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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF LOS ANGELES**

16 TYRA LYNCH, on behalf of herself and all
17 others similarly situated,

18 Plaintiff,

19 v.

20 AERO BENDING COMPANY, a California
21 Corporation; and DOES 1-50, inclusive.

22 Defendants.

CASE NO.: 23STCV04344

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT FOR:**

- (1) FAILURE TO PAY ALL OVERTIME WAGES;
- (2) FAILURE TO PAY ALL SICK TIME;
- (3) MEAL PERIOD VIOLATIONS;
- (4) REST PERIOD VIOLATIONS;
- (5) WAGE STATEMENT VIOLATIONS;
- (6) WAITING TIME PENALTIES;
- (7) UNFAIR COMPETITION; and
- (8) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Tyra Lynch (“Plaintiff”), on behalf of herself and all other similarly situated non-
2 exempt employees, alleges and complains of Defendant Aero Bending Company and DOES 1 to 50
3 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Aero Bending Company manufactures specialty tube assemblies for
6 aerospace and defense programs. Plaintiff brings this class and PAGA representative action against
7 Defendants for alleged violations of the California Labor Code and Business and Professions Code.

8 2. As set forth below, Plaintiff alleges that Defendants failed to pay for all overtime wages
9 by failing to include all forms of compensation when calculating the “regular rate of pay” used in
10 payment of overtime wages. Similarly, Plaintiff alleges that Defendants failed to pay all sick days at
11 the legal “regular rate of pay.” Plaintiff further alleges that Defendants’ meal and rest period policies
12 and practices did not allow and permit all compliant and timely meal and rest periods or pay premium
13 wages at the “regular rate of pay” in lieu thereof. Finally, Plaintiff alleges that Defendants failed to
14 provide non-exempt employees with accurate written itemized wage statements and failed to timely
15 pay all final wages upon separation of employment.

16 3. Based on these alleged Labor Code violations, Plaintiff now brings this class and
17 PAGA representative action to recover unpaid wages, restitution, penalties, and other related relief
18 on behalf of herself and all others similarly situated.

19 **JURISDICTION AND VENUE**

20 4. Plaintiff, on behalf of herself and all other similarly situated employees, hereby brings
21 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-
22 203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1197.1, 1194, 1199, 2268
23 *et. seq.* and, applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to
24 seeking declaratory relief and restitution pursuant to California Business and Professions Code §
25 17200, *et. seq.*

26 5. This class action is brought pursuant to California Code of Civil Procedure § 382.

27 6. This Court has jurisdiction over Defendants’ violations of the California Labor Code
28 and applicable Wage Orders because the amount in controversy exceeds this Court’s jurisdictional

1 minimum.

2 7. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
3 §§ 395(a) and 395.5, Defendants own and/or operate a facility within the County of Los Angeles,
4 and/or otherwise are found within the County of Los Angeles and Defendants are within the
5 jurisdiction of this Court for purposes of service of process.

6 **PARTIES**

7 8. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a
8 California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt
9 employee in Palmdale, California.

10 9. Plaintiff is informed and believes and thereon alleges that Defendant Aero Bending
11 Company is a California corporation authorized to and doing business in California and is and/or was
12 the legal employer of Plaintiff and the Class Members during the applicable statutory periods.
13 Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has
14 been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 221,
15 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1194.2, 1197.1, 1199, 2268 *et. seq.*
16 and the California Business and Professions Code § 17200 *et seq.*, and applicable Wage Orders.

17 10. Plaintiff is informed and believes, and based thereon alleges, that during the four years
18 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
19 do) business in the State of California, County of Los Angeles.

20 11. Plaintiff does not know the true names or capacities, whether individual, partner, or
21 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
22 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
23 amend this Complaint when such true names and capacities are discovered.

24 12. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious
25 defendants, whether individual, partners, or corporate, were responsible in some manner for the acts
26 and omissions alleged herein, and proximately caused Plaintiff and the Classes to be subject to the
27 unlawful employment practices alleged herein.

13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

14. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

COMMON FACTUAL ALLEGATIONS

15. Defendant manufactures specialty tube assemblies for aerospace and defense programs in Palmdale, California. The company offers customized tube bending, welding, torch brazing, complete sheet metal support, waterjet cutting, and computer numerical control machining services, providing cost-effective solutions per client specifications.

16. Defendants employed Plaintiff as a non-exempt employee with the title of “Cert Prep.” Plaintiff and other aggrieved employees (including, but not limited to, welder, estimator, quality inspector, drivers, manufacturing employees, and all other non-exempt positions) were responsible for all aspects of Defendants’ services across California.

17. At all relevant times, Plaintiff and the other aggrieved employees were subjected to the same systemic violations as well as policies, procedures, and practices, working conditions, and

18. First, at all relevant times, Plaintiff and other non-exempt employees were not properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek. Although Plaintiff and other non-exempt employees regularly worked overtime hours, they were not compensated at one and one-half times their “regular rate of pay”

1 because Defendants failed to include all forms of compensation, including, but not limited to, shift
2 differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration when
3 calculating the “regular rate of pay” used for payment of overtime wages.

4 19. Under the California Labor Code (as well as the FLSA), courts have consistently held
5 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
6 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
7 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
8 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
9 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California
10 and federal law on the grounds that Defendant improperly calculated overtime by excluding annual
11 bonuses paid to employees from the “regular rate of compensation”].)

12 20. By their policy of requiring Plaintiff and the other non-exempt employees to work in
13 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
14 them at the lawful rate of one-half (1 1/2) their “regular rate of pay,” Defendants willfully violated
15 the provisions of Labor Code § 510 and the applicable Wage Orders.

16 21. Accordingly, and to the extent permitted by law, Plaintiff and other non-exempt
17 employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204,
18 210, 510, and 1197.1.

19 22. Similarly, at all relevant times, Defendants failed in their obligation to provide Plaintiff
20 and other non-exempt employees the legally required paid sick days at the legal “regular rate of pay”
21 pursuant to Labor Code §§ 246(a),(b).

22 23. Pursuant to Labor Code § 246(a),(b), “[a]n employee who, on or after July 1, 2015,
23 works in California for the same employer for 30 or more days within a year from the commencement
24 of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
25 worked, beginning at the commencement of employment.” In addition, Labor Code § 246(l)(1)
26 provides that paid sick time for non-exempt employees must be “calculated in the same manner as
27 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not
28 the employee actually works overtime in that workweek.”

1 24. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
2 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
3 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §
4 246(i) requires employers to “provide an employee with written notice that sets forth the amount of
5 paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on
6 either the employee’s itemized wage statement described in Labor Code § 226 or in a separate writing
7 provided on the designated pay date with the employee’s payment of wages.”

8 25. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
9 other non-exempt employees the legally required paid sick days at the “regular rate of pay” pursuant
10 to Labor Code §§ 246(a), (b). Indeed, Defendants paid sick time at the base rate of pay, rather than
11 the “regular rate of pay” as required by Labor Code §§ 246(l)(1-2). As a result, Defendants are liable
12 for all unpaid sick pay wages, and associated penalties.

13 26. Moreover, at all relevant times, Plaintiff and other non-exempt employees were denied
14 compliant and timely uninterrupted 30-minute off-duty meal periods as mandated by California law.
15 Due to Defendants’ uniform meal period policies/practices and uniform operational requirements,
16 Plaintiff and other non-exempt employees were often unable to take timely and uninterrupted 30-
17 minute first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other
18 non-exempt employees worked in excess of 10.0 hours in a shift, they were not always allowed and
19 permitted to take a mandated second meal period before the end of the tenth hour of work in violation
20 of the Labor Code and applicable Wage Orders.

21 27. Additionally, Plaintiff and other non-exempt employees were not properly paid meal
22 period premiums for missed or non-compliant meal periods at the “regular rate of pay” pursuant to
23 *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code § 226.7.

24 28. Accordingly, due to Defendants’ uniform meal period policies and/or practices,
25 Plaintiff and other non-exempt employees were regularly denied legally compliant meal periods in
26 violation of Labor Code §§ 226.7, 512, 516, and applicable Wage Orders.

27 29. Next, at all relevant times, Plaintiff and other non-exempt employees were not provided
28 with all uninterrupted net 10-minute rest periods for every four hours worked, or major fraction

1 thereof due to Defendants' uniform rest period policies/practices, work demands, and operational
2 requirements. As a result, Plaintiff and other non-exempt employees were and are often unable to
3 take an uninterrupted net 10-minute duty-free rest periods for every major fraction of four hours
4 worked. This includes a second rest period for shifts in excess of six hours and a third rest period for
5 shifts in excess of 10 hours in a workday. Moreover, Defendant had a rest break policy that required
6 non-exempt employees to remain on the premises during rest periods, thereby failing to relieve non-
7 exempt employees from all control. Despite Defendants' claim that all employees are relieved of all
8 duties during their rest breaks, Defendants still exert control on employees by requiring them to
9 remain on site.

10 30. By not relieving all non-exempt employees of all duties during rest periods, Defendants
11 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
12 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all
13 duties and relinquish control over how employees spend their time."]. In *Augustus*, the California
14 Supreme Court expressly rejected the employers' assertion that it could provide an on-duty rest period
15 to employees who worked as security guards and further explained "that employers [must] relinquish
16 any control over how employees spend their break time and relieve their employees of all duties." *Id.*

17 31. Each time Plaintiff and other non-exempt employees were unable to take a compliant
18 rest period, Defendants failed and continue to fail to adequately pay rest period premium payments
19 at the "regular rate of pay" as required by Labor Code § 226.7.

20 32. Accordingly, due to Defendants' uniform rest period policies/practices and operational
21 requirements, Plaintiff and other non-exempt employees were also regularly denied legally compliant
22 rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

23 33. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for
24 all minimum and overtime wages, sick pay, and meal and rest period premiums at the "regular rate
25 of pay," Defendants issued wage statements that failed to accurately identify the gross wages earned,
26 the total hours worked, the net wages earned, and the correct corresponding number of hours worked
27 at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

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

35. Consequently, because Defendants failed to comply with Labor Code § 226(a), Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

36. Finally, because of, Defendants' failure to pay all minimum and overtime wages, and meal and rest period premiums and sick pay at the "regular rate of pay," Defendants also failed and continue to fail to pay other non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 201-203.

CLASS ACTION ALLEGATIONS

37. Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

All non-exempt employees who work or worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Class”);

All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift, during the four years immediately preceding the filing of the Complaint through the date of trial. (“Overtime Subclass”);

All employees who work or worked for Defendants in California, during the one year immediately preceding the filing of the Complaint through the date of trial. (“Wage Statement Subclass”)

All employees who work or worked for Defendants in California, and who left their employ during the three years immediately preceding the filing of the Complaint through the date of trial. (“Waiting Time Penalty Subclass”) (collectively “the Classes”)

1 38. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
3 unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one
4 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of
5 Defendants' employment and payroll records.

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

10 1. Whether Defendants' pay policies/practices resulted in a failure to pay all overtime
11 wages at the "regular rate of pay" because Defendants failed to include all forms of compensation,
12 including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other
13 forms of remuneration;

14 2. Whether Defendants' payroll policies/practices resulted in a failure to pay all sick pay
15 at the "regular rate of pay";

16 3. Whether Defendants provided legally compliant meal and rest periods or proper
17 compensation at the "regular rate of pay" in lieu thereof to members of the Class;

18 4. Whether Defendants furnished legally compliant wage statements to members of the
19 Wage Statement Subclass pursuant to Labor Code § 226(a); and

20 5. Whether the timing and amount of final wages paid to members of the Waiting Time
21 Penalty Subclass at the time of separation from employment were unlawful.

22 40. **Predominance of Common Questions:** Common questions of law and fact
23 predominate over questions that affect only individual members of the Classes. The common
24 questions of law set forth above are numerous and substantial and stem from Defendants' policies
25 and/or practices applicable to each individual class member, such as Defendants' failure to pay for
26 all overtime wages and sick pay at the "regular rate" including all forms of compensation,
27 Defendants' failure to provide all compliant meal and rest periods or compensation at the "regular
28 rate of pay" in lieu thereof, and Defendants' resulting failure to provide accurate itemized wage

1 statements and to pay for all wages due upon separation of employment. As such, the common
2 questions predominate over individual questions concerning each class member's showing as to his
3 or her eligibility for recovery or the amount of his or her damages.

4 41. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
5 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
6 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
7 Plaintiff, like the members of the Classes was deprived of overtime wages and sick pay at the "regular
8 rate," was deprived of meal and rest period premium wages, was subject to Defendants' uniform meal
9 and rest period policies/practices, was not provided accurate itemized wage statements, and was not
10 paid all wages owed upon separation of employment.

11 42. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
12 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
13 attorneys are ready, willing, and able to represent the members of the Classes fully and adequately.
14 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
15 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
16 members of the Classes.

17 43. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
18 important public interest in establishing minimum working conditions and standards in California.
19 These laws and labor standards protect the average working employee from exploitation by
20 employers who have the responsibility to follow the laws and who may seek to take advantage of
21 superior economic and bargaining power in setting onerous terms and conditions of employment. The
22 nature of this action and the format of laws available to Plaintiff and members of the Classes make
23 the class action format a particularly efficient and appropriate procedure to redress the violations
24 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
25 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
26 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

27 44. Moreover, requiring each member of the Classes to pursue an individual remedy would
28 also discourage the assertion of lawful claims by employees who would be disinclined to file an action

1 against their former and/or current employer for real and justifiable fear of retaliation and permanent
2 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
3 the individual class members, even if possible, would create a substantial risk of inconsistent or
4 varying verdicts or adjudications with respect to the individual class members against Defendants
5 herein; and which would establish potentially incompatible standards of conduct for Defendants;
6 and/or legal determinations with respect to individual class members which would, as a practical
7 matter, be dispositive of the interest of the other class members not parties to adjudications or which
8 would substantially impair or impede the ability of the class members to protect their interests.
9 Further, the claims of the individual members of the class are not sufficiently large to warrant
10 vigorous individual prosecution, considering all of the concomitant costs and expenses attending
11 thereto. As such, the Classes identified in Paragraph 34 are maintainable as Classes under § 382 of
12 the Code of Civil Procedure.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY ALL OVERTIME WAGES**

15 **(AGAINST ALL DEFENDANTS)**

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

17 46. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194,
18 and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
19 hours worked and provide a private right of action for the failure to pay all overtime compensation
20 for overtime work performed.

21 47. At all times relevant herein, Defendants were required to properly pay Plaintiff and
22 members of the Classes for all overtime hours worked pursuant to California Labor Code § 1194 and
23 the applicable Wage Orders.

24 48. Section 3 of the applicable Wage Order requires an employer to pay an employee “one
25 and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per
26 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
27 employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve
28 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in

1 the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate
2 Plaintiff or members of the Classes at one and one-half times their regular rate of pay for such hours.

3 49. Defendants failed to conform their pay practices to the requirements of the law. This
4 unlawful conduct includes Defendants' failure to include all forms of compensation, including, but
5 not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of
6 remuneration when calculating the "regular rate of pay" used in payment of overtime wages, all of
7 which resulted in Plaintiff and the Classes not being paid all overtime wages owed.

8 50. The foregoing policies and practices are unlawful and create entitlement to recovery
9 by Plaintiff and the members of the Classes in a civil action for the unpaid amount of overtime wages,
10 including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor
11 Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure §
12 1021.5.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY ALL SICK TIME**

15 **(AGAINST ALL DEFENDANTS)**

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

17 52. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
18 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid at
19 the regular rate, including all forms of compensation/remuneration.

20 53. At all times relevant herein, Defendants were required to properly pay Plaintiff and
21 members of the Classes for all accrued sick leave taken, pursuant to California Labor Code § 246.

22 54. Defendants failed to conform their pay practices to the requirements of the law. This
23 unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of
24 failing to include all forms of compensation, including but not limited to shift differentials, non-
25 discretionary bonuses, and other forms of remuneration into the calculation of the "regular rate of
26 pay," which resulted in Plaintiff and the Classes not being paid all sick time wages owed.

27 55. The foregoing policies and practices are unlawful and allow recovery by Plaintiff and
28 the members of the Classes in a civil action for the unpaid amount of sick time wages, including

1 interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 246,
2 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

3 **THIRD CAUSE OF ACTION**

4 **MEAL PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

7 57. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
8 their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff
9 and members of the Class, with all required meal periods in accordance with the mandates of the
10 California Labor Code and applicable Wage Orders, for the reasons set forth in the Common
11 Allegations section of this Complaint.

12 58. Despite Defendants' violations, Defendants have not paid an additional hour of pay at
13 the "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay
14 for each violation, in accordance with *Ferra* and Labor Code § 226.7.

15 59. As a result, Defendants are responsible for paying premium compensation for meal
16 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
17 applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

18 **FOURTH CAUSE OF ACTION**

19 **REST PERIOD VIOLATIONS**

20 **(AGAINST ALL DEFENDANTS)**

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

22 61. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish
23 the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for
24 each four (4) hour period worked, or major fraction thereof.

25 62. Due to their unlawful rest period policy and practices, Defendants did not authorize
26 and permit Plaintiff and members of the Class to take all rest periods to which they were legally
27 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the
28 "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay for

1 each violation, in accordance with California Labor Code § 226.7.

2 63. The foregoing violations create an entitlement to recovery by Plaintiff and members
3 of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest
4 thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§
5 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

8 **(AGAINST ALL DEFENDANTS)**

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

10 65. Labor Code 226(a) states in pertinent part the following:

11 “(a) An employer, semimonthly or at the time of each payment of wages,
12 shall furnish to his or her employee, either as a detachable part of the check,
13 draft, or voucher paying the employee’s wages, or separately if wages are
14 paid by personal check or cash, an accurate itemized statement in writing
15 showing (1) gross wages earned, (2) total hours worked by the employee,
16 (3) the number of piece-rate units earned and any applicable piece rate if the
17 employee is paid on a piece-rate basis, (4) all deductions, provided that all
18 deductions made on written orders of the employee may be aggregated and
19 shown as one item, (5) net wages earned, (6) the inclusive dates of the
20 period for which the employee is paid, (7) the name of the employee and
21 only the last four digits of his or her social security number or an employee
22 identification number other than a social security number, (8) the name and
23 address of the legal entity that is the employer, and (9) all applicable hourly
24 rates in effect during the pay period and the corresponding number of hours
25 worked at each hourly rate by the employee.”

26 66. As set forth above, during the Class Period, Defendants issued and continue to issue
27 wage statements to its employees including Plaintiff and members of the Wage Statement Subclass,
28 which are inadequate under Labor Code Section 226(a).

67. As a result of Defendants failure to pay Plaintiff and the Wage Statement Subclass for
all overtime wages, and missed meal and rest period premiums at the appropriate legal rate,
Defendants failed to include required information on Plaintiff and the Wage Statement Subclass’
wage statements, including, but not limited to, the gross wages earned, the net wages earned in
violation of Labor Code section 226(a)(1,2,5, and 9).

68. Defendants' failure to comply with section 226(a) of the Labor Code was knowing and intentional.

69. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

71. The actionable period for this cause of action is three years prior to the filing of this Complaint through the present, and on-going until the violation is corrected, or the class is certified.

72. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

73. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

74. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked, including all overtime wages, sick pay wages, and their meal and rest period premiums at the “regular rate of pay,” prior to or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

75. As a result, Defendants are liable to the Waiting Time Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant to Labor Code § 203. *See, e.g.,* DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 77. Defendants have engaged and continue to engage in unfair and/or unlawful business
6 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
7 failing to pay overtime wages and sick time by failing to properly calculate the “regular rate of pay,”
8 by failing to provide legally required meal and rest periods or pay premium payments at the “regular
9 rate of pay” in lieu thereof, by failing to provide accurate wage statements, and by failing to pay all
10 earned wages at the time of separation from employment.

11 78. Defendants’ utilization of these unfair and/or unlawful business practices deprives
12 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
13 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
14 Defendants’ competitors who have been and/or are currently employing workers and attempting to
15 do so in honest compliance with applicable wage and hour laws.

16 79. Because Plaintiff is a victim of Defendants’ unfair and/or unlawful conduct alleged
17 herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of
18 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
19 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

20 80. The acts complained of herein occurred within the last four years immediately
21 preceding the filing of the Complaint in this action.

22 81. Plaintiff was compelled to retain the services of counsel to file this court action to
23 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
24 Defendants’ current hourly non-exempt employees and to enforce important rights affecting the
25 public interest. Plaintiff has thereby incurred the financial burden of attorneys’ fees and costs, which
26 she is entitled to recover under Code of Civil Procedure § 1021.5.

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28 ///

1 **EIGHT CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 83. Defendants have committed several Labor Code violations against Plaintiff and
6 other non-exempt employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
7 § 2698 *et seq.*, acting on behalf of herself and other non-exempt employees from February 28, 2022,
8 to the present, brings this representative action against Defendants to recover the civil penalties due
9 to Plaintiff, other similarly non-exempt employees, and the State of California according to proof
10 pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial
11 violation and (2) \$200 for each subsequent violation per employee per pay period for those violations
12 of the Labor Code for which no civil penalty is specifically provided based on the following Labor
13 Code violations:

14 a. Failing to pay all overtime and sick time wages at the “regular rate of pay” because
15 of Defendants’ policies/practices, in violation of Labor Code §§ 204, 210, 510, 558, 1174, 1194, and
16 the applicable Wage Orders;

17 b. Failing to provide Plaintiff and other non-exempt employees with all of their
18 statutorily mandated meal or rest periods or compensation at the “regular rate of pay” in lieu thereof
19 in violation of Labor Code §§ 204, 226.7, 510, 512, 516, 558, 1194 1198, and applicable Wage
20 Orders;

21 c. Failing to timely compensate Plaintiff and other non-exempt employees with all
22 earnings during their employment and at their separation of employment in violation of Labor Code
23 §§ 201-204, 210, and 256; and

24 d. Failing to furnish Plaintiff and other non-exempt employees with complete,
25 accurate, itemized wage statements and maintain employment records in violations of Labor Code §
26 226(a), 226.3, and 1174.

27 84. Plaintiff has notified Defendant Aero Bending Company, via certified mail, and the
28 California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s

1 violations of the California Labor Code § 2698 *et seq.*, with respect to violations of the California
2 Labor Code identified in Paragraph 83(a)-(e). Now that sixty-five days have passed from Plaintiff
3 notifying Defendant and the LWDA of these violations, Plaintiff will have exhausted his
4 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
5 to these violations.

6 85. Plaintiff was compelled to retain the services of counsel to file this court action to
7 protect their interests and the interests of other non-exempt employees, and to assess and collect the
8 civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which she
9 is entitled to receive under California Labor Code § 2698 *et seq.*

10 **PRAYER FOR RELIEF**

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

- 13 1. For an order certifying the proposed Classes;
- 14 2. For an order appointing Plaintiff as representative of the Classes;
- 15 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 16 4. Upon the First Cause of Action, for compensatory, consequential, general and
17 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 18 5. Upon the Second Cause of Action, for compensatory, consequential, general and
19 special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199;
- 20 6. Upon the Third Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 22 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
23 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 24 8. Upon the Fifth Cause of Action, penalties pursuant to Labor Code § 226(a), and
25 reasonable costs and attorneys' fees;
- 26 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
27 Labor Code §§ 201-203;

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

4 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other non-
5 exempt aggrieved employees, and the State of California according to proof pursuant to Labor Code
6 § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
7 subsequent violation per employee per pay period for those violations of the Labor Code for which
8 no civil penalty is specifically provided under the Labor Code;

9 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
10 § 218.6 and Civil Code §§ 3287 and 3289;

11 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
12 218.5, 226, 1194, 2802, and Code of Civil Procedure § 1021.5; and

13 14. For such other relief that the Court may deem just and proper.
14

15 Dated: March 25, 2024

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

16
17
18 By: _____

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Classes
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the action; my business address is 1901 Avenue of the Stars, Suite
450, Los Angeles, California 90067.

5 On March 26, 2024, I served the following document(s) described as **FIRST AMENDED**
6 **CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action by placing
true copies thereof enclosed in sealed envelopes addressed as follows:

7 Dawn M. Irizarry, Esq.
8 dirizarry@cdflaborlaw.com
9 Charanjit "CJ" Singh, Esq.
10 csingh@cdflaborlaw.com
CDF Labor Law LLP
707 Wilshire Blvd., Suite 5150
Los Angeles, CA 90017

11 Leigh A. White, Esq.
12 lwhite@cdflaborlaw.com
13 CDF Labor Law LLP
18300 Von Karman Ave., Suite 800
Irvine, CA 92612

14 **Counsel for defendant Aero Bending**
15 **Company**

16 **BY ELECTRONIC SERVICE (via electronic filing service provider):** I caused the
17 document(s) to be electronically transmitted to Case Anywhere, an electronic filing service provider,
at www.caseanywhere.com pursuant to the Court's Order Authorizing Electronic Service governing
18 the matter entitled *Tyra Lynch v. Aero Bending Company*, Case No. 23STCV04344, mandating
electronic service. The transmission was reported as complete and without error to the addressees
as stated on the above service list.

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

21 Executed on March 26, 2024, at Los Angeles, California.

22
23 /s/ Cynthia Garcia
24 Cynthia Garcia
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