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Attorney for Plaintiff and all others similarly situated

Assigned for All Purposes

Judge Lon F. Hurwitz

CX-103

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, COMPLEX CENTER

JAMES COLLINS, an individual, on behalf of all
others similarly situated,

Plaintiffs,

v.

ADVANTAGE SALES AND MARKETING
LLC, a California limited liability company, JILL
GRIFFIN, an individual, BRIAN G. STEVENS,
an individual, TANYA DOMIER, an individual,
and DOES 1 through 20 inclusive,

Defendants.

Case No. 30-2023-01332492-CU-OE-CXC

CLASS ACTION COMPLAINT FOR:

1. Failure to Indemnify for Necessary Expenditures in Violation of Labor Code § 2802;
2. Willful Failure to Pay Wages in Violation of Labor Code §§ 201-203;
3. Civil Penalties in Violation of Labor Code §§ 2698, et seq.;
4. Unfair Competition in Violation of Labor Code §§ 17200, et seq.

Jury Trial Demanded

1. Plaintiff JAMES COLLINS, on behalf of himself and all others similarly situated, and as an aggrieved employee on behalf of all other aggrieved employees, is informed and believes and thereon alleges as follows:

PARTIES, VENUE AND JURISDICTION

2. This Class Action is brought pursuant to Code of Civil Procedure § 382 to recover wages and all other available relief on behalf of Plaintiff and all similarly situated current and former

1 non-exempt, hourly- paid employees of Defendants.

2 3. This enforcement action is brought pursuant to the Private Attorneys General Act of
3 2004, California Labor Code §§ 2698, et seq. (“PAGA”) to recover civil penalties and any other
4 available relief on behalf of Plaintiff, the State of California, and other current and former aggrieved
5 employees of Defendants and against whom one or more Labor Code violations or any provision
6 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
7 Order were committed, as set forth in this Complaint.

8 4. Plaintiff JAMES COLLINS worked as a Merchandiser for ADVANTAGE SALES
9 AND MARKETING LLC, and DOES 1-20, a sales and marketing company, all over California, from
10 August 23, 2016 to present. Plaintiff's job duties include performing moving racking stands and
11 installing new racking stands in stores for clients, merchandising new product, and putting up signs in
12 stores for clients, and steel work.

13 5. Plaintiff JAMES COLLINS was at all times relevant hereto a resident of Apple Valley,
14 California.

15 6. At all relevant times herein, Defendant ADVANTAGE SALES AND MARKETING
16 LLC was a Corporation with its principal place of business in Irvine, California.

17 7. Defendants’ JILL GRIFFIN, BRIAN G. STEVENS, and TANYA DOMIER were at
18 all times relevant herein principals of ADVANTAGE SALES AND MARKETING LLC.

19 8. Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5
20 because this suit was filed in the county where the liability arises, where the breach occurred and where
21 Defendants resided at the commencement of this action.

22 9. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
23 unity of interest and ownership between ADVANTAGE SALES AND MARKETING LLC, JILL
24 GRIFFIN, BRIAN G. STEVENS, TANYA DOMIER, and DOES 1-20 that the individuality and
25 separateness of defendants have ceased to exist.

26 10. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
27 of purported corporate existence, ADVANTAGE SALES AND MARKETING LLC, JILL GRIFFIN,
28 BRIAN G. STEVENS, TANYA DOMIER, and DOES 1-20 are, in reality, one and the same.

1 11. ADVANTAGE SALES AND MARKETING LLC, JILL GRIFFIN, BRIAN G.
2 STEVENS, TANYA DOMIER, and DOES 1-20 do not comply with all requisite corporate formalities
3 to maintain a legal and separate existence.

4 12. The business affairs of ADVANTAGE SALES AND MARKETING LLC, JILL
5 GRIFFIN, BRIAN G. STEVENS, TANYA DOMIER, and DOES 1-20 are, and at all times relevant
6 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
7 inextricable confusion. ADVANTAGE SALES AND MARKETING LLC is, and at all times relevant
8 hereto was, used by JILL GRIFFIN, BRIAN G. STEVENS, TANYA DOMIER, and DOES 1-20 as a
9 mere shell and conduit for the conduct of certain of Defendants' affairs, and is, and was, the alter ego
10 of DOES 1-20. The recognition of the separate existence of ADVANTAGE SALES AND
11 MARKETING LLC would not promote justice, in that it would permit Defendants to insulate
12 themselves from liability to Plaintiff for violations of state law. The corporate existence of
13 ADVANTAGE SALES AND MARKETING LLC and DOES 1-20 should be disregarded in equity
14 and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff
15 herein.

16 13. Accordingly, ADVANTAGE SALES AND MARKETING LLC, JILL GRIFFIN,
17 BRIAN G. STEVENS, TANYA DOMIER, and DOES 1-20 are the alter egos of one another, and the
18 fiction of their separate corporate existence must be disregarded.

19 14. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
20 thereon alleges that ADVANTAGE SALES AND MARKETING LLC, JILL GRIFFIN, BRIAN G.
21 STEVENS, TANYA DOMIER, and DOES 1-20 are joint employers by virtue of a joint enterprise,
22 and that the employees and agents of ADVANTAGE SALES AND MARKETING LLC were also
23 employees of JILL GRIFFIN, BRIAN G. STEVENS, TANYA DOMIER and DOES 1-20.
24 ADVANTAGE SALES AND MARKETING LLC employees performed services for each and every
25 one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of
26 them as employees, either directly or indirectly, and the manner in which Defendants' business was
27 and is conducted.

28 15. The true names and capacities, whether individual, corporate, associate, or otherwise,

1 of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
2 therefore these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
3 Complaint to insert the true names and capacities of these Defendants when they become known to
4 Plaintiff. Plaintiff is informed and believes and based thereupon alleges, that each of the fictitiously
5 named Defendant is responsible for the wrongful acts alleged herein and are therefore liable to Plaintiff
6 as alleged hereinafter.

7 16. Plaintiff is informed and believes and based thereupon alleges, that at all times relevant
8 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
9 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendant, and
10 each of them, and in doing the things alleged herein, were acting at least in part within the course and
11 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or
12 joint venture and with the permission and consent of each of the other Defendant.

13 17. Plaintiff is informed and believes and based thereupon alleges, that Defendant,
14 including those defendants named as DOES 1-20 acted in concert with one another to commit the
15 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
16 wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and
17 based thereupon alleges, that Defendant, including those defendants named as DOES 1-20 formed and
18 executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
19 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to
20 cause and actually causing Plaintiff's harm.

21 18. Whenever and wherever reference is made in this Complaint to any act or failure to act
22 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
23 and/or failures to act by each Defendant acting individually, jointly and severally.

24 **GENERAL ALLEGATIONS**

25 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to receive full reimbursement for
27 all business-related expenses and costs they incurred in direct consequence of the discharge of their
28 duties and that they did not receive full reimbursement of applicable business-related expenses and

costs incurred.

20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiff and class members did not receive payment of all wages due, including overtime wages, minimum wages, and meal and rest period premiums, within the time periods required by law.

21. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and class members for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so.

CLASS ALLEGATIONS

22. Plaintiff's proposed Class consists of:

23. All persons who worked for Defendants as non-exempt, hourly-paid employees in California, within four years prior to the filing of the initial complaint until the date of trial (“Class”).

24. Plaintiff reserves the right to redefine the Class and to add subclasses as appropriate based on further investigation and discovery.

25. At all relevant times, Defendants have had a common and consistent policy and practice of failing to reimburse for necessary business expenditures and timely pay wages in violation of the Labor Code and IWC Wage Orders.

26. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

27. **Numerosity:** The members of the Class are sufficiently numerous that joinder of all members is impracticable. The membership of the entire Class is unknown to Plaintiff at this time. However, the Class is estimated to be greater than 50 individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

28. **Commonality:** There are questions of law and fact common to the Class that are answerable on a common basis, and these questions predominate over individual questions. The questions of law and fact common to the Class include, without limitation:

- a. Whether Defendants failed to reimburse Plaintiff and class members for necessary business expenditures, losses incurred by them in direct consequence of the discharge of their duties or obedience to the directions of the employer;
- b. Whether Defendants failed to pay earned wages due to Plaintiff and class members upon their discharge;
- c. Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and,
- d. The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

29. **Typicality:** Plaintiff's claims are typical of the claims of the Class he seeks to represent. As set forth herein, Defendants' common course of conduct causes Plaintiff and similarly situated persons employed by Defendants the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the Class.

30. **Adequacy:** Plaintiff will fairly and adequately represent the interests of all members of the Class he seeks to represent. Plaintiff is members of the Class he seeks to represent, does not have any conflicts of interest with the Class, will prosecute the case vigorously on behalf of the Class, and has already devoted time and resources to the initial investigation of these claims. Plaintiff's attorney is competent and experienced in litigating employment actions, including wage and hour class actions.

31. **Superiority of Class Action:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy. In particular, Plaintiff is informed and believes that some Class Members may be unwilling to bring individual lawsuits for fear of retaliation by Defendants. Because the damages suffered by certain individual members of the Class may be relatively small, the expense and burden of individual litigation make it impracticable for Class Members to pursue their claims separately. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal, fraudulent and unfair employment practices and policies. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Class action treatment

1 will also avoid inconsistent outcomes because the same issues can be adjudicated in the same manner
2 for all members of the Class.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES**

5 **IN VIOLATION OF LABOR CODE § 2802**

6 **(AGAINST ALL DEFENDANTS)**

7 32. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
8 though fully set forth herein.

9 33. An employer shall indemnify his or her employee for all necessary expenditures or
10 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
11 or her obedience to the directions of the employer.

12 34. At all times relevant herein, Class Members have been required by Defendants to
13 purchase tools, and in fact did purchase tools in order to perform their duties.

14 35. At all times relevant herein, Defendants have had a uniform practice and policy of
15 paying their employees less than twice the minimum wage in contravention of the applicable IWC
16 Wage Orders and California Labor Code §§ 1182, 1194, 1194.2, and 1197.

17 36. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
18 Defendants have maintained a policy, practice, or a lack of policy, which resulted in their failure to
19 indemnify the Class for the reasonable expenses they incurred in the course of performing their duties.
20 Specifically, Plaintiff is informed and believes and thereon alleges that at all relevant times,
21 Defendants have not reimbursed Class Members for the purchase of their tools.

22 37. As a result of the foregoing, all members of the Class are entitled to recover all sums
23 incurred by them for the purchase of the tools that were necessary for the performance of their jobs
24 and which they were required to purchase in an amount according to proof at trial.

25 38. As a result of the foregoing, Class members are further entitled to an award of interest
26 at the same rate as judgments in civil actions, accruing from the date on which they incurred the
27 necessary expenditures or losses and all reasonable costs, including attorney's fees incurred by them
28 for enforcing the rights granted by Labor Code § 2802.

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1 47. Under Labor Code § 2698, et seq., Plaintiff, as a aggrieved employee, may bring an
2 action against defendants, on behalf of himself and other current or former employees, seeking civil
3 penalties for defendants' violations of the California Labor Code.

4 48. Plaintiff was a aggrieved employee within the meaning of Labor Code §2698, et seq.
5 by virtue of the numerous Labor Code violations he was subjected to as plead herein.

6 49. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings
7 this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse
8 for necessary business expenditures in violation of Labor Code § 2802, and willful failure to pay wages
9 in violation of Labor Code § 201-203.

10 50. On March 13, 2023, Plaintiff provided written notice by online filing with the Labor
11 and Workforce Development Agency and by certified mail to Defendants of the specific provisions of
12 the Labor Code alleged to have been violated, including the facts and theories to support the alleged
13 violation, as required by Labor Code § 2699.3 (a) (1) (A).

14 51. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and
15 Workforce Development Agency of its intent to pursue an action against Defendants.

16 52. As a direct and proximate result of Defendants' California Labor Code violations as set
17 forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period
18 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent
19 violation, pursuant to Labor Code § 2699 (f), for those Labor Code sections not expressly providing
20 for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
21 provide for a penalty.

22 53. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the
23 recovered civil penalties.

24 **FOURTH CAUSE OF ACTION**
25 **UNFAIR COMPETITION IN VIOLATION OF**
26 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
27 **(AGAINST ALL DEFENDANTS)**

28 54. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as

1 though fully set forth herein.

2 55. Defendants are a “person” as defined by California Business & Professions Code
3 sections 17201.

4 56. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful
5 and harmful to Plaintiff, the Class, aggrieved employees and to the general public. Plaintiff and the
6 Class have suffered injury in fact and have lost money as a result of Defendants’ unlawful business
7 practices. Plaintiff and the Class seek to enforce important rights affecting the public interest within
8 the meaning of Code of Civil Procedure section 1021.5.

9 57. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
10 predicated on the violation of any state or federal law.

11 58. The employment practices engaged in by Defendant as plead herein, including
12 violations of the Labor Code sections, Code of Regulations and Wage Orders, constitute unfair
13 business practices in violation of Business & Professions Code §§17200, *et seq.*

14 59. As a result of Defendants’ unfair business practices, Defendant have reaped unfair
15 benefits and illegal profits at the expense of Plaintiff, the Class and members of the public.

16 60. Pursuant to California Business & Professions Code §§ 17200, *et seq.* Plaintiff and the
17 Class are entitled to restitution of the wages withheld and retained by Defendants during a period that
18 commences four years prior to the filing of this Complaint; a permanent injunction requiring
19 Defendants to pay all outstanding wages due to Plaintiff, the Class and aggrieved employees; and an
20 award of attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other
21 applicable laws; and an award of costs.

22 **PRAYER FOR RELIEF**

23 Plaintiff and the Class pray for relief and judgment against Defendant as follows:

24 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in excess
25 of \$25,000.

26 **Class Certification**

27 2. That this case be certified as a class action;

28 3. That Plaintiff be appointed as the representatives of the Class and Subclass;

1 4. That counsel for Plaintiff be appointed as class counsel.

2 **As to the First Cause of Action**

3 **(Unreimbursed Business Expenses)**

4 5. That the Court adjudge, declare and decree that Defendants violated Labor Code § 2802
5 by willfully failing to reimburse business expenses incurred by Plaintiff and the Class;

6 6. For unreimbursed business expenses and for all actual, consequential, and incidental
7 losses and damages, according to proof;

8 7. For interest at the same rate as judgments in civil actions, accruing from the date on
9 which Plaintiff and the Class incurred the necessary expenditures or loses pursuant to Labor Code §
10 2802;

11 8. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's
12 enforcement of the rights granted by Labor Code § 2802 pursuant to Labor Code § 2802 (c); and

13 9. For such other relief that the Court deems just and appropriate.

14 **As to the Second Cause of Action**

15 **(Willful Failure to Pay Wages)**

16 10. That the Court declare, adjudge, and decree that Defendants violated California Labor
17 Code § 201-203, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay
18 minimum wages, overtime wages, and meal and rest premiums owed to Plaintiff and class members
19 either upon discharge or within 72 hours of their resignation;

20 11. For wait time penalties pursuant to Labor Code § 203;

21 12. For all actual, consequential, and incidental losses and damages, according to proof;

22 13. For pre-judgment interest on any unpaid wages from the date such amounts were due,
23 or as otherwise provided by law;

24 14. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or
25 as otherwise provided by law; and

26 15. For such other relief that the Court deems just and appropriate.

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As to the Third Cause of Action
(Civil Penalties under the PAGA)

16. That the Court declare, adjudge, and decree that Defendants violated all California Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

17. For civil penalties pursuant to 210, 226.3, 256, 558, 1174.5, 1197.1, 2699 (a) and/or 2699 (a), (f) and (g), for violations of all California Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

18. For attorneys’ fees and costs pursuant to California Labor Code § 2699 (g) (1), and any and all other relevant statutes, for Defendants’ violations of all California Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

19. For pre-judgment and post-judgment interest as provided by law; and

20. For such other and further relief as the Court deems just and appropriate.

As to the Fourth Cause of Action
(Unfair Competition)

21. That the employment practices engaged in by Defendants as plead herein, including violations of the Labor Code, Code of Regulations and Wage Orders, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.;

22. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

23. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, et seq.;

24. For reasonable attorneys’ fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5; and

25. For such other and further relief as the Court deems just and appropriate.

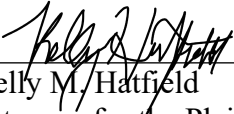
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DEMAND FOR JURY TRIAL

Plaintiff and the Class hereby demand a trial by jury on all issues.

PIMENTEL LAW, P.C.

Dated: June 16, 2023

By: 

Kelly M. Hatfield
Attorney for the Plaintiff