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Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By G. Escorcía, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ABRAHAM COBIAN, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

BET INFORMATION SYSTEMS, INC. d/b/a
MERCHANDISER BY SURVEY and
SURVEY MERCHANDISER, a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendant.

Case No. 25CU034811C

CLASS ACTION COMPLAINT FOR:

- (1) FAILURE TO PAY MINIMUM WAGES
(LAB. CODE §§ 1194, 1197);**
- (2) FAILURE TO PAY OVERTIME WAGES
(LAB. CODE § 510);**
- (3) FAILURE TO PROVIDE MEAL AND
REST BREAKS AND SEPARATE REST
BREAK COMPENSATION (LAB. CODE
§§ 226.2, 226.7, 512);**
- (4) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LAB. CODE § 2802);**
- (5) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS (LAB. CODE §
226);**
- (6) WAITING TIME PENALTIES (LAB.
CODE §§ 201-203);**
- (7) UNFAIR BUSINESS PRACTICES (BUS.
& PROF. CODE § 17200 ET SEQ.); AND**

**INDIVIDUAL & REPRESENTATIVE
ACTION FOR:**

- (8) CIVIL PENALTIES UNDER LABOR
CODE'S PRIVACY ATTORNEY
GENERAL ACT ("PAGA") (LAB.
CODE §§ 2698 ET SEQ.)**

DEMAND FOR JURY TRIAL

1 Plaintiff Abraham Cobian (“Plaintiff”), on behalf of himself and all others similarly situated
2 (“Class Members”), alleges as follows against Defendant BET Information Systems, Inc. d/b/a
3 Merchandiser by Survey and Survey Merchandiser (“Merchandiser” or “Defendant”):

4 **INTRODUCTION**

5 1. Defendant Merchandiser is a technology-based company offering retail brand
6 partners services to increase their brand’s visibility and competitive advantage in retail stores,
7 utilizing a large flexible workforce to perform in-store merchandising, audits, resets, and related
8 tasks.

9 2. Defendant operates an app-based platform connecting workers (“Workers”) with
10 retail service gigs, requiring Workers to review job details, requirements, locations, and pay, and to
11 select and complete assignments as directed by Merchandiser and its clients.

12 3. Despite the integral role of these Workers and the extensive control Merchandiser
13 exercises over their work, Defendant misclassifies them as independent contractors, depriving them
14 of critical labor protections under California law, including minimum wage, overtime,
15 reimbursement of business expenses, meal and rest breaks, and accurate wage statements.

16 **JURISDICTION AND VENUE**

17 4. This Court has jurisdiction over the claims asserted herein pursuant to the California
18 Constitution and applicable statutes because the damages and penalties sought exceed the
19 jurisdictional minimum of this Court.

20 5. Venue is proper in this Court because Defendant conducts business in this County
21 and the unlawful acts alleged herein occurred in this County.

22 **PARTIES**

23 6. Plaintiff Abraham Cobian is, and at all relevant times was, a resident of California
24 who performed work as a Worker for Defendant during the relevant statutory period.

25 7. Defendant BET Information Systems, Inc. d/b/a Merchandiser by Survey and Survey
26 Merchandiser is a corporation registered to do business in California, with its principal office in
27 Boston, MA.

1 8. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
2 DOES 1 through 100, inclusive, and therefore sues these Defendants by such fictitious names.
3 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.

4 **GENERAL ALLEGATIONS**

5 **A. Business Model and Worker Classification**

6 9. Retail stores like Target, Costco, Albertsons and other household names frequently
7 rely on the companies whose products they carry to stock, rotate, and otherwise manage the
8 inventory and presentability of their products.

9 10. Merchandise, through its app, provides brands carried by retail stores with services
10 to ensure they are properly meeting retail requirements and otherwise presenting an appealing, well-
11 managed product to customers. Merchandise assigns retail service tasks to Workers, who must
12 follow detailed instructions, meet client specifications, and comply with company policies in
13 carrying out their responsibilities like merchandizing and stocking. Merchandise pays Workers if
14 and only if its brand partner customer are satisfied with the work.

15 11. Merchandise requires Workers to use its app for all work, tracks their location and
16 activity, and retains the right to terminate or suspend access to the app for any reason, including
17 inactivity.

18 12. Workers are required to use data-enabled smartphones and properly insured vehicles
19 to perform assignments, incurring significant business expenses for which they are not reimbursed.

20 13. Despite exercising significant control, Defendant denies any employment
21 relationship with its Workers, willfully misclassifying them as independent contractors in violation
22 of Labor Code section 226.8.

23 **B. Pay Practices and Labor Code Violations**

24 14. Workers are paid on a per-job or piece-rate basis, without separate compensation for
25 nonproductive time, rest breaks, or on-call periods, and often work more than eight hours per day or
26 forty hours per week without overtime pay.

1 15. Merchandise does not provide or pay for meal and rest breaks, fails to maintain
2 required payroll records, and does not issue accurate wage statements reflecting all hours worked,
3 pay rates, and earnings.

4 16. Workers are not reimbursed for necessary business expenses such as mileage, fuel,
5 insurance, and phone/data usage, in violation of Labor Code section 2802.

6 17. Defendant also fails to pay all wages due upon termination and does not provide paid
7 sick leave as required by law.

8 **CLASS ACTION ALLEGATIONS**

9 18. Pursuant to Code of Civil Procedure, section 382, Plaintiff brings this lawsuit as a
10 class action on behalf of himself and all other similarly situated members of the Class, defined below.
11 This action satisfies the ascertainability, numerosity, commonality, typicality, adequacy,
12 predominance, and superiority requirements of class actions.

13 19. **Class Period:** The Class Period shall be defined as: from four years preceding the
14 date that the first Complaint in this action is filed, until the full resolution of this action, plus any
15 time that may be attributed to equitable or other forms of tolling.

16 20. Plaintiff seeks to represent the following Class of persons:

17 a. All individuals during the Class Period who used Merchandise's app to carry
18 out merchandising, audits, resets, or related tasks for Merchandise customers
19 at a location in California who were not classified as employees ("Class").

20 21. This Class does not include Defendant, its officers, and/or its directors; the Judge to
21 whom this case is assigned; or the Judge's immediate family or staff.

22 22. Plaintiff reserves the right to amend the above Class and to add additional classes and
23 sub-classes as appropriate based on discovery, and the specific theories of liability, among other
24 reasons.

25 23. **Numerosity:** The potential members of the Class as defined are so numerous that
26 joinder of all the members is impracticable. While the precise number of the members of the Class
27 has not been determined, Plaintiff is informed and believes that there are hundreds to thousands of
28 individuals meeting the Class definition. Defendant has access to data sufficient to identify the

members of the Class since they all perform work via the same mobile application and cannot outsource the work.

24. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to fairly and adequately represent the interests of the Class as defined above. Plaintiff's attorneys are highly experienced in employment class action litigation and intend to prosecute this action vigorously.

25. **Common Questions of Law and Fact:** There are predominant common questions and answers of law and fact and a community of interest amongst Plaintiff and the claims of the Class as follows:

- a. Whether Defendant misclassified Workers as independent contractors;
- b. Whether Defendant failed to pay minimum wage for all hours worked, including nonproductive and on-call time;
- c. Whether Defendant failed to pay overtime;
- d. Whether Defendant failed to provide meal and rest breaks and separate compensation for rest breaks;
- e. Whether Defendant failed to reimburse business expenses;
- f. Whether Defendant failed to provide accurate wage statements;
- g. Whether Defendant failed to pay all wages due upon separation.

26. **Typicality:** Plaintiff's claims are typical of the claims of all members of the Class because Defendant applied and continues to apply its illegal classification and pay practices to all workers.

27. **Superiority:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all members of the Class is not practicable, and questions of law and fact common to the Class predominate over questions affecting only individual Class Members.

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1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Failure to Pay Minimum Wages**
4 **(Lab. Code §§ 1194, 1197)**

5 28. Plaintiff incorporates by reference every allegation contained above.

6 29. Defendant failed to pay Plaintiff and Class Members at least minimum wage for all
7 hours worked, including things like nonproductive time spent waiting for assignments, traveling, or
8 remaining on-call.

9 30. Defendant does not track hours or otherwise ensure that its piece rate pay system
10 complies with minimum wages. For example, if a service is not provided to customer standards and
11 no pay is provided, there is no wages paid to Workers.

12 31. As a proximate result of Defendant's unlawful conduct, Plaintiff and the Class
13 sustained damages and are entitled to recover unpaid minimum, regular, and overtime wages, non-
14 productive time pay, reporting time pay, waiting time pay, on-call pay, liquidated damages,
15 applicable penalties, attorneys' fees, and costs.

16 **SECOND CAUSE OF ACTION**

17 **Failure to Pay Overtime Wages**
18 **(Lab. Code § 510)**

19 32. Plaintiff incorporates by reference every allegation contained above.

20 33. Defendant failed to pay overtime wages to Plaintiff and Class Members for hours
21 worked in excess of eight per day or forty per week.

22 34. Workers, including Plaintiff, can and do work over 8 hours per day and over 40 hours
23 per week in line with Defendant's expectations and standards as necessary to complete the work
24 assigned to them. Despite this, they receive no overtime pay in violation of California law.

25 35. Defendant is liable to Plaintiff and the Class for unpaid overtime, interest, reasonable
26 attorneys' fees and costs, and any related statutory penalties.

27 **THIRD CAUSE OF ACTION**

28 **Failure to Provide Meal and Rest Breaks and Separate Rest Break Compensation**
(Lab. Code §§ 226.7, 512, 226.2)

36. Plaintiff incorporates by reference every allegation contained above.

1 37. Defendant failed to provide Plaintiff and Class Members with compliant meal and
2 rest breaks and failed to pay premium wages for missed breaks or separate compensation for rest
3 breaks to piece-rate Workers.

4 38. Defendant has no meal or rest policies and they do not record when breaks start or
5 stop. Nor does Defendant provide for uninterrupted meal periods for Workers or make any effort to
6 relieve them of all duties.

7 39. Despite their records reflecting that Workers routinely do not take breaks, Defendant
8 does not pay premium wages in lieu of these breaks as required by law. And Workers have not
9 otherwise waived their entitlement to meal breaks.

10 40. Furthermore, Defendant does not pay separately for rest breaks for its piece rate
11 workers as required by Labor Code section 226.2.

12 41. As a proximate result of Defendant's unlawful conduct, Plaintiff and the Class
13 sustained damages and are entitled to recover unpaid wages, liquidated damages, interest, applicable
14 penalties, attorneys' fees, and costs.

15 **FOURTH CAUSE OF ACTION**
16 **Failure to Reimburse Business Expenses**
 (Lab. Code § 2802)

17 42. Plaintiff incorporates by reference every allegation contained above.

18 43. Defendant required Plaintiff and Class Members to incur necessary business
19 expenses, including but not limited to vehicle expenses, fuel, maintenance, insurance, and
20 phone/data usage, and failed to reimburse these expenses.

21 44. As alleged above, Plaintiff and the Class incurred business expenses while
22 performing necessary work for Defendant. They were never reimbursed because they were
23 uniformly misclassified as independent contractors.

24 45. The California Labor Code, section 2802, and applicable California Wage Orders
25 require that employers reimburse employees for business expenses reasonably incurred. Defendant
26 failed to do so.

27 46. Plaintiff and the Class have been damaged by Defendant's failures in this respect in
28 an amount to be proven at trial.

1 47. Plaintiff and the Class are entitled to recover their damages, penalties, interest, costs,
2 and attorneys' fees based on Defendant's violations.

3 **FIFTH CAUSE OF ACTION**
4 **Failure to Provide Accurate Wage Statements**
5 **(Lab. Code § 226)**

6 48. Plaintiff incorporates by reference every allegation contained above.

7 49. Defendant failed to provide Plaintiff and Class Members with accurate, itemized
8 wage statements reflecting all hours worked, pay rates, gross and net wages, and reimbursements.

9 50. Defendant violated the above statute by, among other things, failing to provide
10 accurate gross and net wages earned and hours worked on a paystub to Workers.

11 51. Defendant's violations of section 226 and applicable Wage Orders are ongoing and
12 will continue until and unless this Court enters an injunction barring such violations. Therefore,
13 Plaintiff seeks damages and injunctive relief pursuant to Labor Code, section 226, subsections (e)
14 and (g), along with penalties for past violations, including attorneys' fees and costs incurred.

15 **SIXTH CAUSE OF ACTION**
16 **Waiting Time Penalties**
17 **(Lab. Code §§ 201-203)**

18 52. Plaintiff incorporates by reference every allegation contained above.

19 53. Defendant willfully failed to pay all wages due to Plaintiff and Class Members upon
20 separation of employment.

21 54. Defendant is also required to pay wages during employment within time periods set
22 by Labor Code section 204 and other laws and Wage Orders. Defendant failed to pay wages due to
23 Workers while employed within the required time periods.

24 55. Defendant's actions in this respect were willful within the meaning of Labor Code,
25 section 203, entitling Plaintiff and the Class Members to recover waiting time penalties. Defendant
26 failed to pay the above wages pursuant to its standard policies and procedures not to provide
27 employment protections to Workers. Defendant knows or should know Workers are misclassified as
28 independent contractors. Defendant is represented by sophisticated in-house and outside counsel
with a deep understanding of California law who surely understand Defendant cannot meet its
burden to prove Workers are independent contractors.

1 56. Plaintiff and the Class Members are entitled to recover waiting time penalties and
2 unpaid wages, as well as interest, applicable penalties, attorneys' fees, and costs.

3 **SEVENTH CAUSE OF ACTION**

4 **Unfair Business Practices**
5 **(Bus. & Prof. Code § 17200 et seq.)**

6 57. Plaintiff incorporates by reference every allegation contained above.

7 58. Defendant engaged in unlawful, unfair, and fraudulent business practices by
8 misclassifying Workers, failing to pay all wages owed, failing to reimburse expenses, and failing to
9 comply with California labor laws.

10 59. The specific violations of these laws are enumerated below at para. 74.

11 60. Defendant intended to, and did, profit from these illegal acts.

12 61. As a direct and proximate result of the above, Plaintiff and the Class Members have
13 lost money or property, thereby entitling these individuals to restitution.

14 62. Pursuant to the Business and Professions Code, Plaintiff and the Class Members are
15 entitled to restitution of money or property acquired by Defendant by means of such unlawful
16 business practices, in amounts not yet known, but to be ascertained at trial.

17 63. Pursuant to the Business and Professions Code, the Class and the public are also
18 entitled to injunctive relief against Defendant's ongoing continuation of such unlawful business
19 practices, including public injunctive relief. Plaintiffs seek such public injunctive relief here
20 prohibiting Defendant from continuing its illegal practice of misclassifying Workers, including
21 Plaintiff and the Class, and denying them of important wage laws.

22 64. If Defendant is not enjoined from engaging in the unlawful business practices
23 described above, Plaintiff, Class Members, and the public will be irreparably injured. The exact
24 extent, nature, and amount of such injury is difficult to ascertain now.

25 65. The Class, including Plaintiff, have no plain, speedy, and adequate remedy at law.

26 66. Defendant will continue to engage in the unlawful business practices described above
27 in violation of the Business and Professions Code, in derogation of the rights of Plaintiff, the Class,
28 and of the public, if not enjoined by this Court.

1 67. The success of Plaintiff in this action will result in the enforcement of important rights
2 affecting the public interest by conferring a significant benefit upon the public.

3 68. Private enforcement of these rights is necessary as no public agency has pursued
4 enforcement. There is a financial burden incurred in pursuing this action, and it would be against the
5 interests of justice to require the payment of attorneys' fees from any recovery in this action.
6 Plaintiffs are therefore entitled to an award of attorneys' fees and costs of suit under the "common
7 fund," "substantial benefit," and other important doctrines.

8 69. The success of Plaintiff in this action will result in the enforcement of important rights
9 affecting the public interest by conferring a significant benefit upon the public.

10 **EIGHTH CAUSE OF ACTION**
11 **Representative PAGA Action**
 (Lab. Code § 2698 et seq.)

12 70. Plaintiff incorporates by reference every allegation contained above.

13 71. Plaintiff brings this cause of action as a representative action under the Private
14 Attorneys General Act ("PAGA"), Labor Code §§ 2698 et seq., on behalf of himself and all other
15 current and former Workers who performed work for Defendant in California and were classified as
16 independent contractors during the applicable statutory period.

17 72. Plaintiff is an "aggrieved employee" under Labor Code § 2699(c), having been
18 subjected to one or more of the Labor Code violations alleged herein.

19 73. Plaintiff has complied with all administrative prerequisites to suit, including timely
20 providing written notice to the Labor and Workforce Development Agency ("LWDA") and
21 Defendant, as required by Labor Code § 2699.3(a)2.

22 74. Defendant, as a matter of policy and practice, has engaged in violations of the
23 California Labor Code and applicable Wage Orders, including but not limited to:

- 24 a. Failure to pay minimum wages and overtime (Lab. Code §§ 1194, 1197, 1198,
25 510, 558, 1194.2, 1197.1)
- 26 b. Failure to provide meal and rest breaks and premium pay (Lab. Code §§
27 226.7, 512, 226.2, 558)

- c. Failure to pay for all hours worked, including nonproductive and on-call time (Lab. Code §§ 1194, 1197, 1198, 226.2)
- d. Failure to reimburse business expenses (Lab. Code § 2802)
- e. Unlawful deductions from wages (Lab. Code §§ 221, 223, 224)
- f. Failure to provide accurate itemized wage statements (Lab. Code §§ 226(a), (e), 226.3)
- g. Failure to maintain accurate payroll records (Lab. Code § 1174)
- h. Failure to pay all wages due upon separation (Lab. Code §§ 201, 202, 203, 204, 210, 216, 225.5)
- i. Willful misclassification of employees as independent contractors (Lab. Code § 226.8)
- j. Failure to provide paid sick leave (Lab. Code § 245 et seq.)
- k. Requiring unlawful written agreements (Lab. Code § 432.5)
- l. Other violations as set forth in the PAGA letter and above2.

75. Pursuant to Labor Code §§ 2699(a), 2699(f), and 2699.5, Plaintiff seeks to recover all available civil penalties for each violation, for each pay period, for each aggrieved employee, as permitted by law.

76. Plaintiff seeks to recover these penalties on behalf of the State of California, himself, and all other aggrieved employees, plus reasonable attorneys' fees and costs as provided by Labor Code § 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated and as a representative under PAGA, prays for judgment against Defendant as follows:

1. Certification of this action as a class action;
2. Appointment of Plaintiff as Class Representative and his counsel as Class Counsel;
3. Unpaid wages, including minimum and overtime wages;
4. Premium pay for missed meal and rest breaks and unpaid rest break compensation;
5. Reimbursement of business expenses;

6. Statutory penalties for wage statement violations and waiting time penalties;
7. Civil penalties under PAGA for all aggrieved employees;
8. Restitution and injunctive relief under the UCL;
9. Pre- and post-judgment interest;
10. Attorneys' fees and costs;
11. Any other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

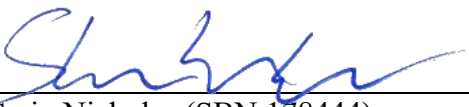
Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: July 1, 2025

NICHOLAS & TOMASEVIC, LLP

By: _____



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