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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 DIANE HAWORTH, MICHAEL
13 VARBAEK, SARI LAMELA, and STACIE
HARDER,

14 Plaintiffs,

15 v.

16 VITA-MIX CORPORATION, AN OHIO
17 CORPORATION, KELLY SERVICES, INC., A
DELAWARE CORPORATION; and DOES 1
18 through 30, inclusive,

19 Defendants.

CASE NO. 37-2016-00045512-CU-OE-CTL

COMPLAINT: (1) FRAUD;
(2) BREACH OF CONTRACT;
(3) BREACH OF DUTY OF
LOYALTY, GOOD FAITH, AND
FAIR DEALING; (4) FAILURE TO
REIMBURSE BUSINESS
EXPENSES (LABOR CODE
SECTION 2802); (5) UNLAWFUL
DEDUCTIONS (LABOR CODE
SECTION 221); (6) THEFT OF
WAGES (PENAL CODE SECTION
496); (7) FAILURE TO KEEP AND
PROVIDE ACCURATE PAYROLL
RECORDS (LABOR CODE
SECTION 226); (8) (LABOR CODE
970: MISREPRESENTATION); (9)
CONVERSION; (10) FAILURE TO
PAY MINIMUM WAGES;
(11) FAILURE TO PAY OVERTIME
WAGES; (12) FAILURE TO
PROVIDE MEAL PERIODS;
(13) FAILURE TO PROVIDE REST
PERIODS; (14) UNFAIR BUSINESS
PRACTICES (BUSINESS AND
PROFESSIONS CODE SECTION
17200, ET AL); and (15)
PROMISSORY ESTOPPEL

IMAGED FILE

1 Plaintiffs DIANE HAWORTH, MICHAEL VARBAEK, SARI LAMELA, and
2 STACIE HARDER allege against Defendants, VITA-MIX CORPORATION, KELLY
3 SERVICES, INC. and DOES 1 through 30, inclusive, and each of them, as follows:

4
5 **I. GENERAL ALLEGATIONS**

6 1. At all times mentioned, Plaintiffs HAWORTH and VARBAEK, and each of
7 them, were residents of the County of San Diego and were employed by Defendants in the
8 State of California, including the County of San Diego. Plaintiffs LAMELA and HARDER
9 were residents of the County of Los Angeles and were employed by Defendants in the State
10 of California, including the County of San Diego.

11 2. Plaintiffs are informed and believe, and thereon allege, that at all times
12 mentioned, Defendants were business entities doing business in the State of California,
13 including the County of San Diego.

14 3. Plaintiffs are informed and believe, and thereon allege, that Defendants, and
15 each of them, were/are the agents, employees, servants, masters or employers of each other,
16 and in performing or omitting the acts alleged in this Complaint were acting within the
17 course and scope of such agency or employment, and with the approval and ratification of
18 each of the other Defendants. Each and every one of the acts and omissions alleged in this
19 Complaint was performed by, or attributable to, all Defendants, each acting as agents and/or
20 employees, and/or under the direction and control of each of the other Defendants, and that
21 said acts and failures to act were within the course and scope of said agency, employment,
22 and/or direction and control.

23 4. Plaintiffs are informed and believe, and thereon allege, that the true names and
24 capacities, whether natural persons, individuals, corporations, associates, or otherwise of
25 DOES 1 through 30, inclusive, are unknown to Plaintiffs, who, therefore sue the DOE
26 Defendants by fictitious names. Plaintiffs will amend this Complaint to show their true
27 names and capacities when they are ascertained.

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II. STATEMENT OF FACTS

5. Plaintiff, DIANE HAWORTH has been employed by Defendants for over 17 years and throughout her employment she has been a hardworking and dedicated employee. Plaintiffs, MICHAEL VARBAEK, SARI LAMELA and STACIE HARDER have also been employed by Defendants for several years and have performed their work in an exemplary manner. During Plaintiffs' employment, Defendants have held a pattern and practice of not compensating or improperly deducting their commissions; not compensating Plaintiffs' hourly wages; and failing to compensate their necessary out of pocket business expenses.

6. Plaintiffs are hourly and commissioned based Sales Representatives for Defendants VITA-MIX and KELLY SERVICES. Plaintiffs' job responsibilities required them to sell Vita-mix blender machines by performing blender demonstrations at various fairs, trade shows, wholesale stores and Military exchanges. Defendants required Plaintiffs to travel far distances away from their homes to sell the Vita-mix machines and perform demonstrations at shows in California, outside California in the United States and overseas.

7. At the time of Plaintiffs' employment, VITA-MIX had a commission structure in place under which Plaintiffs were to be paid on each blender machine sold and compensated by the respective commission rate dependent upon the model of the machine sold. Defendants made representations to Plaintiffs that they would be paid commissions for all machines that they sold. Defendants further represented that commissions would only be deducted from their pay for machines that were returned within one year of the sale date.

8. Plaintiffs detrimentally relied on Defendants representations when making the decision of whether or not to work a show, particularly if it was out of state or overseas due to the immense amount of out of pocket costs involved. Before a show start date, Plaintiffs were able to roughly calculate the amount of commissions they could expect pursuant to the number of machines that were being sent to the show. Plaintiffs thereafter agreed to work the shows based upon the Defendants' representations that they would be paid on all machines sold.

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1 9. Beginning in 2012 to the present time, Defendants have continuously failed
2 to honor their representations and pay the Plaintiffs their previously agreed upon
3 commissions for all blender machines that they sold per show. The policies and procedures
4 Defendants had in place for tracking sales and commissions were flawed as the Plaintiffs
5 total sales were not properly accounted for. Defendants also had a pattern and practice of
6 violating their own policies and procedures by improperly making deductions from Plaintiffs
7 pay checks.
8

9 10. For Costco shows, Defendants failed to pay earned commissions by deducting
10 returned blenders from their total sales they made each day. Defendants would deduct
11 returned machines from Plaintiffs total sales even if they were not the original sales
12 representative who sold the returned machine. Plaintiffs are informed and believe Defendants
13 also traced the original sales representative and deducted the commissions from their
14 paycheck as well, which constituted a double deduction of commissions. Plaintiffs are
15 informed and believe that Defendants refurbished the returned machines and re-sell them on
16 their website.
17

18 11. For the Military Exchange shows on bases overseas, Defendants previously
19 represented to Plaintiffs that they would be paid on all machines that they sold per day in
20 addition to machines that were put on a 90 day layaway plan. However, VITA-MIX
21 retroactively changed their commissions policy, without the Plaintiffs knowledge or
22 approval, by only paying commissions for blender machines that were rung up through the
23 register using a particular serial number. Many of the machines were improperly bar coded
24 and/or placed in other categories which caused the Plaintiffs to not be properly compensated
25 for their commissions. Plaintiffs based their decisions to attend the overseas exchanges on the
26 number of machines that were being sent and the amount of commissions they could expect
27 to receive. However, after Plaintiffs worked the shows, Defendants refused to compensate
28

1 them for all machines that were sold or placed on layaway. Defendants informed the
2 Plaintiffs that they would only be compensated for machines that were properly rung in the
3 register and only for machines that were sold while they were physically at the booth. This
4 excluded all of the Plaintiffs sales that were improperly barcoded, rung up incorrectly by a
5 third party cashier and machines that were put on layaway, despite Defendants previous
6 representations that Plaintiffs would be paid on their total sales.

7 12. For many of the overseas Military exchange shows, Vita-mix machines also
8 often did not arrive on time which caused Plaintiffs to have their shows delayed. In these
9 instances, Defendants did not take into consideration that the show days were pushed back,
10 and only compensated Plaintiffs with commissions for sales made within the original show
11 dates. However, Plaintiffs performed work and made sales after Defendants considered the
12 show to have ended and they were never compensated for those machines sold during that
13 time frame. In many of these instances, this also caused the Plaintiffs to be stuck overseas,
14 unable to return to the U.S., and they would incur additional business expenses for traveling
15 to their next show.

16 13. Defendants have also continuously improperly deducted commissions from
17 Plaintiffs' pay checks for returned machines sold more than a year before by Plaintiffs. This
18 violated the Plaintiffs' commission agreements with VITA-MIX. Additionally, Defendants
19 deducted commissions from the Plaintiffs pay checks when VITA-MIX customers defaulted
20 on their payment plans, even if the machine had been purchased by the customer more than a
21 year earlier. Defendants further improperly deducted commissions for unidentified returns by
22 failing to itemize and provide reasons for the returned machines on the Plaintiffs pay checks.
23 Plaintiffs have often received *negative pay checks* from Defendants as a result of the
24 improper commission deductions. Many of these negative pay checks were issued to the
25 Plaintiffs which left them without any income while they were working for Defendants
26 overseas and incurring additional uncompensated business expenses.

27 14. In addition to the numerous violations for failure to pay the Plaintiffs
28 commissions, in 2013 the Plaintiffs were notified they were now employees of KELLY

1 SERVICES. Pursuant to Labor Code section 2810.5, Plaintiffs received the California Notice
2 to Employee from KELLY SERVICES establishing an employment agreement and entitling
3 them to an hourly wage of \$15.00 per hour with respective overtime rates and meal and break
4 periods, declaring them non-exempt employees. Throughout their employment, Defendants
5 have never compensated Plaintiffs hourly wages or overtime. Plaintiffs were required to
6 work for Defendants in excess of 40 hours per week and they regularly worked over 50 to
7 100 hours per week without ever being compensated for their hourly wages or overtime.
8 Defendants also did not allow Plaintiffs to take meal and break periods. Plaintiffs were told
9 by Defendants that they were required to stay in their booths and that they were not allowed
10 to take lunch or bathroom breaks at numerous show locations. Defendants further failed to
11 compensate Plaintiffs for their attendance at mandatory trainings and conferences nor
12 reimburse them for their travel and lodging to these conferences.

13 15. Plaintiffs were required to be at a show location before the show opened to set
14 up, all hours the show was open and to remain after the show to close down their booth and
15 were never provided the represented hourly wage, overtime or meal/rest periods. However,
16 Defendants provided Plaintiffs with fraudulent pay records which reflected exaggerated
17 hourly wages on their paychecks and appeared as fewer hours of work than Plaintiffs actually
18 worked resulting in higher withholding taxes being deducted. Plaintiffs are informed and
19 believe that Defendants did this fraudulently to deprive Plaintiffs of benefits they would be
20 entitled to as full-time employees.

21 16. When working shows, particularly overseas shows, Plaintiffs incurred
22 substantial out of pocket business expenses. In preparation for each show, Plaintiffs were
23 required to purchase booth supplies, food and other materials to demonstrate the blender
24 machines for customers. In addition, Plaintiffs also incurred necessary out of pocket expenses
25 in order to travel away from their homes to each show location. Defendants had a pattern and
26 practice of only reimbursing some of the Plaintiffs business expenses that pertained to
27 supplies needed for the booth demonstrations. However, Defendants did not reimburse the
28 Plaintiffs' for all other necessary business expenses pertaining to the Plaintiffs travel

1 expenses including but not limited to hotels, meals, mileage, taxis, airfare, baggage tips,
2 parking and other expenses associated with their booth demonstrations. Plaintiffs, who were
3 acting in the capacity of Show Manager, would also advance hotel and meal costs for other
4 sales representatives traveling with Plaintiffs. Defendants failed to reimburse Plaintiffs for
5 these necessary business expenses.

6 17. Defendants use an on-line system, Certify, through which Plaintiffs submit
7 their business expenses to be reviewed by the company for reimbursement. However,
8 Defendants repeatedly informed Plaintiffs that certain expenses, such as hotel and meal
9 expenses, were not allowed to be submitted to Certify for reimbursement. Further,
10 Defendants informed Plaintiffs that the only expenses that could be submitted to Certify were
11 those that directly pertained to the show booth and demonstrations. There were several
12 occasions when Plaintiffs would submit expenses that only pertained to the booth
13 demonstrations and some of the expenses would be denied for reimbursement. In the event
14 that Plaintiffs attempted to submit all of their reasonable and necessary expenses, Defendants
15 would withhold their pay checks, sometimes for months at a time.

16 18. Defendants' failure to pay Plaintiffs necessary business expenses related to
17 their travel severely affected Plaintiffs living circumstances, particularly during the overseas
18 shows. Plaintiffs were unable to afford their hotel and meal expenses overseas while
19 maintaining their residence in California which forced them to skip meals and stay at the
20 cheapest hotels available. Plaintiffs have had to share rooms, rent rooms in houses and stay
21 on military bases. Despite Plaintiffs minimizing their costs, Defendants still refused to
22 reimburse their necessary business expenses.

23 19. Defendants also placed Plaintiffs in situations where they were unable to leave
24 an overseas show location due to their failure to pay Plaintiffs business expenses. Plaintiffs
25 often performed shows in different states or countries back to back and in order to eliminate
26 costs, Defendants refused to fly the Plaintiffs home between shows. Therefore, Plaintiffs
27 were forced to remain overseas or in a different state for weeks at a time before Defendants
28 would pay airfare for their next show. During that time, Plaintiffs still had to advance costs

1 for hotels, meals, taxis, and other necessary business expenses because Defendants would not
2 provide airfare for Plaintiffs to fly home in the interim. Plaintiffs were never compensated or
3 reimbursed when they were forced to stay overseas nor were they compensated for the
4 business expenses they incurred for having to do so.

5 20. Each show, regardless of the location, required the Plaintiffs to build a booth
6 for the Vita-mix demonstrations. Typically, depending on the show location, the Plaintiffs
7 would also need to transport the Vita-mix machines from their storage facility to each show,
8 in addition to their supplies to build a demonstration booth. This often required Plaintiffs
9 travel to the show location days before the actual show start date. Plaintiffs were never
10 compensated by Defendants for their hourly wages to set up each booth demonstration and
11 take it down at the end of each show.

12 21. Plaintiff brings this action against Defendants for (1) Fraud; (2) Breach of
13 Contract; (3) Breach of Duty of Loyalty, Good Faith, and Fair Dealing; (4) Failure to
14 Reimburse Business Expenses in Violation of Labor Code Section 2802; (5) Unlawful
15 Deductions in Violation of Labor Code Section 221; (6) Theft of Wages in Violation of Penal
16 Code Section 496; (7) Failure to Keep and Provide Accurate Payroll Records in Violation of
17 Labor Code Section 226; (8) Misrepresentation in Violation of Labor Code Section 970; (9)
18 Conversion; (10) Failure to Pay Minimum Wages; (11) Failure to Pay Overtime Wages; (12)
19 Failure to Provide Meal Periods; (13) Failure to Provide Rest Periods; (14) Unfair Business
20 Practices in violation of Business and Professions Code Section 17200; and (15) Promissory
21 Estoppel.

22 III. FIRST CAUSE OF ACTION

23 *(Fraud— By All Plaintiffs v. All Defendants)*

24 22. Plaintiffs reallege, and incorporate by reference as though set forth fully, the
25 allegations contained in Paragraphs 1 through 21.

26 23. The elements of fraud are as follows: (1) a knowingly false representation by
27 the defendant, (2) an intent to deceive or induce reliance, (3) justifiable reliance by the
28 plaintiff, and (4) resulting damages. (*Engalla v. Permanente Medical Group, Inc.*

1 ("Engalla") (1997) 12 Cal.4th 951, 974; *Service by Medallion, Inc. v. Clorox Co.* (1996) 44
2 Cal.App.4th 1807, 1816.)

3 24. False representations made recklessly and without regard for their truth in
4 order to induce action by another are the equivalent of misrepresentations knowingly and
5 intentionally uttered. (*Engalla, supra*, 12 Cal.4th at p. 974.)

6 25. Defendants made knowingly false representations to Plaintiffs, including but
7 not limited to, that they would be paid commissions for all machines that they sold, and that
8 commissions would only be deducted from their pay for machines that were returned within
9 one year of the sale date; that they would be paid hourly wages and overtime and that they
10 would be entitled to meal and rest periods.

11 26. Plaintiffs detrimentally relied on Defendants representations when making the
12 decision of whether or not to work a show, particularly if it was out of state or overseas due
13 to the immense amount of out of pocket costs involved. Before a show start date, Plaintiffs
14 were able to roughly calculate the amount of commissions they could expect pursuant to the
15 number of machines that were being sent to the show. Plaintiffs thereafter agreed to work the
16 shows based upon the Defendants' representations that they would be paid on all machines
17 sold.

18 27. Plaintiffs were not paid an hourly rate or overtime rates for their work
19 performed for Defendants. Plaintiffs' commissions were deducted for all items returned to
20 the location at which they were performing work during the time period they were
21 demonstrating, whether they sold the item or not, and regardless of how long ago the item
22 was purchased. Defendants also made fraudulent deductions from Plaintiff's commissions
23 when products sold were rung up by third-party cashiers under general or miscellaneous
24 serial numbers, despite Defendants receiving the proceeds from those sales.

25 28. Additionally, Defendants asked Plaintiffs to work at international locations on
26 by promising a certain commission for products sold. Plaintiffs detrimentally relied on
27 Defendants promises and incurred substantial and necessary out of pocket business expenses
28 in order to work at those international locations. For some of the scheduled shows,

1 Defendants failed to ship any items for Plaintiffs to sell, resulting in Plaintiffs incurring costs
2 without the possibility of earning money. When Defendants failed to ship items on time,
3 necessary business expenses were incurred by the Plaintiffs who were waiting for the items
4 to arrive and they were never compensated for their time nor reimbursed their expenses as
5 promised. Instead, Plaintiffs were receiving negative paychecks.

6 29. Defendants also changed the shows they had agreed to, resulting in Plaintiffs
7 incurring out of pocket expenses while working less favorable shows that Plaintiffs would
8 not have agreed to travel to work.

9 30. Although Defendants required Plaintiffs to be at a show's location before the
10 show opened to set up, all hours the show was open, and to remain after the show to close
11 down their booth, Defendants also provided Plaintiffs with fraudulent pay records including
12 all commissions earned for a show as being earned for fewer hours of work than Plaintiffs
13 actually worked. Upon information and belief, Defendants did this to fraudulently deprive
14 Plaintiffs of benefits they would be entitled to as full-time employees.

15 31. As a direct and proximate cause of Defendants' unlawful conduct, Plaintiff
16 suffered and continues to suffer economic losses in an amount to be proven at the time of
17 trial, and is entitled to compensatory damages.

18 32. Additionally, Defendants acted oppressively, fraudulently, maliciously, and
19 with conscious disregard of the rights of others. As a consequence, Plaintiffs are entitled to
20 an award of punitive damages against Defendants according to proof.

21 IV. SECOND CAUSE OF ACTION

22 *(Breach of Contract – By All Plaintiffs v. All Defendants)*

23 33. Plaintiffs reallege, and incorporate by reference as though set forth fully, the
24 allegations contained in Paragraphs 1 through 32.

25 34. A claim for breach of contract includes four elements: (1) that a contract
26 exists between the parties, (2) that the plaintiff performed his contractual duties or was
27 excused from non-performance, (3) that the defendant breached those contractual duties, and
28

1 (4) that plaintiff's damages were a result of that breach. (*Acoustics, Inc. v. Trepte Constr. Co.*
2 (1971) 14 Cal.App.3d 887, 913.)

3 35. Defendants and Plaintiff entered into an agreement by which Defendants
4 would compensate Plaintiffs for work performed. The contract terms were clear, Plaintiff
5 performed and the agreed upon qualifying events occurred, however, Defendants still refuse
6 to uphold their obligations under the Agreement. (See Exhibits 1 and 2.)

7 36. Defendants willfully, deliberately, unjustifiably, and inexcusably breached
8 their obligations under the Agreement by continuously refusing to pay Plaintiffs their earned
9 but unpaid wages and commissions.

10 37. As a direct and proximate result of Defendants' breaches of contract, Plaintiffs
11 have suffered, and continue to suffer, general and special damage in amounts to be proven at
12 trial. Plaintiff seeks compensation for all damages and losses proximately caused by
13 Defendants' breaches, as well as interest.

14 V. THIRD CAUSE OF ACTION

15 (*Breach of Duty of Good Faith and Fair Dealing – By All Plaintiffs v. All Defendants*)

16 38. Plaintiffs reallege, and incorporate by reference as though set forth fully, the
17 allegations contained in Paragraphs 1 through 37.

18 39. There is an implied covenant of good faith and fair dealing in every contract
19 that neither party will do anything which will injure the right of the other to receive benefits
20 of the agreement. (*Communale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 658.)
21 Every contract imposes upon each party a duty of good faith and fair dealing in its
22 performance and its enforcement. (*Carma Developers (Cal.), Inc. v. marathon Development*
23 *California, Inc.* (1992) 2 Cal.4th 342, 371.)

24 40. A claim for breach of duty of good faith and fair dealing includes five
25 elements: (1) that the parties entered into a contract, (2) that Plaintiff performed, (3) the
26 conditions for Defendants' performance occurred, (4) that Defendant unfairly interfered with
27 Plaintiff's right to receive benefits of the contract, and (5) that Plaintiff was harmed by
28 Defendants' conduct. (CACI 325; See *Hicks v. E.T. Legg & Associates* (2001) 89 Cal.App.4th

1 496, 508-09.)

2 41. As a direct result of Defendants' breach of their duty of good faith and fair
3 dealing, Plaintiffs have suffered and will continue to suffer irreparable harm to be proven at
4 trial. Plaintiffs cannot currently calculate all the damage that has been caused and will
5 continue to be caused by Defendants' breach of their duty of loyalty, but such damages* will
6 exceed the jurisdictional limits of this court.

7
8 **VI. FOURTH CAUSE OF ACTION**

9 *(Failure to Fully Compensate for Business Expenses – All Plaintiffs v. All Defendants)*

10 42. Plaintiffs reallege, and incorporate by reference as though set forth fully, the
11 allegations contained in Paragraphs 1 through 41.

12 43. Pursuant to Labor Code §2802, Defendants are required to reimburse
13 Plaintiffs for business expenses incurred in the direct consequence of their discharge of their
14 duties for Defendants.

15 44. Within the three years before the filing of this Complaint and continuing until
16 the present time, Plaintiffs have been required to incur business expenses in direct
17 consequence of the discharge of their duties or pursuant to their obedience to the directions
18 of Defendants, and each of them.

19 45. Defendants have failed to fully reimburse Plaintiffs for their business
20 expenses, in violation of Labor Code §2802, including but not limited to hotels, meals,
21 products and equipment needed to perform work, taxi expenses and mileage, equipment
22 needed to scan machines, airfare, baggage tips, parking and other necessary items.

23 46. As a result of the violation of Labor Code §2802, Plaintiffs have been
24 damaged in an amount according to proof at time of trial, but in an amount in excess of the
25 jurisdiction of this court. Accordingly Plaintiffs are entitled to reimbursement of unpaid
26 business expenses, interest, attorneys' fees, and costs.

27 47. As a further result of the aforementioned violation of Labor Code §2802,
28 Plaintiffs have incurred reasonable attorneys fees and costs of suit and pursuant to Labor

1 Code §2802(c) and are entitled to recovery of all reasonable costs, including, but not limited
2 to, interest, attorneys' fees and costs incurred by Plaintiffs in enforcing the rights granted by
3 Labor Code §2802.

4 **VII. FIFTH CAUSE OF ACTION**

5 *(Unlawful Deductions from Wages - by All Plaintiffs v. All Defendants)*

6 48. Plaintiffs reallege, and incorporate by reference as though set forth fully, the
7 allegations contained in Paragraphs 1 through 47.

8 49. Pursuant to Labor Code §221, an employer may not collect or receive from an
9 employee any part of their wages theretofore paid to an employee.

10 50. Within the four years before the filing of this Complaint and continuing until
11 the present time, Plaintiffs have had their wages deducted by Defendants including, but not
12 limited to, the deduction of charged back commissions for products not sold by Plaintiffs, the
13 deduction of charged back commissions for products returned after one year from purchase,
14 and deductions for other expenses and items without authorization.

15 51. Defendants failed to provide Plaintiffs with a signed written commission
16 agreement, in violation of Labor Code § 2751, and pursuant to Labor Code § 226,
17 Defendants did not have written authorization from Plaintiffs to make deductions from
18 Plaintiffs' commissions.

19 52. As a direct and proximate result of Defendants' conduct in violation of Labor
20 Code §221, Plaintiffs have been damaged, and are entitled to compensatory and liquidated
21 damages for the illegal deductions, penalties, and interest.

22 53. As a further result of the violation of Labor Code §221, Plaintiffs, and each of
23 them, are entitled to recover attorney's fees and costs pursuant to Labor Code §218.5.

24 **VIII. SIXTH CAUSE OF ACTION**

25 *(Theft of Wages - by All Plaintiffs v. All Defendants)*

26 54. Plaintiffs reallege, and incorporate by reference as though set forth fully, the
27 allegations contained in Paragraphs 1 through 53.

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1 55. Penal Code section 496(a) provides that “[e]very person who buys or receives
2 any property that has been stolen or that has been obtained in any manner constituting theft
3 or extortion, knowing the property to be so stolen or obtained, *or who conceals, sells,*
4 *withholds, or aids in concealing, selling, or withholding any property from the owner,*
5 *knowing the property to be so stolen or obtained,* shall be punished by imprisonment in a
6 county jail for not more than one year...” (Emphasis added.)

7 56. Penal Code section 496(a) provides that “[a]ny person who has been injured
8 by a violation of subdivision (a) ... may bring an action for three times the amount of actual
9 damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney’s fees.”

10 57. Defendants took/received and retained Plaintiffs’ property that was stolen, and
11 concealed and withheld that property (wages) from Plaintiffs.

12 58. As a direct, foreseeable, and proximate result of the violation of Penal Code
13 section 496, Plaintiffs suffered damages in amounts to be proven at trial. Additionally, as a
14 result of Defendants’ acts, Plaintiffs were forced to retain the services of legal counsel and
15 incur legal fees, and Plaintiffs have and will continue to incur legal fees and costs.

16 59. Pursuant to Penal Code section 496(c), Plaintiffs bring this action and seek
17 three times the amount of actual damages and reasonable attorney’s fees and costs.

18 **IX. SEVENTH CAUSE OF ACTION**

19 ***(Failure to Keep and Provide Accurate Payroll Records –***
20 ***by All Plaintiffs v. All Defendants)***

21 60. Plaintiffs reallege, and incorporate by reference as though set forth fully, the
22 allegations contained in Paragraphs 1 through 59.

23 61. At all times mentioned, pursuant to California Industrial Welfare Commission
24 Wage Order 4 and Labor Code section 226, Defendants were required to keep accurate
25 records and to provide Plaintiffs with properly itemized wage statements at each pay period,
26 which must include, *inter alia*, all deductions, provided that all deductions were made on
27 written orders or authorization of the employee may be shown as one item, and net wages
28 earned.

1 that could or would be earned if Plaintiffs traveled to the show locations. Defendants also
2 misrepresented the length of the shows by not informing Plaintiffs of their knowledge of
3 product delays or show schedule changes. Plaintiffs detrimentally relied on the Defendants
4 representations, commission agreements and employment notice pertaining to the amount of
5 pay they would expect per hour and per machine they sold. However, Defendants did not
6 perform their promises and Plaintiffs were required to temporarily relocate in order to
7 perform work for Defendants.

8 68. Pursuant to Labor Code section 972, any person, agent, or officer who violates
9 any provision of Labor Code section 970 is liable to the aggrieved party in a civil action for
10 double damages resulting from such misrepresentations.

11 69. Relocation while working for the same employer is covered by Labor Code
12 section 970. (*Tyco Indus., Inc. v. Superior Court (Richards)* (1985) 164 Cal.App.3d 148,
13 156-57.) Additionally, Labor Code sections 970 and 972 both apply to temporary as well as
14 permanent relocations of residence, and a temporary change of residence lasting only two
15 weeks does not affect the qualitative misrepresentations nor render either section
16 inapplicable. (*Collins v. Rocha* (1972) 7 Cal.3d 232, 239-40.)

17 70. Defendants directly and indirectly influenced, persuaded, and engaged
18 Plaintiffs to change from one place to another within the state and to change from one place
19 within the state to places outside the state for the purpose of performing work for Defendants
20 through or by means of knowingly false representations.

21 71. As a direct, foreseeable, and proximate result of the violation of Labor Code
22 section 970, Plaintiffs suffered damages in amounts to be proven at trial.

23 72. Pursuant to Labor Code section 972, Plaintiffs bring this action and seek
24 double damages, as well as interest.

25 **XI. NINTH CAUSE OF ACTION**

26 (*Conversion - by All Plaintiffs v. All Defendants*)

27 73. Plaintiffs reallege, and incorporate by reference as though set forth fully, the
28 allegations contained in Paragraphs 1 through 72.

1 80. This cause of action only applies when Plaintiffs were required to travel to
2 and attend required training, training other sales representatives, and at all times after
3 Defendants entered into an agreement with Plaintiffs specifying that Plaintiffs were entitled
4 to an hourly rate of pay and overtime wages, as non-exempt employees.

5 81. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
6 1197.1, and 1198 provide that the minimum wage for all employees fixed by the IWC is the
7 minimum wage to be paid to employees, and the payment of less than the minimum so fixed
8 is unlawful.

9 82. Defendants knowingly and intentionally failed to pay Plaintiffs for all hours
10 worked, despite a written agreement stating Plaintiffs were entitled to an hourly rate of pay
11 and overtime. Moreover, Plaintiffs were not relieved of all duties such that each could take a
12 thirty minute meal period on days each worked in excess of five hours per day, or a second
13 thirty minute meal period on days each worked in excess of ten hours per day. Also, to the
14 extent Plaintiffs worked beyond eight hours per day or forty hours per week, Defendants did
15 not pay at least minimum wage for those hours worked, in violation of the California Labor
16 Code.

17 83. As a direct, foreseeable and proximate result of Defendants' failure, Plaintiffs
18 suffered injury are entitled to recover the total in unpaid minimum wages, additional
19 liquidated damages, interest, and attorney's fees and costs of suit pursuant to labor Code
20 sections 1197.1, 1194, and 1194.2.

21 XIII. ELEVENTH CAUSE OF ACTION

22 *(Failure to Pay Overtime Wages - by All Plaintiffs v. All Defendants)*

23 84. Plaintiffs reallege, and incorporate by reference as though set forth fully, the
24 allegations contained in Paragraphs 1 through 83.

25 85. This cause of action only applies when Plaintiffs were required to travel to
26 and attend required training, training other sales representatives, and at all times after
27 Defendants entered into an agreement with Plaintiffs specifying that Plaintiffs were entitled
28 to an hourly rate of pay and overtime wages, as a non-exempt employee.

1 86. Labor Code section 1198 makes it illegal to employ an employee under
2 conditions of labor that are prohibited by the applicable wage order. California Labor Code
3 section 1198 requires that "... the standard conditions of labor fixed by the commission shall
4 be the standard conditions of labor for employees. The employment of any employee...
5 under conditions of labor prohibited by the order is unlawful."

6 87. California Labor Code section 1198 and the applicable IWC Wage Order
7 provide that it is unlawful to employ persons without compensating them at a rate of pay
8 either time-and-one-half or two-times that person's regular rate of pay, depending on the
9 number of hours worked by the person on a daily or weekly basis.

10 88. Specifically, the applicable IWC Wage Order provides that Defendants were
11 and are required to pay Plaintiffs working more than eight hours in a day or more than forty
12 hours in a workweek, at the rate of time and one-half for all hours worked in excess of eight
13 hours in a day or more than forty hours in a workweek.

14 89. The applicable IWC Work Order further provides that Defendants were and
15 are required to pay Plaintiffs working more than twelve hours in a day, overtime
16 compensation at a rate of two times their regular prevailing rate of pay. An employee's
17 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
18 employee, including non-discretionary bonuses and incentive pay.

19 90. California Labor Code section 510 codifies the right to overtime
20 compensation at one-and-one-half times the regular rate of pay for hours worked in excess of
21 eight hours in a day or forty hours in a week or for the first eight hours worked on the
22 seventh day of work, and to overtime compensation at twice the employee's regular rate of
23 pay for hours worked in excess of twelve hours in a day or in excess of eight hours in a day
24 on the seventh day of work.

25 91. During the relevant time period, Defendants entered into an employment
26 agreement with Plaintiffs prescribing that Plaintiffs earned and were entitled to a specific rate
27 of pay, as well as overtime wages as a non-exempt employee of Defendants. During the
28 relevant time period, Plaintiffs were not paid overtime or double time premiums for all of the

1 hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in
2 excess of forty hours in a week, and for time worked on the seventh day of the work week
3 because Defendants had no policy or procedure to record Plaintiffs' time worked.

4 92. Defendants knew or should have known that, as a result of its policies,
5 Plaintiffs were performing their assigned duties off-the-clock. Defendants also knew, or
6 should have known, that they did not compensate Plaintiffs for this off-the-clock work.
7 Because Plaintiffs worked shifts of eight hours a day or more, forty hours a week or more,
8 twelve hours a day or more, and seven days per week, some of this off-the-clock work
9 qualified for overtime premium pay. Therefore, Plaintiffs were not paid overtime wages for
10 all overtime hours worked.

11 93. Defendants' failure to pay Plaintiffs the balance of overtime compensation, as
12 required by California law, therefore violates the provisions of California Labor Code
13 sections 510 and 1198. Furthermore, upon information and belief, Defendants did not pay the
14 correct overtime rate for the recorded overtime hours that they generated. In addition to an
15 hourly wage, Defendants paid plaintiffs incentive pay and/or non-discretionary bonuses.
16 However, in violation of the California Labor Code, Defendants failed to incorporate all
17 remunerations, including incentive pay and/or non-discretionary bonus pay, into the
18 calculation of the regular rate of pay purposes of calculating the overtime wage rate.
19 Therefore, during times when Plaintiffs worked overtime and received incentive pay and/or
20 non-discretionary bonus pay, Defendants failed to pay all overtime wages by paying a lower
21 rate of overtime than required.

22 94. Defendants' failure to pay Plaintiffs the balance of overtime compensation
23 and failure to include all applicable remuneration in calculating the regular rate of pay for
24 overtime pay, as required by California law, violates the provisions of California Labor Code
25 section 510 and 1198. Plaintiffs are therefore entitled to recover compensatory damages,
26 liquidated damages, interest, and attorney's fees and costs. (Labor Code § 1194.)

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XIV. TWELFTH CAUSE OF ACTION

(Failure to Provide Meal Periods - by All Plaintiffs v. All Defendants)

95. Plaintiffs reallege, and incorporate by reference as though set forth fully, the allegations contained in Paragraphs 1 through 94.

96. This cause of action only applies when Plaintiffs were required to travel to and attend required training, training other sales representatives, and at all times after Defendants entered into an agreement with Plaintiffs specifying that Plaintiffs were entitled to an hourly rate of pay and overtime wages, as a non-exempt employee.

97. Labor Code sections 226.7, 512, and 1198 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty minutes for shifts over five hours, to be provided within the first five hours of the shift, and a second meal period of at least thirty minutes for shifts over ten hours. (See, *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) If an employee is entitled to a second meal period, it must be provided after no more than ten hours of work. (Labor Code §§ 226.7, 512.)

98. As stated, Defendant entered into an agreement with Plaintiff specifying that Plaintiff was entitled to an hourly rate of pay and overtime wages, as a non-exempt employee. Nevertheless, Defendants insisted that Plaintiffs stay be present to set up their booth before each host store or fair opened, remain at their booth for all open hours, and then stay to tear down the booth after the store or fair closed, all without breaks.

99. At all times mentioned, Defendants knew or should have known that as a result of their policies, Plaintiffs were prevented from being relieved of all duties, and required to perform some or all of their assigned duties during meal periods, and Defendants failed to pay Plaintiffs' premium wages when meal periods were late, short, interrupted, or not provided at all.

100. Pursuant to Labor Code section 226.7, 512, and 1198, Plaintiff is entitled to liquidated damages, in amounts to be proven at trial, including interest and penalties.

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1 107. Defendants conduct violates IWC Wage Order No. 47-2001 and the California
2 Labor Code, and Plaintiff is therefore entitled to recover liquidated damages, in an amount to
3 be proven at trial, interest, penalties, and attorney's fees and costs

4 **XVI. FOURTEENTH CAUSE OF ACTION**

5 *(Unfair and Unlawful Business Practices In Violation Of California Business And*
6 *Professions Code Section 17200 - by All Plaintiffs v. All Defendants)*

7 108. Plaintiffs reallege, and incorporate by reference as though set forth fully, the
8 allegations contained in Paragraphs 1 through 107.

9 109. Defendants engage in business practices, offer their goods and services for
10 sale, and advertise their goods and services within the jurisdiction of the State of California.
11 As such, Defendants have a duty to comply with the provisions of the Unfair Business
12 Practices Act as set forth in Business & Professions Code sections 17200, et seq., which Act
13 prohibits, inter alia, unlawful, unfair, and/or fraudulent business acts or practices.

14 110. By violating the foregoing statutes, regulations, and orders governing wage
15 and hour issues in California, as alleged above, and by failing to take appropriate measures to
16 address these violations, Defendants' acts constitute unfair and unlawful business practices
17 under Business and Professions Code section 17200, et. seq. Defendants' violations of
18 California wage and hour laws constitute a business practice because they were done
19 repeatedly over a significant period of time throughout the State of California, and in a
20 systematic manner to the detriment of Plaintiffs.

21 111. As a direct, foreseeable and proximate result of Defendants' acts and
22 omissions alleged, Plaintiffs, and each of them, have had their wages and other benefits of
23 employment unlawfully withheld and Defendants have been unjustly enriched as a result of
24 their unfair and unlawful business acts and practices. Plaintiffs, and each of them, therefore
25 request restitution of all wages and other benefits which have been wrongfully withheld and
26 for business expenses which Plaintiffs have incurred in service for Defendants, in an amount
27 according to proof at the time of trial.

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XVII. FIFTEENTH CAUSE OF ACTION

(Promissory Estoppel - by All Plaintiffs v. All Defendants)

112. Plaintiffs reallege, and incorporate by reference as though set forth fully, the allegations contained in Paragraphs 1 through 111.

113. The doctrine of promissory estoppel as stated in section 90 of the Restatement of Contracts provides: "A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." This rule is applicable in California. (*Drennan v. Star Paving Co.* (1958) 51 Cal.2d 409, 413.)

114. The very purpose of section 90 is to make a promise binding even though there was no consideration, in the sense of something that is bargained for and given in exchange. (*Id.*) Reasonable reliance serves to hold the offeror in lieu of the consideration ordinarily required to make the offer binding. (*Id.*) Promissory estoppel is a theory of recovery which is allowed where injustice can be avoided only by enforcement of the promise, this usually occurring where the plaintiff has made a complete and substantial change of position in reliance upon the promise. (*De Zemplen v. Home Federal S. & L. Assn.*, (1963) 221 Cal.App.2d 197, 207.)

115. Defendants instructed Plaintiffs to only hold on to and submit receipts for specific types of expenses incurred for purposes of reimbursement. Because Plaintiffs relied upon Defendants assertion as to which expenses would be reimbursed and which would not, Plaintiffs did not maintain complete records for all other business expenses incurred.

116. Because Plaintiffs relied upon Defendants' assertions and conduct, Plaintiffs should not now be required to produce receipts for all business expenses incurred. In order to avoid injustice, Defendants should be held to their promise and calculations for expense reimbursement damages should be based upon per diem, lump sum, or similar calculations instead of actual expenses incurred.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for relief as follows:

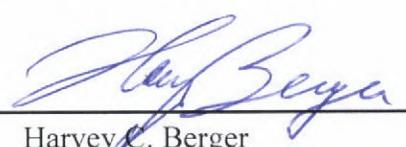
- 3 1. For nominal damages;
- 4 2. For actual damages;
- 5 3. For compensatory damages;
- 6 4. For wages, compensation, liquidated damages, expenses, wage benefits,
- 7 and/or penalties pursuant to Labor Code sections 200, *et seq.*;
- 8 5. For interest accrued to date;
- 9 6. For penalties as alleged;
- 10 7. For punitive damages;
- 11 8. For double damages pursuant to Labor Code section 972;
- 12 9. For treble damages pursuant to Penal Code section 496(c);
- 13 10. For costs of suit and expenses incurred;
- 14 11. For reasonable attorney's fees;
- 15 12. For appropriate injunctive relief;
- 16 13. For appropriate equitable relief;
- 17 14. For appropriate declaratory relief; and
- 18 15. For such other and further relief as the Court deems just and proper.

19

20 **POPE, BERGER, WILLIAMS &**

21 **REYNOLDS, LLP**

22 DATED: December 28, 2016

23 By: 

24 Harvey C. Berger
25 Sara J. Waller
26 Attorneys for Plaintiffs DIANE
27 HAWORTH, MICHAEL DAKOTA
28 VARBAEK, SARI LAMELA, and
STACIE HARDER

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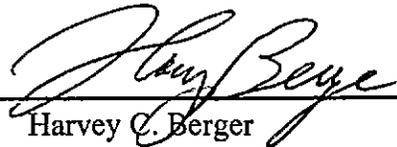
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JURY TRIAL DEMANDED

Plaintiffs demand a jury trial.

**POPE, BERGER, WILLIAMS &
REYNOLDS, LLP**

DATED: December 28, 2016

By: 

Harvey C. Berger
Sara J. Waller
Attorneys for Plaintiffs DIANE
HAWORTH, MICHAEL DAKOTA
VARBAEK, SARI LAMELA, and
STACIE HARDER

CALIFORNIA NOTICE TO EMPLOYEE
Labor Code section 2810.5

California Labor Code section 2810.5(a) requires that the following information be provided to each employee at the time of hire in the language the employer normally uses to communicate employment-related information. Temporary services employers must also provide customer information: since this information changes with each assignment, a new Notice is required for each position. If you have questions about this Notice, please contact Kelly Services' Employee Service Center at 1-866-KELLY-4U (535-5948).

EMPLOYEE

Employee Name: San Lamela

Address of Employee: 1533 S Bedford St Apt 4 Los Angeles CA 90035

Start Date: 4/19/2013 (This is the date when you became eligible for an assignment with Kelly Services. You will not be on an active payroll until you commence working on an assignment for Kelly Services.)

EMPLOYER

Legal Name of Hiring Employer: Kelly Services

Is hiring employer a staffing agency/business (e.g., Temporary Services Agency, employee Leasing Company, or Professional Employer Organization [PEO])? Yes No

Other Name Hiring Employer is "doing business as" (if applicable): Kelly Service, Inc., Kelly Services, Kelly, Kelly Temporary Services, Kelly Educational Services (KES), Kelly Engineering Resources (KER), Kelly Financial Resources (KFR), Kelly Government Solutions, Kelly Healthcare Resources (KHR), Kelly IT Resources (KITR), Kelly Law Registry (KLR), Kelly Marketing Services (KMS), Kelly Scientific Resources (KSR), Kelly Connect, KellyDirect, KellySelect, Kelly Outsourcing and Consulting Services (OCG), Kelly Business Process Outsourcing (BPO), Kelly Recruitment Process Outsourcing (RPO), Kelly Contingent Workforce Outsourcing (CWO), Kelly Managed Service Provider (MSP), Kelly Payroll Process Outsourcing (PPO), Kelly Project Management Office (PMO), Kelly Project Services, Kelly Electronic Assembly, Kelly Light Industrial Services, Kelly Office Services, Kelly Insurance, Kelly Human Resources, Kelly Partnered Staffing, Kelly Higher Education, Kelly Electronic Assembly, Kelly Search & Placement, Kelly HR Consulting, The Ayers Group, Strategic Accounts and Operations (SAO)

Physical Address of Hiring Employer's Main Office: 999 West Big Beaver Troy, MI 48084

Hiring Employer's Mailing Address (if different than above): PO Box 33845 Detroit, MI 48232-5845

Hiring Employer's Telephone Number: 866-535-5948

If the hiring employer is a staffing agency/business (above box checked "Yes"), the following is the other entity for whom this employee will perform work:

Customer Name: OCG PPO VITAMIX

Physical Address of Main Office: 11928 Darlington Ave Los Angeles CA 90049

Mailing Address: 8615 Usher Rd Olmsted Twp OH 44138

Telephone Number: (619)445-6554

Kelly Reference Number: 14M6A0136

WAGE INFORMATION

Rate(s)/Range of Pay: \$15

Time-and-a-Half Rate(s)/Range of Pay (multiply hourly rate by 1.5): \$22.5

Double-Time Rate(s)/Range of Pay (multiply hourly rate by 2): \$30

Or such other rates as federal and state law may require. Kelly Services will verbally notify you of the exact rate of pay of any assignment offered to you. Should you accept and work the specific assignment offered to you, the exact rate of pay agreed to will also be set forth on the pay stub (i.e., itemized wage statement) that you will receive each pay day following the date that the assignment commenced. Your assignment-specific overtime rates will be time-and-a-half and double your hourly and/or differential rate and will be shown on your pay stub when you work overtime and double time.

Rate By: HOUR

Does a written agreement exist providing the rate(s) of pay? Yes No

Allowances, if any, claimed as part of minimum wage (including meal or lodging allowances): None

Regular Pay Day: As long as you submit your time promptly and accurately at the end of your work week, in accordance with Kelly policy, you will be paid within seven days from the end of the pay period.

This is not a contract of employment. By signing this notice, I acknowledge that I understand the following:

- Employees may not "opt out" of future notifications, which will be sent to either my email or mailing address as indicated on the Employment Application. My employment term is not guaranteed and my employment with Kelly Services is "at will."



Vitamix Corporation • Show Department • 8615 Usher Road • Cleveland, OH 44138-2199
shows@vitamix.com • (440) 782-2550 • (440) 235-9580 (fax)

THREE-TIER COMMISSION STRUCTURE

All new Vitamix demonstrators undergo a probationary period that typically lasts from 1-6 months. The duration of the probationary period is determined by the following:

- Length of time it takes the demonstrator to learn and successfully perform the demonstration.
- Total number of machines and containers sold during a given demonstration(s).
- The feedback received from the demonstrator with whom you are teamed.
- Regional manager assessment of your performance.
- Willingness to receive and incorporate constructive criticism and coaching to improve your demonstration.
- Working all scheduled shows.
- Following all policies and procedures including the accurate and timely submission of expense reports.
- Punctuality, attitude and work ethic.
- Ability to work as part of a team.

The first 10-14 days of the probationary period is spent training, for which you will be paid a flat rate of \$150 a day. Upon successfully completing training, you will be paired with an experienced demonstrator with a proven track record. Together you will split commission percentages in a three-tiered commission structure, with the experienced demonstrator receiving the higher commission.

Once the probationary period ends, the commission is then split equally (50/50) when demonstrators are assigned to work a show together. Vitamix expects most new demonstrators to learn quickly. The average time it takes a new demonstrator to begin splitting commissions equally is three months. Working two, 10-day shows a month over a three month period is typically sufficient time for a new demonstrator to become proficient and progress out of the final tier.

Please see attached for the detailed schedule.

Demonstrator Status

Tier 3 = 55% - Lead 45% - Support

Product	Total			
	Commission \$	Lead	Support	Alone
6300 - Base	\$75.00	\$41.25	\$33.75	\$75.00
5200S during	\$55.00	\$30.25	\$24.75	\$55.00
5200S after	\$20.00	\$11.00	\$9.00	\$20.00
5200 - base - WFM	\$74.40	\$40.92	\$33.48	\$74.40
5200 - premium - WFM	\$82.83	\$45.56	\$37.27	\$82.83
5200 - base - Military	\$71.60	\$39.38	\$32.22	\$71.60
5200 - base - H/T/F	\$89.80	\$49.39	\$40.41	\$89.80
5200 - premium - H/T/F	\$99.80	\$54.89	\$44.91	\$99.80
64oz Wet container - CC	\$17.38	\$9.56	\$7.82	\$17.38
32 oz Dry container - CC	\$17.38	\$9.56	\$7.82	\$17.38
32 oz Wet container - CC	\$15.63	\$8.59	\$7.03	\$15.63
32 oz Dry container - WFM	\$16.43	\$9.04	\$7.40	\$16.43
32 oz Wet container - WFM	\$16.43	\$9.04	\$7.40	\$16.43
64oz Wet container - H/T/F	\$19.80	\$10.89	\$8.91	\$19.80
32 oz Dry container - H/T/F	\$19.80	\$10.89	\$8.91	\$19.80
32 oz Wet container - H/T/F	\$19.80	\$10.89	\$8.91	\$19.80

Demonstrator Status

After probationary period = 50% - Lead 50% - Support

Product	Total Commission \$	Lead	Support	Alone
6300 - Base	\$75.00	\$37.50	\$37.50	\$75.00
5200S during	\$55.00	\$27.50	\$27.50	\$55.00
5200S after	\$20.00	\$10.00	\$10.00	\$20.00
5200 - base - WFM	\$74.40	\$37.20	\$37.20	\$74.40
5200 - premium - WFM	\$82.83	\$41.42	\$41.42	\$82.83
5200 - base - Military	\$71.60	\$35.80	\$35.80	\$71.60
5200 - base - H/T/F	\$89.80	\$44.90	\$44.90	\$89.80
5200 - premium - H/T/F	\$99.80	\$49.90	\$49.90	\$99.80
64oz Wet container - CC	\$17.38	\$8.69	\$8.69	\$17.38
32 oz Dry container - CC	\$17.38	\$8.69	\$8.69	\$17.38
32 oz Wet container - CC	\$15.63	\$7.81	\$7.81	\$15.63
32 oz Dry container - WFM	\$16.43	\$8.22	\$8.22	\$16.43
32 oz Wet container - WFM	\$16.43	\$8.22	\$8.22	\$16.43
64oz Wet container - H/T/F	\$19.80	\$9.90	\$9.90	\$19.80
32 oz Dry container - H/T/F	\$19.80	\$9.90	\$9.90	\$19.80
32 oz Wet container - H/T/F	\$19.80	\$9.90	\$9.90	\$19.80

Demonstrator Status

Tier 1 = 65% - Lead 35% - Support

Product	Total			
	Commission \$	Lead	Support	Alone
6300 - Base	\$75.00	\$48.75	\$26.25	\$75.00
5200S during	\$55.00	\$35.75	\$19.25	\$55.00
5200S after	\$20.00	\$13.00	\$7.00	\$20.00
5200 - base - WFM	\$74.40	\$48.36	\$26.04	\$74.40
5200 - premium - WFM	\$82.83	\$53.84	\$28.99	\$82.83
5200 - base - Military	\$71.60	\$46.54	\$25.06	\$71.60
5200 - base - H/T/F	\$89.80	\$58.37	\$31.43	\$89.80
5200 - premium - H/T/F	\$99.80	\$64.87	\$34.93	\$99.80
64oz Wet container - CC	\$17.38	\$11.30	\$6.08	\$17.38
32 oz Dry container - CC	\$17.38	\$11.30	\$6.08	\$17.38
32 oz Wet container - CC	\$15.63	\$10.16	\$5.47	\$15.63
32 oz Dry container - WFM	\$16.43	\$10.68	\$5.75	\$16.43
32 oz Wet container - WFM	\$16.43	\$10.68	\$5.75	\$16.43
64oz Wet container - H/T/F	\$19.80	\$12.87	\$6.93	\$19.80
32 oz Dry container - H/T/F	\$19.80	\$12.87	\$6.93	\$19.80
32 oz Wet container - H/T/F	\$19.80	\$12.87	\$6.93	\$19.80

Demonstrator Status
Tier 2 = 60% - Lead 40% - Support

Product	Total			
	Commission \$	Lead	Support	Alone
6300 - Base	\$75.00	\$45.00	\$30.00	\$75.00
5200S during	\$55.00	\$33.00	\$22.00	\$55.00
5200S after	\$20.00	\$12.00	\$8.00	\$20.00
5200 - base - WFM	\$74.40	\$44.64	\$29.76	\$74.40
5200 - premium - WFM	\$82.83	\$49.70	\$33.13	\$82.83
5200 - base - Military	\$71.60	\$42.96	\$28.64	\$71.60
5200 - base - H/T/F	\$89.80	\$53.88	\$35.92	\$89.80
5200 - premium - H/T/F	\$99.80	\$59.88	\$39.92	\$99.80
64oz Wet container - CC	\$17.38	\$10.43	\$6.95	\$17.38
32 oz Dry container - CC	\$17.38	\$10.43	\$6.95	\$17.38
32 oz Wet container - CC	\$15.63	\$9.38	\$6.25	\$15.63
32 oz Dry container - WFM	\$16.43	\$9.86	\$6.57	\$16.43
32 oz Wet container - WFM	\$16.43	\$9.86	\$6.57	\$16.43
64oz Wet container - H/T/F	\$19.80	\$11.88	\$7.92	\$19.80
32 oz Dry container - H/T/F	\$19.80	\$11.88	\$7.92	\$19.80
32 oz Wet container - H/T/F	\$19.80	\$11.88	\$7.92	\$19.80



SALES REP PAY

COMMISSION

EARNINGS BY SHOW TYPE

The following table lists the commission earned for machine and container sales at various Vitamix shows and venues. A machine purchase includes a free container; container commission is earned for additional containers or containers purchased individually. At a Costco Consignment event, the 6300 is demonstrated, but commission is also earned on 5200s sold during the show.

SHOW	MACHINE COMMISSION	CONTAINER COMMISSION
Field Training	\$150 per day (no commission)	
Costco	6300 - \$75 per machine 5200s - \$55 per machine	48 oz. Wet - \$17.56 per container 32 oz. Dry - \$17.38 per container 64 oz. Wet - \$15.63 per container
Whole Foods Market	7500 - \$80 per machine 5200 - \$74.50 per machine	48 oz. Wet - \$16.43 per container 32 oz. Dry - \$16.43 per container 32 oz. Wet - \$16.43 per container
Direct Sales Shows	5200 - \$89.80 per machine (\$99.80 for brushed stainless)	48 oz. Wet - \$19.80 32 oz. Wet - \$19.80 64 oz. Wet - \$19.80 32 oz. Dry - \$19.80
Sam's Club	5200 - \$71.60 per machine	32 oz. Dry - \$17.80 per container 64 oz. Wet - \$17.80 per container 32 oz. Wet - 15.90 per container

ADDITIONAL INCOME OPPORTUNITIES

REFERRALS

A Sales Rep receives \$100 for a referral who successfully completes a first show and another \$150 after the referral has maintained consecutive employment with Vitamix for six months.

PERSONAL FUNDS USE (NO VITAMIX DEBIT CARD)

A \$300 incentive is available to a Sales Rep who chooses to use personal funds in lieu of a Vitamix debit card for reimbursable expenses such as groceries and supplies. To be eligible, a Sales Rep must either decline the issuance of the Vitamix debit card or have it canceled. Additionally, the Sales Rep must use personal funds for one consecutive year. The incentive is paid for each full year that the Sales Rep uses personal funds for expenses.

BLENDITUP PRODUCTS

A Sales Rep has the opportunity to earn additional commission through the sale of Blenditup products at Costco (excluding Inline shows), Sam's Club, and Direct Sales shows. For more information regarding Blenditup, contact the following representatives:

- Midwest, Northwest, and Southwest Regions – Kevin Bales at 435-632-1240 or kevin@blenditup.com
- East, Southeast, and West Regions – Casey Bales at 435-632-1147 or casey@blenditup.com

CUSTOMER RETURNS

If a customer returns a Vitamix machine within one year of the date of purchase, the Sales Rep who sold the machine has the originally earned commission deducted during the next pay period. The return is reflected on the weekly Commission Report that is provided to the Sales Rep as a negative quantity and commission amount.

NOTE: If a Sales Rep's pay period results in a negative total amount, the negative balance is carried over to the next payroll cycle and appears as a Prior Balance on the Sales Rep's Commission Report.