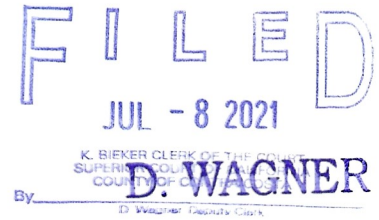


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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF CONTRA COSTA
10 UNLIMITED JURISDICTION

11 LANCE JORGENSEN, on behalf of himself
12 and all others similarly situated,

13 *Plaintiff,*

14 vs.

15 BILL BRANDT FORD, INC., a California
16 corporation; and DOES 1 through 50,
inclusive,

17 *Defendants.*

Case No.: MSC21-00901

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Failure to Indemnify (Lab. Code § 2802);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
8. Penalties Pursuant to Labor Code § 2699, *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff LANCE JORGENSEN (“Plaintiff”), on behalf of himself, the state of California, all
2 others similarly situated, and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants BILL
5 BRANDT FORD, INC., a California corporation; and DOES 1 through 50, inclusive, (collectively
6 referred to as “Defendants”) for alleged violations of the California Labor Code and California
7 Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- 8 (1) failed to pay them overtime wages at the correct rate;
9 (2) failed to pay them double time wages at the correct rate;
10 (3) failed to pay them overtime and/or double time wages by failing to include all
11 applicable remuneration in calculating the regular rate of pay;
12 (4) failed to provide them with meal periods;
13 (5) failed to provide them with rest periods;
14 (6) failed to separately compensate for rest periods;
15 (7) failed to pay them premium wages for missed meal and rest periods;
16 (8) failed to provide them with accurate written wage statements;
17 (9) failed to reimburse them for necessary business expenditures incurred;
18 (10) failed to pay them all of their final wages following separation of employment;
19 and
20 (11) failed to timely pay wages on a semi-monthly or bi-weekly basis.

21 Based on these alleged Labor Code violations, Plaintiff now brings this class and
22 representative action to recover unpaid wages, liquidated damages, civil and statutory penalties,
23 restitution and related relief on behalf of himself, the state of California, all others similarly situated,
24 and the general public.

25 **JURISDICTION AND VENUE**

26 2. This Court has subject matter jurisdiction to hear this case because the monetary
27 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction
28 of the Superior Court of the State of California.

3. Venue is proper in the County of Contra Costa pursuant to Code of Civil Procedure sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business and/or has an agent therein.

4. Venue is proper in Contra Costa County because Defendants' have at all times alleged herein, conducted business in Contra Costa County, and throughout California. As such, venue is proper in any county in California.

PARTIES

5. Plaintiff LANCE JORGENSEN is, and at all relevant times mentioned herein, an individual residing in the State of California.

6. Plaintiff is informed and believes, and thereupon alleges that BILL BRANDT FORD, INC., is, and at all relevant times mentioned herein, a California corporation doing business in the State of California.

7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

8. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, joint employers, owners, principals or co-participants of some or all of the other defendants, and in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent and ratification by such other defendants.

9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times

mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and conspired with one another, and aided and abetted one another to accomplish the occurrences, acts and omissions alleged herein.

10. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

11. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

Hourly Employee Class: All persons employed by Defendants, collectively or separately, and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Hourly Employee Class”).

Meal Period Sub-Class: All **Hourly Employee Class** members who worked in a shift in excess of five hours during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

Waiting Time Penalties Sub-Class: All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

Wage Statement Class: All persons employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

Reimbursement Class: All persons employed by Defendants in California who incurred unreimbursed business expenditures for Defendants during the period beginning four years before the filing of this action and ending when final judgment is entered.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into sub-classes and/or by limitation to particular issues.

13. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of

1 class members, Plaintiff is informed and believes, and thereupon alleges that the actual number
2 exceeds the minimum required for numerosity under California law.

3 14. **Commonality and Predominance:** Common questions of law and fact exist as to all
4 class members and predominate over any questions which affect only individual class members.
5 These common questions include, but are not limited to:

- 6 A. Whether Defendants maintained a policy or practice of failing to provide
7 employees with their rest periods;
- 8 B. Whether Defendants maintained a policy or practice of failing to separately
9 compensate employees for their rest periods;
- 10 C. Whether Defendants maintained a policy or practice of failing to provide
11 employees with their meal periods;
- 12 D. Whether Defendants failed to pay premium wages to class members when they
13 have not been provided with meal and rest periods at the appropriate rates of
14 pay;
- 15 E. Whether Defendants failed to pay minimum and/or overtime wages to class
16 members for all time worked;
- 17 F. Whether Defendants maintained a policy or practice of failing indemnify
18 employees for necessary business expenditures incurred;
- 19 G. Whether Defendants failed to provide class members with accurate written
20 wage statements as a result of providing them with written wage statements
21 with inaccurate entries for, among other things, amounts of gross and net
22 wages, and total hours worked;
- 23 H. Whether Defendants applied policies or practices that result in late and/or
24 incomplete final wage payments;
- 25 I. Whether Defendants are liable to class members for waiting time penalties
26 under Labor Code section 203; and
- 27 J. Whether class members are entitled to restitution of money or property that
28 Defendants may have acquired from them through unfair competition;

15. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to comply with the California Labor Code and Business and Professions Code as alleged in this Complaint.

16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise conflict with, the interests of absent class members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent class members.

18. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of the class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

GENERAL ALLEGATIONS

19. Plaintiff worked for Defendants from September 1, 2018 through March 9, 2020 as a non-exempt hourly employee.¹

¹ Plaintiff incorporates Appendix I to the California Rules of Court, entitled “Emergency Rules Related to COVID-19,” tolling all operative claims herein from April 6, 2020, until October 1, 2020, for a period of 178 days.

1 20. Plaintiff and Class members were not paid proper wages and overtime for all hours
2 worked, at the proper rates of pay. Plaintiff and class members were consistently required to work in
3 excess of eight (8) hours a day and/or forty (40) hours a week, entitling Plaintiff and Class Members
4 to overtime wages. Plaintiff and class members earned commission earnings and non-discretionary
5 and performance-based bonuses in addition to their hourly rates of pay. However, these additional
6 earnings were not factored or considered when determining Plaintiff and class members' regular rates
7 of pay, and respective overtime rates of pay. Additionally, Plaintiff and class members were paid on
8 a draw-versus-commission basis. However, Plaintiff and class members were not separately
9 compensated a minimum wage rates for rest periods.

10 21. Putative class members were not provided with meal periods of at least thirty (30)
11 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
12 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
13 take their meal periods, or that advised putative class members of their meal and rest period rights;
14 and (3) Defendants' practice of requiring putative class members to continue working through their
15 meal and rest periods due to the excessive workload.

16 22. Putative class members were not provided with rest periods of at least ten (10) minutes
17 for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not
18 scheduling each rest period as part of each work shift, including second rest breaks for shifts of six
19 (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to
20 take their rest periods, or that properly advised putative class members of their rest period rights; (3)
21 Defendants' policy and practice of requiring putative class members to remain on the premises during
22 their rest breaks; (4) Defendants' policy and practice of requiring putative class members to continue
23 working through their rest breaks due to the excessive workload; and (5) Defendants' policy and
24 practice of failing to separately compensate employees for rest breaks.

25 23. Additionally, and as discussed above, Defendants failed to pay Plaintiff and class
26 members premium pay wages at their appropriate regular rates of pay for each meal and rest period
27 denied.

28 24. Plaintiff and the putative class were not provided with accurate wage statements as

1 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
2 statements as “a detachable part of the check, draft, or voucher paying the employee’s wages, or
3 separately if wages are paid by personal check or cash, an accurate itemized statement in writing.”
4 Additionally, the wage statements issued to Plaintiff and class members were not recorded in “ink or
5 other indelible form.”

6 25. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
7 earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

8 26. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked
9 by the employee” were not accurately reflected in that: all hours worked, including overtime, were
10 not included.

11 27. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned”
12 were not accurately reflected in that: all hours worked, including overtime, were not included.

13 28. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
14 hourly rates in effect during the pay period and the corresponding number of hours worked at each
15 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
16 overtime, were not included.

17 29. Additionally, Plaintiff and class members were required to incur necessary business
18 expenses in executing their duties under Defendants’ employ. Specifically, Plaintiff and class
19 members were required to use their personal cellular phones to perform their work related duties for
20 which they were never reimbursed.

21 30. Also, Defendants failed to timely pay Plaintiff and aggrieved employees on a semi-
22 monthly or bi-weekly basis in accordance with Labor Code § 204.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PROVIDE MEAL PERIODS**

25 **(Lab. Code §§ 226.7, 512, 1174, and 1198)**

26 **(Plaintiff and Meal Period Sub-Class)**

27 31. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
28 fully alleged herein.

1 32. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
2 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
3 Code and the applicable Industrial Welfare Commission Wage Order.

4 33. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
5 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt
6 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
7 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
8 minutes for each work period of ten hours.

9 34. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
10 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
11 during required meal periods and require employers to pay non-exempt employees an hour of
12 premium wages on each workday that the employee is not provided with the required meal period.

13 35. Compensation for missed meal periods constitutes wages within the meaning of Labor
14 Code section 200.

15 36. Labor Code section 1198 makes it unlawful to employ a person under conditions that
16 violate the applicable Wage Order.

17 37. Section 11 of the applicable Wage Order states:

18 “No employer shall employ any person for a work period of more than five (5) hours
19 without a meal period of not less than 30 minutes, except that when a work period of
20 not more than six (6) hours will complete the day’s work the meal period may be
21 waived by mutual consent of the employer and employee. Unless the employee is
22 relieved of all duty during a 30 minute meal period, the meal period shall be considered
23 an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall
be permitted only when the nature of the work prevents an employee from being
relieved of all duty and when by written agreement between the parties an on-the-job
paid meal period is agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time.”

24 38. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
25 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
26 members were not subject to valid on-duty meal period agreements with Defendants.

27 39. Plaintiff alleges that, at all relevant times during the applicable limitations period,
28 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**

1 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
2 hour work period, as required by Labor Code section 512 ad the applicable Wage Order.

3 40. Plaintiff alleges that, at all relevant times during the applicable limitations period,
4 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
5 **Class** members when they worked five (5) hours without clocking out for any meal period.

6 41. Plaintiff alleges that, at all relevant times during the applicable limitations period,
7 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
8 **Sub-Class** with a second meal period when they worked shifts of ten or more hours and failed to pay
9 them premium wages as required by Labor Code 512 and the applicable Wage Order.

10 42. Moreover, Defendants written policies fail to inform Meal period Class Members of
11 their meal period rights under the Labor Code and applicable Wage Orders.

12 43. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
13 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
14 regular rates of pay when required meal periods were not provided.

15 44. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
16 himself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest
17 thereon, and costs of suit.

18 45. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
19 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the
20 **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REST PERIODS**

23 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

24 **(Plaintiff and Rest Period Sub-Class)**

25 46. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
26 herein.

27 47. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
28 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor

1 Code and the applicable Wage Order.

2 48. Section 12 of the applicable Wage Order imposes an affirmative obligation on
3 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
4 minutes of net rest time for each four hour work period, or major fraction thereof, that must be in the
5 middle of each work period insofar as practicable.

6 49. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
7 employers from requiring employees to work during required rest periods and require employers to
8 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
9 workday that the employee is not provided with the required rest period(s).

10 50. Compensation for missed rest periods constitutes wages within the meaning of Labor
11 Code section 200.

12 51. Labor Code section 1198 makes it unlawful to employ a person under conditions that
13 violate the Wage Order.

14 52. Plaintiff alleges that, at all relevant times during the applicable limitations period,
15 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
16 with net paid rest period of at least ten uninterrupted minutes for each four hour work period, or major
17 fraction thereof, as required by the applicable Wage Order.

18 53. Plaintiff and **Rest Period Sub-Class** members were not provided with rest periods of
19 at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
20 Defendants' policy of not scheduling each rest period as part of each work shift, including second
21 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that
22 encouraged employees to take their rest periods, or that properly advised **Rest Period Sub-Class**
23 members of their rest period rights; (3) Defendants' policy and practice of requiring **Rest Period**
24 **Sub-Class** members to remain on the premises during their rest breaks; (4) Defendants' policy and
25 practice of requiring **Rest Period Sub-Class** members to continue working through their rest breaks
26 due to the excessive workload; and (5) Defendants' policy and practice of failing to separately
27 compensate **Rest Period Sub-Class** members for rest breaks.

28 54. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**

1 members additional premium wages when required rest periods were not provided.

2 55. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of himself
3 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
4 costs of suit.

5 56. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
6 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest**
7 **Period Sub-Class** members, seek to recover reasonable attorneys' fees.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

10 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

11 **(Plaintiff and Hourly Employee Class)**

12 57. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
13 herein.

14 58. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been
15 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
16 applicable Wage Order.

17 59. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
18 which an employee is subject to the control of the employer, and includes all the time the employee
19 is suffered or permitted to work, whether or not required to do so."

20 60. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
21 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours
22 that an employer has actual or constructive knowledge that employees are working.

23 61. Labor Code section 1194 invalidates any agreement between an employer and an
24 employee to work for less than the minimum or overtime wage required under the applicable Wage
25 Order.

26 62. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
27 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
28 to the underlying unpaid minimum wages and interest thereon.

1 63. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
2 than the minimum wage required under the applicable Wage Order for all hours worked during a
3 payroll period.

4 64. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
5 person acting either individually or as an officer, agent or employee of another person, to pay an
6 employee, or cause an employee to be paid, less than the applicable minimum wage.

7 65. Labor Code section 1198 makes it unlawful for employers to employ employees under
8 conditions that violate the applicable Wage Order.

9 66. Labor Code section 204 requires employers to pay non-exempt employees their earned
10 wages for the normal work period at least twice during each calendar month on days the employer
11 designates in advance and to pay non-exempt employees their earned wages for labor performed in
12 excess of the normal work period by no later than the next regular payday.

13 67. Labor Code section 223 makes it unlawful for employers to pay their employees lower
14 wages than required by contract or statute while purporting to pay them legal wages.

15 68. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
16 to pay non-exempt employees overtime wages of no less than one and one-half times their respective
17 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in
18 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh
19 consecutive day of one workweek.

20 69. Labor Code section 510 and Section 3 of the applicable Wage Order also require
21 employers to pay non-exempt employees overtime wages of no less than two times their respective
22 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
23 worked in excess of eight hours on a seventh consecutive workday during the workweek.

24 70. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
25 centrally devised policies and practices to her and **Hourly Employee Class** members with respect to
26 working conditions and compensation arrangements.

27 71. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
28 **Employee Class** members for all time worked, including but not limited to, overtime hours at

1 statutory and/or agreed rates. Plaintiff and **Hourly Employee Class** members were not paid proper
2 wages and overtime for all hours worked, at the proper rates of pay. Plaintiff and **Hourly Employee**
3 **Class** members were consistently required to work in excess of eight (8) hours a day and/or forty (40)
4 hours a week, entitling Plaintiff and **Hourly Employee Class** members to overtime wages. Plaintiff
5 and **Hourly Employee Class** members earned commission earnings and non-discretionary and
6 performance-based bonuses in addition to their hourly rates of pay. However, these additional
7 earnings were not factored or considered when determining Plaintiff and **Hourly Employee Class**
8 members' regular rates of pay, and respective overtime rates of pay. Additionally, Plaintiff and
9 **Hourly Employee Class** members were paid on a draw-versus-commission basis. However, Plaintiff
10 and **Hourly Employee Class** members were not separately compensated a minimum wage rates for
11 rest periods.

12 72. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
13 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
14 full amount of wages earned during each pay period during the applicable limitations period,
15 including overtime wages.

16 73. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
17 behalf of herself and **Hourly Employee Class** members, seek to recover unpaid straight time and
18 overtime wages, interest thereon and costs of suit.

19 74. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
20 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and
21 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

24 **(Lab. Code § 226)**

25 **(Plaintiff and Wage Statement Penalties Sub-Class)**

26 75. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
27 herein.

28 76. Labor Code section 226(a) states:

1 “An employer, semimonthly or at the time of each payment of wages, shall furnish to
2 his or her employee, either as a detachable part of the check, draft, or voucher paying
3 the employee’s wages, or separately if wages are paid by personal check or cash, an
4 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
5 worked by the employee, except as provided in subdivision (j), (3) the number of
6 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
7 rate basis, (4) all deductions, provided that all deductions made on written orders of
8 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
9 inclusive dates of the period for which the employee is paid, (7) the name of the
10 employee and only the last four digits of his or her social security number or an
11 employee identification number other than a social security number, (8) the name and
12 address of the legal entity that is the employer and, if the employer is a farm labor
13 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
14 legal entity that secured the services of the employer, and (9) all applicable hourly
15 rates in effect during the pay period and the corresponding number of hours worked at
16 each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
17 temporary services employer as defined in Section 201.3, the rate of pay and the total
18 hours worked for each temporary services assignment. The deductions made from
19 payment of wages shall be recorded in ink or other indelible form, properly dated,
20 showing the month, day, and year, and a copy of the statement and the record of the
21 deductions shall be kept on file by the employer for at least three years at the place of
22 employment or at a central location within the State of California. For purposes of
23 this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an
24 employee or a computer-generated record that accurately shows all of the information
25 required by this subdivision.”

26 77. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the
27 “detachable part of the check” provision and the “accurate itemized statement in writing” provision
28 of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
retains the right to elect to receive a written paper stub or record and that those who are provided with
electronic wage statements retain the ability to easily access the information and convert the electronic
statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

78. Plaintiff is informed and believes that, at all relevant times during the applicable
limitations period, Defendants have failed to provide **Wage Statement Class** members with written
wage statements as described above. Additionally, the wage statements issued to class members
failed to account for the unpaid minimum wages, overtime, and premium pay wages described
above.

79. Plaintiff is informed and believes that Defendants’ failure to provide her and **Wage
Statement Class** members with accurate written wage statements were intentional in that Defendants
have the ability to provide them with accurate wage statements but have intentionally provided them
with written wage statements that Defendants have known do not comply with Labor Code section

1 226(a).

2 80. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
3 Defendants have violated their legal rights to receive accurate wage statements and have misled them
4 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
5 statements have prevented immediate challenges to Defendants' unlawful pay practices, has required
6 discovery and mathematical computations to determine the amount of wages owed, has caused
7 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
8 submission of inaccurate information about wages and deductions to federal and state government
9 agencies.

10 81. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
11 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
12 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
13 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
14 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

17 **(Lab. Code §§ 201-203)**

18 **(Plaintiff and Waiting Time Penalties Sub-Class)**

19 82. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
20 herein.

21 83. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
22 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
23 earned and unpaid before termination or resignation.

24 84. At all relevant times, pursuant to Labor Code section 201, employees who have been
25 discharged have been entitled to payment of all final wages immediately upon termination.

26 85. At all relevant times, pursuant to Labor Code section 202, employees who have
27 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
28 payment of all final wages at the time of resignation.

86. Plaintiff is informed and believes that, at all relevant time during the applicable limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class** members all of their final wages in accordance with the Labor Code.

87. Plaintiff is informed and believes that, at all relevant times during the applicable limitations period, Defendants have maintained a policy or practice of paying **Waiting Time Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code sections 201 or 202 by failing to timely pay them all final wages.

88. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201 and/or 202 but have intentionally adopted policies or practices that are incompatible with those requirements.

89. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of himself and **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

90. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

SIXTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

(Plaintiff and Expense Reimbursement Class)

91. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

92. Labor Code section 2802(a) states:

“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.”

1 93. At all relevant times during the applicable limitations period, Plaintiff and the **Expense**
2 **Reimbursement Class** members incurred necessary business related expenses and costs. Defendants
3 required Plaintiff and the **Expense Reimbursement Class** to incur necessary business expenses in
4 executing their duties under Defendants' employ. Specifically, Plaintiff and **Expense**
5 **Reimbursement Class** members were required to use their personal cellular phones to perform their
6 work related duties for which they were never reimbursed.

7 94. Plaintiff is informed and believes, and thereupon alleges that the reimbursement paid
8 by Defendants was insufficient to indemnify Plaintiff and **Expense Reimbursement Class** members
9 for all necessary expenses incurred in the discharge of their duties.

10 95. At all relevant times during the applicable limitations period, Defendants required
11 Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused
12 by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense**
13 **Reimbursement Class** members for all such expenditures.

14 96. Plaintiff is informed and believes that, during the applicable limitations period,
15 Defendants maintained a policy or practice of not reimbursing Plaintiff and **Expense**
16 **Reimbursement Class** members for all necessary business expenses.

17 97. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to
18 restitution for all unpaid amounts due and owing to within four years of the date of the filing of the
19 Complaint and until the date of entry of judgment.

20 98. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seek
21 interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees
22 pursuant to Code of Civil Procedure section 1021.5.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

4 **(Plaintiff and UCL Class)**

5 99. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 100. Business and Professions Code section 17200 defines “unfair competition” to include
8 any unlawful business practice.

9 101. Business and Professions Code section 17203-17204 allow a person who has lost
10 money or property as a result of unfair competition to bring a class action in accordance with Code
11 of Civil Procedure section 382 to recover money or property that may have been acquired from
12 similarly situated persons by means of unfair competition.

13 102. California law requires employers to pay hourly, non-exempt employees for all hours
14 they are permitted or suffered to work, including hours that the employer knows or reasonable should
15 know that employees have worked.

16 103. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST,
17 SECOND, THIRD, and SIXTH causes of action herein.

18 104. Plaintiff lost money or property as a result of the aforementioned unfair competition.

19 105. Defendants have or may have acquired money by means of unfair competition.

20 106. Plaintiff is informed and believes and thereupon alleges that by committing the Labor
21 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
22 226.6, 226.7, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802
23 which make it a misdemeanor to commit the Labor Code violations alleged herein.

24 107. Defendants have committed criminal conduct through their policies and practices of,
25 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
26 employees with compliant meal and rest periods and pay non-exempt employees for all hours worked
27 at the proper rates of pay.

28 108. Defendants’ unlawful conduct as alleged in this Complaint amounts to and constitutes

1 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
2 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
3 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
4 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
5 similarly situated persons in a class action proceeding.

6 109. As a result of Defendants' violations of the Labor Code during the applicable
7 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
8 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

9 110. Plaintiff is informed and believes that other similarly situated persons have been
10 subject to the same unlawful policies or practices of Defendants.

11 111. Due to the unfair and unlawful business practices in violation of the Labor Code,
12 Defendants have gained a competitive advantage over other comparable companies doing business in
13 the State of California that comply with their legal obligations.

14 112. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
15 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates
16 or is considered unlawful under any other state or federal law.

17 113. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
18 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
19 Defendants, and each of them, and their agents and employees, from further violations of the Labor
20 Code and applicable Wage Orders.

21 114. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
22 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
23 Defendants, and each of them, and their agents and employees, from further violations of the Labor
24 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
25 order permanently enjoining Defendants, and each of them, and their respective agents and
26 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
27 Wage Orders.

28 115. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of

1 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
2 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
3 and unfair business practices.

4 116. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
5 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
6 reasonable attorneys' fees in connection with their unfair competition claims.

7 117. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
8 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
9 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
10 and unfair business practices.

11 118. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
12 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
13 reasonable attorneys' fees in connection with their unfair competition claims.

14 **EIGHTH CAUSE OF ACTION**

15 **CIVIL PENALTIES**

16 **(Lab. Code §§ 2698 *et seq.*)**

17 119. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
18 herein.

19 120. In addition to all the allegations herein, Defendants failed to timely pay Plaintiff and
20 aggrieved employees on a semi-monthly or bi-weekly basis in accordance with Labor Code § 204.

21 121. During the applicable limitations period, Defendants have violated Labor Code
22 sections 201, 202, 203, 204, 210, 223, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, 1198, and
23 2802.

24 122. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of
25 herself and other current and former employees, to bring a representative civil action to recover
26 civil penalties pursuant to the procedures set forth in Labor Code section 2699.3 that may, but need
27 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

28 123. Plaintiff, a former employee against who Defendants committed one or more of the

1 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
2 within the meaning of Labor Code section 2699(c).

3 124. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
4 section 2699.3.

5 125. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
6 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 223, 226(a),
7 226.7, 227.3, 510, 512, 558, 1194, 1197, 1198, and 2802:

- 8 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 1174, 1194,
9 1198 and 2802, \$100 for each employee per pay period for each initial
10 violation and \$200 for each employee per pay period for each subsequent
11 violation (penalties set by Labor Code section 2699(f)(2));
- 12 B. For violations of Labor Code section 203, a penalty in an amount not
13 exceeding thirty days pay as waiting time (penalties set by Labor Code
14 section 256);
- 15 C. For violations of Labor Code section 204, \$100 for each employee for each
16 initial violation that was neither willful nor intentional, \$200 for each
17 employee, plus 25% of the amount unlawfully withheld from each employee,
18 for each initial violation that was either willful or intentional, and \$200 for
19 each employee, plus 25% of the amount unlawfully withheld from each
20 employee, for each subsequent violation, regardless of whether the
21 subsequent violation was either willful or intentional (penalties set by Labor
22 Code section 210);
- 23 D. For violations of Labor Code section 223, \$100 for each employee for each
24 initial violation that was neither willful nor intentional, \$200 for each
25 employee, plus 25% of the amount unlawfully withheld from each employee,
26 for each initial violation that was either willful or intentional, and \$200 for
27 each employee, plus 25% of the amount unlawfully withheld from each
28 employee, for each subsequent violation, regardless of whether the

subsequent violation was either willful or intentional (penalties set by Labor Code section 225.5);

E. For violations of Labor Code section 226(a), if this action is deemed to be an initial citation, \$250 for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, \$1,000 for each employee for each violation (penalties set by Labor Code section 226.3);

F. For violation of Labor Code sections 510 and 512, \$50 for each employee for each initial pay period for which the employee was underpaid, and \$100 for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code section 558);

G. For violations of Labor Code section 1197, \$100 for each aggrieved employee for each initial violation of Labor Code section 1197 that was intentional, and \$250 for each aggrieved employee per pay period for each subsequent violation of Labor Code section 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code section 1197.1);

H. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable attorneys' fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;
- (6) Liquidated damages;
- (7) Restitution;

- 1 (8) Declaratory relief;
2 (9) Pre-judgment interest;
3 (10) Statutory penalties;
4 (11) Civil penalties;
5 (12) Costs of suit;
6 (13) Reasonable attorneys' fees; and
7 (14) Such other relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff, on behalf of himself, the state of California, all other similarly situated, and the
10 general public, hereby demands a jury trial on all issues so triable.

11
12 Dated: July 7, 2021

13 SETAREH LAW GROUP
14
15

16 Shaun Setareh
17 David Keledjian
18 Attorneys for Plaintiff
19 LANCE JORGENSEN
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On July 7, 2021, I served the foregoing documents described as:

in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as follows:

[X] ONLY BY ELECTRONIC TRANSMISSION

[X] **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 7, 2021, at Beverly Hills, California.


Eric Sams