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11 *attorneys general*

12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**

14 **JASON KINGSLEY, individually**
15 **and on behalf of the proposed class,**

16 **Plaintiffs,**

17 **v.**

18 **IKEA US RETAIL, LLC, a Virginia**
19 **Limited Liability Company; IKEA**
20 **US WEST, form unknown; and**
21 **DOES 1 through 50, inclusive,**

22 **Defendants.**

Case No.:

REPRESENTATIVE ACTION
COMPLAINT FOR:

Violation of the Private Attorneys
General Act of 2004, Cal. Lab.
Code § 2698, et seq.

23 Plaintiff, Jason Kigsley (hereinafter “Plaintiff”), individually, and on behalf of the
24 general public as private attorneys general and all other aggrieved employees, by and
25 through his attorneys, hereby brings this Representative Action Complaint against
26 Defendants IKEA US RETAIL LLC, and IKEA US WEST . (hereinafter referred to as
27 “Defendants”), as follows:

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1 **I. INTRODUCTION**

2 1. Defendants are in the business of operating retail businesses that sell goods
3 throughout the state of California.

4 2. Upon information and belief Plaintiff's job title was a Forklift Operator.

5 3. Upon information and belief Plaintiff and other employees were not provided
6 adequate meal and rest breaks pursuant to California Labor Code.

7 4. Upon information and belief Plaintiff and other employees were not paid for
8 all hours worked, in violation of the Labor Code.

9 5. Upon information and belief Plaintiff and other employees were not provided
10 with an accurate pay stub.

11 6. Upon information and belief Plaintiff and other employees were not paid all
12 their wages at the time of their separation of employment.

13 7. Upon information and belief Plaintiffs were not paid an accurate rate of pay.

14 8. The individuals Plaintiff seeks to represent in this action are current and
15 former employees who are similarly situated to themselves in terms of their positions, job
16 duties, pay structure, and Defendants' violations of California law.

17 **II. JURISDICTION AND VENUE**

18 9. This Court has jurisdiction over Plaintiffs' claims for civil penalties under the
19 Private Attorneys General Act ("PAGA"), Cal. Labor Code § 2698, *et seq.*

20 10. Venue is proper in this Court because Defendants employed Plaintiff and other
21 similarly situated employees in Alameda County California at various locations throughout
22 the County.

23 **III. PARTIES**

24 11. Plaintiff was hired by Defendants in approximately July 17, 2012 as a
25 non-exempt employee. Plaintiff was paid an hourly rate at all times. Plaintiff's duties
26 were as follows: Operating a forklift, stocking shelves, and performing general duties
27 assigned to him in the State of California, county of Alameda.
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12. Additional individuals were or are employed by Defendants as hourly employees during the past four years.

13. Defendant, Ikea US Retail, LLC a Virginia Limited Liability company and IKEA US West, form unknown, (doing business as IKEA), hereinafter referred to as “IKEA” employ employees throughout the United States and in the County Alameda.

14. Upon information and belief, Defendants employed hundreds of employees in California and other states during the last four years to perform services in the retail stores and in other facilities.

15. Plaintiff is informed and believes, and alleges thereon, that Defendants are responsible for meal and rest break violations, for unpaid wages, for paying an accurate rate of pay, and for providing inaccurate wage statements.

IV. FACTUAL ALLEGATIONS

1. At all times during the liability period, IKEA has conducted business by providing Retail Services in Alameda County and elsewhere within California.

2. Plaintiff was employed by Defendant as a Forklift operator, in approximately July 17, 2012 until June 22, 2020, as a non-exempt employee. Plaintiff was paid an hourly rate at all times. Plaintiff’s duties were as follows: Operating a forklift, stocking shelves, and performing general duties assigned to him in the State of California, county of Alameda.

3. Plaintiff work(ed) in non-exempt, non-managerial positions, such as a Fork Lift Operator, and however titled, and similar and incidental positions in California.

4. Plaintiff is informed and believes, and based thereon alleges, Defendant currently employs and during the relevant period has employed hundreds of employees in the State of California in non-exempt positions, such as Plaintiff and/or other similar positions.

5. Plaintiff is, and at all times pertinent hereto, has been a non-exempt employee within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

1 6. Plaintiff is informed and believes, and based thereon alleges, that non-exempt
2 employees are compensated by an hourly rate and upon information and belief, these
3 employees have not been paid wages for all hours worked.

4 7. In addition, on information and belief IKEA did not compensate Plaintiff with a
5 correct rate of pay.

6 8. In addition, on information and belief IKEA failed to pay Plaintiff overtime for all
7 overtime hours, and failed to pay an accurate overtime rate.

8 9. In addition, as a result of Ikea's policies, as well as productivity requirements and
9 work schedules implemented and enforced by Ikea, Plaintiff was unable to take a 2nd meal
10 break, and was prohibited from leaving the premises for a lawful net-ten-minute rest period
11 for every four hours worked or major fraction thereof, and/or lawful 30 minuet meal breaks
12 for work period of more than five hours per day.

13 10. On information and belief, Ikea did not relieve Plaintiff of all duties during meal
14 and rest periods nor did it relinquish control over how Plaintiff spent his meal and rest
15 break time.

16 11. Plaintiff was not paid one additional hour of pay at the employee's regular rate of
17 pay for each workday that the meal and/or rest period was not provided.

18 12. On information and belief, Defendant knew or should have known that it is
19 improper and unlawful to commit the following acts:

- 20 a. failing to authorize and permit a paid ten-minute rest period for every four
21 hours worked or a major fraction thereof;
- 22 b. failing to authorize and permit a lawful 30 minuet meal break for work period
23 of more than five hours per day;
- 24 c. failing to compensate employees with one (1) hour of pay at the regular rate
25 of compensation for each workday that a legally compliant meal or rest period
26 was not provided;
- 27

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- d. failing to pay all wages due and owing upon separation from Defendant's employ;
- e. failing to provide accurate, itemized wage statements; and
- f. failure to pay minimum and overtime wages.

13. Plaintiff is informed and believes, and thereon alleges, that Defendant is and was advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws. Accordingly, Plaintiff is informed and believes that such violations during the liability periods were willful and deliberate.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of Private Attorneys General Act of 2004, Labor Code § 2698, Et Seq.

(Against all Defendants)

14. Plaintiff incorporates the above allegations as if fully set forth herein.

15. Pursuant to California Labor Code § 2699.3,

(a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the

aggrieved employee may commence a civil action pursuant to Section 2699.

16. On or about December 28, 2020, Plaintiff complied with the notice requirements pursuant to California Labor Code § 2699.3 and gave written notice via online filing and certified mail of the specific provisions alleged to have been violated to the Labor and Workforce Development Agency (“LWDA”) and Defendant. A true and correct copy of the notice is attached hereto as **Exhibit A** and incorporated herein by reference.

17. Sixty-five (65) days has passed since Plaintiff provided written notice required by Labor Code § 2699.3. Therefore, Plaintiff may commence a civil action pursuant to Labor Code § 269.3(a)(1)-(2).

18. Plaintiff is an aggrieved employee as defined in Labor Code § 2699(c). Plaintiff brings this action on her own behalf and on behalf of other Aggrieved Employees.

19. Plaintiff regularly worked in excess of four hours or major fraction thereof a day without being provided a rest period of not less than 10 minutes in which she was relieved of all duties, as required by California Labor Code §§ 226.7 and Wage Order No. 7-2001. Similarly Plaintiff was not provided with a lawful 30 minute meal break, in violation of California Labor Code §§ 512 and Wage Order No. 7-2001.

20. As a consequence of productivity requirements and work schedules implemented and enforced by Holiday, Plaintiff was often unable to take lawful net-ten-minute rest periods and lawful 30 minute meal breaks for every five hours worked. As a result of violations of California Labor Code § 226.7; 512, and Wage Order No. 7-2001, Holiday is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

21. Defendant has violated California Labor Code §§ 510, 1194 and IWC Wage Order 7-2001 by willfully failing to pay for all hours worked, including hourly wages for Off-the-clock work. Also by allowing Plaintiff to work through meal and rest periods Defendant failed to pay hourly wages, including minimum and overtime wages earned. In addition, the Aggrieved Employees are entitled to liquidated damages equal to unlawfully unpaid minimum wages with interest pursuant to Labor Code § 1194.2. As a result of

1 violations of California Labor Code § 510, 1194 and Wage Order No. 7-2001, NAF is
2 liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

3 22. Defendant has violated California Labor Code §§ 201 and 202 by willfully failing
4 to pay all compensation due and owing to Plaintiff at the time employment was terminated.
5 Defendant failed to pay Plaintiff all compensation due upon termination of employment as
6 required under California Labor Code §§ 201 and 202, including meal and rest period
7 premium pay and commissions. Accordingly, Defendant has violated California Labor
8 Code §§ 201, 202, and 203, Defendant is liable for civil penalties pursuant to Labor Code
9 § 2698 *et seq.*

10 23. Defendant has violated Labor Code § 226(a) by willfully failing to furnish Plaintiff
11 with accurate, itemized wage statements showing the actual hours worked. As described
12 above, Defendant deliberately failed to pay wages for time worked, failed to apply the
13 bonus earnings to the overtime rate and failed to pay rest period premiums, and, therefore,
14 knew or should have known that the wage statements were inaccurate. As a result of
15 violations of California Labor Code § 226(a), Defendant is liable for civil penalties
16 pursuant to California Labor Code § 2698 *et seq.*

17 24. Labor Code § 558 provides:

18 “An employer or other person acting on behalf of an employer who violates,
19 or causes to be violated, a section of this chapter or any provision regulating
20 hours and days of work in any order of the Industrial Welfare Commission
shall be subject to a civil penalty as follows:

21 “(1) For any initial violation, fifty dollars (\$50) for each underpaid employee
22 for each pay period for which the employee was underpaid in addition to an
23 amount sufficient to recover underpaid wages.

24 (2) For each subsequent violation, one hundred dollars (\$100) for each
25 underpaid employee for each pay period for which the employee was
26 underpaid in addition to an amount sufficient to recovery underpaid wages.”

27 Plaintiff is not claiming any wages under Labor Code § 558.
28

1 25. Labor Code § 2699(f) provides:

2
3 (f) For all provisions of this code except those for which a civil penalty is
4 specifically provided, there is established a civil penalty for a violation of
these provisions, as follows:

5 (1) If, at the time of the alleged violation, the person does not employ one or
6 more employees, the civil penalty is five hundred dollars (\$500).

7 (2) If, at the time of the alleged violation, the person employs one or more
8 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
9 employee per pay period for the initial violation and two hundred dollars
10 (\$200) for each aggrieved employee per pay period for each subsequent
violation.

11 26. As a direct and proximate result of Defendant's conduct as alleged above, Plaintiff
12 and the Aggrieved Employees are entitled to a civil penalty of at least fifty dollars (\$50)
13 for the initial pay period, and at least one hundred dollars (\$100) for each subsequent pay
14 period for which Defendant violated the Labor Code and applicable Wage Order as alleged
15 herein.

16 27. Pursuant to Labor Code § 2698, *et seq.*, Plaintiff seeks to recover civil penalties only
17 as prescribed by the Labor Code Private Attorneys General Act of 2004 as the
18 representative of the State of California for the illegal conduct perpetrated on Plaintiff and
19 the Aggrieved Employees.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a jury trial on issues triable to a jury.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment as follows:

24 1. For recovery of civil penalties as prescribed by the Labor Code Private Attorneys
25 General Act of 2004, Labor Code § 2698, *et seq.*;

26 2. An award of penalties, attorneys' fees and costs of suit, as allowable under the law,
27 including, but not limited to, pursuant to Labor Code sections 2698, *et seq.*; and

28 3. For such other and further relief as the Court deems just and proper.

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2 Dated: 12/28/20
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Respectfully Submitted,

JAMES HAWKINS APLC

4 By: _____

5 JAMES HAWKINS, ESQ.

6 SEAN S. VAHDAT, ESQ.

7 Attorneys for Plaintiffs and Members of the
8 General Public
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