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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

SANDY MONEY, as an individual and on behalf
of all other aggrieved employees,

Plaintiff,

vs.

MY PILLOW, INC., a Minnesota Corporation;
and DOES 1 through 100,

Defendants.

Case No. 30-2020-01137211-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698, *et seq.*)**

UNLIMITED CIVIL CASE

Assigned: Judge William Claster

Dept: CX104

1 Plaintiff Sandy Money (“Plaintiff”), on behalf of herself, all other aggrieved employees,
2 and the State of California, hereby brings this Representative Action Complaint (“Complaint”)
3 against My Pillow, Inc., a Minnesota corporation; and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief, alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself, other aggrieved employees, and the State of
7 California, hereby brings this Complaint for recovery of civil penalties under the California Labor
8 Code Private Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”) and Industrial
9 Welfare Commission (“IWC”) Wage Order No. 7-2001 (hereinafter, “Wage Order 7”).

10 2. The monetary damages that Plaintiff seeks exceeds the minimal jurisdictional
11 limits of the Superior Court and will be established according to proof at trial.

12 3. This Court has jurisdiction over Defendants because, upon information and belief,
13 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
14 themselves to the California market so as to render the exercise of jurisdiction over them by the
15 California courts consistent with the traditional notions of fair play and substantial justice.

16 **VENUE**

17 4. Venue as to each Defendant is proper in this judicial district pursuant to California
18 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
19 complained of herein occurred in the County of Orange. Defendants own, maintain offices,
20 transact business, have agent(s) within the County of Orange, and/or otherwise are found within
21 the County of Orange, and Defendants are within the jurisdiction of this Court for purposes of
22 service of process.

23 **PARTIES**

24 5. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
25 Plaintiff was, and currently is, a California resident. During the one year immediately preceding
26 Plaintiff’s giving of the required notice under the PAGA, Defendants employed Plaintiff as a non-
27 exempt employee (although, as set forth below, she was misclassified by Defendants as an
28 independent contractor). Plaintiff was, and is, a victim of Defendants’ policies and/or practices

1 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
2 under California Business & Professions Code § 17200 *et seq.*; Labor Code §§ 204, 221-223, 226,
3 226.7, 226.8, 512, 516, 558, 1174, 1194, 1194.2, 1198, and 2802; and Wage Order 7, which sets
4 employment standards for the “Mercantile Industry.”

5 6. Plaintiff is informed and believes, and based thereon alleges, that during the one
6 year preceding Plaintiff’s giving of the required notice under the PAGA, and continuing to the
7 present, Defendants did (and continue to do) business by sending demonstrators to Costco
8 Wholesale Corporation (“Costco”) locations in Orange County to demonstrate and promote
9 Defendants’ products, and employed other non-exempt employees within Orange County and the
10 State of California and, therefore, were (and are) doing business in Orange County and the State
11 of California.

12 7. Plaintiff does not know the true names, identities or capacities, whether individual,
13 corporate, associate or otherwise, of Defendants Does 1 through 100, inclusive, and for that
14 reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from
15 this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff
16 is informed, believes, and based thereon alleges, that each of said fictitious defendants, whether
17 individual, partners, or corporate, were responsible in some manner for the acts and omissions
18 alleged herein, and proximately caused Plaintiff and other aggrieved employees to be subject to
19 the unlawful employment practices, wrongs, injuries and damages complained of herein.

20 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
21 herein, Defendants were and are the employers of Plaintiff and all other aggrieved employees.

22 9. At all times herein mentioned, each of said Defendants participated in the doing
23 of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the
24 Defendants, and each of them, were the agents, servants, and employees of each and every one of
25 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
26 were acting within the course and scope of said agency and employment. Defendants, and each
27 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
28 omissions complained of herein.

1 10. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Plaintiff
4 further alleges that all Defendants were joint employers for all purposes of Plaintiff and other
5 aggrieved employees.

6 **REPRESENTATIVE ACTION ALLEGATIONS**

7 11. Defendants employed Plaintiff as a “Demonstrator” (or similarly titled position)
8 from approximately August 2017 to approximately January 2020. Throughout Plaintiff’s
9 employment, Defendants contracted with Costco to send demonstrators to Costco locations to
10 demonstrate and promote Defendants’ products at so-called “road shows” of approximately 10
11 days or more. Defendants dictated to demonstrators which “road shows” to attend at which
12 Costco locations.

13 12. Plaintiff is informed and believes that the agreement between Defendants and
14 Costco requires that Defendants exclusively employ W-2, non-exempt employees to demonstrate
15 Defendants’ products at Costco locations. Specifically, upon information and belief, pursuant to
16 the agreement between Defendants and Costco, anyone who conducts road shows on Costco’s
17 premises on behalf of Defendants, must be a W-2, non-exempt employee of Defendants, and any
18 breach of this provision by Defendants is a material breach of Defendants’ agreement with Costco.

19 13. Notwithstanding the agreement with Costco, Defendants have misclassified
20 Plaintiff and other demonstrators as independent contractors and/or as exempt employees.
21 Specifically, Plaintiff’s and other aggrieved employees’ compensation was primarily based on
22 commissions, which were in turn purportedly based on purchases of Defendants’ products made
23 at Costco during “road shows.” These commissions were paid to Plaintiff and other demonstrators
24 as a combination of W-2 earning and 1099 independent contractor earnings. For example,
25 Plaintiff worked a road show in October/November 2019 for which she was issued a total of seven
26 (7) wage statements: three (3) wage statements reflecting, respectively, \$146.82, \$355.96, and
27 \$33.00 in compensation for “commissions” without itemized deductions; two (2) wage statement
28 each reflecting \$600.00 in “commission” wages, each of which also listed 40 hours of work with

no corresponding rate of pay and no corresponding wages, with several itemized deductions; and two (2) wage statements each reflecting \$180.00 in “commission” wages, each of which also listed 8 hours of work with no corresponding rate of pay and no corresponding wages, with several itemized deductions. Defendants have issued Plaintiff a Form 1099 in each year she has worked for Defendants, reflecting the monies paid to Plaintiff as a 1099 independent contractor.

14. Demonstrators were also ostensibly paid an hourly wage, but, upon information and belief, each demonstrator’s hourly wages were based on a predetermined amount of hours worked during the road show, regardless of how many hours each demonstrator actually worked during the road show. For example, the wage statements described in paragraph 13 indicated that Plaintiff only worked a total of 48 hours over a 10-day road show, when in actuality, Plaintiff worked approximately 11 hours per day on average during road shows. Thus, the wage statements issued to Plaintiff did not contain an accurate accounting of Plaintiff’s hours worked. Rather, on information and belief, Defendants simply inserted an arbitrary number of hours worked on demonstrators’ wage statements.

15. Defendants took unlawful deductions from demonstrators’ commissions. Specifically, upon information and belief, prior to August 2019, Defendants paid demonstrators an approximately 18% commission on products sold during road shows. However, sometime in August 2019, Defendants began reducing Plaintiff’s and other demonstrators’ commissions to 15% (i.e., a 16.67% reduction in commissions) unless the demonstrators hauled Defendants’ merchandise to and from each road show themselves. Defendants intended to reduce shipping costs by unlawfully forcing demonstrators to *either* take a 16.67% deduction in commissions *or* haul Defendants’ merchandise to and from road shows without compensation, and at their own expense. This reduction in commissions is unlawful as it is expressly made to offset business expenses that should be borne by Defendants, in violation of Labor Code § 221. *See, e.g., Hudgins v. Neiman Marcus Grp., Inc.*, 34 Cal.App.4th 1109, 1123 (1995) (an employer may not “make deductions from earned commission wages...a sum of money representing what would otherwise be business losses...”).

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1 16. Plaintiff and other aggrieved employees were also not separately paid for rest
2 periods or other “nonproductive” time, resulting in further unpaid wages. Specifically, Plaintiff
3 and other demonstrators were not separately compensated for rest periods or for time spent
4 working on tasks which could not increase their commissions, including, for example, setting up
5 booths and breaking down booths. Moreover, demonstrators who transported their own
6 merchandise to road shows are not compensated for this time, either. As a result of these practices,
7 Defendants have failed to pay Plaintiff and other demonstrators for rest periods or for
8 “nonproductive” time (i.e., hours that they were working but were not generating potential
9 commissions), in violation of California law. *See Vaquero v. Stoneledge Furniture, LLC*, 9
10 Cal.App.5th 98, 110 (2017) (holding employees paid on commission must be separately
11 compensated for rest periods and other nonproductive time). This has resulted in Defendants’
12 failure to pay at least the minimum wage for all hours worked, and failure to pay overtime for all
13 hours worked over 8 in a workday and/or over 40 in a workweek, for Defendants’ failure to pay
14 separately for rest periods or other nonproductive time.

15 17. In addition to failing to pay separately for rest periods or other nonproductive time,
16 Defendants have also failed to compensate Plaintiff and other aggrieved employees for all
17 overtime wages in those instances in which they worked over 8 hours in a workday, over 40 hours
18 in a workweek, and/or for the first 8 hours on the 7th consecutive workday in the workweek. Nor
19 have Defendants paid Plaintiff and other aggrieved employees double-time wages when they
20 worked in excess of 12 hours in a workday and/or over 8 hours on the 7th consecutive workday
21 in a workweek. Moreover, because Plaintiff and other aggrieved employees were required to work
22 approximately 11 hours per day during 10-day (or longer) road shows, in addition to time spent
23 setting up and breaking down their booths, driving to and from road shows, on information and
24 belief, the wages paid to demonstrators sometimes did not even amount to the minimum wage for
25 all hours worked.

26 18. Further, Defendants misclassified Plaintiff and other demonstrators.
27 Demonstrators: (a) are under the control and direction of Defendants in connection with the
28 performance of their work; (b) perform work that is part of the usual course of Defendants’

business (i.e., demonstrating Defendants’ products to the public, who are Defendants’ potential customers); and/or (c) are not customarily engaged in an independently established trade, occupation, or business in the same nature of the work performed. Notwithstanding that Plaintiff and other demonstrators should have been classified as W-2 employees of Defendants, Defendants willfully misclassified demonstrators as independent contractors. See *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 (“Under this [ABC] test, a worker is properly considered an independent contractor to whom a wage order does not apply only if the hiring entity establishes: . . . (B) that the worker performs work that is outside the usual course of the hiring entity’s business . . .”)

19. As a result of this unlawful misclassification scheme, not only did Defendants fail to pay at least the minimum wage for all hours worked and fail to pay any overtime compensation as alleged above, but Defendants also failed to maintain any compliant meal period practices. In practice, Defendants have often required demonstrators to demonstrate products and/or man their booths for the entire time they are at Costco, and if any meal period is provided, it is often interrupted by work obligations, resulting in less than 30 minutes of off-duty time, and/or it is often late (beginning after the start of the sixth hour of work). Nor have Defendants provided Plaintiff or other aggrieved employees with second meal periods on workdays when they worked over 10 hours. Nonetheless, in the event legally compliant meal period(s) were not provided, Defendants failed to pay Plaintiff or any other aggrieved employees any meal period premiums as required by Labor Code § 226.7. On information and belief, Defendants have not had any mechanism for paying meal period premiums under Labor Code § 226.7 during the relevant time period.

20. In addition, Plaintiff and other aggrieved employees regularly worked shifts of 3.5 hours or more, but were not authorized and permitted a paid rest period for every 4-hour period worked or major fraction thereof, because Defendants’ commission compensation plan failed to separately compensate Plaintiff and other aggrieved employees for required rest periods. See *Vaquero, supra*, 9 Cal.App.5th at 110 (requiring separate compensation for rest periods for employees paid on commission basis). As a result, Plaintiff and other aggrieved employees were

1 not authorized and permitted paid rest periods as required by Wage Order 7, § 12(A). Moreover,
2 for the same reasons it was often impracticable or impossible for Plaintiff and other aggrieved
3 employees to take legally compliant meal periods (as discussed above), Plaintiff and other
4 aggrieved employees were frequently prevented from taking off-duty rest periods. Defendants
5 failed to maintain any rest period policy, and in practice failed to authorize and permit off-duty
6 rest periods, as Plaintiff and other aggrieved employees frequently could not take off-duty 10-
7 minute rest periods as a result of their job duties, which required them to be constantly
8 demonstrating at their booths and/or to maintain constant supervision of their booths.

9 21. Defendants' policies have also failed to reimburse Plaintiff and other
10 demonstrators for all necessary business expenses, including but not limited to mileage incurred
11 traveling to and from road shows, using personal automobiles or renting U-Haul's to transport
12 Defendants' products to and from road shows, and other travel expenses. As noted above, rather
13 than indemnify Plaintiff and other demonstrators for these necessary expenses, Defendants would
14 either require demonstrators to bear these costs out-of-pocket, or it would reduce their
15 commissions to offset Defendants' shipping costs if demonstrators declined to use their personal
16 automobiles or rent a U-Haul vehicle to haul Defendants' merchandise to Costco.

17 22. As a result of Defendants' misclassification as independent contractors, unlawful
18 deductions from wages, failure to pay all earned minimum and overtime wages, failure to provide
19 meal and rest periods, and failure to reimburse necessary business expenses, Defendants failed to
20 provide Plaintiff and other aggrieved employees with accurate itemized wage statements in
21 violation of Labor Code § 226(a) and Wage Order 7, § 7. For example, the wage statements issued
22 by Defendants failed to list any rates of pay (for example, an hourly rate or commission rate), and
23 failed to list the hours actually worked by Plaintiff or other aggrieved employees, instead listing
24 an arbitrary, predetermined number of hours (in Plaintiff's case, 48 hours) for which Defendants
25 purportedly paid hourly wages.

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1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

4 23. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
5 fully set forth herein.

6 24. Defendants have committed Labor Code violations against Plaintiff and other
7 aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor Code §
8 2698 *et seq.*, and acting on behalf of herself, other aggrieved employees, and the State of
9 California, brings this representative action against Defendants to recover the civil penalties due
10 to Plaintiff, other aggrieved employees against whom one or more of the violations has been
11 committed, and the State of California according to proof, pursuant to Labor Code § 2699,
12 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
13 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
14 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
15 withheld; (2) \$100.00 for each initial violation and \$250.00 for each subsequent violation
16 pursuant to Labor Code § 1197.1 per employee per pay period; (3) \$250.00 for each initial
17 violation and \$1,000.00 for each subsequent violation of Labor Code § 226, pursuant to Labor
18 Code § 226.3 per employee per pay period; (4) \$100.00 for each initial violation and \$200.00 for
19 each subsequent violation per employee per pay period for those violations of the Labor Code for
20 which no civil penalty is specifically provided; and/or (5) \$5,000 to \$15,000 for each instance of
21 misclassifying an employee as an independent contractor, pursuant to Labor Code § 226.8(b),
22 and/or \$10,000 to \$25,000 for instance of misclassifying an employee as an independent
23 contractor as part of Defendants’ “pattern or practice” of such violations, pursuant to Labor Code
24 § 226.8(c), based on the following Labor Code violations:

- 25 a. Unlawfully deducting earned wages from Plaintiff and other aggrieved employees
26 in violation of Labor Code §§ 221-223, 558, and 1198;
- 27 b. Failing to pay Plaintiff and other aggrieved employees all overtime compensation
28 earned in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;

- c. Failing to pay Plaintiff and other aggrieved employees all minimum wages earned in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- d. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- e. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- f. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code §§ 226 and 1198;
- g. Failing to reimburse and/or indemnify Plaintiff and other aggrieved employees for all required work-related expenses incurred in violation of Labor Code §§ 1198 and 2802;
- h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198; and
- j. Willfully misclassifying Plaintiff and other aggrieved employees as independent contractors and by making unlawful deductions from their compensation in violation of Labor Code § 226.8.

25. On January 3, 2020, Plaintiff notified Defendant My Pillow, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under the PAGA with respect to violations of the California Labor Code identified in Paragraph 24 (a)-(j) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the PAGA with respect to these violations.

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26. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Labor Code § 226, pursuant to Labor Code § 226.3 per employee per pay period; (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided; and/or (5) \$5,000 to \$15,000 for each instance of misclassifying an employee as an independent contractor, pursuant to Labor Code § 226.8(b) and/or \$10,000 to \$25,000 for instance of misclassifying an employee as an independent contractor as part of Defendants' "pattern or practice" of such violations, pursuant to Labor Code § 226.8(c);

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699(g) and Code of Civil Procedure § 1021.5; and

3. For such other and further relief as the Court may deem just and proper.

Dated: March 9, 2020

HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff