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Superior Court of California
County of Fresno
By: C. York, Deputy

Attorney for Plaintiff
Marina Nazari

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

MARINA NAZARI, individually and on behalf
of all similarly situated individuals,

Plaintiffs,

v.

KIRKMAN BECK, LLC, and DOES 1 to 100,

Defendants.

) CASE NO. 23CECG00572
)
) CLASS ACTION
)
) FIRST AMENDED COMPLAINT
)
) 1. Meal Period Violations
) 2. Rest Period Violations
) 3. Overtime Violations
) 4. Wage Statement Penalties
) 5. Work Expenditure Reimbursements
) 6. Violation of Unfair Competition Law
) 7. PAGA Penalties

PRELIMINARY ALLEGATIONS

1. Plaintiff Marina Nazari is a resident of Stanislaus County.
2. Defendant Kirkman Beck, LLC is a limited liability company based in Fresno County that does business as Hireup Staffing Services ("Hireup").
3. Hireup has 11 offices in California.
4. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore uses fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section 474 to allege the true names and capacities when ascertained.

1 5. Plaintiff is informed and believes that each of the Defendant was the agent or employee of
2 the other defendants and acted in the scope of agency or employment.

3 6. Defendants employed Plaintiff and the class members as recruiters; Defendants' primary
4 office is in Fresno.

5 7. Since Plaintiffs and the class members provide work as recruiters, Industrial Welfare
6 Commission Occupational Wage Order 4 applies.

7 8. Plaintiff and the class members were not exempt since they did not customarily and
8 regularly exercise discretion and independent judgment.

9 9. Throughout Plaintiffs' and the class members' employment, they did not receive compliant
10 meal and rest periods, did not receive accurate wage statements, did not received wages for off the
11 clock work, did not receive overtime at the correct regular rate, were not reimbursed for work-
12 related expenses.

13 10. On February 13, 2023 Plaintiff sent a certified PAGA letter to Kirkman Beck, LLC and
14 uploaded the letter to the LWDA website. Plaintiff will amend the complaint to include PAGA
15 allegations at least 65 days after February 13, 2023.

16
17 CLASS ACTION ALLEGATIONS

18 11. The class is defined as the following: "All non-exempt employees who worked for
19 Defendants as re in California from February 13, 2019 to the date of certification or judgment,
20 whichever is earlier."

21 12. There is a well-defined community of interest, and the proposed class is ascertainable from
22 Defendants' employment records. Further, the following apply to show the viability of a class
23 action pursuant to Code of Civil Procedure section 382:

- 24 a. Numerosity: The members of the class as defined are so numerous that joinder
25 of all class members is impracticable.
- 26 b. Commonality: This action involves common questions of law and fact to the
27 class because the action focuses on Defendants' systematic course of conduct
28 with respect to violating the Labor Code and IWC Wage Order.

- 1 c. Typicality: The claims are typical of the claims of the class. Plaintiff was
2 subjected to the same violations and seeks the same types of damages,
3 restitution, and other relief on the same as those of the members of the class.
- 4 d. Adequacy of Representation: Plaintiff will fairly and adequately represent and
5 protect the interests of the class. Plaintiff understands the obligations as a class
6 representative and is willing and able to fulfill them. Plaintiff's counsel is
7 competent and experienced in litigating large employment class actions and
8 complex litigation matters, including wage and hour cases like this.
- 9 e. Superiority of Class Action: A class action is superior to other available means
10 for the efficient adjudication. Class action treatment will allow similarly situated
11 persons to pursue the claims in a manner that is most efficient and economical.
- 12 13. There are common questions of law and fact including but not limited to:
- 13 a. Whether Defendants did not pay overtime at the correct regular rate of pay in
14 violation of Labor code sections 510 and 1194;
- 15 b. Whether Defendant violated Labor Code section 512 and Wage Order 4 by not
16 providing meal and rest breaks;
- 17 c. Whether Defendants violated Labor Code section 226 by providing inaccurate
18 wage statements;
- 19 d. Whether Defendant violated Labor Code section 226.7 by not paying premium
20 pay for missed meal and rest breaks;
- 21 e. Whether Defendants did not reimburse for work-related expenses in violation of
22 Labor Code section 2802;
- 23 f. Whether Defendants did not pay for time off the clock in violation of Labor
24 Code section 1194;
- 25 g. Whether Defendants engaged in unfair competition; and
- 26 h. The amount of damages, wages, and penalties owed.

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1
2 FIRST CAUSE OF ACTION

3 Meal Period Violations

4 Against All Defendants

5 14. Plaintiff incorporates by reference paragraphs 1 to 13 of the complaint.

6 15. Labor Code section 226.7 requires employers to provide its employees meal periods as
7 mandated by IWC Wage Order 4 and Labor Code section 512(a).

8 16. These provisions also provide that an employer may not employ any person for a work
9 period of more than five hours per day without a meal period of not less than 30 minutes.

10 17. The meal periods, if any, taken by Plaintiff and the class members were on-duty meal
11 periods meaning they were not relieved of all duties.

12 18. As a result, Defendants are required to remit premium pay pursuant to Labor Code section
13 226.7 for each missed break, which is one additional hour of pay at the regular rate of pay.

14
15 SECOND CAUSE OF ACTION

16 Rest Period Violations

17 Against All Defendants

18 19. Plaintiff incorporates by reference paragraphs 1 to 13 of the complaint.

19 20. Pursuant to Wage Order 4 every employer shall authorize and permit employees to take rest
20 periods of ten minutes for every four hours worked.

21 21. Pursuant to Labor Code section 226.7(c) and IWC Wage Order 4, when the employer does
22 not provide an employee with the required rest period, the employer shall pay the employee one
23 hour of pay at the employee's regular rate of compensation for each workday that a rest period is
24 not provided.

25 22. Plaintiff and the class members were denied rest periods because the rest periods were not
26 provided at all.

27 23. As a result of Defendants' rest period violations, Plaintiffs and the class members are
28 entitled to premium pay which is one additional hour of compensation for each missed break.

1 THIRD CAUSE OF ACTION

2 Overtime Violations

3 Against All Defendants

4 24. Plaintiff incorporates by reference paragraphs 1 to 13 of the complaint.

5 25. Plaintiff and the class members were required to work over eight hours in a day and/or 40
6 hours in a week without being compensated for all overtime.

7 26. The reason for the violations is that Plaintiffs and the class members were not paid overtime
8 at the correct regular rate of pay; Plaintiffs and the class members received commissions that were
9 not calculated into the regular rate of pay.

10 27. The remedy for the overtime violations is payment of the unpaid overtime at the correct
11 regular rate of pay, plus interest and attorney fees, pursuant to Labor Code section 1194.

12
13 FOURTH CAUSE OF ACTION

14 Wage Statement Penalties

15 Against All Defendants

16 28. Plaintiff incorporates by reference paragraphs 1 to 13 of the complaint.

17 29. Labor Code section 226(a) provides a list of information to include on wage statements.

18 30. Defendants violated this statute since overtime was not paid at the correct regular rate of
19 pay, and the wage statements did not include premium pay for missed meal and rest breaks.

20 31. As a result of this knowing and intentional violation, Labor Code section 226(e) requires
21 Defendants to pay wage statement penalties up to \$4,000 per class member, plus attorneys' fees
22 and costs per class member.

23
24 FIFTH CAUSE OF ACTION

25 Work Expenditure Reimbursements

26 Against All Defendants

27 34. Plaintiff incorporates by reference paragraphs 1 to 13 of the complaint.

28 35. Plaintiff and the class members were at time required to use their personal cell phones to

1 work, but they were not reimbursed for the cell phone use.

2 36. Plaintiff and the class members were also requested to drive to appointments in the East
3 Bay while clocked in, but were not reimbursed for gas usage.

4 37. Pursuant to Labor Code section 2802, Plaintiffs and the class members are entitled to
5 reimbursement of expenses and attorney fees.

6
7 SIXTH CAUSE OF ACTION

8 Violation of Unfair Competition Law

9 Against All Defendants

10 38. Plaintiff incorporates by reference paragraphs 1 to 13 of the complaint.

11 39. This claim is being brought under the unlawful prong of the UCL.

12 40. Defendants violated the Labor Code and IWC Wage Order by not paying all overtime and
13 premium pay at the correct regular rate, and not reimbursing for work-related expenses.

14 41. Plaintiffs and the class members are entitled to restitution pursuant to Business and
15 Professions Code section 17203.

16 42. Under Code of Civil Procedure section 1021.5, Plaintiffs are entitled to attorney fees.

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18 SEVENTH CAUSE OF ACTION

19 PAGA Penalties

20 Against All Defendants

21 43. Plaintiff incorporates by reference paragraphs 1 to 13 of the complaint.

22 44. As set forth above, it has been more than 65 days since the PAGA letter was sent, so
23 pursuant to Labor Code section 2699.3(a)(2) Plaintiff may now request PAGA penalties.

24 45. The PAGA penalties for the overtime violations are found in Labor Code sections 558,
25 1197.1, and 2699.

26 46. The PAGA penalties for the meal break violations are found in Labor Code sections 558
27 and 2699.

28 47. The PAGA penalties for the rest break violations are found in Labor Code section 2699.

- 1 48. The PAGA penalties for the unreimbursed work expenses are in Labor Code section 2699.
2 49. The PAGA penalties for the wage statement violations are in Labor Code section 2699.
3 50. Plaintiff is also entitles to attorney fees and costs under Labor Code section 2699(g)(1).
4

5 PRAYER

6 For All Causes of Action

- 7 1. That the court determine that this action may be maintained as a class action;
8 2. That Plaintiffs serve as representatives of the class;
9 3. That Counsel for Plaintiffs be appointed as class counsel.
10

11 First Cause of Action

- 12 1. Premium pay at the correct regular rate of pay
13 2. Other relief the court deems proper
14

15 Second Cause of Action

- 16 1. Premium pay at the correct regular rate of pay
17 2. Other relief the court deems proper
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19 Third Cause of Action

- 20 1. Payment of overtime at the correct regular rate of pay
21 2. Attorney fees and costs
22 3. Interest
23 4. Other relief the court deems proper
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25 Fourth Cause of Action

- 26 1. Wage statement penalties
27 2. Attorney fees and costs
28 3. Other relief the court deems proper

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Fifth Cause of Action

- 1. Reimbursement of work-related expenses
- 2. Attorney fees
- 2. Other relief the court deems proper

Sixth Cause of Action

- 1. Restitution of unpaid wages, premium pay, and work expenditures
- 2. Attorney fees and costs
- 3. Other relief the court deems proper

Seventh Cause of Action

- 1. All applicable PAGA penalties
- 2. Attorney fees and costs
- 3. Other relief the court deems proper

Date: May 26, 2023

FRONTIER LAW CENTER

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Marina Nazari

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6 Attorney for Plaintiff
7 Marina Nazari

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF FRESNO

10 MARINA NAZARI, individually and on behalf) CASE NO. 23CECG00572
11 of all similarly situated individuals,) CLASS ACTION
12 Plaintiffs,)
13 v.) PROOF OF SERVICE FOR FIRST
14 KIRKMAN BECK, LLC, and DOES 1 to 100,) AMENDED COMPLAINT
15 Defendants.)
16 _____)

17
18 I, Adam Rose, declare the following pursuant to Code of Civil Procedure section 1013b:

19 1. My eservice address is adam@frontierlawcenter.com, and my business address is 23901
20 Calabasas Rd., #2074, Calabasas, CA 91302.

21 2. On May 26, 2023 I electronically served the following: first amended complaint.

22 3. I electronically served the following people on behalf of Kirkman Beck, LLC: Lisa Horton
23 – lisa@sw2law.com, Ian Wieland – ian@sw2law.com, and Justin Donner – justind@sw2law.com.

24
25 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
26 and correct.

27 Date: May 26, 2023

/s/ Adam Rose