Defendants have, at times, failed to furnish Plaintiff and similarly situated employees
26 within the State of California with itemized wage statements that accurately reflect gross wages
27 earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay
28 period and the corresponding number of hours worked at each hourly rate; and other such

1 information as required by Labor Code section 226, subdivision (a). As a result thereof,
2 Defendants have, at times as herein mentioned, further failed to furnish employees with an
3 accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

4 8. For at least three (3) years prior to the filing of this Action and continuing to the
5 present, Defendants had and have a policy or practice of, upon written request to inspect or receive
6 copies of records pursuant to Labor Code section 226, subdivision (b), pertaining to a current or
7 former employee, complying with the request within 21 days from the date thereof.

8 9. At all relevant times mentioned herein, Defendants, at times, failed to provide
9 Plaintiff and other aggrieved employees with, or permit them inspection of, records pertaining to
10 their employment, including wage statements and similar payroll documents under Labor Code
11 section 226, documents signed to obtain or hold employment under Labor Code section 432,
12 personnel records under Labor Code section 1198.5, and time records under Labor Code section
13 1174, to the detriment of Plaintiff and all other aggrieved employees. As a result of these
14 occasional violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558
15 and 2699.

16 10. At all relevant times mentioned herein, Defendants have had a policy or practice of
17 failing to pay employees their wages in accordance with Labor Code Section 204, which requires
18 that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be
19 paid for between the 16th and 26th day of the month during which the labor was performed, and
20 labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid
21 for between the 1st and 10th day of the following month."

22 11. At all relevant times mentioned herein, Defendants have had a policy or practice of
23 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
24 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other aggrieved
25 employees with the rates of pay and overtime rates of pay applicable to their employment;
26 allowances claimed as part of the minimum wage; the regular payday designated by Employers;
27 the name, address, and telephone number of the workers' compensation insurance carrier;
28

1 information regarding paid sick leave; and other pertinent information required to be disclosed by
2 Defendants under Labor Code section 2810.5.

3 12. At all relevant times mentioned herein, Defendants occasionally failed to provide
4 Plaintiff and other aggrieved employees with the amount of paid sick leave required to be
5 provided pursuant to California law and also did not permit its use upon request as contemplated
6 under California laws, to the detriment of Plaintiff and all other aggrieved employees.

7 13. Plaintiff, on behalf of herself and all other similarly situated employees, brings this
8 action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210,
9 226, 226.3, 226.7, 432, 510, 512, 558, 558.1, 1194, 1194.2, 1198.5, 1197, 1197.1, and California
10 Code of Regulations, Title 8, section 11070, seeking overtime wages, minimum wages, payment
11 of premium wages for missed meal and rest periods, penalties, and other such provisions of
12 California law, and reasonable attorneys' fees and costs.

13 14. Plaintiff, on behalf of herself and all other similarly situated employees, pursuant to
14 California Business and Professions Code sections 17200 through 17208, also seeks (an)
15 injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the
16 establishment of appropriate and effective means to prevent further violations, as well as all
17 monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are
18 entitled, as well as restitution of amounts owed.

19 **PARTIES**

20 **A. Plaintiff**

21 15. Plaintiff, NORMA HERNANDEZ, is a resident of the State of California. At all
22 relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants
23 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,
24 operating as a cashier, processing customer transactions, and registering customer applications for
25 Kohl's credit cards. Plaintiff began working for Defendants in approximately December of 2018
26 and worked through approximately July of 2019.

27 ///

28 ///

B. Defendants

16. Plaintiff is informed and believes and based thereon alleges that defendant KOHL'S is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of Delaware and doing business in the County of Riverside, State of California.

17. Plaintiff is informed and believes and based thereon alleges that defendant KOHL'S STORES is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of a State of unknown origin and doing business in the County of Riverside, State of California

18. Plaintiff is informed and believes and based thereon alleges that defendant DABNEY is, and at all times relevant hereto was, an individual residing in California and Vice President Regional Manager at KOHL'S and KOHL'S STORES. In that role, Plaintiff is informed and believes that he exercised control over the wages, hours and/or working conditions of Plaintiff and Class Members. Plaintiff is further informed and believes and based thereon alleges that, as such, DABNEY violated, or caused to be violated, the below-referenced Labor Code provisions and is thus liable for damages under Labor Code section 558.1.

19. Plaintiff is informed and believes and based thereon alleges that defendant DABNEY is, and at all times relevant hereto was, an individual residing in California and a Vice President Regional Manager at KOHL'S and KOHL'S STORES. In that role, Plaintiff is informed and believes that he exercised control over the wages, hours and/or working conditions of Plaintiff and Class Members. Plaintiff is further informed and believes and based thereon alleges that, as such, DABNEY violated, or caused to be violated, the below-referenced Labor Code provisions and is thus liable for damages under Labor Code section 558.1.

20. Plaintiff is informed and believes and based thereon alleges that defendant WILLIAMS is, and at all times relevant hereto was, an individual residing in California and a Senior Human Resources Manager at KOHL'S and KOHL'S STORES. In that role, Plaintiff is informed and believes that he exercised control over the wages, hours and/or working conditions of Plaintiff and Class Members. Plaintiff is further informed and believes and based thereon

1 alleges that, as such, WILLIAMS violated, or caused to be violated, the below-referenced Labor
2 Code provisions and is thus liable for damages under Labor Code section 558.1.

3 21. Plaintiff is informed and believes and based thereon alleges that defendant PEREZ
4 is, and at all times relevant hereto was, an individual residing in California and a Senior Manager
5 of Human Resources at KOHL'S and KOHL'S STORES. In that role, Plaintiff is informed and
6 believes that she exercised control over the wages, hours and/or working conditions of Plaintiff
7 and Class Members. Plaintiff is further informed and believes and based thereon alleges that, as
8 such, PEREZ violated, or caused to be violated, the below-referenced Labor Code provisions and
9 is thus liable for damages under Labor Code section 558.1.

10 22. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
12 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
13 section 474. Plaintiff is informed and believes and based thereon alleges that each of the
14 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
15 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
16 names and capacities of the defendants designated hereinafter as DOES when such identities
17 become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant
18 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
19 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
20 defendant are legally attributable to the other defendants. Whenever, heretofore or hereinafter,
21 reference is made to "Defendants," it shall include KOHL'S, KOHL'S STORES, DABNEY,
22 WILLIAMS, PEREZ, and any of their parent, subsidiary, or affiliated companies within the State
23 of California, as well DOES 1 through 100 identified herein.

24 **AGENCY, ALTER EGO AND JOINT EMPLOYER ALLEGATIONS**

25 23. Plaintiff is informed and believes and based thereon alleges that all the times
26 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
27 representative, joint venture or co-conspirator of each of the other defendants, either actually or
28 ostensibly, and in doing the things alleged herein acted within the course and scope of such

1 agency, employment, joint venture, and conspiracy.

2 24. All of the acts and conduct described herein of each and every corporate defendant
3 was duly authorized, ordered, and directed by the respective and collective defendant corporate
4 employers, and the officers and management-level employees of said corporate employers. In
5 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
6 their said employees, agents, and representatives, and each of them; and upon completion of the
7 said employees, agents, and representatives, and each of them; and upon completion of the
8 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
9 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
10 acquiesced, authorized, and approved of each and all of the said acts and conduct of the
11 aforementioned corporate employees, agents and representatives.

12 25. Plaintiff is informed and believes, and based thereon alleges, that there exists such
13 a unity of interest and ownership between Defendants, and each of them, that their individuality
14 and separateness have ceased to exist.

15 26. Plaintiff is informed and believes, and based thereon alleges that despite the
16 formation of the purported corporate existence of KOHL'S and KOHL'S STORES and DOES 1
17 through 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and the same
18 with Blackburn and DOES 51 through 100 ("Individual Defendants"), and each of them, due to,
19 without limitation, the following reasons:

20 27. Plaintiff is informed and believes, and based thereon alleges that despite the
21 formation of the purported corporate existence of KOHL'S and KOHL'S STORES, INC., and
22 DOES 1 through 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one and
23 the same with DABNEY, WILLIAMS, and PEREZ, and DOES 51 through 100 ("Individual
24 Defendants"), and each of them, due to, but not limited to, the following reasons:

- 25 a. The Alter Ego Defendants are completely dominated and controlled by the
26 Individual Defendants who personally committed the wrongful and illegal acts and
27 violated the laws as set forth in this Complaint, and who has hidden and currently
28 hide behind the Alter Ego Defendants to perpetrate frauds, circumvent statutes, or

- 1 accomplish some other wrongful or inequitable purpose;
- 2 b. The Individual Defendants derive actual and significant monetary benefits by and
- 3 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
- 4 Defendants as the funding source for the Individual Defendants' own personal
- 5 expenditures;
- 6 c. Plaintiff is informed and believes and thereon alleges that the Individual
- 7 Defendants and the Alter Ego Defendants, while really one and the same, were
- 8 segregated to appear as though separate and distinct for purposes of perpetrating a
- 9 fraud, circumventing a statute, or accomplishing some other wrongful or
- 10 inequitable purpose;
- 11 d. Plaintiff is informed and believes and thereon alleges that the business affairs of the
- 12 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
- 13 mentioned herein were, so mixed and intermingled that the same cannot reasonably
- 14 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
- 15 are, and at all relevant times mentioned herein were, used by the Individual
- 16 Defendants as mere shells and conduits for the conduct of certain of their, and each
- 17 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
- 18 herein were, the alter egos of the Individual Defendants;
- 19 e. The recognition of the separate existence of the Individual Defendants and the
- 20 Alter Ego Defendants would promote injustice insofar that it would permit
- 21 defendants to insulate themselves from liability to Plaintiff for violations of the
- 22 Civil Code, Labor Code, and other statutory violations. The corporate existence of
- 23 these defendants should thus be disregarded in equity and for the ends of justice
- 24 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein;
- 25 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
- 26 Defendants (and vice versa), and the fiction of their separate corporate existence
- 27 must be disregarded;
- 28 ///

28. As a result of the aforementioned facts, among others, Plaintiff is informed and believes, and based thereon alleges that the Individual Defendants, the Alter Ego Defendants, and each of them, are joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of the Alter Ego Defendants and the Individual Defendants. Plaintiff performed services for each and every defendant, and to the mutual benefit of all defendants, and all defendants shared control of Plaintiff and all other similarly situated employees, either directly or indirectly, and in the manner in which defendants' business was and is conducted

JURISDICTION

29. Jurisdiction exists in the Superior Court of the State of California pursuant to Code of Civil Procedure section 410.10.

30. Venue is proper in Riverside County in California pursuant to Code of Civil Procedure section 392, *et seq.* because, among other things, Riverside County is where the causes of action complained of herein arose; the county in which the employment relationship began; the county in which performance of the employment contract, or part of it, between Plaintiff and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in which the employment contract between Plaintiff and Defendants, or part of it, was breached by Defendants. Finally, venue is proper in Riverside County as the unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within Riverside County and the State of California, and because Defendants employ numerous Class Members in Riverside County and the State of California.

31. Plaintiff is also an “aggrieved employee” under PAGA, as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of herself and all other aggrieved current and former employees of Defendants, the civil penalties provided by PAGA plus reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175.

///

32. Plaintiff also seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA allegations described herein is not required.

33. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of herself and all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

34. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. On or around June 24, 2020, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendants of the specified provisions of the Labor Code alleged to have been violated by it. The LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the June 24, 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendant.

FACTUAL BACKGROUND

35. Plaintiff and other similarly situated and aggrieved employees have not been paid, during the relevant liability periods, wages for all time worked, including overtime wages, as a result of, including but not limited to, Defendants at times failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and similarly situated employees occasionally working over eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week or seven (7) consecutive work days in a work week without being properly compensated for the hours worked in excess of (8) hours per day, forty (40) hours per week, or seven (7) consecutive work days in a workweek at the proper overtime rate of pay. Specifically, among other things, Defendants, at times, failing to accurately track and/or pay for all minutes actually engaged, suffered, or permitted to work; and failing to include all forms of remuneration, including non-discretionary bonuses and/or incentive pay, into the regular rate of pay for the pay

1 periods where overtime was worked and a non-discretionary bonus and/or incentive pay was
2 earned, for the purpose of calculating the overtime rate of pay.

3 36. Plaintiff and other similarly situated and aggrieved employees, on occasion, have
4 not been paid during the relevant liability periods, minimum wages for all regular hours worked,
5 as a result of, among other things, Defendants, occasionally, failing to accurately track and/or pay
6 for all minutes actually engaged, suffered, or permitted to work.

7 37. Defendants failed, at times, during the relevant liability periods, to provide Plaintiff
8 and similarly situated and aggrieved employees or former employees within the State of California
9 a thirty (30) minute, uninterrupted, and timely meal period for days on which the employees
10 worked more than five (5) hours in a workday; a second thirty (30) minute, uninterrupted, and
11 timely meal period for days on which employees worked in excess of ten (10) hours in a workday;
12 and/or compensation for such unprovided meal periods as required by California wage and hour
13 laws.

14 38. Defendants failed, at times, during the relevant liability periods, to provide Plaintiff
15 and similarly situated and aggrieved employees or former employees within the State of California
16 rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and
17 failed, at times, to provide compensation for such unprovided rest periods as required by
18 California wage and hour laws.

19 39. At the time Plaintiff's employment and the employment of other former employees
20 of Defendants ended, Defendants willfully failed, at times, during the relevant liability periods, to
21 pay overtime and minimum wages at the proper rate and failed, at times, to pay one hour of wages
22 in lieu of each non-compliant meal and/or rest period, among other things.

23 40. Defendants have failed, at times, during the relevant liability periods, to comply
24 with Labor Code section 226, subdivision (a) by not providing itemized wage statements
25 accurately showing, including but not limited to, gross wages earned; total hours worked; net
26 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate; and other such information as required by Labor
28 Code section 226, subdivision (a).

1 41. Defendants have failed, at times, during the relevant liability periods, to comply
2 with Labor Code section 226, subdivision (c) by failing to, upon written request to inspect or
3 receive copies of records pursuant to Labor Code section 226, subdivision (b), pertaining to a
4 current or former employee, complying with the request within 21 days from the date thereof, in
5 connection with Plaintiff and all others similarly situated.

6 42. At all relevant times mentioned herein, Defendants, at times, failed to provide
7 Plaintiff and other aggrieved employees with, or permit them inspection of, records pertaining to
8 their employment, including wage statements and similar payroll documents under Labor Code
9 section 226, documents signed to obtain or hold employment under Labor Code section 432,
10 personnel records under Labor Code section 1198.5, and time records under Labor Code section
11 1174, to the detriment of Plaintiff and all other aggrieved employees. As a result of these
12 occasional violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558
13 and 2699.

14 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
15 and have a policy or practice of, failing to pay Plaintiff and other aggrieved employees their wages
16 in accordance with Labor Code section 204, which requires that “[l]abor performed between the
17 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th
18 day of the month during which the labor was performed, and labor performed between the 16th
19 and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day
20 of the following month.” As such, Plaintiff is informed and believes, and based thereon alleges,
21 that Defendants did not and do not pay their employees in accordance with Labor Code section
22 204. Defendants would be liable for civil penalties pursuant to Labor Code sections 210, 558 and
23 2699.

24 44. At all relevant times mentioned herein, Defendants have had a policy or practice of
25 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
26 Protection Act of 2011) by, among other things, failing to provide Plaintiffs and other aggrieved
27 employees with the rates of pay and overtime rates of pay applicable to their employment;
28 allowances claimed as part of the minimum wage; the regular payday designated by Employers;

1 the name, address, and telephone number of the workers' compensation insurance carrier;
2 information regarding paid sick leave; and other pertinent information required to be disclosed by
3 Defendants under Labor Code section 2810.5.

4 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 occasionally failed to provide Plaintiff and other aggrieved employees with the amount of paid
6 sick leave required to be provided pursuant to California law (including, without limitation, Labor
7 Code section 246, *et seq.*) and also, at times, did not permit its use upon request as contemplated
8 under California law. As such, Defendants would be liable for civil penalties for violation of the
9 paid sick leave regulations under Labor Code sections 558 and 2699.

10 46. Plaintiff and other similarly situated employees or former employees at all times
11 pertinent hereto were not exempt from the payment of overtime wages, minimum wages, payment
12 of premium wages for missed rest periods, waiting time penalties, wage statement penalties, being
13 permitted to inspect documents requested by employees under Labor Code sections 226 and
14 1198.5, and other such provisions of California law, and the implementing rules and regulations of
15 the IWC California Wage Orders.

16 **CLASS ACTION ALLEGATIONS**

17 47. Plaintiff brings this Action on behalf of herself and all others similarly situated, as a
18 class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of
19 all current and former non-exempt employees of Defendants within the State of California at any
20 time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that
21 notice of the class action is provided to the class (collectively referred to as "Class Members").

22 48. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision
23 (b) to amend or modify the class description with greater specificity or further division into
24 subclasses or limitation to particular issues.

25 49. This Action has been brought and may properly be maintained as a class action
26 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
27 community of interest in the litigation and the proposed Class is easily ascertainable.

28 ///

1 **A. Numerosity**

2 50. The potential Class Members as defined are so numerous that joinder of all the
3 members of the Class is impracticable. While the precise number of Class Members has not been
4 determined yet, Plaintiff is informed and believes that there are at least ninety (90) Class Members
5 employed by Defendants within the State of California, which may be increased due to employee
6 turnover. Plaintiff alleges Defendants' employment records would provide information as to the
7 number and location of all Class Members. Joinder of all members of the proposed Class is not
8 practicable.

9 **B. Commonality**

10 51. There are questions of law and fact common to Class Members. These common
11 questions include, but are not limited to:

- 12 (a) Did Defendants violate Labor Code sections 510, 1194, and 1197 by their
13 occasional failure to adequately track, and therefore adequately pay, for all
14 minutes Class Members were suffered, engaged, or permitted to work?
- 15 (b) Did Defendants violate Labor Code sections 510 and 1194 by at times
16 failing to pay overtime at the proper rate of pay by failing to include all
17 forms of remuneration in the calculation of the overtime rate of pay?
- 18 (c) Are Class Members entitled to liquidated damages under Labor Code
19 section 1194.2 for Defendants' occasional failure to pay minimum wages
20 for all hours worked?
- 21 (d) Did Defendants violate Labor Code section 512 by occasionally not
22 providing Class Members with compliant meal periods?
- 23 (e) Did Defendants violate Labor Code section 226.7 by occasionally not
24 providing Class Members with premium wages for non-compliant meal
25 periods?
- 26 (f) Did Defendants violate applicable Wage Orders by occasionally not
27 providing Class Members with compliant rest periods?

28 ///

- 1 (g) Did Defendants violate Labor Code section 226.7 by occasionally failing to
2 provide Class Members with premium wages for non-compliant rest
3 periods?
- 4 (h) Did Defendants violate Labor Code sections 201 and 202 by occasionally
5 failing to pay Class Members upon termination or resignation all wages
6 earned?
- 7 (i) Are Defendants liable to Class Members for waiting time penalties under
8 Labor Code section 203?
- 9 (j) Did Defendants violate Labor Code section 226, subdivision (a) by not
10 furnishing Class Members on occasion with accurate wage statements?
- 11 (k) Did Defendants at times violate Labor Code section 226, subdivision (c) by
12 not timely providing Class Members with (or permitting them to inspect) a
13 complete set of the documents described in Labor Code section 226,
14 subdivision (b) upon request?
- 15 (l) Are Defendants liable to Class Members for penalties under Labor Code
16 section 226, subdivision (f)?
- 17 (m) Did Defendants violate Labor Code section 1198.5 by not providing Class
18 Members with timely and complete personnel records described under
19 Labor Code section 1198.5, subdivision (a) upon request?
- 20 (n) Are Defendants liable to Class Members for penalties under Labor Code
21 section 1198.5, subdivision (k)?
- 22 (o) Did Defendants violate the Unfair Competition Law, Business and
23 Professions Code section 17200, *et seq.*, by their unlawful practices as
24 alleged herein?
- 25 (p) Are Class Members entitled to restitution of wages under Business and
26 Professions Code section 17203?
- 27 (q) Are Class Members entitled to costs and attorneys' fees?
- 28 (r) Are Class Members entitled to interest?

1 **C. Typicality**

2 52. The claims of Plaintiff herein alleged are typical of those claims which could be
3 alleged by any Class members, and the relief sought is typical of the relief which would be sought
4 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
5 damages arising out of and caused by Defendants' common course of conduct in violation of laws
6 and regulations that have the force and effect of law and statutes as alleged herein.

7 **D. Adequacy of Representation**

8 53. Plaintiff will fairly and adequately represent and protect the interest of Class
9 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
10 hour class actions.

11 **E. Superiority of Class Action**

12 54. A class action is superior to other available means for the fair and efficient
13 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
14 questions of law and fact common to Class Members predominate over any questions affecting
15 only individual Class Members. Class Members, as further described herein, have been damaged
16 and are entitled to recovery by reason of Defendants' illegal policy and/or practices, including,
17 without limitation, occasionally failing to pay overtime wages and minimum wages; at times
18 failing to provide meal and rest breaks or compensation in lieu thereof; at times failing to provide
19 accurate wage statements; at times failing to pay all wages due upon termination and/or
20 resignation; and at times failing to timely permit inspection of complete records under Labor Code
21 sections 226 and 1198.5.

22 55. Class action treatment will allow those similarly situated to litigate their claims in a
23 manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
24 unaware of any difficulties that are likely to be encountered in the management of this action that
25 would preclude its maintenance as a class action.

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

56. Plaintiff realleges and incorporates by reference all the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

57. At all times relevant to this Complaint, Labor Code section 510 was in effect and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

58. At all times relevant to this Complaint, Labor Code section 510 further provided that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay.”

59. At all times mentioned, Plaintiff and Class Members, on occasion, worked for Defendants during shifts that consisted of more than eight (8) hours in a workday, more than twelve (12) hours in a workday, and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, including but not limited to, Defendants, occasionally, failing to accurately track and/or pay for all minutes actually engaged, suffered, or permitted to work; and failing to include all forms of remuneration, including non-discretionary bonuses and/or incentive pay, into the regular rate of pay for the pay periods where overtime was worked and a non-discretionary bonus and/or incentive pay was earned, for the purpose of calculating the overtime rate of pay, to the detriment of Plaintiff and other similarly situated employees in the State of California.

60. Accordingly, by occasionally requiring Plaintiff and Class Members to work greater than eight (8) hours per workday, twelve (12) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays without properly compensating overtime wages at the proper overtime rate of pay, Defendants on occasion willfully violated the provisions of the

1 Labor Code, among others, sections 510, 1194, and applicable IWC Wage Orders, and California
2 law.

3 61. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have,
4 at times been deprived of overtime wages in amounts to be determined at trial, and are entitled to
5 recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant
6 to Labor Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil
7 Code section 3287.

8 **SECOND CAUSE OF ACTION**

9 **(Failure to Pay Minimum Wages – Against All Defendants)**

10 62. Plaintiff realleges and incorporates by reference all the allegations contained in the
11 preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

12 63. At all relevant times, Plaintiff and Class Members were employees of Defendants
13 covered by Labor Code section 1197 and applicable Wage Orders.

14 64. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
15 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
16 Defendants' control.

17 65. Defendants, at times, failed to pay Plaintiff and Class Members minimum wages
18 for all minutes worked as a result of, including but not limited to, Defendants, occasionally, failing
19 to accurately track and/or pay for all minutes actually engaged, suffered, or permitted to work.

20 66. As a result of Defendants' occasional unlawful conduct, Plaintiff and Class
21 Members have suffered damages in an amount, subject to proof, to the extent they were not paid
22 minimum wages for all minutes worked or otherwise due.

23 67. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
24 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled
25 to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
26 damages, reasonable attorneys' fees and costs of suit.

27 ///

28 ///

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

68. Plaintiff realleges and incorporates by reference all the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

69. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall employ an employee for a work period of more than five (5) hours without a timely meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second timely meal period of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.

70. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

71. Plaintiff and Class Members were, at times, during the relevant time period, not provided with compliant meal periods as contemplated under the law.

72. By their occasional failure to provide Plaintiff and Class Members with the meal periods contemplated by Labor Code section 512, among other California authorities, and occasional failure to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 512 and applicable Wage Orders.

73. As a result of Defendants' occasional unlawful conduct, Plaintiff and Class Members have at times suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for missed, untimely, interrupted and/or incomplete meal periods.

74. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for missed meal periods, in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil

1 Code section 3287.

2 **FOURTH CAUSE OF ACTION**

3 **(Failure to Provide Rest Periods – Against All Defendants)**

4 75. Plaintiff realleges and incorporates by reference all the allegations contained in the
5 preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

6 76. California law and applicable Wage Orders require that employers “authorize and
7 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
8 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
9 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
10 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)
11 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be
12 provided thirty (30) minutes of paid rest period.

13 77. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
14 with a meal period or rest period as provided in the applicable Wage Order of the Industrial
15 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
16 employee’s regular rate of compensation for each work day that the rest period is not provided.

17 78. By their occasional failure to provide Plaintiff and Class Members with the rest
18 periods contemplated by California law, and occasional failure to provide compensation for such
19 unprovided rest periods, as alleged above, Defendants at times willfully violated the provisions of
20 Labor Code section 226.7 and applicable Wage Orders.

21 79. As a result of Defendants’ occasional unlawful conduct, Plaintiff and Class
22 Members have at times suffered damages in an amount, subject to proof, to the extent they were
23 not paid additional pay owed for missed rest periods.

24 80. Pursuant to Labor Code section 226.7, Code of Civil Procedure section 1032, and
25 Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of
26 their premium pay for unprovided rest periods, interest and penalties thereon, and costs of suit.

27 ///

28 ///

FIFTH CAUSE OF ACTION

(Failure to Pay All Wages Due Upon Termination – Against All Defendants)

81. Plaintiff realleges and incorporates by reference all the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

82. At all relevant times, Plaintiff and Class Members were employees of Defendants covered by Labor Code sections 201 and 202.

83. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours' previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

84. Plaintiff is informed and believes, and based thereon alleges, that Defendants, due to the occasional failure to provide wages as mentioned above, at times failed to pay Plaintiff and Class Members all wages earned and unpaid, including overtime wages and minimum wages, prior to resignation or termination in accordance with Labor Code sections 201 or 202.

85. Defendants' occasional failure to pay Plaintiff and Class Members all wages earned prior to termination in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202.

86. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to waiting time penalties from the date their earned and unpaid wages were due, upon termination, until paid, up to a maximum of thirty (30) days.

87. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have at times suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination.

88. As a result of Defendants' occasional unlawful conduct, Plaintiff and Class Members have suffered damages in an amount subject to proof, to the extent they were not paid all waiting time penalties owed under Labor Code section 203.

89. Pursuant to Labor Code sections 203, 218, 218.5, 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover waiting time penalties under Labor Code section 203, reasonable attorneys' fees on their unpaid wages, and costs of suit.

90. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover waiting time penalties, interest, and other costs of suit on the waiting time penalties, as well.

SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements – Against All Defendants)

91. Plaintiff realleges and incorporates by reference all the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

92. At all relevant times, Plaintiff and Class Members were employees of Defendants covered by Labor Code section 226.

93. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement that accurately reflects, among other things, gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

94. Plaintiff is informed and believe, and based thereon alleges, that at all relevant times, Defendants, due to the occasional failure to pay due wages for the reasons described herein, also failed, at times, to issue wage statements that accurately set out amounts due to, among other things, gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

95. Thus, Defendants occasionally failed to provide Plaintiff and Class Members accurate itemized wage statements in accordance with Labor Code section 226, subdivision (a).

96. Defendants' occasional failure to provide Plaintiff and Class Members with accurate wage statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff and Class Members with accurate wage statements, but willfully provided wage statements that Defendants knew were not accurate.

97. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered injury. The absence of accurate information on their wage statements has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and mathematical computations to determine the amount of wages owed; causes difficulty and expense in attempting to reconstruct time and pay records; and led to submission of inaccurate information about wages and amounts deducted from wages to state and federal governmental agencies.

98. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members are entitled to recover \$50 for the initial pay period during the period in which violation of Labor Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent pay period, not to exceed an aggregate \$4,000.00 per employee.

99. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable attorneys' fees, and costs of suit.

SEVENTH CAUSE OF ACTION

(Violation of Labor Code § 226(c) – Against All Defendants)

100. Plaintiff realleges and incorporates by reference all the allegations contained in the preceding paragraphs of this First Amended Complaint as though full set forth hereat.

101. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 226.

102. At all relevant times, under Labor Code section 226, subdivision (a), all deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a

1 central location within the State of California.

2 103. At all relevant times, under Labor Code section 226, subdivision (b), an employer
3 required to keep information required by Labor Code section 226, subdivision (a) must afford
4 current and former employees the right to inspect or receive a copy of records pertaining to their
5 employment, upon reasonable request to the employer.

6 104. At all relevant times, under Labor Code section 226, subdivision (c), an employer
7 who receives a written or oral request to inspect or receive a copy of records pursuant to
8 subdivision (b) pertaining to a current or former employees must comply with the request as soon
9 as practicable, but no later than 21 calendar days from the date of the request.

10 105. At all relevant times, under Labor Code section 226, subdivision (f), an employer
11 who fails to permit a current or former employee to inspect or receive a copy of records within the
12 time set forth in subdivision (c) entitles the current or former employee to recover a seven-
13 hundred-fifty-dollar (\$750) penalty from the employer.

14 106. Defendants at times violated Labor Code section 226 by failing to timely permit
15 Plaintiff and Class Members to inspect records described in Labor Code section 226, subdivision
16 (b) that Defendants were required to maintain under subsection (a) upon reasonable request.
17 Moreover, Plaintiff is informed and believes, and thereon alleges, that at all relevant times within
18 the applicable limitations period, Defendants maintained a policy or practice of failing to timely
19 permit current or former employees to inspect or copy their complete personnel records.

20 107. As a result of Defendants' conduct, Plaintiff and Class Members occasionally did
21 not receive documents to which they were entitled under Labor Code section 226, subdivision (b)
22 and thus were at times not able to fully assess potential Labor Code and/or common law violations
23 pertaining to unpaid wages by Defendants against Plaintiff and Class Members while applicable
24 statutes of limitations continue to run, resulting in irreparable injuries without adequate remedies
25 at law. Additionally, Plaintiff and Class Members bear the risk of being irreparably injured should
26 the documents and records responsive to Labor Code section 226, subdivision (b) be lost and/or
27 destroyed.

28 ///

1 108. Pursuant to Labor Code sections 226, subdivisions (f) and (g), Code of Civil
2 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
3 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
4 attorneys' fees and costs of suit.

5 **EIGHTH CAUSE OF ACTION**

6 **(Violation of Labor Code § 1198.5 – Against All Defendants)**

7 109. Plaintiff realleges and incorporates by reference all the allegations contained in the
8 preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

9 110. At all relevant times, Plaintiff and Class Members were employees or former
10 employees of Defendants covered by Labor Code section 1198.5.

11 111. Pursuant to Labor Code section 1198.5, "every current and former employee...has
12 the right to inspect and receive a copy of the personnel records that the employer maintains
13 relating to the employee's performance or to any grievance concerning the employee."

14 112. Defendants were required to maintain a copy of each employee's personnel records
15 for a period of not less than three (3) years after termination of employment and make the contents
16 of those personnel records available for inspection no later than thirty (30) calendar days from the
17 date the employer received a written request.

18 113. Defendants at times violated Labor Code section 1198.5 by failing to timely permit
19 Plaintiff and Class Members to inspect and/or receive copies of such documents. Moreover,
20 Plaintiff is informed and believes, and thereon alleges, that at all relevant times within the
21 applicable limitations period, Defendants maintained a policy or practice of failing to timely
22 permit current or former employees inspect or copy their complete personnel records.

23 114. As a result of Defendants' conduct, Plaintiff and Class Members occasionally did
24 not receive their complete personnel records as contemplated by Labor Code section 1198.5 and
25 were not able to fully assess potential Labor Code and/or common law workplace-based violations
26 by Defendants against Plaintiff and Class Members while applicable statutes of limitations
27 continue to run, resulting in irreparable injuries without adequate remedies at law. Additionally,
28 Plaintiff and Class Members bear the risk of being irreparably injured should the documents and

1 records responsive to Labor Code section 1198.5 be lost and/or destroyed.

2 115. Pursuant to Labor Code section 1198.5, Plaintiff and Class Members are entitled to
3 a statutory \$750 penalty each from Defendants and injunctive relief to obtain compliance with this
4 section, as well as costs of suit and reasonable attorney's fees.

5 **NINTH CAUSE OF ACTION**

6 **(Unfair Competition – Against All Defendants)**

7 116. Plaintiff realleges and incorporates by reference all the allegations contained in the
8 preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

9 117. The unlawful conduct of Defendants alleged herein constitutes unfair competition
10 within the meaning of Business and Professions Code section 17200. Due to their unlawful
11 business practices in violation of the Labor Code, Defendants have gained a competitive
12 advantage over other comparable companies doing business in the State of California that comply
13 with their obligations to compensate employees in accordance with the Labor Code.

14 118. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
15 Members have suffered injury in fact and lost money or property. Plaintiff and Class Members
16 have been, on occasion, deprived of overtime compensation; minimum wage compensation;
17 provision of meal breaks or compensation in lieu thereof; provision of rest breaks or compensation
18 in lieu thereof; provision of all wages upon termination or resignation; accurate wage statements,
19 among other things.

20 119. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
21 Members are entitled to restitution of all wages and other monies owed to them under the Labor
22 Code, including interest thereon, in which they had a property interest and which Defendants
23 nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of
24 the money owed to Plaintiff and Class Members is necessary to prevent Defendants from
25 becoming unjustly enriched by their failure to comply with the Labor Code.

26 120. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
27 Procedure section 1032 and interest under Civil Code section 3287.

28 ///

TENTH CAUSE OF ACTION

(Civil Penalties Under Labor Code § 210 – Against All Defendants)

121. Plaintiff realleges and incorporates by reference all the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

122. At all relevant times herein, Labor Code section 204, requires and required that: “[l]abor 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.”

123. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

124. At all relevant times herein, Defendants have had a consistent policy or practice of, failing to pay Plaintiff and aggrieved employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other aggrieved employees or former employees she seeks to represent are entitled to recover civil penalties for Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each aggrieved employee or former employee for each initial violation per employee, and two hundred dollars (\$200) for each aggrieved employee or former employee for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204.

ELEVENTH CAUSE OF ACTION

(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)

125. Plaintiffs re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

1 126. Defendants have had a consistent policy or practice of failing to comply with Labor
2 Code section 226, subdivision (a) by intentionally failing to furnish employees with itemized wage
3 statements that accurately reflect gross wages earned; total hours worked by the employee; all
4 deductions; net wages earned; the inclusive dates of the period for which the employee is paid; all
5 applicable hourly rates in effect during the pay period and the corresponding number of hours
6 worked at each hourly rate by the employee; and other such information as required by Labor
7 Code section 226, subdivision (a).

8 127. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
9 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
10 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
11 for each violation in a subsequent citation, for which the employer fails to provide the employee a
12 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

13 128. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
14 this section are in addition to any other penalty provided by law.”

15 129. Plaintiffs are informed and believe and based thereon allege that Defendants failed
16 and continue to fail to furnish non-exempt employees, including, without limitation, Plaintiffs,
17 with itemized wage statements that accurately reflect gross wages earned; total hours worked by
18 the employee; all deductions; net wages earned; the inclusive dates of the period for which the
19 employee is paid; all applicable hourly rates in effect during the pay period and the corresponding
20 number of hours worked at each hourly rate by the employee; and other such information, as
21 required by Labor Code section 226, subdivision (a).

22 130. Pursuant to Labor Code section 226.3, Plaintiffs and other similarly aggrieved
23 employees or former employees Plaintiffs seek to represent are entitled to recover civil penalties
24 for Defendants’ violation of Labor Code section 226, subdivision (a) in the amount of two
25 hundred fifty dollars (\$250) for each aggrieved employee or former employee per pay period for
26 the initial violation, and one thousand dollars (\$1,000) for each aggrieved employee or former
27 employee per pay period for each subsequent violation.

28 ///

1 **TWELFTH CAUSE OF ACTION**

2 **(Violation of Labor Code § 558 – Against All Defendants)**

3 131. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs
4 and incorporates each by reference as though fully set forth hereat.

5 132. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other
6 person acting on behalf of an employer who violates, or causes to be violated . . . any provision
7 regulating hours and days of work in any order of the Industrial Welfare Commission” shall be
8 subject to a civil penalty as follows:

9 a. For any initial violation, fifty dollars (\$50) for each underpaid employee and for
10 each pay period for which the employee was underpaid in addition to an amount
11 sufficient to recover underpaid wages;

12 b. For each subsequent violation, one hundred dollars (\$100) for each underpaid
13 employee for each pay period for which the employee was underpaid in addition to
14 an amount sufficient to recover underpaid wages;

15 c. Wages recovered pursuant to this section shall be paid to the affected employee.”

16 133. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
17 each of them, violated, or caused to be violated, the Labor Code sections described herein,
18 including causing Plaintiff and other aggrieved employees not to: be paid overtime wages and
19 minimum wages; receive meal and rest periods or compensation in lieu thereof; be paid timely
20 wages during their employment and after their employment separation; receive accurate, itemized
21 wage statements; to be reimbursed for work expenses; be provided with the opportunity to inspect
22 employment records; and be provided with notice as required under Labor Code section 2810.5.

23 134. As a direct and proximate result of Defendants’ conduct, Plaintiff and other
24 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
25 Labor Code section 558 in amounts to be determined at trial.

26 **THIRTEENTH CAUSE OF ACTION**

27 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

28 135. Plaintiffs re-allege each and every allegation set forth in the preceding paragraphs

1 and incorporate each by reference as though fully set forth hereat.

2 136. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
3 person acting either individually or as an officer, agent, or employee of another person, who pays
4 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
5 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
6 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
7 Section 203 as follows: For any initial violation that is intentionally committed, one hundred
8 dollars (\$100) for each underpaid employee for each pay period for which the employee is
9 underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages,
10 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to
11 Section 203.

12 a. For each subsequent violation for the same specific offense, two hundred fifty
13 dollars (\$250) for each underpaid employee for each pay period for which the
14 employee is underpaid regardless of whether the initial violation is intentionally
15 committed. This amount shall be in addition to an amount sufficient to recover
16 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
17 applicable penalties imposed pursuant to Section 203.

18 b. For each subsequent violation for the same specific offense, two hundred fifty
19 dollars (\$250) for each underpaid employee for each pay period for which the
20 employee is underpaid regardless of whether the initial violation is intentionally
21 committed. This amount shall be in addition to an amount sufficient to recover
22 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
23 applicable penalties imposed pursuant to Section 203.

24 c. Wages, liquidated damages, and any applicable penalties imposed pursuant to
25 Section 203, recovered pursuant to this section shall be paid to the affected
26 employee."

27 ///

28 ///

1 137. Plaintiffs believe, and thereupon allege, that Defendants, and each of them, made
2 the decision that Plaintiffs would not be paid their due minimum wages as required due to, among
3 other things, Defendants routinely failing to accurately track and/or pay for all hours actually
4 worked, engaging, suffering or permitting employees to work off the clock, improperly providing
5 meal allowances in lieu of wages owed, failing to provide reporting time pay, all to the detriment
6 of Plaintiff and other aggrieved employees.

7 138. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to
8 recover directly from Defendants, civil penalties, as set forth above, pursuant to Labor Code
9 section 1197.1.

10 **FOURTEENTH CAUSE OF ACTION**

11 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

12 139. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
13 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

14 140. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
15 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
16 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
17 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
18 action brought by an aggrieved employee on behalf of herself or herself and other current or
19 former employees pursuant to the procedures specified in Labor Code section 2699.3.

20 141. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the
21 Labor Code except those for which a civil penalty is specifically provided, the established civil
22 penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the
23 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
24 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
25 each aggrieved employee per pay period for each subsequent violation.

26 142. Plaintiff is informed and believes and based thereon alleges that Defendants, and
27 each of them, violated the Labor Code sections described herein, including, without limitation, for
28 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or

1 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages
2 during employment and after employment separation; provide employees the opportunity to
3 inspect employment records; provide and pay for sick leave; and provide notice as required under
4 Labor Code section 2810.5 entitling Plaintiff and other aggrieved employees to civil penalties for
5 each of these Labor Code violations in the amounts set forth in Labor Code section 2699,
6 subdivision (f).

7 143. Moreover, Plaintiff and other aggrieved current and former employees within the
8 State of California whom she seeks to represent are entitled to an award of reasonable attorneys'
9 fees and costs in connection with their herein-described claims for civil penalties.

10 **DEMAND FOR JURY TRIAL**

11 144. Plaintiff demands a trial by jury on all causes of action contained herein.

12 **PRAYER**

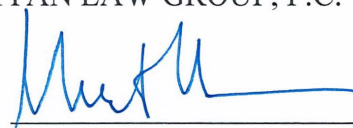
13 WHEREFORE, on behalf of herself and all others similarly situated and aggrieved,
14 Plaintiff prays for judgment against Defendants as follows:

- 15 A. An order certifying this case as a Class Action;
16 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
17 counsel as class counsel;
18 C. Damages for all wages earned and owed, including minimum and overtime wages
19 under Labor Code sections 510, 558.1, 1194, 1197 and 1199;
20 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
21 E. Damages for unpaid premium wages from missed meal and rest periods under,
22 among other Labor Code sections, 512, 558.1 and 226.7;
23 F. Penalties for inaccurate wage statements under Labor Code section 226,
24 subdivision (e) and 558.1;
25 G. Damages for unpaid penalty wages under Labor Code section 203 and 558.1;
26 H. Waiting time penalties under Labor Code section 203 and 558.1;
27 I. Penalties for failure to timely permit inspection of documents under Labor Code
28 sections 226, 1198.5 and 558.1;

- 1 J. Preliminary and permanent injunctions prohibiting Defendants from further
2 violating the California Labor Code and requiring the establishment of appropriate
3 and effective means to prevent future violations;
4 K. Restitution of wages and benefits due which were acquired by means of any unfair
5 business practice, according to proof;
6 L. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 2699, 558,
7 and 1197.1;
8 M. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
9 210, 226.3, 558, 1197.1, and 2699;
10 N. Prejudgment and post-judgment interest at the maximum rate allowed by law;
11 O. For attorneys' fees in prosecuting this action;
12 P. For costs of suit incurred herein; and
13 Q. For such other and further relief as the Court deems just and proper.
14

15 Dated: August 25, 2020

BIBIYAN LAW GROUP, P.C.

16
17 BY: 

18 DAVID BIBIYAN
19 DIEGO AVILES
20 MICHAEL MASSMANN

21 Attorneys for Plaintiff NORMA HERNANDEZ, on
22 behalf of herself and all others similarly situated.
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

On July 15, 2020, and pursuant to the California Judicial Council's Emergency Rules, Appendix I, Emergency Rule 12, I caused a true and correct copy of the foregoing documents(s) described as **FIRST AMENDED CLASS ACTION COMPLAINT** to be served by electronic transmission to the below referenced electronic e-mail address as follows:

Tracie Childs
4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
tracie.childs@ogletree.com

**Counsel for Kohl's Inc.; Kohl's Department Stores Inc.; Le Dabney; Cory Williams;
Deborah Perez**

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

Executed on August 28, 2020 at Beverly Hills, California.


Cynthia Guerrero