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DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile (831) 634-0333

Attorneys for Plaintiff, the Class, and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

CELIA STEWART, as an individual and on behalf
of all others similarly situated, and as a private
attorney general,

Plaintiff,

vs.

RITCHIE BROS. AUCTIONEERS (AMERICA)
INC., a Washington corporation; RITCHIE BROS.
AUCTIONEERS INC., a Washington corporation
upon information and belief, and DOES 1 through
50, inclusive,

Defendants.

Case No.

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

- (1) **Unpaid Sick Pay Wages**
(Lab. Code §§ 201-204, 233, 246)
- (2) **Unpaid Overtime**
(Lab. Code §§ 510, 1198)
- (3) **Inaccurate Itemized Wage Statements**
(Lab. Code § 226(a));
- (4) **Unfair or Unlawful Business Practices**
(Bus. & Prof. Code §§ 17200 et seq.); and
- (5) **Violations of the California Labor Code**
(Lab. Code §§ 2698 et seq.)

DEMAND OVER \$25,000.00

On behalf of herself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Celia Stewart, submits this Class and Representative Action Complaint against Defendants Ritchie Bros. Auctioneers (America) Inc., Ritchie Bros. Auctioneers Inc., and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. This class and representative action challenges systemic employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. The Complaint addresses Defendants’ violations of Labor Code sections 201-202, 204, 226, 233, 246, 510, and 1198, and seeks penalties, damages, and other relief pursuant to, among other provisions, Labor Code sections 203, 210, 218, 218.5, 218.6, 226.3, 248.5, 558, 1194, and 2698 *et seq.*, and the Unfair Competition Law, codified at Business and Professions Code sections 17200 *et seq.* (the “UCL”).¹

2. Plaintiff is informed and believes that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to pay or timely pay all sick pay wages, failing to pay or timely pay all overtime wages, and failing to provide accurate itemized wage statements.

3. Defendants routinely fail to pay sick pay wages at the regular rate of pay. Specifically, Plaintiff and other non-exempt employees regularly earn non-discretionary remuneration, including for example profit-sharing pay, that Defendants fail to consider when paying sick pay wages. Rather than pay sick pay wages at the regular rate of pay, Defendants underpay sick pay wages to Plaintiff and other non-exempt employees at their base rates of pay.

4. Defendants also routinely fail to pay all overtime wages at the regular rate of pay. Again, Plaintiff and other non-exempt employees regularly earn non-discretionary remuneration, including for example profit-sharing pay, that Defendants fail to consider when paying overtime wages. Defendants thus underpay overtime wages to Plaintiff and other non-exempt employees.

5. Defendants also routinely fail to provide accurate itemized wage statements to Plaintiff and other employees. First, as a result of the above practices, Defendants fail to furnish Plaintiff and other non-exempt employees with wage statements that accurately show and itemize all applicable wage

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 rates, gross wages earned, and net wages earned. Second, Defendants fail to furnish Plaintiff and all
2 other employees with wage statements that itemize and show the name of the legal entity that is the
3 employer. Instead, the wage statements identify “Ritchie Bros. Auctioneers Inc.,” a legal entity that is
4 identified in the California Secretary of State’s records as forfeited and resigned in 1999.

5 6. Plaintiff is informed and believes that Defendants have engaged in, among other things, a
6 system of willful violations of the Labor Code by creating and maintaining policies, practices, and
7 customs that knowingly deny its employees the above stated rights and benefits.

8 7. The policies, practices, and customs of Defendants resulted in unjust enrichment of
9 Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of
10 the Labor Code.

11 JURISDICTION AND VENUE

12 8. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
13 Defendants’ violations of Sections 201-202, 204, 226, 233, 246, 510, and 1198, and the UCL.

14 9. Venue is proper in the County of Alameda. Plaintiff worked for Defendants in
15 Pleasanton, California.

16 PARTIES

17 10. In or about August 2016 Plaintiff began working for Defendants and worked in
18 California for Defendants for 30 or more days within a year. Until her employment as a title coordinator
19 ended in or about December of 2020, Plaintiff was paid on an hourly basis as a non-exempt employee
20 and received non-hourly remuneration, including profit-sharing pay. Plaintiff was underpaid sick pay
21 wages and overtime wages and was not provided with accurate itemized wage statements. Plaintiff thus
22 is a victim of the policies, practices, and customs of Defendants complained of in this action in ways
23 that have deprived her of the rights guaranteed by the Labor Code and the UCL.

24 11. Plaintiff is informed and believes that Defendant, Ritchie Bros. Auctioneers (America)
25 Inc., was and is a Washington corporation. Plaintiff is informed and believes that Defendant, Ritchie
26 Bros. Auctioneers Inc., was a Washington corporation. Plaintiff is informed and believes that at all
27 times herein mentioned named defendants and Does 1 through 50, were and are corporations, business
28 entities, individuals, or partnerships that are and were either licensed to do business or actually doing

business in the State of California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-202, 204, 226, 233, 246, 510, and 1198, and the UCL.

12. Plaintiff does not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of the other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

15. Plaintiff is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

CLASS ACTION ALLEGATIONS

16. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California who were paid sick pay wages in any workweek in which they earned non-discretionary remuneration, including for example profit-sharing pay, at any time since July 29, 2016 (the "Sick Pay Class"), (ii) all current and former non-exempt employees of Defendants in the State of

California who were paid overtime wages in any workweek in which they earned non-discretionary remuneration, including for example profit-sharing pay, at any time since July 29, 2016 (the “Overtime Class”), (iii) all current and former employees of Defendants in the State of California since July 29, 2019 (the “Wage Statement Class”), and (iv) all current and former non-exempt employees of Defendants in the State of California who were paid either sick pay wages and overtime wages in any workweek in which they earned non-discretionary remuneration, including for example profit-sharing pay, at any time since July 29, 2019 (the “Wage Statement Sub-Class”). The Sick Pay Class, Overtime Class, Wage Statement Class, and Wage Statement Sub-Class are collectively referred to as the “Class.”

17. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes that Defendants violated Sections 201-202, 204, 226, 233, 246, 510, and 1198, and the UCL against Plaintiff and the Class by failing to pay or timely pay all sick pay wages, failing to pay or timely pay all overtime wages, and failing to provide accurate itemized wage statements.

18. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

19. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of (i) routinely failing to pay or timely pay all sick pay wages, (ii) routinely failing to pay or timely pay all overtime wages, and (iii) routinely failing to provide accurate itemized wage statements.

20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class suffered. As with other members of the Class, Plaintiff was paid on an hourly basis as a non-exempt employee and received non-hourly remuneration, including profit-sharing pay. Plaintiff was underpaid

1 sick pay wages and overtime wages and was not provided with accurate itemized wage statements.

2 Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

3 21. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
4 in establishing minimum working conditions and requirements in California. These labor standards
5 protect employees from onerous terms and conditions of employment or exploitation by employers who
6 have superior economic and bargaining power.

7 22. The nature of this action and the format of laws available to Plaintiff and members of the
8 Class make the class action format a particularly efficient and appropriate procedure to redress the
9 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
10 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and
11 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
12 legal resources. Requiring each member of the Class to pursue an individual remedy would also
13 discourage the assertion of lawful claims by employees who would be disinclined to file an action
14 against their former or current employer for real and justifiable fear of retaliation and permanent
15 damage to their careers at their current or subsequent employment.

16 23. The prosecution of separate actions by individual members of the Class, even if possible,
17 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
18 members of the Class that would establish potentially incompatible standards of conduct for
19 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
20 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
21 of other members of the Class not parties to the adjudications. Further, the claims of the individual
22 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
23 the concomitant costs and expenses.

24 24. Defendants' pattern, practice, and uniform administration of corporate policy in violation
25 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
26 rights of Plaintiff and the Class under Sections 201-204, 210, 218, 218.5, 218.6, 226, 226.3, 233, 246,
27 248.5, 510, 558, 1194, 1198, and 2698 et seq., applicable IWC Wage Orders, the UCL, and Code of
28

Civil Procedure section 1021.5 to recover damages and restitution, including unpaid wages and interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

25. This action is brought for the benefit of the Class, which is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

FIRST CAUSE OF ACTION

Unpaid Sick Pay Wages (Lab. Code §§ 201-204, 233, 246)

(By Plaintiff and the Sick Pay Class Against All Defendants)

26. The preceding paragraphs are re-alleged and incorporated by this reference.

27. Section 233 provides that an employer must permit an employee to use accrued sick leave in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave. Once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

28. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and the Sick Pay Class at the incorrect rate of pay. Plaintiff and the Sick Pay Class regularly use accrued sick leave in workweeks in which they also earn non-discretionary remuneration, including for example profit-sharing pay. As a matter of policy and practice, Defendants pay Plaintiff and the Sick Pay Class at the base hourly rate of pay, as opposed to the regular rate of pay, which would consider all non-discretionary remuneration in addition to their base hourly wages, including for example profit-sharing pay, or the rate resulting from dividing the employees' total wages, not including overtime premium pay, by the employees' total hours worked in the full pay periods of the prior 90 days of employment, as

1 required by Section 246. This results in underpayments of sick pay wages to Plaintiff and the Sick Pay
2 Class.

3 29. Section 204 provides that wages generally are due and payable twice during each
4 calendar month and to be paid no later than the payday for the next regular payroll period. Consistent
5 with Section 204, Section 246 specifically requires that vested sick pay wages are due and to be paid no
6 later than the payday for the next regular payroll period after accrued sick leave is used as paid sick
7 time. Similarly, Section 201 provides that if an employer discharges an employee, the wages earned and
8 unpaid at the time of discharge are due and payable immediately. Section 202 provides that an
9 employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her
10 employment, unless the employee has given seventy-two (72) hours previous notice of his or her
11 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. The
12 Labor Code penalizes untimely payments. For example, Section 203 provides that if an employer
13 willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the
14 employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages
15 shall not continue for more than thirty (30) days. Likewise, Section 210 provides penalties for violations
16 of Section 204.

17 30. As alleged herein and as a matter of policy and practice, Defendants routinely underpay
18 sick pay wages and thus do not timely pay Plaintiff and the Sick Pay Class all owing and underpaid sick
19 pay wages. As a result, Defendants violate Sections 201-204, 233, and 246, among other Labor Code
20 provisions. On information and belief, Defendants were advised by skilled lawyers and knew, or should
21 have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations, especially since
22 the California Supreme Court has explained that "[c]ourts have recognized that 'wages' also include
23 those benefits to which an employee is entitled as a part of his or her compensation, including money,
24 room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th
25 1094, 1103 (2007) (emphasis added). Because Defendants willfully fail to timely pay Plaintiff and the
26 Sick Pay Class all sick pay wages due, Defendants are subject to applicable penalties.

1 31. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
2 entitles Plaintiff and the Sick Pay Class to underpaid sick pay, including interest thereon, applicable
3 penalties, attorneys' fees, and costs of suit.

4 **SECOND CAUSE OF ACTION**

5 **Unpaid Overtime (Lab. Code §§ 510, 1198)**

6 **(By Plaintiff and the Overtime Class Against All Defendants)**

7 32. The preceding paragraphs are re-alleged and incorporated by this reference.

8 33. Section 510 and the applicable IWC Wage Order provide that "[a]ny work in excess of
9 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
10 hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no
11 less than one and one-half times the regular rate of pay for an employee" and that "[a]ny work in excess
12 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
13 an employee." Section 1198 makes unlawful conditions of labor that are prohibited by the applicable
14 IWC Wage Order.

15 34. As a matter of policy and practice, Defendants fail to pay all overtime wages due to
16 Plaintiff and the Overtime Class. Plaintiff and the Overtime Class regularly work hours entitled to
17 overtime wages in workweeks in which they also earn non-discretionary remuneration, including for
18 example profit-sharing pay. Defendants fail to consider such remuneration when paying overtime
19 wages. Defendants thus underpay overtime wages to Plaintiff and the Overtime Class.

20 35. As alleged herein and as a matter of policy and practice, Defendants routinely underpay
21 overtime wages and thus do not timely pay Plaintiff and the Overtime Class all owing and underpaid
22 overtime wages. On information and belief, Defendants were advised by skilled lawyers and knew, or
23 should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Because
24 Defendants willfully fail to timely pay Plaintiff and the Overtime Class all overtime wages due,
25 Defendants are subject to applicable penalties.

26 36. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
27 entitles Plaintiff and the Overtime Class to recover underpaid overtime wages, including interest
28 thereon, applicable penalties, attorneys' fees, and costs of suit.

1 **THIRD CAUSE OF ACTION**

2 **Inaccurate Itemized Wage Statements (Lab. Code § 226(a))**

3 **(By Plaintiff, the Wage Statement Class, and Wage Statement Sub-Class Against All Defendants)**

4 37. The preceding paragraphs are re-alleged and incorporated by this reference.

5 38. Section 226(a) requires an employer to furnish to its employees itemized wage
6 statements that show accurate information, including without limitation, all applicable hourly rates in
7 effect during the pay period, the gross wages earned, the net wages earned, and the name of the legal
8 entity that is the employer.

9 39. As a matter of policy and practice, Defendants fail to provide accurate itemized wage
10 statements to Plaintiff and the Wage Statement Sub-Class. Specifically, because of Defendants' sick pay
11 and overtime violations, Defendants fail to furnish Plaintiff and the Wage Statement Sub-Class with
12 wage statements that accurately itemize and show all applicable hourly rates, gross wages earned, and
13 net wages earned.

14 40. As a matter of policy and practice, Defendants also fail to provide accurate itemized
15 wage statements to Plaintiff and the Wage Statement Class. Specifically, Defendants fail to furnish
16 Plaintiff and all other employees with wage statements that itemize and show the name of the legal
17 entity that is the employer. Instead, the wage statements identify "Ritchie Bros. Auctioneers Inc.," a
18 legal entity that is identified in the California Secretary of State's records as forfeited and resigned in
19 1999.

20 41. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
21 entitles Plaintiff, the Wage Statement Class, and Wage Statement Sub-Class to recover applicable
22 penalties, attorneys' fees, and costs of suit.

23 **FOURTH CAUSE OF ACTION**

24 **Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)**

25 **(By Plaintiff, the Sick Pay Class, and the Overtime Class Against All Defendants)**

26 42. The preceding paragraphs are re-alleged and incorporated by this reference.

27 43. Plaintiff is informed and believes that at Defendants have engaged and continue to
28 engage in unfair and unlawful business practices in California by utilizing the employment policies and

1 practices alleged herein, including the failures to pay or timely pay all sick pay wages and overtime
2 wages.

3 44. Defendants' utilization of such unfair and unlawful business practices constitutes unfair
4 and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed
5 by the UCL. Defendants have deprived Plaintiff and the Class the minimum working condition
6 standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

7 45. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
8 entitles Plaintiff, the Sick Pay Class, and the Overtime Class to restitution of all sums benefitting
9 Defendants by means of the unfair or unlawful practices complained of herein, including interest
10 thereon, attorneys' fees, and costs of suit.

11 **FIFTH CAUSE OF ACTION**

12 **Violation of Labor Code §§ 2698 *Et Seq.***

13 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

14 46. The preceding paragraphs are re-alleged and incorporated by this reference.

15 47. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
16 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
17 capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 226, 233, 246, 510,
18 and 1198, committed since July 29, 2019, against all aggrieved employees.

19 48. As stated herein, Defendants fail to pay or timely pay all sick pay wages, fail to pay or
20 timely pay all overtime wages, and fail to provide accurate itemized wage statements. Under Section
21 2699(c), Plaintiff is an "aggrieved employee," as one or more of the alleged violations was committed
22 against Plaintiff as an employee of Defendants.

23 49. On or about December 20, 2020, Plaintiff sent written notice to the Labor & Workforce
24 Development Agency ("LWDA") of specific facts and theories for Defendants' violations of Sections
25 201-204, 226, 233, 246, 510, and 1198. Plaintiff simultaneously sent written notice to Defendants via
26 certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor
27 indicated that it intends to investigate the allegations in the written notice.

50. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable penalties for Defendants' violations against all aggrieved employees for the period described above.

PRAAYER FOR RELIEF

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

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for damages, including sick pay wages and interest thereon, penalties, and costs and attorneys' fees, pursuant to Sections 203, 210, 218, 218.5, 218.6, 233, 246, and 248.5;
5. Upon the Second Cause of Action for damages, including overtime wages and interest thereon, penalties, and costs and attorneys' fees, pursuant to Sections 203, 210, 218.5, 218.6, and 1194;
6. Upon the Third Cause of Action for penalties and for costs and attorneys' fees, pursuant to Section 226;
7. Upon the Fourth Cause of Action for restitution of all funds acquired by Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon, and for costs and attorneys' fees;
8. Upon the Fifth Cause of Action for penalties according to proof and for costs and attorneys' fees, pursuant to Sections 210, 226.3, 248.5, 558, and 2699;
9. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5, 218.6, 226, 233, 1198, and 2699, and Code of Civil Procedure section 1021.5; and
10. For such other and further relief that the Court may deem just and proper.

DATED: January 25, 2021

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff