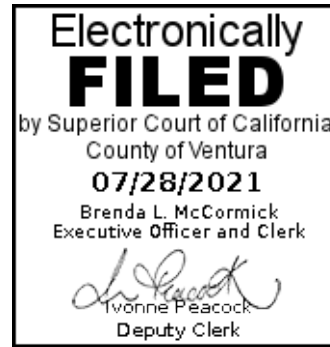


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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

KIMBERLY KIPP, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

KINDERCARE EDUCATION LLC, a
Delaware Limited Liability Company, and
DOES 1 through 100,

Defendants.

Case No.: 56-2021-00556612-CU-OE-VTA

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Kimberly Kipp (“Plaintiff”) on behalf of herself and all others similarly situated,
2 hereby brings this Representative Action against Defendants KinderCare Education LLC, a
3 Delaware Limited Liability Company, and DOES 1 to 100, inclusive (collectively “Defendants”),
4 and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all similarly aggrieved employees, hereby brings
7 this representative action for recovery civil penalties under California Labor Code § 2698 *et seq.*
8 This Court has jurisdiction over Defendants’ violations of the California Labor Code because the
9 amount in controversy exceeds this Court’s jurisdictional minimum.

10 **VENUE**

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

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was and currently is, a California resident. During the statute of limitations period,
20 Plaintiff was employed by Defendants as a non-exempt employee.

21 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
22 year preceding the date the California Labor and Workforce Development Agency (“LWDA”)
23 and Defendants were put on notice (and subsequent filing of this matter) and continuing to the
24 present, Defendants did (and continue to do) business within the County of Ventura and the State
25 of California by operating local day care centers that offer year-round child care and early
26 childhood education for kids from ages 0-12, and therefore, were (and are) doing business in the
27 County of Ventura and the State of California.

1 5. Plaintiff does not know the true names or capacities, whether individual, partner,
2 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
3 defendants are sued under such fictitious names. Plaintiff prays for leave to amend this
4 Representative Action Complaint when the true names and capacities are known. Plaintiff is
5 informed and believes, and based thereon alleges, that each fictitiously named defendant is and
6 was responsible in some way for the alleged wage and hour violations and other wrongful conduct
7 which subjected Plaintiff and the aggrieved employees, as defined below, to the illegal
8 employment practices, wrongs and injuries complained of herein. All references in this Complaint
9 to “Defendants” shall be deemed to include all DOE Defendants.

10 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 mentioned herein, Defendants were and are the employers of Plaintiff and the aggrieved
12 employees (as defined herein).

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

20 8. At all times mentioned herein, Defendants, and each of them, were members of
21 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
22 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
23 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
24 aggrieved employees (as defined herein).

25 **REPRESENTATIVE ACTION ALLEGATIONS**

26 9. Defendants are among the largest for-profit providers of early childhood education
27 in the United States. Plaintiff worked for Defendants as a non-exempt hourly employee, in the
28

position of Site Director, from approximately June 15, 2016 to March 8, 2021. Throughout her employment with Defendants, Plaintiff provided before and after school care for school children.

10. During Plaintiff's employment with Defendants, Defendants maintained an unlawful timekeeping policy/practice that failed to compensate Plaintiff and other non-exempt employees for all hours actually worked. Specifically, Defendants required Plaintiff and other non-exempt employees to clock in and out according to their pre-determined work schedules, regardless of when they actually began and ended their work periods. For example, Defendants usually scheduled Plaintiff to work from 6:00 a.m. to 8:30 a.m. (before school) and then again from 1:15 p.m. to 6:00 p.m. (afterschool), but Plaintiff was routinely required to begin work prior to 6:00 a.m. and/or continue working after 6:00 p.m., and spent a considerable portion of the time between 8:30 a.m. and 1:15 p.m. performing required work activities without compensation. This is corroborated by, among other things, Plaintiff's "headcount sheets" which were filled out and signed every 30 minutes and show Plaintiff's signature appearing at times when she was not on the clock. Despite Defendants knowing that Plaintiff and other non-exempt employees were performing work off-the-clock, Defendants only paid Plaintiff and other non-exempt employees for their recorded time. Therefore, Plaintiff and other aggrieved employees were not compensated for all hours actually worked, depriving them of all required minimum and overtime wages earned.

11. Defendants also required Plaintiff and other aggrieved employees to use their personal cellular phones and vehicles for work. Specifically, Defendants required Plaintiff and other aggrieved employees to use their personal cellular phones to clock in and out of shifts through a smartphone application portal, as well as to communicate with supervisors and coworkers. Defendants required Plaintiff and other aggrieved employees to drive their personal vehicles for work purposes, including to drop off and pick up Defendants' mail at the United Parcel Service (UPS). However, Defendants never reimbursed Plaintiff or other aggrieved employees for any portion of their cellular phone expenses and/or for all necessary business expenses associated with using their personal vehicles, including mileage, as mandated by *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014), and Labor Code § 2802.

1 12. Throughout Plaintiff's employment, Defendants failed to provide Plaintiff and
2 other non-exempt employees with all legally-compliant meal periods due to Defendants' unlawful
3 meal period policies/practices that failed to provide timely, duty-free 30-minute meal periods
4 commencing before the end of the fifth hour of work. Defendants instructed Plaintiff and other
5 non-exempt employees to clock out for their meal period prior to the end of their fifth hour of
6 work regardless of whether they were actually able to take a meal period at that time. This is also
7 corroborated by the "headcount sheets" which show Plaintiff's signatures appearing during times
8 when she was purportedly taking a meal period. Additionally, due to work demands imposed by
9 Defendants, Plaintiff and other non-exempt employees were at times only able to take interrupted
10 meal periods during which they were required to perform work duties. On occasions when
11 Plaintiff and other non-exempt employees were not provided with all lawful duty-free meal
12 periods to which they were entitled, Defendants failed to pay Plaintiff and other non-exempt
13 employees an additional hour of premium pay at their respective rates of pay for each workday
14 in which a meal period violation occurred, as required by Labor Code section 226.7.

15 13. Defendants also failed to authorize and permit Plaintiff and other non-exempt
16 employees to take any required duty-free rest periods for every four hours worked, or major
17 fraction thereof, because, upon information and belief, Defendants did not maintain a lawful rest
18 period policy. Specifically, Defendants informed Plaintiff and other non-exempt employees that
19 they did not qualify for rest periods because they did not work "five consecutive hours." Despite
20 Defendants' failure to provide Plaintiff and other non-exempt employees with all rest periods to
21 which they were entitled, Defendants failed to compensate Plaintiff and other non-exempt
22 employees with an additional hour of premium pay at their respective rates of pay for each
23 workday in which a rest period violation occurred, as required by Labor Code section 226.7.

24 14. As a result of Defendants' failure to pay all earned minimum and overtime wages,
25 as well as meal and rest period premium wages, Defendants maintained inaccurate payroll
26 records, issued inaccurate wage statements to Plaintiff and other aggrieved employees, and failed
27 to pay all final wages owed to Plaintiff and other aggrieved employees upon their respective
28 separations from employment.

1 15. Based on the foregoing, Plaintiff seeks to represent herself and all other aggrieved
2 employees, as defined by Labor Code § 2699(c), which includes all of Defendants' non-exempt
3 employees who worked for Defendants in California from May 12, 2020 through the present.

4 **FIRST CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACTION**

6 **(AGAINST ALL DEFENDANTS)**

7 17. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 18. Defendants have committed several Labor Code violations against Plaintiff and
9 other similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of
10 Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
11 representative action against Defendants to recover the civil penalties due to Plaintiff, other
12 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
13 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200 for
14 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
15 each failure to pay each employee; (2) \$50.00 for each initial violation and \$100 for each
16 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
17 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
18 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
19 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
20 \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay
21 period for those violations of the Labor Code for which no civil penalty is specifically provided,
22 based on the following Labor Code violations;

- 23 a. Defendants violated Labor Code §§ 510, 558, 1194 and 1198 by failing to pay
24 Plaintiff and other aggrieved employees all overtime compensation earned;
- 25 b. Defendants violated Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197 by
26 failing to pay Plaintiff and other aggrieved employees the statutory minimum wage
27 for all hours worked;
- 28

- c. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Plaintiff and other aggrieved employees to take all required rest periods, and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. Defendants violated Labor Code § 2802 and 2804 by failing to reimburse Plaintiff and other aggrieved employees for all necessary work expenses;
- f. Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month;
- g. Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;
- h. Defendants violated Labor Code §§ 558, 1174, and 1198 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees; and
- i. Defendants violated Labor Code §§ 201-203 by failing to timely pay all earned wages to separating employees at the time of separation.

19. On May 12, 2021, Plaintiff notified Defendant KinderCare Education LLC, via certified mail, and the LWDA via e-mail of Defendants' alleged California Labor Code violations and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to those violations identified herein. Now that sixty-five (65) days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under PAGA with respect to these violations.

20. 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

1 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
2 she is entitled to receive under California Labor Code § 2699.

3 **PRAYER**

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

6 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
7 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
8 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
9 to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation
10 pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial
11 violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee
12 per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation
13 pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial
14 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
15 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
16 subsequent violation per employee per pay period for those violations of the Labor Code for
17 which no civil penalty is specifically provided, based on the violations of Labor Code sections
18 cited hereinabove;

19 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
20 2699(g), and Code of Civil Procedure § 1021.5; and

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

22
23 Dated: July 28, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

24
25 By:



26 Fletcher W. Schmidt
27 Attorneys for Plaintiff
28