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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

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SUPERIOR COURT
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STK-CV-2022-3077

EARL GANDIONCO, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

ALLERGAN, INC., a Delaware corporation;
ALLERGAN USA, INC., a Delaware
corporation; ALLERGAN SALES, LLC, a
Delaware limited liability company; ZELTIQ
AESTHETICS, INC., a Delaware corporation;
LANCESOFT, INC., a Virginia corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR
DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code § 2698, *et seq.* (Private Attorneys General Act of 2004);
- (9) Violation of California Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff EARL GANDIONCO (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of San Joaquin.

PARTIES

5. Plaintiff EARL GANDIONCO is an individual residing in the State of California.

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1 6. Defendant ALLERGAN, INC., at all times herein mentioned, was and is, upon
2 information and belief, a Delaware corporation, and at all times herein mentioned, was and is,
3 an employer whose employees are engaged throughout the State of California, including the
4 County of San Joaquin. Defendant ALLERGAN USA, INC., at all times herein mentioned,
5 was and is, upon information and belief, a Delaware corporation, and at all times herein
6 mentioned, was and is, an employer whose employees are engaged throughout the State of
7 California, including the County of San Joaquin. Defendant ALLERGAN SALES, LLC, at all
8 times herein mentioned, was and is, upon information and belief, a Delaware limited liability
9 company, and at all times herein mentioned, was and is, an employer whose employees are
10 engaged throughout the State of California, including the County of San Joaquin. Defendant
11 ZELTIQ AESTHETICS, INC., at all times herein mentioned, was and is, upon information
12 and belief, a Delaware corporation, and at all times herein mentioned, was and is, an employer
13 whose employees are engaged throughout the State of California, including the County of San
14 Joaquin. Defendant LANCESOFT, INC., at all times herein mentioned, was and is, upon
15 information and belief, a Virginia corporation, and at all times herein mentioned, was and is,
16 an employer whose employees are engaged throughout the State of California, including the
17 County of San Joaquin.

18 7. At all relevant times, Defendant ALLERGAN, INC., ALLERGAN USA, INC.,
19 ALLERGAN SALES, LLC ZELTIQ AESTHETICS, INC. and LANCESOFT, INC. were the
20 “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

21 8. At all times herein relevant, Defendants ALLERGAN, INC., ALLERGAN USA,
22 INC., ALLERGAN SALES, LLC, ZELTIQ AESTHETICS, INC., LANCESOFT, INC. and
23 DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
24 employers, representatives, servants, employees, successors-in-interest, co-conspirators and
25 assigns, each of the other, and at all times relevant hereto were acting within the course and
26 scope of their authority as such agents, partners, joint venturers, joint employers,
27 representatives, servants, employees, successors, co-conspirators and assigns, and all acts or
28 omissions alleged herein were duly committed with the ratification, knowledge, permission,

1 encouragement, authorization, and consent of each defendant designated herein.

2 9. The true names and capacities, whether corporate, associate, individual or
3 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who sues
4 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
5 information and belief alleges, that each of the Defendants designated as a DOE is legally
6 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
7 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
8 Plaintiff will seek leave of court to amend this Complaint to show the true names and
9 capacities when the same have been ascertained.

10 10. Defendants ALLERGAN, INC., ALLERGAN USA, INC., ALLERGAN
11 SALES, LLC, ZELTIQ AESTHETICS, INC. LANCESOFT, INC. and DOES 1 through 100
12 will hereinafter collectively be referred to as “Defendants.”

13 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
14 affected the working conditions, wages, working hours, and conditions of employment of
15 Plaintiff and the other class members so as to make each of said Defendants employers and
16 employers liable under the statutory provisions set forth herein.

17 **CLASS ACTION ALLEGATIONS**

18 12. Plaintiff brings this action on his own behalf and on behalf of all other members
19 of the general public similarly situated, and, thus, seeks class certification under Code of Civil
20 Procedure section 382.

21 13. The proposed class is defined as follows:

22 All non-exempt or hourly employees of LANCESOFT, INC. (“LanceSoft”)
23 assigned by LanceSoft to perform work, and who did perform work, for
24 Allergan, Inc.; Allergan USA, Inc.; Allergan Sales, LLC; or Zeltiq Aesthetics,
25 Inc. (together, “Allergan Entities”) at any of the Allergan Entities’ facilities or
26 work locations in California at any time since December 17, 2016.

27 14. Plaintiff reserves the right to establish subclasses as appropriate.

28 15. The class is ascertainable and there is a well-defined community of interest in

the litigation:

- a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- b. Typicality: Plaintiff's claims are typical of all other class members' claims as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.
- c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.
- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are

not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants failed to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants properly calculated the regular rate for Plaintiff and the other class members to worked overtime and earned incentive pay;
- e. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- f. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- g. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- h. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- i. Whether Defendants complied with wage reporting as required by the California Labor Code, including, inter alia, section 226;

- j. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- k. Whether Defendants' conduct was willful or reckless;
- l. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*;
- m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- n. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

17. During the relevant time period set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California.

18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid non-exempt employee from May of 2018 to October of 2018 in the State of California.

19. Defendants had the authority to hire and terminate Plaintiff and other class members; to set work rules and conditions governing Plaintiff's and other class members' employment; and to supervise their daily employment activities.

20. Defendants exercised sufficient authority over the terms and conditions of Plaintiff and other class members' employment for them to be joint employers of Plaintiff and the other class members.

21. Defendants directly hired and paid wages and benefits to Plaintiff and other class members.

22. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

23. Plaintiff and other class members worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

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1 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
3 employees within the State of California. This scheme involved, inter alia, failing to pay them
4 for all hours worked, missed meal periods, and missed rest breaks in violation of California
5 law.

6 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Plaintiff and other class members were entitled to receive
8 certain wages for overtime compensation and that Plaintiff and other class members were not
9 receiving wages for overtime compensation.

10 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 failed to provide Plaintiff and other class members the required rest and meal periods during
12 the relevant time period as required under the Industrial Welfare Commission Wage Orders
13 and thus they are entitled to any and all applicable penalties.

14 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Plaintiff and other class members were entitled to receive all
16 timely and complete meal periods or payment of one additional hour of pay at Plaintiff's and
17 the other class members' regular rate of pay when a meal period was missed, late or
18 interrupted, and that Plaintiff and other class members did not receive all timely and proper
19 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
20 period was missed.

21 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiff and other class members were entitled to receive all
23 timely rest periods without interruption or payment of one additional hour of pay at Plaintiff
24 and the other class members' regular rate of pay when a rest period was missed, late or
25 interrupted, and that Plaintiff and other class members did not receive all rest periods or
26 payment of one additional hour of pay at their regular rate of pay when a rest period was
27 missed.

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1 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and other class members were entitled to receive at
3 least minimum wages for compensation and that Plaintiff and other class members were not
4 receiving at least minimum wages for all hours worked.

5 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and other class members were entitled to receive the
7 wages owed to them upon discharge or resignation, including overtime and minimum wages
8 and meal and rest period premiums, and that Plaintiff and other class members did not, in fact,
9 receive such wages owed to them at the time of their discharge or resignation.

10 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Plaintiff and other class members were entitled to receive
12 complete and accurate wage statements in accordance with California law, but, in fact,
13 Plaintiff and other class members did not receive complete and accurate wage statements from
14 Defendants. The deficiencies included, inter alia, the failure to include the total number of
15 hours worked by Plaintiff and other class members.

16 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knew or should have known that Plaintiff and the other class members were entitled to
18 reimbursement for necessary business-related expenses.

19 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Defendants had to keep complete and accurate payroll records
21 for Plaintiff and other class members in accordance with California law, but, in fact, did not
22 keep complete and accurate payroll records for Plaintiff and other class members.

23 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that they had a duty to compensate Plaintiff and other class
25 members pursuant to California law, and that Defendants had the financial ability to pay such
26 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
27 represented to Plaintiff and other class members that they were properly denied wages, all in
28 order to increase Defendants' profits.

1 35. As a pattern and practice, during the relevant time period set forth herein,
2 Defendants failed to pay overtime wages to Plaintiff and other class members for all hours
3 worked. Plaintiff and other class members were required to work more than eight (8) hours
4 per day and/or forty (40) hours per week without overtime compensation.

5 36. As a pattern and practice, during the relevant time period set forth herein,
6 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
7 Plaintiff and other class members.

8 37. As a pattern and practice, during the relevant time period set forth herein,
9 Defendants failed to pay Plaintiff and other class members at least minimum wages for all
10 hours worked.

11 38. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants failed to pay Plaintiff and other class members the wages owed to them upon
13 discharge or resignation.

14 39. As a pattern and practice, during the relevant time period set forth herein,
15 Defendants failed to provide complete or accurate wage statements to Plaintiff and other class
16 members.

17 40. As a pattern and practice, during the relevant time period set forth herein,
18 Defendants failed to keep complete or accurate payroll records for Plaintiff and other class
19 members.

20 41. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants failed to properly compensate Plaintiff and other class members pursuant to
22 California law in order to increase Defendants' profits.

23 42. California Labor Code section 218 states that nothing in Article 1 of the Labor
24 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
25 due to him [or her] under this article."

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against ALLERGAN, INC., ALLERGAN USA, INC., ALLERGAN SALES, LLC,**
4 **ZELTIQ AESTHETICS, INC., LANCESOFT, INC. and DOES 1 through 100)**

5 43. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
6 through 42, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 44. California Labor Code section 1198 and the applicable Industrial Welfare
9 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
10 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
11 rate of pay, depending on the number of hours worked by the person on a daily or weekly
12 basis.

13 45. Specifically, the applicable IWC Wage Order provides that Defendants are and
14 were required to pay Plaintiff and other class members employed by Defendants, who
15 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
16 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
17 than forty (40) hours in a workweek.

18 46. The applicable IWC Wage Order further provides that Defendants are and were
19 required to pay Plaintiff and other class members overtime compensation at a rate of two times
20 their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

21 47. California Labor Code section 510 codifies the right to overtime compensation
22 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
23 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
24 day of work, and overtime compensation at twice the regular hourly rate for hours worked in
25 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
26 of work.

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48. During the relevant time period set forth herein, Plaintiff and other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

49. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and other class members (but not all).

50. Defendants' pattern and practice of failing to pay Plaintiff and other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

51. Pursuant to California Labor Code section 1194, Plaintiff and other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

**(Against ALLERGAN, INC., ALLERGAN USA, INC., ALLERGAN SALES, LLC,
ZELTIQ AESTHETICS, INC. LANCESOFT, INC. and DOES 1 through 100)**

52. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 51, and each and every part thereof with the same force and effect as though fully set forth herein.

53. During the relevant time period set forth herein, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and other class members' employment by Defendants.

54. During the relevant time period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

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1 55. During the relevant time period set forth herein, the applicable IWC Wage Order
2 and California Labor Code section 512(a) provide that an employer may not require, cause or
3 permit an employee to work for a work period of more than five (5) hours per day without
4 providing the employee with a meal period of not less than thirty (30) minutes, except that if
5 the total work period per day of the employee is no more than six (6) hours, the meal period
6 may be waived by mutual consent of both the employer and employee.

7 56. During the relevant time period set forth herein, the applicable IWC Wage Order
8 and California Labor Code section 512(a) further provide that an employer may not require,
9 cause, or permit an employee to work for a work period of more than ten (10) hours per day
10 without providing the employee with a second uninterrupted meal period of not less than thirty
11 (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the
12 second meal period may be waived by mutual consent of the employer and the employee only
13 if the first meal period was not waived.

14 57. As a pattern and practice, during the relevant time period set forth herein,
15 Plaintiff and other class members (but not all) who were scheduled to work for a period of
16 time no longer than six (6) hours, and who did not waive their legally-mandated meal periods
17 by mutual consent, were required to work for periods longer than five (5) hours without an
18 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

19 58. As a pattern and practice, during the relevant time period set forth herein,
20 Plaintiff and other class members (but not all) who were scheduled to work for a period of
21 time no longer than twelve (12) hours, and who did not waive their legally-mandated meal
22 periods by mutual consent, were required to work for periods longer than ten (10) hours
23 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
24 period.

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1 59. As a pattern and practice, during the relevant time period set forth herein,
2 Plaintiff and other class members (but not all) who were scheduled to work for a period of
3 time in excess of six (6) hours were required to work for periods longer than five (5) hours
4 without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
5 period.

6 60. As a pattern and practice, during the relevant time period set forth herein,
7 Plaintiff and other class members (but not all) who were scheduled to work for a period of
8 time in excess of twelve (12) hours were required to work for periods longer than ten (10)
9 hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without
10 a rest period.

11 61. As a pattern and practice, during the relevant time period set forth herein,
12 Defendants intentionally and willfully required Plaintiff and other class members (but not all)
13 to work during meal periods and failed to compensate Plaintiff and the other class members
14 (but not all) the full meal period premium for work performed during meal periods.

15 62. As a pattern and practice, during the relevant time period set forth herein,
16 Defendants failed to pay Plaintiff and other class members (but not all) the full meal period
17 premium due pursuant to California Labor Code section 226.7.

18 63. Defendants' conduct violates applicable IWC Wage Order and California Labor
19 Code sections 226.7 and 512(a).

20 64. Pursuant to the applicable IWC Wage Order and California Labor Code section
21 226.7(b), Plaintiff and other class members are entitled to recover from Defendants one
22 additional hour of pay at the employee's regular rate of compensation for each workday that
23 the meal or rest period is not provided.

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1 **THIRD CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226.7)**

3 **(Against ALLERGAN, INC., ALLERGAN USA, INC., ALLERGAN SALES, LLC,**
4 **ZELTIQ AESTHETICS, INC. LANCESOFT, INC., and DOES 1 through 100)**

5 65. Plaintiff incorporates by reference the allegations contained in paragraphs 1
6 through 64, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 66. During the relevant time period set forth herein, the applicable IWC Wage Order
9 and California Labor Code section 226.7 were applicable to Plaintiff's and other class
10 members' employment by Defendants.

11 67. During the relevant time period set forth herein, California Labor Code section
12 226.7 provides that no employer shall require an employee to work during any rest period
13 mandated by an applicable order of the California IWC.

14 68. During the relevant time period set forth herein, the applicable IWC Wage Order
15 provides that "[e]very employer shall authorize and permit all employees to take rest periods,
16 which insofar as practicable shall be in the middle of each work period" and that the "rest
17 period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
18 rest time per four (4) hours or major fraction thereof" unless the total daily work time is less
19 than three and one-half (3 ½) hours.

20 69. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants required Plaintiff and other class members (but not all) to work four (4) or more
22 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour
23 period worked.

24 70. As a pattern and practice, during the relevant time period set forth herein,
25 Defendants willfully required Plaintiff and other class members (but not all) to work during
26 rest periods and failed to pay Plaintiff and the other class members the full rest period premium
27 for work performed during rest periods.

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71. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiff and the other class members (but not all) the full rest period premium due pursuant to California Labor Code section 226.7

72. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

73. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each workday that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194 and 1197)

**(Against ALLERGAN, INC., ALLERGAN USA, INC., ALLERGAN SALES, LLC,
ZELTIQ AESTHETICS, INC. and LANCESOFT, INC., DOES 1 through 100)**

74. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 73 and each and every part thereof with the same force and effect as though fully set forth herein.

75. During the relevant time period set forth herein, California Labor Code sections 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed, is unlawful.

76. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay minimum wages to Plaintiff and other class members (but not all) as required, pursuant to California Labor Code sections 1194 and 1197.

77. Defendants' failure to pay Plaintiff and other class members the minimum wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those sections, Plaintiff and other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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1 78. Pursuant to California Labor Code section 1194.2, Plaintiff and other class
2 members are entitled to recover liquidated damages in an amount equal to the wages
3 unlawfully unpaid and interest thereon.

4 **FIFTH CAUSE OF ACTION**

5 **(Violation of California Labor Code §§ 201 and 202)**

6 **(Against ALLERGAN, INC., ALLERGAN USA, INC., ALLERGAN SALES, LLC,**
7 **ZELTIQ AESTHETICS, INC., LANCESOFT, INC., and DOES 1 through 100)**

8 79. Plaintiff incorporates by reference the allegations contained in paragraphs 1
9 through 78, and each and every part thereof with the same force and effect as though fully set
10 forth herein.

11 80. During the relevant time period set forth herein, California Labor Code sections
12 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid
13 at the time of discharge are due and payable immediately, and if an employee quits his or her
14 employment, his or her wages shall become due and payable not later than seventy-two (72)
15 hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her
16 intention to quit, in which case the employee is entitled to his or her wages at the time of
17 quitting.

18 81. As a pattern and practice, during the relevant time period set forth herein,
19 Defendants intentionally and willfully failed to pay Plaintiff and other class members (but not
20 all) who are no longer employed by Defendants their wages, earned and unpaid, within
21 seventy-two (72) hours of their leaving Defendants' employ.

22 82. Defendants' pattern and practice of failing to pay Plaintiff and other class
23 members who are no longer employed by Defendants their wages, earned and unpaid, within
24 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
25 Code sections 201 and 202.

26 83. California Labor Code section 203 provides that if an employer willfully fails to
27 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
28 shall continue as a penalty from the due date thereof at the same rate until paid or until an

1 action is commenced; but the wages shall not continue for more than thirty (30) days.

2 84. Plaintiff and other class members are entitled to recover from Defendants the
3 statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum
4 as provided by Labor Code section 203.

5 **SIXTH CAUSE OF ACTION**

6 **(Violation of California Labor Code § 226(a))**

7 **(Against ALLERGAN, INC., ALLERGAN USA, INC., ALLERGAN SALES, LLC,**
8 **ZELTIQ AESTHETICS, INC., LANCESOFT, INC., and DOES 1 through 100)**

9 85. Plaintiff incorporates by reference the allegations contained in paragraphs 1
10 through 84, and each and every part thereof with the same force and effect as though fully set
11 forth herein.

12 86. During the relevant time period set forth herein, California Labor Code section
13 226(a) provides that every employer shall furnish each of his or her employees an accurate
14 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
15 employee, (3) the number of piece-rate units earned and any applicable piece rate if the
16 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
17 on written orders of the employee may be aggregated and shown as one item, (5) net wages
18 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
19 the employee and his or her social security number, (8) the name and address of the legal
20 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period
21 and the corresponding number of hours worked at each hourly rate by the employee. The
22 deductions made from payments of wages shall be recorded in ink or other indelible form,
23 properly dated, showing the month, day, and year, and a copy of the statement or a record of
24 the deductions shall be kept on file by the employer for at least three years at the place of
25 employment or at a central location within the State of California.

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1 87. As a pattern and practice, Defendants have intentionally and willfully failed to
2 provide Plaintiff and other class members (but not all) with complete and accurate wage
3 statements. The deficiencies include but are not limited to: the failure to include the total
4 number of hours worked by Plaintiff and other class members.

5 88. As a result of Defendants' violation of California Labor Code section 226(a),
6 Plaintiff and other class members have suffered injury and damage to their statutorily
7 protected rights.

8 89. More specifically, Plaintiff and other class members have been injured by
9 Defendants' intentional and willful violation of California Labor Code section 226(a) because
10 they were denied both their legal right to receive, and their protected interest in receiving,
11 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

12 90. Plaintiff and other class members are entitled to recover from Defendants the
13 greater of their actual damages caused by Defendants' failure to comply with California Labor
14 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per
15 employee.

16 91. Plaintiff and other class members are also entitled to injunctive relief to ensure
17 compliance with this section, pursuant to California Labor Code section 226(g).

18 **SEVENTH CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 2800 and 2802)**

20 **(Against ALLERGAN, INC., ALLERGAN USA, INC., ALLERGAN SALES, LLC,**
21 **ZELTIQ AESTHETICS, INC., LANCESOFT, INC., and DOES 1 through 100)**

22 92. Plaintiff incorporates by reference the allegations contained in paragraphs 1
23 through 91, and each and every part thereof with the same force and effect as though fully set
24 forth herein.

25 93. Pursuant to California Labor Code sections 2800 and 2802, an employer must
26 reimburse its employee for all necessary expenditures incurred by the employee in direct
27 consequence of the discharge of his or her job duties or in direct consequence of his or her
28 obedience to the directions of the employer.

94. Defendants have intentionally and willfully failed to reimburse Plaintiff and other class members (but not all) for all necessary business-related expenses and costs. Plaintiff and other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

EIGHTH CAUSE OF ACTION

(Violation of Labor Code § 2698, *et seq.* (“PAGA”))

**(Against ALLERGAN, INC., ALLERGAN USA, INC., ALLERGAN SALES, LLC,
ZELTIQ AESTHETICS, INC., LANCESOFT, INC. and DOES 1 through 100)**

95. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 94, and each and every part thereof with the same force and effect as though fully set forth herein.

96. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the California Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees

97. On April 26, 2022, Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends were violated, and the theories supporting their contentions. Attached hereto as **Exhibit 1** and incorporated by reference is a copy of the written notice to the LWDA. Plaintiff believes that on or about June 30, 2022, the sixty-five (65) day notice period will have expired, and if the LWDA did not take any action to investigate or prosecute this matter Plaintiff will have exhausted his administrative remedies.

98. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current or former employees of LanceSoft assigned by LanceSoft to perform work, and who did perform work,

1 for Allergan, Inc.; Allergan USA, Inc.; Allergan Sales, LLC; or Zeltiq Aesthetics, Inc. (together,
2 “Allergan Entities”) at any of the Allergan Entities’ facilities or work locations in the State of
3 California at any time during the period from April 26, 2021 to the present, and one or more of
4 the alleged violations was committed against them.

5 **Failure to Pay Minimum and Overtime Wages**

6 99. At all times relevant herein, Defendants were required to compensate their non-
7 exempt employees minimum wages for all hours worked and overtime wages for all hours
8 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
9 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

10 100. As a policy and practice, Defendants failed to compensate Plaintiff and the other
11 aggrieved current and former employees for all hours worked, resulting in a failure to pay all
12 minimum wages and overtime wages, where applicable.

13 **Failure to Provide Meal Periods and Rest Breaks**

14 101. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants
15 were required to authorize and permit their non-exempt employees to take a 10-minute rest break
16 for every four (4) hours worked or major fraction thereof, and were further required to provide
17 their non-exempt employees with a 30-minute meal period for every five (5) hours worked.

18 102. As a policy and practice, Defendants failed to provide Plaintiff and the other
19 aggrieved current and former employees with legally-mandated meal periods and rest breaks
20 and failed to pay proper compensation and/or failure to pay the proper rate of compensation
21 pursuant to Labor Code § 226.7 for this failure.

22 **Failure to Timely Pay Wages During Employment**

23 103. At all times relevant herein, Defendants were required to pay their employees
24 within a specified time period pursuant to the mandate of Labor Code § 204.

25 104. As a policy and practice, Defendants failed to pay Plaintiff and the other aggrieved
26 current and former employees all wages due and owing them within the required time period.

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1 **Failure to Timely Pay Wages Upon Termination**

2 105. At all times relevant herein, Defendants were required to pay their employees all
3 wages owed in a timely fashion at the end of employment pursuant to California Labor Code §§
4 201 to 204.

5 106. As a result of Defendants' Labor Code violations alleged above, Defendants failed
6 to pay Plaintiff and the other aggrieved former employees their final wages pursuant to Labor
7 Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code § 203.

8 **Failure to Provide Complete and Accurate Wage Statements**

9 107. At all times relevant herein, Defendants were required to keep *accurate* records
10 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

11 108. As a result of Defendants' various Labor Code violations, Defendants failed to
12 keep accurate records regarding Plaintiff and the other aggrieved current and former employees.
13 For example, Defendants failed in their affirmative obligation to keep accurate wage statements
14 and accurate records regarding Plaintiff and the other aggrieved current and former employees'
15 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable
16 hourly rates and the number of hours worked at each hourly rate.

17 **Failure to Reimburse Business Expenses**

18 109. At all times relevant herein, Defendants were required to reimburse their
19 employees for any and all necessary expenditures or losses incurred by the employees in direct
20 consequences of the discharge or their duties pursuant to the mandate of Labor Code §§ 2800
21 and 2802.

22 110. As a policy and practice, Defendants failed to pay Plaintiff and the other aggrieved
23 current and former employees all business expenses incurred and owing them within the
24 required time period.

25 **Penalties**

26 111. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf
27 of other current and former aggrieved employees, request and are entitled to recover from
28 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs, including but

not limited to:

a. Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

b. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

c. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

d. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

e. Any and all additional penalties as provided by the Labor Code and/or other statutes; and

f. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute.

NINTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, *et seq.*)

**(Against ALLERGAN, INC., ALLERGAN USA, INC., ALLERGAN SALES, LLC,
ZELTIQ AESTHETICS, INC., LANCESOFT, INC., and DOES 1 through 100)**

112. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 111, and each and every part thereof with the same force and effect as though fully set forth herein.

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1 113. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
2 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
3 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public
4 interest within the meaning of Code of Civil Procedure section 1021.5.

5 114. Defendants' activities as alleged herein are violations of California law, and
6 constitute unlawful business acts and practices in violation of California Business &
7 Professions Code section 17200, *et seq.*

8 115. A violation of California Business & Professions Code section 17200, *et seq.*
9 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
10 pattern and practice of requiring Plaintiff and other class members work overtime hours
11 without paying them proper compensation violate California Labor Code sections 510 and
12 1198. Additionally, Defendants' pattern and practice of requiring Plaintiff and other class
13 members, to work through their meal and rest periods without paying them proper
14 compensation violate California Labor Code sections 226.7 and 512(a). Moreover,
15 Defendants' pattern and practice of failing to timely pay wages to Plaintiff and other class
16 members violate California Labor Code sections 201 and 202. Defendants also violated
17 California Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

18 116. As a result of the herein described violations of California law, Defendants
19 unlawfully gained an unfair advantage over other businesses.

20 117. Plaintiff and other class members (but not all) have been personally injured by
21 Defendants' unlawful business acts and practices as alleged herein, including but not
22 necessarily limited to the loss of money and/or property.

23 118. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
24 Plaintiff and other class members are entitled to restitution of the wages withheld and retained
25 by Defendants during a period that commences four years prior to the filing of this Complaint;
26 an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and
27 other applicable laws; and an award of costs.

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, individually, and on behalf of other members of the general public similarly
3 situated, requests a trial by jury.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, individually and on behalf of all other members of the
6 general public similarly situated, prays for relief and judgment against Defendants, jointly and
7 severally, as follows:

8 **Class Certification**

- 9 1. That this action be certified as a class action;
10 2. That Plaintiff be appointed as representative of the Class;
11 3. That counsel for Plaintiff be appointed as Class Counsel; and
12 4. That Defendants provide to Class Counsel immediately the names and most
13 current contact information (address, e-mail and telephone numbers) of all class members.

14 **As to the First Cause of Action**

- 15 5. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
17 pay all overtime wages due to Plaintiff and other class members (but not all);
18 6. For general unpaid wages at overtime wage rates and such general and special
19 damages as may be appropriate;
20 7. For pre-judgment interest on any unpaid overtime compensation commencing
21 from the date such amounts were due;
22 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Labor Code section 1194; and
24 9. For such other and further relief as the court may deem just and proper.

25 **As to the Second Cause of Action**

- 26 10. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
28 provide all meal periods (including second meal periods) to Plaintiff and other class members

(but not all);

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

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

13. For premium wages pursuant to California Labor Code section 226.7(b);

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

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and other class members (but not all);

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

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

20. For premium wages pursuant to California Labor Code section 226.7(b);

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

22. For such other and further relief as the court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and other class members (but not all);

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

3 25. For pre-judgment interest on any unpaid compensation from the date such
4 amounts were due;

5 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Labor Code section 1194(a);

7 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

8 28. For such other and further relief as the court may deem just and proper.

9 **As to the Fifth Cause of Action**

10 29. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at
12 the time of termination of the employment of Plaintiff and other class members (but not all)
13 no longer employed by Defendants;

14 30. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 31. For statutory wage penalties pursuant to California Labor Code section 203 for
17 the other class members who have left Defendants' employ;

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

20 33. For such other and further relief as the court may deem just and proper.

21 **As to the Sixth Cause of Action**

22 34. That the Court declare, adjudge and decree that Defendants violated the record
23 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
24 as to Plaintiff and other class members (but not all), and willfully failed to provide accurate
25 itemized wage statements thereto;

26 35. For actual, consequential and incidental losses and damages, according to proof;

27 36. For statutory penalties pursuant to California Labor Code section 226(e);

28 37. For injunctive relief to ensure compliance with this section, pursuant to

California Labor Code section 226(g); and

38. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and other class members (but not all) for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For the imposition of civil penalties and/or statutory penalties;

42. For punitive damages and/or exemplary damages according to proof at trial;

43. For reasonable attorneys' fees and costs of suit incurred herein; and

44. For such other and further relief as the court may deem just and proper.

As to the Eighth Cause of Action

45. That the Court declare, adjudge, and decree that Defendants violated California Labor Code section 2698, *et seq.*, by failing to pay minimum and overtime wages, failing to provide meal periods and rest breaks, failing to timely pay wages during employment and upon termination, failing to provide complete and accurate wage statements, and failing to reimburse expenses;

46. For civil penalties pursuant to Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512(a), 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800 and 2802;

47. For costs and attorneys' fees pursuant to Labor Code sections 210, 218.5, 1194, and 2699, and any other applicable statute; and

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

As to the Ninth Cause of Action

49. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and other class members all overtime compensation due to them, failing to provide all meal and rest

1 periods to Plaintiff and the other class members, failing to pay at least minimum wages to
2 Plaintiff and the other class members, failing to pay Plaintiff's and other class members' wages
3 timely as required by California Labor Code section 201, 202.

4 50. For restitution of unpaid wages to Plaintiff and other class members and all pre-
5 judgment interest from the day such amounts were due and payable;

6 51. For the appointment of a receiver to receive, manage and distribute any and all
7 funds disgorged from Defendants and determined to have been wrongfully acquired by
8 Defendants as a result of violation of California Business and Professions Code sections
9 17200, *et seq.*;

10 52. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
11 California Code of Civil Procedure section 1021.5;

12 53. For injunctive relief to ensure compliance with this section, pursuant to
13 California Business and Professions Code sections 17200, *et seq.*; and

14 54. For such other and further relief as the court may deem just and proper.
15

16 Dated: April 26, 2022

JUSTICE LAW CORPORATION

17
18 By:  _____

19 Douglas Han
20 Shunt Tatavos-Gharajeh
21 Lizette Rodriguez
22 *Attorneys for Plaintiff*
23
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25
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27
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EXHIBIT 1

April 26, 2022

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: Allergan, Inc., Allergan USA, Inc., Allergan Sales, LLC, Zeltiq Aesthetics, Inc. and LanceSoft, Inc.

Dear Representative:

We have been retained to represent Earl Gandionco against Allergan, Inc., Allergan USA, Inc., Allergan Sales, LLC, Zeltiq Aesthetics, Inc. and LanceSoft, Inc. (hereinafter referred to as "Defendants").

Mr. Gandionco is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Gandionco may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Allergan, Inc. is a Delaware corporation located at 1 N. Waukegan Road, North Chicago, IL 60064.

Allergan USA, Inc. is a Delaware corporation located at 1 N. Waukegan Road, North Chicago, IL 60064.

Allergan Sales, LLC is a Delaware limited liability company located at 1 N. Waukegan Road, North Chicago, IL 60064.

Zeltiq Aesthetics, Inc. is a Delaware corporation located at 1 N. Waukegan Road, North Chicago, IL 60064.

LanceSoft, Inc. is a Virginia corporation located at 13454 Sunrise Valley Drive, Suite 120, Herndon, Virginia 20171.

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Defendants employed Mr. Gandionco as an hourly-paid non-exempt employee during the relevant time period in the State of California. Mr. Gandionco was hired through LanceSoft, Inc. and provided services to Defendants. Defendants directly controlled the wages, hours and/or working conditions of Mr. Gandionco and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Mr. Gandionco may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees of LanceSoft assigned by LanceSoft to perform work, and who did perform work, for Allergan, Inc.; Allergan USA, Inc.; Allergan Sales, LLC; or Zeltiq Aesthetics, Inc. (together, "Allergan Entities") at any of the Allergan Entities' facilities or work locations in the State of California.

Defendants failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements, and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Defendants has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 226, 226.7, 246 (l), 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Gandionco and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. Defendants failed to compensate Mr. Gandionco and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. Defendants also failed to include non-discretionary bonuses in Mr. Gandionco and other aggrieved employees' regular rate of pay for purposes of overtime compensation and sick pay. Therefore, Mr. Gandionco and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, Defendants routinely required Mr. Gandionco and other aggrieved employees to work through, interrupt, cut short, remain on-duty, and/or delay their meal and rest breaks to comply with Defendants' policies and expectations. Defendants failed to provide coverage to Mr. Gandionco and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Additionally, Defendants forced Mr. Gandionco and other aggrieved employees to work through meal and rest breaks in order to meet the demands of production, such that aggrieved employees frequently had no one available to cover their meal or rest breaks and forcing them to skip, cut short, and/or take their breaks late. Lastly, Defendants also failed to authorize and permit Mr. Gandionco and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, Defendants failed to compensate Mr. Gandionco and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Mr. Gandionco and other aggrieved employees' regular rate of pay.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, Defendants failed to pay Mr. Gandionco and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Defendants did not provide Mr. Gandionco and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Defendants were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr.

Gandionco and other aggrieved employees, (2) total hours worked by Mr. Gandionco and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Gandionco and other aggrieved employees (4) all deductions for Mr. Gandionco and other aggrieved employees, (5) net wages earned by Mr. Gandionco and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Gandionco and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Gandionco and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Gandionco and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Defendants failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Gandionco and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Defendants did not provide Mr. Gandionco and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, cleaning up their work areas, pre-shift preparatory work (such as checking and responding to emails, assigning duties for the day, and being debriefed on their daily tasks), and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Gandionco and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including using their personal cellular phones to communicate with supervisors and coworkers and inputting their work time.

We believe that Mr. Gandionco and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Gandionco will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of Defendants within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a long horizontal flourish extending to the right.

Douglas Han, Esq.

LWDA
April 26, 2022
Page 6 of 6

CC: (By E-mail Only):

Rick Bergstrom
rbergstrom@jonesday.com
c/o Allergan, Inc.; Allergan USA, Inc.; Allergan Sales, LLC; and Zeltiq Aesthetics, Inc.
Attorney for Allergan, Inc. et al.

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c/o LanceSoft, Inc.
Attorney for LanceSoft, Inc.

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is jkislow@justicelawcorp.com

On April 27, 2022, I served the foregoing document described as

CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Gandionco v. Allergan, Inc., et al.**
LWDA/Court Case No.: **LWDA Case No.: CM- 880564-22**
Court Case No.: STK-CV-UOE-2022-0003077
San Joaquin County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[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 April 27, 2022, at Pasadena, California.


Jillian Kislow