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SUPERIOR COURT OF CALIFORNIA
IN AND FOR SAN DIEGO COUNTY

VIVIAN HORN, on behalf of all others
similarly aggrieved,

Plaintiff,
vs.

FURAAT, INC., a California corporation; and
DOES 1-00, Inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/15/2020 at 01:34:38 PM
Clerk of the Superior Court
By Megan Dietenhofer, Deputy Clerk

CASE NO. 37-2020-00032266-CU-OE-CTL

COMPLAINT FOR VIOLATION OF
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS 2698, *et*
seq.

JURY TRIAL DEMANDED

1 Plaintiff VIVIAN HORN, an individual on behalf of herself and all other employees
2 similarly situated, hereby files this Complaint against Defendant FURAAT, INC. Plaintiff is
3 informed and believes, and on the basis of that information and belief, allege as follows:

4 THE PARTIES

5 1. Plaintiff VIVIAN HORRN is and at relevant times was, an individual domiciled in
6 the State of California and a citizen of the State of California who worked as a non-exempt
7 delivery driver for Defendant FURAAT, INC., (“Defendant”) who delivered packages for
8 Amazon beginning in 2018 until she was terminated on April 28, 2020 in the State of California.

9 2. Defendant is a California Corporation that, at all relevant times, was authorized to
10 do business within the State of California and is doing business in the State of California.
11 Defendant owns and operates a transportation company that transports products and people.

12 3. The true names and capacities of the DOE Defendants sued herein as DOES 1
13 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such
14 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
15 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this
16 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
17 become known.

18 4. Plaintiff is informed and believes, and thereupon alleges that at all times herein,
19 Defendants, and each of them, were agents, servants, joint employers, employees, employers,
20 partners, and/or joint ventures of each other Defendant, and were, as such, acting within the
21 scope, course, and authority of said relationship. Each of the acts and/or omissions complained of
22 herein were alleged and made known to, and ratified by, each of the other Defendants. All named
23 Defendants and Doe Defendants are hereinafter collectively referred to as “Defendant” or
24 “Defendants.”

25 5. At all relevant times, Defendants were and are legally responsible for all of the
26 unlawful conduct, policies, practices, acts and omissions complained of herein. Further,
27 Defendants are responsible for each of the unlawful acts or omissions complained of herein under
28 the doctrine of respondent superior. The conduct of Defendants’ managers and supervisors was at

1 all relevant times undertaken as employees of Defendants, acting within the scope of their
2 employment or authority in all of the unlawful activities described herein.

3 JURISDICTION AND VENUE

4 6. This court possesses original subject matter jurisdiction over this matter. Venue is
5 proper in San Diego County, California, because Defendants do business in San Diego,
6 California, and some of the complained of conduct occurred in this judicial district.

7 FACTUAL ALLEGATIONS

8 7. During the four-year period preceding filing of this complaint, Plaintiff and each
9 of the Aggrieved Employees worked for Defendant in the State of California as non-exempt
10 employees. Defendant at all times exercised control over Plaintiff and each of the Aggrieved
11 Employees, and suffered and/or permitted them to work.

12 8. On approximately September 4, 2018, Plaintiff began working for Defendant as a
13 truck driver until her employment ended on or around April 28, 2020. During her employment,
14 Plaintiff was classified as a non-exempt employee at all times.

15 9. Plaintiff typically worked an alternate workweek schedule of ten hours a day, four
16 days a week. Plaintiff would often work five to six days straight as well. There were additionally
17 weeks days where Plaintiff would exceed ten hours in a work day. Plaintiff did not receive her
18 first meal period after the end of her fifth hour of work due to the nature of the job. Plaintiff was
19 occasionally interrupted during her meal periods and rest breaks and did not receive premium pay
20 on these occasions. No second meal breaks were ever provided.

21 10. Plaintiff's hours were rounded by Defendant. Defendant did not pay for additional
22 overtime hours when Plaintiff worked over 10 hours a day nor did Defendant pay meal period
23 premiums.

24 11. Plaintiff was not provided her final paycheck upon termination.

25 12. During her employment, Plaintiff failed to receive accurate wage statements in
26 compliance with Labor Code section 226.

27 13. Defendant failed to pay Plaintiff for all hours worked during her employment and
28 upon the separation of employment. Plaintiff was still owed wages for failure to accurately pay

overtime as well as failure to pay second meal period premium.

14. Plaintiff is informed and believes that Defendant engaged in these same unlawful practices with regard to all of the Aggrieved Employees.

15. In sum, Plaintiff and the Aggrieved Employees did not receive all wages for all hours worked because of Defendant's uniform policies and practices concerning the recording, calculation and payment of minimum and overtime wages. Plaintiff and Aggrieved Employees were not paid for all hours worked and/or at the correct rates of pay. Defendants also did not provide Plaintiff and the Aggrieved Employees with timely, duty-free and uninterrupted meal periods, or with compensation in lieu thereof, as required by California law. Additionally, Defendants failed to provide accurate, itemized wage statements to Plaintiff and the Aggrieved Employees, and failed to pay Plaintiff and the Aggrieved Employees all wages due in a timely fashion during in employment and upon separation of employment.

16. Plaintiff brings her complaint under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of California, regarding violations of the Labor Code as to all similarly aggrieved individuals employed by Defendant in the State of California as a non-exempt employee. This action is brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

17. During the period beginning one-year period preceding the filing of the required PAGA notice with the Labor Workforce and Development Agency, and continuing through the present, as alleged herein, Defendant violated Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 510, 512, 1174, 1194, 1197, 1198, 1199, and all applicable Wage Orders as to Plaintiff and all other similarly aggrieved employees employed by Defendant in any non-exempt position, however titled. These violations subject Defendant to civil penalties as set forth in the foregoing statutes as well as other provisions of the Labor Code, including without limitation Labor Code sections 203, 210, 1174.5, 1197.1 and 2699.

FIRST CAUSE OF ACTION

**VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,
LABOR CODE SECTIONS 2698, ET SEQ.**

1 18. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

2 19. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
3 Plaintiff and similarly aggrieved employees with one 30-minute meal break free from all duties
4 for all shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all
5 shifts longer than 10 hours. Meal periods can be waived, but only under the following
6 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
7 than six (6) hours, the required meal period may be waived by mutual consent of the employer
8 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no
9 more than twelve (12) hours, the required second meal period may be waived by mutual consent
10 of the employer and employee, but only if the first meal period was not waived. Employers
11 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one
12 meal period for shifts over five hours (see above), and (2) to record having done so. If the
13 employer fails to properly record a valid meal period, it is presumed no meal period was
14 provided.

15 20. Plaintiff and Aggrieved Employees regularly worked periods of more than five and
16 ten hours in a workday without being provided proper mandatory thirty-minute, duty-free meal
17 periods. Upon information and belief, Defendant failed to maintain a company meal period
18 policy compliant with California law. Plaintiff and Aggrieved Employees were occasionally
19 unable to take timely, thirty-minute uninterrupted meal periods in accordance with the law. They
20 were unable to avail themselves of such breaks for various reasons, including, the pressures from
21 their workloads and the lack of relief workers available. Defendants regularly and routinely
22 failed to provide Plaintiff and other Aggrieved Employees with a second meal period regardless
23 of the number of hours they worked. Per Defendant's illegal meal period policy/practice,
24 Plaintiff and Aggrieved Employees were not always relieved of their duties for purposes of taking
25 meal periods. Defendant also failed to pay Plaintiff and Aggrieved Employees an additional hour
26 of wages at their regular rates of pay for each workday a meal period was not provided.

27 21. California law provides employees in California must be paid for all hours worked,
28 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.

1 California law also provides employees in California must be paid overtime, equal to 1.5 times
2 the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day.
3 Plaintiff and similarly aggrieved employees regularly worked hours, including overtime hours, for
4 which they were not compensated by Defendant as required by California law. Plaintiff and the
5 Aggrieved Employees did not receive all wages for all hours worked because of Defendant's
6 uniform policies and practices concerning the recording, calculation and payment of minimum
7 and overtime wages. Plaintiff and Aggrieved Employees were not paid for all hours worked
8 and/or at the correct rates of pay. Defendant also required Plaintiff and Aggrieved Employees to
9 perform work off-the-clock. Defendants also did not provide Plaintiff and the Aggrieved
10 Employees with timely, duty-free and uninterrupted meal and rest periods, or with compensation
11 in lieu thereof, as required by California law. Additionally, Defendants failed to provide accurate,
12 itemized wage statements to Plaintiff and the Aggrieved Employees, and failed to pay Plaintiff
13 and the Aggrieved Employees all wages due in a timely fashion during in employment and upon
14 separation of employment. As a result, Defendant failed to pay Plaintiff and similarly aggrieved
15 employees for all hours worked at a rate no less than the prevailing minimum wage, thereby
16 violating California minimum wage laws, including but not limited to, Labor Code sections 1194-
17 1199, and Wage Order 9-2001, section 7. These violations subject Defendant to civil penalties
18 under the foregoing Labor Code sections and other applicable Labor Code sections, including
19 without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor Code
20 section and Wage Order provision, for each aggrieved employee, results in a separate civil
21 penalty.

22 22. California law provides that, at the time of each payment of wages, the employer
23 must provide each employee with an itemized statement showing, inter alia, gross wages earned,
24 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
25 employee is being paid, the employee's name and last four digits of their social security number,
26 the name and address of the legal entity that it is the employer, and all applicable hourly rates in
27 effect during the pay period and all hours worked at each rate. Defendant knowingly and
28 intentionally failed to provide Plaintiff and other aggrieved employees with proper, itemized

1 wage statements as the wage statements provided by Defendant do not accurately reflect, inter
2 alia, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in
3 effect during each pay period and all hours worked at each applicable hourly rate. Accordingly,
4 Defendant has violated Labor Code section 226 as to Plaintiff and all similarly aggrieved
5 employees. These violations subject Defendant to civil penalties under the Labor Code, including
6 without limitation Labor Code sections 226 and 2699. Each violation of each Labor Code section
7 and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

8 23. California law requires employers to keep “accurate and complete” payroll records
9 showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage
10 Order 9-2001, section 7, similarly requires employers to keep time records showing, inter alia,
11 when the employees begin and end each work period and reflecting the times during which all
12 owed meal periods are provided each day. At all relevant times, Defendant has failed, and
13 continues to fail, to keep the required time records, as Defendant did not keep records of the true
14 hours worked by Plaintiff and similarly aggrieved employees by virtue of Defendant’s
15 rounding/time-shaving system; also, Defendant failed to provide and/or record employee meal
16 periods. Defendant’s failure to keep “accurate and complete” payroll records for Plaintiff and
17 other similarly aggrieved employees violates Labor Code sections 1174, 1198-99, and Wage
18 Order 9-2001, section 7. These violations subject Defendant to civil penalties under the Labor
19 Code, including without limitation sections 1174.5 and 2699. Each violation of each Labor Code
20 section and Wage Order provision, for each aggrieved employee, results in a separate civil
21 penalty.

22 24. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
23 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
24 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
25 sections 1174, 1197, and 1198, or other order or ruling of the IWC. Defendant’s violations with
26 respect to minimum wages and/or overtime wages, as alleged herein, result in separate violations
27 of Labor Code sections 1198 and 1199, and subject Defendant to civil penalties under the Labor
28 Code, including without limitation Labor Code sections 1197.1 and 2699. Each violation of each

1 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
2 civil penalty.

3 25. Labor Code Section 511 makes it unlawful to implement an alternative work week
4 in an effort to get around paying overtime rates. Employers under Labor Code Section 511 (a)
5 may adopt a regularly scheduled alternative workweek that authorizes work by the affected
6 employees for no longer than 10 hours per day within a 40-hour workweek without the payment
7 to the affected employees of an overtime rate of compensation pursuant to this section. A
8 proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives
9 approval in a secret ballot election by at least two-thirds of affected employees in a readily
10 identifiable work unit. Defendants are in violation of Labor Code Section 511. Each violation of
11 each Labor Code section and Wage Order provision, for each aggrieved employee, results in a
12 separate civil penalty.

13 26. California law requires employers to make certain disclosures at the time of hiring
14 under section 2810.5. Section 2810.5 (a) (1) states At the time of hiring, an employer shall
15 provide to each employee a written notice, in the language the employer normally uses to
16 communicate employment-related information to the employee, containing the following
17 information: (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day,
18 week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.(B)
19 Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.
20 (C) The regular payday designated by the employer in accordance with the requirements of this
21 code. (D) The name of the employer, including any “doing business as” names used by the
22 employer. (E) The physical address of the employer’s main office or principal place of business,
23 and a mailing address, if different. (F) The telephone number of the employer. (G) The name,
24 address, and telephone number of the employer’s workers’ compensation insurance carrier. (H)
25 That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick
26 leave; may not be terminated or retaliated against for using or requesting the use of accrued paid
27 sick leave; and has the right to file a complaint against an employer who retaliates. (I) Any other
28 information the Labor Commissioner deems material and necessary. This notice was not

1 provided.

2 27. Labor Code section 201 requires employers to pay all wages earned and unpaid at
3 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
4 provisions with respect to employees who resign. For all aggrieved employees no longer
5 employed by Defendant, Defendant still has not paid such aggrieved employees all wages earned
6 and unpaid at the time of discharge, in that Defendant has not paid for, inter alia, time spent
7 performing work during uncompensated meal periods. These violations subject Defendant to
8 civil penalties under the Labor Code, including without limitation Labor Code sections 203, 256
9 and 2699. Each violation results in a separate civil penalty, for each aggrieved employee for each
10 pay period during which the statutory provisions were violated.

11 28. Plaintiff complied with the procedures for bringing suit specified in Labor Code
12 sections 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and
13 Workforce Development Agency ("LWDA") via electronic mail at PAGAfilings@dir.ca.gov
14 on May 28, 2020, and via certified mail to Defendant on May 28, 2020, of the specific
15 provisions of the Labor Code and Wage Orders allegedly violated, including the facts and
16 theories to support the alleged violations.

17 29. Under Labor Code section 2699.3, the LWDA must give written notice by
18 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
19 date of the complainant's written notice. As of the date of this Complaint, the LWDA has not
20 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
21 himself and other similarly aggrieved employees. Accordingly, Plaintiff has exhausted all
22 administrative remedies required by law.

23 PRAYER

24 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
25 as follows:

- 26 1. For civil penalties according to proof;
- 27 2. For reasonable attorney's fees and costs of suit; and
- 28 3. For such other and further relief as the Court deems just and proper.

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Dated: September 15, 2020

CROSNER LEGAL, P.C.



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Dated: September 15, 2020

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