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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NATALIE BALYASNY, ON BEHALF OF  
HERSELF AND OTHERS SIMILARLY  
SITUATED,

Plaintiff(s)

v.

BAYER CORPORATION;  
AND DOES 1 TO 10, INCLUSIVE

Defendant(s)

CASE NUMBER:

CV-

CV 06-07594

SUMMONS

NEW PLA

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney  
ERIC B. KINGSLEY, whose address is:

KINGSLEY & KINGSLEY, APC  
16133 VENTURA BL., SUITE 1200  
ENCINO, CA 91436

an answer to the  complaint  \_\_\_\_\_ amended complaint  counterclaim  cross-  
claim which is herewith served upon you within 20 days after service of this Summons upon you, exclusive  
of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded  
in the complaint.

CLERK, U.S. DISTRICT COURT



By: \_\_\_\_\_

Deputy Clerk

(Seal of the Court)

Date: NOV 29 2006

1 D. MAIMON KIRSCHENBAUM (DK 2448)\*  
2 JOSEPH & HERZFELD LLP  
3 757 THIRD AVENUE, 25TH FLOOR  
4 NEW YORK, NY 10017  
5 (212) 688-5640; FAX (212) 688-2548  
6 \*Seeking Admission Pro Hac Vice

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13 Attorneys for Plaintiffs,

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 NATALIE BALYASNY, on )  
17 behalf of herself and )  
18 others similarly )  
19 situated, )

20 Plaintiffs, )

21 vs. )

22 BAYER CORPORATION; and )  
23 DOES 1 to 10, Inclusive, )

24 Defendants. )

25 CASE NO. CV 06-07594

26 FLSA COLLECTIVE ACTION  
27 CALIFORNIA CLASS ACTION

IFW PLA

28 COMPLAINT FOR:

1. FLSA Overtime and Record Keeping Violations, 29 U.S.C. §§201
2. California Unfair Competition Law, B&P Code §17200
3. California Overtime Provisions CA Wage Order 4; Labor Code §§510, 1194 & 1194.5
4. California Waiting Period Penalties Labor Code §§201-203
5. California Record Keeping Provisions CA Wage Order 4; Labor Code §§226, 1174, & 1174.5
6. California Meal & Rest Period Provisions, Labor Code §§226.7 & 512

DEMAND FOR JURY TRIAL

Upon information and belief, comes now plaintiff, NATALIE BALYASNY, on behalf of herself and others similarly situated, alleges as follows:

2006 NOV 29 PM 3:15  
CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT CALIF.  
LOS ANGELES

FILED





1 8. Plaintiff NATALIE BALYASNY ("Plaintiff") is a California  
2 resident and was employed by Defendants in Los Angeles County,  
3 California from February 2000 to April 2005 as a PSR1. Plaintiff  
4 worked hours in excess of forty (40) hours per workweek and eight  
5 (8) hours per day, without receiving overtime compensation as  
6 required by federal and/or state law.

7 9. Plaintiff is informed and believes and thereon alleges at  
8 all relevant times each defendant, directly or indirectly, or  
9 through agents or other persons, employed Plaintiff and/or other  
10 Covered Employees, and exercised control over the wages, hours and  
11 working conditions of Plaintiff and Covered Employees. Plaintiff  
12 is informed and believes and thereon alleges, that, at all relevant  
13 times, each defendant was the principal, agent, partner, joint  
14 venturer, officer, director, controlling shareholder, subsidiary,  
15 affiliate, parent corporation, successor in interest and/or  
16 predecessor in interest of some or all of the other Defendants, and  
17 was engaged with some or all of the other Defendants in a joint  
18 enterprise for profit, and bore such other relationships to some or  
19 all of the other Defendants so as to be liable for their conduct  
20 with respect to the matters alleged below. Plaintiff is informed  
21 and believes and thereon alleges that each defendant acted pursuant  
22 to and within the scope of the relationships alleged above, that  
23 each defendant knew or should have know about, and authorized,  
24 ratified, adopted, approved, controlled, aided and abetted the  
25 conduct of all other Defendants.

26  
27 **FACTS**

28 10. Plaintiff's consent to sue under the FLSA §16 is attached

1 to this Complaint as Exhibit "1."

2 11. Upon information and belief, Defendants employ thousands  
3 of pharmaceutical sales representatives in the United States, and  
4 hundreds in the State of California.

5 12. Plaintiff and Covered Employees were paid a salary plus a  
6 bonus for work performed.

7 13. Specifically, upon information and belief, Defendants'  
8 managers, with the knowledge and consent of corporate management,  
9 systemically violated the law throughout California and the United  
10 States, in the following respects:

- 11 a) Failing to pay employees overtime compensation for  
12 hours worked in excess of forty (40) hours per week;  
13 and  
14 b) Failing to maintain accurate records of employees'  
15 time.  
16 c) Failing to pay Class members overtime compensation for  
17 hours worked in excess of eight (8) hours per day.

18 14. As set forth above, Plaintiff was employed by Defendants.  
19 During this time, Plaintiff on a regular basis worked over forty  
20 (40) hours per week and eight (8) hours per day. Plaintiff  
21 sustained substantial losses from Defendants' failure to pay her  
22 overtime compensation.

23 15. Upon information and belief, other employees who worked for  
24 Defendants throughout California and the United States and who are  
25 FLSA Collective Plaintiffs and/or members of the Class were  
26 subjected to the same policies and practices and have sustained  
27 similar losses of compensation for numerous hours worked on behalf  
28 of Defendants.

1 16. Defendants, through their corporate management deliberately  
2 trained, supervised, instructed, and authorized managerial employees  
3 to engage in the above unlawful practices and have ratified their  
4 actions thereafter, in order to enhance corporate profits and reduce  
5 their labor costs.

6  
7 FLSA COLLECTIVE ACTION ALLEGATIONS

8 17. Plaintiff brings the First Claim for Relief as a collective  
9 action pursuant to FLSA Section 16(b), 29 U.S.C. §216(b), on behalf  
10 of all Covered Employees employed by Defendants on or after the date  
11 that is three years before the filing of the Complaint in this case  
12 as defined herein ("FLSA Collective Plaintiffs").

13 18. At all relevant times, Plaintiff and the other FLSA  
14 Collective Plaintiffs are and have been similarly situated, have had  
15 substantially similar job requirements and pay provisions, and have  
16 been subject to Defendants' decision, policy, plan and common  
17 policies, programs, practices, procedures, protocols, routines, and  
18 rules (1) willfully failing and refusing to pay them at the legally  
19 required time an a half rates for work in excess of forty (40) hours  
20 per workweek, (2) willfully and inaccurately classifying them as  
21 exempt from overtime pay even though Defendants were aware that the  
22 FLSA Collective Plaintiffs were non-exempt and entitled to overtime  
23 pay, and (3) willfully failing to keep records required by the FLSA.  
24 The claims of Plaintiff stated herein are essentially the same as  
25 those of the other FLSA Collective Plaintiffs.

26 19. The First Claim for Relief is properly brought under and  
27 maintained as an opt-in collective action pursuant to §16(b) of the  
28 FLSA, 29 U.S.C. 216(b). The FLSA Collective Plaintiffs are readily

1 ascertainable. For purpose of notice and other purposes related to  
2 this action, their names and addresses are readily available from  
3 the Defendants. Notice can be provided to the FLSA Collective  
4 Plaintiffs via first class mail to the last address known to  
5 Defendants.

6  
7 RULE 23 CLASS ALLEGATIONS - CALIFORNIA

8 20. Plaintiff BALYASNY ("Plaintiff") brings the California  
9 Claims for Relief, pursuant to the Federal Rules of Civil Procedure  
10 ("FRCP") Rule 23, on behalf of all persons who were, are, or will  
11 be employed by Defendants on or after the date that is four (4)  
12 years before the filing of the Complaint in this case (the "Class  
13 Period").

14 21. The proposed class that Plaintiff seeks to represent is  
15 defined as all persons who have been, are, or in the future will be  
16 employed in California by Defendants in any of the "Covered  
17 Positions." All said persons, including Plaintiff, are referred to  
18 herein as the "Class." The Class members are readily ascertainable.  
19 The number and identity of the Class members are determinable from  
20 the records of Defendants. The hours assigned and worked, the  
21 positions held, and the rates of pay for each Class member are also  
22 determinable from Defendants' records. For purposes of notice and  
23 other purposes related to this action, their names and addresses are  
24 readily available from Defendants. Notice can be provided by means  
25 permissible under said FRCP 23.

26 22. The proposed Class is so numerous that joinder of all  
27 members is impracticable, and the disposition of their claims as a  
28 class will benefit the parties and the court. Although the precise

1 number of such persons is unknown, and the facts on which the  
2 calculation of that number are presently within the sole control of  
3 Defendants, upon information and belief, there are more than two  
4 hundred (200) members of the Class.

5 23. Plaintiff's claims are typical of those claims which could  
6 be alleged by any member of the Class, and the relief sought is  
7 typical of the relief which would be sought by each member of the  
8 Class in separate actions. All the Class members were subject to  
9 the same corporate practices of Defendants, as alleged herein, of  
10 failing to pay overtime compensation and failing to maintain  
11 accurate records. Defendants' corporate-wide policies and practices  
12 affected all Class members similarly, and Defendants benefitted from  
13 the same type of unfair and/or wrongful acts as to each Class  
14 member. Plaintiff and other Class members sustained similar losses,  
15 injuries and damages arising from the same unlawful policies,  
16 practices and procedures.

17 24. Plaintiff is able to fairly and adequately protect the  
18 interests of the Class and has no interests antagonistic to the  
19 Class. Plaintiff is represented by attorneys who are experienced  
20 and competent in both class action litigation and employment  
21 litigation and have previously represented plaintiffs in wage and  
22 hour cases.

23 25. A class action is superior to other available methods for  
24 the fair and efficient adjudication of the controversy -  
25 particularly in the context of wage and hour litigation where  
26 individual class members lack the financial resources to vigorously  
27 prosecute a lawsuit against corporate defendants. Class action  
28 treatment will permit a large number of similarly situated persons

1 to prosecute their common claims in a single forum simultaneously,  
2 efficiently, and without the unnecessary duplication of efforts and  
3 expense that numerous individual actions engender. Because the  
4 losses, injuries and damages suffered by each of the individual  
5 Class members are small in the sense pertinent to a class action  
6 analysis, the expenses and burden of individual litigation would  
7 make it extremely difficult or impossible for the individual Class  
8 members to redress the wrongs done to them. On the other hand,  
9 important public interests will be served by addressing the matter  
10 as a class action. The adjudication of individual litigation claims  
11 would result in a great expenditure of court and public resources;  
12 however, treating the claims as a class action would result in a  
13 significant savings of these costs. The prosecution of separate  
14 actions by individual members of the Class would create a risk of  
15 inconsistent and/or varying adjudications with respect to the  
16 individual members of the Class, establishing incompatible standards  
17 of conduct for Defendants and resulting in the impairment of class  
18 members' rights and the disposition of their interests through  
19 actions to which they were not parties. The issues in this action  
20 can be decided by means of common, class-wide proof. In addition,  
21 if appropriate, the court can, and is empowered to, fashion methods  
22 to efficiently manage this action as a class action.

23 26. Upon information and belief, Defendants and other employers  
24 throughout the state violate the California Labor Law. Current  
25 employees are often afraid to assert their rights out of fear of  
26 direct or indirect retaliation. Former employees are fearful of  
27 bringing claims because doing so can harm their employment, future  
28 employment, and future efforts to secure employment. Class actions

1 provide class members who are not named in the complaint a degree  
2 of anonymity which allows for the vindication of their rights while  
3 eliminating or reducing these risks.

4 27. There are questions of law and fact common to the Class  
5 which predominate over any questions affecting only individual class  
6 members, including:

- 7 a) Whether Defendants employed or jointly employed  
8 Plaintiff and the Class within the meaning of the  
9 California law.
- 10 b) What proof of hours is sufficient where Defendants  
11 failed in their duty to maintain time records.
- 12 c) What were the policies, practices, programs,  
13 procedures, protocols and plans of Defendants regarding  
14 payment of overtime wages.
- 15 d) What were the policies, practices, programs,  
16 procedures, protocols and plans of Defendants regarding  
17 payment of wages for all hours worked.
- 18 e) Whether Defendants failed and/or refused to pay  
19 Plaintiff and the Class premium pay for hours worked in  
20 excess of forty (40) per workweek or eight (8) hours  
21 per workday within the meaning of California law.
- 22 f) What are and were the policies, practices, programs,  
23 procedures, protocols and plans of Defendants regarding  
24 the types of work and labor for which Defendants did  
25 not pay the Class members at all.
- 26 g) At what common rate, or rates subject to common methods  
27 of calculation, was and is Defendants required to pay  
28 the Class members for their work.

1 h) What are the common conditions of employment and in the  
2 workplace, such as record keeping, breaks, and policies  
3 and practices regarding labor budgeting, that affect  
4 whether the Class was paid at overtime rates for  
5 overtime work.

6 I) Whether Defendants compensated class members that  
7 terminated their employment all wages owed them  
8 immediately upon the termination of their employment as  
9 required by California law.

10 j) Whether Defendants provided Plaintiff with rest periods  
11 and meal breaks as required by California law.

12  
13 FIRST CLAIM FOR RELIEF

14 (FLSA Overtime and Record

15 Keeping Violations, 29 U.S.C. §§201 et seq.

16 Brought by Plaintiffs on Behalf of Themselves

17 and the FLSA Class Members)

18 28. Plaintiff, on behalf of herself and other FLSA Collective  
19 Plaintiffs, realleges and incorporate by reference all previous  
20 paragraphs.

21 29. Plaintiff is informed and believes and thereon alleges that  
22 at all relevant times, each Defendant has been, and continues to be,  
23 an "employer" engaged in interstate "commerce" within the meaning  
24 of the FLSA, 29 U.S.C. §203. At all relevant times, each Defendant  
25 has employed, and continues to employ the FLSA Collective Plaintiffs  
26 as "employee[s]" within the meaning of the FLSA. At all relevant  
27 times, each defendant has had gross operating revenues in excess of  
28 \$500,000.

1           30. Throughout the statute of limitations period covered by  
2 these claims, Plaintiff and the other FLSA Collective Plaintiffs  
3 regularly worked in excess of forty (40) hours per workweek and  
4 continue to do so.

5           31. At all relevant times, Defendants have had, and continues  
6 to operate under a decision, policy and plan, and under common  
7 policies, programs, practices, procedures, protocols, routines and  
8 rules of willfully failing and refusing to pay the Covered Employees  
9 at time and a half rates for work in excess of forty (40) hours per  
10 workweek, and willfully failing to keep records required by the FLSA  
11 even though the FLSA Collective Plaintiffs have been and are  
12 entitled to overtime.

13           32. At all relevant times, Defendants willfully, regularly and  
14 repeatedly failed, and continue to fail to pay Plaintiff and the  
15 FLSA Collective Plaintiffs at the required overtime rates, one and  
16 a half times their regular hourly rates, for hours worked in excess  
17 of forty (40) hours per workweek.

18           33. At all relevant times, Defendants willfully, regularly and  
19 repeatedly failed, and continue to fail to make, keep and preserve  
20 accurate records required by the FLSA with respect to Plaintiff and  
21 the other FLSA Collective Plaintiffs, including records sufficient  
22 to the accurately determine the wages and hours of employment  
23 pertaining to Plaintiff and the other FLSA Collective Plaintiffs.

24           34. Plaintiff, on behalf of herself and the FLSA Collective  
25 Plaintiffs, seeks damages in the amount of their respective unpaid  
26 overtime compensation, liquidated (double) damages as provided by  
27 the FLSA for overtime violations, attorneys' fees and costs, and  
28 such other legal and equitable relief as this Court deems just and

1 proper.

2  
3 SECOND CLAIM FOR RELIEF

4 (California Unfair Competition Law,

5 Cal. Bus. & Prof. Code §17200 et seq.)

6 35. Plaintiff, on behalf of herself and the Class, realleges  
7 and incorporates by reference all preceding paragraphs.

8 36. The foregoing conduct, as alleged, violates the California  
9 Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §17200 et  
10 seq. Section 17200 of the Cal. Bus. & Prof. Code prohibits unfair  
11 competition by prohibiting, inter alia, any unlawful or unfair  
12 business acts or practices.

13 37. Defendant committed acts of unfair competition, as defined  
14 by the UCL, by, among other things, engaging in the acts and  
15 practices described herein. Defendants' conduct as herein alleged  
16 has damaged Plaintiff and the Class by wrongfully denying their  
17 earned wages, and therefore was substantially injurious to  
18 Plaintiff.

19 38. Defendants' course of conduct, acts, and practices in  
20 violation of California laws constitute a separate and independent  
21 violation of the UCL. Defendants' conduct described herein violates  
22 the policy or spirit of such laws or otherwise significantly  
23 threatens or harms competition.

24 39. The harm to Plaintiff and the Class in being wrongfully  
25 denied lawfully earned wages outweighs the utility, if any, of  
26 Defendants' policies or practices and, therefore, Defendants'  
27 actions described herein constitute an unfair business practice or  
28 act within the meaning of the UCL.



1 46. As a direct and proximate result of Defendants' unlawful  
2 conduct, as set forth herein, Plaintiff and the Class have sustained  
3 damages, including loss of earnings, in an amount to be established  
4 at trial.

5 47. Plaintiff and the Class seek damages in the amount of the  
6 respective unpaid overtime compensation, plus penalties, as provided  
7 by state law, prejudgment interest, and costs and attorneys' fees,  
8 pursuant to statute, and such other legal and equitable relief as  
9 the Court deems just and proper.

10  
11 FOURTH CLAIM FOR RELIEF

12 (California Waiting Period Penalties,

13 Cal. Labor Code §§201-203

14 Brought by Plaintiffs on Behalf of

15 Themselves and the Class)

16 48. Plaintiff, on behalf of herself and the Class, realleges  
17 and incorporates by reference all preceding paragraphs.

18 49. A California employer must compensate an employee that  
19 terminates her employment not later than 72 hours thereafter.

20 50. Defendant failed to pay Plaintiff and members of the Class  
21 whose employment terminated the overtime compensation they were owed  
22 within 72 hours of the termination of their employment.

23 51. As a direct and proximate result of Defendants' unlawful  
24 conduct, as set forth herein, Plaintiff and the Class have sustained  
25 damages, including loss of earnings, in an amount to be established  
26 at trial.

27 52. Plaintiff and the Class are entitled to seek penalties  
28 under Labor Code §203 equal to their regular rate of pay for period

1 of thirty (30) days.

2  
3 FIFTH CLAIM FOR RELIEF

4 (California Record-Keeping Provisions,

5 Cal. Wage Order No. 4;

6 Cal. Labor Code §§226, 1174, & 1174.5

7 Brought by Plaintiffs on Behalf of

8 Themselves and the Class)

9 53. Plaintiff, on behalf of herself and the Class, realleges  
10 and incorporates by reference all preceding paragraphs.

11 54. By failing to record, report, and/or compensate Plaintiff  
12 and the Class for compensable time performed before and after their  
13 regularly scheduled shifts, Defendants have failed knowingly and  
14 intentionally to make, keep, maintain, and preserve records with  
15 respect to each of its employees sufficient to determine their  
16 wages, hours, and other conditions and practice of employment in  
17 violation of Labor Code §§226(a), 1174(d) and the IWC Wage Order.

18 55. Plaintiff and the Class are entitled to and seek injunctive  
19 relief requiring Defendants to comply with Cal. Labor Code §§226(a)  
20 and 1174(d), and further seek penalties under Cal. Labor Code  
21 §§226(e) and 1174.5, including the greater of all actual damages or  
22 one hundred dollars (\$100) for the initial pay period in which a  
23 violation occurs and two hundred dollars (\$200) per employee for  
24 each violation in a subsequent pay period.

25 ///

26 ///

27 ///

28 ///



1 successors, employees, representatives, and any and all persons  
2 acting in concert with it, as provided by law, from engaging in each  
3 of the unlawful practices, policies, and patterns set forth herein;

4 G. An award of damages, according to proof, including  
5 liquidated damages, to be paid by Defendant;

6 H. Penalties available under applicable law;

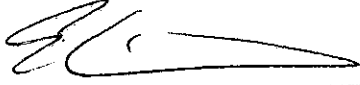
7 I. Costs of action incurred herein, including expert fees;

8 J. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216  
9 and other applicable statutes;

10 K. Pre-Judgment and post-judgment interest, as provided by  
11 law; and

12 L. Such other and further legal and equitable relief as this  
13 Court deems necessary, just and proper.


14  
15 Dated: November 28, 2006 KINGSLEY & KINGSLEY, APC

16  
17 By:   
18 ERIC B. KINGSLEY  
19 Attorney for Plaintiffs

20 DEMAND FOR JURY TRIAL

21 Plaintiff, on behalf of himself and all others similarly  
22 situated, hereby demands a jury trial on all causes of action and  
23 claims with respect to which she has a right to jury trial.

24  
25 Dated: November 28, 2006 KINGSLEY & KINGSLEY, APC

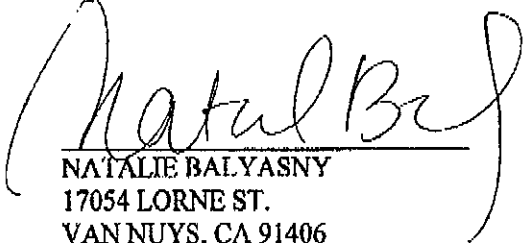
26  
27 By:   
28 ERIC B. KINGSLEY

**EXHIBIT "1"**

**CONSENT TO BE "PARTY PLAINTIFF" UNDER**  
**FEDERAL FAIR LABOR STANDARDS ACT**

I am an employee currently or formerly employed by BAYER. I consent to be a party plaintiff in an action to collect unpaid wages. I agree that I am bound by the terms of the Professional Services Agreement signed by the named plaintiffs in this case.

DATED: 11-20-06

  
\_\_\_\_\_  
NATALIE BALYASNY  
17054 LORNE ST.  
VAN NUYS, CA 91406