

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michelle Williams Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KIMBERLY GONZALEZ and MADISON
DAVIS, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

vs.

BARBIZON SCHOOL OF SAN FRANCISCO.,
INC., a Delaware Corporation; and DOES 1
through 100,

Defendants.

Case No.: 21STCV08077

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiffs Kimberly Gonzalez and Madison Davis (“Plaintiffs”), on behalf of themselves
2 and all other aggrieved employees, hereby bring this Representative Action Complaint against
3 Defendant Barbizon School of San Francisco., Inc., a California corporation, and DOES 1 to
4 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of themselves, all other aggrieved employees, and the State of
7 California, hereby brings this Complaint for recovery of civil penalties under the Private
8 Attorneys General Act, Labor Code § 2698, *et seq.*

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

14 **VENUE**

15 3. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have
18 an agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
19 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 4. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein,
22 Plaintiffs were and currently are California residents. During the relevant statute of limitations
23 periods, Plaintiffs were employed by Defendants as non-exempt employees.

24 5. Plaintiffs are informed and believe, and based thereon allege, that during the
25 relevant time period and continuing to the present, Defendants did (and continue to do) business
26 within the County of Los Angeles and the State of California by operating schools for models and
27 actors, and therefore, were (and are) doing business in the County of Los Angeles and the State
28 of California.

1 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
2 mentioned herein, Defendants were licensed to do business in the State of California and the
3 County of Los Angeles.

4 7. Plaintiffs do not know the true names or capacities, whether individual, partner, or
5 corporate, of the Defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
6 Defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
7 amend this Complaint when such true names and capacities are discovered. Plaintiffs are
8 informed, and believe, and based thereon allege, that each of said fictitious Defendants, whether
9 individual, partners, or corporate, were responsible in some manner for the acts and omissions
10 alleged herein, and proximately caused Plaintiffs and aggrieved employees to be subject to the
11 unlawful employment practices, wrongs, injuries and damages complained of herein.

12 8. Plaintiffs are informed and believe, and based thereon allege, that at all times
13 mentioned herein, Defendants were and are the employers of Plaintiffs and all aggrieved
14 employees.

15 9. At all times herein mentioned, each of said Defendants participated in the doing
16 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
17 Defendants, and each of them, were the agents, servants, and employees of each and every one of
18 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
19 were acting within the course and scope of said agency and employment. Defendants, and each
20 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
21 omissions complained of herein.

22 10. At all times mentioned herein, Defendants, and each of them, were members of
23 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
24 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
25 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all
26 aggrieved employees.

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12. Defendants compensated Plaintiffs pursuant to a commission pay plan, whereby they were paid a commission based on the amounts paid by students and/or their parents when registering for classes or other services. Under this commission pay plan, Plaintiffs were required to record their hours worked by clocking in and clocking out at the beginning and end of their shift through an application on their smart phones called “t-sheets.” However, Plaintiffs were only paid an hourly minimum wage if their commissions did not exceed their minimum wage floor for the pay period. Because Defendants’ pay system is simply a subterfuge for a commission compensation system, on those occasions when Plaintiffs and other non-exempt employees were paid only based on commissions (i.e., when their commissions exceeded the minimum wage floor), Plaintiffs and other non-exempt employees were not separately compensated for time spent working on tasks that were not compensated on a commission basis (i.e., non-productive time), including but not limited to, hours spent attending weekly meetings, undergoing training, traveling to alternative locations for talent searches, cleaning the office, and/or otherwise providing customer service to current students and other customers. As a result of Defendants’ failure to compensate Plaintiffs and other non-exempt employees for non-productive time, Defendants failed to compensate Plaintiffs and other non-exempt employees for all wages earned in violation of California law, which requires employers to pay piece rate and commission workers separately for all nonproductive time. See *Gonzalez v. Downtown LA Motors, LP*, 215 Cal.App.4th 36 (2013) (holding that where employer pays workers either a minimum wage “floor” or a piece rate if the piece rate exceeds the floor, the employer must separately for

nonproductive time when employees are paid a piece rate); Labor Code § 226.2 (requiring employers to pay piece rate employees separately for nonproductive time); *see also Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98, 110 (2017) (holding that the wage orders apply “equally to commissioned employees, employees paid by piece rate, or any other compensation system that does not provide compensation for rest breaks and other nonproductive time.”)

13. Additionally, when Plaintiffs and other aggrieved employees were compensated on a commission basis, Defendants failed to pay them for all overtime hours worked. Specifically, although Plaintiffs and other aggrieved employees routinely worked in excess of 8.0 hours per workday and/or 40 hours per workweek, Defendants did not pay Plaintiff and other aggrieved employees at 1.5 times their regular rate of pay for those hours worked in excess of 8.0 hours per workday and/or 40 hours per workweek. Instead, when Plaintiffs and aggrieved employees were paid on a commission basis, Defendants only compensated them at their regular commission rate, and failed to compensate them at 1.5 times their regular rate of pay for those hours in excess of 8.0 hours per workday and/or 40 hours per workweek.

14. Furthermore, even when Plaintiffs and other aggrieved employees were compensated based on an hourly rate of pay (i.e., when their commissions did not exceed the minimum wage floor), Defendants failed to pay them for all hours worked as a result of its unlawful timekeeping policies and procedures. Specifically, Defendants required Plaintiffs and other aggrieved employees to work from home on Mondays – calling customers and following up with leads – but did not allow Plaintiffs and other aggrieved employees to record these hours worked. As a result, Defendants failed to compensate Plaintiffs and other aggrieved employees at least minimum wage and/or overtime compensation for all hours worked.

15. Defendants further failed to pay Plaintiffs and other aggrieved employees all overtime wages owed. Although Defendants required Plaintiffs and other aggrieved employees to work 7 days per workweek and over 8 hours on the 7th workday, Defendants failed to pay them overtime for the first 8 hours on the 7th workday and/or twice their regular rate of pay for hours worked over 8 on the 7th consecutive workday in the workweek, in violation of Labor Code § 510(a) (“Any work in excess of 12 hours in one day shall be compensated at the rate of no less

1 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours
2 on any seventh day of a workweek shall be compensated at the rate of no less than twice the
3 regular rate of pay of an employee.”) Defendants further failed to pay Plaintiffs and other non-
4 exempt employees all overtime wages owed as a result of its failure to properly calculate
5 Plaintiffs’ and other aggrieved employees’ regular rates of pay. Specifically, Defendants paid
6 Plaintiffs and other aggrieved employees non-discretionary incentive pay, including but not
7 limited to payments denoted in their wage statements as “Bonus Sales,” and/or other forms of pay
8 that are not excludable from an employee’s “regular rate” of pay (hereinafter the aforementioned
9 forms of pay are collectively referred to as “Incentive Pay”). However, Defendants failed to
10 properly calculate Plaintiffs’ and other aggrieved employees’ “regular rate” of pay as a result of
11 their receipt of Incentive Pay by failing to properly incorporate the Incentive Pay into their
12 “regular rate” of pay, thereby miscalculating and underpaying overtime wages owed to them.

13 16. Defendants failed to separately compensate Plaintiffs and other aggrieved
14 employees for rest periods. When Plaintiffs and other aggrieved employees were paid on a
15 commission basis and worked shifts of 3.5 hours or more, they were not provided with a paid rest
16 period for every 4-hour period worked, or major fraction thereof, because Defendants’
17 commission pay plan failed to separately compensate Plaintiffs and other aggrieved employees
18 for required rest periods, as required under California law. *See Vaquero v. Stoneledge Furniture*
19 *LLC*, 9 Cal.App.5th 98, 110 (2017); *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) (“There
20 is no dispute that Safeway’s activity-based compensation system did not separately compensate
21 drivers for their rest periods.”); Labor Code § 226.2(a)(1) (requiring employers to pay piece rate
22 employees separate for rest periods and other nonproductive time). This also resulted in a failure
23 to authorize and permit rest periods, since any rest periods were not paid as required under the
24 law. As a result of Defendants’ failure to authorize and permit all legally required rest periods
25 and its unlawful rest period policy/practice, Defendants failed to compensate their employees
26 with the required rest period premium for each workday in which Plaintiffs and other aggrieved
27 employees experienced a rest period violation, and failed to compensate Plaintiffs and other
28 aggrieved employees for all minimum and overtime wages that should have been earned during

1 paid rest periods. Upon information and belief, during at least a portion of the relevant time
2 period, Defendants maintained no payroll code for paying rest period premiums under Labor Code
3 § 226.7.

4 17. Defendants also failed to provide Plaintiffs and other aggrieved employees with
5 legally-compliant meal periods of at least 30-minutes commencing before the conclusion of the
6 fifth hour of work, and/or a second meal period when they worked shifts in excess of 10.0 hours,
7 by virtue of its unlawful written meal period policy and practice. Specifically, Defendants' written
8 meal period policy requires employees to take a 30- minute break within the first *six (6) hours* of
9 the start of their shift, rather than the first 5 hours as required under California law. The policy
10 further goes on to state that "[i]n order to provide efficient Company operations, meal periods
11 should not be taken during peak periods, such as dialing time 3:30 pm-8:30 pm during the week."
12 As Plaintiffs and other aggrieved employees regularly worked a shift from 2:00 pm to 8:30 pm,
13 Plaintiffs were not able to take timely meal periods prior to the end of their fifth hour of work
14 and/or were often not provided with any meal periods. Additionally, Defendants failed to keep
15 accurate records of employee hours worked, including time records showing when employees
16 were provided with meal periods. During Plaintiffs' and other aggrieved employees' employment
17 with Defendants, Defendants did not require Plaintiffs and other aggrieved employees to clock in
18 and out for their meal periods, and maintained no other records of employee meal periods.
19 Defendants also did not cease operations during meal periods. Instead, Defendants automatically
20 deducted 30-minutes from employee time records regardless if they were actually provided with
21 a legally compliant 30-minute meal period, and falsely altered employee time records to show
22 meal periods that were, in fact, never taken. For example, Defendants would regularly alter
23 Plaintiffs' time records to indicate that they had taken 30-minute meal periods at some point
24 between 3:30 and 8:30 pm, even though Defendants' own written policy expressly prohibited
25 employees from taking meal periods during those "peak" hours as noted above. As a result of
26 Defendants' failure to provide all legally required meal periods, unlawful deduct policy, and
27 failure to accurately record employee meal periods, Defendants failed to compensate their
28 employees with the required meal period premium for each workday in which employees

1 experienced a meal period violation, and also failed to compensate its employees for all minimum
2 and/or overtime wages earned.

3 18. Defendants also failed to reimburse Plaintiffs and other aggrieved employees for
4 all reasonable and necessary work expenditures, including, but not limited to, mileage and for use
5 of their personal vehicles and for use of their personal laptops. Specifically, Defendants required
6 Plaintiffs and other aggrieved employees to use their personal vehicles to travel to different sites
7 for “talent searches” but did not reimburse Plaintiffs and other aggrieved employees for their
8 mileage incurred. Additionally, although Defendants required Plaintiffs and other aggrieved
9 employees to use their personal laptops for worked related purposes, including accessing the
10 server when working from home or when the computers in the office were not working,
11 Defendants failed to reimburse Plaintiffs and other aggrieved employees for use of their personal
12 laptops. As a result of Defendants’ failure to reimburse Plaintiffs and other aggrieved employees
13 for these necessary work expenditures, Plaintiffs and other aggrieved employees are entitled to
14 reimbursement pursuant to Labor Code §2802.

15 19. Defendants also failed to compensate Plaintiffs and other aggrieved employees for
16 all required reporting time pay. Defendants required Plaintiffs and other aggrieved employees to
17 report to work on Mondays and Fridays, either by logging on to a remote computer or appearing
18 in person at Defendants’ worksite, but did not always provide them with half of their usual
19 scheduled work day. Further, on occasions when employees reported for work and were not
20 provided with at least half of their scheduled days’ work, Defendants did not compensate
21 employees for at least half of their scheduled hours, a minimum of two hours and maximum of
22 four hours, at the employee’s regular rate of pay, in violation of the Wage Order.

23 20. As a result of Defendants’ failure to pay all minimum and overtime wages, as well
24 as meal and rest period premium wages, Defendants maintained inaccurate payroll records, and
25 issued inaccurate wage statements to Plaintiffs and other aggrieved employees. Additionally,
26 Defendants issued facially non-compliant wage statements to Plaintiffs by failing to include the
27 address of the legal entity that is the employer, in violation of Labor Code § 226(a)(8); failing to
28 list the total hours of compensable rest and recovery periods and the corresponding rate of

1 compensation and gross wages for those periods, in violation of Labor Code § 226.2(a)(2)(A);
2 and failing to state the total hours of non-productive time along with the corresponding rate of
3 compensation and gross wages for non-productive time worked, in violation of Labor Code §
4 226.2(a)(2)(B).

5 21. Additionally, as a result of their failure to pay all minimum wages, overtime
6 wages, and meal and rest period premiums, Defendants failed to pay all final wages to Plaintiffs
7 and other aggrieved former employees at the separation of their employment. Defendants further
8 failed to timely pay all final wages to Plaintiffs and other aggrieved employees as a result of its
9 failure to provide Plaintiffs with their final pay checks until approximately two weeks after they
10 were terminated.

11 22. Based on the foregoing, Plaintiffs seek to represent themselves and other
12 aggrieved employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor
13 Code violations discussed herein, including all non-exempt employees who worked for
14 Defendants in California from the one year plus 178 days prior to Plaintiffs' giving PAGA notice
15 to the LWDA.

16 **FIRST CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **(AGAINST ALL DEFENDANTS)**

19 23. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though
20 fully set forth herein.

21 24. Defendants have committed Labor Code violations against Plaintiffs and other
22 aggrieved employees. Plaintiffs are "aggrieved employees" within the meaning of the PAGA
23 and, acting on behalf of themselves, other aggrieved employees, and the State of California, bring
24 this representative action against Defendants to recover the civil penalties due to Plaintiffs and
25 other aggrieved employees against whom one or more of the violations has been committed, and
26 the State of California according to proof, pursuant to Labor Code § 2699, including, but not
27 limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00
28 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for

1 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
2 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
3 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
4 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
5 initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to
6 Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation
7 and \$200.00 for each subsequent violation per employee per pay period for those violations of
8 the Labor Code for which no civil penalty is specifically provided pursuant to Labor Code §
9 2699(f), based on the following Labor Code violations:

- 10 a. Failing to pay Plaintiffs and other aggrieved employees at least the statutory
11 minimum wage for all hours worked in violation of Labor Code §§ 204, 226.2,
12 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 13 b. Failing to pay Plaintiffs and other aggrieved employees all overtime and/or
14 double time compensation earned in violation of Labor Code §§ 204, 226.2,
15 510, 558, 1194, and 1198;
- 16 c. Failing to authorize and permit all legally required rest periods, and failing to
17 pay rest period premiums, to Plaintiffs and other aggrieved employees in
18 violation of Labor Code §§ 226.7, 226.2, 516, 558, and 1198;
- 19 d. Failing to provide all legally required meal periods and by failing to pay meal
20 period premiums, to Plaintiffs and other aggrieved employees in violation of
21 Labor Code §§ 226.7, 512, 558, and 1198;
- 22 e. Failing to reimburse Plaintiffs and other aggrieved employees for all necessary
23 work expenditures incurred, in violation of Labor Code §§ 2802 and 2804;
- 24 f. Failing to furnish Plaintiffs and other aggrieved employees with accurate,
25 itemized wage statements in violation of Labor Code §§ 226 and 226.2;
- 26 g. Failing to timely pay all final wages due to Plaintiffs and other aggrieved
27 former employees, in violation of Labor Code §§ 201-203;
- 28 h. Failing to pay Plaintiffs and other aggrieved employees all earned wages at

1 least twice during each calendar month, in violation of Labor Code § 204; and
2 i. Failing to maintain accurate records on behalf of Plaintiffs and other aggrieved
3 employees, in violation of Labor Code § 1174, 1198, and 1199.

4 25. On or about December 23, 2020, Plaintiffs notified Defendant Barbizon School of
5 San Francisco., Inc. via certified mail, and the California Labor and Workforce Development
6 Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and
7 Plaintiffs’ intent to bring a claim for civil penalties under the PAGA with respect to violations of
8 the California Labor Code identified in Paragraph 24 (a)-(i) above. Now that sixty-five (65) days
9 have passed from Plaintiffs’ notifying Defendants and the LWDA of these violations, Plaintiffs
10 have exhausted their administrative requirements for bringing a claim under the PAGA with
11 respect to these violations.

12 26. Plaintiffs were compelled to retain the services of counsel to file this court action
13 to protect their interests and the interests of other aggrieved employees, and to assess and collect
14 the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys’ fees and costs,
15 which he is entitled to recover under California Labor Code § 2699(g).

16 **PRAYER**

17 WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose
18 behalf this suit is brought against Defendants, as follows:

19 1. Upon the First Cause of Action, for civil penalties due to Plaintiffs, other aggrieved
20 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
21 2699(a) and (f) including, but not limited to: 1) \$100.00 for each initial violation for each failure
22 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
23 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
24 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
25 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
26 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
27 pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
28 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial

1 violation and \$200 for each subsequent violation per employee per pay period for those violations
2 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
3 violations identified in Paragraph 24 (a)-(i);

4 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
5 2699(g) and Code of Civil Procedure § 1021.5; and

6 3. For such other and further relief the Court may deem just and proper.
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8 Dated: March 1, 2021

Respectfully submitted,
HAINES LAW GROUP, APC



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10 By: _____

11 Paul K. Haines
12 Attorneys for Plaintiffs
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