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Attorneys for Plaintiff
PATRICIA HERNANDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PATRICIA HERNANDEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

FRED M. BOERNER MOTOR CO., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 19STCV28136

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE §§ 226.7, 512);**
- (2) **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS (LABOR CODE §§ 226.7, 516);**
- (3) **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);**
- (4) **FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION (LABOR CODE §§ 201-203);**
- (5) **UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); and**

**(6) CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE
ATTORNEYS GENERAL ACTION
OF 2004 (LABOR CODE §§ 2698 *et*
seq.)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Patricia Hernandez (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”)
3 against Fred M. Boerner Motor Co., a California corporation, and DOES 1 to 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 FAC for recovery of unpaid wages and penalties under California Business & Professions Code
8 § 17200 *et. seq.*, Labor Code §§ 201-203, 204, 226, 226.7, 512, 516, 1174, 2698 *et seq.*, and
9 Industrial Welfare Commission Wage Order 7 (“Wage Order 7”), in addition to seeking
10 declaratory relief and restitution. This FAC is brought pursuant to California Code of Civil
11 Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor
12 Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
15 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
16 County of Los Angeles. Defendants own, maintain offices, transact business, have agent(s)
17 within the County of, among others, Los Angeles, and/or otherwise are found within the County
18 of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service
19 of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the lawsuit in this action and within the statute of limitations periods applicable to
24 each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-203, 204, 226, 226.7, 512, 516, 1174, and 2698 *et seq.*, California Business & Professions
28 Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 7, which includes the industry

1 in which Plaintiff worked for Defendants.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
3 years preceding the filing of the lawsuit and continuing to the present, Defendants did (and
4 continue to do) business by operating for the purpose of purchasing, selling, or distributing goods
5 or commodities in either wholesale or retail. Defendants employed Plaintiff and other, similarly-
6 situated non-exempt employees within Los Angeles County and the state of California and,
7 therefore, were (and are) doing business in Los Angeles County and the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and
12 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be subject to the
15 unlawful employment practices, wrongs, injuries and damages complained of herein.

16 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

18 7. At all times herein mentioned, each of said Defendants participated in the doing
19 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants, and employees of each and every one of
21 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
22 were acting within the course and scope of said agency and employment. Defendants, and each
23 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
24 omissions complained of herein.

25 8. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Plaintiff was employed by Defendants as a non-exempt employee from
4 approximately July 2017 until approximately September 2017 at which time she was terminated.
5 Plaintiff worked at Defendants' Huntington Park, California location.

6 10. During her employment with Defendants, Plaintiff typically was scheduled to
7 work from approximately 8:00 a.m. until approximately 4:00 p.m. Plaintiff's job title was
8 Customer Service Representative.

9 11. Throughout her employment, Plaintiff was not provided all required meal periods
10 due to Defendants' meal period policies and practices which fail to provide uninterrupted, duty-
11 free 30-minute meal periods when employees work in excess of 5.0 hours in a day. Due to
12 Defendants' work demands, Plaintiff was typically not provided an uninterrupted meal period as
13 she was often asked to perform tasks during a given meal period. Defendants imposed such a
14 high demand on Plaintiff and other non-exempt employees, that Plaintiff and other employees
15 would often have to wait until there was a lull in assignments before being permitted to take a
16 meal period. Furthermore, would often not be permitted to take her lunch until 1:30 p.m. which
17 was after the end of her 5th hour of work. Thus, Plaintiff both had her meal periods often
18 interrupted and also often was not provided with a timely meal period, both of which violate
19 California law.

20 12. Although Plaintiff was not provided with all legally-compliant meal periods to
21 which she was entitled, Defendants failed to compensate Plaintiff with the required meal period
22 premium for each workday in which she experienced a meal period violation as mandated by
23 Labor Code § 226.7. Upon information and belief during at least a portion of the class period,
24 Defendants maintained no payroll code or other mechanism for the payment of meal period
25 premium payments under Labor Code § 226.7 in the event that a legally compliant meal period
26 was not provided to Plaintiff and their other non-exempt employees.

27 13. Plaintiff was not authorized and permitted to take all legally required paid rest
28 periods due to Defendants' unlawful rest period policies and practices. Defendants' rest period

1 policies and practices fail to authorize and permit paid net 10-minute rest periods for every four
2 hours worked, *or major fraction thereof*. It was a regular occurrence for rest periods not to be
3 authorized and permitted due to Defendants' daily work demands. Thus, Plaintiff did not receive
4 her full, uninterrupted net 10-minute rest breaks in violation of California law.

5 14. Despite Plaintiff not being authorized and permitted to take all legally-compliant
6 rest periods to which she was entitled, Defendants failed to compensate Plaintiff with the required
7 rest period premium for each workday in which she experienced a rest period violation as
8 mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion
9 of the class period, Defendants maintained no payroll code or other mechanism for the payment
10 of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant
11 rest period was not provided to their non-exempt employees.

12 15. As a result of Defendants' failure to pay all meal and rest period premium wages,
13 Defendants failed to pay all wages owed to Plaintiff upon her separation of employment from
14 Defendants. As a further result of Defendants' failure to pay all meal and rest period premium
15 wages, Defendants maintained inaccurate payroll records and insured inaccurate wage statements
16 to Plaintiff.

17 **CLASS ACTION ALLEGATIONS**

18 16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
19 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 20 a) The Meal Period Class consists of all of Defendants' current and former non-
21 exempt employees who worked at least one shift in excess of 5.0 hours during the
22 four years immediately preceding the filing of the lawsuit through the present.
- 23 b) The Rest Period Class consists of all of Defendants' current and former non-
24 exempt employees in California who worked at least one shift of 3.5 hours or more
25 during the four years immediately preceding the filing of the lawsuit through the
26 present.

1 c) The Wage Statement Class consists of all of Defendants' current and former non-
2 exempt employees in the Meal Period Class and/or Rest Period Class, during the
3 one year immediately preceding the filing of the lawsuit through the present.

4 d) The Waiting Time Penalty Class consists of Defendants' formerly employed
5 members of the Meal Period Class and/or Rest Period Class in California, during
6 the three years immediately preceding the filing of the lawsuit through the present.

7 e) The UCL Class consists of members of the: (i) Meal Period Class; (ii) Rest Period
8 Class; (iii) Wage Statement Class; and (iv) Waiting Time Class, during the four
9 years immediately preceding the filing of the lawsuit through the present.

10 17. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court,
11 to amend or modify the description of the various classes with greater specificity or further
12 division into subclasses or limitation to particular issues.

13 18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
14 joinder of all members would be unfeasible and not practicable. The membership of the Classes
15 is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes could
16 exceed one-hundred (100) individuals. The identity of such membership is readily ascertainable
17 via inspection of Defendants' employment records.

18 19. **Common Questions of Law and Fact Predominate/Well Defined Community**
19 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
20 situated employees, which predominate over questions affecting only individual members. Those
21 common questions include, without limitation:

22 i. Whether Defendants provided all legally compliant meal periods to members of
23 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

24 ii. Whether Defendants authorized and permitted all legally compliant rest periods to
25 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

26 iii. Whether Defendants furnished legally compliant wage statements to members of
27 the Wage Statement Class pursuant to Labor Code § 226;

28 iv. Whether Defendants' policies and/or practices for the timing and amount of

1 payment of final wages to members of the Waiting Time Class at the time of their
2 separation of employment were lawful; and

3 v. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive
4 business practices by and through the wage and hour policies and practices
5 described above, and whether as a result Defendants owe the classes restitution.

6 20. **Predominance of Common Questions:** Common questions of law and fact
7 predominate over questions that affect only individual members of the Classes. The common
8 questions of law set forth above are numerous and substantial and stem from Defendants' policies
9 and/or practices applicable to each individual class member, such as Defendants' uniform meal
10 and/or rest period policies and practices. As such, the common questions predominate over
11 individual questions concerning each individual class member's showing as to their eligibility for
12 recovery or as to the amount of their damages.

13 21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
14 Plaintiff was employed by Defendants as a non-exempt employee in California during the
15 statute(s) of limitations period applicable to each cause of action pled in the FAC. As alleged
16 herein, Plaintiff, like the members of the Classes, was not provided all required meal periods, was
17 not authorized and permitted to take all required rest periods, did not receive period premium
18 wages when she was not provided compliant meal and/or rest periods, was not provided with all
19 premium wages due at the time of separation, and was not provided with accurate, itemized wage
20 statements.

21 22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
22 to represent fairly and adequately the interests of the members of the Classes. Moreover,
23 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
24 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
25 and-hour class actions in state and federal courts in the past and are committed to vigorously
26 prosecuting this action on behalf of the members of the Classes.

27 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
28 an important public interest in establishing minimum working conditions and standards in

California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 16 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(AGAINST ALL DEFENDANTS)

24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 failed in their affirmative obligation to provide all of their non-exempt employees in California,
2 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
3 in accordance with the mandates of the California Labor Code and Wage Order 7. Despite
4 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
5 of the Meal Period Class at their respective regular rates of compensation, in accordance with
6 California Labor Code §§ 226.7, and 512.

7 26. As a result, Defendants are responsible for paying premium compensation for meal
8 period violations including interest thereon, as well as statutory penalties, civil penalties, and
9 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 7, California Code of
10 Civil Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

13 **(AGAINST ALL DEFENDANTS)**

14 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 28. The Wage Order and California Labor Code §§ 226.7 and 516 establish the right
16 of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes
17 net rest time for each four (4) hour period worked, or major fraction thereof.

18 29. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
19 of the Rest Period Class to take all required rest periods.

20 30. The foregoing violations create an entitlement to recovery by Plaintiff and
21 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
22 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
23 according to California Labor Code §§ 226.7, 516, 558, Wage Order 7, California Code of Civil
24 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

27 **(AGAINST ALL DEFENDANTS)**

28 31. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though

1 fully set forth herein.

2 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
4 and the Wage Statement Class Members with accurate, itemized wage statements that included
5 among other requirements, accurate total gross wages earned, meal and rest period premiums, and
6 total net wages earned in violation of Labor Code § 226 *et seq.*

7 33. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
8 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
9 failures led to, among other things, accurate total gross wages earned, meal and rest period
10 premiums, and total net wages earned in violation of Labor Code § 226 *et seq.*

11 34. Defendants' failures created an entitlement to Plaintiff and members of the Wage
12 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
13 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit
14 pursuant to Labor Code § 226 *et seq.*

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

17 **(AGAINST ALL DEFENDANTS)**

18 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 36. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
20 an employer to pay all wages immediately at the time of separation of employment in the event
21 the employer discharges the employee or the employee provides at least 72 hours of notice of
22 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
23 to quit, said employee's wages become due and payable not later than 72 hours upon said
24 employee's last date of employment.

25 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 failed to timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due
27 to them at their separation from employment, including, meal and rest period premium wages.

28 38. Further, Plaintiff is informed and believes, and based thereon alleges, that as a

1 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
2 of the Waiting Time Penalty Class all earned wages at the end of employment in a timely manner
3 pursuant to the requirements of Labor Code §§ 201-203.

4 39. Defendants' failure to pay all final wages was willful within the meaning of Labor
5 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
6 Time Penalty Class their earned wages upon separation from employment results in a continued
7 payment of wages up to thirty days from the time the wages were due.

8 40. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled
9 to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

10 **FIFTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

12 **(AGAINST ALL DEFENDANTS)**

13 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 42. Defendants have engaged and continue to engage in unfair and/or unlawful
15 business practices in California in violation of California Business and Professions Code § 17200
16 *et seq.*, by failing to provide all required meal periods, failing to authorize and permit all required
17 rest periods, and failing to pay rest period premium wage payments.

18 43. Defendants' utilization of these unfair and/or unlawful business practices deprived
19 Plaintiff and continues to deprive members of the Classes of compensation to which they are
20 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
21 over Defendants' competitors who have been and/or are currently employing workers and
22 attempting to do so in honest compliance with applicable wage and hour laws.

23 44. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
24 herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of
25 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
26 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

27 45. The acts complained of herein occurred within the last four years immediately
28 preceding the filing of the lawsuit in this action.

1 46. Plaintiff was compelled to retain the services of counsel to file this court action to
2 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
3 of Defendants' current non-exempt employees, and to enforce important rights affecting the
4 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
5 which she is entitled to recover under Code of Civil Procedure § 1021.5.

6 **SIXTH CAUSE OF ACTION**

7 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

8 **(AGAINST ALL DEFENDANTS)**

9 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 48. Defendants have committed several Labor Code violations against Plaintiff and
11 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
12 § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
13 representative action against Defendants to recover the civil penalties due to Plaintiff, the other
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
15 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
16 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
17 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
18 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
19 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
20 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
21 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00
22 for each subsequent violation per employee per pay period for those violations of the Labor Code
23 for which no civil penalty is specifically provided, based on the following Labor Code violations:

24 a) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide
25 all legally required meal periods and failing to pay meal period premiums to
26 Plaintiff and other aggrieved employees;

27 b) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize
28 and permit all legally required rest periods and failing to pay rest period

premiums to Plaintiff and other aggrieved employees;

c) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;

d) Defendants violated Labor Code §§ 201-203 by failing to timely pay Plaintiff and other aggrieved employees all wages upon termination of employment;

e) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees; and

f) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month.

49. On May 27, 2020, Plaintiff noticed Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 48 (a)-(f). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

50. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

1 4. Upon the First Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

3 5. Upon the Second Cause of Action, for compensatory, consequential, general and
4 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

5 6. Upon the Third Cause of Action, for statutory wage statement penalties pursuant
6 to Labor Code § 226 *et seq.*;

7 7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to
8 Labor Code § 203;

9 8. Upon the Fifth Cause of Action, for restitution to Plaintiff and members of the
10 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
11 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
12 *seq.*;

13 9. Upon the Sixth Cause of Action, for civil penalties to Plaintiff, other aggrieved
14 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
15 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
16 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
17 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
18 unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent
19 violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial
20 violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee
21 per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent
22 violation per employee per pay period for those violations of the Labor Code for which no civil
23 penalty is specifically provided, based on the Labor Code violations cited in Paragraph 48(a)-(f)
24 above;

25 10. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
26 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

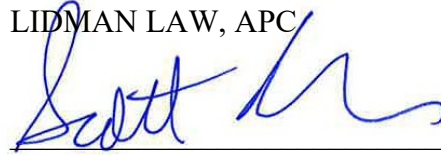
27 11. For such other and further relief as the Court may deem just and proper.
28

1 Dated: August 14, 2020

Respectfully submitted,

LIDMAN LAW, APC

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4 By:



5 Scott M. Lidman
6 Attorneys for Plaintiff
7 PATRICIA HERNANDEZ

8
9 **DEMAND FOR JURY TRIAL**

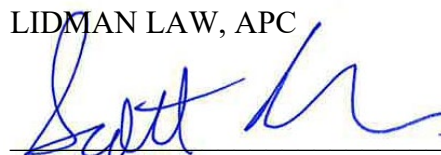
10 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

11 Dated: August 14, 2020

Respectfully submitted,

LIDMAN LAW, APC

12
13 By:



14 Scott M. Lidman
15 Attorneys for Plaintiff
16 PATRICIA HERNANDEZ
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

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 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On August 14, 2020, I served the foregoing document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested party(ies) in this action as follows:

Freeman Mathis & Gary, LLP *Representing: Fred M. Boerner Motor Co.*
Robert Cutbirth, Esq. (rcutbirth@fmglaw.com)
44 Montgomery Street, Suite 3580
San Francisco, CA 94104
Phone: (415) 627-9000

Freeman Mathis & Gary, LLP *Representing: Fred M. Boerner Motor Co.*
Joseph Suarez, Esq. (jsuarez@fmglaw.com)
3030 Old Ranch Parkway, Suite 280
Seal Beach, CA 90740
Phone: (562) 583-2124
Fax: (628) 985-0211

(BY ELECTRONIC SERVICE) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by transmission to Case Anywhere.

Further, on August 14, 2020, I served the document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested party(ies) in this action as follows:

Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

(BY ELECTRONIC SERVICE) I caused a true and correct copy of the document(s) described above to be electronically transmitted to the Labor and Workforce Development Agency ("LWDA") by uploading them to the LWDA's online system, under LWDA Case No. LWDA-CM-791335-20.

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

Executed on August 14, 2020 at El Segundo, California.


Dana Joudi