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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JAIRY AGUILAR, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

BURGESON'S HEATING AND AIR
CONDITIONING, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CIVSB2303316

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 558, 1182.12,
1194, 1194.2, 1197, 1198)**
- (3) **REST PERIOD VIOLATIONS (LABOR
CODE §§ 226.7, 516, 1198);**
- (4) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (5) **WAITING TIME PENALTIES (LABOR
CODE §§ 201-203);**
- (6) **UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*)**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jairy Aguilar (“Plaintiff”), on behalf of herself and all others similarly situated,
2 hereby brings this Class and Representative Action Complaint against Burgeson’s Heating and
3 Air Conditioning, Inc., a California corporation; and Does 1 through 100, inclusive (collectively,
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 class and representative action for recovery of unpaid wages and penalties under California
8 Business and Professions Code section 17200, *et seq.*; Labor Code sections 201-204, 226, 226.7,
9 510, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq*; and Industrial Welfare
10 Commission Wage Order No. 4 (“Wage Order 4”), in addition to seeking declaratory relief and
11 restitution. This class action is brought pursuant to California Code of Civil Procedure section
12 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because
13 the amount in controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in San Bernardino County. Defendants own, maintain offices, transact business, have an
18 agent or agents within San Bernardino County, and/or otherwise are found within San Bernardino
19 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
25 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
26 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
27 204, 226, 226.7, 510, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq*; California
28 Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 4, which

1 sets employment standards for employees in professional, technical, clerical, mechanical, and
2 similar occupations.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
5 business as a provider of heating, air conditioning, electrical, solar, and plumbing services, and
6 that they employed Plaintiff and other similarly situated non-exempt employees within San
7 Bernardino County and the state of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
12 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 15) to be subject to the
15 unlawful employment practices, wrongs, injuries, and damages complained of herein.

16 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
17 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

18 7. At all times herein mentioned, each of said Defendants participated in the acts
19 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
20 each of them, were the agents, servants, and employees of each of the other Defendants, as well
21 as the agents of all Defendants, and at all times herein mentioned were acting within the course
22 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
23 and/or otherwise ratified each of the acts or omissions alleged herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
28 members (as defined in Paragraph 15).

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10. During Plaintiff's employment with Defendants, Plaintiff and other non-exempt employees often worked over 8.0 hours in a workday and/or over 40.0 hours in a workweek, but Defendants failed to pay them overtime compensation at one-and-one-half times (or two times in the case of double-time) their "regular rate" of pay as required under Labor Code § 510 and Wage Order 4. Specifically, Plaintiff and other non-exempt employees earned non-discretionary bonuses, "spiffs," and/or other forms of compensation not excludable from the "regular rate" of pay (these forms of pay are hereinafter referred to collectively as "Incentive Pay"), but Defendants paid overtime and/or double-time compensation at one-and-one-half times (or two times) employees' *base* rate of pay, without incorporating Incentive Pay into the "regular rate" of pay. For example, in the June 8-14, 2022 pay period, Plaintiff's wage statement reflects that she worked overtime and also earned a SPIFF equaling \$250.00 in the same pay period. However, Defendants paid Plaintiff's overtime wages at \$30.00 per hour, which was 1.5 times Plaintiff's *base* rate of pay of \$20.00 per hour. Likewise, in the July 20-26, 2022 pay period, Plaintiff's wage statement reflects that she earned a SPIFF of \$20.00, but Defendants again paid her overtime compensation at \$30.00, which was 1.5 times her *base* rate of pay of \$20.00 per hour. As a result of Defendants' failure to incorporate Incentive Pay into the regular rate of pay, Plaintiff and other non-exempt employees have been underpaid their overtime and/or double-time compensation.

11. In addition to under-paying overtime wages, Defendants have utilized a timekeeping system that has resulted in Plaintiff and other non-exempt employees not being paid for all hours worked. Specifically, Defendants require Plaintiff and other non-exempt employees to clock in and out for their shifts, and although, on information and belief, Defendants record Plaintiff's and other employees' clock-in and clock-out times to the minute, Defendants have rounded and/or time-shaved employee time entries in a manner that was not even-handed over time, and which has resulted in Plaintiff and other non-exempt employees not being compensated for all hours worked. As a result of this policy and practice, Defendants have failed to pay Plaintiff

1 and other non-exempt employees all wages due to them, including minimum wages and overtime
2 wages.

3 12. Defendants have also failed to authorize and permit compliant rest periods to
4 Plaintiff and other non-exempt employees. Specifically, the workload placed upon Plaintiff and
5 other non-exempt employees has often prevented them from taking an off-duty, net 10-minute
6 rest period for each work period of 4 hours or major fraction thereof. Plaintiff's and other non-
7 exempt employees' rest periods have also been interrupted, rendering them less than 10 minutes
8 of net rest time. Despite failing to authorize and permit legally compliant rest periods to Plaintiff
9 and other non-exempt employees, Defendants have failed to pay the rest period premiums
10 required by Labor Code § 226.7. Upon information and belief, during at least a portion of the
11 putative class period, Defendants maintained no payroll code or other mechanism for paying rest
12 period premiums when Defendants failed to authorize and permit a legally compliant rest period.

13 13. As a result of Defendants' failure to pay all earned wages (including but not limited
14 to minimum and overtime wages), as well as Defendants' failure to pay rest period premium
15 wages, Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt
16 employees at the separation of their employment.

17 14. As a further result of Defendants' failure to accurately report Plaintiff's hours
18 worked and failure to pay all earned wages and premium wages, Defendants have maintained
19 inaccurate payroll records, and have issued inaccurate wage statements to Plaintiff and other non-
20 exempt employees. These failures resulted in employees' wage statements including inaccurate
21 information regarding, *inter alia*, gross wages earned, net wages earned, and the rates of pay in
22 effect in each pay period.

23 **CLASS ACTION ALLEGATIONS**

24 15. Class Definitions: Plaintiff brings this action on behalf of herself and the following
25 Classes pursuant to Section 382 of the Code of Civil Procedure:

26 a. The Overtime Class consists of all of the Defendants' current and former non-
27 exempt employees in California who worked more than 8.0 hours in a workday and/or over
28 40.0 hours in a workweek, and (i) were subject to Defendants' timekeeping and payroll

1 policies and practices, and/or (ii) earned Incentive Pay and worked overtime hours in the
2 same pay period, at any time from four years immediately preceding the filing of this
3 lawsuit to the present.

4 b. The Minimum Wage Class consists of all of the Defendants' current and former
5 non-exempt employees in California who were subject to Defendants' timekeeping and
6 payroll practices, at any time from four years immediately preceding the filing of this action
7 to the present.

8 c. The Rest Period Class consists of all of the Defendants' current and former non-
9 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
10 time from four years immediately preceding the filing of this action through the present.

11 d. The Wage Statement Class consists of all members of the Overtime Class,
12 Minimum Wage Class, and/or Rest Period Class, who received a wage statement from
13 Defendants at any time from one year immediately preceding the filing of this lawsuit
14 through the present.

15 e. The Waiting Time Class consists of all members of the Overtime Class, Minimum
16 Wage Class, and/or Rest Period Class, who are no longer employed by Defendants and
17 whose employment with Defendants ended at any time from three years immediately
18 preceding the filing of this lawsuit through the present.

19 16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
20 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
21 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
22 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
23 Defendants' employment records.

24 17. **Common Questions of Law and Fact Predominate/Well Defined Community**
25 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
26 situated employees, which predominate over questions affecting only individual members
27 including, without limitation to:
28

- i. Whether Defendants paid Minimum Wage Class members at least the statutory minimum wage for all hours worked;
- ii. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;
- iii. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- iv. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- v. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment.

18. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual Class members. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each Class member, such as Defendants' timekeeping, payroll, overtime, wage statement, rest period, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned wages and overtime wages, was subject to Defendants' uniform rest period policies/practices, was furnished with inaccurate wage statements, and was deprived of all final wages upon her separation of employment from Defendants.

20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover,

Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by individual class members would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 15 are maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

4 22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 23. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
6 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
7 overtime hours worked and provide a private right of action for the failure to pay all overtime
8 compensation for overtime work performed.

9 24. At all times relevant herein, Defendants were required to properly compensate
10 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
11 Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an
12 employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess
13 of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours
14 on the seventh consecutive workday in a workweek. Wage Order 4, § 3 also requires an employer
15 to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a
16 workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek.

17 25. As alleged herein, Defendants have caused Plaintiff and Overtime Class members
18 to work overtime hours but have not compensated them at one and one-half times (or two times)
19 their regular rate of pay for such hours.

20 26. The foregoing policies and practices are unlawful and create entitlement to
21 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
22 premiums owing, including interest thereon, statutory penalties, and attorneys’ fees and costs of
23 suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of
24 Civil Procedure § 1021.5.

25 **SECOND CAUSE OF ACTION**

26 **MINIMUM WAGE VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

28 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 28. Wage Order 4, § 4 and Labor Code §§ 1197 and 1182.12 establish employees'
2 right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§
3 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage
4 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
5 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

6 29. At all relevant times, Defendants failed to conform their pay practices to the
7 requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours
8 actually worked including, but not limited to, all hours they were subject to Defendants' control
9 and/or suffered or permitted to work under the Labor Code and Wage Order 4.

10 30. California Labor Code § 1198 makes unlawful the employment of an employee
11 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
12 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
13 those employees the balance of the unpaid wages as well as liquidated damages in an amount
14 equal to the wages due and interest thereon.

15 31. As a direct and proximate result of Defendants' unlawful conduct as alleged
16 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
17 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
18 entitled to recover economic and statutory damages and penalties and other appropriate relief as
19 a result of Defendants' violations of the California Labor Code and Wage Order 4.

20 32. Defendants' practice and uniform administration of corporate policy regarding
21 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
22 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
23 damages, interest thereon, statutory penalties, and attorneys' fees and costs of suit, per Labor
24 Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

25 **THIRD CAUSE OF ACTION**

26 **REST PERIOD VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

28 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

34. Labor Code §§ 226.7 and 516, and Wage Order 4, § 12 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each rest period to which they were entitled while working.

35. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

37. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all wages earned, all rest period premium wages earned, total hours worked, each hourly rate in effect during the pay period, and the number of hours worked at each hourly rate, in violation of Labor Code § 226.

38. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their earned minimum wages, overtime wages, and rest period premium wages, and deprived them of the information necessary to identify and reconcile the discrepancies in Defendants' reported data.

39. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor

Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

41. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee, or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

42. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including (but not limited to) unpaid earned minimum wages, unpaid overtime wages, and unpaid rest period premium wages.

43. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

44. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and Waiting Time Class members their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from when the wages were due. Plaintiff and Waiting Time Class members are entitled to compensation per Labor Code § 203, plus reasonable attorneys' fees and costs.

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1 **SEVENTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

4 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 51. Defendants have committed several Labor Code violations against Plaintiff and
6 other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor
7 Code § 2698 et seq. Plaintiff, acting on behalf of herself and other aggrieved employees, brings
8 this representative action against Defendants to recover the civil penalties due to Plaintiff, other
9 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
10 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
11 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
12 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
13 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
14 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
15 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
16 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and
17 \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay
18 period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
19 employee per pay period for those violations of the Labor Code for which no civil penalty is
20 specifically provided, based on the following Labor Code violations:

- 21 a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or
22 double-time compensation earned, in violation of Labor Code §§ 204, 510, 558,
23 1194, and 1198;
- 24 b. Failing to pay Plaintiff and other aggrieved employees at least the statutory
25 minimum wage for all hours worked, in violation of Labor Code §§ 204, 558,
26 1182.12, 1194, 1194.2, 1197, and 1198;
- 27 c. Failing to authorize and permit all legally required rest periods and failing to
28 pay rest period premiums to Plaintiff and other aggrieved employees at the

employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;

- d. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203; and
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198.

52. On or about January 23, 2023, Plaintiff notified Defendant Burgeson's Heating and Air Conditioning, Inc., via certified mail, and the Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the Labor Code and Plaintiff's intent to bring a claim for civil penalties under Labor Code § 2698 *et seq.* ("PAGA") with respect to the Labor Code violations identified in paragraph 51 (a)-(e) above. Now that 65 days have passed since Plaintiff notified Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the PAGA with respect to these violations.

53. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under Labor Code § 2699(g).

PRAYER

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

- 1. For an order certifying the proposed Classes;
- 2. For an order appointing Plaintiff as representative of the Classes;
- 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
- 4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 204, 1182.12, 1194, 1194.2, 1197, and 1198;

1 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;

3 7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code §
4 226, *et seq.*;

5 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
6 Labor Code §§ 201-203;

7 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
8 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
9 practices declared by this Court to be in violation of Business & Professions Code § 17200, *et seq.*;

10 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
11 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
12 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay
13 each employee and \$200.00 for each subsequent violation or willful or intentional violation
14 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
15 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
16 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
17 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
18 pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each
19 subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
20 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
21 period for those violations of the Labor Code for which no civil penalty is specifically provided,
22 pursuant to Labor Code § 2699(f);

23 11. Prejudgment interest on all due and unpaid wages and other damages pursuant to
24 California Labor Code §§ 218.6, 1194(a), 1194.2(a); Civil Code § 3287; and Art. XV, § 1 of the
25 California Constitution;

26 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
27 226(e), 1194 *et seq.*, 2699(g), Code of Civil Procedure § 1021.5, and all other applicable statutes;
28 and

1 13. For such other and further relief the Court may deem just and proper.

2
3 Date: April 21, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

4
5 By: _____


Tuvia Korobkin
Attorneys for Plaintiff

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8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

10
11 Dated: April 21, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

12
13 By: _____


Tuvia Korobkin
Attorneys for Plaintiff