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 ANTHONY YUN, individually and on behalf of other aggrieved employees.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ANTHONY YUN, individually and on behalf
 of other aggrieved employees,

Plaintiff,

and

KINNEY & COMPANY, a California
 Corporation; WILLIAM B. KINNEY, an
 individual; and DOES 1 through 100, inclusive

Defendant.

CASE NO. 21AHCV00147

[Unlimited Civil Jurisdiction]

COMPLAINT FOR:

1. Discrimination (Gov't C. §§12900 *et seq.*);
2. Harassment (Gov't C. §§12900 *et seq.*);
3. Failure to Take Reasonable Steps to Prevent Discrimination (Gov't C. §12900, *et seq.*);
4. Failure to Pay Overtime Wages (Cal. Lab. C. §§ 510, *et seq.*);
5. Failure to Timely Pay Wages Upon Termination (Cal. Lab. C. §§ 201 – 203);
6. Failure to Timely Pay Wages During Employment (Cal. Lab. C. § 204);
7. Failure to Provide Meal Periods (Cal. Lab. C. §§ 226.7, 512, *et seq.*);
8. Failure to Provide Rest Periods (Cal. Lab. C. §§ 226.7, 512, *et seq.*);
9. Failure to Provide Accurate Wage Statements (Cal. Lab. C. §§ 226, *et seq.*);
10. Failure to Indemnify for Business Expenses (Cal. Lab. C. §§ 2802);
11. Failure to Provide Paid Sick Time (Cal. Lab. C. §§ 246, *et seq.*);
12. Unfair Competition (Cal. Bus. & Prof. C. §17200, *et seq.*);
13. Wrongful Termination;
14. Violation of the Private Attorney General Act (Cal. Lab. C. §§ 2698, *et seq.*).

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff ANTHONY YUN, individually and on behalf of other aggrieved employees for causes of action against Defendants KINNEY & COMPANY, a California Corporation, WILLIAM B. KINNEY, an individual, and DOES 1 through 100, inclusive and complains and alleges upon information and belief as follows:

PARTIES

1. Plaintiff ANTHONY YUN ("Plaintiff"), at all times relevant to this action, resided in Los Angeles County, State of California.

2. Plaintiff is informed and believes, and thereon alleges that Defendant KINNEY & COMPANY ("KINNEY & CO.") is a California Corporation with its principal place of business in Los Angeles County, California. At all times relevant hereto, Defendant KINNEY & CO. employed five or more persons.

3. Plaintiff is informed and believes, and based thereon alleges, that Defendant WILLIAM B. KINNEY ("KINNEY") is an owner, director, officer, or managing agent of Defendant KINNEY & CO. and/or DOES 26-50 and is liable to Plaintiff under Cal. Lab. C. § 558.1 for the wage and hour causes of action asserted herein.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants sued herein under fictitious names Does 1 through 100, inclusive, and for that reason sues said Defendants, and each of them, by such fictitious names. Plaintiff is informed, believes, and thereupon alleges that each of the Defendants Does 1 through 100, inclusive, is and was in some manner responsible for, participated in, or contributed to the matters and things of which Plaintiff complains herein, and in some fashion has legal responsibility, therefore. When Plaintiff ascertains the names and capacities of the fictitiously named Defendants Does 1 through 100, inclusive, Plaintiff will seek leave to amend this Complaint to set forth such facts.

5. Plaintiff is informed, believes, and there upon alleges that each Defendants is, and at all times relevant herein was, the agent of his, her, or its co-Defendants, and in committing the acts alleged herein, was acting within the scope of his, her, or its authority as such agent, and with the knowledge, permission, and consent of his, her, or its co-Defendants.

6. Defendant and DOES 1 through 100, shall collectively be referred to in this Complaint as “Defendants” when applicable.

JURISDICTION & VENUE

7. This action is brought pursuant to the California Private Attorneys General Act (“PAGA”), California *Labor Code* sections 2698, *et seq.* The penalties and other remedies sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. It is believed that the total sum owed to Plaintiff and other Aggrieved Employees (“Aggrieved Employees” is defined for all purposes herein as all current and/or former hourly paid or non-exempt employees of Defendant KINNEY & COMPANY) alleged herein is less than \$5,000,000.00, based upon the anticipated number of Aggrieved Employees and the amount in controversy for each member of the Aggrieved Employees.

8. This Court has jurisdiction over this action and the matters alleged herein pursuant to the grant of original jurisdiction set forth in Article VI, Section 10 of the California Constitution. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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

10. Venue is proper in this Court because, upon information and belief, the named Defendants reside, transact business, and/or have offices in this county, and/or the acts or omissions alleged herein took place in this county.

GENERAL ALLEGATIONS

11. Plaintiff is informed and believes, and based thereon alleges, that Defendant KINNEY & CO. is an insurance agency and was in the business of insurance underwriting. At all times relevant hereto, KINNEY & CO.’s principal place of business was in the City of Pasadena, County of Los Angeles, State of California.

1 12. At all times relevant hereto, Defendant KINNEY is and was the owner, director,
2 officer, or managing agent of KINNEY & CO. Plaintiff is informed and believes, and based thereon
3 alleges, that KINNEY resided in Los Angeles County, State of California.

4 13. Beginning in or around November 2020 and continuing until his termination on or
5 around May 7, 2021, Plaintiff worked for Defendants as a customer service representative. His
6 duties included but were not limited to assisting insurance agents and brokers and computing
7 insurance quotes. At all times relevant hereto, Plaintiff performed each and every one of his
8 employment duties competently and effectively and, prior to the events giving rise to this lawsuit,
9 Plaintiff never had any issues with his employer.

10 14. Approximately two months after he began his employment at KINNEY & CO.,
11 Defendant KINNEY began harassing and discriminating against Plaintiff on the basis of his race
12 (Korean), ethnicity, national origin, sexual orientation, and/or perceived sexual orientation.
13 Specifically, KINNEY stated on multiple occasions that he “hates Koreans.” On one occasion,
14 Plaintiff while Plaintiff was explaining that he had gone to a Korean restaurant, KINNEY
15 exclaimed that Plaintiff “smelled like shit” and the Plaintiff “should move his desk,” implying
16 Korean’s and Korean food are foul-smelling. Additionally, on several occasions, KINNEY called
17 Plaintiff “gay” in front of other coworkers.

18 15. Approximately 4-5 months into his employment with KINNEY & CO., Plaintiff’s
19 car was stolen at a retail store parking lot. Accordingly, Plaintiff filed an insurance claim with his
20 carrier. Despite having no reason to believe so, Defendant KINNEY accused Plaintiff of engaging
21 in insurance fraud. Shortly thereafter, KINNEY & CO. forced Plaintiff to sign a 90-day probation
22 letter. When Plaintiff asked Defendant KINNEY what would happen if he didn’t sign the
23 document, KINNEY indicated that Plaintiff would be fired.

24 16. On or around May 7, 2021, only approximately one week after he signed the 90-day
25 probation letter, Plaintiff was terminated.

26 17. Further, at all times during his employment with Defendant KINNEY & CO.,
27 Plaintiff was regularly required to:
28

- (a) work in excess of eight (8) hours in a day and/or forty (40) hours in a week without overtime premium wages.;
- (b) work in excess of eight (8) hours in a day and/or forty (40) hours in a week without appropriate piece rate overtime
- (c) work in excess of five (5) and/or ten (10) hours per day without being provided a first and/or second meal period and not being compensated one (1) hour of pay at his regular rate of compensation for each workday that a meal period was not provided, all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders;
- (d) work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and not being compensated one (1) hour of pay or other compensation at his regular rate of compensation for each workday that a rest period was not provided.

18. At all times relevant hereto, Defendant classified Plaintiff as an exempt employee and compensated Plaintiff on a salary basis. Although Plaintiff was entitled to commission from insurance sales, Defendant required Plaintiff to devote the majority of his work time on non-exempt tasks such as processing applications and generating quotes, processing premium audits, forwarding notice of cancelations to brokers, modifying policies, adding/removing endorsements, binding policies, invoicing brokers, and responding to brokers' questions. As a direct consequence of the realistic requirements of his job, Plaintiff spent less than 15% of his worktime selling insurance products.

19. Plaintiff's exempt classification violates Cal. Lab. C. §515 because Plaintiff falls outside of the contemplated exemptions. Plaintiff's employment does not meet the requirements of the "outside salesperson" exemption under Cal. Labor Code § 1171 because, at all relevant times during his employment, Plaintiff spent less than 15% of his work time selling insurance products. Plaintiff's employment does not meet the requirements of the "commissioned sales" exemption because Plaintiff never earned more than half his income in the form of commissions. See Cal. Code Regs., tit. 8, §§ 11040, subd. (3)(D), 11070, subd. (3)(D).

1 20. At all times relevant to this action, Defendants failed to properly compile, account
2 for, and pay Plaintiff for the hours he worked due to the following uniform practices:

- 3 (a) **Misclassification as Exempt:** Plaintiff and other aggrieved workers were
4 employed by Defendants to perform primarily non-exempt work functions,
5 such as process applications, communicating with brokers, modifying
6 insurance policies, and drafting invoices. However, Defendants misclassified
7 Plaintiff and other aggrieved employees as exempt employees, depriving
8 them of overtime wages, meal and rest breaks, and other benefits and
9 protections afforded by the Labor Code and the Industrial Welfare
10 Commission Wage Orders. Plaintiff and other aggrieved employees' exempt
11 classification violate Cal. Lab. C. § 515 because Plaintiff falls outside of the
12 contemplated exemptions therein and their compensation does not meet the
13 twice the prevailing minimum wage standard under Industrial Welfare
14 Commission's Wage Order 4-2001.
- 15 (b) **Failure to Pay Overtime:** Plaintiff and other aggrieved employees allege
16 that Defendants' practices resulted in the failure to pay all overtime
17 compensation owed. Plaintiff regularly worked in excess of eight (8) hours in
18 a day and forty (40) hours in a week and on the seventh consecutive day of
19 the week without receiving mandatory overtime pay. Plaintiff also alleges
20 that his managers and supervisors failed and refused to record time for time
21 spent performing tasks for the benefit of Defendants. Defendants' unlawful
22 practices and failure to account for time spent on work related tasks resulted
23 in failure to pay overtime wages. Further, Defendant did not pay double time.
- 24 (c) **Failure to Provide Meal and Rest Breaks:** California Labor Code §§ 512
25 and 226.7(a) prohibit an employer from requiring an employee to work more
26 than four hours per day without providing the employee with a 10-minute
27 rest period. 126. Defendants intentionally and consistently required Plaintiff
28 and other aggrieved employees to work for extended periods of time—well

over four hours—without providing the rest periods required by law, thus violating California Labor Code §§ 512 and 226.7.

- (d) **Failure to Provide Paid Sick Time:** Pursuant to Labor Code § 246, *et seq.*, “[a]n employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.” Defendant failed to provide Plaintiff with any sick time in violation of Labor Code § 246, *et seq.*
- (e) **Failure to Timely Pay Wages During Employment:** Plaintiff alleges that Defendants did not pay Plaintiff twice during each calendar month or on regular pay days. Defendants’ failure to timely pay wages to Plaintiff and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 204.
- (f) **Failure to Timely Pay Wages Upon Termination:** Plaintiff alleges that Defendants still owe Plaintiff wages. Defendants’ failure to timely pay all wages to Plaintiff and the other aggrieved employees upon termination in accordance with Labor Code sections 201 and 202 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.
- (g) **Wage Statements:** Defendants did not provide wage statements to Plaintiff or another aggrieved employees. Defendants’ unlawful failure to pay regular, minimum, and/or overtime wages has also resulted in its non-exempt employees receiving inaccurate wage statements. Defendants’ failure to keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

(h) **Waiting Time:** Defendant did not cure its failures to pay minimum, regular, overtime or double-time wages at the time of separation. Accordingly, Plaintiff and other aggrieved employees are entitled to recovery of “waiting time” penalties.

(i) **Failure to Reimburse Necessary Business-Related Expenses and Costs:** Plaintiff was required to use their personal cell phones for work related communications with Defendants. Plaintiffs were never reimbursed for the use of these devices. Further, Plaintiff was never reimbursed for gas costs incurred when required to travel for work-related tasks. Defendants’ failure to reimburse Plaintiff and the other aggrieved employees for necessary business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802 constitutes unlawful and/or unfair activity.

21. Plaintiff has suffered both general and special damages in the past and present and will continue to suffer such damages in the future for an unknown period of time. Plaintiff has also suffered and continues to suffer losses in earnings and other employment benefits, as well as past and future non-economic injury. Moreover, Defendants’ unlawful conduct has adversely affected Plaintiff’s personal health and well-being. Plaintiff has also suffered extensive general damages in the form of anxiety, anguish, and mental suffering. Plaintiff’s damages are continuing and in an amount not yet determined, but in excess of the jurisdictional minimum of this Court.

PAGA ALLEGATIONS

22. At all times herein set forth, PAGA was applicable to Plaintiff’s employment with Defendant KINNEY & CO.

23. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the California Labor & Workforce Development Agency (“LWDA”) for Labor Code violations may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California *Labor Code* section 2699.3.

1 24. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
2 employee,” who is any person that was employed by the alleged violator and against whom one or
3 more of the alleged violations was committed.

4 25. Plaintiff was employed by Defendants, and the alleged violation was committed
5 against him during his time of employment, and he is therefore an aggrieved employee. Plaintiff
6 and other employees of Defendant KINNEY & CO. are “aggrieved employees” as defined by
7 California *Labor Code* section 2699(c) in that they are all current or former employees of
8 Defendants, and one or more of the alleged violations were committed against them.

9 26. Pursuant to California *Labor Code* sections 2699.3 and 2699.5, an aggrieved
10 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
11 requirements have been met:

12 (a) The aggrieved employee shall give written notice by online submission (hereinafter
13 “Employee’s Notice”) to the Labor & Workforce Development Agency (hereinafter
14 “LWDA”) and by U.S. Certified Mail to the employer of the specific provisions of
15 the California Labor Code alleged to have been violated, including the facts and
16 theories to support the alleged violations.

17 (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and
18 the aggrieved employee by certified mail that it does not intend to investigate the
19 alleged violation within sixty (60) calendar days of the postmark date of the
20 Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is
21 not provided within sixty-five (65) calendar days of the postmark date of the
22 Employee’s Notice, the aggrieved employee may commence a civil action pursuant
23 to California *Labor Code* section 2699 to recover civil penalties in addition to any
24 other penalties to which the employee may be entitled.

25 27. On October 5, 2021, Plaintiff provided written notice by online submission to the
26 LWDA and by U.S. Certified Mail to Defendant of the specific provisions of the California Labor
27 Code alleged to have been violated, including the facts and theories to support the alleged
28

1 violations. Plaintiff has not received an LWDA Notice within sixty-five (65) calendar days of the
2 date of Plaintiff's notice.

3 28. Therefore, Plaintiff has satisfied the administrative prerequisites under California
4 Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other
5 remedies, for violations of California Labor Code sections 201– 204, 226.7, 226.8, 246, 248.5, 510,
6 512, 515, 1174, 2800, 2802.

7 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 25. On or about October 29, 2021, the Department of Fair Employment and Housing
9 issued a Notice of Case Closure and Right-to-Sue letter to Plaintiff, authorizing the filing of a
10 private lawsuit in order to enforce rights under the Fair Employment and Housing Act ("FEHA").
11 Plaintiff has timely exhausted all administrative remedies required by FEHA as a prerequisite to
12 filing this action.

13 **FIRST CAUSE OF ACTION**

14 **Discrimination in Violation of Gov't Code §§ 12900, *et seq.***

15 **(Against Defendants KINNEY & CO. and DOES 1 - 25)**

16 26. Plaintiff refers to and incorporates by reference each and every paragraph above as
17 though fully set forth herein.

18 27. Defendant KINNEY & CO. is subject to suit under the Fair Employment and
19 Housing Act, Government Code section 12940, *et seq.* ("FEHA"), in that it regularly employs five
20 or more persons. (Gov. Code § 12926, *et seq.*)

21 28. California Government Code section 12940(a) prohibits discrimination on the basis
22 of an employee's race, ethnicity, national origin, sexual orientation, and/or perceived sexual
23 orientation. This prohibition encompasses a proscription against an employer discharging an
24 employee because of his or her race, ethnicity, national origin, sexual orientation, and/or perceived
25 sexual orientation. (Gov. Code § 12940(a)).

26 29. At all times relevant hereto, Plaintiff was employed by Defendant KINNEY & CO. a
27 customer service representative. Defendant was at all times aware of Plaintiff's race (Korean),
28 ethnicity, national origin, and/or sexual orientation. Nevertheless, Defendant discriminated against

1 Plaintiff on the basis of his race, ethnicity, national origin, sexual orientation, and/or perceived
2 sexual orientation.

3 30. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff's race,
4 ethnicity, national origin, sexual orientation, and/or perceived sexual orientation was a substantial
5 motivating factor in Plaintiff's termination.

6 31. As a result of Defendant's discriminatory conduct, Plaintiff has suffered and
7 continues to suffer substantial losses in earnings and other employment benefits, has incurred
8 attorneys' fees and costs and medical bills, all to Plaintiff's damage and in excess of the minimum
9 jurisdiction of this court, the precise amount of which will be proven at the time of trial. Plaintiff
10 claims such amount as damages together with prejudgment interest pursuant to Civil Code Section
11 3287 and/or any other provision of law providing for pre-judgment interest.

12 32. As a result of Defendant's discriminatory conduct, Plaintiff has suffered and
13 continues to suffer severe anxiety, humiliation, mental anguish, embarrassment, worry,
14 sleeplessness, mental and emotional distress, loss of reputation, and other incidental damages and
15 out-of-pocket expenses, all to Plaintiff's general damage and in excess of the minimum jurisdiction
16 of this court, the precise amount of which will be proven at the time of trial.

17 33. Defendant, in engaging in the unlawful conduct alleged above, acted with a
18 conscious disregard of Plaintiff's rights, and with the intent to vex, injure, and annoy Plaintiff, such
19 as to constitute oppression, fraud, or malice under California Civil Code § 3294, thereby entitling
20 Plaintiff to exemplary or punitive damages.

21 **SECOND CAUSE OF ACTION**

22 **Harassment in Violation of Gov't Code §§ 12900, *et seq.***

23 **(Against Defendants KINNEY & CO. and DOES 1 - 25)**

24 34. Plaintiff refers to and incorporates herein by reference the above paragraphs as
25 though fully set forth herein.

26 35. Defendant is subject to suit under FEHA, Government Code section 12940, *et seq.*,
27 in that it regularly employs five or more persons. Gov. Code sec. 12926 *et seq.*

28 36. Plaintiff was, at all times relevant to this action, protected under the FEHA.

1 37. The Fair Employment and Housing Act makes it unlawful for any employer to
2 harass an employee on the basis of his race, color, national origin, sexual orientation or all of them
3 Gov. Code sec. 12940(a), 12940(j)(1).

4 38. Defendants harassed Plaintiff, and permitted Plaintiff to be harassed, on the basis of
5 his race or color or national origin or all of them, alleged herein, and, as such, violated California
6 Government Code section 12940, et seq.

7 39. As alleged, herein, Plaintiff was subjected to unwelcome conduct and comments that
8 were based on his race, national origin or perceived sexual orientation. Such conduct was severe
9 and/or pervasive so as to alter the conditions of Plaintiff's employment and create an abusive
10 working environment.

11 40. Plaintiff is informed and believes, and based thereon alleges, that as a direct and
12 proximate result of the acts alleged herein, Plaintiff has suffered and continues to suffer emotional
13 distress, anxiety, depression, economic detriment and monetary damages, including, but not limited
14 to, loss of wages, salary, bonuses, and benefits, including, but not limited to, retirement savings,
15 life, and medical/health insurance, and prejudgment interest in an amount to be determined at trial.

16 41. Plaintiff is informed and believe, and based thereon alleges, that Defendants
17 willfully engaged in the conduct alleged herein with malice, fraud, and oppression, without excuse
18 or justification, and with the specific intent to injure Plaintiff for an improper and evil motive which
19 constitutes a malicious and conscious disregard of Plaintiff's rights. By reason thereof, Plaintiff is
20 entitled to an award of exemplary and punitive damages against Defendants sufficient to punish and
21 deter Defendants from engaging in such conduct in the future in an amount to be determined at
22 trial.

23 42. As a direct result of the conduct of Defendants as set forth above, Plaintiff was
24 forced to incur substantial attorney's fees and costs which are recoverable under California
25 Government Code section 12965(b).

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THIRD CAUSE OF ACTION**Failure to Prevent Discrimination in Violation of Gov't Code §§ 12900, *et seq.*****(Against Defendants KINNEY & CO. and DOES 1 - 25)**

43. Plaintiff refers to and incorporates herein by reference all of the above paragraphs as though fully set forth herein.

44. At all times mentioned herein, Government Code section 12900, *et seq.*, was in full force and effect and was fully binding upon Defendant. Specifically, section 12940(k) makes it an unlawful employment practice for an employer to fail to take all reasonable steps necessary to prevent discrimination, retaliation, and/or harassment based on an employee's race, ethnicity, national origin, sexual orientation, and/or perceived sexual orientation

45. Plaintiff was subject to discrimination, retaliation, and/or harassment in the workplace, and Defendant, having knowledge of same, failed to take all reasonable steps to prevent discrimination, harassment, and/or retaliation by subjecting Plaintiff to adverse employment actions, including but not limited to terminating Plaintiff.

46. As a direct, foreseeable, and proximate result of Defendant's unlawful actions, Plaintiff has suffered and continues to suffer substantial losses in earnings and other employment benefits and has incurred other economic losses.

47. As a direct, foreseeable, and proximate result of Defendant's unlawful actions, Plaintiff has suffered emotional distress, humiliation, shame, and embarrassment, all to Plaintiff's damage and in an amount to be proven at the time of trial.

48. Defendant, in engaging in the unlawful conduct alleged above, acted with a conscious disregard of Plaintiff's rights, and with the intent to vex, injure, and annoy Plaintiff, such as to constitute oppression, fraud, or malice under California Civil Code § 3294, thereby entitling Plaintiff to exemplary or punitive damages, or in the alternative under California Civil Code § 3333 for breach of an obligation not arising out contract to "compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not."

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FOURTH CAUSE OF ACTION**Failure to Pay Overtime Wages in Violation of Cal. Lab. C. §§ 510, *et seq.*****(Against Defendants KINNEY & CO, KINNEY, and DOES 26 - 50)**

49. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set forth fully herein. Plaintiff alleges as follows as a representative cause of action on behalf of himself.

50. California *Labor Code* § 510, IWC Wage Order No. 5-2001, §3, and other applicable laws and regulations, provide that an employer must timely pay its employees for all hours worked.

51. California *Labor Code* § 510 provides that employees in California shall not be employed more than eight (8) hours per workday or forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law. All hours must be paid at the statutory or agreed rate, and no part of the rate may be used as a credit against a minimum wage obligation. California *Labor Code* § 510 further provides that employees in California shall not be employed more than twelve (12) hours per workday unless they receive wages at double their regular rate of pay.

52. California *Labor Code* § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest, and the cost of suit. California *Labor Code* § 1198 further provides that the employment of an employee for longer than those fixed by the IWC Wage Orders is unlawful.

53. Plaintiff and other former non-exempt employees are entitled to the protections of California *Labor Code* §§ 510 and 1194, and IWC Wage Order No. 5-2001.

54. At all relevant times, Defendants classified Plaintiff as an exempt employee and compensated Plaintiff on a salary basis. However, Plaintiff was paid only \$60,000 a year in salary and was at all times required to work 5 to 6 days per week for 10 to 12 hours per day. Plaintiff's exempt classification violates Cal. Lab. C. § 515 because Plaintiff falls outside of the contemplated exemptions therein and his compensation does not meet the twice the prevailing minimum wage standard under California wage orders.

55. Defendants maintained and enforced policies and practices of refusing to pay Plaintiff for all hours worked. Defendants employed Plaintiff for more than eight (8) hours per day and/or more than forty (40) hours per workweek during Plaintiff's employment with Defendants, but Defendants failed to pay Plaintiff the correct applicable overtime rate for the number of overtime hours he worked as required by the California Labor Code and the applicable IWC Wage Order.

56. Defendants thus required Plaintiff to work under conditions prohibited by order of the IWC, in violation of those orders.

57. Defendants owe Plaintiff overtime wages, have failed and refused, and continue to fail and refuse to pay the overtime wages owed. Additionally, Defendants did not include all the required compensation in calculating the overtime rate of Plaintiff.

58. Defendants' conduct described herein violated, and continues to violate, California *Labor Code* §§ 510, 1194, and 1198 and IWC WAGE ORDER NO. 5-2001, §3. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, and 1197.1 and other applicable provisions under the Labor Code and IWC WAGE ORDER NO. 5-2001, Plaintiff is entitled to recover the unpaid balance of wages owed to him by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

FIFTH CAUSE OF ACTION

Failure to Timely Pay Wages Upon Termination in Violation of Cal. Lab. C. §§ 201-203

(Against Defendants KINNEY & CO, KINNEY, and DOES 26 - 50)

59. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

60. Pursuant to California *Labor Code* §§ 201, 202, and 203, Defendants are required to pay all earned and unpaid wages to discharged employees and employees who resign from employment with Defendants.

61. California *Labor Code* § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

62. Pursuant to California *Labor Code* § 202, Defendants are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

63. California *Labor Code* § 203 provides that if an employer willfully fails to pay, in accordance with California *Labor Code* §§ 201 and 202, any wages of an employee who discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

64. Defendants have willfully failed, and continue to willfully fail, to pay accrued wages and other compensation to Plaintiff following his termination in accordance with California *Labor Code* §§ 201 and 202.

65. As a result, Plaintiff is entitled to all available statutory penalties, including the waiting time penalties provided in California *Labor Code* § 203, together with interest thereon, as well as other available remedies.

SIXTH CAUSE OF ACTION

Failure to Pay Wages During Employment in Violation of Cal. Lab. C. § 204

(Against Defendants KINNEY & CO, KINNEY, and DOES 26 - 50)

66. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

67. Pursuant to California *Labor Code* § 204, Defendants are required to pay all wages earned by an employee twice during each calendar month, on days designated in advance by the employer as the regular paydays.

68. At all times during Plaintiff's employment with KINNEY & CO., Defendants willfully failed to pay Plaintiff twice during each calendar month and on regularly designated paydays in accordance with California *Labor Code* § 204.

69. As a result, Plaintiff is entitled to all available statutory penalties, together with interest thereon, as well as other available remedies.

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SEVENTH CAUSE OF ACTION**Failure to Provide Meal Periods in Violation of Cal. Lab. C. §§ 226.7, 512, *et seq.*****(Against Defendants KINNEY & CO, KINNEY, and DOES 26 - 50)**

70. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

71. California *Labor Code* §§ 512 and 226.7(a) prohibit an employer from requiring an employee to work more than five hours per day without providing the employee with a meal period of not less than 30 minutes; further, an employer is prohibited from requiring an employee to work more than ten hours without providing the employee with a second meal period of not less than 30 minutes.

72. Defendants intentionally and consistently required Plaintiff to work for extended periods of time—well over five hours—without providing the meal periods required by law, thus violating California *Labor Code* §§ 512 and 226.7.

73. Pursuant to *Labor Code* § 226.7, Plaintiff has sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount according to proof at trial, and Plaintiff is entitled to recover one-hour of premium pay for each day in which a lawful meal period was not provided. Plaintiff is further entitled to attorneys' fees pursuant to Code of Civil Procedure § 1021.5. Further, pursuant to *Labor Code* section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys' fees and costs relating to her claims for civil penalties due to Defendants' violation of the California *Labor Code* and the applicable IWC Wage Order.

EIGHTH CAUSE OF ACTION**Failure to Provide Rest Periods in Violation of Cal. Lab. C. §§ 226.7, 512, *et seq.*****(Against Defendants KINNEY & CO, KINNEY, and DOES 26 - 50)**

74. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

75. California *Labor Code* §§ 512 and 226.7(a) prohibit an employer from requiring an employee to work more than four hours per day without providing the employee with a 10-minute rest period.

77. Pursuant to *Labor Code* § 226.7, Plaintiff has sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount according to proof at trial, and are entitled to recover one-hour of premium pay for each day in which a lawful meal period was not provided. Plaintiff is further entitled to attorneys' fees pursuant to Code of Civil Procedure § 1021.5. Further, pursuant to *Labor Code* section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys' fees and costs relating to her claims for civil penalties due to Defendants' violation of the California Labor Code and the applicable IWC Wage Order.

Failure to Provide Accurate Wage Statements in Violation of Cal. Lab. C. §§ 226, *et seq.*
(Against Defendants KINNEY & CO, KINNEY, and DOES 26 - 50)

14 78. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
15 though fully set forth herein.

16 79. During Plaintiff's employment with Defendants, Defendants intentionally and
17 knowingly failed to provide Plaintiff with timely and accurate wage and hour statements showing
18 gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable
19 hourly rates in effect during each pay period and the corresponding number of hours worked at each
20 hourly rate.

21 80. Defendants systematically failed to provide such wage statements with accurate
22 information and engaged in a policy of under-reporting and failing to pay for all hours actually
23 worked, all in violation of California *Labor Code* § 226 and related statutes.

81. As a result of Defendants' violation of California *Labor Code* § 226 and related statutes, Plaintiff has suffered injuries and damages, including, but not limited to: Plaintiff was not provided meal and rest breaks; Plaintiff was not paid wages due; and the absence of actual hours worked makes it difficult for Plaintiff to collect any overtime wages due.

82. As a result of Defendants' intentional failure to provide Plaintiff with accurate and itemized wage statements, Plaintiff is entitled to all available statutory penalties, costs, and attorneys' fees, including those provided in California *Labor Code* § 226(e), as well as all other available remedies.

TENTH CAUSE OF ACTION

Failure to Indemnify for Business Expenses in Violation of Cal. Lab. C. §§ 2802, *et seq.*

(Against Defendants KINNEY & CO, KINNEY, and DOES 26 - 50)

83. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

84. California *Labor Code* § 2802(a) requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

85. During the course of Plaintiff's employment, Defendants failed to reimburse Plaintiff for the costs incurred for the use of his personal cell phone, which he was required to maintain and use for work-related purposes daily. Further, Defendants failed to reimburse Plaintiff for the cost of gas to operate his vehicle for work-related travel.

86. As a result, Plaintiff is entitled to civil penalties pursuant to California *Labor Code* §§ 203, 1194, 1197, 2802, 2804 and related statutes, the exact amounts of such damages to be proven at trial.

ELEVENTH CAUSE OF ACTION

Failure to Provide Paid Sick Time in Violation of Cal. Lab. C. §§ 246, *et seq.*

(Against Defendants KINNEY & CO, KINNEY, and DOES 26 - 50)

87. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

88. California *Labor Code* §§ 246, *et seq.* provides that "[a]n employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section."

89. During the course of Plaintiff's employment, Defendants failed to provide Plaintiff with any sick time in violation of Labor Code § 246, *et seq.*

90. As a result, Plaintiff is entitled to civil penalties pursuant to California *Labor Code* §§ 246, *et seq.* and related statutes, the exact amounts of such damages to be proven at trial.

TWELFTH CAUSE OF ACTION

Unfair Competition in Violation of Cal. Bus. & Prof. C. §§ 17200, *et seq.*

(Against Defendants KINNEY & CO. and DOES 1 - 25)

91. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

92. California Business and Professions Code §17200 provides, in relevant part: "As used in this chapter, unfair competition shall mean and include any unlawful or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

93. Through the conduct alleged herein, Defendants have acted contrary to these public policies, have violated specific provisions of the FEHA and the California *Labor Code* and have engaged in other unlawful and unfair business practices in violation of California Business and Professions Code §17200, *et seq.*, thus depriving Plaintiff of rights, benefits, and privileges guaranteed to all employees in California. Defendants' conduct as alleged herein constitutes unfair competition in violation of §17200 *et seq.* of the California Business and Professions Code.

94. The acts of Defendants as alleged herein were unfair, unlawful, and fraudulent as defined in California Business and Professions Code §17200. Such acts constitute an unfair business practice and unfair competition, thus violating California Business and Professions Code § 17200, *et seq.* As a result, Defendants obtained valuable property, money, and/or services from Plaintiff, including earned wages for all hours worked, and have deprived Plaintiff of valuable rights and benefits guaranteed by law, all to the detriment of Plaintiff and to the benefit of Defendants so as to allow Defendants to unfairly compete against competitors who comply with the law.

THIRTEENTH CAUSE OF ACTION

(Against Defendants KINNEY & CO. and DOES 1 - 25)

97. At all times mentioned herein, Government Code § 12940 and other code sections cited herein were in full force and effect and were binding on Defendants. The code sections evince policies that benefit society at large, were well-established at the time of Plaintiff's discharge, and are substantial and fundamental.

98. Plaintiff alleges that he was discharged from his employment with Defendant KINNEY & CO. for reasons that violate public policy. Specifically, it is a violation of public policy to discharge an individual from employment because of his or her membership in a protected class and/or as a result of his or her exercise of protected activity as alleged herein.

99. At all times relevant hereto, Plaintiff was employed by Defendant KINNEY & CO. Defendant discharged Plaintiff because of Plaintiff's race, ethnicity, national origin, sexual orientation, and/or perceived sexual orientation. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff's race, ethnicity, national origin, sexual orientation, and/or perceived sexual orientation was a substantial motivating reason for Plaintiff's discharge.

100. As a direct, foreseeable, and proximate result of Defendant's discriminatory conduct and wrongful termination in violation of public policy, Plaintiff has suffered and continues to suffer humiliation, embarrassment, anxiety, mental anguish, and emotional distress. Plaintiff was required to and did employ, and will in the future employ, physicians and health care providers to examine, treat and care for Plaintiff, and did, and will in the future, incur medical and incidental expenses. The exact amount of such expenses is unknown to Plaintiff at this time.

101. As a direct, foreseeable, and proximate result of the Defendant's retaliatory conduct and wrongful termination, Plaintiff has suffered and continues to suffer losses in earnings and other employment benefits all to Plaintiff's damage and in an amount in excess of the minimum jurisdictional limits of this court, the precise amount of which will be proven at trial.

102. As a further legal result of the above-described unlawful conduct of Defendants, and each of them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to proof.

FOURTEENTH CAUSE OF ACTION

Violation of the Private Attorney General Act (Cal. Lab. C. §§ 2698, *et seq.*)

(Against Defendants KINNEY & CO, KINNEY, and DOES 26 - 50)

103. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

104. Under the Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698-2699.5, an aggrieved employee, on behalf of himself or herself and other current or former employees, may recover penalties under any provision of the Cal. Labor Code that provides for civil penalties. These penalties are in addition to any other relief available under the California *Labor Code*.

105. As set forth above, Defendant has committed numerous violations for which the *Labor Code* provides for penalties, including violations of California *Labor Code* §§ 201, 202, 203, 204, 226.7, 226.8, 246, 248.5, 510, 512, 515, 1174, 2800, and 2802.

106. Plaintiff and the other hourly-paid or non-exempt employees are "aggrieved employees" as defined by California *Labor Code* section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

107. Plaintiff has provided written notice by certified mail to the LWDA and to Defendant of the legal claims and theories of this case. Sixty-five days have passed since the postmark date of the written notice to the LWDA, and Plaintiff has not received notification from the LWDA that it intends to investigate the alleged violations. Accordingly, Plaintiff has exhausted administrative remedies as required by California *Labor Code* § 2699.3.

1 108. As a direct result of Defendant's conduct as described, Plaintiff is entitled to recover,
2 on his own behalf and on behalf of others similarly situated, the maximum civil penalties permitted
3 by the Private Attorneys General Act from Defendants for all violations of *Labor Code* §§ 201, 202,
4 203, 204, 226.7, 226.8, 246, 248.5, 510, 512, 515, 1174, 2800, and 2802, as well as reasonable
5 attorney's fees and costs.

6 109. Defendant's conduct of violating the California *Labor Code* constitutes violations of
7 the PAGA. Therefore, Plaintiff requests penalties against Defendant under the provisions of PAGA
8 section 2699(f).

9 110. The proper measure of damages and penalties under the PAGA is to be calculated
10 based on the total number of all aggrieved employees, whether they are a party to this action or not.
11 Further, this claim needs no certification to proceed with class-wide recovery. *See Arias v. Superior*
12 *Court* (2009) 46 Cal. 4th 969, 970-975.

13 111. Further, as a direct and proximate result of the conduct of Defendant, as set forth
14 above, Plaintiff was forced to incur substantial attorney's fees and costs which are recoverable under
15 California Labor Code Section 2699(g)(1).

16 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of aggrieved employees, pray for an award and judgment against Defendants, jointly and severally, as follows:

1. For such general, special, and liquidated damages in amount of \$500,000;
2. For restitution of all monies due to Plaintiff, as well as disgorged profits from defendants' unfair and unlawful business practices in an amount to be determined at trial;
3. For punitive damages on applicable causes of action in the amount of \$1,500,000;
4. For payment of unpaid overtime compensation pursuant to Labor Code §§ 201, 510, 1194, the applicable industrial Welfare Commission Order, and the applicable 8 Code of Regulation sections;
5. For damages pursuant to Labor Code § 226;
6. For waiting time penalties pursuant to Labor Code §§ 201-203;
7. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code §§ 218.6, 1194, and 2802, California Civil Code §§ 3287 and 3288, and/or any other applicable provision providing for pre-judgment interest;
8. For declaratory relief;
9. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code § 2699;
10. For preliminary and permanent injunctive relief enjoining Defendants from violating the relevant provisions of the California Labor Code and applicable IWC Wage Orders and from engaging in the unlawful business practices complained of herein;
11. For an award of interest, including prejudgment interest, at the legal rate;
12. For an award of reasonable attorneys' fees and costs on the applicable causes of action pursuant to California Labor Code §§ 226, 1194, 2699, and 2802, California Civil Code 1021.5, and any other applicable provisions providing for attorneys' fees and costs;
13. For costs of suit incurred; and
14. For such other and further relief as the Court may deem just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

DATED: December 14, 2021

STARPOINT, LC

By: 

AIDIN GHAVIMI, ESQ.
JOHN VAFA, ESQ.
Attorneys for Plaintiff,
ANTHONY YUN