

March 5, 2025

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act
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LWDA Case No.:

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
*Whitaker v. Inogen, Inc.***

Gentlepersons:

This office represents Plaintiff Ashley Whitaker (“Plaintiff”) and other similarly situated aggrieved non-exempt employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants Inogen, Inc., and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff’s Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in Santa Barbara County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.



We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff's class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, address in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked, including time spent working during meal periods. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Because of the foregoing understatement of hours worked, Defendants also failed to pay Plaintiff and Aggrieved Employees proper overtime wages. Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Additionally, Defendants also paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay and vacation pay were calculated and paid.

Defendants had a common policy and/or practice of denying Plaintiff and Aggrieved Employees proper meal periods. Specifically, Plaintiff and Aggrieved Employees were required to work through their meal periods. Also, meal periods that Plaintiff and Aggrieved Employees did take, were late, all in violation of Labor Code and applicable Wage Orders. Similarly, Plaintiff and Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders. In addition, Defendants' timekeeping system had a "waive" meal period feature that

asked Employees if they wanted to waive “meal break 1” and “meal break 2” when they clocked out for the day. Defendants’ instructed Employees to “waive” both their meal periods every day in order to avoid paying meal period premiums for noncompliant meal periods.

Defendants have consistently failed to provide Plaintiff and Aggrieved Employees with paid, uninterrupted rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and total hours worked as discussed above. As a result, Aggrieved Employees’ wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9). The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Aggrieved Employees.

Defendants also unlawfully received and/or collected wages from Employees. In addition, Defendants’ timekeeping system had a “waive” meal period feature that asked Employees if they wanted to waive “meal break 1” and “meal break 2” when they clocked out for the day. Defendants’ instructed Employees to “waive” both their meal periods every day in order to avoid paying meal period premiums for noncompliant meal periods. As a result, Defendants’ automatically deducted thirty minutes of time and wages from Employees even when Employees performed work during their meal periods.

Moreover, Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Aggrieved Employees were not paid for hours worked during alleged meal periods, which were consistently denied. Accordingly, Plaintiff and Aggrieved Employees were required to work without pay. Additionally, Defendants did not pay Plaintiff and Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and Aggrieved Employees. In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is

determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also attorneys' fees and costs pursuant to Labor Code § 2699(k)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Plaintiff and Aggrieved Employees earned wages and overtime. Specifically, Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above including the time they worked while clocked out for meal breaks, caused Plaintiff and Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiff and Aggrieved Employees to overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring Aggrieved Employees to work during their meal periods. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates

for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Aggrieved Employees a reasonable protocol for correcting time records when Aggrieved Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Aggrieved Employees' detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also attorneys' fees and costs pursuant to Labor Code § 2699(k)(1).

Failure to Pay Vacation Wages

Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code § 227.3 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(k)(1).

Failure to Comply with Labor Code §§ 245 *et seq.* and 246

California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed to compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(l). Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(l), Defendants paid sick leave to Aggrieved Employees at a lower rate, in violation of the law. As a result of Defendants' conduct, Defendants have violated California Labor Code §§ 245 *et seq.* and 246. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 245 *et seq.* and 246. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code §§ 245 *et seq.* and 246 in connection with

Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.*, 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(k)(1).

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with off-duty meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with meal periods late and well after the fifth hour of work, or were otherwise not provided with the opportunity to take required meal periods.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely, in violation of the Labor Code and applicable Wage Orders. Upon information and belief, on shifts over ten hours, second meal periods were not provided. In addition, Defendants' timekeeping system had a "waive" meal period feature that asked Employees if they wanted to waive "meal break 1" and "meal break 2" when they clocked out for the day. Defendants' instructed Employees to "waive" both their meal periods every day in order to avoid paying meal period premiums for noncompliant meal periods. Defendants failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Defendants paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also attorneys' fees and costs pursuant to Labor Code § 2699(k)(1).

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid and uninterrupted rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Defendants also paid nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at

which they paid any rest period premiums when Defendants did attempt to pay them, resulting in further violations of section 226.7.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also attorneys' fees and costs pursuant to Labor Code § 2699(k)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees, by Defendants, failed to accurately account for wages, overtime, and premium pay for deficiently provided meal periods and rest breaks. Therefore, Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(k)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Timely Pay Wages in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, such as during interrupted or otherwise on-duty meal periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours she worked after eight hours into a shift or over forty in a work week and was not paid all double time owed either. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(k)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not properly recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also attorneys' fees and costs pursuant to Labor Code § 2699(k)(1).

Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221

Labor Code § 221 provides, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." As discussed above, Defendants have violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages. In addition, Defendants' timekeeping system had a "waive" meal period feature that asked Employees if they wanted to waive "meal break 1" and "meal break 2" when they clocked out for the day. Defendants' instructed Employees to "waive" both their meal periods every day in order to avoid paying meal period premiums for noncompliant meal periods. As a result, Defendants' automatically deducted thirty minutes of time and wages from Employees even when Employees performed work during their meal periods. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558. Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194, 2699(f)(2), and 2699.5, and also attorneys' fees and costs pursuant to Labor Code § 2699(k)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination or within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(k)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(k)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to

take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(k)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(k)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(k)(1);

(e) Failure to Provide Paid Sick Days: For Defendants' failure to provide Employees with all their required and earned sick days in violation of Labor Code §§ 245 *et seq.* and 246 the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(k)(1);

(f) Failure to Pay Vacation Wages: For Defendants' failure to provide Employees with all their vacation days in violation of Labor Code § 227.3 and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(k)(1);

(g) Unlawfully Collecting or Receiving Wages: For unlawfully collecting or receiving wages, under Labor Code § 221 seeking all civil penalties available and applicable under the Labor Code §§ 221 and 2699(f) and also for attorneys' fees and costs pursuant to Labor Code § 2699(k)(1);

(h) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(k)(1).

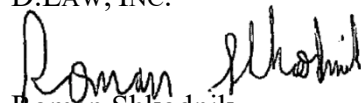
We have been constrained to initially move forward with the filing of the Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter therefore provides the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Inogen, Inc. and any other named Defendants and joint employers. To prevent the violations described herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC.


Roman Shkodnik

Cc: Inogen, Inc. by Certified Mail

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Attorneys for Plaintiff ASHLEY WHITAKER,
on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

ASHLEY WHITAKER, on behalf of herself
and others similarly situated,

Plaintiff,

vs.

INOGEN, INC., a Delaware corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code §
226.7;
4. Rest-Break Liability Under Labor Code §
226.7;
5. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code §§ 245 *et*
seq. and 246;
7. Reimbursement of Necessary Expenditures
Under Labor Code § 2802;
8. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5;
9. Violation of Labor Code § 221
10. Penalties Pursuant to Labor Code § 203; and
11. Violation of Business & Professions Code §
17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff ASHLEY WHITAKER, (hereinafter “Plaintiff”) on behalf of herself and all
2 others similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of herself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants INOGEN, INC., a
8 Delaware corporation; and DOES 1 through 50 (all defendants being collectively referred to
9 herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various
10 provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission
11 (IWC) and California Business & Professions Code, and seeks redress therefore.

12 2. Plaintiff is a resident of California and during the time period relevant to this
13 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
14 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
15 worked for Defendants in Santa Barbara County, and in other nonexempt positions, throughout
16 California and, and consistently worked at Defendants’ behest without being paid all wages due.
17 More specifically, Plaintiff and the other similarly situated Class members were employed by
18 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
19 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
20 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
21 subjected to the same policies and practices, and (3) endured similar violations at the hands of
22 Defendants as the other Employee Class members who served in similar and related positions.

23 3. Defendants required Plaintiff and the Employees in the Class to perform work
24 while remaining under Defendants’ control during meal and rest breaks. Defendants thus failed to
25 pay Plaintiff and the Class members for all hours worked. Defendants also failed to provide
26 Plaintiff and the Class with lawful meal and rest periods, as employees were not provided with the
27 opportunity to take timely, uninterrupted, and duty-free meal and rest periods as required by the
28 Labor Code.

1 **THE PARTIES**

2 **A. The Plaintiff**

3 4. Plaintiff ASHLEY WHITAKER has resided in California and during the time
4 period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee
5 within the State of California.

6 **B. The Defendants**

7 5. Defendant INOGEN, INC. is a Delaware corporation with its principle executive
8 offices in Goleta, California and has been listed as the employer on Plaintiff's paystubs and W2
9 during the relevant time period. INOGEN, INC. lists a Goleta, California address with the
10 California Secretary of State, and employs Class members in Santa Barbara County, including at
11 Defendants' offices and facilities in Goleta, California, and throughout California and conducts
12 business throughout California.

13 6. The true names and capacities, whether individual, corporate, associate, or
14 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
15 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
16 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
17 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
18 some manner for the unlawful acts referred to herein.

19 7. Plaintiff will seek leave of court to amend this Complaint to reflect the true names
20 and capacities of the Defendants designated herein as Does 1 through 50 when their identities
21 become known.

22 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
23 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
24 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
25 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
26 all respects as the employers or joint employers of Employees. Defendants, and each of them,
27 exercised control over the wages, hours or working conditions of Employees, or suffered or
28 permitted Employees to work, or engaged, thereby creating a common law employment

1 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
2 employed Employees.

3 **JURISDICTION AND VENUE**

4 9. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
6 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
7 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
8 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
9 obligations and liabilities giving rise to this lawsuit occurred at least in part in Santa Barbara
10 County and Defendants maintain and operate company offices and facilities in Santa Barbara
11 County, and employ Plaintiff and other Class members in Santa Barbara County and throughout
12 California.

13 **FACTUAL BACKGROUND**

14 10. The Employees who comprise the Class and Collective, including Plaintiff, are
15 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
16 Employees who work in nonexempt positions at the direction of Defendants in the State of
17 California. Plaintiff and the Class members were either not paid by Defendants for all hours
18 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
19 Plaintiff and Employees were not paid for all the overtime hours they worked, including time
20 spent working while clocked out for meal breaks. Plaintiff also contends that Defendants failed to
21 pay Plaintiff and the Class members all wages due and owing and failed to provide meal and rest
22 breaks, all in violation of various provisions of the California Labor Code and applicable Wage
23 Orders. Additionally, Defendants paid Plaintiff and Employees nondiscretionary commissions,
24 incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and
25 belief, Defendants failed to incorporate all remunerations, including nondiscretionary
26 commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the
27 calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore,
28 during times when Plaintiff and Employees worked overtime and received nondiscretionary

1 commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed
2 to pay all overtime wages by paying a lower overtime rate than required. Lastly, Defendants failed
3 to incorporate the prevailing wage rate into the regular rate of pay used to calculate and pay for
4 overtime and double time pay.

5 11. From at least four (4) years prior to the filing of this lawsuit and continuing to the
6 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
7 shift differentials, and/or nondiscretionary bonuses. However, upon information and belief,
8 Defendants failed to incorporate all remunerations, including nondiscretionary commissions,
9 incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the
10 regular rate of pay for purposes of calculating sick pay. Additionally, Defendants failed to
11 incorporate the prevailing wage rate into the regular rate of pay used to calculate sick pay.
12 Therefore, during times when Plaintiff and Employees worked overtime and received
13 nondiscretionary commissions, incentive pay, shift differentials, nondiscretionary bonuses, and/or
14 prevailing wages, Defendants failed to pay all sick pay by paying a lower overtime rate than
15 required.

16 12. From at least four (4) years prior to the filing of this lawsuit and continuing to the
17 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
18 shift differentials, and/or nondiscretionary bonuses. However, upon information and belief,
19 Defendants failed to incorporate all remunerations, including nondiscretionary commissions,
20 incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the
21 regular rate of pay for purposes of calculating vacation pay. Additionally, Defendants failed to
22 incorporate the prevailing wage rate into the regular rate of pay used to calculate vacation pay.
23 Therefore, during times when Plaintiff and Employees worked overtime and received
24 nondiscretionary commissions, incentive pay, shift differentials, nondiscretionary bonuses, and/or
25 prevailing wages, Defendants failed to pay all vacation pay by paying a lower overtime rate than
26 required.

1 13. During the course of Plaintiff and the Class members' employment with
2 Defendants, they were not paid all wages they were owed, including for all work performed and
3 for all overtime hours worked and were forced to work during their meal and rest breaks.

4 14. Throughout the course of Plaintiff and the Class members' employment with
5 Defendants, they were required to work during their meal and rest breaks which were not
6 compensated by Defendants in violation of the California Labor Code. Plaintiff and the Class
7 members were also not paid regular wages and overtime for the time they were required to
8 comply with other requirements imposed upon them, which they had to complete while working
9 through their meal breaks and without compensation. As a result, Plaintiff and the Class members
10 worked shifts over eight (8) hours in a day and over forty (40) hours in a work week, but they
11 were not paid at the appropriate overtime rate for all such hours, including by being required to
12 perform work duties and tasks without pay and while off-the-clock. As a result, Plaintiff and the
13 Class members worked substantial overtime hours during their employment with Defendants for
14 which they were not compensated, in violation of the California Labor Code, applicable IWC
15 Wage Orders.

16 15. As a result of the above described demands and pressures to work through breaks,
17 and the other wage violations they endured at Defendants' hands, Plaintiff and the Class members
18 were not properly paid for all wages earned and for all wages owed to them by Defendants,
19 including when working more than eight (8) hours in any given day and/or more than forty (40)
20 hours in any given week. As a result of Defendants' unlawful policies and practices, Plaintiff and
21 Class members incurred overtime hours worked for which they were not adequately and
22 completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and the
23 Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
24 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
25 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
26 Labor Code, applicable IWC Wage Orders.

27 16. Therefore, from at least four (4) years prior to the filing of this lawsuit and
28 continuing to the present, Defendants had a consistent policy or practice of failing to pay

1 Employees for all hours worked and failing to pay minimum wage for all time worked as required
2 by California Law.

3 17. Additionally from at least four (4) years prior to the filing of this lawsuit and
4 continuing to the present, Defendants had a consistent policy or practice of failing to pay
5 Employees overtime compensation at premium overtime rates for all hours worked in excess of
6 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
7 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
8 sections of IWC Wage Orders.

9 18. Additionally from at least four (4) years prior to the filing of this lawsuit and
10 continuing to the present, Defendants have required Employees to work shifts in excess of five (5)
11 hours without providing them with timely, off-duty meal periods of not less than thirty (30)
12 minutes and shifts in excess of ten (10) hours without providing them with second meal periods of
13 not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one hour of
14 wages at each Employee’s effective regular rate of pay, for each meal period that Defendants
15 failed to provide or deficiently provided. In addition, Defendants’ timekeeping system had a
16 “waive” meal period feature that asked Employees if they wanted to waive “meal break 1” and
17 “meal break 2” when they clocked out for the day. Defendants’ instructed Employees to “waive”
18 both their meal periods every day in order to avoid paying meal period premiums for
19 noncompliant meal periods.

20 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
21 present, Defendants have failed to provide Employees with paid rest breaks of not less than ten
22 (10) minutes for every work period of four (4) or more consecutive hours; nor did Defendant pay
23 Employees premium pay for each day on which requisite rest breaks were not provided or were
24 deficiently provided at one hour of wages at each Employee’s effective regular rate of pay, for
25 each rest period that Defendants failed to provide or deficiently provided.

26 20. From at least four (4) years prior to the filing of this lawsuit and continuing to the
27 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
28 performance of their job duties for Defendants including home internet usage and personal cell

1 phone usage, which were necessary to perform their duties under Defendants' employ in violation
2 of Labor Code § 2802.

3 21. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
4 continuing to the present, Defendants have consistently failed to keep accurate time and wage
5 records as required by California wage-and-hour laws.

6 22. Additionally, from at least four (4) years prior to filing of this lawsuit and
7 continuing to present, Defendants have unlawfully collected/received wages from Employees in
8 violation of Labor Code § 221.

9 23. Additionally, from at least four (4) years prior to filing of this lawsuit and
10 continuing to the present, Defendants have had a consistent policy of failing to pay all wages fur
11 and owed to Employees at the time of their termination or within seventy-two (72) hours of their
12 resignation, as required by California wage-and-hour laws.

13 24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
14 Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1,
15 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198, 1199, and 2802.

16 25. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
17 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
18 enjoyed from their violations of Labor Code.

19 **CLASS ALLEGATIONS**

20 26. Plaintiff brings this class action on behalf of herself and all others similarly situated
21 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
22 all individuals employed by Defendants as non-exempt employees within the State of California at
23 any time within four (4) years of the filing of this lawsuit.

24 27. Further, Plaintiff seeks to represent the following Subclasses composed of and
25 defined as follows:

26 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
27 compensated for all hours worked for Defendants at the applicable minimum wage.

28 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not

1 compensated for all hours worked for Defendants at the required rates of pay, including for all
2 hours worked in excess of eight in a day and/or forty in a week.

3 c. Subclass 3. Vacation Wages Subclass. All Class members who were not
4 compensated at the Employee's regular rate of pay for their vacation wages.

5 d. Subclass 4. Sick Pay Subclass. All Class members who were not compensated at
6 the Employee's regular rate of pay for their sick pay wages.

7 e. Subclass 5. Meal Period Subclass. All Class members who were subject to
8 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
9 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

10 f. Subclass 6. Rest Break Subclass. All Class members who were subject to
11 Defendants' policy and/or practice of failing to authorize and permit Employees to take
12 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
13 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

14 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to
15 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
16 by California wage-and-hour laws.

17 h. Subclass 8. Failure to Reimburse for Necessary Business Expenditures. All Class
18 members who were subject to Defendants' failure to reimburse for expenses necessarily incurred
19 in the performance of Employees job duties for Defendants.

20 i. Subclass 9. Unauthorized Deductions from Wages Subclass. All Class members
21 who were subject to Defendants' policy and/or practice of automatically deducting wages from
22 Employee's pay checks.

23 j. Subclass 10. Termination Pay Subclass. All Class members who, within the
24 applicable limitations period, either voluntarily or involuntarily separated from their employment
25 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
26 termination.

27 k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a
28

1 result of Defendants' business acts and practices, to the extent such acts and practices are found to
2 be unlawful, deceptive, and/or unfair.

3 28. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
4 modify the class description with greater particularity or further division into subclasses or
5 limitation to particular issues.

6 29. This action has been brought and may properly be maintained as a class action
7 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
8 of interest in litigation and proposed class is easily ascertainable.

9 **A. Numerosity**

10 30. The potential members of the class as defined are so numerous that joinder of all
11 the member of the class is impracticable. While the precise number of class members has not been
12 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
13 time period relevant to this lawsuit, employed more than 100 individuals within the State of
14 California.

15 31. Accounting for employee turnover during the relevant time period increases this
16 number substantially. Plaintiff alleges that Defendants' employment records will provide
17 information as to the number and location of all class members.

18 **B. Commonality**

19 32. There are questions of law and fact common to the class that predominate over any
20 questions affecting only individual class members. These common questions of law and fact
21 include:

- 22 a. Whether Defendants failed to pay Employees minimum wages;
- 23 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 24 c. Whether Defendants failed to pay Employees overtime as required under Labor
25 Code § 510;
- 26 d. Whether Defendants failed to pay Employees vacation wages as required under
27 Labor Code § 227.3;
- 28 e. Whether Defendants failed to pay Employees sick pay as required under Labor

Code § 245;

- f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- g. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- h. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- i. Whether Defendants failed to reimburse Employees for necessary business expenses;
- j. Whether Defendants violated Labor Code § 221 by automatically deducting/collecting wages from Employees;
- k. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- l. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- m. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

33. The claims of the named plaintiff are typical of those of the other Employees. Employees all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

34. Plaintiff will fairly and adequately represent and protect the interest of Employees. Counsel who represents Employees are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

35. A class action is superior to other available means for the fair and efficient

1 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
2 questions of law and fact common to all Employees predominate over any questions affecting only
3 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
4 Defendants' illegal policies or practices of failing to compensate Employees properly.

5 36. Class action treatment will allow those persons similarly situated to litigate their
6 claims in the manner that is most efficient and economical for the parties and the judicial system.
7 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

10 **(Against All Defendants)**

11 37. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 38. Defendants failed to pay Employees minimum wages for all hours worked.
14 Defendants had a consistent policy of misstating Employees time records and failing to pay
15 Employees for all hours worked. Employees would work hours and not receive wages, including
16 as alleged above in connection with working during meal breaks and not being paid for all
17 overtime hours worked. Defendants thus regularly failed to pay minimum wages to Plaintiff and
18 Class members. Moreover, Defendants did not pay Plaintiff and Employees at the applicable
19 minimum wage for all hours worked. Defendants' uniform pattern of unlawful wage and hour
20 practices manifested, without limitation, applicable to the Class as a whole, as a result of
21 implementing a uniform policy and practice that denied accurate compensation to Plaintiff and
22 the other members of the Class as to minimum wage pay.

23 39. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
24 states:

25 The minimum wage for employees fixed by the commission is the
26 minimum wage to be paid to employees, and the payment of a less
27 wage than the minimum so fixed is unlawful.
28

1 40. The applicable minimum wages fixed by the commission for work during the
2 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
3 therefore entitled to double the minimum wage during the relevant period.

4 41. The minimum wage provisions of California Labor Code are enforceable by private
5 civil action pursuant to California Labor Code § 1194(a) which states:

6 Notwithstanding any agreement to work for a lesser wage, any
7 employee receiving less than the legal minimum wage or the legal
8 overtime compensation applicable to the employee is entitled to
9 recover in a civil action the unpaid balance of the full amount of
this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees and costs of suit.

10 42. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
11 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

12 43. California Labor Code § 1194.2 also provides for the following remedies:

13 In any action under Section 1194 . . . to recover wages because of
14 the payment of a wage less than the minimum wages fixed by an
15 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

16 44. Defendants have the ability to pay minimum wages for all time worked and have
17 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
18 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

19 45. Wherefore, Employees are entitled to recover the unpaid minimum wages
20 (including double minimum wages), liquidated damages in an amount equal to the minimum
21 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
22 to California Labor Code § 1194(a).

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

25 **(Against All Defendants)**

26 46. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 47. By their conduct, as set forth herein, Defendants violated California Labor Code §

1 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
2 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
3 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
4 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
5 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
6 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
7 paying Employees wages for all hours worked including time spent working during meal breaks.
8 Moreover, Plaintiff alleges that Defendants failed to pay for all overtime hours worked and/or
9 paid overtime hours at the regular hourly rate instead of one and a half times the regular rate.
10 Employees regularly worked over 8 hours on a given day without receiving overtime
11 compensation.

12 48. Furthermore, on information and belief, Defendants did not pay Plaintiff and
13 Employees the correct overtime rate for the recorded overtime hours that they generated. In
14 addition to an hourly wage, Defendants paid Plaintiff and Employees nondiscretionary
15 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
16 belief, Defendants failed to incorporate all remunerations, including nondiscretionary
17 commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the
18 calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
19 Additionally, Defendants failed to incorporate the prevailing wage rate into the regular rate of
20 pay used to calculate and pay for overtime and double time pay overtime pay, double pay, sick
21 pay, vacation pay, and meal and rest break premiums.

22 49. Therefore, during times when Plaintiff and Employees worked overtime and
23 received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary
24 bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than
25 required.

26 50. Defendants' failure to pay compensation in a timely fashion also constituted a
27 violation of California Labor Code § 204, which requires that all wages shall be paid
28 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct

1 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
2 and overtime compensation earned by Employees. Each such failure to make a timely payment of
3 compensation to Employees constitutes a separate violation of California Labor Code § 204.

4 51. Employees have been damaged by these violations of California Labor Code §§
5 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

6 52. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
7 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
8 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
9 reasonable attorneys' fees and costs.

10 **THIRD CAUSE OF ACTION**

11 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

12 **(Against All Defendants)**

13 53. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 54. Employees regularly worked shifts greater than five (5) hours and greater than ten
16 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
17 more than five (5) hours without providing him or her with a meal period of not less than thirty
18 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
19 meal period of not less than thirty (30) minutes.

20 55. Defendants failed to provide Employees with compliant meal periods as required
21 under the Labor Code. Employees were required to work through their meal periods which they
22 were denied. Employees were also required to take meal periods after working well beyond the
23 five (5) hour shifts. Furthermore, Employees were regularly required to work for more than 10
24 hours in a given shift without receiving a second thirty (30) minute meal period as required by
25 law. In addition, Defendants' timekeeping system had a "waive" meal period feature that asked
26 Employees if they wanted to waive "meal break 1" and "meal break 2" when they clocked out for
27 the day. Defendants' instructed Employees to "waive" both their meal periods every day in order
28 to avoid paying meal period premiums for noncompliant meal periods.

56. Moreover, Defendants failed to compensate Employees for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Additionally, as detailed above, when Defendants did pay meal period premiums, they did so at the normal regular rate of pay without factoring in all forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

57. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, a sum to be proven at trial.

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

59. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift.

60. Defendants failed to provide Employees with timely, uninterrupted rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift.

61. Moreover, Defendants failed to compensate Employees for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a rest period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. Defendants failed to compensate the Employees in the Class for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage

1 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
2 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
3 or by otherwise incorrectly calculating the regular rate.

4 62. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
5 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
6 worked without the required rest breaks, a sum to be proven at trial.

7 **FIFTH CAUSE OF ACTION**
8 **FAILURE TO PAY VACATION WAGES**
9 **(Against All Defendants)**

10 63. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 64. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
13 employment policy provides for paid vacation and an employee is terminated without having
14 taken off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate
15 in accordance with said contract of employment or policy respecting eligibility or time served.

16 65. Defendants paid nondiscretionary commissions, incentive pay, shift differentials,
17 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
18 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.
19 Defendants also failed to incorporate the prevailing wage rate into the regular rate of pay used to
20 calculate and pay vacation wages.

21 66. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
22 Code § 227.3.

23 **SIXTH CAUSE OF ACTION**
24 **FAILURE TO COMPLY WITH LABOR CODE §§ 245 *ET SEQ.* AND 246**
25 **(Against All Defendants)**

26 67. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 68. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time

1 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
2 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
3 with the pay calculation under California Labor Code § 246(1).

4 69. Defendants paid nondiscretionary commissions, incentive pay, shift differentials,
5 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
6 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Defendants
7 also failed to incorporate the prevailing wage rate into the regular rate of pay used to calculate and
8 pay sick pay. Rather than calculating the amount of paid sick time due when sick time is used
9 according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick
10 leave to Employees at a lower rate, in violation of the law.

11 70. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
12 Code §§ 245 *et seq.* and 246.

13 **SEVENTH CAUSE OF ACTION**
14 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
15 **IN VIOLATION OF LABOR CODE § 2802**
16 **(Against All Defendants)**

17 71. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
18 full herein.

19 72. Under Labor Code § 2802(a), an employer must indemnify its employees for all
20 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
21 of his or her duties, or of his or her obedience to the directions of the employer.

22 73. Employees incurred necessary expenditures in the performance of their job duties
23 for Defendants, namely home internet usage and personal cell phone usage, which were necessary
24 to perform their duties under Defendants' employ. From four (4) years prior to the original filing
25 of this lawsuit and continuing to the present, Defendants consistently failed to reimburse
26 Employees for these necessarily incurred business expenses.

27 74. As a result of the unlawful acts of Defendants, Employees have been deprived of
28 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,

1 plus interest and penalties thereon, attorneys' fees, and costs.

2 **EIGHTH CAUSE OF ACTION**

3 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174**

4 **AND 1174.5**

5 **(Against All Defendants)**

6 75. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 76. California Labor Code § 1174 requires that all employers shall keep accurate time
9 and wage records for all employees. California Labor Code § 1174.5 further requires that any
10 employee suffering injury due to a willful violation of the aforementioned obligations may seek
11 damages, including civil penalties, from the employer.

12 77. During the course of Plaintiff's and Employees' employment, Defendants
13 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
14 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
15 overtime, and premium pay as discussed above.

16 78. Accordingly, Defendants are liable for civil penalties pursuant to the California
17 Labor Code § 1174.5. for the three (3) years prior to the filing of this Complaint.

18 **NINTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 221**

20 **(Against All Defendants)**

21 79. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 80. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
24 receive from an employee any party of wages theretofore paid by said employer to said
25 employee."

26 81. Defendants unlawfully received and/or collected wages from Employees.
27 Defendants' timekeeping system had a "waive" meal period feature that asked Employees if they
28 wanted to waive "meal break 1" and "meal break 2" when they clocked out for the day.

1 Defendants' instructed Employees to "waive" both their meal periods every day in order to avoid
2 paying meal period premiums for noncompliant meal periods. As a result, Defendants'
3 automatically deducted thirty minutes of time and wages from Employees even when Employees
4 performed work during their meal periods.

5 82. As a direct and proximate cause of the unauthorized deductions, Employees have
6 been damages, in an amount to be determined at trial.

7 **TENTH CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE § 203**
9 **(Against All Defendants)**

10 83. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 84. Numerous Employees are no longer employed by Defendants; they either quit
13 Defendants' employ or were fired therefrom.

14 85. Defendants failed to pay these Employees all wages due and certain at the time of
15 termination or within seventy-two (72) hours of resignation.

16 86. The wages withheld from these Employees by Defendants remained due and owing
17 for more than thirty (30) days from the date of separation of employment.

18 87. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
19 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
20 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
21 to thirty (30) days from the date they were due.

22 **ELEVENTH CAUSE OF ACTION**
23 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***
24 **(Against All Defendants)**

25 88. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 89. Plaintiff, on behalf of herself, Employees, and the general public, brings this claim
28 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in

1 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
2 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
3 meaning of Code of Civil Procedure § 1021.5.

4 90. Plaintiff is a “person” within the meaning of Business & Professions Code
5 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
6 relief, restitution, and other appropriate equitable relief.

7 91. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
8 business practices.

9 92. Wage-and-hour laws express fundamental public policies. Paying employees their
10 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
11 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
12 to enforce minimum labor standards, to ensure that employees are not required or permitted to
13 work under substandard and unlawful conditions, and to protect law-abiding employers and their
14 employees from competitors who lower costs to themselves by failing to comply with minimum
15 labor standards.

16 93. Defendants have violated statutes and public policies. Through the conduct alleged
17 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
18 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
19 violation of Business & Professions Code § 17200 *et seq.* Defendants’ conduct has deprived
20 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
21 privileges guaranteed to all employees under the law.

22 94. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
23 violation of the Business & Professions Code § 17200 *et seq.*

24 95. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
25 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
26 care should have known that their conduct was unlawful; therefore their conduct violates the
27 Business & Professions Code § 17200 *et seq.*

28 96. As a proximate result of the above-mentioned acts of Defendants, Employees have

1 been damaged, in a sum to be proven at trial.

2 97. Unless restrained by this Court, Defendants will continue to engage in such
3 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
4 should make such orders or judgments, including the appointment of a receiver, as may be
5 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
6 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
7 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
8 have unlawfully failed to pay.

9 **RELIEF REQUESTED**

10 WHEREFORE, Plaintiff prays for the following relief:

- 11 1. For an order certifying this action as a class action;
- 12 2. For compensatory damages in the amount of the unpaid minimum wages for work
13 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
14 the filing of this action, as may be proven;
- 15 3. For liquidated damages in the amount equal to the unpaid minimum wage and
16 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 17 4. For compensatory damages in the amount of the hourly wage made by Employees
18 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
19 years prior to the filing of this action, as may be proven;
- 20 5. For compensatory damages in the amount of the hourly wage made by Employees
21 for each day requisite rest breaks were not provided or were deficiently provided and where no
22 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
23 be proven;
- 24 6. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
25 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 26 7. For penalties pursuant to Labor Code § 227.3, as may be proven;
- 27 8. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;
- 28 9. For penalties pursuant to Labor Code § 1174.5, as may be proven;

1 10. For restitution and/or damages for all amounts unlawfully withheld from the wages
2 of all class members in violation of Labor Code § 221, as may be proven;

3 11. For restitution for unfair competition pursuant to Business & Professions Code
4 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

5 12. For compensatory damages in the amount of all previously unreimbursed business
6 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
7 from four (4) years prior to the original filing of this action, as may be proven;

8 13. For an order enjoining Defendants and their agents, servants, and employees, and
9 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
10 duties adumbrated in this Complaint;

11 14. For all general, special, and incidental damages as may be proven;

12 15. For an award of pre-judgment and post-judgment interest;

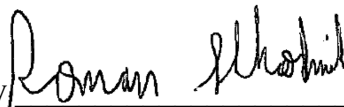
13 16. For an award providing for the payment of the costs of this suit;

14 17. For an award of attorneys' fees; and

15 18. For such other and further relief as this Court may deem proper and just.

16
17 DATED: March 5, 2025

D.LAW, INC.

18
19 By 

David Yeremian
Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
ASHLEY WHITAKER
and the putative class

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DATED: March 5, 2025

By Roman Shohid

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COMPLAINT