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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF CALIFORNIA

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14 SHELLIE GORDON, an individual, on
behalf of herself, and on behalf of all
15 persons similarly situated,

16 Plaintiff,

17 vs.

18 WELLS FARGO BANK, N.A.,

19 Defendant.

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CASE No. '11CV0090 JAH CAB

CLASS ACTION COMPLAINT FOR:

- 1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200 *et seq.*;
- 2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 515.5, 551, 552, 1194 AND 1198, *et seq.*;
- 3. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 4. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
- 5. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF 29 U.S.C. §§ 201, *et seq.*

DEMAND FOR A JURY TRIAL

1 Plaintiff Shellie Gordon ("PLAINTIFF"), on behalf of herself and all other similarly
2 situated current and former employees, allege on information and belief, except for her own acts
3 and knowledge, the following:

4
5 **THE PARTIES**

6 1. Wells Fargo Bank, N.A. is a diversified financial services company providing
7 banking, insurance, investments, mortgage, and consumer and commercial finance through
8 more than 10,000 stores and 12,000 ATMs and the Internet across North America and
9 internationally. Wells Fargo Bank, N.A. hereinafter also referred to as "WELLS FARGO"
10 or "DEFENDANT" employs more than 270,000 team members worldwide and has assets of
11 \$1.2 trillion as of 2010. According to DEFENDANT's website, the company is
12 headquartered in San Francisco, California, and maintains the largest number of its banking,
13 mortgage, and brokerage stores in California.

14 2. Dedicated to servicing the payment processing needs of business merchants,
15 WELLS FARGO employs a fleet of "Business Sales Consultants" with a "I or II"
16 descriptor whose primary job duty is selling electronic payment (credit, debit, check and gift
17 card) processing solutions to business merchants. Business Sales Consultants are primarily
18 engaged in a core, day-to-day business activity of WELLS FARGO to sell payment
19 processing solutions to businesses with varying financial needs. To provide the payment
20 processing solutions, the Business Sales Consultants sell contracts to business merchants to
21 use WELLS FARGO to process their payments and also sell the equipment necessary to
22 physically process the businesses' payments. Business Sales Consultants are compensated
23 in accordance with their sales performance and earn a salary plus a sales incentive bonus
24 under DEFENDANT's "Incentive Compensation Plan." Business Sales Consultants are
25 classified as exempt from California overtime and related laws by DEFENDANT, however,
26 these employees do not earn sales commissions because they earn a salary plus an incentive
27 bonus which does not exceed and does not equal fifty (50) percent of their total
28 compensation on a workweek by workweek basis. Therefore, they do not qualify for the

1 "commissioned salesperson" exemption. Furthermore, Business Sales Consultants perform
2 these ongoing day-to-day sales transactions at their home offices, which DEFENDANT
3 requires them to maintain, or at DEFENDANT's banking locations primarily by and through
4 telephone and internet initiated sales calls. As a result, the Business Sales Consultants are
5 engaged in a type of work that also falls outside the scope of the "outside salesperson"
6 exemption. Therefore, the Business Sales Consultants should have been properly classified
7 as non-exempt employees. These employees, collectively, all are referred to herein as
8 "Business Sales Consultants." This Action is brought on behalf of the PLAINTIFF and all
9 those employees of DEFENDANT (the "CALIFORNIA CLASS") in California who worked
10 for DEFENDANT as a Business Sales Consultant during the CLASS PERIOD ("CLASS" or
11 "Class Members").

12 3. Plaintiff Shellie Gordon ("PLAINTIFF") was employed by DEFENDANT in
13 California as a Business Sales Consultant from May 2010 to November 2010 and is
14 currently employed by DEFENDANT.

15 4. The position of Business Sales Consultant I was represented by DEFENDANT
16 to the PLAINTIFF and the other Business Sales Consultants as an exempt and salaried
17 position.

18 5. For DEFENDANT's business, the Class Members functioned as working
19 members in DEFENDANT's Merchant Payment Solutions (MPS) department. As defined
20 by DEFENDANT's comprehensive corporate policies and procedures, the primary job duty
21 of the Class Members employed by WELLS FARGO was and is to sell electronic payment
22 processing solutions to business merchants in accordance with DEFENDANT's established
23 specific procedures and protocols which govern and control every aspect of the work
24 performed by the Business Sales Consultants. These standardized procedures mirror the
25 realities of the workplace evidencing a uniformity of work among the Business Sales
26 Consultants and negate any exercise of independent judgment and discretion as to any
27 matter of significance.

28 6. The work schedule for Business Sales Consultants was set by DEFENDANT.

1 Generally, the Class Members work twelve (12) to fourteen (14) hours each workday and
2 twenty (20) to forty (40) hours of overtime each workweek.

3 7. DEFENDANT has not established an alternative workweek election for
4 Business Sales Consultants for twelve (12) to fourteen (14) hour workdays.

5 8. PLAINTIFF and the other Business Sales Consultants were not provided with
6 overtime compensation and other benefits required by law as a result of being classified as
7 "exempt" by DEFENDANT.

8 9. PLAINTIFF brings this Class Action on behalf of herself and a California
9 Class consisting of all commissioned sales employees who are or previously were employed
10 by Defendant Wells Fargo Bank, N.A. as a Business Sales Consultant in California (the
11 "CALIFORNIA CLASS") during the period beginning on the date four (4) years before the
12 filing of this Action and ending on the date as determined by the Court (the "CALIFORNIA
13 CLASS PERIOD").

14 10. As a matter of company policy, practice, and procedure, DEFENDANT
15 has unlawfully, unfairly and/or deceptively classified every Business Sales Consultant as
16 exempt based on job title alone, failed to pay the required overtime compensation and
17 otherwise failed to comply with all applicable labor laws with respect to these Business
18 Sales Consultants.

19 11. The agents, servants, and/or employees of DEFENDANT and each of
20 them acting on behalf of DEFENDANT acted within the course and scope of his, her or its
21 authority as the agent, servant, and/or employee of DEFENDANT, and personally
22 participated in the conduct alleged herein on behalf of DEFENDANT with respect to the
23 conduct alleged herein. Consequently, DEFENDANT is jointly and severally liable to the
24 PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as
25 a proximate result of the conduct of DEFENDANT's agents, servants, and/or employees.
26

27 **THE CONDUCT**

28 12. The primary duty required of the Business Sales Consultants as defined by

1 DEFENDANT is executed by the Business Sales Consultants through the performance of
2 non-exempt labor within a defined skill set.

3 13. Although the PLAINTIFF and the other Business Sales Consultants primarily
4 performed non-exempt labor, DEFENDANT instituted a blanket classification policy,
5 practice and procedure by which all of these Business Sales Consultants were classified as
6 exempt from overtime compensation, meal breaks and rest breaks. By reason of this
7 uniform exemption practice, policy and procedure applicable to the PLAINTIFF and the
8 other Business Sales Consultants who performed this non-exempt labor, DEFENDANT
9 committed acts of unfair competition in violation of the California Unfair Competition law,
10 Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in a company-wide policy,
11 practice and procedure which failed to properly classify the PLAINTIFF and the other
12 Business Sales Consultants and thereby failed to pay them overtime wages for documented
13 overtime hours worked and provide them with all legally required meal and rest breaks. The
14 proper classification of these employees is DEFENDANT's burden. As a result of
15 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
16 failed to pay all required overtime compensation for work performed by the members of the
17 CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated
18 thereunder as herein alleged. In addition, DEFENDANT failed to provide all of the legally
19 required meal and rest breaks to the PLAINTIFF and the other Business Sales Consultants
20 as required by the applicable Wage Order and Labor Code. During the CLASS PERIOD,
21 DEFENDANT did not have a policy or practice which provided meal and rest breaks to the
22 PLAINTIFF and the other Business Sales Consultants. As a result, DEFENDANT's failure
23 to provide the PLAINTIFF and the CALIFORNIA CLASS with all legally required meal
24 and rest breaks is evidenced by DEFENDANT's business records which contain no record
25 of these breaks. DEFENDANT also engaged in a common course of failing to reimburse
26 the PLAINTIFF and the other Business Sales Consultants for expenses incurred in the
27 discharge of their job duties which includes but is not limited to home office expenses such
28 as internet service, a printer, ink and other office supplies.

1 14. DEFENDANT, as a matter of law, has the burden of proving that (a)
2 employees are properly classified as exempt and that (b) DEFENDANT otherwise complies
3 with applicable laws. Other than the initial classification of the PLAINTIFF and the other
4 Business Sales Consultants as exempt from being paid overtime based on job title alone,
5 DEFENDANT had no business policy, practice, or procedure to ensure that the PLAINTIFF
6 and the other Business Sales Consultants were properly classified as exempt, and in fact, as
7 a matter of corporate policy erroneously and unilaterally classified all the Class Members as
8 exempt based on job title alone.

9 15. During their employment with DEFENDANT, the PLAINTIFF and the
10 other Business Sales Consultants, primarily performed non-exempt job duties, but were
11 nevertheless classified by DEFENDANT as exempt from overtime pay and worked more
12 than eight (8) hours a day, forty (40) hours a week, and/or on the seventh (7th) consecutive
13 day of a workweek.

14 16. PLAINTIFF and the other Business Sales Consultants employed by
15 DEFENDANT were not primarily engaged in work of a type that was or now is directly
16 related to the management or general business operations of the employer's customers,
17 when giving these words a fair but narrow construction. PLAINTIFF and the other Business
18 Sales Consultants employed by DEFENDANT were also not primarily engaged in work of a
19 type that was or now is performed where more than half of their earned income is derived
20 from bona fide sales commissions. PLAINTIFF and the other Business Sales Consultants
21 employed by DEFENDANT were also not primarily engaged in work of a type that was or
22 now is performed at the level of the policy or management of DEFENDANT. PLAINTIFF
23 and the other Business Sales Consultants employed by DEFENDANT were also not
24 primarily engaged in work requiring knowledge of an advanced type in a field or science or
25 learning customarily acquired by a prolonged course of specialized intellectual instruction
26 and study, but rather their work primarily involves the performance of routine mental,
27 manual, and/or physical processes. PLAINTIFF and the other Business Sales Consultants
28 employed by DEFENDANT were also not primarily engaged in work that is predominantly

1 intellectual and varied in character, but rather is routine mental, manual, mechanical, and/or
2 physical work that is of such character that the output produced or the result accomplished
3 can be standardized in relation to a given period of time. The work of a Business Sales
4 Consultant of DEFENDANT was work wherein the PLAINTIFF and the members of the
5 CALIFORNIA CLASS were primarily engaged in the day-to-day business of WELLS
6 FARGO to sell electronic payment processing solutions to business merchants in strict
7 accordance with the protocols, policies and operations established by DEFENDANT
8 primarily by and through telephone and internet initiated sales calls as well as banker
9 referrals as a means of obtaining business.

10 17. The fact that the work of these employees may have involved work using a
11 specialized skill set or technical abilities in a defined technical area does not mean that the
12 PLAINTIFF or the other Business Sales Consultants employed by DEFENDANT are
13 exempt from overtime wages. Indeed, the exercise of discretion and independent judgment
14 must be more than the use of a highly technical skill set described in a manual or other
15 sources. The work that the PLAINTIFF and the other Business Sales Consultants employed
16 by DEFENDANT was and are primarily engaged in performing day-to-day sales activities is
17 the work that is required to be performed as part of the day-to-day-business activity of
18 DEFENDANT. As a result, the PLAINTIFF and the other Business Sales Consultants
19 employed by DEFENDANT were primarily engaged in work that falls on the production or
20 the non-exempt administrative sale side of the administrative/production worker dichotomy
21 and should have been properly classified as non-exempt employees.

22 18. The primary job duty of the PLAINTIFF and the other Business Sales
23 Consultants employed by DEFENDANT was and is selling electronic payment processing
24 solutions to business merchants via internet and telephone sales. Business Sales Consultants
25 are classified as exempt from California overtime and related laws by DEFENDANT,
26 however, these employees do not earn sales commissions because they earn a salary plus a
27 bonus which does not exceed and does not equal fifty (50) percent of their total
28 compensation. Furthermore, Business Sales Consultants perform these ongoing day-to-day

1 sales transactions at their home offices, which DEFENDANT requires them to maintain, or
2 at DEFENDANT's banking locations, primarily by and through telephone and internet
3 initiated sales calls as well as banker referrals as a means of obtaining business. As a result,
4 the Business Sales Consultants were engaged in a type of work that falls outside the scope
5 of the "commissioned salesperson" and "outside salesperson" exemptions and should
6 therefore have been properly classified as non-exempt employees.

7 19. PLAINTIFF and all members of the CALIFORNIA CLASS are and were
8 uniformly classified and treated by DEFENDANT as exempt at the time of hire and
9 thereafter, DEFENDANT failed to take the proper steps to determine whether the
10 PLAINTIFF, and the members of the CALIFORNIA CLASS, were properly classified
11 under the applicable Industrial Welfare Commission Wage Order (Wage Order 4-2001) and
12 Cal. Lab. Code §§ 510, *et seq.* as exempt from applicable California labor laws. Since
13 DEFENDANT affirmatively and wilfully misclassified the PLAINTIFF and the members of
14 the CALIFORNIA CLASS in compliance with California labor laws, DEFENDANT's
15 practices violated and continue to violate California law. In addition, DEFENDANT acted
16 deceptively by falsely and fraudulently telling the PLAINTIFF and each member of the
17 CALIFORNIA CLASS that they were exempt from overtime pay when DEFENDANT
18 knew or should have known that this statement was false and not based on known facts.
19 DEFENDANT also acted unfairly by violating the California labor laws, and as a result of
20 this policy and practice, DEFENDANT also violated the UCL. In doing so, DEFENDANT
21 cheated the competition by paying the CALIFORNIA CLASS less than the amount
22 competitors paid who complied with the law and cheated the CALIFORNIA CLASS by not
23 paying them in accordance with California law.

24 20. DEFENDANT also failed to provide and still fails to provide the PLAINTIFF
25 and the other Business Sales Consultants with a wage statement in writing that accurately
26 sets forth gross wages earned, all applicable hourly rates in effect during the pay period and
27 the corresponding number of hours worked at each hourly rate by the PLAINTIFF and the
28 other Business Sales Consultants. This conduct violates California Labor Code § 226. The

1 pay stub also does not accurately display anywhere the PLAINTIFF's and the other
2 Business Sales Consultants' overtime hours and applicable rates of overtime pay for the pay
3 period.

4 21. By reason of this uniform conduct applicable to the PLAINTIFF and all the
5 CALIFORNIA CLASS members, DEFENDANT committed acts of unfair competition in
6 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the
7 "UCL"), by engaging in a company-wide policy and procedure which failed to correctly
8 classify the PLAINTIFF and the CALIFORNIA CLASS of Business Sales Consultants as
9 non-exempt. The proper classification of these employees is DEFENDANT's burden. As a
10 result of DEFENDANT's intentional disregard of the obligation to meet this burden,
11 DEFENDANT failed to properly calculate and/or pay all required overtime compensation
12 for work performed by the members of the CALIFORNIA CLASS and violated the
13 applicable Wage Order, the California Labor Code and the regulations promulgated
14 thereunder as herein alleged.

15
16 **THE UCL REMEDIES**

17 22. As a result of DEFENDANT's UCL violation, the PLAINTIFF, on behalf
18 of herself and the CALIFORNIA CLASS, seeks restitutionary disgorgement of
19 DEFENDANT's ill-gotten gains into a fluid fund in order to provide restitution of all the
20 money that DEFENDANT was required by law to pay, but failed to pay, to the PLAINTIFF
21 and all the other CALIFORNIA CLASS members. PLAINTIFF also seeks all other relief
22 available to her and the other Business Sales Consultants located in California under
23 California law. PLAINTIFF also seeks declaratory relief finding that the employment
24 practices and policies of DEFENDANT violate California law.

25
26 **THE CALIFORNIA CLASS**

27 23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
28 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200 *et seq.* (the

1 "UCL") as a Class Action, pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), on behalf of a
2 California Class, defined as all employees who are or previously were employed by
3 Defendant Wells Fargo Bank, N.A. as a Business Sales Consultant as hereinabove defined
4 in California during the period beginning on the date four (4) years before the filing of this
5 Action and ending on the date as determined by the Court ("CALIFORNIA CLASS").

6 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
7 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
8 accordingly.

9 25. DEFENDANT, as a matter of corporate policy, practice and procedure,
10 and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC")
11 Wage Order Requirements, and the applicable provisions of California law, intentionally,
12 knowingly, and wilfully, engaged in a practice whereby DEFENDANT unfairly, unlawfully,
13 and deceptively instituted a practice to ensure that the employees employed in a Business
14 Sales Consultant position were not properly classified as non-exempt from the requirements
15 of California Labor Code §§ 510, *et seq.*

16 26. DEFENDANT has the burden of proof that each and every employee is
17 properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*
18 DEFENDANT, however, as a matter of uniform and systematic policy and procedure had in
19 place during the CALIFORNIA CLASS PERIOD and still has in place a policy and practice
20 that misclassifies the CALIFORNIA CLASS members as exempt. DEFENDANT's uniform
21 policy and practice in place at all times during the CALIFORNIA CLASS PERIOD and
22 currently in place is to systematically classify each and every CALIFORNIA CLASS
23 member as exempt from the requirements of the California Labor Code §§ 510, *et seq.* This
24 common business practice applicable to each and every CALIFORNIA CLASS member can
25 be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal.
26 Business & Professions Code § 17200 *et seq.* (the "UCL") as causation, damages, and
27 reliance are not elements of this claim.

28 27. At no time before, during or after the PLAINTIFF's employment with

1 DEFENDANT was any Business Sales Consultants reclassified as non-exempt from the
2 applicable requirements of California Labor Code §§ 510, *et seq.* after each CALIFORNIA
3 CLASS member was initially, uniformly, and systematically classified as exempt upon
4 being hired.

5 28. Any individual declarations of any employees offered at this time purporting
6 to indicate that one or more Business Sales Consultant may have been properly classified is
7 of no force or affect absent contemporaneous evidence that DEFENDANT's uniform system
8 did not misclassify the PLAINTIFF and the other Business Sales Consultants as exempt
9 pursuant to Cal. Lab. Code §§ 510, *et seq.* Absent proof of such a contemporaneous system,
10 DEFENDANT's business practice is uniformly unlawful, unfair and/or deceptive under the
11 UCL and may be so adjudicated on a class-wide basis. As a result of the UCL violations,
12 the PLAINTIFF and the CALIFORNIA CLASS members are entitled to compel
13 DEFENDANT to provide restitutionary disgorgement of their ill-gotten gains into a fluid
14 fund in order to restitute these funds to the PLAINTIFF and the CALIFORNIA CLASS
15 members according to proof.

16 29. The CALIFORNIA CLASS is so numerous that joinder of all Business Sales
17 Consultants is impracticable.

18 30. Common questions of law and fact exist as to members of the CALIFORNIA
19 CLASS, including, but not limited, to the following:

- 20 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof.
21 Code § 17200 *et seq.* (the "UCL"), by unlawfully, unfairly and/or
22 deceptively having in place company policies, practices and procedures
23 that uniformly misclassified the PLAINTIFF and the members of the
24 CALIFORNIA CLASS as exempt;
- 25 (b) Committing an act of unfair competition in violation of the UCL, by
26 unlawfully, unfairly, and/or deceptively failing to have in place a
27 company policy, practice and procedure that accurately determined the
28 amount of working time spent by the PLAINTIFF and the members of

- 1 the CALIFORNIA CLASS performing non-exempt labor;
- 2 (c) Committing an act of unfair competition in violation of the UCL, by
- 3 having in place a company policy, practice and procedure that failed to
- 4 reclassify as non-exempt those members of the CALIFORNIA CLASS
- 5 whose actual job duties are primarily comprised of non-exempt job
- 6 functions;
- 7 (d) Committing an act of unfair competition in violation of the UCL, by
- 8 violating Cal. Lab. Code §§ 510, *et seq.* by failing to pay the correct
- 9 overtime pay to the PLAINTIFF and the members of the
- 10 CALIFORNIA CLASS who were improperly classified as exempt, and
- 11 retaining the unpaid overtime to the benefit of DEFENDANT;
- 12 (e) Committing an act of unfair competition in violation of the UCL, by
- 13 failing to provide all mandatory meal and/or rest periods to the
- 14 PLAINTIFF and the Class Members;
- 15 (f) Committing an act of unfair competition in violation of the UCL, by
- 16 failing to reimburse the PLAINTIFF and the Class Members for
- 17 necessary expenses incurred in the discharge of their job duties for
- 18 DEFENDANT;
- 19 (g) Committing an act of unfair competition in violation of the UCL, by
- 20 violating Cal. Lab. Code § 226 by failing to provide the PLAINTIFF
- 21 and the members of the CALIFORNIA CLASS with an accurate
- 22 itemized statement in writing showing the gross wages earned, the net
- 23 wages earned, all applicable hourly rates in effect during the pay period
- 24 and the corresponding number of hours worked at each hourly rate by
- 25 the employee; and,
- 26 (h) Committing an act of unfair competition in violation of the UCL, by
- 27 violating the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et*
- 28 *seq.*, by failing to pay the correct overtime wages to the PLAINTIFF

1 and the members of the CALIFORNIA CLASS who were improperly
2 classified as exempt as legally required by the FLSA, and retaining the
3 unpaid overtime to the benefit of DEFENDANT.

4 31. This Class Action meets the statutory prerequisites for the maintenance of a
5 Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

6 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
7 that the joinder of all such persons is impracticable and the disposition
8 of their claims as a class will benefit the parties and the Court;

9 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
10 raised in this Complaint are common to the CALIFORNIA CLASS will
11 apply uniformly to every member of the CALIFORNIA CLASS;

12 (c) The claims of the representative PLAINTIFF are typical of the claims
13 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
14 the other members of the CALIFORNIA CLASS, was initially
15 classified as exempt upon hiring based on the defined corporate
16 policies and practices and labored under DEFENDANT's systematic
17 procedure that failed to properly classify the PLAINTIFF and the
18 members of the CALIFORNIA CLASS. PLAINTIFF sustained
19 economic injury as a result of DEFENDANT's employment practices.
20 PLAINTIFF and the members of the CALIFORNIA CLASS were and
21 are similarly or identically harmed by the same unlawful, deceptive,
22 unfair and pervasive pattern of misconduct engaged in by
23 DEFENDANT by deceptively advising all Business Sales Consultants
24 that they were exempt from overtime wages based on the defined
25 corporate policies and practices, and unfairly failing to pay overtime to
26 these employees who were improperly classified as exempt; and,

27 (d) The representative PLAINTIFF will fairly and adequately represent and
28 protect the interest of the CALIFORNIA CLASS, and have retained

1 counsel who are competent and experienced in Class Action litigation.
2 There are no material conflicts between the claims of the representative
3 PLAINTIFF and the members of the CALIFORNIA CLASS that would
4 make class certification inappropriate. Counsel for the CALIFORNIA
5 CLASS will vigorously assert the claims of all employees in the
6 CALIFORNIA CLASS.

7 32. In addition to meeting the statutory prerequisites to a Class Action, this Action
8 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3),
9 in that:

10 (a) Without class certification and determination of declaratory, statutory
11 and other legal questions within the class format, prosecution of
12 separate actions by individual members of the CALIFORNIA CLASS
13 will create the risk of:

14 1) Inconsistent or varying adjudications with respect to individual
15 members of the CALIFORNIA CLASS which would establish
16 incompatible standards of conduct for the parties opposing the
17 CALIFORNIA CLASS; and/or,

18 2) Adjudication with respect to individual members of the
19 CALIFORNIA CLASS which would as a practical matter be
20 dispositive of interests of the other members not party to the
21 adjudication or substantially impair or impede their ability to
22 protect their interests.

23 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
24 to act on grounds generally applicable to the CALIFORNIA CLASS,
25 making appropriate class-wide relief with respect to the CALIFORNIA
26 CLASS as a whole in that DEFENDANT uniformly classified and
27 treated the Business Sales Consultants as exempt and, thereafter,
28 uniformly failed to take proper steps to determine whether the Business

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Sales Consultants were properly classified as exempt, and thereby denied these employees overtime wages as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the PLAINTIFF seeks declaratory relief holding that DEFENDANT’s policy and practices constitute unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for

1 DEFENDANT; and/or,

2 B. Adjudications with respect to individual members of the
3 CALIFORNIA CLASS would as a practical matter be
4 dispositive of the interests of the other members not
5 parties to the adjudication or substantially impair or
6 impede their ability to protect their interests;

7 3) In the context of wage litigation because as a practical matter a
8 substantial number of individual class members will avoid
9 asserting their legal rights out of fear of retaliation by
10 DEFENDANT, which may adversely affect an individual's job
11 with DEFENDANT or with a subsequent employer, the Class
12 Action is the only means to assert their claims through a
13 representative; and,

14 4) A Class Action is superior to other available methods for the fair
15 and efficient adjudication of this litigation because class
16 treatment will obviate the need for unduly and unnecessary
17 duplicative litigation that is likely to result in the absence of
18 certification of this Action pursuant to Fed. R. Civ. Proc.
19 23(b)(2) and/or (3).

20 33. This Court should permit this Action to be maintained as a Class Action
21 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

22 (a) The questions of law and fact common to the CALIFORNIA CLASS
23 predominate over any question affecting only individual members
24 because DEFENDANT's employment practices were uniform and
25 systematically applied with respect to the CALIFORNIA CLASS;

26 (b) A Class Action is superior to any other available method for the fair
27 and efficient adjudication of the claims of the members of the
28 CALIFORNIA CLASS because in the context of employment litigation

- 1 a substantial number of individual Class members will avoid asserting
2 their rights individually out of fear of retaliation or adverse impact on
3 their employment;
- 4 (c) The members of the CALIFORNIA CLASS are so numerous that it is
5 impractical to bring all members of the CALIFORNIA CLASS before
6 the Court;
- 7 (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not
8 be able to obtain effective and economic legal redress unless the action
9 is maintained as a Class Action;
- 10 (e) There is a community of interest in obtaining appropriate legal and
11 equitable relief for the acts of unfair competition, statutory violations
12 and other improprieties, and in obtaining adequate compensation for the
13 injuries which DEFENDANT's actions have inflicted upon the
14 CALIFORNIA CLASS;
- 15 (f) There is a community of interest in ensuring that the combined assets of
16 DEFENDANT are sufficient to adequately compensate the members of
17 the CALIFORNIA CLASS for the injuries sustained;
- 18 (g) DEFENDANT had acted or refused to act on grounds generally
19 applicable to the CALIFORNIA CLASS, thereby making final class-
20 wide relief appropriate with respect to the CALIFORNIA CLASS as a
21 whole;
- 22 (h) The members of the CALIFORNIA CLASS are readily ascertainable
23 from the business records of DEFENDANT. The CALIFORNIA
24 CLASS consists of all DEFENDANT's Business Sales Consultants
25 employed in California during the CALIFORNIA CLASS PERIOD;
26 and,
- 27 (i) Class treatment provides manageable judicial treatment calculated to
28 bring a efficient and rapid conclusion to all litigation of all wage and

1 hour related claims arising out of the conduct of DEFENDANT as to
2 the members of the CALIFORNIA CLASS.

3 34. DEFENDANT maintains records from which the Court can ascertain and
4 identify by name and job title, each of DEFENDANT's employees who have been
5 systematically, intentionally and uniformly subjected to DEFENDANT's corporate policy,
6 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the
7 Complaint to include any additional job titles of similarly situated employees when they
8 have been identified.

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THE CALIFORNIA LABOR SUB-CLASS

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35. PLAINTIFF further brings the Second and Third Causes of Action on behalf
of a sub-class which consists of all members of the CALIFORNIA CLASS who were
employed by DEFENDANT during the period beginning on the date three (3) years prior to
the filing of the Action and ending on the date as determined by the Court (the
"CALIFORNIA LABOR SUB-CLASS PERIOD"), who performed work in excess of eight
(8) hours in one day and/or forty (40) hours in one week and/or hours on the seventh (7th)
consecutive day of a workweek and did not receive overtime compensation (the
"CALIFORNIA LABOR SUB-CLASS") pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

36. DEFENDANT, as a matter of corporate policy, practice and procedure,
and in violation of the applicable California Labor Code ("Labor Code"), and Industrial
Welfare Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully,
and systematically misclassified the PLAINTIFF and the other members of the
CALIFORNIA CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from
overtime wages and other labor laws based on DEFENDANT's comprehensive policies and
procedures in order to avoid the payment of overtime wages by misclassifying their
positions as exempt from overtime wages and other labor laws. To the extent equitable
tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

1 37. DEFENDANTS have intentionally and deliberately created job levels and job
2 titles such as "Business Sales Consultant," often with additional designations of "I or II."
3 These titles were distributed in order to create the superficial appearance of a number of
4 unique jobs, when in fact, these jobs are substantially similar and can be easily grouped
5 together for the purpose of determining whether they were all misclassified. One of
6 DEFENDANT's purposes in creating and maintaining this multi-level job classification
7 scheme is to create an artificial barrier to discovery and class certification for all employees
8 similarly misclassified as exempt. DEFENDANT has uniformly misclassified these
9 CALIFORNIA LABOR SUB-CLASS members as exempt and denied them overtime wages
10 and other benefits to which non-exempt employees are entitled in order to unfairly cheat the
11 competition and unlawfully profit.

12 38. DEFENDANT maintains records from which the Court can ascertain and
13 identify by job title each of DEFENDANT's employees who as CALIFORNIA LABOR
14 SUB-CLASS members have been systematically, intentionally and uniformly misclassified
15 as exempt as a matter of DEFENDANT's corporate policy, practices and procedures.
16 PLAINTIFF will seek leave to amend the Complaint to include these additional job titles
17 when they have been identified.

18 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
19 members is impracticable.

20 40. Common questions of law and fact exist as to members of the CALIFORNIA
21 LABOR SUB-CLASS, including, but not limited, to the following:

- 22 (a) Whether DEFENDANT unlawfully failed to pay overtime
23 compensation to members of the CALIFORNIA LABOR SUB-CLASS
24 in violation of the California Labor Code and California regulations
25 and the applicable California Wage Order;
- 26 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
27 non-exempt employees entitled to overtime compensation for overtime
28 hours worked under the overtime pay requirements of California law;

- 1 (c) Whether DEFENDANT's policy and practice of classifying the
2 CALIFORNIA LABOR SUB-CLASS members as exempt from
3 overtime compensation and failing to pay the CALIFORNIA LABOR
4 SUB-CLASS members overtime violate applicable provisions of
5 California law;
- 6 (d) Whether DEFENDANT unlawfully failed to keep and furnish
7 CALIFORNIA LABOR SUB-CLASS members with accurate records
8 of overtime hours worked;
- 9 (e) Whether DEFENDANT's policy and practice of failing to pay
10 members of the CALIFORNIA LABOR SUB-CLASS all wages when
11 due within the time required by law after their employment ended
12 violates California law; and,
- 13 (f) The proper measure of damages and penalties owed to the members of
14 the CALIFORNIA LABOR SUB-CLASS.

15 41. DEFENDANT, as a matter of corporate policy, practice and procedure,
16 erroneously classified all Business Sales Consultants as exempt from overtime wages and
17 other labor laws. All Business Sales Consultants, including the PLAINTIFF, performed the
18 same primary functions and were paid by DEFENDANT according to uniform and
19 systematic company procedures, which, as alleged herein above, failed to correctly pay
20 overtime compensation. This business practice was uniformly applied to each and every
21 member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this
22 conduct can be adjudicated on a class-wide basis.

23 42. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
24 CLASS under California law by:

- 25 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
26 failing to pay the PLAINTIFF and the members of the CALIFORNIA
27 LABOR SUB-CLASS the correct overtime pay for a workday longer
28 than eight (8) hours, a workweek longer than forty (40) hours, and/or

- 1 all hours worked on the seventh (7th) consecutive day of a workweek
2 for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 3 (b) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
4 when an employee is discharged or quits from employment, the
5 employer must pay the employee all wages due without abatement, by
6 failing to tender full payment and/or restitution of wages owed or in the
7 manner required by California law to the members of the
8 CALIFORNIA LABOR SUB-CLASS who have terminated their
9 employment;
- 10 (c) Violating Cal. Lab. Code § 2802, by failing to reimburse the
11 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
12 CLASS with necessary expenses incurred in the discharge of their job
13 duties for DEFENDANT; and,
- 14 (d) Violating Cal. Lab. Code § 226, by failing to provide the PLAINTIFF
15 and the members of the CALIFORNIA LABOR SUB-CLASS who
16 were improperly classified as exempt with an accurate itemized
17 statement in writing showing the gross wages earned, the net wages
18 earned, all applicable hourly rates in effect during the pay period and
19 the corresponding number of hours worked at each hourly rate by the
20 employee.

21 43. This Class Action meets the statutory prerequisites for the maintenance of a
22 Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 23 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
24 exceed are so numerous that the joinder of all such persons is
25 impracticable and the disposition of their claims as a class will benefit
26 the parties and the Court;
- 27 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
28 raised in this Complaint are common to the CALIFORNIA LABOR

1 SUB-CLASS and will apply uniformly to every member of the
2 CALIFORNIA LABOR SUB-CLASS;

3 (c) The claims of the representative PLAINTIFF are typical of the claims
4 of each member of the CALIFORNIA LABOR SUB-CLASS.
5 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
6 SUB-CLASS, was improperly classified as exempt and denied
7 overtime pay as a result of DEFENDANT's systematic classification
8 practices. PLAINTIFF and all the other members of the CALIFORNIA
9 LABOR SUB-CLASS sustained economic injuries arising from
10 DEFENDANT's violations of the laws of California; and,

11 (d) The representative PLAINTIFF will fairly and adequately represent and
12 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and
13 has retained counsel who are competent and experienced in Class
14 Action litigation. There are no material conflicts between the claims of
15 the representative PLAINTIFF and the members of the CALIFORNIA
16 LABOR SUB-CLASS that would make class certification
17 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
18 will vigorously assert the claims of all Class Members.

19 44. In addition to meeting the statutory prerequisites to a Class Action, this Action
20 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3),
21 in that:

22 (a) Without class certification and determination of declaratory, statutory
23 and other legal questions within the class format, prosecution of
24 separate actions by individual members of the CALIFORNIA LABOR
25 SUB-CLASS will create the risk of:
26 1) Inconsistent or varying adjudications with respect to individual
27 members of the CALIFORNIA LABOR SUB-CLASS which
28 would establish incompatible standards of conduct for the

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parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT uniformly classified and treated the Business Sales Consultants as exempt and, thereafter, uniformly failed to take proper steps to determine whether the Business Sales Consultants were properly classified as exempt, and thereby denied these employees overtime wages as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS members when compared to the substantial expense and burden of individual prosecution

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of this litigation;

- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual class members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A Class Action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

45. This Court should permit this Action to be maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual

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- members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual Class Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of those Business Sales

1 Consultants who worked overtime hours and who were not paid
2 overtime; and,

3 (i) Class treatment provides manageable judicial treatment calculated to
4 bring a efficient and rapid conclusion to all litigation of all wage and
5 hour related claims arising out of the conduct of DEFENDANT.

6
7 **JURISDICTION AND VENUE**

8 46. This Court has jurisdiction over the PLAINTIFF's federal claims pursuant to 28
9 U.S.C. § 1331 and supplemental jurisdiction of the PLAINTIFF's state law claims pursuant to
10 28 U.S.C. § 1367.

11 47. Further, with respect to the state law class claims, these state law class claims
12 are brought as a Class Action pursuant to Fed. R. Civ. Proc, Rule 23 on behalf of a class that
13 exceeds 100 persons, that involves more than \$5,000,000 in controversy, and where the
14 citizenship of at least one member of the class is diverse from that of DEFENDANT. As a
15 result, this Court also has original jurisdiction over the state law class claims under 28
16 U.S.C. § 1332 (CAFA Jurisdiction).

17 48. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (i)
18 DEFENDANT is subject to personal jurisdiction in this District and therefore resides in this
19 District; (ii) DEFENDANT maintains offices or facilities in this District; and, (iii)
20 DEFENDANT committed the wrongful conduct against members of the CALIFORNIA
21 CLASS in this District.

22
23 **FIRST CAUSE OF ACTION**

24 **For Unlawful Business Practices**

25 **[Cal. Bus. And Prof. Code § 17200 *et seq.*]**

26 **(By PLAINTIFF and the CALIFORNIA CLASS and against All Defendants)**

27 49. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
28 and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 48
of this Complaint.

1 50. DEFENDANT is a "persons" as that term is defined under Cal. Bus. and
2 Prof. Code § 17021.

3 51. California Business & Professions Code § 17200 *et seq.* (the "UCL")
4 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.
5 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to
6 unfair competition as follows:

7 Any person who engages, has engaged, or proposes to engage in unfair
8 competition may be enjoined in any court of competent jurisdiction. The court
9 may make such orders or judgments, including the appointment of a receiver,
10 as may be necessary to prevent the use or employment by any person of any
11 practice which constitutes unfair competition, as defined in this chapter, or as
12 may be necessary to restore to any person in interest any money or property,
13 real or personal, which may have been acquired by means of such unfair
14 competition.

15 California Business & Professions Code § 17203.

16 52. By the conduct alleged herein, DEFENDANT has engaged and continues to
17 engage in a business practice which violates California and Federal law, including but not
18 limited to provisions of the Wage Orders, the California Labor Code, the regulations of the
19 Department of Labor, the opinions of the Department of Labor Standards Enforcement, the
20 FLSA, and the Code of Federal Regulations, for which this Court should issue declaratory,
21 and other equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be necessary
22 to prevent and remedy the conduct held to constitute unfair competition.

23 53. Throughout the CLASS PERIOD, it was also DEFENDANT's uniform policy
24 and practice to not provide all legally required meal and rest breaks to the PLAINTIFF and
25 the Class Members. DEFENDANT's uniform practice requires the PLAINTIFF and the
26 Class Members to work continuously throughout the workday without being supplied all
27 meal and/or rest periods in accordance with the number of hours they worked. At all
28 relevant times during the CLASS PERIOD, DEFENDANT failed to provide any
compensated work time for failing to provide such breaks to the PLAINTIFF and the Class
Members.

 54. Therefore, the PLAINTIFF demands on behalf of herself and on behalf of
each member of the CLASS, one (1) hour of pay for each workday in which a meal period

1 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
2 workday in which a second meal period was not timely provided for each ten (10) hours of
3 work.

4 55. PLAINTIFF further demands on behalf of herself and on behalf of each
5 member of the CLASS, one (1) hour of pay for each workday in which a rest period was not
6 timely provided as required by law.

7 56. By and through the unfair and unlawful business practices described herein
8 above, DEFENDANT has obtained valuable property, money, and services from the
9 PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived them
10 of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
11 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and equitable
12 relief is necessary to prevent and remedy this unfair competition.

13 57. All the acts described herein as violations of, among other things, the
14 California Labor Code, California Code of Regulations, the Industrial Welfare Commission
15 Wage Orders, the FLSA, the Code of Federal Regulations, and the related opinions of the
16 Department of Labor, are unlawful, are in violation of public policy, are immoral, unethical,
17 oppressive, and unscrupulous, and are likely to deceive employees, as herein alleged, and
18 thereby constitute deceptive, unfair and unlawful business practices in violation of Cal. Bus.
19 and Prof. Code § 17200 *et seq.*

20 58. PLAINTIFF, and the other members of the CALIFORNIA CLASS, are further
21 entitled to, and do, seek a declaration that the above described business practices are
22 deceptive unfair and/or unlawful.

23 59. The practices herein alleged presently continue to occur unabated. As a result
24 of the unfair and unlawful business practices described above, the PLAINTIFF, and the
25 other members of the CALIFORNIA CLASS, have suffered legal and economic harm.

26
27 **SECOND CAUSE OF ACTION**

28 **For Failure To Pay Overtime Compensation**

[Cal. Lab. Code §§ 510, 515.5, 551, 552, 1194 and 1198]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS)

60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 59 of this Complaint.

61. Cal. Lab. Code § 510 states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

62. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."

63. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees to work more than six days in seven."

64. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

65. Cal. Lab. Code § 1194 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.

66. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

1 67. In addition, Labor Code Section 558 provides:

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

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

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

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

14 (b) If upon inspection or investigation the Labor Commissioner determines
15 that a person had paid or caused to be paid a wage for overtime work in
16 violation of any provision of this chapter, or any provision regulating hours
17 and days of work in any order of the Industrial Welfare Commission, the
18 Labor Commissioner may issue a citation. The procedures for issuing,
19 contesting, and enforcing judgments for citations or civil penalties issued by
20 the Labor Commissioner for a violation of this chapter shall be the same as
21 those set out in Section 1197.1.

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

24 68. DEFENDANT has intentionally and uniformly designated certain employees
25 as "exempt" employees, by their job title and without regard to DEFENDANT's realistic
26 expectations and actual overall requirements of the job, including the PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS who worked on the production
28 side of DEFENDANT's business. This was done in an illegal attempt to avoid payment of
overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare
Commission requirements.

 69. For an employee to be exempt as a bona fide "commissioned salesperson," all
the following criteria must be met and DEFENDANT has the burden of proving that:

(a) The employee's primary duty must be making sales as defined to include any
sale, exchange, contract to sell, consignment sale, shipment for sale, or other
disposition; or

(b) The employee must obtain orders or contracts for services or for the use of
facilities for which a consideration will be paid by the client or customer; and,

(c) The employee's earnings must be exceed one and one-half times the minimum
wage; and,

1 (d) The employee must earn more than half of their income from bona fide sales
2 commissions; and,

3 (e) The employee must be primarily engaged in duties which meet the test of
4 exemption.

5 No member of the CALIFORNIA LABOR SUB-CLASS was or is an inside salesperson
6 because they all fail to meet the requirements of being a "commissioned salesperson" within
7 the meaning of the applicable Wage Order.

8 70. For an employee to be exempt as a bona fide "outside salesperson," all the
9 following criteria must be met and DEFENDANT has the burden of proving that:

10 (a) The employee's primary duty must be making sales as defined to include any
11 sale, exchange, contract to sell, consignment sale, shipment for sale, or other
12 disposition; or

13 (b) The employee must obtain orders or contracts for services or for the use of
14 facilities for which a consideration will be paid by the client or customer; and,

15 (c) The employee must customarily and regularly spend more than half the work
16 time away from the employer's place of business engaged in sales-related
17 activity; and,

18 (d) The employee must be primarily engaged in duties which meet the test of
19 exemption.

20 No member of the CALIFORNIA LABOR SUB-CLASS was or is an outside salesperson
21 because they all fail to meet the requirements of being an "outside salesperson" within the
22 meaning of the applicable Wage Order.

23 71. For an employee to be exempt as a bona fide "executive," all the following
24 criteria must be met and DEFENDANT has the burden of proving that:

25 (a) The employee's primary duty must be management of the enterprise, or of a
26 customarily recognized department or subdivision; and,

27 (b) The employee must customarily and regularly direct the work of at least two
28 (2) or more other employees; and,

- 1 (c) The employee must have the authority to hire and fire, or to command
- 2 particularly serious attention to his or her recommendations on such actions
- 3 affecting other employees; and,
- 4 (d) The employee must customarily and regularly exercise discretion and
- 5 independent judgment; and,
- 6 (e) The employee must be primarily engaged in duties which meet the test of
- 7 exemption.

8 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because
9 they all fail to meet the requirements of being an "executive" within the meaning of the
10 applicable Wage Order.

11 72. For an employee to be exempt as a bona fide "administrator," all of the
12 following criteria must be met and DEFENDANT has the burden of proving that:

- 13 (a) The employee must perform office or non-manual work directly related to
- 14 management policies or general business operation of the employer; and,
- 15 (b) The employee must customarily and regularly exercise discretion and
- 16 independent judgment; and,
- 17 (c) The employee must regularly and directly assist a proprietor or an exempt
- 18 administrator; or,
- 19 (d) The employee must perform, under only general supervision, work requiring
- 20 special training, experience, or knowledge, or,
- 21 (e) The employee must execute special assignments and tasks under only general
- 22 supervision; and,
- 23 (f) The employee must be primarily engaged in duties which meet the test of
- 24 exemption.

25 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because
26 they all fail to meet the requirements for being an "administrator" under the applicable Wage
27 Order.

28 73. The Industrial Welfare Commission, in Wage Order 4-2001, at section

1 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied
2 with to place an employee in the "professional" exempt category. For an employee to be
3 exempt as a bona fide "professional," all the following criteria must be met and
4 DEFENDANT has the burden of proving that:

5 (a) The employee is primarily engaged in an occupation commonly recognized as
6 a learned or artistic profession. For the purposes of this subsection, "learned
7 or artistic profession" means an employee who is primarily engaged in the
8 performance of:

- 9 1) Work requiring knowledge of an advanced type in a field or science or
10 learning customarily acquired by a prolonged course of specialized
11 intellectual instruction and study, as distinguished from a general
12 academic education and from an apprenticeship, and from training in
13 the performance of routine mental, manual, or physical processes, or
14 work that is an essential part or necessarily incident to any of the above
15 work; or,
16 2) Work that is original and creative in character in a recognized field of
17 artistic endeavor, and the result of which depends primarily on the
18 invention, imagination or talent of the employee or work that is an
19 essential part of or incident to any of the above work; and,
20 3) Whose work is predominately intellectual and varied in character (as
21 opposed to routine mental, manual, mechanical, or physical work) and
22 is of such character cannot be standardized in relation to a given period
23 of time.

24 (b) The employee must customarily and regularly exercise discretion and
25 independent judgment; and,

26 (c) The employee earns a monthly salary equivalent to no less than two (2) times
27 the state minimum wage for full-time employment.

28 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because

1 they all fail to meet the requirements of being a "professional" within the meaning of the
2 applicable Wage Order.

3 74. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
4 CLASS, do not fit the definition of an exempt executive, administrative, or professional
5 employee because:

6 (a) They did not work as executives or administrators; and,

7 (b) The professional exemption does not apply to the PLAINTIFF, nor to the
8 other members of the CALIFORNIA LABOR SUB-CLASS because they did
9 not meet all the applicable requirements to work under the professional
10 exemption for the reasons set forth above in this Complaint.

11 75. The Industrial Welfare Commission, in Wage Order 4-2001, at section (3)(D)
12 provides a partial exemption for "commissioned" employees. This partial exemption only
13 applies to overtime, and does not apply to the other benefits guaranteed by California law.
14 For an employee to be exempt as a bona fide "commissioned" employee, the following
15 criteria must be met and DEFENDANT has the burden of proving that for each workweek,
16 the employee's "earnings exceed one and one-half (1 ½) times the minimum wage" and that
17 "more than half of that employee's compensation represents commissions." Because the
18 Business Sales Consultants do not earn sales commissions, and their incentive bonuses do
19 not exceed fifty (50) percent of their total compensation on a workweek by workweek basis,
20 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, do not fit
21 the definition of an exempt outside salesperson.

22 76. The Industrial Welfare Commission, in Wage Order 4-2001, at section (2)(M),
23 also sets forth the requirements which must be complied with to place an employee in the
24 "outside salesperson" exempt category. For an employee to be exempt as a bona fide
25 "outside salesperson," all the following criteria must be met and DEFENDANT has the
26 burden of proving that the employee "customarily and regularly works more than half the
27 working time away from the employer's place of business selling tangible or intangible
28 items or obtaining orders or contracts for products, services or use of facilities." Because

1 the Business Sales Consultants perform their work at their home offices, which
2 DEFENDANT requires them to maintain, or at DEFENDANT's banking locations primarily
3 by and through telephone and internet initiated communications as well as banker referrals,
4 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, do not fit
5 the definition of an exempt outside salesperson. 29 C.F.R. §541.502 provides in relevant
6 part:

7 An outside sales employee must be customarily and regularly engaged "away
8 from the employer's place or places of business." The outside sales employee
9 is an employee who makes sales at the customer's place of business or, if
10 selling door-to-door, at the customer's home. Outside sales does not include
11 sales made by mail, telephone or the Internet unless such contact is used
merely as an adjunct to personal calls. Thus, any fixed site, whether home or
office, used by a salesperson as a headquarters or for telephonic solicitation of
sales is considered one of the employer's places of business, even though the
employer is not in any formal sense the owner or tenant of the property.

12 77. During the CLASS PERIOD, the PLAINTIFF, and the other members of the
13 CALIFORNIA LABOR SUB-CLASS, worked more than eight (8) hours in a workday,
14 forty (40) hours in a workweek, and/or worked on the seventh (7th) consecutive day of a
15 workweek.

16 78. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and the
17 other members of the CALIFORNIA LABOR SUB-CLASS, overtime compensation for the
18 hours they have worked in excess of the maximum hours permissible by law as required by
19 Cal. Lab. Code §§ 510 and 1198, even though the PLAINTIFF, and the other members of
20 the CALIFORNIA LABOR SUB-CLASS, were regularly required to work, and did in fact
21 work, overtime hours.

22 79. By virtue of DEFENDANT's unlawful failure to pay additional compensation
23 to the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for
24 their overtime hours, the PLAINTIFF, and the other members of the CALIFORNIA
25 LABOR SUB-CLASS, have suffered, and will continue to suffer, an economic injury in
26 amounts which are presently unknown to them and which will be ascertained according to
27 proof at trial.

28 80. DEFENDANT knew or should have known that the PLAINTIFF, and the

1 other members of the CALIFORNIA LABOR SUB-CLASS, were misclassified as exempt
2 and DEFENDANT systematically elected, either through intentional malfeasance or gross
3 nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate
4 policy, practice and procedure.

5 81. Therefore, the PLAINTIFF, and the other members of the CALIFORNIA
6 LABOR SUB-CLASS, request recovery of overtime compensation according to proof,
7 interest, costs, as well as the assessment of any statutory penalties against DEFENDANT, in
8 a sum as provided by the Cal. Lab. Code and/or other statutes. To the extent overtime
9 compensation is determined to be owed to members of the CALIFORNIA LABOR SUB-
10 CLASS who have terminated their employment, these employees would also be entitled to
11 waiting time penalties under Labor Code § 203, which penalties are sought herein. Further,
12 the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, are
13 entitled to seek and recover statutory costs.

14 82. In performing the acts and practices herein alleged in violation of labor laws
15 and refusing to provide the requisite overtime compensation, DEFENDANT acted and
16 continues to act intentionally, oppressively, and maliciously toward the PLAINTIFF, and
17 toward the other members of the CALIFORNIA LABOR SUB-CLASS, with a conscious
18 and utter disregard of their legal rights, or the consequences to them, and with the despicable
19 intent of depriving them of their property and legal rights and otherwise causing them injury
20 in order to increase corporate profits at the expense of the PLAINTIFF and the members of
21 the CALIFORNIA CLASS.

22
23 **THIRD CAUSE OF ACTION**

24 **For Failure to Provide Accurate Itemized Statements**

25 **[Cal. Lab. Code § 226]**

26 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS)**

27 83. PLAINTIFF, and the other members of the CALIFORNIA LABOR
28 SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein,

1 paragraphs 1 through 80 of this Complaint.

2 84. Cal. Labor Code § 226 provides that an employer must furnish employees
3 with an "accurate itemized" statement in writing showing:

- 4 (1) gross wages earned,
5 (2) total hours worked by the employee, except for any employee whose
6 compensation is solely based on a salary and who is exempt from payment of
7 overtime under subdivision (a) of Section 515 or any applicable order of the
8 Industrial Welfare Commission,
9 (3) the number of piecerate units earned and any applicable piece rate if the employee
10 is paid on a piece-rate basis,
11 (4) all deductions, provided that all deductions made on written orders of the
12 employee may be aggregated and shown as one item,
13 (5) net wages earned,
14 (6) the inclusive dates of the period for which the employee is paid,
15 (7) the name of the employee and his or her social security number, except that by
16 January 1, 2008, only the last four digits of his or her social security number or an
17 employee identification number other than a social security number may be shown on
18 the itemized statement,
19 (8) the name and address of the legal entity that is the employer, and
20 (9) all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee.

22 85. At all times relevant herein, DEFENDANT violated Labor Code § 226,
23 in that DEFENDANT failed to provide an accurate wage statement in writing that properly
24 and accurately itemized the number of hours worked by the PLAINTIFF, and the other
25 members of the CALIFORNIA LABOR SUB-CLASS at the effective regular rates of pay
26 and the effective overtime rates of pay.

27 86. DEFENDANT knowingly and intentionally failed to comply with Labor Code
28 § 226, causing damages to the PLAINTIFF, and the other members of the CALIFORNIA
LABOR SUB-CLASS. These damages include, but are not limited to, costs expended
calculating the true hours worked and the amount of employment taxes which were not
properly paid to state and federal tax authorities. These damages are difficult to estimate.
Therefore, the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
CLASS may elect to recover liquidated damages of \$50.00 for the initial pay period in
which the violation occurred, and \$100.00 for each violation in subsequent pay period
pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no
event more than \$4,000.00 for the PLAINTIFF and each respective member of the

1 CALIFORNIA LABOR SUB-CLASS herein).

2

3

FOURTH CAUSE OF ACTION

4

For Failure to Reimburse Employees for Necessary Expenses

5

[Cal. Lab. Code § 2802]

6

(By PLAINTIFF and the CLASS and against DEFENDANT)

7

87. PLAINTIFF, and the Class Members, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 84 of this Complaint.

9

88. Cal. Lab. Code § 2802 provides, in relevant part, that:

10

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

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89. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse the PLAINTIFF, and all the Class Members for expenses incurred in the discharge of their job duties for DEFENDANT. In particular, DEFENDANT failed to reimburse the PLAINTIFF and the Class Members for expenses incurred which includes but is not limited to home office expenses such as internet service, a printer, ink and other necessary office supplies. It was WELLS FARGO's uniform policy and practice to not reimburse the PLAINTIFF and the Class Members for home office expenses necessary to complete their principal job duties. Specifically, DEFENDANT provided the PLAINTIFF and the other Class Members with a monthly quota to purchase home office expenses and other office-related supplies. However, the PLAINTIFF and the other Class Members regularly incurred these expenses because the quota was unreasonably insufficient for the Class Members to effectively perform their job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenditures incurred by the PLAINTIFF and the Class Members, DEFENDANT failed to indemnify and reimburse the PLAINTIFF and the Class Members for these expenses as an employer is required to do under the laws and regulations of California.

1 Except as otherwise provided in this section, no employer shall employ any of his
2 employees who in any workweek is engaged in commerce or in the production
3 of goods for commerce, or is employed in an enterprise engaged in commerce or
4 in the production of goods for commerce, for a workweek longer than forty hours
5 unless such employee receives compensation for his employment in excess of the
6 hours above specified at a rate not less than one and one-half times the regular
7 rate at which he is employed.

8 98. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does
9 not apply to:

10 any employee employed in a bona fide executive, administrative, or professional
11 capacity (including any employee employed in the capacity of academic
12 administrative personnel or teacher in elementary or secondary schools), or in the
13 capacity of outside salesman (as such terms are defined and delimited from time
14 to time by regulations of the Secretary, subject to the provisions of the
15 Administrative Procedure Act [5 USCS §§ 551 et seq.] except [that] an employee
16 of a retail or service establishment shall not be excluded from the definition of
17 employee employed in a bona fide executive or administrative capacity because
18 of the number of hours in his workweek which he devotes to activities not
19 directly or closely related to the performance of executive or administrative
20 activities, if less than 40 per centum of his hours worked in the workweek are
21 devoted to such activities).

22 99. DEFENDANT has willfully engaged in a widespread pattern and practice of
23 violating the provisions of the FLSA, as detailed above, by uniformly designating certain
24 employees as "exempt" employees, by their job title and without regard to DEFENDANT's
25 realistic expectations and actual overall requirements of the job, including the PLAINTIFF and
26 the other members of the COLLECTIVE CLASS who worked on the production side of
27 DEFENDANT's business enterprise. This was done in an illegal attempt to avoid payment of
28 overtime wages and other benefits in violation of the FLSA and Code of Federal Regulations
requirements.

100. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, the
PLAINTIFF and the other members of the COLLECTIVE CLASS are entitled to overtime
compensation for all overtime hours actually worked, at a rate not less than one and one-half
times their regular rate of pay for all hours worked in excess of forty (40) hours in any
workweek. DEFENDANT's failure to pay overtime wages as required by federal law was
willful and not in good faith.

101. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the
exempt status of an employee. The exempt or nonexempt status of any particular employee

1 must be determined on the basis of whether the employee's salary and duties meet the
2 requirements of the regulations in this part.

3 102. The exemptions of the FLSA as listed in section 13(a), and as explained by 29
4 C.F.R. 541.3, do not apply to the PLAINTIFF and the other members of the COLLECTIVE
5 CLASS, because their work consists of non-management, production line labor performed with
6 skills and knowledge acquired from on-the-job training, rather than from the prolonged course
7 of specialized intellectual instruction required for exempt learned professional employees such
8 as medical doctors, architects and archeologists. Business Sales Consultants either do not hold
9 an advanced degree, have not taken any prolonged course of specialization, and/or have attained
10 the vast majority of the skills they use as employees of DEFENDANT from on-the-job training.

11 103. For an employee to be exempt as a bona fide "commissioned salesperson," all
12 the following criteria must be met and DEFENDANT has the burden of proving that:

- 13 (a) The employee's primary duty must be making sales as defined to include any
14 sale, exchange, contract to sell, consignment sale, shipment for sale, or other
15 disposition; or
16 (b) The employee must obtain orders or contracts for services or for the use of
17 facilities for which a consideration will be paid by the client or customer; and,
18 (c) The employee's earnings must be exceed one and one-half times the minimum
19 wage; and,
20 (d) The employee must earn more than half of their income from bona fide sales
21 commissions; and,
22 (e) The employee must be primarily engaged in duties which meet the test of
23 exemption.

24 No member of the CALIFORNIA LABOR SUB-CLASS was or is an inside salesperson
25 because they all fail to meet the requirements of being an "commissioned salesperson" within
26 the meaning of the applicable Wage Order.

27 104. For an employee to be exempt as a bona fide "outside salesperson," all the
28 following criteria must be met and DEFENDANT has the burden of proving that:

- 1 (a) The employee's primary duty must be making sales as defined to include any
- 2 sale, exchange, contract to sell, consignment sale, shipment for sale, or other
- 3 disposition; or
- 4 (b) The employee must obtain orders or contracts for services or for the use of
- 5 facilities for which a consideration will be paid by the client or customer; and,
- 6 (c) The employee must customarily and regularly spend more than half the work
- 7 time away from the employer's place of business engaged in sales-related
- 8 activity; and,
- 9 (d) The employee must be primarily engaged in duties which meet the test of
- 10 exemption.

11 No member of the CALIFORNIA LABOR SUB-CLASS was or is an outside salesperson
12 because they all fail to meet the requirements of being an "outside salesperson" within the
13 meaning of the applicable Wage Order.

14 105. For an employee to be exempt as a bona fide "executive," all the following
15 criteria must be met and DEFENDANT has the burden of proving that:

- 16 (a) The employee's primary duty must be management of the enterprise, or of a
- 17 customarily recognized department or subdivision;
- 18 (b) The employee must customarily and regularly direct the work of at least two (2)
- 19 or more other employees;
- 20 (c) The employee must have the authority to hire and fire, or to command
- 21 particularly serious attention to his or her recommendations on such actions
- 22 affecting other employees; and,
- 23 (d) The employee must be primarily engaged in duties which meet the test of
- 24 exemption.

25 No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet
26 the requirements of being an "executive " under section 13 of the FLSA and 29 C.F.R. 541.100.
27 Moreover, none of the members of the COLLECTIVE CLASS managed the work of two or
28 more other employees in a customarily recognized department or subdivision of the employer,

1 and whose recommendations as to the hiring, firing, advancement, promotion or other change
2 of status of the other employees were given particular weight and therefore, they do not qualify
3 for the executive exemption.

4 106. For an employee to be exempt as a bona fide "administrator," all of the following
5 criteria must be met and DEFENDANT has the burden of proving that:

- 6 (a) The employee must perform office or non-manual work directly related to
7 management or general business operation of the employer or the employer's
8 customers;
- 9 (b) The employee must customarily and regularly exercise discretion and
10 independent
11 judgment with respect to matters of significance; and,
- 12 (c) The employee must regularly and directly assist a proprietor or an exempt
13 administrator; or,
- 14 (d) The employee must perform under only general supervision, work requiring
15 special training, experience, or knowledge; and,
- 16 (e) The employee must be primarily engaged in duties which meet the test of
17 exemption.

18 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to
19 meet the requirements of for being an "administrator" under section 13(a) of the FLSA and 29
20 C.F.R. 541.300.

21 107. For an employee to be exempt as a bona fide "professional", DEFENDANT has
22 the burden of proving that the primary duty of the employee is the performance of work that:

- 23 (a) Requires knowledge of an advanced type in a field of science or learning
24 customarily acquired by a prolonged course of specialized intellectual instruction;
25 or
- 26 (b) Requires invention, imagination, originality or talent in a recognized field of
27 artistic or creative endeavor.

28 No member of the COLLECTIVE CLASS was or is a professional because they all fail to meet

1 the requirements of being an "professional" within the meaning of 29 CFR 541.300.

2 Further, the PLAINTIFF and the other Business Sales Consultants operated under intense
3 scrutiny from management and are strictly dictated by written guidelines and standardized
4 procedures.

5 108. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other
6 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a workweek.

7 109. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and other
8 members of the COLLECTIVE CLASS, overtime compensation for the hours they have worked
9 in excess of the maximum hours permissible by law as required by section 207 of the FLSA,
10 even though the PLAINTIFF, and the other members of the COLLECTIVE CLASS, were
11 regularly required to work, and did in fact work, overtime hours.

12 110. For purposes of the Fair Labor Standards Act, the employment practices of
13 DEFENDANT were and are uniform throughout the United States in all respects material to the
14 claims asserted in this Complaint.

15 111. There are no other exemptions applicable to the PLAINTIFF and/or to members
16 of the COLLECTIVE CLASS.

17 112. As a result of DEFENDANT's failure to pay overtime compensation for
18 overtime hours worked, as required by the FLSA, the PLAINTIFF and the members of the
19 COLLECTIVE CLASS were damaged in an amount to be proved at trial.

20 113. Therefore, the PLAINTIFF demands that she and the members of the
21 COLLECTIVE CLASS be paid overtime compensation as required by the FLSA for every hour
22 of overtime worked in any workweek for which they were not compensated, plus interest and
23 statutory costs as provided by law.

24
25 **PRAYER**

26 WHEREFOR, the PLAINTIFF prays for judgment against each Defendant, jointly
27 and severally, as follows:

28 1. On behalf of the CALIFORNIA CLASS:

- 1 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
2 CLASS as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- 3 B) An order requiring DEFENDANT to correctly calculate and pay all wages and
4 all sums unlawfully withheld from compensation due to the PLAINTIFF and
5 the other members of the CALIFORNIA CLASS; and,
- 6 C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
7 fund for restitution of the sums incidental to DEFENDANT's violations due to
8 the PLAINTIFF and to the other members of the CALIFORNIA CLASS
9 according to proof.
- 10 D) An order temporarily, preliminarily, and permanently enjoining and
11 restraining DEFENDANT from engaging in similar unlawful conduct as set
12 forth herein.
- 13 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 14 A) That the Court certify the Second and Third Causes of Action asserted by the
15 CALIFORNIA LABOR SUB-CLASS as a Class Action pursuant to Fed. R.
16 Civ. Proc. 23(b)(2) and/or (3);
- 17 B) Compensatory damages, according to proof at trial, including compensatory
18 damages for overtime compensation due to the PLAINTIFF and the other
19 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
20 CALIFORNIA CLASS PERIODS plus interest thereon at the statutory rate;
- 21 C) The wages of all terminated employees from the CALIFORNIA LABOR
22 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
23 or until an action therefor is commenced, in accordance with Cal. Lab. Code §
24 203; and,
- 25 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay
26 period in which a violation occurs and one hundred dollars (\$100) per each
27 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
28 subsequent pay period, not exceeding an aggregate penalty of four thousand

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DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: January 14, 2011 BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff