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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

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14 ROBERT MILLEMAN; ORVILLE OSBORNE; JEFFREY  
15 SNYDER; and DENNIS SPOHR on behalf of themselves and other  
16 similarly situated,

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 IN AND FOR THE COUNTY OF SONOMA

19 RALPH GRAY, JR.; DAVID JARRELL;  
20 ROBERT MILLEMAN; ORVILLE  
21 OSBORNE; JEFFREY SNYDER; and  
22 DENNIS SPOHR on behalf of themselves and  
23 other similarly situated,

24 Plaintiffs,

25 v.

26 HANSEL FORD, INC.,

27 Defendant.

Case No. SCV258850

**SECOND AMENDED COMPLAINT  
FOR FAILURE TO PAY FOR EACH  
HOUR WORKED AT THE  
APPROPRIATE RATE; FAILURE TO  
AUTHORIZE AND PERMIT PAID  
REST BREAKS; FAILURE TO  
PROVIDE MEAL PERIODS; FAILURE TO  
PROVIDE ACCURATE ITEMIZED  
WAGE STATEMENTS; FAILURE TO  
PROVIDE ALL WAGES DUE AT  
SEPARATION; AND VIOLATION OF  
CALIFORNIA'S UNFAIR  
COMPETITION LAW**

28 **I. INTRODUCTION**

This is an action brought by Plaintiffs RALPH GRAY, JR.; DAVID JARRELL; ROBERT MILLEMAN; ORVILLE OSBORNE; JEFFREY SNYDER; and DENNIS SPOHR ("Plaintiffs"), on their own behalf and on behalf of all those similarly situated, against Defendant HANSEL FORD, INC. ("Hansel Ford" or "Defendant"), alleging unfair business practices and violations of the California Labor Code and Industrial Welfare Commission Wage Order. Plaintiffs and the class seek restitution, equitable accounting, statutory penalties and damages, including declaratory and injunctive relief, attorneys' fees, and costs of suit.

BY FAX

1 Plaintiffs and all others similarly situated (the “class”) are presently, or were formerly,  
2 employed by Defendant as mechanics/technicians. Plaintiffs and class members performed auto  
3 maintenance, service, and repair work for Defendant. During the statutory period, Defendant  
4 failed to compensate the class for all hours worked, pay proper minimum wages and overtime  
5 wages, maintain proper piece rate records, and properly pay wages at separation. Further,  
6 Defendant failed to provide rest periods as required under state law. As a direct result of these  
7 violations, Plaintiffs and the class were injured in the form of lost compensation over the statutory  
8 period.

## 9 II. PARTIES

10 1. Plaintiffs RALPH GRAY, JR.; DAVID JARRELL; ROBERT MILLEMAN;  
11 ORVILLE OSBORNE; JEFFREY SNYDER are currently employed by Defendant Hansel Ford.  
12 Plaintiff DENNIS SPOHR was formerly employed by Defendant Hansel Ford. They bring this  
13 action on their own behalf and on behalf of all others similarly situated.

14 2. HANSEL FORD is a corporation doing business in California, and is a “person” as  
15 defined in California Labor Code (“Labor Code”) § 18, and California Business and Professions  
16 Code § 17201. In addition, Hansel Ford is an “employer” as that term is used in the Labor Code  
17 and in the California Industrial Welfare Commission’s orders regulating wages, hours, and  
18 working conditions.

19 3. Venue is proper based on the location of Defendant Hansel Ford in Sonoma  
20 County wherein the events giving rise to this Complaint occurred.

21 4. The relief requested is within the jurisdiction of this Court.

## 22 III. FACTUAL ALLEGATIONS

23 5. During the four years prior to the filing of this action, Defendant employed  
24 Plaintiffs and class members.

25 6. The wages, hours and working conditions of individuals employed in mechanical  
26 industries, including mechanics or technicians, are regulated by Industrial Welfare Commission  
27 Wage Order 4-2001, Cal. Code Regs. tit. 8, § 11040 (“Wage Order 4”) and various provisions of  
28 the Labor Code.

1           7.       As mechanics, each plaintiff and class member has been required at all times to  
2 provide their own tools.

3           8.       Wage Order 4, § 9(B) requires employers to pay employees who provide and  
4 maintain their own tools at least two (2) times the state minimum wage for each and every hour  
5 worked.

6           9.       Labor Code § 1197 and Wage Order 4, §4 require employers to pay workers at  
7 least minimum wage for each individual hour worked or portion thereof. See also, *Armenta v.*  
8 *Osmose, Inc.* (2005) 135 Cal.App.4th 314; *Gonzalez v. Downtown LA Motors, LP* (2013) 215  
9 Cal.App.4th 36.

10          10.       From May 23, 2012 through July 1, 2013, Defendant compensated plaintiffs and  
11 class members based on a “piece rate” system of pay. This system is based upon the number and  
12 type of maintenance, repair, or service work performed. Each maintenance, repair or service task  
13 is valued at a specific rate, and employees are paid based on the assigned value of the task,  
14 regardless of the time required for completion. Employees are not paid hourly, but rather based  
15 on the number of tasks completed at the assigned rate of compensation for the task performed.

16          11.       Defendant failed to compensate Plaintiffs and the class at the minimum rate to be  
17 paid to employees who provide and maintain their own tools (twice the state minimum wage), for  
18 all hours worked. This failure stems from the failure to provide pay for rest breaks and the  
19 failure to provide pay for waiting around or unproductive time when Plaintiffs and the class were  
20 present at the Defendant’s facility but Plaintiffs were impeded from performing piece rate work.

21          12.       In doing so, Defendant failed to compensate the class for all hours worked at the  
22 appropriate minimum rates, in violation of Labor Code §§ 510, 1197 and 226.7 as well as Wage  
23 Order 4, §§ 3, 4 and 9.

24          13.       Starting in July 2013, in recognition of the illegality of its prior pay plan, the  
25 Defendant added an hourly pay component to weekly wages. Double the minimum wage, which  
26 in 2013 was \$16 an hour, starting on July 1, 2014 was \$18 an hour and starting January 1, 2016  
27 was \$20.00 an hour; was provided to Plaintiffs for the difference between 40 hours a week at  
28 double minimum wage and each mechanic’s “authorized” or “flagged” hours (productive hours)

1 at their assigned flat rate hourly rate. If a mechanic's productivity was under 50%, the mechanic  
2 would only receive double the state minimum wage for each hour worked. The calculation does  
3 not take into account the "regular" hours or hours actually worked.

4 14. This change perpetuated the employer's practice using productive hours to offset  
5 its double minimum wage obligation for non-productive hours. This practice has been  
6 invalidated by the appellate court in both *Armenta* and *Downtown LA Motors*.

7 15. Labor Code § 510 states an employee must be compensated for "work." It also  
8 provides that any work in excess of eight hours in one workday and any work in excess of 40  
9 hours in any one workweek and the first eight hours worked on the seventh day of work in any  
10 one workweek shall be compensated at the rate of no less than one and one-half times the regular  
11 rate of pay for an employee.

12 16. Plaintiffs worked for Defendant more than eight (8) hours in any workday and/or  
13 more than 40 hours in any workweek for hours which they were not compensated at a rate of one  
14 and one-half (1½) times their regular rate of pay. Defendant maintains and enforces a policy of  
15 calculating overtime on a bimonthly basis, rather than on a weekly basis. Defendant maintain a  
16 policy of adjusting time records by rolling daily overtime hours worked onto another day of the  
17 week, often a Sunday, in an effort to avoid paying daily overtime hours worked at the overtime  
18 rate. Defendant also maintains a policy of calculating overtime at a rate of one half rather than  
19 one and one-half. Defendant's policies result in a failure to pay the proper overtime rate for a  
20 period of work in which overtime compensation of one and one-half the regular rate is required.

21 17. The adjustment of time records and miscalculation of overtime has resulted in a  
22 secret underpayment of wages under Labor Code § 223 as well as underreporting hours worked  
23 on wage statements required by Labor Code § 226.

24 18. Under the terms of Wage Order 4, § 12, employees are entitled to two  
25 uninterrupted ten minute paid rest periods during each eight hour shift.

26 19. Labor Code § 226.7 requires employers to provide employees with meal and rest  
27 periods mandated by the Wage Order and provides for wages of one additional hour of pay at the  
28 employee's regular rate to compensate for each day such meal and/or rest period was not

1 provided up to a maximum of 2 additional hours of compensation per day.

2 20. During the four years prior to the filing of this action Defendant failed to provide  
3 rest breaks and failed to pay employees during rest breaks in violation of Labor Code §§ 1197 and  
4 226.7 and Wage Order 4, §§ 4, 12. Employees were not provided with a billing code or other  
5 mechanism to record rest breaks, causing Plaintiffs and the class to be unpaid for each rest break  
6 taken and systematically discouraging mechanics from taking rest breaks.

7 21. Rest breaks were also unaccounted for on wage statements. The appellate court  
8 has held that rest breaks must be a separate line item on a wage statement for piece rate workers.  
9 *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864. Failure to account for rest breaks or  
10 provide a mechanism for recording or receiving pay for rest breaks is a failure to provide a rest  
11 break as contemplated by Labor Code section 226.7.

12 22. Under the terms of Wage Order 4, § 11, employees are required to receive a ½  
13 hour unpaid, off-duty meal period during each eight (8) hour shift. Employees working beyond  
14 ten (10) hours in a day are entitled to a second ½ hour unpaid, off-duty meal period. These  
15 provisions are also found in Labor Code § 512.

16 23. The Defendant regularly failed to provide Plaintiffs and others their right to the  
17 state mandated ½ hour off-duty meal period. Plaintiffs and others have been instructed or  
18 permitted to work “off the clock” while clocked out for meal periods. This instruction results in a  
19 loss of the required meal period as well as a failure to compensate for all hours worked and  
20 inaccurate wage statements.

21 24. Plaintiffs and the class have not been compensated one additional hour for each  
22 day a meal and/or one additional hour for each day a paid rest period has not been provided.

23 25. Labor Code § 226(a) requires that an employer shall, at the time of each payment  
24 of wages, provide each employee with an itemized statement in writing showing wages, hours  
25 worked, and the number of piece-rate units earned and the applicable piece-rate if the employee is  
26 paid on a piece-rate basis.

27 26. During one year prior to the filing of this action, the wage statements were  
28 inaccurate under Labor Code §§ 226(a) and 1174(d) and Wage Order §7(A) because Defendant

1 underreported total hours worked and hours for which overtime compensation should have been  
2 provided by adjusting time records, improperly calculating overtime and allowing off the clock  
3 work. Further, the wage statements were inaccurate because they did not contain all of the actual  
4 hours worked.

5 27. Labor Code §§ 201 and 202 require an employer to pay out all wages owed an  
6 employee upon separation. Labor Code § 203 penalizes employers who fail to comply with §§  
7 201 and 202 by requiring them to continue paying wages for up to 30 days or until payment is  
8 executed.

9 28. By failing to pay for all hours worked, improperly calculating wages on overtime  
10 hours worked, and failing to provide premium pay, Defendant has failed to prove all wages due at  
11 separation.

12 29. These violations commonly affected all class members during the Statutory Period.

#### 13 IV. CLASS ALLEGATIONS

14 30. Plaintiffs reallege, and incorporate by reference, the allegations contained in  
15 paragraphs 1 through 29 above, as if fully stated herein.

16 31. Plaintiffs bring this action on behalf of themselves and all other current and former  
17 mechanics similarly situated as a class action under California Code of Civil Procedure (“CCP”)  
18 § 382. Plaintiffs seek to represent the following class:

19 All mechanics employed by Defendant at its Santa Rosa, California  
20 location from May 2012 through the present (“statutory period”).

21 Should the Court determine that subdividing the class would be beneficial, five sub-  
22 classes are readily defined as follows:

##### 23 1. Each Hour Worked Subclass

24 All mechanics employed by Defendant at its Santa Rosa, California  
25 location during the statutory period who were not paid at least the  
26 appropriate minimum wage for any or each hour worked in any  
27 workweek.

##### 28 2. Rest Period Subclass

All mechanics employed by Defendant at its Santa Rosa, California  
location during the statutory period who were not authorized and  
permitted to take paid rest periods.

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**3. Meal Period Subclass**

All mechanics employed by Defendant at its Santa Rosa, California location during the statutory period who did not receive 30 minute off-duty uninterrupted meal periods.

**4. Records Subclass**

All mechanics employed by Defendant at its Santa Rosa, California location during the statutory period who, when paid wages, were not provided with accurate itemized wage statements.

**5. Separation Class**

All former mechanics employed by Defendant at its Santa Rosa, California location during the statutory period who have not received all wages due.

32. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class descriptions with greater specificity or further division into sub-classes or limitation to particular issues.

33. This action may be properly maintained as a class action under CCP § 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable.

**B. NUMEROSITY**

34. The members of the proposed class are so numerous that joinder of all the members of the class is impracticable. While the precise number of class members has not been determined at this time, Plaintiffs are informed and believe that Defendant employed at least forty (40) mechanics during the statutory period. Of these individuals, 6 are named plaintiffs and 16 are already informed of this action and are willing participants.

35. Plaintiffs allege Defendant's employment records will provide information as to the number and identity of all class members. Those records will furthermore disclose the recorded amount of time worked and pay received to date for each employee, whether appropriate wage rates were applied, the piece rates and service records, and employee attendance records. Otherwise, Plaintiffs and the class will have their own reasonable estimates.

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1           **C.       COMMONALITY**

2           36.       There are several questions of law and fact common to the class that predominates  
3 over any questions affecting only individual class members. These common questions of law and  
4 fact include, without limitation:

5           a.       Whether Defendant violated Labor Code § 1194 and Wage Order 4, §§ 4 and 9 by  
6 not paying the class members at least twice the minimum wage for each hour worked when  
7 providing and maintaining their own tools and equipment;

8           b.       Whether Defendant violated Labor Code § 510, 1197 and Wage Order 4, §4 by  
9 failing to pay workers at 1½ times their regular rate for all hours worked beyond 8 in a workday  
10 or 40 in a workweek;

11           c.       Whether Defendant violated Wage Order 4, § 11 and Labor Code § 226.7 by  
12 failing to provide paid rest periods in accordance with the Wage Order;

13           d.       Whether Defendant violated Wage Order 4, § 10 and Labor Code §§ 226.7 and  
14 512 by failing to provide meal periods in accordance with the Wage Order;

15           e.       Whether Defendant violated Labor Code §§ 226 and 1174(d) and Wage Order 4, §  
16 7, by failing to provide class members with accurate itemized statements and keep adequate  
17 payroll records; and

18           f.       Whether Defendant violated Labor Code §§ 201 and 202 by failing to pay all  
19 wages due at the time of separation of employment and continuing to pay wages under Labor  
20 Code §203 for every day wages were withheld.

21           **D.       TYPICALITY**

22           37.       The claims of the named Plaintiffs are typical of the claims of the proposed class.  
23 Plaintiffs and all members of the proposed class sustained injuries and damages arising out of and  
24 caused by Defendant' common course of conduct in violation of laws and regulations as alleged  
25 herein.

26           **E.       ADEQUACY OF REPRESENTATION**

27           38.       Plaintiffs are adequate representatives of the proposed class in that Plaintiffs have  
28 the same interests in the litigation of this case as the proposed class members. Plaintiffs are



1 committed to vigorous prosecution of this case and have retained competent counsel that are  
2 highly experienced in class action and wage and hour litigation of this nature. Plaintiffs are not  
3 subject to any individual defenses different from those conceivably applicable to the Class as a  
4 whole.

5 **F. SUPERIORITY OF CLASS ACTION**

6 39. A class action is superior to other available means for the fair and efficient  
7 adjudication of this controversy. Individual joinder of all proposed class members is not  
8 practicable, and questions of law and fact common to the class predominate over any questions  
9 affecting only individual members of the class. Each member of the class has been damaged and  
10 is entitled to recovery by reason of Defendant' illegal policies and/or practices as described  
11 above.

12 40. Class action treatment will allow those similarly situated persons to litigate their  
13 claims in the manner that is most efficient and economical for the parties and the judicial system.  
14 Plaintiffs are not aware of any difficulties that are likely to be encountered in the management of  
15 this action that would preclude its maintenance as a class action.

16 41. A class action is superior to other available methods for the fair and efficient  
17 adjudication of this controversy because individual litigation of the claims of all proposed class  
18 members is impractical. Even if every proposed class member could afford individual litigation,  
19 the court system could not. It would be unduly burdensome to the courts in which individual  
20 litigation of numerous cases would proceed. Individualized litigation would also present the  
21 potential for varying, inconsistent, or contradictory judgments and would magnify the delay and  
22 expense to all parties and to the court system resulting from multiple trials of the same complex  
23 factual issues. By contrast, the conduct of this action as a class action presents fewer  
24 management difficulties, conserves the resources of the parties and the court system, and protects  
25 the rights of each proposed class member. Plaintiffs anticipate no management difficulties in this  
26 litigation.

27 42. If each employee were required to file an individual lawsuit, the Defendant would  
28 gain an unconscionable advantage as they would be able to exploit and overwhelm the limited

1 resources of each individual Plaintiff with vastly superior financial and legal resources.  
2 Requiring each class member to pursue an individual remedy would also discourage the assertion  
3 of lawful claims of employees who would be disinclined to file an action against their  
4 current/former employer for real and justifiable fear of retaliation and permanent damage to their  
5 careers and subsequent employment.

6 43. Defendant have also acted, or have refused to act, in respects generally applicable  
7 to the proposed class, thereby making injunctive relief appropriate with regard to the members of  
8 the proposed class as a whole, as requested herein.

9 **V. FIRST CAUSE OF ACTION**

10 **(FAILURE TO PAY FOR EACH HOUR WORKED AT THE APPROPRIATE RATE)**  
11 **(Labor Code §§ 223, 225, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1,**  
12 **Wage Order 4, § 3, 4, 9)**

13 44. Plaintiffs reallege and incorporate paragraphs 1 through 43 inclusive, as though  
14 fully set forth herein.

15 45. California law requires employees be compensated at no less than the appropriate  
16 minimum wage for each and every individual hour worked.

17 46. Moreover, unlike federal minimum wage law, California law does not allow an  
18 employer to meet its minimum wage obligations by averaging weekly pay over the total hours  
19 worked in a given week. (*Armenta v. Osmose*, 135 Cal.App.4th 314, 324 [concluding that “the  
20 [federal] model of averaging all hours worked ‘in any work week’ to compute an employer’s  
21 minimum wage obligation under California law is inappropriate” and clarifying that “[t]he  
22 minimum wage standard affixes to each hour worked by respondents for which they were not  
23 paid”].)

24 47. The California Courts have found piece rate systems which fail to compensate  
25 employees for each individual hour worked, violate California law. *Gonzalez v. Downtown LA*  
26 *Motors, LP* (2013) 215 Cal.App.4th 36.

27 48. Plaintiffs worked for Defendant for hours which they were not compensated.  
28 Under the flat rate/piece rate system, prior to July 2013, Plaintiffs did not receive any wages at  
any rate for time spent performing non-productive work. After July 2013, Defendant have used

1 high levels of productivity under the piece rate system to offset its minimum wage obligation for  
2 non-productive hours worked. This averaging of hours across a workweek is not permitted under  
3 State law.

4 49. On some occasions, this failure to pay for hours worked or illegal averaging would  
5 occur because of periods of time that piece rate work was not available. Notwithstanding the  
6 inability of the Plaintiffs and the class to earn piece rate wages, Plaintiffs and the class were  
7 required to remain on the Defendant' premises to wait for work to come in. This "stand-by" time  
8 was not compensated at any rate.

9 50. On other occasions, the failure to pay for hours worked or illegal averaging would  
10 occur because the Defendant would alter time cards to reduce the total hours worked by Plaintiffs  
11 and the class. On some occasions, the failure to pay for hours worked would occur because the  
12 Defendant would instruct Plaintiffs and the class to work when they were off-the-clock for meal  
13 periods. On some occasions, the failure to pay for hours worked would occur because Defendant  
14 would instruct Plaintiffs to only flag hours on the day the repair was completed, regardless of the  
15 number of days spent performing the repair.

16 51. Labor Code § 1194 provides for a private right of action to recover wages for  
17 hours worked but not compensated.

18 52. During the statutory period, Defendant failed to pay Plaintiffs and members of the  
19 class wages for all hours worked in violation of Labor Code § 1197 and Wage Order 4, §§ 4 and  
20 9. Some hours were not compensated at the correct rate; other hours were not compensated at all.

21 53. Plaintiffs and the class have worked more than 8 hours in a day and/or 40 hours in  
22 a week without receiving any compensation for that time and without overtime compensation at  
23 the rate of one and one-half (1½) times their regular weekly rate in violation of Labor Code §§  
24 510, 1194 and IWC 4, § 3.

25 54. Defendant has altered the time records of Plaintiffs and the class in an effort to  
26 escape its overtime compensation obligation.

27 55. Even on those events that overtime hours were not summarily disregarded, the  
28 calculation used to credit overtime work did not comport with either state or federal law as it

1 created a regular rate and total hours worked over the bimonthly pay period rather than the  
2 established work week.

3 56. The altering of time records to reduce wage obligations is an unauthorized  
4 deduction from wages in violation of Labor Code §§ 223 and 225.

5 57. Labor Code § 218 provides for a private right of action to recover wages under the  
6 Labor Code. Plaintiffs seek to recover unpaid wages and penalties directly under § 218.

7 58. Plaintiffs and the class seek to recover compensation for time worked but not paid,  
8 attorneys' fees and costs under Labor Code § 1194.

9 59. Plaintiffs and the class seek liquidated damages under Labor Code § 1194.2.

10 60. Labor Code § 218.6 provides for interest on all dues and unpaid wages in any  
11 action brought for the nonpayment of wages. Plaintiffs and the class seek to recover interest on  
12 all wages due.

13 61. Plaintiffs and the class seek to recover the civil penalty contained in Labor Code §  
14 558 for the failure to pay wages as required under Labor Code § 510.

15 62. Plaintiffs and the class seek to recover the civil penalty contained in Labor Code §  
16 1197.1 for the failure to pay wages as required under Labor Code § 1197.

17 63. Plaintiffs seek reasonable attorneys' fees and costs associated with bringing this  
18 action pursuant to Labor Code §§ 218.5 and 1194.

19 64. Plaintiffs and the class seek to recover penalties under Wage Order 4, § 20 for  
20 violations of § 4. Each penalty amounts to \$50 per employee for the first violation and \$100 per  
21 employee for each subsequent pay period in which the employee is underpaid.

22 Wherefore, Plaintiffs pray for judgment as set forth below.

23 **VI. SECOND CAUSE OF ACTION**

24 **(FAILURE TO AUTHORIZE AND PERMIT PAID REST BREAKS)**  
25 **(Wage Order 4, § 12, Labor Code §§ 226.6, 1194, 1197, 1197.1)**

26 65. Plaintiffs reallege, and incorporate by reference each and every allegation set forth  
27 in paragraphs 1 through 64 above, inclusive, as though fully set forth at length herein.

28 66. Wage Order 4, §12 requires employer to authorize and permit paid rest breaks at a

1 rate of ten (10) minutes for every four (4) hours worked or greater fraction thereof.

2 67. Labor Code § 226.7 and Wage Order 4, § 12 require the payment of compensation  
3 for the failure to provide paid rest breaks in accordance with the applicable Wage Order of one  
4 additional hour of pay for each work day that the paid rest break(s) is not provided.

5 68. During the statutory period, Defendant consistently failed to pay employees for  
6 rest breaks. The Defendant failed to issue a billing code for such breaks, institute a formal policy  
7 permitting paid employee breaks, or provide any other mechanism for an employee to be paid for  
8 break time.

9 69. By failing to establish a rest break policy and failing to establish any mechanism  
10 for providing pay for rest breaks, Defendant systematically discouraged and dissuaded Plaintiffs  
11 and the class from taking paid rest breaks and provided no method for compensation in the event  
12 a rest break was taken. 69. Such a policy and practice of denying employees compensation for  
13 legally mandated rest breaks is in violation of the duty to pay for all hours worked in accordance  
14 with Wage Order 4, § 12 and Labor Code §§ 1194 and 1197.

15 70. Defendant' failure to provide paid rest breaks in accordance with Wage Order 4 §  
16 12 entitles Plaintiffs and the class to the remedy provided in Labor Code § 226.7 and Wage Order  
17 4, § 12.

18 71. Further, upon the Defendant's adoption of the new pay plan in July 2013, the  
19 Defendant still failed to properly compensate rest breaks. Plaintiffs were provided a basic hourly  
20 rate for each hour worked (in the event their pay for productive time did not exceed double the  
21 minimum wage per hour worked). In so doing, Plaintiffs and others were only compensated for  
22 rest breaks at the applicable minimum wage rather than at their average hourly rate. This violates  
23 Labor Code section 226.2 and systematically discouraged mechanics from taking rest breaks.

24 72. In addition, for each day rest breaks were taken but compensation was not  
25 provided, each employee is entitled to 20 minutes of compensation at their regular rate of pay but  
26 no less than twice the minimum wage rate.

27 73. Labor Code § 218 provides wage claimants with a private right of action to  
28 recover wages under the Labor Code. The payments owed to employees for paid rest breaks not

1 provided are premium wages under Labor Code § 226.7.

2 74. Labor Code § 218.6 provides for an award of interest on all due and unpaid wages.  
3 Plaintiffs seek to recover interest on all wages due under the Section on behalf of themselves and  
4 others similarly situated.

5 75. Plaintiffs and the class are entitled to and hereby seek premium pay for paid rest  
6 breaks not provided, wages for rest breaks taken, interest on the unpaid amounts, and an award of  
7 attorney fees and costs all in amounts to be proven at trial.

8 76. Plaintiffs and the class seek to recover the civil penalty contained in Labor Code §  
9 1197.1 for the failure to pay wages as required under Labor Code § 1197.

10 77. Plaintiffs and the class seek to recover the unpaid balance of the full amount of  
11 this minimum wage or overtime compensation, including interest thereon, reasonable attorney's  
12 fees, and costs of suit for rest breaks taken but not paid under Labor Code §§ 218, 218.5, 218.6,  
13 1194 and liquidated damages under Labor Code § 1194.2.

14 78. Wage Order 4, § 20(A) provides for civil penalties for violations of the Wage  
15 Order. As a result of Defendant' violation of Wage Order 4, §§ 4 and 12, Plaintiffs and the class  
16 are entitled to and hereby seek civil penalties in the amount of \$50 per employee for the first  
17 violation and \$100 per employee for each subsequent pay period.

18 Wherefore, Plaintiffs pray for judgment as set forth below.

19 **VII. THIRD CAUSE OF ACTION**

20 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**  
21 **(Labor Code §§ 226, 226.2, 226.6, 1174, 2810.5, Wage Order 4, §7(A)(4))**

22 79. Plaintiffs reallege, and incorporate by reference each and every allegation set forth  
23 in paragraphs 1 through 78 above, as though fully set forth at length herein.

24 80. California Labor Code § 226(a) states that every employer shall, semi-monthly or  
25 at the time of each payment of wages, furnish each of his or her employees an accurate itemized  
26 statement in writing showing substantial detailed information, including but not limited to, each  
27 hour worked.. Wage Order 4, §7(A)(4)) contains similar requirements.

28 81. California Labor Code § 226.2(a)(2)(A) provides that an employer of employees

1 paid on a piece rate basis must furnish statements including the total hours of compensable rest  
2 and recovery periods, the rate of compensation for those periods, and the gross wages paid for  
3 those periods during the pay period.

4 82. Labor Code § 1174(d) requires the employer to keep payroll records showing  
5 hours worked and wages paid.

6 83. Labor Code § 2810.5 requires an employer provide employees with timely,  
7 accurate written notice of any changes to any pay plan used to determine his compensation.

8 84. Plaintiffs and the class are paid on a piece-rate basis, with compensation  
9 contingent on the maintenance, service or repair provided, regardless of the time taken to  
10 complete each task.

11 85. During the statutory period, Defendant consistently failed to provide employees  
12 with accurate itemized statements and keep adequate payroll records because they failed to report  
13 the total number of hours worked, underreported the total number of hours worked and failed to  
14 include hours for which overtime compensation should have been provided. Defendant failed to  
15 provide statements including the total compensatory rest period time. In 2013, *Bluford* held that  
16 the wage statement for a piece rate worker needs to show pay for rest breaks. This requirement  
17 was codified effective January 1, 2016 under Labor Code § 226.2.

18 86. As a result of Defendant' knowing and intentional failure to comply with the  
19 provisions of Labor Code §§ 226(a)(3) and 1174(d), Plaintiffs and the class have been deprived of  
20 wage information and wages entitled to them by law. This establishes injury under 226(e)(2).

21 87. Plaintiffs and the class are entitled to and seek the remedy provided in Labor Code  
22 § 226(e):

23 [T]he greater of all actual damages or fifty dollars (\$50) for the  
24 initial pay period in which the violation occurs and one hundred  
25 dollars (\$100) per employee for each violation in a subsequent pay  
26 period, not exceeding an aggregate penalty of four thousand dollars  
27 (\$4,000) and is entitled to an award of costs and reasonable  
28 attorney's fees.

27 88. Plaintiffs and the class seek injunctive relief against the Defendant to ensure future  
28 compliance and attorney's fees under 226(g).

1 89. Plaintiffs seek to enforce the fine contained in Labor Code § 226.6 against the  
2 individual Defendant who knowingly and intentionally participated in or aided in the violation of  
3 Labor Code § 226.

4 90. Wage Order 4, § 20(A) provides for civil penalties for violations of the Wage  
5 Order. As a result of all Defendant' violation of Wage Order 4, § 7, Plaintiffs and the class are  
6 entitled to and hereby seek civil penalties in the amount of \$50 per employee for the first  
7 violation and \$100 per employee for each subsequent pay period.

8 Wherefore, Plaintiffs pray for judgment as set forth below.

9 **VIII. FOURTH CAUSE OF ACTION**

10 **(FAILURE TO PROVIDE MEAL PERIODS)**

11 **(Labor Code §§ 510, 512, 558, 1194, Wage Order 4, § 11)**

12 91. Plaintiffs reallege and incorporate paragraphs 1 through 90 above, inclusive, as  
13 though set forth fully herein.

14 92. Defendant have failed to provide Plaintiffs and the class all meal periods as  
15 required by Labor Code §§ 226.7 and 512 and Wage Order 4, § 11.

16 93. Defendant has given away available jobs to other employees if an employee took  
17 his meal period. This has resulted in systematic discouragement to taking meal periods because  
18 taking away jobs, particularly those which mechanics could perform in the assigned time or less,  
19 negatively impacted an employees' productivity, and thus is violative of Labor Code section 512.

20 94. Defendant has directed employees to perform work during meal periods when the  
21 employee is clocked out. This has resulted in a failure to provide wages for all hours worked in  
22 addition to denying employees uninterrupted 30-minute meal periods in violation of Labor Code  
23 §§ 512, 1194, 1197. It has also resulted in an under reporting of total hours worked on wage  
24 statements.

25 95. Labor Code § 218 provides wage claimants with a private right of action to  
26 recover wages under the Labor Code. The payments owed to employees for meal periods not  
27 provided are premium wages under Labor Code § 226.7.

28 96. Labor Code § 218.6 provides for an award of interest on all due and unpaid wages.



1 Plaintiffs seek to recover interest on all wages due under the Section on behalf of themselves and  
2 others similarly situated.

3 97. Plaintiffs and the class are entitled to and hereby seek premium pay for meal  
4 periods not provided, wages for work performed while clocked out for meal periods, interest on  
5 the unpaid amounts, and an award of attorney fees and costs all in amounts to be proven at trial.

6 98. For the off the clock work, Plaintiffs and the class are entitled to and hereby seek  
7 wages, interest, liquidated damages and attorneys; fees under Labor Code §§ 218, 218.5, 218.6,  
8 1194, 1194.2, 1197, 1197.1.

9 99. Plaintiffs and the class seek to recover the civil penalty contained in Labor Code §  
10 558 for the failure to provide meal breaks as required under Labor Code § 512.

11 100. Wage Order 4, § 20(A) provides for civil penalties for violations of the Wage  
12 Order. As a result of Defendant' violation of Wage Order 4, §§ 4 and 11, Plaintiffs and the class  
13 are entitled to and hereby seek civil penalties in the amount of \$50 per employee for the first  
14 violation and \$100 per employee for each subsequent pay period.

15 Wherefore, Plaintiffs pray for judgment as set forth below.

16 **IX. FIFTH CAUSE OF ACTION**

17 **(FAILURE TO PROVIDE ALL WAGES DUE AT SEPARATION)**

18 **(Labor Code §§ 201, 202, 203)**

19 101. Plaintiffs reallege, and incorporate by reference each and every allegation set forth  
20 in paragraphs 1 through 100 above, inclusive, as though fully set forth at length herein.

21 102. Labor Code § 201 provides that an employer who terminates an employee must  
22 immediately pay that employee all wages owing on separation.

23 103. Similarly, Labor Code § 202 provides that an employee who quits is entitled to all  
24 wages owing within seventy-two (72) hours of quitting, unless that employee provides at least  
25 seventy-two hours' notice to the employer, in which case the employer immediately must pay all  
26 wages owing at the time of separation.

27 104. Labor Code § 203 provides that if an employer willfully fails to pay wages when  
28 due to an employee who is discharged or quits, the employee's wages continue at the same rate

1 until the employer pays or until suit is filed, but not for more than thirty (30) days.

2 105. All mechanics employed by Defendant who were terminated or quit since May  
3 2012 have been deprived of wages immediately upon separation due to Defendant' policy and  
4 practice of failing to provide wages for all hours worked and premiums for meal and rest periods.

5 106. Defendant failure to pay all wages at termination was in violation of Labor Code  
6 §§ 201 and 202. As a result, members of the class who separated from employment have been  
7 damaged in that they have been deprived of compensation owing to them.

8 107. In addition to the wages due for prior work, the class is entitled to one day's wages  
9 for every day Defendant failed to pay wages owed on termination, up to thirty (30) days' pay,  
10 plus interest on the unpaid amounts, in amounts to be proven at trial.

11 108. Labor Code § 218 provides for a private right of action to recover wages and  
12 penalties under the Labor Code. The class seeks to recover § 203 penalties directly under § 218  
13 on behalf of themselves and others similarly situated.

14 109. Labor Code §218.5 provides for attorneys' fees and costs for a prevailing plaintiff  
15 who seeks to recover wages and penalties. The class seeks to recover attorneys' fees and costs in  
16 this action brought for the nonpayment of wages.

17 110. Labor Code § 218.6 provides for interest on all due and unpaid wages at the rate of  
18 interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from  
19 the date that the wages were due and payable.

20 Wherefore, Plaintiffs pray judgment as set forth below.

21 **X. SIXTH CAUSE OF ACTION**

22 **(VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW)**  
23 **(Business & Professions Code §§ 17200, et seq.)**

24 111. Plaintiffs reallege and incorporate paragraphs 1 through 110, inclusive, as though  
25 set forth fully herein.

26 112. California Business and Professions Code § 17200 et seq. prohibits unfair  
27 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practice.

28 113. During the statutory period, the Defendant committed unlawful acts as defined by

1 California Business & Professions Code § 17200. The Defendant have engaged in unlawful and  
2 unfair business practices including, but not limited to, violations of:

3 a. Labor Code §§ 510, 1194, 1997 and Wage Order 4, §§ 3, 4, 9;

4 b. Wage Order 4, § 12;

5 c. Wage Order 4, § 11, and Labor Code § 512;

6 d. Labor Code § 226.7;

7 e. Labor Code §§ 201, 202 and 203;

8 a. 107. The violation of these laws serve as unlawful predicate acts for purposes of  
9 Business & Professions Code § 17200 and remedies are provided therein under  
10 Business & Professions Code § 17203. Plaintiffs have suffered direct economic  
11 injury in that they have not been paid all wages and compensation due in a timely  
12 manner.

13 b. 108. The acts and practices described in this Complaint constitute unlawful,  
14 unfair and fraudulent business practices, and unfair competition by the Defendant  
15 within the meaning of Business and Professions Code § 17200 et seq.

16 114. Business & Professions Code § 17203 provides that the Court may restore to any  
17 person in interest any money or property which may have been acquired by means of such unfair  
18 competition and to which those person have an ownership interest. Plaintiffs and other  
19 employees of Defendant are entitled to restitution pursuant to Business & Professions Codes §§  
20 17203 and 17208 for all wages unlawfully withheld from them during the four years prior to the  
21 filing of this Complaint. Plaintiffs will, upon leave of the Court, amend this Complaint to state  
22 such amounts when they become ascertained.

23 115. Plaintiffs' success in this action will enforce important rights affecting the public  
24 interest, and in that regard, Plaintiffs sue on behalf of themselves and other current and former  
25 employees similarly situated. Plaintiffs seek and are entitled to unpaid wages at the appropriate  
26 regular and overtime rate, unpaid premium pay for missed meal and rest periods, injunctive relief,  
27 declaratory relief, and any other remedy owing to Plaintiffs.

28 116. Injunctive and declaratory relief is necessary and appropriate to prevent the  
Defendant from repeating wrongful business practices alleged above.

117. To prevent the Defendant from profiting and benefiting from their wrongful and  
illegal acts, it is appropriate and necessary to enter an order requiring the Defendant to restore  
Plaintiffs and others all monies that are owed.



1 §§226.7, 510, 1182.12, 1194, 1197 and Business & Professions Code §§ 17200 and 17203 and  
2 any other applicable provision;

3 5. For an equitable accounting to identify, locate, and restore to all current and  
4 former employees the wages they are due;

5 6. For penalties under Labor Code §§ 203, 226, 226.6, 558, 1197.1, Wage Order 4, §  
6 20 and any other applicable provisions;

7 7. For interest under Labor Code §§ 218.6, 1194, 1197.1 and any other applicable  
8 provisions;

9 8. For liquidated damages under Labor Code § 1194.2;

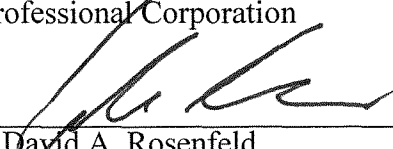
10 9. For an award of reasonable attorneys' fees, costs and interest thereon pursuant to  
11 Labor Code §§ 218.5, 226, 1194; CCP § 1021.5 and any other applicable provision; and

12 10. For such other and further relief as this Court deems just and proper.

13 Dated: September 20, 2016

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

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15  
16 By:

  
\_\_\_\_\_  
David A. Rosenfeld  
Caren P. Sencer  
Caroline N. Cohen

17  
18 Attorneys for Plaintiffs RALPH GRAY, JR.;  
19 DAVID JARRELL; ROBERT MILLEMAN;  
20 ORVILLE OSBORNE; JEFFREY SNYDER; and  
21 DENNIS SPOHR on behalf of themselves and  
22 other similarly situated,

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**PROOF OF SERVICE  
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On September 2, 2016, I served the following documents in the manner described below:

**SECOND AMENDED COMPLAINT**

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

On the following part(ies) in this action:

Mr. John K. Skousen  
Fisher & Phillips LLP  
2050 Main Street, Ste. 1000  
Irvine, CA 92614  
(949) 851-0152 (fax)  
jskousen@laborlawyers.com  
Attorneys for Hansel Enterprises, Inc. and  
Hansel Ford, Inc.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 20, 2016, at Alameda, California.

  
\_\_\_\_\_  
Lara Hull