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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

Attorneys for Plaintiff LYNA HENDERSON,
on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

LYNA HENDERSON, an individual on
behalf of herself and all others similarly
situated,

Plaintiff,

vs.

BIOLEGEND, INC., a California
corporation; PERKINELMER U.S., LLC, a
Delaware limited liability company;
PERKINELMER, INC., a business entity of
unknown form; PERKINELMER, a business
entity of unknown form; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2024-00010689-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:

Hon. Carolyn Caietti

Dept.: C-70

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Under Labor Code § 510;
3. Failure to Comply with Labor Code § 245 *et seq.* and 246;
4. Meal Period Liability Under Labor Code § 226.7;
5. Rest-Break Liability Under Labor Code § 226.7;
6. Failure to Provide Accurate Wage Statements Under Labor Code § 226(a);
7. Failure to Timely Pay Wages Upon Termination Under Labor Code § 203;
8. Failure to Reimburse Necessary Business Expenses § 2802;
9. Violation of Business & Professions Code § 17200 *et seq.*; and
10. Penalties under PAGA Labor Code § 2698

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff LYNA HENDERSON (“Plaintiff”) brings this action on behalf of herself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants BIOLEGEND, INC., a California corporation; PERKINELMER U.S., LLC, a Delaware limited liability company; PERKINELMER, INC., a business entity of unknown form; PERKINELMER, a business entity of unknown form; and DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”).

2. Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the California Business & Professions Code, and seeks redress for these violations.

3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Class Members who served in similar and related positions.

THE PARTIES

A. The Plaintiff

4. Plaintiff LYNA HENDERSON resides in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant BIOLEGEND, INC. is a California corporation and lists its principal address with the California Secretary of State in San Diego, California. BIOLEGEND, INC. is listed as an employer on Plaintiff’s wage statements during the relevant time period that Plaintiff was employed with Defendants. Plaintiff is informed and believes, and thereupon alleges, that BIOLEGEND, INC. conducts business in San Diego County, and throughout California, and employed, and continues to employ, individuals (including Plaintiff and Class members) in San Diego County, and throughout California.

1 6. Defendant PERKINELMER U.S., LLC is a Delaware limited liability company and
2 lists its principal place of business with the California Secretary of State in Shelton, CO.¹
3 “PerkinElmer” is listed as an employer on Plaintiff’s wage statements during the relevant time
4 period that Plaintiff was employed with Defendants. PERKINELMER U.S., LLC does not list a
5 California address with the California Secretary of State, but upon information and belief,
6 PERKINELMER U.S., LLC conducts business in San Diego County and throughout California, and
7 employed, and continues to employ, individuals (including Plaintiff and Class members), in San
8 Diego County and throughout California.

9 7. Defendant PERKINELMER, INC. is a business entity of unknown form.
10 PERKINELMER, INC. is listed as an employer on documents provided to Plaintiff and, upon
11 information and belief, Class members, including the employee handbook, during the relevant time
12 period that Plaintiff was employed with Defendants. The address provided for PERKINELMER,
13 INC. on the employee handbook is 940 Winter Street, Waltham, Massachusetts 02451.
14 “PerkinElmer” is also listed as an employer on Plaintiff’s wage statements during the relevant time
15 period that Plaintiff was employed with Defendants.

16 8. Defendant PERKINELMER is a business entity of unknown form. PERKINELMER
17 is listed as an employer on documents provided to Plaintiff and, upon information and belief, Class
18 members during the relevant time period that Plaintiff was employed with Defendants. Defendant
19 PERKINELMER is also listed as an employer on Plaintiff’s wage statements during the relevant
20 time period that Plaintiff was employed with Defendants.

21 9. The true names and capacities, whether individual, corporate, associate, or whatever
22 else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to
23 Plaintiff, who therefore sue these Defendants by such fictitious names under Code of Civil
24 Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated
25 herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner
26 for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to
27 reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when
28

¹ Upon information and belief, Defendant PerkinElmer U.S. LLC’s principle place of business is in Shelton, Connecticut, not Shelton, Colorado.

1 their identities become known.

2 10. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
3 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out
4 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
5 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all
6 respects as the employers or joint employers of Class Members. Defendants, and each of them,
7 exercised control over the wages, hours or working conditions of Class Members, or suffered or
8 permitted Class Members to work, or engaged, thereby creating a common law employment
9 relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly
10 employed Class Members.

11 11. Whenever and wherever reference is made in this Complaint to any act by a
12 defendant or defendants, such allegations and references shall also be deemed to mean the acts and
13 failures to act of each defendant acting individually, jointly, and severally.

14 12. Whenever and wherever reference is made to individuals who are not named as a
15 Defendant in this Complaint but were agents, servants, employees and/or supervisors of Defendants,
16 such individuals at all relevant times acted on behalf of Defendants within the scope of their
17 employment.

18 **JURISDICTION AND VENUE**

19 13. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as
21 a Class Action on behalf of similarly situated Class Members of Defendants pursuant to California
22 Code of Civil Procedure § 382.

23 14. Venue as to Defendants is also proper in this judicial district pursuant to California
24 Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities
25 giving rise to this lawsuit occurred in part in San Diego County. Defendants maintain and operate
26 facilities in San Diego County and employ Plaintiff and other Class Members in San Diego County,
27 while doing business throughout California.

28 ///

FACTUAL BACKGROUND

15. Class Members consistently worked at Defendants behest without being paid all wages due. Class Members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Class Members all wages due and owing, including by failing to incorporate non-discretionary bonuses, commissions, and/or shift differentials into the regular rate of pay used to calculate and pay for overtime pay, sick pay, and meal and rest break premiums, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages all in violation of various provisions of the California Labor Code and applicable Wage Orders. Defendants also failed to pay Class Members “premium pay,” i.e. one hour of wages at each Class Member’s effective hourly rate of pay, for each meal period and/or rest break that Defendants failed to provide or deficiently provided.

16. During the course of Class Members’ employment with Defendants, they were not paid all wages they were owed, including for all worked performed resulting in off the clock work. Class Members were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants’ control. Specifically, Class Members were required to pass through a security checkpoint and wait in line for several minutes before clocking in each morning.

17. Defendants also failed to pay Class Members all wages due and owing because Defendants failed to incorporate non-discretionary bonuses, commissions, and/or shift differentials into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not incorporate these non-discretionary bonuses, commissions, and/or shift differentials paid to the Class Members into the regular rate of pay. Defendants used to calculate and pay for overtime, sick pay, and meal and rest break premiums.

18. By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work and failing to incorporate non-discretionary bonuses, commissions, and/or shift differentials into the regular rate of pay, Defendants’ willful actions resulted in the systematic underpayment of wages to Class Members, including underpayment of overtime pay to

1 Class Members over the relevant time period. For example, the above described off the clock work
2 addressed above caused Plaintiff to begin receiving overtime pay later than they should have.

3 19. As a result of the above described requirements to work off the clock, the failure to
4 incorporate non-discretionary bonuses, commissions, and/or shift differentials into the regular rate
5 of pay used to calculate and pay, and the other wage violations they endured at Defendants' hands,
6 Class Members were not properly paid all wages earned and all wages owed to them by Defendants,
7 including when working more than eight (8) hours in any given day and/or more than forty (40)
8 hours in any given week.

9 20. As a result of Defendants' unlawful policies and practices, Class Members incurred
10 overtime hours worked for which they were not adequately and completely compensated, in addition
11 to the hours they were required to work off the clock. To the extent applicable, Defendants also
12 failed to pay Class Members at an overtime rate of 1.5 times the regular rate for the first eight hours
13 of the seventh consecutive work day in a week and overtime payments at the rate of 2 times the
14 regular rate for hours worked over eight (8) on the seventh consecutive work day, as required under
15 the Labor Code and applicable IWC Wage Orders.

16 21. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing
17 to the present, Defendants had a consistent policy or practice of failing to pay Class Members for
18 all hours worked, and failing to pay minimum wages for all time worked, as required by California
19 law. Defendants thus failed to pay Class Members at least minimum wages for all the time they
20 worked for Defendants in violation of the Labor Code and applicable IWC Wage Orders as the
21 actual times when Class Members were under the control and direction of Defendants was under
22 reported in the hours reflected on the timekeeping records. Furthermore, Defendants' willful actions
23 resulted in the systematic underpayment of wages to Class Members, including underpayment of
24 overtime pay to Class Members over a period of time.

25 22. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing
26 to the present, Defendants had a consistent policy or practice of failing to pay Class Members for
27 all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit and continuing
28 to the present, Defendants also had a consistent policy or practice of failing to pay Class Members

1 their true and correct overtime compensation at premium overtime rates for all hours worked in
2 excess of eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours
3 worked in excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
4 sections of IWC Wage Orders.

5 23. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
6 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
7 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
8 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
9 without receiving a lawful and timely meal break. Defendants placed their needs over Class
10 Members lawful meal breaks and this resulted in Class Members often having to work through their
11 scheduled meal breaks, or otherwise take shortened ones, because the demands of the job would not
12 avail them the opportunity to take a lawfully uninterrupted and off duty meal break.

13 24. On the occasions when Class Members worked over 10 hours in a shift, Defendants
14 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
15 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid meal
16 periods and all the legally required off-duty is and will be evidenced by Defendants' business
17 records, or lack thereof. Defendants also failed to pay Class Members "premium pay," i.e. one hour
18 of wages at each Class Member's effective hourly rate of pay, for each meal period that Defendants
19 failed to provide or deficiently provided.

20 25. Therefore, for at least four years prior to the filing of this action through the present,
21 Defendants regularly required Class Members to work shifts in excess of five (5) hours without
22 providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in
23 excess of (10) hours without providing them with second meal periods of not less than thirty
24 minutes; nor did Defendants pay Class Members "premium pay," i.e. one hour of wages at each
25 Class Member's effective hourly rate of pay, for each meal period that Defendants failed to provide
26 or deficiently provided.

27 26. Meal period violations thus occurred in one or more of the following manners:

28 (a) Class Members were not provided full thirty-minute duty free meal periods

1 for work days in excess of five (5) hours and were not compensated one (1)
2 hour's wages in lieu thereof, all in violation of, among others, Labor Code
3 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
4 Order(s);

5 (b) Class Members were not provided second full thirty-minute duty free meal
6 periods for work days in excess of ten (10) hours;

7 (c) Class Members were required to work through at least part of their daily
8 meal period(s);

9 (d) Meal periods were provided after five (5) hours of continuous work during
10 a shift; and

11 (e) Class Members were restricted in their ability to take a full thirty-minute
12 meal period.

13 27. Class Members were also not authorized and permitted to take lawful rest periods,
14 were systematically required by Defendants to work through or during breaks and were not provided
15 with one (1) hour of wages in lieu thereof. Class Members were restricted in their ability to take
16 their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods.
17 In addition, Defendants unlawfully prohibited Class Members from leaving the work premises
18 during rest periods. Therefore, from at least four years prior to the filing of this lawsuit and
19 continuing to the present, Defendants have consistently failed to provide Class Members with paid
20 rest breaks of not less than ten minutes for every work period of four or more consecutive hours, or
21 major fraction thereof, nor did Defendants pay Class Members premium pay for each day on which
22 requisite rest breaks were not provided or were deficiently provided.

23 28. Rest period violations therefore arose in one or more of the following manners:

24 (a) Class Members were required to work without being provided a minimum
25 ten (10) minute rest period for every four (4) hours or major fraction thereof
26 worked and were not compensated one (1) hour of pay at their regular rate
27 of compensation for each workday that a rest period was not provided;

28 (b) Class Members were not authorized and permitted to take timely rest periods

for every four hours worked, or major fraction thereof;

(c) When rest periods were taken, Class Members were prohibited from leaving the premises; and

(d) Class Members were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

29. Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Class Members failed to accurately list the total hours worked by Plaintiff and Class Members. Thus, the wage statements do not comply with Labor Code § 226(a)(2). Moreover, the wage statements given to Class Members failed to incorporate non-discretionary bonuses, commissions and/or shift differentials into the regular rate of pay used to calculate and pay overtime compensation, sick pay, and meal and rest break premiums. Thus, the wage statements do not comply with Labor Code § 226(a)(9). Finally, the wage statements given to Class Members failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

30. From at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have thus also had a consistent policy of failing to pay all wages owed to Class Members at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws. Class Members were not paid all regular and overtime wages because Defendants failed to pay for all hours worked by failing to incorporate non-discretionary bonuses, commissions and/or shift differentials into the regular rate of pay used to calculate and pay for overtime, sick pay, and meal and rest break premiums, and failing to pay meal and rest break premiums owed, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

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

32. Additionally, from at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants have regularly required Plaintiff to incur business expenses in

the course of performing their required job duties for Defendants including for cell phone expenses. Upon information and belief, Class Members incurred similar costs. These expenses incurred by Plaintiff and Class Members were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and Class Members for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

33. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 245, 246, 510, 512, 558, 558.1, 1182.12, 1185, 1194, 1194.2, 1197, 1198, and 1199, 2698 et seq., 2802, and California Code of Regulations, Title 8, section 11000 *et seq.*

34. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

35. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

b. Subclass 2. Overtime Subclass. All Class Members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Sick Pay Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

d. Subclass 4. Meal Period Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Class Member's regular rate of pay in lieu thereof.

e. Subclass 5. Rest Break Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to authorize and permit Class Members to take

uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Class Member's regular rate of pay in lieu thereof.

f. Subclass 6. Wage Statement Subclass. All Class Members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

g. Subclass 7. Termination Pay Subclass. All Class Members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

h. Subclass 8. Expense Reimbursement Subclass. All Class Members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendant and who were subject to a policy and/or practice under which such expenses were not reimbursed.

i. Subclass 9. UCL Subclass. All Class Members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

36. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

37. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate compensation for the time worked by Class Members, even though Defendants enjoyed the benefit of this work, required Class Members to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class Members wages to which these employees are entitled and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

38. This action has been brought and may properly be maintained as a class action under

1 the provisions of Code of Civil Procedure § 382 because there is a well-defined community of
2 interest in litigation and proposed class is easily ascertainable.

3 **A. Numerosity**

4 39. The potential members of the class as defined are so numerous that joinder of all the
5 member of the class is impracticable. While the precise number of class member has not been
6 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
7 time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within
8 the State of California.

9 40. Accounting for employee turnover during the relevant time period increases this
10 number substantially. Plaintiff alleges that Defendants' employment records will provide
11 information as to the number and location of all Class Members.

12 **B. Commonality**

13 41. There are questions of law and fact common to the Class that predominates over any
14 questions affecting only individual Class Members. These common questions of law and fact
15 include:

- 16 a. Whether Defendants failed to pay Class Members minimum wages;
- 17 b. Whether Defendants failed to pay Class Members wages for all hours worked;
- 18 c. Whether Defendants failed to pay Class Members overtime as required under Labor
19 Code § 510;
- 20 d. Whether Defendants failed to properly pay Employees sick pay as required under
21 Labor Code § 245;
- 22 e. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
23 Wage Orders, by failing to provide Class Members with requisite meal periods or
24 premium pay in lieu thereof;
- 25 f. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
26 Orders, by failing to authorize and permit Class Members to take requisite rest breaks
27 or provide premium pay in lieu thereof;
- 28 g. Whether Defendants violated Labor Code § 226(a) by providing Class Members with

inaccurate wage statements;

h. 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;

i. Whether Defendants violated Labor Code § 2802 by failing to reimburse all necessary business expenses Defendants required them to incur in performing their job duties;

j. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;

k. Whether Defendants conduct was willful; and

l. Whether Class Members are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

42. The claims of the named plaintiff is typical of those of Class Members. The Class Members 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

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

E. Superiority of Class Action

44. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to all Class Members predominate over any questions affecting only individual Class Members. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Class Members properly.

45. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class Members is

1 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
2 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may
3 be relatively small, the expense and burden of individual actions makes it difficult for the Class
4 Members to individually redress the wrongs they have suffered. Moreover, in the event
5 disgorgement is ordered, a class action is the only mechanism that will permit the employment of a
6 fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
7 managing this case as a class action, and proceeding on a class-wide basis will permit Class
8 Members to vindicate their rights for violations they endured which they would otherwise be
9 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
10 them.

11 46. Class action treatment will allow those persons similarly situated to litigate their
12 claims in the manner that is most efficient and economical for the parties and the judicial system.
13 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
14 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would set
15 forth the subject and nature of the instant action. The Defendants' own business records can be
16 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that
17 any further notice is required additional media and/or mailings can be used.

18 47. Defendants, as prospective and actual employers of the Class Members, had a special
19 fiduciary duty to disclose to prospective Class Members the true facts surrounding Defendants' pay
20 practices, policies and working conditions imposed upon Class Members as well as the effect of any
21 alleged arbitration agreements that may have been forced upon them. In addition, Defendants knew
22 they possessed special knowledge about pay practices and policies, most notably intentionally
23 refusing to pay for all hours actually worked which should have been recorded in Defendants' pay
24 records and the consequence of the alleged arbitration agreements and policies and practices on
25 Class Members.

26 48. Class Members did not discover the fact that they were entitled to all pay under the
27 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about
28 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively

1 organize and oppose unlawful pay practices under California law as well as obtain injunctive relief
2 preventing such practices from continuing. As a result, the applicable statutes of limitation were
3 tolled until such time as Plaintiff and the Class Members discovered their claims.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 **(Against All Defendants)**

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

9 50. Defendants failed to pay Class Members minimum wages for all hours worked.
10 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
11 Class Members for all hours worked. Class Members would work hours and not receive wages,
12 including as alleged above in connection with off the clock work. Additionally, Defendants failed
13 to incorporate non-discretionary bonuses, commissions, and/or shift differentials into the regular
14 rate of pay used to calculate and pay overtime. Defendants, and each of them, have intentionally and
15 improperly changed, adjusted and/or modified the hours of Class Members, which resulted in off
16 the clock work and underpayment of all wages owed to Class Members over a period of time, while
17 benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay
18 minimum wages to Class Members, to their detriment. Additionally, Defendants had a consistent
19 policy of failing to pay Class Members for hours worked during alleged meal and rest periods for
20 which Class Members were consistently denied, as also addressed herein. Defendants' uniform
21 pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class
22 as a whole, as a result of implementing a uniform policy and practice that denied accurate
23 compensation to Class Members as to minimum wage pay.

24 51. In California, employees must be paid at least the then applicable state minimum
25 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
26 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
27 timely pay its employees for all hours worked. Defendants failed to do so.

28 52. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

1 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to
2 employees, and the payment of a less wage than the minimum so fixed is unlawful.”

3 53. The applicable minimum wages fixed by the commission for work during the
4 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

5 54. The minimum wage provisions of California Labor Code are enforceable by private
6 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
7 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
8 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
9 balance of the full amount of this minimum wage or overtime compensation, including interest
10 thereon, reasonable attorney’s fees and costs of suit.”

11 55. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
12 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
13 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
14 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
15 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
16 be used as a credit against a minimum wage obligation.

17 56. California Labor Code § 1194.2 also provides for the following remedies: “In any
18 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
19 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
20 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

21 57. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
22 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely
23 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
24 minimum wages.

25 58. Pursuant to California Labor Code § 1194.2, Class Members are further entitled to
26 recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

27 59. Defendants have the ability to pay minimum wages for all time worked and have
28 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 Class Members.

60. Wherefore, Class Members 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 members of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code, including § 558, and/or other applicable statutes.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

62. California Labor Code § 1194 provides that “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.” The action may be maintained directly against the employer in an employee’s name without first filing a claim with the Division of Labor Standards and Enforcement.

63. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class Members:

(a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) 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 (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek.

64. Defendants had a consistent policy of not paying Class Members wages for all hours worked, including by requiring off the clock work. Additionally, Defendants failed to incorporate

1 non-discretionary bonuses, commissions, and/or shift differentials into the regular rate of pay used
2 to calculate and pay overtime pay, sick pay, and meal and rest break premiums. Defendants, and
3 each of them, have intentionally and improperly changed, adjusted and/or modified certain
4 employees' hours, including Plaintiff's, in order to avoid paying Class Members all earned and owed
5 straight time and overtime wages and other benefits, in violation of the California Labor Code, the
6 California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division
7 of Labor Standards and Enforcement. Defendants have also violated these provisions by requiring
8 Class Members to work through portions of their meal period. Therefore, Class Members were not
9 properly compensated, nor were they paid overtime rates for hours worked in excess of eight hours
10 in a given day, and/or forty hours in a given week. Based on information and belief, Defendants did
11 not make available to Class Members a reasonable protocol for correcting time records when Class
12 Members worked overtime hours or to fix incorrect time entries.

13 65. Defendants' failure to pay Class Members the unpaid balance of regular wages owed
14 and overtime compensation, as required by California law, violates the provisions of Labor Code
15 §§ 510 and 1198, and is therefore unlawful.

16 66. Additionally, Labor Code § 558(a) provides "any employer or other person acting on
17 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
18 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
19 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
20 pay period for which the employee was underpaid in addition to an amount sufficient to recover
21 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
22 employee for each pay period for which the employee was underpaid in addition to an amount
23 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to
24 the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in this section
25 are in addition to any other civil or criminal penalty provided by law." Defendants have violated
26 provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders.
27 Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor Code § 558.

28 67. Defendants' failure to pay compensation in a timely fashion also constituted a

violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that provision of the California Labor Code, Defendants have failed to pay all wages and overtime compensation earned by Class Members. Each such failure to make a timely payment of compensation to Class Members constitutes a separate violation of California Labor Code § 204.

68. Class Members have been damaged by these violations of California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

69. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B), Defendants are liable to Class Members 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.

THIRD CAUSE OF ACTION

FAILURE TO COMPLY WITH LABOR CODE § 245 *ET SEQ.* AND 246

(Against All Defendants)

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

71. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed to properly compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(1).

72. Defendants paid non-discretionary bonuses, commissions and/or shift differentials to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon 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(1), Defendants paid sick leave to Employees at a lower rate, in violation of the law.

73. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code

§ 245 *et seq.* and §§ 245 *et seq.* and 246.

FOURTH CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

75. Class Members regularly worked shifts greater than five (5) hours and in some instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second meal period of not less than thirty (30) minutes.

76. As discussed above, Defendants failed to provide Class Members with meal periods as required under the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this resulted in Class Members consistently having to work through their scheduled meal breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions when Class Members worked more than ten (10) hours in a given shift, they did so without receiving a second uninterrupted thirty (30) minute meal period as required by law.

77. Defendants thus failed to provide Class Members with meal periods as required by the Labor Code, including by not providing them with the opportunity to take meal breaks, by providing them late or for less than thirty (30) minutes, or by requiring them to perform work during breaks.

78. Moreover, Defendants failed to compensate Class Members for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 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 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Defendants failed to compensate Class Members for each meal period not provided or

1 inadequately provided, as required under Labor Code § 226.7. Additionally, upon information and
2 belief, when Defendants did pay meal period premiums, they did so at the normal regular rate of
3 pay without factoring in all forms or remuneration/compensation or by otherwise incorrectly
4 calculating the regular rate.

5 79. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
6 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages
7 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a
8 sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants,
9 and each of them, in a sum as provided by the Labor Code and other statutes.

10 **FIFTH CAUSE OF ACTION**

11 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

12 **(Against All Defendants)**

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

15 81. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide
16 that employers must authorize and permit all employees to take rest periods at the rate of ten (10)
17 minutes net rest time per four (4) work hours.

18 82. Class Members consistently worked consecutive four (4) hour shifts and were
19 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize
20 and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC Wage
21 Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for each
22 consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely rest
23 breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants placed
24 their needs over Class Members lawful rest breaks, and this resulted in Class Members consistently
25 having to work through their scheduled rest breaks because the demands of the job would not avail
26 them the opportunity to take a lawfully uninterrupted and off-duty rest break. In addition,
27 Defendants unlawfully prohibited Class Members from leaving the work premises during rest
28 periods. Thus, Class Members were consistently denied of their rest breaks.

83. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders 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 (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

84. Defendants, and each of them, have therefore intentionally and improperly denied rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

85. Defendants failed to authorize and permit Class Members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Class Members with an additional hour of pay at each Class Member's effective hourly rate for each day that Defendants failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

86. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage Orders, Class Members are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS UNDER

LABOR CODE § 226(a)

(Against All Defendants)

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

88. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; 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

1 the employee these statements twice a month or each time wages are paid.

2 89. Defendants failed to provide Class Members with accurate itemized wage statements
3 in writing, as required by the Labor Code. Specifically, the wage statements given to Employees
4 failed to accurately list the total hours worked by Employee. Thus, the wage statements do not
5 comply with Labor Code § 226(a)(2). Additionally, the wage statements given to Class Members
6 failed to incorporate non-discretionary bonuses, commissions and/or shift differentials into the
7 regular rate of pay used to calculate and pay overtime compensation, sick pay, and meal and rest
8 break premiums. Thus, the wage statements do not comply with Labor Code § 226(a)(9).
9 Additionally, the wage statements given to Class Members failed to accurately account for premium
10 pay for deficiently provided meal periods and rest breaks.

11 90. Throughout the liability period, Defendants intentionally failed to furnish to Class
12 Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages
13 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
14 applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the
15 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only
16 the last four digits of his or her social security number or an employee identification number other
17 than a social security number, (8) the name and address of the legal entity that is the employer and
18 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate by the employee pursuant to Labor Code § 226, amongst other statutory
20 requirements. Defendants knowingly and intentionally failed to provide Class Members with such
21 timely and accurate wage and hour statements.

22 91. Class Members suffered injury as a result of Defendants' knowing and intentional
23 failure to provide them with the accurate wage and hour statements as required by law and are
24 presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the
25 Defendants have failed to provide wage statements with accurate and complete information as
26 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and Class Members
27 cannot promptly and easily determine from the wage statement alone one or more of the following:
28 (i) The amount of the gross wages or net wages paid to the employee during the pay period or any

of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period, (iii) The name and address of the employer and, (iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number. For purposes of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an objective standard] would be able to readily ascertain the information without reference to other documents or information.

92. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code § 226(a), Class Members 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.

93. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC Wage Order, paragraph 7(B), Class Members 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.

SIEVENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES UNDER LABOR CODE § 203

(Against All Defendants)

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

95. Numerous Class Members are no longer employed by Defendants; they either quit Defendants’ employ or were fired therefrom.

96. Defendants failed to pay these Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

97. The wages withheld from these Class Members by Defendants remained due and

1 owing for more than thirty (30) days from the date of separation from employment.

2 98. Defendants failed to pay Class Members without abatement, all wages as defined by
3 applicable California law. Class Members were not paid all regular and overtime wages because
4 Defendants failed to pay for all hours worked by required off the clock work and failing to
5 incorporate non-discretionary bonuses, commissions and/or shift differentials into the regular rate
6 of pay used to calculate and pay for overtime, sick pay, and meal and rest break premiums.
7 Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest
8 periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
9 required time was willful within the meaning of Labor Code § 203.

10 99. Defendants' failure to pay wages, as alleged entitles these Class Members to
11 penalties under Labor Code § 203, which provides that an employee's wages shall continue until
12 paid for up to thirty (30) days from the date they were due.

13 **EIGHTH CAUSE OF ACTION**

14 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

15 **(Against All Defendants)**

16 100. Plaintiff re-alleges and incorporates all preceding paragraphs as though set forth in
17 full herein.

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

21 102. Defendants have regularly required Plaintiff to incur business expenses in the course
22 of performing her required job duties for Defendants including for cell phone expenses. Upon
23 information and belief, Class Members incurred similar costs. These expenses incurred by Plaintiff
24 and Class Members were necessary and required of them in performing their assigned job duties,
25 but Defendants failed to reimburse Plaintiff and Class Members for all such necessary expenditures,
26 thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and
27 the applicable provisions of the IWC Wage Orders, paragraph 9.

28 103. As a result of the unlawful acts of Defendants, Class Members have been deprived

1 of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
2 plus interest and penalties thereon, attorneys' fees, and costs.

3 **NINTH CAUSE OF ACTION**

4 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

5 **(Against All Defendants)**

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

8 105. Plaintiff, on behalf of herself, Class Members, and the general public, brings this
9 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
10 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class
11 Members and the general public. Plaintiff seeks to enforce important rights affecting the public
12 interest within the meaning of Code of Civil Procedure § 1021.5.

13 106. Plaintiff is a "person" within the meaning of Business & Professions Code
14 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
15 relief, restitution, and other appropriate equitable relief.

16 107. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
17 practices. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent in
18 that Defendants' policy and practice failed to provide the required amount of compensation for
19 missed meal and rest breaks, and failed to adequately compensate Class Members for all hours
20 worked, due to systematic business practices as alleged herein that cannot be justified, pursuant to
21 the applicable California Labor Code and Industrial Welfare Commission requirements in violation
22 of California Business and Professions Code §§ 17200, *et seq.*, and for which this Court should issue
23 injunctive and equitable relief, pursuant to California Business & Professions Code § 17203,
24 including restitution of wages wrongfully withheld.

25 108. Wage-and-hour laws express fundamental public policies. Paying employees their
26 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental public
27 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
28 to enforce minimum labor standards, to ensure that employees are not required or permitted to work

1 under substandard and unlawful conditions, and to protect law-abiding employers and their
2 employees from competitors who lower costs to themselves by failing to comply with minimum
3 labor standards.

4 109. Defendants have violated statutes and public policies. Through the conduct alleged
5 in this Complaint Defendants have acted contrary to these public policies, have violated specific
6 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
7 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff, and
8 all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
9 guaranteed to all employees under the law.

10 110. Defendants' conduct, as alleged above, constitutes unfair competition in violation of
11 the Business & Professions Code § 17200 *et seq.*

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

16 112. By the conduct alleged herein, Defendants have engaged and continue to engage in
17 a business practice which violates California and federal law, including but not limited to, the
18 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
19 Code including Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 558.1,
20 1182.12, 1194, 1194.2, 1197, 1198, and 1199, for which this Court should issue declaratory and
21 other equitable relief pursuant to California Business & Professions Code § 17203 as may be
22 necessary to prevent and remedy the conduct held to constitute unfair competition, including
23 restitution of wages wrongfully withheld.

24 113. As a proximate result of the above-mentioned acts of Defendants, Class Members
25 have been damaged, in a sum to be proven at trial.

26 114. Unless restrained by this Court Defendants will continue to engage in such unlawful
27 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make
28 such orders or judgments, including the appointment of a receiver, as may be necessary to prevent

1 the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited
2 by the Business & Professions Code, including but not limited to the disgorgement of such profits
3 as may be necessary to restore Class Members to the money Defendants have unlawfully failed to
4 pay.

5 **TENTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**
7 **(Against All Defendants)**

8 115. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in
9 full herein.

10 116. Plaintiff and the Employees in the Class are also aggrieved employees as defined
11 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and either
12 were or are employed by the alleged violators, Defendants (“Aggrieved Employees”) during the
13 relevant time period.

14 117. In failing to pay Aggrieved Employees minimum wages and overtime, not providing
15 proper meal and rest periods, failing to provide accurate wage statements, and failing to Pay
16 Employees upon termination or timely upon resignation, all discussed above, Defendants failed to
17 timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code §
18 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages
19 paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable
20 IWC Wage Orders.

21 118. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
22 for Defendants’ violation of Labor Code provisions included under Labor Code 2699.5, including
23 the penalty provisions, without limitation, based, inter alia, on the following California Labor Code
24 sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1,
25 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 *et seq.*

26 119. More specifically, after complying with the notice procedures of Labor Code §
27 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General and
28 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, 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 §§ 226.2, 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, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(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(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and 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€, 226.3, 558, 1174.5, 1199, 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(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, 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages, 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(g)(1);

(e) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections: For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of which constitute separate 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(g)(1).

120. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also seeks the penalties and remedies set forth in Labor Code § 558, which states:

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

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulation hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for

1 issuing, contesting, and enforcing judgments for citations or civil penalties issued by the
2 Labor Commissioner for a violation of this chapter shall be the same as those set out in
3 Section 1197.1.

4 (c) The penalties provided for in this section are in addition to any other civil or criminal
5 penalty provided by law.

6 121. Plaintiff has exhausted his administrative remedies by sending a certified letter to the
7 LWDA and Defendants postmarked on **March 6, 2024**, addressing in detail the specific provisions
8 of the Labor Code Defendants have violated and addressing the facts and legal theories to support
9 the alleged violations and requested penalties. The LWDA has not provided notice of its intent to
10 investigate the alleged violations within 65 calendar days of the postmark date of the letter, and
11 Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed herein and
12 in the PAGA Notice Letter and the original Complaint.

13 **RELIEF REQUESTED**

14 WHEREFORE, Plaintiff prays for the following relief:

- 15 1. For an order certifying this action as a class action;
- 16 2. For compensatory damages in the amount of the unpaid minimum wages for work
17 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
18 to the filing of this action, as may be proven;
- 19 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
20 thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 21 4. For compensatory damages in the amount of all unpaid wages, including overtime
22 and double-time pay, as may be proven;
- 23 5. For restitution and/or damages for all amounts unlawfully withheld from the wages
24 for all Class Members in violation of Labor Code § 246, as may be proven;
- 25 6. For compensatory damages in the amount of the hourly wage made by Class
26 Members for each missed or deficient meal period where no premium pay was paid therefor from
27 four (4) years prior to the filing of this action, as may be proven;
- 28 7. For compensatory damages in the amount of the hourly wage made by Class

Members for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;

8. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be proven;

9. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

10. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 2802, as may be proven;

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

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

13. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

14. For other wages and penalties under the Labor Code as may be proven;

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

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

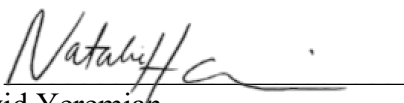
17. For an award providing for the payment of the costs of this suit;

18. For an award of attorneys' fees; and

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

DATED: May 10, 2024

D.LAW, INC.

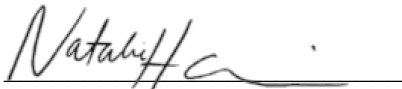
By: 
David Yeremian
Natalie Haritonian
Matthew Carraher
Attorneys for Plaintiff LYNA HENDERSON
and all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: May 10, 2024

D.LAW, INC.

By: 
David Yeremian
Natalie Haritounian
Matthew Carraher
Attorneys for Plaintiff LYNA HENDERSON
and all others similarly situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Los Angeles, CA 90067


Kathryn Perez