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County of Los Angeles

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Sherri R. Carter, Executive Officer / Clerk of Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MARIA TERESA PEREZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

ADVANCED BIONICS, LLC, a Delaware
corporation; and DOES 1 through 100,

Defendants.

Case No. 20STCV26408

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

- (1) **MINIMUM WAGE
VIOLATIONS (LABOR CODE §§
1182.12, 1194, 1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 1194 and
1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 and 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 and 516);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203)**
- (7) **UNFAIR COMPETITION (BUS
& PROF CODE § 17200 *et seq.*).**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *et seq.*)**

1 Plaintiff Maria Teresa Perez (“Plaintiff”) hereby brings this Second Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendants Advanced Bionics, LLC, a
3 Delaware corporation; and DOES 1 through 100, inclusive (collectively, “Defendants”), and on
4 information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under Labor Code §§ 201-204, 226, 226.7,
8 510, 512, 516, 1182.12, 1194, 1194.2, 117, 1198, 2698, *et seq.* California Business & Professions
9 Code § 17200 *et seq.*, and Industrial Welfare Commission Wage Order No. 1 (“Wage Order 1”),
10 in addition to seeking declaratory relief and restitution. This Complaint is brought pursuant to
11 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
12 of the California Labor Code because the amount in controversy exceeds this Court’s
13 jurisdictional minimum.

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. Within the statute of limitations periods
23 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
24 exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
25 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
26 to her by Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 117, 1198,
27 2698, *et seq.* Business and Professions Code Section 17200 *et seq.*, and Wage Order 1, which sets
28 employment standards for the manufacturing industry.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the time
2 period relevant to this action, Defendants did (and do) business by manufacturing medical
3 devices.

4 5. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 mentioned herein, Defendants were licensed to do business in California and were the employers
6 of Plaintiff and of the members of the Classes (as defined in Paragraph 16).

7 6. Plaintiff does not know the true names, capacities, relationships, and/or the extent
8 of participation of Defendants DOES 1 through 100, inclusive, in the conduct alleged in this
9 Complaint. For that reason, Defendants DOES 1 through 100, inclusive, are sued under such
10 fictitious names. Plaintiff prays for leave to amend this Complaint when their true names and
11 capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each
12 fictitiously named Respondent is and was responsible in some way for the alleged wage-and-hour
13 violations and other wrongful conduct that subjected Plaintiff and the Classes, as defined below,
14 to the illegal employment practices, wrongs and injuries complained of herein. All references in
15 this Complaint to “Defendants” shall be deemed to include all DOE Defendants.

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

23 8. At all times mentioned herein, Defendants, and each of them, were members of
24 and engaged in a joint venture, partnership, and common enterprise, and acted within the course
25 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
27 Classes (as defined in Paragraph 15).

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10. During Plaintiff's employment with Defendants, Defendants maintained an unlawful timekeeping policy/practice that failed to compensate Plaintiff and other non-exempt employees for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, during the relevant time period, including at least the year of 2018, Defendants regularly, systematically, and impermissibly rounded and/or truncated the hours worked by Plaintiff and non-exempt employees by maintaining a policy/practice that rounded Plaintiff's and other non-exempt employees' timekeeping entries in 15-minute increments, which resulted, over a period of time, in Defendants' failure to properly compensate Plaintiff and other non-exempt employees for all hours worked, and deprived them of all minimum and overtime wages earned. Upon information and belief, Defendants also failed to pay all minimum and overtime wages as a result of unlawful one-way deductions that would occur in the event that an employee arrived late to work, in which case a disproportionate deduction of hours worked would be taken from their wages.

11. Additionally, during Plaintiff's employment with Defendants, Plaintiff worked over 8.0 hours per workday and/or more than 40.0 hours per workweek but did not receive overtime compensation equal to one and one-half times her regular rate of pay for working overtime hours. Specifically, Defendants paid Plaintiff and other non-exempt employees non-discretionary incentive pay, including but not limited to payments denoted on their wage statements as "Bonus," "Bonus Variable," "Merit Lmp Sum," "Vcmpbonus," "Shift Differnc," and/or other forms of pay that are not excludable from an employee's "regular rate" of pay (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). However, Defendants failed to properly calculate Plaintiff's and other non-exempt employees' regular rates of pay as a result of their receipt of Incentive Pay, thereby miscalculating and underpaying the overtime wages owed to them.

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1 12. Plaintiff and other non-exempt employees were not provided with all legally
2 compliant meal periods, because Defendants' meal period policies/practices failed to provide
3 Plaintiff and other non-exempt employees with a duty-free, timely, and uninterrupted 30-minute
4 meal period before the end of the fifth hour of work and/or a second 30-minute meal period for
5 shifts of over 10.0 hours. Specifically, during Plaintiff's employment with Defendants,
6 Defendants impermissibly prevented Plaintiff and other non-exempt employees from taking a
7 timely meal period before the fifth hour of work due to a lack of scheduling meal periods and
8 appropriate coverage and work demands, including but not limited to Defendant's policy and
9 practice of prohibiting Plaintiff and other non-exempt employees from leaving their workstation
10 midway through the process of testing, cleaning and sterilizing a hearing aid. For example, the
11 process for cleaning and sterilizing a hearing aid took approximately 20-30 minutes, Plaintiff and
12 other non-exempt employees were frequently forced to take untimely meal periods after the
13 completion of the fifth hour of work. Moreover, Defendants failed to provide Plaintiff and other
14 non-exempt employees with a second meal period when they worked shifts in excess of 10.0
15 hours. On occasions where Plaintiff and other non-exempt employees were not provided with all
16 legally-compliant meal periods to which they were entitled, Defendants failed to compensate
17 Plaintiff and other non-exempt employees with the required meal period premiums for each
18 workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.
19 Additionally, upon information and belief, during at least a portion of the class period, Defendants
20 maintained no payroll code or other mechanism for payment of meal period premiums under
21 Labor Code § 226.7 in the event a legally compliant meal period was not provided to their non-
22 exempt employees.

23 13. Plaintiff and other non-exempt employees were also not authorized and permitted
24 to take all legally compliant rest periods. Defendants failed to authorize and permit Plaintiff and
25 other non-exempt employees to take a third rest period on occasions when they worked over 10.0
26 hours in a workday. Despite failing to authorize and permit rest periods as required under
27 California law, Defendants failed to pay Plaintiff and other non-exempt employees one hour of
28 rest period premium for each day they experienced a rest period violation as required by Labor

Code Section 226.7. Defendants also failed to maintain a mechanism for payment of rest period premium payments as required by Labor Code Section 226.7.

14. As a result of Defendants' failure to compensate Plaintiff and other non-exempt employees for all minimum wages, overtime wages, and meal and rest period premium wages earned, Defendants maintained inaccurate payroll records and issued inaccurate wage statements. As a further result of Defendants' failure to pay all wages, Defendants failed to pay Plaintiff and other former employees all wages due at termination of employment.

15. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended from April 6, 2020 through October 1, 2020. Accordingly, the relevant time period for each cause of action pled herein have been calculated based on a filing date of April 6, 2020.

CLASS ACTION ALLEGATIONS

16. Class Definitions: Plaintiff brings this Complaint on behalf of herself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

- a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the period of April 6, 2016 through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8.0 hours per day and/or 40.0 hours per week and (i) received Incentive Pay during a corresponding time period and/or (ii) were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the period of April 6, 2016 through the present.
- c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours and/or (ii) worked at least one shift in excess of 10.0 hours, during the period of April 6, 2016 through the present.

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d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 10.0 hours, during the period of April 6, 2016 through the present; and

e. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who have received a wage statement from Defendants during the period of April 6, 2019 through the present.

f. The Waiting Time Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who separated their employment with Defendants at any time during the period of April 6, 2017 through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes and subclasses are unknown to Plaintiff, at this time; however, it is estimated that the Classes number is in excess of 100 individuals as to each class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

i. Whether Defendants paid all minimum wages owed to members of the Minimum Wage Class for all hours worked pursuant to Labor Code sections 1182.12, 1194, 1194.2 and 1197;

ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, sections 510 and 1194 by requiring members of the Overtime Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;

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- 1 iii. Whether Defendants’ timekeeping policies/practices resulted in the failure to
2 properly compensate members of the Overtime Class, Minimum Wage Class,
3 Meal Period Class, and/or Rest Period Class;
- 4 iv. Whether Defendants provided legally compliant meal periods to members of the
5 Meal Period Class pursuant to Labor Code sections 226.7 and 512;
- 6 v. Whether Defendants correctly paid meal period premium payments for non-
7 compliant meal periods pursuant to Labor Code section 226.7;
- 8 vi. Whether Defendants provided legally complaint rest periods to members of the
9 Rest Period Class pursuant to Labor Code sections 226.7 and 516;
- 10 vii. Whether Defendants correctly paid rest period premium payments for non-
11 compliant rest periods pursuant to Labor Code section 226.7;
- 12 viii. Whether Defendants furnished legally compliant wage statements to members of
13 the Wage Statement Class pursuant to Labor Code section 226; and
- 14 ix. Whether Defendants paid all final wages due to members of the Waiting Time
15 Class pursuant to Labor Code §§ 201-202.

16 19. **Predominance of Common Questions:** Common questions of law and fact
17 predominate over questions that affect only individual members of the Classes. The common
18 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
19 and/or practices applicable to each individual class member including but not limited to
20 Defendants’ uniform policies and/or practices dealing with minimum wage payment, overtime
21 payment, meal periods, rest periods, and/or wage statements. As such, the common questions
22 predominate over individual questions concerning each individual class member’s showing as to
23 his or her eligibility for recovery or as to the amount of his or her damages.

24 20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
25 Plaintiff was employed by Defendants as a non-exempt employee in California during the statutes
26 of limitation applicable to each cause of action pled in this Complaint. As alleged herein, Plaintiff,
27 like the members of the Classes, was not properly paid minimum wages due to Defendants’
28 timekeeping policies/practices, overtime wages due to a miscalculation of her regular rate of pay,

was not provided all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages for missed and/or non-compliant meal and rest periods, and/or was not issued accurate itemized wage statements.

21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual Class Member with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be

dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

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

FIRST CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

24. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully set forth herein.

25. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

26. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 1.

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

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1 28. As a direct and proximate result of Defendants' unlawful conduct as alleged
2 herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but
3 not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are
4 entitled to recover economic and statutory damages and penalties and other appropriate relief as
5 a result of Defendants' violations of the California Labor Code and Wage Order 1.

6 29. The foregoing practices and policies are unlawful and create an entitlement to
7 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
8 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
9 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
10 1194, 1197, and 1198, Wage Order 1, and Code of Civil Procedure § 1021.5.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY ALL OVERTIME WAGES**

13 **(AGAINST ALL DEFENDANTS)**

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

15 31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
16 1198, which provide that non-exempt employees are entitled to all overtime wages and
17 compensation for all overtime hours worked and provide a private right of action for the failure
18 to pay all overtime compensation for overtime work performed.

19 32. At all times relevant herein, Defendants were required to properly compensate
20 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
21 hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3
22 requires an employer to pay an employee "one and one-half (1½) times the employee's regular
23 rate of pay" for work in excess of 8 hours per work day and/or in excess of 40 hours of work in
24 the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate
25 Plaintiff or members of the Overtime Pay Class with one and one-half times their regular rate of
26 pay for such hours.

27 33. The foregoing policies and practices are unlawful and create an entitlement to
28 recovery by Plaintiff and the Overtime Class Members in a civil action for the unpaid amount of

overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 1194, and 1198; and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

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

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

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

38. Wage Order 1, § 12 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

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

40. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums

owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

42. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate wage statements that included, among other requirements, all hours worked, total gross wages earned, all rates of pay and corresponding number of hours worked (including for overtime pay), and total net wages earned, in violation of Labor Code § 226 *et seq.*

43. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages owed, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

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

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

45. Plaintiff realleges and incorporates by reference all previous paragraphs.

46. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages earned immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her

intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

47. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation which include, among other things, underpaid overtime wages and minimum wages and meal and rest period premiums. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all wages was willful within the meaning of Labor Code § 203.

48. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

50. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of Business & Professions Code § 17200 *et seq.*, by: (a) failing to pay Plaintiff and members of the Minimum Wage Class all minimum wages; (b) failing to pay Plaintiff and members of the Overtime Class all overtime wages; (c) failing to provide Plaintiff and members of the Meal Period Class with all meal periods to which they are entitled, and/or failing to pay them meal period premium payments; (d) failing to authorize and permit all required duty-free rest periods to Plaintiff and members of the Rest Period Class, and/or failing to pay them rest period premiums payments; and/or (e) knowingly failing to furnish

1 Plaintiff and the Wage Statement Class with all accurate and complete itemized wage statements
2 in violation of Labor Code § 226.

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

8 52. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
9 herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of
10 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
11 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

12 53. The acts complained of herein occurred within the four years immediately
13 preceding April 6, 2020, the date on which Judicial Council Emergency Rule 9 suspended the
14 statute of limitations for civil causes of action that exceed 180 days.

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

20 **EIGHTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **(AGAINST ALL DEFENDANTS)**

23 55. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
24 fully set forth herein.

25 56. Defendants have committed several Labor Code violations against Plaintiff,
26 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
27 within the meaning of Labor Code § 2698 *et seq.* ("PAGA"), acting on behalf of himself and other
28 aggrieved employees, brings this representative action against Defendants to recover the civil

penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to compensate Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197 and 1198;
- b. Failing to compensate Plaintiff and other aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide Plaintiff and other aggrieved employees with their statutorily mandated meal periods and failing to pay meal period premiums in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take their statutorily mandated rest periods and failing to pay rest period premiums in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages to aggrieved former employees in violation of Labor Code § 201, 202, and 203;
- g. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice each calendar month in violation of Labor Code § 204; and

h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

57. On or around July 17, 2020 Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

58. Based on the foregoing, Plaintiff seeks to represent herself and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California between April 6, 2019, and the present.

59. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 1194, and 1198;

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

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

5 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
6 226 *et. seq.*;

7 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
8 203;

9 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Bus. & Prof. Code § 17200, *et seq.*;

12 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
13 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
14 558 and 2699(a) and (f) including, but not limited to: 1) \$100.00 for each initial violation for each
15 failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional
16 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
17 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent
18 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
19 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
20 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
21 violation of Labor Code § 226 pursuant to Labor Code § 226.3 per employee per pay period;
22 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
23 employee per pay period for those violations of the Labor Code for which no civil penalty is
24 specifically provided, based on the Labor Code violations sections cited in Paragraph 52 (a)-(h);

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

27 13. On all causes of action, for attorneys' fees and costs pursuant to Labor Code §§
28 226, 1194, 2699(g), Code of Civil Procedure § 1021.5; and

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

2
3 Dated: May 3, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

4
5 By: _____

Paul K. Haines
Attorneys for Plaintiff

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7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

9
10 Dated: May 3, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

11
12 By: _____

Paul K. Haines
Attorneys for Plaintiff

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On May 3, 2022, I served the foregoing document(s) described as:

on the interested party(ies) in this action as follows:

[X] (VIA ELECTRONIC MAIL) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by transmission to CASE ANYWHERE.

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

Executed on May 3, 2022, at El Segundo, California.

Nestor Castillo