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Superior Court of California
County of Los Angeles

APR 12 2021

Sherri R. Carter, Executive Officer/Clerk of Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DEBRA ANDERSON, individually, and on
behalf of all others similarly situated,

PLAINTIFF,

v.

THE TREATMENT SKIN BOUTIQUE,
INC, a California corporation; RYAN
JENSEN, an individual; ERIN MARIE
JENSEN, an individual and DOES 1 - 20,
inclusive,

DEFENDANTS.

CASE No.: 21STCV01911

FIRST AMENDED CLASS ACTION
COMPLAINT:

1. Failure to Compensate for Non-Productive Time and Rest and Recovery Periods Separate from any Piece-Rate Compensation, and Failure to Comply with the Wage Statement Requirements for Piece-Rate Compensation [Cal. Lab. Code § 226.2]
2. Failure to Pay Minimum and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]
3. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]
4. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]
5. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]
6. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
7. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];
8. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and
9. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

Plaintiff DEBRA ANDERSON ("Plaintiff"), based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further

1 investigation and discovery, alleges as follows:

2 **INTRODUCTION & PRELIMINARY STATEMENT**

3 1. Plaintiff brings this action against Defendants THE TREATMENT SKIN BOUTIQUE,
4 INC.; RYAN JENSEN; ERIN MARIE JENSEN; and DOES 1 through 20 (collectively referred to
5 as “Defendants”) for California Labor Code violations and unfair business practices stemming from
6 Defendants’: Failure to pay regular base hourly rate of at least two (2) times the minimum wage in
7 addition to paid commission (Cal. Lab. Code § 204.11); Failure to comply with the requirements
8 for piece-rate basis compensation, including failure to compensate for non-productive time and rest
9 and recovery periods separate from any piece-rate compensation, and failure to comply with the
10 wage statement requirements for piece-rate compensation (Cal. Labor Code § 226.2); Failure to pay
11 all wages and minimum wages and minimum wage violations (Cal. Lab. Code §§ 1194, 1194.2,
12 1197; California Minimum Wage Order MW-2019, Wage Order 4-2001); Failure to pay overtime
13 wages (Cal. Lab. Code § 1194; MW-2019, Wage Order 4-2001); Improper deductions and paying
14 less than the agreed-upon wage scale (Cal. Lab. Code §§ 221-224); Failure to provide meal and rest
15 periods (Cal. Lab. Code § 226.7 and 512); Failure to reimburse expenses or losses incurred as a
16 result of performing work duties (Cal. Lab. Code § 2802); Waiting time penalties (Cal. Lab. Code
17 § 203); Inaccurate wage statements (Cal. Lab. Code § 226); and Failure to pay all wages by the
18 appropriate pay period (Cal. Lab. Code § 204). The facts regarding each of these violations are set
19 forth in detail below.

20 2. Plaintiff brings the First through Ninth Causes of Action individually and as a class action
21 on behalf of herself and certain current and former employees of Defendants (hereinafter
22 collectively referred to as the “Class” or “Class Members” and defined more fully below in
23 paragraph 36). The Class consists of Plaintiff and all other persons who have been employed by any
24 Defendant in California during the statute of limitations period applicable to the claims pleaded
25 here.

26 3. Defendants own/owned and operate/operated an industry, business, and establishment
27 within the State of California, including Los Angeles County and Orange County. As such, and
28 based upon all the facts and circumstances incident to Defendants' business in California,

1 Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
2 Commission ("IWC"), and the California Business & Professions Code.

3 4. Despite these requirements, throughout the statutory period Defendants maintained a
4 systematic, company-wide policy and practice of:

- 5 a. Failing to pay regular base hourly rate of at least two (2) times the minimum wage
6 in addition to paid commission;
- 7 b. Failing to comply with the requirements for piece-rate basis compensation, including
8 failure to compensate for non-productive time and rest and recovery periods separate
9 from any piece-rate compensation, and failure to comply with the wage statement
10 requirements for piece-rate compensation;
- 11 c. Failing to pay employees for all hours worked, including all minimum wages,
12 straight time wages, and overtime wages in compliance with the California Labor
13 Code and IWC Wage Orders;
- 14 d. Failing to provide employees with timely and duty-free meal periods in compliance
15 with the California Labor Code and IWC Wage Orders, failing to maintain accurate
16 records of all meal periods taken or missed, and failing to pay an additional hour's
17 pay for each workday a meal period violation occurred;
- 18 e. Failing to authorize and permit employees to take timely and duty-free rest periods
19 in compliance with the California Labor Code and IWC Wage
20 Orders, and failing to pay an additional hour's pay for each workday a rest period
21 violation occurred; Willfully failing to pay employees all minimum wages, straight
22 time wages, overtime wages, meal period premium wages, and rest period premium
23 wages due within the time period specified by California law when employment
24 terminates;
- 25 g. Failing to maintain accurate records of the hours that employees worked; and
- 26 h. Failing to provide employees with accurate, itemized wage statements containing all
27 the information required by the California Labor Code and IWC Wage Orders.

28 5. On information and belief, Defendants, and each of them were on actual and constructive

1 notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies.
2 Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

3 6. At all relevant times, Defendants were and are legally responsible for all of the unlawful
4 conduct, policies, practices, acts and omissions as described in each and all of the foregoing
5 paragraphs as the employer of Plaintiff and the Class. Further, Defendants are responsible for each
6 of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior."

7 **JURISDICTION & VENUE**

8 7. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure
9 § 410.10.

10 8. This Court has personal jurisdiction over Defendants because Defendants conduct
11 business in the State of California, has its principal place of business in Claremont, California, and
12 have caused injuries within this County, as well as throughout the State of California, through their
13 acts and omissions, and by and through their violations of the Labor Code.

14 9. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
15 Procedure § 395(a) and 395.5 because Defendants have their principal place of business in the city
16 of Claremont, transacts business in this County that is the subject of this lawsuit, and because the
17 cause of action accrued in part within this County and within Claremont, and because Defendants
18 are otherwise within this Court's jurisdiction. The unlawful acts alleged herein have a direct effect
19 on Plaintiff and other aggrieved employees within this County and throughout the State of
20 California, including within Los Angeles County and Claremont.

21 **THE PARTIES**

22 **A. Plaintiff**

23 10. Plaintiff DEBRA ANDERSON is a California resident and is licensed pursuant to the
24 Barbering and Cosmetology Act, who worked for Defendants in the State of California as an
25 "Esthetician/Skin Expert" from approximately January 8, 2018 to approximately June 19, 2020.

26 11. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if
27 necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings*
28 *and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

1 **B. Defendants**

2 12. Plaintiff is informed and believes, and based upon that information and belief alleges,
3 that Defendant THE TREATMENT SKIN BOUTIQUE, INC. (“TTSB”) is:

4 (a) a California Corporation with its principal places of business in Claremont,
5 California.

6 (b) A business entity conducting business in numerous counties throughout the State
7 of California, including in Los Angeles County; and

8 (c) The former employer of Plaintiff, and the current and/or former employer of the
9 putative Class. TTSB suffered and permitted Plaintiff and the Class to work,
10 and/or controlled their wages, hours, or working conditions.

11 13. Plaintiff is informed and believes, and based upon that information and belief alleges,
12 that Defendant RYAN JENSEN is, and at all times herein mentioned, was a resident of the County
13 of San Bernardino, State of California.

14 14. Plaintiff is informed and believes, and based upon that information and belief alleges,
15 that Defendant ERIN MARIE JENSEN is, and at all times herein mentioned, was a resident of the
16 County of San Bernardino, State of California.

17 15. Plaintiff is informed and believes, and based upon that information and belief alleges, that
18 Defendants RYAN JENSEN and ERIN MARIE JENSEN are individuals who during the relevant
19 time period owned, managed and operated and continue to own, manage and operate “The
20 Treatment Skin Boutique” franchises/locations within the State of California under various
21 California corporations, including without limitation, TTSB. Plaintiff is informed and believes and
22 thereon alleges that TTSB was created by Defendants RYAN JENSEN and ERIN MARIE JENSEN
23 in order to avoid potential liability.

24 16. Plaintiff is informed and believes, and thereon alleges that there exists, and at all times
25 herein mentioned there existed, a unity and ownership between Defendants RYAN JENSEN and
26 ERIN MARIE JENSEN on one hand and TTSB on the other hand, such that any individuality and
27 separateness between Defendants RYAN JENSEN and ERIN MARIE JENSEN on one hand and
28 TTSB on the other hand have ceased, and based on information and belief Defendants RYAN

1 JENSEN and ERIN MARIE JENSEN are and were the alter ego of TTSB in that:

2 17. Defendants RYAN JENSEN and ERIN MARIE JENSEN used the assets of TTSB for
3 their personal use, caused assets of the corporations to be transferred to them without adequate
4 consideration, and withdrew funds from TTSB'S bank accounts for their personal use;

5 18. TTSB is, and at all times herein mentioned was, a mere shell, instrumentality, and conduit
6 through which Defendants RYAN JENSEN and ERIN MARIE JENSEN carried on their business,
7 exercising complete control and dominance of such business to such an extent that any individuality
8 or separateness of ENTITY DEFENDANTS does not, and at all times herein mentioned did not,
9 exist;

10 19. TTSB is and at all times herein mentioned was, controlled, dominated, and operated by
11 Defendants RYAN JENSEN and ERIN MARIE JENSEN as their individual business and alter ego;

12 20. TTSB failed to comply with corporate formalities, including but not limited to (1) the
13 nonexistence of bylaws; (2) the failure to conduct corporate meetings of the board of directors; (3)
14 the failure to take or maintain corporate minutes of any corporate proceedings; (4) the failure to
15 create any corporate resolutions or voting; (5) the entering and carrying out of unapproved,
16 undocumented transactions without adequate consideration between and among TTSB and
17 Defendants RYAN JENSEN and ERIN MARIE JENSEN; and (6) TTSB has at all times herein
18 failed to have any assets;

19 21. TTSB was conceived, intended, and used by Defendants RYAN JENSEN and ERIN
20 MARIE JENSEN as a device to avoid individual liability and for purposes of substituting a financial
21 insolvent corporation in the place of Defendants RYAN JENSEN and ERIN MARIE JENSEN;

22 22. TTSB is, and at all times herein mentioned was, so inadequately capitalized that,
23 compared with the business to be done by TTSB and the risk of loss, its capitalization was trifling.

24 23. Defendants RYAN JENSEN and ERIN MARIE JENSEN held themselves out to the
25 public that they were the owners of the corporation, and one in the same as the corporation, and that
26 they were personally liable for the debts of the corporation.

27 24. Plaintiff is informed and believes and thereon alleges that adherence to the fiction of the
28 separate existence of TTSB as an entity distinct from Defendants RYAN JENSEN and ERIN

1 MARIE JENSEN would permit an abuse of the corporate privilege and would sanction fraud and
2 promote injustice in that Defendants RYAN JENSEN and ERIN MARIE JENSEN established and
3 conceived said TTSB as devices to avoid individual liability and for the purpose of substituting
4 TTSB in the place of Defendants RYAN JENSEN and ERIN MARIE JENSEN as individuals.

5 25. Plaintiff does not know the true names or capacities of the persons or entities sued herein
6 as Does 1-20, inclusive, and therefore sue said Defendants by such fictitious names. Each of the
7 Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and
8 the Class as alleged herein. Plaintiff will amend this complaint to set forth the true names and
9 capacities of these Defendants when they have been ascertained, together with appropriate charging
10 allegations, as may be necessary.

11 26. At all times mentioned herein, the Defendants named as Does 1-20, inclusive, and each
12 of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured
13 a significant number of the Plaintiff and the Class in the State of California.

14 27. Plaintiff is informed and believes and thereon alleges that at all relevant times each
15 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the
16 other employees described in the class definitions below, and exercised control over their wages,
17 hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all
18 relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director,
19 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
20 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
21 the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all
22 of the other Defendants so as to be liable for their conduct with respect to the matters alleged below.
23 Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and
24 within the scope of the relationships alleged above, that each Defendant knew or should have known
25 about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all
26 other Defendants.

27 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

28 28. Plaintiff DEBRA ANDERSON is a California resident, and is licensed pursuant to the

1 Barbering and Cosmetology Act, who worked for Defendants in the State of California as an
2 “Esthetician/Skin Expert” from approximately January 8, 2018 to approximately June 19, 2020.
3 During this time, Plaintiff provided services to Defendants’ clients for which a license pursuant to
4 the Barbering and Cosmetology Act is required. Defendants paid Plaintiff on a commission basis
5 but failed to pay her a base rate of at least two times the state minimum wage, and typically
6 scheduled Plaintiff to work 6 days per workweek, and in excess of 8 hours each workday or in excess
7 of 40 hours each workweek.

8 29. Throughout the statutory period, Defendants failed to pay Plaintiff a base hourly rate at
9 least two times the state minimum wage, failed to comply with the requirements for piece-rate basis
10 compensation, including failure to compensate for non-productive time and rest and recovery
11 periods separate from any piece-rate compensation, and failure to comply with the wage statement
12 requirements for piece-rate compensation, failed to pay Plaintiff for all hours worked (including
13 base rate, minimum wages, straight time wages, and overtime wages), failed to provide Plaintiff
14 with uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
15 periods, failed to timely pay all final wages to Plaintiff when Defendants terminated Plaintiff’s
16 employment, and failed to furnish accurate wage statements to Plaintiff. As discussed below,
17 Plaintiff’s experience working for Defendants was typical and illustrative for both,, commission
18 based, and non-exempt hourly employees.

19 30. Throughout the statutory period, Defendants have wrongfully failed to provide Plaintiff
20 and the Class with legally compliant meal periods. Defendants regularly, but not always, required
21 Plaintiff and the Class to work in excess of five consecutive hours a day without providing a 30-
22 minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without
23 compensating Plaintiff and the Class for meal periods that were not provided by the end of the fifth
24 hour of work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Class of
25 their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10
26 hours, by the end of the tenth hour of work. Moreover, Defendants did not have adequate written
27 policies or practices providing meal periods for Plaintiff and the Class, nor did Defendants have
28 adequate policies or practices regarding the timing of meal periods. Defendants also failed to keep

1 an accurate record of the meal periods taken by Plaintiff and the Class. Defendants also did not have
2 adequate policies or practices to document and verify whether Plaintiff and the Class were taking
3 their required meal periods. Accordingly, Defendants' policy and practice was to not provide meal
4 periods to Plaintiff and the Class in compliance with California law.

5 31. Throughout the statutory period, Defendants have wrongfully failed to authorize and
6 permit Plaintiff and the Class to take timely and duty-free rest periods. Defendants regularly, but
7 not always, required Plaintiff and the Class to work in excess of four consecutive hours a day without
8 Defendants authorizing and permitting them to take a 10-minute, continuous and uninterrupted, rest
9 period for every four hours of work (or major fraction of four hours), or without compensating
10 Plaintiff and the Class for rest periods that were not authorized or permitted. Defendants did not
11 adequately inform Plaintiff and the Class of their right to take a rest period. Moreover, Defendants
12 did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and
13 the Class, nor did Defendants have adequate policies or practices regarding the timing of rest periods.
14 Defendants also did not have adequate policies or practices to verify whether Plaintiff and the Class
15 were taking their required rest periods. Further, Defendants did not maintain accurate records of
16 employee work periods, and therefore Defendants cannot demonstrate that Plaintiff and the Class
17 took rest periods during the middle of each work period. Accordingly, Defendants' policy and
18 practice was to not authorize and permit Plaintiff and the Class to take rest periods in compliance
19 with California law.

20 32. Throughout the statutory period, Defendants willfully failed and refused to timely pay
21 Plaintiff and the Class at the conclusion of their employment all wages for all minimum wages,
22 straight time wages, overtime wages, meal period premium wages, and rest period premium wages.

23 33. Throughout the statutory period, Defendants failed to furnish Plaintiff and the Class with
24 accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages
25 earned (including correct hours worked, correct wages earned for hours worked, correct overtime
26 hours worked, correct wages for meal periods that were not provided in accordance with California
27 law, and correct wages for rest periods that were not authorized and permitted to take in accordance
28 with California law). As a result of these violations of California Labor Code § 226(a), the Plaintiff

1 and the Class suffered injury because, among other things:

- 2 a) the violations led them to believe that they were not entitled to be paid minimum
3 wages, overtime wages, meal period premium wages, and rest period premium wages
4 to which they were entitled, even though they were entitled;
- 5 b) the violations led them to believe that they had been paid the minimum, overtime,
6 meal period premium, and rest period premium wages, even though they had not been;
- 7 c) the violations led them to believe they were not entitled to be paid minimum,
8 overtime, meal period premium, and rest period premium wages at the correct
9 California rate even though they were;
- 10 d) the violations led them to believe they had been paid minimum, overtime, meal period
11 premium, and rest period premium wages at the correct California rate even though
12 they had not been;
- 13 e) the violations hindered them from determining the amounts of minimum, overtime,
14 meal period premium, and rest period premium owed to them;
- 15 f) in connection with their employment before and during this action, and in connection
16 with prosecuting this action, the violations caused them to have to perform
17 mathematical computations to determine the amounts of wages owed to them,
18 computations they would not have to make if the wage statements contained the
19 required accurate information;
- 20 g) by understating the wages truly due them, the violations caused them to lose
21 entitlement and/ or accrual of the full amount of Social Security, disability,
22 unemployment, and other governmental benefits;
- 23 h) the wage statements inaccurately understated the wages, hours, and wages rates to
24 which Plaintiff and the Class were entitled, and Plaintiff and the Class were paid less
25 than the wages and wage rates to which they were entitled.

26 Thus, Plaintiff and the Class are owed the amounts provided for in California Labor Code §
27 226(e), including actual damages.

28 **CLASS ACTION ALLEGATIONS**

1 34. Plaintiff brings certain claims individually, as well as on behalf of each and all other
2 persons similarly situated, and thus, seeks class certification under California Code of Civil
3 Procedure § 382.

4 35. All claims alleged herein arise under California law for which Plaintiff seeks relief
5 authorized by California law.

6 36. The proposed Class consists of and is defined as:

7 All persons who worked for any Defendant in California as an hourly
8 paid or commission-based or piece-rate-based, non-exempt employee, at
9 any time during the period beginning four years before the filing of the
10 initial complaint in this action and ending when notice to the Class is
11 sent. A more precise definition of the Class may be determined after
12 further investigation and discovery. Plaintiff thus reserves the right to
13 redefine the Class in accordance with California law.

14 37. At all material times, Plaintiff was a member of the Class.

15 38. Plaintiff undertakes this concerted activity to improve the wages and working conditions
16 of all Class Members.

17 39. There is a well-defined community of interest in the litigation and the Class is readily
18 ascertainable:

19 A. Numerosity: The members of the Class (and each subclass, if any) are so numerous
20 that joinder of all members would be unfeasible and impractical. The membership of
21 the entire Class is unknown to Plaintiff at this time, however, the Class is estimated
22 to be greater than 50 individuals and the identity of such membership is readily
23 ascertainable by inspection of Defendants' records.

24 B. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
25 interests of each Class Member with whom there is a shared, well-defined
26 community of interest, and Plaintiffs claims (or defenses, if any) are typical of all
27 Class Members' claims as demonstrated herein.

28 C. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the
interests of each Class Member with whom there is a shared, well-defined
community of interest and typicality of claims, as demonstrated herein. Plaintiff has

1 no conflicts with or interests antagonistic to any Class Member. Plaintiff's attorneys,
2 the proposed class counsel, are versed in the rules governing class action discovery,
3 certification, and settlement. Plaintiff has incurred, and throughout the duration of
4 this action, will continue to incur costs and attorneys' fees that have been, are, and
5 will be necessarily expended for the prosecution of this action for the substantial
6 benefit of each class member.

7 D. Superiority: A Class Action is superior to other available methods for the fair and
8 efficient adjudication of the controversy, including consideration of:

- 9 1) The interests of the members of the Class in individually controlling the
10 prosecution or defense of separate actions;
- 11 2) The extent and nature of any litigation concerning the controversy already
12 commenced by or against members of the Class;
- 13 3) The desirability or undesirability of concentrating the litigation of the claims
14 in the particular forum; and
- 15 4) The difficulties likely to be encountered in the management of a class action.

16 E. Public Policy Considerations: The public policy of the State of California is to
17 resolve the California Labor Code claims of many employees through a class action.
18 Indeed, current employees are often afraid to assert their rights out of fear of direct
19 or indirect retaliation. Former employees are also fearful of bringing actions because
20 they believe their former employers might damage their future endeavors through
21 negative references and/or other means. Class actions provide the class members who
22 are not named in the complaint with a type of anonymity that allows for the
23 vindication of their rights at the same time as their privacy is protected.

24 40. There are common questions of law and fact as to the Class (and each subclass, if any)
25 that predominate over questions affecting only individual members, including without limitation,
26 whether, as alleged herein, Defendants have:

- 27 A. Failed to pay Class Members for all hours worked, including minimum wages,
28 straight time wages, and overtime wages;

- B. Failed to provide meal periods and pay meal period premium wages to Class Members;
- C. Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- D. Failed to promptly pay all wages due to Class Members upon their discharge or resignation;
- E. Failed to maintain accurate records of all hours Class Members worked, and all meal periods Class Members took or missed; and
- F. (Violated California Business & Professions Code §§ 17200 et. seq. as a result of their illegal conduct as described above.

41. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- A. The questions of law and fact common to the Class predominate over any question affecting only individual members;
- B. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- C. The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;
- D. Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- E. There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- F. Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for

Defendants; and/or

2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,

G. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

42. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

Overview of Labor Law Violations

43. TTSB's willful failure to comply with the requirements for piece-rate basis compensation, and failure to comply with the wage statement requirements for piece-rate compensation, and other practices set forth herein give rise to numerous other Labor Code violations, including: Failure to comply with the requirements for piece-rate basis compensation, including failure to compensate for non-productive time and rest and recovery periods separate from any piece-rate compensation, and failure to comply with the wage statement requirements for piece-rate compensation (Cal. Labor Code § 226.2); Failure to pay all wages and minimum wages and minimum wage violations (Cal. Lab. Code §§ 1194, 1194.2, 1197; California Minimum Wage Order MW-2019, Wage Order 4-2001); Failure to pay overtime wages (Cal. Lab. Code § 1194; MW-2019, Wage Order 4-2001); Improper deductions and paying less than the agreed-upon wage scale (Cal. Lab. Code §§ 221-224); Failure to provide meal and rest periods (Cal. Lab. Code § 226.7 and

512); Failure to reimburse expenses or losses incurred as a result of performing work duties (Cal. Lab. Code § 2802); Waiting time penalties (Cal. Lab. Code § 203); Inaccurate wage statements (Cal. Lab. Code § 226); and Failure to pay all wages by the appropriate pay period (Cal. Lab. Code § 204). The facts regarding each of these violations are set forth in detail below.

Failure to Comply with Commission Compensation Requirements

44. Labor Code § 204.11 requires wages that are paid to an employee who is licensed pursuant to the Barbering and Cosmetology Act for providing services for which such a license is required, when paid as a percentage or a flat sum portion of the sums paid to the employer by the client recipient of such service, and for selling goods, constitute commissions, provided that the employee is paid, in every pay period in which hours are worked, a regular base hourly rate of at least two times the state minimum wage rate for all hours worked in addition to commissions paid. The employee and employer may agree to a commission in addition to the base hourly rate. An employee may be compensated for rest and recovery periods at a rate of pay not less than the employee's regular base hourly rate.

45. Here, TTSB's compensation structure for Plaintiff violates all of these provisions regarding compensation and commission for employees licensed and providing services pursuant to the Barbering and Cosmetology Act. TTSB failed to pay Plaintiff and other employees who were licensed and providing services pursuant to the Barbering and Cosmetology Act a regular base hourly rate of at least two times the state minimum wage rate for all hours worked in addition to commissions paid. Accordingly, TTSB's payment practices violate Labor Code Section 204.11.

Failure to Comply with Piece-Rate Compensation Requirements

46. Labor Code § 226.2, numerous California Supreme Court and Court of Appeal decisions, and numerous Opinion Letters from the DLSE make clear that any piece-rate compensation scheme must adequately compensate workers for, among other things, nonproductive time, rest and recovery periods, travel time, and other de minimis tasks.

47. The legislature recently codified California law regarding piece-rate compensation in Labor Code § 226.2. The statute requires that employees "shall be compensated for . . . nonproductive time *separate from any piece-rate compensation.*" Labor Code § 226.2(a)(1)

(emphasis added). Section 226.2 defines “other nonproductive time” as time under the employer’s control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.” Labor Code § 226.2. The statute also makes clear that employees “shall be compensated for rest and recovery periods . . . *separate from any piece-rate compensation.*” Labor Code § 226.2(a)(1) (emphasis added). Section 222.6 further requires that itemized wage statements separately state “[t]he total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.” Labor Code § 226.2(a)(2)(A). The wage statements must also state “the total hours of other nonproductive time, . . . the rate of compensation, and the gross wages paid for that time during the pay period.” Labor Code § 226.2(a)(2)(B). Further, the statute requires that the pay rate for rest periods must be “no less than the higher” of either the applicable minimum wage or “[a]n hourly rate determined by dividing the total compensation for the workweek [excluding rest period pay and overtime] by the total hours worked during the workweek.” Labor Code § 226.2(a)(3)(A). Section 226.2(a)(4) further states that nonproductive time must be compensated at an hourly rate not less than the minimum wage. The amount of nonproductive time may be determined either through actual records or the employer’s reasonable estimates. *Id.* § 226.2(a)(5).

48. Although Labor Code Section 226.2 was recently enacted, it codified existing California case law regarding piece-rate compensation schemes and their failure to compensate employees for all hours worked. See *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013); see also *Vaquero v. Stoneledge Furniture*, 9 Cal. App. 4th 98 (2017); *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 871-72 (2013); *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314 (2005); *Quezada v. Con-Way Freight, Inc.*, 2012 WL 2847609 (N.D. Cal. July 11, 2012); *Ridgeway v. Wal-Mart Stores*, 2015 WL 3451966 (N.D. Cal. May 28, 2015).

49. California law also makes clear that an employer must compensate its workers for any travel commuting time that is either undertaken at the employer’s direction or control, or that is excessive, or which involves the transportation of any goods, equipment, or materials for the company. See *Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000); *Rutti v. Lojack Corp.*, 596 F.3d 1046 (9th Cir. 2010); *Slavkov v. Fast Water Heater Partners I, LP*, Case No. 14-CV-04324-JST,

1 2015 WL 8482141, at *3 (N.D. Cal. Dec. 10, 2015); *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
2 314, 322–24 (2005); see also DLSE 4/22/2003 Opinion Letter; DLSE 2/21/02 Opinion Letter. In
3 addition to these long-established requirements that piece-rate compensation schemes separately
4 compensate workers for rest periods, nonproductive time, and travel, the California Supreme Court’s
5 recent decision in *Troester v. Starbucks Corporation*, 421 P.3d 1114 (2018) makes clear that an
6 employer cannot rely on the federal de minimis doctrine as any sort of defense.

7 50. Here, TTSB’s compensation of its employee workforce violates all of these provisions
8 regarding piece-rate compensation. TTSB does not compensate employees for nonproductive time
9 or for rest and recovery periods separate from any piece rate compensation, or even track that time.
10 As referenced above, employees inevitably incur significant nonproductive time working for TTSB
11 that goes entirely uncompensated. Employees may therefore spend significant time working for
12 TTSB in an attempt to build a book of business or acquire new clients, upsell services and products,
13 only to be unsuccessful and therefore uncompensated. Or to spend an excessive amount of time in
14 the pursuit of growing their list of clients, only to obtain one or a few new clients or only few repeat
15 booking of appointments by existing clients, earning no compensation for their time spent working
16 for TTSB that did not directly result in the acquiring new clients or repeat clients. TTSB also does
17 not specifically compensate employees for time spent between client appointments or for attending
18 mandatory trainings or events. Employees also often work numerous hours for TTSB, without any
19 compensation for rest periods or meal periods separate from the piece-rate compensation. Wage
20 statements issued to employees do not separately state the total hours of compensable rest and
21 recovery periods, or total hours of nonproductive time, or any rate of compensation for either.
22 Accordingly, TTSB’s payment practices violate Labor Code Section 226.2.

23 Failure to Pay All Wages/Minimum Wage Violations

24 51. For similar reasons, TTSB’s payment practices also fail to pay employees the applicable
25 state minimum wage for all hours worked. TTSB only compensates its Licensed Aestheticians on
26 a commission/piece-rate basis for their work, generally a percent of gross revenue dollars generated
27 from successfully providing services or selling products, regardless of how long that process takes,
28 regardless of whether this compensation results in the employee being paid less than the hourly

1 minimum wage, and without any compensation at all for nonproductive time, as described above.
2 Employees' compensation is not at all derivative of how many hours the employee works. As set
3 forth above, employees spend significant amounts of nonproductive time working for TTSB,
4 benefitting TTSB, and under the control of TTSB, all of which goes entirely uncompensated. Even
5 in instances where an employee is partially compensated for their time, the piece-rate compensation
6 may end up with the employee being paid less than the minimum wage.

7 52. California law prescribes that it is an automatic minimum wage violation when an
8 employee works but is not compensated for each and every hour worked. See *Gonzalez v. Downtown*
9 *L.A. Motors*, 215 Cal. App. 4th 36, 49-50 (2014); Labor Code § 226.2(a)(4); *Armenta v. Osmose,*
10 *Inc.* (2005) 215 Cal. App. 4th 314, 323-324 (2005); see also Labor Code §§ 221-23. Notably,
11 averaging wages over the workweek to meet minimum wage obligations is not permitted under the
12 California Labor Code.

13 Failure to Pay All Overtime Wages Earned

14 53. TTSB also fails to pay employees all the overtime pay for which they are entitled, or
15 indeed any overtime pay at all. Because TTSB does not track or pay employees for the non-piece
16 rate hours they work, TTSB fails to accurately assess how much is due in overtime wages to the
17 employees and, thus, fails to pay employees accurate overtime wages.

18 Meal and Rest Period Violations

19 54. TTSB also does not provide meal and rest periods in accordance with California law.
20 Employees paid on a piece-rate system must also be separately compensated for rest periods, which
21 TTSB fails to do. See Labor Code § 226.2(a)(1); 226.2(a)(3)(A); *Bluford v. Safeway Stores, Inc.*,
22 216 Cal.App.4th 864 (2013); *Cardenas v. McLane FoodServices, Inc.*, 796 F.Supp.2d 1246, 1252
23 (C.D. Cal. 2011) (piece-rate pay system that did not separately pay truck drivers for non-driving
24 duties and rest periods violates California law requiring compensation for each hour worked);
25 *Reinhardt v. Gemini Motor Transport*, 869 F.Supp.2d 1158, 1168 (E.D. Cal. 2012) (piece-rate pay
26 system that did not separately pay truck drivers for non-driving duties violates California law
27 requiring compensation for each hour worked).

28 Failure to Reimburse for Business Expenses

1 55. TTSB also fails to reimburse employees with respect to the equipment and tools they
2 need to perform their work. Employees require specialized equipment and products, which TTSB
3 requires employees to obtain from TTSB at their own expense. Employees are further required to
4 attend various off-site events and trainings without reimbursement for travel expenses, use of
5 vehicle and gas.

6 56. The other alleged violations, including inaccurate wage statements and waiting time
7 penalties, are largely derivative of the failure to pay minimum wage and overtime violations as well
8 as the failure to provide meal and rest periods violations.

9 57. Plaintiff further believes that additional violations may be discovered and therefore
10 reserves her right to allege additional violations of the law as investigation and discovery warrant.
11 In the event Plaintiff discovers additional violations through the discovery process, Plaintiff will
12 seek to amend the operative complaint as necessary.

13 58. On January 14, 2021, Plaintiff submitted notice to the California Labor and Workforce
14 Development Agency ("LWDA") and Defendants informing them of Defendants' alleged Labor
15 Code violations pursuant to PAGA.

16
17 **FIRST CAUSE OF ACTION**

18 **(Against all Defendants for Failure to Compensate for Non-Productive Time and Rest and**
19 **Recovery Periods Separate from any Piece-Rate Compensation, and Failure to Comply with**
20 **the Wage Statement Requirements for Piece-Rate Compensation [Cal. Lab. Code § 226.2])**

21 59. Plaintiff incorporates by reference and re-alleges all proceeding paragraphs in this
22 Complaint as if fully stated and incorporated herein.

23 60. Cal. Lab. Code § 226.2 states that piece-rate employees "shall be compensated for rest
24 and recovery periods and other nonproductive time separate from any piece-rate compensation."
25 The term "other nonproductive time" is defined as "time under the employer's control, exclusive of
26 rest and recovery periods, that is not directly related to the activity being compensated on a piece-
27 rate basis." (Cal. Lab. Code § 226.2.) Further, subdivision (a) specifies that the separate
28 compensation for rest and recovery time must be at an hourly rate that is no less than the applicable

1 minimum wage, and in some instances must be greater than minimum wage, depending on a
2 statutory formula. (Cal. Lab. Code § 226.2, subd. (a)(3)(A), (B).) Similarly, the separate
3 compensation for employees' other nonproductive time must be no less than the applicable minimum
4 wage. (Cal. Lab. Code § 226.2, subd. (a)(4).)

5 66. Defendants have failed to comply with the requirements for piece-rate basis
6 compensation set forth in Cal. Lab. Code § 226.2, including failure to compensate for non-
7 productive time and rest and recovery periods separate from any piece-rate compensation, and
8 failure to comply with the wage statement requirements for piece-rate compensation.

9 67. Plaintiff and the Class are also entitled to seek recovery of all unpaid bases hourly rate
10 of at least two times the state minimum wage rate for all hours worked, and reasonable attorneys'
11 fees and costs pursuant to California Labor Code §§ 218.5, 218.6, and 1194(a).

12 **SECOND CAUSE OF ACTION**

13 **(Against all Defendants for Failure to Pay Minimum and Straight Time Wages for All Hours** 14 **Worked)**

15 68. Plaintiff incorporates by reference and re-alleges all proceeding paragraphs in this
16 Complaint as if fully stated and incorporated herein.

17 69. "Hours worked" is the time during which an employee is subject to the control of an
18 employer, and includes all the time the employee is suffered or permitted to work, whether or not
19 required to do so.

20 70. At all relevant times herein mentioned, Defendants knowingly failed to pay to Plaintiff
21 and the Class compensation for all hours they worked. By their failure to pay compensation for each
22 hour worked as alleged above, Defendants willfully violated the provisions of Section 1194 of the
23 California Labor Code, and any additional applicable Wage Orders, which require such
24 compensation to non-exempt employees.

25 71. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight time
26 wages for all non-overtime hours worked for Defendants.

27 72. By and through the conduct described above, Plaintiff and the Class have been deprived
28 of their rights to be paid wages earned by virtue of their employment with Defendants.

73. By virtue of the Defendants' unlawful failure to pay additional compensation to Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional minimum of this Court, and which will be ascertained according to proof at trial.

74. By failing to keep adequate time records required by California Labor Code § 1174 (d), Defendants have made it difficult to calculate the full extent of minimum wage compensation due Plaintiff and the Class.

75. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

76. California Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including minimum and straight time wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiff and the Class all such wages due, and failed to pay those wages twice a month.

77. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 218.6, and 1194(a).

THIRD CAUSE OF ACTION

(Against all Defendants for Failure to Pay Overtime Wages)

78. Plaintiff incorporates by reference and re-alleges all proceeding paragraphs in this Complaint as if fully stated and incorporated herein.

79. California Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

80. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation

beyond their regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

81. At all times relevant hereto, Plaintiff and the Class have worked more than eight hours in a workday, as employees of Defendants.

82. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by California Labor Code § 510 and 1198. Plaintiff and the Class are regularly required to work overtime hours.

83. By virtue of Defendants' unlawful failure to pay additional premium rate compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to them but which exceed the jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

84. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of overtime compensation due to Plaintiff and the Class.

85. Plaintiff and the Class also request recovery of overtime compensation according to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other statutes.

86. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. The Wage Orders also provide that every employer shall pay to each employee, on the established payday for the period involved, overtime wages for all overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class with all compensation due, in violation of California Labor Code § 204.

FOURTH CAUSE OF ACTION

(Against All Defendants for Failure to Provide Meal Periods)

1 87. Plaintiff incorporates by reference and re-alleges all proceeding paragraphs in this
2 Complaint as if fully stated and incorporated herein.

3 88. Under California law, Defendants have an affirmative obligation to relieve the Plaintiff
4 and the Class of all duty in order to take their first daily meal periods no later than the start of
5 Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal periods no
6 later than the start of the eleventh hour of work in the workday. Section 512 of the California Labor
7 Code, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal
8 periods of at least 30 minutes for each five-hour period worked. It is a violation of Section 226. 7 of
9 the California Labor Code for an employer to require any employee to work during any meal period
10 mandated under any Wage Order.

11 89. Despite these legal requirements, Defendants regularly failed to provide Plaintiff and the
12 Class with both meal periods as required by California law. By their failure to permit and authorize
13 Plaintiff and the Class to take all meal periods as alleged above (or due to the fact that Defendants
14 made it impossible or impracticable to take these uninterrupted meal periods), Defendants willfully
15 violated the provisions of Section 226. 7 of the California Labor Code and the applicable Wage
16 Orders.

17 90. Under California law, Plaintiff and the Class are entitled to be paid one hour of additional
18 wages for each workday he or she was not provided with all required meal period(s), plus interest
19 thereon.

20 **FIFTH CAUSE OF ACTION**

21 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

22 91. Plaintiff incorporates by reference and re-alleges all proceeding paragraphs in this
23 Complaint as if fully stated and incorporated herein.

24 92. Defendants are required by California law to authorize and permit breaks of 10
25 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
26 two hours). Section 512 of the California Labor Code, the applicable Wage Orders require that the
27 employer permit and authorize all employees to take paid rest periods of 10 minutes each for each
28 4-hour period worked. Thus, for example, if an employee's work time is 6 hours and ten minutes,

1 the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is
2 itself a violation of California's rest break laws. It is a violation of Section 226.7 of the California
3 Labor Code for an employer to require any employee to work during any rest period mandated under
4 any Wage Order.

5 93. Despite these legal requirements, Defendants failed to authorize Plaintiff and the Class
6 to take rest breaks, regardless of whether employees worked more than 4 hours in a workday. By
7 their failure to permit and authorize Plaintiff and the Class to take rest periods as alleged above (or
8 due to the fact that Defendants made it impossible or impracticable to take these uninterrupted rest
9 periods), Defendants willfully violated the provisions of Section 226.7 of the California Labor Code
10 and the applicable Wage Orders.

11 94. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium
12 wages rate for each workday he or she was not provided with all required rest break(s), plus interest
13 thereon.

14 **SIXTH CAUSE OF ACTION**

15 **(Against all Defendants for Failure to Pay Wages of Discharged Employees - Waiting** 16 **Time Penalties)**

17 95. Plaintiff incorporates by reference and re-alleges all proceeding paragraphs in this
18 Complaint as if fully stated and incorporated herein.

19 96. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an
20 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
21 payable immediately, and that if an employee voluntarily leaves his or her employment, his or her
22 wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the
23 employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which
24 case the employee is entitled to his or her wages at the time of quitting.

25 97. Within the applicable statute of limitations, the employment of Plaintiff and many other
26 members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of
27 others will be. However, during the relevant time period, Defendants failed, and continue to fail to
28 pay terminated Class Members, without abatement, all wages required to be paid by California

1 Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours
2 of their leaving Defendants' employ.

3 98. Defendants' failure to pay Plaintiff and those Class members who are no longer employed
4 by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72)
5 hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

6 99. California Labor Code § 203 provides that if an employer willfully fails to pay wages
7 owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a
8 penalty wage from the due date, and at the same rate until paid or until an action is commenced; but
9 the wages shall not continue for more than thirty (30) days.

10 100. Plaintiff and the Class are entitled to recover from Defendants their additionally
11 accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days
12 maximum pursuant to California Labor Code § 203.

13 101. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiff and the Class are
14 also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this
15 action.

16 **SEVENTH CAUSE OF ACTION**

17 **(Against all Defendants for Failure to Provide and Maintain Accurate and Compliant**
18 **Wage Records)**

19 102. Plaintiff incorporates by reference and re-alleges all proceeding paragraphs in this
20 Complaint as if fully stated and incorporated herein.

21 103. At all material times set forth herein, California Labor Code § 226(a) provides that
22 every employer shall furnish each of his or her employees an accurate itemized wage statement in
23 writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours
24 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if
25 the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
26 written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6)
27 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
28 the last four digits of his or her social security number or an employee identification number other

1 than a social security number, (8) the name and address of the legal entity that is the employer, and
2 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate by the employee.

4 104. Defendants have intentionally and willfully failed to provide employees with complete
5 and accurate wage statements. The deficiencies include, among other things, the failure to correctly
6 identify the gross wages earned by Plaintiff and the Class, the failure to list the true "total hours
7 worked by the employee,;" piece-rate information; failure to include last four digits of his or her
8 social security number or an employee identification number other than a social security number
9 and the failure to list the true net wages earned.

10 105. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and the
11 Class have suffered injury and damage to their statutorily-protected rights.

12 106. Specifically, Plaintiff and the members of the Class have been injured by Defendants'
13 intentional violation of California Labor Code § 226(a) because they were denied both their legal
14 right to receive, and their protected interest in receiving, accurate, itemized wage statements under
15 California Labor Code § 226(a).

16 107. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time
17 consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result
18 of having to bring this action to attempt to obtain correct wage information following Defendants'
19 refusal to comply with many of the mandates of California's Labor Code and related laws and
20 regulations.

21 108. Plaintiff and the Class are entitled to recover from Defendants their actual damages
22 caused by Defendants' failure to comply with California Labor Code § 226(a).

23 109. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of
24 attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code
25 § 226(h).

26 **EIGHTH CAUSE OF ACTION**

27 **(Against all Defendants for Violation of California Business & Professions Code §§**
28 **17200, et seq.)**

1 110. Plaintiff incorporates by reference and re-alleges all proceeding paragraphs in this
2 Complaint as if fully stated and incorporated herein.

3 111. Defendants, and each of them, are "persons" as defined under California Business &
4 Professions Code § 17201.

5 112. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful,
6 and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks to enforce
7 important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

8 113. Defendants' activities, as alleged herein, are violations of California law, and constitute
9 unlawful business acts and practices in violation of California Business & Professions Code §§
10 17200, et seq.

11 114. A violation of California Business & Professions Code §§ 17200, et seq. maybe
12 predicated on the violation of any state or federal law. All of the acts described herein as violations
13 of, among other things, the California Labor Code, are unlawful and in violation of public policy;
14 and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby
15 constitute unfair, unlawful and/or fraudulent business practices in violation of California Business
16 & Professions Code §§ 17200, et seq.

17 **Failure to Pay Regular Base Hourly Rate of at Least Two (2) Times the Minimum**
18 **Wage in Addition to Paid Commission**

19 115. Failure to pay regular base hourly rate of at least two (2) times the minimum wage in
20 addition to paid commission in violation of the California Labor Code constitutes unlawful and/or
21 unfair activity prohibited by California Business & Professions Code §§ 17200, et seq.

22 **Failure to Pay Minimum and Straight Time Wages**

23 116. Defendants' failure to pay minimum wages, straight time wages, and other benefits in
24 violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by
25 California Business & Professions Code §§ 17200, et seq.

26 **Failure to Pay Overtime Wages**

27 117. Defendants' failure to pay overtime compensation and other benefits in violation of
28 California Labor Code §§ 510, 1194, and 1198, California Penal Code §§ 484 and 532 (obtaining

1 labor through false pretenses), constitutes unlawful and/or unfair activity prohibited by California
2 Business & Professions Code § § 17200, et seq.

3 **Failure to Maintain Accurate Records of All Hours Worked**

4 118. Defendants' failure to maintain accurate records of all hours worked in accordance with
5 California Labor Code§ 1174.5 and the IWC Wage Orders constitutes unlawful and/or unfair
6 activity prohibited by California Business & Professions Code §§ 17200, et seq.

7 **Failure to Provide Meal Periods**

8 119. Defendants' failure to provide meal periods in accordance with California Labor Code
9 §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair
10 activity prohibited by California Business & Professions Code §§ 17200, et seq.

11 **Failure to Authorize and Permit Rest Periods**

12 120. Defendants' failure to authorize and permit rest periods in accordance with California
13 Labor Code§ 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair
14 activity prohibited by Business and Professions Code §§ 17200, et seq.

15 **Failure to Provide Accurate Itemized Wage Statements**

16 121. Defendants' failure to provide accurate itemized wage statements in accordance with
17 California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity
18 prohibited by California Business & Professions Code§§ 17200, et seq.

19 122. By and through their unfair, unlawful and/or fraudulent business practices described
20 herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all
21 persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of valuable
22 rights and benefits guaranteed by law, all to their detriment.

23 123. Plaintiff and the Class Members suffered monetary injury as a direct result of
24 Defendants' wrongful conduct.

25 124. Plaintiff, individually, and on behalf of members of the putative Class, is entitled to,
26 and do, seek such relief as may be necessary to disgorge money and/or property which the
27 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by
28 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and

1 the Class are not obligated to establish individual knowledge of the wrongful practices of
2 Defendants in order to recover restitution.

3 125. Plaintiff, individually, and on behalf of members of the putative class, are further
4 entitled to and do seek a declaration that the above-described business practices are unfair, unlawful
5 and/or fraudulent, and injunctive relief restraining the Defendants, and each of them, from engaging
6 in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

7 126. Plaintiff, individually, and on behalf of members of the putative class, have no plain,
8 speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered as
9 a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result
10 of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
11 and on behalf of members of the putative Class, has suffered and will continue to suffer irreparable
12 harm unless the Defendants, and each of them, are restrained from continuing to engage in said
13 unfair, unlawful and/or fraudulent business practices.

14 127. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
15 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
16 withholdings.

17 128. Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff and
18 putative Class Members are entitled to restitution of the wages withheld and retained by Defendants
19 during a period that commences four years prior to the filing of this complaint; a permanent
20 injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members;
21 an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other
22 applicable laws; and an award of costs.

23 **NINTH CAUSE OF ACTION**

24 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act**
25 **of 2004, Cal. Lab. Code § 2698 et seq.)**

26 129. Plaintiff incorporates by reference and re-allege as if fully stated herein paragraphs
27 1 through 33 in this First Amended Complaint.

1 130. At all times herein mentioned, Defendants were subject to the Labor Code of the
2 State of California and the applicable Industrial Welfare Commission Orders.

3 131. California Labor Code § 2699(a) specifically provides for a private right of action to
4 recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law,
5 any provision of this code that provides for a civil penalty to be assessed and collected by the
6 Labor and Workforce Development Agency or any of its departments, divisions,

7 132. commissions, boards, agencies, or employees, for a violation of this code, may, as an
8 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
9 himself or herself and other current or former employees pursuant to the procedures specified in
10 Section 2699.3.”

11 133. Plaintiff has exhausted her administrative remedies pursuant to California Labor
12 Code § 2699.3. On January 14, 2021 Plaintiff gave written notice by online filing to the Labor
13 and Workforce Development Agency and by certified mail to Defendants of the specific
14 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
15 former aggrieved employees, including the facts and theories to support the violations. At the
16 time of this filing, 65 days has elapsed since Plaintiff provided notice, but the Labor and
17 Workforce Development Agency has not indicated that it intends to investigate Defendants’ Labor
18 Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to
19 recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor
20 Code described in this Complaint. These penalties include, but are not limited to, penalties under
21 California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

22 134. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
23 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
24 employing labor who willfully fails to maintain accurate and complete records required by
25 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
26 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins
27 and ends each work period. Meal periods, and total hours worked daily shall also be recorded.
28

1 Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total
2 hours worked in the payroll period and applicable rates of pay.

3 135. During the time period of employment for Plaintiff and the Aggrieved Employees,
4 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
5 maintain accurate records showing meal periods, and accurate records showing when employees
6 begin and end each work period. Defendants' failure to provide and maintain records required by
7 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
8 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
9 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
10 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
11 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
12 Employees have suffered and continue to suffer, substantial losses related to the use and
13 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
14 to compel Defendants to fully perform its obligation under state law, all to their respective damage
15 in amounts according to proof at trial. Because of Defendants' knowing failure to comply with
16 the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have
17 also suffered an injury in that they were prevented from knowing, understanding, and disputing
18 the wage payments paid to them.

19 136. Based on the conduct described in this First Amended Complaint, Plaintiff is entitled
20 to an award of civil penalties on behalf of herself, the State of California, and similarly Aggrieved
21 Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount
22 to be shown according to proof at trial. These penalties are in addition to all other remedies
23 permitted by law.

24 137. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant
25 to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
26 shall be entitled to an award of reasonable attorney's fees and costs."

27 **PRAYER FOR RELIEF**

28 Plaintiff, individually, and on behalf of all others similarly situated only with respect to the

1 class claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

2 Class Certification

3 1. That this action be certified as a class action with respect to the First, Second, Third,
4 Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action;

5 2. That Plaintiff be appointed as the representative of the Class; and

6 3. That counsel for Plaintiff be appointed as Class Counsel.

7 As to the First Cause of Action

8 4. That the Court declare, adjudge and decree that Defendants violated California Labor
9 Code § 226.2 and applicable IWC Wage Orders by willfully failing to comply with the requirements
10 for piece-rate basis compensation, including failure to compensate for non-productive time and rest
11 and recovery periods separate from any piece-rate compensation, and failure to comply with the
12 wage statement requirements for piece-rate compensation.

13 5. For general unpaid wages and such general and special damages as may be appropriate;

14 6. For pre-judgment interest on any unpaid compensation commencing from the date such
15 amounts were due;

16 7. For liquidated damages;

17 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California
18 Labor Code § 1194(a); and,

19 9. For such other and further relief as the Court may deem equitable and appropriate.

20 As to the Second Cause of Action

21 10. That the Court declare, adjudge and decree that Defendants violated California Labor
22 Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum
23 and straight time wages due;

24 11. For general unpaid wages and such general and special damages as may be appropriate;

25 12. For pre-judgment interest on any unpaid compensation commencing from the date such
26 amounts were due;

27 13. For liquidated damages;

28 14. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California

1 Labor Code§ 1194(a); and,

2 15. For such other and further relief as the Court may deem equitable and appropriate.

3 As to the Third Cause of Action

4 16. That the Court declare, adjudge and decree that Defendants violated California Labor
5 Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime
6 wages due;

7 17. For general unpaid wages at overtime wage rates and such general and special damages
8 as may be appropriate;

9 18. For pre-judgment interest on any unpaid overtime compensation commencing from the
10 date such amounts were due;

11 19. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California
12 Labor Code § 1194(a); and,

13 20. For such other and further relief as the Court may deem equitable and appropriate.

14 As to the Fourth Cause of Action

15 21. That the Court declare, adjudge and decree that Defendants violated California Labor
16 Code§§ 226.7 and 512, and the IWC Wage Orders;

17 22. For unpaid meal period premium wages as may be appropriate;

18 23. For pre-judgment interest on any unpaid compensation commencing from the date such
19 amounts were due;

20 24. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and
21 for costs of suit incurred herein; and

22 25. For such other and further relief as the Court may deem equitable and appropriate.

23 As to the Fifth Cause of Action

24 26. That the Court declare, adjudge and decree that Defendants violated California Labor
25 Code§§ 226.7 and 512, and the IWC Wage Orders;

26 27. For unpaid rest period premium wages as may be appropriate;

27 28. For pre-judgment interest on any unpaid compensation commencing from the date such
28 amounts were due;

1 29. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and
2 for costs of suit incurred herein; and

3 30. For such other and further relief as the Court may deem equitable and appropriate.

4 As to the Sixth Cause of Action

5 31. That the Court declare, adjudge and decree that Defendants violated California Labor
6 Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
7 termination of the employment;

8 32. For all actual, consequential and incidental losses and damages, according to proof;

9 33. For statutory wage penalties pursuant to California Labor Code § 203 for former
10 employees who have left Defendants' employ;

11 34. For pre-judgment interest on any unpaid wages from the date such amounts were due;

12 35. For reasonable attorneys' fees and for costs of suit incurred herein; and

13 36. For such other and further relief as the Court may deem equitable and appropriate.

14 As to the Seventh Cause of Action

15 37. That the Court declare, adjudge and decree that Defendants violated the record keeping
16 provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed
17 to provide accurate itemized wage statements thereto;

18 38. For all actual, consequential and incidental losses and damages, according to proof;

19 39. For actual damages pursuant to California Labor Code § 226(e);

20 40. For injunctive relief to ensure compliance with this section, pursuant to California Labor
21 Code § 226(h);

22 41. For reasonable attorneys' fees and for costs of suit incurred herein; and

23 42. For such other and further relief as the Court may deem equitable and appropriate.

24 As to the Eighth Cause of Action

25 43. That the Court declare, adjudge and decree that Defendants violated California Business
26 & Professions Code §§ 17200, et seq. by failing to pay wages for all hours worked (including
27 minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize
28 and permit rest periods, and failing to maintain accurate records of all hours worked, and failing to

1 furnish accurate wage statements;

2 44. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment
3 interest from the day such amounts were due and payable;

4 45. For the appointment of a receiver to receive, manage and distribute any and all funds
5 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
6 result of violations of California Business & Professions Code §§ 17200 et seq.;

7 46. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
8 Code of Civil Procedure § 1021.5;

9 47. For injunctive relief to ensure compliance with this section, pursuant to California
10 Business & Professions Code §§ 17200, et seq.; and,

11 48. For such other and further relief as the Court may deem equitable and appropriate.

12 As to the Ninth Cause of Action

13 49. That the Court declare, adjudge and decree that Defendants violated the California
14 Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and
15 overtime wages), failing to provide meal periods, failing to maintain accurate records of meal
16 periods, failing to authorize and permit rest periods, failing to maintain accurate records of all
17 hours worked and meal periods, failing to pay final wages at termination, and failing to furnish
18 accurate wage statements;

19 50. That the Court declare, adjudge and decree that Defendants violated California Labor
20 Code § 226.2 and applicable IWC Wage Orders by willfully failing to comply with the
21 requirements for piece-rate basis compensation, including failure to compensate for non-
22 productive time and rest and recovery periods separate from any piece-rate compensation, and
23 failure to comply with the wage statement requirements for piece-rate compensation;

24 51. For all actual, consequential and incidental losses and damages, according to Proof;

25 52. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all other
26 applicable Labor Code provisions;

27 53. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
28 Labor Code § 2699;

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54. For such other and further relief as the Court may deem equitable and appropriate.

As to all Causes of Action

55. For any additional relief that the Court deems just and proper.

DATED: April 10, 2021

MANJLAI LAW PC

By: *Haroon Manjlai*
HAROON MANJLAI
Attorney for Plaintiff DEBRA ANDERSON

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DATED: April 10, 2021

By: Haroon Manjlai
HAROON MANJLAI
Attorney for Plaintiff DEBRA ANDERSON

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On April 10, 2021, I served the foregoing document(s) described as **FIRST AMENDED CLASS ACTION COMPLAINT** on all the interested parties in this action at the address listed below, as follows:

Attorneys for Defendants
THE TREATMENT SKIN BOUTIQUE, INC.; RYAN JENSEN; and ERIN MARIE JENSEN

(x) **E-SERVICE:** I served the above document(s) via e-service through Case Anywhere.

☐ **EXPRESS MAIL:** I caused said document(s) to be placed in an Express Mail Overnight Envelope and deposited in an express Mail DropBox to be delivered the following business day pursuant to Code of Civil Procedure section 1013(c).

Haroon Manjlai

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