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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF MARIN
11 UNLIMITED JURISDICTION
12

13 TAMARA WATKINS, on behalf of herself
14 and all others similarly situated, and the
general public,

15 *Plaintiff,*

16 v.

17 PRICE-SIMMS, INC., a California
corporation; PRICE-SIMMS
18 MANAGEMENT, INC., a California
corporation; PRICE-SIMMS FAIRFIELD,
19 LLC, a California limited liability company;
PRICE-SIMMS FORD, LLC, a California
20 limited liability company; PRICE-SIMMS PA,
LLC, a California limited liability company;
21 PRICE-SIMMS PSM, LLC, a California
limited liability company; PRICE-SIMMS
22 PSSJ, LLC, a California limited liability
company; PRICE-SIMMS WALNUT CREEK
23 RE, LLC, a California limited liability
company; PRICE-SIMMS WALNUT
24 CREEK, LLC, a California limited liability
company; and DOES 1 through 50, inclusive,

25 *Defendants.*
26
27
28

Case No.

CIV 23 00340

CLASS AND REPRESENTATIVE ACTION

COMPLAINT

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 (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Indemnify (Lab. Code § 2802);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
8. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff TAMARA WATKINS (“Plaintiff”), on behalf of herself and all others similarly
2 situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against defendants PRICE-
5 SIMMS, INC., a California corporation; PRICE-SIMMS MANAGEMENT, INC., a California
6 corporation; PRICE-SIMMS FAIRFIELD, LLC, a California limited liability company; PRICE-
7 SIMMS FORD, LLC, a California limited liability company; PRICE-SIMMS PA, LLC, a
8 California limited liability company; PRICE-SIMMS PSM, LLC, a California limited liability
9 company; PRICE-SIMMS PSSJ, LLC, a California limited liability company; PRICE-SIMMS
10 WALNUT CREEK RE, LLC, a California limited liability company; PRICE-SIMMS WALNUT
11 CREEK, LLC, a California limited liability company; and DOES 1 through 50, inclusive,
12 (collectively referred to as “Defendants”) for alleged violations of the Labor Code. As set forth
13 below, Plaintiff alleges that Defendants have:

- 14 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
15 periods;
- 16 (2) failed to provide them with rest periods;
- 17 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 18 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
19 rate of pay;
- 20 (5) failed to pay them at least minimum wage for all hours worked;
- 21 (6) failed to pay them overtime wages at the correct rate;
- 22 (7) failed to pay them double time wages at the correct rate;
- 23 (8) failed to pay them overtime and/or double time wages by failing to include all
24 applicable remuneration in calculating the regular rate of pay;
- 25 (9) failed to pay them for all vested vacation pay;
- 26 (10) failed to reimburse them for all necessary business expenses;
- 27 (11) failed to provide them with accurate written wage statements; and
- 28 (12) failed to pay them all of their final wages following separation of employment.

1 Based on these alleged violations, Plaintiff now brings this class and representative action to
2 recover unpaid wages, restitution, civil and statutory penalties, and related relief on behalf of
3 herself and all others similarly situated, all other aggrieved employees, and the State of California.

4 **JURISDICTION AND VENUE**

5 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
6 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants
7 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

8 3. Venue is proper in the County of Marin pursuant to Code of Civil Procedure §§
9 393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are
10 the subject matter of this Complaint occurred therein and/or each defendant is found, maintains
11 offices, transacts business, and/or has an agent therein.

12 **PARTIES**

13 4. Plaintiff is and was, and at all relevant times mentioned herein, an individual
14 residing in the State of California.

15 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant PRICE-
16 SIMMS, INC., is, and at all relevant times mentioned herein, a California corporation doing
17 business in the State of California.

18 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant PRICE-
19 SIMMS MANAGEMENT, INC., is, and at all relevant times mentioned herein, a California
20 corporation doing business in the State of California.

21 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant PRICE-
22 SIMMS FAIRFIELD, LLC, is, and at all relevant times mentioned herein, a California limited
23 liability company doing business in the State of California.

24 8. Plaintiff is informed and believes, and thereupon alleges, that Defendant PRICE-
25 SIMMS FORD, LLC, is, and at all relevant times mentioned herein, a California limited liability
26 company doing business in the State of California.

27 9. Plaintiff is informed and believes, and thereupon alleges, that Defendant PRICE-
28 SIMMS PA, LLC, is, and at all relevant times mentioned herein, a California limited liability

1 company doing business in the State of California.

2 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant PRICE-
3 SIMMS PSM, LLC, is, and at all relevant times mentioned herein, a California limited liability
4 company doing business in the State of California.

5 11. Plaintiff is informed and believes, and thereupon alleges, that Defendant PRICE-
6 SIMMS PSSJ, LLC, is, and at all relevant times mentioned herein, a California limited liability
7 company doing business in the State of California.

8 12. Plaintiff is informed and believes, and thereupon alleges, that Defendant PRICE-
9 SIMMS WALNUT CREEK RE, LLC, is, and at all relevant times mentioned herein, a California
10 limited liability company doing business in the State of California.

11 13. Plaintiff is informed and believes, and thereupon alleges, that Defendant PRICE-
12 SIMMS WALNUT CREEK, LLC, is, and at all relevant times mentioned herein, a California
13 limited liability company doing business in the State of California.

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

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

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CLASS ALLEGATIONS

16. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure § 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.

17. **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 whether directly or indirectly through any staffing agencies and/or any other third parties in hourly or non-exempt positions in California during the **Relevant Time Period**.

Meal Period Sub-Class: All **Hourly Employee Class** members who worked in a shift in excess of five hours during the **Relevant Time Period**.

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours during the **Relevant Time Period**.

Wage Statement Penalties Sub-Class: All **Hourly Employee Class** members employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

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.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the **Relevant Time Period**.

Expense Reimbursement Class: All persons employed by Defendants in California who incurred business expenses during the **Relevant Time Period**.

18. **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.

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

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

- 4 i. Whether Defendants maintained a policy or practice of failing to provide employees
5 with their meal periods;
- 6 ii. Whether Defendants maintained a policy or practice of failing to provide employees
7 with their rest periods;
- 8 iii. Whether Defendants failed to pay premium wages to class members when they have
9 not been provided with required meal and/or rest periods;
- 10 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
11 as a result of policies that fail to provide meal periods in accordance with California
12 law;
- 13 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
14 for all time worked;
- 15 vi. Whether Defendants failed to reimburse class members for all necessary business
16 expenses incurred during the discharge of their duties;
- 17 vii. Whether Defendants failed to provide class members with accurate written wage
18 statements as a result of providing them with written wage statements with
19 inaccurate entries for, among other things, amounts of gross and net wages, and total
20 hours worked;
- 21 viii. Whether Defendants applied policies or practices that result in late and/or incomplete
22 final wage payments;
- 23 ix. Whether Defendants are liable to class members for waiting time penalties under
24 Labor Code section 203;
- 25 x. Whether class members are entitled to restitution of money or property that
26 Defendants may have acquired from them through unfair competition;

27 21. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
28 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing

1 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

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

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

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

20 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

21 25. Plaintiff worked for Defendants as an hourly, non-exempt employee from
22 approximately December 2019 through March 2022.

23 **COVID Screening and Off-the-Clock Work**

24 26. During the applicable limitations period, Plaintiff and the putative class had to work
25 off-the-clock because they were not paid for all hours. Defendants had a policy and/or practice of
26 requiring Plaintiff and the putative class to submit to a temperature check to screen for COVID-19
27 prior to clocking-in for work. The time spent submitting to the temperature check was time that
28 Plaintiff and the putative class were under the control of Defendants, but for which they were not

1 compensated. Additionally, occasionally when Plaintiff and the putative class first entered the
2 work place before clocking in (and sometimes during meal periods when they had already clocked-
3 out), their managers and/or supervisors would be waiting to speak to them about work related
4 matters even though they were aware that Plaintiff and the putative class were not clocked-in for
5 work. Defendants failed to pay Plaintiff and the putative class for this time.

6 27. Defendants knew or should have known that Plaintiff and the putative class were
7 performing work before and after their scheduled work shifts and failed to pay Plaintiff and the
8 putative class for these hours.

9 28. Defendants were aware of this practice and directed, permitted, or otherwise
10 encouraged Plaintiff and the putative class to perform off-the-clock work.

11 29. As a result of Defendants' policies and practices, Plaintiff and the putative class were
12 not paid for all hours worked.

13 **Missed Meal Periods**

14 30. Plaintiff and the putative class were not provided with meal periods of at least thirty
15 (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling
16 each meal period as part of each work shift; (2) chronically understaffing each work shift with not
17 enough workers; (3) imposing so much work on each employee such that it made it unlikely that an
18 employee would be able to take their breaks if they wanted to finish their work on time; and (4) no
19 formal written meal and rest period policy that encouraged employees to take their meal and rest
20 periods.

21 31. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
22 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
23 worked.

24 **Missed Rest Periods**

25 32. Plaintiff and the putative class were not provided with rest periods of at least ten
26 (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
27 policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing
28 each work shift with not enough workers; (3) imposing so much work on each employee such that

1 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their
2 work on time; and (4) no formal written meal and rest period policy that encouraged employees to
3 take their meal and rest periods.

4 33. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
5 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours
6 worked.

7 **Expense Reimbursement**

8 34. Plaintiff and the putative class members were required to utilize their own personal
9 vehicles and their own personal cell phones to perform their job duties.

10 35. Plaintiff and the putative class members were not reimbursed for business expenses
11 incurred in frequently using their personal cell phones to communicate with management and/or
12 HR, and were not reimbursed for gas and/or mileage for required trips taken in their personal
13 vehicles between dealerships.

14 36. Defendants failed to reimburse Plaintiff and the putative class for such necessary
15 business expenses incurred by them.

16 **Wage Statements**

17 37. Plaintiff and the putative class were not provided with accurate wage statements as
18 mandated by law pursuant to Labor Code § 226.

19 38. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
20 earned" were not accurately reflected in that all hours worked, including overtime and "off-the-
21 clock" work were not included.

22 39. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours
23 worked by the employee" were not accurately reflected in that all hours worked, including overtime
24 and "off-the-clock" work were not included.

25 40. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages
26 earned" were not accurately reflected in that all hours worked, including overtime and "off-the-
27 clock" work were not included.

28 41. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable

1 hourly rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee” were not accurately reflected in that all hours worked, including
3 overtime and “off-the-clock” work were not included.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL PERIODS**

6 **(Lab. Code §§ 204, 223, 226.7, 512 and 1198)**

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

8 42. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged
9 herein.

10 43. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
11 non-exempt employees of Defendants entitled to the full meal period protections of both the Labor
12 Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

13 44. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative
14 obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal
15 periods of at least thirty minutes for each work period of five hours, and to provide them with two
16 uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

17 45. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers
18 from requiring employees to work during required meal periods and require employers to pay non-
19 exempt employees an hour of premium wages on each workday that the employee is not provided
20 with the required meal period.

21 46. Compensation for missed meal periods constitutes wages within the meaning of
22 Labor Code § 200.

23 47. Labor Code § 1198 makes it unlawful to employ a person under conditions that
24 violate the applicable Wage Order.

25 48. Section 11 of the applicable Wage Order states:

26 “No employer shall employ any person for a work period of more than five (5)
27 hours without a meal period of not less than 30 minutes, except that when a
28 work period of not more than six (6) hours will complete the day’s work the
meal period may be waived by mutual consent of the employer and employee.
Unless the employee is relieved of all duty during a 30 minute meal period, the

1 meal period shall be considered an 'on duty' meal period and counted as time
2 worked. An 'on duty' meal period shall be permitted only when the nature of
3 the work prevents an employee from being relieved of all duty and when by
4 written agreement between the parties an on-the-job paid meal period is agreed
5 to. The written agreement shall state that the employee may, in writing, revoke
6 the agreement at any time."

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

10 50. Plaintiff alleges that, at all relevant times during the applicable limitations period,
11 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
12 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for
13 each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order.

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

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

22 53. Moreover, upon information and belief Defendants' written policies do not provide
23 that employees must take their first meal period before the end of the fifth hour of work, that
24 employees are entitled to a second meal period if they work a shift of over ten hours, or that the
25 second meal period must commence before the end of the tenth hour of work, unless waived.

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

55. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and
the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and

1 costs of suit.

2 56. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
3 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Meal**
4 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REST PERIODS**

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

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

9 57. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

10 58. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
11 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
12 Code and the applicable Wage Order.

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

17 60. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers
18 from requiring employees to work during required rest periods and require employers to pay non-
19 exempt employees an hour of premium wages at the employees' regular rates of pay, on each
20 workday that the employee is not provided with the required rest period(s).

21 61. Compensation for missed rest periods constitutes wages within the meaning of Labor
22 Code § 200.

23 62. Labor Code § 1198 makes it unlawful to employ a person under conditions that
24 violate the Wage Order.

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

64. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class** members additional premium wages when required rest periods were not provided.

65. Specifically, Defendants written policies do not provide that employees may take a rest period for each four hours worked, or major fraction thereof, nor that rest periods should be taken in the middle of each work period insofar as practicable.

66. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and costs of suit.

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

THIRD CAUSE OF ACTION

FAILURE TO PAY HOURLY AND OVERTIME WAGES

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

(Plaintiff and Hourly Employee Class)

68. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

72. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

1 73. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
2 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
3 underlying unpaid minimum wages and interest thereon.

4 74. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
5 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
6 period.

7 75. Labor Code § 1197.1 provides that it is unlawful for any employer or any other
8 person acting either individually or as an officer, agent, or employee of another person to pay an
9 employee, or cause an employee to be paid, less than the applicable minimum wage.

10 76. Labor Code § 1198 makes it unlawful for employers to employ employees under
11 conditions that violate the applicable Wage Order.

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

16 78. Labor Code § 223 makes it unlawful for employers to pay their employees lower
17 wages than required by contract or statute while purporting to pay them legal wages.

18 79. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
19 non-exempt employees overtime wages of no less than one and one-half times the employees'
20 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
21 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
22 seventh consecutive day of one workweek.

23 80. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
24 pay non-exempt employees overtime wages of no less than two times the employees' respective
25 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
26 worked in excess of eight hours on a seventh consecutive workday during the workweek.

27 81. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
28 centrally devised policies and practices to her and **Hourly Employee Class** members with respect

1 to working conditions and compensation arrangements.

2 82. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
3 **Employee Class** members for all time worked, including but not limited to, overtime hours at
4 statutory and/or agreed rates.

5 83. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
6 **Employee Class** members all earned wages every pay period at the correct rates, including
7 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
8 **Hourly Employee Class** members to perform off-the-clock work.

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

13 85. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
14 behalf of herself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
15 overtime wages, interest thereon, and costs of suit.

16 86. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
17 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Hourly**
18 **Employee Class** members, seeks to recover reasonable attorneys' fees.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO INDEMNIFY**

21 **(Lab. Code § 2802)**

22 **(Plaintiff and Expense Reimbursement Class)**

23 87. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

24 88. Labor Code section 2802(a) states:

25 An employer shall indemnify his or her employee for all necessary expenditures or
26 losses incurred by the employee in direct consequence of the discharge of his or her
27 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.

28 89. At all relevant times during the applicable limitations period, Plaintiff and the

1 **Expense Reimbursement Class** members incurred necessary business-related expenses and costs,
2 including but not limited to, usage of their personal cellphones to text and email management and/or
3 HR, as well as gas and mileage for trips between dealerships and/or stores.

4 90. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid
5 by Defendants was insufficient to indemnify Plaintiff for all necessary expenses incurred in the
6 discharge of their duties.

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

10 92. 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 93. 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 94. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to
18 restitution for all unpaid amounts due and owing within four years of the date of the filing of the
19 original Complaint and until the date of entry of judgment.

20 95. Plaintiff, on behalf of herself, and **Expense Reimbursement Class** members, seeks
21 interest thereon and costs pursuant to Labor Code § 218.6 and reasonable attorneys' fees pursuant to
22 Code of Civil Procedure § 1021.5.

23 **FIFTH CAUSE OF ACTION**

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

25 **(Lab. Code § 226)**

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

27 96. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

28 97. Labor Code § 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
16 at 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 98. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize
27 the "detachable part of the check" provision and the "accurate itemized statement in writing"
28 provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
29 employee retains the right to elect to receive a written paper stub or record and that those who are
30 provided with electronic wage statements retain the ability to easily access the information and
31 convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion
32 Letter July 6, 2006.)

33 99. Plaintiff is informed and believes that, at all relevant times during the applicable
34 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
35 members with written wage statements as described above.

36 100. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
37 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
38 that Defendants had the ability to provide them with accurate wage statements but had intentionally
39 provided them with written wage statements that Defendants knew do not comply with Labor Code
40 § 226(a).

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

102. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of herself and **Wage Statement Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation of Labor Code section 226(a) occurred and one hundred dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code § 226(a) occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class member.

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

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL FINAL WAGES

(Lab. Code §§ 201–203)

(Plaintiff and Waiting Time Penalties Sub-Class)

104. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

107. At all relevant times, pursuant to Labor Code § 202, employees who have resigned after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of

1 all final wages at the time of resignation.

2 108. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
3 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of
4 all final wages within seventy-two (72) hours' of giving notice of resignation.

5 109. During the applicable limitations period, Defendants failed to pay Plaintiff all of her
6 final wages in accordance with the Labor Code by failing to timely pay her all of her final wages.

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

10 111. Plaintiff is informed and believes that, at all relevant times during the applicable
11 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
12 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
13 §§ 201 or 202 by failing to timely pay them all final wages.

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

19 113. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of herself and **Waiting**
20 **Time Penalties Sub-Class** members, seeks waiting time penalties from the respective dates that
21 their final wages had first become due until paid, up to a maximum of thirty days, and interest
22 thereon.

23 114. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
24 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time**
25 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

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1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

4 **(Plaintiff and UCL Class)**

5 115. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

6 116. Business and Professions Code § 17200 defines “unfair competition” to include any
7 unlawful business practice.

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

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

15 119. Plaintiff, on behalf of herself and the **UCL Class** members, re-alleges and
16 incorporates the FIRST, SECOND, THIRD, and FOURTH causes of action herein.

17 120. Plaintiff lost money and/or property as a result of the aforementioned unfair
18 competition.

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

20 122. Plaintiff is informed and believes and thereupon alleges that, by committing the
21 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
22 225, 226.6, 1175, 1199 and 2802. Defendants thus committed misdemeanors by violating the Labor
23 Code as alleged herein.

24 123. 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-
26 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
27 work period of five or more hours, by failing to pay non-exempt employees for all hours worked,
28 and by failing to reimburse them for all expenses.

1 124. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
2 employees and entitled to the full protections of both the Labor Code and the applicable Wage
3 Order.

4 125. Defendants' unlawful conduct as alleged in this Complaint amounts to and
5 constitutes unfair competition within the meaning of Business and Professions Code section 17200
6 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
7 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
8 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of herself and on
9 behalf of similarly situated persons in a class-action proceeding.

10 126. As a result of Defendants' violations of the Labor Code during the applicable
11 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
12 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
13 conduct.

14 127. Plaintiff is informed and believes that other similarly situated persons have been
15 subject to the same unlawful policies or practices of Defendants.

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

19 129. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
20 relief for "any unlawful, unfair or fraudulent business act or practice," including a practice or act
21 that violates, or is considered unlawful under, any other state or federal law.

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

131. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of herself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

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

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698 *et seq.*)

133. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

134. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, 1198, and 2802.

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

136. Plaintiff, a former employee against whom Defendants committed one or more of the alleged Labor Code violations during the applicable limitations period, is an aggrieved employee within the meaning of Labor Code § 2699(c).

137. Plaintiff has complied with the procedures for bringing suit specified in Labor Code § 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to investigate.

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

i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1194, 1198 and

1 2802, one hundred dollars (\$100) for each employee per pay period for each
2 initial violation and two hundred dollars (\$200) for each employee per pay
3 period for each subsequent violation (penalties set by Labor Code §
4 2699(f)(2));

5 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
6 thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);

7 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
8 employee for each initial violation that was neither willful nor intentional,
9 two hundred dollars (\$200) for each employee, plus 25% of the amount
10 unlawfully withheld from each employee, for each initial violation that was
11 either willful or intentional, and two hundred dollars (\$200) for each
12 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
13 from each employee, for each subsequent violation, regardless of whether the
14 subsequent violation was either willful or intentional (penalties set by Labor
15 Code § 210);

16 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
17 employee for each initial violation that was neither willful nor intentional,
18 two hundred dollars (\$200) for each employee, plus twenty-five percent
19 (25%) of the amount unlawfully withheld from each employee, for each
20 initial violation that was either willful or intentional, and two hundred dollars
21 (\$200) for each employee, plus twenty-five percent (25%) of the amount
22 unlawfully withheld from each employee, for each subsequent violation,
23 regardless of whether the subsequent violation was either willful or
24 intentional (penalties set by Labor Code § 225.5);

25 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
26 citation, two hundred and fifty dollars (\$250) for each employee for each
27 violation. Alternatively, if an initial citation or its equivalent occurred before
28 the filing of this action, one thousand dollars (\$1,000) for each employee for

1 each violation (penalties set by Labor Code § 226.3);

2 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
3 employee for each initial pay period for which the employee was underpaid,
4 and one hundred dollars (\$100) for each employee for each subsequent pay
5 period for which the employee was underpaid (penalties set by Labor Code §
6 558);

7 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
8 aggrieved employee for each initial violation of Labor Code § 1197 that was
9 intentional and two hundred and fifty dollars (\$250) for each aggrieved
10 employee per pay period for each subsequent violation of Labor Code §
11 1197, regardless of whether the initial violation was intentional (penalties set
12 by Labor Code § 1197.1);

13 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable
14 attorneys' fees and costs in connection with Plaintiff's claims for civil
15 penalties.

16 **PRAYER FOR RELIEF**

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

- 19 (1) An order that the action be certified as a class action;
20 (2) An order that Plaintiff be appointed class representative;
21 (3) An order that counsel for Plaintiff be appointed class counsel;
22 (4) Unpaid wages;
23 (5) Actual damages;
24 (6) Liquidated damages;
25 (7) Restitution;
26 (8) Declaratory relief;
27 (9) Pre-judgment interest;
28 (10) Statutory penalties;

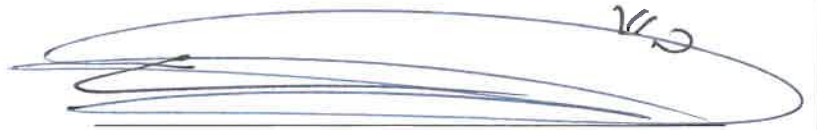
- 1 (11) Civil penalties;
2 (12) Costs of suit;
3 (13) Reasonable attorneys' fees; and
4 (14) Such other relief as the Court deems just and proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby
7 demands a jury trial on all issues so triable.

8
9 Dated: February 6, 2023

SETAREH LAW GROUP

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