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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

BY H DEPUTY CLERK

12 Attorneys for Plaintiffs RALPH GRAY, JR.; DAVID JARRELL;
13 ROBERT MILLEMAN; ORVILLE OSBORNE; JEFFREY
14 SNYDER; and DENNIS SPOHR, on behalf of
15 themselves and other similarly situated

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SONOMA

12 RALPH GRAY, JR.; DAVID JARRELL;
13 ROBERT MILLEMAN; ORVILLE
14 OSBORNE; JEFFREY SNYDER; and
15 DENNIS SPOHR on behalf of themselves
16 and other similarly situated,

15 Plaintiff,

16 v.

17 HANSEL FORD, INC.,

18 Defendant.

CASE NO.: SCV258850

*Assigned for all purposes to the
Honorable Patrick Broderick, Dept. 16*

CLASS ACTION

**THIRD AMENDED COMPLAINT FOR
FAILURE TO PAY FOR EACH HOUR
WORKED AT THE APPROPRIATE RATE;
FAILURE TO AUTHORIZE AND PERMIT
PAID REST BREAKS; FAILURE TO
PROVIDE MEALS PERIODS; FAILURE
TO PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS; FAILURE TO
PROVIDE ALL WAGES DUE AT
SEPARATION; VIOLATION OF
CALIFORNIA'S UNFAIR COMPETITION
LAW; AND STATUTORY PENALTIES
PURSUANT TO PAGA**

22 2nd Amd CT: September 21, 2016
23 FAC Filed: June 7, 2016
24 Trial Date: None

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I. INTRODUCTION

This is an action brought by Plaintiffs RALPH GRAY, JR.; DAVID JARRELL; ROBERT MILLEMAN; ORVILLE OSBORNE; JEFFREY SNYDER; and DENNIS SPOHR ("Plaintiffs"), on their own behalf and on behalf of all those similarly situated, against Defendant HANSEL FORD, INC. ("Hansel Ford" or "Defendant"), alleging unfair business practices and violations of the California Labor Code and Industrial Welfare Commission Wage Order. Plaintiffs and the class seek restitution, equitable accounting, statutory penalties and damages, including declaratory and injunctive relief, attorneys' fees, and costs of suit.

Plaintiffs and all others similarly situated (the "class") are presently, or were formerly, employed by Defendant as mechanics/technicians. Plaintiffs and class members performed auto maintenance, service, and repair work for Defendant. During the statutory period, Defendant failed to compensate the class for all hours worked, pay proper minimum wages and overtime wages, maintain proper piece rate records, and properly pay wages at separation. Further, Defendant failed to provide rest periods as required under state law. As a direct result of these violations, Plaintiffs and the class were injured in the form of lost compensation over the statutory period.

II. PARTIES

1. Plaintiff DAVID JARRELL is currently employed by Defendant Hansel Ford. Plaintiffs DENNIS SPOHR; RALPH GRAY, JR.; ROBERT MILLEMAN; ORVILLE OSBORNE; and JEFFREY SNYDER were formerly employed by Defendant Hansel Ford. They bring this action on their own behalf and on behalf of all others similarly situated, and under the Private Attorneys General Act ("PAGA").

2. HANSEL FORD is a corporation doing business in California, and is a "person" as defined in California Labor Code ("Labor Code") § 18, and California Business and Professions Code § 17201. In addition, Hansel Ford is an "employer" as that term is used in the Labor Code and in the California Industrial Welfare Commission's orders regulating wages, hours, and working conditions.

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1 3. Venue is proper based on the location of Defendant Hansel Ford in Sonoma
2 County wherein the events giving rise to this Complaint occurred.

3 4. The relief requested is within the jurisdiction of this Court.

4 **III. FACTUAL ALLEGATIONS**

5 5. During the four years prior to the filing of this action, Defendant employed
6 Plaintiffs and class members.

7 6. The wages, hours and working conditions of individuals employed in
8 mechanical industries, including mechanics or technicians, are regulated by Industrial Welfare
9 Commission Wage Order 4-2001, Cal. Code Regs. tit. 8, § 11040 ("Wage Order 4") and
10 various provisions of the Labor Code.

11 7. As mechanics, each plaintiff and class member has been required at all times to
12 provide their own tools.

13 8. Wage Order 4, § 9(B) requires employers to pay employees who provide and
14 maintain their own tools at least two (2) times the state minimum wage for each and every hour
15 worked.

16 9. Labor Code § 1197 and Wage Order 4, §4 require employers to pay workers at
17 least minimum wage for each individual hour worked or portion thereof. See also, *Armenta v.*
18 *Osmose, Inc.* (2005) 135 Cal.App.4th 314; *Gonzalez v. Downtown LA Motors, LP* (2013) 215
19 Cal.App.4th 36.

20 10. From May 23, 2012 through July 1, 2013, Defendant compensated plaintiffs and
21 class members based on a "piece rate" system of pay. This system is based upon the number
22 and type of maintenance, repair, or service work performed. Each maintenance, repair or
23 service task is valued at a specific rate, and employees are paid based on the assigned value of
24 the task, regardless of the time required for completion. Employees are not paid hourly, but
25 rather based on the number of tasks completed at the assigned rate of compensation for the task
26 performed.

27 11. Defendant failed to compensate Plaintiffs and the class at the minimum rate to
28 be paid to employees who provide and maintain their own tools (twice the state minimum

1 wage), for all hours worked. This failure stems from the failure to provide pay for rest breaks
2 and the failure to provide pay for waiting around or unproductive time when Plaintiffs and the
3 class were present at the Defendant's facility but Plaintiffs were impeded from performing
4 piece rate work.

5 12. In doing so, Defendant failed to compensate the class for all hours worked at the
6 appropriate minimum rates, in violation of Labor Code §§ 510, 1197 and 226.7 as well as Wage
7 Order 4, §§ 3, 4 and 9.

8 13. Starting in July 2013, in recognition of the illegality of its prior pay plan, the
9 Defendant added an hourly pay component to weekly wages. Double the minimum wage,
10 which in 2013 was \$16 an hour, starting on July 1, 2014 was \$18 an hour and starting January
11 1, 2016 was \$20.00 an hour; was provided to Plaintiffs for the difference between 40 hours a
12 week at double minimum wage and each mechanic's "authorized" or "flagged" hours
13 (productive hours) at their assigned flat rate hourly rate. If a mechanic's productivity was
14 under 50%, the mechanic would only receive double the state minimum wage for each
15 hour worked. The calculation does not take into account the "regular" hours or hours
16 actually worked.

17 14. This change perpetuated the employer's practice using productive hours to
18 offset its double minimum wage obligation for non-productive hours. This practice has
19 been invalidated by the appellate court in both *Armenta* and *Downtown LA Motors*.

20 15. Labor Code § 510 states an employee must be compensated for "work." It
21 also provides that any work in excess of eight hours in one workday and any work in
22 excess of 40 hours in any one workweek and the first eight hours worked on the seventh
23 day of work in any one workweek shall be compensated at the rate of no less than one and
24 one-half times the regular rate of pay for an employee.

25 16. Plaintiffs worked for Defendant more than eight (8) hours in any workday
26 and/or more than 40 hours in any workweek for hours which they were not compensated at
27 a rate of one and one-half (1½) times their regular rate of pay. Defendant maintains and
28 enforces a policy of calculating overtime on a bimonthly basis, rather than on a weekly

1 basis. Defendant maintain a policy of adjusting time records by rolling daily overtime
2 hours worked onto another day of the week, often a Sunday, in an effort to avoid paying
3 daily overtime hours worked at the overtime rate. Defendant also maintains a policy of
4 calculating overtime at a rate of one half rather than one and one-half. Defendant's policies
5 result in a failure to pay the proper overtime rate for a period of work in which overtime
6 compensation of one and one-half the regular rate is required.

7 17. The adjustment of time records and miscalculation of overtime has resulted
8 in a secret underpayment of wages under Labor Code § 223 as well as underreporting
9 hours worked on wage statements required by Labor Code§ 226.

10 18. Under the terms of Wage Order 4, § 12, employees are entitled to two
11 uninterrupted ten minute paid rest periods during each eight hour shift.

12 19. Labor Code§ 226.7 requires employers to provide employees with meal and rest
13 periods mandated by the Wage Order and provides for wages of one additional hour of pay at
14 the employee's regular rate to compensate for each day such meal and/or rest period was not
15 provided up to a maximum of 2 additional hours of compensation per day.

16 20. During the four years prior to the filing of this action Defendant failed to
17 provide rest breaks and failed to pay employees during rest breaks in violation of Labor Code
18 §§ 1197 and 226.7 and Wage Order 4, §§ 4, 12. Employees were not provided with a billing
19 code or other mechanism to record rest breaks, causing Plaintiffs and the class to be unpaid for
20 each rest break taken and systematically discouraging mechanics from taking rest breaks.

21 21. Rest breaks were also unaccounted for on wage statements. The appellate court
22 has held that rest breaks must be a separate line item on a wage statement for piece rate
23 workers. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864. Failure to account for
24 rest breaks or provide a mechanism for recording or receiving pay for rest breaks is a failure to
25 provide a rest break as contemplated by Labor Code section 226.7.

26 22. Under the terms of Wage Order 4, § 11, employees are required to receive a ½
27 hour unpaid, off-duty meal period during each eight (8) hour shift. Employees working beyond
28 ten (10) hours in a day are entitled to a second ½ hour unpaid, off-duty meal period. These

1 provisions are also found in Labor Code § 512.

2 23. The Defendant regularly failed to provide Plaintiffs and others their right to the
3 state mandated ½ hour off-duty meal period. Plaintiffs and others have been instructed or
4 permitted to work "off the clock" while clocked out for meal periods. This instruction results in
5 a loss of the required meal period as well as a failure to compensate for all hours worked and
6 inaccurate wage statements.

7 24. Plaintiffs and the class have not been compensated one additional hour for each
8 day a meal and/or one additional hour for each day a paid rest period has not been provided.

9 25. Labor Code § 226(a) requires that an employer shall, at the time of each payment
10 of wages, provide each employee with an itemized statement in writing showing wages, hours
11 worked, and the number of piece-rate units earned and the applicable piece-rate if the employee
12 is paid on a piece-rate basis.

13 26. During one year prior to the filing of this action, the wage statements were
14 inaccurate under Labor Code §§ 226(a) and 1174(d) and Wage Order §7(A) because Defendant
15 underreported total hours worked and hours for which overtime compensation should have
16 been provided by adjusting time records, improperly calculating overtime and allowing off the
17 clock work. Further, the wage statements were inaccurate because they did not contain all of
18 the actual hours worked.

19 27. Labor Code §§ 201 and 202 require an employer to pay out all wages owed an
20 employee upon separation. Labor Code § 203 penalizes employers who fail to comply with §§
21 201 and 202 by requiring them to continue paying wages for up to 30 days or until payment is
22 executed.

23 28. By failing to pay for all hours worked, improperly calculating wages on
24 overtime hours worked, and failing to provide premium pay, Defendant has failed to prove all
25 wages due at separation.

26 29. These violations commonly affected all class members during the Statutory
27 Period.

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1 IV. CLASS ALLEGATIONS

2 30. Plaintiffs reallege, and incorporate by reference, the allegations contained in
3 paragraphs 1 through 29 above, as if fully stated herein.

4 31. Plaintiffs bring this action on behalf of themselves and all other current and
5 former mechanics similarly situated as a class action under California Code of Civil Procedure
6 ("CCP") § 382. Plaintiffs seek to represent the following class:

7 All current and former technicians or mechanics employed by
8 Defendant at its Santa Rosa, California location at any time from
May 24, 2012 through the present ("statutory period").

9 Should the Court determine that subdividing the class would be beneficial, five sub-
10 classes are readily defined as follows:

11 1. **Each Hour Worked Subclass**

12 All mechanics employed by Defendant at its Santa Rosa,
13 California location during the statutory period who were not
14 paid at least the appropriate minimum wage for any or each
hour worked in any workweek.

15 2. **Rest Period Subclass**

16 All mechanics employed by Defendant at its Santa Rosa,
17 California location during the statutory period who were not
18 authorized and permitted to take paid rest periods.

19 3. **Meal Period Subclass**

20 All mechanics employed by Defendant at its Santa Rosa,
21 California location during the statutory period who did not
receive 30 minute off-duty uninterrupted meal periods.

22 4. **Records Subclass**

23 All mechanics employed by Defendant at its Santa Rosa,
24 California location during the statutory period who, when paid
wages, were not provided with accurate itemized wage
statements.

25 5. **Separation Class**

26 All former mechanics employed by Defendant at its
27 Santa Rosa, California location during the statutory
28 period who have not received all wages due.

1 32. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of
2 Court to amend or modify the class descriptions with greater specificity or further division
3 into sub-classes or limitation to particular issues.

4 33. This action may be properly maintained as a class action under CCP § 382
5 because there is a well-defined community of interest in the litigation and the proposed
6 class is easily ascertainable.

7 **A. NUMEROSITY**

8 34. The members of the proposed class are so numerous that joinder of all the
9 members of the class is impracticable. While the precise number of class members has not
10 been determined at this time, Plaintiffs are informed and believe that Defendant employed
11 at least forty (40) mechanics during the statutory period. Of these individuals, 6 are named
12 plaintiffs and 16 are already informed of this action and are willing participants.

13 35. Plaintiffs allege Defendant's employment records will provide information
14 as to the number and identity of all class members. Those records will furthermore
15 disclose the recorded amount of time worked and pay received to date for each employee,
16 whether appropriate wage rates were applied, the piece rates and service records, and
17 employee attendance records. Otherwise, Plaintiffs and the class will have their own
18 reasonable estimates.

19 **B. COMMONALITY**

20 36. There are several questions of law and fact common to the class that
21 predominates over any questions affecting only individual class members. These common
22 questions of law and fact include, without limitation:

- 23 a. Whether Defendant violated Labor Code § 1194 and Wage Order 4, §§ 4
24 and 9 by not paying the class members at least twice the minimum wage for
25 each hour worked when providing and maintaining their own tools and
26 equipment;
- 27 b. Whether Defendant violated Labor Code § 510, 1197 and Wage Order 4, §4
28 by failing to pay workers at 1½ times their regular rate for all hours worked

- beyond 8 in a workday or 40 in a workweek;
- c. Whether Defendant violated Wage Order 4, § 11 and Labor Code § 226.7 by failing to provide paid rest periods in accordance with the Wage Order;
- d. Whether Defendant violated Wage Order 4, § 10 and Labor Code §§ 226.7 and 512 by failing to provide meal periods in accordance with the Wage Order;
- e. Whether Defendant violated Labor Code §§ 226 and 1174(d) and Wage Order 4, § 7, by failing to provide class members with accurate itemized statements and keep adequate payroll records; and
- f. Whether Defendant violated Labor Code §§ 201 and 202 by failing to pay all wages due at the time of separation of employment and continuing to pay wages under Labor Code §203 for every day wages were withheld.

C. TYPICALITY

37. The claims of the named Plaintiffs are typical of the claims of the proposed class. Plaintiffs and all members of the proposed class sustained injuries and damages arising out of and caused by Defendant' common course of conduct in violation of laws and regulations as alleged herein.

D. ADEQUACY OF REPRESENTATION

38. Plaintiffs are adequate representatives of the proposed class in that Plaintiffs have the same interests in the litigation of this case as the proposed class members. Plaintiffs are committed to vigorous prosecution of this case and have retained competent counsel that are highly experienced in class action and wage and hour litigation of this nature. Plaintiffs are not subject to any individual defenses different from those conceivably applicable to the Class as a whole.

E. SUPERIORITY OF CLASS ACTION

39. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed class members is not practicable, and questions of law and fact common to the class predominate over any

1 questions affecting only individual members of the class. Each member of the class has
2 been damaged and is entitled to recovery by reason of Defendant' illegal policies and/or
3 practices as described above.

4 40. Class action treatment will allow those similarly situated persons to litigate
5 their claims in the manner that is most efficient and economical for the parties and the
6 judicial system. Plaintiffs are not aware of any difficulties that are likely to be
7 encountered in the management of this action that would preclude its maintenance as a
8 class action.

9 41. A class action is superior to other available methods for the fair and efficient
10 adjudication of this controversy because individual litigation of the claims of all proposed
11 class members is impractical. Even if every proposed class member could afford
12 individual litigation, the court system could not. It would be unduly burdensome to the
13 courts in which individual litigation of numerous cases would proceed. Individualized
14 litigation would also present the potential for varying, inconsistent, or contradictory
15 judgments and would magnify the delay and expense to all parties and to the court system
16 resulting from multiple trials of the same complex factual issues. By contrast, the conduct
17 of this action as a class action presents fewer management difficulties, conserves the
18 resources of the parties and the court system, and protects the rights of each proposed class
19 member. Plaintiffs anticipate no management difficulties in this litigation.

20 42. If each employee were required to file an individual lawsuit, the Defendant
21 would gain an unconscionable advantage as they would be able to exploit and overwhelm
22 the limited resources of each individual Plaintiff with vastly superior financial and legal
23 resources. Requiring each class member to pursue an individual remedy would also
24 discourage the assertion of lawful claims of employees who would be disinclined to file an
25 action against their current/former employer for real and justifiable fear of retaliation and
26 permanent damage to their careers and subsequent employment.

1 43. Defendant have also acted, or have refused to act, in respects generally
2 applicable to the proposed class, thereby making injunctive relief appropriate with regard
3 to the members of the proposed class as a whole, as requested herein.

4 **V. FIRST CAUSE OF ACTION**
5 **(FAILURE TO PAY FOR EACH HOUR WORKED AT THE APPROPRIATE**
6 **RATE) (Labor Code §§ 223, 225, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1;**
7 **Wage Order 4, § 3, 4, 9)**

8 44. Plaintiffs reallege and incorporate paragraphs 1 through 43 inclusive, as
9 though fully set forth herein.

10 45. California law requires employees be compensated at no less than the
11 appropriate minimum wage for each and every individual hour worked.

12 46. Moreover, unlike federal minimum wage law, California law does not allow
13 an employer to meet its minimum wage obligations by averaging weekly pay over the total
14 hours worked in a given week. (*Armenta v. Osmose*, 135 Cal.App.4th 314,324 [concluding
15 that "the [federal] model of averaging all hours worked 'in any work week' to compute an
16 employer's minimum wage obligation under California law is inappropriate" and
17 clarifying that "[t]he minimum wage standard affixes to each hour worked by respondents
18 for which they were not paid"].)

19 47. The California Courts have found piece rate systems which fail to
20 compensate employees for each individual hour worked, violate California law. *Gonzalez*
21 *v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36.

22 48. Plaintiffs worked for Defendant for hours which they were not
23 compensated. Under the flat rate/piece rate system, prior to July 2013, Plaintiffs did not
24 receive any wages at any rate for time spent performing non-productive work. After July
25 2013, Defendant have used high levels of productivity under the piece rate system to offset
26 its minimum wage obligation for non-productive hours worked. This averaging of hours
27 across a workweek is not permitted under State law.

28 49. On some occasions, this failure to pay for hours worked or illegal averaging
would occur because of periods of time that piece rate work was not available.

1 Notwithstanding the inability of the Plaintiffs and the class to earn piece rate wages,
2 Plaintiffs and the class were required to remain on the Defendant' premises to wait for
3 work to come in. This "stand-by" time was not compensated at any rate.

4 50. On other occasions, the failure to pay for hours worked or illegal averaging
5 would occur because the Defendant would alter time cards to reduce the total hours
6 worked by Plaintiffs and the class. On some occasions, the failure to pay for hours worked
7 would occur because the Defendant would instruct Plaintiffs and the class to work when
8 they were off-the-clock for meal periods. On some occasions, the failure to pay for hours
9 worked would occur because Defendant would instruct Plaintiffs to only flag hours on the
10 day the repair was completed, regardless of the number of days spent performing the
11 repair.

12 51. Labor Code § 1194 provides for a private right of action to recover wages
13 for hours worked but not compensated.

14 52. During the statutory period, Defendant failed to pay Plaintiffs and members
15 of the class wages for all hours worked in violation of Labor Code§ 1197 and Wage Order
16 4, §§ 4 and 9. Some hours were not compensated at the correct rate; other hours were not
17 compensated at all.

18 53. Plaintiffs and the class have worked more than 8 hours in a day and/or 40
19 hours in a week without receiving any compensation for that time and without overtime
20 compensation at the rate of one and one-half (1½) times their regular weekly rate in
21 violation of Labor Code §§ 510, 1194 and IWC 4, § 3.

22 54. Defendant has altered the time records of Plaintiffs and the class in an effort
23 to escape its overtime compensation obligation.

24 55. Even on those events that overtime hours were not summarily disregarded,
25 the calculation used to credit overtime work did not comport with either state or federal
26 law as it created a regular rate and total hours worked over the bimonthly pay period rather
27 than the established work week.

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1 56. The altering of time records to reduce wage obligations is an unauthorized
2 deduction from wages in violation of Labor Code §§ 223 and 225.

3 57. Labor Code § 218 provides for a private right of action to recover wages
4 under the Labor Code. Plaintiffs seek to recover unpaid wages and penalties directly under
5 § 218.

6 58. Plaintiffs and the class seek to recover compensation for time worked but
7 not paid, attorneys' fees and costs under Labor Code § 1194.

8 59. Plaintiffs and the class seek liquidated damages under Labor Code § 1194.2.

9 60. Labor Code § 218.6 provides for interest on all dues and unpaid wages in
10 any action brought for the nonpayment of wages. Plaintiffs and the class seek to recover
11 interest on all wages due.

12 61. Plaintiffs and the class seek to recover the civil penalty contained in Labor
13 Code § 558 for the failure to pay wages as required under Labor Code § 510.

14 62. Plaintiffs and the class seek to recover the civil penalty contained in Labor
15 Code § 1197.1 for the failure to pay wages as required under Labor Code § 1197.

16 63. Plaintiffs seek reasonable attorneys' fees and costs associated with bringing
17 this action pursuant to Labor Code §§ 218.5 and 1194.

18 64. Plaintiffs and the class seek to recover penalties under Wage Order 4, § 20
19 for violations of § 4. Each penalty amounts to \$50 per employee for the first violation and
20 \$100 per employee for each subsequent pay period in which the employee is underpaid.

21 Wherefore, Plaintiffs pray for judgment as set forth below.

22 **VI. SECOND CAUSE OF ACTION**
23 **(FAILURE TO AUTHORIZE AND PERMIT PAID REST BREAKS)**
24 **(Wage Order 4, § 12; Labor Code §§ 226.6, 1194, 1197, 1197.1)**

25 65. Plaintiffs reallege, and incorporate by reference each and every allegation
26 set forth in paragraphs 1 through 64 above, inclusive, as though fully set forth at length
27 herein.

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1 66. Wage Order 4, §12 requires employer to authorize and permit paid rest
2 breaks at a rate often (10) minutes for every four (4) hours worked or greater fraction
3 thereof.

4 67. Labor Code § 226.7 and Wage Order 4, § 12 require the payment of
5 compensation for the failure to provide paid rest breaks in accordance with the applicable
6 Wage Order of one additional hour of pay for each work day that the paid rest break(s) is
7 not provided.

8 68. During the statutory period, Defendant consistently failed to pay employees
9 for rest breaks. The Defendant failed to issue a billing code for such breaks, institute a
10 formal policy permitting paid employee breaks, or provide any other mechanism for an
11 employee to be paid for break time.

12 69. By failing to establish a rest break policy and failing to establish any
13 mechanism for providing pay for rest breaks, Defendant systematically discouraged and
14 dissuaded Plaintiffs and the class from taking paid rest breaks and provided no method for
15 compensation in the event a rest break was taken. Such a policy and practice of denying
16 employees compensation for legally mandated rest breaks is in violation of the duty to pay
17 for all hours worked in accordance with Wage Order 4, § 12 and Labor Code §§ 1194 and
18 1197.

19 70. Defendant' failure to provide paid rest breaks in accordance with Wage
20 Order 4 § 12 entitles Plaintiffs and the class to the remedy provided in Labor Code § 226.7
21 and Wage Order 4, §12.

22 71. Further, upon the Defendant's adoption of the new pay plan in July 2013,
23 the Defendant still failed to properly compensate rest breaks. Plaintiffs were provided a
24 basic hourly rate for each hour worked (in the event their pay for productive time did not
25 exceed double the minimum wage per hour worked). In so doing, Plaintiffs and others
26 were only compensated for rest breaks at the applicable minimum wage rather than at their
27 average hourly rate. This violates Labor Code section 226.2 and systematically
28 discouraged mechanics from taking rest breaks.

1 80. California Labor Code § 226(a) states that every employer shall, semi-
2 monthly or at the time of each payment of wages, furnish each of his or her employees an
3 accurate itemized statement in writing showing substantial detailed information, including
4 but not limited to, each hour worked. Wage Order 4, § 7(A)(4)) contains similar
5 requirements.

6 81. California Labor Code § 226.2(a)(2)(A) provides that an employer of
7 employees paid on a piece rate basis must furnish statements including the total hours of
8 compensable rest and recovery periods, the rate of compensation for those periods, and the
9 gross wages paid for those periods during the pay period.

10 82. Labor Code § 1174(d) requires the employer to keep payroll records
11 showing hours worked and wages paid.

12 83. Labor Code § 2810.5 requires an employer provide employees with timely,
13 accurate written notice of any changes to any pay plan used to determine his
14 compensation.

15 84. Plaintiffs and the class are paid on a piece-rate basis, with compensation
16 contingent on the maintenance, service or repair provided, regardless of the time taken to
17 complete each task.

18 85. During the statutory period, Defendant consistently failed to provide
19 employees with accurate itemized statements and keep adequate payroll records because
20 they failed to report the total number of hours worked, underreported the total number of
21 hours worked and failed to include hours for which overtime compensation should have
22 been provided. Defendant failed to provide statements including the total compensatory
23 rest period time. In 2013, *Bluford* held that the wage statement for a piece rate worker
24 needs to show pay for rest breaks. This requirement was codified effective January 1, 2016
25 under Labor Code § 226.2.

26 86. As a result of Defendant' knowing and intentional failure to comply with the
27 provisions of Labor Code §§ 226(a)(3) and 1174(d), Plaintiffs and the class have been
28 deprived of wage information and wages entitled to them by law. This establishes injury

1 under 226(e)(2).

2 87. Plaintiffs and the class are entitled to and seek the remedy provided in Labor
3 Code § 226(e):

4 [T]he greater of all actual damages or fifty dollars (\$50) for
5 the initial pay period in which the violation occurs and one
6 hundred dollars (\$100) per employee for each violation in a
7 subsequent pay period, not exceeding an aggregate penalty
8 of four thousand dollars (\$4,000) and is entitled to an award
9 of costs and reasonable attorney's fees.

10 88. Plaintiffs and the class seek injunctive relief against the Defendant to ensure
11 future compliance and attorney's fees under 226(g).

12 89. Plaintiffs seek to enforce the fine contained in Labor Code § 226.6 against
13 the individual Defendant who knowingly and intentionally participated in or aided in the
14 violation of Labor Code § 226.

15 90. Wage Order 4, § 20(A) provides for civil penalties for violations of the
16 Wage Order. As a result of all Defendant' violation of Wage Order 4, § 7, Plaintiffs and
17 the class are entitled to and hereby seek civil penalties in the amount of \$50 per employee
18 for the first violation and \$100 per employee for each subsequent pay period.

19 Wherefore, Plaintiffs pray for judgment as set forth below.

20 **VIII. FOURTH CAUSE OF ACTION**
21 **(FAILURE TO PROVIDE MEAL PERIODS)**
22 **(Labor Code §§ 510, 512, 558, 1194; Wage Order 4, § 11)**

23 91. Plaintiffs reallege and incorporate paragraphs 1 through 90 above, inclusive,
24 as though set forth fully herein.

25 92. Defendant have failed to provide Plaintiffs and the class all meal periods as
26 required by Labor Code §§ 226.7 and 512 and Wage Order 4, § 11.

27 93. Defendant has given away available jobs to other employees if an employee
28 took his meal period. This has resulted in systematic discouragement to taking meal
periods because taking away jobs, particularly those which mechanics could perform in

1 the assigned time or less, negatively impacted an employees' productivity, and thus is
2 violative of Labor Code section 512.

3 94. Defendant has directed employees to perform work during meal periods
4 when the employee is clocked out. This has resulted in a failure to provide wages for all
5 hours worked in addition to denying employees uninterrupted 30-minute meal periods in
6 violation of Labor Code §§ 512, 1194, 1197. It has also resulted in an under reporting of
7 total hours worked on wage statements.

8 95. Labor Code § 218 provides wage claimants with a private right of action to
9 recover wages under the Labor Code. The payments owed to employees for meal periods
10 not provided are premium wages under Labor Code § 226.7.

11 96. Labor Code § 218.6 provides for an award of interest on all due and unpaid
12 wages. Plaintiffs seek to recover interest on all wages due under the Section on behalf of
13 themselves and others similarly situated.

14 97. Plaintiffs and the class are entitled to and hereby seek premium pay for meal
15 periods not provided, wages for work performed while clocked out for meal periods,
16 interest on the unpaid amounts, and an award of attorney fees and costs all in amounts to
17 be proven at trial.

18 98. For the off the clock work, Plaintiffs and the class are entitled to and hereby
19 seek wages, interest, liquidated damages and attorneys; fees under Labor Code §§ 218,
20 218.5, 218.6, 1194, 1194.2, 1197, 1197.1.

21 99. Plaintiffs and the class seek to recover the civil penalty contained in Labor
22 Code § 558 for the failure to provide meal breaks as required under Labor Code § 512.

23 100. Wage Order 4, § 20(A) provides for civil penalties for violations of the
24 Wage Order. As a result of Defendant' violation of Wage Order 4, §§ 4 and 11, Plaintiffs
25 and the class are entitled to and hereby seek civil penalties in the amount of \$50 per
26 employee for the first violation and \$100 per employee for each subsequent pay period.

27 **IX. FIFTH CAUSE OF ACTION**
28 **(FAILURE TO PROVIDE ALL WAGES DUE AT SEPARATION)**
(Labor Code §§ 201, 202, 203)

1 101. Plaintiffs reallege, and incorporate by reference each and every allegation
2 set forth in paragraphs 1 through 100 above, inclusive, as though fully set forth at length
3 herein.

4 102. Labor Code § 201 provides that an employer who terminates an employee
5 must immediately pay that employee all wages owing on separation.

6 103. Similarly, Labor Code § 202 provides that an employee who quits is entitled
7 to all wages owing within seventy-two (72) hours of quitting, unless that employee
8 provides at least seventy-two hours' notice to the employer, in which case the employer
9 immediately must pay all wages owing at the time of separation.

10 104. Labor Code § 203 provides that if an employer willfully fails to pay wages
11 when due to an employee who is discharged or quits, the employee's wages continue at the
12 same rate until the employer pays or until suit is filed, but not for more than thirty (30)
13 days.

14 105. All mechanics employed by Defendant who were terminated or quit since
15 May 2012 have been deprived of wages immediately upon separation due to Defendant's
16 policy and practice of failing to provide wages for all hours worked and premiums for
17 meal and rest periods.

18 106. Defendant failure to pay all wages at termination was in violation of Labor
19 Code §§ 201 and 202. As a result, members of the class who separated from employment
20 have been damaged in that they have been deprived of compensation owing to them.

21 107. In addition to the wages due for prior work, the class is entitled to one day's
22 wages for every day Defendant failed to pay wages owed on termination, up to thirty (30)
23 days' pay, plus interest on the unpaid amounts, in amounts to be proven at trial.

24 108. Labor Code § 218 provides for a private right of action to recover wages and
25 penalties under the Labor Code. The class seeks to recover § 203 penalties directly under §
26 218 on behalf of themselves and others similarly situated.

1 109. Labor Code § 218.5 provides for attorneys' fees and costs for a prevailing
2 plaintiff who seeks to recover wages and penalties. The class seeks to recover attorneys'
3 fees and costs in this action brought for the nonpayment of wages.

4 110. Labor Code § 218.6 provides for interest on all due and unpaid wages at the
5 rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall
6 accrue from the date that the wages were due and payable.

7 Wherefore, Plaintiffs pray judgment as set forth below.

8 **X. SIXTH CAUSE OF ACTION**
9 **(VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW)**
 (Business & Professions Code §§ 17200, et seq.)

10 111. Plaintiffs reallege and incorporate paragraphs 1 through 110, inclusive, as
11 though set forth fully herein.

12 112. California Business and Professions Code § 17200 et seq. prohibits unfair
13 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practice.

14 113. During the statutory period, the Defendant committed unlawful acts as
15 defined by California Business & Professions Code § 17200. The Defendant have engaged
16 in unlawful and unfair business practices including, but not limited to, violations of:

17 a. Labor Code §§ 510, 1194, 1997 and Wage Order 4, §§ 3, 4, 9;

18 b. Wage Order 4, § 12;

19 c. Wage Order 4, § 11, and Labor Code § 512;

20 d. Labor Code § 226.7;

21 e. Labor Code §§ 201, 202 and 203;

22 114. The violation of these laws serve as unlawful predicate acts for purposes of
23 Business & Professions Code § 17200 and remedies are provided therein under Business &
24 Professions Code § 17203. Plaintiffs have suffered direct economic injury in that they have
25 not been paid all wages and compensation due in a timely manner.

26 115. The acts and practices described in this Complaint constitute unlawful,
27 unfair and fraudulent business practices, and unfair competition by the Defendant within
28 the meaning of Business and Professions Code § 17200 et seq.

1 116. Business & Professions Code § 17203 provides that the Court may restore
2 to any person in interest any money or property which may have been acquired by means
3 of such unfair competition and to which those person have an ownership interest. Plaintiffs
4 and other employees of Defendant are entitled to restitution pursuant to Business &
5 Professions Code §§ 17203 and 17208 for all wages unlawfully withheld from them
6 during the four years prior to the filing of this Complaint. Plaintiffs will, upon leave of the
7 Court, amend this Complaint to state such amounts when they become ascertained.

8 117. Plaintiffs' success in this action will enforce important rights affecting the
9 public interest, and in that regard, Plaintiffs sue on behalf of themselves and other current
10 and former employees similarly situated. Plaintiffs seek and are entitled to unpaid wages at
11 the appropriate regular and overtime rate, unpaid premium pay for missed meal and rest
12 periods, injunctive relief, declaratory relief, and any other remedy owing to Plaintiffs.

13 118. Injunctive and declaratory relief is necessary and appropriate to prevent the
14 Defendant from repeating wrongful business practices alleged above.

15 119. To prevent the Defendant from profiting and benefiting from their wrongful
16 and illegal acts, it is appropriate and necessary to enter an order requiring the Defendant to
17 restore Plaintiffs and others all monies that are owed.

18 120. An actual controversy has arisen and now exists relating to the rights and
19 duties of the Defendant and Plaintiffs as to whether Defendant must pay wages for each
20 hour worked (and at what rate), provide premium pay for missed meal and unpaid rest
21 periods, and all compensation at the time of discharge or quitting.

22 121. Plaintiffs require a declaration by this Court that Plaintiffs are entitled to be
23 paid at no less than twice the minimum wage for each hour worked, to be compensated at
24 time and one-half for hours worked beyond 8 in a day and/or 40 in a week, to be
25 compensated for missed meal and unpaid rest periods pursuant to California Law, to be
26 compensated for all wages owed at the time of discharge or quitting and to receive
27 penalties for these violations.

28 122. Plaintiffs herein take upon themselves enforcement of these laws and lawful

1 claims. There is a financial burden incurred in pursuing this action and it would be against
2 the interests of justice to penalize Plaintiffs by forcing them to pay attorneys' fees from the
3 recovery in this action. The enforcement of the state wage and hours laws will confer a
4 public benefit as the failure to provide appropriate wages for all hours worked and failure
5 to provide paid rest breaks are both actions that violate the state's public policy of wage
6 and rest protections for employees. Therefore, attorneys' fees are appropriate pursuant to
7 California Code of Civil Procedure § 1021.5 as well as Labor Code §§ 218.5, 226 and
8 1194 and any other applicable statute.

9 Wherefore, Plaintiffs pray judgment as set forth below.

10 **XI. SEVENTH CAUSE OF ACTION**
11 **(STATUTORY PENALTIES PURSUANT TO PAGA)**
12 **(Labor Code §§ 2698, et seq.)**

13 123. Plaintiffs reallege, and incorporate by reference each and every allegation
14 set forth in paragraphs 1 through 122 above, inclusive, as though fully set forth at length
15 herein.

16 124. At all times herein set forth, the Private Attorneys General Act of 2004
17 (PAGA) applied to Defendant's employment of Plaintiffs and the proposed Class
18 members.

19 125. At all times herein set forth, the PAGA provided that any provision of law
20 under the California Labor Code that provides for a civil penalty to be assessed and
21 collected by the Labor and Workforce Development Agency (LWDA) for violations of the
22 California Labor Code may, as an alternative, be recovered through a civil action brought
23 by an aggrieved employee on behalf of her or himself and other current or former
24 employees pursuant to procedures outlined in California Labor Code § 2699.3.

25 126. A civil action under PAGA may be brought by an "aggrieved employee,"
26 any person that was employed by the alleged violator and against whom one or more of
27 the alleged violations was committed.

28 127. Plaintiffs have been employed by Defendant and the alleged violations were
committed against them during their time of employment and they are, therefore,

1 aggrieved employees. Plaintiffs and other employees are “aggrieved employees” as
2 defined by California Labor Code § 2699(c) in that they are all current or former
3 employees of Defendant, and one or more of the alleged violations were committed
4 against them.

5 128. At all times herein set forth, the PAGA provided that for the violation of any
6 Labor Code provision that does not itself contain a civil penalty, there are established civil
7 penalties of \$100 for each aggrieved employee per pay period for the initial violation and
8 \$200 for each aggrieved employee per pay period for each subsequent violation. Cal. Lab.
9 Code § 2699(f).

10 129. Pursuant to California Labor Code section 2699.3, an aggrieved employee,
11 such as Plaintiffs, may pursue a civil action arising under PAGA after the following
12 requirements have been met:

- 13 a. The aggrieved employee must file written notice online with the LWDA and
14 by certified mail to the employer of the specific provisions of the California
15 Labor Code alleged to have been violated, including the facts and theories to
16 support the alleged violations;
- 17 b. The notice filed with the LWDA must be accompanied by a filing fee of
18 seventy-five dollars (\$75);
- 19 c. The LWDA shall notify the employer and the aggrieved employee or
20 representative by certified mail that it does not intend to investigate the
21 alleged violations within sixty (60) calendar days of the postmark date of the
22 notice received pursuant to paragraph (1). Upon receipt of that notice or if
23 no notice is provided within sixty-five (65) calendar days of the postmark
24 date of the notice given, the aggrieved employee may commence a civil
25 action pursuant to Section 2699.

26 130. On August 6, 2021, Plaintiffs provided written notice online to the LWDA
27 and by certified mail to Defendant of the specific provisions of the California Labor Code
28 alleged to have been violated, including the facts and theories to support the alleged

1 violations.

2 131. It has been more than 65 days since Plaintiffs' notice, and the LWDA has
3 not provided notice of its intent to investigate. Accordingly, Plaintiffs have satisfied the
4 administrative prerequisites under California Labor Code Section 2699.3(a) to recover
5 civil penalties against Defendants for violations of California Labor Code stated above.

6 132. Plaintiffs and the other aggrieved employees are entitled to and seek to
7 recover civil penalties for Defendant's violations of the Labor Code during the applicable
8 limitations period in the following amounts:

- 9 a. For violations of California Labor Code Section 226.8(a), Fifteen Thousand
10 Dollars (\$15,000.00) for each of Defendant's violations in addition to any
11 other penalties or fines permitted by law (penalty amounts established by
12 California Labor Code § 226.8(b)) or for pattern and practice violations of
13 California Labor Code Section 226.8(a), Twenty-Five Thousand Dollars
14 (\$25,000.00) for each of Defendant's violations in addition to any other
15 penalties or fines permitted by law (penalty amounts established by
16 California Labor Code § 226.8(c));
- 17 b. For violations of California Labor Code Sections 200, 201, 202, 226.7, and
18 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay
19 period for each initial violation and two hundred dollars (\$200.00) for each
20 aggrieved employee per pay period for each subsequent violation (penalty
21 amounts established by California Labor Code § 2699(f)(2));
- 22 c. For violations of California Labor Code Section 1197, one hundred dollars
23 (\$100.00) for each aggrieved employee per pay period for each initial
24 violation and two hundred dollars and fifty (\$250.00) for each aggrieved
25 employee per pay period for each subsequent violation regardless of
26 whether the initial violation is intentionally committed (penalty amounts
27 established by California Labor Code § 1197.1);
- 28 d. For violations of California Labor Code Sections 221 and 223 one hundred

dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent or willful violation, plus 25 percent of the amount unlawfully withheld (penalty amounts established by California Labor Code §225.5);

- e. For violations of California Labor Code Section 510 and 512 and Wage Order No. 4 Sections 3, 9, 11, and 12, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558);
- f. For violations of California Labor Code Section 1174, five hundred dollars (\$500.00) for each of Defendant's violations in addition to any other penalties or fines permitted by law (penalty amounts established by California Labor Code § 1174.5);
- g. For violations of California Labor Code Section 226, two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3); and
- h. For violations of California Labor Code Section 558: for each initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages; for each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

133. Pursuant to California Labor Code Section 2699(g), Plaintiffs, on behalf of themselves and the other aggrieved employees, are entitled to an award of reasonable attorneys' fees and costs.

1 Wherefore, Plaintiffs pray judgment as set forth below.

2 **XII. PRAYER FOR RELIEF**

3 Plaintiffs pray for judgment as follows:

4 1. For preliminary and permanent injunctive relief prohibiting the Defendant,
5 its officers, agents and all those acting in concert with them from committing these
6 violations herein alleged;

7 2. For an order determining this matter to be a class action and that Plaintiffs'
8 be named class representative and Plaintiffs' attorneys be named class counsel;

9 3. For an award of damages in an amount according to proof with interest
10 thereon;

11 4. For an award of restitution and wages according to proof under Labor Code
12 §§ 226.7, 510, 1182.12, 1194, 1197 and Business & Professions Code §§ 17200 and
13 17203 and any other applicable provision;

14 5. For an equitable accounting to identify, locate, and restore to all current and
15 former employees the wages they are due;

16 6. For penalties under Labor Code §§ 203, 225.5, 226, 226.3, 226.6, 226.8,
17 558, 1174.5, 1197.1, 2699(f), Wage Order 4, § 20 and any other applicable provisions;

18 7. For interest under Labor Code §§ 218.6, 1194, 1197.1 and any other
19 applicable provisions;

20 8. For liquidated damages under Labor Code § 1194.2;

21 9. For an award of reasonable attorneys' fees, costs and interest thereon
22 pursuant to Labor Code §§ 218.5, 226, 1194; CCP § 1021.5 and any other applicable
23 provision; and

24 10. For such other and further relief as this Court deems just and proper.

1 Dated: October 12, 2021

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

2
3
4 By:


DAVID A. ROSENFELD
CAREN P. SENCER

Attorneys for Plaintiffs, RALPH GRAY, JR.;
DAVID JARRELL; ROBERT MILLEMAN;
ORVILLE OSBORNE; JEFFREY SNYDER; and
DENNIS SPOHR, on behalf of themselves and
other similarly situated

1 **PROOF OF SERVICE**
2 **(CCP §1013)**

3 I am a citizen of the United States and resident of the State of California. I am
4 employed in the County of Alameda, State of California, in the office of a member of the bar of
5 this Court, at whose direction the service was made. I am over the age of eighteen years and
6 not a party to the within action.

7 On October 12, 2021, I served the following documents in the manner described below:

8 **THIRD AMENDED COMPLAINT FOR FAILURE TO PAY FOR EACH HOUR**
9 **WORKED AT THE APPROPRIATE RATE; FAILURE TO AUTHORIZE AND**
10 **PERMIT PAID REST BREAKS; FAILURE TO PROVIDE MEALS PERIODS;**
11 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS; FAILURE**
12 **TO PROVIDE ALL WAGES DUE AT SEPARATION; VIOLATION OF**
13 **CALIFORNIA'S UNFAIR COMPETITION LAW; AND STATUTORY PENALTIES**
14 **PURSUANT TO PAGA**

- 15 ☒ (BY U.S. MAIL) I am personally and readily familiar with the business practice of
16 Weinberg, Roger & Rosenfeld for collection and processing of correspondence for
17 mailing with the United States Postal Service, and I caused such envelope(s) with
18 postage thereon fully prepaid to be placed in the United States Postal Service at
19 Emeryville, California.
- 20 ☒ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy
21 through Weinberg, Roger & Rosenfeld's electronic mail system from
22 hwebb@unioncounsel.net to the email addresses set forth below.

23 On the following part(ies) in this action:

24 Mr. Karl R. Lindegren
25 Fisher & Phillips LLP
26 2050 Main Street, Ste. 1000
27 Irvine, CA 92614
28 E-Mail: klindegren@fisherphillips.com
Attorneys for Hansel Ford, Inc.

Mr. Hassan A. Aburish
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haburish@fisherphillips.com
Attorneys for Hansel Ford, Inc.

I declare under penalty of perjury under the laws of the United States of America that
the foregoing is true and correct. Executed on October 12, 2021, in Emeryville, California.



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