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SHANTE FARR

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO**

SHANTE FARR, an individual, on her
own behalf and on behalf of all others
similarly situated,

Plaintiffs,

vs.

JUDSON ENTERPRISES, INC.
DBA K-DESIGNERS, a Montana
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 24CV022197

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY PREMIUM
OVERTIME WAGES DUE (Cal. *Labor Code* §§ 510, 1198; IWC Wage Order No. 16);**
- 2. FAILURE TO PAY MINIMUM WAGES
DUE TO ROUNDING (Cal. *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 16);**
- 3. FAILURE TO MAINTAIN RECORDS
AND PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS (Cal. *Labor Code* §226; IWC Wage Order No. 16);**
- 4. FAILURE TO PAY WAGES DUE ON
TERMINATION (Cal. *Labor Code* §§ 201-
203);**
- 5. FAILURE TO REIMBURSE BUSINESS
EXPENSES (Cal. *Labor Code* §2802);**
- 6. FAILURE TO PAY COMMISSION
WAGES (Cal. *Labor Code* §§ 200 et seq.);**
- 7. FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS (Cal. *Labor Code* §1198.5); and**
- 8. UNFAIR COMPETITION (Cal. *Bus. & Prof. Code* §§17200 et seq.)**
- 9. DAMAGES PURSUANT TO PRIVATE
ATTORNEY GENERAL ACT (“PAGA”)**

DEMAND FOR A JURY TRIAL

1 All allegations in this First Amended Complaint are based upon information and belief
2 except for those allegations which pertain to the Plaintiff named herein and her counsel. Each
3 allegation has evidentiary support or is likely to have evidentiary support after a reasonable op-
4 portunity for further investigation and discovery.

5 Shante Farr ("Plaintiff") alleges the following:

6 1. This is a class action brought under California law by an individual who was
7 employed by Judson Enterprises, Inc. dba K-Designers ("K-Designers" or "Defendant") (along
8 with DOES 1 through 100, collectively "Defendants"). Plaintiff brings this action on behalf of
9 herself and others similarly situated to recover wages from Defendant due to Defendant's
10 systematic failure to pay overtime wages, failure to pay minimum wages due to rounding,
11 failure to issue accurate wage statements, failure to pay wages due on termination of
12 employment, failure to reimburse business expenses, failure to pay commission wages and
13 failure to allow inspection of employment records.

14 2. Plaintiffs have worked as employees for Defendant at Defendant's offices in
15 Rancho Cordova, California. While working, Plaintiffs have been forced to endure stressful and
16 illegal workplace conditions created by Defendant's efforts to maximize profits and tightly
17 control labor costs.

18 3. Plaintiff, like her co-workers whom Defendant also employed during the
19 applicable limitations period, spend their workdays at Defendant's offices in Rancho Cordova,
20 California, under illegal and highly regimented circumstances. That regimen results from
21 Defendant's insistence to strictly monitor and curtail labor costs, which Defendant
22 accomplishes by not paying for all labor costs, failing to pay overtime, failing to pay minimum
23 wages due to rounding, failing to issue accurate wages statements, failing to pay all wages due
24 on termination of employment, failing to reimburse business expenses, failing to pay
25 commission wages, failing to allow inspection of employment records, and by using other
26 unlawful stratagems to ensure that labor costs remain artificially low.

27 4. Plaintiff brings this class action to recover, among other things, wages and
28 penalties from unpaid wages earned and due, including but not limited to, premium overtime

1 wages, minimum wages due to illegal rounding, wages due to discharged or quitting
2 employees, penalties for failure to provide accurate itemized wage statements, wages for failure
3 to issue all wages on termination, reimbursement of business expenses, wages for failure to pay
4 commissions, damages for failure to allow inspection of employment records and interest,
5 attorneys' fees, costs, and expenses.

6 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
7 herself and all members of the class, to compensate these workers for the unpaid wages and to
8 protect current and future workers of Defendant from being subjected to similar wage theft and
9 otherwise unlawful working conditions.

10 6. Plaintiff also brings an action seeking relief for Defendant's violations of
11 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
12 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
13 business practices, as well as injunctive relief.

14 JURISDICTION AND VENUE

15 7. This Court has jurisdiction over this First Amended Complaint under Code of
16 Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* § 382, and
17 *Business & Professions Code* §§ 17200 *et seq.* Plaintiff Shante Farr brings this Complaint on
18 her own behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

19 8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
20 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
21 herein, occurred in the County of Sacramento and because Defendant owned and operated its
22 business in the County of Sacramento.

23 THE PARTIES

24 PLAINTIFF

25 9. At all times relevant hereto, Plaintiff was:

- 26 (a) An individual over age 18 and a resident of Sacramento County,
27 California;
28

- 1 (b) Employed as an hourly employee for Defendant in Rancho Cordova,
2 California;
- 3 (c) Did not receive overtime compensation required by *Labor Code* §§510
4 and 1194 and IWC Wage Order No. 16;
- 5 (d) Did not receive minimum wages due to illegal rounding in violation of
6 *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and IWC Wage Order
7 No. 16;
- 8 (e) Did not receive accurate wage statements as mandated by *Labor Code*
9 §226;
- 10 (f) Was not paid all her wages due on termination as mandated by *Labor*
11 *Code* §§ 201-203;
- 12 (g) Was not reimbursed for business expenses as required by *Labor Code*
13 §2802;
- 14 (h) Did not receive earned commissions as required by *Labor Code* §§ 200
15 et seq.; and
- 16 (i) Was not provided her personnel records. Each of these was a violation of
17 the *Labor Code*.

18 **DEFENDANT**

19 10. Plaintiff is informed and believes, and based on that information and belief,
20 alleges, Defendant K-Designers is, and at all times mentioned herein was:

- 21 (a) A Montana corporation, with a principal place of business at 2440 Gold
22 River Road, Suite 100, Gold River, CA 95670. Defendant has been
23 authorized to do business and has been doing business in the County of
24 Sacramento;
- 25 (b) The former employer of Plaintiff and the current and former employer of
26 the putative Class members;
- 27 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 28

- 1 (d) Failed to pay Plaintiff and all putative Class members premium overtime
2 wages;
- 3 (e) Failed to pay Plaintiff and all putative Class members minimum wages
4 due to illegal rounding;
- 5 (f) Failed to provide Plaintiff and all putative Class members with accurate
6 itemized wage statements;
- 7 (g) Failed to pay Plaintiff and all putative Class members wages due on
8 termination of employment;
- 9 (h) Failed to reimburse Plaintiff and Class members' necessary business
10 expenses;
- 11 (i) Failed to pay Plaintiff and Class members their earned commissions; and
12 (j) Was not provided her personnel records. Each of these was a violation of
13 the *Labor Code*.

14 11. The true names and capacities, whether individual, corporate, subsidiary,
15 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
16 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
17 *Civil Procedure* § 474. Plaintiff will seek leave to amend her First Amended Complaint to
18 allege the true names and capacities of DOES 1 through 100, inclusive, when they are
19 ascertained.

20 12. Plaintiff is informed and believes, and based on that information and belief
21 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
22 reside in or are authorized to do, or are otherwise doing, business in the State of California.
23 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
24 conduct business in the County of Sacramento. Each of the Defendants DOES 1 through 100
25 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator,
26 alter ego and/or representative of one or more of the other Defendants named herein, and acting
27 with permission, authorization, and/or ratification and consent of the other Defendants.
28

1 13. Plaintiff is informed and believes, and based on that information and belief
2 alleges, that the Defendants named in this First Amended Complaint, including DOES 1
3 through 100, inclusive, are responsible in some manner for one or more of the events and
4 happenings that proximately caused the injuries and damages hereinafter alleged.

5 14. Plaintiff is informed and believes, and based on that information and belief
6 alleges, that Defendants named in this First Amended Complaint, including DOES 1 through
7 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or
8 employees of each of the other Defendants and that each Defendant was acting within the
9 course and scope of his, hers or its authority as the agent, servant and/or employee of each of
10 the other Defendants. Consequently, all of the Defendants are jointly and severally liable to the
11 Plaintiff, and the Class, for the damages sustained as a proximate result of their conduct.

12 15. Plaintiff is informed and believes, and based on that information and belief
13 alleges, that the Defendants named in this First Amended Complaint, including DOES 1
14 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together
15 among themselves and entered into a combination and systemized campaign of activity to *inter*
16 *alia* damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
17 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
18 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
19 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
20 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
21 the actions of one Defendant was accomplished in concert with, and with the knowledge,
22 ratification, authorization and approval of each of the other Defendants.

23 **CLASS ALLEGATIONS**

24 **A. The Definition of the Class**

25 16. The Class ("the Class") is defined as follows:

- 26 (a) "All current and former employees who were hourly paid employees of
27 Defendant and worked for K-Designers in California at any time during the
28

1 period commencing on the date that is four (4) years prior to the filing of this
2 Complaint and continuing through the present date (the “Class Period”).”

3 (b) “All persons who were hourly paid employees of Defendant and worked for
4 K-Designers in California and left the employ of Defendant at any time during
5 the period commencing on the date that is within one (1) year prior to the filing
6 of this Complaint and continuing through the present date (the “Class Period”).”

7 Plaintiff reserves her right under Rule 3.765 of the California Rules of Court to
8 amend or modify the Class description with greater specificity or further
9 division into subclasses or limitation to particular issues.

10 **B. Maintenance of the Action**

11 17. Plaintiff brings this action individually and on behalf of herself and as
12 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
13 and 17204 and *Code of Civil Procedure* § 382.

14 **C. The Class Requisites**

15 18. At all material times, Plaintiff was a member of the Class.

16 19. The Class action meets the statutory prerequisites for maintaining a class action
17 under Code of Civil Procedure § 382 in that:

18 (a) The persons who comprise the Class are so numerous that the joinder of all
19 those persons is impracticable and the disposition of their claims as a Class
20 will benefit the parties and the Court;

21 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
22 that are raised in this First Amended Complaint are common to the Class
23 and will apply uniformly to every Class member;

24 (c) The claims of the representative Plaintiff are typical of the claims of each
25 Class member. Plaintiff, like all Class members, has sustained damages
26 arising from Defendant’s violations of the laws of the State of California.
27 Plaintiff, and the Class members, were and are similarly or identically
28

1 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
2 pattern of misconduct engaged in by the Defendant;

- 3 (d) The representative Plaintiff has, and will continue to, fairly and adequately
4 represent and protect the interests of the Class and has retained counsel
5 who are competent and experienced in class action litigation. There are no
6 material conflicts between the claims of the representative Plaintiff and the
7 Class members that would make class certification inappropriate. Counsel
8 for the Class will vigorously assert the claims of all Class members.

9 20. The persons who comprise the Class are so numerous that joining all of them is
10 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
11 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
12 will fairly and adequately protect the interests of the Class she seeks to represent. Plaintiff does
13 not have any interests that are antagonistic to the Class she seeks to represent. Counsel for
14 Plaintiff are experienced, qualified and generally able to conduct complex class action
15 litigation.

16 21. The Court should permit the action to be maintained as a class action under
17 *Code of Civil Procedure* § 382 because:

- 18 (a) The questions of law and fact common to the Class predominate over any
19 question affecting only individual members:
20 (b) A class action is superior to any other available method for fairly and
21 efficiently adjudicating the claims of the Class;
22 (c) The Class members are so numerous that it is impractical to bring all of
23 them before the Court;
24 (d) Plaintiff and other Class members will not be able to obtain effective and
25 economic legal redress unless the action is maintained as a class action;
26 (e) There is a community of interest in obtaining appropriate legal and
27 equitable relief for the statutory violations, and in obtaining adequate
28 compensation for the damages and injuries for which Defendant is

1 responsible in an amount sufficient to adequately compensate the Class
2 members;

3 (f) Without Class certification, the prosecution of separate actions by
4 individual Class members would create a risk of:

5 i. Inconsistent or varying adjudications for individual Class members
6 that would establish incompatible standards of conduct for
7 Defendant; and/or,

8 ii. Adjudication for individual Class members that would, as a
9 practical matter, dispose of other non-party members' interests, or
10 that would substantially impair or impede the non-parties' ability
11 to protect their interests, by, for example, potentially exhausting
12 the funds available from Defendant, and

13 (g) Defendant has acted or refused to act on grounds generally applicable to
14 the Classes, making final injunctive relief appropriate for the Class, as a
15 whole.

16 22. Plaintiff contemplates eventually issuing notice to the proposed Class Members
17 that would set forth the subject and nature of the action. The Defendant's own business records
18 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
19 any further notices may be required, Plaintiff would contemplate using additional media and/or
20 mailing.

21 GENERAL ALLEGATIONS

22 23. At all times material hereto, Defendant has been and is, a home remodeling
23 company.

24 24. Plaintiff and members of the Class were employed as Telemarketers by
25 Defendant in California at various times during the Class Period.

26 THE CONDUCT

27 25. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
28 Plaintiff and members of the Class wages and compensation owed under California law.

1 26. Starting on or about August 1, 2023 and continuing to October 19, 2023,
2 Defendant employed Plaintiff on an hourly basis as a Telemarketer in Rancho Cordova,
3 California.

4 27. While employed by Defendant as a Telemarketer, Plaintiff was paid
5 approximately \$17.00 per hour.

6 28. The employment by Defendant of the Class Members, and each them, is
7 governed by Industrial Welfare Commission Wage Order 16, which covers those persons
8 employed in the construction, drilling, logging and mining industries.

9 **FAILURE TO PAY OVERTIME/MINIMUM WAGES DUE TO ROUNDING**

10 29. Under California law, non-exempt employees as defined by Wage Order 16, are
11 entitled to premium wages for overtime worked. Under California law, an hourly paid
12 employee is entitled to overtime pay when they exceed eight hours of work in a single day,
13 exceed 40 hours of work in a week or work seven days in a row.

14 30. Under California law, non-exempt employees as defined by IWC Wage Order
15 No. 16 are entitled to minimum wages. Labor Code Section 1197 states the California
16 requirement that employees must be paid at least the minimum wage fixed by the Commission
17 or by any applicable state or local law, and any payment of less than the minimum wage is
18 unlawful. Similarly, Labor Code Section 1194 entitles “any employee receiving less than the
19 legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full
20 amount of this minimum wage.” The applicable IWC Wage Order(s), including IWC Wage
21 Order No. 16-2001, obligates employers to pay each employee minimum wages for all hours
22 worked.

23 31. These minimum wage standards apply to each hour employees worked or were
24 subject to control by the employer for which they were not paid. Therefore, an employer’s
25 failure to pay for any particular hour of time worked by an employee or subject to the
26 employer’s control is unlawful, even if averaging an employee’s total pay over all hours
27 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
28 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

1 32. Plaintiff and Class members' hours were rounded. Although Plaintiff and Class
2 members clocked in on a timeclock box fingerprint scanner, Defendant also used an electronic
3 timesheet on an online portal to record employees' time. Plaintiff and Class members were also
4 required to clock in on the electronic timesheet online. When Plaintiff and Class members
5 entered their start/stop times on the electronic timesheet, their hours were rounded. As a result,
6 during this period, it was the practice and policy of Defendant to not pay employees at
7 appropriate overtime and minimum wage rates. Monies for unpaid overtime and minimum
8 wages remain due and owing.

9 33. Defendant required Plaintiff and the Class to regularly perform compensable
10 tasks pre- and post-shift off-the-clock for which they did not receive any compensation.
11 Specifically, Plaintiff and Class members engaged in off the clock activities such as waiting for
12 between 3-5 minutes to clock in for their shifts on the timeclock box fingerprint scanner.
13 Further, after Plaintiff and Class members clocked out for the end of their shifts, they would
14 speak with management and the Human Resources Department about days that they worked,
15 but they were not paid for and also the hostile work environment. Plaintiff and Class members
16 are entitled to overtime pay for any time spent working off the clock.

17 34. Further, Plaintiff and Class members were required to use their personal cell
18 phones both on and off the clock for work-related activities. Plaintiff and Class members were
19 required to use their personal cell phones because their phones at their work stations failed and
20 management told them to use their personal cell phones for texting/calling clients. Additionally,
21 Plaintiff and Class members used their personal cell phones to speak with Defendant about pay
22 that was missing from their checks and the hostile work environment.

23 35. Plaintiff and the Class were not paid overtime and minimum wages due to
24 rounding and off the clock work.

25 36. At all times during the relevant time period, Plaintiff and the Class routinely
26 worked schedules such that they were due pay at overtime and minimum wage rates. During
27 this period, it was the practice and policy of Defendant to not pay employees' overtime and
28 minimum wages. Monies for unpaid overtime and minimum wages remain due and owing.

1 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

2 37. As a result of Defendant's failure to pay employees at required overtime rates
3 and minimum wages due to illegal rounding, the wage statements issued to the employees did
4 not comply with Labor Code §226 and California Industrial Welfare Commission ("IWC")
5 Wage Order 16 in that they did not accurately reflect all wages earned and due and owing.

6 **FAILURE TO PAY WAGES ON TERMINATION**

7 38. As a further result of Defendant's failure to pay employees overtime wages and
8 minimum wages, they were not timely paid all wages due them, as required by Labor Code §§
9 201, 202 and IWC Wage Order No. 16. Further, it was the practice of Defendant to not pay
10 employees the final paychecks within the time periods mandated by Labor Code §§201, 202
11 and IWC Wage Order No. 16.

12 **LACK OF EXPENSE REIMBURSEMENT**

13 39. Defendant failed to reimburse Plaintiff and members of the Class for business-
14 related expenses, such as cell phone use for work. Thus, Defendant failed to reimburse Plaintiff
15 and Class members for these necessary business expenses.

16 **FAILURE TO PAY COMMISSION WAGES**

17 40. Defendant failed to pay Plaintiff and Class members the commissions they
18 earned on sales.

19 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

20 41. Defendant failed to allow Plaintiff and Class members to timely inspect their
21 records and payroll files.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME**

24 **(Labor Code §§510, 558, 1194.3 and Wage Order 16 By Plaintiffs Against Defendant and**
25 **Does 1-100)**

26 42. Plaintiff and the Class reallege and incorporate by reference all of the allegations
27 set forth in this First Amended Complaint.

1 43. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab.
2 Code §§510, 1194, and 1198, and IWC Wage Order No. 16, Defendant was required to
3 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
4 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
5 hours on the seventh (7th) consecutive day of any work week.

6 44. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
7 who had not been paid overtime compensation could recover the unpaid balance of the full
8 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
9 fees and costs of suit.

10 45. Pursuant to IWC Wage Order No. 16-2001, § 3, "Employment beyond eight (8)
11 hours in any workday is permissible provided the employee is compensated for such overtime
12 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
13 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
14 workday...

15 46. California Labor Code section 558 provides in pertinent part:

16 (a) Any employer or other person acting on behalf of an employer who
17 violates, or causes to be violated, a section of this chapter or any
18 provision regulating hours and days of work in any order of the
19 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

20 (1) For any initial violation, fifty dollars (\$50) for each underpaid
21 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

22 (2) For each subsequent violation, one hundred dollars (\$100) for each
23 underpaid employee for each pay period for which the employee was
24 underpaid in addition to an amount sufficient to recover underpaid
wages.

25 (3) Wages recovered pursuant to this section shall be paid to the affected
26 employee...

27 (c) The civil penalties provided for in this section are in addition to any
28 other civil or criminal penalty provided by law.

47. Defendants required Plaintiff and the Class to regularly perform compensable tasks pre- and post-shift off-the-clock for which they did not receive any compensation. Specifically, Plaintiff and Class members engaged in off the clock activities such as waiting for between 3-5 minutes to clock in for their shifts on the timeclock box fingerprint scanner. Further, after Plaintiff and Class members clocked out for the end of their shifts, they would speak with management and the Human Resources Department about days that they worked, but were not paid for and also the hostile work environment.

48. The amount of time spent by Class members on off the clock activities was not *de minimis*.

49. Throughout Plaintiff's employment, Defendant failed and refused to pay and properly calculate overtime compensation to Plaintiff and Class Members as required by law.

50. The foregoing overtime compensation is owed and unpaid. As a direct and proximate result of Defendant's failure and refusal to pay overtime, Plaintiff and Class Members suffered damages in an amount to be proven at trial.

51. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover Plaintiff's attorneys' fees, costs and interest.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES DUE TO TIME ROUNDING

(IWC Wage Order No. 16; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiffs

Against Defendant and Does 1 through 100)

52. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

53. Labor Code §§ 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

1 54. *Labor Code* § 1197 states the California requirement that employees must be
2 paid at least the minimum wage fixed by the Commission, and any payment of less than the
3 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
4 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
5 the full amount of this minimum wage.” IWC Wage Order 16-2001 also obligates employers
6 to pay each employee minimum wages for all hours worked. These minimum wage standards
7 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
8 failure to pay for any particular hour of time worked by an employee is unlawful, even if
9 averaging an employee’s total pay over all hours worked, paid or not, results in an average
10 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
11 (2005).

12 55. Pursuant to Wage Order 16, Defendant is required to pay the members of the
13 Class for all hours worked, meaning the time during which an employee is subject to the
14 control of an employer, including all the time the employee is suffered or permitted to work,
15 whether or not required to do so.

16 56. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
17 and the standard conditions of labor fixed by the commission shall be the maximum hours of
18 work and the standard conditions of labor for employees. The employment of any employee for
19 longer hours than those fixed by the order or under conditions of labor prohibited by the order
20 is unlawful.”

21 57. Defendant failed to satisfy minimum wage requirements because they
22 improperly rounded down Plaintiff’s actual hours worked and required Plaintiff and Class
23 members to engage in activities off the clock in violation of *Labor Code* §§ 1197, 1198 and
24 Wage Order 16.

25 58. Defendant’s pattern, practice and uniform administration of corporate policy
26 regarding illegal employee compensation as described herein is unlawful and creates an
27 entitlement, pursuant to *Labor Code* § 218, to recovery by Plaintiff and the members of the
28

1 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
2 the appropriate rate.

3 59. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
4 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
5 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
6 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
7 the time associated with the overtime for which they received no compensation. *See Sillah v.*
8 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
9 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
10 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
11 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

12 60. Plaintiff and the other Class Members suffered and continue to suffer losses
13 related to the use and enjoyment of compensation due and owing to them as a direct result of
14 Defendant's unlawful acts and Labor Code violations in an amount to be shown according to
15 proof at trial and within the jurisdictional limitations of this Court.

16 61. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
17 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
18 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
19 proof.

20 **THIRD CAUSE OF ACTION**

21 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

22 **ITEMIZED STATEMENTS**

23 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

24 62. Plaintiff and the Class reallege and incorporate by reference all of the allegations
25 set forth in this First Amended Complaint.

26 63. Pursuant to IWC Wage Order No. 16, Defendant was the employer of Plaintiff
27 and the Class.

1 64. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 16-
2 2001 section 7, Defendant is required to maintain and provide accurate records relating to
3 employee compensation including all formulas and production records used to calculate wages
4 due.

5 65. Defendant is further required to provide, *inter alia*, semimonthly or at the time
6 of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2)
7 all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which
8 the employee is being paid; (5) the name of the employee; and (6) the name and address of the
9 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

10 66. Section 226(e) provides that an employee is entitled to recover \$50 for the initial
11 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
12 not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods
13 in which the employer knowingly and intentionally failed to provide accurate itemized
14 statements to the employee causing the employee to suffer injury.

15 67. Notwithstanding these provisions. Defendant has engaged in a uniform practice
16 of refusing to maintain and provide the accurate records and wage statements required by
17 California law.

18 68. Throughout the Class Period, Defendant intentionally and knowingly provided
19 Plaintiff and other members of the Class with weekly itemized wage statements containing
20 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
21 that the payments owed to Plaintiff and the members of the Class for overtime compensation,
22 minimum wages, reimbursement for business expenses, wages for earned commissions, were
23 not included in gross wages earned by Plaintiff and members of the Class.

24 69. As a result, Plaintiff and members of the Class have been injured by having been
25 deprived of the true facts pertaining to their compensation and employment.

26 70. Plaintiff and members of the Class were damaged by these failures because,
27 among other things, the failures led them to believe that they were not entitled to overtime
28 compensation, minimum wages, reimbursement for business expenses, wages for earned

1 commissions, even though they were so entitled and these failures hindered them from
2 determining the amounts of wages owed to them.

3 71. Plaintiff and members of the Class are entitled to the amounts provided in Labor
4 Code §226(e), plus attorneys' fees and costs.

5 72. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
6 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
7 provided by law for Defendant's improper conduct.

8 **FOURTH CAUSE OF ACTION**

9 **FOR FAILURE TO PAY WAGES UPON TERMINATION**

10 **(Labor Code §§201-203 By Plaintiffs against Defendant and Does 1 through 100)**

11 73. Plaintiff and the Class reallege and incorporate by reference all of the allegations
12 set forth in this First Amended Complaint.

13 74. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
14 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
15 from employment, unpaid wages are due and payable within 72 hours of resignation.

16 75. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
17 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
18 paid, not to exceed thirty days.

19 76. Plaintiff and the Class were discharged and/or resigned from Defendant's
20 employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

21 77. Plaintiff was given her last pay in a paystub/check approximately 4 days late.
22 Plaintiff's last pay did not include any waiting time penalties.

23 78. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's
24 wages for each day he or she was not timely paid, not to exceed 30 days' wages.

25 **FIFTH CAUSE OF ACTION**

26 **REIMBURSEMENT OF BUSINESS EXPENSES**

27 **(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

79. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

80. Labor Code §2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

81. At all times relevant herein, Defendant was aware that Plaintiff and Class members were using their personal cell phones for work-related purposes, but failed to indemnify Plaintiff and Class members for all their business-related expenses, in accordance with Labor Code §2802. Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendant maintained a practice of not reimbursing Plaintiff and Class members for their work-related expenses that they incurred in using their personal cell phones, including wear and tear, for work-related purposes.

82. As a result of Defendant's conduct, Plaintiff and Class Members suffered damages in an amount, subject to proof, to the extent they were not reimbursed for all of their business-related expenses incurred in the discharge of their duties.

83. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION

FAILURE TO PAY COMMISSION WAGES

(Labor Code §§ 200 et seq., By Plaintiffs against Defendant and Does 1 through 100)

84. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

85. Plaintiff and Class members agreed with Defendant that, in addition to their hourly rate, they would earn commissions on sales of home remodeling.

86. At all relevant times, a portion of Plaintiff and Class members' total compensation as employees of Defendant included commissions earned by sales resulting from Plaintiff and the Class's telemarketing services.

1 87. At all relevant times, Plaintiff and the Class set up appointments for remodeling
2 services which resulted in sales thereof that entitled them to promised commission wages.

3 88. Plaintiff and Class members performed all of the duties required by them during
4 their employment with Defendant, including those duties and obligations that would entitle
5 them to receive commissions.

6 89. Defendant has knowingly, intentionally and willfully failed and refused to pay to
7 Plaintiff and Class members the full and complete amount of the commissions they properly
8 earned during their employment with Defendant.

9 90. Pursuant to California Labor Code §§ 200 et seq., Plaintiff and the Class are
10 entitled to recover their unpaid commissions and penalties, all in an amount to be proven at
11 trial.

12 91. Pursuant to Labor Code § 218.5, Plaintiff requests that the court award Plaintiff
13 reasonable attorneys' fees and costs incurred by her in this action.

14 92. Pursuant to California Labor Code § 218.6, Plaintiff requests that the court
15 award Plaintiff interest on all due and unpaid wages, at the legal rate specified by Civil Code §
16 3289(b), accruing from the date the wages were due and payable.

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

19 ***(Labor Code §1198.5 By Plaintiffs Against Defendant and Does 1 through 100)***

20 93. Plaintiff and the Class reallege and incorporate by reference all of the allegations
21 set forth in this First Amended Complaint.

22 94. California Labor Code Section 1198.5 provides:

23 (a) Every current and former employee, or his or her representative, has the
24 right to inspect and receive a copy of the personnel records that the
25 employer maintains relating to the employee's performance or to any
26 grievance concerning the employee.

27 (b) The employer shall make the contents of those personnel records available
28 for inspection to the current or former employee, or his or her
representative, at reasonable intervals and at reasonable times, but not later
than 30 calendar days from the date the employer receives a written request,

1 unless the current or former employee, or his or her representative, and the
2 employer agree in writing to a date beyond 30 calendar days to inspect the
3 records, and the agreed-upon date does not exceed 35 calendar days from
4 the employer's receipt of the written request to inspect the records. Upon a
5 written request from a current or former employee, or his or her
6 representative, the employer shall also provide a copy of the personnel
7 records,..... later than 30 calendar days from the date the employer receives
8 the request...

9 (k) If an employer fails to permit a current or former employee, or his or her
10 representative, to inspect or copy personnel records within the times specified I
11 this section... the current or former employee may recover a penalty of seven
12 hundred fifty dollars (\$750) from the employer.

13 (1) A current or former employee may also bring an action for injunctive relief
14 to obtain compliance with this section, and may recover costs and reasonable
15 attorney's fees in such an action.

16 95. Additionally, pursuant to Wage Order 16, at section 7 re: Records, employers
17 are required to keep accurate payroll records on each employee, and such records must be
18 made readily available for inspection by the employee upon reasonable request. The employer
19 must also maintain accurate production records.

20 96. On or about October 30, 2024, Plaintiff's counsel issued a written request to
21 Defendant for copies of her personnel records.

22 97. Under California Labor Code Sections 226, 432 and 1198.5, such records were
23 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
24 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
25 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of her
26 records.

27 98. As a direct result and consequence of Defendant's failure and refusal to permit
28 Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or
decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a
result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
penalty of \$750 based upon Defendant's violation of §1198.

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1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1**
4 **through 100)**

5 99. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this First Amended Complaint.

7 100. Pursuant to IWC Wage Order No. 16, Defendant was the employer of Plaintiff
8 and the Class. Defendant is also a "person" as that term is defined in Business & Professions
9 Code §17021.

10 101. The Business & Professions Code defines unfair competition as any unlawful,
11 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
12 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
13 Plaintiff and the Class overtime compensation; (2) pay minimum wages; (3) furnish Plaintiff
14 and the Class with accurate itemized wage statements, as mandated by the applicable Labor
15 Code and Industrial Welfare Commission requirements, (4) pay Plaintiff and the Class all
16 wages due on termination of employment; (5) reimburse business expenses, (6) pay
17 commission wages; (7) provide personnel records, all in violation of Business & Professions
18 Code §§ 17200 *et seq.*

19 102. By and through the unfair and unlawful business practices described herein,
20 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
21 and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of
22 Plaintiff and the Class.

23 103. All the acts described herein are violations of, among other things, the Labor
24 Code and Industrial Commission Wage Order No. 16, are unlawful and in violation of public
25 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
26 constitute unfair and unlawful business practices in violation of Business & Professions Code
27 §§ 17200 *et seq.*

104. Plaintiff and the Class are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which Defendant has acquired, or of which Plaintiff and the Class have been deprived by means of the above-described unfair and unlawful business practices.

105. Plaintiff and the Class are further entitled to, and do, seek a declaration that the above-described business practices are unfair and unlawful and that injunctive relief should be issued restraining Defendant from engaging in any of the above described unfair and unlawful business practices in the future.

106. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of the unfair and unlawful business practices of Defendant. As a result of the unfair and unlawful business practices described above, Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless Defendant is restrained from continuing to engage in these unfair and unlawful business practices. In addition, Defendant should be required to disgorge the unpaid moneys to Plaintiff and the Class.

NINTH CAUSE OF ACTION

**(Damages Pursuant to Private Attorney General Act Against All Defendants and Does
1 through 100)**

107. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this First Amended Complaint.

108. Plaintiff brings this action on his own behalf and on behalf of all current and former employees of Defendants who were employed in California for the previous four years seeking to recover wages from Defendant due to Defendant's systematic failure to pay overtime, minimum wages due to rounding, to issue accurate wage statements, to pay all wages due on termination of employment, to reimburse business expenses, to pay earned commissions, to allow inspection of employment records and unfair competition as set forth in this pleading.

109. On October 30, 2024, Plaintiff, pursuant to California Labor Code §§2699, et seq., by and through Plaintiff's attorneys, uploaded a Private Attorney General Act ("PAGA") claim to the State of California Labor and Workforce Development Agency ("LWDA") and sent a letter via Certified Mail Return Receipt Requested to the defendant.

110. More than 65 days have passed since the above letter, and Plaintiff's counsel has not received any notice from the LWDA stating an intention to prosecute Plaintiff's PAGA claims.

111. Plaintiff has, therefore complied with the administrative exhaustion requirements of PAGA.

112. Plaintiff seeks Labor Code penalties, attorney's fees, and costs, in an amount according to proof at trial, as provided by the Labor Code Private Attorney General Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor and against Defendant as follows:

1. For compensatory damages in the amount of unpaid overtime due to Plaintiff and Class Members, according to proof;

2. For compensatory damages in the amount minimum wages due to Plaintiff and Class Members, according to proof;

3. For payment of unpaid wages in accordance with California labor and employment law;

4. For compensatory damages in the amount of Plaintiff and Class Members' cell phone expenses for business purposes, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);

5. For all commissions owed:

6. For an award of consequential damages in Plaintiff and Class Members' favor and against Defendant, in an amount to be proven at trial;

7. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

1 8. For payment to Plaintiff and Class members of waiting time penalties pursuant
2 to *Cal. Lab. Code* §203, in an amount equal to their respective daily rates of pay at the time of
3 termination or layoff, multiplied by the total amount of days elapsed between the date of the
4 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
5 maximum of 30 days' pay, according to proof;

6 9. For specific relief enforcing waiting time penalties of 30 days of per diem wages
7 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

8 10. For prejudgment interest accrued on all due and unpaid overtime and minimum
9 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
10 1194(a), according to proof;

11 11. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5,
12 according to proof;

13 12. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order 16-
14 2001(14);

15 13. For penalties provided by the Labor Code Private Attorney General Act;

16 14. For reasonable costs, including attorneys' fees, in an amount according to proof
17 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802, and/or *Cal. Code of*
18 *Civ. Proc.* §1021.5;

19 15. For an award of restitution of wages to Plaintiff and Class members in an
20 amount equal to the amount of wages owed and unpaid, according to proof;

21 16. For injunctive relief requiring Defendant to comply with Labor Code
22 1198.5(b)(1);

23 17. For injunctive relief ordering the continuing unfair business acts and practices to
24 cease, as the Court deems just and proper;

25 18. For other injunctive relief ordering Defendant to notify Plaintiff and Class
26 members that they have not been paid the proper amounts in accordance with California law;

27 19. For punitive and exemplary damages in a sum to be determined at trial; and

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

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DEMAND FOR JURY TRIAL

Plaintiff Shante Farr hereby respectfully requests a trial by jury for all claims and issues raised in her First Amended Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: January 23, 2025

By: 

Kevin A. Lipeles
Attorneys for Plaintiff
Shante Farr