

1 **SEYFARTH SHAW LLP**  
Jon D. Meer (SBN 144389)  
2 jmeer@seyfarth.com  
Bethany A. Pelliconi (SBN 182920)  
3 bpelliconi@seyfarth.com  
2029 Century Park East, Suite 3500  
4 Los Angeles, California 90067-3021  
Telephone: (310) 277-7200  
5 Facsimile: (310) 201-5219

6 **SEYFARTH SHAW LLP**  
Paul J. Leaf (SBN 261949)  
7 pleaf@seyfarth.com  
601 South Figueroa Street,  
8 Suite 3300  
Los Angeles, California  
9 90017-5793  
Telephone: (213) 270-9600  
10 Facsimile: (213) 270-9601

11 Attorneys for Defendant  
WAYFAIR LLC

12  
13  
14  
15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17

18 LIONESHA HAMILTON, individually, and  
on behalf of other members of the general  
19 public similarly situated,

20 Plaintiff,

21 v.

22 WAYFAIR LLC, an unknown business  
entity; and DOES 1 through 100, inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. \_\_\_\_\_

**DEFENDANT WAYFAIR LLC'S  
NOTICE OF REMOVAL OF CIVIL  
ACTION TO UNITED STATES  
DISTRICT COURT**

(Alameda County Super. Ct. Case No.  
RG19006990)

Complaint Filed: February 14, 2019  
Trial Date: None Set

1           **TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN**  
2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFF LIONESHA HAMILTON**  
3 **AND HER COUNSEL OF RECORD:**

4           PLEASE TAKE NOTICE that Defendant Wayfair LLC (“Defendant”) files this  
5 Notice of Removal, pursuant to 28 U.S.C. §§ 1331, 1332(d)(2) & (d)(10), 1441(a), 1446,  
6 and 1453, to effectuate the removal of the above-captioned action from the Superior  
7 Court for the County of Alameda to the United States District Court for the Northern  
8 District of California. This Court has original jurisdiction under 28 U.S.C. §§ 1332(d)(2)  
9 & (d)(10)—the Class Action Fairness Act of 2005 (“CAFA”). Removal is proper for the  
10 reasons set forth below.

11 **I.     BACKGROUND**

12           1.     On February 14, 2019, Plaintiff Lionesha Hamilton (“Plaintiff”) filed a class  
13 action complaint in the Superior Court of California for the County of Alameda, titled  
14 “*LIONESHA HAMILTON, individually, and on behalf of other members of the general*  
15 *public similarly situated; Plaintiff, vs. WAYFAIR LLC, an unknown business entity; and*  
16 *DOES 1 through 100, inclusive, Defendants,”* Case No. RG19006990 (“Complaint”).

17           2.     On March 26, 2019, Defendant’s registered agent for service of process in  
18 California received, via process server, the Summons and Complaint. Plaintiff did not  
19 serve a Civil Case Cover Sheet, Certificate of Assignment, Notice of Case Management  
20 Conference, Guidelines for the Complex Litigation Program, or any other document with  
21 the Summons and Complaint. A true and correct copy of the service packet received by  
22 Defendant is attached hereto as **Exhibit A**.

23           3.     On April 18, 2019, Plaintiff filed a First Amended Complaint. That pleading  
24 was served on Defendant on April 19, 2019. A true and correct copy of the First  
25 Amended Complaint served on Defendant is attached hereto as **Exhibit B**.

26           4.     On April 24, 2019, Defendant filed its Answer to Plaintiff’s Complaint in  
27 Alameda Superior Court. A true and correct copy of Defendant’s Answer filed to  
28 Plaintiff’s Complaint is attached hereto as **Exhibit C**.

1           5.     On April 25, 2019, Defendant filed its Answer to Plaintiff’s First Amended  
2 Complaint in Alameda Superior Court. A true and correct copy of Defendant’s Answer  
3 filed to Plaintiff’s First Amended Complaint is attached hereto as **Exhibit D**.

4           6.     According to the online docket of the Alameda Superior Court, a Case  
5 Management Conference in the state court action is currently set for April 30, 2019.

6           7.     Other than the documents described as Exhibits A through D, Defendant has  
7 not filed or received any other pleadings or papers in this action prior to this Notice of  
8 Removal.

9 **II.   TIMELINESS OF REMOVAL**

10          8.     The time for filing a Notice of Removal does not run until a party has been  
11 formally served with the summons and complaint under the applicable state law “setting  
12 forth the claim for relief upon which such action or proceeding is based” or, if the case  
13 stated by the initial pleading is not removable, after receipt of any “other paper from  
14 which it may be first ascertained that the case is one which is or has become removable.”  
15 28 U.S.C. § 1446(b)(1); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S.  
16 344, 347-348 (1999) (“[A] named Defendant’s time to remove is triggered by  
17 simultaneous service of the summons and complaint.”).

18          9.     The service of process that triggers the 30-day period to remove is governed  
19 by state law. *City of Clarksdale v. BellSouth Telecomms., Inc.*, 428 F.3d 206, 210 (5th  
20 Cir. 2005) (“Although federal law requires the defendant to file a removal motion within  
21 thirty days of service, the term ‘service of process’ is defined by state law.”).

22          10.    The 30-day time limit to remove was triggered by Plaintiff’s service of the  
23 Summons and Complaint on March 26, 2019. *See Murphy Bros.*, 526 U.S. at 347-348  
24 (“[A] named defendant’s time to remove is triggered by simultaneous service of the  
25 summons and complaint.”).

26          11.    This Notice of Removal is timely because it is filed within 30 days of  
27 service of the Summons and Complaint, by personal service on the agents for service of  
28 process for Defendant, on March 26, 2019. Cal. Code Civ. Proc. § 415.10 (“A summons

1 may be served by personal delivery of a copy of the summons and of the complaint to the  
 2 person to be served. Service of a summons in this manner is deemed complete at the time  
 3 of such delivery.”); 28 U.S.C. § 1446(b)(1) (“The notice of removal of a civil action or  
 4 proceeding shall be filed within 30 days after the receipt by the defendant, through  
 5 service or otherwise, of a copy of the initial pleading setting forth the claim for relief  
 6 upon which such action or proceeding is based, or within 30 days after the service of  
 7 summons upon the defendant if such initial pleading has then been filed in court and is  
 8 not required to be served on the defendant, whichever period is shorter.”).

### 9 **III. JURISDICTION: CLASS ACTION FAIRNESS ACT (“CAFA”) REMOVAL**

10 12. This Court has original jurisdiction of this action under CAFA, codified in  
 11 pertinent part at 28 U.S.C. Section 1332(d)(2). As set forth below, this action is properly  
 12 removable, pursuant to 28 U.S.C. Section 1441(a), in that this Court has original  
 13 jurisdiction over the action, because the aggregate amount in controversy exceeds  
 14 \$5,000,000, exclusive of interest and costs, and the action is a class action in which at  
 15 least one putative class member is a citizen of a state different from that of a defendant.  
 16 28 U.S.C. §§ 1332(d)(2), (d)(6), & (d)(10). Furthermore, the number of putative class  
 17 members is greater than 100. 28 U.S.C. § 1332(d)(5)(B); *see* Declaration of Amy Strebel  
 18 (“Strebel Decl.”), ¶¶ 7-8.

#### 19 **A. Plaintiffs And Defendant Are Minimally Diverse**

20 13. CAFA requires only minimal diversity to establish federal jurisdiction: at  
 21 least one purported class member must be a citizen of a state different from any named  
 22 defendant. 28 U.S.C. § 1332(d)(2)(A). In the instant case, Plaintiff is a citizen of a state  
 23 (California) that is different from the state of citizenship of Defendant (which is a citizen  
 24 of Delaware and Massachusetts).

#### 25 **1. Plaintiff Is A Citizen Of California**

26 14. For purposes of determining diversity, a person is a “citizen” of the state in  
 27 which he or she is domiciled. *Kantor v. Wellesley Galleries, Inc.*, 704 F.2d 1088, 1090  
 28 (9th Cir. 1983) (“To show state citizenship for diversity purposes under federal common

1 law a party must . . . be domiciled in the state.”). Residence is *prima facie* evidence of  
 2 domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994)  
 3 (“[T]he place of residence is prima facie the domicile.”). Citizenship is determined by  
 4 the individual’s domicile at the time that the lawsuit is filed. *Armstrong v. Church of*  
 5 *Scientology Int’l*, 243 F.3d 546, 546 (9th Cir. 2000) (“For purposes of diversity  
 6 jurisdiction, an individual is a citizen of his or her state of domicile, which is determined  
 7 at the time the lawsuit is filed.”).

8 15. Plaintiff alleges that she resides in the “State of California, County of  
 9 Alameda.” (Ex. A, Compl., ¶ 5.) Plaintiff further alleges that Defendant “employed  
 10 Plaintiff . . . as [an] hourly-paid or non-exempt employee[] within the State of California,  
 11 including the County of Alameda.” (Ex. A, Compl., ¶ 17.) In addition, Defendant’s  
 12 review of Plaintiff’s personnel file from her employment with Defendant reveals that  
 13 Plaintiff resided in Oakland, California. (Strebel Decl., ¶ 6.) Finally, an Accurint report  
 14 run on Plaintiff shows that she currently resides in Fremont, California. (Leaf Decl., ¶ 2,  
 15 Ex. A.) Accordingly, Plaintiff is a citizen of California.

## 16 2. Defendant Wayfair LLC Is Not A Citizen Of California

### 17 a. Under CAFA, Which Treats LLCs As Corporations For 18 Diversity Purposes, Defendant Is A Citizen Of Delaware And Massachusetts

19 16. Limited liability companies like Defendant are treated as unincorporated  
 20 associations under 28 U.S.C. Section 1332. *Johnson v. Columbia Properties Anchorage,*  
 21 *LP*, 437 F.3d 894, 899 (9th Cir. 2006) (stating that “every circuit that has addressed the  
 22 question treats [LLCs] like partnerships for the purposes of diversity jurisdiction,” and  
 23 noting that a “partnership” is “an unincorporated association”); *Motu Novu, LLC v.*  
 24 *Percival*, 2018 WL 3069316, at \*8 (N.D. Cal. May 7, 2018) (noting that “an LLC” is a  
 25 type of “unincorporated association”); *Havensight Capital, LLC v. Facebook, Inc.*, 2015  
 26 WL 12819134, at \*1 (C.D. Cal. June 16, 2015) (“[P]laintiff Havensight Capital, LLC . . .  
 27 is an unincorporated association.”); *MTO Summerlin LLC v. Shops at Summerlin N., LP*,  
 28

1 2019 WL 1261105, at \*5 (D. Nev. Mar. 19, 2019) (stating that “limited liability  
2 companies” are “types of unincorporated associations”); *Zambelli Fireworks Mfg. Co. v.*  
3 *Wood*, 592 F.3d 412, 420 (3d Cir. 2010) (recognizing a limited liability company “as an  
4 unincorporated business entity”).

5 17. For purposes of diversity jurisdiction under CAFA, “an unincorporated  
6 association shall be deemed to be a citizen of the State where it has its principal place of  
7 business and the State under whose laws it is organized.” 28 U.S.C. § 1332(d)(10). *See*  
8 *also Davis v. HSBC Bank Nevada, N.A.*, 557 F.3d 1026, 1032 n.13 (9th Cir. 2009) (A.  
9 Kleinfeld, concurring) (“CAFA abrogates the traditional rule that an unincorporated  
10 association shares the citizenship of each of its members for diversity purposes . . . .”);  
11 *Breckenridge v. Best Buy Co.*, 2010 WL 5315812, at \*1 (C.D. Cal. Dec. 17, 2010)  
12 (“[CAFA] . . . treats unincorporated associations as corporations for diversity  
13 purposes.”); *Parker v. Dean Transportation, Inc.*, 2013 WL 12091841, at \*8-9 (C.D. Cal.  
14 June 26, 2013) (“In actions under CAFA, an unincorporated association is ‘deemed to be  
15 a citizen of the State where it has its principal place of business and the State under  
16 whose laws it is organized.’ 28 U.S.C. § 1332(d)(10) . . . . Here, Defendant Heartland is  
17 an LLC organized in Delaware with its principal place of business in California.  
18 Heartland is therefore a California citizen for CAFA purposes.”); *Ferrell v. Express*  
19 *Check Advance of SC LLC*, 591 F.3d 698, 699-700 (4th Cir. 2010) (“[F]or purposes of  
20 determining subject matter jurisdiction under the [CAFA], a limited liability company is  
21 an ‘unincorporated association’ as that term is used in 28 U.S.C. § 1332(d)(10) and  
22 therefore is a citizen of the State under whose laws it is organized and the State where it  
23 has its principal place of business.”); *Marroquin v. Wells Fargo, LLC*, 2011 WL 476540,  
24 at \*2 (S.D. Cal. Feb. 3, 2011) (“Defendant, a limited liability company, is alleged to be  
25 incorporated under Delaware law, with its principal place of business in California.  
26 Under CAFA an unincorporated association is ‘deemed to be a citizen of the State where  
27 it has its principal place of business and the State under whose laws it is organized.’ 28  
28 U.S.C. § 1332(d)(10). Accordingly, Defendant is a citizen of Delaware and California.”);

1 *Gillespie v. Benton Investments & Assocs., LLC*, 2012 WL 13020749, at \*1 (E.D. Ark.  
2 Nov. 2, 2012) (stating that “Defendants acknowledge that CAFA changes the traditional  
3 rule for ‘unincorporated association[s]’ in 28 U.S.C. § 1332(d)(10), which provides that  
4 an unincorporated association is a citizen of the state where it is organized and the state  
5 where its principal place of business is located,” and rejecting the argument that “section  
6 1332(d)(10) does not apply to LLCs because the term ‘unincorporated association’ refers  
7 only to less formal non-corporate business entities”).

8 18. In short, to determine jurisdiction under CAFA, limited liability companies,  
9 such as Defendant, are treated the same as corporations in determining their citizenship.

10 19. Defendant, is now, and ever since this action commenced has been,  
11 organized under the laws of the State of Delaware. (Strebel Decl., ¶ 13.) Thus, for  
12 purposes of diversity jurisdiction, Defendant is a citizen of Delaware.

13 20. Further, as shown below, Defendant’s principal place of business is, and has  
14 been at all times since this action commenced, located in the State of Massachusetts.  
15 (Strebel Decl., ¶ 14.) Thus, for purposes of diversity jurisdiction, Defendant is also a  
16 citizen of Massachusetts.

17 21. The United States Supreme Court held that when determining a company’s  
18 principal place of business for diversity purposes, the appropriate test is the “nerve  
19 center” test. *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81, 92-93 (2010). Under that test,  
20 the “principal place of business” means the corporate headquarters where a corporation’s  
21 high-level officers direct, control, and coordinate its activities on a day-to-day basis. *Id.*  
22 (“[P]rincipal place of business’ is best read as referring to the place where a  
23 corporation’s officers direct, control, and coordinate the corporation’s activities.”).

24 22. Under the “nerve center” test, Massachusetts emerges as Defendant’s  
25 principal place of business. Defendant’s corporate headquarters are located in Boston,  
26 Massachusetts, where Defendant’s high-level officers direct, control, and coordinate  
27 Defendant’s activities. (Strebel Decl., ¶ 14.) Defendant’s high-level corporate officers  
28 maintain offices in Massachusetts, and many of Defendant’s corporate level functions are

1 performed in the Massachusetts office. (Strebel Decl., ¶ 14.) Additionally, many of  
2 Defendant’s executive and administrative functions are directed from the Boston,  
3 Massachusetts headquarters. (Strebel Decl., ¶ 14.)

4 23. Therefore, for purposes of diversity of citizenship, Defendant is, and has  
5 been at all times since this action commenced, a citizen of the States of Delaware and  
6 Massachusetts. 28 U.S.C. § 1332(d)(10).

7 24. Because Plaintiff is a citizen of California and Defendant is a citizen of  
8 Delaware and Massachusetts, minimal diversity exists for purposes of CAFA.

9 **b. Diversity Exists Even If This Were Not A CAFA Removal**

10 25. Outside of CAFA, a limited liability company’s citizenship for diversity  
11 purposes is determined by the citizenship of its members. *Johnson*, 437 F.3d at 899  
12 (“[A]n LLC is a citizen of every state of which its owners/members are citizens.”).

13 26. Defendant’s sole member is SK Retail, Inc. (“SK Retail”). (Strebel Decl., ¶  
14 15.)

15 27. SK Retail is now, and ever since this action commenced has been, organized  
16 under the laws of the State of Massachusetts. (Strebel Decl., ¶ 15.)

17 28. Under the “nerve center” test discussed above, Massachusetts emerges as SK  
18 Retail’s principal place of business. SK Retail’s principal place of business and corporate  
19 headquarters are located in Boston, Massachusetts, where SK Retail’s high-level officers  
20 direct, control, and coordinate its activities. SK Retail’s high-level corporate officers  
21 maintain offices in Massachusetts, and many of its corporate level functions are  
22 performed in the Massachusetts office. Additionally, many of SK Retail’s executive and  
23 administrative functions, including corporate finance and accounting, are directed from  
24 the Boston, Massachusetts headquarters. (Strebel Decl., ¶ 15.)

25 29. Therefore, for purposes of diversity of citizenship in a non-CAFA context,  
26 SK Retail is, and has been at all times since this action commenced, a citizen only of the  
27 State of Massachusetts. This means that outside of CAFA, Defendant is a citizen only of  
28 the State of Massachusetts based on the citizenship of its sole member, SK Retail.



1           30.   Accordingly, no matter which citizenship test applies, diversity exists  
2 because Plaintiff is a citizen of California and Defendant is a citizen of Delaware and/or  
3 Massachusetts.

### 4                   **3.    Doe Defendants' Citizenship Is Disregarded**

5           31.   The presence of Doe defendants in this case has no bearing on diversity of  
6 citizenship for removal. *See* 28 U.S.C. § 1441(a) (“For purposes of removal under this  
7 chapter, the citizenship of defendants sued under fictitious names shall be disregarded.”).  
8 *See also* *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (“[I]f  
9 Fristoe’s objection can be read as including the failure of the unidentified ‘officers’ of  
10 Reynolds and the unions, as well as the Doe defendants, to join in the removal petition,  
11 their joinder [in the removal] was unnecessary.”); *Soliman v. Philip Morris, Inc.*, 311 F.  
12 3d 966, 971 (9th Cir. 2002) (“[C]itizenship of fictitious defendants is disregarded for  
13 removal purposes and becomes relevant only if and when the plaintiff seeks leave to  
14 substitute a named defendant.”). Thus, the existence of Doe defendants 1-100 does not  
15 deprive this Court of jurisdiction. *Abrego v. Dow Chemical Co.*, 443 F.3d 676, 679-680  
16 (9th Cir. 2006) (rule applied in CAFA removal).

### 17                   **B.    The Amount In Controversy Exceeds The Statutory Minimum**

18           32.   CAFA requires that the amount in controversy exceed \$5,000,000, exclusive  
19 of interest and costs. 28 U.S.C. § 1332(d)(2). Under CAFA, the claims of the individual  
20 members in a class action are aggregated to determine if the amount in controversy  
21 exceeds the sum or value of \$5,000,000. 28 U.S.C. § 1332(d)(6). Federal jurisdiction is  
22 appropriate under CAFA “if the value of the matter in litigation exceeds \$5,000,000  
23 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and  
24 regardless of the type of relief sought (*e.g.*, damages, injunctive relief, or declaratory  
25 relief).” Senate Judiciary Committee Report, S. Rep. No. 109-14, at 42 (2005), *reprinted*  
26 *in* 2005 U.S.C.C.A.N. 3, 40; *see also* *Pagel v. Dairy Farmers of Am., Inc.*, 986 F. Supp.  
27 2d 1151, 1161 (C.D. Cal. 2013) (“CAFA’s rejection of the anti-aggregation rule makes  
28 the ‘either viewpoint’ rule a valid method for assessing the value of the matter in

1 controversy to determine whether jurisdiction lies under [CAFA].”). And any doubts  
2 regarding the maintenance of interstate class actions in state or federal court should be  
3 resolved in favor of federal jurisdiction. S. Rep. No. 109-14, at 42-43 (“[I]f a federal  
4 court is uncertain about whether ‘all matters in controversy’ in a purposed class action  
5 ‘do not in the aggregate exceed the sum or value of \$5,000,000, the court should err in  
6 favor of exercising jurisdiction over the case. . . . Overall, new section 1332(d) is  
7 intended to expand substantially federal court jurisdiction over class actions. Its  
8 provision should be read broadly, with a strong preference that interstate class actions  
9 should be heard in a federal court if properly removed by any defendant.”); *Yeroushalmi*  
10 *v. Blockbuster, Inc.*, 2005 WL 2083008, at \*5 (C.D. Cal. July 11, 2005) (“[U]nder  
11 CAFA[,] the Court has jurisdiction. This result is further supported by the Senate  
12 Judiciary Committee’s direction that ‘[when] a federal court is uncertain about whether  
13 ‘all matters in controversy’ in a purported class action ‘do not in the aggregate exceed the  
14 sum or value of \$5,000,000,’ the court should err in favor of exercising jurisdiction.”).

15 33. Plaintiff’s Complaint does not allege the amount in controversy for the class  
16 she purports to represent. Where a complaint does not allege a specific amount in  
17 damages, the removing defendant bears the burden of proving by a “**preponderance of**  
18 **the evidence**” that the amount in controversy exceeds the statutory minimum. *Rodriguez*  
19 *v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 977 (9th Cir. 2013) (“[T]he proper burden  
20 of proof imposed upon a defendant to establish the amount in controversy is the  
21 preponderance of the evidence standard.”) (emphasis added).

22 34. In 2011, Congress amended the removal statute to specify that “removal of  
23 the action is proper on the basis of an amount in controversy asserted . . . if the district  
24 court finds, by the **preponderance of the evidence**, that the amount in controversy  
25 exceeds the amount specified in section 1332(a).” Pub. L. 112–63, Dec. 7, 2011, 125  
26 Stat. 758, § 103(b)(3)(C) (codified at 28 U.S.C. § 1446(c)(2) (emphasis added)). *Accord*  
27 *Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006) (“Where the complaint  
28 does not specify the amount of damages sought, the removing defendant must prove by a

1 preponderance of the evidence that the amount in controversy requirement has been  
2 met.”); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 701 (9th Cir. 2007) (“[T]he  
3 complaint fails to allege a sufficiently specific total amount in controversy . . . we  
4 therefore apply the preponderance of the evidence burden of proof to the removing  
5 defendant.”). The defendant must show that it is “more likely than not” that the  
6 jurisdictional threshold is met. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404  
7 (9th Cir. 1996) (“[W]here a plaintiff’s state court complaint does not specify a particular  
8 amount of damages, the removing defendant bears the burden of establishing, by a  
9 preponderance of the evidence, that the amount in controversy exceeds [the jurisdictional  
10 threshold]. Under this burden, the defendant must provide evidence establishing that it is  
11 ‘more likely than not’ that the amount in controversy exceeds that amount.”); *Schiller v.*  
12 *David’s Bridal, Inc.*, 2010 WL 2793650, at \*2 (E.D. Cal. July 14, 2010) (same).

13 35. To satisfy this standard, the “defendants’ notice of removal need include  
14 only a plausible allegation that the amount in controversy exceeds the jurisdictional  
15 threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, — U.S. —, 135 S.  
16 Ct. 547, 554 (2014).

17 36. The burden of establishing the jurisdictional threshold “is not daunting  
18 [because] the removing defendant is not obligated to research, state, and prove the  
19 plaintiff’s claims for damages.” *Ko v. Natura Pet Prod., Inc.*, 2009 WL 10695886, at \*2  
20 (N.D. Cal. Sept. 28, 2009) (internal quotes omitted); *see also Korn v. Polo Ralph Lauren*  
21 *Corp.*, 536 F. Supp. 2d 1199, 1204-1205 (E.D. Cal. 2008) (same); *Bryant v. Serv. Corp.*  
22 *Int’l*, 2008 WL 2002515, at \*6 (N.D. Cal. May 7, 2008) (“[T]he amount of detail  
23 plaintiffs require would render removal under CAFA unworkable in many cases.  
24 Plaintiffs would ask that defendants quantify the number of employees who experienced  
25 a wage and hour violation during the class period, the type of wage and hour violation  
26 each employee experienced, and that specific employee’s hourly salary. Plaintiffs, in  
27 other words, would ask that defendants conduct a fact-specific inquiry into whether the  
28 rights of each and every potential class member were violated. This, however, is the

1 ultimate question the litigation presents, and defendants cannot be expected to try the  
2 case themselves for purposes of establishing jurisdiction . . . .”); *Wheatley v.*  
3 *MasterBrand Cabinets, LLC*, 2019 WL 688209, at \*4 (C.D. Cal. Feb. 19, 2019) (“[T]he  
4 Complaint provides no indication of the violation rate. Plaintiff cannot avoid federal  
5 jurisdiction by purposefully opaque pleading. Nor can he rely on the argument that  
6 Defendant has failed to prove the violation rate without alleging or offering evidence of a  
7 lower violation rate.”); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004)  
8 (“[T]he parties need not predict the trier of fact’s eventual award with one hundred  
9 percent accuracy.”).

10 37. It is well-settled that “the court must accept as true plaintiff’s allegations as  
11 plead in the Complaint and assume that plaintiff will prove liability and recover the  
12 damages alleged.” *Muniz v. Pilot Travel Ctrs. LLC*, 2007 WL 1302504, at \*3 (E.D. Cal.  
13 May 1, 2007) (denying motion for remand of a class action for claims under the  
14 California Labor Code for missed meal and rest periods, unpaid wages and overtime,  
15 inaccurate wage statements, and waiting-time penalties); *see also Ko v. Natura Pet Prod.,*  
16 *Inc.*, 2009 WL 10695886, at \*2 (N.D. Cal. Sept. 28, 2009) (“Allegations made in a  
17 complaint are accepted as true for purposes of removal. . . . [Thus, i]n measuring the  
18 amount in controversy, a court must assume that the allegations of the complaint are true  
19 and that a jury will return a verdict for the plaintiff on all claims made . . . .”).

20 38. As explained by the Ninth Circuit, “the amount-in-controversy inquiry in the  
21 removal context is not confined to the face of the complaint.” *Valdez v. Allstate Ins. Co.*,  
22 372 F.3d 1115, 1117 (9th Cir. 2004); *see also Rodriguez v. AT&T Mobility Servs. LLC*,  
23 728 F.3d 975, 981 (9th Cir. 2013) (holding that the ordinary preponderance of the  
24 evidence standard applies even if a complaint is artfully pled to avoid federal  
25 jurisdiction); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 702 (9th Cir. 2007)  
26 (holding that even if a plaintiff affirmatively pled damages less than the jurisdictional  
27 minimum and did not allege a sufficiently specific total amount in controversy, the  
28

1 removing defendant is still only required to show by a preponderance of evidence that the  
2 amount in controversy exceeds the jurisdictional threshold).

3 39. If a plaintiff asserts statutory violations, the court must assume that the  
4 violation rate is 100 percent, unless the plaintiff specifically alleges otherwise:

5 As these allegations reveal, plaintiff includes no fact-specific  
6 allegations that would result in a putative class or violation rate  
7 that is discernibly smaller than 100%, used by defendant in its  
8 calculations. Plaintiff is the “master of [her] claim[s],” and if  
she wanted to avoid removal, she could have alleged facts  
specific to her claims which would narrow the scope of the  
putative class or the damages sought. She did not.

9 *Muniz*, 2007 WL 1302504, at \*4 (citing *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392  
10 (1987)); *see also Arreola v. The Finish Line*, 2014 WL 6982571, at \*4 (N.D. Cal. Dec. 9,  
11 2014) (“District courts in the Ninth Circuit have permitted a defendant removing an  
12 action under CAFA to make assumptions when calculating the amount in controversy—  
13 such as assuming a 100 percent violation rate, or assuming that each member of the class  
14 will have experienced some type of violation—when those assumptions are reasonable in  
15 light of the allegations in the complaint.”); *Altamirano v. Shaw Indus., Inc.*, 2013 WL  
16 2950600, at \*7 (N.D. Cal. June 14, 2013) (“[M]ost of the cases conducting this analysis  
17 appear to allow the defendant to assume a 100% violation rate only where such an  
18 assumption is supported directly by, or reasonably inferred from, the allegations in the  
19 complaint. . . . [This approach] is more in line with guidance from the Ninth Circuit  
20 regarding the burden of proof [on] removal.”); *Soratorio v. Tesoro Ref. and Mktg. Co.,*  
21 *LLC*, 2017 WL 1520416, at \*3 (C.D. Cal. Apr. 26, 2017) (“Plaintiff’s Complaint could be  
22 reasonably read to allege a 100% violation rate. The Complaint notes that Defendants  
23 ‘did not provide’ Plaintiff and the other class members ‘a thirty minute meal period for  
24 every five hours worked,’ and that this was Defendants’ ‘common practice.’ It also  
25 alleges that Defendants had a practice of ‘requiring employees to work for four hours and  
26 more without a rest period’ and that Defendants had a ‘common practice’ of failing to  
27 provide required breaks.”); *Coleman v. Estes Express Lines, Inc.*, 730 F. Supp. 2d 1141,  
28

1 1149 (C.D. Cal. 2010) (“[C]ourts have assumed a 100% violation rate in calculating the  
2 amount in controversy when the complaint does not allege a more precise calculation.”).

3 40. Numerous district courts have thus concluded that alleging a policy of  
4 noncompliance in a complaint justifies the use of a 100 percent violation rate. *See, e.g.,*  
5 *Altamirano v. Shaw Indus., Inc.*, 2013 WL 2950600, at \*7 (N.D. Cal. June 14, 2013)  
6 (“Given Plaintiff’s allegations that the time shaving policy applied to all putative class  
7 members, . . . assuming a 100% violation rate is not unreasonable.”); *Torrez v. Freedom*  
8 *Mortg., Corp.*, 2017 WL 2713400, at \*3-5 (C.D. Cal. June 22, 2017) (where complaint  
9 alleged “FMC engaged in a pattern and practice of wage abuse against its hourly-paid or  
10 non-exempt employees within the state of California,” the complaint “can reasonably be  
11 interpreted to imply nearly 100% violation rates”); *Franke v. Anderson Merchandisers*  
12 *LLC*, 2017 WL 3224656, at \*2 (C.D. Cal. July 28, 2017) (“Courts in this Circuit have  
13 generally found the amount in controversy satisfied where a defendant assumes a 100%  
14 violation rate based on allegations of a ‘uniform’ illegal practice—or other similar  
15 language—and where the plaintiff offers no evidence rebutting this violation rate.”);  
16 *Feao v. UFP Riverside, LLC*, 2017 WL 2836207, at \*5 (C.D. Cal. June 26, 2017)  
17 (“Plaintiff’s allegations contain no qualifying words such as ‘often’ or ‘sometimes’ to  
18 suggest less than uniform violation that would preclude a 100 percent violation rate.”);  
19 *Soratorio, LLC*, 2017 WL 1520416, at \*3 (“Plaintiff’s Complaint could be reasonably  
20 read to allege a 100% violation rate. The Complaint notes that Defendants ‘did not  
21 provide’ Plaintiff and the other class members ‘a thirty minute meal period for every five  
22 hours worked,’ and that this was Defendants’ ‘common practice.’ It also alleges that  
23 Defendants had a practice of ‘requiring employees to work for four hours and more  
24 without a rest period’ and that Defendants had a ‘common practice’ of failing to provide  
25 required breaks.”); *Ritenour v. Carrington Mortg. Servs. LLC*, 228 F. Supp. 3d, 1025  
26 1030 (C.D. Cal. 2017) (“Given the vague language of the Complaint and the broad  
27 definition of the class, it is reasonable for Defendants to assume a 100% violation rate—  
28 especially since Plaintiffs offer no alternative rate to challenge Defendant’s

1 calculations.”); *Jones v. Tween Brands, Inc.*, 2014 WL 1607636, at \*3 (C.D. Cal.  
2 Apr. 22, 2014) (using 100 percent violation rate for waiting-time penalties since the  
3 complaint did not limit the number or frequency of violations).

4 41. The Complaint alleges **ten** causes of action: (1) “Violation of California  
5 Labor Code §§ 510 and 1198 (Unpaid Overtime)”;

6 (2) “Violation of California Labor  
7 Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums)”;

8 (3) “Violation of California  
9 Labor Code § 226.7 (Unpaid Rest Period Premiums)”;

10 (4) “Violation of California Labor  
11 Code §§ 1194, 1197, 1197.1 (Unpaid Minimum Wages)”;

12 (5) “Violation of California  
13 Labor Code §§ 201 and 202 (Final Wages Not Timely Paid)”;

14 (6) “Violation of  
15 California Labor Code § 204 (Wages Not Timely Paid During Employment)”;

16 (7) “Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements)”;

17 (8) “Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll  
18 Records)”;

19 (9) “Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed  
20 Business Expenses)”;

21 and (10) “Violation of California Business & Professions Code  
22 §§ 17200, *et seq.*”

23 42. The Complaint seeks to certify a class of “[a]ll current and former hourly-  
24 paid or non-exempt employees who worked for any of the Defendants within the State of  
25 California at any time during the period from four years preceding the filing of this  
26 Complaint to final judgment.” (Ex. A, Compl., ¶ 13.)

27 43. Plaintiff’s Tenth Cause of Action for unfair competition is based on an  
28 alleged violation of California Business and Professions Code sections 17200, *et seq.*  
(Ex. A, Compl., ¶¶ 111-117.) The statute of limitations on Plaintiff’s Tenth Cause of  
Action for unfair competition is four years. *See* Cal. Bus. & Prof. Code § 17208.

44. Plaintiff alleges that Defendant’s “**policies and practices**” violated Section  
17200 by requiring Plaintiff and the other putative class members “to work overtime  
without paying them proper compensation” and “to work through their meal and rest  
periods without paying them proper compensation.” (Ex. A, Compl., ¶ 114 (emphasis  
added).) Plaintiff further alleges that Defendant’s “**policies and practices**” violated

1 Section 17200 by “failing to pay minimum wages,” “failing to timely pay wages,” and  
2 failing to comply with “Labor Code sections 226(a) [wage statements], 1174(d), 2800  
3 and 2802 [expense reimbursements].” (Ex. A, Compl., ¶ 114 (emphasis added).)

4 45. Plaintiff alleges that “[she] and the other class members have been  
5 personally injured by Defendants’ unlawful business acts and practices” and that “[she]  
6 and the other class members are entitled to restitution of the wages withheld and retained  
7 by Defendants during a period that commences four years preceding the filing of this  
8 Complaint.” (Ex. A, Compl., ¶¶ 116-117.) Accordingly, for purposes of the calculations  
9 in this Notice of Removal, the “relevant time period” is from **February 14, 2015** through  
10 the present.

11 46. Plaintiff was an hourly, non-exempt employee who worked for Defendant in  
12 San Leandro, California (Alameda County). (Ex. A, Compl., ¶ 17; Strebel Decl., ¶ 5.)

13 47. During the relevant time period identified in the Complaint, there were 610  
14 current and former non-exempt hourly employees that are or were employed by  
15 Defendant in California. (Strebel Decl., ¶ 8.) These 610 current and former employees  
16 worked full-time for a total of approximately 26,997 workweeks. (Strebel Decl., ¶ 8; Ex.  
17 A, Compl. ¶ 24 (“Plaintiff and the other class members worked over . . . forty (40) hours  
18 in a week during their employment with Defendant[ ].”.) The average hourly rate of pay  
19 for these individuals is approximately \$16.44 during the proposed class period. (Strebel  
20 Decl., ¶ 9.)

21 48. As set forth below, the alleged amount in controversy implicated by the  
22 class-wide allegations exceeds \$5,000,000. All calculations supporting the amount in  
23 controversy are based on the Complaint’s allegations, assuming, without any admission  
24 of the truth of the facts alleged and assuming solely for purposes of this Notice of  
25 Removal that liability is established.

### 26 **1. Meal And Rest Period Claims**

27 49. Plaintiff seeks payment for alleged denials of, short, late, or interrupted meal  
28 and rest periods. (Ex. A, Compl., ¶¶ 19, 27-29, 38, 56-75; Prayer for Relief, ¶¶ 10-22.)



1           50. California Labor Code Section 512 provides that “[a]n employer may not  
2 employ an employee for a work period of more than five hours per day without providing  
3 the employee with a meal period of not less than 30 minutes . . . .” Section 512 further  
4 provides that “[a]n employer may not employ an employee for a work period of more  
5 than 10 hours per day without providing the employee with a second meal period of not  
6 less than 30 minutes . . . .” California Labor Code Section 226.7 requires employers to  
7 pay an extra hour’s pay to employees who are not provided full or timely meal periods or  
8 rest periods. Relevant case law holds that an employee is entitled to an additional hour’s  
9 wages per day, for both a rest and meal period violation each day. *Lyon v. W.W.*  
10 *Grainger, Inc.*, 2010 WL 1753194, \*4 (N.D. Cal. Apr. 29, 2010) (noting that Labor Code  
11 Section 226.7 provides recovery for one meal break violation per work day and one rest  
12 break violation per work day).

13           51. According to Plaintiff, Defendant’s “**policies and practices**” require  
14 “Plaintiff and the other class members to work through their meal and rest periods  
15 without paying them proper compensation.” (Ex. A, Compl., ¶ 114.) Plaintiff thus  
16 alleges that Defendant “failed to provide Plaintiff and other class members **all** required  
17 rest and meal periods.” (Ex. A, Compl., ¶¶ 27, 38 (emphasis added).)

18           52. Plaintiff further alleges that Plaintiff and putative class members “were  
19 required to work for periods of longer than five (5) hours without an uninterrupted meal  
20 period of not less than thirty (30) minutes.” (Ex. A, Compl., ¶¶ 61-62.) Plaintiff further  
21 alleges that Defendant “intentionally and willfully required Plaintiff and the other class  
22 members to work during meal periods and failed to compensate Plaintiff and the other  
23 class members the full meal period premium for work performed during meal periods.”  
24 (Ex. A, Compl., ¶ 63.)

25           53. Plaintiff further alleges that Defendant “required Plaintiff and other class  
26 members to work four (4) or more hours without authorizing or permitting a ten (10)  
27 minute rest period per each four (4) hour period worked.” (Ex. A, Compl., ¶ 71.)  
28 Plaintiff further alleges that Defendant “willfully required Plaintiff and the other class

1 members to work during rest periods and failed to pay Plaintiff and the other class  
2 members the full rest period premium for work performed during rest periods.” (Ex. A,  
3 Compl., ¶ 72.)

4 54. Plaintiff seeks “one additional hour of pay at [each] employee’s regular rate  
5 of compensation for each workday that a meal . . . period [was] not provided,” and “one  
6 additional hour of pay at [each] employee’s regular hourly rate of compensation for each  
7 workday that the rest period was not provided.” (Ex. A, Compl., ¶¶ 66, 75; Prayer for  
8 Relief, ¶¶ 11, 18.)

9 55. Plaintiff alleges that her “claims are typical of all other class members.”  
10 (Ex. A, Compl., ¶ 15b.) Plaintiff further alleges that Defendant “**engaged in a policy**  
11 **and practice of wage abuse**” and had a “**polic[y] and practice[] of requiring**  
12 **employees, including Plaintiff and the other class members, to work through their**  
13 **meal and rest periods.**” (Ex. A, Compl., ¶¶ 25, 114 (emphasis added).)

14 56. The statute of limitations to recover meal or rest period premium pay under  
15 California Labor Code Section 226.7 pay is three years. *Murphy v. Kenneth Cole Prods.,*  
16 *Inc.*, 40 Cal. 4th 1094, 1099 (2007) (“[T]he remedy provided in Labor Code section  
17 226.7 constitutes a wage or premium pay and is governed by a three-year statute of  
18 limitations.”). However, Plaintiff alleges a claim for meal and rest break premium pay as  
19 part of her unfair competition claim under Business and Professions Code section 17200,  
20 *et seq.* (Ex. A, Compl., ¶ 114.) Although Defendant contends that meal and rest break  
21 premium pay cannot be recovered under Business and Professions Code Section 17200  
22 (*Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 1401 (2010) (“[P]ermitting recovery  
23 of section 203 penalties via the UCL would not restore the status quo by returning to the  
24 plaintiff funds in which he or she has an ownership interest. Section 203 is not designed  
25 to compensate employees for work performed. Instead, it is intended to encourage  
26 employers to pay final wages on time, and to punish employers who fail to do so.”)),  
27 according to the Complaint, the four-year statute of limitations applies for purposes of  
28

1 removal. Cal. Bus. & Prof. Code § 17208. Thus, for determining the amount in  
2 controversy, the four-year statute of limitations applies.

3 57. Plaintiff is silent as to the amount of alleged meal and rest breaks she claims  
4 to have been denied, thereby precluding precise estimates of the amount in controversy.  
5 However, Plaintiff does allege, in absolute terms, that “Plaintiff and the other class  
6 members worked over eight (8) hours in a day, and/or forty (40) hours in a week their  
7 employment with Defendant[ ].” (Ex. A, Compl., ¶ 24.) These alleged hours worked by  
8 Plaintiff and putative class members are enough to trigger meal period and rest period  
9 requirements under California law.

10 58. Given that Plaintiff alleges that all similarly situated employees in the  
11 putative class worked enough hours on each shift to qualify for meal and rest periods, and  
12 given that Plaintiff alleges a “policy and practice” by Defendant of requiring Plaintiff and  
13 putative class members to work through their meal and rest periods, the Complaint  
14 contemplates that all putative class members suffered meal and rest period violations on  
15 each shift.

16 59. Although Defendant denies that Plaintiff or any putative class member is  
17 entitled to any meal or rest period premium payments, assuming **five meal period**  
18 **violations** and **three rest period violations per week** for each putative class member,<sup>1</sup>  
19 the amount in controversy would be approximately **\$3,550,645.44** [(26,997 workweeks) x  
20 (\$16.44 average hourly pay rate) x (8 premium payments per week)]. Even assuming  
21 only **three meal period violations** and **two rest period violations per week** for each  
22 putative class member, the amount in controversy would be approximately **\$2,219,153.40**  
23 [(26,997 workweeks) x (\$16.44 average hourly pay rate) x (5 premium payments per  
24

25 \_\_\_\_\_  
26 <sup>1</sup> *Wheatley*, 2019 WL 688209, at \*6 (“Because Plaintiff alleges a ‘policy’ of requiring  
27 employees to work through their meal and rest break periods, without specifying a  
28 violation rate or offering evidence of a rate lower than that assumed by Defendant, the  
Court finds Defendant’s estimate of five meal break violations and three rest break  
violations per employee per week reasonable.”).

1 week)]. Accordingly, the amount in controversy on Plaintiff's meal and rest break claims is between approximately **\$3,550,645.44** and **\$2,219,153.40**.

## 2. Unpaid Overtime Claim

60. Plaintiff seeks payment for alleged unpaid overtime wages. (Ex. A, Compl., ¶¶ 24-26, 37, 47-55; Prayer for Relief, ¶¶ 5-9.) Labor Code Section 510(a) requires overtime hours to be paid at one and a half times an employee's "regular rate" for hours in excess of eight hours in a day or 40 hours in a week. The statute of limitations to recover overtime pay under California Labor Code Section 510 pay is three years. Cal. Civ. Proc. Code § 338. However, Plaintiff alleges a claim for overtime pay as part of her unfair competition claim under Business and Professions Code Section 17200, *et seq.* (Ex. A, Compl., ¶ 114). According to the Complaint, the four-year statute of limitations applies for purposes of removal. Cal. Bus. & Prof. Code § 17208. Thus, for determining the amount in controversy, the four-year statute of limitations applies.

61. Plaintiff alleges that "Plaintiff and the other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week," which means that any alleged off-the-clock time worked by putative class members would necessarily result in overtime payments. (Ex. A, Compl., ¶¶ 52, 24.) Plaintiff further alleges that "Plaintiff and the other class members were required to work more than eight (8) hours per day and/or forty (40) hours per week without overtime compensation for all overtime hours worked." (Ex. A, Compl., ¶ 37.)

62. Plaintiff further alleges that Defendant "intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members." (Ex. A, Compl., ¶¶ 53, 37.)

63. Plaintiff alleges that his "claims are typical of all other class members." (Ex. A, Compl., ¶ 15b.) Plaintiff further alleges that Defendant "**engaged in a pattern and practice of wage abuse**" and had a "**polic[y] and practice[] of requiring employees, including Plaintiff and the other class members, to work overtime**

1 **without paying them proper compensation.”** (Ex. A, Compl., ¶¶ 25, 114 (emphasis  
2 added).)

3 64. Although Defendant denies that Plaintiff or any putative class member is  
4 entitled to any overtime pay, assuming **2.5 hours of overtime** in excess of eight hours  
5 per day or 40 hours per week for each putative class member, the amount in controversy  
6 would be approximately **\$1,664,365.05** [(26,997 workweeks) x (\$16.44 average hourly  
7 pay rate times 1.5) x (2.5 hours overtime hours per week)]. Even assuming only **1.0 hour**  
8 **of overtime** in excess of eight hours per day or 40 hours per week for each putative class  
9 member, the amount in controversy would be approximately **\$665,746.02** [(26,997  
10 workweeks) x (\$16.44 average hourly pay rate times 1.5) x (2.5 hours overtime hours per  
11 week)]. Accordingly, the amount in controversy on Plaintiff’s overtime claim is between  
12 approximately **\$1,664,365.05 and \$665,746.02.**

### 13 3. Waiting Time Penalties

14 65. Plaintiff seeks to recover statutory penalties on behalf of class members for  
15 each day up to 30 days that they were not paid their wages owed. (Ex. A, Compl., ¶¶ 31,  
16 40, 82-87; Prayer for Relief, ¶¶ 30-34.) Pursuant to Labor Code Section 203, an  
17 employer who willfully fails to pay all wages due at the time of termination or  
18 resignation results in a penalty of continued wages for each day a former employee is not  
19 paid, up to a 30-day maximum. *See* Cal. Lab. Code § 203(a).

20 66. Plaintiff alleges that Defendant failed to timely pay wages due, in violation  
21 of California Labor Code Section 203. Plaintiff alleges that Defendant “intentionally and  
22 willfully failed to pay Plaintiff and the other class members who are no longer employed  
23 by Defendant[] their wages, earned and unpaid, within seventy-two (72) hours of their  
24 leave Defendant[’s] employ.” (Ex. A, Compl., ¶ 84.) Plaintiff further alleges that “[she]  
25 and the other class members are entitled to recover from Defendant[] the statutory  
26 penalty wages for each day they were not paid, up to a thirty (30) days maximum.” (Ex.  
27 A, Compl., ¶ 87.)  
28

1           67. The statute of limitations period for California Labor Code Section 203  
 2 penalties extends back three years from the date of filing of the complaint. *See Pineda*,  
 3 50 Cal. 4th at 1399 (“[I]f an employer failed to timely pay final wages to an employee  
 4 who quit or was fired, the employee would have had one year to sue for the section 203  
 5 penalties but, under Code of Civil Procedure section 338, subdivision (a) . . . , three years  
 6 to sue for the unpaid final wages giving rise to the penalty.”). However, Plaintiff alleges  
 7 a claim for waiting time penalties pay as part of her unfair competition claim under  
 8 Business and Professions Code Section 17200, *et seq.* (Ex. A, Compl., ¶ 114). Although  
 9 Defendant contends that waiting time penalties cannot be recovered under Business and  
 10 Professions Code Section 17200 (*Pineda*, 50 Cal. 4th at 1401 (“[P]ermitting recovery of  
 11 section 203 penalties via the UCL would not restore the status quo by returning to the  
 12 plaintiff funds in which he or she has an ownership interest. Section 203 is not designed  
 13 to compensate employees for work performed. Instead, it is intended to encourage  
 14 employers to pay final wages on time, and to punish employers who fail to do so.”)),  
 15 according to the Complaint, the four-year statute of limitations applies for purposes of  
 16 removal. Cal. Bus. & Prof. Code § 17208. Thus, for determining the amount in  
 17 controversy, the four-year statute of limitations applies.

18           68. During the four-year period for waiting time penalties, from February 14,  
 19 2015 to the present, there are approximately 610 former non-exempt, hourly employees  
 20 in California. (Strebel Decl., ¶ 8.) And 142 of those individuals’ employment with  
 21 Defendant ended between February 14, 2015 and April 22, 2019. (Strebel Decl., ¶ 12.)

22           69. The amount in controversy on this claim for waiting time penalties is  
 23 **\$560,275.20** [8 hours per day x \$16.44 average hourly pay rate x 30 days x 142  
 24 employees].<sup>2</sup>

25 \_\_\_\_\_  
 26 <sup>2</sup> *Wheatley*, 2019 WL 688209, at \*6 (“[B]ecause Plaintiff does not allege or offer  
 27 evidence that some class members worked part time, it is reasonable for Defendant to  
 28 assume eight-hour shifts. Moreover, the Court has previously found reasonable the use  
 of the thirty-day maximum penalty to calculate the AIC for waiting time claims where, as  
 here, the plaintiff failed to specify if or when any wages due at termination had been paid.

#### 4. Non-Compliant Wage Statement Claim

70. Plaintiff asserts a claim for failing to provide accurate wage statements under California Labor Code Section 226. (Ex. A, Compl., ¶¶ 33, 42, 94-100; Prayer for Relief, ¶¶ 39-43.) California Labor Code Section 226(e) provides a minimum of \$50 for the initial violation as to each employee, and \$100 for each further violation as to each employee, up to a maximum penalty of \$4,000 per employee. The statute of limitations for recovery of penalties under California Labor Code Section 226 is one year. Cal. Civ. Proc. Code § 340(a); *Morales v. Jerome's Furniture Warehouse*, 2019 WL 1091444, at \*5 (S.D. Cal. Mar. 8, 2019) (“A one year statute of limitations applies to this [wage statement] claim.”).

71. Plaintiff alleges that Defendant’s “**policies and practices**” violated California law by failing to comply with “Labor Code sections 226(a).” (Ex. A, Compl., ¶ 114 (emphasis added).)

72. Plaintiff further alleges that Defendant “intentionally and willfully failed to provide Plaintiff and the other class members with complete or accurate wage statements.” (Ex. A, Compl., ¶ 96.) Plaintiff further alleges that “[t]he deficiencies include, but are not limited to: the failure to include the total number of hours worked by Plaintiff and the other class members.” (Ex. A, Compl., ¶ 96.)

73. Plaintiff filed her Complaint on February 14, 2019, 2018. Therefore, the statutory period for this wage statement claim begins on February 14, 2018.

74. Defendant pays its hourly employees on a bi-weekly basis. (Strebel Decl., ¶ 11.) Accordingly, there are 26 pay periods per year. (Strebel Decl., ¶ 11.)

75. During the applicable statute of limitations period, 592 potential class members did not (according to Plaintiff) receive accurate wage statements. (Strebel

---

Moreover, to the extent the waiting time claim is based on nonpayment of wages allegedly owed under the other claims in this action, it is clear those wages have still not been paid, and thus that the waiting time exceeds thirty days. In line with its previous cases and the decisions of other district courts, the Court finds Defendant’s use of the thirty-day maximum reasonable.”).

1 Decl., ¶ 10.) During this period, the 592 employees worked a total of approximately  
2 9,329 pay periods. (Strebel Decl., ¶ 10.) And during this period, an employee could  
3 receive \$50 for an initial inaccurate wage statement and \$100 for each subsequent  
4 inaccurate wage statement, up to a maximum of \$4,000. All 9,329 of the pay periods  
5 qualify for these penalties. (Strebel Decl., ¶ 10.) These figures put the current amount in  
6 controversy for Plaintiff’s wage statement claim at **\$903,300**. (Strebel Decl., ¶ 10.) But  
7 as of April 22, 2019, none of the 592 employees have reached the \$4,000 maximum for  
8 penalties, given that the employees are paid bi-weekly. (Strebel Decl., ¶ 10.) Once each  
9 of the 592 employees reach the \$4,000 maximum, the amount in controversy for this  
10 claim will be **\$2,368,000**. (Strebel Decl., ¶ 10.) Accordingly, the amount in controversy  
11 for Plaintiff’s wage statement claim spans **\$903,300 to \$2,368,000**.

## 12 5. Reimbursement Claim

13 76. Plaintiff asserts a claim for failing to reimburse business expenses under  
14 California Labor Code Section 2802. (Ex. A, Compl., ¶¶ 35, 44, 106-110; Prayer for  
15 Relief, ¶¶ 48-52.) California Labor Code Section 2802(a) requires an employer to  
16 “indemnify [its] employee for all necessary expenditures or losses incurred by the  
17 employee in direct consequence of the discharge of his or her duties . . . .” The statute of  
18 limitations for recovery of reimbursement pay under California Labor Code Section 2802  
19 is three years. Cal. Code Civ. § Proc. 338. However, Plaintiff alleges a claim for  
20 unreimbursed business expenses as part of her unfair competition claim under Business  
21 and Professions Code Section 17200, *et seq.* (Ex. A, Compl., ¶ 114.) According to the  
22 Complaint, a four-year statute of limitations applies for purposes of removal. Cal. Bus. &  
23 Prof. Code § 17208. Thus, for determining the amount in controversy, the four-year  
24 statute of limitations applies to this claim.

25 77. Plaintiff alleges that Defendant’s “**policies and practices**” violated  
26 California law by failing to comply with “Labor Code sections 2800 and 2802.” (Ex. A,  
27 Compl., ¶ 114 (emphasis added).)  
28



1           78. More specifically, Plaintiff alleges that “[she] and the other class members  
2 incurred necessary business-related expenses and costs,” but “Defendant failed to  
3 reimburse Plaintiff and the other class members for all necessary business-related  
4 expenses and costs.” (Ex. A, Compl. ¶¶ 108, 44.)

5           79. Defendant denies that any putative class member was required to incur  
6 business-related expenses, and to the extent any were, Defendant denies that it failed to  
7 reimburse the putative class members for those business-related expenses.

8           80. Plaintiff does not identify what types of business-related expenses she and  
9 the putative class members allegedly incurred. Nor does Plaintiff specify the amount of  
10 these unreimbursed expenses. Defendant thus offers various estimates of the amount at  
11 issue for this claim, based strictly on cellular texting costs. Defendant is thus excluding  
12 large expenses from the amount in controversy that Plaintiff may be claiming, such as  
13 costs related to automobile usage, laptops, home internet, cell phones, and cellular plans.

14           81. Assuming each putative class member used his or her cell phone to send **one**  
15 **text message per month** for work related-reasons, and further assuming that an average  
16 text costs 11 cents, the amount in controversy would be approximately \$3,422.10 [(610  
17 employees) x (\$0.11 average cost of text message times 51 months)]. Assuming each  
18 putative class member used his or her cell phone to send **four text messages per month**  
19 for work related-reasons, and further assuming that an average text costs 11 cents, the  
20 amount in controversy would be approximately \$13,688.40 [(610 employees) x (\$0.11  
21 average cost of text message times 51 months) x (4 texts per month)]. Assuming each  
22 putative class member used his or her cell phone to send **20 text messages per month** for  
23 work related-reasons, and further assuming that an average text costs 11 cents, the  
24 amount in controversy would be approximately \$68,442 [(610 employees) x (\$0.11  
25 average cost of text message times 51 months) x (20 texts per month)]. Accordingly, the  
26 amount in controversy for Plaintiff’s reimbursement claim ranges from **at least \$3,422.10**  
27 **to \$68,442.**  
28

## 6. Attorneys' Fees

82. Plaintiff also seeks attorneys' fees on her First, Second, Fourth, Ninth, and Tenth Causes of Action. (Ex. A, Compl., ¶¶ 55, 79, 117; Prayer for Relief, ¶¶ 8, 15, 27, 51, 56.) Additionally, through her First Amended Complaint, Plaintiff seeks attorneys' fees in connection with her Eleventh cause of action. (Ex. B, FAC, ¶ 140; Prayer for Relief, ¶ 59.)

83. Requests for attorneys' fees must be taken into account in ascertaining the amount in controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("We hold that where an underlying statute authorizes an award of attorneys' fees, either with mandatory or discretionary language, such fees may be included in the amount in controversy."); *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002) ("Where the law entitles the prevailing plaintiff to recover reasonable attorney fees, a reasonable estimate of fees likely to be incurred to resolution is part of the benefit permissibly sought by the plaintiff and thus contributes to the amount in controversy."); *Muniz*, 2007 WL 1302504, at \*2 ("[A]ttorneys' fees or punitive damages which are plead and which, as set forth below, are also properly considered in ascertaining the amount in controversy.").

84. A reasonable estimate of fees likely to be recovered may be used in calculating the amount in controversy. *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1011 (N.D. Cal. 2002) ("Where the law entitles the prevailing plaintiff to recover reasonable attorney fees, a reasonable estimate of fees likely to be incurred to resolution is part of the benefit permissibly sought by the plaintiff and thus contributes to the amount in controversy."); *Longmire v. HMS Host USA, Inc.*, 2012 WL 5928485, at \*9 (S.D. Cal. Nov. 26, 2012) ("[C]ourts may take into account reasonable estimates of attorneys' fees likely to be incurred when analyzing disputes over the amount in controversy under CAFA.").

85. The Ninth Circuit recently held that "a court must include future attorneys' fees recoverable by statute or contract when assessing whether the amount-in-controversy

1 requirement is met.” *Fritsch v. Swift Transp. Co. of Ariz., LLC*, --- F.3d ----, 2018 WL  
2 3748667, at \*6 (9th Cir. Aug. 8, 2018); *see also Chavez v. JPMorgan Chase & Co.*, 888  
3 F.3d 413, 414-15 (9th Cir. 2018) (“[T]he amount in controversy is not limited to damages  
4 incurred prior to removal—for example, it is not limited to wages a plaintiff-employee  
5 would have earned before removal (as opposed to after removal). Rather, the amount in  
6 controversy is determined by the complaint operative at the time of removal and  
7 encompasses all relief a court may grant on that complaint if the plaintiff is victorious.”).  
8 Districts courts within the Ninth Circuit agree. *Cortez v. United Nat. Foods, Inc.*, 2019  
9 WL 955001, at \*7 (N.D. Cal. Feb. 27, 2019) (“The Court finds that the Defendants have  
10 sufficiently demonstrated that the amount in controversy for future attorneys' fees puts  
11 the total amount in controversy over \$5,000,000.”); *Lucas v. Michael Kors (USA), Inc.*,  
12 2018 WL 2146403 (C.D. Cal. May 9, 2018) (holding that “unaccrued post-removal  
13 attorneys’ fees can be factored into the amount in controversy” for CAFA jurisdiction).

14 86. With class actions, courts have found that 25 percent of the aggregate  
15 amount in controversy is a benchmark for attorneys’ fees awards under the “percentage  
16 of fund” calculation, and courts routinely move north of that benchmark. *See Powers v.*  
17 *Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000) (“We have also established twenty-five  
18 percent of the recovery as a ‘benchmark’ for attorneys’ fees calculations under the  
19 percentage-of-recovery approach.”); *Wren v. RGIS Inventory Specialists*, 2011 WL  
20 1230826, at \*29 (N.D. Cal. Apr. 1, 2011) (“[T]here is ample support for adjusting the  
21 25% presumptive benchmark upward to . . . just under 42% of the settlement amount . . .  
22 .”); *Cicero v. DirecTV, Inc.*, 2010 WL 2991486, at \*7 (C.D. Cal. July 27, 2010)  
23 (“[A]lthough this [30%] is slightly higher than the 25% benchmark for fees in class  
24 action cases, it is consistent with other wage and hour class actions . . . .”); *Vasquez v.*  
25 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Cal. 2010) (citing to five  
26 wage and hour class actions where federal district courts approved attorney fee awards  
27 ranging from 30% to 33%); *Singer v. Becton Dickinson and Co.*, 2010 WL 2196104, \* 8  
28 (S.D. Cal. June 1, 2010) (approving attorney fee award of 33.33% of the common fund

1 and holding that award was similar to awards in three other wage and hour class action  
2 cases where fees ranged from 30.3% to 40%); *see also In re Quintas Secs. Litig.*, 148 F.  
3 Supp. 2d 967, 973 (N.D. Cal. 2001) (noting that in the class action settlement context, the  
4 benchmark for setting attorneys' fees is 25 percent of the common fund).

5 87. Using 40 percent of the high recovery for the claims discussed above,  
6 attorneys' fees alone would be upward of **\$3,284,691.07** in this case [(\$3,550,645.44 for  
7 Unpaid Meal and Rest Period Premiums + \$1,664,365.05 for Unpaid Overtime Wages  
8 Claim + \$560,275.20 for Waiting Time Penalties + \$2,368,000 for Wage Statement  
9 Claim + \$68,442 for Reimbursement Claim) x 0.40]. And even under the conservative  
10 benchmark of 25 percent of the low recovery for the applicable claims, attorneys' fees  
11 alone would be upward of **\$1,087,974.18** in this case [(\$2,219,153.40 for Unpaid Meal  
12 and Rest Period Premiums + \$665,746.02 for Unpaid Overtime Wages Claim +  
13 \$560,275.20 for Waiting Time Penalties + \$903,300 for Wage Statement Claim +  
14 \$3,422.10 for Reimbursement Claim) x 0.25]. Accordingly, the amount in controversy  
15 for Plaintiff's attorneys' fees range from **\$1,087,974.18 to \$3,284,691.07**.

#### 16 **7. Approximate Aggregate Amount In Controversy**

17 88. Although Defendant denies Plaintiff's allegations that she or the putative  
18 class are entitled to any relief for the above-mentioned claims, based on the foregoing  
19 calculations, the aggregate amount in controversy for the putative class for all asserted  
20 claims ranges from approximately **\$5,439,870.90 to \$11,496,418.76**.

<u>LOW</u>	<u>HIGH</u>	
\$2,219,153.40	\$3,550,645.44	Meal/Rest Period Claim (3 meal and 2 rest violations/week v. 5 meal and 3 rest violations/week)
\$665,746.02	\$1,664,365.05	Overtime Claim (1 hour of unpaid OT/week v. 2.5 hours of unpaid OT/week)
\$560,275.20	\$560,275.20	Waiting Time Penalties Claim
\$903,300	\$2,368,000	Wage Statement Claim
\$3,422.10	\$68,442	Reimbursement Claim (1 text/month v. 20 texts/month)
<u>\$1,087,974.18</u>	<u>\$3,284,691.07</u>	Attorneys' Fees (25% v. 40% of above figures)
<b>\$5,439,870.90</b>	<b>\$11,496,418.76</b>	<b>TOTALS</b>

89. Although Defendant denies Plaintiff's allegations that she or the putative class are entitled to any relief, based on Plaintiff's allegations and prayer for relief, and a conservative estimate based on those allegations, the total amount in controversy exceeds the \$5,000,000 threshold set forth under 28 U.S.C. § 1332(d)(2) for removal jurisdiction.

90. Because minimal diversity of citizenship exists, and the amount in controversy exceeds \$5,000,000, this Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2). This action is therefore a proper one for removal to this Court pursuant to 28 U.S.C. § 1441(a).

91. To the extent that Plaintiff has alleged any other claims for relief in the Complaint or First Amended Complaint over which this Court would not have original jurisdiction under 28 U.S.C. § 1332(d), the Court has supplemental jurisdiction over any such claims pursuant to 28 U.S.C. section 1367(a).

#### IV. VENUE

92. Venue lies in the United States District Court for the Northern District of California, pursuant to 28 U.S.C. §§ 1391(a), 1441, and 84(c). This action originally was

1 brought in Alameda County Superior Court of the State of California, which is located  
2 within the Northern District of California. 28 U.S.C. § 84(c). Therefore, venue is proper  
3 because it is the “district and division embracing the place where such action is pending.”  
4 28 U.S.C. § 1441(a). A true and correct copy of this Notice of Removal will be promptly  
5 served on Plaintiff and filed with the Clerk of the Alameda County Superior Court of the  
6 State of California as required under 28 U.S.C. § 1446(d).

7 **V. INTRADISTRICT ASSIGNMENT**

8 93. Assignment to the San Francisco or Oakland divisions of this Court is proper  
9 under Local Rule 3-2 because Plaintiff filed her Complaint in the Superior Court of the  
10 State of California, County of Alameda.

11 **VI. CONSENT**

12 94. No consent is necessary from the other Defendants, Does 1-100, because  
13 they are not named in the Complaint and have not been served.

14 **VII. NOTICE TO STATE COURT AND TO PLAINTIFF**

15 95. Defendant will give prompt notice of the filing of this Notice of Removal to  
16 Plaintiff and to the Clerk of the Superior Court of the State of California in the County of  
17 Alameda. The Notice of Removal is concurrently being served on all parties.

18 **VIII. PRAAYER FOR REMOVAL**

19 96. WHEREFORE, Defendant prays that this civil action be removed from  
20 Superior Court of the State of California for the County of Alameda to the United States  
21 District Court for the Northern District of California.

22 Date: April 26, 2019

Respectfully submitted,

SEYFARTH SHAW LLP

25 By: /s/ Jon D. Meer

26 Jon D. Meer  
27 Bethany A. Pelliconi  
28 Paul J. Leaf  
Attorneys for Defendant  
WAYFAIR LLC

# **EXHIBIT A**

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

WAYFAIR LLC, an unknown business entity; and DOES 1 through 100, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

LIONESHA HAMILTON, individually, and on behalf of other members of the general public similarly situated;

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ENDORSED  
FILED  
ALAMEDA COUNTY**

FEB 14 2019

CLERK OF THE SUPERIOR COURT  
By: ERICA BAKER, Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorta.ca.gov](http://www.sucorta.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorta.ca.gov](http://www.sucorta.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Superior Court of California  
County of Alameda, Rene C. Davidson Courthouse  
1225 Fallon Street, Oakland, California 94612

CASE NUMBER:  
(Número del Caso)  
RG19006990

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Edwin Aiwazian, 410 Arden Ave., Ste. 203, Glendale, CA 91203; Telephone No. (818) 265-1020

DATE: FEB 14 2019  
(Fecha)

Crist Finke

Clerk, by *[Signature]*  
(Secretario)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[REDACTED]

- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
  - as the person sued under the fictitious name of (specify):
  - on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
  - by personal delivery on (date):





**FILED**  
ALAMEDA COUNTY

FEB 14 2019

CLERK OF THE SUPERIOR COURT  
By: Eric Barker  
ERIC BARKER Deputy

1 Edwin Aiwazian (SBN 232943)  
2 **LAWYERS for JUSTICE, PC**  
3 410 West Arden Avenue, Suite 203  
4 Glendale, California 91203  
5 Tel: (818) 265-1020 / Fax: (818) 265-1021

6 *Attorneys for Plaintiff*

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF ALAMEDA**

**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

10 LIONESHA HAMILTON, individually, and  
11 on behalf of other members of the general  
12 public similarly situated;

13 **Plaintiff,**

14 **vs.**

15 WAYFAIR LLC, an unknown business  
16 entity; and DOES 1 through 100, inclusive,

17 **Defendants.**

Case No.: **RG 19006990**  
**CLASS ACTION COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.

**DEMAND FOR JURY TRIAL**

**FAX FILE**

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 COMES NOW, Plaintiff LIONESHA HAMILTON ("Plaintiff"), individually, and on  
2 behalf of other members of the general public similarly situated, and alleges as follows:

3 JURISDICTION AND VENUE

4 1. This class action is brought pursuant to the California Code of Civil Procedure  
5 section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal  
6 jurisdiction limits of the Superior Court and will be established according to proof at trial. The  
7 "amount in controversy" for the named Plaintiff, including but not limited to claims for  
8 compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of  
9 attorneys' fees, is less than seventy-five thousand dollars (\$75,000).

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

14 3. This Court has jurisdiction over Defendant because, upon information and  
15 belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or  
16 otherwise intentionally avails itself of the California market so as to render the exercise of  
17 jurisdiction over it by California courts consistent with traditional notions of fair play and  
18 substantial justice.

19 4. Venue is proper in this Court because, upon information and belief, Defendant  
20 maintains offices, has agents, employs individuals, and/or transacts business in the State of  
21 California, County of Alameda. The majority of acts and omissions alleged herein relating to  
22 Plaintiff and the other class members took place in the State of California, including the County  
23 of Alameda.

24 PARTIES

25 5. Plaintiff LIONESHA HAMILTON is an individual residing in the State of  
26 California, County of Alameda.

27 ///

28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1           6. Defendant WAYFAIR LLC, at all times herein mentioned, was and is, upon  
2 information and belief, an employer whose employees are engaged throughout the State of  
3 California, including the County of Alameda.

4           7. At all relevant times, Defendant WAYFAIR LLC was the “employer” of  
5 Plaintiff within the meaning of all applicable California laws and statutes.

6           8. At all times herein relevant, Defendants WAYFAIR LLC, and DOES 1 through  
7 100, and each of them, were the agents, partners, joint venturers, joint employers,  
8 representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns,  
9 each of the other, and at all times relevant hereto were acting within the course and scope of  
10 their authority as such agents, partners, joint venturers, joint employers, representatives,  
11 servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions  
12 alleged herein were duly committed with the ratification, knowledge, permission,  
13 encouragement, authorization and/or consent of each defendant designated as a DOE herein.

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

22           10. Defendant WAYFAIR LLC and DOES 1 through 100 will hereinafter  
23 collectively be referred to as “Defendants.”

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

28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

**CLASS ACTION ALLEGATIONS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

12. Plaintiff bring this action on her own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from four years preceding the filing of this Complaint to final judgment.

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

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

- a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.
- c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily

**LAWYERS for JUSTICE, PC**  
 410 West Arden Avenue, Suite 203  
 Glendale, California 91203

- 1                   expended for the prosecution of this action for the substantial benefit of  
 2                   each class member.
- 3           d.    Superiority: A class action is superior to other available methods for the  
 4           fair and efficient adjudication of this litigation because individual joinder  
 5           of all class members is impractical.
- 6           e.    Public Policy Considerations: Certification of this lawsuit as a class  
 7           action will advance public policy objectives. Employers of this great  
 8           state violate employment and labor laws every day. Current employees  
 9           are often afraid to assert their rights out of fear of direct or indirect  
 10          retaliation. However, class actions provide the class members who are  
 11          not named in the complaint anonymity that allows for the vindication of  
 12          their rights.

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

- 16           a.    Whether Defendants' failure to pay wages, without abatement or  
 17           reduction, in accordance with the California Labor Code, was willful;
- 18           b.    Whether Defendants' had a corporate policy and practice of failing to  
 19           pay their hourly-paid or non-exempt employees within the State of  
 20           California for all hours worked and missed (short, late, interrupted,  
 21           and/or missed altogether) meal periods and rest breaks in violation of  
 22           California law;
- 23           c.    Whether Defendants required Plaintiff and the other class members to  
 24           work over eight (8) hours per day and/or over forty (40) hours per week  
 25           and failed to pay the legally required overtime compensation to Plaintiff  
 26           and the other class members;
- 27           d.    Whether Defendants deprived Plaintiff and the other class members of  
 28           meal and/or rest periods or required Plaintiff and the other class

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

- 1 members to work during meal and/or rest periods without compensation;
- 2 e. Whether Defendants failed to pay minimum wages to Plaintiff and the
- 3 other class members for all hours worked;
- 4 f. Whether Defendants failed to pay all wages due to Plaintiff and the other
- 5 class members within the required time upon their discharge or
- 6 resignation;
- 7 g. Whether Defendants failed to timely pay all wages due to Plaintiff and
- 8 the other class members during their employment;
- 9 h. Whether Defendants complied with wage reporting as required by the
- 10 California Labor Code; including, *inter alia*, section 226;
- 11 i. Whether Defendants kept complete and accurate payroll records as
- 12 required by the California Labor Code, including, *inter alia*, section
- 13 1174(d);
- 14 j. Whether Defendants failed to reimburse Plaintiff and the other class
- 15 members for necessary business-related expenses and costs;
- 16 k. Whether Defendants' conduct was willful or reckless;
- 17 l. Whether Defendants engaged in unfair business practices in violation of
- 18 California Business & Professions Code section 17200, et seq.;
- 19 m. The appropriate amount of damages, restitution, and/or monetary
- 20 penalties resulting from Defendants' violation of California law; and
- 21 n. Whether Plaintiff and the other class members are entitled to
- 22 compensatory damages pursuant to the California Labor Code.

**GENERAL ALLEGATIONS**

24 17. At all relevant times set forth herein, Defendants employed Plaintiff and other  
25 persons as hourly-paid or non-exempt employees within the State of California, including the  
26 County of Alameda.

27 ///

28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-  
2 exempt employee, from approximately July 2017 to approximately June 2018, in the State of  
3 California, County of Alameda.

4 19. Defendants hired Plaintiff and the other class members, classified them as  
5 hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and  
6 missed meal periods and/or rest breaks.

7 20. Defendants had the authority to hire and terminate Plaintiff and the other class  
8 members, to set work rules and conditions governing Plaintiff's and the other class members'  
9 employment, and to supervise their daily employment activities.

10 21. Defendants exercised sufficient authority over the terms and conditions of  
11 Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff  
12 and the other class members.

13 22. Defendants directly hired and paid wages and benefits to Plaintiff and the other  
14 class members.

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

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

19 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
20 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt  
21 employees within the State of California. This pattern and practice involved, *inter alia*, failing  
22 to pay them for all regular and/or overtime wages earned and for missed meal periods and rest  
23 breaks in violation of California law.

24 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
25 knew or should have known that Plaintiff and the other class members were entitled to receive  
26 certain wages for overtime compensation and that they were not receiving accurate overtime  
27 compensation for all overtime hours worked.

28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

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

5           28. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
6 knew or should have known that Plaintiff and the other class members were entitled to receive  
7 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class  
8 member's regular rate of pay when a meal period was missed, and they did not receive all meal  
9 periods or payment of one additional hour of pay at Plaintiff's and the other class member's  
10 regular rate of pay when a meal period was missed.

11           29. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
12 knew or should have known that Plaintiff and the other class members were entitled to receive  
13 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class  
14 member's regular rate of pay when a rest period was missed, and they did not receive all rest  
15 periods or payment of one additional hour of pay at Plaintiff's and the other class members'  
16 regular rate of pay when a rest period was missed.

17           30. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
18 knew or should have known that Plaintiff and the other class members were entitled to receive  
19 at least minimum wages for compensation and that they were not receiving at least minimum  
20 wages for all hours worked.

21           31. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
22 knew or should have known that Plaintiff and the other class members were entitled to receive  
23 all wages owed to them upon discharge or resignation, including overtime and minimum wages  
24 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to  
25 them at the time of their discharge or resignation.

26           32. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
27 knew or should have known that Plaintiff and the other class members were entitled to receive  
28 all wages owed to them during their employment. Plaintiff and the other class members did



LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 not receive payment of all wages, including overtime and minimum wages and meal and rest  
2 period premiums, within any time permissible under California Labor Code section 204.

3 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
4 knew or should have known that Plaintiff and the other class members were entitled to receive  
5 complete and accurate wage statements in accordance with California law, but, in fact, they did  
6 not receive complete and accurate wage statements from Defendants. The deficiencies  
7 included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the  
8 other class members.

9 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
10 knew or should have known that Defendants had to keep complete and accurate payroll records  
11 for Plaintiff and the other class members in accordance with California law, but, in fact, did  
12 not keep complete and accurate payroll records.

13 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
14 knew or should have known that Plaintiff and the other class members were entitled to  
15 reimbursement for necessary business-related expenses.

16 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
17 knew or should have known that they had a duty to compensate Plaintiff and the other class  
18 members pursuant to California law, and that Defendants had the financial ability to pay such  
19 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely  
20 represented to Plaintiff and the other class members that they were properly denied wages, all  
21 in order to increase Defendants' profits.

22 37. During the relevant time period, Defendants failed to pay overtime wages to  
23 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other  
24 class members were required to work more than eight (8) hours per day and/or forty (40) hours  
25 per week without overtime compensation for all overtime hours worked.

26 38. During the relevant time period, Defendants failed to provide all requisite  
27 uninterrupted meal and rest periods to Plaintiff and the other class members.

28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 39. During the relevant time period, Defendants failed to pay Plaintiff and the other  
2 class members at least minimum wages for all hours worked.

3 40. During the relevant time period, Defendants failed to pay Plaintiff and the other  
4 class members all wages owed to them upon discharge or resignation.

5 41. During the relevant time period, Defendants failed to pay Plaintiff and the other  
6 class members all wages within any time permissible under California law, including, *inter*  
7 *alia*, California Labor Code section 204.

8 42. During the relevant time period, Defendants failed to provide complete or  
9 accurate wage statements to Plaintiff and the other class members.

10 43. During the relevant time period, Defendants failed to keep complete or accurate  
11 payroll records for Plaintiff and the other class members.

12 44. During the relevant time period, Defendants failed to reimburse Plaintiff and the  
13 other class members for all necessary business-related expenses and costs.

14 45. During the relevant time period, Defendants failed to properly compensate  
15 Plaintiff and the other class members pursuant to California law in order to increase  
16 Defendants' profits.

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

20 **FIRST CAUSE OF ACTION**

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

22 **(Against WAYFAIR LLC and DOES 1 through 100)**

23 47. Plaintiff incorporates by reference the allegations contained in Paragraphs 1  
24 through 46, and each and every part thereof with the same force and effect as though fully set  
25 forth herein.

26 48. California Labor Code section 1198 and the applicable Industrial Welfare  
27 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without  
28 compensating them at a rate of pay either time-and-one-half or two-times that person's regular

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 rate of pay, depending on the number of hours worked by the person on a daily or weekly  
2 basis.

3 49. Specifically, the applicable IWC Wage Order provides that Defendants are and  
4 were required to pay Plaintiff and the other class members employed by Defendants, and  
5 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the  
6 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more  
7 than forty (40) hours in a workweek.

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

11 51. California Labor Code section 510 codifies the right to overtime compensation  
12 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours  
13 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day  
14 of work, and to overtime compensation at twice the regular hourly rate for hours worked in  
15 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day  
16 of work.

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

19 53. During the relevant time period, Defendants intentionally and willfully failed to  
20 pay overtime wages owed to Plaintiff and the other class members.

21 54. Defendants' failure to pay Plaintiff and the other class members the unpaid  
22 balance of overtime compensation, as required by California laws, violates the provisions of  
23 California Labor Code sections 510 and 1198, and is therefore unlawful.

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

27 ///

28 ///

**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

**SECOND CAUSE OF ACTION**

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

**(Against WAYFAIR LLC and DOES 1 through 100)**

1  
2  
3  
4 56. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
5 through 55, and each and every part thereof with the same force and effect as though fully set  
6 forth herein.

7 57. At all relevant times, the IWC Order and California Labor Code sections 226.7  
8 and 512(a) were applicable to Plaintiff's and the other class members' employment by  
9 Defendants.

10 58. At all relevant times, California Labor Code section 226.7 provides that no  
11 employer shall require an employee to work during any meal or rest period mandated by an  
12 applicable order of the California IWC.

13 59. At all relevant times, the applicable IWC Wage Order and California Labor  
14 Code section 512(a) provide that an employer may not require, cause or permit an employee to  
15 work for a work period of more than five (5) hours per day without providing the employee  
16 with a meal period of not less than thirty (30) minutes, except that if the total work period per  
17 day of the employee is no more than six (6) hours, the meal period may be waived by mutual  
18 consent of both the employer and employee.

19 60. At all relevant times, the applicable IWC Wage Order and California Labor  
20 Code section 512(a) further provide that an employer may not require, cause or permit an  
21 employee to work for a work period of more than ten (10) hours per day without providing the  
22 employee with a second uninterrupted meal period of not less than thirty (30) minutes, except  
23 that if the total hours worked is no more than twelve (12) hours, the second meal period may  
24 be waived by mutual consent of the employer and the employee only if the first meal period  
25 was not waived.

26 61. During the relevant time period, Plaintiff and the other class members who were  
27 scheduled to work for a period of time no longer than six (6) hours, and who did not waive  
28 their legally-mandated meal periods by mutual consent, were required to work for periods

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)  
2 minutes and/or rest period.

3 62. During the relevant time period, Plaintiff and the other class members who were  
4 scheduled to work for a period of time in excess of six (6) hours were required to work for  
5 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty  
6 (30) minutes and/or rest period.

7 63. During the relevant time period, Defendants intentionally and willfully required  
8 Plaintiff and the other class members to work during meal periods and failed to compensate  
9 Plaintiff and the other class members the full meal period premium for work performed during  
10 meal periods.

11 64. During the relevant time period, Defendants failed to pay Plaintiff and the other  
12 class members the full meal period premium due pursuant to California Labor Code section  
13 226.7.

14 65. Defendants' conduct violates applicable IWC Wage Order and California Labor  
15 Code sections 226.7 and 512(a).

16 66. Pursuant to applicable IWC Wage Order and California Labor Code section  
17 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one  
18 additional hour of pay at the employee's regular rate of compensation for each work day that  
19 the meal or rest period is not provided.

20 **THIRD CAUSE OF ACTION**

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

22 **(Against WAYFAIR LLC and DOES 1 through 100)**

23 67. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
24 through 66, and each and every part thereof with the same force and effect as though fully set  
25 forth herein.

26 68. At all times herein set forth, the applicable IWC Wage Order and California  
27 Labor Code section 226.7 were applicable to Plaintiff's and the other class members'  
28 employment by Defendants.

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 69. At all relevant times, California Labor Code section 226.7 provides that no  
2 employer shall require an employee to work during any rest period mandated by an applicable  
3 order of the California IWC.

4 70. At all relevant times, the applicable IWC Wage Order provides that “[e]very  
5 employer shall authorize and permit all employees to take rest periods, which insofar as  
6 practicable shall be in the middle of each work period” and that the “rest period time shall be  
7 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
8 hours or major fraction thereof” unless the total daily work time is less than three and one-half  
9 (3 ½) hours.

10 71. During the relevant time period, Defendants required Plaintiff and other class  
11 members to work four (4) or more hours without authorizing or permitting a ten (10) minute  
12 rest period per each four (4) hour period worked.

13 72. During the relevant time period, Defendants willfully required Plaintiff and the  
14 other class members to work during rest periods and failed to pay Plaintiff and the other class  
15 members the full rest period premium for work performed during rest periods.

16 73. During the relevant time period, Defendants failed to pay Plaintiff and the other  
17 class members the full rest period premium due pursuant to California Labor Code section  
18 226.7

19 74. Defendants’ conduct violates applicable IWC Wage Orders and California  
20 Labor Code section 226.7.

21 75. Pursuant to the applicable IWC Wage Orders and California Labor Code section  
22 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one  
23 additional hour of pay at the employees’ regular hourly rate of compensation for each work  
24 day that the rest period was not provided.

25 ///

26 ///

27 ///

28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

**FOURTH CAUSE OF ACTION**

**(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

**(Against WAYFAIR LLC and DOES 1 through 100)**

1  
2  
3  
4 76. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
5 through 75, and each and every part thereof with the same force and effect as though fully set  
6 forth herein.

7 77. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1  
8 provide that the minimum wage to be paid to employees, and the payment of a lesser wage  
9 than the minimum so fixed is unlawful.

10 78. During the relevant time period, Defendants failed to pay minimum wage to  
11 Plaintiff and the other class members as required, pursuant to California Labor Code sections  
12 1194, 1197, and 1197.1.

13 79. Defendants' failure to pay Plaintiff and the other class members the minimum  
14 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to  
15 those sections Plaintiff and the other class members are entitled to recover the unpaid balance  
16 of their minimum wage compensation as well as interest, costs, and attorney's fees, and  
17 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

18 80. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class  
19 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each  
20 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee  
21 minimum wages.

22 81. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class  
23 members are entitled to recover liquidated damages in an amount equal to the wages  
24 unlawfully unpaid and interest thereon.

25 ///  
26 ///  
27 ///  
28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

**FIFTH CAUSE OF ACTION**

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

**(Against WAYFAIR LLC and DOES 1 through 100)**

82. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 81, and each and every part thereof with the same force and effect as though fully set forth herein.

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

84. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

85. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

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

87. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

///



**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SIXTH CAUSE OF ACTION**

**(Violation of California Labor Code § 204)**

**(Against WAYFAIR LLC and DOES 1 through 100)**

88. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 87, and each and every part thereof with the same force and effect as though fully set forth herein.

89. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

90. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

91. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

92. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

93. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

///  
///  
///  
///  
///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

**SEVENTH CAUSE OF ACTION**

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

**(Against WAYFAIR LLC and DOES 1 through 100)**

1  
2  
3  
4 94. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
5 through 93, and each and every part thereof with the same force and effect as though fully set  
6 forth herein.

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

21 96. Defendants have intentionally and willfully failed to provide Plaintiff and the  
22 other class members with complete and accurate wage statements. The deficiencies include,  
23 but are not limited to: the failure to include the total number of hours worked by Plaintiff and  
24 the other class members.

25 97. As a result of Defendants' violation of California Labor Code section 226(a),  
26 Plaintiff and the other class members have suffered injury and damage to their statutorily-  
27 protected rights.

28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

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

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

9 100. Plaintiff and the other class members are also entitled to injunctive relief to  
10 ensure compliance with this section, pursuant to California Labor Code section 226(h).

11 **EIGHTH CAUSE OF ACTION**

12 (Violation of California Labor Code § 1174(d))

13 (Against WAYFAIR LLC and DOES 1 through 100)

14 101. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
15 through 100, and each and every part thereof with the same force and effect as though fully set  
16 forth herein.

17 102. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a  
18 central location in the state or at the plants or establishments at which employees are  
19 employed, payroll records showing the hours worked daily by and the wages paid to, and the  
20 number of piece-rate units earned by and any applicable piece rate paid to, employees  
21 employed at the respective plants or establishments. These records shall be kept in accordance  
22 with rules established for this purpose by the commission, but in any case shall be kept on file  
23 for not less than two years.

24 103. Defendants have intentionally and willfully failed to keep accurate and complete  
25 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other  
26 class members.

27 ///

28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 104. As a result of Defendants' violation of California Labor Code section 1174(d),  
2 Plaintiff and the other class members have suffered injury and damage to their statutorily-  
3 protected rights.

4 105. More specifically, Plaintiff and the other class members have been injured by  
5 Defendants' intentional and willful violation of California Labor Code section 1174(d) because  
6 they were denied both their legal right and protected interest, in having available, accurate and  
7 complete payroll records pursuant to California Labor Code section 1174(d).

8 **NINTH CAUSE OF ACTION**

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

10 **(Against WAYFAIR LLC and DOES 1 through 100)**

11 106. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
12 through 105, and each and every part thereof with the same force and effect as though fully set  
13 forth herein.

14 107. Pursuant to California Labor Code sections 2800 and 2802, an employer must  
15 reimburse its employee for all necessary expenditures incurred by the employee in direct  
16 consequence of the discharge of his or her job duties or in direct consequence of his or her  
17 obedience to the directions of the employer.

18 108. Plaintiff and the other class members incurred necessary business-related  
19 expenses and costs that were not fully reimbursed by Defendants.

20 109. Defendants have intentionally and willfully failed to reimburse Plaintiff and the  
21 other class members for all necessary business-related expenses and costs.

22 110. Plaintiff and the other class members are entitled to recover from Defendants  
23 their business-related expenses and costs incurred during the course and scope of their  
24 employment, plus interest accrued from the date on which the employee incurred the necessary  
25 expenditures at the same rate as judgments in civil actions in the State of California.

26 ///

27 ///

28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

**TENTH CAUSE OF ACTION**

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

**(Against WAYFAIR LLC and DOES 1 through 100)**

111. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 110, and each and every part thereof with the same force and effect as though fully set forth herein.

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

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

114. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800 and 2802.

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

///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 116. Plaintiff and the other class members have been personally injured by  
2 Defendants' unlawful business acts and practices as alleged herein, including but not  
3 necessarily limited to the loss of money and/or property.

4 117. Pursuant to California Business & Professions Code sections 17200, et seq.,  
5 Plaintiff and the other class members are entitled to restitution of the wages withheld and  
6 retained by Defendants during a period that commences four years preceding the filing of this  
7 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section  
8 1021.5 and other applicable laws; and an award of costs.

9 **DEMAND FOR JURY TRIAL**

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, individually, and on behalf of other members of the general  
14 public similarly situated, prays for relief and judgment against Defendants, jointly and  
15 severally, as follows:

16 **Class Certification**

- 17 1. That this action be certified as a class action;
- 18 2. That Plaintiff be appointed as the representative of the Class;
- 19 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 20 4. That Defendants provide to Class Counsel immediately the names and most  
21 current/last known contact information (address, e-mail and telephone numbers) of all class  
22 members.

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

- 24 5. That the Court declare, adjudge and decree that Defendants violated California  
25 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay  
26 all overtime wages due to Plaintiff and the other class members;

- 27 6. For general unpaid wages at overtime wage rates and such general and special  
28 damages as may be appropriate;

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 7. For pre-judgment interest on any unpaid overtime compensation commencing  
2 from the date such amounts were due;

3 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
4 California Labor Code section 1194; and

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

6 As to the Second Cause of Action

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

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

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

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

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

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

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

21 As to the Third Cause of Action

22 17. That the Court declare, adjudge and decree that Defendants violated California  
23 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all  
24 rest periods to Plaintiff and the other class members;

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

28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

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

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

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

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

7 **As to the Fourth Cause of Action**

8 23. That the Court declare, adjudge and decree that Defendants violated California  
9 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to  
10 Plaintiff and the other class members;

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

13 25. For statutory wage penalties pursuant to California Labor Code section 1197.1  
14 for Plaintiff and the other class members in the amount as may be established according to  
15 proof at trial;

16 26. For pre-judgment interest on any unpaid compensation from the date such  
17 amounts were due;

18 27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
19 California Labor Code section 1194(a);

20 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

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

23 30. That the Court declare, adjudge and decree that Defendants violated California  
24 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the  
25 time of termination of the employment of Plaintiff and the other class members no longer  
26 employed by Defendants;

27 31. For all actual, consequential, and incidental losses and damages, according to  
28 proof;



LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 32. For statutory wage penalties pursuant to California Labor Code section 203 for  
2 Plaintiff and the other class members who have left Defendants' employ;

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

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

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

7 35. That the Court declare, adjudge and decree that Defendants violated California  
8 Labor Code section 204 by willfully failing to pay all compensation owed at the time required  
9 by California Labor Code section 204 to Plaintiff and the other class members;

10 36. For all actual, consequential, and incidental losses and damages, according to  
11 proof;

12 37. For pre-judgment interest on any unpaid compensation from the date such  
13 amounts were due; and

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

15 **As to the Seventh Cause of Action**

16 39. That the Court declare, adjudge and decree that Defendants violated the record  
17 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders  
18 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized  
19 wage statements thereto;

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

21 41. For statutory penalties pursuant to California Labor Code section 226(e);

22 42. For injunctive relief to ensure compliance with this section, pursuant to  
23 California Labor Code section 226(h); and

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

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

26 44. That the Court declare, adjudge and decree that Defendants violated California  
27 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records  
28 for Plaintiff and the other class members as required by California Labor Code section

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 1174(d);

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

3 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

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

5 **As to the Ninth Cause of Action**

6 48. That the Court declare, adjudge and decree that Defendants violated California  
7 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other  
8 class members for all necessary business-related expenses as required by California Labor  
9 Code sections 2800 and 2802;

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

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

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

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

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

15 53. That the Court decree, adjudge and decree that Defendants violated California  
16 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the  
17 other class members all overtime compensation due to them, failing to provide all meal and  
18 rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to  
19 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'  
20 wages timely as required by California Labor Code section 201, 202 and 204 and by violating  
21 California Labor Code sections 226(a), 1174(d), 2800 and 2802.

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

24 55. For the appointment of a receiver to receive, manage and distribute any and all  
25 funds disgorged from Defendants and determined to have been wrongfully acquired by  
26 Defendants as a result of violation of California Business and Professions Code sections  
27 17200, et seq.;

28 ///

1 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
2 California Code of Civil Procedure section 1021.5;

3 57. For injunctive relief to ensure compliance with this section, pursuant to  
4 California Business and Professions Code sections 17200, et seq.; and

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

6 Dated: February 14, 2019

**LAWYERS for JUSTICE, PC**

7  
8 By:   
9 Edwin Aiwazian  
10 Attorneys for Plaintiff

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT B**

FAX FILE

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Edwin Aiwazian (SBN 232943)  
**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203  
Tel: (818) 265-1020 / Fax: (818) 265-1021

*Attorneys for Plaintiff*

ENDORSED  
FILED  
ALAMEDA COUNTY  
APR 18 2019

CLERK OF THE SUPERIOR COURT  
By *[Signature]* Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

LIONESHA HAMILTON, individually, and  
on behalf of other members of the general  
public similarly situated;

Plaintiff,

vs.

WAYFAIR LLC, an unknown business  
entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: RG19006990

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES &  
ENFORCEMENT UNDER THE PRIVATE  
ATTORNEYS GENERAL ACT,  
CALIFORNIA LABOR CODE  
§ 2698, ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.

(11) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004)

**DEMAND FOR JURY TRIAL**

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

**JURISDICTION AND VENUE**

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiff, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

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

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Alameda. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Alameda.

///

**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

**PARTIES**

1  
2 5. Plaintiff LIONESHA HAMILTON is an individual residing in the State of  
3 California, County of Alameda.

4 6. Defendant WAYFAIR LLC, at all times herein mentioned, was and is, upon  
5 information and belief, an employer whose employees are engaged throughout the State of  
6 California, including the County of Alameda.

7 7. At all relevant times, Defendant WAYFAIR LLC was the “employer” of  
8 Plaintiff within the meaning of all applicable California laws and statutes.

9 8. At all times herein relevant, Defendants WAYFAIR LLC, and DOES 1 through  
10 100, and each of them, were the agents, partners, joint venturers, joint employers,  
11 representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns,  
12 each of the other, and at all times relevant hereto were acting within the course and scope of  
13 their authority as such agents, partners, joint venturers, joint employers, representatives,  
14 servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions  
15 alleged herein were duly committed with the ratification, knowledge, permission,  
16 encouragement, authorization and/or consent of each defendant designated as a DOE herein.

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

25 10. Defendant WAYFAIR LLC and DOES 1 through 100 will hereinafter  
26 collectively be referred to as “Defendants.”

27 11. Plaintiff further alleges that Defendants directly or indirectly controlled or  
28 affected the working conditions, wages, working hours, and conditions of employment of

1 Plaintiff and the other class members so as to make each of said Defendants employers liable  
2 under the statutory provisions set forth herein.

3 **CLASS ACTION ALLEGATIONS**

4 12. Plaintiff bring this action on her own behalf and on behalf of all other members  
5 of the general public similarly situated, and, thus, seeks class certification under California  
6 Code of Civil Procedure section 382.

7 13. The proposed class is defined as follows:

8 All current and former hourly-paid or non-exempt employees who worked for  
9 any of the Defendants within the State of California at any time during the  
10 period from February 14, 2015 to final judgment.

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

12 15. The class is ascertainable and there is a well-defined community of interest in  
13 the litigation:

14 a. Numerosity: The class members are so numerous that joinder of all class  
15 members is impracticable. The membership of the entire class is  
16 unknown to Plaintiff at this time; however, the class is estimated to be  
17 greater than fifty (50) individuals and the identity of such membership is  
18 readily ascertainable by inspection of Defendants' employment records.

19 b. Typicality: Plaintiff's claims are typical of all other class members' as  
20 demonstrated herein. Plaintiff will fairly and adequately protect the  
21 interests of the other class members with whom she has a well-defined  
22 community of interest.

23 c. Adequacy: Plaintiff will fairly and adequately protect the interests of  
24 each class member, with whom she has a well-defined community of  
25 interest and typicality of claims, as demonstrated herein. Plaintiff has no  
26 interest that is antagonistic to the other class members. Plaintiff's  
27 attorneys, the proposed class counsel, are versed in the rules governing  
28 class action discovery, certification, and settlement. Plaintiff has

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203



**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

- d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.
- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

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

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants' had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked and missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members;

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- d. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members to work during meal and/or rest periods without compensation;
- e. Whether Defendants failed to pay minimum wages to Plaintiff and the other class members for all hours worked;
- f. Whether Defendants failed to pay all wages due to Plaintiff and the other class members within the required time upon their discharge or resignation;
- g. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class members during their employment;
- h. Whether Defendants complied with wage reporting as required by the California Labor Code; including, *inter alia*, section 226;
- i. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);
- j. Whether Defendants failed to reimburse Plaintiff and the other class members for necessary business-related expenses and costs;
- k. Whether Defendants' conduct was willful or reckless;
- l. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- m. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- n. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

**PAGA ALLEGATIONS**

17. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

///

**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1           18.     At all times herein set forth, PAGA provides that any provision of law under the  
2 California Labor Code that provides for a civil penalty, including unpaid wages and premium  
3 wages, to be assessed and collected by the LWDA for violations of the California Labor Code  
4 may, as an alternative, be recovered through a civil action brought by an aggrieved employee  
5 on behalf of himself and other current or former employees pursuant to procedures outlined in  
6 California Labor Code section 2699.3.

7           19.     Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved  
8 employee,” who is any person that was employed by the alleged violator and against whom  
9 one or more of the alleged violations was committed.

10           20.     Plaintiff was employed by Defendants and the alleged violations were  
11 committed against him during his time of employment and he is, therefore, an aggrieved  
12 employee. Plaintiff and the other employees are “aggrieved employees” as defined by  
13 California Labor Code section 2699(c) in that they are current or former employees of  
14 Defendants, and one or more of the alleged violations were committed against them.

15           21.     Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved  
16 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following  
17 requirements have been met:

18           a.     The aggrieved employee shall give written notice by online submission  
19 (hereinafter “Employee's Notice”) to the LWDA and by certified mail to  
20 the employer of the specific provisions of the California Labor Code  
21 alleged to have been violated, including the facts and theories to support  
22 the alleged violations.

23           b.     The LWDA shall provide notice (hereinafter “LWDA Notice”) to the  
24 employer and the aggrieved employee by certified mail that it does not  
25 intend to investigate the alleged violation within sixty (60) calendar days  
26 of the postmark date of the Employee’s Notice. Upon receipt of the  
27 LWDA Notice, or if the LWDA Notice is not provided within sixty-five  
28 (65) calendar days of the postmark date of the Employee’s Notice, the



LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1           28. Defendants exercised sufficient authority over the terms and conditions of  
2 Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff  
3 and the other class members.

4           29. Defendants directly hired and paid wages and benefits to Plaintiff and the other  
5 class members.

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

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

10           32. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
11 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt  
12 employees within the State of California. This pattern and practice involved, *inter alia*, failing  
13 to pay them for all regular and/or overtime wages earned and for missed meal periods and rest  
14 breaks in violation of California law.

15           33. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
16 knew or should have known that Plaintiff and the other class members were entitled to receive  
17 certain wages for overtime compensation and that they were not receiving accurate overtime  
18 compensation for all overtime hours worked.

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

23           35. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
24 knew or should have known that Plaintiff and the other class members were entitled to receive  
25 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class  
26 member's regular rate of pay when a meal period was missed, and they did not receive all meal  
27 periods or payment of one additional hour of pay at Plaintiff's and the other class member's  
28 regular rate of pay when a meal period was missed.

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1           36. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
2 knew or should have known that Plaintiff and the other class members were entitled to receive  
3 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class  
4 member's regular rate of pay when a rest period was missed, and they did not receive all rest  
5 periods or payment of one additional hour of pay at Plaintiff's and the other class members'  
6 regular rate of pay when a rest period was missed.

7           37. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
8 knew or should have known that Plaintiff and the other class members were entitled to receive  
9 at least minimum wages for compensation and that they were not receiving at least minimum  
10 wages for all hours worked.

11           38. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
12 knew or should have known that Plaintiff and the other class members were entitled to receive  
13 all wages owed to them upon discharge or resignation, including overtime and minimum wages  
14 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to  
15 them at the time of their discharge or resignation.

16           39. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
17 knew or should have known that Plaintiff and the other class members were entitled to receive  
18 all wages owed to them during their employment. Plaintiff and the other class members did  
19 not receive payment of all wages, including overtime and minimum wages and meal and rest  
20 period premiums, within any time permissible under California Labor Code section 204.

21           40. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
22 knew or should have known that Plaintiff and the other class members were entitled to receive  
23 complete and accurate wage statements in accordance with California law, but, in fact, they did  
24 not receive complete and accurate wage statements from Defendants. The deficiencies  
25 included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the  
26 other class members.

27           41. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
28 knew or should have known that Defendants had to keep complete and accurate payroll records

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 for Plaintiff and the other class members in accordance with California law, but, in fact, did  
2 not keep complete and accurate payroll records.

3 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
4 knew or should have known that Plaintiff and the other class members were entitled to  
5 reimbursement for necessary business-related expenses.

6 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
7 knew or should have known that they had a duty to compensate Plaintiff and the other class  
8 members pursuant to California law, and that Defendants had the financial ability to pay such  
9 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely  
10 represented to Plaintiff and the other class members that they were properly denied wages, all  
11 in order to increase Defendants' profits.

12 44. During the relevant time period, Defendants failed to pay overtime wages to  
13 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other  
14 class members were required to work more than eight (8) hours per day and/or forty (40) hours  
15 per week without overtime compensation for all overtime hours worked.

16 45. During the relevant time period, Defendants failed to provide all requisite  
17 uninterrupted meal and rest periods to Plaintiff and the other class members.

18 46. During the relevant time period, Defendants failed to pay Plaintiff and the other  
19 class members at least minimum wages for all hours worked.

20 47. During the relevant time period, Defendants failed to pay Plaintiff and the other  
21 class members all wages owed to them upon discharge or resignation.

22 48. During the relevant time period, Defendants failed to pay Plaintiff and the other  
23 class members all wages within any time permissible under California law, including, *inter*  
24 *alia*, California Labor Code section 204.

25 49. During the relevant time period, Defendants failed to provide complete or  
26 accurate wage statements to Plaintiff and the other class members.

27 50. During the relevant time period, Defendants failed to keep complete or accurate  
28 payroll records for Plaintiff and the other class members.







**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

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

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

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

19           69.     During the relevant time period, Plaintiff and the other class members who were  
20 scheduled to work for a period of time in excess of six (6) hours were required to work for  
21 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty  
22 (30) minutes and/or rest period.

23           70.     During the relevant time period, Defendants intentionally and willfully required  
24 Plaintiff and the other class members to work during meal periods and failed to compensate  
25 Plaintiff and the other class members the full meal period premium for work performed during  
26 meal periods.

27 ///

28 ///

1 71. During the relevant time period, Defendants failed to pay Plaintiff and the other  
2 class members the full meal period premium due pursuant to California Labor Code section  
3 226.7.

4 72. Defendants' conduct violates applicable IWC Wage Order and California Labor  
5 Code sections 226.7 and 512(a).

6 73. Pursuant to applicable IWC Wage Order and California Labor Code section  
7 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one  
8 additional hour of pay at the employee's regular rate of compensation for each work day that  
9 the meal or rest period is not provided.

10 **THIRD CAUSE OF ACTION**

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

12 **(Against WAYFAIR LLC and DOES 1 through 100)**

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

16 75. At all times herein set forth, the applicable IWC Wage Order and California  
17 Labor Code section 226.7 were applicable to Plaintiff's and the other class members'  
18 employment by Defendants.

19 76. At all relevant times, California Labor Code section 226.7 provides that no  
20 employer shall require an employee to work during any rest period mandated by an applicable  
21 order of the California IWC.

22 77. At all relevant times, the applicable IWC Wage Order provides that "[e]very  
23 employer shall authorize and permit all employees to take rest periods, which insofar as  
24 practicable shall be in the middle of each work period" and that the "rest period time shall be  
25 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
26 hours or major fraction thereof" unless the total daily work time is less than three and one-half  
27 (3 ½) hours.

28 ///

**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203













**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 with rules established for this purpose by the commission, but in any case shall be kept on file  
2 for not less than two years.

3 110. Defendants have intentionally and willfully failed to keep accurate and complete  
4 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other  
5 class members.

6 111. As a result of Defendants' violation of California Labor Code section 1174(d),  
7 Plaintiff and the other class members have suffered injury and damage to their statutorily-  
8 protected rights.

9 112. More specifically, Plaintiff and the other class members have been injured by  
10 Defendants' intentional and willful violation of California Labor Code section 1174(d) because  
11 they were denied both their legal right and protected interest, in having available, accurate and  
12 complete payroll records pursuant to California Labor Code section 1174(d).

13 **NINTH CAUSE OF ACTION**

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

15 **(Against WAYFAIR LLC and DOES 1 through 100)**

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

19 114. Pursuant to California Labor Code sections 2800 and 2802, an employer must  
20 reimburse its employee for all necessary expenditures incurred by the employee in direct  
21 consequence of the discharge of his or her job duties or in direct consequence of his or her  
22 obedience to the directions of the employer.

23 115. Plaintiff and the other class members incurred necessary business-related  
24 expenses and costs that were not fully reimbursed by Defendants.

25 116. Defendants have intentionally and willfully failed to reimburse Plaintiff and the  
26 other class members for all necessary business-related expenses and costs.

27 117. Plaintiff and the other class members are entitled to recover from Defendants  
28 their business-related expenses and costs incurred during the course and scope of their

1 employment, plus interest accrued from the date on which the employee incurred the necessary  
2 expenditures at the same rate as judgments in civil actions in the State of California.

3 **TENTH CAUSE OF ACTION**

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

5 **(Against WAYFAIR LLC and DOES 1 through 100)**

6 118. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
7 through 117, and each and every part thereof with the same force and effect as though fully set  
8 forth herein.

9 119. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
10 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'  
11 competitors. Accordingly, Plaintiff seek to enforce important rights affecting the public  
12 interest within the meaning of Code of Civil Procedure section 1021.5.

13 120. Defendants' activities as alleged herein are violations of California law, and  
14 constitute unlawful business acts and practices in violation of California Business &  
15 Professions Code section 17200, et seq.

16 121. A violation of California Business & Professions Code section 17200, et seq.  
17 may be predicated on the violation of any state or federal law. In this instant case, Defendants'  
18 policies and practices of requiring employees, including Plaintiff and the other class members,  
19 to work overtime without paying them proper compensation violate California Labor Code  
20 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring  
21 employees, including Plaintiff and the other class members, to work through their meal and  
22 rest periods without paying them proper compensation violate California Labor Code sections  
23 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate  
24 California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and  
25 practices of failing to timely pay wages to Plaintiff and the other class members violate  
26 California Labor Code sections 201, 202 and 204. Defendants also violated California Labor  
27 Code sections 226(a), 1174(d), 2800 and 2802.

28 ///

**LAWYERS for JUSTICE, PC**  
410 West Arden Avenue, Suite 203  
Glendale, California 91203



1 former employees of Defendants, and one or more of the alleged violations was committed  
2 against them.

3 **Failure to Pay Overtime**

4 129. Defendants' failure to pay legally required overtime wages to Plaintiff and the  
5 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or  
6 unfair activity prohibited by California Labor Code sections 510 and 1198.

7 **Failure to Provide Meal Periods**

8 130. Defendants' failure to provide legally required meal periods to Plaintiff and the  
9 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or  
10 unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

11 **Failure to Provide Rest Periods**

12 131. Defendants' failure to provide legally required rest periods to Plaintiff and the  
13 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or  
14 unfair activity prohibited by California Labor Code section 226.7.

15 **Failure to Pay Minimum Wages**

16 132. Defendants' failure to pay legally required minimum wages to Plaintiff and the  
17 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or  
18 unfair activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

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

20 133. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved  
21 employees upon termination in accordance with Labor Code sections 201 and 202 constitutes  
22 unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

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

24 134. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved  
25 employees during employment in accordance with Labor Code section 204 constitutes  
26 unlawful and/or unfair activity prohibited by California Labor Code section 204.

27 ///

28 ///

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

2 135. Defendants' failure to provide complete and accurate wage statements to  
3 Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a)  
4 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

5 **Failure to Keep Complete and Accurate Payroll Records**

6 136. Defendants' failure to keep complete and accurate payroll records relating to  
7 Plaintiff and the other aggrieved employees in accordance with California Labor Code section  
8 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section  
9 1174(d).

10 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

11 137. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for  
12 necessary business-related expenses and costs in accordance with California Labor Code  
13 sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California  
14 Labor Code sections 2800 and 2802.

15 138. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on  
16 behalf of all aggrieved employees, requests and is entitled to recover from Defendants and  
17 each of them, business expenses, unpaid wages, and/or untimely wages according to proof,  
18 interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as  
19 all statutory penalties against Defendants, and each of them, including but not limited to:

- 20 a. Penalties under California Labor Code section 2699 in the amount of a  
21 hundred dollars (\$100) for each aggrieved employee per pay period for the  
22 initial violation, and two hundred dollars (\$200) for each aggrieved  
23 employee per pay period for each subsequent violation;
- 24 b. Penalties under California Code of Regulations Title 8 section 11010, et  
25 seq. in the amount of fifty dollars (\$50) for each aggrieved employee per  
26 pay period for the initial violation, and one hundred dollars (\$100) for  
27 each aggrieved employee per pay period for each subsequent violation;
- 28 c. Penalties under California Labor Code section 210 in addition to, and

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

139. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

140. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

**DEMAND FOR JURY TRIAL**

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

**PRAYER FOR RELIEF**

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

**Class Certification**

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and

///  
///

1 4. That Defendants provide to Class Counsel immediately the names and most  
2 current/last known contact information (address, e-mail and telephone numbers) of all class  
3 members.

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

5 5. That the Court declare, adjudge and decree that Defendants violated California  
6 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay  
7 all overtime wages due to Plaintiff and the other class members;

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

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

12 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
13 California Labor Code section 1194; and

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

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

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

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

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

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

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

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







LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

- 1 41. For statutory penalties pursuant to California Labor Code section 226(e);
- 2 42. For injunctive relief to ensure compliance with this section, pursuant to
- 3 California Labor Code section 226(h); and
- 4 43. For such other and further relief as the Court may deem just and proper.

**As to the Eighth Cause of Action**

6 44. That the Court declare, adjudge and decree that Defendants violated California  
7 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records  
8 for Plaintiff and the other class members as required by California Labor Code section  
9 1174(d);

- 10 45. For actual, consequential and incidental losses and damages, according to proof;
- 11 46. For statutory penalties pursuant to California Labor Code section 1174.5; and
- 12 47. For such other and further relief as the Court may deem just and proper.

**As to the Ninth Cause of Action**

14 48. That the Court declare, adjudge and decree that Defendants violated California  
15 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other  
16 class members for all necessary business-related expenses as required by California Labor  
17 Code sections 2800 and 2802;

- 18 49. For actual, consequential and incidental losses and damages, according to proof;
- 19 50. For the imposition of civil penalties and/or statutory penalties;
- 20 51. For reasonable attorneys' fees and costs of suit incurred herein; and
- 21 52. For such other and further relief as the Court may deem just and proper.

**As to the Tenth Cause of Action**

23 53. That the Court decree, adjudge and decree that Defendants violated California  
24 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the  
25 other class members all overtime compensation due to them, failing to provide all meal and  
26 rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to  
27 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'

28 ///

LAWYERS for JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, California 91203

1 wages timely as required by California Labor Code section 201, 202 and 204 and by violating  
2 California Labor Code sections 226(a), 1174(d), 2800 and 2802.

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

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

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

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

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

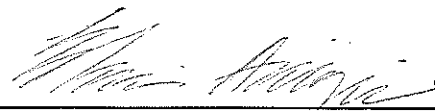
14 As to the Eleventh Cause of Action

15 59. For civil penalties and wages pursuant to California Labor Code sections  
16 2699(a), (f) and (g) and 558 plus costs and attorneys' fees for violation of California Labor  
17 Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1,  
18 1198, 2800 and 2802; and

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

21 Dated: April 18, 2019

LAWYERS for JUSTICE, PC

22  
23 By:   
24 Edwin Aiwasian  
25 Attorneys for Plaintiff.

26  
27  
28

# **EXHIBIT C**

1 **SEYFARTH SHAW LLP**  
Jon D. Meer (SBN 144389)  
2 jmeer@seyfarth.com  
Bethany A. Pelliconi (SBN 182920)  
3 bpelliconi@seyfarth.com  
2029 Century Park East, Suite 3500  
4 Los Angeles, California 90067-3021  
Telephone: (310) 277-7200  
5 Facsimile: (310) 201-5219

**ENDORSED  
FILED  
ALAMEDA COUNTY**  
APR 24 2019  
CLERK OF THE SUPERIOR COURT  
By P. Prew Deputy

6 **SEYFARTH SHAW LLP**  
Paul J. Leaf (SBN 261949)  
7 pleaf@seyfarth.com  
601 South Figueroa Street, Suite 3300  
8 Los Angeles, California 90017-5793  
Telephone: (213) 270-9600  
9 Facsimile: (213) 270-9601

10 Attorneys for Defendant  
WAYFAIR LLC

11  
12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA  
15

16 LIONESHA HAMILTON, individually, and on  
behalf of other members of the general public  
17 similarly situated,

18 Plaintiff,

19 v.

20 WAYFAIR LLC, an unknown business entity; and  
DOES 1 through 100, inclusive,

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

Case No. RG19006990

Hon. Winifred Y. Smith

**ANSWER OF DEFENDANT WAYFAIR  
LLC TO PLAINTIFF'S COMPLAINT FOR  
DAMAGES**

Complaint Filed: February 14, 2019

Trial Date: None Set

1 Defendant Wayfair LLC (“Defendant”) hereby answers the unverified Complaint filed by  
2 Plaintiff Lionesha Hamilton as set forth below.

3 **GENERAL DENIAL**

4 Pursuant to the provisions of California Code of Civil Procedure Section 431.30(d), Defendant  
5 denies, generally and specifically, each and every allegation, statement, matter, and each purported  
6 cause of action contained in Plaintiff’s Complaint, and without limiting the generality of the foregoing,  
7 denies that Plaintiff has been damaged in the manner or sums alleged, or in any way at all, by reason of  
8 any acts or omissions of Defendant. Defendant further denies, generally and specifically, that Plaintiff  
9 has suffered any loss of wages, overtime, penalties, compensation, benefits or restitution, or any other  
10 legal or equitable relief within the jurisdiction of this Court. Defendant also asserts the affirmative and  
11 additional defenses set forth below.

12 **AFFIRMATIVE AND ADDITIONAL DEFENSES**

13 Defendant asserts these affirmative and additional defenses without thereby assuming the burden  
14 of proof on any defense on which it would not otherwise have the burden of proof by operation of law.

15 **FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

16 **(Failure To State A Cause Of Action Or Claim For Relief - All Claims)**

17 Plaintiff’s Complaint, and each purported cause of action alleged therein, fails to state facts  
18 sufficient to constitute a cause of action or claim for relief against Defendant.

19 **SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

20 **(Lack Of Ascertainability And Plausibility - All Claims)**

21 Plaintiff’s Complaint, and each purported cause of action alleged therein, sets forth mere labels  
22 and conclusions that only recite the elements of causes of action. The Complaint’s failure to describe  
23 each purported cause of action with sufficient particularity leaves Defendant and the Court unable to  
24 ascertain the causes of action at issue.

25 **THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE**

26 **(Arbitration - All Claims)**

27 To the extent that Plaintiff and the proposed class have agreed to arbitrate claims alleged in the  
28 Complaint, their claims are barred in part or in whole by their contractual agreements to arbitrate.

1 **FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

2 (Statute Of Limitations - All Claims)

3 Plaintiff's claims are barred, in whole or in part, to the extent that the allegations fall outside the  
4 applicable statutes of limitations, including California Business and Professions Code § 17208;  
5 California Labor Code §§ 201, 202, 203, 226, 226.7, 512, 1174, 2802; and California Code of Civil  
6 Procedure §§ 312, 337, 338, 340, and 343.

7 **FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

8 (No Knowing And Intentional Violation Of Labor Code - All Claims)

9 Any alleged violation of the California Labor Code was not knowing and intentional and  
10 therefore Plaintiff's and the purported class members' requested recovery is barred.

11 **SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

12 (Laches - All Claims)

13 Plaintiff's claims are barred, in whole or in part, by the doctrine of laches because of  
14 unreasonable delay in filing the Complaint.

15 **SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

16 (Release - All Claims)

17 To the extent Plaintiff or any putative class member has executed a release encompassing claims  
18 alleged in the Complaint, their claims are barred by that release.

19 **EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

20 (Waiver - All Claims)

21 Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver. Plaintiff, or any  
22 putative class member, by their own conduct and actions, have waived their right, if any, to assert the  
23 claims alleged in the Complaint.

24 **NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

25 (Estoppel - All Claims)

26 Plaintiff is barred by the doctrine of estoppel from pursuing her Complaint, and each purported  
27 cause of action alleged therein. Plaintiff, and any putative class members, by their own conduct and  
28 actions, are estopped, as a matter of law, from pursuing the claims alleged in the Complaint.





1 forth in the Complaint. Defendant did not have actual or constructive knowledge about any purported  
2 overtime or off-the-clock work allegedly performed by Plaintiff or any putative class members.  
3 Defendant did not have actual or constructive knowledge about any alleged failure to pay minimum,  
4 overtime, double time, premium, and/or other wages to Plaintiff or any putative class members.  
5 Defendant did not have actual or constructive knowledge about any alleged inaccuracies regarding wage  
6 statements or payroll records of Plaintiff or any putative class members. Defendant did not have actual  
7 or constructive knowledge that Plaintiff or any putative class members were not provided meal periods  
8 or not authorized and permitted rest periods. Plaintiff, therefore, did not provide Defendant with an  
9 opportunity to correct any alleged violations and provide the appropriate remedy, if any, to Plaintiff  
10 prior to the time she filed this lawsuit.

11 **SIXTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

12 **(Failure To Show Adequate Damages - All Claims)**

13 The Complaint, and each purported cause of action alleged therein, fails to the extent that  
14 Plaintiff cannot show a specific or reliable measure of alleged damages owed to Plaintiff and/or the  
15 members of the purported class.

16 **SEVENTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

17 **(Failure To Mitigate Damages - All Claims)**

18 Plaintiff and putative class members are not entitled to recover the amount of damages as alleged  
19 in the Complaint, or any damages, due to their continuous failure to make reasonable efforts to mitigate  
20 or minimize the damages that they have allegedly incurred.

21 **EIGHTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

22 **(Failure To Maintain And Submit Records - All Claims)**

23 Plaintiffs and putative class members are not entitled to recover the amount of damages as  
24 alleged in the Complaint, or any damages, due to their failure to maintain or submit records that show  
25 their alleged damages or restitution so that the amount may be reasonably calculated.  
26  
27  
28

1 **NINETEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

2 (Contributory Fault - All Claims)

3 If the injuries and/or alleged damages in the Complaint occurred at all (which Defendant denies),  
4 such injuries and/or alleged damages were proximately caused by and/or contributed to by Plaintiff  
5 and/or the putative class's own acts, omissions, and/or failures to act. Any recovery from Defendant  
6 should be reduced in proportion to the percentage of Plaintiff's and/or the putative class members'  
7 negligence, or in proportion to their fault.

8 **TWENTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

9 (Exemption From Regular Rate - Claims 1, 5-8, And 10)

10 Any bonuses paid to Plaintiffs and putative class members were exempt from the regular rate of  
11 pay.

12 **TWENTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

13 (Avoidable Consequences Doctrine - All Claims)

14 The Complaint, and each purported cause of action alleged therein, is barred by the avoidable  
15 consequences doctrine.

16 **TWENTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

17 (Setoff And Recoupment - All Claims)

18 To the extent the Court holds that Plaintiff or putative class members are entitled to damages or  
19 penalties, which are specifically denied, Defendant is entitled under the equitable doctrine of setoff and  
20 recoupment to offset all overpayments and/or all obligations that Plaintiff and/or the putative class  
21 members owed to Defendant against any judgment that may be entered against Defendant.

22 **TWENTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE**

23 (Lack Of Care And Diligence In Performing Services - All Claims)

24 Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that  
25 Plaintiff and the purported class members did not exercise the level of care and diligence required when  
26 performing their duties or in complying with Defendant's policies and procedures, pursuant to California  
27 Labor Code §§ 2850 and 2854.  
28

1 **TWENTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

2 **(Failure To Comply With Employer’s Direction - All Claims)**

3 The Complaint, and each purported cause of action alleged therein, is barred to the extent that  
4 Plaintiff and/or putative class members failed to substantially comply with all of the directions of  
5 Defendant concerning the service on which they were engaged, and their obedience to the directions of  
6 Defendant were not impossible or unlawful and would not impose new and unrealistic burdens on them,  
7 pursuant to California Labor Code § 2856.

8 **TWENTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

9 **(Failure To Conform To Usage Of Place Of Performance - All Claims)**

10 Plaintiff’s Complaint, and each cause of action contained therein, is barred to the extent that  
11 Plaintiff and the purported class members failed to perform services in conformity to the usage of the  
12 place of performance directed by Defendant. Plaintiff and the purported class members, therefore, are  
13 barred from seeking relief pursuant to California Labor Code § 2857.

14 **TWENTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

15 **(Degree Of Skill - All Claims)**

16 The Complaint, and each purported cause of action alleged therein, is barred to the extent that  
17 Plaintiff and/or putative class members failed to exercise a reasonable degree of skill in performing their  
18 job duties, pursuant to California Labor Code § 2858.

19 **TWENTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

20 **(Failure To Use Skill Possessed - All Claims)**

21 The Complaint, and each purported cause of action alleged therein, is barred to the extent that  
22 Plaintiff and/or putative class members did not use such skill as they possess, so far as the same was and  
23 is required, for the service specified for Defendant, as provided under California Labor Code § 2859.

24 **TWENTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

25 **(Plaintiff’s Willful Breach Of Duties - All Claims)**

26 The Complaint, and each purported cause of action alleged therein, is barred to the extent that  
27 Plaintiff and/or putative class members willfully breached their duties as employees, habitually  
28 neglected their duties, and/or failed to perform their duties, pursuant to California Labor Code § 2924.

**TWENTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Failure To Provide Preference To Performance Of Employer’s Business - All Claims)**

The Complaint, and each purported cause of action alleged therein, is barred to the extent that Plaintiff and/or putative class members had any business to transact on their own account, similar to that entrusted to them by Defendant, but failed to always give preference to the business of Defendant, as provided under California Labor Code § 2863.

**THIRTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Res Judicata And Collateral Estoppel - All Claims)**

The Complaint, and each purported cause of action alleged therein, is barred by the doctrines of res judicata and/or collateral estoppel, to the extent Plaintiff has asserted the same claims in any prior legal or administrative proceeding, and did not prevail on such claim.

**THIRTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Lack Of Standing Under Business and Professions Code § 17200 - Claim 10)**

This claim fails to the extent that Plaintiff, or any person upon whose behalf Plaintiff purports to act, lacks the requisite standing to sue under Proposition 64, enacted on November 2, 2004, as California Business and Professions Code § 17204. Under Proposition 64, any plaintiff suing for an alleged violation of the California Unfair Competition Law (the “UCL”), California Business and Professions Code § 17200, *et seq.*, must show that he or she has suffered an injury in fact, in addition to simply alleging a loss money or property. Because Plaintiff, or any other person on whose behalf Plaintiff purports to act, cannot allege the requisite injury in fact, in addition to the requisite loss of money or property, Plaintiff lacks standing to sue under the UCL.

**THIRTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Lack Of Standing For Injunctive Relief - Claim 10)**

The claims of Plaintiff and putative class members for injunctive and other equitable relief are barred because Plaintiff is a former employee and thus has no standing to seek injunctive or other equitable relief. Plaintiff is not entitled to the equitable relief sought insofar as she has an adequate remedy at law and/or cannot make the requisite showing to obtain injunctive relief in a labor dispute.

**THIRTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Due Process/Excessive Fine - All Claims)**

Although Defendant denies that it has committed or has responsibility for any act that could support the recovery of civil penalties in this lawsuit, if, and to the extent any such act or responsibility is found, recovery of civil penalties against Defendant is unconstitutional under numerous provisions of the United States Constitution and the California Constitution, including the excessive fines clause of the Eighth Amendment, the due process clauses of the Fifth Amendment and Section 1 of the Fourteenth Amendment, the self-incrimination clause of the Fifth Amendment, and other provisions of the United States Constitution, and the excessive fines clause of Section 17 of Article I, the due process clause of Section 7 of Article I, the self-incrimination clause of Section 15 of Article I, and other provisions of the California Constitution.

**THIRTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Failure To Show Entitlement To Waiting Time Penalties - All Claims)**

These claims are barred to the extent that Plaintiff and putative class members have failed to show that Defendant willfully, knowingly, or intentionally did not pay all accrued wages or premium wages within the time required following any discharge or voluntary resignation of employment by Plaintiff or putative class members.

**THIRTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Lack Of Standing For Waiting Time Penalties - All Claims)**

Purported class members lack standing to assert this claim to the extent that they continue to be employed, and therefore, have not suffered an injury in fact.

**THIRTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Duplicate Damages - All Claims)**

To the extent Plaintiff has received other benefits and/or awards attributable to an injury for which Plaintiff seeks compensation in this case, such benefits and/or awards should offset, in whole or in part, against any award Plaintiff receives here for the same injury.

**THIRTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE****(Minute Or Irregular Work - Claims 1-8 and 10)**

These claims fail to the extent that, even if Plaintiff was not paid for all work performed, such work is not compensable because an employer is not required to pay for purported off-the-clock work that is “so minute or irregular that it is unreasonable to expect the time to be recorded.” *Troester v. Starbucks Corp.*, 2018 WL 3582702, at \*1, 9 (Cal. 2018) (holding that an employer that requires its employees “to work minutes off the clock on a regular basis or as a regular feature of the job” may not invoke the *de minimis* doctrine, but leaving open the possibility that an employer is not required to pay for purported off-the-clock work that is “so minute or irregular that it is unreasonable to expect the time to be recorded”).

**THIRTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE****(No Knowledge Of Denial Of Meal Or Rest Periods - Claims 2-8 And 10)**

These claims are barred to the extent that Defendant did not have actual or constructive knowledge that Plaintiff or any putative class member were denied any meal or rest periods. *See, e.g., Brinker v. Super. Ct.*, 53 Cal. 4th 1004, 1040-1041 (2012) (“[T]he employer is not obligated to police meal breaks and ensure no work thereafter is performed. Bona fide relief from duty and the relinquishing of control satisfies the employer’s obligations, and work by a relieved employee during a meal break does not thereby place the employer in violation of its obligations and create liability for premium pay.”); *Jong v. Kaiser Found. Health Plan, Inc.*, 226 Cal. App. 4th 391, 396 (2014) (“To prevail on his off-the clock claim, [the employee] must prove that [the employer] had actual or constructive knowledge of his alleged off-the-clock work.”).

**THIRTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE****(Meal Periods Provided And Rest Periods Authorized And Permitted - Claims 2-8 And 10)**

These claims fail to the extent that Plaintiff and the putative class members did, in fact, take all meal periods and rest breaks to which they claim they were entitled throughout their employment. Defendant, at all relevant times, posted the applicable Wage Order and had policies and practices that provided meal periods and authorized and permitted rest periods as required by law.

**FORTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Waiver Of Meal Periods - Claims 2, 4-8, And 10)**

These claims are barred to the extent that Plaintiff and putative class members signed legally valid written waivers of any meal periods or voluntarily waived meal periods. These claims are further barred to the extent that Plaintiff and putative class members waived their second 30-minute meal period during shifts, if any, in which they worked at least 10 hours, but less than 12 hours, and were provided with the first 30-minute meal period during those same shifts.

**FORTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Waiver Of Rest Periods - Claims 3-8 And 10)**

These claims are barred to the extent that Plaintiff and any putative class members voluntarily waived rest periods.

**FORTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Premium Wages For Alleged Failure To Take Meal Periods Or Rest Periods - Claims 2-8 And 10)**

These claims are barred to the extent that Plaintiff and putative class members were paid a premium pay of an additional hour of regular pay for each day, if any, when not provided a meal period or not authorized or permitted to take a rest period. The payment of such premium pay negates any additional liability for alleged meal or rest period violations.

**FORTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Premium Pay May Be Excluded From The Regular Rate Of Pay - Claims 2-8 And 10)**

These claims are barred to the extent they are based on the theory that premium pay must be paid at an employee’s regular rate of pay. The California Labor Commissioner, Division of Labor Standards Enforcement (“DLSE”) recognizes that “premium” payments paid to employees for working overtime in any day or workweek should be “excluded in determining” the regular rate. *See* DLSE Enforcement Policies and Interpretations Manual (Revised) (2002). And “district courts within the Ninth Circuit that have addressed this issue have agreed that, as a matter of law, meal-period premium payments to employees are not included in the rate used to calculate the employee’s overtime pay.” *Mitchell v. Medtronic, Inc.*, 2015 WL 12747824, at \*3 (C.D. Cal. Feb. 13, 2015), *aff’d*, 684 F. App’x 624 (9th Cir. 2017) (citing *Rubin v. Wal-Mart Stores, Inc.*, 599 F. Supp. 2d 1176, 1177 (N.D. Cal. 2009); *Kamar v.*

1 *Radioshack Corp.*, 2008 WL 2229166 (C.D. Cal. 2008)). “[U]nder both federal and state law, meal-  
 2 period premium payments paid by an employer to an employee as required by [California Labor Code]  
 3 Section 226.7 are considered premium payments and thus are not required to be considered  
 4 ‘remuneration’ in calculating an employee’s regular rate for overtime purposes.” *Mitchell*, 2015 WL  
 5 12747824, at \*3.

6 **FORTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

7 **(Premium Pay May Exclude The Value Of Any Bonuses - Claims 2-8 And 10)**

8 These claims are barred to the extent they are based on the theory that premium pay must include  
 9 the value of bonuses. Under California Labor Code Section 226.7(c), premium pay for meal and rest  
 10 period violations is paid at one additional hour of pay at the employee’s “regular rate of compensation.”  
 11 On the other hand, California Labor Code Section 510(a) requires overtime to be paid at 1.5 or 2 times  
 12 an employee’s “regular rate of pay.” This “regular rate of pay [for overtime purposes] . . . include[s]  
 13 [the value of] non-discretionary bonuses.” *Culley v. Lincare Inc.*, 2017 WL 3284800, at \*5-\*6 (E.D.  
 14 Cal. Aug. 2, 2017) (citing 29 U.S.C. § 207(e)(3)). Given the difference in language between these  
 15 statutes, courts recognize that the value of bonuses are not included in the rate at which employees’  
 16 premium payments for meal and rest period violations are paid. Instead, premium pay is paid strictly at  
 17 an employee’s base hourly rate. *See, e.g., Brum v. MarketSource, Inc.*, 2017 WL 2633414, at \*4 (E.D.  
 18 Cal. June 19, 2017) (granting a motion to strike without leave to amend, and finding defendant’s  
 19 argument “persuasive” that the amount of premium pay “includes only an employee’s base pay rate, and  
 20 no other forms of compensation”); *Wert v. Bancorp*, 2015 WL 3617165, at \*3 (S.D. Cal. Jun. 9, 2015)  
 21 (not permitting the plaintiff to amend her premium pay claim to allege that “§ 226.7’s ‘regular rate of  
 22 compensation’ is synonymous with § 510’s ‘regular rate of pay’”: “In the absence of legal authority  
 23 stating that § 226.7’s ‘regular rate of compensation’ language is the same as § 510’s ‘regular rate of pay’  
 24 language, this Court reiterates its previous determination that the legislature’s choice of different  
 25 language is meaningful, and that the relief under § 226.7 is not necessarily or logically the same as the  
 26 relief under § 510 insofar as the ‘regular rate’ language is involved.”); *Bradescu v. Hillstone Rest. Grp.*,  
 27 *Inc.*, 2014 WL 5312546, at \*8 (C.D. Cal. Sept. 18, 2014) (holding that no authority supports “the view  
 28 that ‘regular rate of compensation,’ for purposes of meal period compensation, is to be interpreted the



1 same way as ‘regular rate of pay’ is for purposes of overtime compensation,” and emphasizing that “the  
2 legislature’s choice of different language [in the applicable statutes] is meaningful”).

3 **FORTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

4 **(No Knowledge Of Overtime Or Off-The-Clock Work - Claim 1, 4-8, And 10)**

5 These claims are barred to the extent that Defendant did not have actual or constructive  
6 knowledge about any purported overtime or off-the-clock work allegedly performed by Plaintiff and/or  
7 the putative class members. *See, e.g., Jong v. Kaiser Found. Health Plan, Inc.*, 226 Cal. App. 4th 391  
8 (2014) (“[W]here the acts of an employee prevent an employer from acquiring knowledge, here of  
9 alleged uncompensated overtime hours, the employer cannot be said to have suffered or permitted the  
10 employee to work in violation of § 207(a.)”); *Forrester v. Roth’s I.G.A. Foodliner, Inc.*, 646 F.2d 413,  
11 414 (9th Cir. 1981) (“[W]here an employer has no knowledge that an employee is engaging in overtime  
12 work and that employee fails to notify the employer or deliberately prevents the employer from  
13 acquiring knowledge of the overtime work, the employer’s failure to pay for the overtime hours are not a  
14 violation.”).

15 **FORTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

16 **(Compliance With The Wage Statement Requirements - Claims 7 And 10)**

17 These claims are barred because the wage statements of Plaintiff and all putative class members  
18 fully complied with the requirements of California Labor Code § 226.

19 **FORTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

20 **(Failure To Show Intentional Violation Of Wage Statement Requirements - Claims 7 And 10)**

21 These claims are barred because even if Plaintiff can demonstrate wage statement deficiencies  
22 under California Labor Code § 226, Defendant did not willfully, knowingly, or intentionally violate the  
23 provisions of that statute.

24 **FORTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

25 **(Failure To Show A Failure To Keep Records - Claims 8 And 10)**

26 These claims are barred to the extent that Plaintiff cannot allege any facts showing that  
27 Defendant failed to keep records in accordance with the requirements of California Labor Code §  
28 1174(d).

1                                   **FORTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

2                                   **(Unjust, Arbitrary, And Oppressive, Or Confiscatory Penalties - All Claims)**

3                                   Plaintiff is not entitled to recover any statutory penalties because, under the circumstances of this  
4 case, any such recovery would be unjust, arbitrary, and oppressive, or confiscatory.

5                                   **FIFTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

6                                   **(Failure To Show Lack Of Payment Of Minimum Wage - Claims 4-8 And 10)**

7                                   Plaintiff's Complaint, and each claim contained therein, fails to the extent that Plaintiff cannot  
8 allege facts showing that Defendant failed to pay her or any putative class member the required  
9 minimum wage for all hours worked while employed by Defendant. Plaintiff, therefore, has no claim  
10 pursuant to California Labor Code §§ 1194 and 1194.2.

11                                   **FIFTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

12                                   **(Unavailable Remedies Under The UCL - Claim 10)**

13                                   This claim fails to the extent that it seeks anything but restitution for alleged violations of the  
14 Labor Code that form the basis of the claims under the UCL.

15                                   **FIFTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

16                                   **(No Unlawful, Unfair, Or Fraudulent Business Practice - Claim 10)**

17                                   Without admitting the allegations of the Complaint, this claim fails because the alleged practices  
18 of Defendant, even assuming they occurred, are not unfair, unlawful, or fraudulent, the public is not  
19 likely to be deceived by any alleged practices, Defendant gained no competitive advantage by such  
20 alleged practices, and the benefits of the alleged practices outweigh any harm or other impact they may  
21 cause.

22                                   **FIFTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE**

23                                   **(Failure To Allege Facts To Support Restitution - Claim 10)**

24                                   This claim fails to the extent that Plaintiff cannot show a specific and individualized amount of  
25 property claimed by her and/or any member of the purported class, as required for a remedy of  
26 restitution under the UCL.

1 **FIFTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

2 **(Inability To Pursue Attorneys' Fees Under UCL - Claim 10)**

3 This claim fails to the extent that Plaintiff seeks attorneys' fees and costs because she cannot  
4 show the enforcement of an important right affecting the public interest.

5 **FIFTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

6 **(Action Unconstitutional - Claim 10)**

7 Prosecuting a class action and certification of the alleged class as representative of the general  
8 public under California Business and Professions Code § 17200 is barred, under the facts and  
9 circumstances of this case, because provisions of § 17200 violate the provisions of the United States and  
10 California Constitutions, including, but not limited to, the due process clauses of the Fifth and  
11 Fourteenth Amendments to the United States Constitution.

12 **FIFTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

13 **(Adequate Remedy At Law)**

14 Plaintiff is are not entitled to the equitable relief sought insofar as she has an adequate remedy at  
15 law and/or cannot make the requisite showing to obtain injunctive relief.

16 **FIFTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

17 **(Substantial Compliance - All Claims)**

18 The Complaint, and each purported cause of action alleged therein, is barred in whole or in part  
19 because Defendant complied with its statutory obligations, and to the extent it is determined that there  
20 was technical non-compliance, Defendant substantially complied with its obligations and is not liable in  
21 whole or in part for the claims of Plaintiff.

22 **FIFTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

23 **(No Knowledge Of Reasonable And Necessary Business Expenses - Claims 9-10)**

24 These claims fail to the extent that Plaintiff and the putative class members did not inform  
25 Defendant of or seek reimbursement of reasonably and necessarily incurred business expenses. An  
26 employer cannot be held liable for failing to reimburse an employee's necessary expenses if it does not  
27 know or have reason to know that the employee has incurred the expense.

**FIFTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Unreasonable And Unnecessary Expenses - Claims 9-10)**

These claims fail to the extent that Plaintiff and the putative class members seek reimbursement for expenses that were not incurred in the direct consequence of the discharge of their duties or were not necessary and reasonable.

**SIXTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Reimbursement Obligation Satisfied - Claims 9-10)**

These claims are barred to the extent that Defendant has satisfied any expense reimbursement obligation under California Labor Code § 2802 and/or Plaintiff and the individuals she seeks to represent have failed to request reimbursement for reasonable and necessary business expenses reimbursable under Labor Code § 2802.

**SIXTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Ratification - All Claims)**

Plaintiff's Complaint, and each cause of action alleged herein, is barred by the ground that Plaintiff and/or other putative class members ratified Defendant's alleged actions.

**SIXTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Failure To State Facts Warranting Class Certification And Class Damages - All Claims)**

Plaintiff's allegations that this action should be certified as a class action fail as a matter of law because Plaintiff cannot allege facts sufficient to warrant class certification and/or an award of class damages, pursuant to California Code of Civil Procedure § 382 or Rule 23 of the Federal Rules of Civil Procedure.

**SIXTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(No Predominance Of Common Questions Of Fact And Law - All Claims)**

Plaintiff's Complaint, and each cause of action alleged therein, fails to the extent that Plaintiff cannot allege predominant questions of fact and law, as required under California Code of Civil Procedure § 382 or Rule 23 of the Federal Rules of Civil Procedure.

**SIXTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE****(Not Appropriate For Class Action - All Claims)**

Plaintiff's Complaint, and each purported cause of action alleged therein, is not proper for treatment as a class action because, among other reasons: (a) Plaintiff is an inadequate representative of the purported class; (b) Plaintiff cannot establish commonality of claims; (c) Plaintiff cannot establish typicality of claims; and (d) the individualized nature of Plaintiff's claims predominate and thus makes class treatment inappropriate.

**SIXTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE****(Class Action Not Superior Method of Adjudication - All Claims)**

The alleged claims are barred, in whole or in part, as a class action, because a class action is not the superior method of adjudicating this dispute.

**SIXTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE****(Inadequate Class Representative - All Claims)**

Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff is not an adequate representative of the alleged class that she purports to represent. Defendant alleges that Plaintiff does not have claims typical of the alleged class, if any, and that Plaintiff's interests are antagonistic to the alleged class she purports to represent. As such, the class action claims and allegations fail as a matter of law.

**SIXTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE****(Inadequate Class Counsel - All Claims)**

Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff's counsel is not an adequate representative of the alleged class, particularly to the extent that counsel has been found to have engaged in acts of abuse, fraud, dishonesty, or breach of fiduciary duty. For instance, Plaintiff's counsel is counsel of record for the plaintiff in *Lockhart v. Columbia Sportswear Co.*, Riverside Superior Court, Case Number RIC1507504. In *Lockhart*, the court examined how a lawyer from Plaintiff's counsel's law firm conducted depositions of putative class members. The *Lockhart* court deemed that lawyer "unprofessional, demeaning, argumentative, and abusive" during the depositions, including by making multiple witnesses "repeatedly cry," "intimidat[ing]" and "ridiculing"

1 them, “accus[ing witnesses] of lying,” “threaten[ing]” them with “sanctions,” and “dispar[ing] the  
2 witnesses’ command of the English language, their maturity, their memory, and their competence as  
3 employees.” The *Lockhart* court concluded that Plaintiff’s counsel’s law firm as a whole was  
4 “unapologetic” for this misconduct because that law firm argued that “no misbehavior occurred in any  
5 of the depositions.” As such, the class action claims and allegations fail as a matter of law.

6 **SIXTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

7 **(No Private Right of Action - All Claims)**

8 Plaintiffs’ Complaint is barred to the extent that she seeks to recover civil penalties for which no  
9 private right of action exists, including, but not limited to, her claims pursuant to Labor Code § 204.

10 **RESERVATION OF RIGHTS**

11 Defendant does not presently know all of the facts and circumstances respecting Plaintiff’s  
12 claims, and it has insufficient knowledge or information upon which to form a belief whether there may  
13 be additional, as yet unstated defenses. Defendant has not knowingly or intentionally waived any  
14 applicable defenses and reserves the right to assert and rely on such other applicable defenses as may  
15 later become available or apparent through discovery or further investigation of Plaintiff’s claims.  
16 Defendant further reserves the right to amend its answer or defenses accordingly and/or to delete  
17 defenses that it determines are not applicable during the course of discovery.

18 To the extent that Defendant has not expressly admitted an allegation of the Complaint or denied  
19 an allegation of the Complaint based on a lack of knowledge and information, Defendant denies all  
20 further and remaining allegations of the Complaint, and no response contained herein is intended to  
21 constitute a waiver of such denial.

22 **PRAYER**

23 WHEREFORE, Defendant prays for judgment as follows:

- 24 1. That Plaintiff take nothing by her Complaint;  
25 2. That Defendant did not damage or harm Plaintiff, or any of the other members of the  
26 purported class, in any way;  
27 3. That Plaintiff is not entitled to any wages, compensation, benefits, penalties, restitution,  
28 injunctive relief, declaratory relief, attorneys’ fees, costs, or any other legal or equitable  
remedy due to any act or omission of Defendant;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 4. That Plaintiff is not an adequate representative to bring an action under the standards of the California Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.*, California Code of Civil Procedure § 382, and/or Rule 23 of the Federal Rules of Civil Procedure;
- 5. That the Complaint fails to allege facts sufficient to show that there is a predominance of common questions of law or fact among Plaintiff and/or any other person upon whose behalf Plaintiff purports to act;
- 6. That the Complaint be dismissed in its entirety with prejudice;
- 7. That judgment be entered in favor of Defendant and against Plaintiff on her entire Complaint and on all causes of action alleged therein;
- 8. That Defendant be awarded the costs of suit herein incurred as provided by statute; and
- 5. That Defendant be awarded such other and further relief as the Court may deem appropriate.

DATED: April 24, 2019

Respectfully submitted,

SEYFARTH SHAW LLP



By:

---

Jon D. Meer  
 Bethany A. Pelliconi  
 Paul J. Leaf  
 Attorneys for Defendant  
 WAYFAIR LLC

**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF LOS ANGELES )

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793. On April 24, 2019, I served the within document(s):

**ANSWER OF DEFENDANT WAYFAIR LLC TO PLAINTIFF'S COMPLAINT FOR DAMAGES**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by contracting with Federal Express and placing the document(s) listed above in a Federal Express envelope with postage paid on account and deposited with Federal Express at Los Angeles, California, addressed as set forth below.
- by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

Edwin Aiwarzian  
LAWYERS FOR JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, CA 91203

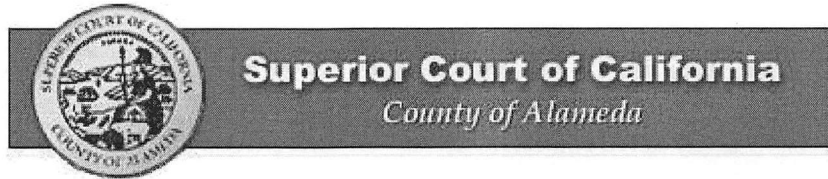
*Attorneys for plaintiff,*  
LIONESHA HAMILTON

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 24, 2019, at Los Angeles, California.

Grace A. Gonzales





Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse  
1225 Fallon Street  
Oakland, CA 94612

Receipt Nbr: 856896  
Clerk: ddrew  
Date: 04/24/2019

Type	Case Number	Description	Amount
Filing	RG19006990	Initial Appearance	\$435.00
Filing	RG19006990	Complex Fee - Adverse Party	\$1000.00

Total Amount Due: \$1,435.00  
Prior Payment:  
Current Payment: \$1,435.00  
Balance Due: \$.00  
Overage:  
Excess Fee:  
Change:

Payment Method:  
Cash:  
Check: \$1,435.00

# **EXHIBIT D**

1 **SEYFARTH SHAW LLP**  
Jon D. Meer (SBN 144389)  
2 jmeer@seyfarth.com  
Bethany A. Pelliconi (SBN 182920)  
3 bpelliconi@seyfarth.com  
2029 Century Park East, Suite 3500  
4 Los Angeles, California 90067-3021  
Telephone: (310) 277-7200  
5 Facsimile: (310) 201-5219

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**APR 25 2019**

**SUE PESKO**

6 **SEYFARTH SHAW LLP**  
Paul J. Leaf (SBN 261949)  
7 pleaf@seyfarth.com  
601 South Figueroa Street, Suite 3300  
8 Los Angeles, California 90017-5793  
Telephone: (213) 270-9600  
9 Facsimile: (213) 270-9601

10 Attorneys for Defendant  
WAYFAIR LLC

11  
12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF ALAMEDA**

16 LIONESHA HAMILTON, individually, and on  
behalf of other members of the general public  
17 similarly situated,

18 **Plaintiff,**

19 **v.**

20 WAYFAIR LLC, an unknown business entity; and  
DOES 1 through 100, inclusive,

21 **Defendants.**  
22  
23  
24  
25  
26  
27  
28

Case No. RG19006990

Hon. Winifred Y. Smith

**ANSWER OF DEFENDANT WAYFAIR  
LLC TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT FOR DAMAGES**

Complaint Filed: February 14, 2019

FAC Filed: April 18, 2019

Trial Date: None Set

1 Defendant Wayfair LLC (“Defendant”) hereby answers the unverified First Amended Complaint  
2 filed by Plaintiff Lionesha Hamilton as set forth below.

3 **GENERAL DENIAL**

4 Pursuant to the provisions of California Code of Civil Procedure Section 431.30(d), Defendant  
5 denies, generally and specifically, each and every allegation, statement, matter, and each purported  
6 cause of action contained in Plaintiff’s First Amended Complaint, and without limiting the generality of  
7 the foregoing, denies that Plaintiff has been damaged in the manner or sums alleged, or in any way at all,  
8 by reason of any acts or omissions of Defendant. Defendant further denies, generally and specifically,  
9 that Plaintiff has suffered any loss of wages, overtime, penalties, compensation, benefits or restitution,  
10 or any other legal or equitable relief within the jurisdiction of this Court. Defendant also asserts the  
11 affirmative and additional defenses set forth below.

12 **AFFIRMATIVE AND ADDITIONAL DEFENSES**

13 Defendant asserts these affirmative and additional defenses without thereby assuming the burden  
14 of proof on any defense on which it would not otherwise have the burden of proof by operation of law.

15 **FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

16 **(Failure To State A Cause Of Action Or Claim For Relief - All Claims)**

17 Plaintiff’s First Amended Complaint, and each purported cause of action alleged therein, fails to  
18 state facts sufficient to constitute a cause of action or claim for relief against Defendant.

19 **SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

20 **(Lack Of Ascertainability And Plausibility - All Claims)**

21 Plaintiff’s First Amended Complaint, and each purported cause of action alleged therein, sets  
22 forth mere labels and conclusions that only recite the elements of causes of action. The First Amended  
23 Complaint’s failure to describe each purported cause of action with sufficient particularity leaves  
24 Defendant and the Court unable to ascertain the causes of action at issue.



1 **NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

2 (Estoppel - All Claims)

3 Plaintiff is barred by the doctrine of estoppel from pursuing her First Amended Complaint, and  
4 each purported cause of action alleged therein. Plaintiff, and any putative class members, by their own  
5 conduct and actions, are estopped, as a matter of law, from pursuing the claims alleged in the First  
6 Amended Complaint.

7 **TENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

8 (Unclean Hands - All Claims)

9 Plaintiff is precluded from maintaining the First Amended Complaint, and each purported cause  
10 of action alleged therein, because Plaintiff engaged in conduct showing unclean hands.

11 **ELEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

12 (No Injury As A Result Of Violation Of Labor Code - All Claims)

13 Plaintiff has suffered no injury as a result of any alleged violation of the California Labor Code  
14 and therefore is barred from recovering penalties.

15 **TWELFTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

16 (Consent/Authorization - All Claims)

17 Plaintiff's First Amended Complaint, and each purported cause of action alleged therein, is  
18 barred, in whole or in part, because the alleged conduct of Defendant was approved, consented to, and/or  
19 authorized by Plaintiff and/or the putative class members through their actions, omissions, and course of  
20 conduct.

21 **THIRTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

22 (Good Faith Dispute - All Claims)

23 Plaintiff is not entitled to any penalty because, at all times relevant and material herein,  
24 Defendant did not willfully fail to comply with any provisions of the California Labor Code or  
25 applicable wage orders, but rather acted in good faith and had reasonable grounds for believing that it  
26 did not violate the California Labor Code or the applicable wage order.



1 **SEVENTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

2 **(Failure To Mitigate Damages - All Claims)**

3 Plaintiff and putative class members are not entitled to recover the amount of damages as alleged  
4 in the First Amended Complaint, or any damages, due to their continuous failure to make reasonable  
5 efforts to mitigate or minimize the damages that they have allegedly incurred.

6 **EIGHTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

7 **(Failure To Maintain And Submit Records - All Claims)**

8 Plaintiffs and putative class members are not entitled to recover the amount of damages as  
9 alleged in the First Amended Complaint, or any damages, due to their failure to maintain or submit  
10 records that show their alleged damages or restitution so that the amount may be reasonably calculated.

11 **NINETEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

12 **(Contributory Fault - All Claims)**

13 If the injuries and/or alleged damages in the First Amended Complaint occurred at all (which  
14 Defendant denies), such injuries and/or alleged damages were proximately caused by and/or contributed  
15 to by Plaintiff and/or the putative class's own acts, omissions, and/or failures to act. Any recovery from  
16 Defendant should be reduced in proportion to the percentage of Plaintiff's and/or the putative class  
17 members' negligence, or in proportion to their fault.

18 **TWENTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

19 **(Exemption From Regular Rate - Claims 1, 5-8, And 10)**

20 Any bonuses paid to Plaintiffs and putative class members were exempt from the regular rate of  
21 pay.

22 **TWENTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

23 **(Avoidable Consequences Doctrine - All Claims)**

24 The First Amended Complaint, and each purported cause of action alleged therein, is barred by  
25 the avoidable consequences doctrine.



1                                   **TWENTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

2                                   **(Setoff And Recoupment - All Claims)**

3                   To the extent the Court holds that Plaintiff or putative class members are entitled to damages or  
4 penalties, which are specifically denied, Defendant is entitled under the equitable doctrine of setoff and  
5 recoupment to offset all overpayments and/or all obligations that Plaintiff and/or the putative class  
6 members owed to Defendant against any judgment that may be entered against Defendant.

7                                   **TWENTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE**

8                                   **(Lack Of Care And Diligence In Performing Services - All Claims)**

9                   Plaintiff's First Amended Complaint, and each cause of action contained therein, is barred to the  
10 extent that Plaintiff and the purported class members did not exercise the level of care and diligence  
11 required when performing their duties or in complying with Defendant's policies and procedures,  
12 pursuant to California Labor Code §§ 2850 and 2854.

13                                   **TWENTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

14                                   **(Failure To Comply With Employer's Direction - All Claims)**

15                   The First Amended Complaint, and each purported cause of action alleged therein, is barred to  
16 the extent that Plaintiff and/or putative class members failed to substantially comply with all of the  
17 directions of Defendant concerning the service on which they were engaged, and their obedience to the  
18 directions of Defendant were not impossible or unlawful and would not impose new and unrealistic  
19 burdens on them, pursuant to California Labor Code § 2856.

20                                   **TWENTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

21                                   **(Failure To Conform To Usage Of Place Of Performance - All Claims)**

22                   Plaintiff's First Amended Complaint, and each cause of action contained therein, is barred to the  
23 extent that Plaintiff and the purported class members failed to perform services in conformity to the  
24 usage of the place of performance directed by Defendant. Plaintiff and the purported class members,  
25 therefore, are barred from seeking relief pursuant to California Labor Code § 2857.

**TWENTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Degree Of Skill - All Claims)**

The First Amended Complaint, and each purported cause of action alleged therein, is barred to the extent that Plaintiff and/or putative class members failed to exercise a reasonable degree of skill in performing their job duties, pursuant to California Labor Code § 2858.

**TWENTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Failure To Use Skill Possessed - All Claims)**

The First Amended Complaint, and each purported cause of action alleged therein, is barred to the extent that Plaintiff and/or putative class members did not use such skill as they possess, so far as the same was and is required, for the service specified for Defendant, as provided under California Labor Code § 2859.

**TWENTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Plaintiff’s Willful Breach Of Duties - All Claims)**

The First Amended Complaint, and each purported cause of action alleged therein, is barred to the extent that Plaintiff and/or putative class members willfully breached their duties as employees, habitually neglected their duties, and/or failed to perform their duties, pursuant to California Labor Code § 2924.

**TWENTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Failure To Provide Preference To Performance Of Employer’s Business - All Claims)**

The First Amended Complaint, and each purported cause of action alleged therein, is barred to the extent that Plaintiff and/or putative class members had any business to transact on their own account, similar to that entrusted to them by Defendant, but failed to always give preference to the business of Defendant, as provided under California Labor Code § 2863.

**THIRTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Res Judicata And Collateral Estoppel - All Claims)**

The First Amended Complaint, and each purported cause of action alleged therein, is barred by the doctrines of res judicata and/or collateral estoppel, to the extent Plaintiff has asserted the same claims in any prior legal or administrative proceeding, and did not prevail on such claim.

**THIRTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Lack Of Standing Under Business and Professions Code § 17200 - Claim 10)**

This claim fails to the extent that Plaintiff, or any person upon whose behalf Plaintiff purports to act, lacks the requisite standing to sue under Proposition 64, enacted on November 2, 2004, as California Business and Professions Code § 17204. Under Proposition 64, any plaintiff suing for an alleged violation of the California Unfair Competition Law (the “UCL”), California Business and Professions Code § 17200, *et seq.*, must show that he or she has suffered an injury in fact, in addition to simply alleging a loss money or property. Because Plaintiff, or any other person on whose behalf Plaintiff purports to act, cannot allege the requisite injury in fact, in addition to the requisite loss of money or property, Plaintiff lacks standing to sue under the UCL.

**THIRTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Lack Of Standing For Injunctive Relief - Claim 10)**

The claims of Plaintiff and putative class members for injunctive and other equitable relief are barred because Plaintiff is a former employee and thus has no standing to seek injunctive or other equitable relief. Plaintiff is not entitled to the equitable relief sought insofar as she has an adequate remedy at law and/or cannot make the requisite showing to obtain injunctive relief in a labor dispute.

**THIRTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Due Process/Excessive Fine - All Claims)**

Although Defendant denies that it has committed or has responsibility for any act that could support the recovery of civil penalties in this lawsuit, if, and to the extent any such act or responsibility is found, recovery of civil penalties against Defendant is unconstitutional under numerous provisions of the United States Constitution and the California Constitution, including the excessive fines clause of the Eighth Amendment, the due process clauses of the Fifth Amendment and Section 1 of the Fourteenth Amendment, the self-incrimination clause of the Fifth Amendment, and other provisions of the United States Constitution, and the excessive fines clause of Section 17 of Article I, the due process clause of Section 7 of Article I, the self-incrimination clause of Section 15 of Article I, and other provisions of the California Constitution.

**THIRTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Failure To Show Entitlement To Waiting Time Penalties - All Claims)**

These claims are barred to the extent that Plaintiff and putative class members have failed to show that Defendant willfully, knowingly, or intentionally did not pay all accrued wages or premium wages within the time required following any discharge or voluntary resignation of employment by Plaintiff or putative class members.

**THIRTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Lack Of Standing For Waiting Time Penalties - All Claims)**

Purported class members lack standing to assert this claim to the extent that they continue to be employed, and therefore, have not suffered an injury in fact.

**THIRTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Duplicate Damages - All Claims)**

To the extent Plaintiff has received other benefits and/or awards attributable to an injury for which Plaintiff seeks compensation in this case, such benefits and/or awards should offset, in whole or in part, against any award Plaintiff receives here for the same injury.

**THIRTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Minute Or Irregular Work - Claims 1-8 and 10)**

These claims fail to the extent that, even if Plaintiff was not paid for all work performed, such work is not compensable because an employer is not required to pay for purported off-the-clock work that is “so minute or irregular that it is unreasonable to expect the time to be recorded.” *Troester v. Starbucks Corp.*, 2018 WL 3582702, at \*1, 9 (Cal. 2018) (holding that an employer that requires its employees “to work minutes off the clock on a regular basis or as a regular feature of the job” may not invoke the *de minimis* doctrine, but leaving open the possibility that an employer is not required to pay for purported off-the-clock work that is “so minute or irregular that it is unreasonable to expect the time to be recorded”).

**THIRTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(No Knowledge Of Denial Of Meal Or Rest Periods - Claims 2-8 And 10)**

These claims are barred to the extent that Defendant did not have actual or constructive knowledge that Plaintiff or any putative class member were denied any meal or rest periods. *See, e.g., Brinker v. Super. Ct.*, 53 Cal. 4th 1004, 1040-1041 (2012) (“[T]he employer is not obligated to police meal breaks and ensure no work thereafter is performed. Bona fide relief from duty and the relinquishing of control satisfies the employer’s obligations, and work by a relieved employee during a meal break does not thereby place the employer in violation of its obligations and create liability for premium pay.”); *Jong v. Kaiser Found. Health Plan, Inc.*, 226 Cal. App. 4th 391, 396 (2014) (“To prevail on his off-the clock claim, [the employee] must prove that [the employer] had actual or constructive knowledge of his alleged off-the-clock work.”).

**THIRTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Meal Periods Provided And Rest Periods Authorized And Permitted - Claims 2-8 And 10)**

These claims fail to the extent that Plaintiff and the putative class members did, in fact, take all meal periods and rest breaks to which they claim they were entitled throughout their employment. Defendant, at all relevant times, posted the applicable Wage Order and had policies and practices that provided meal periods and authorized and permitted rest periods as required by law.

**FORTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Waiver Of Meal Periods - Claims 2, 4-8, And 10)**

These claims are barred to the extent that Plaintiff and putative class members signed legally valid written waivers of any meal periods or voluntarily waived meal periods. These claims are further barred to the extent that Plaintiff and putative class members waived their second 30-minute meal period during shifts, if any, in which they worked at least 10 hours, but less than 12 hours, and were provided with the first 30-minute meal period during those same shifts.

**FORTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Waiver Of Rest Periods - Claims 3-8 And 10)**

These claims are barred to the extent that Plaintiff and any putative class members voluntarily waived rest periods.

**FORTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE****(Premium Wages For Alleged Failure To Take Meal Periods Or Rest Periods - Claims 2-8 And 10)**

These claims are barred to the extent that Plaintiff and putative class members were paid a premium pay of an additional hour of regular pay for each day, if any, when not provided a meal period or not authorized or permitted to take a rest period. The payment of such premium pay negates any additional liability for alleged meal or rest period violations.

**FORTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE****(Premium Pay May Be Excluded From The Regular Rate Of Pay - Claims 2-8 And 10)**

These claims are barred to the extent they are based on the theory that premium pay must be paid at an employee's regular rate of pay. The California Labor Commissioner, Division of Labor Standards Enforcement ("DLSE") recognizes that "premium" payments paid to employees for working overtime in any day or workweek should be "excluded in determining" the regular rate. *See* DLSE Enforcement Policies and Interpretations Manual (Revised) (2002). And "district courts within the Ninth Circuit that have addressed this issue have agreed that, as a matter of law, meal-period premium payments to employees are not included in the rate used to calculate the employee's overtime pay." *Mitchell v. Medtronic, Inc.*, 2015 WL 12747824, at \*3 (C.D. Cal. Feb. 13, 2015), *aff'd*, 684 F. App'x 624 (9th Cir. 2017) (citing *Rubin v. Wal-Mart Stores, Inc.*, 599 F. Supp. 2d 1176, 1177 (N.D. Cal. 2009); *Kamar v. Radioshack Corp.*, 2008 WL 2229166 (C.D. Cal. 2008)). "[U]nder both federal and state law, meal-period premium payments paid by an employer to an employee as required by [California Labor Code] Section 226.7 are considered premium payments and thus are not required to be considered 'remuneration' in calculating an employee's regular rate for overtime purposes." *Mitchell*, 2015 WL 12747824, at \*3.

**FORTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE****(Premium Pay May Exclude The Value Of Any Bonuses - Claims 2-8 And 10)**

These claims are barred to the extent they are based on the theory that premium pay must include the value of bonuses. Under California Labor Code Section 226.7(c), premium pay for meal and rest period violations is paid at one additional hour of pay at the employee's "regular rate of compensation." On the other hand, California Labor Code Section 510(a) requires overtime to be paid at 1.5 or 2 times

1 an employee’s “regular rate of pay.” This “regular rate of pay [for overtime purposes] . . . include[s]  
 2 [the value of] non-discretionary bonuses.” *Culley v. Lincare Inc.*, 2017 WL 3284800, at \*5-\*6 (E.D.  
 3 Cal. Aug. 2, 2017) (citing 29 U.S.C. § 207(e)(3)). Given the difference in language between these  
 4 statutes, courts recognize that the value of bonuses are not included in the rate at which employees’  
 5 premium payments for meal and rest period violations are paid. Instead, premium pay is paid strictly at  
 6 an employee’s base hourly rate. *See, e.g., Brum v. MarketSource, Inc.*, 2017 WL 2633414, at \*4 (E.D.  
 7 Cal. June 19, 2017) (granting a motion to strike without leave to amend, and finding defendant’s  
 8 argument “persuasive” that the amount of premium pay “includes only an employee’s base pay rate, and  
 9 no other forms of compensation”); *Wert v. Bancorp*, 2015 WL 3617165, at \*3 (S.D. Cal. Jun. 9, 2015)  
 10 (not permitting the plaintiff to amend her premium pay claim to allege that “§ 226.7’s ‘regular rate of  
 11 compensation’ is synonymous with § 510’s ‘regular rate of pay’”: “In the absence of legal authority  
 12 stating that § 226.7’s ‘regular rate of compensation’ language is the same as § 510’s ‘regular rate of pay’  
 13 language, this Court reiterates its previous determination that the legislature’s choice of different  
 14 language is meaningful, and that the relief under § 226.7 is not necessarily or logically the same as the  
 15 relief under § 510 insofar as the ‘regular rate’ language is involved.”); *Bradescu v. Hillstone Rest. Grp.*,  
 16 *Inc.*, 2014 WL 5312546, at \*8 (C.D. Cal. Sept. 18, 2014) (holding that no authority supports “the view  
 17 that ‘regular rate of compensation,’ for purposes of meal period compensation, is to be interpreted the  
 18 same way as ‘regular rate of pay’ is for purposes of overtime compensation,” and emphasizing that “the  
 19 legislature’s choice of different language [in the applicable statutes] is meaningful”).

20 **FORTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

21 **(No Knowledge Of Overtime Or Off-The-Clock Work - Claim 1, 4-8, And 10)**

22 These claims are barred to the extent that Defendant did not have actual or constructive  
 23 knowledge about any purported overtime or off-the-clock work allegedly performed by Plaintiff and/or  
 24 the putative class members. *See, e.g., Jong v. Kaiser Found. Health Plan, Inc.*, 226 Cal. App. 4th 391  
 25 (2014) (“[W]here the acts of an employee prevent an employer from acquiring knowledge, here of  
 26 alleged uncompensated overtime hours, the employer cannot be said to have suffered or permitted the  
 27 employee to work in violation of § 207(a.)”); *Forrester v. Roth’s I.G.A. Foodliner, Inc.*, 646 F.2d 413,  
 28 414 (9th Cir. 1981) (“[W]here an employer has no knowledge that an employee is engaging in overtime

1 work and that employee fails to notify the employer or deliberately prevents the employer from  
2 acquiring knowledge of the overtime work, the employer's failure to pay for the overtime hours are not a  
3 violation.").

4 **FORTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

5 **(Compliance With The Wage Statement Requirements - Claims 7 And 10)**

6 These claims are barred because the wage statements of Plaintiff and all putative class members  
7 fully complied with the requirements of California Labor Code § 226.

8 **FORTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

9 **(Failure To Show Intentional Violation Of Wage Statement Requirements - Claims 7 And 10)**

10 These claims are barred because even if Plaintiff can demonstrate wage statement deficiencies  
11 under California Labor Code § 226, Defendant did not willfully, knowingly, or intentionally violate the  
12 provisions of that statute.

13 **FORTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

14 **(Failure To Show A Failure To Keep Records - Claims 8 And 10)**

15 These claims are barred to the extent that Plaintiff cannot allege any facts showing that  
16 Defendant failed to keep records in accordance with the requirements of California Labor Code §  
17 1174(d).

18 **FORTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

19 **(Unjust, Arbitrary, And Oppressive, Or Confiscatory Penalties - All Claims)**

20 Plaintiff is not entitled to recover any statutory penalties because, under the circumstances of this  
21 case, any such recovery would be unjust, arbitrary, and oppressive, or confiscatory.

22 **FIFTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

23 **(Failure To Show Lack Of Payment Of Minimum Wage - Claims 4-8 And 10)**

24 Plaintiff's First Amended Complaint, and each claim contained therein, fails to the extent that  
25 Plaintiff cannot allege facts showing that Defendant failed to pay her or any putative class member the  
26 required minimum wage for all hours worked while employed by Defendant. Plaintiff, therefore, has no  
27 claim pursuant to California Labor Code §§ 1194 and 1194.2.  
28



1 **FIFTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

2 **(Unavailable Remedies Under The UCL - Claim 10)**

3 This claim fails to the extent that it seeks anything but restitution for alleged violations of the  
4 Labor Code that form the basis of the claims under the UCL.

5 **FIFTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

6 **(No Unlawful, Unfair, Or Fraudulent Business Practice - Claim 10)**

7 Without admitting the allegations of the First Amended Complaint, this claim fails because the  
8 alleged practices of Defendant, even assuming they occurred, are not unfair, unlawful, or fraudulent, the  
9 public is not likely to be deceived by any alleged practices, Defendant gained no competitive advantage  
10 by such alleged practices, and the benefits of the alleged practices outweigh any harm or other impact  
11 they may cause.

12 **FIFTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE**

13 **(Failure To Allege Facts To Support Restitution - Claim 10)**

14 This claim fails to the extent that Plaintiff cannot show a specific and individualized amount of  
15 property claimed by her and/or any member of the purported class, as required for a remedy of  
16 restitution under the UCL.

17 **FIFTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

18 **(Inability To Pursue Attorneys' Fees Under UCL - Claim 10)**

19 This claim fails to the extent that Plaintiff seeks attorneys' fees and costs because she cannot  
20 show the enforcement of an important right affecting the public interest.

21 **FIFTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

22 **(Action Unconstitutional - Claim 10)**

23 Prosecuting a class action and certification of the alleged class as representative of the general  
24 public under California Business and Professions Code § 17200 is barred, under the facts and  
25 circumstances of this case, because provisions of § 17200 violate the provisions of the United States and  
26 California Constitutions, including, but not limited to, the due process clauses of the Fifth and  
27 Fourteenth Amendments to the United States Constitution.  
28

1 **FIFTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

2 (Adequate Remedy At Law)

3 Plaintiff is are not entitled to the equitable relief sought insofar as she has an adequate remedy at  
4 law and/or cannot make the requisite showing to obtain injunctive relief.

5 **FIFTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

6 (Substantial Compliance - All Claims)

7 The First Amended Complaint, and each purported cause of action alleged therein, is barred in  
8 whole or in part because Defendant complied with its statutory obligations, and to the extent it is  
9 determined that there was technical non-compliance, Defendant substantially complied with its  
10 obligations and is not liable in whole or in part for the claims of Plaintiff.

11 **FIFTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

12 (No Knowledge Of Reasonable And Necessary Business Expenses - Claims 9-10)

13 These claims fail to the extent that Plaintiff and the putative class members did not inform  
14 Defendant of or seek reimbursement of reasonably and necessarily incurred business expenses. An  
15 employer cannot be held liable for failing to reimburse an employee's necessary expenses if it does not  
16 know or have reason to know that the employee has incurred the expense.

17 **FIFTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

18 (Unreasonable And Unnecessary Expenses - Claims 9-10)

19 These claims fail to the extent that Plaintiff and the putative class members seek reimbursement  
20 for expenses that were not incurred in the direct consequence of the discharge of their duties or were not  
21 necessary and reasonable.

22 **SIXTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

23 (Reimbursement Obligation Satisfied - Claims 9-10)

24 These claims are barred to the extent that Defendant has satisfied any expense reimbursement  
25 obligation under California Labor Code § 2802 and/or Plaintiff and the individuals she seeks to  
26 represent have failed to request reimbursement for reasonable and necessary business expenses  
27 reimbursable under Labor Code § 2802.  
28

1 **SIXTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

2 **(Ratification - All Claims)**

3 Plaintiff's First Amended Complaint, and each cause of action alleged herein, is barred by the  
4 ground that Plaintiff and/or other putative class members ratified Defendant's alleged actions.

5 **SIXTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

6 **(Failure To State Facts Warranting Class Certification And Class Damages - All Claims)**

7 Plaintiff's allegations that this action should be certified as a class action fail as a matter of law  
8 because Plaintiff cannot allege facts sufficient to warrant class certification and/or an award of class  
9 damages, pursuant to California Code of Civil Procedure § 382 or Rule 23 of the Federal Rules of Civil  
10 Procedure.

11 **SIXTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE**

12 **(No Predominance Of Common Questions Of Fact And Law - All Claims)**

13 Plaintiff's First Amended Complaint, and each cause of action alleged therein, fails to the extent  
14 that Plaintiff cannot allege predominant questions of fact and law, as required under California Code of  
15 Civil Procedure § 382 or Rule 23 of the Federal Rules of Civil Procedure.

16 **SIXTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

17 **(Not Appropriate For Class Action - All Claims)**

18 Plaintiff's First Amended Complaint, and each purported cause of action alleged therein, is not  
19 proper for treatment as a class action because, among other reasons: (a) Plaintiff is an inadequate  
20 representative of the purported class; (b) Plaintiff cannot establish commonality of claims; (c) Plaintiff  
21 cannot establish typicality of claims; and (d) the individualized nature of Plaintiff's claims predominate  
22 and thus makes class treatment inappropriate.

23 **SIXTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

24 **(Class Action Not Superior Method of Adjudication - All Claims)**

25 The alleged claims are barred, in whole or in part, as a class action, because a class action is not  
26 the superior method of adjudicating this dispute.

**SIXTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE****(Inadequate Class Representative - All Claims)**

Plaintiff's First Amended Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff is not an adequate representative of the alleged class that she purports to represent. Defendant alleges that Plaintiff does not have claims typical of the alleged class, if any, and that Plaintiff's interests are antagonistic to the alleged class she purports to represent. As such, the class action claims and allegations fail as a matter of law.

**SIXTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE****(Inadequate Class Counsel - All Claims)**

Plaintiff's First Amended Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff's counsel is not an adequate representative of the alleged class, particularly to the extent that counsel has been found to have engaged in acts of abuse, fraud, dishonesty, or breach of fiduciary duty. For instance, Plaintiff's counsel is counsel of record for the plaintiff in *Lockhart v. Columbia Sportswear Co.*, Riverside Superior Court, Case Number RIC1507504. In *Lockhart*, the court examined how a lawyer from Plaintiff's counsel's law firm conducted depositions of putative class members. The *Lockhart* court deemed that lawyer "unprofessional, demeaning, argumentative, and abusive" during the depositions, including by making multiple witnesses "repeatedly cry," "intimidat[ing]" and "ridiculing" them, "accus[ing witnesses] of lying," "threaten[ing]" them with "sanctions," and "dispar[ing] the witnesses' command of the English language, their maturity, their memory, and their competence as employees." The *Lockhart* court concluded that Plaintiff's counsel's law firm as a whole was "unapologetic" for this misconduct because that law firm argued that "no misbehavior occurred in any of the depositions." As such, the class action claims and allegations fail as a matter of law.

**SIXTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE****(No Private Right of Action - All Claims)**

Plaintiffs' First Amended Complaint is barred to the extent that she seeks to recover civil penalties for which no private right of action exists, including, but not limited to, her claims pursuant to Labor Code § 204.

**SIXTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Unconstitutionality Of PAGA Penalties - Claim 11)**

The PAGA penalties claimed by Plaintiff in this case are excessive and, thus, violate the California and United States’ Constitutions.

**SEVENTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(PAGA Is Unmanageable - Claim 11)**

Plaintiff’s First Amended Complaint and each cause of action cannot proceed as a representative action because it is unmanageable due to individualized issues.

**SEVENTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Inability To Pursue Penalties Under PAGA - Claim 11)**

This claim is barred to the extent that Plaintiff seeks civil penalties for alleged violations of the Labor Code that already contain a statutory or other civil penalty.

**SEVENTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Failure to Exhaust Administrative Remedies - Claim 11)**

Plaintiff’s claim for civil penalties pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*, is barred because Plaintiff failed to exhaust her administrative remedies before the Labor and Workforce Development Agency of the State of California and/or the Department of Industrial Relations.

**SEVENTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(Unlawful Delegation of Executive Authority - Claim 11)**

This claim is barred to the extent private actions seeking PAGA penalties manifest an unlawful delegation of executive authority.

**SEVENTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

**(No Penalties Beyond “Initial” Violation - Claim 11)**

This claim is barred to the extent Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, request penalties beyond the “initial” violation as described in California Labor Code Section 2699(f)(2). *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1207-1209 (2008).



1 information, Defendant denies all further and remaining allegations of the First Amended Complaint,  
2 and no response contained herein is intended to constitute a waiver of such denial.

3 **PRAYER**


4 WHEREFORE, Defendant prays for judgment as follows:

- 5 1. That Plaintiff take nothing by her First Amended Complaint;
- 6 2. That Defendant did not damage or harm Plaintiff, or any of the other members of the  
7 purported class, in any way;
- 8 3. That Plaintiff is not entitled to any wages, compensation, benefits, penalties, restitution,  
9 injunctive relief, declaratory relief, attorneys' fees, costs, or any other legal or equitable  
10 remedy due to any act or omission of Defendant;
- 11 4. That Plaintiff is not an adequate representative to bring an action under the standards of  
12 the California Unfair Competition Law, California Business and Professions Code §§  
13 17200, *et seq.*, California Code of Civil Procedure § 382, and/or Rule 23 of the Federal  
14 Rules of Civil Procedure;
- 15 5. That the First Amended Complaint fails to allege facts sufficient to show that there is a  
16 predominance of common questions of law or fact among Plaintiff and/or any other  
17 person upon whose behalf Plaintiff purports to act;
- 18 6. That the First Amended Complaint be dismissed in its entirety with prejudice;
- 19 7. That judgment be entered in favor of Defendant and against Plaintiff on her entire First  
20 Amended Complaint and on all causes of action alleged therein;
- 21 8. That Defendant be awarded the costs of suit herein incurred as provided by statute; and
- 22 9. That Defendant be awarded such other and further relief as the Court may deem  
23 appropriate.

24 DATED: April 25, 2019

Respectfully submitted,

SEYFARTH SHAW LLP

25 By: 

26 Jon D. Meer  
27 Bethany A. Pelliconi  
28 Paul J. Leaf  
Attorneys for Defendant  
WAYFAIR LLC

**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF LOS ANGELES )

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793. On April 25, 2019, I served the within document(s):

**ANSWER OF DEFENDANT WAYFAIR LLC TO PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by contracting with Federal Express and placing the document(s) listed above in a Federal Express envelope with postage paid on account and deposited with Federal Express at Los Angeles, California, addressed as set forth below.
- by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

Edwin Aiwarzian  
LAWYERS FOR JUSTICE, PC  
410 West Arden Avenue, Suite 203  
Glendale, CA 91203

*Attorneys for plaintiff,*  
LIONESHA HAMILTON

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 25, 2019, at Los Angeles, California.

Grace A. Gonzales



**CERTIFICATE OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793. On April 26, 2019, I served the within document(s):

**DEFENDANT WAYFAIR LLC'S NOTICE OF REMOVAL OF CIVIL ACTION TO UNITED STATES DISTRICT COURT**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by contracting with Federal Express and placing the document(s) listed above in a Federal Express envelope with postage paid on account and deposited with Federal Express at Los Angeles, California, addressed as set forth below.
- by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

Edwin Aiwarzian	<i>Attorneys for plaintiff,</i>
LAWYERS FOR JUSTICE, PC	LIONESHA HAMILTON
410 West Arden Avenue, Suite 203	
Glendale, CA 91203	

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 26, 2019, at Los Angeles, California.

  
 \_\_\_\_\_  
 Grace A. Gonzales

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Lionesha Hamilton

(b) County of Residence of First Listed Plaintiff Alameda County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Lawyers for Justice, PC Edwin Awazian (SBN 232943) 410 West Arden Avenue, Suite 203 Glendale, CA 91203 818-265-1020

DEFENDANTS

Wayfair LLC and Does 1-100

County of Residence of First Listed Defendant Suffolk County, Massachusetts (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Seyfarth Shaw LLP Jon Meer (144389), Bethany Pelliconi (182920), Paul Leaf (261949) 2029 Century Park East, Suite 3500 Los Angeles, CA 90067 310-277-7200

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant X 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding X 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1331, 1332(d)(2) & (d)(10), 1441(a), 1446, and 1453

Brief description of cause:

Plaintiff alleges various wage and hour claims on a class-wide basis. Jurisdiction is proper under CAFA.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 04/26/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jon D. Meer

**CERTIFICATE OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 South Figueroa Street, Suite 3300, Los Angeles, California 90017-5793. On April 26, 2019, I served the within document(s):


**CIVIL CASE COVER SHEET**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by contracting with Federal Express and placing the document(s) listed above in a Federal Express envelope with postage paid on account and deposited with Federal Express at Los Angeles, California, addressed as set forth below.
- by transmitting the document(s) listed above, electronically, via the e-mail addresses set forth below.

Edwin Aiwazian	<i>Attorneys for plaintiff,</i>
LAWYERS FOR JUSTICE, PC	LIONESHA HAMILTON
410 West Arden Avenue, Suite 203	
Glendale, CA 91203	

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 26, 2019, at Los Angeles, California.

  
 \_\_\_\_\_  
 Grace A. Gonzales

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wayfair Facing Class Action Over Alleged California Labor Law Violations](#)

---