

Tyler D. Kring, Bar No. 325588
tkring@kringandchung.com
Jeffrey T. Green, Bar No. 330065
jgreen@kringandchung.com
KRING & CHUNG, LLP
38 Corporate Park
Irvine, CA 92606-5105
Telephone: (949) 261-7700
Facsimile: (949) 261-8800

Assigned for All Purposes
Judge Randall J. Sherman
Dept. CX105

Attorneys for Plaintiff
DARLENE BLANCHARD, individually and on behalf of all
others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CIVIL COMPLEX CENTER

DARLENE BLANCHARD, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

HOME CONSIGNMENT CENTER, LLC., a
Texas limited liability company; and DOES 1 to
10, inclusive,

Defendants.

) Case No. 30-2023-01365696-CU-OE-CXC

) **FIRST AMENDED CLASS ACTION**
) **COMPLAINT FOR:**

) **1. FAILURE TO PAY OVERTIME**
) **WAGES;**
) **2. FAILURE TO PAY WAGES FOR**
) **HOURS WORKED;**
) **3. FAILURE TO PROVIDE MEAL**
) **PERIODS;**
) **4. FAILURE TO PROVIDE REST**
) **PERIODS;**
) **5. FAILURE TO FURNISH ACCURATE**
) **ITEMIZED WAGE STATEMENTS;**
) **6. FAILURE TO PAY WAGES AT**
) **LEAST TWICE IN A CALENDAR**
) **MONTH;**
) **7. FAILURE TO REIMBURSE**
) **NECESSARY BUSINESS EXPENSES;**
) **8. FAILURE TO PAY WAGES UPON**
) **TERMINATION OF EMPLOYMENT;**
) **9. UNFAIR BUSINESS PRACTICES;**
) **AND**
) **10. VIOLATIONS OF THE PRIVATE**
) **ATTORNEYS GENERAL ACT OF 2004.**

) **DEMAND FOR JURY TRIAL**

) Assigned to: Hon. Randall J. Sherman
) Dept: CX105

) Action Filed: November 28, 2023

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COMES NOW Plaintiff DARLENE BLANCHARD (“Plaintiff”) individually, and on behalf of herself and all other similarly situated current and former employees, files this Class Action and Representative Action Complaint (“Complaint”) against Defendant HOME CONSIGNMENT CENTER, LLC (collectively with Does, “Defendants”) and allege as follows:

INTRODUCTION

1. This Complaint is brought as a class action, pursuant to California Code of Civil Procedure section 382 on behalf of Plaintiff and all non-exempt employees employed by, or formerly employed by, HOME CONSIGNMENT CENTER, LLC, a Texas limited liability company, (“HCC”) within the State of California. These non-exempt employees who are employed by, or who were formerly employed by, Defendants within the State of California are hereinafter referred to individually as “Class Members” and collectively as the “Class” or “Classes.”

2. In addition, California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”) creates specified remedies that are triggered when an employer violates any provision of the California Labor Code specified in Labor Code section 2699.5. On **October 31, 2023**, Plaintiff gave notice of these alleged violations to the California Labor and Workforce Development Agency (“LWDA”) and to the agent for service of process for Defendants (the “PAGA Notice,” a true and correct copy of which is attached hereto as **Exhibit A**). At the date of this filing, Plaintiff has not received a response from the LWDA and Defendants failed to cure or remedy the alleged violations of the California Labor Codes identified in the PAGA Notice, or identified below, within the requisite statutory period. As a result, Plaintiff amends this action to file a representative action claim under the PAGA as mandated by Labor Code section 2699.3(a)(2)(C) since no further action is taken to cure or remedy the alleged violations by either the LWDA or Defendants.

3. For at least four (4) years prior to the filing of this action and through to the present (“relevant time period” or “liability period”), Defendants consistently maintained and enforced against Defendants’ non-exempt employees, among others, the below addressed unlawful practices and policies, in violation of California state wage and hour laws, including:

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- 1 a) During the relevant time period, Defendants had a consistent policy of
2 requiring employees to work more than eight (8) hours in any given day and/or
3 more than forty (40) hours in any given week, and of not paying them all
4 overtime compensation pursuant to applicable California Labor Code
5 requirements.
- 6 b) During the relevant time period, Defendants had a consistent policy of
7 requiring Class Members within the State of California to work at least five (5)
8 hours without a lawful meal period and failing to pay such employees one (1)
9 hour of pay at the employees' proper regular rate of compensation (including
10 any bonuses, overtime and other wages impacting the regular rate of pay) for
11 each workday that the meal period is not provided, as required by California
12 state wage and hour laws.
- 13 c) During the relevant time period, Defendants had a consistent policy of
14 requiring Class Members within the State of California to work at least five (5)
15 hours without a lawful meal period by rounding the beginning and ending time
16 punch of the meal period and thus failing to pay such employees one (1) hour
17 of pay at the employees' proper regular rate of compensation for each workday
18 that the meal period is not provided, as required by California state wage and
19 hour laws.
- 20 d) During the relevant time period, Defendants have had a consistent policy of
21 failing to provide Class Members within the State of California, including
22 Plaintiff, rest periods of at least (10) minutes per three and a half (3.5) hours
23 worked or major fraction thereof and failing to pay such employees one (1)
24 hour of pay at the employees' proper regular rate of compensation for each
25 workday that the rest period is not provided, as required by California state
26 wage and hour laws.

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- e) With respect to Class Members who either were discharged, laid off, or resigned, during the relevant time period, Defendants failed to pay them in accordance with the requirements of Labor Code sections 201, 202, 203; and,
- f) During the relevant time period, Defendants failed to maintain accurate records of Class Members' earned wages and work periods as evidenced by Defendants' failure to keep adequate records of when meal periods were taken or when they were paid, whether in the correct work week or otherwise.

4. Plaintiff, on behalf of herself and all other Class Members, brings this action pursuant to California Labor Code sections 201, 202, 203, 204, 210, 218, 218.6, 226, 226.7, 510, 511, 512, 1174, 1194, 1197, 1197.1, 1199, 2698, 2699, 2800-2802, and California Code of Regulations, Title 8, section 11000 et seq., seeking compensation for off-the-clock work, meal and rest period compensation, penalties, injunctive, and other equitable relief, and reasonable attorneys' fees and costs.

5. Plaintiff, on behalf of herself and all Classes, pursuant to Business & Professions Code sections 17200-17208, also seeks injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this Complaint.

PARTIES

A. Plaintiff

6. Plaintiff DARLENE BLANCHARD, at all relevant times, was and is a resident of Laguna Woods, California. Since approximately August 2018, Plaintiff has been employed by Defendants as a non-exempt hourly Associate employee, and was promoted to a non-exempt hourly Assistant Manager in November 2022, and worked as an Assistant Manager until January 2, 2024. Plaintiff and the other similarly situated Class Members were employed by Defendants and worked at Defendants' locations, with assigned responsibilities including: researching items for consignment, pre-qualifying products for consignment, home visits to potential sellers of consignment products, sales and merchandising of consignment products, monitoring products for sale and balancing inventory, assisting movers with transporting consignment items to the showroom, tagging products for sale, and communicating with consigners and donation centers for



1 items that do not sell. In both the Associate and Assistant Manager position, Plaintiff (1) shares
2 similar job duties and responsibilities; (2) is subjected to the same policies and practices; (3)
3 endures similar violations at the hands of Defendants as the other Class and Representative
4 Members who served in similar and related positions.

5 7. Defendants failed to record accurate time worked by these employees, and provided
6 Plaintiff and the Class Members with inaccurate wage statements that prevented Plaintiff and the
7 Class from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and
8 the Class with lawful meal and rest periods, as employees were not provided with the opportunity
9 to take uninterrupted and duty-free rest periods and meal breaks as required by the Labor Code.

10 **B. Defendants**

11 8. Plaintiff is informed and believes and based upon that information and belief alleges
12 that Defendant HOME CONSIGNMENT CENTER, LLC is in good standing and authorized to do
13 business in California and in the United States. Further, HCC does business throughout the United
14 States and in California, including Orange County. Accordingly, HCC is a furniture and jewelry
15 consignment company, and has showrooms and warehouses throughout California and the United
16 States. See (<https://thehomeconsignmentcenter.com/location/>)

17 9. The true names and capacities, whether individual, corporate, associate, or
18 otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to
19 Plaintiff, who therefore sues Defendants by such fictitious names under California Code of Civil
20 Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that each of
21 the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
22 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
23 names and capacities of the Defendants designated hereinafter as DOES when such identities
24 become known.

25 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
26 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
27 scheme, business plan or policy in all respects pertinent hereto, and that the acts of each Defendant
28 are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the



1 employer and/or joint employer of Plaintiff and the Classes.

2 **JURISDICTION AND VENUE**

3 11. This court has jurisdiction in this matter because Plaintiff is a resident of the State of
4 California and Defendant HCC, a Texas limited liability company, has its headquarters at 1901
5 Camino Ramon #F, Danville, CA 94526, and regularly conducts business in California and in this
6 County.

7 12. Venue is proper under Code of Civil Procedure sections 395 and 395.5 because
8 Defendants conduct business in this County, employed Plaintiff in this County, and committed
9 some of the alleged violations in this County.

10 **FACTUAL BACKGROUND**

11 13. Plaintiff and the Class Members are, and at all times pertinent hereto have been,
12 non-exempt employees within the meaning of the California Labor Code and the implementing
13 rules and regulations of IWC California Wage Orders. Defendants hire hourly employees who
14 work in non-exempt positions, like Plaintiff and Class Members' position, Assistant Manager,
15 and/or similar job titles and positions, at the direction of Defendants in the State of California.

16 14. Plaintiff and the Class Members are required to remain on the showroom floor and
17 attend to the needs of customers, and cannot always be relieved to take meal and/or rest breaks, or
18 are required to remain on-duty at all times and were unable to take off-duty breaks or were
19 otherwise not provided with the opportunity to take required breaks due to Defendants' policies and
20 practices. Although Defendants' facial policy regarding meal periods appears lawful, it was
21 Plaintiff's understanding and belief that the policy was not implemented, especially during periods
22 when Defendants needed employees to keep up with the demands of business. Further, Defendants
23 typically operated with a "skeleton crew" that provided little coverage for Plaintiff and Class
24 Members to take timely and uninterrupted meal and rest periods. Plaintiff understands and believes
25 that Class Members were many times unable to take a meal period. On the occasions when Class
26 Members could take a meal period, they were often untimely or interrupted, as the Class Members
27 were required to respond to work demands. Nonetheless, Plaintiff and Class Members were
28 required to record meal periods as if they were taken before the end of the fifth hour of work.



1 Accordingly, Class Members were not provided with one (1) hour's wage in lieu thereof. Plaintiff
2 understands and believes therefore, that meal period violations occurred in one or more of the
3 following manners:

- 4 a) Class Members were not provided full thirty-minute duty free meal periods for
5 workdays in excess of five (5) hours and were not compensated one (1) hour's
6 wage in lieu thereof, all in violation of, among others, Labor Code section
7 226.7, 512 and the applicable Industrial Welfare Commission Wage Order(s);
- 8 b) Class Members were required to work through at least part of their daily meal
9 period(s);
- 10 c) Meal periods were provided after five (5) hours of continuous working during
11 a shift;
- 12 d) Meal periods were short due to being rounded at the beginning or the end of
13 the shift resulting in less than a net thirty (30) minute meal period;
- 14 e) Class Members were restricted in their ability to take a full thirty (30) minute
15 meal period; and
- 16 f) Class Members were not paid meal period premiums using the proper regular
17 rate of pay that included all non-discretionary bonuses, shift differential or
18 other wages.

19 15. Plaintiff and the Defendants' non-exempt employees were also not authorized
20 and permitted to take lawful rest periods, were often asked by Defendants to work through or
21 during breaks, and were not provided with one (1) hour's wages in lieu thereof. Rest period
22 violations therefore arose in one or more of the following manners:

- 23 a) Class Members were required to work without being provided a minimum ten
24 minute rest period for every three and a half (3.5) hours or major fraction
25 thereof worked and were not compensated one (1) hour of pay at their proper
26 regular rate of compensation for each workday that a rest period was not
27 provided;



- 1 b) Class Members were not authorized and permitted to take timely rest periods
2 for every three and a half (3.5) hours worked, or major fraction thereof; and
3 c) Class Members were restricted in their ability to take their full ten (10)
4 minutes net rest time or were otherwise not provided with duty-free rest periods.

5 16. Further, during Plaintiff and the Class Members' employment with Defendants, they
6 were not paid all wages they were owed, including for all work performed (resulting in "off-the-
7 clock" work) while they were forced to work through their meal and rest periods, and not paid all
8 overtime hours worked and all hours worked off-the-clock, to keep labor budgets low. Plaintiff was
9 an "Assistant Manager" employee, which is an hourly, non-exempt position with employees who
10 holds similar duties to all employees on the showroom floor, whose duties are: researching items
11 for consignment, pre-qualifying products for consignment, home visits to potential sellers of
12 consignment products, sales and merchandising of consignment products, monitoring products for
13 sale and balancing inventory, assisting movers with transporting consignment items to the
14 showroom, tagging products for sale, and communicating with consigners and donation centers for
15 items that do not sell. Plaintiff and Class Members were sometimes asked to work shifts over eight
16 (8) hours and to work over forty (40) hours in a workweek, and it was company practice to not pay
17 for all time worked. Although Plaintiff and the Class Members were paid bi-weekly by Defendants,
18 the pay never reflected the hours that Plaintiff and the Class Members worked without pay and
19 while off-the-clock. As a result, Plaintiff and the Class Members worked substantial hours during
20 their employment with Defendants for which they were not compensated, in violation of the
21 California Labor Code.

22 17. As a matter of uniform Company policy, Plaintiff and the Class Members were
23 required to work off-the-clock for which they were not compensated by Defendants in violation of
24 the California Labor Code. Plaintiff and the Class Members were also not paid regular wages or
25 overtime for the time they were required to comply with other requirements imposed upon them,
26 which they had to complete while off-duty and without compensation.

27 18. As a result of these requirements to work off-the-clock, Plaintiff had to comply with
28 the daily work demands and pressures to work through her breaks, respond to telephone calls and



1 text messages to her manager, Craig, on her personal cell phone outside of her scheduled shift, and
2 endured other wage violations at Defendants' hands. Plaintiff and the Class Members were not
3 properly paid for all wages earned and for all wages when working in any given week. As a result
4 of Defendants' unlawful policies and practices, Plaintiff and Class Members were required to work
5 consistently off-the-clock, some working more than eight (8) hours in a workday or over forty (40)
6 hours in a workweek, but Plaintiff estimates they were not paid by Defendants for at least two (2)
7 to three (3) hours of time worked per week.

8 19. However, Defendants followed a policy and practice of further denying overtime
9 payments to the Class Members at an overtime rate of 1.5 times the regular rate for the first eight
10 (8) hours of the seventh consecutive workday in a week and overtime payments at the rate of 2
11 times the regular rate for hours worked over eight (8) on the seventh consecutive workday, as
12 required under the Labor Code and applicable IWC Wage Orders.

13 20. In order to stay in compliance with the California Labor Code, Defendants would
14 routinely adjust Plaintiff's punch times to reflect that she took a timely meal break. Other times,
15 Plaintiff was instructed by Defendants to clock out and continue working off-the-clock. This
16 totaled approximately two (2) to three (3) hours per week worked off-the-clock from this practice
17 alone. Additionally, Plaintiff's store manager Craig, as well as coworkers and customers, would
18 text her on her personal cell phone intermittently throughout the week to discuss work related tasks
19 while she was clocked out for the day. The time responding to these text messages amounts to
20 approximately one (1) hour per week. Defendants were aware of these violations.

21 21. Plaintiff and other class members were not paid for this time, even though: (1) no
22 practical administrative difficulty of recording the additional time exists or existed for Defendants
23 during the relevant time period; (2) it is or was feasible for Defendants to determine or estimate the
24 time that each non-exempt employee actually worked, as all class members at issue in this action
25 were paid for fewer hours than their punch records will show. See also *Troester v. Starbucks Corp.*,
26 (2018) 5 Cal.5th 829.

27 22. Throughout their employment with Defendants, Plaintiff and the Class Members
28 were routinely required to use their personal cell phones for several purposes, including using



1 Global Positioning Systems (“GPS”) to get to homes of potential customers for home visits,
2 researching items for sale online for appraisal, taking photographs and videos of items using social
3 media and various websites to promote items for sale, which often made it necessary to carry their
4 cell phones throughout their shifts.

5 23. At no point during Plaintiff’s employment did Defendants’ expense reimbursement
6 policy cover personal cell phone use despite widespread knowledge and understanding that
7 personal cell phones were necessary to perform Plaintiff and the Class Members’ job duties. As a
8 result, Defendants never reimbursed Plaintiff and the Class Members for personal cell phone
9 expenses incurred.

10 24. Similarly, Plaintiff and the Class Members were required to drive their personal
11 vehicles to conduct business. Although Defendants did provide a policy for reimbursing mileage
12 for home visits, mileage for driving to other necessary locations to pick up supplies, equipment or
13 to perform other daily tasks were not included. As a result, Plaintiff and the Class Members
14 incurred business expenses necessary to Defendants’ business, which were not reimbursed.

15 25. As a result of these illegal policies and practices, Defendants engaged in and
16 enforced the following additional unlawful practices and policies against Plaintiff and the Class
17 Members he seeks to represent:

- 18 a) failing to pay all wages owed to Class Members who were either discharged,
19 laid off, or resigned in accordance with the requirements of Labor Code
20 sections 201, 202 and 203;
- 21 b) failing to pay all wages owed to the Class Members twice monthly in
22 accordance with the requirements of Labor Code section 204;
- 23 c) failing to pay Class Members all wages owed, including all meal and rest
24 period premium wages; and
- 25 d) failing to maintain accurate records of Class Members’ earned wages and
26 meal periods in violation of Labor Code section 226 and 1174(d), and section
27 7 of the applicable IWC Wage Orders.



1 26. Defendants have made it difficult to account with precision for the unlawfully
2 withheld rest period compensation owed to Plaintiff and the Class, during the liability period,
3 because they did not implement and preserve a record-keeping method as required for non-exempt
4 employees by California Labor Code sections 226, 1174(d), and paragraph 7 of the applicable
5 California Wage Orders. Upon information and belief, time clock punches were not maintained, or
6 were not accurately maintained, for work shifts and were automatically presumed by Defendants to
7 have been lawfully provided when they were not. Defendants also failed to accurately record and
8 pay for all hours worked off-the-clock and submitted by Plaintiff and the Class Members.
9 Defendants have thus also failed to comply with Labor Code section 226(a) by inaccurately
10 reporting total hours worked and total wages earned by Plaintiff and the Class Members, along with
11 the appropriate applicable rates, among other requirements. Plaintiff and Class Members are
12 therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code
13 section 226(b).

14 27. Defendants have failed to comply with paragraph 7 of the applicable California IWC
15 Wage Orders by failing to maintain time records showing when the employee begins and ends each
16 work period, rest periods, wages earned pursuant to Labor Code section 226.7, and total daily hours
17 worked by itemizing in wage statements all deductions from payment of wages and accurately
18 reporting total hours worked by the Class Members.

19 **CLASS ALLEGATIONS**

20 28. Plaintiff also brings this action on behalf of herself and all others similarly situated
21 as a class action pursuant to California Code of Civil Procedure section 382. Plaintiff seeks to
22 represent a Class composed of and defined as:

23 **All persons who are employed or have been employed by**
24 **Defendants in the State of California who, during any time from**
25 **four years prior to the filing of this class action to the present,**
26 **have worked as non-exempt employees at Home Consignment**
27 **Center (“Class Members” of “Class”).**

27 a) **Subclass 1. Unpaid Overtime Subclass.** All current and former non-exempt,
28 hourly-paid class members employed by Defendant in California during the



1 Class Period, who worked at least one shift longer than eight (8) hours in a
2 workday and/or worked more than forty (40) hours during the workweek.

3 b) **Subclass 2. Off-the-Clock Subclass.** All current and former non-exempt,
4 hourly-paid class members employed by Defendant in California during the
5 Class Period, who worked at least one shift less than eight (8) hours in a
6 workday and/or worked less than forty (40) hours during the workweek.

7 c) **Subclass 3. Meal Period Subclass.** All current and former non-exempt,
8 hourly-paid class members employed by Defendant in California during the
9 Class Period, who worked at least one shift longer than five (5) hours in a
10 workday and/or who worked at least one shift longer than ten (10) hours in a
11 workday.

12 d) **Subclass 4. Rest Period Subclass.** All current and former non-exempt,
13 hourly-paid class members employed by Defendant in California during the
14 Class Period, who worked at least one shift longer than three and a half (3.5)
15 hours in a workday.

16 e) **Subclass 5. Wage Payment Subclass.** All current and former non-exempt,
17 hourly-paid class members employed by Defendant in California during the
18 Class Period, who received at least one wage statement from Defendant within
19 the statute of limitations period applicable to claims under Section 226 of the
20 California Labor Code.

21 f) **Subclass 6. Unreimbursed Expenses Subclass.** All current and former non-
22 exempt, hourly-paid class members employed by Defendant in California
23 during the Class Period, who incurred necessary business expenses in the
24 performance of their job duties.

25 g) **Subclass 7. Termination Pay Subclass.** All current and former non-exempt,
26 hourly-paid class members employed by Defendant in California during the
27 Class Period, who separated employment with Defendant at any point during
28 the period beginning three (3) years prior to the filing of this action.



h) **Subclass 8. B&P Code section 17200 Subclass.** All current and former non-exempt, hourly-paid class members employed by Defendant in California during the Class Period, regarding whom Defendant has engaged in unlawful, unfair and/or fraudulent business acts or practices prohibited by Business & Professions Code section 17200 et. Seq. as specifically described herein.

29. Plaintiff reserves the right under Rule 1855(b) of the California Rules of Court, to amend or modify the class descriptions with greater specificity or to provide further division into subclasses or limitation to particular issues.

30. This action has been brought and may properly be maintained as a class action under the provisions of the California Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable.

A. Numerosity

31. The potential members of each Class as defined are so numerous that joinder of all the members of the Class is impracticable. Plaintiff estimates there are at least several dozen Class Members, and possibly several hundred, which is sufficient to satisfy the numerosity requirement. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant time periods employed, sufficiently numerous employees in positions as Defendants' non-exempt employees in California, who are or have been affected by Defendants' unlawful practices as alleged herein.

32. Employee turnover during the relevant time period will increase this number substantially. Upon information and belief, Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Classes is not practicable.

B. Commonality

33. There are questions of law and fact common to each Class predominating over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

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- 1 a) Whether Defendants violated Labor Code section 1194 by failing to
2 compensate all employees during the relevant time period for all hours
3 worked, whether regular or overtime;
- 4 b) Whether Defendants violated Labor Code section 226.7 and the IWC Wage
5 Orders, and Cal. Code Regs., by failing to authorize and permit meal breaks
6 and failing to compensate said employees one (1) hour's wages at the proper
7 regular rate in lieu of meal periods;
- 8 c) Whether Defendants violated Labor Code section 226.7 and the IWC Wage
9 Orders, and Cal. Code Regs., by failing to authorize and permit all daily ten
10 (10) minute rest periods to non-exempt employees for every three and a half
11 (3.5) hours and/or 7 hours or major fraction thereof worked and failing to
12 compensate said employees one (1) hour's wages in lieu of rest periods;
- 13 d) Whether Defendants violated Labor Code section 226, and section 1174 and
14 the IWC Wage Orders by failing to maintain accurate records of Class
15 Members' earned wages and work periods;
- 16 e) Whether Defendants violated section 17200 et seq. of the Business and
17 Professions Code, Labor Code sections 201-203, 204, 226.7, 512, 1174, and
18 applicable IWC Wage Orders, which constitutes a violation of fundamental
19 public policy;
- 20 f) Whether Plaintiff and the Class Members are entitled to equitable relief
21 pursuant to Business and Professions Code section 17200 et seq.; and

22 34. There are common answers to these questions which further demonstrate that class
23 treatment is appropriate in this case.

24 **C. Typicality**

25 35. The claims of the named Plaintiff are typical of the claims of the Class Members.
26 Plaintiff and all members of each Class sustained injuries and damages arising out of and caused by
27 Defendants' common course of conduct in violation of California laws, regulations, and statutes as
28 alleged herein.



1 **D. Adequacy of Representation**

2 36. Plaintiff will fairly and adequately represent and protect the interests of the members
3 of each Class. Counsel who represent Plaintiff are competent and highly experienced in litigating
4 large employment class actions on a regular basis. See www.kringandchung.com.

5 **E. Superiority of Class Action**

6 37. A class action is superior to other available means for the fair and efficient
7 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
8 questions of law and fact common to each Class predominate over any questions affecting only
9 individual members of the Class.

10 38. Each member of the Class has been damaged and is entitled to recovery by reason of
11 Defendants' unlawful policies and practices alleged in the Complaint.

12 39. Class action treatment will allow those similarly situated persons to litigate their
13 claims in the manner that is most efficient and economical for the parties and the judicial system.
14 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
15 action that would preclude its maintenance as a class action.

16 40. Class Plaintiff contemplates the eventual issuance of notice to the proposed Class
17 Members of each Plaintiff Classes that would set forth the subject and nature of the instant action.
18 The Defendants' own business records can be utilized for assistance in the preparation and issuance
19 of the contemplated notices. To the extent that any further notice is required additional media
20 and/or mailings can be used.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY OVERTIME WAGES**

23 **[California Labor Code section 510, 1194, and 1198]**

24 **(Against All Defendants)**

25 41. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by
26 reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

27 42. This claim is brought by Plaintiff, on behalf of the Class and the subclasses thereof.

28 ///



1 43. In California, employees must be paid at least the then applicable state minimum
2 wage for all hours worked. (IWC Wage Order MW-2014).

3 44. California Labor Code section 1194 provides that “any employee receiving less than
4 the legal minimum wage or the legal overtime compensation applicable to the employee is entitled
5 to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
6 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.” The action
7 may be maintained directly against the employer in an employee’s name without first filing a claim
8 with the Department of Labor Standards and Enforcement.

9 45. Employees in California shall not be employed more than eight hours in any
10 workday, and/or more than forty hours in any workweek, unless they receive additional
11 compensation beyond their regular wages in amounts specified by law. More specifically, Labor
12 Code section 510 codifies the right to overtime compensation at one and one-half times the regular
13 hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week.

14 46. California Labor Code section 1198 provides that “[T]he maximum hours of work
15 and the standard conditions of labor fixed by the commission shall be the maximum hours of work
16 and the standard conditions of labor for employees. The employment of any employee for longer
17 hours than those fixed by the order or under conditions of labor prohibited by the order is
18 unlawful.”

19 47. At all times relevant hereto, the Labor Code requirements and paragraph 3 of the
20 applicable IWC Wage Orders also provided for payment of overtime wages equal to one and one-
21 half times an employee’s regular rate of pay for all hours worked over 8 hours a day and/or forty
22 (40) hours in a work week, and for the first eight (8) hours on the seventh consecutive day of work
23 in a work week.

24 48. Defendants, and each of them, have intentionally and improperly avoided payment
25 of overtime wages in violation of the California Labor Code and California Code of Regulations
26 and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and
27 Enforcement, as described above. Defendants have also violated these provisions by requiring
28 Plaintiff and other similarly situated non-exempt employees to work through meal periods when



1 they were required to be clocked out. Defendants, and each of them, have also intentionally and
2 improperly rounded, changed, adjusted and/or modified certain employees' hours, and imposed
3 difficult to attain job and scheduling requirements on Plaintiff and the Class Members, which
4 resulted in an underpayment of wages to employees over a period of time while benefiting
5 Defendants.

6 49. At all times relevant hereto, Plaintiff and Class Members have worked more than
7 eight (8) hours in a workday, and/or more than forty (40) hours in a workweek, as employees of
8 Defendants. During the relevant time period, Plaintiff and Class Members were not fully paid for
9 all the hours they worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours
10 in a week as a result of Defendants' above-described policies and practices. In addition to the other
11 overtime payments Defendants failed to make for all off the clock work. Plaintiff is informed and
12 believes that Defendants have scheduled Class Members to occasionally work shifts for seven
13 consecutive days in a row. However, Defendants followed a policy and practice of further denying
14 overtime payments to Class Members at an overtime rate of 1.5 times the regular rate for the first
15 eight hours of the seventh consecutive workday in a week and overtime payments at the rate of 2
16 times the regular rate for hours worked over eight (8) on the seventh consecutive workday, as
17 required under the Labor Code section 510, and paragraph 3 of the applicable IWC Wage Orders.

18 50. Therefore, Plaintiff and Class Members were not properly paid for all hours worked,
19 including for the hours worked in excess of the maximum hours permissible by law under
20 California Labor Code section 1194, section 1197 and section 1198 and the provisions of IWC
21 Wage Orders and the applicable California Code of Regulations sections.

22 51. On information and belief, Plaintiff and the Class Members allege that Defendants
23 followed an unlawful policy and practice of refusing to pay and failing to pay them for all wages
24 earned in each pay period, including by requiring and compelling off-the-clock work, by failing to
25 pay for overtime hours worked, and for the other reasons set forth in detail above.

26 52. As a result of Defendants' failure to pay overtime pay throughout Class Members'
27 employment, Defendants intentionally failed to provide Class Members with all earned wages
28 earned by and owed to them during the corresponding pay periods. Defendants willfully violated



the provisions of Labor Code section 1194, the applicable IWC Wage Orders, and California law by failing to properly pay the Class the overtime pay that Class Members were due.

53. Defendants' failure to pay Class Members all wages owed to them also violated California Penal Code sections 484 and 532 (obtaining labor through false pretenses), to the extent their managers specifically instructed them that they were not entitled to receive overtime under the California Labor Code and related provisions for off the clock work they were required to perform.

54. Plaintiff and the Class Members are informed and believe, and based upon that information and belief therefore further allege, that Defendants knew or should have known that the Class did not qualify as exempt employees, and Defendants purposely elected not to pay the Class Members for their overtime labor performed.

55. By virtue of the Defendants' unlawful failure to provide overtime pay to Plaintiff and the Plaintiff Classes, Plaintiff and Class Members have suffered, and will continue to suffer, damages in amounts which are presently unknown to them, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

56. Plaintiff and the Class Members are informed and believe, and based upon that information and belief allege, that Defendants, and each of them, purposely elected not to provide overtime pay.

57. As a result of Defendants' failure to pay overtime pay throughout the Class Members' employment, Plaintiff and Class Members were deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, for Defendants' violations of Labor Code section 510, and applicable IWC Wage Order provisions.

58. Defendants, and each of them, acted intentionally, oppressively and maliciously toward the Class Members with a conscious disregard of their rights, or the consequences to the Class Members, with the intent of depriving them of property and legal rights and otherwise causing the Class Members injury.

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59. Plaintiff, on behalf of members of the Class and Sub-Classes, requests recovery of both straight time and overtime compensation according to proof, interest, attorney's fees and costs pursuant to Labor Code section 1194(a), as well as the assessment of any statutory penalties against these Defendants.

60. Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes.

61. Further, Plaintiff and the Class Members are entitled to seek and recover reasonable attorneys' fees and costs pursuant to Labor Code sections 210 and 1194.

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES FOR HOURS WORKED

[California Labor Code section 1194, 1197, 1197.1 and 558]

(Against All Defendants)

62. Plaintiff and the Members of the Class re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

63. Plaintiff brings these claims under California Labor Code sections 1194, 1197, 1197.1 and the applicable IWC Wage Orders, as amended.

64. California Labor Code sections 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.

65. Defendants did not and do not compensate Plaintiff and other hourly employees for time spent off the clock during lunch or after hours responding to calls, texts, emails and other work-related inquiries. This work was known or should have been known by Defendants as management are and were requesting the off the clock work and receiving the work-related communications.

66. As a result of violations of California Labor Code sections 1194, 1197, 1197.1 and the applicable Industrial Welfare Commission Wage Order, for failure to pay minimum wage, Defendants are liable for attorneys' fees and costs, civil penalties pursuant to California Labor



1 Code sections 558, 1197.1, and 2698 et seq. and other relief.

2 67. California Labor Code section 1194 provides that “any employee receiving less than
3 the legal minimum wage compensation applicable to the employee is entitled to recover in a civil
4 action the unpaid balance of the full amount of this minimum wage compensation, including
5 interest thereon, reasonable attorney's fees, and costs of suit.” The action may be maintained
6 directly against the employer in an employee’s name without first filing a claim with the
7 Department of Labor Standards and Enforcement.

8 68. Defendants, and each of them, have also intentionally and improperly rounded,
9 changed, adjusted, underpaid, and/or modified certain employees’ hours, including by requiring
10 off-the-clock work, requiring work to be performed while on breaks, and by not properly paying
11 employees all regular and/or overtime hours they worked and reported, and imposed difficult to
12 attain job and scheduling requirements on Plaintiff and the Class Members. This resulted in an
13 underpayment of wages to employees over a period of time while benefitting Defendants.

14 69. During the relevant time period, Plaintiff and the Class Members were not fully paid
15 for all the hours they worked as a result of Defendants’ above-described policies and practices.
16 Therefore, Plaintiff and the Class Members were not properly paid for all work performed.

17 70. During the relevant time period, Defendants willfully failed to pay all wages owed
18 to Plaintiff and the Class Members.

19 71. Labor Code section 558(a) provides “any employer or other person acting on behalf
20 of an employer who violates, or causes to be violated, a section of this chapter or any provisions
21 regulating hours and days of work in any order of the IWC shall be subject to a civil penalty as
22 follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each pay period
23 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
24 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
25 for each pay period for which the employee was underpaid in addition to an amount sufficient to
26 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
27 employee.” Labor Code section 558(c) states, “the civil penalties provided for in this section are in
28 addition to any other civil or criminal penalty provided by law.”



72. Defendants have violated provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor Code section 558.

73. Upon information and belief, Plaintiff alleges that Defendants' policy of failing to pay employees for all hours worked whether regular time or overtime violates the Labor Code and IWC Wage Orders. Pursuant to Labor Code section 1194, Plaintiff and the Class Members are entitled to recover their unpaid wages owed, as well as interest, costs and attorney's fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

[California Labor Code section 226.7 and 512, and Applicable IWC Wage Orders]

(Against All Defendants)

74. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

75. This claim is brought by Plaintiff on his behalf, and on behalf of Class Members and the subclasses thereof.

76. Labor Code sections 226.7 and 512, and paragraph 11 of the applicable IWC Wage Order provide that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes.

77. Labor Code section 226.7 and paragraph 11 of the applicable IWC Wage Orders also provide that, if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's proper regular rate of compensation for each workday that the meal period is not provided.

78. Defendants failed to provide the Class Members with meal periods as required by the Labor Code, including by not providing them with the opportunity to take meal breaks, by providing them late or for less than thirty (30) minutes, or by requiring them to perform work during breaks.

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1 79. Defendants, and each of them, have intentionally and improperly denied meal
2 periods to Class Members in violation of Labor Code sections 226.7 and 512, and paragraph 11 of
3 the applicable IWC Wage Orders, along with other applicable regulations and statutes.

4 80. At all times relevant hereto, Class Members have worked more than five (5) hours
5 in a workday.

6 81. At all times relevant hereto, the Defendants, and each of them, failed to provide
7 meal periods as required by Labor Code sections 226.7 and 512, and paragraph 11 of the applicable
8 IWC Wage Orders.

9 82. By virtue of the Defendants' unlawful failure to provide meal periods Class
10 Members, Plaintiff is informed and believes Class Members have suffered, and will continue to
11 suffer, damages in amounts which are presently unknown to Plaintiff, but which exceed the
12 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

13 83. Plaintiff and the Class Members are informed and believe, and based upon that
14 information and belief allege, that Defendants, and each of them, purposely elected not to provide
15 meal periods.

16 84. Plaintiff is informed and believes Defendants, and each of them, acted intentionally,
17 oppressively and maliciously toward Class Members with a conscious disregard of their rights, or
18 the consequences to them, with the intent of depriving them of property and legal rights and
19 otherwise causing the Class Members to suffer injury.

20 85. Plaintiff, on behalf of the Class, requests recovery of meal period compensation
21 pursuant to Labor Code section 226.7, and paragraph 11 of the applicable IWC Wage Orders, as
22 well as the assessment of any statutory penalties against these Defendants, and each of them, in a
23 sum as provided by the Labor Code and other statutes.

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FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
[California Labor Code sections 226.7 and 512, and
Paragraph 11 of Applicable IWC Wage Orders]
(Against All Defendants)

86. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

87. Labor Code section 226.7, and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per three and a half (3.5) work hours.

88. Labor Code section 226.7, and paragraph 12 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's proper regular rate of compensation for each workday that the rest period is not provided.

89. Defendants, and each of them, have intentionally and improperly denied rest periods to Plaintiff and the Class Members in violation of Labor Code section 226.7, and paragraph 12 of the applicable IWC Wage Orders. Defendants failed to authorize and permit Plaintiff and the Class Members to take rest periods, as required by the Labor Code.

90. At all times relevant hereto, Plaintiff and the Class Members have worked more than three and a half hours in a workday.

91. At all times relevant hereto, the Defendants, and each of them, failed to provide rest periods as required by Labor Code section 226.7, and paragraph 12 of the applicable IWC Wage Orders.

92. By virtue of the Defendants' unlawful failure to provide rest periods to the Plaintiff and the Class Members, Plaintiff and the Class Members have suffered, and will continue to suffer, damages in amounts which are presently unknown to the Plaintiff and the Class Members but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.



1 93. Plaintiff and the Class Members are informed and believe, and based upon that
2 information and belief allege, that Defendants, and each of them, knew or should have known that
3 Plaintiff and the Class Members were entitled to rest periods and purposely elected not to provide
4 them with rest periods.

5 94. Defendants, and each of them, acted intentionally, oppressively and maliciously
6 toward Plaintiff and the Class Members with a conscious disregard of their rights, or the
7 consequences to Plaintiff and the Plaintiff Classes, with the intent of depriving Plaintiff and the
8 Class of property and legal rights and otherwise causing the Plaintiff and the Class Members injury.

9 95. Plaintiff, individually, and on behalf of employees similarly situated, requests
10 recovery of rest period compensation pursuant to Labor Code section 226.7, and paragraph 12 of
11 the applicable IWC Wage Orders, as well as the assessment of any statutory penalties against these
12 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

15 **[California Labor Code section 226]**

16 **(Against All Defendants)**

17 96. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by
18 reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

19 97. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiff
20 and the Class Members, upon each payment of wages, itemized statements accurately showing: (1)
21 gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
22 earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages
23 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
24 employee and only the last four digits of his or her social security number or an employee
25 identification number other than a social security number, (8) the name and address of the legal
26 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
28 Code section 226, amongst other statutory requirements.



1 98. As a result of Defendants' conduct, Plaintiff and the Class Members have suffered
2 injury in that, among other things, the lack of the required information hindered them from
3 determining the amount of wages owed to them and led them to believe they were not entitled to be
4 paid wages all hours worked, for overtime, missed meal and rest breaks, or for each hour of labor
5 they performed, for piece rates where applicable, and the properly hourly rate where applicable,
6 although they were so entitled. The absence of accurate wage statements has prevented timely
7 challenges to Defendants' unlawful pay practices, caused difficulty and expense in attempting to
8 reconstruct time and pay records, and resulted in the submission by Defendants of inaccurate
9 information about wages and deductions from wages to state and federal government agencies. The
10 entitlement of Plaintiff and the Class Members is to receive wage statements that accurately list the
11 total amount of wages earned and deductions from wages as reflected on wage statements, and
12 Plaintiff and the Class Members have thereby been injured by the Defendants' failure to report the
13 total amount of wages earned during each pay period on each paycheck stub. All Class Members
14 have been similarly injured. As a result of Defendants' conduct, Plaintiff and the Class Members
15 have suffered injury because their legal right to receive accurate wage statements was violated.

16 99. Labor Code section 226(a) requires Defendants "semimonthly or at the time each
17 payment to wages" to furnish to Plaintiff and the Class Members "an accurate itemized statement
18 in writing" showing (1) gross wages earned, (2) total hours worked by the employee, (3) the
19 number of piece-rate units earned and any applicable piece rate for Class Members paid on a piece-
20 rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which
21 the employee is paid, (7) the name of the employee and only the last four digits of his or her social
22 security number or an employee identification number other than a social security number, (8) the
23 name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect
24 during the pay period and the corresponding number of hours worked at each hourly rate by the
25 employee pursuant to Labor Code section 226. Defendants knowingly and intentionally failed to
26 provide Plaintiff and the Class Members with such timely and accurate wage and hour statements.

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100. Plaintiff and the Class Members suffered injury as a result of Defendants' knowing and intentional failure to provide them with the wage and hour statements as required by law and are presumed to have suffered injury and entitled to penalties under Labor Code section 226(e), as the Defendants have failed to provide a wage statement, failed to provide accurate and complete information as required by any one or more of items Labor Code section 226 (a)(1) to (9), inclusive, and the Plaintiff and Class Members cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period, (iii) The name and address of the employer and, (iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number. For purposes of Labor Code section 226(e) "promptly and easily determine" means a reasonable person [i.e. an objective standard] would be able to readily ascertain the information without reference to other documents or information.

101. Plaintiff and the Class Members suffered injury as a result of Defendants' knowing and intentional failure to provide them with the wage and hour statements as required by law.

102. Plaintiff and the Class Members are entitled to the amounts provided in Labor Code section 226(e), plus costs and attorneys' fees.

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES AT LEAST TWICE IN A CALENDAR MONTH

[California Labor Code section 204]

(Against All Defendants)

103. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

104. Labor Code section 204 instructs all wages are due and payable twice each calendar month.



105. The wages required by Labor Code section 1194 and other sections became due and payable to each employee in each pay period that he or she was not provided with a meal period or rest period or paid straight or overtime wages to which he or she was entitled.

106. Defendants violated Labor Code section 204 by systematically refusing to pay wages due under the Labor Code.

107. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of wages in amounts to be determined at trial, and is entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code sections 210, 218.5 and 1194.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

[California Labor Code section 2800-2802]

(Against All Defendants)

108. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

109. Plaintiff and the Members of the Class are informed, believe, and based thereon allege that throughout the period applicable, Defendants were required to pay for lawful and necessary work-related expenses incurred by their employees. Plaintiff and the Class Members were also often required to incur such expenses, including for use of their personal cellular phones and data, in performing their daily job duties and such expenses were necessary for performing those duties. Other expenses may include but are not limited to: (1) supplies; and (2) mileage. Plaintiff and the Class Members were not reimbursed for those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code section 2802(a) and the applicable IWC Wage Orders and sections of the California Code of Regulations.

110. Defendants' knowing and willful failure to reimburse lawful necessary work-related expenses and losses to Plaintiff and the Class Members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work-related



1 expenses. As Defendants failed to inform and misled Plaintiff and the Class Members with regard
2 to their rights, Plaintiff and the Class Members were led to believe that incurring those lawful and
3 necessary expenses was an expected and essential function of their employment with Defendants
4 and that they would not be reimbursed from this expense because it was company practice to not
5 reimburse for mileage to sites outside of home visits.

6 111. Therefore, Plaintiff and the Class Members are entitled to reimbursement for any
7 and all necessary work-related expenses, as provided for in Labor Code section 2802(b), incurred
8 during the direct discharge of their duties while employed by Defendants as well as accrued interest
9 on those expenses that were not reimbursed from the date Plaintiff and the Class Members incurred
10 those expenses. Further, Plaintiff and the Class Members are entitled to costs and attorney's fees
11 pursuant to Labor Code section 2802(c).

12 **EIGHTH CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT**

14 **[California Labor Code section 201-203]**

15 **(Against All Defendants)**

16 112. Plaintiff, on behalf of the Members of the Class (and subclasses) re-allege and
17 incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this
18 Complaint.

19 113. Plaintiff is informed and believes that many of the Class Members quit or were
20 discharged from their employment with Defendants within the applicable statute of limitations.

21 114. However, Defendants failed to pay them without abatement, all wages as defined by
22 applicable California law. Among other things, these employees were not paid any compensation
23 for off-the-clock work or the premium pay referred to in this Complaint. Defendants' failure to pay
24 these wages within the required time was willful within the meaning of Labor Code section 203.

25 115. Therefore, each of these employees is entitled to one day's wages for each day he or
26 she was not timely paid all said wages due, up to a maximum of thirty (30) days' wages for each
27 employee. Because none of the employees were ever paid all earned overtime wages, to which they
28 were entitled, and as referred to in this Complaint, each of these employees is entitled to up to



thirty (30) days of wages.

NINTH CAUSE OF ACTION

UNLAWFUL COMPETITION AND UNLAWFUL BUSINESS PRACTICES

[California Business & Professions Code section 17200 *et seq.*]

(Against All Defendants)

116. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

117. This claim is brought by Plaintiff, on behalf of herself and on behalf of the Class and the subclasses thereof.

118. At all times relevant hereto, from time to time, the Class Members have worked as employees of Defendants. The representative Plaintiff herein and members of the Class have had their hours adjusted, changed, underpaid, and/or modified to not reflect their actual number of hours worked per day and per pay period, including by Defendants' failure to pay for all off-the-clock hours worked at the appropriate rate of pay and by requiring off-the-clock work before and after work shifts.

119. At all times relevant hereto, from time to time, Plaintiff and the Class Members have been denied meal and/or rest breaks by Defendants.

120. Defendants, and each of them, are "persons" as defined under Business & Professions Code section 17021.

121. Since at least four years prior to the present Complaint filing and at all times relevant hereto, by and through the conduct described herein, the Defendants have engaged in unfair, unlawful and fraudulent business practices, in violation of California Business & Professions Code section 17200, *et seq.*, and have thereby deprived Plaintiff, and all persons in interest, of fundamental rights and privileges guaranteed to all employees under California law.

122. Defendants own, operate and manage facilities in California which provide services in California to the public as defined in the Business & Professions Code sections 17022 and 17024.

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123. Defendants, as set forth in this Complaint, supra, engaged in false, unfair and misleading business practices, consisting of acts and omissions that include, but are not limited to:

- (a) The fact that Defendants adjusted, altered, underpaid and/or changed time and/or pay schedules to reflect that employee Class Members had not worked off-the-clock;
- (b) The fact that Defendants required non-exempt, hourly employees to work more than three and a half (3.5) hour shifts without a ten (10) minute rest period;
- (c) The fact that Defendants required non-exempt, hourly employees to work more than five (5) hours in a workday and/or who worked longer than ten (10) hours in a workday without timely, uninterrupted meal period(s) of at least thirty (30) minutes;
- (d) The fact that Defendants kept no detailed records of non-exempt, hourly employees' actual daily work activities, in part, to prevent Plaintiff and Plaintiff Classes from recovering overtime wages from Defendants after the discovery of Defendants' deceptive, fraudulent, false, unfair and unlawful conduct;
- (e) The fact that Defendants failed to pay all earned wages to Plaintiff and Plaintiff Class for all hours worked;
- (f) The fact that Defendants failed to pay all earned wages to Plaintiff and Plaintiff Class twice monthly for all hours worked;
- (g) The fact that Defendants failed to pay all earned wages to Plaintiff and the Plaintiff Class twice monthly;
- (h) The fact that Defendants failed to pay all earned wages to Plaintiff and Plaintiff Class upon termination of employment; and
- (i) The fact that Defendants' activities related to their failure to disclose material and relevant information constitutes violations of Business & Professions Code § 17200.

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124. Defendants, and each of them, have underreported to state authorities, wages earned by non-exempt, hourly employees and, therefore, have underpaid state taxes, employer matching funds, unemployment premiums and Worker's Compensation premiums. The aforesaid conduct is criminal in nature and subjects the Defendants, and each of them, to sanctions, fines and imprisonment, and is actionable under of Business & Professions Code section 17000, et seq. and 17200, et seq.

125. Pursuant to of Business & Professions Code sections 17071 and 17075, the failure of Defendants, and each of them, to pay overtime wages, related benefits, and employment taxes, is admissible as evidence of Defendants' intent to violate Chapter 4 of the Unfair Business Trade Act.

126. Defendants' practices are unlawful, unfair, deceptive, untrue, and misleading. Non-exempt, hourly employees, including Plaintiff and Plaintiff Classes are likely to be deceived by these practices.

127. As a direct and proximate result of these acts and omissions, Plaintiff, is informed and believes, and based upon that information and belief alleges, that the Defendants, and each of them, were able to unfairly compete with other facilities in the state of California by not paying overtime and wages in violation of Business & Professions Code Chapters 4 and 5, et al. Due to this unfair business practice, Defendants have been able to charge lower prices for its services than the prices charged by other comparable entities doing business in the state of California.

128. The victims of this unfair business practice include, but are not limited to, all non-exempt, hourly employees of Defendants, competitors of Defendants in the state of California, and the general public.

129. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendants, and each of them, performed the above-mentioned acts with the intent of gaining an unfair competitive advantage and thereby injuring Plaintiff, other employees, other competitors, and the general public.

130. By and through the conduct described above, Plaintiff and all non-exempt, hourly employees have been deprived of the right to be paid all wages earned, including meal and rest premiums and overtime compensation earned by virtue of employment with the Defendants at



1 regular intervals, in accordance with the requirements of Labor Code sections 200-203, 204, 226.7,
2 1197, et seq.

3 131. By and through their unfair, unlawful and/or fraudulent business practices described
4 herein, Defendants, has obtained valuable property, money and services from Plaintiff, and all
5 persons similarly situated, and has deprived Plaintiff, and all non-exempt, hourly employees of
6 valuable rights and benefits guaranteed by law, all to their detriment.

7 132. Plaintiff and the Class have injury-in-fact as a result of Defendants' conduct.
8 Moreover, Plaintiff and the Class have lost money as a direct result of Defendants' unfair,
9 unlawful, deceptive and fraudulent conduct.

10 133. All of the acts described herein as violations of, among other things, the California
11 Labor Code and Industrial Welfare Commission Wage Orders, are unlawful and in violation of
12 public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and
13 thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California
14 Business & Professions Code section 17200, et seq.

15 134. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, is entitled
16 to, and does seek such relief as may be necessary to disgorge the profits which the Defendants have
17 acquired, or of which Plaintiff has been deprived, by means of the above-described unfair, unlawful
18 and/or fraudulent business practices. Plaintiff, and the members of the Plaintiff Classes, is not
19 obligated to establish individual knowledge of the unfair practices of Defendants in order to
20 recover restitution.

21 135. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, is further
22 entitled to and does seek a declaration that the above-described business practices are unfair,
23 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them, from
24 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the
25 future.

26 136. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, has no
27 plain, speedy, and/or adequate remedy at law to redress the injuries suffered as a consequence of
28 the Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair,



1 unlawful and/or fraudulent business practices described above, Plaintiff and the Plaintiff Class have
2 suffered and will continue to suffer irreparable harm unless the Defendants' and each of them, are
3 restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

4 137. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
5 herein above, they will continue its failure to compensate non-exempt hourly employees for off-
6 the-clock work. In addition, Defendants, and each of them, will continue to avoid paying the
7 appropriate taxes, insurance and unemployment holdings.

8 138. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, requests
9 that the Court issue a preliminary and permanent injunction prohibiting the Defendants, and each of
10 them, from requiring non-exempt, hourly employees from working off-the-clock.

11 139. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, also
12 requests that the Court order Defendants to disgorge all illegally obtained monies from failing to
13 pay taxes, state disability insurance premiums, and unemployment taxes, obtained by way of their
14 violation of Business & Professions Code section 17200, et seq.

15 140. As Plaintiff seeks to enforce an important right affecting the public interest, to wit,
16 and the disgorgement of ill-gotten gains and the restitution of unlawfully withheld wages, with
17 interest thereon, Plaintiff requests an award of attorneys' fees, pursuant to Code Civil Procedure
18 section 1021.5.

19 **TENTH CAUSE OF ACTION**

20 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

21 **("PAGA")**

22 **IN VIOLATION OF LABOR CODE § 2698 ET SEQ.**

23 **(Against All Defendants)**

24 141. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by
25 reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

26 142. Labor Code sections 2698-2699.5, in relevant part, provides, "any provision of this
27 code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
28 Development Agency. . . for a violation of this code may, as an alternative, be recovered through a



1 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
2 former employees pursuant to the procedures specified in section 2699.3.”

3 143. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
4 PAGA only after giving notice to the LWDA and the employer of the Labor Code sections alleged
5 to have been violation, and after receiving notice from the LWDA of its intention not to investigate,
6 or after sixty-five (65) days have passed without notice.

7 144. To the extent applicable, Plaintiff has satisfied in full the requirements of Labor
8 Code section 2699.3. Plaintiff sent notice to Defendants and the LWDA on or about October 31,
9 2023, detailing Defendants’ alleged Labor Code violations. In particular, Plaintiff’s notice alleged
10 violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1102.5, 1174, 1174.5, 1175,
11 1194, 1198, and 2802.

12 145. LWDA did not provide notice of its intention to investigate Defendants’ alleged
13 violations within sixty-five (65) calendar days of the postmark date of Plaintiff’s notice.

14 146. Plaintiff is an “aggrieved employee” under PAGA because he was employed by
15 Defendants during the applicable statutory period and suffered one (1) or more of the Labor Code
16 violations set forth in this Complaint.

17 147. Plaintiff seeks to recover, on her behalf, on behalf of the State, and on behalf of all
18 former and current aggrieved employees of Defendants, the civil penalties provided by PAGA, plus
19 reasonable attorney’s fees and costs through a representative action permitted by PAGA and the
20 California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.App.4th 969. Therefore, class
21 certification is not required.

22 148. Plaintiff seeks penalties pursuant to PAGA for the following Labor Code violations:

- 23 A. Labor Code § 1102.5 (Whistleblower Retaliation);
- 24 B. Labor Code § 1194 (Failure to Pay Minimum Wages);
- 25 C. Labor Code §§ 510, 1194, and 1198 (Failure to Pay Overtime Wages);
- 26 D. Labor Code §§ 201 and 202 (Failure to Timely Pay Wages);
- 27 E. Labor Code §§ 226.7 and 512 (Failure to Provide Meal and Rest Periods);
- 28 F. Labor Code § 2802 (Failure to Reimburse Necessary Business Expenses);



- 1 G. Labor Code §§ 1174, 1174.5, and 1175 (Failure to Maintain Accurate Records);
2 H. Labor Code § 226 (Failure to Provide Accurate Itemized Wage Statements);
3 I. Labor Code § 203 (Failure to Pay All Wages Due and Payable ant Separation of
4 Employment); and
5 J. Labor Code § 226 (Failure to Provide Payroll Records).

6 149. Labor Code section 2699 *et seq.* imposes a civil penalty of one hundred dollars
7 (\$100.00) per pay period, per aggrieved employee for initial violations, and two hundred dollars
8 (\$200.00) per pay period, per aggrieved employee for subsequent violations for all Labor Code
9 provisions for which a civil penalty is not specifically provided.

10 150. As a proximate result of the action and conduct described in the paragraphs above,
11 which constitute violations of certain Labor Code sections, Plaintiff and all other aggrieved
12 employees have been damaged in an amount according to proof at the time of trial and seeks civil
13 penalties and attorney's fees pursuant to Labor Code section 2699(f) and (g) against Defendants.

14 **PRAYER**

15 **ON THE FIRST CAUSE OF ACTION**

- 16 a) For compensatory damages and/or statutory damages and statutory penalties
17 resulting from improper compensation according to proof;
18 b) For interest on any compensatory damages;
19 c) For Certification of the Classes defined herein, or such other Classes and/or
20 subclasses as the Court will certify; and
21 d) For attorneys' fees and costs.

22 **ON THE SECOND CAUSE OF ACTION**

- 23 a) For compensatory damages and/or statutory damages and statutory penalties
24 resulting from improper compensation according to proof;
25 b) For interest on any compensatory damages;
26 c) For Certification of the Classes defined herein, or such other Classes and/or
27 subclasses as the Court will certify; and
28 d) For attorneys' fees and costs.



1 **ON THE THIRD CAUSE OF ACTION**

- 2 a) For statutory compensation, including one hour of pay for each workday that a
3 lawful meal period was not provided;
4 b) For interest on any compensatory damages;
5 c) For Certification of the Classes defined herein, or such other Classes and/or
6 subclasses as the Court will certify; and
7 d) For attorneys' fees and costs.

8 **ON THE FOURTH CAUSE OF ACTION**

- 9 a) For statutory compensation, including one hour of pay for each workday that a
10 lawful rest period was not provided;
11 b) For interest on any compensatory damages;
12 c) For Certification of the Classes defined herein, or such other Classes and/or
13 subclasses as the Court will certify; and
14 d) For attorneys' fees and costs.

15 **ON THE FIFTH CAUSE OF ACTION**

- 16 a) For statutory penalties;
17 b) For compensatory damages and interest thereon for actual harm caused;
18 c) For Certification of the Classes defined herein, or such other Classes and/or
19 subclasses as the Court will certify; and
20 d) For attorneys' fees and costs.

21 **ON THE SIXTH CAUSE OF ACTION**

- 22 a) For statutory penalties;
23 b) For attorneys' fees and costs as allowed by law.

24 **ON THE SEVENTH CAUSE OF ACTION**

- 25 a) For statutory penalties;
26 b) For penalty enhancements for willful conduct;
27 c) For Certification of the Classes defined herein, or such other Classes and/or
28 subclasses as the Court will certify; and



1 d) For attorneys' fees and costs.

2 **ON THE EIGHTH CAUSE OF ACTION**

3 a) For statutory penalties, including 30 days of pay for each employee not timely
4 paid wages upon termination;

5 b) For penalty enhancements for willful conduct;

6 c) For Certification of the Classes defined herein, or such other Classes and/or
7 subclasses as the Court will certify; and

8 d) For disgorgement of profits.

9 **ON THE NINTH CAUSE OF ACTION**

10 a) For equitable, injunctive and declaratory relief;

11 b) Treble damages;

12 c) For Certification of the Classes defined herein, or such other Classes and/or
13 subclasses as the Court will certify; and

14 d) For disgorgement of profits.

15 **ON THE TENTH CAUSE OF ACTION**

16 a) For civil penalties;

17 b) Other penalties under the PAGA; and

18 c) For attorneys' fees and costs.

19 **ON ALL CAUSES OF ACTION**

20 a) For reasonable attorneys' fees;

21 b) For costs of suit; and

22 c) For such other and further relief s this Court may deem just and proper.

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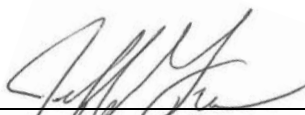
1 **ON ALL CAUSES OF ACTION**

- 2 a) For reasonable attorneys' fees;
- 3 b) For costs of suit; and
- 4 c) For such other and further relief as this Court may deem just and proper.

5 Dated: January 25, 2024 KRING & CHUNG, LLP

6

7

8 By: 

9 Tyler D. Krings
10 Jeffrey T. Green
11 Attorneys for Claimant
12 DARLENE BLANCHARD, individually
13 and on behalf of all others similarly
14 situated
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