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County of Alameda

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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

11 MARY BETH WENDT and JEANNE
12 BARTLETT, on behalf of themselves and all
13 others similarly situated,

14 Plaintiffs,

15 vs.

16 TELECOM BROKERAGE, INC. dba TBI, INC.,
17 GEOFFREY SHEPSTONE, and DOES 1 through
50,

18 Defendants.

Case No. **23CV056029**

**PRIVATE ATTORNEYS GENERAL ACT
COMPLAINT**

1. Failure to Pay Wages (Cal. Lab. Code §§ 204, 218.5, 223, 1194 & Wage Orders);
2. Wage Statement and Record Keeping Violations (Cal. Lab. Code §§ 226, 1174 *et seq.*);
3. Failure to Pay All Wages Owed Upon Termination (Cal. Lab. Code § 203);
4. Promissory Fraud;
5. Promissory Estoppel;
6. Breach of Contract;
7. Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and
8. Private Attorneys General Act (Cal. Lab. Code §§ 2699 *et seq.*)

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff MARY BETH WENDT (“Wendt”) and JEANNE BARTLETT
3 (“Plaintiffs”) bring this action against Defendants TELECOM BROKERAGE, INC. dba TBI, INC.
4 (“TBI”), GEOFFREY SHEPSTONE (“Shepstone”), and DOES 1 through 50 (collectively
5 “Defendants”), for failure to pay contractual wages, wage statement and record keeping violations,
6 failure to pay all wages owed upon termination, promissory fraud, promissory estoppel, breach of
7 contract, violation of the California Unfair Competition Law (“UCL”), and penalties under the
8 Private Attorneys General Act (“PAGA”).

9 2. The allegations in this Complaint are based on Plaintiffs’ personal knowledge and on
10 information and belief based on a reasonable investigation under the circumstances.

11 3. As a result of the violations described herein, Plaintiffs bring this representative
12 action on behalf of a the State of California and a group of similarly situated employees who were
13 promised non-discretionary bonuses that were not paid (“Aggreived Employees”).
14

15 **JURISDICTION AND VENUE**

16 4. This case is subject to the jurisdiction of this court pursuant to the California Labor
17 Code, California Business and Professions Code, and California Code of Civil Procedure.
18 Defendants are entities, partnerships, businesses, and/or persons who reside and/or conduct business
19 in the County of Alameda.

20 5. This Court has jurisdiction under California Code of Civil Procedure Section 410.10,
21 in that this is a civil action where the matter in controversy, exclusive of interest and costs, exceeds
22 \$25,000.

23 6. Venue is proper in this judicial district because Defendants conduct business in
24 Alameda County and many or all of the alleged violations arose in Alameda County.
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PARTIES

7. Wendt is an adult individual and resident of California who was directly or jointly employed by Defendants in California. Wendt was employed by Defendants within the relevant time period and was denied wages owed based on Defendants' unlawful failure to pay non-discretionary bonuses. Wendt has suffered injury in fact and loss of property as a result of Defendants' unlawful conduct as described in this Complaint.

8. Bartlett is an adult individual and resident of California who was directly or jointly employed by Defendants in California. Bartlett was employed by Defendants within the relevant time period and was denied wages owed based on Defendants' unlawful failure to pay non-discretionary bonuses. Bartlett has suffered injury in fact and loss of property as a result of Defendants' unlawful conduct as described in this Complaint.

9. Defendant TBI is a Michigan Corporation with a principal place of business in Chicago, Illinois. TBI provides enterprise technology. During all relevant times alleged herein, TBI employed Plaintiffs and Aggreived Employees and committed, in California and in this county, the acts and/or caused the violations complained of herein.

10. Shepstone was, on information and belief, the Former President of TBI. On information and belief, Shepstone controlled the operation of TBI and caused the violations at issue here either by making, implementing, or failing to correct illegal policies. On information and belief, along with the other Defendants, Shepstone caused all violations described herein. Shepstone exercised ultimate control over policies involving compensation and hours and either (a) knowingly authorized the unlawful practices; or (b) with knowledge of unlawful practices, did nothing to stop them, instead ratifying them.

11. Plaintiffs are ignorant of the true names or capacities of the Defendants sued herein under the fictitious names Does 1 through 50. Plaintiffs will amend this Complaint to allege the true names or capacities of these Doe Defendants once they have been ascertained and verified.

12. The acts and failures to act alleged herein were duly performed by and attributable to all Defendants, each acting as a successor, agent, alter ego, employee, indirect employer, joint employer, and/or integrated enterprise, at the direction and control of the others, except as

specifically alleged otherwise. Said acts and failures to act were within the scope of such agency and/or employment, and each Defendant participated in, approved of, and/or ratified the unlawful acts and omissions by the other Defendants complained of herein.

13. On information and belief, Plaintiffs further assert the damages herein alleged were actually and proximately caused by each Defendant's conduct.

FACTUAL ALLEGATIONS

14. The claims of this lawsuit spring from Defendants' unlawful failure to pay non-discretionary bonuses. Specifically, Shepstone repeatedly told Plaintiffs beining in approximately 2020 that he planned to sell the business and promised he would pay 18% of the proceeds of that sale to certain long-tenured employees—including Plaintiffs—if they remained with the company until the sale took place.

15. Shepstone repeated this promise approximately every other month over the next several years, always verbally.

16. In reliance on Shepstone's promise, Plaintiffs and other employees stayed with the company in anticipation of the sale of the company and the associated bonus Shepstone promised to pay Plaintiffs and other employees. In doing so, they turned down other employment opporutnies. This forbearance was the direct result of Shepstone's promise, which induced them to stay with TBI until the sale.

17. When Shepstone did finally sell TBI, Palintiffs and other similarly situated employees did not receive any portion of the proceeds, in violation of Shepstone's promise and in breach of a binding agreement to that effect. Of the approximately 66 employees to whom the promise was made, only about 12 were provided any share of the proceeds of the sale of the company. The remaining employees—including Plaintiffs—did not receive their share of the 18% which they had been promised.

18. Plaintiffs bring this action pursuant to California Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.3, 558.1, 1174, and 2699 et seq. and Business & Professions Code §§ 17200 et seq. seeking unpaid and/or underpaid wages, statutory penalties, liquidated damages, declaratory,

injunctive, and other equitable relief, reasonable attorneys' fees and costs of suit, interest, restitution, and disgorgement of all profits or benefits retained by Defendants as a result of their failure to comply with the above laws.

19. Defendants have made it difficult to account with precision for the unlawfully withheld wages due to certain of Defendants' qualifying employees, including Plaintiffs, during all relevant times herein, because they have not implemented an adequate record-keeping method to record all wages earned by their employees as required by California Labor Code §§ 226 and 1174(d).

CAUSES OF ACTION

FIRST CAUSE OF ACTION FAILURE TO PAY ALL CONTRACTUAL WAGES Cal. Lab. Code §§ 204, 218.5, 223, 1194 & Wage Orders (All Plaintiffs Against All Defendants)

20. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

21. Labor Code § 223 requires an employer to pay an employee the wage designated by statute or contract. Furthermore, California law requires payment of all wages due for "all hours worked."

22. Pursuant to Labor Code § 223, it is unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or contract.

23. Non-discretionary bonuses are contractually required bonuses to be paid, upon the satisfaction of a specific result. (See Division of Labor Standards Enforcement (DLSE) Glossary: Bonus). This includes terms that induce employees to remain in the employ of the employer for a certain period of time. *Id.* The term "non-discretionary payments" are payments for an employee's work that are owed "pursuant to [a] prior contract, agreement, or promise," not "determined at the sole discretion of the employer." (DLSE), Update of the DLSE Enforcement Policies and Interpretations Manual (rev. 2019) § 49.1.2.4(3), p. 49-3 (2019 DLSE Manual), citing 29 C.F.R. §§ 778.211, 778.213 (2021); see C.F.R. § 778.211 (2021) [a payment is discretionary if "both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of

1 the employer ... and not pursuant to any prior contract, agreement, or promise causing the employee
2 to expect such payments regularly”].

3 24. The term “regular rate of compensation” in Cal. Lab. Code § 226.7(c) has the same
4 meaning as “regular rate of pay” in section 510(a) and encompasses not only hourly wages but all
5 non-discretionary payments for work performed by the employee. Further, individual persons who
6 unlawfully withhold wages owed to employees, in violation of Cal. Lab Code §§ 212, 216, 221, 222,
7 and 223, are personally liable under Cal. Lab. Code sections 2699(f) and 2699.5. Defendants
8 breached their agreement and refused to compensate Plaintiffs and, on information and belief,
9 Aggrieved Employees, in violation of the Labor Code and Wage Orders, including section 223 of
10 the Labor Code. By failing to pay wages at the required rate on at least a weekly basis, Defendants
11 have also violated Labor Code § 204 by failing to pay all earned wages in a timely manner.

12 25. Earned bonuses are considered wages under Cal. Lab. Code section 200. Id. Here,
13 the alleged earned bonuses are non-discretionary and are subject to the relevant penalties under
14 PAGA, including, and without limitation, waiting time penalties (Cal. Lab. Code § 203), wage scale
15 penalties for failure to pay for contracted wages (Cal. Lab. Code § 223), and wage statement
16 penalties (Cal. Lab. Code § 226).

17 26. Plaintiffs bring this cause of action under Labor Code § 218.5, authorizing a private
18 right of action for the nonpayment of wages.

19 27. Defendants have the ability to pay wages at the required rates for all “hours worked,”
20 but have willfully refused to pay such wages with the intent to secure a discount upon their
21 indebtedness to Plaintiffs Aggrieved Employees, as well as to annoy, harass, oppress, hinder, delay,
22 or defraud Plaintiffs and Aggrieved Employees. Defendants have secretly paid Plaintiffs and
23 Aggrieved Employees a lower wage while purporting to pay the wage designated by contract, in
24 violation of Labor Code § 223. Defendants are therefore guilty of a misdemeanor, pursuant to Labor
25 Code § 225, and are liable for penalties pursuant to Labor Code § 225.5.

26 28. Due to their failure to pay the earned, non-discretionary bouses, Defendants failed to
27 pay Plaintiffs and Aggrieved Employees at the written agreed upon wage rate.
28

1 29. Under Labor Code § 558.1, any natural person who is an owner, director, officer, or
2 managing agent of an employer, acting on behalf of the employer, who violates or causes to be
3 violated any provision regulating minimum wages or hours and days of work in any order of the
4 Industrial Welfare Commission, or violates, or causes to be violated, Labor Code §§ 203, 226, 226.7,
5 1193.6, 1194, or 2802, may be held liable as the employer for such violation. Therefore, Shepstone
6 is liable for the violations herein alleged.

7 30. WHEREFORE, Plaintiffs are entitled to recover the unpaid wages, liquated damages
8 in an amount equal to the wages unlawfully unpaid, interest thereon, reasonable attorneys' fees, and
9 costs of suit pursuant to California Labor Code § 1194(a).

10 **SECOND CAUSE OF ACTION**
11 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED WAGE**
12 **STATEMENT PROVISIONS**
 Cal. Lab. Code § 226
 (All Plaintiffs Against All Defendants)

13 31. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

14 32. California Labor Code § 226(a) requires employees be provided accurate itemized
15 wage statements containing gross and net wages earned, total hours worked and applicable wage
16 rates, among other statutory requirements.

17 33. Plaintiffs and, on information and belief, other current or former employees were not
18 provided "accurate itemized statements" within the meaning of California Labor Code § 226,
19 because of the violations described in this complaint. For example, the wage statements Defendants
20 provided falsely understated the wages Plaintiffs and Aggrieved employees earned through non-
21 discretionary bonuses.

22 34. California Labor Code § 226(e) and (g) provide that employees may recover fifty
23 dollars (\$50) for an initial violation and one hundred dollars (\$100) thereafter up to four thousand
24 dollars (\$4,000), costs and reasonable attorneys' fees for violating the obligation to provide a proper,
25 itemized wage statement. Additionally, an employee may seek injunctive relief to ensure compliance
26 with this requirement under the UCL.

1 35. Defendants failed to comply with Labor Code § 226 because of the wage violations
2 and timekeeping violations described above. These violations apply to Plaintiffs and, on information
3 and belief, other current or former employees.

4 36. Under Labor Code § 558.1, any natural person who is an owner, director, officer, or
5 managing agent of an employer, acting on behalf of the employer, who violates or causes to be
6 violated any provision regulating minimum wages or hours and days of work in any order of the
7 Industrial Welfare Commission, or violates, or causes to be violated, Labor Code §§ 203, 226, 226.7,
8 1193.6, 1194, or 2802, may be held liable as the employer for such violation. Therefore, Shepstone
9 is liable for the violations herein alleged.

10 37. By failing to comply with Labor Code § 226, Defendants have injured Plaintiffs
11 within the meaning of the statute, entitling Plaintiffs to relief. Defendants also failed to maintain
12 records of correct wages earned.

13 38. WHEREFORE, Plaintiffs seek relief against Defendants as described herein and
14 below, including penalties in an amount to be determined at trial, injunctive relief, cost of suit, and
15 attorneys' fees.

16 **THIRD CAUSE OF ACTION**
17 **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION OR RESIGNATION**
18 Cal. Lab. Code §§ 201, 202, & 203
 (All Plaintiffs Against All Defendants)

19 39. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

20 40. California Labor Code §§ 201 and 202 provide for immediate payment of all wages
21 owed at termination of employment.

22 41. Defendants required Plaintiffs and Aggrieved Employees to work without
23 compensating them for all wages as described in this complaint and failed to pay these wages at the
24 termination of these employees. Consequently, Defendants have violated California Labor Code §§
25 201 and/or 202.

26 42. California Labor Code § 203 states:

27 If an employer willfully fails to pay, without abatement or reduction, in
28 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
 employee who is discharged or who quits, the wages of the employee shall

1 continue as a penalty from the due date thereof at the same rate until paid
2 or until an action therefor is commenced; but the wages shall not continue
3 for more than 30 days. An employee who secretes or absents himself or
4 herself to avoid payment to him or her, or who refuses to receive the
5 payment when fully tendered to him or her, including any penalty then
6 accrued under this section, is not entitled to any benefit under this section
7 for the time during which he or she so avoids payment. Suit may be filed
8 for these penalties at any time before the expiration of the statute of
9 limitations on an action for the wages from which the penalties arise.

6 43. Defendants willfully failed to pay all wages due as the failure to pay was not
7 inadvertent or accidental.

8 44. As a result, Plaintiffs and Aggrieved Employees are entitled to "30-days' wages,
9 which are calculated pursuant to California case law as 30 working days and not merely a month's
10 wages.

11 45. In calculating 30 days wages pursuant to California Labor Code § 203, Plaintiffs and
12 Aggrieved Employees are entitled to compensation for all forms of wages earned (even if not
13 properly paid), including, but not limited to, compensation for unprovided rest periods and
14 unprovided meal periods, compensation for work done at hourly rates below the minimum and
15 overtime wages, and other compensation due but not received.

16 46. On information and belief, more than 30 working days have passed since Plaintiffs
17 and several Aggrieved Employees have left Defendants' employ, and despite this, they have not
18 received payment pursuant to Labor Code § 203.

19 47. Because of Defendants' willful conduct in not paying all earned wages, Plaintiffs are
20 entitled to 30 days' wages as a penalty under Labor Code § 203 for failure to pay legal wages.

21 48. Under Labor Code § 558.1, any natural person who is an owner, director, officer, or
22 managing agent of an employer, acting on behalf of the employer, who violates or causes to be
23 violated any provision regulating minimum wages or hours and days of work in any order of the
24 Industrial Welfare Commission, or violates, or causes to be violated, Labor Code §§ 203, 226, 226.7,
25 1193.6, 1194, or 2802, may be held liable as the employer for such violation. Therefore, Shepstone
26 is liable for the violations herein alleged.

27 49. Wherefore, Plaintiffs seek the relief as described herein and below.
28

1 **FOURTH CAUSE OF ACTION**
2 **PROMISSORY FRAUD**
(All Plaintiffs Against Defendant TBI)

3 50. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

4 51. The elements for promissory fraud are: (1) the defendant must have concealed or
5 suppressed a material fact; (2) the defendant must have been under a duty to disclose the fact to the
6 plaintiff; (3) the defendant must have intentionally concealed or suppressed the facts with the intent
7 to defraud the plaintiff; (4) the plaintiff must have been unaware of the fact, and would not have acted
8 as he did if he had known of the concealed or suppressed fact; and (5) as a result of the concealment
9 or suppression of the fact, the plaintiff must have sustained damage. Cal. Civ. Code §§ 1572(3),
10 1710(3); *see Moncada v. West Coast Quartz Corp.*, 221 Cal.App.4th 768, 775 (2013).

11 52. Defendants concealed or suppressed their true intentions, in order to induce Plaintiffs
12 and other qualified employees to continue to work for Defendants until the company sold. Defendants
13 intentionally misrepresented to Plaintiffs and qualified employees that Defendants would pay
14 Plaintiffs and qualified employees who remained a bonus at the time of sale that would be “life
15 changing” (18% of the company sale price).

16 53. Defendants’ representations were false, in that Defendants actually intended to pay
17 Plaintiffs and qualified employees a nominal bonus or no bonus at all at the time of sale.

18 54. Plaintiffs and qualified employees justifiably relied on the representations by the
19 Defendants because Defendants repeatedly assured them of the bonus.

20 55. Plaintiffs and qualified employees did not seek alternative employment opportunities
21 and remained at the company because of the promise of the bonus.

22 56. WHEREFORE, Plaintiffs request relief as described herein and below.

23 **FIFTH CAUSE OF ACTION**
24 **PROMISSORY ESTOPPEL**
(All Plaintiffs Against Defendant TBI)

25 57. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

26 58. To satisfy a claim for promissory estoppel, the following four elements must be met:
27 (1) A promise that is clear and unambiguous in its terms; (2) reliance by the party to whom the
28 promise is made; (3) the reliance must be both reasonable and foreseeable; and (4) the party asserting

1 the estoppel must be injured by his or her reliance. *Id.* An oral promise that meets the elements of
2 promissory estoppel is enforceable if injustice can be avoided only by enforcement of the promise.
3 *Allied Grape Growers v. Brono Wine Co.*, 203 Cal.App.3d 432 (1988).

4 59. Plaintiffs relied on Defendants' promise of a bonus upon the sale of the company, to
5 their substantial detriment by remaining employed at Defendants' company and foregoing other
6 employment (etc.) opportunities.

7 60. Shepstone made a clear and unambiguous promise to provide 18% of the proceeds of
8 the sale to Plaintiffs and other qualified employees upon the sale of the company.

9 61. Defendants breached this promise through their failure to provide any proceeds of the
10 eventual sale to Plaintiffs and other qualified employees upon the sale of the company.

11 62. Plaintiffs actually relied on this promise by remaining with the company and not
12 taking other opportunities. This forbearance was detrimental to Plaintiffs because they lost other
13 opportunities and benefits in so doing.

14 63. WHEREFORE, Plaintiffs request relief as described herein and below.

15 **FIFTH CAUSE OF ACTION**
16 **BREACH OF CONTRACT**
(All Plaintiffs Against Defendant TBI)

17 64. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

18 65. A contract is valid when: (1) the contract terms were clear enough that the parties
19 could understand what each was required to do; (2) that the parties agreed to give each other
20 something of value [a promise to do so something or not do something may have value]; and (3) the
21 parties agreed to the terms of the contract. California Civil Jury Instructions ("CACI") § 302,
22 Contract Formation.

23 66. The Parties agreed Defendants would pay a group of qualified employees 18% of the
24 company's sale price if said employees remained employed with Defendant until the sale of the
25 company. However, the date of sale came and went and Plaintiffs, nor the rest of the qualified
26 employees, were paid, putting Defendant in breach.

27 67. WHEREFORE, Plaintiffs request relief as described herein and below.

SEVENTH CAUSE OF ACTION
UNFAIR AND UNLAWFUL ACTS IN VIOLATION OF UNFAIR COMPETITION LAW
Cal. Bus. & Prof. Code §§ 17200 *et seq.*
(Against Defendant TBI)

68. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

69. On information and belief, and at all relevant times, Plaintiffs allege Defendants, by and through their policies and practices, engaged in unlawful activity prohibited by Business and Professions Code §§ 17200, *et seq.*, including the following:

- a. failing to pay at the agreed upon rates and secretly paying below contractual or statutory rates, in violation of Labor Code § 223;
- b. failing to pay all wages due at the appropriate periodic intervals as required by Labor Code § 204; and
- c. failing to pay all wages owed timely upon termination of the employment relationship, in violation of state law.

70. Defendant TBI's actions as alleged herein constitute false, fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business and Professions Code §§ 17200 *et seq.* Plaintiffs have suffered injury in fact and have lost money or property because of such unfair competition.

71. Plaintiffs are entitled to an injunction and other equitable relief against Defendant TBI for such unlawful practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

72. As a result of Defendant TBI's unlawful acts described herein, Defendant TBI has reaped and continues to reap unfair benefits and unlawful profits at the expense of Plaintiffs and Aggrieved Employees. Defendant TBI should be enjoined from this activity and made to disgorge the ill-gotten gains and restore to Plaintiffs and Aggrieved Employees the wrongfully withheld wages, pursuant to Business and Professions Code § 17203, as well as to enforce penalty provisions pursuant to § 17202.

1 73. Plaintiffs are informed and believe, and thereon allege, that Defendant TBI has been
2 and continues to be unjustly enriched through false, fraudulent, unlawful, unfair, and deceptive
3 business practices as alleged throughout this Complaint. Plaintiffs are and have been prejudiced by
4 Defendant TBI's unfair trade practices.

5 74. As a direct and proximate result of Defendant TBI's unfair business practices,
6 Plaintiffs and Aggrieved Employees are entitled to equitable and injunctive relief from Defendant
7 TBI, including full restitution and/or disgorgement of all wages which have been unlawfully
8 withheld from them, and enjoinder of Defendant TBI to cease and desist from engaging in the
9 practices described herein.

10 75. As a direct and proximate result of Defendant TBI's unfair business practices,
11 Plaintiffs are entitled, in accordance with Business and Professions Code § 17202, to enforcement
12 of penalties resulting from the business acts and practices described herein and entitled to enjoinder
13 of Defendant TBI to cease and desist from engaging in the practices described herein.

14 76. On information and belief, the unlawful conduct alleged herein is continuing, and
15 there is no indication that Defendant TBI will cease such activity. Plaintiffs allege that, if Defendant
16 TBI is not enjoined from the conduct set forth in this Complaint, Defendants will continue the
17 practice of failing to properly compensate employees for all wages owed; provide accurate wage
18 statements; maintain required records; or pay all wages owed upon discharge.

19 77. WHEREFORE, Plaintiffs request relief as described herein and below.

20
21 **EIGHTH CAUSE OF ACTION**
22 **PRIVATE ATTORNEYS GENERAL ACT**
 Cal. Lab. Code § 2699 *et seq.*
 (Against Defendant TBI)

23 78. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

24 79. Plaintiffs bring this representative claim for themselves, the State of California and
25 all other qualifying current and former employees of Defendants who were promised but not paid a
26 a non-discretionary bonus upon the sale of the company as a non-class claim, as expressly authorized
27 by the statute.
28

1 80. This PAGA cause of action is brought against Defendants pursuant to provisions of
2 the labor code including § 558, which imposes liability on “persons” (defined by Labor Code § 18
3 as “... any person, association, organization, partnership, business trust, limited liability company,
4 or corporation.”) who violate the Labor Code or IWC regulations or cause these to be violated, and
5 which provides for recovery of wages in addition to penalties. Section 558.1 is similar.

6 81. Plaintiffs have complied with PAGA’s administrative requirements. Specifically, in
7 the manner prescribed in Labor Code § 2699.3, Plaintiffs gave notice to Defendants and the Labor
8 & Workforce Development Agency (“LWDA”) of the Labor Code provisions Defendants are
9 alleged to have violated, as well as the facts and theories surrounding those allegations. Plaintiffs
10 did not received notice from the LWDA that it would not investigate the allegations, entitling
11 Plaintiffs bring a PAGA cause of action, or the LWDA failed to respond within the time allotted by
12 statute.

13 82. Plaintiffs are aggrieved employees within the meaning of Labor Code § 2699(a).
14 They bring this cause on behalf of themselves, the State of California, and other aggrieved
15 employees – (i.e., current or former employees affected by the Labor Code violations alleged in this
16 Complaint).

17 83. Pursuant to Labor Code § 2699(a), Plaintiffs seek civil penalties as provided under
18 applicable Labor Code sections for violations alleged herein.

19 84. To the extent any violation of statute or regulation alleged herein does not carry a
20 penalty, Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f), which provides:

21 For all provisions of this code except those for which a civil penalty
22 is specifically provided, there is established a civil penalty for a
23 violation of these provisions, as follows: . . . (2) If, at the time of the
24 alleged violation, the person employs one or more employees, the civil
25 penalty is one hundred dollars (\$100) for each aggrieved employee
26 per pay period for the initial violation and two hundred dollars (\$200)
27 for each aggrieved employee per pay period for each subsequent
28 violation.

25 85. The penalties sought by Plaintiffs are to be distributed as mandated in Labor Code §
26 2699(i) – 75% to the State and the remaining 25% to the aggrieved employees.

1 86. Defendants are liable to Plaintiffs, the State, and other current or former employees
2 for the violations alleged in this Complaint. Plaintiffs are also entitled to an award of attorneys' fees
3 and costs for bringing this claim as set forth below.

4 87. Plaintiffs' PAGA claim does not require Class Certification because both the
5 language of the PAGA and the express intent of the Legislature indicate an aggrieved employee may
6 act in place of the State and bring a representative action on behalf of the State and other employees
7 without having to certify a class. Labor Code § 2699 specifically states an aggrieved employee may
8 bring an action on behalf of other employees, "[n]otwithstanding any other provision of law..." The
9 wording of the PAGA, which authorizes an aggrieved employee to bring an action "on behalf of
10 himself or herself and other current or former employees... [,]" is similar to the former wording of
11 Business and Professions Code § 17204, which authorized a person or organization to act "for the
12 interests of itself, its members or the general public" The Legislature has made clear an action
13 under the PAGA is in the nature of an enforcement action, with the aggrieved employee acting as
14 Private Attorney General to collect penalties from employers and persons who violate labor laws.
15 Such an action is fundamentally a law enforcement action designed to protect the public and penalize
16 the defendant for past illegal conduct. Restitution is not the primary object of a PAGA action, as its
17 purpose is not recovering damages, but civil penalties. And the PAGA does not preclude an
18 employee from pursuing any other claim he may have available under law.

19 88. As such, Plaintiffs individually hold a substantive right to stand in the shoes of the
20 State of California and bring this PAGA claim for the State and other current or former employees.

21 89. Under California Labor Code § 558.1, any natural person who is an owner, director,
22 officer, or managing agent of an employer, acting on behalf of the employer, who violates or causes
23 to be violated any provision regulating minimum wages or hours and days of work in any order of
24 the Industrial Welfare Commission, or violates, or causes to be violated, California Labor Code §§
25 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
26 Therefore, Shepstone is liable for the violations herein alleged.

27 90. Wherefore, Plaintiffs request penalties pursuant to the PAGA as described herein and
28 any other relief this Court deems proper.

1 **PRAYER**

2 Wherefore, Plaintiffs pray for judgment as follows:

3 91. For all remedies as provided by the above statutes and related provisions;

4 92. For wages pursuant to the remedy provisions of the above stated California Labor
5 Code provisions;

6 93. For penalties and interest as provided by the California Labor Code;

7 94. For all provisions of the Labor Code violated as described above except those for
8 which a civil penalty is specifically provided, a civil penalty of one hundred dollars (\$100) for each
9 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
10 aggrieved employee per pay period for each subsequent violation;

11 95. For attorneys' fees and costs pursuant to the California Labor Code, third party
12 contracts and/or local wage ordinances;

13 96. For any other remedies provided by third party contracts and/or local wage
14 ordinances;

15 97. For an award of post-judgment interest as authorized under the law;

16 98. For restitution to Plaintiffs in amounts to be proven at trial, for the violation of
17 Business and Professions Code § 17200, et. seq.;

18 99. For an award of a preliminary and permanent injunction ordering Defendants to cease
19 the unlawful and unfair business practices as herein alleged;

20 100. For an award of injunctive relief ordering Defendants to comply with Labor Code §
21 226(e), plus attorneys' fees and costs;

22 101. For such other relief as this Court deems just and proper.
23

24 **DEMAND FOR JURY TRIAL**

25 Plaintiffs hereby demand a trial by jury on all issues to the extent authorized by law.
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1 Dated: December 15, 2023

MALLISON & MARTINEZ

2 By 

3 Stan S. Mallison
4 Hector R. Martinez
5 Cody A. Bolce

6 Attorneys for Representative Plaintiff
7 and Aggrieved Employees
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