

SEYFARTH SHAW LLP
Jon D. Meer (SBN 144389)
Email: jmeer@seyfarth.com
Richard Y. Chen (SBN 225392)
Email: rchen@seyfarth.com
Michael Afar (SBN 298990)
Email: mafar@seyfarth.com
Jared W. Speier (SBN 311751)
Email: jspeier@seyfarth.com
2029 Century Park East, Suite 3500
Los Angeles, California 90067-3021
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

Attorneys for Defendants
HURLEY INTERNATIONAL, LLC; and
NIKE, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENA N. TINCHER, on behalf of herself,
and all others similarly situated, and as an
“aggrieved employee” on behalf of other
“aggrieved employees” under the Labor
Code Private Attorneys General Act of
2004,

Plaintiff(s),

v.

HURLEY INTERNATIONAL, LLC, an
Oregon limited liability company; NIKE,
INC., an Oregon corporation; and DOES 1
through 50, inclusive,

Defendant(s).

Case No.

**DEFENDANT NIKE, INC.’S
NOTICE OF REMOVAL OF CIVIL
ACTION TO THE UNITED STATES
DISTRICT COURT PURSUANT TO
28 U.S.C. §§ 1332(d), 1446, 1453**

[Los Angeles County Superior Court;
Case No. 19STCV08627]

Complaint Filed: March 14, 2019

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL**
2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFF JENA N. TINCHER AND**
3 **HER COUNSEL OF RECORD:**

4 **PLEASE TAKE NOTICE** that Defendant Nike, Inc. (“Nike” or “Defendant”) files this Notice of Removal, pursuant to 28 U.S.C. §§ 1332(c), 1332(d)(2), 1441(a), 1446, and 1453, to effectuate the removal of the above-captioned action, which was originally commenced in the Superior Court of the State of California in and for the County of Los Angeles, to the United States District Court for the Central District of California. This Court has original jurisdiction over the action pursuant to the Class Action Fairness Act of 2005 (“CAFA”) for the following reasons:

11 **I. BACKGROUND**

12 1. On March 14, 2019, Plaintiff Jena N. Tinchler filed a class action complaint in the Superior Court of California for the County of Los Angeles, titled *JENA N. TINCHER, on behalf of herself, and all other similarly situated as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorney’s General Act of 2004, v. HURLEY INTERNATIONAL, LLC, an Oregon limited liability company; NIKE, INC., an Oregon Corporation; and DOES 1 through 50, inclusive*, Case No. 19STCV08627 (the “Complaint”). A true and correct copy of the Complaint is attached hereto as **Exhibit A**.

20 2. Nike was served with the Summons and Complaint and accompanying documents on April 10, 2019. True and correct copies of the (1) Service of Process Notice; (2) Summons; (3) Civil Case Cover Sheet; and (4) Certificate of Assignment is attached hereto as **Exhibit B**.

24 3. The Superior Court’s order regarding the initial status conference is attached hereto as **Exhibit C**.

26 4. Nike and Hurley International, LLC (“Hurley”) (collectively, “Defendants”) filed their Answer to Plaintiff’s Complaint on May 10, 2019. A true and correct copy of Defendants’ Answer is attached hereto as **Exhibit D**.

5. Defendants have not filed any other pleadings or papers in this action prior to this Notice of Removal. The exhibits listed above constitute all prior pleadings, process, and orders filed with the court in this matter.

II. TIMELINESS OF REMOVAL

6. The time for filing a Notice of Removal does not run until a party has been formally served with the summons and complaint under the applicable state law “setting forth the claim for relief upon which such action or proceeding is based” or, if the case stated by the initial pleading is not removable, after receipt of any “other paper from which it may be first ascertained that the case is one which is or has become removable.” 28 U.S.C. §§ 1446; *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (holding that “a named Defendant’s time to remove is triggered by simultaneous service of the summons and complaint”).

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

8. The 30-day time limit to remove was triggered by Plaintiff’s service of the Summons and Complaint on April 10, 2019. *See Murphy Bros., Inc.*, 526 U.S. at 347-48 (holding that “a named Defendant’s time to remove is triggered by simultaneous service of the summons and complaint”).

9. This Notice of Removal is timely because it is filed within thirty (30) days of service of the Complaint, by personal service on the agents for service of process for Defendant, on April 10, 2019. Cal. Code Civ. Proc. § 415.10 (“A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery.”); 28 U.S.C. § 1446(b). Thirty (30) days from the service of the Complaint on Defendant on April 10, 2019 is May 10, 2019.

III. HURLEY CONSENTS TO THE REMOVAL

10. Plaintiff has also named Hurley International, LLC, as a defendant in this lawsuit. There is no requirement that Hurley consent to this removal. 28 U.S.C. § 1453(b) (Under CAFA, an action “may be removed by any defendant without the consent of all defendants.”) Nonetheless, Hurley consents to this removal. *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1225 (9th Cir. 2009) (“One defendant’s timely removal notice containing an averment of the other defendants’ consent and signed by an attorney of record is sufficient” to establish unanimous joinder in removing to federal court). Accordingly, all Defendants consent to this removal.

IV. CLASS ACTION FAIRNESS ACT (“CAFA”) REMOVAL

11. This Court has original jurisdiction of this action under CAFA, codified in pertinent part at 28 U.S.C. section 1332(d)(2). As set forth below, this action is properly removable, pursuant to 28 U.S.C. section 1441(a), in that this Court has original jurisdiction over the action, because the aggregate amount in controversy exceeds \$5,000,000 exclusive of interest and costs, and the action is a class action in which at least one class member is a citizen of a state different from that of the Defendant. 28 U.S.C. §§ 1332(d)(2) & (d)(6). Furthermore, the number of putative class members is greater than 100. 28 U.S.C. § 332(d)(5)(B); *see* Declaration of Steve Nelson in Support of Defendant’s Notice of Removal (“Nelson Decl.”), ¶ 4.

A. Plaintiff And Defendant Are Minimally Diverse

12. CAFA requires only minimal diversity for the purpose of establishing federal jurisdiction; that is, at least one purported class member must be a citizen of a state different from any named defendant. 28 U.S.C. § 1332(d)(2)(A). In the instant case, Plaintiff is a citizen of a state (California) that is different from the state of citizenship of Nike (Oregon).

1. Plaintiff Is A Citizen Of California

13. For purposes of determining diversity, a person is a “citizen” of the state in which he or she is domiciled. *Kantor v. Wellesley Galleries, Inc.*, 704 F.2d 1088, 1090

(9th Cir. 1983) (“To show state citizenship for diversity purposes under federal common law a party must . . . be domiciled in the state.”). Residence is *prima facie* evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) (“the place of residence is prima facie the domicile”); *see also Zavala v. Deutsche Bank Trust Co. Americas*, No. C 13-1040 LB, 2013 WL 3474760, at *3 (N.D. Cal. July 10, 2013) (where a plaintiff’s complaint alleges he resides in California, “in the absence of evidence to the contrary, [plaintiff] is a California citizen for diversity purposes”). Citizenship is determined by the individual’s domicile at the time that the lawsuit is filed. *Armstrong v. Church of Scientology Int’l*, 243 F.3d 546, 546 (9th Cir. 2000) (“For purposes of diversity jurisdiction, an individual is a citizen of his or her state of domicile, which is determined at the time the lawsuit is filed”) (citing *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986)).

14. In her Complaint, Plaintiff alleges that she “is an individual and a resident of Cherry Valley, California.” (Ex. A, Compl. ¶ 10.) Plaintiff was also domiciled in California while she worked at Hurley retail stores located in Cabazon, Los Angeles, Irvine, and Costa Mesa, California. (Ex. A, Compl. ¶ 27; Nelson Decl., ¶ 9.)

15. Additionally, Plaintiff provided her home address during the course of her employment for purposes of her personnel file, payroll checks, state payroll, and tax withholdings. (Nelson Decl., ¶ 10.) Nike’s review of Plaintiff’s personnel file from her employment reveals that Plaintiff resides in Cherry Valley, California. (*Id.*) A public records search for Plaintiff also reveals that she resides in Cherry Valley, California. (*Id.*)

16. Plaintiff’s intent to remain domiciled in California is evident from the fact that she brought her lawsuit against Defendants in Los Angeles Superior Court. Therefore, Plaintiff was at all relevant times, and still is, a citizen and resident of the State of California.

2. Nike is Not a Citizen Of California

17. Nike, is, and was at the time of the filing of this action, a citizen of a state other than California within the meaning of 28 U.S.C. section 1332(c)(1). For purposes

1 of diversity jurisdiction, a corporation is deemed a citizen of the state “by which it has
2 been incorporated” and of the state “where it has its principal place of business.” 28
3 U.S.C. § 1332(c)(1).

4 18. Defendant Nike is now, and ever since this action commenced has been,
5 incorporated under the laws of the State of Oregon, with its principal place of business in
6 Beaverton, Oregon. (Declaration of Adrian Bell in Support of Defendant’s Notice of
7 Removal (“Bell Decl.”), ¶ 3.) Thus, for purposes of diversity jurisdiction, Nike is a
8 Citizen of Oregon.

9 19. Further, as shown below, Nike’s principal place of business is, and has been
10 at all times since this action commenced, located in the State of Oregon. (Bell Decl., ¶¶
11 4-5.) Thus, for purposes of diversity jurisdiction, Nike is a citizen of Oregon.

12 20. The United States Supreme Court held that when determining a
13 corporation’s principal place of business for diversity purposes, the appropriate test is the
14 “nerve center” test. *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81, 92-93 (2010). Under the
15 “nerve center” test, the principal place of business is the state where the “corporation’s
16 officers direct, control, and coordinate the corporation’s activities” and where the
17 corporation maintains its headquarters. *Id.* Other relevant factors include where
18 corporate executives maintain their offices, where corporate policies and procedures are
19 made, and where primary corporate functions are based. *See Ho v. Ikon Office Solutions,*
20 *Inc.*, 143 F. Supp. 2d 1163, 1168 (N.D. Cal. 2001) (nerve center found to be location
21 where corporation’s headquarters were located, where the corporate officers worked, and
22 from where corporate policies and procedures were made).

23 21. Under the “nerve center” test, Oregon emerges as Nike’s principal place of
24 business. Beaverton, Oregon is the site of Nike’s corporate headquarters and executive
25 offices, where its high level officers direct, control, and coordinate Nike’s activities.
26 (Bell Decl., ¶ 4.) Furthermore, many of Nike’s executive and administrative functions,
27 including corporate financing and accounting, are directed from Beaverton, Oregon.
28

(Bell Decl., ¶ 5.) Accordingly, Nike’s principal place of business is Beaverton, Oregon under the “nerve center” test. *See Hertz Corp.*, 130 S. Ct. at 1192.

22. Therefore, for diversity of citizenship purposes, Nike is, and has been at all times since this action commenced, a citizen of the State of Oregon. 28 U.S.C. § 1332(c)(1).

23. Because Plaintiff is a citizen of California and Nike is a citizen of Oregon, minimal diversity exists for purposes of CAFA.

24. **Doe Defendants.** The presence of Doe defendants in this case has no bearing on diversity of citizenship for removal. 28 U.S.C. § 1441(a) (“For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.”); *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a removal petition); *see also Soliman v. Philip Morris, Inc.*, 311 F. 3d 966, 971 (9th Cir. 2002) (“citizenship of fictitious defendants is disregarded for removal purposes and becomes relevant only if and when the plaintiff seeks leave to substitute a named defendant”). Thus, the existence of Doe defendants one through fifty does not deprive this Court of jurisdiction. *Abrego Abrego v. Dow Chemical Co.*, 443 F.3d 676, 679-80 (9th Cir. 2006) (rule applied in CAFA removal).

B. The Amount In Controversy Exceeds The Statutory Minimum

25. CAFA requires that the amount in controversy exceed \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). Under CAFA, the claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000. 28 U.S.C. § 1332(d)(6). In addition, Congress intended for federal jurisdiction to be appropriate under CAFA “if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (*e.g.*, damages, injunctive relief, or declaratory relief).” Senate Judiciary Committee Report, S. Rep. No. 109-14, at 42 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 40. Moreover, the Senate

Judiciary Committee’s Report on the final version of CAFA makes clear that any doubts regarding the maintenance of interstate class actions in state or federal court should be resolved in favor of federal jurisdiction. *Id.* at 42-43 (“[I]f a federal court is uncertain about whether ‘all matters in controversy’ in a purposed class action ‘do not in the aggregate exceed the sum or value of \$5,000,000, the court should err in favor of exercising jurisdiction over the case Overall, new section 1332(d) is intended to expand substantially federal court jurisdiction over class actions. Its provision should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant.”).

26. **Preponderance Of The Evidence Standard.** Plaintiff’s Complaint does not allege the amount in controversy for the class she purports to represent. Where a complaint does not allege a specific amount in damages, the removing defendant bears the burden of proving by a **preponderance of the evidence** that the amount in controversy exceeds the statutory minimum. In *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588 (2013), the U.S. Supreme Court held that the proper burden of proof imposed upon a defendant to establish the amount in controversy is the preponderance of the evidence standard. *Accord Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 977 (9th Cir. 2013) (“the proper burden of proof imposed upon a defendant to establish the amount in controversy is the preponderance of the evidence standard”).

27. In 2011, Congress amended the federal removal statute to specify that, where the underlying state practice “permits recovery of damages in excess of the amount demanded . . . removal of the action is proper on the basis of an amount in controversy asserted . . . if the district court finds, by the **preponderance of the evidence**, that the amount in controversy exceeds the amount specified in section 1332(a).” Pub.L. 112–63, December 7, 2011, 125 Stat. 758, § 103(b)(3)(C) (codified at 28 U.S.C. § 1446(c)(2) (emphasis added)); *accord Abrego Abrego*, 443 F.3d 676, 683 (9th Cir. 2006) (“Where the complaint does not specify the amount of damages sought, the removing defendant must prove by a preponderance of the evidence that the amount in controversy

1 requirement has been met”); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 701 (9th
 2 Cir. 2007) (“the complaint fails to allege a sufficiently specific total amount in
 3 controversy . . . we therefore apply the preponderance of the evidence burden of proof to
 4 the removing defendant”). The defendant must show that it is “more likely than not” that
 5 the jurisdictional threshold is met. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398,
 6 404 (9th Cir. 1996) (“[W]here a plaintiff’s state court complaint does not specify a
 7 particular amount of damages, the removing defendant bears the burden of establishing,
 8 by a preponderance of the evidence, that the amount in controversy exceeds \$50,000.
 9 Under this burden, the defendant must provide evidence establishing that it is ‘more
 10 likely than not’ that the amount in controversy exceeds that amount.”); *Schiller v.*
 11 *David’s Bridal, Inc.*, 2010 WL 2793650, at *2 (E.D. Cal. July 14, 2010) (same).

12 28. To satisfy this standard, the “defendant’s notice of removal need include
 13 only a plausible allegation that the amount in controversy exceeds the jurisdictional
 14 threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 135 S.Ct.
 15 547, 554 (2014).

16 29. The burden of establishing the jurisdictional threshold “is not daunting, as
 17 courts recognize that under this standard, a removing defendant is **not** obligated to
 18 research, state, and prove the plaintiff’s claims for damages.” *Korn v. Polo Ralph Lauren*
 19 *Corp.*, 536 F. Supp. 2d 1199, 1204-05 (E.D. Cal. 2008) (internal quotations omitted)
 20 (emphasis in original); *see also Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir.
 21 2004) (“the parties need not predict the trier of fact’s eventual award with one hundred
 22 percent accuracy.”).

23 30. It is well-settled that “the court must accept as true plaintiff’s allegations as
 24 plead in the Complaint and assume that plaintiff will prove liability and recover the
 25 damages alleged.” *Muniz v. Pilot Travel Ctrs. LLC*, 2007 WL 1302504, at *3 (E.D. Cal.
 26 May 1, 2007) (denying motion for remand of a class action for claims under the
 27 California Labor Code for missed meal and rest periods, unpaid wages and overtime,
 28 inaccurate wage statements, and waiting-time penalties).

31. As explained by the Ninth Circuit, “the amount-in-controversy inquiry in the removal context is not confined to the face of the complaint.” *Valdez*, 372 F.3d at 1117; *see also Rodriguez*, 728 F.3d at 981 (holding that the ordinary preponderance of the evidence standard applies even if a complaint is artfully pled to avoid federal jurisdiction); *Guglielmino.*, 506 F.3d at 702 (holding that even if a plaintiff affirmatively pled damages less than the jurisdictional minimum and did not allege a sufficiently specific total amount in controversy, the removing defendant is still only required to show by a preponderance of evidence that the amount in controversy exceeds the jurisdictional threshold).

32. **The Court Must Assume A 100% Violation Rate Based On Plaintiff’s Class-Wide Allegations.** If a plaintiff asserts statutory violations, the court must assume that the violation rate is 100% unless the plaintiff specifically alleges otherwise:

As these allegations reveal, plaintiff includes no fact-specific allegations that would result in a putative class or violation rate that is discernibly smaller than 100%, used by defendant in its 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.

Muniz, 2007 WL 1302504, at *4 (citing *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)); *see also Wheatley v. MasterBrand Cabinets*, 2019 WL 688209, at *5 (C.D. Cal. Feb. 19, 2019) (“Defendant and the Court must rely on assumptions regarding the rate of the alleged violations ... Plaintiff does not allege that some putative class members were subject to distinct policies. The Court therefore finds the assumption that uniform ... policies were applied to all putative class members reasonable”); *Soratorio v. Tesoro Ref. and Mktg. Co., LLC*, 2017 WL 1520416, at *3 (C.D. Cal. Apr. 26, 2017) (“Plaintiff’s Complaint could be reasonably read to allege a 100% violation rate. The Complaint notes that Defendants ‘did not provide’ Plaintiff and the other class members ‘a thirty minute meal period for every five hours worked,’ and that this was Defendant’s ‘common practice.’ It also alleges that Defendants had a practice of ‘requiring employees to work

1 for four hours and more without a rest period’ and that Defendants had a ‘common
 2 practice’ of failing to provide required breaks.”); *Arreola v. The Finish Line*, 2014 WL
 3 6982571, *4 (N.D. Cal. Dec. 9, 2014) (“District courts in the Ninth Circuit have
 4 permitted a defendant removing an action under CAFA to make assumptions when
 5 calculating the amount in controversy—such as assuming a 100 percent violation rate, or
 6 assuming that each member of the class will have experienced some type of violation—
 7 when those assumptions are reasonable in light of the allegations in the complaint.”);
 8 *Coleman v. Estes Express Lines, Inc.*, 730 F. Supp. 2d 1141, 1149 (C.D. Cal. 2010), *aff’d*
 9 *sub nom. Coleman v. Estes Exp. Lines, Inc.*, 631 F.3d 1010 (9th Cir. 2011) (“[C]ourts
 10 have assumed a 100% violation rate in calculating the amount in controversy when the
 11 complaint does not allege a more precise calculation”).

12 33. Numerous other District Courts have similarly concluded that alleging a
 13 policy of noncompliance in a complaint justifies the assumption of a 100 percent
 14 violation rate. *See Franke v. Anderson Merchandisers LLC*, 2017 WL 3224656, at *2
 15 (C.D. Cal. July 28, 2017) (“Courts in this Circuit have generally found the amount in
 16 controversy satisfied where a defendant assumes a 100% violation rate based on
 17 allegations of a ‘uniform’ illegal practice—or other similar language—and where the
 18 plaintiff offers no evidence rebutting this violation rate”); *Torrez v. Freedom Mortg.,*
 19 *Corp.*, 2017 WL 2713400, at *3-5 (C.D. Cal. June 22, 2017) (where complaint alleged
 20 “FMC engaged in a pattern and practice of wage abuse against its hourly-paid or non-
 21 exempt employees within the state of California,” the complaint “can reasonably be
 22 interpreted to imply nearly 100% violation rates”); *Franke v. Anderson Merchandisers*
 23 *LLC*, 2017 WL 3224656, at *2 (C.D. Cal. July 28, 2017) (“Courts in this Circuit have
 24 generally found the amount in controversy satisfied where a defendant assumes a 100%
 25 violation rate based on allegations of a ‘uniform’ illegal practice – or other similar
 26 language – and where the plaintiff offers no evidence rebutting this violation rate”); *Feao*
 27 *v. UFP Riverside, LLC*, 2017 WL 2836207, at *5 (C.D. Cal. June 26, 2017) (“Plaintiff’s
 28 allegations contain no qualifying words such as ‘often’ or ‘sometimes’ to suggest less

1 than uniform violation that would preclude a 100 percent violation rate.”); *Soratorio,*
 2 *LLC*, 2017 WL 1520416, at *3 (“Plaintiff’s Complaint could be reasonably read to allege
 3 a 100% violation rate. The Complaint notes that Defendants ‘did not provide’ Plaintiff
 4 and the other class members ‘a thirty minute meal period for every five hours worked,’
 5 and that this was Defendants’ ‘common practice.’ It also alleges that Defendants had a
 6 practice of ‘requiring employees to work for four hours and more without a rest period’
 7 and that Defendants had a ‘common practice’ of failing to provide required breaks.”);
 8 *Ritenour v. Carrington Mortg. Servs. LLC*, 228 F. Supp. 3d. 1025, 1030 (C.D. Cal. 2017)
 9 (“Given the vague language of the Complaint and the broad definition of the class, it is
 10 reasonable for Defendants to assume a 100% violation rate – especially since Plaintiffs
 11 offer no alternative rate to challenge Defendant’s calculations.”); *Jones v. Tween Brands,*
 12 *Inc.*, 2014 WL 1607636, at *3 (C.D. Cal. Apr. 22, 2014) (using 100 percent violation rate
 13 for waiting-time penalties since the complaint did not limit the number or frequency of
 14 violations).

15 34. The Complaint asserts 7 causes of action against all Defendants for:
 16 (1) “Failure to Pay All Wages Earned for All Hours Worked”; (2) “Failure to Provide
 17 Rest Breaks”; (3) “Failure to Provide Meal Periods”; (4) “Failure to Provide Accurate
 18 Wage Statements”; (5) “Failure to Timely Pay Wages Upon Termination”; (6) “Unfair
 19 Competition”; and (7) “Civil Penalties under the Labor Code Private Attorneys General
 20 Act.” (Ex. A, Compl.)

21 35. The alleged amount in controversy in this class action, in the aggregate,
 22 exceeds \$5,000,000. Plaintiff’s Complaint seeks to certify, and seeks relief on behalf of,
 23 “[a]ll persons Defendants employed in California as hourly non-exempt retail store
 24 employees at all Hurley retail stores, including sales leads, and persons in other similar
 25 positions (‘Class Members’), at any time during the period beginning four years prior to
 26 the filing of this action and ending on the date that final judgment is entered in this
 27 action.” (Ex. A, Compl. ¶ 17.) Given that Plaintiff’s Complaint was filed on March 14,
 28

2019, for purposes of the calculations in this Notice of Removal the “relevant time period” is from **March 14, 2015** until the present.

36. During the time period identified in the Complaint, Defendants employed approximately 517 non-exempt employees in California, who worked a total of approximately 30,471 workweeks. (Nelson Decl., ¶ 4.) The average hourly rate of pay for these individuals is approximately \$11.92 per hour during the proposed class period. (Nelson Decl., ¶ 5.)

37. Plaintiff seeks to recover, on behalf of herself and the alleged class, unpaid wages and penalties for Defendants’ alleged failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to pay all wages due upon resignation or termination of employment, failure to provide accurate and complete itemized wage statements, and unfair business practices. (Ex. A, Compl. ¶ 40.). Plaintiff also seeks attorneys’ fees and costs for all causes of action. (Ex. A, Compl. Prayer for Relief.) Plaintiff also seeks civil penalties under PAGA. (*Id.*)

38. As set forth below, the amount in controversy implicated by the class-wide allegations exceeds \$5,000,000. **All calculations supporting the amount in controversy are based on the Complaint’s allegations, assuming, without any admission, the truth of the facts alleged and assuming liability is established.** When the amount in controversy is not apparent from the face of the Complaint, a defendant may state underlying facts supporting its assertion that the amount in controversy exceeds the jurisdictional threshold. *Abrego*, 443 F.3d at 682-83.

39. The calculations below show that the alleged amount in controversy exceeds \$5,000,000, when considering non-exempt employees of Defendants, such as Plaintiff.

1. Unpaid Minimum Wage And Overtime Compensation

40. For her first cause of action, Plaintiff alleges that “[a]t all relevant times during the applicable limitations period, Defendants knowingly failed to compensate Plaintiff and the other Class Members for all hours worked, including, but not limited to overtime wages for hours in excess of 40 in a week, all in excess of eight in a day and all

1 for the 7th day worked in a workweek.” (Ex. A, Compl. ¶ 52), and “Plaintiff is informed
2 and believes that, at all relevant times, Defendants have applied centrally devised policies
3 and practices to [Plaintiff] and the Class Members with respect to working conditions and
4 compensation arrangements.” (Ex. A, Compl. ¶ 54).

5 41. Plaintiff does not, however, provide any details in terms of how many hours
6 per day or week she and the putative class members allegedly worked without
7 compensation. However, activities that take only ten minutes or less outside an
8 employee’s scheduled working hours are generally considered *de minimis* outside of
9 California, and thus not compensable. *See, e.g., Anderson v. Mt. Clemens Pottery Co.*,
10 328 U.S. 680, 692 (1946); *Lindow v. United States*, 738 F.2d 1057, 1062, 1063 (9th Cir.
11 1984) (“[i]t is only when an employee is required to give up a substantial measure of his
12 time and effort that compensable working time is involved”; “most courts have found
13 daily periods of 10 minutes *de minimis* even though otherwise compensable”). And,
14 although the California Supreme Court recently held that the *de minimis* doctrine may not
15 be available in defending against unpaid wage claims under the California Labor Code in
16 many contexts, it addressed specifically instances involving regular or routine minutes of
17 off-the-clock work, and indicated that the defense may still be available in the context of
18 “minute or irregular” instances of compensable time. *Troester v. Starbucks Corp.*, 5 Cal.
19 5th 829, 835 (2018).

20 42. The statute of limitations for recovery of unpaid wages under California
21 Labor Code Section 1194 is three years. *See* Cal. Code Civ. § Proc. 338. Plaintiff’s UCL
22 claim, however, extends the liability period of the overtime and minimum wage claim to
23 four years. *See* Cal. Bus. & Prof. Code § 17208 (“Any action to enforce any cause of
24 action pursuant to [the UCL] shall be commenced within four years after the cause of
25 action accrued.”). Thus, for determining the amount in controversy for Plaintiff’s
26 overtime and minimum wage claim, the UCL’s four-year statute of limitations applies.
27 Thus, although Defendants deny Plaintiff’s allegations or that she or the putative class are
28 entitled to any relief, it is reasonable to assume, based on Plaintiff’s allegations and the

remaining applicability of the *de minimis* rule, that employees worked, at minimum, one hour of unpaid time per week. One hour per week of unpaid time is just a few minutes of alleged time off the clock before and after each shift. An estimate of one hour per class member per week is appropriate in light of Plaintiff's allegation that Defendants had a "pattern and practice" of wage abuse, including overtime violations. *See Wheatley*, 2019 WL 688209, at *5 (C.D. Cal. Feb. 19, 2019) (finding an estimate of one hour per class member appropriate where Plaintiff alleged a "a pattern and practice" of overtime violations); *Stanley v. Distribution Alternatives, Inc.*, 2017 WL 6209822, at *2 (C.D. Cal. Dec. 7, 2017) (denying motion to remand where, "[f]or the at-controversy overtime wages, [defendant] assumes that each of the class members worked two hours of overtime each week during the class period"); *Patel v. Nike Retail Servs., Inc.*, 58 F. Supp. 3d 1032, 1042 (N.D. Cal. 2014) (finding appropriate the assumption that each class member is owed one hour of overtime compensation per week where the complaint alleged overtime violations occurred "regularly"); *Oda v. Gucci Am. Inc.*, 2015 WL 93335 at *4 (C.D. Cal. Jan. 7, 2015) (finding reasonable an assumed violation rate of one hour of overtime per week where the plaintiffs' asserted the defendant "sometimes" failed to pay overtime); *Ray v. Wells Fargo Bank, N.A.*, 2011 WL 1790123, at *7 (C.D. Cal. May 9, 2011) (finding reasonable the defendant's estimate of one hour of unpaid overtime per week for each class member where the complaint alleged "consistent" unpaid overtime work). As such, the reasonable estimate of the amount in controversy for Plaintiff's first cause of action is **\$544,821.48** [(\$11.92/hour * 1 hour per week * 30,471 workweeks * 1.5 OT premium)].

2. Meal And Rest Period Claims

43. For her second cause of action, Plaintiff claims that "at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with all rest breaks required by California law." (Ex. A, Compl. ¶ 68.)

1 44. For her third cause of action, Plaintiff claims that “at relevant times within
2 the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
3 which resulted in Defendants not providing the Class Members with all meal periods
4 required by California Labor Code § 512 and the Wage Order, including, but not limited
5 to, a second 30-minute uninterrupted meal period on workdays they worked more than
6 ten hours in a workday.” (Ex. A, Compl. ¶ 79.)

7 45. Plaintiff alleges that “[a]t all relevant times, Defendants failed to provide
8 Plaintiff an the Class Members adequate rest breaks . . . during most of their work days.”
9 (Ex. A, Compl. ¶¶ 29-30.). Additionally, Plaintiff alleges that “Defendants have failed to
10 provide Plaintiff and the other Class Members all rest and/or meal period . . . [and]
11 Plaintiff and other Class Members often had to assist customers with returns during their
12 meal periods.” (Ex. A, Compl. ¶¶ 31-32.). Plaintiff also alleges that at all relevant times,
13 Defendants “routinely denied Plaintiff and other Class Members an uninterrupted timely
14 second rest period.” (Ex. A, Compl. ¶¶ 35, 38.)

15 46. For both causes of action for meal period and rest period violations, Plaintiff
16 also claims that Defendants failed to pay her and the putative class members “additional
17 wages for all rest breaks not provided to them” and “additional wages for all meal periods
18 not provided to them.” (Ex. A, Compl. ¶¶ 69, 80.)

19 47. Plaintiff further alleges that “Plaintiff’s claims are typical of the other Class
20 Members’ claims. Plaintiff is informed and believes and thereon alleges that Defendants
21 have a policy, practice, or lack of a policy which resulted in Defendants failing to comply
22 with the California Labor Code and the Business and Professions Code as alleged
23 herein.” (Ex. A, Compl. ¶ 22.)

24 48. Plaintiff seeks separate payments for (1) denial of rest breaks and (2) denial
25 of meal periods. (Ex. A, Compl. ¶¶ 71, 82.) Labor Code § 226.7 requires employers to
26 pay an extra hour’s pay to employees who are not provided a meal period or a rest period.
27 Case law makes clear that an employee is entitled to an additional hour’s wages per day,
28 for both a rest and meal period violation each day. *Lyon v. W.W. Grainger, Inc.*, 2010

1 WL 1753194, *4 (N.D. Cal. Apr. 29, 2010) (noting that Labor Code section 226.7
2 provides recovery for one meal break violation per work day and one rest break violation
3 per work day). Plaintiff alleges each putative class member is entitled to meal break
4 premiums for each meal period missed and rest break premiums for each rest period
5 missed.

6 49. The statute of limitations for recovery for meal or rest period premium pay
7 under California Labor Code section 226.7 pay is three years. *Murphy v. Kenneth Cole*
8 *Prods., Inc.*, 40 Cal. 4th 1094, 1099 (2007) (“[T]he remedy provided in Labor Code
9 section 226.7 constitutes a wage or premium pay and is governed by a three-year statute
10 of limitations.”). However, Plaintiff alleges a claim for meal and rest break premium pay
11 as part of her unfair competition claim under Business and Professions Code section
12 17200, et seq. (Ex. A, Compl., ¶ 104.) Although Defendants contend that meal and rest
13 break premium pay cannot be recovered under Business and Professions Code section
14 17200 (*Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 1401 (2010)), according to the
15 allegations of her 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 50. Plaintiff is silent as to the amount of alleged meal periods or rest periods she
19 claims to have been denied, thereby precluding precise estimates of the amount in
20 controversy. Because Plaintiff alleges that Defendants had a “policy, practice, or a lack
21 of a policy which resulted in Defendants not providing the Class Members with all meal
22 periods [and rest periods]” (Ex. A, Compl., ¶¶ 68, 79), and “Plaintiff’s claims are typical
23 of the other Class Members’ claims” (Ex. A, Compl., ¶ 22), the Complaint contemplates
24 a 100% violation rate. Accordingly, a 100% violation rate can properly be assumed for
25 purposes of calculating the amount in controversy of Plaintiff’s meal and rest period
26 claims. See *Muniz*, 2007 WL 1302504, at *4 (citing *Caterpillar, Inc.*, 482 U.S. at 392
27 (finding a 100 percent violation rate appropriate when “plaintiff includes no fact-specific
28

1 allegations that would result in a putative class or violation rate that is discernibly smaller
2 than 100%”).

3 51. While Nike is entitled to assume a 100 percent violation rate (*i.e.*, five
4 missed meal periods and five missed rest periods per workweek) based on the allegations
5 in the Complaint, Nike will conservatively assume that putative class members were not
6 provided five meal periods and three rest periods each workweek.¹ Where Plaintiff has
7 alleged a policy and practice of meal and rest period violations, it is reasonable to assume
8 that there were five meal period and three rest break violations each week for every
9 employee. *See Wheatley*, 2019 WL 688209, at *6 (C.D. Cal. Feb. 19, 2019) (finding an
10 estimate of five meal period and three rest break violations per week reasonable where
11 Plaintiff alleged a “a policy and practice” of meal and rest break violations); *Bryant v.*
12 *NCR Corp.*, 284 F. Supp. 3d 1147, 1151 (S.D. Cal. 2018) (“Defendant conservatively
13 assumed the putative class members were not provided ... three of ten rest periods they
14 were entitled to receive each work week, even though assumption of a 100 percent
15 violation rate may have been reasonable based on allegations in the Complaint. The Court
16 therefore we finds Defendant's assumed violation rates reasonable”); *Agredano v. Sw.*
17 *Water Co.*, 2017 WL 2985395, at *6 (C.D. Cal. May 30, 2017) (“Plaintiff further alleges
18 that Defendants ‘routinely’ and ‘consistently’ failed to provide him and the putative class
19 members with the required 30–minute lunch break periods. Plaintiff does not limit the
20 number of violations alleged in his Complaint, nor has he offered any evidence that he or
21 other putative class members missed fewer than five legally required meal breaks per
22 week. Thus, the Court finds that ‘Plaintiff's own complaint alleges universal violations of
23 meal ... period laws’ such that Defendants’ ‘use of a 100% violation rate [five missed
24 meal periods] is proper.”); *Mejia v. DHL Express (USA), Inc.*, 2015 WL 2452755, at *4
25

26
27 ¹ Plaintiff cannot allege that this action “involves common questions of law and fact to
28 the potential class” without also implicitly alleging that each putative class member
suffered at least five meal period or three rest period violations per week based on
“policy, practice, or lack of policy.” (Ex. A, Compl. ¶¶ 68, 79.)

(C.D. Cal. May 21, 2015) (finding an estimate of five missed rest periods a week reasonable where plaintiff alleged that defendant maintained “policies, practices and procedures that caused the purported violations. . .”); *Lopez v. Aerotek, Inc.*, 2015 WL 2342558, at *2 (C.D. Cal. May 14, 2015) (finding defendant’s estimate of five meal period and five rest period violations was reasonable); *Coleman v. Estes Express Lines, Inc.*, 730 F. Supp. 2d 1141, 1150 (C.D. Cal. 2010) (“Plaintiff included no limitation on the number of violations, and, taking his complaint as true, Defendants could properly calculate the amount in controversy based on a 100% violation rate,” i.e., 5 missed meal periods and five missed rest breaks per week).

52. As stated above, there are approximately 517 current or former non-exempt employees of Defendants in California during the time period identified in the Complaint, who worked a total of approximately 30,471 workweeks. (Nelson Decl., ¶ 4.) Assuming that the employees were not provided five meal periods and three rest periods each workweek, the amount in controversy for Plaintiff’s meal and rest period claims is **\$2,905,714.56** [(\$11.92/hour * 8 premium payments² * 30,471 workweeks)].

3. Wage Statement Penalties

53. For Plaintiff’s fourth cause of action, she alleges that Defendants failed to maintain and provide the putative class with accurate itemized wage statements, in violation of California Labor Code section 226. (Ex. A, Compl. ¶ 89.) Plaintiff further alleges that “Defendants’ failure to provide Plaintiff and the Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.” (Ex. A, Compl. ¶ 90.)

54. 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,

² Five Meal Period Violations + Three Rest Period Violations = 8 Premium Payments.

up to a maximum penalty of \$4,000 per employee. The statute of limitations for recovery of penalties under Labor Code section 226 is one year. *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal. App. 4th 365, 376 (2005); Cal. Civ. Proc. Code § 340(a).

55. Defendants pay their non-exempt employees every two weeks. (Nelson Decl., ¶ 6.) Accordingly, there are approximately 26 pay periods per year. (*Id.*)

56. Based on Plaintiff's allegations that she and the putative class were subject to off-the-clock work, were not paid the correct overtime rate, and were not paid premium wages for noncompliant meal and rest breaks Plaintiff alleges that Defendants "failed to properly and accurately itemize **each** employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked by employees and other requirements California Labor Code § 226." (Ex. A, Compl. ¶ 89; emphasis added).

57. Plaintiff filed her Complaint on March 14, 2019. Therefore, the statutory period for a claim under California Labor Code § 226 runs from March 14, 2018 to the present.

58. During the one-year statute of limitations period for the wage statement claim, 253 putative class members worked approximately 4,534 pay periods. (Nelson Decl., ¶ 7.) Thus, the amount in controversy for Plaintiff's fourth cause of action for wage statement penalties is **\$440,750** [(\$100 x 4,534 pay periods) - (\$50 for the initial pay period x 253 initial pay periods)].

4. Waiting Time Penalties

59. For Plaintiff's fifth cause of action, she alleges that "Defendants failed to timely pay Plaintiff and the Class Members all earned and unpaid wages in violation of Labor Code section 201 or 202." (Ex. A, Compl. ¶ 97.) Additionally, Plaintiff alleges that Defendants alleged failure to pay all wages at the time of termination was "willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements."

(Ex. A, Compl. ¶ 100.) Plaintiff seeks waiting time penalties, not to exceed 30 days of penalties for each class member. Lab. Code § 203; (Ex. A, Compl. ¶ 101.) Pursuant to Labor Code § 203, an employer who willfully fails to pay all wages due at the time of termination or resignation results in a penalty of continued wages for each day a former employee is not paid, up to a thirty day maximum. *See* Cal. Lab. Code § 203(a).

60. The statute of limitations period for California Labor Code § 203 penalties extends back only three years from the date of filing of the complaint, or March 14, 2016. *See Pineda*, 50 Cal. 4th at 1399 (“if an employer failed to timely pay final wages to an employee who quit or was fired, the employee would have had one year to sue for the section 203 penalties but, under Code of Civil Procedure section 338, subdivision (a) (Stats.1935, ch. 581, § 1, p. 1673), three years to sue for the unpaid final wages giving rise to the penalty”).

61. Because Plaintiff does not allege that some class members worked part time, it is reasonable to assume that each employee worked eight hour shifts. *Wheatley, LLC*, 2019 WL 688209, at *6 (“it is reasonable for Defendant to assume eight-hour shifts”). It is also reasonable to assume that each employee waited over 30 days for payment of any allegedly unpaid wages. *See Tajonar v. Echosphere, LLC*, 2015 WL 4064642, at *4-5 (S.D. Cal. July 2, 2015) (finding reasonable the defendant-employer’s assumption that each employee was entitled to the maximum thirty-day penalty); *Byrd v. Masonite Corp.*, 2016 WL 2593912, at *3 (C.D. Cal. May 5, 2016) (“[I]t is not unreasonable for [defendant] to assume that each employee would be entitled to the maximum wage penalty – thirty days – for waiting time violations.”). From March 14, 2016 to the present, 301 non-exempt employees were separated from their employment. (Nelson Decl., ¶ 8.) Accordingly, although Defendants dispute liability, a reasonable estimate of the amount in controversy for section 203 penalties is **\$861,100.80** [\$11.92/hour x 8 hours/day x 30 days x 301 former employees].³

³ The waiting-time penalty calculation does not include future damages, though they are properly considered.

62. Although Nike denies Plaintiff's allegations or that she or the putative class are entitled to any relief for the above-mentioned claims, based on the forgoing calculations, the aggregate amount in controversy for the putative class for all asserted claims, exclusive of attorneys' fees, is approximately **\$4,752,386.84** calculated as follows:

- **\$ 544,821.48** Overtime and Unpaid Minimum Wage Claims
- **\$ 2,905,714.56** Meal/Rest Period Claim
- **\$ 440,750.00** Wage Statement Claim
- **\$ 861,100.80** Waiting Time Penalties Claim

63. The figures above do not take into account Plaintiff's claim for PAGA penalties, attorneys' fees, or Plaintiff's claim for liquidated damages for her unpaid minimum wage claim.

5. Attorneys' Fees

64. Plaintiff also seeks attorneys' fees. (Ex. A, Compl. Prayer for Relief.) Requests for attorneys' fees must also be taken into account in ascertaining the amount in controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys' fees are to be included in amount in controversy, regardless of whether award is discretionary or mandatory); *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.")

65. A reasonable estimate of fees likely to be recovered may be used in calculating 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.") (citing *Brady*, 243 F. Supp. 2d at 1010-11);

1 *Muniz*, 2007 WL 1302504 at *4 (attorneys’ fees appropriately included in determining
2 amount in controversy).

3 66. In a recent decision, the Ninth Circuit held that “a court must include future
4 attorneys’ fees recoverable by statute or contract when assessing whether the amount-in-
5 controversy requirement is met.” *Fritsch v. Swift Transp. Co. of Arizona, LLC*, 899 F.3d
6 785, 794 (9th Cir. 2018); *see also Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 414-
7 15 (9th Cir. 2018) (“[T]he amount in controversy is not limited to damages incurred prior
8 to removal—for example, it is not limited to wages a plaintiff-employee would have
9 earned before removal (as opposed to after removal). Rather, the amount in controversy
10 is determined by the complaint operative at the time of removal and encompasses all
11 relief a court may grant on that complaint if the plaintiff is victorious.”); *Lucas v.*
12 *Michael Kors (USA), Inc.*, 2018 WL 2146403 (C.D. Cal. May 9, 2018) (holding that
13 “unaccrued post-removal attorneys’ fees can be factored into the amount in controversy”
14 for CAFA jurisdiction).

15 67. In the class action context, courts have found that 25 percent of the
16 aggregate amount in controversy is a benchmark for attorneys’ fees award under the
17 “percentage of fund” calculation and courts may depart from this benchmark when
18 warranted. *See Wheatley, LLC*, 2019 WL 688209, at *6 (C.D. Cal. Feb. 19, 2019)
19 (finding that an estimate of attorney’s fees of 25% reasonable); *Ramos v. Schenker, Inc.*,
20 2018 WL 5779978, at *3 (C.D. Cal. Nov. 1, 2018) (“[T]he 25% benchmark provides a
21 non-speculative guidepost for assessing jurisdiction.”); *Campbell v. Vitran Exp., Inc.*, 471
22 F. App’x 646, 649 (9th Cir. 2012) (attorneys’ fees appropriately included in determining
23 amount in controversy under CAFA); *Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th
24 Cir. 2000) (“We have also established twenty-five percent of the recovery as a
25 ‘benchmark’ for attorneys’ fees calculations under the percentage-of-recovery
26 approach”); *Wren v. RGIS Inventory Specialists*, 2011 U.S. Dist. LEXIS 38667 at *78-84
27 (N.D. Cal. Apr. 1, 2011) (finding ample support for adjusting the 25% presumptive
28 benchmark upward and found that plaintiffs’ request for attorneys’ fees in the amount of

42% of the total settlement payment was appropriate and reasonable in the case); *Cicero v. DirecTV, Inc.*, 2010 U.S. Dist. LEXIS 86920 at *16-18 (C.D. Cal. July 27, 2010) (finding attorneys' fees in the amount of 30% of the total gross settlement amount to be reasonable); *see also In re Quintas Secs. Litig.*, 148 F. Supp. 2d 967, 973 (N.D. Cal. 2001) (noting that in the class action settlement context the benchmark for setting attorneys' fees is 25 percent of the common fund). Even under the conservative benchmark of 25 percent of the total recovery, attorneys' fees alone would be upward of **\$1,188,096.71** in this case.

68. Although Defendants deny Plaintiff's allegations that she or the putative class are entitled to any relief, based on Plaintiff's allegations and prayer for relief, the total amount in controversy exceeds **\$5,940,483.55**, including attorneys' fees.⁴ This amount exceeds the \$5,000,000 threshold set forth under 28 U.S.C. § 1332(d)(2) for removal jurisdiction.

69. Accordingly, because 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. section 1332(d)(2). This action is therefore a proper one for removal to this Court pursuant to 28 U.S.C. section 1441(a).

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

V. VENUE AND INTRADISTRICT ASSIGNMENT

71. Venue lies in the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 1391(a), 1441, 1446(a) and 84(c). This action originally was brought in Los Angeles County Superior Court of the State of California,

⁴ Approximately \$4,752,386.84 for the causes of action alleged in the Complaint, plus \$1,188,096.71 in attorneys' fees as 25% of the total potential recovery, results in a total amount in controversy of approximately \$5,940,483.55.

1 which is located within the Central District of California. 28 U.S.C. § 84(c). Therefore,
 2 venue is proper because it is the “district and division embracing the place where such
 3 action is pending.” 28 U.S.C. § 1441(a). The County of Los Angeles is located within
 4 the jurisdiction of the United States District Court, Central District of California, Western
 5 Division.

6 **VI. NOTICE OF REMOVAL**

7 72. A true and correct copy of this Notice of Removal will be promptly served
 8 on Plaintiff and filed with the Clerk of the Superior Court of the State of California,
 9 County of Los Angeles. The Notice of Removal is concurrently being served on all
 10 parties and counsel of record.

11 **VII. PRAYER FOR REMOVAL**

12 73. WHEREFORE, Defendant prays that the above action now pending before
 13 the Superior Court of the State of California for the County of Los Angeles be removed
 14 to the United States District Court for the Central District of California.

15 DATED: May 10, 2019

SEYFARTH SHAW LLP

17 By: /s/ Michael Afar

18 Jon D. Meer
 19 Richard Y. Chen
 20 Michael Afar
 Jared W. Speier

21 Attorneys for Defendants
 22 HURLEY INTERNATIONAL, LLC; and
 23 NIKE, INC.
 24
 25
 26
 27
 28

EXHIBIT A

COPY

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

MAR 14 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By: Brigitte De La Rosa, Deputy

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 CAROLINE TAHMASSIAN (SBN 285680)

caroline@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 16530 Ventura Blvd., Ste 203

Encino, CA 91436

5 Telephone (818) 582-3086

6 Facsimile (818) 582-2561

7 Attorneys for Plaintiff.

JENA N. TINCHER, and all others similarly situated

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**
11 **(UNLIMITED JURISDICTION)**

12 JENA N. TINCHER on behalf of herself, and
13 all others similarly situated, and as an
14 "aggrieved employee" on behalf of other
"aggrieved employees" under the Labor Code
Private Attorneys General Act of 2004,

15 *Plaintiff(s).*

16 vs.

17 HURLEY INTERNATIONAL, LLC, an
18 Oregon limited liability company; NIKE,
19 INC., and Oregon corporation; and DOES 1
20 through 50, inclusive,

21 *Defendant(s).*

Case No.: **19STCV08627**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Failure to Provide Accurate Wage Statements (Wage Statement Penalties) (Lab. Code § 226);
5. Failure to Timely Pay Wages Upon Termination (Waiting Time Penalties) (Lab. Code §§ 201, 202, 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties under the Labor Code Private Attorneys General Act (Lab. Code §§ 2698, *et seq.*

JURY TRIAL DEMANDED



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

Tincher v. Hurley International, LLC, et al.

Class Action Complaint

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 Plaintiff JENA N. TINCHER (hereafter "Plaintiff"), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class action based on alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage Order") and the
6 Business and Professions Code against defendants HURLEY INTERNATIONAL, LLC, an
7 Oregon limited liability company, NIKE, INC., an Oregon corporation, and DOES 1 through 10,
8 inclusive (collectively "Defendants").

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
10 and other similarly situated current and former employees in California for unpaid wages and
11 other related relief. These claims are based on Defendants' alleged failures to (1) pay all wages
12 for all hours worked, (2) provide all rest and meal periods, (3) fairly compete, (4) timely pay
13 wages during employment, (5) timely pay wages upon termination, (6) provide accurate written
14 wage statements, and (7) to maintain accurate employment records. Accordingly, Plaintiff now
15 seeks to recover unpaid wages and related relief through this class action.

16 JURISDICTION AND VENUE

17 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
18 and Class Members, inclusive of all relief, place more than \$25,000 in controversy.

19 4. This Court has jurisdiction over Plaintiff's and Class Members' claims for unpaid
20 overtime wages under Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5,
21 1194, 1197, 1198.

22 5. There is no basis for federal question subject matter jurisdiction in this case.
23 Specifically, Plaintiff asserts claims on behalf of herself and Class Members that solely arise
24 under California law, rather than federal law.

25 6. There is also no basis for federal diversity jurisdiction in this case.

26 7. This Court has jurisdiction over Plaintiff's and Class Members' claims for
27 restitution arising from Defendants' unlawful business practices under Business & Professions
28 Code §§ 17203 and 17204.

8. Plaintiff has exhausted administrative remedies, and this Court has jurisdiction
over Plaintiff's and Class Members' claims for penalties for Defendants' Labor Code violations
under Labor Code §§ 2699 and 2699.3.



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

9. Venue is proper in Los Angeles County pursuant to California Code of Civil Procedure § 395(a) and § 395.5 in that liability arose in Los Angeles County because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or because each defendant is found, maintains offices, transacts business, and/or has an agent therein.

PARTIES

10. Plaintiff JENA N. TINCHER is an individual and a resident of Cherry Valley, California.

11. Defendant HURLEY INTERNATIONAL, LLC, is an Oregon limited liability company doing business in the County of Los Angeles, State of California, and a citizen of California based on Plaintiff's information and belief.

12. Defendant NIKE, INC., is an Oregon corporation doing business in the County of Los Angeles, State of California and a citizen of California based on Plaintiff's information and belief.

13. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the complaint to allege the true names and capacities of the DOE defendants when ascertained.

14. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

15. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable California labor laws as alleged herein.

16. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other



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Employee Rights Attorneys
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Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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Defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

CLASS ACTION ALLEGATIONS

17. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

18. **Class Definition:** The class is defined as follows: All persons Defendants employed in California as hourly non-exempt retail store employees at all Hurley retail stores, including sales leads, and persons in other similar positions ("Class Members"), at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

19. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

20. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California law.

21. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to provide Class Members with all rest periods as required by section 12 of the Wage Order;

B. Whether Defendants failed to provide the Class Members with all meal periods as required by section 11 of the Wage Order;

C. Whether Defendants failed to pay all wages earned to Class Members for all hours worked;

D. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to Class Members;



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Employee Rights Attorneys
16530 Ventura BL Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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1 E. Whether Defendants knowingly and intentionally failed to provide Class
2 Members with accurate written wage statements;

3 F. Whether Defendants failed to timely pay Class Members for wages earned
4 during employment;

5 G. Whether Defendants violated California Labor Code §§ 201-203 by failing
6 to pay Defendants all wages earned and due at the time of termination; and

7 H. Whether Defendants had a policy or practice of not paying meal and rest
8 period premium wages for each day in which they failed to provide meal and rest periods;

9 I. Whether Defendants have knowingly and intentionally failed to provide
10 Class Members with accurate and itemized wage statements pursuant to California Labor Code §
226 and IWC Wage Order No. 7;

11 J. Whether Defendants have violated California Labor Code §§ 201-203 by
12 failing, upon termination, to timely pay Class Members wages that were due for overtime and
13 missed meal periods;

14 K. Whether Defendants' failures (a) to pay minimum wage (b) to pay Class
15 Members for all hours worked, (c) to pay Class Members overtime compensation, and (d) to
16 provide Class Members with adequate off-duty meal periods and on duty meal period
17 compensation, constitute unlawful, unfair, and/or fraudulent business practices under Cal.
Business & Professions Code § 17200 et seq.

18 22. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
19 Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or
20 a lack of a policy which resulted in Defendants failing to comply with the California Labor Code
21 and the Business and Professions Code as alleged herein.

22 23. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
23 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
24 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
25 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
26 Members.

27 24. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
28 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
in wage and hour class action litigation and are dedicated to vigorously prosecuting this action on



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Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 behalf of Plaintiff and absent Class Members.

2 25. **Superiority:** A class action is vastly superior to other available means for fair and
3 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
4 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
5 and efficiently prosecute their common claims in a single forum without the unnecessary
6 duplication of effort and expense that numerous individual actions would entail. In addition, the
7 monetary amounts due to many individual Class Members are likely to be relatively small and
8 would thus make it difficult, if not impossible, for individual Class Members to both seek and
9 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
10 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
11 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

12 **STATEMENT OF FACTS**

13 26. At all relevant times during the applicable limitations periods, Defendants
14 employed Plaintiff and the Class Members as hourly sales associates, sales leads or other
15 comparable positions to sell and/or make arrangements to sell goods.

16 27. Plaintiff commenced work with Defendants in July 2014 as a sales lead at Hurley's
17 retail store located in Cabazon, California. During the applicable limitations periods, and in
18 addition to working in Hurley's retail store located in Cabazon, Plaintiff worked in Hurley retail
19 stores located in Los Angeles, Irvine and Costa Mesa, California.

20 28. At all relevant times, Defendants paid Plaintiff and the Class Members on a bi-
21 weekly basis and at an hourly rate of pay.

22 29. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
23 adequate rest periods and compensation for missed rest periods in violation of California Labor
24 Code §§ 226.7 and Wage Order No. 7.

25 30. Because the stores were often understaffed, Defendants failed to provide duty-free
26 rest periods to Plaintiff and the other Class Members during most of their workdays. For example,
27 Joan Alvarez, Manager at the Hurley retail store in Cabazon, California, told Plaintiff and other
28 Class Members that Defendants could withhold rest breaks from employees. Defendants also
failed to provide Class Members at other Hurley locations with duty-free rest periods.

31. Plaintiff and the other Class Members have had many workdays over five and ten
hours long. Despite this, Defendants have failed to provide Plaintiff and the other Class Members



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Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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1 all rest and/or meal periods, including, but not limited to, two uninterrupted, unrestricted 30-
 2 minute meal periods on workdays of over ten hours to begin before they worked in excess of five
 3 and ten hours, respectively.

4 32. Defendants also failed to provide Plaintiff and the other Class Members with a
 5 third rest period when they worked in excess of ten hours in a workday. Defendants compelled
 6 Plaintiff and the Class Members to work during their meal periods without pay. For example,
 7 Plaintiff and the Class Members often had to assist customers with returns during their meal
 8 periods. Moreover, managers failed to permit Plaintiff and the Class Members to leave the store
 9 during periods they were clocked out for meal periods.

10 33. Plaintiff and the Class Members incurred uncompensated regular time and
 11 overtime when Defendants failed to provide them with an uninterrupted 30-minute meal period,
 12 and Class Members worked through periods clocked out. At all relevant times, Defendants failed
 13 to pay all overtime compensation to Plaintiff and the Class Members for hours worked in excess
 14 of eight hours per day. Defendants also failed to pay all overtime compensation to Plaintiff and
 15 the other Class Members for hours worked in excess of 40 hours per week.

16 34. Plaintiff ceased employment on August 2, 2018.

17 35. At all relevant times, upon resignation or termination, Defendants failed to pay
 18 final wages in a timely manner. Defendants willfully failed and refused to pay timely
 19 compensation and wages, for among other things, unpaid overtime, unpaid premium wages, and
 20 unpaid meal periods.

21 36. Defendants failed to provide Plaintiff and the Class Members with an
 22 uninterrupted, off-duty meal period of at least 30 consecutive minutes in duration beginning
 23 before they had worked more than five hours for all shifts in excess of five hours as guaranteed
 24 by California Labor sections 226.7 and 512, and Wage Order 7.

25 37. Defendants failed to provide Plaintiff and the Class Members with a second
 26 uninterrupted 30-minute meal period when they worked in excess of 10 hours in a workday
 27 beginning within the first ten hours of work.

28 38. Defendants routinely denied Plaintiff and the other Class Members an
 uninterrupted timely second rest period. Defendants required Plaintiff and the other Class
 Members to work in excess of eight (8) hours in one workday and forty (40) hours in one
 workweek without compensating them for such time worked at the overtime rates required by



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Employee Rights Attorneys
 16530 Ventura Bl. Ste 312
 Encino CA 91436
 (818) 582-3086 Tel
 (818) 582-2561 Fax
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California law.

39. Defendants did not keep records of the hours worked by Plaintiff and other Class Members, nor did they provide these records to Plaintiff and other Class Members with itemized wage statements.

40. For the reasons stated herein, Plaintiff alleges the following violations of the California Labor Code and the Wage Order 7 on behalf of herself and the Class Members:

a) Defendants failed to provide Plaintiff and the Class Members with all rest breaks and meal periods;

b) Defendants failed to pay Plaintiff and the Class Members one hour's pay for each workday in which they failed to provide them with one or more rest breaks;

c) Defendants failed to pay Plaintiff and the Class Members one hour's pay for each workday in which they failed to provide them with one or more meal periods;

d) Defendants failed to pay Plaintiff and the Class Members minimum wages for all hours worked;

e) Defendants failed to pay Plaintiff and the Class Members overtime wages for all overtime hours worked;

f) Defendants failed to pay wages, including minimum wages, overtime wages, and meal and rest penalty wages upon their separation from employment; and

g) Defendants failed to provide Plaintiff and the Class Members with accurate wage statements.

FIRST CAUSE OF ACTION

FAILURE TO PAY EMPLOYEES ALL WAGES

FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1194, 1197, and 1198)

(By Plaintiff and the Class against all Defendants)

41. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

42. At all relevant times, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the California Labor Code sections 510, 1194, 1197, and 1198 and the Wage Order.

43. Pursuant to Labor Code § 1197, "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees,



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Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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1 and the payment of a lower wage than the minimum so fixed is unlawful. This section does not
2 change the applicability of local minimum wage laws to any entity."

3 44. Section 3 of the applicable Wage Order states:

4 (A) Daily Overtime - General Provisions

5 (1) The following overtime provisions are applicable to employees 18 years of age
6 or over and to employees 16 or 17 years of age who are not required by law to
7 attend school and are not otherwise prohibited by law from engaging in the subject
8 work. Such employees shall not be employed more than eight (8) hours in any
9 workday or more than 40 hours in any workweek unless the employee receives
10 one and one-half (1½) times such employee's regular rate of pay for all hours
11 worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's
12 work. Employment beyond eight (8) hours in any workday or more than six (6)
13 days in any workweek is permissible provided the employee is compensated for
14 such overtime at not less than:

15 (a) One and one-half (1½) times the employee's regular rate of pay for all
16 hours worked in excess of eight (8) hours up to and including 12 hours in
17 any workday, and for the first eight (8) hours worked on the seventh (7th)
18 consecutive day of work in a workweek.

19 45. Section 4(B) of Wage Order states:

20 Every employer shall pay to each employee, on the established payday for
21 the period involved, not less than the applicable minimum wage for all hours
22 worked in the payroll period, whether the remuneration is measured by time,
23 piece, commission, or otherwise.

24 46. In relevant part, Section 2(G) of the Wage Order states:

25 'Hours worked' means the time during which an employee is subject to the
26 control of an employer, and includes all the time the employee is suffered
27 or permitted to work, whether or not required to do so.

28 47. In relevant part, California Labor Code § 1194 states:

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



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Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-3561 Fax
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1
2 48. Labor Code section 510 states:

3 Any work in excess of eight hours in one workday and any work in excess
4 of 40 hours in any one workweek and the first eight hours worked on the
5 seventh day of work in any one workweek shall be compensated at the rate
6 of no less than one and one-half times the regular rate of pay for an
7 employee. Any work in excess of 12 hours in one day shall be compensated
8 at the rate of no less than twice the regular rate of pay for an employee. In
addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular
rate of pay of an employee.

9 49. Labor Code § 1198 makes it unlawful for an employer to employ an employee
10 under conditions that violate the Wage Order.

11 50. Defendants are required to pay overtime compensation to all employees, unless
12 they are made exempt from the overtime pay requirements by the Legislature or the IWC. Plaintiff
13 and Class Members have not qualified for any exemption at any time relevant to this action.
14 Therefore, Plaintiff and Class Members have at all times relevant to this action been entitled to
15 be paid overtime compensation for all overtime hours worked.

16 51. During the Class Period, Plaintiff and the Class Members have worked in excess
17 of eight (8) hours in a workday, twelve (12) hours in a workday, (40) hours in a workweek, and
18 in excess of eight (8) hours on the seventh day of a workweek.

19 52. At all relevant times during the applicable limitations period, Defendants
20 knowingly failed to compensate Plaintiff and the other Class Members for all hours worked,
21 including, but not limited to overtime wages for all hours in excess of 40 in a week, all in excess
22 of eight in a day and all for the 7th day worked in a workweek. Plaintiff and the other Class
23 Members incurred uncompensated time at minimum wage or overtime wage rates when
Defendants permitted them to work without pay during periods clocked out for meals.

24 53. Plaintiff is informed and believes that, at all relevant times, Defendants have
25 applied centrally devised policies and practices to her and the Class Members with respect to
26 working conditions and compensation arrangements.

27 54. Defendants compensated Plaintiff and the Class Members with an hourly rate of
28 pay on a bi-weekly basis.

55. Defendants further deducted at least 30 minutes from Plaintiff and the Class



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Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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Members' hours worked in a workday even if they could not take their duty-free meal periods. Defendants also failed to compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay.

56. Further, Defendants failed to provide Plaintiff and the other Class Members with a third rest period when they worked in excess of ten hours in a workday, compelled Plaintiff and the Class Members to work during their meal periods without pay, and managers failed to permit Plaintiff and the Class Members to leave the store during periods they were clocked out for meal periods.

57. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants' failure to compensate the Class Members for all hours worked as required by California law, including, but not limited to overtime wages for all overtime hours they worked.

58. As a result of Defendants' unlawful conduct, Plaintiff and the other Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period.

59. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

60. Additionally, with respect to this cause of action, on behalf of herself and the Class Members, Plaintiff prays for an award of reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiff and the Class against all Defendants)

61. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

62. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 1198, and the Wage Order.

63. Labor Code § 1198 states,



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16530 Ventura Bl Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

64. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

65. "[I]n the context of an eight-hour shift, '[a]s a general matter,' one rest break should fall on either side of the meal break. (*Ibid.*)" *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1032, 273 P.3d 513, 531.

66. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.



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Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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67. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

68. Defendants failed to provide Plaintiff with all required rest breaks in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with all rest breaks required by California law.

69. Defendants failed to pay Plaintiff the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class Members with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

70. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all rest breaks not provided to them.

71. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more rest breaks were not provided to them pursuant to California Labor Code § 226.7.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

72. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

73. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

74. Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by



the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

75. In relevant part, Labor Code Section 512 states

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

76. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period



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Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 in accordance with the applicable provisions of this order, the employer
2 shall pay the employee one (1) hour of pay at the employee's regular rate
of compensation for each workday that the meal period is not provided.

3 77. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
4 Class Members were entitled to be provided with uninterrupted meal periods of at least 30 minutes
5 for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were
6 also entitled to a second 30-minute meal period when they worked more than 10 hours in a
7 workday.

8 78. During the relevant time period, Defendants failed to provide Plaintiff with all
9 required meal periods in accordance with California Labor Code § 512 and the Wage Order,
10 including, but not limited to, a second 30-minute uninterrupted meal periods on workdays the
employee worked more than ten hours in a workday.

11 79. Plaintiff is informed and believes and thereon alleges that, at relevant times within
12 the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy
13 which resulted in Defendants not providing the Class Members with all meal periods required by
14 California Labor Code § 512 and the Wage Order, including, but not limited to, a second 30-
15 minute uninterrupted meal period on workdays they worked more than ten hours in a workday.

16 80. Defendants failed to pay Plaintiff the additional wages required by California
17 Labor Code § 226.7 for all meal periods not provided to her. Plaintiff is informed and believes
18 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
19 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
20 providing the Class Members with additional wages for all meal periods not provided to them as
required by California Labor Code § 226.7.

21 81. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
22 suffered damages in amounts subject to proof to the extent they were not paid additional wages
23 owed for all meal periods not provided to them.

24 82. By reason of the above, Plaintiff and the Class Members are entitled to premium
25 wages for workdays in which one or more meal periods were not provided to them pursuant to
26 California Labor Code § 226.7.

27 ///

28 ///



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Employee Rights Attorneys
16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE,
WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class Members against all Defendants)

83. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

84. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code § 226.

85. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing among other things: a) gross wages earned; b) total hours worked; c) net wages earned; d) all deductions; e) the inclusive dates of the period for which the employee is paid; e) the name of the employee and only the last four digits of his or her social security number or an employee identification number; f) the name and address of the legal entity that is the employer; g) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

86. Pursuant to California Labor Code § 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

87. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);



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16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-3561 Fax
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1 B. Which deductions the employer made from gross wages to determine the
2 net wages paid to the employee during the pay period;

3 C. The name and address of the employer and, if the employer is a farm labor
4 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
5 and address of the legal entity that secured the services of the employer during the pay period;
6 and

7 D. The name of the employee and only the last four digits of his or her social
8 security number or an employee identification number other than a social security number.

9 88. "Promptly and easily determine," as stated in California Labor Code § 226(e),
10 means a reasonable person would be able to readily ascertain the information without reference
11 to other documents or information.

12 89. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
13 all wages owed, including but not limited to, minimum and overtime wages and all premium
14 wages for unprovided rest and/or meal periods. As a result, Defendants have failed to properly
15 and accurately itemize each employee's gross wages earned, net wages earned, the total hours
16 worked, the corresponding number of hours worked by employees and other requirements of
17 California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

18 90. Defendants' failure to provide Plaintiff and the Class Members with accurate wage
19 statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the
20 Class Members with accurate wage statements but intentionally provided wage statements that
21 Defendants knew were not accurate.

22 91. As a result of being provided with inaccurate wage statements by Defendants,
23 Plaintiff and the Class Members have suffered injury. Their legal rights to receive accurate wage
24 statements were violated and they were misled about the amount of wages they had actually
25 earned and were owed. In addition, the absence of accurate information on their wage statements
26 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
27 and mathematical computations to determine the amounts of wages owed, has caused difficulty
28 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
inaccurate information about wages to state and federal government agencies. Further, Plaintiff
and the Class Members were not able to ascertain from the wage statements whether Defendants
complied with their obligations under California Labor Code § 226(a).



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16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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92. Pursuant to California Labor Code § 226(e), Plaintiff and the Class Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per class member, and are also entitled to an award of costs and reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES UPON TERMINATION

(WAITING TIME PENALTIES)

(Lab. Code §§ 201-203)

(By Plaintiffs and the Class against all Defendants)

93. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

94. At all relevant times during the applicable limitations period, Plaintiff and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code sections 201 to 203 and the Wage Order.

95. Labor Code section 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

96. Labor Code section 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

97. By failing to pay all earned minimum, regular, overtime, and premium wages to Plaintiffs and the Class Members as described above, Defendants failed to timely pay Plaintiff and the Class Members all earned and unpaid wages in violation of Labor Code section 201 or 202.

98. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to her and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201 and 202 but have intentionally adopted policies or practice that are incompatible with those requirements.

99. Labor Code section 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned



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1 and unpaid wages to the employee in accordance with Labor Code section 201 or 202.

2 100. Plaintiff is informed and believe that Defendants' failures to timely pay Plaintiff
3 and the Class all of their earned and unpaid wages have been willful in that, at all relevant times,
4 Defendants have deliberately maintained policies and practices that violate the requirements of
5 the Labor Code and the Wage Order even though, at all relevant times, they have had the ability
6 to comply with those legal requirements.

7 101. Pursuant to Labor Code section 203, Plaintiff seeks waiting time penalties on
8 behalf of herself and the Class Members, in amounts subject to proof not to exceed 30 days of
9 waiting time penalties for each Class Member.

10 **SIXTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

13 **(By Plaintiff and the Class against all Defendants)**

14 102. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 103. At all relevant times during the applicable limitations period, Plaintiff and the
16 Class Members have been employees of Defendants and entitled to the benefits and protections
17 of the Business and Professions Code §§ 17200, *et seq.*

18 104. The unlawful conduct of Defendants alleged herein amounts to and constitutes
19 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
20 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
21 gained a competitive advantage over other comparable companies doing business in California
22 that comply with their legal obligations to compensate employees for all earned wages.

23 105. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
24 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
25 Members were deprived of wages for all hours worked and premium wages for all rest and meal
26 periods not provided to them.

27 106. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
28 Class Members are entitled to restitution of all monies rightfully belonging to them that
29 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
30 practices.

107. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in



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connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

**(By Plaintiff, on behalf of herself and the other Aggrieved Employees,
and the Public against Defendant Hurley, LLC and Doe Defendants)**

108. Plaintiff incorporates the preceding paragraphs of the Complaint as if alleged fully herein.

109. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §2699(c), and is a proper representative to bring a civil action on behalf of herself and other current and former employees of Defendants pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff is or was employed by Defendants and the alleged violations of the California Labor Code were and continue to be committed by Defendants.

110. Labor Code § 204 states:

- (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...
- (b) (1) Notwithstanding any other provision of this section, 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.
- (2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.



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1 (c) However, when employees are covered by a collective bargaining
2 agreement that provides different pay arrangements, those
3 arrangements shall apply to the covered employees.

4 (d) The requirements of this section shall be deemed satisfied by the
5 payment of wages for weekly, biweekly, or semimonthly payroll if
6 the wages are paid not more than seven calendar days following the
7 close of the payroll period.

8 111. Defendants paid wages to employees on regular intervals. Defendants failed to
9 pay Plaintiff on such intervals for all wages earned and all hours worked. On information and
10 belief, Plaintiff alleges that Defendants also failed to pay the aggrieved employees on such
11 intervals for all wages earned and all hours worked.

12 112. During the applicable time period, Defendants violated California Labor Code §§
13 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, and 1198.

14 113. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
15 behalf of themselves and other current or former employees, to bring a civil action to recover civil
16 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

17 A. For violations of California Labor Code § 204, one hundred dollars
18 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
19 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully
20 withheld from each aggrieved employee for each subsequent, willful or intentional violation
21 (penalty amounts established by California Labor Code § 210).

22 B. For violations of California Labor Code §§ 512 and 510, fifty dollars
23 (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for
24 each aggrieved employee for each subsequent violation, per pay period in addition to an amount
25 sufficient to recover underpaid wages (penalty amounts established by California Labor Code §
26 558).

27 C. For violations of California Labor Code § 1174, five hundred dollars
28 (\$500.00) for each aggrieved employee for each violation (penalty amounts established by
California Labor Code § 1174.5).

D. For violations of California Labor Code § 1197, one hundred dollars
(\$100.00) for each aggrieved employee for each initial and intentional violation and two hundred



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1 fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay period
 2 (regardless of whether the initial violations were intentionally committed), in addition to an
 3 amount sufficient to recover unpaid wages (penalty amounts established by California Labor
 4 Code § 1197.1).

5 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and
 6 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial
 7 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
 8 subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

9 G. For violations of Labor Code § 226(a), two hundred fifty dollars (\$250.00)
 10 for each aggrieved employee for each initial violation of California Labor Code § 226(a), and one
 11 thousand dollars (\$1,000) for each aggrieved employee for each subsequent violation (penalties
 12 set by California Labor Code § 226.3).

13 114. Plaintiff has complied with the procedures for bringing suit specified in California
 14 Labor Code § 2699.3. By letter dated December 20, 2018, Plaintiff gave written notice by certified
 15 mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific
 16 provisions of the California Labor Code alleged to have been violated, including the facts and
 17 theories to support the alleged violations. A true and correct copy of Plaintiff's letter to the LWDA
 18 dated December 20, 2018 is attached hereto as Exhibit A. The LWDA has not responded to
 19 Plaintiff's letter.

20 115. Therefore, Plaintiff has complied with all of the requirements set forth in
 21 California Labor Code § 2699.3 to pursue a representative action under PAGA.

22 PRAYER FOR RELIEF

23 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for
 24 relief and judgment against Defendants as follows:

- 25 A. An order that the action be certified as a class action;
- 26 B. An order that Plaintiff be appointed class representative;
- 27 C. An order that counsel for Plaintiff be appointed class counsel;
- 28 D. Unpaid Wages;
- E. Actual damages;
- F. Statutory damages;
- G. Statutory penalties;



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- 1 H. Civil penalties;
2 I. Liquidated damages;
3 J. Restitution;
4 K. Declaratory and injunctive relief;
5 L. Equitable relief;
6 M. Pre-judgment interest;
7 N. Costs of suit;
8 O. Interest
9 P. Reasonable attorneys' fees; and
10 Q. Such other relief as the Court deems just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial
13 on all issues so triable.

14 Respectfully submitted,

15 THE SPIVAK LAW FIRM

16 Dated: March 12, 2019

17 By 

18 DAVID SPIVAK
19 CAROLINE TAHMASSIAN
20 Attorneys for Plaintiff, JENA N. TINCHER,
21 and all others similarly situated
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16530 Ventura Bl. Ste 312
Encino CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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EXHIBIT A



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SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 20, 2018

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Jena N. Tincher / Hurley International LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Jenna N. Tincher (hereafter "Tincher") provides notice on behalf of herself and of all individuals currently and formerly employed in California as hourly non-exempt retail store employees at all Hurley retail stores (hereafter referred to collectively as "Aggrieved Employees") by Hurley International LLC, an Oregon limited liability company (hereafter "Hurley") of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, and 1198.

At all relevant times, Hurley has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Tincher and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage Order" or "Wage Order 7"), paragraph 2.E, and "Aggrieved Employees" within the meaning of California Labor Code § 2699(c).

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Statement of Facts

Hurley employed Tincher as a sales lead at its Cabazon, California retail store from approximately July 2014 to August 2, 2018. At all relevant times, Hurley paid Tincher and the Aggrieved Employees on a bi-weekly basis and at an hourly rate of pay. Therefore, Tincher and the Aggrieved Employees were entitled to the protections of the Labor Code and the Wage Order.

At all relevant times, Hurley failed to provide Tincher and the Aggrieved Employees adequate rest periods and compensation for missed rest periods in violation of California Labor Code §§ 226.7 and Wage Order No. 7. Because of understaffing, Hurley failed to provide duty-free rest periods to Tincher and the other Aggrieved Employees during most of their workdays. Joan Alvarez, Manager, at the Hurley retail store in Cabazon, California, told Tincher and other Aggrieved Employees that Hurley could withhold rest breaks from employees. Hurley also failed to provide Aggrieved Employees at other Hurley locations with duty-free rest periods.

At all relevant times, Hurley failed to consistently provide Tincher and the Aggrieved Employees a timely, 30-minute, uninterrupted, off-duty meal period. Tincher and the other Aggrieved Employees have had many workdays over five and ten hours long. Despite this, Hurley has failed to provide Tincher and the other Aggrieved Employees all rest and/or meal periods, including, but not limited to, two uninterrupted, unrestricted 30-minute meal periods on workdays of over ten hours to begin before they worked in excess of five and ten hours, respectively. Hurley also failed to provide Tincher and the other Aggrieved Employees with a third rest period when they worked in excess of ten hours in a workday. Hurley compelled Tincher and the Aggrieved Employees to work during their meal periods without pay. For example, Tincher and the Aggrieved Employees often had to take care of returns during their meal periods. Managers failed to permit Tincher and the Aggrieved Employees to leave the store during periods they were clocked out for meal periods.

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Tincher and the Aggrieved Employees incurred uncompensated regular time and overtime when Hurley failed to provide them with an uninterrupted 30-minute meal period and they worked through periods clocked out. At all relevant times, Hurley failed to pay all overtime compensation to Tincher and the Aggrieved Employees for hours worked in excess of eight hours per day. Hurley also failed to pay all overtime compensation to Tincher and the other Aggrieved Employees for hours worked in excess of 40 hours per week.

Further, Hurley failed to compensate Tincher and the other Aggrieved Employees for all hours worked on days it modified their time records to falsely state that meal periods took place in compliance with California law. As a result, Hurley has failed to properly itemize Tincher and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and corresponding number of hours worked at each hourly rate.

At all relevant times, upon resignation or termination, Hurley failed to pay final wages in a timely manner. Hurley willfully failed and refused to pay timely compensation and wages, for among other things, unpaid overtime, unpaid premium wages, and unpaid meal periods.

For the reasons herein, Tincher charges Hurley with the following violations of the California Labor Code and the Wage Order on behalf of herself and the Aggrieved Employees:

- a) Hurley failed to provide Tincher and the other Aggrieved Employees with all rest breaks and meal periods;
- b) Hurley failed to compensate Tincher and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more meal periods required by law;
- c) Hurley failed to compensate Tincher and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more rest breaks required by law;

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- d) Hurley failed to compensate Tincher and the other Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, minimum, regular and overtime wages;
- e) Hurley failed to provide Tincher and the other Aggrieved Employees with accurate wage statements; and
- f) Hurley willfully failed to timely pay Tincher and the other Aggrieved Employees all earned and unpaid wages during their employment at Hurley and at the time such employment ended.

Accordingly, Tincher now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Hurley's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

"Wage Order 7" or "The Wage Order" applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order 7, § 1. The Wage Order defines "Mercantile Industry" to include "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail..." (*Id.* § 2(H)). At all relevant times during the applicable limitations period, Hurley employed Tincher and the Aggrieved Employees as hourly sales associates, sales leads or other comparable positions to sell and/or make arrangements to sell goods. Accordingly, Tincher and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Provide Rest Breaks And Meal Periods **(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 1198 states:

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The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

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- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and

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one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal period or rest or recovery period in accordance with a state law, including but not limited to an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest or recovery period is not provided.

Hurley has intentionally and improperly failed to provide all duty-free rest breaks and/or meal periods free from any work or duties to Tincher and the other Aggrieved Employees as required by law, including but not limited to, second meal periods and third rest periods on days they work directly or are on call for more than ten hours in a workday. Hurley did not pay premium wages

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to Tincher and Aggrieved Employees on days it did not provide them with one or more timely meal and rest periods as required by law. In failing to do so, Hurley violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Tincher seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of California Labor Code § 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Pay All Wages Earned For All Hours Worked
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

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Section 4(B) of Wage Order states:

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2(G) of the Wage Order states:

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

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

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be

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employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

At all relevant times during the applicable limitations period, Hurley knowingly failed to compensate Tincher and the other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all hours in excess of 40 in a week, all in excess of eight in a day and all for the 7th day worked in a workweek. Tincher and the other Aggrieved Employees incurred uncompensated time at minimum wage or overtime wage rates when Hurley

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permitted them to work without pay during periods clocked out for meals.

Accordingly, Tincher seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of California Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each aggrieved employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203, including “waiting time” penalties of up to thirty (30) days’ wages, with interest thereon, and reasonable attorney’s fees and costs (penalties set by California Labor Code § 1197.1).

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Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As alleged herein, Hurley failed to provide Tincher and the other Aggrieved Employees all wages owed, including, but not limited to, all overtime wages at the legal rates of pay for all overtime hours worked. As a result, Hurley failed to properly itemize each employee's gross wages earned, net wages earned, and other requirements of California Labor Code § 226. As a result, Hurley has violated California Labor Code § 226.

Accordingly, Tincher seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

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Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code §204 states that all wages (other than those mentioned in Labor Code sections 201-202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As alleged herein, Hurley failed to provide Tincher and the other Aggrieved Employees all wages owed, including, but not limited to, all overtime wages at the legal rates of pay for all overtime hours worked. As a result, Hurley failed to pay Tincher and the other Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Hurley has violated California Labor Code § 204. Because of Hurley's failures to fully pay Tincher and the other Aggrieved Employees within the time periods set by California Labor Code § 204, Hurley failed to timely pay all wages due during employment.

Accordingly, Tincher seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204 and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, for each subsequent violation (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

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Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay wages to Tincher and the other Aggrieved Employees as set forth above, at the time of termination of employment, Hurley is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the other Aggrieved Employees, Tincher seeks civil penalties from Hurley as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

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3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f) (2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:

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- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Hurley has willfully failed to maintain the records required by § 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, overtime records, and records pertaining to unpaid hours worked. Accordingly, Tincher seeks civil penalties from Hurley on behalf of herself and the other Aggrieved Employee as follows:

1. \$500 for each aggrieved employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and


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2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Jena N. Tincher
Walter Haines, Esq.

Hurley International LLC
c/o United Agent Group Inc.
Agent for Service of Process
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292

EXHIBIT B



Computershare Governance Services, Inc.
100 Beard Sawmill Road, Shelton, CT 06484

NIKE, Inc.
Carolyn Gutsick
NIKE, Inc.
One Bowerman Drive, Air Ace
Beaverton OR 97005

April 11, 2019

SERVICE OF PROCESS NOTICE

Item: 2019-352

The following is a courtesy summary of the enclosed document(s). ALL information should be verified by you.

Note: Any questions regarding the substance of the matter described below, including the status or to whom or where to respond, should be directed to the person set forth in line 12 below or to the court or government agency where the matter is being heard.

1.	Client Entity: NIKE, Inc.	
2.	Title of Action: Jena N. Tincher, on behalf of herself and all others similarly situated, etc., et al. vs. Hurley International, LLC, et al.	
3.	Document(s) Served: Summons Civil Case Cover Sheet Complaint Initial Status Conference Order (Complex Litigation Program)	
4.	Court/Agency: Los Angeles County Superior Court	
5.	State Served: California	
6.	Case Number: 19STCV08627	
7.	Case Type: Labor Code Violations	
8.	Method of Service: Hand Delivered	
9.	Date Received: Wednesday 4/10/2019	
10.	Date To Client: Thursday 4/11/2019	
11.	# Days When Answer Due: 30 Answer Due Date: 05/10/2019	CAUTION: Client is solely responsible for verifying the accuracy of the estimated Answer Due Date. To avoid missing a crucial deadline, we recommend immediately confirming in writing with opposing counsel that the date of the service in their records matches the Date Received.
12.	SOP Sender: The Spivak Law Firm (Name, City, State, and Phone Number) Encino, CA 818-582-3086	
13.	Shipped To Client By: Email Only with PDF Link	
14.	Tracking Number:	
15.	Handled By: 051	
16.	Notes: Also Attached: • Certificate of Mailing	

NOTE: This notice and the information above is provided for general informational purposes only and should not be considered a legal opinion. The client and their legal counsel are solely responsible for reviewing the service of process and verifying the accuracy of all information. At ComputerShare, we take pride in developing systems that effectively manage risk so our clients feel comfortable with the reliability of our service. We always deliver service of process so our clients avoid the risk of a default judgment. As registered agent, our role is to receive and forward service of process. To decrease risk for our clients, it is not our role to determine the merits of whether service of process is valid and effective. It is the role of legal counsel to assess whether service of process is invalid or defective. Registered agent services are provided by ComputerShare Governance Services, Inc.

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: HURLEY INTERNATIONAL, LLC, an Oregon (AVISO AL DEMANDADO): limited liability company; NIKE, INC., and Oregon corporation; and DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF: JENA N. TINCHER on behalf of herself, **(LO ESTÁ DEMANDANDO EL DEMANDANTE):** and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 14 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By: Brigitte De La Rosa, 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), 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), the California Courts Online Self-Help Center (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.sucorte.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), en el Centro de Ayuda de las Cortes de California (www.sucorte.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 Los Angeles
111 North Hill Street
Los Angeles, California 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: David Spivak, Esq. / Caroline Tahn
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

THE SPIVAK LAW FIRM

16530 Ventura Blvd., Suite 203 Encino, CA 91436

818-582-3086

DATE:

MAR 14 2019

SHERRI R. CARTER

Clerk, by

Brigitte De La Rosa

Deputy

(Fecha)

(Secretario)

(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)).

(SEAL)

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): Nike, Inc., and Oregon corporation

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

- ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

COPY

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Spivak, Esq. / Caroline Tahmassian, Esq. SBN: 179684 / 285680 THE SPIVAK LAW FIRM 16530 Ventura Blvd., Suite 203, Encino, CA 91436 TELEPHONE NO.: 818-582-3086 FAX NO.: 818-582-2561 ATTORNEY FOR (Name): Jena N. Tincher		FOR COURT USE ONLY CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles MAR 14 2019 Sherri R. Carter, Executive Officer/Clerk of Court By: Brigitte De La Rosa, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Stanley Mosk Courthouse		
CASE NAME: JENA N. TINCHER, et al. v. HURLEY INTERNATIONAL, LLC, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 19STCV08627 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DP/WD (23) Non-P/DP/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DP/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (08) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☒ Large number of witnesses
 b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. ☒ Substantial amount of documentary evidence f. ☒ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Seven (7)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 12, 2019

Caroline Tahmassian, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rules.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

 Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

 Cal. Rules of Court, rules 3.230, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, std. 3.10
 www.courtinfo.ca.gov
 Westlaw Doc & Form Builder

COPY

SHORT TITLE: TINCHER, et al. v. HURLEY INTERNATIONAL, LLC, et al.

CASE NUMBER

19STCV08627

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

- | | |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District. | 7. Location where petitioner resides. |
| 2. Permissive filing in central district. | 8. Location where in defendant/respondent functions wholly. |
| 3. Location where cause of action arose. | 9. Location where one or more of the parties reside. |
| 4. Mandatory personal injury filing in North District. | 10. Location of Labor Commissioner Office. |
| 5. Location where performance required or defendant resides. | 11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury). |
| 6. Location of property or permanently garaged vehicle. | |

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A8070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11 1, 4, 11
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 4, 11
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 4, 11
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1, 4, 11
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11

SHORT TITLE TINCHER, et al. v. HURLEY INTERNATIONAL, LLC, et al.	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Contract	Breach of Contract/ Warranty (08) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels_____	2, 6
Real Property	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	8, 11
Unlawful Detainer	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	8, 11
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

SHORT TITLE: TINCHER. et al. v. HURLEY INTERNATIONAL, LLC, et al.	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2, 8
		<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2
		<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2, 5, 11
		<input type="checkbox"/> A6160 Abstract of Judgment	2, 6
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2, 9
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2, 8
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2, 8
		<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 8, 9
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1, 2, 8
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 8
	<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8	
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment With Damages	2, 3, 9
		<input type="checkbox"/> A6123 Workplace Harassment With Damages	2, 3, 9
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case With Damages	2, 3, 9
		<input type="checkbox"/> A6190 Election Contest	2
		<input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender	2, 7
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2, 3, 8
<input type="checkbox"/> A6100 Other Civil Petition	2, 9		

SHORT TITLE: **TINCHER, et al. v. HURLEY INTERNATIONAL, LLC, et al.**

CASE NUMBER

Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.			ADDRESS:		
CITY:		STATE:	ZIP CODE:		

Step 5: Certification of Assignment: I certify that this case is properly filed in the CENTRAL District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: March 12, 2019


 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

VOLUNTARY EFFICIENT LITIGATION STIPULATIONS

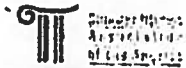


Superior Court of California
County of Los Angeles



Los Angeles County
Bar Association
Litigation Section

Los Angeles County
Bar Association Labor and
Employment Law Section



Consumer Attorneys
Association of Los Angeles



Southern California
Defense Counsel



Association of
Business Trial Lawyers



California Employment
Lawyers Association

The Early Organizational Meeting Stipulation, Discovery Resolution Stipulation, and Motions in Limine Stipulation are voluntary stipulations entered into by the parties. The parties may enter into one, two, or all three of the stipulations; however, they may not alter the stipulations as written, because the Court wants to ensure uniformity of application. These stipulations are meant to encourage cooperation between the parties and to assist in resolving issues in a manner that promotes economic case resolution and judicial efficiency.

The following organizations endorse the goal of promoting efficiency in litigation and ask that counsel consider using these stipulations as a voluntary way to promote communications and procedures among counsel and with the court to fairly resolve issues in their cases.

◆ Los Angeles County Bar Association Litigation Section ◆

◆ Los Angeles County Bar Association
Labor and Employment Law Section ◆

◆ Consumer Attorneys Association of Los Angeles ◆

◆ Southern California Defense Counsel ◆

◆ Association of Business Trial Lawyers ◆

◆ California Employment Lawyers Association ◆

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Court's File Stamp
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FAX NO. (Optional):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			CASE NUMBER:
STIPULATION – EARLY ORGANIZATIONAL MEETING			

This stipulation is intended to encourage cooperation among the parties at an early stage in the litigation and to assist the parties in efficient case resolution.

The parties agree that:

1. The parties commit to conduct an initial conference (in-person or via teleconference or via videoconference) within 15 days from the date this stipulation is signed, to *discuss and consider whether there can be agreement on the following*:
 - a. Are motions to challenge the pleadings necessary? If the issue can be resolved by amendment as of right, or if the Court would allow leave to amend, could an amended complaint resolve most or all of the issues a demurrer might otherwise raise? If so, the parties agree to work through pleading issues so that a demurrer need only raise issues they cannot resolve. Is the issue that the defendant seeks to raise amenable to resolution on demurrer, or would some other type of motion be preferable? Could a voluntary targeted exchange of documents or information by any party cure an uncertainty in the pleadings?
 - b. Initial mutual exchanges of documents at the "core" of the litigation. (For example, in an employment case, the employment records, personnel file and documents relating to the conduct in question could be considered "core." In a personal injury case, an incident or police report, medical records, and repair or maintenance records could be considered "core.");
 - c. Exchange of names and contact information of witnesses;
 - d. Any insurance agreement that may be available to satisfy part or all of a judgment, or to indemnify or reimburse for payments made to satisfy a judgment;
 - e. Exchange of any other information that might be helpful to facilitate understanding, handling, or resolution of the case in a manner that preserves objections or privileges by agreement;
 - f. Controlling issues of law that, if resolved early, will promote efficiency and economy in other phases of the case. Also, when and how such issues can be presented to the Court;
 - g. Whether or when the case should be scheduled with a settlement officer, what discovery or court ruling on legal issues is reasonably required to make settlement discussions meaningful, and whether the parties wish to use a sitting judge or a private mediator or other options as

SHORT TITLE:	CASE NUMBER:
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discussed in the "Alternative Dispute Resolution (ADR) Information Package" served with the complaint;

- h. Computation of damages, including documents, not privileged or protected from disclosure, on which such computation is based;
 - i. Whether the case is suitable for the Expedited Jury Trial procedures (see information at www.lacourt.org under "Civil" and then under "General Information").
2. The time for a defending party to respond to a complaint or cross-complaint will be extended to _____ (INSERT DATE) for the complaint, and _____ (INSERT DATE) for the cross-complaint, which is comprised of the 30 days to respond under Government Code § 68616(b), and the 30 days permitted by Code of Civil Procedure section 1054(a), good cause having been found by the Civil Supervising Judge due to the case management benefits provided by this Stipulation. A copy of the General Order can be found at www.lacourt.org under "Civil", click on "General Information", then click on "Voluntary Efficient Litigation Stipulations".
 3. The parties will prepare a joint report titled "Joint Status Report Pursuant to Initial Conference and Early Organizational Meeting Stipulation, and if desired, a proposed order summarizing results of their meet and confer and advising the Court of any way it may assist the parties' efficient conduct or resolution of the case. The parties shall attach the Joint Status Report to the Case Management Conference statement, and file the documents when the CMC statement is due.
 4. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day

The following parties stipulate:

Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR PLAINTIFF)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR DEFENDANT)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR DEFENDANT)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR DEFENDANT)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR _____)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR _____)
Date:	_____	>	_____
	(TYPE OR PRINT NAME)		(ATTORNEY FOR _____)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FAX NO. (Optional):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			CASE NUMBER:
STIPULATION – DISCOVERY RESOLUTION			

This stipulation is intended to provide a fast and informal resolution of discovery issues through limited paperwork and an informal conference with the Court to aid in the resolution of the issues.

The parties agree that:

1. Prior to the discovery cut-off in this action, no discovery motion shall be filed or heard unless the moving party first makes a written request for an Informal Discovery Conference pursuant to the terms of this stipulation.
2. At the Informal Discovery Conference the Court will consider the dispute presented by parties and determine whether it can be resolved informally. Nothing set forth herein will preclude a party from making a record at the conclusion of an Informal Discovery Conference, either orally or in writing.
3. Following a reasonable and good faith attempt at an informal resolution of each issue to be presented, a party may request an Informal Discovery Conference pursuant to the following procedures:
 - a. The party requesting the Informal Discovery Conference will:
 - i. File a Request for Informal Discovery Conference with the clerk's office on the approved form (copy attached) and deliver a courtesy, conformed copy to the assigned department;
 - ii. Include a brief summary of the dispute and specify the relief requested; and
 - iii. Serve the opposing party pursuant to any authorized or agreed method of service that ensures that the opposing party receives the Request for Informal Discovery Conference no later than the next court day following the filing.
 - b. Any Answer to a Request for Informal Discovery Conference must:
 - i. Also be filed on the approved form (copy attached);
 - ii. Include a brief summary of why the requested relief should be denied;

SHORT TITLE:	CASE NUMBER:
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- iii. Be filed within two (2) court days of receipt of the Request; and
- iv. Be served on the opposing party pursuant to any authorized or agreed upon method of service that ensures that the opposing party receives the Answer no later than the next court day following the filing.
- c. No other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.
- d. If the Court has not granted or denied the Request for Informal Discovery Conference within ten (10) days following the filing of the Request, then it shall be deemed to have been denied. If the Court acts on the Request, the parties will be notified whether the Request for Informal Discovery Conference has been granted or denied and, if granted, the date and time of the Informal Discovery Conference, which must be within twenty (20) days of the filing of the Request for Informal Discovery Conference.
- e. If the conference is not held within twenty (20) days of the filing of the Request for Informal Discovery Conference, unless extended by agreement of the parties and the Court, then the Request for the Informal Discovery Conference shall be deemed to have been denied at that time.
4. If (a) the Court has denied a conference or (b) one of the time deadlines above has expired without the Court having acted or (c) the Informal Discovery Conference is concluded without resolving the dispute, then a party may file a discovery motion to address unresolved issues.
5. The parties hereby further agree that the time for making a motion to compel or other discovery motion is tolled from the date of filing of the Request for Informal Discovery Conference until (a) the request is denied or deemed denied or (b) twenty (20) days after the filing of the Request for Informal Discovery Conference, whichever is earlier, unless extended by Order of the Court.

It is the understanding and intent of the parties that this stipulation shall, for each discovery dispute to which it applies, constitute a writing memorializing a "specific later date to which the propounding [or demanding or requesting] party and the responding party have agreed in writing," within the meaning of Code Civil Procedure sections 2030.300(c), 2031.320(c), and 2033.290(c).
6. Nothing herein will preclude any party from applying *ex parte* for appropriate relief, including an order shortening time for a motion to be heard concerning discovery.
7. Any party may terminate this stipulation by giving twenty-one (21) days notice of intent to terminate the stipulation.
8. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day.

SHORT TITLE:	CASE NUMBER:
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The following parties stipulate:

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

➤

(ATTORNEY FOR PLAINTIFF)

➤

(ATTORNEY FOR DEFENDANT)

➤

(ATTORNEY FOR DEFENDANT)

➤

(ATTORNEY FOR DEFENDANT)

➤

(ATTORNEY FOR _____)

➤

(ATTORNEY FOR _____)

➤

(ATTORNEY FOR _____)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY.		STATE BAR NUMBER	Reserved for Clerk's Fee Stamp
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FAX NO. (Optional):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			CASE NUMBER.
INFORMAL DISCOVERY CONFERENCE (pursuant to the Discovery Resolution Stipulation of the parties)			

1. This document relates to:

- ☐ Request for Informal Discovery Conference
☐ Answer to Request for Informal Discovery Conference

2. Deadline for Court to decide on Request: _____ (Insert date 10 calendar days following filing of the Request).
3. Deadline for Court to hold Informal Discovery Conference: _____ (Insert date 20 calendar days following filing of the Request).
4. For a Request for Informal Discovery Conference, briefly describe the nature of the discovery dispute, including the facts and legal arguments at issue. For an Answer to Request for Informal Discovery Conference, briefly describe why the Court should deny the requested discovery, including the facts and legal arguments at issue.

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FAX NO. (Optional):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			CASE NUMBER:
STIPULATION AND ORDER – MOTIONS IN LIMINE			

This stipulation is intended to provide fast and informal resolution of evidentiary issues through diligent efforts to define and discuss such issues and limit paperwork.

The parties agree that:

1. At least ____ days before the final status conference, each party will provide all other parties with a list containing a one paragraph explanation of each proposed motion in limine. Each one paragraph explanation must identify the substance of a single proposed motion in limine and the grounds for the proposed motion.
2. The parties thereafter will meet and confer, either in person or via teleconference or videoconference, concerning all proposed motions in limine. In that meet and confer, the parties will determine:
 - a. Whether the parties can stipulate to any of the proposed motions. If the parties so stipulate, they may file a stipulation and proposed order with the Court.
 - b. Whether any of the proposed motions can be briefed and submitted by means of a short joint statement of issues. For each motion which can be addressed by a short joint statement of issues, a short joint statement of issues must be filed with the Court 10 days prior to the final status conference. Each side's portion of the short joint statement of issues may not exceed three pages. The parties will meet and confer to agree on a date and manner for exchanging the parties' respective portions of the short joint statement of issues and the process for filing the short joint statement of issues.
3. All proposed motions in limine that are not either the subject of a stipulation or briefed via a short joint statement of issues will be briefed and filed in accordance with the California Rules of Court and the Los Angeles Superior Court Rules.

SHORT TITLE:	CASE NUMBER
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The following parties stipulate:

Date:

(TYPE OR PRINT NAME)

Date:

> _____
(ATTORNEY FOR PLAINTIFF)

(TYPE OR PRINT NAME)

Date:

> _____
(ATTORNEY FOR DEFENDANT)

(TYPE OR PRINT NAME)

Date:

> _____
(ATTORNEY FOR DEFENDANT)

(TYPE OR PRINT NAME)

Date:

> _____
(ATTORNEY FOR DEFENDANT)

(TYPE OR PRINT NAME)

Date:

> _____
(ATTORNEY FOR _____)

(TYPE OR PRINT NAME)

Date:

> _____
(ATTORNEY FOR _____)

(TYPE OR PRINT NAME)

> _____
(ATTORNEY FOR _____)

THE COURT SO ORDERS.

Date: _____

JUDICIAL OFFICER



Superior Court of California, County of Los Angeles

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE

THE PLAINTIFF MUST SERVE THIS ADR INFORMATION PACKAGE ON EACH PARTY WITH THE COMPLAINT.

CROSS-COMPLAINANTS must serve this ADR Information Package on any new parties named to the action with the cross-complaint.

What is ADR?

ADR helps people find solutions to their legal disputes without going to trial. The main types of ADR are negotiation, mediation, arbitration and settlement conferences. When ADR is done by phone or computer, it may be called Online Dispute Resolution (ODR). These "alternatives" to litigation and trial are described below.

Advantages of ADR

- **Saves Time:** ADR is faster than going to trial.
- **Saves Money:** Parties can save on court costs, attorney's fees and witness fees.
- **Keeps Control with the parties:** Parties choose their ADR process and provider for voluntary ADR.
- **Reduces stress/protects privacy:** ADR is done outside the courtroom, in private offices, by phone or online.

Disadvantages of ADR

- **Costs:** If the parties do not resolve their dispute, they may have to pay for ADR and litigation and trial.
- **No Public Trial:** ADR does not provide a public trial or a decision by a judge or jury.

Main Types of ADR:

1. **Negotiation:** Parties often talk with each other in person, or by phone or online about resolving their case with a settlement agreement instead of a trial. If the parties have lawyers, they will negotiate for their clients.
2. **Mediation:** In mediation, a neutral "mediator" listens to each person's concerns, helps them evaluate the strengths and weaknesses of their case, and works with them to try to create a settlement agreement that is acceptable to all. Mediators do not decide the outcome. Parties may go to trial if they decide not to settle.

Mediation may be appropriate when the parties

- want to work out a solution but need help from a neutral person.
- have communication problems or strong emotions that interfere with resolution.

Mediation may not be appropriate when the parties

- want a public trial and want a judge or jury to decide the outcome.
- lack equal bargaining power or have a history of physical/emotional abuse.

How to arrange mediation in Los Angeles County

Mediation for civil cases is voluntary and parties may select any mediator they wish. Options include:

a. The Civil Mediation Vendor Resource List

Parties may contact these organizations to request a "Resource List Mediation" for reduced-cost or free (for selected cases) mediation in person or with ODR (by phone or online).

- JAMS, Inc.: Case Manager (213) 253-9776 mdawson@jamsadr.com
- Mediation Center of Los Angeles: Case Manager: (833) 476-9145 info@mediationLA.org

These organizations cannot accept every case and they may decline cases at their discretion.

Visit www.lacourt.org/ADR.Res.List for important information and FAQs before contacting them.

NOTE: This service is not available for family law, probate or small claims.

b. Los Angeles County Dispute Resolution Programs

<https://wdacs.lacounty.gov/programs/drp/>

- Free, day-of-trial mediations at the courthouse for small claims, unlawful detainers (evictions) and, at the Stanley Mosk Courthouse, limited civil. No appointment needed.
- Free or low-cost mediations before the day of trial for these and other case types.
- For ODR by phone or computer for small claims or unlawful detainer (eviction) cases before the day of trial, visit <http://www.lacourt.org/division/smallclaims/pdf/OnlineDisputeResolutionFlyer-EngSpan.pdf>

c. Mediators and ADR and Bar organizations that provide mediation may be found on the Internet.

3. **Arbitration:** Arbitration is less formal than trial, but like trial, the parties present evidence and arguments to the person who decides the outcome. In "binding" arbitration, the arbitrator's decision is final; there is no right to trial. In "nonbinding" arbitration, any party can request a trial after the arbitrator's decision. For more information about arbitration, visit <http://www.courts.ca.gov/programs-adr.htm>

4. **Mandatory Settlement Conferences (MSC):** MSCs are ordered by the Court and are often held close to the trial date. The parties and their attorneys meet with a judge or settlement officer who does not make a decision but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. For information about the Court's MSC programs for civil cases, visit: www.lacourt.org/division/civil/settlement

Los Angeles Superior Court ADR website: www.lacourt.org/division/civil/settlement

For general information and videos about ADR, visit <http://www.courts.ca.gov/programs-adr.htm>

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		<small>Reserved for Clerk's File Stamp</small>	
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012		FILED Superior Court of California County of Los Angeles 03/14/2019 Sherri R. Carter, Executive Officer / Clerk of Court By: <u>Brigitte De La Rosa</u> Deputy	
NOTICE OF CASE ASSIGNMENT UNLIMITED CIVIL CASE			
Your case is assigned for all purposes to the judicial officer indicated below.		CASE NUMBER: 19STCV08627	

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

ASSIGNED JUDGE		DEPT	ROOM		ASSIGNED JUDGE		DEPT	ROOM
✓	William F. Highberger	10						

Given to the Plaintiff/Cross-Complainant/Attorney of Record

Sherri R. Carter, Executive Officer / Clerk of Court

on 03/14/2019

(Date)

By Brigitte De La Rosa, Deputy Clerk

INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the California Rules of Court, Title 3, Division 7, as applicable in the Superior Court, are summarized for your assistance.

APPLICATION

The Division 7 Rules were effective January 1, 2007. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Division 7 Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure Section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Independent Calendaring Courts will be subject to processing under the following time standards:

COMPLAINTS

All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days.

CROSS-COMPLAINTS

Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

STATUS CONFERENCE

A status conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties to attend a final status conference not more than 10 days before the scheduled trial date. All parties shall have motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested form jury instructions, special jury instructions, and special jury verdicts timely filed and served prior to the conference. These matters may be heard and resolved at this conference. At least five days before this conference, counsel must also have exchanged lists of exhibits and witnesses, and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Three of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party, or if appropriate, on counsel for a party.

This is not a complete delineation of the Division 7 or Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is imperative.

Class Actions

Pursuant to Local Rule 2.3, all class actions shall be filed at the Stanley Mosk Courthouse and are randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be a class action it will be returned to an Independent Calendar Courtroom for all purposes.

***Provisionally Complex Cases**

Cases filed as provisionally complex are initially assigned to the Supervising Judge of complex litigation for determination of complex status. If the case is deemed to be complex within the meaning of California Rules of Court 3.400 et seq., it will be randomly assigned to a complex judge at the designated complex courthouse. If the case is found not to be complex, it will be returned to an Independent Calendar Courtroom for all purposes.

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 10

19STCV08627

JENA N. TINCHER vs HURLEY INTERNATIONAL, LLC, et al.

March 25, 2019

9:52 AM

**Judge: Honorable William F. Highberger
Judicial Assistant: M. Mata
Courtroom Assistant: R. Sanchez**

**CSR: None
ERM: None
Deputy Sheriff: None**

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order

By this order, the Court determines this case to be Complex according to Rule 3.400 of the California Rules of Court. The Clerk's Office has randomly assigned this case to this department for all purposes.

By this order, the Court stays the case, except for service of the Summons and Complaint. The stay continues at least until the Initial Status Conference. Initial Status Conference is set for 05/15/2019 at 02:30 PM in this department. At least 10 days prior to the Initial Status Conference, counsel for all parties must discuss the issues set forth in the Initial Status Conference Order issued this date. The Initial Status Conference Order is to help the Court and the parties manage this complex case by developing an orderly schedule for briefing, discovery, and court hearings. The parties are informally encouraged to exchange documents and information as may be useful for case evaluation.

Responsive pleadings shall not be filed until further Order of the Court. Parties must file a Notice of Appearance in lieu of an Answer or other responsive pleading. The filing of a Notice of Appearance shall not constitute a waiver of any substantive or procedural challenge to the Complaint. Nothing in this order stays the time for filing an Affidavit of Prejudice pursuant to Code of Civil Procedure Section 170.6.

Counsel are directed to access the following link for information on procedures in the Complex litigation Program courtrooms: <http://www.lacourt.org/division/civil/CI0037.aspx>

According to Government Code section 70616 subdivisions (a) and (b), each party shall pay a fee of \$1,000.00 to the Los Angeles Superior Court within 10 calendar days from this date.

The plaintiff must serve a copy of this minute order and the attached Initial Status Conference

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 10

19STCV08627

**JENA N. TINCHER vs HURLEY INTERNATIONAL, LLC, et
al.**

March 25, 2019

9:52 AM

Judge: Honorable William F. Highberger

CSR: None

Judicial Assistant: M. Mata

ERM: None

Courtroom Assistant: R. Sanchez

Deputy Sheriff: None

**Order on all parties forthwith and file a Proof of Service in this department within 7 days of
service.**

Certificate of Mailing is attached.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 21 2019

Sherril R. Carter, Executive Officer/Clerk of Court
By: Maribel Mata, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

JENA N. TINCHER

Plaintiff,

vs.

HURLEY INTERNATIONAL. LLC

Defendants.

Case No.: 19STCV08627

INITIAL STATUS CONFERENCE ORDER
(COMPLEX LITIGATION PROGRAM)

Case Assigned for All Purposes to
Judge William F. Highberger

Department: 10
Date: May 15, 2019
Time: 2:30 p.m.

This case has been assigned for all purposes to Judge William F. Highberger in the Complex Litigation Program. An Initial Status Conference is set for May 15, 2019 at 2:30 p.m. in Department 10 located in the Los Angeles Superior Court at the United States Court House on 312 North Spring Street, Los Angeles, CA 90012. Counsel for all parties are ordered to attend.

The court orders counsel to prepare for the Initial Status Conference by identifying and discussing the central legal and factual issues in the case. Counsel for plaintiff is ordered to initiate contact with counsel for defense to begin this process. Counsel then must negotiate and agree, as much as possible, on a case management plan. To this end, counsel must file a Joint Initial Status Conference Class Action Response Statement five court days before the Initial Status

1 Conference. The Joint Response Statement must be filed on line-numbered pleading paper and
2 must specifically answer each of the below-numbered questions. Do not use the use the Judicial
3 Council Form CM-110 (Case Management Statement).

4 **1. PARTIES AND COUNSEL:** Please list all presently-named class representatives and
5 presently-named defendants, together with all counsel of record, including counsel's contact and
6 email information.

7 **2. POTENTIAL ADDITIONAL PARTIES:** Indicate whether any plaintiff presently
8 intends to add additional class representatives, and, if so, the name(s) and date by which these
9 class representatives will be added. Indicate whether any plaintiff presently intends to name
10 additional defendants, and, if so, the name(s) and date by which the defendant(s) will be added.
11 Indicate whether any appearing defendant presently intends to file a cross-complaint and, if so, the
12 names of cross-defendants and the date by which the cross-complaint will be filed.

13 **3. IMPROPERLY NAMED DEFENDANT(S):** If the complaint names the wrong
14 person or entity, please explain why the named defendant is improperly named and the proposed
15 procedure to correct this error.

16 **4. ADEQUACY OF PROPOSED CLASS REPRESENTATIVE(S):** If any party
17 believes one or more named plaintiffs might not be an adequate class representative, including
18 reasons of conflict of interest as described in Apple Computer v. The Superior Court of Los
19 Angeles County (2005) 126 Cal.App.4th 1253, please explain. No prejudice will attach to these
20 responses.

21 **5. ESTIMATED CLASS SIZE:** Please discuss and indicate the estimated class size.

22 **6. OTHER ACTIONS WITH OVERLAPPING CLASS DEFINITIONS:** Please list
23 other cases with overlapping class definitions. Please identify the court, the short caption title, the
24 docket number, and the case status.

8. **POTENTIAL EARLY CRUCIAL MOTIONS:** Opposing counsel should identify and describe the significant core issues in the case, and then identify efficient ways to resolve those issues, including one or more of the following:

- 7 **9. CLASS CONTACT INFORMATION:** Counsel should discuss whether obtaining
8 class contact information from defendant' s records is necessary in this case and, if so, whether
9 the parties consent to an "opt-out" notice process (as approved in *Belair-West Landscape, Inc. v.*
0 *Superior Court* (2007) 149 Cal.App.4th 554, 561). Counsel should address timing and procedure,
1 including allocation of cost and the necessity of a third party administrator.

11. DISCOVERY: Please discuss a discovery plan. If the parties cannot agree on a plan, summarize each side's views on discovery. The court generally allows discovery on matters

1 relevant to class certification, which (depending on circumstances) may include factual issues also
 2 touching the merits. The court generally does not permit extensive or expensive discovery
 3 relevant only to the merits (for example, detailed damages discovery) at the initial stage unless a
 4 persuasive showing establishes early need. If any party seeks discovery from absent class
 5 members, please estimate how many, and also state the kind of discovery you propose¹.

6 **12. INSURANCE COVERAGE:** Please state if (1) there is insurance for indemnity or
 7 reimbursement, and (2) whether there are any insurance coverage issues which might affect
 8 settlement.
 9

10 **13. ALTERNATIVE DISPUTE RESOLUTION:** Please discuss ADR and state each
 11 party's position about it. If pertinent, how can the court help identify the correct neutral and
 12 prepare the case for a successful settlement negotiation?

13 **14. TIMELINE FOR CASE MANAGEMENT:** Please recommend dates and times for
 14 the following:

- 15 ■ The next status conference,
- 16 ■ A schedule for alternative dispute resolution, if it is relevant,
- 17 ■ A filing deadline for the motion for class certification, and
- 18 ■ Filing deadlines and descriptions for other anticipated non-discovery motions.
- 19

20 **15. ELECTRONIC SERVICE OF PAPERS:** For efficiency the complex program
 21 requires the parties in every new case to use a third-party cloud service.

22 Please agree on one and submit the parties' choice when filing the Joint Initial Status
 23 Conference Class Action Response Statement. If there is agreement, please identify the vendor. If
 24 parties cannot agree, the court will select the vendor at the Initial Status Conference. Electronic
 25 service is not the same as electronic filing. Only traditional methods of filing by physical delivery
 26

27
 28 ¹ See California Rule of Court, Rule 3.768.

1 of original papers or by fax filing are presently acceptable.

2 **Reminder When Seeking To Dismiss Or To Obtain Settlement Approval:**

3 "A dismissal of an entire class action, or of any party or cause of action in a class action, requires
4 court approval. . . . Requests for dismissal must be accompanied by a declaration setting forth the
5 facts on which the party relies. The declaration must clearly state whether consideration, direct or
6 indirect, is being given for the dismissal and must describe the consideration in detail."² If the
7 parties have settled the class action, that too will require judicial approval based on a noticed
8 motion (although it may be possible to shorten time by consent for good cause shown).

9
10 **Reminder When Seeking Approval of a Settlement–** Plaintiff(s) must address the issue
11 of any fee splitting agreement in their motion for preliminary approval and demonstrate
12 compliance with California Rule of Court 3.769, and the Rules of Professional Conduct 2-200(a)
13 as required by Mark v. Spencer (2008) 166 Cal.App.4th 219.

14 Pending further order of this Court, and except as otherwise provided in this Initial Status
15 Conference Order, these proceedings are stayed in their entirety. This stay precludes the filing of
16 any answer, demurrer, motion to strike, or motions challenging the jurisdiction of the Court;
17 however, any defendant may file a Notice of Appearance for purposes of identification of counsel
18 and preparation of a service list. The filing of such a Notice of Appearance is without prejudice to
19 any challenge to the jurisdiction of the Court, substantive or procedural challenges to the
20 Complaint, without prejudice to any affirmative defense, and without prejudice to the filing of any
21 cross-complaint in this action. This stay is issued to assist the Court and the parties in managing
22 this "complex" case through the development of an orderly schedule for briefing and hearings on
23 procedural and substantive challenges to the complaint and other issues that may assist in the
24 orderly management of these cases. This stay does not preclude the parties from informally
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28 ² California Rule of Court, Rule 3.770(a)

1 exchanging documents that may assist in their initial evaluation of the issues presented in this
2 case, however it stays all outstanding discovery requests.

3 Plaintiff's counsel is directed to serve a copy of this Initial Status Conference Order along
4 with a copy of the attached Guidelines for Motions for Preliminary and Final Approval of Class
5 Settlement on counsel for all parties, or if counsel has not been identified, on all parties, within
6 five (5) days of service of this order. If any defendant has not been served in this action, service is
7 to be completed within twenty (20) days of the date of this order.

8
9 If all parties have been served, have conducted the required meet and confer, and are ready
10 to fully participate in the status conference prior to the assigned date, counsel may contact the
11 clerk of Department 10 and request an earlier date for the Initial Status Conference.

12
13 Dated: 3/21/19
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15
16 WILLIAM F. HIGHBERGER, JUDGE

17 Judge William F. Highberger
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SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Spring Street Courthouse 312 North Spring Street, Los Angeles, CA 90012	FILED Superior Court of California County of Los Angeles 03/25/2019
PLAINTIFF/PETITIONER: Jena N. Tincher	Sherri R. Carter, Executive Officer / Clerk of Court By: <u>Maribel Mata</u> Deputy
DEFENDANT/RESPONDENT: Hurley International, LLC et al	
CERTIFICATE OF MAILING	CASE NUMBER: 19STCV08627

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order, Initial Status Conference Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

David Glenn Spivak
THE SPIVAK LAW FIRM
16530 Ventura Blvd
Suite 203
Encino, CA 91436

INITIAL AND DATE

Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 03/25/2019

By: Maribel Mata
Deputy Clerk

CERTIFICATE OF MAILING

APR 10 2019

INITIAL AND DATE

EXHIBIT D

COPY

1 SEYFARTH SHAW LLP
Jon D. Meer (SBN 144389)
2 Email: jmeer@seyfarth.com
Richard Y. Chen (SBN 225392)
3 Email: rchen@seyfarth.com
Michael Afar (SBN 298990)
4 Email: mafar@seyfarth.com
Jared W. Speier (SBN 311751)
5 Email: jspeier@seyfarth.com
2029 Century Park East, Suite 3500
6 Los Angeles, California 90067-3021
Telephone: (310) 277-7200
7 Facsimile: (310) 201-5219

8 Attorneys for Defendants
HURLEY INTERNATIONAL, LLC; and
9 NIKE, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12

13 JENA N. TINCHER, on behalf of herself, and all
14 others similarly situated, and as an "aggrieved
employee" on behalf of other "aggrieved
15 employees" under the Labor Code Private
Attorneys General Act of 2004

16 Plaintiff(s),

17 v.

18 HURLEY INTERNATIONAL, LLC, an Oregon
19 limited liability company; NIKE, INC., an Oregon
corporation; and DOES 1 through 50, inclusive

20 Defendant(s).
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CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAY 10 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By: Isaac Lovo, Deputy

Case No. 19STCV08627

[Assigned to the Hon. William F. Highberger,
Dept. 10]

DEFENDANTS' ANSWER TO
PLAINTIFF'S UNVERIFIED CLASS
ACTION COMPLAINT

Complaint Filed: March 14, 2019

BY FAX

1 Defendants Hurley International, LLC and Nike, Inc. ("Defendants") hereby answer the
 2 unverified Class Action Complaint ("Complaint") filed on behalf of Plaintiff Jena N. Tincher
 3 ("Plaintiff"), purportedly acting on behalf of herself and others similarly situated as follows:

4 **GENERAL DENIAL**

5 Pursuant to California Code of Civil Procedure Section 430.10(d) and (e), Defendants deny,
 6 generally and specifically, each and every allegation, and each purported cause of action contained in
 7 Plaintiff's Complaint. Defendants further deny, generally and specifically, that Plaintiff has been
 8 damaged in any amount, or at all, by reason of any alleged act or omission of Defendants. Defendants
 9 further deny, generally and specifically, that Plaintiff has suffered any loss of wages, overtime,
 10 penalties, compensation, benefits or restitution, or any other legal or equitable relief within the
 11 jurisdiction of this Court.

12 In further answer to the Complaint, and as separate and distinct affirmative or additional
 13 defenses, Defendants allege as follows:

14 **FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE**

15 (Failure to State a Cause of Action Upon Which Relief Can Be Granted)

16 1. The Complaint, and each purported cause of action alleged therein, fails to state any
 17 cause of action upon which relief can be granted.

18 **SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE**

19 (Failure to Exhaust Administrative Remedies)

20 2. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the
 21 extent that Plaintiff has failed to exhaust any administrative or statutory remedies provided under
 22 California Labor Code Sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, and
 23 2698 et seq. (the "Labor Code Private Attorneys General Act of 2004" or "PAGA"). To the extent that
 24 Plaintiff was required to exhaust any administrative remedies provided by various sections of PAGA,
 25 she failed to do so, and thus, lacks standing to sue under PAGA.
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 27
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THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE

(Waiver)

3. Plaintiff has waived her right to assert the purported claims contained in the Complaint, and each purported cause of action therein, against Defendants. Plaintiff, by her own conduct and actions, has waived the right, if any, to assert the claims alleged in the Complaint.

FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Estoppel)

4. Plaintiff is barred by the doctrine of estoppel from pursuing her Complaint, and each purported cause of action alleged therein. Plaintiff, by her own conduct and actions, is estopped, as a matter of law, from pursuing the claims alleged in the Complaint.

FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Release)

5. To the extent Plaintiff or any putative member of the purported class has executed a release encompassing claims alleged in the Complaint, his/her claims are barred by that release.

SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Laches)

6. Plaintiff is barred by the doctrine of laches from pursuing her Complaint, and each purported cause of action alleged therein, because Plaintiff exercised inexcusable delay in commencing this action. Additionally, employees are instructed on how to report any alleged improper activity. To the extent that Plaintiff and/or the putative class failed to report any such alleged conduct, their claims are barred by the doctrine of laches.

SEVENTH AFFIRMATIVE OR ADDITIONAL OR ADDITIONAL DEFENSE

(Unclean Hands)

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

EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Statutes of Limitation)

8. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred by the applicable statutes of limitation for each alleged cause of action, including but not limited to California Code of Civil Procedure sections 312, 337, 338(a), 340, and 343, and California Business and Professions Code Section 17208.

NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(No Equitable Tolling)

9. Plaintiff's claims are not entitled to equitable tolling.

TENTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Failure to Mitigate Damages)

10. Defendants allege, based on information and belief, that Plaintiff and/or the putative class had the ability and opportunity to mitigate the purported damages alleged in the Complaint and failed to act reasonably to mitigate such damages. By reason of the foregoing, Plaintiff and/or the putative class are barred in whole or in part from recovery of damages from Defendants.

ELEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Contribution By Plaintiff's Own Acts)

11. If the injuries and/or alleged damages in the Complaint occurred at all (which Defendants deny), such injuries and/or alleged damages were proximately caused by and/or contributed to by Plaintiff and/or the putative class's own acts, omissions, and/or failures to act.

TWELFTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Lack Of Standing)

12. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred for lack of subject matter jurisdiction to the extent Plaintiff lacks standing to assert any of the causes of action contained in the Complaint because Plaintiff has not suffered any injury.

THIRTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Prompt Remedial Action)

13. Defendants took prompt and appropriate corrective action in response to Plaintiff's Complaint or stated concerns regarding the workplace, if in fact Plaintiff and/or the putative class made any such complaints, thereby satisfying all legal duties and obligations Defendants had to Plaintiff and/or the putative class, if any at all.

FOURTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(No Knowledge Of Overtime Or Denial Of Meal Or Rest Periods)

14. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the extent that Defendants did not have actual or constructive knowledge about any purported overtime or off-the-clock work allegedly performed by Plaintiff and/or the putative class. Defendants also did not have actual or constructive knowledge that Plaintiff and/or the putative class were denied any meal or rest periods. *See, e.g., Brinker v. Superior Court*, 53 Cal. 4th 1004, 1051-1052 (2012); *Forrester v. Roth's I.G.A. Foodliner, Inc.*, 646 F.2d 413, 414 (9th Cir. 1981) ("where an employer has no knowledge that an employee is engaging in overtime work and that employee fails to notify the employer or deliberately prevents the employer from acquiring knowledge of the overtime work, the employer's failure to pay for the overtime hours are not a violation"); *Jong v. Kaiser Found. Health Plan, Inc.*, 226 Cal. App. 4th 391, 398 (2014) (denying summary judgment on the grounds that the employer was not aware of the employee's unreported hours).

FIFTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Waiver Of Meal Periods)

15. Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff and/or the putative class signed legally valid written waivers of any meal periods or voluntarily waived meal periods.

SIXTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Waiver Of Second Meal Periods)

16. Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff and/or the putative class waived their second 30-minute meal period during shifts, if any, in

1 which they worked at least 10 hours, but less than 12 hours, and were provided with the first 30-minute
2 meal period during those same shifts.

3 **SEVENTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

4 (Accord and Satisfaction)

5 17. Plaintiff and/or the putative class's claims are barred by the doctrine of accord and
6 satisfaction. Specifically, Plaintiff and/or the putative class were properly and fully compensated for all
7 work performed for Defendants, and their acceptance of these payments constituted an accord and
8 satisfaction for all debts, if any, owed by Defendants to Plaintiff and/or the putative class.

9 **EIGHTEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

10 (Unjust, Arbitrary, And Oppressive, Or Confiscatory Penalties)

11 18. Plaintiff and/or the putative class are not entitled to recover any civil penalties because,
12 under the circumstances of this case, any such recovery would be unjust, arbitrary, and oppressive, or
13 confiscatory.

14 **NINETEENTH AFFIRMATIVE OR ADDITIONAL DEFENSE**

15 (Failure To Use Ordinary Care)

16 19. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the
17 extent that Plaintiff and/or the putative class received good consideration in agreement to serve as an
18 employee of Defendants, yet failed to use ordinary care and diligence during their employment, or
19 employment-related duties, pursuant to California Labor Code Section 2854.

20 **TWENTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE**

21 (Failure To Conform To Usage Of Place Of Performance)

22 20. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the
23 extent that Plaintiff and/or the putative class failed to perform services in conformity to the usage of the
24 place of performance and was not otherwise directed by the employer, and such performance was
25 neither impracticable, nor manifestly injurious to Plaintiff and/or the putative class, pursuant to
26 California Labor Code Section 2857.

TWENTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE

(Res Judicata And Collateral Estoppel)

21. Plaintiff's 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 and/or the putative class have asserted the same claims in any prior legal or administrative proceeding, and did not prevail on such claim.

TWENTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE

(Inability To Pursue Penalties Under California Labor Code § 2698 *et seq.*)

22. Plaintiff's Complaint is barred to the extent that it seeks civil penalties for alleged violations of the Labor Code that already contain a statutory or other civil penalty.

TWENTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE

(Not "Aggrieved Employees")

23. Plaintiff's Complaint, and each purported claim alleged therein, is barred because Plaintiff is not an aggrieved employee and is not entitled to any relief under Labor Code § 2698 *et seq.* Plaintiff's Complaint, and each purported claim alleged therein, is further barred to the extent it seeks to recover penalties on behalf of individuals who are not "aggrieved employees."

TWENTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Unlawful Delegation of Executive Authority)

24. Plaintiff's Complaint, and each purported claim alleged therein, is barred to the extent private actions seeking PAGA penalties manifest an unlawful delegation of executive authority.

TWENTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(No Penalties Beyond "Initial" Violation)

25. Plaintiff's Complaint, and each purported claim alleged therein, is barred to the extent Plaintiff, and the individuals on whose behalf Plaintiff seeks relief, seek penalties beyond the "initial" violation as described in California Labor Code § 2699(f)(2).

TWENTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Lack Of Standing For Injunctive Relief)

26. Plaintiff's Complaint for injunctive and other equitable relief is barred because Plaintiff and/or the putative class are not entitled to the equitable relief sought insofar as they have an adequate remedy at law and/or cannot make the requisite showing to obtain injunctive relief in a labor dispute.

TWENTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Substantial Compliance)

27. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred in whole or in part because Defendants complied with their statutory obligations, and to the extent it is determined that there was technical non-compliance, Defendants substantially complied with their obligations and are not liable in whole or in part for the claims of Plaintiff and/or the putative class.

TWENTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(No Liquidated Damages)

28. Plaintiff is not entitled to liquidated damages because any acts or omissions giving rise to Plaintiff and/or the putative class's claims were undertaken or made in good faith, and the Defendants had reasonable grounds for believing that its actions or omissions did not violate the law.

TWENTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Manageability)

29. Plaintiff's Complaint is not proper for treatment as a representative action under PAGA because, among other reasons, the representative action is not manageable.

THIRTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE

(*De Minimis*)

30. Plaintiff's Complaint, and each cause of action alleged therein, fails to the extent that, even if Plaintiff and/or the putative class are alleging that they were not paid for all hours worked or for work off-the-clock, such time is so brief in duration or irregular as to be *de minimis* and therefore not compensable.

THIRTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE

(No Knowing and Intentional Violation of Labor Code)

31. Any alleged violation of the California Labor Code was not knowing and intentional and therefore Plaintiff's requested recovery is barred.

THIRTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE

(No Injury as a Result of Violation of Labor Code)

32. Plaintiff and/or the putative class have suffered no injury as a result of any alleged violation of the California Labor Code and therefore are barred from recovering penalties.

THIRTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE

(Failure to Inform Employer of Alleged Violations)

33. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the extent that Defendants did not have actual or constructive knowledge about any purported overtime or off-the-clock work allegedly performed by Plaintiff and/or the putative class. Defendants did not have actual or constructive knowledge about any alleged failure to pay minimum, overtime or other wages, and/or premium wages, and/or any alleged inaccuracies regarding wage statements or payroll records of Plaintiff and/or the putative class. Defendants did not have actual or constructive knowledge that Plaintiff and/or the putative class were denied any meal or rest periods. Plaintiff and/or the putative class, therefore, did not provide Defendants with an opportunity to correct any alleged violations and provide the appropriate remedy, if any, prior to the time Plaintiff filed the Complaint.

THIRTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Failure To Show A Lack of Payment of Overtime)

34. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the extent that assuming *arguendo* that Plaintiff and/or the putative class were entitled to be paid overtime (which Defendants deny), Plaintiff and/or the putative class cannot allege any facts showing that Defendants failed to pay the appropriate amount of overtime wages, if any, due to them pursuant to California Labor Code Sections 510 and 1194.

THIRTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Failure To Show Denial Of Meal And/Or Rest Periods)

35. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the extent that, Plaintiff and/or the putative class cannot allege facts that show that Defendants required or requested Plaintiff and/or the putative class to work during any meal or rest period or failed to provide an employee with a meal period or failed to authorize and permit a rest period in accordance with an applicable order of the California Industrial Welfare Commission or the California Labor Code.

THIRTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Meal And Rest Periods Were Authorized, Permitted, And Taken)

36. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the extent that Plaintiff and/or the putative class did, in fact, take all meal periods or rest breaks to which Plaintiff and/or the putative class claims they were entitled throughout their employment. Defendants, 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.

THIRTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Premium Wages Paid For Alleged Failure To Take Meal Periods Or Rest Period)

37. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred to the extent that Plaintiff and/or the putative class were paid a "premium wage" of an additional hour of regular pay for each day, if any, when not provided a meal period or authorized or permitted to take a rest period. The payment of such "premium wages" negates any additional liability for alleged meal or rest period violations.

THIRTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Failure To Show The Lack Of Itemized Or Accurate Wage Statement)

38. Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff and/or the putative class cannot show that Defendants failed to furnish an accurate, itemized statement in writing at the time of each payment of wages.

THIRTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Failure To Show Intentional Violation Of Wage Statements Requirement)

39. Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff and/or the putative class cannot show that Defendants willfully, knowingly and intentionally violated the provisions of California Labor Code Section 226.

FORTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Good Faith Dispute And Waiting Time Penalties)

40. Plaintiff and/or the putative class are not entitled to any penalties because, at all times relevant and material herein, Defendants did not willfully fail to comply with any provisions of the California Labor Code or applicable wage orders, but rather acted in good faith and had reasonable grounds for believing that it did not violate the California Labor Code or the applicable wage order.

FORTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE

(Failure To Follow Employer's Established Procedures)

41. Plaintiff and/or the putative class are not entitled to recover from Defendants as alleged in the Complaint for any damages, interest, restitution, injunction, or other relief, due to their failure to comply with all directions of their employer concerning the service on which they were engaged, in violation of California Labor Code section 2856.

FORTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE

(Action Unconstitutional)

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

FORTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE

(Lack of Standing Under Business and Professions Code Section 17200)

43. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff, or any person upon whose behalf Plaintiff purports to act, lacks the requisite

1 standing to sue under Proposition 64, enacted on November 2, 2004, as California Business and
2 Professions Code Section 17204. Under Proposition 64, any plaintiff suing for an alleged violation of
3 the California Unfair Competition Law (the "UCL"), California Business and Professions Code Section
4 17200, *et seq.*, must show that she or she has suffered an injury in fact, in addition to simply alleging a
5 loss of money or property. Since Plaintiff, or any other person on whose behalf Plaintiff purports to act,
6 cannot allege the requisite injury in fact, in addition to the requisite loss of money or property, Plaintiff
7 lacks standing to sue under the UCL.

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

9 (No Unfair Business Practice)

10 44. Without admitting the allegations of the Complaint, Defendants allege that Plaintiff's
11 Complaint, and each purported cause of action alleged therein, fails because the alleged practices of
12 Defendants are not unfair, unlawful or fraudulent, the public is not likely to be deceived by any alleged
13 practices, Defendants gained no competitive advantage by such practices, and the benefits of the alleged
14 practices outweigh any harm or other impact they may cause.

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

16 (Failure To Allege Facts To Support Restitution)

17 45. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the
18 extent that Plaintiff and/or the putative class cannot show a specific and individualized amount of
19 property claimed by Plaintiff and/or the putative class, as required for a remedy of restitution under the
20 UCL.

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

22 (Inability to Pursue Attorneys' Fees Under UCL)

23 46. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the
24 extent that Plaintiff seeks attorneys' fees and costs because Plaintiff cannot show the enforcement of an
25 important right affecting the public interest.
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FORTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Adequate Remedy At Law)

47. Plaintiff and/or the putative class is not entitled to the equitable relief sought insofar as they have an adequate remedy at law and/or cannot make the requisite showing to obtain injunctive relief.

FORTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Offset)

48. To the extent a court holds that Plaintiff and/or the putative class are entitled to damages or penalties, which is specifically denied, Defendants are entitled to an offset for any overpayment of wages, forgiveness of debt, and/or other consideration previously provided to Plaintiff and/or the putative class. To the extent a court holds that Plaintiff and/or the putative class are entitled to damages or penalties, which is specifically denied, Defendants are entitled under the equitable doctrine of setoff and recoupment to offset all overpayments and/or all obligations that Plaintiff and/or the putative class owed to Defendants against any judgment that may be entered against Defendants.

FORTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Ratification)

49. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred on the ground that Plaintiff and/or the putative class ratified Defendants' alleged actions.

FIFTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Consent/Authorization)

50. Plaintiff's Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because the alleged conduct of Defendants complained of in the Complaint was approved, consented to, and/or authorized by Plaintiff and/or the putative class through their actions, omissions, and course of conduct.

FIFTY-FIRST AFFIRMATIVE OR ADDITIONAL DEFENSE

(Avoidable Consequences)

51. Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of avoidable consequences.

FIFTY-SECOND AFFIRMATIVE OR ADDITIONAL DEFENSE

(Due Process/Excessive Fine)

52. Although Defendants deny that they have 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 Defendants 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. The penalties Plaintiff and/or the putative class seeks are disproportionate to any damage or loss incurred as a result of Defendants' conduct, and therefore are unconstitutional.

FIFTY-THIRD AFFIRMATIVE OR ADDITIONAL DEFENSE

(PAGA Violates Due Process)

53. The Complaint is barred because allowing Plaintiff to bring a representative action under PAGA violates Defendants' right to due process. Prosecution of a representative action under California Labor Code Section 2698 *et seq.*, based upon the facts and circumstances of this case, would be an unconstitutional denial of Defendants' rights contained in the United States and California Constitutions, including, but not limited to, the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

FIFTY-FOURTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Failure To State Facts Warranting Class Certification And Class Damages)

54. Plaintiff's allegations that this action should be certified as a class action or representative 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 Section 382 or Rule 23 of the Federal Rules of Civil Procedure.

FIFTY-FIFTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Failure To State Facts Warranting A Predominance Of Common Questions Of Fact And Law)

55. 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 Section 382 or Rule 23 of the Federal Rules of Civil Procedure.

FIFTY-SIXTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Failure To Show Adequate Damages)

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

FIFTY-SEVENTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Not Appropriate for Class Action)

57. 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.

FIFTY-EIGHTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Class Action Not Superior Method of Adjudication)

58. 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.

FIFTY-NINTH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Inadequate Class Representative)

59. Plaintiff's Complaint, and each purported cause of action alleged therein, fails to the extent that Plaintiff is not an adequate representative of alleged class that she purports to represent. Defendants allege 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.

SIXTIETH AFFIRMATIVE OR ADDITIONAL DEFENSE

(Inadequate Class Counsel)

60. 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 alleged class, particularly to the extent that Counsel has been found to have engage in acts of fraud, dishonesty, or breach of fiduciary duty. As such, the class action claims and allegations fail as a matter of law.

PRAYER

WHEREFORE, Defendants pray for judgment against Plaintiff as follows:

1. That Plaintiff takes nothing by way of her Complaint;
2. That Defendants did not damage or harm Plaintiff and/or the putative class, in any way;
3. That Plaintiff and/or the putative class are not entitled to any wages, compensation, benefits, penalties, restitution, injunctive relief, declaratory relief, attorneys' fees, costs or any other legal or equitable remedy due to any act or omission of Defendants;
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 Section 17200, et seq., California Code of Civil Procedure Section 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 Defendants and against Plaintiff on her entire Complaint and on all causes of action alleged therein;
8. That Defendants be awarded the costs of suit herein incurred as provided by statute; and
9. That Defendants be awarded such other and further relief as the Court may deem appropriate.

1 DATED: May 10, 2019

SEYFARTH SHAW LLP

2
3 By: 

4 Jon D. Meer

Richard Y. Chen

Michael Afar

Jared W. Speier

6 Attorneys for Defendants
7 HURLEY INTERNATIONAL, LLC; and
8 NIKE, INC.
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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
 COUNTY OF LOS ANGELES) SS

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2029 Century Park East, Los Angeles, California 90017. On May 10, 2019, I served the within document(s):

DEFENDANTS' ANSWER TO PLAINTIFF'S UNVERIFIED CLASS ACTION COMPLAINT

(BY MAIL) 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 FACSIMILE) I delivered such document by facsimile to the respective facsimile number(s) of the party(ies) as stated below. The transmission was reported as complete without error.



(BY HAND DELIVERY) I delivered the within documents to Nationwide Legal, Inc. for delivery to the person(s) at the address(es) set forth below with instructions that such envelope be delivered personally on _____, 2019.



(BY OVERNIGHT MAIL) I am readily familiar with the firm's practice of collection and processing correspondence for mailing with Federal Express. Under that practice it would be deposited with Federal Express on that same day thereon fully prepaid at Los Angeles, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on that date following ordinary business practices.

David G. Spivak
 Caroline Tahmassian
 THE SPIVAK LAW FIRM
 16530 Ventura Blvd., Suite 203
 Encino, CA 91436

Email: david@spivaklaw.com;
 Email: caroline@spivaklaw.com

Attorneys for Plaintiff

JENA N. TINCHER

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 May 10, 2019, at Los Angeles, California.



LORA CALMA

SEYFARTH SHAW LLP
Jon D. Meer (SBN 144389)
Email: jmeer@seyfarth.com
Richard Y. Chen (SBN 225392)
Email: rchen@seyfarth.com
Michael Afar (SBN 298990)
Email: mafar@seyfarth.com
Jared W. Speier (SBN 311751)
Email: jspeier@seyfarth.com
2029 Century Park East, Suite 3500
Los Angeles, California 90067-3021
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

Attorneys for Defendants
HURLEY INTERNATIONAL, LLC; and
NIKE, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENA N. TINCHER on behalf of herself,
and all others similarly situated, and as an
“aggrieved employee” on behalf of other
“aggrieved employees” under the Labor
Code Private Attorneys General Act of
2004

Plaintiff(s),

v.

HURLEY INTERNATIONAL, LLC, an
Oregon limited liability company; NIKE,
INC., an Oregon corporation; and DOES 1
through 50, inclusive

Defendant(s).

Case No.

**DECLARATION OF STEVE
NELSON IN SUPPORT OF
DEFENDANT NIKE, INC.’S
NOTICE OF REMOVAL OF CIVIL
ACTION TO UNITED STATES
DISTRICT COURT**

[Los Angeles County Superior Court;
Case No. 19STCV08627]

Complaint Filed: March 14, 2019

DECLARATION OF STEVE NELSON

I, Steve Nelson, hereby declare and state as follows:

1. I have personal knowledge of the facts contained in this declaration, and if called as a witness, could and would testify as to their accuracy.

2. I am a Senior Global HR Report Lead for NIKE, Inc. ("Nike"). I have been employed by Nike for 16 years. In my role as Senior Global HR Report Lead, I have access to employment and payroll data for current and former employees of Nike and Hurley International, LLC, in California, including Plaintiff Jena N. Tincher ("Plaintiff"). This employment and payroll data is maintained in Nike's SAP software and human resources management systems in the ordinary course of business.

I. INFORMATION ABOUT THE PUTATIVE CLASS

3. It is my understanding that the relevant time period alleged in the complaint is March 14, 2015 to the present. To determine the number of current and former non-exempt employees that are or were employed by Hurley in California from March 14, 2015 to the present, and the total number of weeks worked by these individuals during that time frame, I retrieved information from our human resources database, which is kept in the ordinary course of business.

4. Based on my review of the data retrieved, there are approximately 517 current and former non-exempt employees that are or were employed by Hurley in California from March 14, 2015 to the present. These 517 individuals have worked a combined total of approximately 30,471 workweeks.

5. To calculate an approximate and conservative average rate of pay for the non-exempt employees during the relevant time period alleged in the complaint, I reviewed salary data for all current and former non-exempt employees for the time period from March 14, 2015 to the present. Based on my review of the data retrieved, the average hourly rate of pay for the non-exempt employees in California for this time period is approximately \$11.92.

6. Non-exempt employees at Hurley are paid every two weeks. Accordingly, there are approximately 26 pay periods per year.

7. Based on my review of the data retrieved, from March 14, 2018 to the present, there are approximately 253 non-exempt employees that are or were employed by Hurley in California. During this time period, these employees worked approximately 4,534 pay periods.

8. Based on my review of the data retrieved, from March 14, 2016 to the present, 301 non-exempt employees were separated from their employment with Hurley.

II. INFORMATION ABOUT PLAINTIFF

9. Plaintiff was employed as a sales associate at Hurley retail stores in Cabazon, Los Angeles, Irvine, and Costa Mesa, California. Plaintiff was first hired as a sales associate on July 29, 2014. Plaintiff was terminated on August 5, 2018.

10. Additionally, Plaintiff provided Hurley with her home address during the course of her employment for purposes of her personnel file, payroll checks, state payroll, and tax withholdings. Through my review of records, I am aware of Plaintiff's address listed on her employment file and W-2s. Employees are required to keep their contact information current. My review of Plaintiff's personnel file and payroll records from her employment with Hurley reveals that Plaintiff resides in Cherry Valley, California. I also reviewed a public records search for Plaintiff, which confirms that she currently resides in Cherry Valley, California.

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

Executed on May 9, 2019, at Beaverton, Oregon.


STEVE NELSON

SEYFARTH SHAW LLP
Jon D. Meer (SBN 144389)
Email: jmeer@seyfarth.com
Richard Y. Chen (SBN 225392)
Email: rchen@seyfarth.com
Michael Afar (SBN 298990)
Email: mafar@seyfarth.com
Jared W. Speier (SBN 311751)
Email: jspeier@seyfarth.com
2029 Century Park East, Suite 3500
Los Angeles, California 90067-3021
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

Attorneys for Defendant
HURLEY INTERNATIONAL, LLC; and
NIKE, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENA N. TINCHER, on behalf of herself,
and all others similarly situated, and as an
“aggrieved employee” on behalf of other
“aggrieved employees” under the Labor
Code Private Attorneys General Act of
2004

Plaintiff(s),

v.

HURLEY INTERNATIONAL, LLC, an
Oregon limited liability company; NIKE,
INC., an Oregon corporation; and DOES 1
through 50, inclusive,

Defendant(s).

Case No.

**DECLARATION OF ADRIAN BELL
IN SUPPORT OF DEFENDANT
NIKE, INC.’S NOTICE OF
REMOVAL OF CIVIL ACTION TO
UNITED STATES DISTRICT
COURT**

[Los Angeles County Superior Court;
Case No. 19STCV08627]

Complaint Filed: March 14, 2019

DECLARATION OF ADRIAN BELL

I, Adrian Bell, hereby declare and state as follows:

1. I have personal knowledge of the facts contained in this declaration, and if called as a witness, could and would testify as to their accuracy.

2. I am the Senior Counsel and Assistant Secretary for NIKE, Inc. ("Nike"). In this capacity, I am familiar with the corporate and organizational structure of Nike.

3. Nike is now, and ever since this action commenced has been, incorporated under the laws of the State of Oregon, with its principal place of business in Beaverton, Oregon.

4. Beaverton, Oregon is the site of Nike's corporate headquarters and executive offices, where its senior officers direct, control, and coordinate the companies' activities.

5. Many of Nike's executive and administrative functions, including corporate finance and accounting, are directed from the Beaverton, Oregon offices.

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

Executed on May 9, 2019, at Beaverton, Oregon.


ADRIAN L. BELL

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Nike, Hurley International Hit with Wage and Hour Class Action in California](#)
