

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

06/08/2023 at 10:02:05 PM

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Attorneys for Plaintiff Kamora Newsome

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

Kamora Newsome, on behalf of herself and
all similarly situated individuals,

Plaintiff,

vs.

**Kiva Sales & Services, Inc.; Kristi Knoblich
Palmer**, an individual; and **Does 1-10**, inclusive;

Defendants.

CASE NO. **23CV035642**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

**1) PAGA Penalties (Labor Code §§ 2699,
et seq.)**

1 Plaintiff Kamora Newsome, in her representative capacity on behalf of herself and all other
2 similarly-situated current and former employees (the “Aggrieved Employees”), by and through her
3 counsel of record, alleges as follows against Defendant Kiva Sales & Services, Inc., Kristi Knoblich
4 Palmer, and Does 1-10, inclusive (collectively, “Defendants”):

5 **PARTIES**

6 1. Plaintiff Kamora Newsome (“Plaintiff”) was, for all relevant times in this Complaint,
7 a resident of Alameda County, California. Plaintiff was an hourly, non-exempt employee of Kiva Sales
8 & Services, Inc. working as a Specialist from approximately 2022 to 2023. Plaintiff received an hourly
9 wage of \$20.00. Plaintiff was subject to the policies and practices described in this Complaint at all
10 times during her employment at Kiva.

11 2. Defendant Kiva Sales & Services, Inc (“Kiva”) is a California corporation with its
12 principal business location at 2300 N Loop Road Alameda, CA 94502.

13 3. Upon information and belief, Defendant Kristi Knoblich Palmer is the owner of Kiva
14 and a resident of the State of California. Since Ms. Palmer, upon information and belief, caused or
15 directed the acts described herein, she is personally liable for the Labor Code violations and PAGA
16 penalties complained herein per Labor Code § 558.1.

17 4. Plaintiff is not currently aware of the names and true identities of defendants Does 1-
18 10. Plaintiff reserves the right to amend this complaint to allege their true names and capacities when
19 this information is available. Each Doe defendant is responsible for the damages alleged pursuant to
20 each of the causes of action asserted, either through its own conduct, or vicariously through the
21 conduct of others. All further references in this complaint to any of the named Defendants include the
22 fictitiously named defendants.

23 5. Except as otherwise noted herein, Defendants participated in the acts alleged herein
24 and/or were the agents, servants, employees, or representatives of the other Defendants. At all times
25 relevant to this complaint, Defendants were acting within the course, scope, and authority of their
26 agency and employment such that the acts of one defendant are legally attributable to the other
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1 Defendants. Defendants, in all respects, acted as employers and/or joint employers of Plaintiff and
2 Aggrieved Employees in that each of them exercised control over the wages, hours, and/or working
3 conditions of the Defendants' hourly non-exempt employees.

4 VENUE AND JURISDICTION

5 6. The court has jurisdiction over all causes of action in this complaint pursuant to Article
6 VI, § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on
7 California statutes and law, including the Government Code and the Business & Professions Code.
8 Because Defendants conduct substantial business in Alameda County, Defendants are within the
9 jurisdiction of the court for service of process. Moreover, Business & Professions Code § 17204
10 provides that any person acting on their own behalf may bring an action in any court of competent
11 jurisdiction.

12 7. Venue as to Defendants is proper in this Superior Court pursuant to California Code
13 of Civil Procedure § 395. The unlawful acts alleged have directly affected Plaintiff and similarly
14 situated employees as in Alameda County, where Plaintiff lives and he earned the wages at issue in
15 this action. Accordingly, this Court maintains appropriate jurisdiction over this dispute.

16 FIRST CAUSE OF ACTION

17 *Labor Code §§ 558, 2698, et seq.*

18 *Private Attorneys General Act ("PAGA") Penalties*

19 *(Plaintiff and Aggrieved Employees Against Defendants)*

20 8. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in
21 this paragraph, all the allegations of this Complaint.

22 9. Violations. Defendants violated Labor Code § 226.7 by failing to provide legally
23 compliant meal and rest periods to the Aggrieved Employees as set forth below. Defendants also
24 violated Labor Code §§ 226, 432, and 1198.5 by failing to provide copies of Plaintiff's records to
25 Plaintiff's counsel upon request and maintain such records for the requisite amount of time.
26 Defendants also violated Labor Code § 2802 by failing to reimburse its employees for business-related
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1 expenditures. Finally, Defendants violated Labor Code § 1197 and 1182.12 for not providing
2 employees with compensation for all hours worked.

3 10. *Rest Periods.* Section 12 of Wage Order No. 5 provides that “[e]very employer shall
4 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
5 middle of each work period” and that the “rest period time shall be based on the total hours worked
6 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless
7 the total daily work time is less than three and one-half (3½) hours. Employees must be compensated
8 for time spent in their rest periods.

9 11. Employers must authorize and permit employees to be relieved of all duty during their
10 rest periods: “A rest period, in short, must be a period of rest.” *Augustus v. ABM Sec. Servs., Inc.*, 385
11 P.3d 823, 834 (2016). Employees also must be free to leave the premises.¹

12 12. At all relevant times, Defendants’ policies and practices, including their scheduling
13 and staffing practices and policies, failed to authorize or permit all required compliant paid rest periods
14 for shifts between 3.5 and 12+ hours and failed relieve Aggrieved Employees of all duties or employer
15 control during their rest periods by requiring them to interrupt their rest periods or forgo them entirely
16 to care for patients, respond to doctors and supervisors, or otherwise suffer to work for Defendants.
17 Defendants also failed to implement a lawful rest period policy or practice that relieved Plaintiff and
18 Aggrieved Employees from all duties by failing to authorize them to leave their worksite during rest
19 periods.

20 13. Moreover, Defendants did not pay Plaintiffs and Class Members for all rest period
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22 ¹ See *id.* at 832 (“In the context of a 10-minute break that employers must provide during the
23 work period, a broad and intrusive degree of control exists when an employer requires employees to
24 remain on call and respond during breaks. An employee on call cannot take a brief walk—five minutes
25 out, five minutes back—if at the farthest extent of the walk he or she is not in a position to respond.
26 Employees similarly cannot use their 10 minutes to take care of other personal matters that require
27 truly uninterrupted time.”); see also Department of Industrial Relations, “Rest Periods,” *available at*
https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the
work premises during my rest period? A. No, your employer cannot impose any restraints not
inherent in the rest period requirement itself.”).

1 premium wages when they were missed, interrupted by work, and taken late. Upon information and
2 belief, Defendants engaged in a systematic company-wide policy to not pay rest period premiums for
3 Plaintiffs and Class Members, regardless of whether they were able to take a compliant rest period.

4 14. *Meal Periods.* At all times relevant to this complaint, Defendants knew they were
5 obligated to provide legally-compliant meal breaks to its non-exempt employees pursuant to Labor
6 Code §§ 512 and 226.7.

7 15. Labor Code § 512(a) states in pertinent part: “[A]n employer shall not employ an
8 employee for a work period of more than five hours per day without providing the employee with a
9 meal period of not less than 30 minutes...An employer shall not employ an employee for a work period
10 of more than 10 hours per day without providing the employee with a second meal period of not less
11 than 30 minutes...”

12 16. Labor Code §§ 226.7, 512(a), and 1198 provide that no employer shall require an
13 employee to work during any meal period mandated by an applicable order of the IWC. “An off-duty
14 meal period, therefore, is one in which the employee “*is* relieved of all duty during [the] 30-minute
15 meal period.”...[A]n employer’s obligation is to provide an off-duty meal period: an uninterrupted
16 30-minute period during which the employee is relieved of all duty.” *Brinker Rest. Corp. v. Superior*
17 *Court*, 273 P.3d 513, 533 (2012).

18 17. Defendants have consistently denied their non-exempt employees the opportunity to
19 take compliant 30-minute meal periods in accordance with these mandates. Upon information and
20 belief, numerous Aggrieved Employees, including Plaintiff, were required to interrupt their meal
21 periods to answer phone calls, otherwise interrupt or cut short their meal periods, or remain on duty
22 and under Defendants’ control during their meal periods to perform other tasks at Defendants’
23 directions due to Defendants’ policies and practices, including their scheduling and staffing practices
24 and policies.

25 18. Moreover, Defendants did not pay Plaintiffs and Class Members for all meal period
26 premium wages when they were missed, interrupted by work, and taken late. Upon information and
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1 belief, Defendants engaged in a systematic company-wide policy to not pay meal period premiums for
2 Plaintiffs and Class Members, regardless of whether they were able to take a compliant rest period.

3 19. Accordingly, Plaintiff and Aggrieved Employees were uniformly denied meal periods
4 as a result of Defendants' formal policies and practices. By failing to consistently provide
5 uninterrupted, off-duty 30-minute meal periods, Defendants violated Wage Order No. 5 and the Labor
6 Code as to Plaintiff and Aggrieved Employees.

7 20. *Failure to Provide and Maintain Records.* California labor Code section 226(a) requires
8 employers to keep copies of an employee's accurate itemized statements (also known as: pay stubs)
9 on file for at least three years. The paystubs must include certain information, including, but not
10 limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay
11 period, total hours worked, and all applicable rates of pay. Defendants' failure to include premium pay
12 for missed meal and rest periods on Aggrieved Employees' paystubs violates Labor Code § 226(a).

13 21. Labor Code § 226 additionally provides that employers "shall afford current and
14 former employees the right to inspect or receive a copy of records pertaining to their employment,
15 upon reasonable request to the employer" and that employers "shall comply with the request as soon
16 as practicable, but no later than 21 calendar days from the date of the request." Labor Code § 226 also
17 requires that Defendants provide

18 22. Labor Code § 1198.5 provides that "[u]pon a written request from a current or former
19 employee, or her or her representative, the employer shall also provide a copy of the personnel
20 records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from
21 the date the employer receives the request . . ."

22 23. Labor Code § 432 provides that "[i]f an employee or applicant signs any instrument
23 relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon
24 request."

25 24. Labor Code § 1174 requires employers to maintain payroll records showing the hours
26 worked daily by all employees, for a time not less than three years. Industrial Wage Order No. 5,
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1 Section 7 requires that an employer maintain “time records showing when the employee begins and
2 ends each work period” and make those records available to any employee upon reasonable request.

3 *Id.*

4 25. Plaintiff Kamora Newsome, through counsel, requested copies of her records kept in
5 accordance with Labor Code §§ 226, 432, 1174, and 1198.5 by certified letter on April 27, 2023.

6 26. Defendants did not provide Plaintiff with all records required to be produced by these
7 statutes by the deadline of May 29, 2023.

8 27. Labor Code § 226(f) and (h) sets forth that if an employer fails to permit a current or
9 former employee to inspect or copy records required to be kept under that section within 21 days of a
10 request to inspect, that employer is liable to the employee for a penalty of \$750, and the employee is
11 entitled to bring an action for injunctive relief to enforce compliance and shall be entitled to an award
12 of costs and reasonable attorney’s fees in doing so. Labor Code § 1198.5(k) sets forth that if an
13 employer fails to permit a current or former employee to inspect or copy records relating to the
14 employee’s performance or to any grievance concerning the employee within 30 days of a request to
15 inspect, that employer is liable to the employee for a penalty of \$750, and the employee is entitled to
16 bring an action for injunctive relief to enforce compliance and shall be entitled to an award of costs and
17 reasonable attorney’s fees in doing so.

18 28. Defendants have a policy and practice of denying requests for employee records to their
19 current and former employees in California that violates Labor Code §§ 226, 432, 1174, and 1198.5
20 and the Wage Orders. Under information and belief, Defendants also fail to maintain these records for
21 the statutorily prescribed length of time.

22 29. *Failure to Reimburse Necessary Business Expenditures.* Labor Code § 2802 requires
23 employers to “indemnify his or her employee for all necessary expenditures or losses incurred by the
24 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the
25 directions of the employer, even though unlawful, unless the employee, at the time of obeying the
26 directions, believed them to be unlawful.” If an employer fails to indemnify said employee for all
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1 necessary business expenditures or losses, the employer is liable for reasonable costs, including, but
2 not limited to reasonable attorneys' fees and costs.

3 30. Plaintiff and Aggrieved Employees were required to use their cellphones during work
4 hours for business related purposes without being reimbursed.

5 31. Defendants did not pay Plaintiffs and Class Members for all necessary business
6 expenditures incurred by its employees. Upon information and belief, Defendants engaged in a
7 systematic company-wide policy to not reimburse Plaintiffs and Class Members for their cellphone
8 usage.

9 32. *Failure to Compensate Employees for All Hours Worked.* Lab. Code § 1197 states "[t]he
10 minimum wage for employees fixed by the commission or by any applicable state or local law, is the
11 minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed
12 is unlawful."

13 33. Defendants have routinely not provided their non-exempt employees with
14 compensation for all hours worked in accordance with these mandates. Upon information and belief,
15 numerous Aggrieved Employees, including Plaintiff, were required to perform tasks as a requisite to
16 begin working, including being screened for COVID-19, prior to clocking into work.

17 34. Moreover, Defendants did not pay Plaintiffs and Class Members for all hours worked.
18 Upon information and belief, Defendants engaged in a systematic company-wide policy to not pay
19 employees for all hours worked, regardless of the hours they were subjected under the direction or
20 control of Defendants.

21 35. Representative Action. Plaintiffs seeks to recover the PAGA civil penalties through a
22 representative action as permitted by PAGA (Labor Code § 2699, *et seq.*) and the California Supreme
23 Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA
24 claims is not required, but Plaintiffs may choose to seek certification of the PAGA claims.

25 36. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by Defendants
26 during the applicable statutory period and suffered the Labor Code violations alleged herein.

1 37. Entitlement to Penalties. Under the California Private Attorneys General Act
2 (“PAGA”), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a
3 private attorney general, on behalf of herself and other current or former employees as well as the
4 general public, to recover penalties for an employer’s violations of the Labor Code and IWC Wage
5 Orders. These penalties are in addition to any other relief available under the Labor Code and are
6 allocated seventy-five percent to the Labor and Workforce Development Agency and twenty-five
7 percent to the affected employees.

8 38. These penalties may be “stacked” separately for each of Defendants’ violations of the
9 Labor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77
10 (C.D. Cal. June 22, 2012) (“[F]ederal courts applying California law have concluded that stacking is
11 appropriate.”); *see also O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at
12 *7 (N.D. Cal. June 30, 2016) (“Finally, Plaintiff ignore the potential for stacking of PAGA penalties
13 related to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal
14 and rest breaks, minimum wage and overtime, and workers’ compensation.”).

15 39. Plaintiffs, the Aggrieved Employees, and the State of California are entitled to recover
16 the maximum civil penalties allowed by law for the violations of the Labor Code as alleged in this
17 Complaint. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to
18 be paid by Defendants and allocated as required by PAGA, in the amounts set forth in the underlying
19 statute,² or \$100 per pay period for an initial violation and \$200 per pay period for subsequent
20 violations. *See* Lab. Code § 2699(f).

21 40. Procedural Requirements Met. Plaintiff filed a notice of claims with the LWDA and
22 sent a copy to Defendants by certified mail. **Exhibit A.** As of the date of filing this complaint, Plaintiff
23 has not received a response from the LWDA. As of 65 days from the date of that filing, should the
24 LWDA not take action in response to Plaintiff’s filing, Plaintiff will meet all procedural requirements

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26 ² Violations of Labor Code § 226.7 entitled the affected employee to “one additional hour of
27 pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery
28 period is not provided.” Cal. Lab. Code § 226.7.

1 necessary to bring this claim. Accordingly, Plaintiff is entitled to assert this claim. Labor Code
2 § 2699.3(a)(2).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff respectfully prays judgment as follows:

- 5 A. For civil penalties, according to proof at trial;
6 B. For post-judgment interest on monetary damages;
7 C. For reasonable attorney's fees and costs and expert fees and costs; and
8 D. For such other relief as this Court deems just and proper.

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10 Respectfully submitted,
Dated: June 8, 2023 **KING & SIEGEL LLP**

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13 By: Elliot J. Siegel
14 Elliot J. Siegel
15 Attorneys for Plaintiff Kamora Newsome
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Exhibit A



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June 8, 2023

Original filed online via the LWDA's PAGA Claim Notice Portal

Labor & Workforce Development Agency

1515 Clay Street, Ste. 801
Oakland, CA 94612

Copy Sent via certified mail to:

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Alameda CA 94502

CSC - LAWYER'S INCORPORATING SERVICE
2710 Gateway Oaks Drive
Sacramento, CA 95833

Re: Kamora Newsome v. Kiva Sales & Services, Inc.

To Whom it May Concern:

We represent Kamora Newsome ("Plaintiff") against defendants Kiva Sales & Services, Inc. ("Defendants") in a lawsuit filed against Defendants in Alameda County Superior Court (the "Action"). A copy of the Complaint filed in the Action is enclosed as **Exhibit A**.

Together with this correspondence, the enclosed Complaint serves as notice pursuant to Labor Code § 2699.3, *et seq.* that we intend to prosecute representative claims for civil penalties under the Private Attorney's General Act ("PAGA") on behalf of those of Defendants' employees employed from one year prior to filing of this Notice through trial (the "Aggrieved Employees") for the Labor Code violations asserted in the Complaint. *See* Cal. Lab. Code §§ 2699, *et seq.*

As set forth in greater detail in the Complaint, Defendants violated their obligations under the California Labor Code by (1) failing to provide rest and meal breaks pursuant to Lab. Code § 226.7(b); (2) failing to reimburse employees for business expenditures pursuant to Lab. Code § 2802; (3) failing to provide employees compensation for all hours worked pursuant to Lab. Code

§ 1197, 1182.12, and (4) failing to provide and maintain records under Lab. Code §§ 226, 432, and 1198.5 due to Defendant's practices and policies. *See* **Exhibit A**.

Please feel free to contact us with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Elliot J. Siegel".

Elliot J. Siegel
KING & SIEGEL LLP