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RAYMOND KENT

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

RAYMOND KENT, an individual,

Plaintiff,

vs.

BANNING RV DISCOUNT CENTERS
INC., a California corporation, COULA
RINGGOLD, an individual, and DOES 1
through 10, inclusive,

Defendants.

Case No. CVRI2200761

FIRST AMENDED COMPLAINT FOR:

- (1) Age Harassment
- (2) Wrongful Termination
- (3) Retaliation
- (4) Unpaid Wages
- (5) Failure To Provide Meal Periods
- (6) Failure To Provide Rest Breaks
- (7) Wage Statement Violations
- (8) Failure To Timely Pay All Wages Due Upon Separation From Employment
- (9) Unreimbursed Expenses
- (10) Failure To Produce Required Records
- (11) Unfair Business Practices
- (12) Representative Action Under PAGA

DEMAND FOR JURY TRIAL

1 Plaintiff Raymond Kent ("Plaintiff" or "Kent") alleges, on information and belief, as
2 follows:

3 **PARTIES, JURISDICTION AND VENUE**

4 1. Plaintiff is an individual and resident of Riverside County, California.

5 2. Defendant Banning RV Discount Centers Inc., dba Banning RV (the
6 "Company") is a California corporation doing business in Riverside County, California.

7 3. Plaintiff worked for the Company in California as an employee. By way of
8 this amended Complaint (and any amendment thereto) Plaintiff seeks damages, statutory
9 penalties, and other relief that render this matter an "unlimited" civil case within the meaning
10 of California law. This Complaint invokes all forms of applicable tolling, including, without
11 limitation, the tolling provided by the Judicial Council's emergency rules. All causes of
12 action alleged herein are asserted under California law.

13 4. The true names and capacities of the Doe Defendants (Does 1 through 10,
14 inclusive) are unknown to Plaintiff at this time and Plaintiff is informed and believes that
15 they are in some way responsible and liable for the illegal conduct, injury and damages he
16 has experienced. The Doe Defendants are believed to be joint or additional employers,
17 responsible executives or agents, or otherwise liable for the conduct complained of herein,
18 whether because of alter-ego status, agency principles, aider and abettor (or conspirator)
19 status, statutorily-imposed or authorized liability, or otherwise. If necessary, Plaintiff will
20 amend this Complaint to allege the true names and capacities of the Doe Defendants when
21 ascertained and the legal basis upon which they are liable.

22 5. The Court has personal jurisdiction over the Company because it is a citizen
23 of this State, does business in this State, and otherwise has minimum contacts with this State.
24 The Court has personal jurisdiction over Plaintiff because he is a resident of California and
25 has sufficient minimum contacts with this State. Venue is proper in Riverside County as
26 Plaintiff is a resident of Riverside County, was employed by the Company in Riverside
27 County, and numerous illegal acts complained of herein occurred in this County.

28 6. Plaintiff timely and properly exhausted his administrative remedies, and

1 obtained a Right-To-Sue Notice from the California Department of Fair Employment and
2 Housing (DFEH) in October 2021. A true and correct copy of Plaintiff's DFEH
3 documentation is collectively attached hereto as **Exhibit 1**. Plaintiff's DFEH documentation
4 includes an original and an amended complaint of discrimination, with the only difference
5 between the two being that the latter correctly identifies Plaintiff's city of residence as
6 Beaumont, California. Plaintiff has exhausted his administrative remedies under the Private
7 Attorneys General Act of 2004 ("PAGA"), and this amended complaint adds a representative
8 cause of action under PAGA.

9 **GENERAL ALLEGATIONS**

10 7. The Company is in the business of selling and servicing recreational vehicles
11 (RVs). The Company has a dealership in Banning, California. Plaintiff worked for the
12 Company in California at its dealership. During his employment, the Company, at times,
13 paid Plaintiff commissions in connection with RVs that he sold. At all times during his
14 employment at the Company, Plaintiff was 40 or older.

15 8. Jason Horgan ("Mr. Horgan") worked at the Company at the same time as
16 Kent. Mr. Horgan was and is a manager or supervisor of the Company. Mr. Horgan would
17 repeatedly harass Kent and another older worker on the basis of age, making verbal remarks
18 such as "I need to get rid of you old fucks" and "I need to get young people in here," and
19 derogatorily referring to Kent and another older worker as "old dudes."

20 9. After Mr. Horgan verbally berated an employee (Josh Whipple) in Kent's
21 presence, the employee approached Kent privately, asked Kent if he had witnessed the
22 incident, and discussed filing a hostile work environment claim with a government agency.
23 This conversation between the employee (Josh Whipple) and Kent was protected activity.
24 Mr. Horgan found out about the conversation and accosted Kent for it, and angrily remarked,
25 "I heard you are going to sue us" or words to that effect.

26 10. Mr. Horgan also levied unwarranted criticism at Kent and made false
27 accusations about Kent.

28 11. Kent informed the Company's owner, Coula Ringgold ("Ringgold"), of Mr.

1 Horgan's misconduct, and Ms. Ringgold did nothing about it. The Company's sales manger,
2 John Horgan (son of Jason Horgan) was also aware of the misconduct and did nothing about
3 it.

4 12. Mr. Horgan, who is in a relationship with the Company's owner, Ringgold,
5 caused the Company to terminate Kent. Mr. Horgan falsified the reason for Kent's
6 termination, and the real reason was Kent's age and protected activity. On the day of Kent's
7 termination, Mr. Horgan angrily remarked to Kent, "you're gonna fucking sue us anyways,
8 so go do it" or words to that effect. Both Kent's age and protected activity caused his
9 termination.

10 **FIRST CAUSE OF ACTION**

11 Age Harassment In Violation of FEHA

12 (Against The Company)

13 13. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 12 as
14 though fully set forth herein.

15 14. At all material times, the Company was and is an "employer" subject to the
16 California Fair Employment and Housing Act ("FEHA"), and Plaintiff was an "employee"
17 of the Company entitled to the protections of FEHA. At all material times, Mr. Horgan (i.e.,
18 Jason Horgan) was also an agent of the Company and/or "supervisor" of Plaintiff within the
19 meaning of FEHA.

20 15. During his employment at the Company, Mr. Horgan repeatedly subjected
21 Plaintiff to unwelcome harassment because of his age. The harassment, which included,
22 among other things, overtly ageist verbal remarks, false accusations, and beratement,
23 constituted "hostile work environment" harassment

24 16. The harassment that Plaintiff experienced was offensive and was performed
25 and/or carried out by supervisory personnel (Mr. Horgan), and is attributable to the
26 Company. The Company knew or should have known of the harassment, and failed to take
27 immediate and appropriate corrective action.

28 17. The harassment that Plaintiff experienced was unwelcome, and severe and/or

1 pervasive. The harassment altered the conditions of Plaintiff's employment, and created a
2 hostile or abusive work environment. The harassment disrupted Plaintiff's emotional
3 tranquility in the workplace and interfered with and undermined Plaintiff's personal sense of
4 well-being.

5 18. Plaintiff considered the work environment to be hostile and abusive, and a
6 reasonable person in Plaintiff's position would have considered the work environment to be
7 hostile and abusive.

8 19. The harassment that Plaintiff experienced was a substantial factor in causing
9 Plaintiff harm, including, but not limited to, emotional distress, and pain and suffering.

10 20. The Company failed to take all reasonable steps to prevent the harassment
11 from occurring. The Company failed to take remedial or corrective action to prevent or deter
12 the harassment from occurring.

13 21. The actions committed against Plaintiff were done in callous disregard of the
14 law, Plaintiff's welfare, and the Company's obligation to provide a safe working environment
15 for Plaintiff. These actions were such that they were despicable, and subjected Plaintiff to
16 cruel and unjust hardship in knowing disregard of his rights. These actions were designed
17 to cause (and did cause) injury to Plaintiff. These actions constitute malice and/or
18 oppression, and justify the imposition of punitive damages against the Company.

19 **SECOND CAUSE OF ACTION**

20 Wrongful Termination

21 (Against The Company)

22 22. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 21 as
23 though fully set forth herein.

24 23. At all material times, the Company was and is an "employer" subject to FEHA,
25 and Plaintiff was an "employee" of the Company entitled to the protections of FEHA. At
26 all material times, Mr. Horgan (i.e., Jason Horgan) was also an agent of the Company and/or
27 "supervisor" of Plaintiff within the meaning of FEHA.

28 ///

24. Mr. Horgan made known his disdain for older workers, and remarked in Plaintiff's presence that "I need to get rid of you old fucks."

25. Plaintiff's employment at the Company was terminated because of his age, in violation of FEHA.

26. Plaintiff's termination caused Plaintiff harm, including, among other things, economic damages (e.g., lost wages), and emotional distress.

27. The actions committed against Plaintiff, including his wrongful termination, were done in callous disregard of the law, Plaintiff's welfare, and the Company's obligation to provide a safe working environment for Plaintiff. These actions were such that they were despicable, and subjected Plaintiff to cruel and unjust hardship in knowing disregard of his rights. These actions were designed to cause (and did cause) injury to Plaintiff. These actions constitute malice and/or oppression, and justify the imposition of punitive damages against the Company.

THIRD CAUSE OF ACTION

Retaliation

(Against The Company)

28. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 27 as though fully set forth herein.

29. At all material times, the Company was and is an "employer" subject to FEHA and the California Labor Code, and Plaintiff was an "employee" of the Company entitled to the protections of FEHA and the Labor Code. At all material times, Mr. Horgan (i.e., Jason Horgan) was also an agent of the Company and/or "supervisor" of Plaintiff for all relevant purposes.

30. FEHA prohibits an employer from retaliating against an employee because the employee engaged in protected activity, including "because the person has opposed any practices forbidden" by FEHA "or because the person has filed a complaint, testified, or assisted in any proceeding" under FEHA. (Gov't Code, § 12940(h).) Protected activity under FEHA includes "[a]ssisting or advising any person in seeking the advice of the Department

1 or Council, whether or not a complaint is filed" (2 Cal. Code Reg. §
2 11021(1)(B)), "[p]articipating in an activity that is perceived by the employer or other
3 covered entity as opposition to discrimination" (2 Cal. Code Reg. § 11021(1)(D)), and
4 "[i]nvolvement as a potential witness" (2 Cal. Code Reg. § 11021(2)(B)) in a FEHA-related
5 proceeding.

6 31. The Labor Code prohibits an employer from retaliating against an employee
7 "because the employer believes that the employee disclosed or may disclose information, to
8 a government or law enforcement agency" (Labor Code, § 1102.5(b)) or because the
9 employee is "refusing to participate in an activity that would result in a violation of [a] state
10 or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
11 regulation" (Labor Code, § 1102.5(c)).

12 32. The Labor Code also prohibits an employer from retaliating against an
13 employee for "disclos[ing] information about the employer's working conditions" to
14 another. (Labor Code, § 232.5(c).)

15 33. After Mr. Horgan verbally berated an employee, Josh Whipple ("Whipple"),
16 in Kent's presence, Whipple approached Kent privately, asked Kent if he had witnessed the
17 incident, and discussed filing a hostile work environment claim with a government agency.
18 Mr. Horgan found out about the conversation and accosted Kent for it, and angrily remarked,
19 "I heard you are going to sue us" or words to that effect.

20 34. The conversation between Whipple and Kent concerned their working
21 conditions at the Company, including Mr. Horgan's misconduct and mistreatment. Mr.
22 Horgan believed that Kent was objecting to Mr. Horgan's conduct, that Kent was a witness
23 and would be assisting Whipple in a proceeding against the Company, and/or that Kent
24 would instituting his own action against the Company arising out of Mr. Horgan's conduct.
25 In either event, Mr. Horgan believed that Plaintiff would disclosing Mr. Horgan's
26 misconduct in a legal proceeding.

27 35. As a result of the foregoing, the Company subjected Kent to adverse
28 employment action, including, among other things, his termination from employment.

36. Kent's protected activity caused his termination.

37. As a result of the termination, Kent has suffered damage, including economic damages (e.g., lost wages) and emotional distress damages.

38. The actions committed against Plaintiff, including his wrongful termination, were done in callous disregard of the law, Plaintiff's welfare, and the Company's obligation to provide a safe working environment for Plaintiff. These actions were such that they were despicable, and subjected Plaintiff to cruel and unjust hardship in knowing disregard of his rights. These actions were designed to cause (and did cause) injury to Plaintiff. These actions constitute malice and/or oppression, and justify the imposition of punitive damages against the Company.

FOURTH CAUSE OF ACTION

Unpaid Wages

(Against All Defendants)

39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 38 as though fully set forth herein. This cause of action is alleged against the Company and Ringgold, as Ringgold caused the violations herein asserted within the meaning of Labor Code section 558.1 and any other applicable California law. (*Espinoza v. Hepta Run, Inc.* (2022) 74 Cal.App.5th 44.)

40. The Company provided some California employees, Kent included, with commission pay. The Company incorrectly classified Kent (and others) as exempt during all their pay periods. Among other things, Kent did not always receive more than half of his compensation in commissions in each pay period. (*Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662.) No other exemptions applied to Kent to make him exempt under California law.

41. Labor Code section 1198 makes it unlawful for an employer to employ any person under conditions of employment that violate the Wage Orders. Section 2(K) of the IWC Wage Orders define “hours worked” as the “time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted

1 to work, whether or not required to do so.”

2 42. Labor Code sections 1194 and 1197, and Section 4 of the IWC Wage Orders,
3 require employers to pay their non-exempt employees at least the California minimum wage
4 for all time worked.

5 43. Labor Code sections 510 and 1194, and Section 3 of the IWC Wage Orders,
6 require employers to pay overtime wages to their non-exempt employees at no less than one
7 and one-half times their regular rates of pay for all hours worked in excess of eight hours in
8 one workday, all hours worked in excess of forty hours in one workweek, and for the first
9 eight hours worked on a seventh consecutive workday.

10 44. Labor Code sections 204 and 218 require employers to pay the earned wages
11 of their employees on a timely and periodic basis.

12 45. Labor Code section 1174(d) requires employees to keep accurate records of
13 hours worked by employees.

14 46. During those pay periods in which Kent failed to satisfy the test for the
15 commissioned employee overtime exemption, he worked sufficient hours to be entitled to
16 overtime and/or double-time wages. The Company, however, did not track his hours and
17 pay him overtime pay. The Company's failure to pay Kent overtime and/or double-time
18 wages was a violation of, and is actionable under, Labor Code §§ 204, 510, and 1198. The
19 nonpayment of overtime also violated § 3(A) of the applicable IWC Wage Order.

20 47. Commissioned employees, like Kent, performed tasks other than selling,
21 including, for example, attending meetings at the Company. This time is often referred to
22 as "nonproductive time." The Company was required to but failed to separately track and
23 pay at least the California minimum wage for Kent's nonproductive time worked. (*Vaquero*
24 *v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 111-112.) The Company's failure to
25 track and pay at least the California minimum wage for nonproductive time was a violation
26 of, and actionable under, Labor Code §§ 204, 1174(d), 1194, 1194.2, 1197, 1197.1 and 1199.

27 48. With respect to commissioned employees, like Kent, the Company also failed
28 to properly compensate them for their rest period time, in violation of Labor Code section

1 226.7 and the IWC's Wage Order's requirement that rest period time be "counted as hours
2 worked for which there shall be no deduction from wages." (IWC Wage Order No. 7, §
3 12(A); see also Labor Code § 558 [providing for enforcement of Wage Order violations].)
4 The Company either failed to compensate Kent's rest periods separately, or failed to properly
5 pay for his rest periods by arbitrarily adding pay to his paychecks. This arbitrarily-added
6 pay was not legally sufficient because it was not paid based on actual rest time, the Company
7 did not disclose the rate it was using for said time, and rest period time was not tracked for
8 payment purposes. The effect of the arbitrarily-added pay was conceptually no different
9 than giving Kent a lump sum bonus, and then artificially considering that bonus as
10 compensation for rest period time.

11 49. The Company also failed to pay Kent and other commissioned employees all
12 the commissions due to them. Kent performed work that entitled him to commissions on
13 the sales of RVs, but the Company did tender to Kent all the commissions due, in violation
14 of, inter alia, Labor Code § 204, § 204.1, and § 223.

15 50. Plaintiff is entitled to the unpaid balance of all forms of unpaid wages he is
16 owed including, minimum wages, overtime (including double-time), and commission pay.
17 Pursuant to Labor Code section 1194, Plaintiff is entitled to recover the unpaid balance of
18 the full amount of California minimum wages owed, including interest thereon, reasonable
19 attorney's fees, and costs of suit. Furthermore, under Labor Code section 1194.2, Plaintiff
20 is entitled to recover liquidated damages in an amount equal to the California minimum
21 wages unlawfully unpaid and interest thereon. Plaintiff is entitled to recover all damages,
22 penalties and other remedies available for a violation of Labor Code section 1197 and the
23 General Minimum Wage Order, and any other remedies available under Labor Code section
24 218.5.

25 **FIFTH CAUSE OF ACTION**

26 Failure To Provide Meal Periods

27 (Against All Defendants)

28 51. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 50 as

1 though fully set forth herein. This cause of action is alleged against the Company and
2 Ringgold, as Ringgold caused the violations herein asserted within the meaning of Labor
3 Code section 558.1 and any other applicable California law.

4 52. Under California law, all non-exempt employees who work more than five (5)
5 hours in a day are entitled to take a full 30-minute uncontrolled duty-free meal period. Any
6 meal period must be started no later than after five (5) hours of work. (Labor Code, § 512,
7 subd. (a); IWC Wage Orders § 11.)

8 53. Under California law, all non-exempt employees who work more than ten (10)
9 hours in a day are entitled to take a second duty-free uncontrolled meal period of thirty (30)
10 minutes. Any second meal period must be started no later than after ten (10) hours of work.
11 (Labor Code, § 512, subd. (a); IWC Wage Orders, § 11.)

12 54. Under California law, employers are forbidden from requiring employees to
13 work during a meal period mandated pursuant to California statutory law or mandated by
14 the IWC Wage Orders. (Labor Code, § 226.7(a).)

15 55. Under California law, employers must provide an employee with an additional
16 one (1) hour of pay at the employee's regular rate of compensation for each workday that an
17 employee is not provided with a meal period "in accordance with" California statutory law
18 or the IWC Wage Orders. (Labor Code, § 226.7(c).)

19 56. Plaintiff regularly worked more than (5) hours in a shift for the Company and
20 was entitled to meal periods that conformed with California law.

21 57. The Company failed to provide Plaintiff with timely, uninterrupted, and un-
22 controlled first and second meal periods of at least thirty (30) minutes.

23 58. The Company did not establish or provide employees with any type of formal
24 break system or organized process for the scheduling, taking, and/or recording of meal
25 periods. This lack of structure caused Kent and others to not receive the legally-compliant
26 meal periods to which they were entitled. The meal period violations experienced by Kent
27 have included missed, late, and short meal periods. Among other things, employees, such
28 as Kent, who are attending to a customer, or customer needs, must wait until they are finished

1 with the customer or customer-related task before being relieved of duty, causing meal
2 periods to be untimely, interrupted, or missed altogether.

3 59. The Company failed to pay Plaintiff all the meal period premium pay to which
4 he was entitled as a result of all the meal period violations.

5 60. The Company's non-provision of compliant meal periods, and its non-payment
6 of the requisite meal period premiums, violated and is actionable under Labor Code section
7 512, subdivision (a), and Labor Code sections 226.7, subdivisions (b) & (c).

8 61. As a result of the Company's violation of California's meal period rules, Kent
9 is entitled to, among other things, one (1) hour of pay at his regular rate of pay for each
10 workday in which a meal period violation occurred. Plaintiff is also entitled to the minimum
11 wage for all the uncompensated "meal period" time that he was under the control of the
12 Company, or otherwise required to work or be on duty.

13 **SIXTH CAUSE OF ACTION**

14 Failure To Provide Rest Periods

15 (Against All Defendants)

16 62. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 61 as
17 though fully set forth herein. This cause of action is alleged against the Company and
18 Ringgold, as Ringgold caused the violations herein asserted within the meaning of Labor
19 Code section 558.1 and any other applicable California law.

20 63. Under California law, employers must authorize and permit all non-exempt
21 employees to take a "net" 10-minute rest period for every four (4) hours worked, or major
22 fraction thereof. (IWC Wage Orders, § 12(A).) More specifically, employers must authorize
23 and permit non-exempt employees to take one 10-minute rest break for shifts from three and
24 one-half (3 ½) hours to six (6) hours in length, two 10-minute rest breaks for shifts of more
25 than six (6) hours up to ten (10) hours in length, three 10-minute rest breaks for shifts of
26 more than ten (10) hours up to fourteen (14) hours in length, and so on. (*Brinker Restaurant*
27 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1029.) In terms of the timing of rest breaks,
28 employers must authorize and permit the taking of rest breaks "in the middle of each work

1 period." (IWC Wage Orders, § 12(A).)

2 64. Employers must provide employees with "suitable resting facilities" (Wage
3 Orders, §13(B)) that are "away from the work station" (DLSE Enforcement Manual, §
4 45.3.3). An employee's rest period starts from the moment the employee can reach an area
5 of rest away from the work station and be free from employer control. (*Vaquero v.*
6 *Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 112 [a rest period "begins when the
7 employee reaches an area away from the work station that is appropriate for rest"]; *Augustus*
8 *v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273 ["California law requires employers
9 to relieve their employee of all work-related duties and employer control during 10-minute
10 rest periods"].)

11 65. Under California law, it is illegal for an employer to require an employee to
12 work during a rest period that is mandated by California statutory law or an IWC Wage
13 Order. (Labor Code, § 226.7(b).)

14 66. Under California law, employers must provide an employee with an additional
15 one (1) hour of pay at the employee's regular rate of compensation for each workday that an
16 employee is not provided with a rest period "in accordance with" California statutory law or
17 IWC Wage Orders. (Labor Code, § 226.7(c).)

18 67. Plaintiff regularly worked 3.5 hours or more in a shift for the Company and
19 was entitled to rest breaks that conformed with California law. The Company failed to
20 provide Plaintiff with timely, uninterrupted, uncontrolled rest periods of at least ten (10)
21 minutes for every four (4) hours worked, or major fraction thereof. The Company did not
22 provide Plaintiff with proper rest periods, whether first, second or third.

23 68. The Company did not establish or provide employees with any type of formal
24 break system or organized process for the scheduling, taking, and/or recording of rest
25 periods. This lack of structure caused Kent and others to not receive the legally-compliant
26 rest periods to which they were entitled. The rest period violations experienced by Kent
27 have included missed, late, and short rest breaks. Among other things, employees, such as
28 Kent, who are attending to a customer, or customer needs, must wait until they are finished

1 with the customer or customer-related task before being relieved of duty, causing rest
2 periods to be untimely, interrupted, or missed altogether.

3 69. The Company failed to pay Plaintiff all the rest period premium pay to which
4 he was entitled for all the rest period violations.

5 70. The Company's non-provision of compliant rest periods, and the Company's
6 non-payment of the requisite rest period premiums, violated and is actionable under Labor
7 Code sections 226.7 subdivisions (b) & (c).

8 71. As a result of the Company's violation of California's rest period rules,
9 Plaintiff is entitled to, among other things, one (1) hour of pay at his regular rate of pay for
10 each workday in which a rest period violation occurred.

11 **SEVENTH CAUSE OF ACTION**

12 Wage Statement Violations

13 (Against All Defendants)

14 72. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 71 as
15 though fully set forth herein. This cause of action is alleged against the Company and
16 Ringgold, as Ringgold caused the violations herein asserted within the meaning of Labor
17 Code section 558.1 and any other applicable California law.

18 73. At all relevant times, Labor Code section 226 subdivision (a) applied to the
19 Company's employment of Plaintiff. At all relevant times, Labor Code section 226
20 subdivision (a) required that employers (such as the Company) furnish to their employees
21 (such as Plaintiff), semi-monthly or at the time of each payment of wages, an accurate
22 itemized statement in writing showing such matters as the gross wages earned, the total hours
23 worked, the net wages earned, all deductions, and all applicable hourly rates, during the pay
24 period. Plaintiff is informed and believes and, based thereon, alleges that the Company
25 knowingly and intentionally failed to provide him with such accurate itemized wage
26 statements as required by Labor Code section 226.

27 74. In those pay periods that Kent was incorrectly classified as exempt, he was not
28 paid by the hour and his wage statements did not accurately reflect his total hours worked

1 (violating Labor Code section 226(a)(2)). Moreover, during those same pay periods, he
2 worked overtime which the Company did not track or pay, causing his wage statements to
3 inaccurately reflect his total hours worked (violating Labor Code section 226(a)(2)), gross
4 wages earned (violating Labor Code § 226(a)(1)), net wages earned (violating Labor Code
5 § 226(a)(5)), and the applicable rates of pay and hours worked at those rates (violating Labor
6 Code § 226(a)(9)).

7 75. As Kent was paid by commissions for sales work, the Company was required
8 to but failed to separately track and pay at least the California minimum wage for Kent's rest
9 period time and nonproductive time worked, deficiencies which caused his wage statements
10 to inaccurately display his total hours worked (violating Labor Code section 226(a)(2)),
11 gross wages earned (violating Labor Code § 226(a)(1)), net wages earned (violating Labor
12 Code § 226(a)(5)), and the applicable rates of pay and hours worked at those rates (violating
13 Labor Code § 226(a)(9)).

14 76. Insofar as Kent received pay for "Rest Breaks," his wage statements failed to
15 list the hours associated with that pay, or the rate of that pay (violating Labor Code sections
16 226(a)(2)) and 226(a)(9)).

17 77. With respect to commissioned employees, like Kent, the Company failed to
18 pay all the commissions due, causing his wage statements to inaccurately reflect his gross
19 wages earned (violating Labor Code § 226(a)(1)) and net wages earned (violating Labor
20 Code § 226(a)(5)).

21 78. Insofar as meal period and rest period premiums must be shown on wage
22 statements, the Company's failure to pay Kent premiums for meal and rest period violations,
23 or to pay premiums at the correct rate of pay, rendered Kent's wage statements deficient
24 because they failed to accurately show gross wages earned (violating Labor Code §
25 226(a)(1)) or net wages earned (violating Labor Code § 226(a)(5)) during the pay period.

26 79. Furthermore, the Company violated Labor Code section 226 by failing to keep
27 on file for at least three (3) years at the place of employment or at a central location within
28 the State of California copies of accurate itemized wage statements as required by Labor

1 Code section 226.

2 80. Plaintiff has suffered the requisite injury as result of the Company's violations
3 of Labor Code section 226, violations which precluded Plaintiff from being able to
4 "promptly and easily" determine from the wage statements alone one or more the statutorily
5 required items of information.

6 81. Pursuant to Labor Code section 226 subdivision (e), Plaintiff is entitled to
7 recover from the Company the greater of actual damages, or fifty dollars (\$50) for the initial
8 violation of Labor Code Section 226(a) and one hundred dollars (\$100) for each subsequent
9 violation up to a maximum of \$4,000. Furthermore, Plaintiff is entitled to attorneys' fees
10 and costs.

11 **EIGHTH CAUSE OF ACTION**

12 Failure To Pay All Wages Due Upon Separation

13 (Against All Defendants)

14 82. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 81 as
15 though fully set forth herein. This cause of action is alleged against the Company and
16 Ringgold, as Ringgold caused the violations herein asserted within the meaning of Labor
17 Code section 558.1 and any other applicable California law.

18 83. Labor Code sections 201 and 202 impose time requirements on tendering to a
19 discharged or quitting employee their final wages. At all relevant times, Labor Code section
20 201 provided that, if an employer discharged an employee, the employee's wages earned and
21 unpaid at the time of discharge are due and payable immediately.

22 84. Plaintiff's employment at the Company was terminated over thirty (30) days
23 ago and, to this day, he has not received all the wages due to him.

24 85. As a result of the Company's failure to pay Kent required overtime wages,
25 separate proper wages for rest period time, separate proper wages for nonproductive time,
26 all commissions owed, and the requisite meal and rest period premium pay, the Company
27 did not provide Kent with final pay that contained all wages due to him under California
28 law. This deficiency in final pay was willful within the meaning of Labor Code § 203.

86. At all relevant times, Labor Code section 203 provided that, if employers (such as the Company) willfully fail to pay any wages of an employee who is discharged or quits in the time required by Labor Code section 201 or 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced, but the wages shall not continue for more than thirty (30) days. Accordingly, Plaintiff is entitled to receive statutory penalties up to a maximum of thirty (30) days, as well as attorney's fees and costs, under Labor Code section 203.

NINTH CAUSE OF ACTION

Unreimbursed Expenses

(Against All Defendants)

87. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 86 inclusive as though fully set forth herein. This cause of action is alleged against the Company and Ringgold, as Ringgold caused the violations herein asserted within the meaning of Labor Code section 558.1 and any other applicable California law.

88. At all relevant times, Labor Code section 2802 required and continues to require employers to fully reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer. The Company failed to reimburse Plaintiff for all his work-related expenses, including, without limitation, those set forth in this pleading.

89. Among other things, the Company required Kent to utilize his personal cell-phone for work-related purposes, including, without limitation, to review and engage in work-related communications. The Company did not properly reimburse Kent for the Company-required usage of his personal cell-phone or other device. The Company either neglected to issue any reimbursement, or the reimbursement amount was insufficient. The Company's failure to properly reimburse Kent violates and is actionable under Labor Code § 2802(a)-(c). (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.)

90. In addition to other appropriate relief, Plaintiff is entitled to full reimbursement of all expenses owed and full reimbursement of all covered losses, plus

1 interest, attorney's fees and costs, as provided for in Labor Code section 2802.

2 **TENTH CAUSE OF ACTION**

3 Failure To Produce Required Records

4 (Against The Company)

5 91. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 90 as
6 though fully set forth herein.

7 92. Through authorized counsel, Plaintiff requested, in writing, a copy of his
8 personnel file under Labor Code section 1198.5, a copy of his wage statements under Labor
9 Code section 226, and a copy of time records and sick leave records under Labor Code
10 section 247.5 subdivision (a).

11 93. By statute, Plaintiff's personnel file was due within 30 days, and the remaining
12 records were due within 21 days from the date of the request.

13 94. The Company failed to provide Plaintiff with his personnel file within the time
14 required by law, and (to this date) has failed to produce any of his wage statements, time
15 records, or sick leave records.

16 95. Because the Company did not timely produce the records required by law,
17 Plaintiff is entitled to all penalties available for such violations, including, but not limited
18 to, the penalty provided by Labor Code section 1198.5, subdivision (k), and Labor Code
19 section 226, subdivision (f), as well as attorneys' fees and costs.

20 **ELEVENTH CAUSE OF ACTION**

21 Unfair Business Practices

22 (Against All Defendants)

23 96. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 95 as
24 though fully set forth herein.

25 97. At all relevant times, the Company's practices, as alleged above, have been
26 and continue to be unfair, fraudulent and illegal, and harmful to Plaintiff, others similarly
27 situated, and the general public. The Company's above-alleged practices constitute
28 violations of Business and Professions Code section 17200 *et seq.* Specifically, a practice

1 that violates any state law or regulation may constitute the basis of an unlawful business
2 practice prohibited by Business and Professions Code Sections 17200 *et seq.*

3 98. In addition to the foregoing conduct alleged in this pleading, the following
4 practices of the Company also constitute unfair business practices:

5 a. The Company's failure to comply with the requirements of Labor Code
6 section 2751 with respect to the Company commissioned employees, including Kent. Under
7 California Labor Code section 2751, when an employee is to be paid in commissions, the
8 employer must enter into a commission agreement in writing with the employee, the contract
9 must set forth the method by which commissions shall be computed and paid, the employer
10 must give a signed copy of the contract to the employee, and the employer must obtain a
11 signed receipt for the contract from each employee who is to be paid commissions. The
12 Company failed to abide by all of these requirements with respect to the commissioned
13 employees. Among other things, the Company failed to obtain a signed receipt from Kent
14 and the other commissioned employees, violating Labor Code section 2751.

15 b. The Company's failure to provide employees, Kent included, with paid
16 sick leave as required by Labor Code sections 246 and 246.5.

17 c. The Company's failure to issue employees, including Kent, the payroll
18 documentation to which they were entitled under Labor Code section 2810.5(a)(1) and (b),
19 and Labor Code section 246(i).

20 99. Consequently, pursuant to Business and Professions Code Section 17200 *et*
21 *seq.*, Plaintiff is entitled to declaratory relief and restitution of wages and other property held
22 by the Company and/or Ringgold and/or other relief requiring the Company and/or Ringgold
23 (and any other responsible parties) to pay all wages and other sums due to Plaintiff.

24 100. Plaintiff meets the standing requirements for seeking relief pursuant to
25 Business and Professions Code section 17203, in that he has suffered injury in fact and has
26 lost money as a result of the Company's and Ringgold's actions, as more fully set forth
27 elsewhere in this pleading.

28 ///

1 **TWELFTH CAUSE OF ACTION**

2 Representative Action Under PAGA

3 (Against The Company)

4 101. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 100
5 inclusive as though fully set forth herein.

6 102. Pursuant to Labor Code section 2699.3, Plaintiff, on behalf of himself and all
7 other aggrieved employees, brings this action as a representative action under the Private
8 Attorneys General Act of 2004 (“PAGA”) for civil penalties based on violations of the
9 California Labor Code and the applicable IWC Wage Order(s).

10 103. Plaintiff has timely and adequately exhausted his administrative remedies
11 under PAGA. Plaintiff submitted his PAGA Notice to the LWDA on January 27, 2022
12 (incorporated herein by reference and attached hereto as **Exhibit 2**), provided a copy of the
13 same to the Company via certified mail, and waited the requisite 65-day time-period before
14 filing this PAGA action in court.

15 104. The group of aggrieved employees as to whom this cause of action applies is
16 identified in **Exhibit 2**. Pursuant to Labor Code section 2699.5, Plaintiff asserts this
17 representative action on behalf of himself and other aggrieved employees for civil penalties
18 for the following violations alleged above and **Exhibit 2**:

- 19 a. The failure to pay all required wages;
- 20 b. The failure to provide legally-compliant meal and rest periods, and pay the
21 required meal and rest-period premiums;
- 22 c. The failure to comply with Labor Code § 2751;
- 23 d. The failure to provide accurate itemized wage statements;
- 24 e. The failure to pay all the wages due separated employees;
- 25 f. The failure to reimburse employees for expenses incurred;
- 26 g. The failure to provide/denial of paid sick leave required by law;
- 27 h. The lack of required payroll documentation;
- 28 i. The failure to produce required records; and

1 j. Unlawful retaliation;

2 105. Labor Code section 2699(f)(2), in turn, provides that the default civil penalties
3 recoverable under PAGA for such violations are “one hundred dollars (\$100) for each
4 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200)
5 for each aggrieved employee per pay period for each subsequent violation,” except where
6 the Labor Code specifically provides for another penalty. In addition to the default civil
7 penalties PAGA provides, Plaintiff seeks, through PAGA, any other civil penalties available
8 under the Labor Code (including, without limitation, Labor sections 210, 226.3, 256, 558,
9 1174.5, and 1102.5(f)) for the above-alleged violations of the Labor Code and/or applicable
10 IWC Wage Order(s).

11 106. Plaintiff reserves the right to amend this pleading in the event that future
12 discovery and investigation indicate the presence of additional as yet unstated causes of
13 action.

14 **PRAYER**

15 WHEREFORE, Plaintiff requests judgment as follows:

16 **On The First Cause Of Action**

17 1. For all recoverable damages, including economic, non-economic, and punitive
18 damages, and any other statutory relief or remedy available;

19 **On The Second Cause Of Action**

20 2. For all recoverable damages, including economic, non-economic, and punitive
21 damages, and any other statutory relief or remedy available;

22 **On The Third Cause Of Action**

23 3. For all recoverable damages, including economic, non-economic, and punitive
24 damages, and any other statutory relief or remedy available;

25 **On The Fourth Cause Of Action**

26 4. For all recoverable damages and unpaid wages, including unpaid minimum
27 wages, overtime wages, double-time wages, and commission pay;

28 5. For liquidated damages pursuant to Labor Code § 1194.2;

1 **On The Fifth Cause Of Action**

2 6. For premium pay for meal period violations under Labor Code § 226.7, and
3 pay for uncompensated "meal periods" as to which Plaintiff was under the control of the
4 Company, or otherwise required to work or be on duty;

5 **On The Sixth Cause Of Action**

6 7. For premium pay for rest period violations under Labor Code § 226.7, and the
7 requisite pay for uncompensated or undercompensated "rest periods";

8 **On The Seventh Cause Of Action**

9 8. For statutory penalties under Labor Code § 226, or actual damages incurred as
10 a result of the wage statement violations;

11 **On The Eighth Cause Of Action**

12 9. For statutory penalties under Labor Code § 203, up to the statutory maximum;

13 **On The Ninth Cause Of Action**

14 10. For the full reimbursement of any expenses owed and full reimbursed for
15 losses sustained, including interest thereon, under Labor Code § 2802;

16 **On The Tenth Cause Of Action**

17 11. For all penalties authorized by law;

18 **On The Eleventh Cause Of Action**

19 12. For declaratory relief and restitution of all unpaid wages, overtime (including
20 double-time), minimum wages, commission pay, premium pay, sick leave pay, and other
21 monies withheld from Plaintiff together with the disgorgement of any profits received as a
22 result of the unlawful or unfair business practices;

23 **On The Twelfth Cause Of Action**

24 13. For all forms of relief and civil penalties recoverable under PAGA;

25 14. For judgment in favor of the aggrieved employees;

26 **On All Causes Of Action**

27 15. For attorney's fees and costs pursuant to Civil Code § 1021.5, FEHA (Govt.
28 Code, § 12965), all provisions of the Labor Code that authorize attorney's fees and costs

1 (including, e.g., Labor Code §§ 218.5, 226, 203, 1194(a), 1194.3, 1198.5, 2802, and PAGA),
2 and/or any other applicable statutory provision, theory or doctrine;

3 16. For prejudgment interest on all amounts owing, commencing from the date
4 such amounts were due;

5 17. For post-judgment interest; and

6 18. For all such other relief as the Court deems just and proper.

7
8 Dated: April 4, 2022

SCHEPPACH BAUER

9
10 By: _____

JOHN M. SCHEPPACH
Attorneys for Plaintiff
RAYMOND KENT

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12
13
14 **DEMAND FOR JURY TRIAL**

15 Plaintiff demands a trial by jury on all issues, claims and causes of action so triable.

16 Dated: April 4, 2022

SCHEPPACH BAUER

17 By: _____

18 JOHN M. SCHEPPACH
Attorneys for Plaintiff
19 RAYMOND KENT
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EXHIBIT 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfefh.ca.gov

October 22, 2021

John Scheppach
23181 Verdugo Drive, Suite 105-A
Laguna Hills, California 92653

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202110-15154621
Right to Sue: Kent / Banning RV Discount Centers Inc. et al.

Dear John Scheppach:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 22, 2021

RE: **Notice of Filing of Discrimination Complaint**

Dfeh Matter Number: 202110-15154621

Right to Sue: Kent / Banning RV Discount Centers Inc. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be made within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

October 22, 2021

Raymond Kent
23181 Verdugo Drive, Suite 105-A
Laguna Hills, California 92653

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202110-15154621
Right to Sue: Kent / Banning RV Discount Centers Inc. et al.

Dear Raymond Kent:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective October 22, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

Department of Fair Employment and Housing

COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)

In the Matter of the Complaint of

Raymond Kent

DFEH No. 202110-15154621

Complainant,

vs.

Banning RV Discount Centers Inc.
2424 W. Ramsey Street
Banning, California 92220

Jason Horgan
2424 W. Ramsey Street
Banning, California 92220

Respondents

1. Respondent **Banning RV Discount Centers Inc.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Jason Horgan** individual as Co-Respondent(s).

3. Complainant **Raymond Kent**, resides in the City of **Laguna Hills**, State of **California**.

4. Complainant alleges that on or about **April 15, 2021**, respondent took the following adverse actions:

Complainant was harassed because of complainant's age (40 and over), other.

Complainant was discriminated against because of complainant's age (40 and over), other and as a result of the discrimination was terminated.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment and as a result was terminated.

Additional Complaint Details: Complainant Raymond Kent ("Complainant") worked for Respondent Banning RV Discount Centers Inc. (the "Company") for over a year. Jason Horgan ("Mr. Horgan") also worked onsite at the Company. Mr. Horgan would repeatedly harass Complainant and another older worker on the basis of age, making verbal remarks such as "I need to get rid of you old fucks" and "I need to get young people in here," and derogatorily referring to Complainant and another older worker as "old dudes."

After Mr. Horgan verbally berated an employee (first name Josh, last name unknown) in Complainant's presence, the employee approached Complainant privately, asked Complainant if he had witnessed the incident, and discussed filing a hostile work environment claim with a government agency. This conversation between the employee and Complainant was protected activity. Mr. Horgan found out about the conversation and accosted Complainant for it, and angrily remarked, "I heard you are going to sue us" or words to that effect.

Mr. Horgan also levied unwarranted criticism at Complainant and made false accusations about Complainant.

Complainant informed the Company's owner, Coula Ringgold, of Mr. Horgan's misconduct, and Ms. Ringgold did nothing about it. The Company's sales manger, John Horgan (son of Jason Horgan) was also aware of the misconduct and did nothing about it.

Mr. Horgan, who is in a relationship with the Company's owner, Coula Ringgold, caused the Company to terminate Complainant. Mr. Horgan falsified the reason for Complainant's termination, and the real reason was Complainant's age and protected activity. On the day of Complainant's termination, Mr. Horgan angrily remarked to Complainant, "you're gonna fucking sue us anyways, so go do it" or words to that effect. Complainant's age and protected activity were a substantial motivating reason for his termination.

The Company is liable for Mr. Horgan's conduct because he is either a manager or supervisor of the Company, or because the Company knew or should have known of his misconduct and failed to take immediate and appropriate corrective action.

Complainant has suffered severe emotional distress as a result of the harassment and his wrongful termination, and he has also been economically damaged.

SCHEPPACH BAUER PC /s/ John M. Scheppach, Esq.

1 VERIFICATION

2 I, **John M. Scheppach**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On October 22, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Laguna Hills, California**
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DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
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October 27, 2021

John Scheppach
23181 Verdugo Drive, Suite 105-A
Laguna Hills, California 92653

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202110-15154621
Right to Sue: Kent / Banning RV Discount Centers Inc. et al.

Dear John Scheppach:

Attached is a copy of your **amended** complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the DFEH. (Cal. Code Regs., tit. 2, § 10022.)

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Raymond Kent

DFEH No. 202110-15154621

Complainant,

vs.

Banning RV Discount Centers Inc.
2424 W. Ramsey Street
Banning, California 92220

Jason Horgan
2424 W. Ramsey Street
Banning, California 92220

Respondents

1. Respondent **Banning RV Discount Centers Inc.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Jason Horgan** individual as Co-Respondent(s).

3. Complainant **Raymond Kent**, resides in the City of **Beaumont**, State of **California**.

4. Complainant alleges that on or about **April 15, 2021**, respondent took the following adverse actions:

Complainant was harassed because of complainant's age (40 and over), other.

Complainant was discriminated against because of complainant's age (40 and over), other and as a result of the discrimination was terminated.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment and as a result was terminated.

Additional Complaint Details: Complainant Raymond Kent ("Complainant") worked for Respondent Banning RV Discount Centers Inc. (the "Company") for over a year. Jason Horgan ("Mr. Horgan") also worked onsite at the Company. Mr. Horgan would repeatedly harass Complainant and another older worker on the basis of age, making verbal remarks such as "I need to get rid of you old fucks" and "I need to get young people in here," and derogatorily referring to Complainant and another older worker as "old dudes."

After Mr. Horgan verbally berated an employee (Josh Whipple) in Complainant's presence, the employee approached Complainant privately, asked Complainant if he had witnessed the incident, and discussed filing a hostile work environment claim with a government agency. This conversation between the employee (Josh Whipple) and Complainant was protected activity. Mr. Horgan found out about the conversation and accosted Complainant for it, and angrily remarked, "I heard you are going to sue us" or words to that effect.

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Mr. Horgan, who is in a relationship with the Company's owner, Coula Ringgold, caused the Company to terminate Complainant. Mr. Horgan falsified the reason for Complainant's termination, and the real reason was Complainant's age and protected activity. On the day of Complainant's termination, Mr. Horgan angrily remarked to Complainant, "you're gonna fucking sue us anyways, so go do it" or words to that effect. Complainant's age and protected activity were a substantial motivating reason for his termination.

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Complainant has suffered severe emotional distress as a result of the harassment and his wrongful termination, and he has also been economically damaged.

SCHEPPACH BAUER PC /s/ John M. Scheppach, Esq.

1 VERIFICATION

2 I, **John M. Scheppach**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On October 27, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Laguna Hills, California**
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EXHIBIT 2

PAGA NOTICE

January 27, 2022

VIA CERTIFIED MAIL

Employer

Banning RV Discount Centers Inc.
Attn: Coula Ringgold
Registered Agent For Service Of Process
2424 W. Ramsey
Banning, CA 92220

VIA ONLINE SUBMISSION

**State Of California, Labor & Workforce
Development Agency ("LWDA")**

[http://www.dir.ca.gov/Private-Attorneys-
General-Act/Private-Attorneys-General-
Act.html](http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)

Re: *Raymond Kent v. Banning RV Discount Centers Inc.*
PAGA Notice

Dear Employer and the LWDA:

Raymond Kent ("Kent") on behalf of himself and all other aggrieved employees, and through his undersigned representative, hereby provides notice pursuant to the California Private Attorneys General Act of 2004, Labor Code sections 2698 – 2699.5 ("PAGA"), of alleged violations of the California Labor Code committed by Banning RV Discount Centers Inc., dba Banning RV (the "Company"). Pursuant to the requirements of PAGA, the Labor Code provisions allegedly violated, including the alleged facts and theories in support thereof, are set forth in the paragraphs below. All citations herein are to the California Labor Code as it is presently constituted. The Labor Code may be amended in one or more respects after the date of this PAGA Notice. This PAGA Notice invokes any and all applicable tolling that might apply to the allegations herein asserted.

I. BACKGROUND.

The Company is in the business of selling and servicing recreational vehicles (RVs). The Company has a dealership in Banning, California. Kent worked for the Company in California.

PAGA Groups

This PAGA Notice is alleged on behalf of Kent and all other aggrieved employees. The applicable PAGA group as to each claim is set forth below.

Kent may represent other aggrieved employees, even if Kent himself did not experience the same Labor Code violations as they did. (*Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757.)

II. ALLEGED LABOR CODE VIOLATIONS.

Kent and the aggrieved employees have experienced a variety of Labor Code violations.

A. Unpaid Wages (Commissioned Employees).

The Company provided some California employees, Kent included, with commission pay. The Company incorrectly classified them as exempt during all their pay periods. Among other things, employees who were paid commissions did not always receive more than half of their compensation in commissions in each pay period. (*Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662.) No other exemptions applied to the commission-earning employees to make them exempt under California law.

The claims alleged in this section apply to all of the Company's current and former employees who were paid commissions by the Company during the applicable limitations period ("Commissioned Employees").

During those pay periods in which the Commissioned Employees failed to satisfy the test for the commissioned employee overtime exemption, they worked sufficient hours to be entitled to overtime and/or double-time wages. The Company, however, did not track their hours and pay them overtime pay. The Company's failure to pay overtime and/or double-time wages to Commissioned Employees was a violation of, and is actionable under, Labor Code §§ 204, 510, and 1198. The nonpayment of overtime also violated § 3(A) of the applicable IWC Wage Order.

Commissioned Employees performed tasks other than selling, including, for example, attending meetings. This time is often referred to as "nonproductive time." The Company was required to but failed to separately track and pay at least the California minimum wage for nonproductive time worked by the Commissioned Employees. (*Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 111-112.) The Company's failure to track and pay at least the California minimum wage for non-productive time was a violation of, and actionable under, Labor Code §§ 204, 1174(d), 1194, 1194.2, 1197, 1197.1 and 1199.

With respect to Commissioned Employees, the Company also failed to properly compensate them for their rest period time, in violation of Labor Code section 226.7 and the IWC's Wage Order's requirement that rest period time be "counted as hours worked for which there shall be no deduction from wages." (IWC Wage Order No. 7, § 12(A); see also Labor Code § 558 [providing for enforcement of Wage Order violations].) The Company either failed to compensate the rest periods of Commissioned Employees separately, or failed to properly pay for their rest periods by arbitrarily adding pay to their paychecks. This arbitrarily-added pay was not legally sufficient because it was not paid based on actual rest time, the employer did not disclose the rate it was using for said time, and rest period time was not tracked for payment purposes. The effect

of the arbitrarily-added pay was conceptually no different than giving an employee a lump sum bonus, and then artificially considering that bonus as compensation for rest period time.

Finally, the Company failed to pay Kent and other Commissioned Employees all the commissions due to them. Kent and other Commissioned Employees performed work that entitled them to commissions on the sales of RVs, but the Company did tender to them all the commissions due, in violation of, inter alia, Labor Code § 204, § 204.1, and § 223.

B. Unpaid Wages (Hourly Employees).

The claims alleged in this section apply to all of the Company's current and former hourly-paid employees who worked for the Company during the applicable limitations period ("Hourly Employees").

Aggrieved employees performed work, including before and/or after their shift, and/or during meal periods, that was not accounted for in their pay. This could include, for example, pre-shift work tasks or assisting a customer during a meal period. All the time that Hourly Employees were suffered or permitted to work, or were otherwise under the control of the Company, was not captured on time records, and consequently this off-the-clock work not reflected in their pay.

The Company's failure to compensate Hourly Employees for all their time worked, caused them to not be paid the applicable California minimum wage for compensable work (in violation of, and actionable under, Labor Code §§ 204, 1194, 1194.2, 1197, 1197.1 & 1199), to not be paid their regular hourly rate for all hours worked (in violation of, and actionable under Labor Code §§ 204 & 218), and to not receive proper overtime and/or double-time compensation (in violation of, and actionable under, Labor Code §§ 204, 510 & 1198). The Company's failure to pay Hourly Employees the overtime, double-time, and/or minimum wages they were due also violates regulatory law. (IWC Wage Orders, § 3 [overtime and double-time requirements], and § 4 [minimum wage requirements].)

C. Meal Periods & Rest Breaks (Commissioned And Hourly Employees).

The claims in this section apply to both Commissioned Employees and Hourly Employees.

The Company failed to provide Commissioned Employees and Hourly Employees with legally-compliant meal periods (first and second) and rest breaks (first, second, and third) to which they were entitled. The Company did not, and has not, established or provided employees with any type of formal break system or organized process for the scheduling, taking, and/or recording of breaks. This lack of structure has caused them to not receive the legally-compliant meal periods and rest breaks to which they were entitled. The meal and rest break violations have included missed, late, and short meal periods and rest breaks. Among other things, employees who are attending to a customer or customer needs must wait until they are finished with the customer or customer-related task before being relieved of duty, causing meal periods and rest breaks to be untimely, interrupted, or missed altogether.

No valid waiver exists to excuse the meal period violations. The Company did not properly pay the employees the required premium wages owed for the first and second meal period violations. The Company's non-provision of compliant meal periods, and the Company's non-payment of the required meal period premiums, violated and is actionable under Labor Code § 512(a), and Labor Code §§ 226.7(b) & (c).

Likewise, no valid waiver exists to excuse the rest break violations. The Company did not properly pay aggrieved employees the required premium wages owed for the rest break violations. The Company's non-provision of compliant rest breaks, and the Company's non-payment of the required rest break premiums, violated and is actionable under Labor Code sections 226.7(b) and (c). The Company's failure to provide legally-compliant rest breaks also violated regulatory law. (IWC Wage Orders, § 12 [rest break requirements].)

D. Lack Of Required Payroll Records (Commissioned And Hourly Employees).

The claims in this section apply to both Commissioned Employees and Hourly Employees.

Commissioned Employees. During those pay periods that the Commissioned Employees were incorrectly classified as exempt from overtime, they were not paid by the hour and the Company failed to keep an accurate record of their hours worked and their associated wages, in violation of Labor Code section 1174(d). Moreover, the Company did not separately track and pay for the nonproductive time of Commissioned Employees, in violation of Labor Code section 1174(d).

Hourly Employees. With respect to Hourly Employees, the Company failed to keep an accurate record of their hours worked and their associated wages, in violation of Labor Code section 1174(d), because the Company did not accurately account for all their compensable work time in the Company's time and wage records.

E. Illegalities As To Commissions (Commissioned Employees).

The claims in this section apply to the Commissioned Employees.

Under California Labor Code section 2751, when an employee is to be paid in commissions, the employer must enter into a commission agreement in writing with the employee, the contract must set forth the method by which commissions shall be computed and paid, the employer must give a signed copy of the contract to the employee, and the employer must obtain a signed receipt for the contract from each employee who is to be paid commissions. The Company failed to abide by all of these requirements with respect to the Commissioned Employees. Among other things, the Company failed to obtain a signed receipt from Kent and the other Commissioned Employees, violating Labor Code section 2751.

F. Wage Statement Violations (Commissioned And Hourly Employees).

The claims in this section apply to both Commissioned Employees and Hourly Employees.

Commissioned Employees. With respect to Commissioned Employees, in those pay periods that they were incorrectly classified as exempt, they were not paid by the hour and their wage statements did not accurately reflect their total hours worked (violating Labor Code section 226(a)(2)). Moreover, during those same pay periods, the Commissioned Employees worked overtime which the Company did not track or pay, causing their wage statements to inaccurately reflect their total hours worked (violating Labor Code section 226(a)(2)), their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)). The Company was required to but failed to separately track and pay at least the California minimum wage for their rest period time and nonproductive time worked, causing their wage statements to inaccurately their total hours worked (violating Labor Code section 226(a)(2)), their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)). Insofar as Commissioned Employees received pay for "Rest Breaks" on their wage statements, the wage statements failed to list the hours associated with that pay, or the rate of pay (violating Labor Code sections 226(a)(2)) and 226(a)(9)). With respect to Commissioned Employees, the Company failed to pay them all the commissions due, causing their wage statements to inaccurately reflect their gross wages earned (violating Labor Code § 226(a)(1)) and their net wages earned (violating Labor Code § 226(a)(5)).

Hourly Employees. As a result of the Company's failure to pay Hourly Employees for all their compensable hours worked, the Company failed to provide them with wage statements that accurately reflected their total hours worked (violating Labor Code § 226(a)(2)), their gross wages earned (violating Labor Code § 226(a)(1)), their net wages earned (violating Labor Code § 226(a)(5)), and their applicable rates of pay and hours worked at those rates (violating Labor Code § 226(a)(9)).

Commissioned & Hourly Employees. Insofar as meal period and rest period premiums must be shown on wage statements, the Company's failure to pay premiums for meal and rest period violations, or to pay premiums at the correct rate of pay, rendered its wage statements deficient because they failed to accurately show gross wages earned (violating Labor Code § 226(a)(1)) or net wages earned (violating Labor Code § 226(a)(5)) during the pay period. The Company was required to maintain, at a centralized location and for three years, a copy of accurate itemized wage statements for its employees containing all the informational items required by law, and the Company failed to satisfy this requirement because of all the inaccuracies identified above in this section II.F., all in violation of Labor Code section 226(a).

G. Failure To Pay All Wages Due Upon Separation (Commissioned And Hourly Employees).

The claims in this section apply to both Commissioned Employees and Hourly Employees.

Commissioned Employees. As a result of the Company's failure to pay Commissioned Employees required overtime wages, separate proper wages for rest period time, separate proper wages for nonproductive time, all commissions owed, and the requisite meal and rest period premium pay, the Company did not provide separated employees (Kent included) with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

Hourly Employees. As a result of the Company's failure to pay Hourly Employees for all their compensable hours worked, and the requisite meal and rest period pay, the Company did not provide separated employees with final pay that contained all wages due to them under California law. This deficiency in final pay was willful within the meaning of Labor Code § 203. The Company's non-provision of timely and sufficient final pay to separated employees violated, and is actionable under, Labor Code §§ 201, 202, 203, 208, 226(a), and 226.3.

H. Unreimbursed Expenses.

The claims in this section apply to both Commissioned Employees and Hourly Employees.

Labor Code section 2802 requires employers to fully reimburse employees for expenses incurred in the discharge of their work-related duties or while carrying out the directions of their employer. The Company failed to reimburse Commissioned Employees and Hourly Employees for all their expenses, in violation of Labor Code section 2802.

Among other things, the Company required Kent and other aggrieved employees to utilize their personal cell-phones or other devices for work-related purposes, including, without limitation, to review and engage in work-related communications. The Company did not properly reimburse Kent and the aggrieved employees for the Company-required usage of their personal cell-phones or other devices. The Company either neglected to issue any reimbursement, or the reimbursement amount was insufficient. The Company's failure to properly pay the expenses of Kent and the other aggrieved employees violates and is actionable under Labor Code § 2802(a)-(c). (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.)

I. Failure To Provide Paid Sick Leave (Commissioned And Hourly Employees).

The claims in this section apply to both Commissioned Employees and Hourly Employees.

California employers must provide paid sick leave to employees in conformity with Labor Code sections 246 and 246.5. The Company failed to provide paid sick leave benefits to Commissioned Employees and Hourly Employees, in violation of these provisions.

With respect to paid sick leave benefits, California employers must comply with Labor Code sections 246 and 246.5. Under these provisions, a California employer must grant paid sick leave to an employee who verbally requests it for a qualifying reason. (Labor Code, § 246(m) & § 246.5(a).) The Company maintains a policy which provides that "OFF WORK ORDERS FOR MEDICAL VISITS ARE REQUIRED BY ALL EMPLOYEES TO BE GIVEN TO THE GENERAL SALES MANAGER THE DAY THE EMPLOYEE ARRIVES BACK TO WORK." (Capitalization in original.) To the extent the Company contends that it provided paid sick leave to employees, the Company policy quoted above conditions the use of paid sick leave on the tendering of a doctor's note or other documentation, in violation of Labor Code sections 246(m) and 246.5(a).

J. Lack Of Required Payroll Documentation (Commissioned And Hourly Employees).

The claims in this section apply to both Commissioned Employees and Hourly Employees.

The Company has failed to issue Commissioned Employees and Hourly Employees, including Kent, the payroll documentation to which they were entitled under Labor Code section 2810.5(a)(1) and (b), and Labor Code section 246(i). The Company did not provide this required payroll documentation to its employees.

K. Failure To Produce Required Records.

As currently alleged, the claims in this section apply to Kent.

Kent, through counsel, served a records request on the Company, asking for his personnel file, all documents he signed in connection with his employment, his time records, wage statements, and records (if any) regarding his accrual and use of paid sick leave. More than thirty (30) days elapsed, and the Company did not produce the requested records. The Company purported to produce Kent's personnel file, but the production occurred after thirty (30) days, and the Company has produced no further documents (e.g., wage statements) to date. The Company's non-production of the requested documents in the time required by law violated Labor Code §§ 1198.5, 226(c), § 247.5(a), and 432.

L. Retaliation.

As currently alleged, the claims in this section apply to Kent.

Jason Horgan ("Mr. Horgan") worked at the Company at the same time as Kent. Mr. Horgan was and is a manager or supervisor of the Company. Mr. Horgan would repeatedly harass Kent and another older worker on the basis of age, making verbal remarks such as "I need to get rid of you old fucks" and "I need to get young people in here," and derogatorily referring to Kent and another older worker as "old dudes."

After Mr. Horgan verbally berated an employee (Josh Whipple) in Kent's presence, the employee approached Kent privately, asked Kent if he had witnessed the incident, and discussed filing a hostile work environment claim with a government agency. This conversation between the employee (Josh Whipple) and Kent was protected activity. Mr. Horgan found out about the conversation and accosted Kent for it, and angrily remarked, "I heard you are going to sue us" or words to that effect.

Mr. Horgan also levied unwarranted criticism at Kent and made false accusations about Kent.

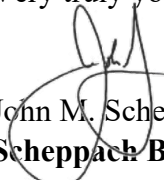
Kent informed the Company's owner, Coula Ringgold, of Mr. Horgan's misconduct, and Ms. Ringgold did nothing about it. The Company's sales manger, John Horgan (son of Jason Horgan) was also aware of the misconduct and did nothing about it.

Mr. Horgan, who is in a relationship with the Company's owner, Coula Ringgold, caused the Company to terminate Kent. Mr. Horgan falsified the reason for Kent's termination, and the real reason was Kent's age and protected activity. On the day of Kent's termination, Mr. Horgan angrily remarked to Kent, "you're gonna fucking sue us anyways, so go do it" or words to that effect. Kent's age and protected activity were each a substantial motivating reason for his termination. Kent has exhausted his administrative remedies with the DFEH regarding his claims under the California Fair Employment and Housing Act. Through this PAGA Notice, Kent is asserting retaliation claims against the Company under the California Labor Code, including, without limitation, Labor Code sections 1102.5(b) & (c), and 232.5, for which Kent seeks, among other things, civil penalties recoverable under PAGA.

III. CIVIL PENALTIES SOUGHT.

For all the above-specified Labor Code violations, Kent, on behalf of himself and all other aggrieved employees, seeks all available civil penalties against the Company that California law allows, including the default civil penalties provided by PAGA, and any civil penalties specifically provided by statute for the alleged Labor Code violations (including, inter alia, Labor Code §§ 210, 226.3, 256, 558, 1174.5, and 1102.5(f)) which are recoverable under PAGA. Kent, on behalf of himself and all other aggrieved employees, also reserves the right to assert claims for Labor Code violations and associated civil penalties that are uncovered in the discovery process, but which are presently unknown. Although the Company is named in this PAGA Notice, Kent, on behalf of himself and all other aggrieved employees, reserves the right to assert PAGA claims against all responsible parties, including owners and officers, under (among others) Labor Code § 558.1, should discovery indicate it is appropriate to do so.

Very truly yours,


John M. Scheppach
Scheppach Bauer PC