

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Gregg Lander, Esq. (#194018) D.Law, Inc. 1635 Pontius Avenue, Second Floor, Los Angeles, CA 90025-3361		FOR COURT USE ONLY
TELEPHONE NO.: (424) 320-6420	FAX NO.: (424) 320-6454	
EMAIL ADDRESS: Gregg@d.law		
ATTORNEY FOR (Name): Plaintiff		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE		
STREET ADDRESS: 4050 Main Street		
MAILING ADDRESS: 4050 Main Street		
CITY AND ZIP CODE: Riverside, CA 92501-3703		
BRANCH NAME: Riverside Historic Courthouse		
CASE NAME: Arturo Cabrera v. Ritchie Bros. Auctioneers (America) Inc.		
CIVIL CASE COVER SHEET		CASE NUMBER:
☒ Unlimited (Amount demanded exceeds \$35,000)	☐ Limited (Amount demanded is \$35,000 or less)	CVRI2403102
Complex Case Designation		JUDGE:
☐ Counter ☐ Joinder		DEPT.:
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. ☐ Large number of separately represented parties | d. ☒ Large number of witnesses |
| b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☒ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Seven (7)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 5, 2024

Gregg Lander

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner
Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

☐ **BANNING** 311 E. Ramsey St., Banning, CA 92220
☐ **BLYTHE** 265 N. Broadway, Blythe, CA 92225
☐ **CORONA** 505 S. Buena Vista, Rm. 201, Corona, CA 92882
☐ **MORENO VALLEY** 13800 Heacock St., Ste. D201,
Moreno Valley, CA 92553

☐ **MURRIETA** 30755-D Auld Rd., Suite 1226, Murrieta, CA 92563
☐ **PALM SPRINGS** 3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262
☒ **RIVERSIDE** 4050 Main St., Riverside, CA 92501

RI-CI032

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number and Address) Gregg Lander, Esq. (SB#194018) D.Law, Inc. 1635 Pontius Avenue, Floor 2 Los Angeles, CA 90025-3361 TELEPHONE NO: (424) 320-6420 FAX NO. (Optional): (424) 320-6454 E-MAIL ADDRESS (Optional): Gregg@d.law ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY
PLAINTIFF/PETITIONER: Arturo Cabrera		
DEFENDANT/RESPONDENT: Ritchie Bros. Auctioneers (America) Inc.		
CASE NUMBER: CVRI2403102		
CERTIFICATE OF COUNSEL		

The undersigned certifies that this matter should be tried or heard in the court identified above for the reasons specified below:

☒ The action arose in the zip code of: 92571

☐ The action concerns real property located in the zip code of: _____

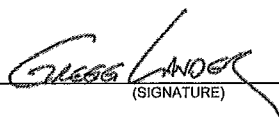
☐ The Defendant resides in the zip code of: _____

For more information on where actions should be filed in the Riverside County Superior Courts, please refer to Local Rule 3115 at www.riverside.courts.ca.gov.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date June 5, 2024

Gregg Lander
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY MAKING DECLARATION)

► 
(SIGNATURE)

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

RITCHIE BROS. AUCTIONEERS (AMERICA) INC., a Washington corporation; and Does 1 to 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ARTURO CABRERA, on behalf of himself and all others similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Riverside Historic Courthouse
4050 Main Street
Riverside, CA 92501

CASE NUMBER: (Número del Caso):

CVRI 2403102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gregg Lander, Esq. - D.Law, Inc., 1635 Pontius Avenue, Floor 2, Los Angeles, CA 90025-3361 - (424) 320-6420

DATE:
(Fecha) 6/5/2024

Clerk, by J Blackwell
(Secretario)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



GC68150(g)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1

Emil Davtyan, Esq. (#299363)
Gregg Lander, Esq. (#194018)
Vanessa M. Ruggles, Esq. (#254031)
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Emails: Emil@d.law
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Vanessa@d.law

Attorneys for Plaintiff ARTURO CABRERA,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ARTURO CABRERA, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

RITCHIE BROS. AUCTIONEERS
(AMERICA) INC., a Washington
corporation; and Does 1 to 50, inclusive,

Defendants.

CLASS ACTION

Case No. **CVRI 2403102**

COMPLAINT FOR:

- 1. FAILURE TO PROVIDE ALL MEAL PERIODS;**
- 2. FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS;**
- 3. DERIVATIVE FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;**
- 4. INDEPENDENT FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5. DERIVATIVE VIOLATIONS OF LABOR CODE §§ 201-202;**
- 6. INDEPENDENT VIOLATIONS OF LABOR CODE §§ 201-202; AND**
- 7. UNFAIR BUSINESS PRACTICES**

DEMAND FOR JURY TRIAL

Plaintiff Arturo Cabrera, an individual on behalf of himself and all others similarly situated (collectively referred to as "Plaintiffs"), hereby files this Complaint against Defendant Ritchie Bros. Auctioneers (America) Inc. and Does 1 to 50 (collectively referred to as "Defendants"). Plaintiffs are informed and believe, and on the basis of that information and belief, allege as follows:

1 I.

2 **INTRODUCTION**

3 1. This is a civil action seeking recovery for Defendants' violations of the California
4 Labor Code, California Business and Professions Code, the applicable Wage Orders issued by
5 the California Industrial Welfare Commission (the "IWC Wage Orders") and related common law
6 principles.

7 2. Plaintiffs' action seeks monetary damages including full restitution from
8 Defendants as a result of Defendants' unlawful, fraudulent, and/or unfair business practices.

9 3. The acts complained of herein occurred, occur and will occur, at least in part,
10 within the time period from four years preceding the filing of the original Complaint herein, plus
11 additional time provided under Cal. Rules of Court, Appendix I, Emergency Rule No. 9, up to
12 and through the time of trial for this matter (although this should not automatically be considered
13 the statute of limitations for any cause of action herein).

14 **RELEVANT JOB TITLES**

15 4. For introductory and general information only (and not to be considered a
16 proposed class definition), the relevant individuals in this action are Defendants' non-exempt
17 employees who were subjected to Defendants' policies and practices as described herein. Any
18 differences in job activities between the different individuals in these positions were and are
19 legally insignificant to the issues presented by this action.

20 **SUMMARY OF CLAIMS**

21 5. With regard to Defendants' non-exempt employees, Defendants have:

- 22 a. Failed to provide all legally-required meal periods;
23 b. Failed to authorize and permit all paid legally-required rest periods;
24 c. Derivatively failed to timely furnish accurate itemized wage statements;
25 d. Independently failed to timely furnish accurate itemized wage statements;
26 e. Derivatively Violated Labor Code §§ 201-202;
27 f. Independently Violated Labor Code §§ 201-202; and
28 g. Conducted unfair business practices.

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PLAINTIFF ARTURO CABRERA

7. Plaintiff Arturo Cabrera worked for Defendants as a Yard Staff from approximately December 8, 2022, to June 8, 2023, in Perris, California, which is in Riverside County, California.

- a. Failed to provide all legally-required meal periods;
- b. Failed to authorize and permit all paid legally-required rest periods;
- c. Derivatively failed to timely furnish accurate itemized wage statements;
- d. Independently failed to timely furnish accurate itemized wage statements;
- e. Derivatively Violated Labor Code §§ 201-202;
- f. Independently Violated Labor Code §§ 201-202; and
- g. Conducted unfair business practices.

9. Defendant Ritchie Bros. Auctioneers (America) Inc. is now and/or at all times mentioned in this Complaint was a Washington corporation and the owner and operator of an industry, business and/or facilities licensed to do business and actually doing business in the State of California.

11. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of Does 1 to 50, inclusive and for that reason, Does 1 to 50 are sued under such

1 fictitious names under California Code of Civil Procedure § 474.

2 12. Plaintiffs will seek leave of court to amend this Complaint to allege such names and
3 capacities as soon as they are ascertained.

4 ALL DEFENDANTS

5 13. Defendants, and each of them, are now and/or at all times mentioned in this
6 Complaint were in some manner legally responsible for the events, happenings, and circumstances
7 alleged in this Complaint. Defendants, and each of them, directly or indirectly, or through an
8 agent or any other person, employed or exercised control over the wages, hours, or working
9 conditions of Plaintiffs.

10 14. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful
11 practices, wrongs, complaints, injuries, and/or damages alleged in this Complaint.

12 15. Defendants, and each of them, are now and/or at all times mentioned in this
13 Complaint were the agents, servants, and/or employees of some or all other Defendants, and
14 vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all
15 times mentioned in this Complaint were acting within the course and scope of that agency,
16 servitude, and/or employment.

17 16. Defendants, and each of them, are now and/or at all times mentioned in this
18 Complaint were members of and/or engaged in a joint venture, partnership, and common
19 enterprise, and were acting within the course and scope and in pursuance of said joint venture,
20 partnership, and common enterprise.

21 17. Defendants, and each of them, at all times mentioned in this Complaint concurred
22 and contributed to the various acts and omissions of each and every one of the other Defendants
23 in proximately causing the complaints, injuries, and/or damages alleged in this Complaint.

24 18. Defendants, and each of them, at all times mentioned in this Complaint approved
25 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
26 this Complaint.

27 19. Defendants, and each of them, at all times mentioned in this Complaint aided and
28 abetted the acts and omissions of each and every one of the other Defendants thereby

1 proximately causing the damages alleged in this Complaint.

2 **III.**

3 **JURISDICTION AND VENUE**

4 20. The California Superior Court has jurisdiction in this matter due to Defendants'
5 aforementioned violations of California statutory law and/or related common law principles.

6 21. The California Superior Court also has jurisdiction in this matter because both the
7 individual and aggregate monetary damages and restitution sought herein exceed the minimal
8 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

9 22. The California Superior Court also has jurisdiction in this matter because during
10 their employment with Defendants, Plaintiff Arturo Cabrera and the members of the putative

11 Classes herein were all California citizens and Defendant Ritchie Bros. Auctioneers (America) Inc.,
12 is a Washington corporation. Further, there is no federal question at issue, as the issues herein are
13 based solely on California statutes and law.

14 23. Venue is proper in Riverside County under Code of Civil Procedure §§ 395(a)
15 and 395.5, in that liability arose there because at least some of the transactions that are the
16 subject matter of this Complaint occurred therein and/or each Defendant either is found,
17 maintains offices, transacts business, and/or has an agent therein.

18 **IV.**

19 **CLASS ACTION ALLEGATIONS**

20 24. Code of Civil Procedure § 382 provides in pertinent part, "[W]hen the question is
21 one of a common or general interest, of many persons, or when the parties are numerous, and it
22 is impracticable to bring them all before the court, one or more may sue or defend for the benefit
23 of all." Plaintiffs bring this suit as a class action under Code of Civil Procedure § 382.

24 25. The putative classes Plaintiffs will seek to certify are currently composed of and
25 defined as follows:

- 26 a. All California citizens employed by Defendants as non-exempt employees (as
27 defined, supra) during the appropriate time period who were subjected to
28 Defendants' policies and practices regarding meal periods as specifically

described herein (hereinafter, the “Meal Period Class”);

b. All California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were subjected to Defendants’ policies and practices regarding paid rest periods as specifically described herein (hereinafter, the “Rest Period Class”);

c. All California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were derivatively subjected to Defendants’ policies and practices regarding itemized wage statements as specifically described herein (hereinafter, the “Derivative Wage Statement Class”);

d. All California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were independently subjected to Defendants’ policies and practices regarding itemized wage statements as specifically described herein (hereinafter, the “Independent Wage Statement Class”);

e. All formerly-employed California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were derivatively subjected to Defendants’ policies and practices regarding Labor Code § 203 and the payment of final wages as specifically described herein (hereinafter, the “Derivative LC 203 Class”);

f. All formerly-employed California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period who were independently subjected to Defendants’ policies and practices regarding Labor Code § 203 and the payment of final wages as specifically described herein (hereinafter, the “Independent LC 203 Class”); and

g. All California citizens employed by Defendants as non-exempt employees (as defined, supra) during the appropriate time period regarding whom Defendants have engaged in unlawful, unfair and/or fraudulent business acts

or practices prohibited by Business & Professions Code §§ 17200, et seq. as specifically described herein (hereinafter, the “17200 Class”).

26. The Meal Period Class, Rest Period Class, Derivative Wage Statement Class, Independent Wage Statement Class, Derivative LC 203 Class, Independent LC 203 Class, and 17200 Class are herein collectively referred to as the “Classes.”

27. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary to amend the definition of the Classes. Plaintiffs will formally define and designate a class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

28. Numerosity (Code of Civil Procedure § 382):

- a. The potential quantity of members of the Classes as defined is so numerous that joinder of all members is unfeasible and impractical;
- b. The disposition of the claims of the members of the Classes through this class action will benefit both the parties and this Court;
- c. The quantity of members of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the membership of the Classes numbers greater than 100 individuals; and
- d. The quantity and identity of such membership is readily ascertainable via inspection of Defendants’ records.

29. Superiority (Code of Civil Procedure § 382): The nature of this action and the nature of the laws available to Plaintiffs make the use of the class action format particularly efficient and the appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein, as follows:

- a. California has a public policy that encourages the use of the class action device;
- b. By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual

litigation;

- c. This case involves large corporate Defendants and a large number of individual Class members with many relatively small claims and common issues of law and fact;
- d. If each individual member of the Classes was required to file an individual lawsuit, the large corporate Defendants would necessarily gain an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each individual member of the Classes with Defendants' vastly superior financial and legal resources;
- e. Requiring each individual member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the Classes who would be disinclined to pursue an action against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers, and well-being;
- f. Proof of a common business practice or factual pattern, of which the members of the Classes experienced, is representative of the Classes herein and will establish the right of each of the members of the Classes to recover on the causes of action alleged herein;
- g. Absent class treatment, the prosecution of separate actions by the individual members of the Classes, even if possible, would likely create:
 - i) a substantial risk of each individual plaintiff presenting in separate, duplicative proceedings the same or essentially similar arguments and evidence, including expert testimony;
 - ii) a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants;
 - iii) inconsistent or varying verdicts or adjudications with respect to the individual members of the Classes against Defendants;
 - iv) potentially incompatible standards of conduct for Defendants; and

1 v) potentially incompatible legal determinations with respect to individual
2 members of the Classes which would, as a practical matter, be
3 dispositive of the interest of the other members of the Classes who are
4 not parties to the adjudications or which would substantially impair or
5 impede the ability of the members of the Classes to protect their
6 interests.

7 h. The claims of the individual members of the Classes are not sufficiently large
8 to warrant vigorous individual prosecution considering all of the concomitant
9 costs and expenses attendant thereto;

10 i. Courts seeking to preserve efficiency and other benefits of class actions

11 routinely fashion methods to manage any individual questions; and

12 j. The Supreme Court of California urges trial courts, which have an obligation
13 to consider the use of innovative procedural tools to certify a manageable
14 class, to be procedurally innovative in managing class actions.

15 30. Well-defined Community of Interest: Plaintiffs also meet the established
16 standards for class certification, as follows:

17 a. Typicality: The claims of Plaintiff Arturo Cabrera are typical of the claims of
18 all members of the Classes he seeks to represent because all members of the
19 Classes sustained injuries and damages arising out of Defendants' common
20 course of conduct in violation of law and the injuries and damages of all
21 members of the Classes were caused by Defendants' wrongful conduct in
22 violation of law, as alleged herein.

23 b. Adequacy: Plaintiff Arturo Cabrera:

- 24 i) is an adequate representative of the Classes he seeks to represent;
25 ii) will fairly protect the interests of the members of the Classes;
26 iii) he has no interests antagonistic to the members of the Classes; and
27 iv) will vigorously pursue this suit via attorneys who are competent, skilled
28 and experienced in litigating matters of this type.

- 1 c. Predominant Common Questions of Law or Fact: There are common
2 questions of law and/or fact as to the members of the Classes which
3 predominate over questions affecting only individual members of the Classes,
4 including, without limitation:
- 5 i) Whether Defendants failed and continue to fail to provide legally-
6 required meal periods to the members of the Meal Period Class in
7 violation of the Labor Code and Section 11 of the IWC Wage Orders;
8 ii) Whether Defendants failed and continue to fail to authorize and permit
9 paid legally-required rest periods to the members of the Rest Period
10 Class in violation of the Labor Code and Section 12 of the IWC Wage
11 Orders;
12 iii) Whether Defendants failed to timely furnish accurate, itemized and legal
13 wage statements to the members of the Derivative Wage Statement
14 Class;
15 iv) Whether Defendants failed to timely furnish accurate, itemized and legal
16 wage statements to the members of the Independent Wage Statement
17 Class;
18 v) Whether Defendants are liable under Labor Code § 203 to the members
19 of the Derivative LC 203 Class;
20 vi) Whether Defendants are liable under Labor Code § 203 to the members
21 of the Independent LC 203 Class;
22 vii) Whether Defendants' conduct constitutes unfair competition within the
23 meaning of Business & Professions Code §§ 17200, et seq.;
24 viii) Whether the members of the Classes are entitled to compensatory
25 damages, and if so, the means of measuring such damages;
26 ix) Whether the members of the Classes are entitled to injunctive relief;
27 x) Whether the members of the Classes are entitled to restitution; and
28 xi) Whether Defendants are liable for attorneys' fees and costs.

31. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE ALL MEAL PERIODS

(On Behalf of the Meal Period Class)

(Against All Defendants)

32. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

33. Labor Code § 226.7(b) provides, “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

34. Labor Code § 512 provides, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

35. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.”

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1 36. Section 11(C) of the IWC Wage Orders provides that “Unless the employee is
2 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on
3 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted
4 only when the nature of the work prevents an employee from being relieved of all duty and when
5 by written agreement between the parties an on-the-job paid meal period is agreed to. The
6 written agreement shall state that the employee may, in writing, revoke the agreement at any
7 time.”

8 37. Section 11(D) of the IWC Wage Order(s) provides “If an employer fails to
9 provide an employee a meal period in accordance with the applicable provisions of this order, the
10 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
11 compensation for each workday that the meal period is not provided.”

12 38. On one or more occasions, the members of the Meal Period Class worked over
13 five hours per shift and therefore were entitled to an uninterrupted meal period of not less than
14 30 minutes prior to exceeding five hours of employment.

15 39. Further, on one or more occasions, some members of the Meal Period Class
16 worked over 10 hours per shift and therefore were entitled to an uninterrupted second meal
17 period of not less than 30 minutes prior to exceeding 10 hours of employment.

18 40. The members of the Meal Period Class did not validly or legally waive their meal
19 periods, by mutual consent with Defendants or otherwise.

20 41. The members of the Meal Period Class did not enter into any written agreement
21 with Defendants agreeing to an on-the-job paid meal period.

22 42. As a matter of Defendants’ established company policy, Defendants failed to
23 always comply with the meal period requirements established by Labor Code §§ 226.7, 512, and
24 516 and Section 11 of the IWC Wage Order(s) by failing to always provide the members of the
25 Meal Period Class with a first and in some cases a second legally compliant meal period.

26 43. Under Section 11(B) of the IWC Wage Order(s) and Labor Code § 226.7(c),
27 which states “If an employer fails to provide an employee a meal or rest or recovery period in
28 accordance with a state law, including, but not limited to, an applicable statute or applicable

1 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
2 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
3 pay the employee one additional hour of pay at the employee's regular rate of compensation for
4 each workday that the meal or rest or recovery period is not provided," the members of the Meal
5 Period Class are entitled to damages in an amount equal to one additional hour of pay at each
6 employee's regular rate of compensation for each work day that one or more meal periods were
7 not provided to them, in a sum to be proven at trial.

8 44. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Meal
9 Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

10 SECOND CAUSE OF ACTION

11 FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS

12 (On Behalf of the Rest Period Class)

13 (Against All Defendants)

14 45. Plaintiffs incorporate by reference and reallege each and every one of the
15 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
16 forth herein.

17 46. Labor Code § 226.7(b) provides, "An employer shall not require an employee to
18 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
19 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
20 Safety and Health Standards Board, or the Division of Occupational Safety and Health."

21 47. Labor Code § 516 provides that the Industrial Welfare Commission "may adopt or
22 amend working condition orders with respect to break periods, meal periods, and days of rest for
23 any workers in California consistent with the health and welfare of those workers."

24 48. Section 12(A) of the IWC Wage Order(s) states, "Every employer shall authorize
25 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
26 of each work period. The authorized rest period time shall be based on the total hours worked
27 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
28 However, a rest period need not be authorized for employees whose total daily work time is less

1 than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
2 worked for which there shall be no deduction from wages.”

3 49. Section 12(B) of the IWC Wage Order(s) states, “If an employer fails to provide
4 an employee a rest period in accordance with the applicable provisions of this order, the
5 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
6 compensation for each workday that the rest period is not provided.”

7 50. The members of the Rest Period Class sometimes worked over four hours per
8 shift. Further, the members of the Rest Period Class sometimes worked over six hours per shift
9 and in some cases over 10 hours per shift.

10 51. The members of the Rest Period Class were entitled to a rest period of not less
11 than 10 minutes for every four hours of work or major fraction thereof.

12 52. As a matter of Defendants’ established company policy, Defendants failed to
13 always authorize and permit legally-compliant rest periods. Defendants did not authorize and
14 permit rest periods for shifts every four hours or major fraction thereof.

15 52. Under Section 12 of the IWC Wage Order(s) and Labor Code § 226.7(b) which
16 states “if an employer fails to provide an employee a meal or rest period in accordance with an
17 applicable order of the Industrial Welfare Commission, the employer shall pay the employee one
18 additional hour of pay at the employee’s regular rate of compensation for each work day that the
19 meal or rest period is not provided,” the members of the Rest Period Class are entitled to
20 damages in an amount equal to one (1) additional hour of pay at each employee’s regular rate of
21 compensation for each work day that one or more rest periods were not so provided.

22 53. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Rest
23 Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

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THIRD CAUSE OF ACTION
DERIVATIVE FAILURE TO TIMELY
FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
(On Behalf of the Derivative Wage Statement Class)

54. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

55. Labor Code § 226(a) states in pertinent part, "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period and the corresponding number of hours worked at each hourly rate by the employee...."

56. Further, the IWC Wage Orders § 7(A) states in pertinent part, "(A) Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rates of pay...."

57. Therefore, under Labor Code § 226(a) and the IWC Wage Orders § 7(A), California employers are required to maintain accurate records pertaining to the total hours worked for Defendants by the members of the Derivative Wage Statement Class, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

58. As a pattern and practice, in violation of Labor Code § 226(a) and the IWC Wage Orders § 7(A), Defendants did not and still do not furnish each of the members of the Derivative

1 Wage Statement Class with an accurate itemized statement in writing showing (1) gross wages
2 earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or
3 (5) all applicable hourly rates in effect during each respective pay period and the corresponding
4 number of hours worked at each hourly rate by each respective individual.

5 59. As set forth herein in prior causes of action, Defendants failed to pay the members
6 of the Derivative Wage Statement Class all wages due and owing.

7 60. As a derivative result of this failure to pay wages and as a pattern and practice in
8 violation of Labor Code § 226(a) and the IWC Wage Orders § 7(A), Defendants knowingly and
9 intentionally failed to furnish accurate wage statements to the members of the Derivative Wage
10 Statement Class, including, but not limited to, failing to provide the beginning and ending of
11 each work period, meal period interval, total daily hours worked, total hours worked per pay
12 period, and the applicable rates of pay.

13 61. As of January 1, 2013, SB 1255 amended Labor Code § 226 to clarify that an
14 employee suffers injury if the employer fails to provide accurate and complete information as
15 required by any one or more items listed in Labor Code § 226(a)(1)-(9) and the employee cannot
16 promptly and easily ascertain requisite information without reference to other documents or
17 information.

18 62. Here, the members of Derivative Wage Statement Class suffered injury because,
19 due to Defendants' failure to pay all wages due and owing, Defendants derivatively failed to
20 provide accurate and complete information as required by one or more items listed in Labor
21 Code § 226(a)(1)-(9).

22 63. In addition, the members of the Derivative Wage Statement Class have suffered
23 injury as a result of Defendants' failure to maintain accurate records for the members of the
24 Derivative Wage Statement Class in that the members of the Derivative Wage Statement Class
25 were not timely provided written accurate itemized statements showing all requisite information,
26 including but not limited to total hours worked by the employee, net wages earned and all
27 applicable hourly rates in effect during the pay period and the corresponding number of hours
28 worked at each hourly rate, in violation of Labor Code § 226 and the IWC Wage Orders § 7(A),

1 such that the members of the Derivative Wage Statement Class were misled by Defendants as to
2 the correct information regarding various items, including but not limited to total hours worked
3 by the employee, net wages earned and all applicable hourly rates in effect during the pay period
4 and the corresponding number of hours worked at each hourly rate.

5 64. The actual injuries suffered by the members of the Derivative Wage Statement
6 Class as a result of Defendants' knowing and intentional failure to maintain accurate records for
7 the members of the Derivative Wage Statement Class include but are not limited to:

- 8 a. Confusion over whether they received all wages owed them by Defendants;
- 9 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 10 c. Being forced to engage in mathematical computations to analyze whether
11 Defendants' wages in fact compensated for all hours worked;
- 12 d. The inability to accurately calculate wage rates complicated by the fact that
13 wage statement information required by Labor Code § 226 is missing;
- 14 e. That such practice prevents the members of the Derivative Wage Statement
15 Class from being able to effectively challenge information on their wage
16 statements; and/or
- 17 f. The difficulty and expense of filing and maintaining this lawsuit, and the
18 discovery required to collect and analyze the very information that California
19 law requires.

20 65. Under Labor Code § 226(e), the members of the Derivative Wage Statement
21 Class are entitled to \$50.00 per employee for the initial pay period in which a violation
22 hereunder occurs and \$100.00 per employee for each violation in a subsequent pay period, not
23 exceeding an aggregate penalty of \$4,000.00.

24 66. Under Labor Code § 226(g), the currently-employed members of the Derivative
25 Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with
26 Labor Code § 226.

27 67. Under Labor Code §§ 226(e)/(g), the members of the Derivative Wage Statement
28 Class are also entitled to an award of costs and reasonable attorneys' fees.

1 **FOURTH CAUSE OF ACTION**
2 **INDEPENDENT FAILURE TO TIMELY**
3 **FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**
4 **(On Behalf of the Independent Wage Statement Class)**
5 **(Against All Defendants)**

6 68. Plaintiffs incorporate by reference and reallege each and every one of the
7 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
8 forth herein.

9 69. Labor Code § 226(a) states in pertinent part, "Every employer shall, semimonthly
10 or at the time of each payment of wages, furnish each of his or her employees, either as a
11 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
12 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
13 gross wages earned, (2) total hours worked by the employee, except for any employee whose
14 compensation is solely based on a salary and who is exempt from payment of overtime under
15 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3)
16 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
17 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
18 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
19 dates of the period for which the employee is paid, (7) the name of the employee and only the
20 last four digits of his or her social security number or an employee identification number other
21 than a social security number, (8) the name and address of the legal entity that is the employer
22 and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the
23 name and address of the legal entity that secured the services of the employer, and (9) all
24 applicable hourly rates in effect during the pay period..."

25 70. As a pattern and practice, in violation of Labor Code § 226(a), Defendants did not
26 and still do not furnish each of the members of the Independent Wage Statement Class with an
27 accurate itemized statement in writing showing total hours worked by the employee.

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1 71. As of January 1, 2013, SB 1255 amended Labor Code § 226 to clarify that an
2 employee suffers injury if the employer fails to provide accurate and complete information as
3 required by any one or more items listed in Labor Code § 226(a)(1)-(9) and the employee cannot
4 promptly and easily ascertain required information without reference to other documents or
5 information.

6 72. Here, the members of Independent Wage Statement Class suffered injury because
7 Defendants failed to provide accurate and complete information as required by one or more items
8 listed in Labor Code § 226(a)(1)-(9) and the Independent Wage Statement Class members could
9 not and cannot promptly and easily ascertain required information without reference to other
10 documents or information.

11 73. In addition, the members of the Independent Wage Statement Class have suffered
12 injury as a result of Defendants' failure to maintain accurate records for the members of the
13 Independent Wage Statement Class in that the members of the Independent Wage Statement
14 Class were not timely provided written accurate itemized statements showing all required
15 information, including but not limited to total hours worked by the employee, in violation of
16 Labor Code § 226, such that the members of the Independent Wage Statement Class were misled
17 by Defendants as to the correct information regarding various items, including but not limited to
18 total hours worked by the employee.

19 74. The actual injuries suffered by the members of the Independent Wage Statement
20 Class as a result of Defendants' knowing and intentional failure to maintain accurate records for
21 the members of the Independent Wage Statement Class include but are not limited to:

- 22 a. That such practice prevents the members of the Independent Wage Statement
23 Class from being able to effectively challenge information on their wage
24 statements; and/or
25 b. The difficulty and expense of filing and maintaining this lawsuit and the
26 discovery required to collect and analyze the very information that California
27 law requires.

28 ///

75. Under Labor Code § 226(e), the members of the Independent Wage Statement Class are entitled to \$50.00 per employee for the initial pay period in which a violation hereunder occurs and \$100.00 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000.00.

76. Under Labor Code § 226(g), the currently-employed members of the Independent Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with Labor Code § 226.

77. Under Labor Code §§ 226(e)/(g), the members of the Independent Wage Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

DERIVATIVE VIOLATIONS OF LABOR CODE §§ 201-202

(On Behalf of the Derivative LC 203 Class)

(Against All Defendants)

78. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

79. Labor Code § 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to 30 days from the due date thereof, until paid or until an action therefor is commenced.

80. The members of the Derivative LC 203 Class are no longer employed by Defendants as they were either discharged from or quit Defendants' employment.

81. Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to pay the earned wages of Defendants' former employees, as set forth above, according to amendment or proof.

82. As set forth above, Defendants willfully failed to pay the members of the Derivative LC 203 Class their entire wages due and owing at the time of their termination or

1 within seventy-two hours of their resignation and failed to pay those sums for up to 30 days
2 thereafter.

3 83. Defendants' willful failure to pay wages to the members of the Derivative LC 203
4 Class violates Labor Code § 203 because Defendants knew or should have known wages were
5 due to the members of the Derivative LC 203 Class, as set forth above, but Defendants failed to
6 pay them.

7 84. Thus, the members of the Derivative LC 203 Class are entitled to recovery under
8 Labor Code § 203.

9 **SIXTH CAUSE OF ACTION**

10 **INDEPENDENT VIOLATIONS OF LABOR CODE §§ 201-202**

11 **(On Behalf of the Independent LC 203 Class)**

12 **(Against All Defendants)**

13 85. Plaintiffs incorporate by reference and reallege each and every one of the
14 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
15 forth herein.

16 86. Labor Code § 201(a) states in pertinent part, "If an employer discharges an
17 employee, the wages earned and unpaid at the time of discharge are due and payable
18 immediately."

19 87. Labor Code § 202(a) states in pertinent part, "If an employee not having a written
20 contract for a definite period quits his or her employment, his or her wages shall become due and
21 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous
22 notice of his or her intention to quit, in which case the employee is entitled to his or her wages at
23 the time of quitting. Notwithstanding any other provision of law, an employee who quits without
24 providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests
25 and designates a mailing address. The date of the mailing shall constitute the date of payment for
26 purposes of the requirement to provide payment within 72 hours of the notice of quitting."

27 88. Labor Code § 203 provides that if an employer willfully fails to timely pay,
28 without abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an

1 employee who is discharged or who quits, the wages of the employee shall continue at the same
2 rate, for up to 30 days from the due date thereof, until paid or until an action therefore is
3 commenced.

4 89. The members of the Independent LC 203 Class are no longer employed by
5 Defendants as they were either discharged from or quit Defendants' employ.

6 90. Defendants had a consistent and uniform policy, practice and procedure of
7 willfully failing to timely pay the earned wages of Defendants' former employees, according to
8 amendment or proof.

9 91. For example, on or about June 8, 2023, Defendants terminated the employment of
10 Plaintiff Arturo Cabrera. However, Defendants did not provide final wages to Plaintiff Arturo
11 Cabrera until June 23, 2023, i.e., 15 days after his employment termination, and this check did
12 not include waiting time penalties.

13 92. As such, Defendants willfully failed to pay the members of the Independent LC
14 203 Class all wages due and owing at the time of their termination or within seventy-two hours
15 of their resignation.

16 93. Defendants' willful failure to timely pay final wages to the members of the
17 Independent LC 203 Class violates Labor Code §§ 201-202 because Defendants knew or should
18 have known final wages were due to the members of the Independent LC 203 Class by a date
19 certain, but Defendants failed to pay them on a timely basis on or before that deadline.

20 94. Thus, the members of the Independent LC 203 Class are entitled to recovery
21 under to Labor Code § 203.

22 **SEVENTH CAUSE OF ACTION**

23 **UNFAIR BUSINESS PRACTICES**

24 **(On Behalf of the 17200 Class)**

25 **(Against All Defendants)**

26 95. Plaintiffs incorporate by reference and reallege each and every one of the
27 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
28 forth herein.

1 96. Business & Professions Code § 17200 provides, in pertinent part, “unfair
2 competition shall mean and include any unlawful, unfair or fraudulent business act.”

3 97. Business & Professions Code § 17205 provides that unless otherwise expressly
4 provided, the remedies or penalties provided for unfair competition “are cumulative to each other
5 and to the remedies or penalties available under all other laws of this state.”

6 98. Business & Professions Code § 17204 provides that an action for any relief from
7 unfair competition may be prosecuted by any person who has suffered injury in fact and has lost
8 money or property as a result of such unfair competition.

9 99. Defendants have engaged in unlawful, unfair and fraudulent business acts or
10 practices prohibited by Business & Professions Code § 17200, including those set forth in the
11 preceding and foregoing paragraphs of the complaint, thereby depriving the members of the
12 17200 Class of the minimum working standards and conditions due to them under the Labor
13 Code and/or the IWC Wage Orders, as specifically described herein.

14 100. Defendants have engaged in unfair business practices in California by practicing,
15 employing and utilizing the employment practices outlined in the preceding paragraphs,
16 specifically, by requiring employees to perform the labor services complained of herein without
17 the requisite compensation.

18 101. Defendants’ use of such practices constitutes an unfair business practice and
19 unfair competition and provides an unfair advantage over Defendants’ competitors.

20 102. Plaintiffs have suffered injury in fact and have lost money or property as a result
21 of such unfair competition.

22 103. Plaintiffs seek full restitution from Defendants, as necessary and according to
23 proof, to restore any and all monies withheld, acquired, and/or converted by Defendants by
24 means of the unfair practices complained of herein.

25 104. Further, if Defendants are not enjoined from the conduct set forth above,
26 Defendants will continue to practice, employ, and utilize the employment practices outlined in
27 the preceding paragraphs.

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105. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

106. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

- a. That the Court issue an Order certifying the Classes herein, appointing all named Plaintiffs as representative of all others similarly situated, and appointing all law firms representing all named Plaintiffs as counsel for the members of the Classes;

As to the First Cause of Action for Failure to Provide Meal Periods:

- b. For one hour of pay at the regular rate of compensation for each member of the Meal Period Class for each workday that a meal or rest period was not provided;
- c. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code § 3287;

As to the Second Cause of Action for Failure to Authorize and Permit Paid Rest Periods:

- d. For one hour of pay at the regular rate of compensation for each member of the Rest Period Class for each workday that a meal or rest period was not provided;
- e. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code § 3287;

As to the Third Cause of Action for Derivative Failure to Timely Furnish Accurate Itemized Wage Statements:

- f. For recovery as authorized by Labor Code § 226(e);
- g. For an award of costs and reasonable attorneys' fees under Labor Code §§ 226(e)/(g);

As to the Fourth Cause of Action for Independent Failure to Timely Furnish Accurate Itemized Wage Statements:

- i. For an award of costs and reasonable attorneys' fees under Labor Code §§ 226(e)/(g);

1 As to the Fifth Cause of Action for Derivative Violations of Labor Code §§ 201-202:

2 j. For recovery as authorized by Labor Code § 203;

3 As to the Sixth Cause of Action for Independent Violations of Labor Code §§ 201-202:

4 k. For recovery as authorized by Labor Code § 203;

5 As to the Seventh Cause of Action for Unfair Business Practices:

6 l. For an accounting, under administration of Plaintiffs and/or the receiver and subject
7 to Court review, to determine the amount to be returned by Defendants, and the
8 amounts to be refunded to members of the Classes who are owed monies by
9 Defendants;

10 m. For an Order requiring Defendants to identify each of the members of the Classes by

11 name, home address, home telephone number and, if available, email address;

12 n. For an Order requiring Defendants to make full restitution and payment under
13 California law;

14 o. For an Order for a preliminary and/or permanent injunction prohibiting Defendants
15 from engaging in the acts complained of herein;

16 p. For the creation of an administrative process wherein each injured member of the
17 Classes may submit a claim in order to receive his/her money;

18 q. For all other appropriate injunctive, declaratory and equitable relief;

19 r. For interest to the extent permitted by law;

20 s. For an award of attorneys' fees and costs incurred in the investigation, filing and
21 prosecution of this action under Code of Civil Procedure § 1021.5, Business &
22 Professions Code §§ 17200, et seq., Labor Code § 1194 and/or any other applicable
23 provision of law;

24 As to All Causes of Action:

25 t. For such relief as this Court may deem just and proper, including reasonable
26 attorneys' fees and costs incurred.

27 ///

28 ///

VII.

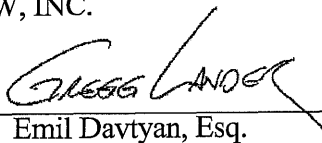
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Dated: June 5, 2024

D.LAW, INC.

By:



Emil Davtyan, Esq.

Gregg Lander, Esq.

Vanessa M. Ruggles, Esq.

Attorneys for Plaintiffs



SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
www.riverside.courts.ca.gov

Self-represented parties: <https://www.riverside.courts.ca.gov/SelfHelp/self-help.php>

**ALTERNATIVE DISPUTE RESOLUTION (ADR) –
 INFORMATION PACKAGE**

***** THE PLAINTIFF MUST SERVE THIS INFORMATION PACKAGE
 ON EACH PARTY WITH THE COMPLAINT. *****

What is ADR?

Alternative Dispute Resolution (ADR) is a way of solving legal disputes without going to trial. The main types are mediation, arbitration, and settlement conferences.

Advantages of ADR:

- ✍ Faster: ADR can be done in a 1-day session within months after filing the complaint.
- ✍ Less expensive: Parties can save court costs and attorneys' and witness fees.
- ✍ More control: Parties choose their ADR process and provider.
- ✍ Less stressful: ADR is done informally in private offices, not public courtrooms.

Disadvantages of ADR:

- ✍ No public trial: Parties do not get a decision by a judge or jury.
- ✍ Costs: Parties may have to pay for both ADR and litigation.

Main Types of ADR:

Mediation: In mediation, the mediator listens to each person's concerns, helps them evaluate the strengths and weaknesses of their case, and works with them to create a settlement agreement that is acceptable to everyone. If the parties do not wish to settle the case, they go to trial.

Mediation may be appropriate when the parties:

- ✍ want to work out a solution but need help from a neutral person; or
- ✍ have communication problems or strong emotions that interfere with resolution; or
- ✍ have a continuing business or personal relationship.

Mediation is not appropriate when the parties:

- ✍ want their public "day in court" or a judicial determination on points of law or fact;
- ✍ lack equal bargaining power or have a history of physical/emotional abuse.

Arbitration: Arbitration is less formal than trial, but like trial, the parties present evidence and arguments to the person who decides the outcome. In "binding" arbitration the arbitrator's decision is final; there is no right to trial. In "non-binding" arbitration, any party can request a trial after the arbitrator's decision. The court's mandatory Judicial Arbitration program is non-binding.

Arbitration may be appropriate when the parties:

- ⌚ want to avoid trial, but still want a neutral person to decide the outcome of the case.

Arbitration is not appropriate when the parties:

- ⌚ do not want to risk going through both arbitration and trial (Judicial Arbitration)
- ⌚ do not want to give up their right to trial (binding arbitration)

Settlement Conferences: Settlement conferences are similar to mediation, but the settlement officer usually tries to negotiate an agreement by giving strong opinions about the strengths and weaknesses of the case, its monetary value, and the probable outcome at trial. Settlement conferences often involve attorneys more than the parties and often take place close to the trial date.

RIVERSIDE COUNTY SUPERIOR COURT ADR REQUIREMENTS

ADR Information and forms are posted on the ADR website:
<https://www.riverside.courts.ca.gov/Divisions/ADR/ADR.php>

General Policy:

Parties in most general civil cases are expected to participate in an ADR process before requesting a trial date and to participate in a settlement conference before trial. (Local Rule 3200)

Court-Ordered ADR:

Certain cases valued at under \$50,000 may be ordered to judicial arbitration or mediation. This order is usually made at the Case Management Conference. See the “Court-Ordered Mediation Information Sheet” on the ADR website for more information.

Private ADR (for cases not ordered to arbitration or mediation):

Parties schedule and pay for their ADR process without Court involvement. Parties may schedule private ADR at any time; there is no need to wait until the Case Management Conference. See the “Private Mediation Information Sheet” on the ADR website for more information.

BEFORE THE CASE MANAGEMENT CONFERENCE (CMC), ALL PARTIES MUST:

1. Discuss ADR with all parties at least 30 days before the CMC. Discuss:
 - ⌚ Your preferences for mediation or arbitration.
 - ⌚ Your schedule for discovery (getting the information you need) to make good decisions about settling the case at mediation or presenting your case at an arbitration.
2. File the attached “Stipulation for ADR” along with the Case Management Statement, if all parties can agree.
3. Be prepared to tell the judge your preference for mediation or arbitration and the date when you could complete it.

(Local Rule 3218)

RIVERSIDE COUNTY ADR PROVIDERS INCLUDE:

- ⌚ The Court’s Civil Mediation Panel (available for both Court-Ordered Mediation and Private Mediation). See <https://adr.riverside.courts.ca.gov/Home/CivilMedPanel> or ask for the list in the civil clerk’s office, attorney window.
- ⌚ Riverside County ADR providers funded by DRPA (Dispute Resolution Program Act):
 - Dispute Resolution Service (DRS) Riverside County Bar Association: (951) 682-1015
 - Dispute Resolution Center, Community Action Partnership (CAP): (951) 955-4900
 - Chapman University School of Law Mediation Clinic (services only available at the court)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

- | | |
|--|--|
| ☐ BLYTHE 265 N. Broadway, Blythe, CA 92225
☐ CORONA 505 S. Buena Vista, Rm. 201, Corona, CA 92882
☐ MORENO VALLEY 13800 Heacock St. #D201, Moreno Valley, CA 92553 | ☐ MURRIETA 30755-D Auld Rd., Murrieta, CA 92563
☐ PALM SPRINGS 3255 Tahquitz Canyon Way, Palm Springs, CA 92262
☐ RIVERSIDE 4050 Main St., Riverside, CA 92501 |
|--|--|

RI-ADR001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number and Address) TELEPHONE NO: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	FOR COURT USE ONLY CASE NUMBER: CASE MANAGEMENT CONFERENCE DATE(S):
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	

STIPULATION FOR ALTERNATIVE DISPUTE RESOLUTION (ADR)
(CRC 3.2221; Local Rule, Title 3, Division 2)

Court-Ordered ADR:

Eligibility for Court-Ordered Mediation or Judicial Arbitration will be determined at the Case Management Conference. If eligible, the parties agree to participate in:

- ☐ Mediation ☐ Judicial Arbitration (non-binding)

Private ADR:

If the case is not eligible for Court-Ordered Mediation or Judicial Arbitration, the parties agree to participate in the following ADR process, which they will arrange and pay for without court involvement:

- ☐ Mediation ☐ Judicial Arbitration (non-binding)
- ☐ Binding Arbitration ☐ Other (describe): _____

Proposed date to complete ADR: _____

SUBMIT THIS FORM ALONG WITH THE CASE MANAGEMENT STATEMENT.

(PRINT NAME OF PARTY OR ATTORNEY) ☐ Plaintiff ☐ Defendant	(SIGNATURE OF PARTY OR ATTORNEY)	(DATE)
(PRINT NAME OF PARTY OR ATTORNEY) ☐ Plaintiff ☐ Defendant	(SIGNATURE OF PARTY OR ATTORNEY)	(DATE)
(PRINT NAME OF PARTY OR ATTORNEY) ☐ Plaintiff ☐ Defendant	(SIGNATURE OF PARTY OR ATTORNEY)	(DATE)
(PRINT NAME OF PARTY OR ATTORNEY) ☐ Plaintiff ☐ Defendant	(SIGNATURE OF PARTY OR ATTORNEY)	(DATE)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
4050 Main Street, Riverside, CA 92501
www.riverside.courts.ca.gov

Case Number: CVRI2403102

Case Name: CABRERA vs RITCHIE BROS.AUCTIONEERS (AMERICA) INC.

NOTICE OF DEPARTMENT ASSIGNMENT

The above entitled case is assigned to the Honorable Harold W. Hopp in Department 1 for All Purposes.

Any disqualification pursuant to CCP section 170.6 shall be filed in accordance with that section.

The court follows California Rules of Court, Rule 3.1308(a)(1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law and motion matter are posted on the internet by 3:00 p.m. on the court day immediately before the hearing at <http://riverside.courts.ca.gov/tentativerulings.shtml>. If you do not have internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, you must (1) notify the judicial secretary at (760) 904-5722 and (2) inform all other parties, no later than 4:30 p.m. the court day before the hearing. If no request for oral argument is made by 4:30 p.m., the tentative ruling will become the final ruling on the matter effective the date of the hearing.

The filing party shall serve a copy of this notice on all parties.

	Interpreter services are available upon request. If you need an interpreter, please complete and submit the online Interpreter Request Form (https://riverside.courts.ca.gov/Divisions/InterpreterInfo/ri-in007.pdf) or contact the clerk's office and verbally request an interpreter. All requests must be made in advance with as much notice as possible, and prior to the hearing date in order to secure an interpreter.
	Assistive listening systems, computer-assisted real time captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the Office of the ADA Coordinator by calling (951) 777-3023 or TDD (951) 777-3769 between 8:00 am and 4:30 pm or by emailing ADA@riverside.courts.ca.gov to request an accommodation. A <i>Request for Accommodations by Persons With Disabilities and Order</i> (form MC-410) must be submitted when requesting an accommodation. (Civil Code section 54.8.)

Dated: 06/07/2024

JASON B. GALKIN,
Court Executive Officer/Clerk of the Court

by:



J. Blackwell, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House

Court Ruling re: Class Action Case Management Order #1

06/12/2024

8:30 AM

Department 1

CVRI2403102

CABRERA vs RITCHIE BROS.AUCTIONEERS (AMERICA) INC.

Honorable Harold W. Hopp, Judge

E. Escobedo, Courtroom Assistant

Court Reporter: None

APPEARANCES:

No Appearances

Court deems case complex pursuant to Section CRC 3.400.

Minute entry completed.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

CASE TITLE: Cabrera v. Ritchie Bros. Auctioneers (America) Inc.	Department 1	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE JUN 12 2024 E. Escobedo	SG JUN 14 2024 R
CASE NO.: CVRI2403102			
DATE: June 10, 2024			
PROCEEDING: Class Action Case Management Order #1			

Unless otherwise ordered, this Case Management Order ("CMO") shall govern the management of this case.

A. IN GENERAL

1. The Court finds that this is a complex case. *Cal. Rules of Court*, rules 3.400(c)(6), 3.403(b). The clerk shall impose fees accordingly. The court will entertain objections to this designation at the next Case Management Conference or status conference.
2. This case has been assigned to Department 1, Judge Harold W. Hopp, for all purposes, including case management, law and motion, and trial.
3. The plaintiff shall serve a copy of this CMO on any defendant who has not yet appeared, and shall file proof of service promptly thereafter.

B. CASE MANAGEMENT AND THE CASE PROGRESSION PLAN

1. The Court finds that this case involves exceptional circumstances that are likely to prevent this case from meeting the goals and deadlines set by *California Rules of Court*, rule 3.713(b). Accordingly, this case is exempt from those case disposition time goals. *Id.*, rule 3.714(c)(1). With the input from the parties, the Court shall develop a case progression plan with the goal of disposing of the case within three years. *Id.*, rule 3.714(c)(2).
2. Prior to the next Case Management Conference, counsel for the parties shall meet and confer regarding the joint statement required by RSC Local Rule 3160.
3. Not later than five court days in advance of the next Case Management Conference, all parties that have appeared shall file the joint statement required by rule 3160 instead of Judicial Council form CM-110 [case management statement]. In addition to the items listed in Rule 3160, the statement shall:
 - a. Advise the Court whether any of the parties or their counsel are aware of any other class action, putative class action, or other type of representative or collective action in this or any other jurisdiction that asserts claims similar to those here on behalf of

a class, putative class, or other group of individuals that in any way overlaps with the putative class alleged here.

- b. Describe the parties' case progression plan, which shall include at least (i) a statement as to whether the parties agree to pursue mediation and (ii) a plan of the informal discovery and any formal discovery to be conducted in preparation for mediation, class certification, or both.
4. At least five court days before any subsequent Case Management Conference, Status Conference, or Trial Setting Conference, the parties shall file a joint statement that:
 - a. Describes the status of the case, including (i) the results of any mediation or other settlement efforts, (ii) the degree to which the case progression plan has been implemented and (iii) any changes or additions to the case progression plan; and
 - b. Identifies any issues or concerns that either party wishes to discuss with the Court.
5. If mediation is unsuccessful, the case progression plan shall be expanded prior to the next status conference to include (a) a pre-certification discovery schedule, (b) a deadline for filing a motion for class certification, and a proposed briefing schedule for that motion.
6. The Court intends to conduct all Case Management Conferences and Status Conferences informally, in chambers. Should an appearance be necessary, the Court will inform all counsel via email and/or telephone.

C. MEDIATION

The court expects the parties to engage in private mediation at the earliest practicable time, i.e., as soon as all parties have obtained – preferably through informal means – sufficient information from the opposing party(s) to enable them to engage in meaningful mediation.

D. DISCOVERY

1. Counsel are encouraged to engage in informal discovery rather than relying on formal discovery. The Court does not stay or otherwise limit informal discovery.
2. The discovery stay under RSC Local Rule 3160(B) is vacated as to interrogatories concerning the identity of and contact information for members of the putative class. Any such interrogatories propounded by the plaintiff to the defendant shall be accompanied by (a) a proposed *Belair West* notice, (b) the name of a proposed third-party administrator, and (c) a proposal regarding the allocation of the cost of the notice.
3. All other formal discovery concerning class-certification issues is stayed pending further order of the court. Requests for leave to propound formal discovery concerning class-certification issues may be made either by submitting a declaration and proposed order or by making an oral request at status conferences or at informal conferences with the Court

in accordance with paragraph 5 below. The Court will grant such a request if the applicant demonstrates:

- a. That the parties have met and conferred to discuss both (i) the scope and sources of the information needed either to permit a meaningful mediation or to support or oppose a class-certification motion and (ii) whether the parties would agree to exchange that information informally;
 - b. That the parties were unable to reach an agreement; and
 - c. The discovery is reasonably necessary either (i) to permit a meaningful mediation or (ii) to make or oppose a certification motion.
4. All formal discovery concerning solely the merits of the plaintiff's claims (as opposed to whether a class should be certified to prosecute those claims) is stayed until a motion regarding class certification has been granted.
5. No discovery motions may be filed without leave of court. If a discovery dispute arises:
- a. The parties shall meet and confer either in person or by telephone in a good-faith effort to resolve the dispute. If, despite that effort, the parties are unable to resolve the dispute, then counsel shall contact the clerk of this department to schedule an informal conference at which the court will discuss the dispute with counsel and, if not resolved to the parties' satisfaction, will consider any request for leave to file a formal motion.
 - b. The conference may be conducted by telephone or in person, as counsel prefer. Prior to the conference, the party seeking relief shall provide the clerk of this department with a brief (two-to-three sentence) description in writing of the reason for the conference. If the conference is to be by telephone, counsel shall also provide the clerk with the call-in telephone number and passcode.
 - c. If the opposing side will not agree to participate in the informal conference, then the moving party shall bring an ex parte application for leave to file a discovery motion.

E. REQUESTS FOR DISMISSAL OF CLASS CLAIMS

If the plaintiff seeks to dismiss or otherwise abandon either the entire action, any cause of action asserted on behalf of the putative class, or any defendant against whom any cause of action is asserted on behalf of the class, Court approval must be sought as follows:

1. The plaintiff shall not use the preprinted Request for Dismissal, Judicial Council form CIV-110. Instead, the request shall be made by the submission to the court of an Application for Dismissal that includes: (a) a declaration from plaintiff's counsel; (b) a declaration from each named plaintiff; and (c) a proposed order of dismissal.
2. The declarations shall state whether the plaintiff has attempted to settle the plaintiff's individual claims, and if so, the status of those negotiations.

3. The declarations must comply with *California Rules of Court*, rule 3.770(a), pertaining to any consideration being paid for the dismissal. Because the purpose of that rule is to avoid collusion between the parties to the detriment of the potential class members, the showing must be made by declaration rather than by stipulation.
4. If the dismissal is in exchange for any consideration other than a waiver of costs, the declaration of plaintiff's counsel shall authenticate a fully executed copy of any settlement agreement. In addition, the declaration shall address each of the following:
 - a. What is the form and value of the consideration, how was it calculated, and to whom is it to be paid?
 - b. Is the plaintiff required to execute a release in addition to a dismissal? If so, what is the scope of that release?
 - c. How is the retention of that consideration either by the plaintiff or the plaintiff's attorney consistent with their respective fiduciary duties to the class? In particular, if the plaintiff has negotiated a settlement of any individual claim against any defendant separate from the representative claims, and that settlement provides for the payment to any plaintiff of consideration other than a waiver of costs, the declaration shall as to each such individual claim:
 - i. Estimate both (A) the total amount of damages, monetary penalties, attorney's fees and costs, interest, or other relief that the plaintiff would be awarded if the action were entirely successful at trial on that claim, and (B) the total amount of damages, monetary penalties, attorney's fees and costs, interest, or other relief that the plaintiff could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks;
 - ii. Briefly describe the basis for those estimates; and
 - iii. Describe the form and value of the consideration to be paid in satisfaction of that claim.
5. The declarations by plaintiff and plaintiff's counsel shall state (a) whether the declarant has ever informed any of the putative class members – whether formally or informally, orally or in writing, individually or as a group – of the preparation, filing, or pendency of the action, and (b) if so, both (i) the nature and extent of that information and (ii) whether the declarant knows or has a means of discovering the name and mailing address of the putative class member or members to whom that information was communicated.
6. If the dismissal is in exchange for no consideration other than a waiver of costs, the request shall explain the reason for the dismissal. If the reason is that the named plaintiff no longer wishes to prosecute the case on behalf of the putative class:
 - a. The plaintiff shall explain the reason for his or her change of heart. Simply stating that the plaintiff no longer wishes to represent the class is not sufficient.

- b. The plaintiff's counsel shall explain why counsel wishes to abandon the class claims rather than locate a new class representative.
- 7. Any request shall explain why the putative class members will not be prejudiced by the requested dismissal.
- 8. If the complaint alleges any claims under *California Labor Code* section 2699 (PAGA), and the plaintiff intends to dismiss any of those representative claims because the plaintiff has negotiated a settlement of individual claims against any defendant separate from the representative claims, and that settlement provides for the payment to any plaintiff of any consideration (other than a waiver of costs) that is in addition to or instead of PAGA penalties, the plaintiff's counsel's declaration shall describe the information required by section G.9.

F. MOTIONS & APPLICATIONS GENERALLY

- 1. A party making an ex parte application must, inter alia, "[a]ttempt to determine whether the opposing party will appear to oppose the application." *Cal. Rules of Court*, rule 3.1204(a)(2). That attempt shall be made by telephone. Written notice asking the opposing party to inform the moving party of the opposing party's intentions is not sufficient.
- 2. A party desiring an order shortening time for notice of a motion shall not bring an ex parte application for such an order until that party has first (a) reserved the earliest available hearing date for the motion and (b) filed the motion. The Court will not deem the ex parte application as constituting the motion to be heard.

G. MOTIONS FOR PRELIMINARY APPROVAL OF SETTLEMENT

If the matter is settled, a motion for preliminary approval of the settlement must be filed. All applications for such approval shall be made by noticed motion, and shall be supported by declaration. In order to aid the Court's review, all declarations filed in support of a motion for preliminary approval shall include appropriate headings that identify the specific paragraph of Section G which is being addressed. For example, counsel's estimate of the number of individuals in the class should be preceded by a heading that identifies G(3)(a)(1), and counsel's estimate of the recovery by the average class member if the settlement were approved should be preceded by heading that identifies G(3)(a)(iv).

1. Settlement Agreements in General

- a. The settlement agreement shall not provide that any order, notice, form, or judgment shall include any provision that this order prohibits from being included in such a document. (See §§ G.3 through G.10 and I, *infra*.)

- b. The settlement agreement shall be written, signed by all necessary parties, and filed, either in the form of a separate stipulation or as an authenticated attachment to a declaration of counsel.

2. Notices of Settlement

Regardless of the terms of the proposed settlement, counsel shall not file a Notice of Settlement of Entire Case (Judicial Council form CM-200).

3. The Motion in General

- a. The motion shall be supported by a declaration from the plaintiff's attorney that, inter alia:
 - i. Sets forth the attorney's estimate of the number of individuals in the class and for any settlement that includes a claim for statutory penalties under PAGA, sets forth the attorney's estimate of the number of aggrieved employees employed during the applicable PAGA period.
 - ii. (A) Sets forth the attorney's estimate of the total amount of damages, monetary penalties or other relief that the class would be awarded on each claim if that claim were entirely successful at trial; (B) explains how that estimate was calculated; and (C) states the collective total for all of the claims.
 - iii. Sets forth: (A) the attorney's estimate as to each claim of the total amount of damages, monetary penalties or other relief that the class could reasonably expect to be awarded at trial, taking into account difficulties of proof, the defendant's defenses, and other attendant risks; (B) the attorney's reasons for those estimates; (C) and the likely award at trial for all claims collectively.
 - iv. Sets forth the attorney's estimate of the recovery by the average class member, exclusive of any amounts payable under the settlement of any PAGA claim, if the settlement were approved. If the recovery by different class members will vary, the attorney shall also estimate the range (high and low) of possible recoveries.
 - v. Sets forth the attorney's estimate of the recovery by the individual aggrieved employees under the proposed settlement of any PAGA claim.
 - vi. Describes in detail the nature and extent of the formal and informal discovery exchanged and other factual investigation conducted to determine the size of the class and the strength of the class claims.
 - vii. States (A) whether the attorney is aware of any class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals some or all of whom would also be members of the class defined in this action and (B) whether the attorney made reasonable

inquiry of other members of the attorney's law firm and any associated law firm to determine whether those individuals are aware of any such similar actions. If any such similar actions are known to exist, the declaration shall also state (C) the name and case number of any such case, the nature of the claims asserted, the definition of the class or other parties on whose behalf the action is brought, and the procedural status of that case.

- b. The motion shall be supported by a declaration from the defendant's attorney that states (i) whether the attorney is aware of any class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals some or all of whom would also be members of the class defined in this action and (ii) the name and case number of any such case, the nature of the claims asserted, the definition of the class or other parties on whose behalf the action is brought, and the procedural status of that case.
- c. The motion shall describe how the value of any uncashed checks, unpaid cash residue, or other unclaimed or abandoned funds will be distributed.
 - i. In a wage-and-hour case or any other case seeking relief on behalf of a class of employees, the Court believes that redistribution of the value of uncashed settlement check to those class members who have cashed their checks will better serve the public interest and the interest of the class than distribution in the manner otherwise prescribed by *California Code of Civil Procedure* section 384(b). If one or more of the parties disagree, then the motion shall be supported by a declaration from a party or the party's counsel explaining the factual basis for the disagreement.
 - ii. In any other type of case, the motion shall describe the intended distribution of unclaimed funds in accordance with *California Code of Civil Procedure* section 384(b), and shall explain the reason for choosing proposed recipient as opposed to other potential recipients considered.
 - iii. The motion shall be supported by a declaration from a knowledgeable person from the proposed recipient. The declaration shall:
 - A. Establish that the recipient is a nonprofit organization, foundation, or program of the type described in that subdivision.
 - B. Describe the history of the recipient, the types of projects that it has conducted or supported over the last five years, and any particular use to which it would intend to devote the unpaid residue if received.
 - C. Describe the geographic area in which the recipient operates in general, and the nature and extent of the services it provides in Riverside County in particular.

- iv. The declarations of the attorneys for the plaintiff and for the defendant shall describe both (A) any relationship between the proposed recipient and (1) any class representative or other party, (2) any officer, director, or manager of any party, or (3) any attorney or law firm for any party, and (B) the inquiries the attorney made to determine whether there is any such relationship.
 - v. The agreement shall not provide that the unclaimed funds be deposited into the Industrial Relations Unpaid Wage Fund. *Cal. Lab. Code* § 96.6. That fund is limited to wages or monetary benefits determined by the Labor Commissioner to be due to an employee after an investigation by the Labor Commissioner, and thus will not accept wages, penalties or interest distributed as part of the settlement of a lawsuit brought by a plaintiff other than the Labor Commissioner.
- d. If the settlement contemplates the use of an administrator to implement the terms of the settlement, the motion shall be supported by:
- i. A declaration from the plaintiff's attorney, stating whether bids were sought from multiple potential administrators and, if so, the results of that competitive bidding. If the parties did not select the lowest bidder, the declaration shall explain that decision.
 - ii. A declaration from the administrator describing:
 - A. The administrator's experience;
 - B. The fee to be charged by the administrator to perform the services described in the settlement agreement and proposed order;
 - C. Whether that fee is (1) fixed, (2) hourly, or (3) hourly with a cap; and
 - D. How the fee was calculated.
- e. Any release to be given by the participating class members (other than the class representatives) shall be limited to:
- i. The defendants named in the complaint, together with their officers, directors, employees and agents. If any other parties are sought to be released, the motion shall both (A) identify those other parties by name and (B) explain the facts that justify their inclusion.
 - ii. The claims stated in the complaint and those based solely upon the facts alleged in the complaint.
 - iii. Liability that arose during the class period as defined by the settlement agreement.
 - iv. Any release of claims for PAGA penalties shall bind only the named plaintiff and the State of California and shall release only those claims described in the notice sent by plaintiff to the LWDA, and only to the extent that they are

alleged in the complaint. An example of an acceptable release is as follows: "Plaintiff releases all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release any aggrieved employee's claim for wages or damages."

- f. If notice is not to be given by first class mail to addresses believed to be current, the motion shall discuss the proposed method of giving notice, the alternative methods considered, and the reasons that the proposed method is the one most likely to give actual notice to the greatest number of class members.
- g. If the settlement requires any of the class members to submit claims, the motion shall explain why a claim process is reasonably necessary. If the defendant knows (A) the identity of the class members, (B) their addresses or former addresses, and (C) the facts necessary to calculate the recovery of each class member, the Court will require a strong showing of necessity for a claims process.
- h. If the settlement provides that any portion of the consideration paid or deposited by the defendant may revert to the defendant, the motion shall explain (i) the circumstances under which that reversion would occur, (ii) the maximum amount of any reversion, and (iii) why that reversion is fair.
- i. If the settlement includes compensation for unpaid wages, the motion shall describe how the employer's share of any applicable payroll taxes will be handled. The Court suggests that the employer's share not be paid out of the gross settlement fund. The Court is not likely to include the amount of those payments when calculating the plaintiff's counsel's percentage attorney's fee.
- j. The motion shall describe how individual settlement payments will be allocated for tax purposes among wages, interest and non-PAGA penalties and how such allocation was determined. Payments to aggrieved employees pursuant to the settlement of any PAGA claim should be addressed separately and allocated solely as penalties. The 25% portion of PAGA penalties payable to aggrieved employees should not be included as part of the net settlement amount.
- k. The documents that will be read by or used by the class members – the proposed notice, objection form, exclusion form, and any claim form – shall be drafted in a manner that is likely to be readily understood by the members of the class.
 - i. In particular, they shall not contain any Latin terms (such as et al. and et seq.), any legal terms of art (such as nonexempt and class certification), or any unfamiliar symbols or abbreviations (such as §, LLC, and IWO).
 - ii. To assist the Court in determining whether those documents comply with that directive, the motion shall be supported by a declaration of the defendant on personal knowledge concerning the likely age, education, and experience of the class members, and of their ability to read and comprehend English.

4. The Proposed Order

- a. The motion shall be accompanied by a separate proposed order which shall include, as attachments to the order, the proposed notice (*Cal. Rules of Court*, rule 3.769(e)), proposed exclusion form, proposed objection form, any proposed claim form, and any other form that is proposed to accompany the notice. The Court is likely to modify those proposed forms. Therefore, the Court will not issue an order that merely incorporates by reference the forms attached to the settlement agreement.
- b. The settlement agreement shall not be attached to the order.
- c. Counsel shall carefully review both the terms and the terminology of the order and accompanying forms (notice, objection form, exclusion form, and any claim form) to confirm that the various documents are internally consistent, consistent with each other, and consistent with the settlement agreement.
- d. The order shall state the name of any settlement administrator, and shall describe the nature of the services that the administrator will be required to perform, either directly or by reference to the settlement agreement.
- e. The order shall provide that the notice shall be accompanied by an exclusion form that the class members may use. The order shall provide that any exclusion form shall be submitted to the settlement administrator rather than filed with the court. The order shall not require the class member to send copies of the exclusion form to counsel, but may require the settlement administrator to do so. The order shall provide that the settlement administrator shall file a declaration concurrently with the filing of any motion for final approval, authenticating a copy of every exclusion form received by the administrator.
- f. The proposed order shall provide that the notice shall be accompanied by an objection form that the class members may use. The order shall provide that any objection shall be submitted to the settlement administrator rather than filed with the court. The order shall not require the class member to send copies of the objection form to counsel, but may require the settlement administrator to do so. The order shall provide that the settlement administrator shall file a declaration concurrently with the filing of any motion for final approval, authenticating a copy of every objection form received by the administrator.
- g. Neither the order, the notice, nor the objection form shall require an objecting party to do either of the following, either personally or through counsel:
 - i. To appear at the hearing on the motion for final approval for that party's objection to be considered.
 - ii. To file or serve, or to state in the objection, a notice of intention to appear at the hearing on the motion for final approval.

- h. The order shall provide a proposed date for the Final Approval Hearing. The order shall require that either counsel or the administrator must give notice to any objecting party of any continuance of the hearing of the motion for final approval.
- i. Neither the order nor the notice shall purport to enjoin the class members from filing any actions or administrative claims or proceedings pending the final hearing on the settlement, or for any other period.
- j. If notice is to be given by mail, and if the class members will be required to submit a claim form, the order shall provide:
 - i. That the notice be accompanied by a stamped envelope addressed to the claims administrator; and
 - ii. That the claims administrator be required to send a reminder notice to every class member from whom no claim or exclusion request is received within 30 days of mailing the notice.

5. The Proposed Notice

- a. The notice shall include an estimate of the likely recovery by the individual class member to whom the notice is sent, if known. If it is not known, the notice shall include an estimate of the likely recovery by the average class member. If the recovery by different members will vary, the notice shall also include an estimate of the range of possible recoveries.
- b. To avoid discouraging any dissenting class members from objecting to the proposed settlement, the notice shall clearly indicate that the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing.
- c. The notice shall advise the class members of where they can find the settlement agreement, by describing (i) the full title and filing date either of the settlement agreement or of the declaration or other document to which the agreement was attached when filed with the Court, (ii) the address of the courthouse to which the case is assigned, and (iii) the address of the court's website at which the case file can be viewed on-line.
- d. Neither the notice nor the documents enclosed with it shall describe any settlement administrator as the "claims administrator" unless the class members are required to submit claims.
- e. The notice shall include a description of any release being given by the class members.
- f. If the action includes a claim for statutory penalties under PAGA, the notice shall explain what PAGA is and advise class members/aggrieved employees that they may neither object to nor opt out of the PAGA settlement. The Notice shall also

describe the terms of the settlement of the PAGA claim, including who is an aggrieved employee and shall provide an estimate of the individual aggrieved employee's share of the penalties and advise aggrieved employees that the payments will be reported on a Form 1099.

6. The Proposed Claim Form

The information required to be provided by the class member on any claim form shall not exceed the minimum information necessary to (a) identify the claimant, (b) process the claim, and (c) contact the claimant to clarify any uncertainties.

7. The Proposed Objection Form

- a. The objection form shall (i) instruct the objecting class member that the objection must be mailed or delivered to the settlement administrator, (ii) state the name and address of the settlement administrator, and (iii) state the date by which the objection must be mailed or otherwise delivered.
- b. The information required to be provided by an objecting class member on the objection form shall not exceed the minimum information necessary to (i) identify the objector as a person entitled to object to the settlement, (ii) describe the nature of and basis for the objection, and (iii) contact the objector to clarify any uncertainties.
- c. If a claim must be submitted to participate in the settlement, the objection form shall remind the objector that, to participate in the settlement in the event that the objection is overruled, the objector must also submit a claim.

8. The Proposed Exclusion Form

- a. The exclusion form shall (i) instruct the class member seeking exclusion that the exclusion form must be mailed or delivered to the settlement administrator, (ii) state the name and address of the settlement administrator, and (iii) state the date by which the exclusion form must be mailed or otherwise delivered.
- b. The information required to be provided by a class member on the exclusion form shall not exceed the minimum information necessary to (i) identify the person as a class member and (ii) contact the person to clarify any uncertainties.
- c. The exclusion form shall indicate that exclusion from the class settlement will not result in exclusion from any PAGA settlement.

9. PAGA Penalties

- a. If the action includes a claim for statutory penalties under PAGA, the motion shall explain the terms of any settlement of that claim.
- b. If the settlement provides for the payment of penalties under PAGA, the motion shall be accompanied by a declaration describing how the penalties were calculated and otherwise establishing facts sufficient to allow the Court to review and approve

those penalties as required by *California Labor Code* section 2699(l). In particular, the declaration shall explain:

- i. The nature of the alleged violations;
 - ii. The number of alleged individual violations, including both the length of the relevant employment period and the number of employees allegedly employed during that period;
 - iii. The total amount of penalties for which the defendant is potentially liable if all allegations are proven;
 - iv. The total amount of penalties defendant is likely to be found liable at trial considering the weight of the evidence, the clarity of the applicable law, and the strength of any factual or legal defense likely to be asserted by the defendant;
 - v. The likelihood that any violations would be proven to have been knowing and intentional;
 - vi. Any facts that tend to suggest that the imposition of the total amount of statutory penalties for which the defendant would be likely to be found liable at trial would be unjust, arbitrary and oppressive, or confiscatory;
 - vii. How the amount of the agreed-upon penalties was calculated or otherwise arrived at; and
 - viii. Any other factors that are material to a determination that the amount of the agreed-upon penalties is fair.
- c. All PAGA penalties shall be distributed among all aggrieved employees, even those who opt out of the class settlement.
- d. Any release of claims for PAGA penalties:
- i. Shall bind only the named plaintiff and the State of California;
 - ii. Shall release only the defendant named in the complaint, together with its officers, directors, employees and agents. If any other parties are sought to be released, the motion shall both (i) identify those other parties by name and (ii) explain the facts that justify their inclusion; and
 - iii. Shall release only those claims described in the notice sent by the plaintiff to the LWDA, and only to the extent that they are alleged in the complaint.
 - iv. An example of an acceptable release is as follows: "Plaintiff releases all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release any aggrieved employee's claim for wages or damages."

If the Court either denies the motion or continues the hearing on the motion, and if the plaintiff thereafter files any amended settlement agreement, order, notice or form in support of either that motion or a renewed motion, the plaintiff shall file a declaration authenticating a "red-lined" version of the amended document, showing how the earlier version was modified.

H. MOTIONS FOR FINAL APPROVAL OF A SETTLEMENT

If a motion for preliminary approval is granted, the plaintiff must thereafter move for final approval of the settlement.

1. The order granting preliminary approval will set the date for the hearing on the plaintiff's motion for final approval. Promptly after the entry of that order, the plaintiff shall reserve a law and motion hearing on the date set in the order.
2. Any request for a "service," "enhancement," or "incentive" payment to a named class representative shall be supported by a declaration from the proposed recipient in which the declarant:
 - a. Describes the services performed by the declarant to further the prosecution of the action;
 - b. Estimates the time incurred by the declarant in performing those services;
 - c. Describes any risks assumed or benefits received by the declarant in prosecuting the action;
 - d. Describes any adverse consequences actually suffered by the declarant as a result of prosecuting the action; and
 - e. States the amount that the declarant expects to receive as a class member.
3. Any request of attorney's fees shall be supported by a declaration of plaintiff's counsel that provides evidence of the total amount of time spent by counsel, a description of the work performed, the reasonableness of the fees charged and a detailed description of the costs actually incurred. Additionally, if relevant, the request for fees shall also advise the Court whether there is an agreement about how attorney fees will be paid, including fee splitting, and whether the client(s) has been given written notice.
4. Any request for compensation for expenses incurred by the plaintiff's attorneys shall be supported by a detailed declaration or other evidence describing the date, nature, and amount of each expense incurred.
5. The motion shall be accompanied by a declaration from the settlement administrator. That declaration shall:
 - a. Describe both (i) the administrator's distribution of the notice, objection form, exclusion form, and any claim form, and (ii) the results thereof. If claims are required, the declaration shall describe the number of claims received and the total

value of the claims. The declaration shall clearly distinguish between valid forms and any forms that are untimely, incomplete, or otherwise invalid.

- b. Attach and authenticate (i) a copy of the final version of the notice and of all forms enclosed with it, including the objection form, the exclusion form, and any claim form, (ii) a copy of every objection form received, and (iii) a copy of every exclusion form received. If the reasons stated on any objection form are in a language other than English, the administrator shall include a translation into English.
 - c. Describe (i) the services performed by the administrator to the date of the declaration, (ii) the time and expenses incurred to perform those services, and (iii) either the fee charged for those the services or the agreed-upon flat fee.
 - d. Describe (i) the services to be performed by the administrator after the date of the declaration, (ii) the estimated time and expenses needed to perform those services, and (iii) either the estimated fee for those the services or the agreed-upon flat fee.
6. If the settlement includes compensation for unpaid wages, and if the employer's share of the payroll taxes is to be paid out of the settlement funds, the motion shall be supported by a declaration estimating the amount of those taxes.
7. The motion shall be accompanied by a proposed judgment or, if counsel prefer, a proposed combined order and judgment.
8. The judgment shall require that:
 - a. Any envelope transmitting a settlement distribution to a class member shall bear the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED."
 - b. Any settlement distribution check shall be negotiable for at least 90 days but not more than 180 days from the date of mailing.
 - c. The administrator shall mail a reminder postcard to any class member whose settlement distribution check has not been negotiated within 60 days after the date of mailing.
 - d. If (i) any of the class members are current employees of the defendant, (ii) the distribution mailed to those employees is returned to the administrator as being undeliverable, and (iii) the administrator is unable to locate a valid mailing address, the administrator shall arrange with the defendant to have those distributions delivered to the employees at their place of employment.
9. The first reference in the judgment to the settlement agreement shall include a statement of (a) the title of the settlement agreement, (b) the date the agreement was filed, and (c) the name of the document to which the agreement was attached, if any.
10. The judgment shall state the names of any class members who excluded themselves from the settlement, if any.

11. If multiple law firms represent the plaintiff, the judgment shall separately state the fees and expenses to be paid to each firm.
12. If the settlement agreement provides for the distribution of any funds to a *cy pres* recipient, the judgment shall state the recipient's name and address, and shall describe the circumstances under which funds would be paid to that recipient.
13. The judgment shall not:
 - a. Expose the class members to a potential contempt charge by barring or otherwise enjoining the class members from prosecuting the released claims.
 - b. Include a provision that the class members shall be deemed to have agreed not to sue on any released claims, or any other provision that may expose the class members to potential liability for either breach of contract or misrepresentation.
 - c. Provide for the dismissal of the action. (Cal. Rules of Court, rule 3.769(h).)
14. The judgment may restrict the plaintiff and the defendant from offering the settlement agreement into evidence in actions between each other, but shall not purport to prevent other parties from doing so or to otherwise predetermine its admissibility in litigation involving third parties.
15. The judgment shall describe both the text of the notice of entry of judgment to be given to the class members *California Rules of Court*, rule 3.771(b), the party or person required to give that notice, and the manner in which that notice is to be given.
16. If the Court either denies the motion for final approval or continues the hearing on the motion, and if the plaintiff thereafter files any amended proposed order or judgment, or other document in support of either that motion or a renewed motion, the plaintiff shall file a declaration authenticating a "red-lined" version of the amended document, showing how the earlier version was modified.
17. The order granting the motion for final approval shall provide a date for the Final Report (Nonappearance) Hearing and a deadline for the filing of a report concerning the amount of money distributed.

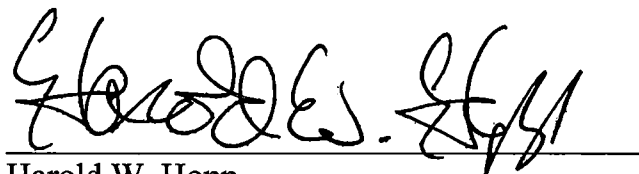
I. FINAL REPORT (NONAPPEARANCE) HEARING

Any report pursuant to *California Code of Civil Procedure* section 384(b), shall be filed within 5 court days of the nonappearance hearing and shall be in the form of a declaration from the administrator or other declarant with personal knowledge of the facts, and, if there is unpaid residue to be distributed, shall be accompanied by a proposed amended judgment. The report shall be in the form of a declaration from the settlement administrator or other declarant with personal knowledge of the facts, and to describe (i) the date the checks were mailed, (ii) the total number of checks mailed to class members, (iii) the average amount of those checks, (iv) the number of checks that remain uncashed, (v) the total value of those uncashed checks, (vi) the average amount of the uncashed checks, and (vii) the nature and date of the disposition of those unclaimed funds.

If applicable, the proposed amended judgment shall require counsel for Plaintiff to send a copy of any amended judgment which distributes funds to a cy pres recipient to the Judicial Council in compliance with *California Code of Civil Procedure* section 384.5. Further the correspondence by counsel shall include a cover letter providing the Judicial Council with the information required pursuant to *California Government Code* section 68520. Proof of Service shall be filed with the court within 15 days of the filing of the judgment.

J. MOTIONS REGARDING CLASS CERTIFICATION

1. No motion for class certification or to deny class certification shall be filed without leave of court. Before leave to file such a motion is requested, the Court expects the parties to have exhausted efforts to mediate a resolution of the case.
2. At the time that the Court grants leave of court to file either a motion for class certification or a motion denying class certification, the Court will also establish a briefing schedule and will set a status conference on a date after the reply brief is due. At the status conference, the Court will determine the date on which the motion will be heard. The hearing date may be far enough in the future to allow for further mediation.
3. If multiple classes or subclasses are alleged, the motion shall address the issues of definition, ascertainability and numerosity separately as to each class or subclass.
4. If multiple class representatives are proposed, the motion shall address the issues of typicality and adequacy of representation separately as to each representative.
5. If multiple class claims are alleged, the motion shall address the issue of whether common questions of law and fact predominate separately as to each such claim.
6. A motion for class certification shall include:
 - a. A trial plan that explains how the plaintiff will establish a prima facie case at trial. If the plaintiff intends to rely upon statistical evidence to prove any portion of any class claim, the plan shall describe that evidence and how it will be used to promote manageability. If the defendant has raised any affirmative defenses that rely upon individual evidence, the plan that explains how those defenses can be litigated.
 - b. A declaration of proposed class counsel, describing his or her experience in representing a class at trial.



Harold W. Hopp
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
4050 Main Street, Riverside, CA 92501

Case Number: CVRI2403102

Case Name: CABRERA vs RITCHIE BROS.AUCTIONEERS (AMERICA) INC.

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing notice on this date, by depositing said copy as stated above.

Notices Mailed: Class Action Case Management Order #1

Dated: 06/12/2024

JASON B. GALKIN,
Court Executive Officer/Clerk of the Court

by: 

E. Escobedo, Deputy Clerk

Notice has been printed for the following Firm/Attorneys or Parties: CVRI2403102

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
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