

FILED/ENDORSED

NOV 20 2020

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7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10 **STEVE TRACY, individually and on behalf of**
11 **all other similarly situated employees,**

12 **Plaintiff,**

13 **vs.**

14 **VON HOUSEN'S SACRAMENTO, INC., a**
15 **California Corporation;**
16 **GEORGE GRINZEWITSCH, JR., an**
17 **individual; and**
DOES 1 to 100, inclusive,

18 **Defendants.**

Case No. 34-2020-00282778

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. **Failure to Pay Overtime Wages**
2. **Failure to Pay Minimum Wages**
3. **Meal Period Violations**
4. **Rest Period Violations**
5. **Wage Statement Violations**
6. **Waiting Time Penalties**
7. **Failure to Reimburse Expenses**
8. **Unfair Competition**
9. **Private Attorneys General Act**

DEMAND FOR JURY TRIAL

1 Plaintiff STEVE TRACY ("Plaintiff"), on behalf of himself and all other similarly situated
2 employees, hereby files this Complaint against Defendants VON HOUSEN'S SACRAMENTO,
3 INC., a California Corporation; GEORGE GRINZEWITSCH, JR., an individual; and DOES 1 to
4 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief,
5 Plaintiff allege the following:

6 INTRODUCTION

7 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
8 Plaintiff for failure to pay minimum wages, failure to pay overtime wages, meal period violations, rest
9 period violations, wage statement violations, failure to timely pay final wages, failure to reimburse
10 expenses, and unfair competition.

11 JURISDICTION AND VENUE

12 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 7.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
16 Defendants reside in Sacramento County. In addition, some of the wrongful acts and violations of law
17 asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in
18 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
19 (1984).

20 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
21 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
22 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
23 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
24 approximately July 31, 2020. Plaintiff provided facts and legal bases for his claims within the notice to
25 the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff
26 submitted the \$75.00 filing fee. The July 31, 2020 notice was also sent via certified mail to Defendants
27 on the same day. Plaintiff is informed and believes, that to date, the LWDA has not provided any
28 response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and believes that he

1 has exhausted all administrative remedies pursuant to the Private Attorneys General Act and may bring
2 this action on behalf of himself and all similarly situated employees. See Cal. Labor Code §
3 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
4 (2005).

5 **PARTIES**

6 5. STEVE TRACY is an individual over the age of eighteen (18) and is a resident of the
7 State of California.

8 6. On information and belief, Plaintiff alleges, VON HOUSEN'S SACRAMENTO,
9 INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the
10 owner and operator of an industry, business and/or facility doing business in the State of California.

11 7. On information and belief, Plaintiff alleges, that GEORGE GRINZEWITSCH, JR is
12 an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff
13 further allege(s) that GEORGE GRINZEWITSCH, JR is an owner, director, officer, and/or
14 managing agent of VON HOUSEN'S SACRAMENTO, INC. responsible for causing the violations
15 outlined in the First through Seventh and Ninth causes of action. As such GEORGE
16 GRINZEWITSCH, JR is individually liable pursuant to California Labor Code section 558.1.

17 8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
18 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
19 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
20 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
21 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
22 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
23 Plaintiff.

24 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
25 other Defendants and was acting within the course and scope of such agency or employment. The
26 Defendants are jointly and severally liable to Plaintiff.

27 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
28 were members of and/or engaged in a joint employment, joint venture, partnership and common

enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

11. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

13. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.

The class which Plaintiff seeks to represent is composed of, and defined, as follows:

all non-exempt employees who have or continue to work for Defendants in California from August 4, 2016 to the present.

14. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) **Numerosity:** The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) **Common Questions Predominate:** Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants had a policy and practice to pay all overtime wages;
- (2) Whether Defendants had a policy and practice to pay all minimum wages;

1 (3) Whether Defendants had a policy and practice to separately compensate Plaintiff
2 and putative class members for time spent during non-productive, such as rest
3 periods, meetings, trainings, and other activities that did not earn wages under
4 Defendants compensation system but were still required of Plaintiff and putative
5 class members;

6 (4) Whether Defendants authorized and permitted all meal periods;

7 (5) Whether Defendants authorized and permitted all rest periods;

8 (6) Whether Defendants had a policy and practice to reimburse Plaintiff and putative
9 class members for the use of their cellphones;

10 (7) Whether as a result of Defendants' policies and practices Plaintiff's and putative
11 class members received all wages, due and owing, at the time of their termination
12 or separation; and

13 (8) Whether Defendants provided Plaintiff's and putative class members with wage
14 statements that complied with Labor Code section 226.

15 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
16 class. The putative class also sustained damages arising out of Defendants' common
17 course of conduct in violation of the law as complained of herein. Plaintiff and all
18 members of the putative class were non-exempt employees who were not compensated
19 for time spent during rest periods, meetings, and trainings, and other non-productive time,
20 were not authorized and permitted to take all meal and paid rest periods, and were not
21 reimbursed for the personal use of their cellphones resulting in unpaid minimum and
22 overtime wages, meal and rest period violations, wage statement violations, waiting time
23 penalties, and unfair competition. As a result, Plaintiff and each member of the putative
24 class will have suffered the same type of harm and seek the same type of recovery based
25 on the same legal theories.

26 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
27 putative class. For all relevant times, Plaintiff resided in California and worked for
28 Defendants in California. Moreover, Plaintiff is an adequate representative of the

1 putative class as Plaintiff has no interests that are adverse to those of putative class
2 members. Additionally, Plaintiff has retained counsel who has substantial experience in
3 complex civil litigation and wage and hour matters.

- 4 (e) Superiority: A class action is superior to other available means for the fair and efficient
5 adjudication of the controversy since individual joinder of all members of the putative
6 class is impracticable. Class action treatment will permit a larger number of similarly
7 situated persons to prosecute their common claims in a single forum simultaneously,
8 efficiently, and without the unnecessary duplication of effort and expense that numerous
9 individual actions would engender. Further, as damages suffered by each individual
10 member of the class may be relatively small, the expenses and burden of the individual
11 litigation would make it difficult or impossible for individual members of the class to
12 redress the wrongs done to them, and an important public interest will be served by
13 addressing the matter as a class action. The cost to the court system of adjudication of
14 such individualized litigation would be substantial. Individualized litigation would also
15 present the potential for inconsistent or contradictory judgments.

16 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the
17 management of this action that would preclude its maintenance as a class action.

18 GENERAL ALLEGATIONS

19 16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though fully
20 set forth herein.

21 17. Defendants run car dealerships where Plaintiff worked from approximately March 2000
22 to June 13, 2020. Defendants paid Plaintiff and similarly situated employees under a base unit pay and
23 additional bonus unit pay plan. The pay plans were based on a tiered system. Each of the pay plans
24 included the payment of flat amounts that corresponded the number of units sold by Plaintiff and
25 similarly situated employees. For example, if Plaintiff sold 1-6 cars during the month, he would earn
26 base unit pay of \$1,000.00 and would receive additional bonus unit pay of either \$150 or \$100 per car
27 depending on whether the cars were new or used. If Plaintiff sold 8-9.5 cars during the month, he would
28 earn base unit pay of \$1,750.00 and would receive additional bonus unit pay of either \$300 or \$250

1 depending on whether the cars were new or used. There were additional factors affecting the amount of
2 unit pay that would result in either no unit pay earning for the work performed in selling a car or
3 negative unit pay earnings that would count against the unit value of other sales in the same or future
4 pay periods. The factors included, but were not limited to, customer service ratings of a customer's
5 overall experience at the dealership (not just limited to Plaintiff or one other similarly situated
6 employees) or the amount sold below the manufacturer's suggested retail price.

7 18. In the event that Plaintiff or other similarly situated employees had no unit pay earnings
8 as a result of Defendants' compensation system, Defendants would pay a \$1,000 monthly draw. Any
9 amounts paid as a draw would be recouped by Defendants from future base unit and bonus unit pay such
10 that Plaintiff and similarly situated employees only earned base unit pay and bonus unit pay when
11 engaged in sales activities that ultimately resulted in a sale. Because some sales activity resulted in
12 negative base unit and bonus unit pay under Defendants compensation system, sales activity in the
13 morning that would have resulted in positive base and/or bonus unit pay could end up being completely
14 uncompensated based on a subsequent sales activity later in the afternoon that created a negative base
15 and/or bonus unit pay calculation. Plaintiff and similarly situated employees spent approximately 50%
16 of their time on activities that were uncompensated either due to a lack of sales, negative sales that
17 eliminated prior positive sales activity, or engaging in tasks that did not directly earn additional
18 compensation under Defendants system, but were still suffered or permitted by Defendants.

19 19. Defendants did not pay Plaintiff and similarly situated employees for any non-selling
20 time, such as time spent in meetings, time spent during trainings, time spent learning information about
21 the products being sold, time spent on rest periods, etc. Because of this, Defendants failed to provide
22 paid rest periods and pay Plaintiff and similarly situated employees at least minimum wage for every
23 hour worked.

24 20. Plaintiff and similarly situated employees regularly worked overtime (*i.e.*, over eight
25 hours in a day or forty in a week). However, Defendants did not have any policy or practice to pay
26 overtime wages to Plaintiff and similarly situated employees. Additionally, Defendants did not keep
27 track of any of the hours Plaintiff and similarly situated employees worked, including regular hours,
28 overtime hours, or time spent during meal periods, if any.

1 21. Defendants' failure to pay for all regular and overtime hours worked also resulted in
2 Defendants' failure to pay Plaintiff and similarly situated employees all wages they were owed during
3 the applicable pay period.

4 22. Defendants did not have a policy or practice to authorize Plaintiff and similarly situated
5 employees to take all meal periods and paid rest periods owed to them. Plaintiff and similarly situated
6 employees did not receive a meal period or began their first meal period before completion of their fifth
7 hour worked on multiple occasions. Plaintiff and similarly situated employees also worked over ten
8 hours a day on numerous occasions but were never provided with a second meal period. In addition to
9 the lack of policies authorizing meal periods and rest periods for every four hours worked or major
10 fraction thereof, Defendants supervisors regularly made comments to discourage Plaintiff and similarly
11 situated employees from taking meal and rest periods and told them to continue working rather than take
12 all meal and rest periods owed. Furthermore, as a result of Defendants compensation system, Plaintiff
13 and similarly situated employees were not able to take any paid rest periods because rest periods were
14 unpaid as non-productive time. No separate compensation for time spent on rest periods were given.
15 Defendants did not pay Plaintiff and Similarly situated employees any meal or rest period premiums.

16 23. The policies and practices described above resulted in Plaintiff and similarly situated
17 employees being owed wages at the time of their separation or termination that went unpaid by
18 Defendants.

19 24. Defendants failed to issue Plaintiff and similarly situated employees wage statements that
20 stated their total hours worked, and the number of regular and overtime hours they worked and
21 corresponding applicable hourly rates, the correct amount of gross and net wages, and amounts for meal
22 and rest period premiums.

23 25. Plaintiff and similarly situated employees regularly used their personal cellphones for
24 work to call, speak with, and receive calls from prospective customers. Defendants did not have any
25 policy or practice to reimburse similarly situated employees for this expense. Defendants were aware
26 and encouraged the use of Plaintiff's and similarly situated employees personal cell phones. There were
27 only a small number of phones available at the office location that were inside individual offices. These
28 offices were regularly occupied by IT employees, so Plaintiff and similarly situated employees could not

1 access them for use of phones. Instead, they had to use their personal cell phones in order to complete
2 company business.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**
5 **FAILURE TO PAY OVERTIME WAGES**
6 **(As to all Defendants)**

7 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
8 set forth herein.

9 27. During the period Plaintiff was employed by Defendants, Defendants were required to
10 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
11 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
12 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 7, section (3)(A);*
13 *Cal. Lab. Code §§ 510, 1194.*

14 28. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
15 and/or forty (40) hours per week on multiple occasions while employed by Defendants. However,
16 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
17 worked at their regular rate of pay.

18 29. Plaintiff and similarly situated employees were not exempt from overtime protections
19 employees under the California Wage Orders and Labor Code.

20 30. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
21 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
22 the extent pertinent as if set forth here in full.

23 **SECOND CAUSE OF ACTION**
24 **FAILURE TO PAY MINIMUM WAGES**
25 **(As to all Defendants)**

26 31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully
27 set forth herein.

28 32. For the period preceding the filing of this Complaint, Defendants were required to
compensate Plaintiff and similarly situated employees with at least California's applicable minimum for

every hour worked. See MW-Order 2019; IWC Wage Order, No. 7, section 4(A); Cal. Lab. Code § 1194.

33. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so. Defendants did not pay Plaintiff and similarly situated employees for time spent during rest periods, meetings, trainings, and other non-productive time.

34. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully set forth herein.

36. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

37. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 7, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

38. California Labor Code section 512 and Wage Order No. 7 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

39. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated

1 employees to take their first meal period before the completion of their fifth hour of work and failed
2 to allow Plaintiff and similarly situated employees to take their second meal period before the
3 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
4 rights to all meal periods throughout their employment.

5 40. Defendants further failed to pay Plaintiff and similarly situated employees the
6 applicable meal period premiums for any such missed meal breaks.

7 41. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
8 employees have been damaged as stated in the section below entitled "DAMAGES," which is
9 incorporated here to the extent pertinent as if set forth here in full.

10 **FOURTH CAUSE OF ACTION**
11 **REST PERIOD VIOLATIONS**
12 **(As to all Defendants)**

13 42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41 as though fully
14 set forth herein.

15 43. An employer must provide an employee a rest period in accordance with the
16 applicable Wage Order and California Labor Code section 226.7.

17 44. California Labor Code section 226.7 and Wage Order No. 7, section 12(A) require an
18 employer to provide a paid rest period of not less than ten (10) minutes for each work period of more
19 than four (4) hours or a major fraction thereof.

20 45. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
21 situated employees to take all rest periods of at least ten (10) minutes for each work period that they
22 worked more than four (4) hours or a major fraction thereof. Moreover, for those rest periods that
23 were received, they were unpaid.

24 46. Defendants further failed to pay Plaintiff and similarly situated employees the
25 applicable rest period premiums for any such missed rest periods.

26 47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
27 employees have been damaged as stated in the section below entitled "DAMAGES," which is
28 incorporated here to the extent pertinent as if set forth here in full.

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FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully set forth herein.

49. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

50. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. Plaintiff and similarly situated employees were not able to promptly and easily determine their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

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51. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

52. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 51 as though fully set forth herein.

53. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. See Cal. Lab. Code § 201.

54. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. See Cal. Lab. Code § 202.

55. Plaintiff and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums at their termination or within the required time after their separation from employment.

56. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. See Cal. Lab. Code § 203.

57. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees took unpaid rest periods and spent time during meetings and trainings that were uncompensated. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

58. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

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SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully set forth herein.

60. California Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

61. Defendants required Plaintiff and similarly situated employees to use their personal cellphones but failed to reimburse them for such use.

62. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to VON HOUSEN'S SACRAMENTO, INC. and DOES 1 to 100)

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully set forth herein.

64. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

65. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, or reimbursed for business expenses, during their employment or any time thereafter.

66. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

1 67. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
2 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
3 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
4 sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an
5 amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

6 **NINTH CAUSE OF ACTION**
7 **PRIVATE ATTORNEYS GENERAL ACT**
8 **(As to all Defendants)**

9 68. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 67 as though fully
10 set forth herein.

11 69. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
12 following provisions of the Labor Code in their dealings with him and other similarly situated current
13 and former employees:

- 14 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay
15 Overtime Wages)
- 16 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (Failure to Pay
17 Minimum Wages)
- 18 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 19 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
20 Statements)
- 21 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 22 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
23 Work in Any Industrial Welfare Commission Order)
- 24 • Violation of Labor Code §§ 226.7, 512; IWC Wage Order 7, §§ 11(A) and 11(B)
25 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 26 • Violation of Labor Code § 226.7; IWC Wage Order 7, § 12(A) (Failure to Provide
27 Rest Periods or Pay Premiums in Lieu Thereof)
- 28 • Violation of Labor Code § 226.3, 1174, 1198; IWC Wage Order 7, § 7(A) (Failure to
Maintain Accurate Records)

- Violation of Labor Code §§204, 210 (Failure to Pay Wages in a Timely Manner)

70. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

71. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;

2. As to the First Cause of Action:

- Wages in an amount to be proven at trial;
- Interest for the wages due pursuant to California Labor Code section 1194;
- For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

3. As to the Second Cause of Action:

- Wages in an amount to be proven at trial;
- Interest for the wages due pursuant to California Labor Code section 1194;
- For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
- Liquidated damages pursuant to California Labor Code section 1194.2;

4. As to the Third Cause of Action:

- Wages in an amount to be proven at trial;
- Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

5. As to the Fourth Cause of Action:

- Wages in an amount to be proven at trial;
- Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

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1 6. As to the Fifth Cause of Action:

- 2 a. Penalties as provided for in Labor Code section 226, including the greater of all
3 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
4 violation occurred and one hundred dollars (\$100.00) per employee for each
5 violation in the subsequent pay periods, but not to exceed four thousand dollars
6 (\$4,000.00);
- 7 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
8 226(e);

9 7. As to the Seventh Cause of Action:

- 10 a. An amount to be proven at trial;
- 11 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

12 8. As to the Ninth Cause of Action:

- 13 a. For civil penalties as provided for in the Labor Code for each enumerated
14 violation;
- 15 b. For those Labor Code sections, the violation of which there is no civil penalty
16 provided, the default penalty provided in Labor Code section 2699(f): for any
17 initial violation, one hundred dollars (\$100) for each aggrieved employee per
18 pay period; For any subsequent violation, two hundred dollars (\$200) for
19 each aggrieved employee per pay period;
- 20 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 21 d. For any other remedies as allowed by law and/or deemed appropriate by the
22 Court;

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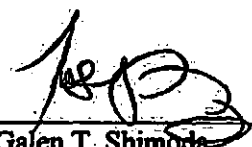
28 //

- 1 9. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d. Interest.

7 Dated: November 12, 2020

Shimoda Law Corp.

8
9
10 By: _____


Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

1 *Tracy v. Von Housen's Sacrametno, Inc.*
2 *Sacramento County Superior Court of California 34-2020-00282778*

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On November 20, 2020, I served the following documents on the party below:

- 9 • First Amended Complaint for Damages

10 Gregory C. Cheng (SBN: 226865) 11 Heidi G. Kim (SBN: 306641) 12 Ogletree, Deakins, Nash, Smoak & Stewart, 13 P.C. 14 One Market Plaza, Ste. 1300 15 San Francisco, CA 94105 16 Telephone: (415) 536-3406 17 Facsimile: (415) 442-4870 18 Email: Gregory.cheng@ogletree.com 19 Heidi.kim@ogletree.com	
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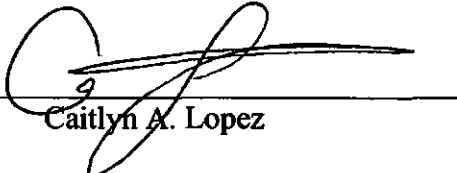
20 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
21 processing of correspondence for mailing with the United States Postal
22 Service and that each day's mail is deposited with the United States Postal
23 Service that same day in the ordinary course of business. On the date set
24 forth above, I served the aforementioned document(s) on the parties in
25 said action by placing a true copy thereof enclosed in a sealed envelope
26 with postage thereon fully prepaid, for collection and mailing on this date,
27 following ordinary business practices, at Elk Grove, California, addressed
28 as set forth above.

29 [] [By Personal Service] By personally delivering a true copy thereof to the
30 office of the addressee above.

31 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
32 above. No error was reported by the e-mail service that I used.

33 [] [By Overnight Courier] By causing a true copy and/or original thereof to
34 be personally delivered via the following overnight courier service: UPS.

35 I declare under penalty of perjury under the laws of the State of California that the foregoing
36 is true and correct, and that this declaration was executed on November 20, 2020, at Elk Grove,
37 California

38 
Caitlyn A. Lopez

RECEIVED
IN DROP BOX

2020 NOV 20 AM 11:08

CLERK OF COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO