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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 BAMBİ HOLZER, RICHARD RAMMER and
12 ROBERT KINSCH on behalf of themselves
and all others similarly situated,

13 Plaintiff,

14 vs.

15 WEDBUSH SECURITIES INC., a California
16 corporation, and DOES 1 through 100,
inclusive,

17 Defendants.
18

Case No.: BC550462

[Assigned for all purposes the Hon. Elihu M.
Berle, Dept. 6]

**STIPULATION TO AMEND JOINT
STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint Filed: July 1, 2014

Trial Date: March 4, 2019

19
20 Named Plaintiffs Richard Rammer and Robert Kinsch (“Plaintiffs”) and Defendant
21 Wedbush Securities Inc. (“Defendant”)(collectively, “Parties”), by and through their respective
22 counsel of record, HEREBY STIPULATE AND AGREE to amend the Joint Stipulation and
23 Agreement to Settle Class Action previously executed by the Parties on or about October 2, 2018
24 (“Settlement Agreement’ or “Settlement”) as follows:

25 1. Page 2, paragraph I(B) of the Settlement Agreement shall be replaced with the
26 following language:

27 “Class” or “Class Members” means all persons who performed worked for
28 Defendant in the State of California in the position of financial advisor and were
classified as independent contractors during all or part of the Class Period.

1 2. Page 2, paragraph I(V) of the Settlement Agreement shall be replaced with the
2 following language:

3 “Response Deadline” means the date that is sixty (60) calendar days after the
4 date the Notice Packet is mailed to the Class Members, which will be the
5 deadline for Class Members to submit Workweeks Disputes, objections to the
6 Settlement, or to request to be excluded from the Settlement.

7 3. The following definition shall be added to paragraph I of the Settlement:

8 AA. “Settlement Class Members” means all Class Members who do not validly
9 opt out of the Settlement.

10 4. The following language shall be deleted from page 8, paragraph III(D)(1) of the
11 Settlement Agreement: “. . . by filing his or her objection with the Court and . . .

12 5. The following sub-paragraph shall be added to Paragraph III of the Settlement
13 Agreement:

14 **G. Procedure for Requesting Exclusion from the Settlement.**

15 1. Class Members may elect to opt-out of the Settlement and, thus, exclude
16 themselves from the Settlement. The Notice shall advise Class Members
17 of the option to opt-out of the Settlement and will contain instructions on
18 how to do so. Class Members who wish to exercise this option must send
19 the Settlement Administrator a written statement requesting exclusion from
20 the Settlement on or before the Response Deadline. Any opt-out request
21 must be postmarked on or before the Response Deadline, and the date of
22 the postmark on the opt-out request shall be the exclusive means used to
23 determine whether an opt-out request has been timely submitted. In the
24 event that the postmark is illegible, the request for exclusion shall be
25 deemed untimely unless received within five (5) calendar days after the
26 Response Deadline.

27 2. Any written opt-out request must be signed and dated, and must contain the
28 Class Member’s full name, address, telephone number, the last-four digits
of their social security number, his or her dates of employment with
Defendant, and shall include the statement “I wish to exclude myself from
the settlement reached in *Holzer v. Wedbush Securities Inc.* and I
understand by excluding myself I will not receive any money from this
settlement.”

 3. Any Class Member who properly opts out of the Settlement will not be
entitled to any payment under the Settlement, will not be bound by the
Settlement, and will not have any right to object, appeal, or comment on
the Settlement. Class Members who do not submit a valid and timely opt-
out request shall be deemed Settlement Class Members, shall receive an
Individual Settlement Payment, and shall be bound by all the terms of the
Settlement (including without limitation the release of claims) and any
Final Judgment in this Action. Upon request, the Settlement Administrator
will provide counsel for Defendant and Class Counsel with a complete list
of all Class Members who have timely opted out from the Settlement.

1 6. References to the term “Class Members” in paragraphs I(Q), I(Z), IV(C)(6),
2 IV(D)(2)(b)(i), IV(D)(4), IV(D)(5), and IV(K) of the Settlement Agreement shall be replaced
3 with the term “Settlement Class Members.”

4 7. As a precondition to seeking preliminary approval of the Settlement Agreement,
5 the Parties stipulate to grant Plaintiffs leave to file a proposed Second Amended Complaint,
6 attached hereto as “Exhibit 1”. The Parties will submit their Joint Stipulation to Amend
7 Complaint at the same time Plaintiffs file their Motion for Preliminary Approval, and will ask
8 the Court to grant such leave in its order granting Preliminary Approval.

9 8. “SAC” shall mean the proposed Second Amended Complaint, attached hereto as
10 “Exhibit 1”.

11 9. References to the term “FAC” in paragraphs I(T), IV(K)(5), IV(6) of the
12 Settlement Agreement shall be replaced with the term “SAC”.

13 IT IS SO STIPULATED.

14 Dated: November 6, 2018

PROTECTION LAW GROUP, LLP



16 By: _____

17 Heather Davis
18 Attorneys for Plaintiffs Richard Rammer
and Robert Kinsch

19 Dated: *11/6/18*

JONES BELL ABBOTT FLEMING AND
20 FITZGERALD, LLP



21 William Turner
22 Attorneys for Defendant Wedbush
23 Securities, Inc.

EXHIBIT 1

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10 Attorney for Plaintiffs
11 RICHARD RAMMER and ROBERT KINSCH

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

14 BAMBI HOLZER, RICHARD RAMMER
15 AND ROBERT KINSCH on behalf of
16 themselves and all others similarly situated,

17 Plaintiff,

18 vs.

19 WEDBUSH SECURITIES INC., a California
20 corporation, and DOES 1 through 100,
21 inclusive,

22 Defendants.

Case No.: BC 550462

Hon. Elihu M. Berle
Department 6

**SECOND AMENDED CLASS ACTION
COMPLAINT**

- (1) UNLAWFUL DEDUCTIONS FROM WAGES (VIOLATION OF CALIFORNIA LABOR CODE § 221);
- (2) FAILURE TO PAY ALL WAGES DUE (VIOLATION OF CALIFORNIA LABOR CODE §§ 201-204);
- (3) UNREIMBURSED BUSINESS EXPENSES (VIOLATION OF CALIFORNIA LABOR CODE §§ 2800 AND 2802);
- (4) MISCLASSIFICATION (VIOLATION OF CALIFORNIA LABOR CODE § 226.8);
- (5) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (VIOLATION OF CALIFORNIA LABOR CODE 226(a))
- (6) FAILURE TO PAY OVERTIME COMPENSATION (VIOLATION OF LABOR CODE §§ 510 AND 1198)
- (7) FAILURE TO PAY MINIMUM WAGES (VIOLATION OF LABOR CODE §§ 1194, 1197 AND 1197.1)
- (8) FAILURE TO PROVIDE MEAL PERIODS (VIOLATION OF LABOR CODE §§ 226.7 AND 512)
- (9) FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

**(VIOLATION OF LABOR CODE §
226.7)
(10) UNFAIR BUSINESS PRACTICES
PURSUANT TO BUSINESS &
PROFESSIONS CODE § 17200; and
(11) PRIVATE ATTORNEY GENERAL
ACT**

DEMAND FOR TRIAL BY JURY

Plaintiffs RICHARD RAMMER and ROBERT KINSCH (collectively "Plaintiffs"), on behalf of themselves and all others similarly situated and ROBERT KINSCH as a private attorney general allege as follows:

INTRODUCTION

1. Plaintiffs Robert Kinsch ("Kinsch") and Richard Rammer ("Rammer") bring this class and representative action against defendant Wedbush Securities Inc. for alleged violations of the Labor and Business and Professions Codes.

2. Plaintiff Robert Kinsch also brings this lawsuit as a representative action on behalf of the State of California in the capacity as a private attorney general pursuant to Private Attorneys General Act of 2004, California Labor Code section 2698, et seq. ("PAGA").

3. As set forth below, Plaintiffs allege that Defendant failed to pay them all of their wages due, improperly made deductions from their wages owed, failed to provide legally compliant meal and rest periods, and failed to pay minimum and overtime wages. Based on these alleged Labor Code violations, Plaintiffs now bring this class and representative action to recover unpaid wages, restitution, and related relief individually, and on behalf of other members of the general public similarly situated.

THE PARTIES, JURISDICTION AND VENUE

4. Defendant Wedbush Securities, Inc. ("Wedbush") is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of California, and qualified to do business in California.

5. Wedbush is, and at all times herein mentioned was, (a) conducting business in the County of Los Angeles, State of California and (b) the employer of Plaintiffs consistent with California Labor Code and Industrial Welfare Commission Wage Orders.

1 6. Plaintiff Rammer was hired by Defendant in or around 2007. Plaintiff Rammer is a
2 former employee of Defendant.

3 7. Plaintiff Kinsch was hired by Defendant in or around 2009 and is currently employed by
4 Defendant.

5 8. Plaintiffs were improperly classified as independent contractors.

6 9. During their employment, Defendant deprived Plaintiffs of the rights guaranteed to them
7 by the California Labor Code.

8 10. The acts alleged herein arose in Los Angeles County, within the State of California and
9 Defendant is believed to have more than 27 offices located throughout the state of California.

10 11. Plaintiffs are ignorant of the identities of defendants Does 1 through 100, inclusive, and
11 therefore sues these defendants by such fictitious names. The Doe defendants may be individuals,
12 partnerships, or corporations. Plaintiffs are informed and believe, and thereon alleges, that at all
13 times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant,
14 employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times
15 mentioned, acting within the scope, purpose, consent, knowledge, ratification and authorization of
16 such agency, employment, joint venture and conspiracy. Plaintiffs will amend this Complaint to
17 allege their true names and capacities when ascertained. Plaintiffs are informed and believe and
18 thereon allege that each of the fictitiously named Doe defendants are responsible in some manner
19 for the occurrences herein alleged, and that Plaintiffs' damages as herein alleged were proximately
20 caused by their conduct. Doe Defendants 1 through 100 and Defendant are herein collectively
21 referred to as "Defendant."

22 12. The California Superior Court has jurisdiction in this matter due to Defendant's
23 violations of various provisions of the Cal. Lab. Code, Bus & Prof. Code § 17200, et seq., the IWC
24 Wage Order(s), and/or related common law principles.

25 13. The California Superior Court also has jurisdiction in this matter because the monetary
26 damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior
27 Court and will be established at trial, according to proof.

1 14. The California Superior Court has personal jurisdiction over Defendant because, at all
2 relevant times, Defendant is/are residents of and/or are/were doing business in the State of
3 California.

4 15. Venue is proper in the County of Los Angeles in accordance with Cal. Civ. Code §
5 395(a) because Defendant, or some of them, reside in this county and/or the alleged wrongs
6 occurred in this county.

7 **CLASS ALLEGATIONS**

8 16. This action has been brought and may be maintained as a class action pursuant to Code
9 of Civil Procedure § 382 because there is a well-defined community of interest among the persons
10 who comprise the readily ascertainable classes defined below and because Plaintiffs are unaware
11 of any difficulties likely to be encountered in managing this case as a class action.

12 17. Relevant Time Period: The relevant time period is defined as the time period beginning
13 four years prior to the filing of this action until judgment is entered. The class and subclass
14 members are defined as follows:

15 18. Class: All individuals who performed work for Defendant in the position of
16 Stockbroker or performed broker duties at any time four years prior to the filing of this Complaint
17 through the present in the State of California (the "Class").

18 19. Numerosity and Ascertainability: The members of the Class are so numerous that
19 joinder of all members would be impractical, if not impossible. The identity of the members of the
20 Class is readily ascertainable by review of Defendant's records, including payroll records.

21 20. Adequacy of Representation: The named Plaintiffs are fully prepared to take all
22 necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiffs
23 are adequate class representatives in that they have no interests that are adverse to, or otherwise
24 conflict with, the interests of absent class members and is dedicated to vigorously prosecuting this
25 action on their behalf. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules
26 governing class action discovery, certification, and settlement. Plaintiffs have incurred, and during
27 the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are,

1 and will be necessarily expended for the prosecution of this action for the substantial benefit of
2 each class member.

3 21. Superiority: A class action is vastly superior to other available means for fair and
4 efficient adjudication of the class members' claims and would be beneficial to the parties and the
5 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
6 and efficiently prosecute their common claims in a single forum without the unnecessary
7 duplication of effort and expense that numerous individual actions would entail. In addition, the
8 monetary amounts due to many individual class members are likely to be relatively small and
9 would thus make it difficult, if not impossible, for individual class members to both seek and obtain
10 relief. Moreover, a class action will serve an important public interest by permitting class members
11 to effectively pursue the recovery of moneys owed to them. Further, a class action will prevent the
12 potential for inconsistent or contradictory judgments inherent in individual litigation.

13 22. There are common questions of law and fact as to the class members that predominate
14 over questions affecting only individual members. The following common questions of law or fact,
15 among others, exist as to the members of the class:

16 23. Whether Defendant's failure to pay wages, without abatement or reduction, in
17 accordance with the California Labor Code, was willful;

18 24. Whether Defendant failed to timely pay all wages due to Plaintiffs and the other class
19 members during their employment;

20 25. Whether Defendant has made deductions from the compensation paid to Class
21 Members in violation of Cal. Labor Code § 221;

22 26. Whether Defendant's deductions from Class Members' compensation constitute an
23 unlawful, unfair, and/or fraudulent business practice under Cal. Business & Professions Code §
24 17200 et seq.;

25 27. Whether Defendant has violated Labor Code §§ 201-204 by failing to timely pay
26 California Class Members wages that were due for wrongful deductions from wages;

27 28. Whether Defendant has violated Labor Code §§ 2800 and 2802 by failing to reimburse
28 Class Members for all necessary expenditures incurred by the Class Members in direct

1 consequence of the discharge of his or her job duties or in direct consequence of his or her
2 obedience to the directions of Defendants;

3 29. Whether Defendants deprived Plaintiff and the other Class Members of meal and/or
4 rest periods or required Plaintiff and the other Class Members to work during meal and/or rest
5 periods without compensation.

6 30. Whether Defendants failed to pay meal period premium wages to Class Members when
7 they were not provided with a legally compliant meal period;

8 31. Whether Defendants failed to pay rest period premium wages to class Members when
9 they were not authorized and permitted to take legally compliant rest periods.

10 32. Whether Defendants failed to pay Class Members required minimum wages.

11 33. Whether Defendants failed to pay Class Member proper overtime compensation.

12 34. Whether Defendant's failure to pay all compensation owed to Class Members
13 constituted an unlawful, unfair, and/or fraudulent business practice under Cal. Business &
14 Professions Code § 17200 et seq.;

15 35. Whether Defendant engaged in unfair business practices in violation of California
16 Business & Professions Code section 17200, et seq.;

17 36. The appropriate amount of damages, restitution, and/or monetary penalties resulting
18 from Defendant's violation of California law; and

19 37. Whether Plaintiffs and the other class members are entitled to compensatory damages
20 pursuant to the California Labor Code.

21 **GENERAL ALLEGATIONS**

22 38. On or about July 27, 2007, Defendant hired Plaintiff Holzer, as a broker-dealer.
23 Defendant paid, and upon information and belief, pays its Class Members based on a commission
24 basis.

25 39. In or about September 2007, Defendant hired Plaintiff Rammer, as a broker-dealer.
26 Defendant paid, and upon information and belief, pays its Class Members based on a commission
27 basis.

1 40. On or about 2009, Defendant hired Plaintiff Kinsch, as a broker-dealer. Defendant paid,
2 and upon information and belief, pays its Class Members based on a commission basis.

3 41. Under California law, such commissions constitute wages earned.

4 42. Defendant maintained and maintains a policy and practice of reducing commissions to
5 Class Members paid based on the deduction of a monthly fee for purported Errors and Omissions
6 Insurance and/or to provide representation by counsel for actions taken by the Class Members.

7 43. Such deduction of the monthly fee for the payment of Errors and Omissions Insurance
8 was and is intended to pay for attorney's fees, costs, settlements, judgments, award and/or claims
9 asserted by third parties against Class Members for actions taken by Class Members in the
10 performance of his or her duties for Defendant. Such deductions were and continue to be
11 deductions for the cost of business related expenses for Defendant.

12 44. In addition, Defendant deducted other expenses from the Class Member's pay which
13 were part of Defendant's cost of doing business.

14 45. By deducting the fees for Errors and Omissions insurance and/or attorney's fees and
15 other business related expenses, Defendant failed to pay Class Members all wages due and owing
16 to the Class Members.

17 46. Defendant willfully misclassified Plaintiffs as Independent Contractors rather than non-
18 exempt hourly employees. Defendant controlled Plaintiffs' work, manner of performance, and
19 daily performance. For instance, Defendant monitored Plaintiffs' communications with clients
20 such as outgoing and incoming e-mail, on a daily basis. Further, Defendant required Plaintiffs' to
21 seek approval for all communications provided by mail including correspondence and even
22 holiday or birthday greetings cards. Finally, Defendant required approval for all of Plaintiffs'
23 transactions.

24 47. Throughout the time period involved in this case, Defendants have implemented policies
25 and practices which failed to provide Plaintiffs and the Class with timely and duty-free meal
26 periods. Defendants routinely failed to relieve Plaintiffs and the Class of all duties during their
27 meal periods, failed to relinquish control over Plaintiffs and the Class during their meal periods,
28 failed to permit Plaintiffs and the Class a reasonable opportunity to take their meal periods, and

1 impeded or discouraged Plaintiffs and the Class from taking thirty (30) minute uninterrupted meal
2 breaks no later than the end of their fifth hour of work and/or from taking a second thirty (30)
3 minute uninterrupted meal break no later than their tenth hour of work for shifts lasting more than
4 ten (10) hours. Defendants also failed to maintain accurate records of meal periods taken by
5 Plaintiffs and the Class.

6 48. Throughout the time period involved in this case, Defendants did not adequately inform
7 Plaintiffs and the Class of their right to take meal periods under California law. Moreover,
8 Defendants systematically disregarded their own written policies regarding the provision and
9 timing of meal periods for Plaintiffs and the Class. Instead, Defendants' actual policy and practice
10 was to schedule Plaintiffs and the Class in a way the prohibited them from taking timely and duty-
11 free meal periods, and to require Plaintiffs and the Class to work through their meal periods, for
12 which they were not compensated.

13 49. Throughout the time period involved in this case, Defendants failed to pay Plaintiffs and
14 the Class premium wages for meal periods that were missed, late, interrupted, or shortened in
15 violation of California law.

16 50. Throughout the time period involved in this case, Defendants have implemented
17 policies and practices which prohibited Plaintiffs and the Class from taking timely and duty-free
18 rest periods. Defendants regularly failed to provide, authorize, and permit Plaintiffs and the Class
19 to take full, uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to
20 six (6) hours and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to
21 ten (10) hours, and failed to make a good faith effort to authorize, permit, and provide such rest
22 breaks in the middle of each work period.

23 51. Throughout the time period involved in this case, Defendants did not adequately inform
24 Plaintiffs and the Class of their right to take rest periods under California law. Moreover,
25 Defendants systematically disregarded their own written policies regarding the provision and
26 timing of rest periods for Plaintiffs and the Class. Instead, Defendants' actual policy and practice
27 was to schedule Plaintiffs and the Class in a way the prohibited them from taking timely and duty
28 free rest periods, and to require Plaintiffs and the Class to work through their rest periods.

1 the State of California to protect employees' expectations with regard to their wages, including
2 their commissions, and to prevent fraud and deceit in the employment relationship.

3 59. Defendant has violated Cal. Lab. Code § 221 and acted inconsistently with Cal. Lab.
4 Code §§ 221 -223 and §§ 400-410 by deducting from the earned commissions of Class Members
5 for purported Errors and Omissions Insurance and/or representation by attorneys in the defense of
6 potential claims.

7 60. As a direct and proximate result of Defendant's conduct, Plaintiffs and similarly situated
8 Class Members have suffered substantial losses according to proof, as well as pre-judgment
9 interest, costs, and attorneys' fees pursuant to statute and applicable law.

10 **SECOND CAUSE OF ACTION**

11 **(Failure to Timely Pay All Wages Due - Violation of California Labor Code §§ 201 – 204**

12 **Against All Defendants)**

13 61. The allegations of each of the preceding paragraphs are realleged and incorporated
14 herein by reference.

15 62. California Labor Code §§ 201 and 202 require Defendant to pay its employees all wages
16 due within the time specified by law.

17 63. California Labor Code § 203 provides: "If an employer willfully fails to pay, without
18 abatement or reduction, in accordance with sections 201, 201.5, 202 and 205.5, any wages of an
19 employee who is discharged or quits, the wages of the employee shall continue as a penalty from
20 the due date thereof at the same rate until paid or until an action therefor is commenced; but the
21 wages shall not continue for more than 30 days."

22 64. At all times herein set forth, California Labor Code section 204 provides that all wages
23 earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar
24 month, other than those wages due upon termination of an employee, are due and payable between
25 the 16th and 26th day of the month during which the labor was performed.

26 65. At all times herein set forth, California Labor Code section 204 provides that all wages
27 earned by any person in any employment between the 16th and the last day, inclusive, of any
28

1 calendar month, other than those wages due upon termination of an employee, are due and payable
2 between the 1st and the 10th day of the following month.

3 66. At all times herein set forth, California Labor Code section 204 provides that all wages
4 earned for labor in excess of the normal work period shall be paid no later than the payday for the
5 next regular payroll period.

6 67. During the relevant time period, Defendant intentionally and willfully failed to pay
7 Plaintiffs and the other class members all wages due to them, within any time period permissible
8 under California Labor Code section 204.

9 68. Plaintiffs and the other class members are entitled to recover all remedies available for
10 violations of California Labor Code section 204.

11 **THIRD CAUSE OF ACTION**

12 **(Unreimbursed Business Expenses – Violation of California Labor Code §§ 2800**
13 **and 2802 Against All Defendants)**

14 69. Plaintiff Rammer re-alleges and incorporates herein by reference each and every
15 allegation of the preceding paragraphs.

16 70. Pursuant to California Labor Code sections 2800 and 2802, an employer must
17 reimburse its employees for all necessary expenditures incurred by the employee in direct
18 consequence of the discharge of his or her job duties or in direct consequence of his or her
19 obedience to the directions of the employer.

20 71. Plaintiff Rammer and the other class members incurred necessary business-related
21 expenses and costs that were not fully reimbursed by Defendant.

22 72. Defendant has intentionally and willfully failed to reimburse Plaintiff Rammer and the
23 other class members for all necessary business-related expenses and costs. Plaintiff Rammer and
24 other class members are entitled to recover from Defendant their business-related expenses and
25 costs incurred during the course and scope of their employment, plus interest accrued, including
26 attorneys' fees and costs, from the date on which the employee incurred the necessary expenditures
27 at the same rate as judgments in civil actions in the State of California.

1 **FOURTH CAUSE OF ACTION**

2 **(Misclassification - Violation of Labor Code §226.8 - Against All Defendants)**

3 73. Plaintiff Kinsch re-alleges and incorporates herein by reference each and every
4 allegation of the preceding paragraphs.

5 74. Labor Code §226.8(a) states, “It is unlawful for any person or employer to engage in
6 any of the following activities: (1) Willful misclassification of an individual as an independent
7 contractor. (2) Charging an individual who has been willfully misclassified as an independent
8 contractor a fee, or making any deductions from compensation, for any purpose, including for
9 goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or
10 fines arising from the individual’s employment where any of the acts described in this paragraph
11 would have violated the law if the individual had not been misclassified.”

12 75. As set forth herein, Defendant, as a matter of established company policy and
13 procedure, consistently misclassified Plaintiffs as “independent contractors” to avoid the payment
14 of wages and other benefits, in violation of Labor Code §226.8(a)(1).

15 76. Labor Code §226.8 provides that an employer shall be charged not more than twenty-
16 five thousand dollars (\$25,000.00) for each violation, in addition to any other penalties or fines.

17 77. Defendant’s illegal employment classification as described herein is unlawful and
18 creates an entitlement to recovery by Plaintiff Kinsch of penalties pursuant to Labor Code
19 §226.8(b), (c), and/or (e)-(f), according to proof, for Defendant’s violations of Labor Code
20 §226.8(a).

21 **FIFTH CAUSE OF ACTION**

22 **(Failure to Provide Accurate Wage Statements –**

23 **Violation of Labor Code §226(a) - Against All Defendants)**

24 78. Plaintiff Rammer re-alleges and incorporates herein by reference each and every
25 allegation of the preceding paragraphs.

26 79. At all material times set forth herein, California Labor Code section 226(a) provides
27 that every employer shall furnish each of his or her employees an accurate itemized statement in
28 writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number

1 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
2 basis, (4) all deductions, provided that all deductions made on written orders of the employee may
3 be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
4 for which the employee is paid, (7) the name of the employee and his or her social security number,
5 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates
6 in effect during the pay period and the corresponding number of hours worked at each hourly rate
7 by the employee. The deductions made from payments of wages shall be recorded in ink or other
8 indelible form, properly dated, showing the month, day, and year, and a copy of the statement or
9 a record of the deductions shall be kept on file by the employer for at least three years at the place
10 of employment or at a central location within the State of California.

11 80. Defendants have intentionally and willfully failed to provide Plaintiff and the other
12 class members with complete and accurate wage statements. The deficiencies include, but are not
13 limited to: the failure to include the gross wages earned by Plaintiff and the other class members,
14 failure to include all deductions for Plaintiff and the other class members, failure to provide net
15 wages earned by Plaintiff and the other class members, failure to provide the name of employee
16 and social security number for Plaintiff and the other class members, and failure to include all
17 bonuses and commissions earned by Plaintiff and the other class members.

18 81. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
19 and the other class members have suffered injury and damage to their statutorily-protected rights.

20 82. More specifically, Plaintiff and the other class members have been injured by
21 Defendants' intentional and willful violation of California Labor Code section 226(a) because they
22 were denied both their legal right to receive, and their protected interest in receiving, accurate and
23 itemized wage statements pursuant to California Labor Code section 226(a).

24 83. Plaintiff and the other class members are entitled to recover from Defendants the greater
25 of their actual damages caused by Defendants' failure to comply with California Labor Code
26 section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

27 84. Plaintiff and the other class members are also entitled to injunctive relief to ensure
28 compliance with this section, pursuant to California Labor Code section 226(g).

1 **SIXTH CAUSE OF ACTION**

2 **(Failure to Pay Overtime Compensation – Violation of Labor Code §§ 510 and 1198 –**
3 **Against All Defendants)**

4 85. The allegations of each of the preceding paragraphs are realleged and incorporated
5 herein by reference.

6 86. California Labor Code section 1198 and the applicable Industrial Welfare
7 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
8 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
9 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

10 87. Specifically, the applicable IWC Wage Order provides that Defendants are and were
11 required to pay Plaintiffs and the other Class Members employed by Defendants, and working
12 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of
13 time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty
14 (40) hours in a workweek.

15 88. The applicable IWC Wage Order further provides that Defendants are and were
16 required to pay Plaintiffs and the Class overtime compensation at a rate of two times their regular
17 rate of pay for all hours worked in excess of twelve (12) hours in a day and for all hours worked
18 in excess of eight (8) hours on the seventh day of work in a workweek.

19 89. California Labor Code section 510 codifies the right to overtime compensation at one-
20 and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day
21 or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work,
22 and no overtime compensation at twice the regular hourly rate for hours worked in excess of
23 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

24 90. During the relevant time period, Plaintiffs and the other Class Members regularly
25 worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

26 91. During the relevant time period, Defendants intentionally and willfully failed to pay
27 overtime wages owed to Plaintiffs and the other Class Members.

28 92. Defendants’ failure to pay Plaintiffs and the other Class Members the unpaid balance

1 of overtime compensation, as required by California laws, violates the provisions of California
2 Labor Code sections 510 and 1198, and is therefore unlawful.

3 93. Pursuant to California Labor Code section 1194, Plaintiffs and the other Class
4 Members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
5 attorneys' fees.

6 **SEVENTH CAUSE OF ACTION**

7 **(Failure to Pay Minimum Wages – Violation of California Labor Code §§ 1194, 1197, and**
8 **1197.1 – Against All Defendants)**

9 94. The allegations of each of the preceding paragraphs are realleged and incorporated
10 herein by reference.

11 95. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide
12 that the minimum wage to be paid to employees and the payment of a lesser wage than the
13 minimum so fixed is unlawful.

14 96. During the relevant time period, Defendants regularly failed to pay minimum wage to
15 Plaintiffs and the other Class Members as required pursuant to California Labor Code sections
16 1194, 1197, and 1197.1.

17 97. Defendants' failure to pay Plaintiff and the other Class Members the minimum wage
18 as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those
19 sections, Plaintiffs and the other Class Members are entitled to recover the unpaid balance of their
20 minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated
21 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

22 98. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other Class
23 Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
24 unpaid and interest thereon.

1 **EIGHTH CAUSE OF ACTION**

2 **(Failure to Provide Meal Periods – Violation of California Labor Code §§ 226.7 and 512(a)**
3 **– Against All Defendants)**

4 99. The allegations of each of the preceding paragraphs are realleged and incorporated
5 herein by reference.

6 100. At all relevant times, the relevant IWC Order and California Labor Code sections
7 226.7 and 512(a) were applicable to Plaintiffs and the other Class Members' employment by
8 Defendants.

9 101. At all relevant times, California Labor Code section 226.7 provides that no employer
10 shall require an employee to work during any meal or rest period mandated by an applicable order
11 of the California IWC.

12 102. At all relevant times, the applicable IWC Wage Order and California Labor Code
13 section 512(a) provide that an employer may not require, cause or permit an employee to work for
14 a work period of more than five (5) hours per day without providing the employee with a meal
15 period of not less than thirty (30) minutes, except that if the total work period per day of the
16 employee is no more than six (6) hours, the meal period may be waived by mutual consent of both
17 the employer and employee.

18 103. At all relevant times, California Labor Code section 512(a) further provides that an
19 employer may not require, cause or permit an employee to work for a work period of more than
20 ten (10) hours per day without providing the employee with a second uninterrupted meal period of
21 not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12)
22 hours, the second meal period may be waived by mutual consent of the employer and the employee
23 only if the first meal period was not waived.

24 104. During the relevant time period, Plaintiff and the other Class Members who were
25 scheduled to work for a period of time longer than six (6) hours, and who did not waive their
26 legally-mandated meal periods by mutual consent, were required to work for periods longer than
27 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.
28

1 113. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer
2 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
3 in the middle of each work period” and that the “rest period time shall be based on the total hours
4 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof
5 unless the total daily work time is less than three and one-half (3.5) hours.”

6 114. During the relevant time period, Defendants required Plaintiffs and other Class
7 Members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
8 period per each four (4) hour period worked.

9 115. During the relevant time period, Defendants willfully required Plaintiffs and the other
10 Class Members to work during rest periods, failed to allow Plaintiffs and the other class Member
11 to take any rest period and/or failed to authorize and permit Plaintiffs and the other Class members
12 to take uninterrupted, duty-free rest breaks.

13 116. During the relevant time period, Defendants failed to pay Plaintiffs and the other
14 Class Members the full rest period premium due pursuant to California Labor Code section 226.7
15 for work performed during rest periods, and/or for failure to authorize and permit Plaintiffs and
16 other Class Members from taking uninterrupted rest periods.

17 117. Defendants’ conduct violates applicable IWC Wage Orders and California Labor
18 Code section 226.7.

19 118. Pursuant to the applicable IWC Wage Orders and California Labor Code section
20 226.7(b), Plaintiffs and the other Class Members are entitled to recover from Defendants one
21 additional hour of pay at the employees' regular hourly rate of compensation for each work day
22 that the rest period was not provided.

23 **TENTH CAUSE OF ACTION**

24 **(Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 –**
25 **Against All Defendants)**

26 119. The allegations of each of the preceding paragraphs are realleged and incorporated
27 herein by reference.
28

1 120. Defendant's acts and commissions alleged herein violate the California Unfair
2 Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 et seq. Section 17200 prohibits unfair
3 competition by engaging in, among other things, any unlawful or unfair business acts or practices.

4 121. Beginning on a date unknown to Plaintiffs, but at least as long ago as four years before
5 the filing of this action, Defendant committed and continues to commit acts of unfair competition,
6 as defined by the UCL, by, among other things, engaging in the acts and practices described herein.

7 122. Defendant's conduct as herein alleged has injured Plaintiffs and Class Members by
8 wrongfully denying them earned wages, deducting from wages and reimbursement for business
9 expenses, and therefore was substantially injurious to Plaintiffs and Class Members.

10 123. Defendant engaged in unfair competition in violation of the UCL by violating, inter
11 alia, California Labor Code sections 201, 202, 203, 204, 221, 226.7, 512, 1194, 1197, 1197.1,
12 1198, and 2802.

13 124. Each of these violations constitutes an independent and separate violation of the UCL.

14 125. Defendant's course of conduct, acts, and practices in violation of the California laws
15 mentioned in the above paragraph constitute a separate and independent violation of the UCL.
16 Defendant's conduct described herein violates the policy and spirit of such laws and otherwise
17 significantly threatens and harms competition.

18 126. Plaintiffs, individually, and on behalf of the Class Members, seek restitution in the
19 amount of their unreimbursed business expenses and unpaid wages earned, and such other legal
20 and equitable relief from Defendant's unlawful and willful conduct as the Court deems just and
21 proper, as well as attorneys' fees and costs.

22 127. Plaintiffs, individually, and on behalf of the Class Members, seek restitution in the
23 amount of their unreimbursed business expenses and unpaid wages earned, and such other legal
24 and equitable relief from Defendant's unlawful and willful conduct as the Court deems just and
25 proper, as well as attorneys' fees and costs.

1 **ELEVENTH CAUSE OF ACTION**

2 **(Private Attorney General Act – Against All Defendants)**

3 128. Plaintiff Kinsch re-alleges and incorporates herein by reference each and every
4 allegation of the preceding paragraphs.

5 129. Plaintiff Kinsch brings this lawsuit as a representative action on behalf of the State of
6 California in the capacity as a private attorney general pursuant to the Private Attorneys General
7 Act of 2004, California Labor Code section 2698, et seq. (“PAGA”).

8 130. An Aggrieved Employee is any person who was employed by Defendant and against
9 whom one or more of the alleged violations was committed. Cal. Lab. Code § 2699(c). Here,
10 Plaintiff Kinsch is the “Aggrieved Employees,” including but not limited to all current and former
11 employees who performed work as a broker, who were employed by Defendant and against whom
12 the foregoing alleged violations were committed, in addition to the violations discussed herein
13 below, relating to misclassification, failure to reimburse for necessary business expenditures,
14 unlawful deductions, record-keeping violations, and timely payment of wages.

15 131. On April 29, 2016, prior to filing this Complaint, Plaintiff Kinsch gave written notice
16 by certified mail to the Labor and Workforce Development Agency and Defendant of the specific
17 provisions of the California Labor Code alleged to have been violated, including the facts and
18 theories in support thereof.

19 132. Prior to filing this Complaint, the Labor and Workforce Development Agency did not
20 respond.

21 133. California Labor Code section 2699, subdivision (f)(2) (“PAGA Default Penalties”)
22 states in pertinent part: “. . . the civil penalty is one hundred dollars (\$100) for each aggrieved
23 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
24 employee per pay period for each subsequent violation.”

25 134. California Labor Code section 558 (“LC558 Penalties”) provides for additional civil
26 penalties, which states in pertinent part, “(a) Any employer or other person acting on behalf of an
27 employer who violates, or causes to be violated, a section of this chapter or any provision
28 regulating hours and days of work in any order of the Industrial Welfare Commission shall be

1 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
2 underpaid employee for each pay period for which the employee was underpaid in addition to an
3 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
4 dollars (\$100) for each underpaid employee for each pay period for which the employee was
5 underpaid in addition to an amount sufficient to recover underpaid wages (c) The civil
6 penalties provided for in this section are in addition to any other civil or criminal penalty provided
7 by law.”

8 135. As alleged herein above, during each pay period, Defendant: failed to properly classify
9 Aggrieved Employees; failed to reimburse Aggrieved Employees for necessary business
10 expenditures; made unlawful deductions from Aggrieve Employees’ commission; failed to keep
11 proper records related to Aggrieved Employees; failed to provide timely payment of wages to
12 Aggrieved Employees; and failed to provide accurate wage statements.

13 136. Additionally, relating to Defendants’ **record-keeping** violations, as a result of the
14 foregoing, Defendants do not keep accurate information relating to Aggrieved Employees’ time
15 records showing when they begin and end each work period, and total hours worked in the payroll
16 period and applicable rates of pay. Similarly, Defendants failed to maintain accurate records
17 relating to hours worked daily in violation of Labor Code section 1174(d).

18 137. Aggrieved Employees never received **timely payment of wages** during their
19 employment from Defendant as required by California Labor Code section 204, which states
20 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid
21 for between the 16th and the 26th day of the month during which the labor was performed, and
22 labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid
23 for between the 1st and 10th day of the following month.” As to each pay period, the timing of
24 payment has been violated since Aggrieved Employees were not paid all the wages they were
25 owed, as discussed above.

26 139. Aggrieved Employees incurred necessary business-related expenses and costs that
27 were not fully reimbursed by Defendant as required by California Labor Code sections 2800 and
28 2802.

- 1 10. Pursuant to Labor Code § 2802 (b), the reimbursement shall carry interest at the same
2 rate as judgements in civil actions, and shall accrue from the date on which the
3 employees incurred the expenditures or loss;
- 4 11. Pursuant to Labor Code § 2802(c), Plaintiffs and putative class members are also
5 entitled to recover reasonable attorneys' fees and costs, since those are considered part
6 of the "necessary expenditure or losses";
- 7 12. That the Court declare, adjudge and decree that Defendants violated California Labor
8 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
9 pay all overtime wages due to Plaintiff and other Class Members;
- 10 13. For general unpaid wages at overtime wage rates and such general and special
11 damages as may be appropriate;
- 12 14. For pre-judgment interest on any unpaid overtime compensation commencing from
13 the date such amounts were due;
- 14 15. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
15 Labor Code section 1194;
- 16 16. That the Court declare, adjudge and decree that Defendants violated California Labor
17 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
18 Plaintiff and the Class;
- 19 17. For general unpaid wages and such general and special damages as may be
20 appropriate;
- 21 18. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
22 Plaintiff and the Class in the amount as may be established according to proof at trial;
- 23 19. For pre-judgment interest on any unpaid compensation from the date such amounts
24 were due;
- 25 20. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
26 Labor Code section 1194(a);
- 27 21. For liquidated damages pursuant to California Labor Code section 1194.2;
- 28 22. That the Court declare, adjudge and decree that Defendants violated California Labor

- 1 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
2 provide all meal periods (including second meal periods) to Plaintiff and the Class;
- 3 23. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each
4 employee's regular rate of compensation for each workday that a meal period was not
5 provided;
- 6 24. That the Court declare, adjudge and decree that Defendants violated California Labor
7 Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide
8 all rest periods to Plaintiff and the Class;
- 9 25. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each
10 employee's regular rate of compensation for each workday that a rest period was not
11 provided;
- 12 26. That the Court decree, adjudge and decree that Defendant violated California Business
13 and Professions Code sections 17200, et seq. by violating California Labor Code
14 sections 201, 202, 203, 204, 221, 226.7, 512, 1194, 1197, 1197.1, 1198, and 2802;
- 15 27. For the appointment of a receiver to receive, manage and distribute any and all funds
16 disgorged from Defendant and determined to have been wrongfully acquired by
17 Defendant as a result of violations of California Business and Professions Code
18 sections 17200, et seq.;
- 19 28. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
20 Code of Civil Procedure section 1021.5;
- 21 29. For injunctive relief to ensure compliance with this section, pursuant to California
22 Business and Professions Code sections 17200, et seq.;
- 23 30. Statutory penalties;
- 24 17. Interest pursuant to section 218.5 of the California Labor Code;
- 25 18. For such other and further relief as the court may deem proper;
- 26 19. An amount sufficient to recover unpaid wages for Aggrieved Employees, according
27 to proof at trial;
- 28


1 20. PAGA Default Penalties triggered multiple times; California Labor Code section
2 1174.5 penalties; California Labor Code section 226.3 penalties; California Labor Code
3 section 226.8 penalties; California Labor Code sections 2800 and 2802 penalties and
4 California Labor Code section 210(a) penalties, in an amount to be proven at trial.

5 21. For reasonable attorney's fees and costs pursuant to California Labor Code section
6 2699, subdivision (g)(1); and

7 22. For such other and further relief as the court may deem proper.

8 DATED: November 7, 2018

Respectfully Submitted,

9 
10 By: _____

11 Heather Davis
12 Attorney for Plaintiffs
13 RICHARD RAMMER AND
14 ROBERT KINSCH
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1 **PLAINTIFFS' DEMAND FOR A JURY TRIAL**

2 Plaintiffs demand a trial by jury as to all causes of action triable by a jury.

3
4 DATED: November 7, 2018

Respectfully Submitted,

5 

6 By: _____

Heather Davis
Attorney for Plaintiffs
RICHARD RAMMER AND
ROBERT KINSCH

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