

1 Todd M. Friedman (SBN 216752)
2 Adrian R. Bacon (SBN 280332)
3 Law Offices of Todd M. Friedman, P.C.
4 21550 Oxnard St., Suite 780
5 Woodland Hills, CA 91367
6 Phone: 877-206-4741
7 Fax: 866-633-0228
8 tfriedman@toddfllaw.com
9 abacon@toddfllaw.com

10 **Attorneys for Plaintiffs,**
11 **Nicole Romano, Jonathan Bono, and James Doyle**

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 Nicole Romano, Jonathan Bono, and)
15 James Doyle, on behalf of themselves)
16 and all others similarly situated,)
17)
18 Plaintiff,)
19 vs.)
20)
21 SCI DIRECT, INC., TRIDENT)
22 SOCIETY INC., NEPTUNE)
23 SOCIETY OF AMERICA, INC., and)
24 NEPTUNE MANAGEMENT CORP.,)
25 Defendants.)

CASE NO.: 2:17-cv-03537-ODW

CLASS ACTION

**FOURTH AMENDED
COMPLAINT FOR VIOLATIONS
OF THE FAIR LABOR
STANDARDS ACT, CALIFORNIA
LABOR CODE, AND UNFAIR
BUSINESS PRACTICES ACT**

JURY DEMAND

26 Plaintiffs Nicole Romano, Jonathan Bono, and James Doyle (hereinafter
27 "Plaintiffs"), on behalf of themselves and all those similarly situated, alleges the
28 following as and for a complaint against Defendants SCI DIRECT, INC., TRIDENT
SOCIETY INC., NEPTUNE SOCIETY OF AMERICA, INC., and NEPTUNE
MANAGEMENT CORP. (hereinafter sometimes collectively referred to as
"Defendants").

Plaintiffs bring this Class Action against Defendants, and each of them, pursuant
to Fed. R. Civ. P. 23. All allegations in this Class Action Complaint ("Complaint") are
based upon information and belief, except for those allegations which pertain to the

1 Plaintiffs named herein and their counsel. Plaintiffs’ information and beliefs are based
2 upon, *inter alia*, the investigation conducted to date by Plaintiffs and their counsel.
3 Each allegation in this Complaint either has evidentiary support or is likely to have
4 evidentiary support after a reasonable opportunity for further investigation and
5 discovery.

6 **INTRODUCTION**

7 1. This Complaint challenges systemic illegal employment practices
8 resulting in violations of the California *Labor Code, Business and Professions Code*,
9 the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(B), and applicable Industrial
10 Welfare Commission (“IWC”) wage order against employees of Defendants.

11 2. Plaintiffs are informed and believes and based thereon alleges that
12 Defendants, jointly and severally, have acted intentionally and with deliberate
13 indifference and conscious disregard of the rights of all employees in, among other
14 things, failing to provide the statutorily required meal and rest periods and failing to pay
15 the statutorily required meal period and rest period premium wages when not provided,
16 failing to pay all minimum, regular and overtime wages due, failing to pay wages in a
17 timely fashion, including at the end of employment, mis-classifying employees so as to
18 avoid payment of wages, failing to keep statutorily required payroll records, and failing
19 to reimburse for reasonable business expenses.

20 3. Plaintiffs are informed and believes and based thereon alleges that
21 Defendants have engaged in, among other things, a system of willful violations of the
22 Fair Labor Standards Act, 29 U.S.C. § 216 (B), California *Labor Code, Business and*
23 *Professions Code*, and applicable IWC wage order, including, but not limited to, Labor
24 Code §§ 201-203, 221, 222.5, 223, 226, 226.8, 226.3, 226.7, 400-410, 450, 510, 512,
25 1182, 1174, 1194, 1197, 1197.1, and 2802; California Code of Regulations, Title 8
26 §11090 section 7 & 11-12; California Wage Order No. 1-2001 (8 Cal. Code Reg., §
27 11090); and Industrial Wage Commission Wage (hereinafter “IWC”) Order No. 4.
28 Specifically, Plaintiffs challenge Defendants’ acts of creating and maintaining policies,

1 practices and customs of: (1) classifying Independent Sales Representatives as
2 independent contractors instead of employees; (2) failing to reimburse Plaintiffs and the
3 Class for reasonable business expenses; (3) failing to provide, authorize, permit and/or
4 make available meal and rest periods to Plaintiffs and the Class as required by California
5 law; (4) denying Plaintiffs and the Class full compensation for all hours worked; (5)
6 failing to pay Plaintiffs and the Class minimum wage; (6) failing to pay Plaintiffs and
7 the Class overtime and double time; (7) failing to provide Plaintiffs and the Class with
8 accurate, itemized wage statements; (8) failing to timely pay Plaintiffs and the Class
9 full wages upon termination or resignation; and (9) engaging in a pattern or practice of
10 willfully misclassifying employees as independent contractors. Plaintiffs seek
11 compensation, damages, penalties and interest to the full extent permitted by the Labor
12 Code and IWC Wage Orders.

13 4. The policies, practices and customs of Defendants described above and
14 below have resulted in the unjust enrichment of Defendants and an unfair business
15 advantage over businesses that routinely adhere to the strictures of the California *Labor*
16 *Code* and the *Business and Professions Code*.

17 **JURISDICTION AND VENUE**

18 5. This action is within the Court's jurisdiction as it arises out of a question
19 of federal law, namely the Fair Labor Standards Act, 29 U.S.C. § 216(B).

20 6. Venue is appropriate in this Court pursuant to 18 U.S.C. § 1391(b)(2)
21 because, on information and belief, and at all times relevant, Defendants, and each of
22 them, do business throughout the State of California, including Los Angeles County
23 where Plaintiffs were employed.

24 7. The unlawful acts alleged herein have a direct effect on Plaintiffs and other
25 employees similarly situated within the State of California and Nationwide. Plaintiffs
26 and the Class Members have suffered damages and will continue to suffer the same
27 harm as the Representative Plaintiffs as a result of Defendants', and each Defendant's,
28 wrongful conduct unless the relief requested herein is granted.

1 ///

2 **PARTIES**

3 8. Plaintiffs are informed and believes and based thereon alleges that
4 Defendant SCI DIRECT, INC. is a Florida corporation with principal place of business
5 in Florida, which regularly does business throughout the State of California. Plaintiffs
6 are informed and believes and thereon alleges that Defendants, at all times herein
7 mentioned, is and was doing business in the County of Los Angeles, State of California.

8 9. TRIDENT SOCIETY INC. is a California Corporation with principal
9 place of business in Texas, which regularly does business throughout the state of
10 California.

11 10. NEPTUNE SOCIETY OF AMERICA, INC. is a California Corporation
12 with principal place of business in Texas, which regularly does business throughout the
13 state of California.

14 11. NEPTUNE MANAGEMENT CORP. is a California Corporation with
15 principal place of business in Florida, which regularly does business throughout the
16 state of California.

17 12. Whenever in this Complaint reference is made to “SCI Direct, Inc.,” such
18 allegations collectively mean and refer to Defendants.

19 13. Plaintiff Nicole Romano is, and at relevant times herein was, a resident of
20 the County of Los Angeles, California. Plaintiff was at all relevant times Independent
21 Sales Representative employed by Defendants. Plaintiff was employed as an
22 independent contractor, and worked in Los Angeles County, California.

23 14. Plaintiff Jonathan Bono is, and at relevant times herein was, a resident of
24 the County of Los Angeles, California. Plaintiff was at all relevant times Independent
25 Sales Representative employed by Defendants. Plaintiff was employed as an
26 independent contractor, and worked in Los Angeles County, California.

27 15. Plaintiff James Doyle, at relevant times herein, was a resident of the
28 County of Ventura, California. Plaintiff was at all relevant times an Independent Sales

1 Representative employed by Defendants. Plaintiff was employed as an independent
2 contractor and worked in Los Angeles County, California, such that the events that give
3 rise to this lawsuit arose there and venue is appropriate in this county.

4 16. Although Plaintiffs were classified as independent contractors, and not
5 classified as employees, Plaintiff's employment nonetheless was subject to substantial
6 control by Defendants over their wages, hours and working conditions.

7 17. Plaintiffs are informed and believe and based thereon alleges that at all
8 times herein mentioned Defendants are and were corporations, business entities,
9 individuals, and partnerships, licensed to do business and actually doing business in the
10 State of California.

11 18. At all times herein mentioned, each of said Defendants participated in the
12 doing of the acts hereinafter alleged to have been done by the named Defendants; and,
13 furthermore, the Defendants, and each of them, were the agents, servants and employees
14 of each of the other Defendants, as well as the agents of all Defendants, and at all times
15 herein mentioned were acting within the course and scope of said agency and
16 employment.

17 19. Plaintiffs are informed and believes and based thereon alleges that at all
18 times material hereto, each of the Defendants named herein was the agent, employee,
19 alter ego and/or joint venturer of, or working in concert with, each of the other co-
20 Defendants and was acting within the course and scope of such agency, employment,
21 joint venture, or concerted activity. To the extent said acts, conduct, and omissions
22 were perpetrated by certain Defendants, each of the remaining Defendants confirmed
23 and ratified said acts, conduct, and omissions of the acting Defendants.

24 20. At all times herein mentioned, Defendants, and each of them, were
25 members of, and engaged in, a joint venture, partnership and common enterprise, and
26 acted within the course and scope of, and in pursuance of, said joint venture, partnership
27 and common enterprise.

28

1 21. Plaintiffs are further informed and believe and based thereon alleges, at all
2 times herein material, each Defendants were completely dominated and controlled by
3 its Co-Defendants, and each was the alter ego of the other. Whenever and wherever
4 reference is made in this Complaint to any conduct by Defendants or Defendants, such
5 allegations and references shall also be deemed to mean the conduct of each of the
6 Defendants, acting individually, jointly, and severally. Whenever and wherever
7 reference is made to individuals who are not named as Defendants in this Complaint,
8 but were employees and/or agents of Defendants, such individuals at all relevant times
9 acted on behalf of Defendants named in this Complaint within the scope of their
10 respective employments.

11 22. At all times herein mentioned, the acts and omissions of various
12 Defendants, and each of them, concurred and contributed to the various acts and
13 omissions of each and all of the other Defendants in proximately causing the injuries
14 and damages as herein alleged. At all times herein mentioned, Defendants, and each of
15 them, ratified each and every act or omission complained of herein. At all times herein
16 mentioned, the Defendants, and each of them, aided and abetted the acts and omissions
17 of each and all of the other Defendants in proximately causing the damages as herein
18 alleged.

19 **FACTUAL ALLEGATIONS**

20 23. At all times herein mentioned, Class Members, including Plaintiffs, were
21 employees of Defendants in the State of California, and Defendants were and are
22 employers employing persons in the State of California. As such, Class Members,
23 including Plaintiffs, were the type of persons contemplated to be protected by the FLSA,
24 California *Labor Code* and the Wage Order, and said laws and regulations were
25 intended to apply to Defendants and to prevent the type of injury and damage herein.

26 24. Plaintiffs are informed and believe and based thereon allege that
27 Defendants are and were advised by skilled lawyers and other professionals, employees,
28

1 and advisors with knowledge of the requirements of the United States’ and California’s
2 wage and hour laws.

3 25. During the relevant time period of this action, Defendants have employed,
4 and continue to employ, Plaintiffs and other similarly situated individuals
5 (“Independent Sales Representatives”) to solicit and sell services on behalf of
6 Defendants to new customers. Defendants’ entire business model is premised on
7 outsourcing its sales onto Independent Sales Representatives as independent
8 contractors, as a method of cutting costs, and thereby gain a competitive advantage.

9 26. Defendants has devised an elaborate scheme to skirt the requirements
10 under the California Labor Code, and FLSA by misclassifying its Independent Sales
11 Representatives as independent contractors rather than employees, denying them the
12 benefits of employment, and shifting the vast majority of the cost of doing business onto
13 the employees who carry out the day to day sales duties for Defendants.

14 27. Defendants characterize its Independent Sales Representatives as
15 independent contractors who merely utilize Defendants’ offices and supplies to solicit
16 and sell services on behalf of Defendants to new customers. In fact, these Independent
17 Sales Representatives are subject to high levels of control by Defendants over their
18 wages, hours and working conditions, such that the conditions of their employment are
19 in fact dominated and controlled in every material aspect, by Defendants.

20 28. Defendants’ control over Plaintiffs’ and Class Members’ wages, hours and
21 working conditions, begins with Defendants’ requirement that each Independent Sales
22 Representative enter into a written agreement with Defendants, as to the terms of their
23 employment. This agreement specifies that Independent Sales Representative must
24 adhere to strict rules and regulations put in place at Defendants’ sole discretion.

25 29. Defendants maintain sole discretion over the terms of the independent
26 contractor agreement, and require applicants to sign these agreements with no ability to
27 negotiate the terms, but rather as a condition of employment.

28

1 30. The Agreements are drafted exclusively by Defendants and/or its legal
2 counsel.

3 31. The Agreement purports to classify Independent Sales Representatives as
4 independent contractors so as to conceal the true nature of the relationship between
5 Defendants and their Independent Sales Representative: that of employer and
6 employees.

7 32. Defendants retain the right to terminate Independent Sales Representative
8 without notice if they fail to adhere to any part of the Agreement. Defendants require
9 Independent Sales Representatives to comply with their numerous policies and
10 procedures, or face possible termination

11 33. Defendants maintain exclusive control over the rates of pay that
12 Independent Sales Representatives will receive, which is based on an hourly rate and
13 other factors, determined at the sole discretion of Defendants. Defendants reserve the
14 right to make adjustments to their rates of pay, at any time, without notice to
15 Independent Sales Representatives directly impacting the wages earned by Plaintiffs
16 and Class Members.

17 34. Independent Sales Representatives are required to agree to Defendants'
18 pay schedule, which is subject to change, in order to work for Defendants.

19 35. Defendants' managers also supervise and oversee the work performed by
20 Independent Sales Representatives, and are in regular communication with Independent
21 Sales Representatives about Defendants' policies and procedures, and about the job
22 duties of Independent Sales Representatives.

23 36. Independent Sales Representatives must utilize Defendants' offices and
24 supplies in order to access Defendants' network of customers. Defendants' application
25 place serious limitations and requirements on Independent Sales Representatives in how
26 they are required to carry out their job duties. Having a Smartphone is a condition of
27 employment with Defendants as an Independent Sales Representative.

28

1 37. Defendants determine where Independent Sales Representatives are
2 required to work, when they are required to work, and how they are required to work.
3 Specifically, Defendants will set Independent Sales Representatives work schedules,
4 which instruct them where and when to work.

5 38. Defendants require Independent Sales Representatives to provide a full
6 report to Defendants, including hours worked, clients called, and sales made.
7 Defendants maintain attendance records, and have the ability to maintain accurate time
8 records for all hours worked by Independent Sales Representative.

9 39. Defendants fail to account for all time worked by Independent Sales
10 Representative, and fail to fully compensate Independent Sales Representatives for all
11 working time. Further, where Independent Sales Representatives work more than 40
12 hours in a week or 8 hours in a day, Defendants fail to pay Independent Sales
13 Representative overtime wages, including by not paying for all compensable hours, and
14 by using an improper regular rate of pay for purposes of said calculations.

15 40. Defendants provide Independent Sales Representatives with no meal or
16 rest breaks, and do not provide Independent Sales Representatives with any of the other
17 benefits of employment.

18 41. Specifically as to meal breaks, Defendant's written policy concerning meal
19 breaks is that Independent Sales Representatives are to receive a meal break only in
20 instances where their shift is 8 hours or longer in length. In practice, even when
21 Independent Sales Representatives work for 8 hours or more, Defendants fail to provide
22 breaks, provides them late, does not provide breaks that are duty free, and otherwise
23 provides non-compliant breaks, such that a compliant meal break is the exception rather
24 than the norm. Further, Defendants fail to maintain accurate time records regarding
25 meal breaks for Call Service Representatives.

26 42. Plaintiffs are informed and believes and based thereon alleges that
27 Defendants know, should know, knew or should have known that Class Members,
28 including Plaintiffs, were entitled to receive duty-free meal periods within the first five

1 (5) hours of any shift of six (6) or more hours worked, and that any failure to do so
2 requires Defendants to pay Class Members one (1) hour of wages per day for untimely,
3 missed, or on-duty meal periods.

4 43. Plaintiffs are informed and believe and based thereon alleges that, during
5 the Class Period, Defendants had a consistent policy or practice of requiring Class
6 Members, including Plaintiffs, to continue working through meal periods, or were
7 required to stay on the premises during their meal periods, or were interrupted during
8 their meal periods, or Defendants otherwise failing to provide a duty-free meal period
9 within the first five (5) hours of any shift of six (6) or more hours worked.

10 44. Plaintiffs are informed and believes and based thereon alleges, during the
11 Class Period, Defendants had a consistent policy or practice of failing to compensate
12 Class Members, including Plaintiffs, for duty-free meal periods that were not provided
13 within the first five (5) hours of any shift of six (6) or more hours worked, and for on-
14 duty meal periods.

15 45. Plaintiffs are informed and believes and based thereon alleges that
16 Defendants know, should know, knew or should have known that Class Members,
17 including Plaintiffs, was and is entitled to one (1) ten (10) minute rest break for each
18 shift of four (4) hours or more, and that any failure to allow said breaks requires
19 Defendants to pay Class Members, including Plaintiffs, one (1) hour of wages per day
20 for missed or on-duty rest breaks.

21 46. Plaintiffs are informed and believe and based thereon alleges that during
22 the Class Period, Defendants had a consistent policy or practice of failing to provide to
23 Class Members, including Plaintiffs, one (1) ten (10) minute break for each shift of four
24 (4) hours or more worked.

25 47. Plaintiffs are informed and believe and based thereon allege that, during
26 the Class Period, Defendants had a consistent policy or practice of failing to compensate
27 Class Members, including Plaintiffs, for missed rest breaks that were not provided
28 within each four (4) hours of a shift.

1 48. Plaintiffs are informed and believes and based thereon alleges that, during
2 the Class Period, Defendants had a consistent policy or practice of failing to compensate
3 Class Members, including Plaintiffs, overtime pay for all overtime hours, and regular
4 pay for any regular hours worked, and at least minimum wage for all hours worked.

5 49. Plaintiffs are informed and believes and based thereon alleges that, during
6 the Class Period, Defendants had a consistent policy or practice of failing to provide
7 Class Members, including Plaintiffs, with accurate wage statements reflecting the true
8 number of hours worked due to Defendants' failure to provide lawful, timely, and duty-
9 free meal and rest periods and failure to document all hours worked.

10 50. In *S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations*, 48 Cal. 3d 341
11 (1989), the California Supreme Court laid out eight (8) factors in addition to the
12 common-law control test in determining the issue of misclassification. These factors
13 include: (1) whether the one performing services is engaged in a distinct occupation or
14 business; (2) the kind of occupation, with reference to whether, in the locality, the work
15 is usually done under the direction of the principal or by a specialist without
16 supervision; (3) the skill required in the particular occupation; (4) whether the principal
17 or the worker supplies the instrumentalities, tools, and the place of work for the person
18 doing work; (5) the length of time for which the services are to be formed; (6) the
19 method of payment, whether by the time or by the job; (7) whether or not the work is a
20 part of the regular business of the principal; and (8) whether or not the parties believe
21 they are creating the relationship of employer-employee.

22 51. Defendants' 30(b)(6) Witness confirmed in her deposition testimony that
23 the only basis Defendants have for classifying Plaintiffs and similarly situated Class
24 Members as independent contractors is based on their signature on the Independent
25 Sales Representative Agreement as described above.

26 52. Defendants' CEO Tim Nicholson confirmed in his deposition that
27 Defendants' sales managers, which are employees of Defendant that oversee and
28 directly control the Independent Sales Representatives, have the authority to hire and

1 fire Independent Sales Representatives, and that this authority is the same nationwide
2 for all sales managers.

3 53. Defendants' CEO Tim Nicholson further confirmed that the policies that
4 Defendant applied to Plaintiffs and the California Independent Sales Representatives
5 were the same policies that applied to Independent Sales Representatives across the
6 United States, as defined in the FLSA Class below.

7 54. Defendants' sales managers would exercise direct supervision over
8 Plaintiffs and putative Class Members and their performance, including through regular
9 and continuous communication by email and text, and would also hold weekly "huddle
10 up" meetings with during which they would provide guidance and training to the
11 Independent Sales Representatives in order to try to boost Defendants' sales. This goes
12 to both the 2nd and 4th *Borello* factors as Defendants exercised supervision and a location
13 for these meetings to occur.

14 55. Plaintiffs were Independent Sales Representatives at Defendants' Sherman
15 Oaks Office. Independent Sales Representatives were assigned to a local "home" office
16 around which all the leads provided by Defendants to them would be regionally located.
17 This goes to the 4th *Borello* factor about location.

18 56. Plaintiffs and putative Class Members were paid on a bi-weekly
19 commission structure similar to sales employees. This goes to the 6th *Borello* factor
20 about the form and type of payment.

21 57. Defendants would provide the contracts that Independent Sales
22 Representatives would take to potential consumers and require the Independent Sales
23 Representatives to return the signed contracts to Defendants' physical office for
24 processing. This goes to the 4th *Borello* factors as Defendants provided the contracts
25 and required Plaintiffs and Independent Sales Representatives to physically return to
26 those offices.

27 58. Defendants would require Plaintiffs and the putative Class Members to
28 regularly and continuously update their lead management system to reflect the status of

1 leads and to track the performance of Independent Sales Representatives in handling
2 those leads assigned by Defendants.

3 59. Defendants would additionally provide presentation guides, forms,
4 pamphlets, brochures, door hangers, as well as business cards, but would charge
5 Independent Sales Representatives for many of these materials through its online lead
6 tracking system.

7 60. Defendants misclassify and employ hundreds of Independent Sales
8 Representatives in California and nationwide. Defendants' Independent Sales
9 representatives are the majority if not the exclusive source of calling and visiting
10 consumers in order to sign them up for the services that Defendants sell. Defendants'
11 conversion of leads to customers by Independent Sales Representatives is its primary
12 source of revenue. Defendants' reward structure of its employees, including sales
13 managers, on top of its wages is premised on the performance of the Independent Sales
14 Representatives they oversee. This goes directly to the 7th *Borello* factor as Plaintiffs
15 and other Independent Sales Representatives were an integral part of Defendants'
16 business.

17 61. Independent Sales Representatives work in a generic sales job in which
18 there is no specialized training or skills specific to the position as compared to another
19 sales job, and the duties and responsibilities for the Independent Sales Representatives
20 are the same across both the State of California as well as the United States.

21 62. To the extent any training is necessary for the position of Independent
22 Sales Representative, Defendants provide training materials and sessions to
23 Independent Sales Representatives on general sales practices as well as the use of
24 Defendants' lead management system.

25 63. Defendants employ a number of employees in all its other positions
26 combined approximately equal to the total number of Independent Sales
27 Representatives employed by Defendants.

28

1 64. Defendants treated Plaintiffs and putative Class and FLSA Class Members
2 the same regardless which of the many different locations Defendants own and operates
3 offices in they worked at.

4 Plaintiffs' Facts Regarding Underpayment of Wages

5 *Plaintiff Romano*

6 65. Plaintiff Romano worked (conservatively) at least 50 hours per week on
7 average, and often times worked up to 60 hours a week during her time working for
8 SCI. She worked for SCI from approximately May 2014 to April 2017 as an
9 Independent Sales Representative. There were multiple weeks during which Romano
10 worked in excess of forty (40) hours and was thereby entitled to overtime pay, but
11 Romano did not receive overtime pay from SCI during such weeks, because SCI had a
12 policy not to pay overtime.

13 66. During her time working for SCI, Romano was never provided with meal
14 or rest breaks. Romano would regularly be required to drive long distances to
15 customers' homes, often times (on a weekly basis on average) taking more than 6 hours
16 round trip, in order to make sales for SCI, during which time she was unable to take
17 breaks. Plaintiff Romano recalls multiple occasions on which she worked in excess of
18 eight hours without taking a meal or rest break because SCI did not provide time for
19 such a meal or rest break, and for which Romano was also not paid a premium by SCI
20 for working through her breaks. SCI never once paid Romano a single meal or rest
21 period premium.

22 67. Despite on average working 10 or more hours of overtime per week,
23 Romano was never provided a single penny of overtime pay from SCI. Not a single
24 pay stub of Romano's itemizes her hours worked, or describes how many regular hours
25 she worked vs overtime hours. Romano was required to work these hours in order to
26 work the leads she was provided by SCI.

27 68. Romano incurred numerous business expenses as a result of her work for
28 SCI. Such expenses included mileage on her vehicle, cell phone usage, car signage,

1 business cards, a computer, and an iPad. Romano was told by SCI that she was expected
2 to buy these items in order to perform her job duties for SCI. She purchased business
3 cards from SCI's store, which had the Neptune Society logo on them as well as her
4 name and identified Romano as a sales agent for the company. On average, Romano
5 estimates that she spent approximately \$3,000 a year in costs as a result of her job with
6 SCI, excluding business mileage.

7 69. Romano drove extensively for SCI in order to go to the homes of customers
8 and sell them SCI's services. Romano estimates that she drove over 100 miles per week
9 with her personal vehicle. Mileage rates between 2014 and present varied from \$.53
10 per mile to \$57 per mile. At an average rate of approximately \$.55 per mile, this equates
11 to an estimate of \$55 per week in unreimbursed mileage, or approximately \$8,250 over
12 three years in expenses incurred by Romano driving for SCI to sell its services. Romano
13 was never reimbursed for her mileage expenses.

14 70. Romano used her personal cell phone for work, for the purpose of
15 answering calls texts and emails from her manager, and co-workers, as well as
16 coordinating with SCI customers and potential customers. Romano was never
17 reimbursed for her cell phone usage either.

18 71. SCI written policy is that the company will not permit Independent Sales
19 Representatives to request reimbursement of any of their business expenses.

20 *Plaintiff Bono*

21 72. Plaintiff Bono worked (conservatively) at least 40-45 hours per week on
22 average, during his time working for SCI. Bono worked for SCI from approximately
23 2012 to 2017 as an Independent Sales Representative. There were multiple weeks
24 during which Bono worked in excess of forty (40) hours and was thereby entitled to
25 overtime pay, but Bono did not receive overtime pay from SCI during such weeks,
26 because SCI had a policy not to pay overtime.

27 73. During his time working for SCI, Bono was never provided with meal or
28 rest breaks. Bono would often be required to drive long distances to customers' homes,

1 often times taking more than 5-6 hours round trip, in order to make sales for SCI, during
2 which time he was unable to take breaks. Plaintiff Bono recalls multiple occasions on
3 which he worked in excess of eight hours without taking a meal or rest break because
4 SCI did not provide time for such a meal or rest break, and for which Bono was also not
5 paid a premium by SCI for working through his breaks. SCI never once paid Bono a
6 single meal or rest period premium.

7 74. Despite on average working up to 5 hours of overtime per week, Bono was
8 never provided a single penny of overtime pay from SCI. Not a single pay stub of
9 Bono's itemizes his hours worked, or describes how many regular hours he worked vs
10 overtime hours. Bono was required to work these hours in order to work the leads he
11 was provided by SCI.

12 75. Bono incurred numerous business expenses as a result of his work for SCI.
13 Such expenses included mileage on his vehicle, cell phone usage, business cards, and a
14 laptop computer. Bono was told by SCI that he was expected to buy these items in
15 order to perform her job duties for SCI. He purchased business cards from SCI's store,
16 which had the Neptune Society logo on them as well as his name and identified Bono
17 as a sales agent for the company. On average, Bono estimates that he spent
18 approximately \$4,000 a year in costs as a result of his job with SCI, excluding business
19 mileage.

20 76. Bono drove extensively for SCI in order to go to the homes of customers
21 and sell them SCI's services. Bono estimates that he drove approximately 100-200
22 miles per week with his personal vehicle (an average of 150 miles per week). Mileage
23 rates between 2014 and present varied from \$.53 per mile to \$57 per mile. At an average
24 rate of approximately \$.55 per mile, this equates to an estimate of \$82.50 per week in
25 unreimbursed mileage, or approximately \$16,500 over a period of four years in
26 expenses incurred by Bono driving for SCI to sell its services. Bono was never
27 reimbursed for his mileage expenses.

28

1 77. Bono used his personal cell phone for work, for the purpose of answering
2 calls texts and emails from her manager, and co-workers, as well as coordinating with
3 SCI customers and potential customers. Bono was never reimbursed for his cell phone
4 usage either.

5 *Plaintiff Doyle*

6 78. Plaintiff James Doyle worked at least 40 hours per week on average. He
7 has worked for Defendants from approximately the last ten (10) years as an Independent
8 Sales Representative.

9 79. Doyle incurred numerous business expenses as a result of his work for
10 Defendants. Such expenses included mileage on his vehicle, cell phone usage, laptop
11 and computers, and business cards, among other things. Doyle was told by Defendants
12 that he was expected to buy these items in order to perform his job duties for Defendants.

13 80. Doyle drove extensively for Defendants in order to go to the homes of
14 customers and sell them Defendants' services. Doyle estimates that he drove over 100
15 miles per week with his personal vehicle. Mileage rates in the last ten years have, but
16 with an estimated average rate of approximately \$.55 per mile, this equates to an estimate
17 of \$55 per week in unreimbursed mileage, or approximately \$11,000 over the past four
18 years alone in expenses incurred by Doyle driving for Defendants to sell its services.
19 Doyle was never reimbursed for his mileage expenses. Doyle's tax records will provide
20 more accurate mileage figures.

21 81. Doyle used his personal cell phone for work, for the purpose of answering
22 calls texts and emails from her manager, and co-workers, as well as coordinating with
23 Defendants' customers and potential customers. Doyle was never reimbursed for his cell
24 phone usage either.

25 82. Defendants written policy is that the company will not permit Independent
26 Sales Representatives to request reimbursement of any of their business expenses.

27 *Examples of Wage Damages*

28 83. As but a few examples of times when Plaintiffs were not paid enough
wages to cover minimum wages or overtime, Plaintiffs cite the following facts.

1 84. The California Minimum wage rate from 2014 to 2015 was \$9 per hour,
2 increased to \$10 per hour in 2016 and \$10.50 in 2017. Under the FLSA, where an
3 employee is subject to both the state and federal minimum wage laws, the employee is
4 entitled to the higher minimum wage rate.¹

5 85. Plaintiff Jon Bono alleges that he worked 40-45 hours per week, an average
6 of 42.5 hours per week. Based on the California minimum wage rates described above,
7 an individual working 42.5 hours per week in California would be entitled to at least
8 \$393.75 per week (or \$787.5 per two week pay period) during the time frame of 2014
9 to 2015. An individual working 42.5 hours per week in California would be entitled to
10 at least \$437.50 per week (or \$875 per two week pay period) during the time frame of
11 2016. An individual working 42.5 hours per week in California would be entitled to at
12 least \$459.375 per week (or \$918.75 per two week pay period) during the time frame
13 of 2017.

14 86. Plaintiff Jon Bono's pay stub from the work period of February 17, 2017
15 to March 2, 2017 shows that he received \$645 in pay for that pay period despite the
16 minimum wages due under the facts as alleged being \$918.75. Plaintiff Jon Bono's
17 pay stub for this period also failed to properly itemize all hours worked and the wages
18 paid for each hour worked. Defendant SCI did not provide an accurate itemized
19 statement of Plaintiff Bono's wages for this time period, and Defendant's failure was
20 knowing and intentional because Defendant had a common policy to not pay Plaintiff
21 Bono for all hours worked.

22 87. Plaintiff Jon Bono's pay stub from the work period of May 3, 2017 to May
23 16, 2017 shows that he received \$645 in pay for that pay period despite the minimum
24 wages due under the facts as alleged being \$918.75.

25
26
27
28 ¹ <https://www.dol.gov/whd/minwage/q-a.htm>

1 88. Plaintiff Jon Bono's pay stub from the work period of April 3, 2017 to
2 April 16, 2017 shows that he received \$215 in pay for that pay period despite the
3 minimum wages due under the facts as alleged being \$918.75.

4 89. Plaintiff Jon Bono's pay stub from the work period of January 3, 2017 to
5 January 17, 2017 shows that he received \$645 in pay for that pay period despite the
6 minimum wages due under the facts as alleged being \$918.75.

7 90. Plaintiff Jon Bono's pay stub from the work period of February 3, 2017 to
8 February 17, 2017 shows that he received \$215 in pay for that pay period despite the
9 minimum wages due under the facts as alleged being \$918.75.

10 91. Plaintiff Jon Bono's pay stub from the work period of December 3, 2016
11 to December 16, 2016 shows that he received \$215 in pay for that pay period despite
12 the minimum wages due under the facts as alleged being \$875.

13 92. Plaintiff Jon Bono's pay stub from the work period of June 3, 2016 to June
14 16, 2016 shows that he received \$589 in pay for that pay period despite the minimum
15 wages due under the facts as alleged being \$875.

16 93. Plaintiff Jon Bono ceased employment with Defendant SCI on or about
17 June 1, 2017. Defendant SCI failed to pay Plaintiff Jon Bono within thirty (30) days of
18 the cessation of his employment all wages owed, including the thousands of dollars in
19 regular, overtime, and minimum wages as alleged for the specific pay dates noted
20 above. Defendant SCI willfully failed to pay all wages owed within thirty (30) days of
21 the cessation of employment because SCI willfully refused to pay its Independent Sales
22 Representatives for all hours worked.

23 94. Plaintiff Nicole Romano alleges that she worked at least 50 hours a week
24 and up to 60 hours a week. For purposes of calculations, Plaintiff uses an average of
25 50 hours per week (which is lower than Ms. Romano's true average). Based on the
26 California minimum wage rates described above, an individual working 50 hours per
27 week in California would be entitled to at least \$495 per week (or \$990 per two week
28 pay period) during the time frame of 2014 to 2015. An individual working 50 hours per

1 week in California would be entitled to at least \$550 per week (or \$1100 per two week
2 pay period) during the time frame of 2016. An individual working 50 hours per week
3 in California would be entitled to at least \$577.50 per week (or \$1155 per two week pay
4 period) during the time frame of 2017.

5 95. Plaintiff Nicole Romano's pay stub from the work period ending March 2,
6 2015 shows that she received \$375.60 in pay for that pay period despite the minimum
7 wages due under the facts as alleged being \$990.

8 96. Plaintiff Nicole Romano's pay stub from the work period ending May 16,
9 2015 shows that she received \$424 in pay for that pay period despite the minimum
10 wages due under the facts as alleged being \$990.

11 97. Plaintiff Nicole Romano's pay stub from the work period ending July 16,
12 2015 shows that she received \$263 in pay for that pay period despite the minimum
13 wages due under the facts as alleged being \$990. Plaintiff Romano's pay stub for this
14 period also failed to properly itemize all hours worked and the wages paid for each hour
15 worked. Defendant SCI did not provide an accurate itemized statement of Plaintiff
16 Romano's wages for this time period, and Defendant's failure was knowing and
17 intentional because Defendant had a common policy to not pay Plaintiff Romano for all
18 hours worked.

19 98. Plaintiff Nicole Romano's pay stub from the work period ending May 2,
20 2016 shows that she received \$203 in pay for that pay period despite the minimum
21 wages due under the facts as alleged being \$1100.

22 99. Plaintiff Nicole Romano's pay stub from the work period ending February
23 16, 2017 shows that she received \$735 in pay for that pay period despite the minimum
24 wages due under the facts as alleged being \$1155.

25 100. Plaintiff Nicole Romano's pay stub from the work period ending March 2,
26 2017 shows that she received \$855 in pay for that pay period despite the minimum
27 wages due under the facts as alleged being \$1155.

28

1 101. Plaintiff Nicole Romano’s pay stub from the work period ending March
2 16, 2017 shows that she received \$865 in pay for that pay period despite the minimum
3 wages due under the facts as alleged being \$1155.

4 102. Plaintiff Nicole Romano ceased employment with Defendant SCI on or
5 about April of 2017. Defendant SCI failed to pay Plaintiff Romano within thirty (30)
6 days of the cessation of his employment all wages owed, including the thousands of
7 dollars in regular, overtime, and minimum wages as alleged for the specific pay dates
8 noted above. Defendant SCI willfully failed to pay all wages owed within thirty (30)
9 days of the cessation of employment because SCI willfully refused to pay its
10 Independent Sales Representatives for all hours worked.

11 103. These examples are by no means exhaustive of the wage damages suffered
12 by Plaintiffs, but are merely illustrative of the fact that SCI was denying Plaintiffs and
13 other Independent Sales Representatives basic minimum wage and overtime wages.

14 104. Plaintiffs allege that they are owed one meal period premium and one rest
15 period premium per day worked for Defendant, as Defendant never provided Plaintiffs
16 with any breaks of any kind, having no break policies whatsoever for Independent Sales
17 Representatives, and having never paid Plaintiffs even a single break premium during
18 either of their tenures working for SCI.

19 **CLASS ALLEGATIONS**

20 **COLLECTIVE CLASS:**

21 105. The FLSA Collective Class: Plaintiffs bring claims for violation of the
22 FLSA, as a nationwide “opt-in” collective action pursuant to 29 U.S.C. Section 216(b),
23 individually and on behalf of the following class of persons (“the FLSA Class”):

24 All current and former Independent Sales Representatives of
25 Defendants who have worked in the United States at any time
during the last three years, plus periods applicable tolling.

26 106. The FLSA claim may be pursued by those who opt-in to this case, pursuant
27 to 29 U.S.C. Section 216(b) and who have previously filed consent to join forms in any
28 transferred actions.

1 107. Plaintiffs, individually and on behalf of other similarly situated employees
2 seek relief on a collective basis challenging among other FLSA violations, Defendants’
3 practice of failing to accurately to pay employees for all hours worked, including
4 overtime compensation, misclassifying Independent Sales Representatives, and failing
5 to properly calculate and pay overtime compensation that was recorded. The number and
6 identity of other Plaintiff yet to opt in and consent to be party Plaintiffs may be
7 determined from Defendants’ records, and potential class members may easily and
8 quickly be notified of the pendency of this action.

9 CLASS:

10 108. Plaintiffs additionally bring claims for violation of California Law as a
11 class action pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), individually and on behalf
12 of the following class of persons (the “Class”) brings this action on behalf of the
13 following class:

14 All individuals who contracted with or provided services to
15 Defendants, as an independent sales representative in California
16 from May 18, 2014 to February 1, 2019 (the “Class Period”).

17 109. The Class seeks unpaid wages for meal period and rest periods, regular
18 hours and overtime hours worked, penalties, equitable relief, interest, and reasonable
19 attorneys’ fees and costs, for failure to comply with applicable sections of the California
20 *Labor Code*, Industrial Welfare Commission Wage Order No. 4 (“Wage Order”),
21 *California Business and Professions Code* §§ 17200, *et seq.*, and *California Code of*
Civil Procedure § 1021.5.

22 110. This action is also brought by Plaintiffs on behalf of a sub-class, as follows
23 (the “California Subclass”):

24 All Class Members whose employment ended at any time during
25 the Class Period (collectively, the “Former Employee Sub-Class”
or “Former Employee Sub-Class Members”).

26 111. The California Sub-Class Members seek waiting time penalties of up to
27 thirty (30) days wages each, pursuant to *California Labor Code* § 203, due to
28

1 Defendants' failure to pay all wages due and owing at the time of termination of the
2 employment relationship.

3 112. Under California *Business and Professions Code* §§ 17200, *et seq.*
4 (“Unfair Practices Act”), and pursuant to both the class action and representative action
5 procedures provided for in these statutes, Plaintiffs, on behalf of themselves and the
6 proposed Class Members, also seeks restitution of all benefits Defendants have received
7 from its unlawful actions as alleged herein.

8 113. During Plaintiffs' and Class Members' employment with Defendants,
9 Defendants did not provide meal or rest periods in compliance with California law, and
10 did not compensate Plaintiffs and members of the Class for all regular hours worked,
11 for all overtime hours worked, or for meal or rest periods that did not comply with
12 California law (including, but not limited to, missed meal and rest periods). Plaintiffs
13 and the Class Members they seek to represent did not voluntarily or willfully waive
14 their meal or rest periods. Defendants maintained and implemented a course of conduct
15 requiring Plaintiffs and Class Members to involuntarily waive their meal or rest periods
16 as a condition of employment and failed to obtain uncoerced waivers.

17 114. During Plaintiff's and Class Members' employment with Defendants,
18 Defendants did not reimburse Independent Sales Representatives for business expenses
19 incurred in the course of their employment, in violation of California *Labor Code* §§
20 2800 *et seq.*

21 115. Defendants did not keep accurate records of the hours worked by Plaintiffs
22 and members of the Classes, or of the amount of wages due to them. Plaintiffs were
23 and are a victim of the policies, practices and customs of Defendants complained of in
24 this action in ways that have deprived them of the rights guaranteed by California *Labor*
25 *Code* §§ 201-204, 226, 226.7, 510, 512, 1194, 1194.2, 1197.1, 1198 and 1199, and
26 California *Business and Professions Code* §§ 17200, *et seq.* (Unfair Practices Act).

27 116. As such, and based upon all the facts and circumstances incident to
28 Defendants' business in California, Defendants are subject to California *Labor Code* §§

1 201-204, 226, 226.7, 227.3, 1194, 1194.2 and 2802, and California *Business and*
2 *Professions Code* §§ 17200, *et seq.* (Unfair Practices Act).

3 117. This action is brought, and may properly be maintained, as a Class Action
4 under Fed. R. Civ. P. 23 because there is a well-defined community of interest in the
5 litigation and the proposed Classes are easily ascertainable. This action satisfies the
6 predominance, typicality, numerosity, superiority, and adequacy requirements of these
7 provisions.

8 118. **Numerosity:** The members of the Classes are so numerous that joinder of
9 all members would be impractical, if not impossible. The identity of the members of
10 the Classes are readily ascertainable by review of Defendants' records, including
11 payroll records. Plaintiffs are informed and believe and based thereon allege that: (a)
12 Classes Members regularly were denied payment of all regular and overtime wages due
13 and denied payment of overtime wages at the proper rate of overtime pay; (b) Classes
14 Members were not provided meal periods or rest periods in compliance with the FLSA,
15 California *Labor Code* §§ 226.7 and 512 and the applicable IWC wage order, and were
16 not paid all meal period or rest period premium wages for non-compliant periods; (c)
17 Classes Members were not paid all wages in a timely fashion, including all wages at the
18 end of employment based on Defendants' own records; (d) Defendants did not maintain
19 accurate records and provide accurate wage statements to Class Members, pursuant to
20 California *Labor Code* § 226; and (e) Defendants did not reimburse reasonable business
21 expenses pursuant to *Cal. Lab. C.* § 2802. Based on information and belief, there are
22 more than 100 persons who are potentially Classes Members.

23 119. **Adequacy of Representation:** The named Plaintiffs are fully prepared to
24 take all necessary steps to represent fairly and adequately the interests of the Classes
25 defined above with whom they have a well-defined community of interests and
26 typicality of claims as demonstrated herein. Plaintiff's attorneys are ready, willing and
27 able to fully and adequately represent the Classes and the representative Plaintiffs.
28 Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions in the past

1 and currently have a number of wage-and-hour class actions pending in California
2 courts. Further, Plaintiffs' counsel is competent and experienced in litigation class
3 actions involving California *Business and Professions Code* §§ 17200, *et seq.*

4 120. Defendants uniformly administered corporate policies and practices that
5 did not afford Plaintiffs and Class Members proper meal and rest periods, as required
6 by California *Labor Code* §§ 226.7 and 512 and the applicable IWC wage order, that
7 failed to pay all earned regular and overtime wages, minimum wages, and all wages
8 owed, and that uniformly paid their employees late wages. Plaintiffs are informed and
9 believe and based thereon alleges that this corporate conduct was accomplished with
10 the advance knowledge and designed intent to willfully withhold appropriate wages for
11 work performed by Class Members.

12 121. Plaintiffs are informed and believes and based thereon alleges that
13 Defendants, in violation of California *Labor Code* §§ 201 through 203, had a consistent
14 and uniform policy, procedure and practice of willfully failing to pay Plaintiff and
15 California Sub-Class Members all wages due them upon termination. Plaintiff and
16 other Class Members did not secret or absent themselves from Defendants, nor refuse
17 to accept the earned and unpaid wages from Defendants upon termination.
18 Accordingly, Defendants are liable for waiting time compensation for the unpaid wages
19 to the Sub-Class Members pursuant to California *Labor Code* § 203.

20 122. In addition, Defendants uniformly administered a corporate policy,
21 procedure and practice of not maintaining accurate records, and failing to provide true
22 and accurate wage statements, as required by California *Labor Code* § 226.

23 123. Plaintiffs are informed and believes and based thereon alleges that the
24 foregoing corporate conduct was accomplished with the advance knowledge and
25 designed intent to willfully and intentionally fail to accurately record proper rates of
26 pay, hours worked, net wages, and deductions.

1 124. As a pattern and practice and matter of corporate policy, in violation of the
2 aforementioned labor laws, Defendants committed unfair practices based on the claims
3 alleged in the preceding paragraphs.

4 125. **Common Question of Law and Fact:** There are predominant common
5 questions of law and fact and a community of interest among Plaintiff and the Classes
6 Members concerning whether:

- 7 a) Class Members are independent contractors or employees under applicable
8 law;
- 9 b) Defendants have the right to control the manner and means by which the
10 Independent Sales Representatives perform their work;
- 11 c) Defendants direct and/or supervise the work that the Independent Sales
12 Representatives perform;
- 13 d) Defendants' policy manuals and handbooks instruct the Independent Sales
14 Representatives on how to conduct themselves and perform their work;
- 15 e) The Independent Sales Representatives use and receive forms and materials
16 provided by Defendants;
- 17 f) The Independent Sales Representatives attend meetings or training conducted
18 by Defendants regarding their work assignments and performance;
- 19 g) Defendants assign the Independent Sales Representatives schedules;
- 20 h) Defendants exercise control, directly or indirectly, over Classes Members'
21 work hours;
- 22 i) Defendants exercise control, directly or indirectly, over Classes Members'
23 working conditions;
- 24 j) Defendants exercise control, directly or indirectly, over the kinds equipment
25 the Independent Sales Representatives use;
- 26 k) Independent Sales Representatives need special training, skills or education
27 to perform their work;
- 28

- 1 l) Defendants supply tools and equipment to the Independent Sales
2 Representatives;
- 3 m) The Independent Sales Representative work is part of the regular business of
4 Defendants;
- 5 n) The method by which Defendants pay the Independent Sales Representatives;
- 6 o) The Independent Sales Representatives tenure with the company is indefinite
7 and/or whether the contracts signed by the Independent Sales Representatives
8 contain automatic renewal clauses and can be terminated by either party;
- 9 p) Defendants have the authority to discipline and/or terminate a Independent
10 Sales Representative;
- 11 q) The Classes Members are entitled to be reimbursed for Defendants' business
12 expenses and deductions;
- 13 r) Defendants failed to provide Plaintiffs and the Classes Members with meal
14 and rest periods in compliance with California law;
- 15 s) Defendants failed to pay Plaintiffs and the Classes Members statutory meal
16 and rest period premium wages for non-compliant meal and rest periods;
- 17 t) Plaintiffs and the Classes Members regularly were denied payment of all
18 overtime wages due for overtime hours worked;
- 19 u) Plaintiffs and the Classes Members regularly were denied payment of all
20 regular wages due for regular hours worked;
- 21 v) Plaintiffs and the Classes Members regularly were denied payment of at least
22 minimum wage for all hours worked;
- 23 w) Defendants failed to pay all wages due in a timely fashion under California
24 law;
- 25 x) Waiting time penalties are owed to Plaintiffs and the Classes Members;
- 26 y) Defendants failed to maintain accurate records of hours worked by Plaintiffs
27 and the Classes Members, and failed to provide accurate wage statements that
28 comply with California *Labor Code* § 226; and

1 z) Defendants' employment practices towards Plaintiff and Classes Members
2 constitute unfair business practices pursuant to California *Business and*
3 *Professions Code* §§ 17200, *et seq.*

4 126. **Typicality:** The claims of Plaintiffs are typical of the claims of all
5 members of the Classes. Plaintiffs are a member of the Classes and have suffered harm
6 as a result of the violations of the FLSA, Wage Order and California *Labor Code* alleged
7 herein, including but not limited to California *Labor Code* §§ 201-204, 226, 226.7,
8 227.3, 1194, 1194.2 and 2802.

9 127. The FLSA, Wage Order, and the California *Labor Code* upon which
10 Plaintiff bases these claims contain provisions that are broadly remedial in nature.
11 These laws and labor standards serve an important public interest in establishing
12 minimum working conditions and standards in California and Nationwide. These laws
13 and labor standards protect the average working employee from exploitation by
14 employers who may seek to take advantage of superior economic and bargaining power
15 by establishing onerous terms and conditions of employment.

16 128. The nature of this action and the format of laws available to Plaintiffs and
17 members of the Classes identified herein make the Class Action format a particularly
18 efficient and appropriate procedure to redress the wrongs alleged herein. If each
19 employee were required to file an individual lawsuit, the corporate Defendants would
20 necessarily gain an unconscionable advantage since they would be able to exploit and
21 overwhelm the limited resources of each individual Plaintiffs with their vastly superior
22 financial and legal resources. Requiring each Classes Member to pursue an individual
23 remedy would also discourage the assertion of lawful claims by current employees for
24 fear of retaliation, and even by former employees, for fear of retaliation within the
25 industry.

26 129. The prosecution of separate actions by the individual Classes Members,
27 even if possible, would create a substantial risk of (a) inconsistent or varying
28 adjudications with respect to individual Classes Members against the Defendants,

1 which would establish potentially incompatible standards of conduct for the
2 Defendants, and/or (b) adjudications with respect to individual Classes Members which
3 would, as a practical matter, be dispositive of the interests of the other Classes Members
4 not parties to the adjudications, or which would substantially impair or impede the
5 ability of the Classes Members to protect their interests. Further, the claims of the
6 individual members of the Classes are not sufficiently large to warrant vigorous
7 individual prosecution considering all of the concomitant costs and expenses.

8 130. Such a pattern, practice and uniform administration of corporate policy
9 regarding illegal employee compensation described herein is unlawful and creates an
10 entitlement to recovery by the Plaintiffs and the Classes identified herein, in a civil
11 action, for the unpaid balance of the full amount of unpaid wages, overtime and vacation
12 wages, including interest thereon, applicable penalties, reasonable attorney's fees, and
13 costs of suit according to the mandate of California *Labor Code* §§ 218.6, 226, 226.7,
14 227.3, & 1194, 1194.2 and 2802, California *Code of Civil Procedure* § 1021.5, and
15 applicable IWC wage order.

16 131. Proof of a common business practice or factual pattern, which the named
17 Plaintiffs experienced and are representative of, will establish the right of each of the
18 Classes Members to recovery on the causes of action alleged herein.

19 132. The Classes Members are commonly entitled to a specific fund with
20 respect to the compensation illegally and unfairly retained by Defendants. The Classes
21 Members are commonly entitled to restitution of those funds being improperly withheld
22 by Defendants. This action is brought for the benefit of the entire Classes and will result
23 in the creation of a common fund.

24 133. Defendants have engaged in a common, unlawful practice in its
25 misclassification as independent contractors of both its California and Nationwide
26 Independent Sales Representatives such that injunctive relief pursuant to Fed. R. Civ.
27 P. 23 is further appropriate to finally stop Defendants illegal practices.

28 **FIRST CAUSE OF ACTION**

1 **Unpaid Overtime Wages**

2 **(California Labor Code §§ 510, 1194 and 1198,**

3 **and Industrial Welfare Commission Wage Order No. 4)**

4 **-By Plaintiffs and Class Members Against All Defendants-**

5 134. Plaintiffs reallege and incorporates herein by reference each and every
6 allegation contained in the preceding paragraphs of this Complaint as though fully set
7 forth herein.

8 135. This action is brought, in part, pursuant to the Wage Order and *California*
9 *Labor Code* §§ 510, 1194 and 1198. Under the Wage Order and *California Labor Code*
10 § 510, Defendants were required to compensate Plaintiffs and all Class Members for all
11 overtime, calculated at one and one-half (1-½) times the regular rate of pay for hours
12 worked in excess of eight (8) hours per day and/or forty (40) hours per week, two (2)
13 times the regular rate of pay for hours worked in excess of twelve (12) hours per day,
14 and two (2) times the regular rate of pay for hours worked in excess of eight (8) hours
15 on the seventh (7th) day of work.

16 136. While employed by Defendants, Plaintiffs and the Class Members were
17 required to work more than eight (8) hours in a day or forty (40) hours in a week.
18 Regardless of the number of actual hours worked, and even though Plaintiff and all
19 Class Members are not exempt from California overtime laws, Plaintiffs and all Class
20 Members were not and are not afforded overtime compensation for any hours in excess
21 of eight (8) hours in a workday and/or forty (40) hours per week. By failing to
22 compensate Plaintiffs and all Class Members for the hours actually worked, Defendants
23 have failed and continue to fail to pay the overtime compensation owed to Plaintiff and
24 all Class Members pursuant to the Wage Order and the *California Labor Code*.

25 137. Plaintiffs are informed and believes and based thereon alleges that
26 Defendants' policy and practice of requiring overtime work and not paying for said
27 work according to the overtime mandates of California law is, and at all times herein
28 mentioned was, in violation of *California Labor Code* § 1194, applicable regulations,

1 and the Wage Order. Defendants' employment policies and practices wrongfully and
2 illegally failed to compensate Plaintiffs and Class Members for overtime compensation
3 earned as required by California law.

4 138. The conduct of Defendants and their agents and employees as described
5 herein was willful and intentional and part of a corporate policy, procedure and practice.
6 Furthermore, Defendants willfully failed to pay Plaintiffs and Class Members proper
7 compensation for all overtime hours worked at the appropriate rate of overtime pay.

8 139. Plaintiffs are informed and believes and based thereon alleges that
9 Defendants' willful failure to provide all overtime wages due and owing them upon
10 separation from employment results in a continued payment of wages up to thirty (30)
11 days from the time the wages were due. Therefore, Plaintiffs and other members of the
12 Class who have separated from employment are entitled to compensation pursuant to
13 California *Labor Code* § 203.

14 140. Such a pattern, practice and uniform administration of unlawful corporate
15 policy regarding employee compensation as described herein creates an entitlement to
16 recovery by Plaintiffs and each Class Member for damages and wages owed, and for
17 penalties, interest, costs and attorney's fees, in an amount to be proven at time of trial.

18 **SECOND CAUSE OF ACTION**

19 **Failure to Pay Minimum Wages**

20 **(California *Labor Code* § 1194, 1194.2 and 1197.1)**

21 **-By Plaintiffs and Class Members Against All Defendants-**

22 141. Plaintiffs reallege and incorporates herein by reference each and every
23 allegation contained in the preceding paragraphs of this Complaint as though fully set
24 forth herein.

25 142. This cause of action is brought pursuant to California *Labor Code* § 1194,
26 which provides that non-exempt employees are entitled to the statutory hourly
27 minimum wage for work performed.

28

1 143. At all times relevant herein, Defendants were required to compensate
2 Plaintiffs and Class Members at least the statutorily mandated minimum wage for all
3 regular hours worked.

4 144. As a pattern and practice, Defendants regularly required Plaintiffs and
5 Class Members to work without recording the time worked in any capacity, due to the
6 misclassification of Independent Sales Representatives as independent contractors.

7 145. As a result, Defendants regularly failed to pay Plaintiffs and Class
8 Members the statutorily required minimum wage for all hours worked.

9 146. Defendants' conduct as alleged herein is in violation of California *Labor*
10 *Code* § 1194 and the Wage Order. Defendants' employment policies and practices
11 wrongfully and illegally failed to compensate Plaintiffs and Class Members for all hours
12 worked at minimum wages as required by California law.

13 147. Plaintiffs are informed and believes and based thereon allege that
14 Defendants willfully failed to pay Plaintiffs and Class Members minimum wages for all
15 hours worked. Plaintiffs are informed and believes and based thereon alleges that
16 Defendants' willful failure to provide wages due and owing upon separation from
17 employment results in a continued payment of wages up to thirty (30) days from the
18 time the wages were due. Therefore, Plaintiffs and Sub-Class Members who have
19 separated from employment are entitled to compensation pursuant to *California Labor*
20 *Code* § 203.

21 148. Such a pattern, practice and uniform administration of unlawful corporate
22 policy regarding employee compensation as described herein creates an entitlement to
23 recovery by Plaintiffs and Class Members for damages and wages owed, and for
24 liquidated damages, penalties, interest, costs and attorney's fees.

25 ///

26 **THIRD CAUSE OF ACTION**

27 **Failure to Pay All Regular Wages**

28 ***(California Labor Code §§ 1197.1 and 1199, and the Wage Order)***

1 **-By Plaintiffs and Class Members Against All Defendants-**

2 149. Plaintiffs reallege and incorporates herein by reference each and every
3 allegation contained in the preceding paragraphs of this Complaint as though fully set
4 forth herein.

5 150. At all times relevant herein, Defendants were required by California *Labor*
6 *Code* §§ 1197.1 and 1199 and the Wage Order to compensate Plaintiffs and Class
7 Members correct and proper wages for all hours worked.

8 151. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and
9 Class Members for all hours worked in excess of eight (8) hours in one day or forty (40)
10 hours in a week.

11 152. Plaintiffs are informed and believes and based thereon alleges that
12 Defendants willfully failed to pay Plaintiffs and Class Members wages for all hours
13 worked. Plaintiffs are informed and believes and based thereon allege that Defendants'
14 willful failure to provide all wages due and owing upon separation from employment
15 results in a continued payment of wages up to thirty (30) days from the time the wages
16 were due. Therefore, Plaintiffs and Class Members are entitled to compensation
17 pursuant to California *Labor Code* § 203.

18 153. Such a pattern, practice and uniform administration of unlawful corporate
19 policy regarding employee compensation as described herein creates an entitlement to
20 recovery by Plaintiffs and Class Members for damages and wages owed, and for
21 penalties, interest, costs and attorney's fees, in an amount according to proof.

22 **FOURTH CAUSE OF ACTION**

23 **Failure to Allow or Pay for Meal Periods**

24 **(California *Labor Code* §§ 226.7 and 512)**

25 **-By Plaintiffs and Class Members Against All Defendants-**

26 154. Plaintiffs reallege and incorporates herein by reference each and every
27 allegation contained in the preceding paragraphs of this Complaint as though fully set
28 forth herein.

1 155. At all times relevant herein, Defendants were required to provide Plaintiffs
2 and Class Members with meal periods that comply with the California *Labor Code* and
3 applicable regulations and the Wage Order, including California *Labor Code* §§ 226.7
4 and 512.

5 156. Consistent with Defendants' corporate policy, practice and pattern,
6 Defendants regularly failed to provide, and in fact denied, Plaintiff's and Class
7 Members' statutorily compliant meal periods.

8 157. Consistent with Defendants' policy, practice and pattern, Defendants
9 regularly failed to provide any breaks to Independent Sales Representatives, allow
10 Plaintiffs and Class Members to take or timely take uninterrupted, duty-free meal
11 periods. As a pattern and practice, Defendants regularly failed to accurately record meal
12 periods.

13 158. Plaintiffs are informed and believe and based thereon alleges that
14 Defendants willfully failed to pay Plaintiffs and Class Members proper meal period
15 premium wages for all non-compliant or missed meal periods. Plaintiffs are informed
16 and believe and based thereon alleges that Defendants' willful failure to provide all such
17 meal period wages due and owing to Class Members upon separation from employment
18 results in a continued payment of wages up to thirty (30) days from the time the wages
19 were due. Therefore, Class Members are entitled to compensation pursuant to
20 California *Labor Code* § 203.

21 159. Such a pattern, practice and uniform administration of unlawful corporate
22 policy regarding employee compensation as described herein creates an entitlement to
23 recovery by Plaintiffs and Class Members for damages and wages owed, and for
24 penalties, interest, costs and attorney's fees.

25 160. Accordingly, Plaintiffs and all members of the Class are entitled to one (1)
26 hour of compensation at their regular hourly rate for each workday that the proper meal
27 periods were not provided and one (1) hour of compensation at their regular hourly rate
28

1 for each workday that the proper meal periods were not provided in penalty wages
2 pursuant to California *Labor Code* § 226.7 and the Wage Order.

3 161. Plaintiffs and Class Members are further entitled to civil penalties under
4 California *Labor Code* § 558 as follows: For the initial violation, Fifty Dollars (\$50.00)
5 for each pay period for which the employee was underpaid, in addition to any amount
6 sufficient to recover underpaid wages; and, for each subsequent violation, One Hundred
7 Dollars (\$100.00) for each pay period for which the employee was underpaid, in
8 addition to any amount sufficient to recover underpaid wages.

9 **FIFTH CAUSE OF ACTION**

10 **Failure to Allow or Pay For Rest Periods**

11 **(California *Labor Code* §226.7)**

12 **-By Plaintiffs and Class Members Against All Defendants-**

13 162. Plaintiffs reallege and incorporate herein by reference each and every
14 allegation contained in the preceding paragraphs of this Complaint as though fully set
15 forth herein.

16 163. At all times relevant herein, Defendants were required to provide Plaintiffs
17 and Class Members with rest periods that comply with the California *Labor Code* and
18 applicable regulations and IWC wage order, including California *Labor Code* § 226.7.

19 164. Consistent with Defendants' corporate policy, practice and pattern,
20 Defendants regularly failed to provide, and in fact denied, Plaintiffs and Class Members
21 statutorily compliant rest periods.

22 165. Consistent with Defendants' corporate policy, practice and pattern,
23 Defendants failed to provide or allow Plaintiffs and Class Members to take or timely
24 take mandated rest periods due to their misclassification as independent contractors.

25 166. Plaintiffs are informed and believes and based thereon alleges that
26 Defendants willfully failed to pay Plaintiffs and Class Members proper rest period
27 premium wages for all non-compliant or missed rest periods. Plaintiffs are informed
28 and believes and based thereon alleges that Defendants' willful failure to provide all

1 such rest period wages due and owing upon separation from employment results in a
2 continued payment of wages up to thirty (30) days from the time the wages were due.
3 Therefore, members of the Class who have separated from employment are entitled to
4 compensation pursuant to California *Labor Code* § 203.

5 167. Such a pattern, practice and uniform administration of unlawful corporate
6 policy regarding employee compensation as described herein creates an entitlement to
7 recovery by Plaintiffs and Class Members for damages and wages owed, and for
8 penalties, interest, costs and attorney's fees.

9 168. Plaintiffs and all members of the Class were regularly scheduled as a
10 matter of uniform company policy to work, and in fact worked, without rest breaks in
11 violation of California *Labor Code* §§ 226.7 and 512 and the Wage Order, in that they
12 are not and were not permitted to take one (1) ten (10) minute rest break for every four
13 (4) hours worked.

14 169. Accordingly, Plaintiffs and all members of the Class are entitled to one (1)
15 hour of compensation at their regular hourly rate for each workday that the proper rest
16 periods were not provided and one (1) hour of compensation at their regular hourly rate
17 for each workday that the proper rest periods were not provided in penalty wages
18 pursuant to *California Labor Code* § 226.7 and the Wage Order.

19 170. Plaintiffs and Class Members are further entitled to civil penalties under
20 California *Labor Code* § 558 as follows: For the initial violation, Fifty Dollars (\$50.00)
21 for each pay period for which the employee was underpaid, in addition to any amount
22 sufficient to recover underpaid wages; and, for each subsequent violation, One Hundred
23 Dollars (\$100.00) for each pay period for which the employee was underpaid, in
24 addition to any amount sufficient to recover.

25 **SIXTH CAUSE OF ACTION**

26 **Waiting Time Penalties**

27 **(California *Labor Code* §§ 201-203)**

28 **-By Plaintiffs and California Sub-Class Members Against All Defendants-**

1 171. Plaintiffs reallege and incorporates herein by reference each and every
2 allegation contained in the preceding paragraphs of this Complaint as though fully set
3 forth herein.

4 172. At all times relevant herein, Defendants were required to pay their
5 employees all wages owed in a timely fashion during and at the end of their
6 employment, pursuant to California *Labor Code* §§ 201 through 203.

7 173. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and
8 Sub-Class Members their final wages pursuant to California *Labor Code* §§ 201 through
9 203, and accordingly owe waiting time penalties pursuant to California *Labor Code* §
10 203.

11 174. The conduct of Defendants and their agents and managerial employees as
12 described herein was willful, and in violation of the rights of Plaintiffs and the Sub-
13 Class Members.

14 175. Plaintiffs each allege that they were underpaid by several thousands of
15 dollars in wages, break premiums, and unreimbursed business expenses during their
16 time working for SCI, as detailed above. These wages, premiums and expenses were
17 never paid at the time of termination of employment. SCI has written policies and
18 procedures explicitly stating that Independent Sales Representatives are not entitled to
19 these benefits of employment, because it has chosen to intentionally classify them as
20 independent contractors. Plaintiffs allege that this policy and practice was informed
21 and was crafted with the assistance of counsel, and thus, that the failure to pay wages
22 to Plaintiffs and class members was intentional, willful and knowing.

23 176. Plaintiffs are informed and believe and based thereon alleges that
24 Defendants' willful failure to pay wages due and owing to Sub-Class Members upon
25 separation from employment results in a continued payment of wages up to thirty (30)
26 days from the time the wages were due. Therefore, Sub-Class Members are entitled to
27 compensation pursuant to California *Labor Code* § 203.

28 **SEVENTH CAUSE OF ACTION**

1 **Failure to Provide Accurate Itemized Wage Statements**

2 **(California *Labor Code* § 226(a))**

3 **-By Plaintiffs and Class Members Against All Defendants-**

4 177. Plaintiffs reallege and incorporates herein by reference each and every
5 allegation contained in the preceding paragraphs of this Complaint as though fully set
6 forth herein.

7 178. At all times relevant hereto, California *Labor Code* § 226(a) provides, and
8 provided, that every employer shall furnish each of its employees an accurate itemized
9 wage statement in writing showing nine (9) pieces of information, including: (1) gross
10 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
11 units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
12 (4) all deductions, provided that all deductions made on written orders of the employee
13 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
14 of the period for which the employee is paid, (7) the name of the employee and the last
15 four digits of his or her social security number or an employee identification number
16 other than a social security number, (8) the name and address of the legal entity that is
17 the employer, and (9) all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the employee.

19 179. Defendants failed and continue to fail in their affirmative obligation to
20 keep accurate payroll records reflecting the actual hours worked, and the amount of
21 compensation due to their California employees. Defendants, as a matter of policy and
22 practice, did not maintain accurate records in violation of California *Labor Code* § 226.

23 180. For example, as a matter of policy and practice, among the violations of
24 California *Labor Code* § 226, Defendants failed to keep accurate records reflecting total
25 number of hours worked, rates of pay, rates of overtime pay (as a result of Defendants'
26 failure to record proper overtime hours worked, and to properly calculate the overtime
27 rate of pay), and daily or weekly overtime pay. As a result, Defendants failed to provide
28

1 true and accurate wage statements to Plaintiffs and Class Members, as required by
2 California *Labor Code* § 226.

3 181. Defendant's pay stubs to Plaintiffs failed to itemize hours, specify an
4 hourly rate of pay, failed to specify any regular time hour worked or wages paid, failed
5 to specify any overtime hours worked or wages paid, failed to account for the number
6 of missed meal or rest breaks and failed to itemize any pay for missed meal or rest
7 breaks. These wage statements are facially not in compliance with Labor Code § 226,
8 in a manner that is not derivative of the other causes of action pled herein. These wage
9 statements are also inaccurate derivatively because of the fact that they fail to accurately
10 account for the legal pay owed to Plaintiffs and other Independent Sales
11 Representatives, as described throughout this complaint.

12 182. Such a pattern, practice and uniform administration of corporate policy as
13 described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the
14 Class Members in a civil action for all damages and/or penalties pursuant to California
15 *Labor Code* § 226, including interest thereon, penalties, reasonable attorney's fees, and
16 costs of suit according to the mandate of California *Labor Code* § 226, in amount
17 according to proof.

18 183. Class Members, including Plaintiffs, are entitled to recover from
19 Defendants the greater of their actual damages caused by Defendants' failure to comply
20 with California *Labor Code* § 226(a), or an aggregate penalty not exceeding Four
21 Thousand Dollars (\$4,000.00) per employee.

22 **EIGHTH CAUSE OF ACTION**

23 **Unfair Business Practices**

24 **(California *Business and Professions Code* §§ 17200, *et seq.*)**

25 **-By Plaintiffs and Class Members Against All Defendants-**

26 184. Defendants, and each of them, have engaged in unfair business practices
27 in California by practicing, employing and utilizing the employment practices outlined
28 above, including but not limited to, requiring Class Members to perform the labor

1 complained of herein without overtime compensation, regular compensation or
2 minimum wage for all hours worked, failing to provide meal and rest breaks, and failing
3 to provide itemized wage statements. Defendants' utilization of such unfair business
4 practices constitutes unfair competition and provides an unfair advantage over
5 Defendants' competitors.

6 185. Plaintiffs and the Class Members, and other similarly situated members of
7 the general public, seek full restitution and disgorgement of monies, as necessary and
8 according to proof, to restore any and all monies withheld, acquired and/or converted
9 by the Defendants by means of the unfair practices complained of herein. Plaintiffs
10 seek, on their own behalf and on behalf of the Class Members and general public, the
11 appointment of a receiver, as necessary. The acts complained of herein occurred, at
12 least in part, within the last four (4) years preceding the filing of the original complaint
13 in this action.

14 186. Plaintiffs are informed and believe and on that basis alleges that, at all
15 times herein mentioned, Defendants have engaged in unlawful, deceptive and unfair
16 business practices, as proscribed by California *Business and Professions Code* §§
17 17200, *et seq.*, as set forth above, thereby depriving Plaintiffs and Class Members the
18 minimum working condition standards and conditions due to them under the California
19 labor laws and the Wage Order as specifically described herein.

20 187. Plaintiffs, Class Members, and all persons similarly situated, are further
21 entitled to and do seek a declaration that the above-described business practices are
22 unfair, unlawful and/or fraudulent.

23 **NINTH CAUSE OF ACTION**

24 **Fair Labor Standards Act**

25 **(29 U.S.C. § 216(B))**

26 **-Brought by Plaintiffs and the FLSA Class-**

27 188. At all times material herein, Plaintiffs have been entitled to the rights,
28 protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

1 189. The FLSA regulates, among other things, the payment of overtime pay by
2 employers whose employees are engaged in interstate commerce, or engaged in the
3 production of goods for commerce or employed in an enterprise engaged in commerce
4 or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

5 190. Defendants are subject to the overtime pay requirements of the FLSA
6 because it is an enterprise engaged in interstate commerce and its employees are engaged
7 in commerce.

8 191. Defendants violated the FLSA by failing to pay and properly calculate
9 overtime. In the course of perpetrating these unlawful practices, Defendants have also
10 willfully failed to keep accurate records of all hours worked by its employees.
11 Defendants failed to compensate Plaintiffs and the FLSA Class at a rate of not less than
12 one and one-half times the regular rate of pay for work performed in excess of forty
13 hours in a work week, and therefore, Defendants have violated, and continue to violate,
14 the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. § 207(a)(1).

15 192. Section 13 of the FLSA, codified at 29 U.S.C. § 213, exempts certain
16 categories of employees from overtime pay obligations. None of the FLSA exemptions
17 apply to Plaintiffs and the FLSA Class.

18 193. Plaintiffs and the FLSA Class are victims of a uniform and company-wide
19 compensation policy. Upon information and belief, Defendants are applying this
20 uniform policy of illegally reducing or modifying recorded hours, including overtime to
21 all Independent Sales Representatives employed nationwide during the last three years.
22 Additionally, Defendants are applying their uniform policy of: refusing to allow
23 Plaintiffs and the FLSA Class to properly record all hours worked, including hours
24 worked in excess of forty per work week; requiring them to work during uncompensated
25 break and failing to pay overtime on bonus pay.

26 194. Plaintiffs and the FLSA Class are entitled to damages equal to the
27 mandated overtime premium pay within the three years preceding the filing of this
28

1 Complaint, plus periods of equitable tolling, because Defendants acted willfully and
2 knew, or showed reckless disregard of whether, its conduct was prohibited by the FLSA.

3 195. Defendants have acted neither in good faith nor with reasonable grounds
4 to believe that its actions and omissions were not a violation of the FLSA, and as a result
5 thereof, Plaintiffs and the FLSA Class are entitled to recover an award of liquidated
6 damages in an amount equal to the amount of unpaid overtime pay described pursuant
7 to Section 16(b) of the FLSA, codified at 29 U.S.C. § 216(b). Alternatively, should the
8 Court find Defendants did act with good faith and reasonable grounds in failing to pay
9 overtime pay, Plaintiffs and the FLSA Class members are entitled to an award of pre-
10 judgment interest at the applicable legal rate.

11 196. As a result of the aforesaid willful violations of the FLSA's overtime pay
12 provisions, overtime compensation has been unlawfully withheld by Defendants from
13 Plaintiffs and the FLSA Class. Accordingly, Defendants are liable for compensatory
14 damages pursuant to 29 U.S.C. § 216(b), together with an additional amount as
15 liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys'
16 fees, costs of this action, and such other legal and equitable relief as the Court deems
17 just and proper. WHEREFORE, Plaintiff and the FLSA Class, pray for relief as follows:

- 18 a. Designation of this action as a collective action on behalf of the proposed
19 FLSA Class and promptly issue notice pursuant to 29 U.S.C. § 216(b) to
20 all members of the FLSA Class members opt-in class apprising them of the
21 pendency of this action and permitting them to assert timely FLSA claims
22 in this action by filing individual consents to join pursuant to 29 U.S.C. §
23 216(b);
- 24 b. A declaration that Defendants are financially responsible for notifying all
25 FLSA Class Members of its alleged wage and hour violations;
- 26 c. Designation of the Law Offices of Todd M. Friedman as the attorneys
27 representing the putative collective action Plaintiffs;

- d. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, 29 U.S.C. § 201, *et seq.*;
- e. An award of damages for overtime compensation due to Plaintiffs and the FLSA Class, including liquidated damages, to be paid by Defendants;
- f. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- g. Pre-Judgment and post-Judgment interest, as provided by law; and
- h. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

TENTH CAUSE OF ACTION

**Failure to Reimburse Business Expenses
(California Labor Code § 2800, and 2802)**

-By Plaintiffs and Class Members Against All Defendants-

197. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

198. While acting on the direct instruction of Defendants and discharging their duties for them, Plaintiffs and putative Class members incurred work-related expenses.

199. Such expenses include but are not limited to the costs associated with travel, including fuel, maintenance, vehicle depreciation, and others, as well as the cost of maintaining a personal cell phone, a computer with an internet connection, business cards, door hangers, and other items which could be purchased by Independent Sales Representatives from Defendants through its online storefront, or elsewhere, for purposes of using for Defendants' business. Plaintiffs necessarily incurred these substantial expenses and losses as a direct result of performing their job duties for Defendants.

200. Defendants have failed to indemnify or in any manner reimburse Plaintiffs for these expenditures and losses. By requiring Plaintiffs to pay expenses and cover

1 losses that they incurred in direct consequence of the discharge of their duties for
2 Defendants and/or in obedience to Defendants' direction, Defendants have violated Cal.
3 Labor Code § 2802. Beyond merely failing to reimburse Plaintiffs and Class Members,
4 Defendants actually charged Class Members for such items as business cards and door
5 hangers, which were advertising materials that were used by Class Members to sell
6 Defendants' products and services.

7 201. As a direct and proximate result of Defendants' conduct, Plaintiffs have
8 suffered substantial losses according to proof, as well as pre-judgment interest, costs,
9 and attorney fees for the prosecution of this action.

10 202. The conduct of Defendants and their agents and managerial employees as
11 described herein was willful, and in violation of the rights of Plaintiffs and the Class
12 Members.

13 **TENTH CAUSE OF ACTION**

14 **Remedies under California Private Attorney General Act**
15 **(California Labor Code §§ 2698, et seq.)**
16 **-Brought by Plaintiffs and the Class-**

17 203. Plaintiffs incorporates all preceding paragraphs as though fully set forth
18 herein.

19 204. Under Labor Code § 2699, any employee aggrieved by an employer's
20 violation of the Labor Code has the right to file an action on behalf of all aggrieved
21 employees for the penalties established by § 2699 and/or other Labor Code sections.

22 205. The aforementioned wrongful acts and omissions of Defendants were
23 violations of the Labor Code, as set forth herein. Plaintiffs were each an employee that
24 has been aggrieved by Defendants' violations of the aforementioned Labor Code
25 provisions.

26 206. During the applicable limitations period, Defendants have violated Labor
27 Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 1194, 1197, 1198, 2802, and Sections
28 3, 4, 11, and 12 of the Wage Order.

1 207. In addition to the aforementioned wrongful acts pled herein, Plaintiffs also
2 allege that Defendant has violated Labor Code § 226.8, by intentionally and willfully
3 misclassifying Plaintiffs and other Independent Sales Representatives, and seek
4 penalties for this violation of the Labor Code pursuant to § 2699. Plaintiffs do not seek
5 a private right of action under § 226.8, and merely incorporate this alleged violating as
6 one of the bases for their claim under the Private Attorney General’s Act.

7 208. Defendants have been engaging in a pattern and practice of misclassifying
8 employees as independent contractors for their own financial benefit.

9 209. As a direct and proximate result of the unlawful acts and/or omissions of
10 Defendants, Plaintiffs and Class Members are entitled to recover damages in an amount
11 to be determined at trial, civil penalties, plus interest thereon, and attorneys’ fees, and
12 costs of suit pursuant to Labor Code § 226.8.

13 210. Defendants have engaged in or are engaging in a pattern or practice of
14 misclassifying the Independent Sales Representatives, and Plaintiffs seek recovery for
15 civil penalties of not less than ten thousand dollars (\$10,000) and not more than twenty-
16 five thousand dollars (\$25,000) for each violation, in addition to any other penalties or
17 fines permitted by law.

18 211. Plaintiffs, as employees against whom Defendants have committed one or
19 more alleged violations of the Labor Code during the applicable limitations period are
20 each an “aggrieved employee” within the meaning of Labor Code § 2699(c).

21 212. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiffs, on behalf of
22 themselves and other aggrieved employees, seeks the following civil penalties for
23 Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 226.8, 510,
24 1197, 1198, 2802, and Sections 3, 4, 11, 12 of the Wage Order:

- 25 A. For violations of Labor Code §§ 201, 202, 203, 226.7, 226.8, and 2802,
26 \$100 for each employee per pay period for each initial violation and \$200
27 for each employee per pay period for each subsequent violation (penalties
28 set by Labor Code § 2699(f)(2));

- 1 B. For violations of Labor Code § 204, \$100 for each employee for each initial
2 violation, and \$200 for each employee, plus 25% of the amount unlawfully
3 withheld from each employee, for each subsequent violation (penalties set
4 by Labor Code § 210);
- 5 C. For violations of Labor Code § 226(a), if this action is deemed to be an
6 initial citation, \$250 for each employee for each violation; alternatively, if
7 an initial citation or its equivalent occurred before the filing of this action,
8 \$1,000 for each employee for each violation (penalties set by Labor Code
9 § 226.3);
- 10 D. For violations of Labor Code §§ 512 and 1198, and Sections 3, 11, and 12
11 of the Wage Order, \$50 for each employee for each initial pay period for
12 which the employee was underpaid in addition to an amount sufficient to
13 recover underpaid wages, and \$100 for each employee for each subsequent
14 pay period for which the employee was underpaid, in addition to an amount
15 sufficient to recover underpaid wages (penalties set by Labor Code § 558);
- 16 E. For violations of Labor Code § 1197 and Section 3 of the Wage Order, \$100
17 for each employee for each initial and intentional violation in addition to
18 an amount sufficient to recover underpaid wages, and \$250 for each
19 subsequent violation in addition to an amount sufficient to recover
20 underpaid wages, regardless of whether or not the initial violation was
21 intentionally committed (penalties set by Labor Code § 1197.1); and
- 22 F. For violations of Labor Code § 226.8, civil penalties of not less than ten
23 thousand dollars (\$10,000) and not more than twenty-five thousand dollars
24 (\$25,000) for each violation.

25 213. Plaintiffs have complied with the procedures for bringing suit set forth in
26 Labor Code § 2699.3. By letter mailed June 7, 2017 and May 18, 2018, Plaintiffs filed
27 claims online with the Labor and Workforce Development Agency (“LWDA”) and gave
28 written notice via certified mail to Defendants of the specific provisions of the Labor

1 Code that they alleged to have been violated, including the facts and theories to support
2 the alleged violations. Plaintiffs have not received a letter from the LWDA informing
3 Plaintiffs that it intends to investigate the violations of the Labor Codes they alleged.

4 214. Pursuant to Labor Code § 2699(g)(1), Plaintiffs seek awards of reasonable
5 costs and attorneys' fees in connection with her claims for civil penalties.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for judgment for themselves and all others on
8 whose behalf this suit is brought against Defendants, jointly and severally, as follows:

- 9 a) That the Court determine that this action may be maintained as a class action
10 under Fed. R. Civ. P. 23;
- 11 b) That the Plaintiffs be appointed as the representatives of the Classes;
- 12 c) That counsel for Plaintiffs be appointed as Classes Counsel;
- 13 d) That the Court find that Defendants have been in violation of applicable
14 provisions of the California Labor Code by failing to pay each member of the
15 proposed Classes for all hours worked, including minimum wage;
- 16 e) That the Court find that Defendants have been in violation of applicable
17 provisions of the California Labor Code §§510, 1194 et seq., and IWC Wage
18 Order by failing to pay overtime wages to Plaintiff and members of the Class;
- 19 f) That the Court find that Defendants have been in violation of California Labor
20 Code §§226.7 and 512 by failing to provide Plaintiffs and members of the Class
21 with meal periods and therefore owe compensation under California Labor Code
22 §226.7(b);
- 23 g) That the Court find that Defendants have been in violation of California Labor
24 Code §§226.7 by failing to authorize and permit rest periods for Plaintiff and
25 members of the Class, and therefore owe compensation under California Labor
26 Code §226.7(b);
- 27
28

1 h) That the Court find that Defendants have been in violation of California Labor
2 Code § 2802, by failing to reimburse the Plaintiffs and the Class reasonable
3 business expenses and losses;

4 i) That the Court find that Defendants have violated the recordkeeping provisions
5 of California Labor Code §§ 1174 and 1174.5 as to Plaintiffs and the Class;

6 j) That the Court find that Defendants have been in violation of California Labor
7 Code § 226 by failing to timely furnish Plaintiffs and members of the Class with
8 itemized statements accurately showing the total hours worked, vacation benefits,
9 bonus benefits, and wages earned by each of them during each pay period;

10 l) That the Court find that Defendants have been in violation of California Labor
11 Code §§201 and 202 and therefore owe waiting time penalties under California
12 Labor Code §203 for willful failure to pay all compensation owed at the time of
13 termination of employment to Plaintiff and other formerly employed members of
14 the Class;

15 m) That the Court find that Defendants have been in violation of California Labor
16 Code §226.8 and therefore owe civil penalties under California Labor Code
17 §226.8 and all damages proximately caused by Defendants' wrongful conduct of
18 engaging in a pattern or practice of willfully misclassifying Call Service
19 Representative as independent contractors;

20 n) That the Court find that Defendants have committed unfair and unlawful
21 business practices, in violation of California Business and Professions Code
22 §17200, et seq., by their violations of the Labor Code and Wage Orders as
23 described above;

24 o) That the Court find that Defendants' violations of the California Labor Code
25 described herein have been willful;

26 q) That the Court award to Plaintiffs and the proposed Classes Members
27 restitution for the amounts of unpaid wages, including interest thereon, liquidated
28 damages and/or statutory penalties for failure to timely furnish accurate itemized

1 wage statements, and waiting time and other statutory penalties in amounts
2 subject to proof at trial;

3 r) That Defendants be ordered and enjoined to pay restitution and penalties to
4 Plaintiffs and the proposed Classes Members due to Defendants' unlawful and/or
5 unfair activities, pursuant to Business and Professions Code §§17200-17205;

6 s) That Defendants further be enjoined to cease and desist from unlawful and/or
7 unfair activities in violation of Business and Professions Code §17200, pursuant
8 to §17203;

9 t) That Plaintiffs and the Class be awarded reasonable attorneys' fees and costs
10 pursuant to Labor Code §§ 203, 225.5, 226, 1194, 1197, and 2804, Code of Civil
11 Procedure § 1021.5, and/or other applicable law;

12 u) That the Court award any other relief this Court deems just, equitable, and
13 proper; and

14 v) That these Defendants be ordered to refrain from retaliating against any Class
15 Members who are current employees.

16 w) Any and all other applicable statutory penalties, as provided by law; and

17 x) Any other and further relief the Court deems just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff requests a trial by jury on all applicable claims.

20
21 Dated: December 21, 2018

22 By: /s/ Todd M. Friedman
23 Law Offices of Todd M. Friedman, P.C.
24 Todd M. Friedman, Esq.
25 Adrian R. Bacon, Esq.

1 Filed electronically on this 21st Day of December, 2018, with:

2 United States District Court CM/ECF system.

3 Notification sent electronically on this 21st Day of December, 2018, to:

4 Honorable Otis D. Wright II

5 United States District Court

6 Central District of California

7 And All Counsel of Record as Recorded On The Electronic Service List

8
9 /s/ Todd M. Friedman, Esq.

10 TODD M. FRIEDMAN

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