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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

PRINCESS ACQUAH on behalf of herself and all others similarly situated,

Plaintiff,

v.

CARE.COM, INC., a Texas Corporation; TOWN & COUNTRY RESOURCES, INC., a California Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 23CV426049

FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT:

(1) FAILURE TO PAY ALL MINIMUM WAGES;
(2) FAILURE TO PAY ALL OVERTIME WAGES;
(3) MEAL PERIOD VIOLATIONS;
(4) REST PERIOD VIOLATIONS;
(5) FAILURE TO PAY ALL SICK TIME;
(6) WAGE STATEMENT VIOLATIONS;
(7) WAITING TIME PENALTIES;
(8) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
(9) UNFAIR COMPETITION; &
(10) PAGA PENALTIES

<u>DEMAND FOR JURY TRIAL</u>

Plaintiff Princess Acquah ("Plaintiff") on behalf of herself, and all other similarly situated non-exempt employees, alleges, and complains of Defendants Care.com, Inc., and Town & Country Resources, Inc., and DOES 1 to 50 (collectively, "Defendants") and each of them, as follows:

INTRODUCTION

1. Defendants are an online marketplace for families to find childcare, senior care, care for those with special needs, care for home, tutoring support, and pet care.

2. Plaintiff brings this class action lawsuit against Defendants for alleged violations of the California Labor Code and Business and Professions Code.

3. As set forth below, Plaintiff alleges that Defendants failed to pay for all hours worked due to its unlawful timekeeping practices. Plaintiff further alleges that Defendants failed to pay all overtime compensation and sick pay wages at the proper legal rates by failing to properly calculate the "regular rate of pay." In addition, Plaintiff alleges that Defendants' meal and rest period policies and practices failed to allow and permit non-exempt employees to take all compliant and timely meal and rest periods or pay premium wages at the "regular rate of pay" in lieu thereof. Plaintiff further alleges that Defendants failed to provide non-exempt employees with accurate written itemized wage statements in violation of Labor Code § 226(a), failed to reimburse for all necessary business expenses, and failed to timely pay all final wages upon separation of employment in violation of Labor Code §§ 201-203.

4. Plaintiff also brings a claim for civil penalties based on the foregoing Labor Code violations under the Private Attorney General Act ("PAGA").

5. Based on these alleged Labor Code violations, Plaintiff now brings this class action and representative action to recover unpaid wages, restitution, penalties, and other related relief on behalf of herself and all others similarly situated non-exempt employees.

JURISDICTION AND VENUE

6. Plaintiff, on behalf of herself and all other similarly situated employees, hereby brings this class action for recovery of unpaid wages and penalties under California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1194, 1197.1, 1198, 1199, 2802-2804, and applicable Industrial Welfare Commission Wage Orders ("Wage

Orders"), in addition to seeking declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et seq*.

7. This class action is brought pursuant to California Code of Civil Procedure § 382.

8. This Court has jurisdiction over Defendants' violations of the California Labor Code and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional minimum.

9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendants operate in California within the County of Santa Clara, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

10. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California. Defendants employed Plaintiff as a non-exempt employee in the County of Santa Clara.

11. Plaintiff is informed and believes and thereon alleges that Defendants are authorized to and doing business within the County of Santa Clara and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1194, 1197.1, 1198, 1199, 2802-2804, and the California Business and Professions Code § 17200 *et seq*., and applicable Wage Orders.

12. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Santa Clara.

13. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or

corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices alleged herein.

14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all times herein mentioned, each of the Defendants participated in the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

15. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

COMMON FACTUAL ALLEGATIONS

16. Plaintiff was employed by Defendants as a non-exempt employee with the title of "Babysitter/Back-up Care" Plaintiff began working for Defendants from June 29, 2023, until her separation from employment on October 24, 2023.

17. Plaintiff and other non-exempt employees (including, but not limited to, Childcare Provider, Partner Trust and Safety Specialist, Sales Development Representative, Client Support Specialist, Support Specialist, Back Up Caregivers, and all other non-exempt positions) were responsible for all aspects of Defendants' business in the State of California. However, in these roles Plaintiff and other non-exempt employees were often not afforded all protections and rights conferred under the California Labor Code and applicable Wage Orders.

18. At all relevant times, Plaintiff and other non-exempt employees regularly worked various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.

Plaintiff alleges that other non-exempt employees were also subjected to the same policies, procedures, and practices, working conditions, and corresponding wage and hour violations to which she was subjected during her employment.

19. First, at all relevant times, Defendants has had a consistent timekeeping policy/practice of unevenly rounding or editing Plaintiff and other non-exempt employees' time entries, resulting in a failure to pay all hours worked. As a result of this practice, over a period of time, Plaintiff and other non-exempt employees are not compensated for all the hours that they work and all of the overtime hours they work, in violation of Cal. Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

20. California courts have held that rounding time policies can be lawful "if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked. *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907 (29 C.F.R. § 785.48; see DLSE Manual, supra, §§ 47.1, 47.2.)."

21. Here, Defendants' rounding time policy/practice is not neutral on its face or in its application as Plaintiff and other non-exempt employees are subject to discipline, including termination for being tardy in reporting to work or returning from a meal period. Moreover, because Defendants can easily track the time worked by non-exempt employees to the minute, the policy exists not for the convenience or benefit of the employees who are trying to report their time on timecards or otherwise but for Defendants' benefit. As a result, the policy is not neutral on its face, and over a period of time, Plaintiff and other non-exempt employees were not properly paid for all hours worked in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

22. As a result of this rounding practice, over a period of time, Plaintiff and other non-exempt employees were not properly paid for all hours worked in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders,

23. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of

wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. Additionally, Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day, no less than one and one-half times (11/2) the regular rate of pay.

24. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

25. Furthermore, at all relevant times, Plaintiff and other non-exempt employees worked regular shifts that lasted longer than 8.0 hours in a workday and resulted non-exempt employees regularly working more than 40 hours in a workweek. However, Plaintiff and other non-exempt employees were not properly paid at the correct overtime rate for all overtime hours worked due to Defendants' uniform failure to include all forms of compensation/renumeration, including, but not limited to, incentives, non-discretionary bonuses, commissions, and all other forms of renumeration in calculating the "regular rate of pay" for purposes of overtime compensation.

26. Under the California Labor Code (as well as the FLSA), courts have consistently held that regularly paid non-discretionary bonuses (and other forms of pay) must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News*, Inc. 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under

California and federal law on the grounds, that Defendants improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-Reynolds Hardwood Co*. (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an actual fact. Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110 ("production bonus") and 778.111 ("piece-rate").)

27. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8.0) hours in one workday, forty (40) hours in a workweek, and for the first eight (8.0) hours worked on the seventh consecutive day, no less than one and one-half times (11/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8.0) hours in any workday or more than 40.0 hours in any workweek unless the employee receives one and one-half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

28. By their policy of requiring Plaintiff and the other non-exempt employees to work in excess of eight (8.0) hours in a workday and/or forty (40.0) hours in a workweek without compensating them at the lawful rate of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

29. Furthermore, at all relevant times, Defendants also failed in its obligation to provide Plaintiff and other non-exempt employees the legally required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours

worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek."

30. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code §246(i) requires employers to "provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

31. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and other non-exempt employees the legally required paid sick days at the legal rate, including all forms of compensation, pursuant to Labor Code § 246(a), (b). As such, Defendants paid sick time below "regular rate of pay" as required by Labor Code § 246(l) (1-2).

32. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to Defendants uniform meal period policies/practices, operational requirements, and work demands, Plaintiff and other non-exempt employees were often unable to take timely and uninterrupted net 30-minute first meal periods before the end of the fifth hour of work.

33. Further, at all relevant times, Plaintiff and other non-exempt employees were often unable to take a second 30 minute uninterrupted and timely meal period for shifts in excess of 10.0 hours. In addition, for each missed or non-compliant meal period, Defendants failed and continues to fail to maintain a mechanism by which non-exempt employees were paid meal period premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code § 226.7.

34. Accordingly, due to Defendants uniform meal period practices, non-exempt employees were also regularly denied legally compliant meal periods in violation of Labor Code §§

226.7, 510, 516, and applicable Wage Orders.

35. Next, at all relevant times, Plaintiff and other non-exempt employees were not provided with all uninterrupted 10-minute rest periods for every four hours worked, or a major fraction thereof, due to Defendant's uniform rest period policies/practices, operational requirements, and work demands. As a result, other non-exempt employees were and are often unable to take a net 10-minute duty-free rest period for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10 hours in a workday.

36. By not relieving all non-exempt employees of all duties during rest periods, Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."] (Emphasis added). In *Augustus*, the California Supreme Court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained: "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id*. at 273. Each time non-exempt employees were unable to take a compliant rest period, Defendants failed and continue to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

37. Accordingly, due to Defendants uniform rest period policies/practices, non-exempt employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

38. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for all hours they were subject to the control of Defendants, including all, overtime, sick pay wages, and Defendants failure to pay for meal and rest period premiums at the "regular rate of pay," Defendants issued wage statements which failed to accurately identify the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

39. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of

Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

40. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants violations of Labor Code § 226(a). Consequently, because Defendants failed to comply with Labor Code § 226(a), Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e).

41. Moreover, because of, Defendants failure to pay all overtime, sick pay wages, and meal and rest period premiums at the "regular rate of pay," Defendants also failed and continues to fail to pay the non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 201-203.

42. Finally, at all relevant times, Defendants required Plaintiff and other non-exempt employees to incur necessary business expenses associated with using their personal cell phones for work related purposes but did not reimburse non-exempt employees adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804. See *Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all...To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed"].

43. Here, Defendants uniformly failed to reimburse non-exempt employees for a reasonable portion of cell phone bill and other necessary costs incurred in the discharge of their duties for those non-exempt employees. Accordingly, due to Defendants' uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802 and applicable Wage Orders.

CLASS ACTION ALLEGATIONS

44. Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

> All non-exempt employees who work or worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. ("the Class");
>
> All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift, during the four years immediately preceding the filing of the Complaint through the date of trial. ("the Overtime Subclass");
>
> All employees who work or worked for Defendants in California, during the one year immediately preceding the filing of the Complaint through the date of trial. ("the Wage Statement Subclass")
>
> All employees who work or worked for Defendants in California, and who left their employment during the three years immediately preceding the filing of the Complaint through the date of trial. ("the Waiting Time Penalty Subclass")
>
> (collectively "the Classes")

45. **Numerosity/Ascertainability**: The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment and payroll records.

46. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest**: There are common questions of law and fact as to Plaintiff and all other similarly situated non-exempt employees, which predominate over questions affecting only individual members including, without limitation to:

1. Whether Defendants rounding policy/practice failed to pay all Class Members for all hours worked;

2. Whether Defendants failed to pay overtime and sick pay wages at the "regular rate of pay" to the members of the Class;

3. Whether Defendants provided legally compliant meal and rest periods or proper

compensation at the "regular rate of pay" in lieu thereof to members of the Class;

4. Whether Defendants allowed and permitted Plaintiff and the Class to take legally compliant meal periods or pay premium wages at the "regular rate of pay" in lieu thereof;

5. Whether Defendants allowed and permitted Plaintiff and the Class to take legally compliant rest periods or pay premium wages at the "regular rate of pay" in lieu thereof;

6. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a);

7. Whether Defendants accurately paid all sick pay wages owed using the "regular rate of pay" to Plaintiff and members of the Class;

8. Whether the timing and amount of payment of final wages to members of the Waiting Time Penalty Subclass at the time of separation from employment were unlawful; and

9. Whether Defendants failed to reimburse Class Members for all necessary business expenses in violation of Labor Code §§ 2802-2804.

47. **Predominance of Common Questions**: Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as without limitation, Defendants' failure to pay for all hours worked, and failure to adequately calculate the "regular rate of pay" for purposes of overtime pay and sick pay, Defendants' failure to provide all compliant meal and rest periods or premiums at the "regular rate of pay" in lieu thereof, Defendants' failure to provide accurate itemized wage statements, and Defendants' failure to pay for all wages due upon separation of employment. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

48. **Typicality**: The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes was deprived of overtime wages, sick pay wages, was

deprived of meal and rest period premium wages, was subject to Defendants' uniform meal and rest period policies/practices, was not provided accurate itemized wage statements, and was not timely paid all wages owed upon separation of employment.

49. **Adequacy of Representation**: Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes. Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions in state and federal courts and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

50. **Superiority**: The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources.

51. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which

would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 43 are maintainable as Classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

52. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

53. Section 4 of the applicable Wage Order(s) and Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

54. At all relevant times herein, Defendant failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to, Defendant's uniform and unlawful timekeeping practices, including rounding, time editing, and/or failing to capture all time worked or time which non-exempt employees were subject to the control of Defednants, which resulted in these individuals not being paid for all hours they were actually suffered or permitted worked. Accordingly, Plaintiff and members of the Classes were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendant and/or suffered or permitted to work under the Labor Code and applicable Wage Orders.

55. Labor Code § 1198 makes unlawful the employment of an employee under conditions that the Industrial Welfare Commission prohibits. Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

56. As a direct and proximate result of Defendant's unlawful conduct as alleged herein, Plaintiff and the Classes have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendant's violations of the Labor Code and applicable Wage Orders.

57. Defendant's practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Classes in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 558, 1194 *et seq*., 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

58. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

59. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

60. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code § 1194 and the applicable Wage Orders.

61. Section 3 of the applicable Wage Order requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. The same section also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime and hours but did not compensate Plaintiff or members of the Overtime Subclass at one and one-half times their "regular rate of pay"

for such hours.

62. Defendants failed to conform their pay practices to the requirements of the law. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' unlawful timekeeping practices, including, rounding, time editing, and/or failing to capture all time worked, and Defendants' failure to include all forms of compensation, including, but not limited to, non-discretionary bonuses and other incentive pay in calculating the "regular rate of pay," which resulted in these individuals not being paid for all overtime hours worked.

63. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Subclass in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

64. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

65. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their hourly non-exempt employees, including, Plaintiff and members of the Class, with all required meal periods in accordance with the mandates of the California Labor Code and applicable Wage Orders, for the reasons set forth in the Common Allegations section of this Complaint.

66. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

67. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

68. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

69. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

70. Due to their unlawful rest period policy/practices and operational requirements/work demands, Defendants did not authorize and permit Plaintiff and members of the Class to take all rest periods to which they were legally entitled.

71. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

72. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL SICK TIME

(AGAINST ALL DEFENDANTS)

73. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

74. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, and 1199 which provide that "[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment."

75. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Class for all sick time pursuant to California Labor Code § 246 and the applicable

Wage Orders.

76. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code §246(i) requires employers to "provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

77. Defendants failed in their obligation to provide Plaintiff and the Class the legally required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b). Plaintiff and the members of the Class were not paid at the correct "regular rate of pay."

78. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Class in a civil action for the unpaid amount of wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 246 1192, 1194 *et seq*., 1197, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

<u>SIXTH CAUSE OF ACTION</u>

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

79. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

80. Labor Code 226(a) states in pertinent part the following:

> "(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all

> deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) 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, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

81. As set forth above, during the Class Period, Defendants issued and continue to issue wage statements to its employees including Plaintiff and members of the Wage Statement Subclass, which are inadequate under Labor Code Section 226(a).

82. As a result of Defendants' failure to pay Plaintiff and the Wage Statement Subclass for all overtime wages, sick pay, and missed meal and rest period premiums at the appropriate legal rate, Defendants failed to include required information on Plaintiff and the Wage Statement Subclass' wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226(a)(1,2,5, and 9).

83. Defendants' failure to comply with section 226(a) of the Labor Code was knowing and intentional.

84. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial penalty of $50, and subsequent penalties of $100, up to an amount not exceeding an aggregate penalty of $4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

85. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

86. The actionable period for this cause of action is three years prior to the filing of this Complaint through the present, and on-going until the violation is corrected, or the class is certified.

87. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

88. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

89. Defendants willfully failed to pay the Waiting Time Subclass for all hours worked, including all minimum and overtime wages, sick pay wages, vested vacation pay, and their meal and rest period premiums at the "regular rate of pay", prior to or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

90. As a result, Defendants are liable to the Waiting Time Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant to Labor Code § 203. *See,* e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

<u>EIGHT CAUSE OF ACTION</u>

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES

(AGAINST ALL DEFENDANTS)

91. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

92. Labor Code 2802(a) states in pertinent part the following: "(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

93. As set forth above, Plaintiff and members of the Class must be compensated for all necessary business expenditures, including, but not limited to, a reasonable portion of their monthly personal cell phone bills incurred in their discharge of their duties. (See *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them.

Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

94. At all relevant times, by failing to reimburse Plaintiff and the Class for all necessary business expenditures, Defendants have failed to comply with Labor Code Section 2802 and the applicable Wage Orders.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

95. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

96. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq*., by failing to pay for all hours worked including overtime wages, sick pay wages, by failing to provide all legally required meal and rest periods or pay premium payments at the "regular rate of pay" in lieu thereof, by failing to provide accurate wage statements, failing to reimburse for all necessary business expenses, and by failing to pay all earned wages at the time of separation from employment.

97. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

98. Because Plaintiff is a victim of Defendants unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

99. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

100. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current hourly non-exempt employees and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

TENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

101. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

102. Defendants have committed several Labor Code violations against Plaintiff and other similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq*., acting on behalf of herself and other similarly aggrieved employees, brings this PAGA representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) $100 for each initial violation and (2) $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

a) Failing to pay Plaintiff and similarly Aggrieve Employees for all minimum wages for all hours worked or for which they were subject to the control of the employer;

b) Failing to pay Plaintiff and other similarly Aggrieved Employees all overtime and sick pay wages at the appropriate premium rates in violation of Labor Code §§ 246, 510, 1194, 1197;

c) Failing to provide Plaintiff and other similarly Aggrieved Employees with all of their statutorily-mandated meal periods in violation of Labor Code §§ 204, 510, 1194 and 1198;

d) Failing to authorize and permit Plaintiff and other similarly Aggrieved employees with all of their statutorily-mandated rest periods in violation of Labor Code §§ 226.7 and 516;

e) Failing to furnish Plaintiff and other similarly situated employees with complete, accurate, itemized wage statements in violations of Labor Code § 226(a) and applicable Wage Orders;

f) Failing to pay final wages in a timely manner in violation of Labor Code §§ 201-203 and applicable Wage Orders; and

g) Failing to reimburse Plaintiff and other aggrieved employees with all necessary business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders.

103. On or about November 17, 2023, Plaintiff notified Care.com, Inc., and Town & Country Resources, Inc. (collectively, "Defendants") and the California Labor and Workforce Development Agency ("LWDA") via email of Defendants' violations of the California Labor Code § 2698 *et seq*., with respect to violations of the California Labor Code identified in Paragraph 101 (a)-(g). Now that the sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

104. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order-appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First and Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, and 1198 and reasonable attorneys' fees and cost;
5. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198 and reasonable attorneys' fees and costs;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198 and

reasonable attorneys' fees and costs;

7. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;

8. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

9. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1198, and 1199;

10. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and reasonable costs and attorneys' fees;

11. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;

12. Upon the Eight Cause of Action, for unreimbursed expenses, interest and attorney's fees and costs pursuant to Labor Code §§ 2802-2804;

13. Upon the Ninth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq*.;

14. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, other similarly Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) $100.00 for each initial violation and $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided under the Labor Code, and for reasonable attorneys' fees and costs.

15. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

16. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, 2802, Code of Civil Procedure § 1021.5; and

17. For such other relief that the Court may deem just and proper.

Dated: October 29, 2024

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

By: ______________________________

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Putative Classes

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On October 29, 2024, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action:

Eric E. Hill
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Counsel for Defendants
CARE.COM, INC. and
TOWN & COUNTRY RESOURCES, INC.

BY ELECTRONIC SERVICE: I transmitted the above-referenced document(s) via electronic service provider First Legal to the person(s) identified above at the email address(es) indicated and did not, within a reasonable time after transmission, receive any message or communication indicating that delivery failed or that any other error had occurred which would delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

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

Executed on October 29, 2024, in Los Angeles, California.

/s/ Carlos Garcia
Carlos Garcia