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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15

16 FELICIA CIPOLLA, ALEXIS WOOD,
17 BERNADETTE BLANCHARD, SHIRIN
LESSAN, DENNIS FISHER, and JAMIE
18 ARIAS, individually and on behalf of all others
similarly situated,

19 Plaintiffs,

20 vs.

21
22 TEAM ENTERPRISES, LLC; NEW TEAM
LLC, doing business as TEAM ENTERPRISES,

23 Defendants.
24
25
26
27
28

Case No. 18-cv-06867-WHA

FOURTH AMENDED COMPLAINT

[CLASS ACTION]

1. Labor Code §§ 510, 1194 (Cal. Wages)
2. Labor Code §§ 226.7, 512 (Meal Breaks)
3. Labor Code § 226.7 (Rest Breaks)
4. B&P § 17203 (Cal. Wages)
5. B&P § 17203 (Meal and Rest Breaks)
6. Labor Code § 203 (Waiting Time Penalties)
7. Labor Code § 226 and 1174 (Wage Statements)
8. Labor Code § 2802 (Unreimbursed Business Expenses)
9. Labor Code § 2699 (PAGA Penalties)

1 Plaintiffs Felicia Cipolla, Alexis Wood, Bernadette Blanchard, Shirin Lessan, Dennis Fisher,
2 and Jamie Arias (hereinafter “Plaintiffs”), on behalf of themselves and all others similarly situated,
3 allege as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this action as a California Class on behalf of all of Defendants’ current
6 and former employees who are or have been employed as Promotional Specialists within the State of
7 California from four years prior to the filing of the Complaint through the date of the Court’s granting
8 of class certification and who were (a) not paid overtime compensation and other wages; (b) not
9 provided meal and rest breaks; (c) not provided lawful wage statements; and (d) who have not been
10 reimbursed for all reasonable and necessary business expenses.

11 2. Plaintiffs also bring this action as a Waiting Time Penalties Sub-Class on behalf of all
12 of Defendants’ current and former employees who are or have been employed as Promotional
13 Specialists within the State of California from three years prior to the filing of the Complaint through
14 the date of the Court’s granting of class certification and who were not timely and properly paid their
15 final wages at time of termination in violation of California Labor Code §§ 201-203.

16 3. Plaintiffs also bring this action as a 2019 Arbitration Agreement Sub-Class on behalf
17 of all of Defendants’ current and former employees who are or have been employed as Promotional
18 Specialists within the State of California from four years prior to the filing of this Complaint through
19 the date of the Court’s granting of class certification and who signed an arbitration agreement on or
20 after February 15, 2019.

21 4. Plaintiffs are unaware of the names and capacities of all Defendants who may have
22 caused or contributed to the harms complained of herein, but will seek leave to amend this complaint
23 once their identities become known. Upon information and belief, Plaintiffs allege that at all relevant
24 times each defendant was the officer, director, employee, agent, representative, alter ego, joint
25 employer, co-employer, or co-conspirator of each of the other defendants, and has engaged in the
26 conduct alleged herein, and was in the course and scope of and in furtherance of such relationship.

27 5. The individual members of the Class are hereafter collectively referred to as the “Class
28 Members.”

THE PARTIES

1
2 6. Plaintiff Felicia Cipolla is an individual residing in El Sobrante, California. She was
3 employed by Defendants from approximately 2013 to December 2017. She worked as a Promotional
4 Specialist for Defendants within this judicial district.

5 7. Plaintiff Alexis Wood is an individual residing in Sacramento, California. She was
6 employed by Defendants from approximately 2013 to October 2017. She worked as a Promotional
7 Specialist for Defendants within this judicial district.

8 8. Plaintiff Bernadette Blanchard is an individual residing in Brentwood, California. She
9 was employed by Defendants from approximately 2013 to 2017. She worked as a Promotional
10 Specialist for Defendants within this judicial district.

11 9. Plaintiff Shirin Lessan is an individual residing in San Jose, California. She was
12 employed by Defendants from approximately 2014 to 2016. She worked as a Promotional Specialist
13 for Defendants within this judicial district.

14 10. Plaintiff Dennis Fisher is an individual residing in San Diego, California. He was
15 employed by Defendants from approximately June 2019 to 2020. He worked as a Promotional
16 Specialist for Defendants in Southern California.

17 11. Plaintiff Jamie Arias is an individual residing in California. She has been employed by
18 Defendants from approximately March 2019 to the present. She works as a Promotional Specialist for
19 Defendants in the San Francisco Bay Area in California.

20 12. Defendant Team Enterprises, LLC is a Delaware limited liability corporation with its
21 principal place of business in Fort Lauderdale, Florida. Team Enterprises, LLC does business
22 throughout the state of California, including within this judicial district, and in other states throughout
23 the United States.

24 13. Defendant New Team, LLC is a Delaware limited liability corporation with its principal
25 place of business in Fort Lauderdale, Florida. New Team, LLC does business throughout the state of
26 California, including within this judicial district, and in other states throughout the United States.

27 14. Defendants are in the business of marketing and promoting specific brands of products
28 on behalf of clients who own or sell those products. Defendants employed Plaintiffs and those similarly

1 situated to promote products at various events.

2 15. Plaintiffs are informed and believe, and thereon allege, that each of the defendants
3 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or joint
4 venture of the remaining defendants and was acting within the course and scope of the relationship.
5 Plaintiffs are further informed, believe, and thereon allege that each of the defendants herein gave
6 consent to, ratified and authorized the acts alleged herein to the remaining defendants.

7 **JURISDICTION AND VENUE**

8 16. The Court has subject matter jurisdiction over this action based on the Class Action
9 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). Plaintiffs are informed and believe and herein
10 allege that (1) there are over 1,800 class members covered by this action, (2) the amount in controversy
11 exceeds \$5 million, exclusive of interest and costs, due to the aggregate value of all the claims alleged
12 herein based on class members average hourly rate of at least \$30 per hour, and (3) most class members
13 are citizens of California while Defendants are citizens of Florida.

14 17. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs’ state
15 law claims because those claims derive from a common nucleus of operative facts.

16 18. Venue is proper pursuant to 28 U.S.C. § 1391 as Defendants are subject to personal
17 jurisdiction in this district because they conduct business within this judicial district.

18 19. At all times herein mentioned, Defendants are business entities licensed to do business
19 and doing business in the Northern District of California. Plaintiffs and other class members worked
20 for Defendants within the Northern District of California. Based on the facts and circumstances
21 incident to Defendants’ business in California, Defendants are subject to the California Labor Code,
22 California Business and Professions Code § 17200 *et seq.*, (Unfair Practices Act), and the applicable
23 Industrial Welfare Commission Wage Orders.

24 **FACTUAL ALLEGATIONS**

25 20. During the applicable statutory period, Plaintiffs and those similarly situated worked as
26 Promotional Specialists (also known as Promotional Models and Brand Ambassadors) for Defendants.

27 21. Defendants paid Plaintiffs and the other Promotional Specialists an hourly rate for time
28 spent working at events, but did not pay them for all hours worked and paid below minimum wage for

1 certain tasks. For instance, Defendants required them to show up for events at least 15 minutes early
2 and perform work after the events ended, but did not pay them for this time. Defendants paid a flat
3 sum of \$5.00 for certain tasks that took a significant amount of time to complete.

4 22. Defendants did not pay Plaintiffs and the other Promotional Specialists overtime
5 compensation at time and one-half for all hours worked in excess of eight hours per day and did not
6 pay for all hours worked, as is required under California law. Defendants required the Promotional
7 Specialists to travel between events, but did not consistently pay for travel time, and did not provide
8 them with uninterrupted rest breaks and meal breaks as required by California law. In addition,
9 Defendants did not pay for all of their business expenses, including mileage, parking, tolls and other
10 reasonable business expenses, including deductions for ordinary losses due to no fault of the employees.

11 23. Plaintiffs and those similarly situated were not provided an opportunity to take meal
12 breaks or rest breaks. Plaintiffs and those similarly situated regularly ate meals while they worked and
13 worked through their meal and rest periods.

14 24. Defendants did not keep accurate records of the hours worked by Plaintiffs and those
15 similarly situated. Defendants did not track whether Plaintiffs and those similarly situated took meal
16 or rest periods. Because Defendants did not pay Plaintiffs and those similarly situated for all hours
17 worked, including overtime hours, Defendants' wage statements did not accurately reflect all hours
18 worked.

19 25. Because Defendants did not pay Plaintiffs and those similarly situated for all hours
20 worked, Defendants did not provide Plaintiffs and those similarly situated all wages owed at the time
21 they were no longer employed by Defendants.

22 26. Defendants' unlawful conduct is widespread, repeated and consistent across its offices
23 in California. Defendants' unlawful conduct was willful, in bad faith, and was part of a scheme causing
24 significant damages to Plaintiffs and those similarly situated.

25 **CLASS ALLEGATIONS**

26 27. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure 23.

27 28. The members of the Class and Sub-Class ("Classes") are so numerous that joinder of
28 all members is impracticable. The exact number of the members of the Classes can be determined by

1 reviewing Defendants' records.

2 29. Plaintiffs will fairly and adequately protect the interests of the Classes and have
3 retained counsel who are experienced and competent in class action and employment litigation.
4 Plaintiffs have no interests that are contrary to, or in conflict with, members of the Class.

5 30. A class action suit, such as the instant one, is superior to other available means for fair
6 and efficient adjudication of this lawsuit. The damages suffered by individual members of the Classes
7 may be relatively small when compared to the expense and burden of litigation, making it virtually
8 impossible for members of the Classes to individually seek redress for the wrongs done to them.

9 31. A class action is, therefore, superior to other available methods for the fair and efficient
10 adjudication of the controversy. Absent these actions, the members of the Classes likely will not obtain
11 redress of their injuries and Defendants will retain the proceeds of their violations of California and
12 United States law.

13 32. Even if any member of the Classes could afford individual litigation against
14 Defendants, it would be unduly burdensome to the judicial system. Concentrating this litigation in one
15 forum will promote judicial economy and parity among the claims of individual members of the Classes
16 and provide for judicial consistency.

17 33. There is a well-defined community of interest in the questions of law and fact affecting
18 the Classes as a whole. Questions of law and fact common to each of the Classes predominate over any
19 questions affecting solely individual members of the action. Among the common questions of law and
20 fact are:

- 21 a. Whether Defendants failed to pay the Class members for all hours worked;
- 22 b. Whether Defendants failed to pay the Class members for time spent travelling
23 between events;
- 24 c. Whether the California Class members are provided legally compliant meal breaks;
- 25 d. Whether the California Class members are provided legally compliant rest breaks;
- 26 e. Whether the California Class members are provided lawful reimbursements for
27 business expenses;
- 28 f. Whether the California Class members are paid overtime compensation for hours

1 worked over eight hours per day and forty per week;

2 g. Whether the California Class members are reimbursed for all reasonable and
3 necessary business expenses;

4 h. Whether the Class members have sustained damages and, if so, what the proper
5 measure of damages is.

6 34. The answers to these predominant common questions are equally applicable to all Class
7 Members and are answers that will drive resolution of this litigation.

8 35. Pursuant to Federal Rule of Civil Procedure 23(a) and (b), Plaintiffs allege a California
9 Class on behalf of:

10 All persons who are or have been employed, at any time from four years prior
11 to the filing of this Complaint through the date of the Court's granting of class
12 certification in this matter, by Defendant in California under the job title
13 Promotional Specialist, or the functional equivalent, however titled (the
"California Class")

14 36. Pursuant to Federal Rule of Civil Procedure 23(a) and (b), Plaintiffs also allege a Sub-
15 Class on behalf of:

16 All persons who are or have been employed, at any time from three years prior
17 to the filing of this Complaint through the date of the Court's granting of class
18 certification in this matter, by Defendant in California under the job title
19 Promotional Specialist or the functional equivalent, however titled, who did not
timely receive all of their wages at time of separation (the "Sub-Class.")

20 37. Pursuant to Federal Rule of Civil Procedure 23(a) and (b), Plaintiffs also allege a Sub-
21 Class on behalf of:

22 All persons who are or have been employed, at any time from four years prior
23 to the filing of this Complaint through the date of the Court's granting of class
24 certification in this matter, by Defendant in California under the job title
25 Promotional Specialist, or the functional equivalent, however titled, and who
signed an arbitration agreement on or after February 15, 2019.

26 38. Notice of the pendency and any resolution of this action can be provided to the Classes
27 by mail, print, and/or internet publication.

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FIRST CAUSE OF ACTION

(Labor Code §§ 510, 1194 on behalf of the California Class)

1
2 39. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
3 Complaint as if fully set forth herein.

4 40. California Labor Code § 510 states that an employee must be paid overtime, equal to
5 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week and/or 8
6 per day.

7 41. Defendants routinely failed to pay Plaintiffs and other Class members for all hours
8 worked. Plaintiffs and other Class members sometimes worked more than 8 hours per day, but were
9 not paid overtime compensation.

10 42. Class members are paid hourly and do not meet any of the tests for exempt status under
11 the California Wage Orders and/or the California Labor Code.

12 43. By their failure to pay wages for all hours worked, as alleged above, Defendants have
13 violated and continue to violate the above noted provisions of the California Labor Code and the
14 applicable IWC Wage Order. As a result of Defendants' unlawful acts, Plaintiffs and other Class
15 members have been deprived of wages at the regular rate, the overtime rate, and the minimum wage
16 rate, and are entitled to recovery of such unpaid wages.

17 44. Due to Defendants' failure to pay the minimum wage for all hours worked, Plaintiffs
18 and other Class members are entitled to liquidated damages, in an amount equal to the unpaid minimum
19 wages, pursuant to Labor Code § 1194.2.

20 45. Plaintiffs and other Class members seek their unpaid minimum wages, overtime
21 compensation, and other wages, including interest thereon and reasonable attorneys' fees and costs
22 pursuant to Labor Code §§ 218.5 and 1194.

23
SECOND CAUSE OF ACTION

24 **(Labor Code §§ 226.7 and 512 – Meal Period Violations - on behalf of the California Class)**

25 46. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
26 Complaint as if fully set forth herein.

27 47. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendants failed to
28 provide and document meal period breaks for the Class in the number, length and manner as required.

1 In violation of Labor Code § 226.7, Defendants have failed to pay Plaintiffs and the other Class
2 members their wages owed for not being provided meal period breaks as required by law. At no time
3 have Plaintiffs or other Class members entered into any written agreement with Defendant expressly
4 or impliedly waiving their right to their meal breaks. Plaintiffs and the Class have been injured by
5 Defendants' failure to comply with Labor Code § 512 and IWC Wage Order 4-2001 and are thus
6 entitled to the wages set forth in Labor Code § 226.7 and IWC Wage Order 4-2001 § 11.

7 48. As a proximate result of the unlawful acts of Defendants, Plaintiffs and the other Class
8 members have been deprived of premium wages in an amount unknown at this time, but which will be
9 shown according to proof at the time of trial. Further, Plaintiffs and the other Class members are
10 entitled by statute to recover reasonable attorneys' fees, costs of suit, and interest and penalties on the
11 unpaid amounts pursuant to Labor Code § 218.5.

12 **THIRD CAUSE OF ACTION**

13 **(Labor Code § 226.7 – Rest Period Violations - on behalf of the California Class)**

14 49. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
15 Complaint as if fully set forth herein.

16 50. Labor Code § 226.7 prohibits employers from requiring employees to work during any
17 rest period mandated by the IWC Wage Orders. Section 226.7 also provides for the payment of a
18 premium wage if an employer fails to authorize and permit employees to take rest periods.

19 51. By their failure to authorize and permit Plaintiffs and other Class members paid 10-
20 minute rest periods for every four (4) hours or major fraction thereof worked per day, and failing to
21 provide premium pay compensation for denied rest periods, Defendants willfully violated the
22 provisions of Labor Code § 226.7 and IWC Wage Order 4-2001, § 12.

23 52. As a proximate result of the unlawful acts of Defendants, Plaintiffs and the other Class
24 members have been deprived of premium wages in an amount unknown at this time, but which will be
25 shown according to proof at the time of trial. Further, Plaintiffs and the other Class members are entitled
26 by statute to recover reasonable attorneys' fees, costs of suit, and interest and penalties on the unpaid
27 amounts pursuant to Labor Code § 218.5.

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FOURTH CAUSE OF ACTION

(Bus. & Prof. Code § 17203 – Unpaid Overtime and Minimum Wages – on behalf of the California Class)

53. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

54. Defendants have committed an act of unfair competition under California Business & Professions Code § 17200 *et seq.* by not paying the required state law overtime pay and minimum wages to the members of the California Class for all hours worked.

55. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request an order requiring Defendants to make restitution of all overtime and minimum wages due to the California Class.

FIFTH CAUSE OF ACTION

(Bus. & Prof. Code § 17203 – Meal and Rest Breaks - on behalf of the California Class)

56. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

57. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendants failed to provide and document meal and rest period breaks for the California Class in the number, length and manner as required. At no time have Plaintiffs or other Class members entered into any written agreement with Defendants expressly or impliedly waiving their right to their meal and rest breaks. Plaintiffs and the other Class members have been injured by Defendants' failure to comply with Labor Code § 512 and IWC Wage Order 4-2001 and are thus entitled to the wages set forth in Labor Code § 226.7 and IWC Wage Order 4-2001 §§ 11 and 12.

58. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request Defendants make restitution of all wages due to the class under this Cause of Action.

SIXTH CAUSE OF ACTION

(Labor Code § 203 on behalf of the California Sub-Class)

59. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

60. Plaintiffs and the California Sub-Class were discharged by Defendants or voluntarily quit, and did not have a written contract for employment. Defendants, in violation of California Labor

1 Code §§ 201 and 202 *et seq.* had a consistent and uniform policy, practice and procedure of willfully
2 failing to pay the earned and unpaid wages of all such former employees. Defendants have willfully
3 failed to pay the earned and unpaid wages of such individuals, including, but not limited to, straight
4 time, overtime, meal and rest wages, and other wages earned and remaining uncompensated according
5 to amendment or proof. Plaintiffs and the California Sub-Class did not secret or absent themselves
6 from Defendants nor refuse to accept the earned and unpaid wages from Defendants. Accordingly,
7 Defendants are liable for waiting time penalties for the unpaid wages pursuant to California Labor Code
8 § 203.

9
10 **SEVENTH CAUSE OF ACTION**
(Labor Code §§ 226 and 1174 on behalf of the California Class)

11 61. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
12 Complaint as if fully set forth herein.

13 62. Defendants, as a matter of corporate policy, did not maintain or provide accurate
14 itemized statements in violation of Labor Code §§ 226 and 1174.

15 63. Defendants did not accurately state, *inter alia*, the total hours worked or daily hours
16 worked by Plaintiffs and other non-exempt employees in their pay statements. Defendants' failure to
17 maintain accurate itemized statements was willful, knowing, intentional, and the result of Defendants'
18 custom, habit, pattern and practice. Defendants' failure to maintain accurate itemized statements was
19 not the result of isolated, sporadic or unintentional behavior. Due to Defendants' failure to comply
20 with the requirements of Labor Code § 226, Plaintiffs and other non-exempt employees suffered
21 damages.

22 64. Such a pattern and practice as alleged herein is unlawful and creates an entitlement to
23 recovery by Plaintiffs and the identified Class for all damages pursuant to Labor Code §§ 226, 1174,
24 and 1174.5 including interest, attorneys' fees and costs.

25
26 **EIGHTH CAUSE OF ACTION**
(Labor Code § 2802 On Behalf of The California Class)

27 65. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
28 Complaint as if fully set forth herein.

b. where civil penalties are not established in the Labor Code for each of the violations alleged herein, Plaintiffs seek recovery of the penalties established in § 2699(e) of the Labor Code Private Attorneys General Act of 2004, and in accordance with § 200.5 of the Labor Code.

73. On August 23, 2018, Plaintiffs Cipolla and Wood filed and served the Labor and Workforce Development Agency with written notices of their intent to file a lawsuit pursuant to Labor Code § 2699 *et seq.* Plaintiffs Cipolla and Wood thereafter served Defendants with written notices via certified mail of their intent to file a lawsuit pursuant to Labor Code § 2699 *et seq.*

74. The LWDA did not respond to the notices within the time provided by Labor Code § 2699.3.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members of all classes, pray for judgment as follows:

1. For an order certifying the claims brought under California law and for an order directing notice be send to all members of the California Classes;
2. For damages, restitution, penalties, attorney fees and costs; and,
3. For prejudgment interest.

JURY DEMAND

Plaintiffs hereby request a jury trial on all issues so triable.

Dated: March 20, 2023

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