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DEPUTY

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

JOSE MAYORGA, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

BROWN STRAUSS, INC., a Delaware
Corporation; and DOES 1 to 100, inclusive,

Defendants.

STK-CV-406-2020-10906

CLASS ACTION

COMPLAINT FOR DAMAGES:

1. Failure to Pay Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Wage Statement Violations
5. Waiting Time Penalties
6. Unfair Competition
7. Failure to Pay Accrued Vacation

DEMAND FOR JURY TRIAL

Plaintiff JOSE MAYORGA ("Plaintiff"), on behalf of himself and all other similarly situated employees, hereby files this Complaint against Defendants BROWN STRAUSS, INC., a Delaware Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

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1 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
2 Plaintiff.

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

6 8. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
7 were members of and/or engaged in a joint employment, joint venture, partnership and common
8 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
9 joint venture, partnership and common enterprise.

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

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

14 CLASS ALLEGATIONS

15 11. Plaintiff brings the First through Seventh Causes of Action on behalf of himself and
16 all others similarly situated as a class action pursuant to California Code of Civil Procedure section
17 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

18 All non-exempt employees who have or continue to work for Defendants
19 in California from four (4) years prior to the filing of this Complaint to the
20 present.

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

24 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
25 is impracticable under the circumstances of this case. While the exact number of class
26 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
27 Defendants have employed as many as fifty (50) individuals falling within the above
28 stated class definition throughout the State of California during the applicable statute of

1 limitations, who were subjected to the policies and practices outlined in this Complaint.
2 As such, joinder of all members of the putative class is not practicable.

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

- 7 (1) Whether Defendant included all non-discretionary remuneration paid to
8 employees when calculating their regular rate of pay for overtime, sick leave,
9 and/or other premium purposes;
- 10 (2) Whether Defendant had a policy and/or practice of failing to authorize second
11 meal periods and third rest periods for employees working longer than ten hours
12 in a day;
- 13 (3) Whether Defendants required employees to unlawfully forfeit accrued PTO by
14 preventing any accrued vacation beyond forty hours from being carried over to
15 the next year;
- 16 (4) Whether Defendants failed to pay all accrued and unused PTO at an employee's
17 termination;
- 18 (5) Whether as a result of Defendants' policies and practices Plaintiff's and putative
19 class members received all wages, due and owing, at the time of their termination
20 or separation; and
- 21 (6) Whether Defendants provided Plaintiff's and putative class members with wage
22 statements that complied with Labor Code section 226.

23 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
24 class. The putative class also sustained damages arising out of Defendants' common
25 course of conduct in violation of the law as complained of herein. Plaintiff and all
26 members of the putative class were non-exempt employees who were not paid all
27 overtime owed, not paid all accrued and unused PTO at separation, not able to carry over
28 more than 40 hours of accrued PTO from one year to the next (being unlawfully required

1 to forfeit the remainder), provided all meal and rest periods or paid premiums in lieu
2 thereof, and were not paid all sick leave wages owed resulting in unpaid wages at their
3 separation. Additionally, Defendants issued Plaintiff and all members of the putative
4 class wage statements that did not comply with Labor Code section 226. As a result,
5 Plaintiff and each member of the putative class will have suffered the same type of harm
6 and seek the same type of recovery based on the same legal theories.

7 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
8 putative class. For all relevant times, Plaintiff resided in California and worked for
9 Defendants in California. Moreover, Plaintiff is an adequate representative of the
10 putative class as Plaintiff has no interests that are adverse to those of putative class
11 members. Additionally, Plaintiff has retained counsel who has substantial experience in
12 complex civil litigation and wage and hour matters.

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

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

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18. Plaintiffs and similarly situated employees had unpaid overtime, sick leave wages, and meal and rest period premiums as a result of Defendants' practices. Defendants prohibited employees from carrying over any accrued but unused PTO (Paid Time Off) beyond forty (40) hours into the new year, which caused employees to unlawfully forfeit accrued PTO wages. Defendants also failed to pay out all accrued, but unused PTO at the time of their separation. These amounts remained unpaid at the time of Plaintiffs' and similarly situated employees' separation and remain unpaid to this date.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

19. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 18 as though fully set forth herein.

20. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.,* IWC Wage Order No. 4, section (3)(A); Cal. Lab. Code §§ 510, 1194.

21. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff and similarly situated employees for all overtime wages earned at 1.5x their regular rate of pay due to their failure to account for all non-discretionary wage payments (e.g. bonuses, incentives, etc.) when performing the regular rate calculation.

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

23. 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.

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

24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully set forth herein.

25. 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.

26. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, 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.

27. California Labor Code section 512 and Wage Order No. 4 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.

28. Defendants employed Plaintiff and similarly situated employees for periods of more than ten (10) hours without providing a second meal break of at least thirty (30) minutes. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

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

30. 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
REST PERIOD VIOLATIONS
(As to all Defendants)

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

1 32. An employer must provide an employee a rest period in accordance with the
2 applicable Wage Order and California Labor Code section 226.7.

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

6 34. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
7 situated employees to take third rest period of at least ten (10) minutes when they worked longer than
8 ten (10) hours.

9 35. Defendants further failed to pay Plaintiff and similarly situated employees the
10 applicable rest period premiums for any such missed rest periods.

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

14 **FOURTH CAUSE OF ACTION**
15 **WAGE STATEMENT VIOLATIONS**
16 **(As to all Defendants)**

17 37. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 36 as though fully
18 set forth herein.

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

21 *(1) gross wages earned, (2) total hours worked by the employee, except for*
22 *any employee whose compensation is solely based on a salary and who is*
23 *exempt from payment of overtime under subdivision (a) of Section 515 or*
24 *any applicable order of the Industrial Welfare Commission, (3) the*
25 *number of piece-rate units earned and any applicable piece rate if the*
26 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
27 *all deductions made on written orders of the employee may be aggregated*
28 *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

1 *recorded in ink or other indelible form, properly dated, showing the*
2 *month, day, and year, and a copy of the statement and the record of the*
3 *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.

4 39. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
5 itemized statement or failed to provide an accurate and complete itemized statement showing the
6 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
7 accurately itemize all applicable hourly rates in effect during the pay period and gross and net wages
8 earned. Plaintiff and similarly situated employees were not able to promptly and easily determine
9 their accurate hourly rates, including overtime and sick leave rates of pay from their paystubs alone.
10 Defendants would issue bonus and incentive payments on separate paystubs and would not provide
11 any aggregate or correct total to what employees were receiving like they would have had the
12 information been provided all on one paystub. Plaintiff and similarly situated employees suffered
13 confusion over whether they received all wages owed and were prevented from effectively
14 challenging information on their wage statements.

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

18 **FIFTH CAUSE OF ACTION**
19 **WAITING TIME PENALTIES**
 (As to all Defendants)

20 41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully
21 set forth herein.

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

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

26 44. Plaintiff and similarly situated employees did not receive all wages, including overtime
27 wages and used sick leave pay at the correct rates that were owed or accrued but unused PTO at their
28 termination or within the required time after their separation from employment.

45. 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.

46. 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 earned overtime and utilized sick leave pay at during the same periods for which non-discretionary remuneration beyond an employee's basic hourly rate was being paid. It was also aware that accrued and unused PTO remained at an employee's separation based on payroll records, but did not pay out those amounts anyways. 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.

47. 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.

SIXTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to Defendant and DOES 1 to 100)

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

49. 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.

50. Plaintiff and similarly situated employees were not paid all wages owed, including overtime wages, meal and rest period premiums, accrued and unused (or unlawfully forfeited) PTO, or paid sick leave during their employment or any time thereafter.

51. 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 52. 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 227.3, 245, *et seq.*, 510, 512, and
5 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing
6 of this Action.

7 **SEVENTH CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE § 227.3**
 (As to all Defendants)

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

11 54. Labor Code section 227.3 provides that "whenever a contract of employment or employer
12 policy provides for paid vacations, and an employee is terminated without having taken off his vested
13 vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such
14 contract of employment or employer policy respecting eligibility or time served."

15 55. At the time of termination, Defendants failed to pay Plaintiff and similarly situated
16 employees their accrued PTO.

17 56. As a proximate cause of Defendants' conduct, Plaintiff and similarly situated employees
18 were damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the
19 extent pertinent as if set forth here in full.

20 **DAMAGES**

21 WHEREFORE Plaintiff requests relief as follows:

- 22 1. A jury trial;
- 23 2. As to the First Cause of Action:
- 24 a. Wages in an amount to be proven at trial;
- 25 b. Interest for the wages due pursuant to California Labor Code section 1194;
- 26 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
- 27 Code section 1194;

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1 3. As to the Second Cause of Action:

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

5 4. As to the Third Cause of Action:

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

9 5. As to the Fourth Cause of Action:

- 10 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 11 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 12 violation occurred and one hundred dollars (\$100.00) per employee for each
- 13 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 14 (\$4,000.00);
- 15 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 16 226(e);

17 6. As to the Seventh Cause of Action:

- 18 a. For all unpaid vacation wages due and owing;
- 19 b. For attorneys' fees, costs, and interest pursuant to Labor Code §§ 218.5 and
- 20 218.6;

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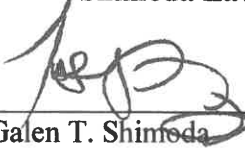
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- 1 7. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d.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

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8 Dated: December 23, 2020

Shimoda Law Corp.

9
10 By: _____


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Brittany V. Berzin
Attorneys for Plaintiff