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KALVYN ESCOBAR

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

KALVYN ESCOBAR, individually and on  
behalf of all current and former similarly situated  
employees in the State of California,

Plaintiff,

v.

PRIME FINANCE CONSULTING, INC., a  
California Corporation; HANIEH JODAT, an  
individual; SHAHIN JOUDAT, an individual,  
and DOES 1 to 50, inclusive,

Defendants.

) CASE NO.: 30-2020-01134584-CU-OE-CXC

) ASSIGNED FOR ALL PURPOSES TO:

) HON. RANDALL J. SHERMAN

) **FIRST AMENDED CLASS AND**

) **REPRESENTATIVE ACTION**

) **COMPLAINT:**

- ) **1. MISCLASSIFICATION AS**  
) **INDEPENDENT CONTRACTOR**  
) **(VIOLATION OF CALIFORNIA**  
) **LABOR CODE §§ 2750.3, 226.8);**  
) **2. FAILURE TO PAY ALL WAGES**  
) **(VIOLATION OF CALIFORNIA**  
) **LABOR CODE §§ 510, 1194, 1198;**  
) **IWC WAGE ORDER NO.4);**  
) **3. FAILURE TO PROVIDE MEAL**  
) **PERIODS OR COMPENSATION**  
) **IN LIEU THEREOF (VIOLATION**  
) **OF IWC WAGE ORDER 4-2001,**  
) **CAL. LAB. CODE §§ 226.7, 512);**  
) **4. FAILURE TO AUTHORIZE AND**  
) **PERMIT REST BREAKS**  
) **(VIOLATION OF IWC WAGE**  
) **ORDER 4-2001, CAL. LAB. CODE**  
) **§ 226.7);**  
) **5. FAILURE TO INDEMNIFY FOR**  
) **EXPENDITURES INCURRED IN**  
) **DISCHARGE OF DUTIES (CAL.**  
) **LAB. CODE §§ 450, 2802, 2804);**

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- ) 6. UNLAWFUL COLLECTION OR RECEIPT OF WAGES DUE (VIOLATION OF CALIFORNIA LABOR CODE §§ 221, 224, 225);
- ) 7. FAILURE TO PROVIDE PAID SICK DAYS (VIOLATION OF CALIFORNIA LABOR CODE §§ 245.5 -249);
- ) 8. FAILURE TO MAINTAIN RECORDS IN VIOLATION OF (VIOLATION OF CALIFORNIA LABOR CODE §§ 558, 1174, 1174.5, 274.5(a));
- ) 9. WAITING TIME PENALTIES (VIOLATION OF CALIFORNIA LABOR CODE §§ 201, 202, 203);
- ) 10. FAILURE TO PAY MINIMUM WAGE (VIOLATION OF CALIFORNIA LABOR CODE §§ 1197, 1194, 1194.2, 1197.1);
- ) 11. ILLEGAL TERMS OF EMPLOYMENT (VIOLATION OF CALIFORNIA LABOR CODE §432.5);
- ) 12. FAILURE TO COMPLY WITH WAGE THEFT PREVENTION ACT (VIOLATION OF CALIFORNIA LABOR CODE § 2810.5);
- ) 13. FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS (VIOLATION OF CALIFORNIA LABOR CODE § 226(a));
- ) 14. CONVERSION;
- ) 15. VIOLATION OF BUSINESS & PROFESSIONS CODE §17200;
- ) 16. INJUNCTIVE RELIEF
- ) 17. PENALTIES UNDER CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LABOR CODE § 2699, *et seq.*)
- ) DEMAND FOR JURY TRIAL
- )

**COMES NOW** Plaintiff KALVYN ESCOBAR, (hereinafter “PLAINTIFF” or “ESCOBAR”) on behalf of himself and all other similarly situated individuals (hereinafter “CLASS”), and on behalf of the general public, and alleges as follows:

## INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of PLAINTIFF and all individuals who currently work or formerly worked for Defendants PRIME FINANCE CONSULTING, INC. (“PFC”); SHAHIN JOUDAT (“JODAT”); HANIEH JODAT (“JODAT”) and DOES 1 to 50, inclusive (collectively referred to as “DEFENDANTS”) who were knowingly and intentionally misclassified as independent contractors within the State of California.

2. DEFENDANTS had a consistent policy of misclassifying their employees as independent contractors, instead of employees, in order to gain an unfair workforce advantage. DEFENDANTS knew or should have known that such classifications clearly violate the Labor Code and IWC Wage Orders and run afoul of public policy. By misclassifying employees as independent contractors, DEFENDANTS failed to pay them wages earned during the course of their employment and upon separation of employment, failed to provide them with meal and rest periods or compensation in lieu thereof, failed to reimburse their business expenses, failed to issue them accurate itemized wages statements, failed to comply with Cal. Lab. Code § 2751 because DEFENDANTS failed to memorialize their commission agreements in writing, explaining the methods by which commissions will be computed and paid, failed to provide them with signed copies of the applicable commission contracts, failed to obtain a signed receipt for the contracts from each employee, failed to comply with Cal. Lab. Code § 2810.5, and failed to comply with Lab. Code § 2802.

## THE PARTIES

### A. Plaintiff

3. Plaintiff KALVYN ESCOBAR is an individual residing in Lake Forest, County of Orange, California.

1       4.       PLAINTIFF is a former employee of DEFENDANTS who began his employment with  
2 DEFENDANTS from approximately October, 2019 until February 10, 2020. ESCOBAR held the  
3 position of a Student Loan Advisor with DEFENDANTS.

4       5.       PLAINTIFF on behalf of himself and the CLASS brings this Class Action to recover,  
5 statutorily mandated employee benefits, among other things, unpaid wages for all hours worked,  
6 including minimum and overtime wages, commissions, premiums for missed meal and rest break  
7 periods, indemnification of business expenses, injunctive relief, declaratory relief, penalties for  
8 failure to comply with various California Labor Code sections and the Industrial Welfare  
9 Commission Wage Order 4-2001, (“IWO Wage Order 4”), out of pocket expenses (including payroll  
10 taxes) that should have been paid by DEFENDANTS, interest, restitution, attorneys’ fees, and costs,  
11 and any other appropriate relief for DEFENDANTS’ systematic pattern of violations of California  
12 law which contributed to PFC’s deliberate unfair competition in direct violation of Bus. & Prof. Code  
13 § 17200.

14       **A. Defendants**

15       6.       At all relevant times alleged herein, PLAINTIFF and the CLASS are informed and  
16 believe, and based thereon allege that Defendant PRIME FINANCE CONSULTING, INC, dba,  
17 Financial Amnesty (hereinafter, “PFC”) is a corporation duly organized and existing under the laws  
18 of the State of California, with its principle place of business located at located at 2575 MCCABE  
19 WAY #220, Irvine, CA 92614.

20       7.       At all relevant times alleged herein, PLAINTIFF and the CLASS are informed and  
21 believe, and based thereon allege that Defendant SHAHIN JOUDAT(“JOU DAT”), is an individual,  
22 and at all times material hereto, was a resident of the State of California, County of Orange.  
23 PLAINTIFF and the CLASS are informed and believe, and thereon allege, that Defendant JOUDAT  
24 is the owner and Chief Executive Officer (“CEO”) of PFC who directly oversees and controls PFC’s  
25 operation in California and who managed the PLAINTIFF and continues to manage and the CLASS  
26 members in the state of California and exercises significant control over their overall working  
27 conditions.  
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1           8.       PLAINTIFF and the CLASS are informed and believe, and based thereon allege, that  
2 JODAT permitted, authorized, approved, and ratified the wrongful acts and practices against the  
3 PLAINTIFF and the CLASS.

4           9.       JODAT, as the owner and CEO, had the authority to hire and terminate the  
5 PLAINTIFF and the other members of the CLASS; to set work rules and conditions governing  
6 PLAINTIFF and the CLASS members' employment; and to supervise their daily employment  
7 activities, including but not limited to the payment of their wages and commissions.

8           10.      At all relevant times alleged herein, PLAINTIFF and the CLASS are informed and  
9 believe, and based thereon allege that Defendant HANIEH JODAT ("JODAT"), is an individual,  
10 and at all times material hereto, was a resident of the State of California, County of Orange.  
11 PLAINTIFF and the CLASS are informed and believe, and thereon allege, that Defendant JODAT  
12 is the owner, Chief Financial Officer ("CFO"), and Director of PFC who directly oversees and  
13 controls PFC's operation in California and who managed the PLAINTIFF and continues to manage  
14 the CLASS members in the state of California and exercises significant control over their overall  
15 working conditions.

16           11.      PLAINTIFF and the CLASS are informed and believe, and based thereon allege, that  
17 JODAT permitted, authorized, approved, and ratified the wrongful acts and practices against the  
18 PLAINTIFF and the CLASS.

19           12.      JODAT, as the owner, Director, and CFO, had the authority to hire and terminate the  
20 PLAINTIFF and the other members of the CLASS; to set work rules and conditions governing  
21 PLAINTIFF and the CLASS members' employment; and to supervise their daily employment  
22 activities, including but not limited to the payment of their wages and commissions.

23           13.      PLAINTIFF and the CLASS are unaware of the true names and capacities, whether  
24 individual, corporate, associate, or otherwise of the DEFENDANTS sued herein as DOES 1 through  
25 50, inclusive, and for that reason PLAINTIFF sues said DEFENDANTS by such fictitious names  
26 pursuant to § 474 of the California Code of Civil Procedure. PLAINTIFF will file and serve an  
27 amendment to this Cross-Complaint alleging the true names and capacities of these fictitiously  
28 named DEFENDANTS when PLAINTIFF knows such true names and capacities. PLAINTIFF and

1 the CLASS are informed and believe, and based thereon allege, that each of the DOE  
2 DEFENDANTS are in some manner liable to PLAINTIFF and the CLASS for the events and actions  
3 alleged herein. PFC, JOUDAT, JODAT, and DOES 1 through 50, inclusive, are referred to  
4 collectively herein as “DEFENDANTS”.

5 14. PLAINTIFF and the CLASS are informed and believe, and based thereon allege that  
6 at all times herein mentioned, each of the DEFENDANTS, whether named or fictitious, exercised  
7 sufficient authority over the terms and conditions of PLAINTIFF and the CLASS’ employment for  
8 them to be liable as the “employer” and/or “person” for the claims asserted in this Complaint,  
9 including but not limited to, under Labor Code § 558.1 and §18, who violated or caused to be  
10 violated California Labor Code or any provision regulating hours and days of work in any order of  
11 the Industrial Welfare Commissions, as such are subject to penalties for each underpaid employee,  
12 which includes an amount equal to the underpaid wages, which shall be paid to each affected  
13 employee, as set forth in Labor Code § 558.

14 15. DEFENDANTS, including but not limited to JOUDAT and JODAT’s conduct forms  
15 significant basis for the PLAINTIFF’S claims alleged herein. JOUDAT and JODAT are sued  
16 individually pursuant to Cal. Labor Code § 558, and 588.1 which defines “employer or other person  
17 acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or  
18 managing agent of the employer.” Each JOUDAT and JODAT in performing their duties, knew  
19 that their actions were unlawful and intentionally acted anyway in denying PLAINTIFF and the  
20 CLASS their rights under California law.

21 16. JOUDAT and JODAT each violated or caused the violations alleged herein because  
22 each created, implemented, directed and/or enforced PFC’s employment practices and policies,  
23 including but not limited to, misclassifying employees as independent contractors, meal and rest  
24 period polices, overtime policies, and failure to reimburse for necessary business expenses.

25 17. JOUDAT and JODAT each created, set and/or implemented PFC’s policies, practices,  
26 and procedures regarding misclassifying employees as independent contractors, payment of wages  
27 and commissions, overtime wages, and meal and rest period premiums that resulted in the failure to  
28 pay PLAINTIFF and the CLASS proper wages for all hours worked.

1           18.       JOUDAT and JODAT each exercised day-to-day control over PLAINTIFF and the  
2 CLASS' employment, controlled and authorized payroll transactions, and supervised PFC's current  
3 and former employees.

4           19.       PLAINTIFF and the CLASS are informed and believe, and based thereon allege that  
5 at all times relevant herein, each of the DEFENDANTS, whether named or fictitious, was an  
6 employer, was the principle, agent, co-conspirator, partner, joint venturer, officer, director,  
7 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or  
8 predecessor in interest of each of the other DEFENDANTS named herein, and, in doing the acts and  
9 in carrying out the wrongful conduct alleged herein, was engaged with some or all of the other  
10 DEFENDANTS in a joint enterprise for profit, and bore such other relationships to some or all of  
11 the other DEFENDANTS so as to be liable for their conduct with respect to the matters alleged in  
12 this CROSS-COMPLAINT.

13          20.       At all times mentioned herein, PLAINTIFF and the CLASS are further informed and  
14 believe and thereon allege that each and every of the acts and omissions alleged herein were  
15 performed by, and/or attributable to each of the DEFENDANTS, whether named or fictitious, each  
16 acting as agents and/or employees, and/or under the directions and control of each of the other  
17 DEFENDANTS and acting pursuant to and within the course and scope of the relationships alleged  
18 above, and that all relevant times, each of the DEFENDANTS knew or should have known about,  
19 authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other  
20 DEFENDANTS.

21          21.       PLAINTIFF and the CLASS are informed and believe and thereupon allege that  
22 DEFENDANTS, and each of them, exercised sufficient degree of control over PLAINTIFF and the  
23 CLASS to render each of the DEFENDANTS the employer or joint employers of PLAINTIFF and  
24 the CLASS. Throughout PLAINTIFF's employment the DEFENDANTS assigned work to  
25 PLAINTIFF and the CLASS, and directed each in the performance thereof, to which end  
26 PLAINTIFF and the CLASS were required to report to each of the DEFENDANTS on a regular  
27 basis and did so report. DEFENDANTS each had the authority to control the terms and condition  
28 of PLAINTIFF's employment; set work rules and conditions governing PLAINTIFF's employment;

1 and to supervise his daily employment activities. As result of sufficient authority and exercise of  
2 control over the terms and conditions of PLAINTIFF and the CLASS' employment,  
3 DEFENDANTS, and each of them, are joint employers of PLAINTIFF and the CLASS, and each  
4 of them, is jointly and severally liable to PLAINTIFF and the CLASS for the damages alleged  
5 herein.

6 22. As a direct and proximate result of the unlawful actions of DEFENDANTS,  
7 PLAINTIFF and the CLASS have suffered and continue to suffer from loss of earnings in amounts  
8 as yet unascertained, but subject to proof at trial and within the jurisdiction of this Court.

9 23. At all relevant times herein, PLAINTIFF and the CLASS were employed by  
10 DEFENDANTS under employment agreements, including commissions agreement, that were oral,  
11 and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each  
12 of them, acted pursuant to and in furtherance of their policies and practices of not paying PLAINTIFF  
13 for all hours worked, including minimum and overtime wages; failing to properly classify workers  
14 as employees entitling to statutory mandated benefits; failing to pay payroll taxes; failing to provide  
15 compliant meal periods; failing to authorize and permit rest periods; failing to provide accurate  
16 itemized wage statements; failure to timely pay wages due upon termination of employment; failing  
17 to reimburse and indemnify PLAINTIFF and the CLASS for expenditures in discharge of their  
18 duties; failing to properly maintain records; failing to provide paid sick leave; and requiring  
19 employees and applicants to agree to illegal employment terms and conditions of employment. By  
20 doing the unlawful acts alleged herein, DEFENDANTS decreased their employment-related costs  
21 and obtained unfair advantage over their law-abiding competitors; therefore, engaged in unfair  
22 competition.

23 24. PLAINTIFF brings this lawsuit seeking injunction, declaratory relief, restitution, and  
24 monetary relief against DEFENDANTS on behalf of himself and all other current and former  
25 employees of DEFENDANTS to recover, among other things, restitution, unpaid wages, interest,  
26 penalties, liquidated damages, attorney's fees and costs pursuant to California Labor Code 201, 202,  
27 203, 226, 226.3, 226.7, 432.5, 510, 512, 558, 558.1, 1194, 1198, and 2802, 2751, 2810.5 and the  
28 Business and Professions Code §§ 16600, 17200 *et seq.*

1 **JURISDICTION**

2 25. This Court has jurisdiction over this action pursuant to the California Constitution,  
3 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”  
4 except those given by statute to other courts. The statutes under which this action is brought do not  
5 specify any other basis for jurisdiction.

6 26. Venue is proper in this Court because, upon information and belief, DEFENDANTS  
7 maintain offices, have agents, and/or transact business in the State of California, county of Orange.  
8 DEFENDANTS’ illegal policies and practices which are the subject of this action were also applied  
9 in the State of California, County of Orange, and because records relevant and related to this action  
10 are maintained in this county. PFC’s main place of business is in this judicial district.

11 **FACTUAL BACKGROUND**

12 27. PLAINTIFF makes the allegations in this Complaint without any admission to any  
13 particular allegation. PLAINTIFF bears the burden of pleading, proving, or persuading and  
14 PLAINTIFF reserves all of complainant’s rights to plead the alternative.

15 28. As part of their compensation, PLAINTIFF and the CLASS received commissions,  
16 as the term is defined under Cal. Lab. Code § 204.1, for the work performed while employed with  
17 DEFENDANTS to sell DEFENDANTS’ services of document preparation. Commissions are  
18 25% of the amount or value of such services. However, despite the fact that California employers  
19 are required to memorialize all commission agreements in writing, explaining the methods by which  
20 commissions will be computed and paid, DEFENDANTS failed to do so. Additionally, Cal. Lab.  
21 Code § 2751 requires employers to provide each affected employee with a signed copy of the  
22 applicable commission contract and obtain a signed receipt of the contract from each employee.  
23 DEFENDANTS failed to do so in direct violation of Cal. Lab. Code § 2751.

24 29. DEFENDANTS’ failure to comply with the requirement of Cal. Lab. Code § 2751 is  
25 an unfair business practice under California law (Cal. Business and Professions Code, section 17200  
26 *et. seq.*), entitling PLAINTIFF to penalties under the Private Attorneys General Act<sup>1</sup> (Cal. Lab.  
27 Code § 2698 *et. seq.*), actual damages, and attorneys’ fees and costs.

28 <sup>1</sup> PLAINTIFF will amend this COMPLAINT to add such allegations after he exhausts the administrative notice requirements to Labor and Workforce Development Agency.

1           30. DEFENDANTS' held PLAINTIFF and the CLASS to a strict work schedule, set strict  
2 standards, policies, and procedures, which apply uniformly to the entire CLASS and that  
3 DEFENDANTS require and expect the CLASS to carefully follow. DEFENDANTS routinely  
4 monitor the details of the work of the CLASS to ensure strict adherence to DEFENDANTS'  
5 standards, policies, and procedures.

6           31. DEFENDANTS' policy and practice and unrealistic imposition of work schedules  
7 and work demands did not permit PLAINTIFF and the CLASS to take meal and rest breaks.  
8 PLAINTIFF and the CLASS were unable to complete their job requirements without working  
9 through meal and rest breaks and/or working before and after their scheduled shifts.

10           32. Additionally, PLAINTIFF and the CLASS' meal and rest breaks, if taken, were  
11 frequently interrupted by DEFENDANTS' practice of requiring PLAINTIFF and the CLASS to  
12 answer calls at all times in order to respond to calls from customers. PLAINTIFF and the CLASS  
13 were pressured and specifically instructed to meet their job requirement through DEFENDANTS'  
14 policy of disciplining and/or terminating those who did not meet the job requirements imposed by  
15 DEFENDANTS. For example, individuals that did not "meet a minimum of \$5000 bi-weekly"  
16 suffered a 5% commission loss (i.e. would only receive a 20% commission as opposed 25%.)

17           33. As a direct result of DEFENDANTS' work demands, policies, and procedures, and  
18 directives, PLAINTIFF and the CLASS did not have the ability to regularly take a daily meal break,  
19 much less a daily one-half hour uninterrupted meal period before the end of the 1st five (5) hour of  
20 work as is required by California law. PLAINTIFF and the CLASS also did not take any rest breaks  
21 throughout the workday.

22           34. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS  
23 routinely worked through their meal and rest breaks, and before and after their scheduled shifts  
24 without compensation.

25           35. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS were  
26 entitled to receive certain wages for overtime compensation, and that they were not receiving  
27 overtime compensation.

28           36. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS were  
entitled to receive minimum wages, and that they were not receiving said minimum wages.

1           37. DEFENDANTS failed to compensate PLAINTIFF and the CLASS premium pay for  
2 missed meal and rest break periods, equal to one additional hour of pay at PLAINTIFF and the  
3 CLASS' regular rate of pay when a meal and/or a rest period was missed.

4           38. DEFENDANTS' engage in a policy and practice of coercing and compelling  
5 PLAINTIFF and the CLASS to pay DEFENDANTS for desk space rental, supplies, marketing,  
6 computer, and other equipment expenses to carry out DEFENDANTS' business. DEFENDANTS  
7 unlawfully deduct said amounts from the PLAINTIFF and the CLASS' wages.

8           39. DEFENDANTS also engaged in a policy and practice of recouping from the  
9 PLAINTIFF and the CLASS the full amounts refunded to their clients by deducting said amounts  
10 from PLAINTIFF'S and the CLASS' wages in direct violation of California Labor Code § 221.

11           40. DEFENDANTS engage in a policy and practice of violating California Labor Code  
12 246(a) by failing to provide PLAINTIFF and the CLASS with paid sick days to accrue at a rate of  
13 not less than one hour per every 30 hours worked, or in the alternative comply with the requirements  
14 of section 246(b)(1) or 246(f).

15           41. PLAINTIFF is informed and believes, and thereon allege, that DEFENDANTS knew  
16 or should have known that DEFENDANTS were obligated to provide PLAINTIFF and the CLASS  
17 with paid sick leave benefits but failed to do so.

18           42. DEFENDANTS engage in a policy and practice of violating California Labor Code  
19 §§ 246(i) by failing to provide PLAINTIFF and the CLASS with written notices setting forth the  
20 amount of paid sick leave available, or PTO leave that DEFENDANTS provide in lieu of sick leave,  
21 for use either on each employees' itemized wage statements as described in Section 226 or in a  
22 separate writing provided on the designated pay date with each employees' payment of wages.

23           43. DEFENDANTS engage in a policy and practice of completely failing to issue  
24 itemized wage statements to PLAINTIFF and the CLASS in compliance with the statutory  
25 requirement of §226(a) which requires employers to maintain accurate records for each employee's  
26 hours of work and to provide each employee with an accurate wage statements in writing setting  
27 forth, among other things, the gross wages earned; total hours worked by the employee; net wages  
28 earned; all applicable hourly rates in effect during the pay period and the corresponding number of  
hours worked at each hourly rate by the employee, and all deductions made.

1           44. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS were  
2 entitled to receive itemized wage statements or separate written statements showing the amount of  
3 paid sick leave available, or paid time off provided in lieu of sick leave. In violation of the California  
4 Labor Code, DEFENDANTS failed to provide PLAINTIFF and the CLASS with itemized wage  
5 statements or separate written statements showing this information.

6           45. DEFENDANTS failed to maintain records documenting PLAINTIFF and the  
7 CLASS' accrued and used sick leave in violation of Labor Code § 247.5(a).

8           46. PLAINTIFF is informed and believes, and thereon alleges that DEFENDANTS  
9 engage in a policy and practice of failing to maintain payroll records, and records pertaining to  
10 current and former employees within the state in violation of Labor Code § 1174(d).

11           47. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew  
12 or should have known that they had a duty to maintain accurate and complete payroll records in this  
13 state in accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,  
14 and intentionally failed to do so.

15           **PLAINTIFF EXHAUSTED HIS ADMINISTRATIVE REMEDIES**

16           48. PLAINTIFF met all the jurisdictional requirements of proceeding with claims for civil  
17 penalties under the PAGA, codified at Labor Code, Section 2698 *et seq.* by timely giving written  
18 notice in the manner required by Labor Code §2699.3 at the time of filing. Specifically, on February  
19 28, 2020, PLAINTIFF exhausted his administrative remedies by notifying DEFENDANTS via  
20 certified U. S. Mail, by electronic mail to Labor and Workforce Development Agency ("LWDA")  
21 a true and correct copy is attached and incorporated by reference as Exhibit "1".

22           49. The notice filed with LWDA was accompanied by a filing fee of seventy-five dollars  
23 (\$75) pursuant to § 2699.3(c)(1)(B). A true and correct copy is attached hereto as Exhibit "2".

24           50. More than 65 days elapsed after PLAINTIFF's notification letter was sent to LWDA;  
25 however, PLAINTIFF's counsel received no notice from LAWD stating their intention to  
26 investigate or prosecute the claims.

27           51. Pursuant to Lab. Code § 2699.3(a)(2)(C), PLAINTIFF amends his existing Complaint  
28 "as a matter of right" to add a cause of action arising under PAGA within 60 days of the time periods  
specified.

1 **CLASS ACTION DESIGNATION**

2 52. PLAINTIFF brings this Complaint as a class action, on behalf of himself and all  
3 persons within the CLASS, pursuant to California Code of Civil Procedure §382, as the code  
4 authorizes “one or more may sue or defend for the benefit of all” “when the question is one of a  
5 common or general interest of many persons” and “its impracticable to bring them all before the  
6 court”; California Code of Civil Procedure §§ 428.10 - 428.30; and California Business and  
7 Professions Code § 17200 *et seq.* as follows:

8 **THE CLASS**

9 53. All current and former employees, who were employed by DEFENDANTS in the  
10 State of California for a period of time within the four (4) years preceding the filing of this action  
11 until the time of trial, “THE RELEVANT TIME PERIOD,” in the position of Student Loan  
12 Advisors, Student Loan Processor, or similar positions, who were subjected to DEFENDANTS’  
unlawful acts as stated herein.

13 54. PLAINTIFF reserves the right under Rule 3.765, California Rules of Court, to amend  
14 or modify the CLASS description with greater specificity or further division into subclasses or  
15 limitations to particular issues.

16 55. This action has been brought and may properly be maintained as a class action under  
17 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community  
18 of interest in the litigation and the proposed CLASS is easily ascertainable. This action is  
19 appropriately suited for a Class Action because:

20 56. **Ascertainable Class:** The CLASS is ascertainable in that its members may be  
21 identified and located using information contained in DEFENDANTS’ personnel records.

22 57. **Numerosity:** The potential members of the CLASS as defined are so numerous that  
23 joinder of all members of the CLASS is impracticable. While the precise size of the CLASS has  
24 not been ascertained at this time, PLAINTIFF is informed and believes, and based thereon alleges,  
25 that DEFENDANTS currently employee, and during THE RELEVANT TIME PERIOD employed,  
approximately 35 persons in the State of California who fall within the CLASS definition.

26 58. Accounting for employees’ turnover during THE RELEVANT PERIOD necessarily  
27 increases this number. PLAINTIFF alleges that DEFENDANTS’ employment records would  
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1 provide information as to the number and location of members of the CLASS. Joinder of members  
2 of the CLASS is not practicable.

3 59. **Common Questions of Fact or Law:** This action involves questions of law and fact  
4 common to the CLASS that predominate over questions affecting only individual class members.  
5 The common questions of law and fact focuses on DEFENDANTS' systematic course of illegal  
6 practices and policies, which were applied to the entire CLASS in violation of the California Labor  
7 Code, IWC Orders, the California Business and Professions Code, which prohibits unfair business  
8 practices arising from such violations. These common questions of law and fact include, without  
9 limitations:

- 10 a. Whether DEFENDANTS misclassified PLAINTIFF and the CLASS as independent  
11 contractors;
- 12 b. Whether DEFENDANTS required PLAINTIFF and the CLASS to work over eight  
13 (8) hours per day and/or over forty (40) hours per week and failed to pay for all hours  
14 worked;
- 15 c. Whether DEFENDANTS required PLAINTIFF and the CLASS to work over eight  
16 (8) hours per day and/or over forty (40) hours per week and failed to pay the legally  
17 required overtime compensation to PLAINTIFF and the CLASS;
- 18 d. Whether DEFENDANTS deprived PLAINTIFF and the CLASS of meal periods or  
19 required PLAINTIFF and the CLASS to work during meal periods without  
20 compensation;
- 21 e. Whether DEFENDANTS deprived PLAINTIFF and the CLASS of rest periods or  
22 required PLAINTIFF and the CLASS to work during rest periods without  
23 compensation;
- 24 f. Whether DEFENDANTS failed to reimburse PLAINTIFF and the CLASS for  
25 necessary business expenses incurred in the performance of their job duties, in  
26 violation of Labor Code §2802;
- 27 g. Whether DEFENDANTS' requirement that the PLAINTIFF and the CLASS to agree  
28 to pay DEFENDANTS for desk space, supplies, and marketing and other expenses to

1           carryout DEFENDANTS' business constitutes illegal terms and conditions of  
2           employment in violation of Labor Code § 432.5;

- 3           h. Whether DEFENDANTS failed to timely pay all wages due to PLAINTIFF and the  
4           CLASS during their employment;
- 5           i. Whether DEFENDANTS failed to issue accurately itemized wage statements to  
6           PLAINTIFF and the CLASS, in violation of Labor Code §§ 226(a);
- 7           j. Whether DEFENDANTS kept complete and accurate payroll records as required by  
8           California Labor Code, including, *inter alia*, section 1174(d);
- 9           k. Whether DEFENDANTS paid PLAINTIFF and the former CLASS members their  
10          final wages beyond the time frames set forth in Labor Code §§ 201-203;
- 11          l. Whether DEFENDANTS' conduct of misclassifying employees as independent  
12          contractor was voluntary and intentional;
- 13          m. Whether DEFENDANTS failed to properly record all hours worked;
- 14          n. Whether DEFENDANTS failed to memorialize commission agreements in writing;
- 15          o. Whether DEFENDANTS engaged in unfair business practices in violation of  
16          California Business & Professions Code section 17200, *et seq.*

17          60.    **Typicality:** The claims of the PLAINTIFF are typical of the CLASS because  
18          DEFENDANTS subjected all of their Student Loan Advisors, and Student Loan Processors to  
19          identical violations of the California Labor Code, IWC Wage Order, and California Business and  
20          Professions Code by, *inter alia*, misclassifying them as independent contractor; failing to pay them  
21          for all hours worked; failing to pay them minimum and overtime wages; failing to reimburse them  
22          for reasonable business expenses incurred in the discharge of their duties; failing to properly  
23          maintain their payroll records; failing to provide them with accurate itemized statements for each  
24          pay period; failing to authorize or permit them to take meal and rest breaks as required by California  
25          law; and requiring them to agree to illegal terms and conditions of employment.

26          61.    **Adequacy of Representation:** PLAINTIFF is fully prepared to take all necessary  
27          steps to represent fairly and adequately the interest of the members of the CLASS. PLAINTIFF has  
28          no interests that are adverse to the interests of the CLASS. PLAINTIFF'S attorneys are ready, able  
29          and willing to fully and adequately represent the CLASS and PLAINTIFF. PLAINTIFF has

1 incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees,  
2 that have been, are and will be necessarily expended for the prosecution of this action for the  
3 substantial benefit of each CLASS member.

4 62. **Superiority of Class Action:** A class action is superior to other available means for  
5 the fair and efficient adjudication of this controversy. Individual joinder of all proposed members  
6 of the CLASS is not practicable, and questions of law and fact common to the proposed CLASS  
7 predominate over any questions affecting only individual members of the proposed CLASS. Each  
8 member of the proposed CLASS has been damaged and is entitled to recovery by reason of  
9 DEFENDANTS' illegal policies and/or practices.

10 63. **Public Policy Consideration:** Certification of this lawsuit as a class action will  
11 advance public policy objectives. Employers of this state violate employment and labor laws every  
12 day. Current employees are often afraid to assert their rights out of fear of direct or indirect  
13 retaliation. However, class actions provide the class members who are not named in the Complaint  
14 anonymity that allows for the vindication of their rights.

15 64. Class action treatment will allow those similarly situated persons to litigate their  
16 claims in the manner that is most efficient and economical for the parties and the judicial system.  
17 PLAINTIFF is unaware of any difficulties that are likely to be encountered in the management of  
18 this action that would preclude its maintenance as a class action. Individualized litigation would  
19 also present the potential for inconsistent or contradictory judgments, in addition of duplication of  
20 efforts and expenses.

21 **FIRST CAUSE OF ACTION**  
22 **MISCLASSIFICATION AS INDEPENDENT CONTRACTOR**  
23 **(LABOR CODE §§ 2750.3, 226.8)**  
24 **(AGAINST ALL DEFENDANTS)**

25 65. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs  
26 as though fully set forth in this cause of action, and incorporates them by reference, and further  
27 alleges:  
28

66. Labor Code § 3353 defines "Independent Contractor" as "any person who renders  
service for a specified recompense for a specified result, under the control of his principal as to the  
result of his work only and not as to the means by which such result is accomplished."

1           67. Labor Code § 2750.3 provides in pertinent part that “a person providing labor or  
2 services for remuneration shall be considered an employee rather than an independent contractor  
3 unless the hiring entity demonstrates that all of the following conditions are satisfied:

4           (A) The person is free from the control and direction of the hiring entity in connection with  
5 the performance of the work, both under the contract for the performance of the work and in  
6 fact.

7           (B) The person performs work that is outside the usual course of the hiring entity’s business.

8           (C) The person is customarily engaged in an independently established trade, occupation, or  
9 business of the same nature as that involved in the work performed.”

10          68. DEFENDANTS, as a matter of established company policy and procedure  
11 consistently:

12           a. Administered and continue to administer a uniform company policy and practice  
13 regarding the duties and responsibilities of the members of the Class. For instance,

14           Loan Processors are required to

- 15                   • “Handle Customer Service Calls
- 16                   • Retrieve Necessary Documents such as proof of income
- 17                   • Submit documents accordingly to the Dept of Ed
- Recover missed payments from clients
- Retain clients from cancelling.”

18           b. Administered and continue to administer a uniform company policy and practice  
19 regarding the payment of wages to the members of the CLASS;

20           c. Treated and continue to treat the members of the CLASS as Independent Contractors  
21 to avoid the payment of wages and other benefits in violation of the Labor Code and  
22 IWC Wage Orders;

23           d. Controlled and continue to control the work performed by, the manner, and the means  
24 in which the work was performed by the members of the CLASS; and

25           e. Disseminated false information throughout DEFENDANTS' facilities and amongst  
26 DEFENDANTS' employees reciting that, under DEFENDANTS' labor policies and  
27 practices and under California law, the members of the CLASS were properly  
28 classified as Independent Contractors.

1       69.     The PLAINTIFF and the CLASS were inappropriately misclassified by DEFENDANTS  
2 as Independent Contractors because:

3           (A) PLAINTIFF and the CLASS are not free from the control and direction of the  
4 DEFENDANTS in connection with the performance of the work. In fact, the PLAINTIFF and the  
5 CLASS were controlled by DEFENDANTS as to both the result of their work and as to the means  
6 by which results were accomplished. PLAINTIFF and the CLASS did not in fact have the right to  
7 control or discretion as to the manner of performance of their services.

8           (B) PLAINTIFF and the CLASS do not perform work that is outside the usual course of  
9 the hiring entity's business.

10          (C) PLAINTIFF and the CLASS are not customarily engaged in an independently  
11 established trade, occupation, or business of the same nature as that involved in the work performed  
12 for DEFENDANTS.

13       70.     PLAINTIFF and the CLASS did not meet the bona fide Independent Contractor status in  
14 that they did not ordinarily and customarily:

- 15           i) substantially invest other than personal services in the business;
- 16           ii) hold out to be in business for themselves;
- 17           iii) bargain for contracts to complete a specific project for compensation;
- 18           iv) control the time and place their work is performed;
- 19           v) supply tools and instrumentalities used in the work other than those normally and  
20 customarily provided by employees;
- 21           vi) hire employees;
- 22           vii) perform work that is not ordinarily in the course of the principal's work;
- 23           viii) perform work that requires a particular skill;
- 24           ix) hold a license pursuant to the Business and Professions Code;
- 25           x) intend a work relationship of an Independent Contractor status; and/or
- 26           xi) intend a work relationship that is not severable or terminable at will by the  
27 principal but gives rise to an action for the breach of contract.

1           71.     DEFENDANTS' pattern, practice and uniform administration of corporate policy  
2 regarding illegal employment classification as described herein is unlawful and creates an entitlement  
3 to recovery by the members of the CLASS, in a civil action, for reimbursement of the appropriate  
4 withholding of federal, state, and local income taxes based upon a flat withholding rate for  
5 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or  
6 supplemented, and any corresponding state or local law, and the CLASS members' share of FICA,  
7 Medicare, and state and local employment taxes that were improperly not paid by DEFENDANTS  
8 as a result of the independent contractor classification.

9           72.     Labor Code § 226.8(a)(1) states "It is unlawful for any person or employer to engage  
10 in any of the following activities:

11           (1) Willful misclassification of an individual as an independent contractor.

12           (2) Charging an individual who has been willfully misclassified as an independent contractor  
13 a fee, or making any deductions from compensation, for any purpose, including for goods,  
14 materials, space rental, services, government licenses, repairs, equipment maintenance,  
15 or fines arising from the individual's employment where any of the acts described in this  
16 paragraph would have violated the law if the individual had not been misclassified."

17           73.     "Willful misclassification" is defined by Labor Code § 226.8(i)(4) as "avoiding  
18 employee status for an individual by voluntarily and knowingly misclassifying that individual as an  
19 independent contractor."

20           74.     Labor Code § 226.8(b) provides that if a court issues a determination that  
21 DEFENDANTS have violated Labor Code § 226.8(a), DEFENDANTS shall be subject to a civil  
22 penalty: between \$ 5,000 and \$ 15,000 for each violation, in addition to any other penalties or fines  
23 permitted by law.

24           75.     Further, Labor Code § 226.8(c) provides that if a court issues a determination that  
25 DEFENDANTS have violated Labor Code § 226.8(a) and has engaged or is engaging in a pattern or  
26 practice of these violations, DEFENDANTS shall be subject to a civil penalty between \$ 10,000 and  
27 \$ 25,000 for each violation, in addition to any other penalties or fines permitted by law.

76. Here, as set forth above, DEFENDANTS willfully misclassified PLAINTIFF and the CLASS, and has engaged and are engaging in a pattern and practice of these violations. Therefore, DEFENDANTS are subject to a civil penalty between \$ 10,000 and \$ 25,000 for each violation, in addition to any other penalties or fines permitted by law.

**SECOND CAUSE OF ACTION**  
**FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**  
**(In Violation of CAL. LAB. CODE §§ 510, 1194, 1198; IWC WAGE ORDER NO.4.)**  
**(AGAINST ALL DEFENDANTS)**

77. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

78. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS are and were “non-exempt” employees of DEFENDANTS and did not receive any compensation for work performed in excess of 8 hours per day, and/or 40 hours per week regardless of the number of hours actually worked.

79. In addition, requiring the PLAINTIFF and the CLASS to work on their “on own time” deprived PLAINTIFF and the CLASS proper protections and benefits of the laws governing the payment of wages for all hours worked and overtime wages.

80. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS regularly and/or consistently worked in excess of eight (8) hours in a workday, and/or in excess of forty (40) hours in a workweek. The precise number of overtime hours will be proven at trial. Despite the hours worked by PLAINTIFF and the CLASS, DEFENDANTS intentionally, willfully, in bad faith, and in knowing violation of the California Labor Code, and the applicable IWC Wage Order failed and refused to compensate PLAINTIFF and the CLASS for all of the overtime wages earned.

81. At all relevant times, DEFENDANTS were aware of, and were under a duty to comply with, the overtime provisions of the IWO Wage Orders, and California Labor Code including, but not limited to, California Labor Code §§510, 1194 and 1198.

82. The IWC Wage Order provides that DEFENDANTS are and were required to pay PLAINTIFF and the CLASS employed by DEFENDANTS, and working more than eight (8) hours

1 in a day or more than forty (40) hours in a workweek, at a rate of time-and-one half for all hours  
2 worked in excess of eight (8) hours in a day or more than forty hours (40) in a workweek.

3 83. The Applicable IWC Wage Order further provides that DEFENDANTS are and were  
4 required to pay PLAINTIFF and the CLASS overtime compensation at the rate of two times their  
5 regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

6 84. California Labor Code § 510 codifies the right to overtime compensation and  
7 provides, in pertinent part:

8 “Any work in excess of eight hours in one workday and any work in excess of 40 hours in  
9 any one workweek and the first eight hours worked on the seventh day of work in any one  
10 workweek shall be compensated at the rate of no less than one and one-half times the regular  
rate of pay for an employee.”

11 85. California Labor Code §1194, in pertinent part, provides:

12 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than  
13 the legal minimum wage or the legal overtime compensation applicable to the employee is  
14 entitled to recover in a civil action the unpaid balance of the full amount of this minimum  
15 wage or overtime compensation, including interest thereon, reasonable attorney’s fees and  
cost of the suit.”

16 86. California Labor Code §1198, in pertinent part, provides:

17 “(t) he maximum hours of work and the standard conditions of labor fixed by the commission  
18 shall be the maximum hours of work and the standard conditions of labor for employees. The  
19 employment of any employee for longer hours than those fixed by the order or under  
conditions of labor prohibited by the order is unlawful.”

20 87. By refusing to compensate PLAINTIFF and the CLASS for all hours worked, and for  
21 overtime wages earned, DEFENDANTS violated those California Labor Code provisions cited  
22 herein as well as the applicable IWC Wage Order, and their actions are therefore unlawful.

23 88. PLAINTIFF and the CLASS are entitled to receive overtime compensation for all  
24 hours worked in excess of eight (8) hours in one workday and any work in excess of forty (40) hours  
25 in any workweek and the first eight hours worked on the seventh day of work in any one workweek  
26 at the rate of no less than one and one have times the regular rate of pay for each employee. In  
27 determining the regular rate of pay for each CLASS member, all remuneration paid to each, including  
28 but not limited to commissions, must be calculated.

1           89.     As a direct and proximate result of DEFENDANTS' unlawful conduct, as set forth  
2 therein, PLAINTIFF and the CLASS have sustained damages, including loss of earnings for hours  
3 worked, hours of overtime worked, in an amount to be established at trial.

4           90.     Pursuant to California Labor Code §1194, PLAINTIFF and the CLASS are entitled  
5 to recover unpaid overtime compensation and double time compensation, including interest thereon.

6           91.     PLAINTIFF and the CLASS are also entitled to recover reasonable attorneys' fees  
7 and costs, pursuant to California Labor Code §1194(a).

8           92.     During the RELEVANT TIME PERIOD, DEFENDANTS were and are the  
9 PLAINTIFF and the CLASS employers and/or persons acting on behalf of the DEFENDANTS,  
10 within the meaning of California Labor Code § 558, who violated or caused to be violated any section  
11 of the wage order regulating the days and hours worked and, as such are individually liable to each  
12 member of the CLASS for each such violations as set forth in the California Labor Code.

13           93.     Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty  
14 of \$50.00 for each underpaid employee for each pay period for which the employee was underpaid  
15 in addition to an amount sufficient to recover the underpaid wages, which shall be paid to each  
16 affected employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each  
17 subsequent violation, a penalty of \$100.00 for each underpaid employee for each pay period for  
18 which the employee was underpaid, in addition to an amount sufficient to recover the underpaid  
19 wages, which shall be paid to each affected employee.

20           94.     PLAINTIFF on behalf of himself and the CLASS seeks all available remedies for  
21 DEFENDANTS' violations including any and all wages due, penalties, monies, interest, attorney's  
22 fees, and costs to the extent permitted by law.

23           WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

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**THIRD CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL PERIODS**  
**(In Violation of IWC Wage Order 4-2001, CAL. LAB. CODE §§ 226.7, 512)**  
**(AGAINST All DEFENDANTS)**

95. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

96. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor Code sections 226.7 and 512 were applicable to PLAINTIFF and the CLASS employed by DEFENDANTS.

97. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS are and were “non-exempt” employees of DEFENDANTS and did not receive meal periods or premium pay in lieu of meal periods.

98. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of, and under a duty to comply with, California Labor Code §§226.7 and 512.

99. California Labor Code §226.7 provides:

“(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Moreover, California Labor Code §512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

1           100. Sections 11 and 12 of IWC Wage Order 4 mandate that the employer provide all  
2 applicable meal periods to employees.

3           101. Section 11 of the applicable IWC Wage Order provides in pertinent part:

4                   “No employer shall employ any person for a work period of more than of not less than 30  
5 minutes... Unless the employee is relieved of all duty during a 30-minute meal period, the  
6 meal period shall be considered an “on duty” meal period and counted as time worked.

7                   If an employer fails to provide an employee a meal period in accordance with the  
8 applicable provisions of this order the employer shall provide the employee one (1) hour  
9 of pay at the employee ‘s regular rate of compensation for each workday that the meal  
period is not provided.

10           102. PLAINTIFF and the CLASS regularly and consistently worked eight (8) hours or  
11 more per day but were not provided an uninterrupted, thirty-minute meal period within the first five  
12 hours of work each day. By failing to consistently provide PLAINTIFF and each member of the  
13 CLASS an uninterrupted thirty-minute meal period within the first five hours of work each day,  
14 DEFENDANTS violated the California Labor Code and applicable IWC Wage Order provisions.

15           103. During the RELEVANT TIME PERIOD, DEFENDANTS intentionally and willfully  
16 required PLAINTIFF and the CLASS to work during meal periods and failed to compensate  
17 PLAINTIFF and the CLASS the full meal period premium for work performed during meal periods.

18           104. PLAINTIFF is informed and believes and on that basis alleges, that DEFENDANTS  
19 have never paid the one-hour compensation as a premium payment for PLAINTIFF or any member  
20 of the CLASS due to their violation of the California Labor Code and applicable IWC Wage Order  
21 provisions.

22           105. DEFENDANTS’ conduct violates the applicable IWC Wage Order and California  
23 Labor Code sections 226.7 and 512(a).

24           106. As a direct and proximate result of DEFENDANTS unlawful conduct, as set forth  
25 herein, PLAINTIFF and the CLASS have sustained damages including loss of compensation  
26 resulting from missed meal periods, in an amount to be established at trial.

27           107. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b),  
28 PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one additional hour of pay

1 at the employee's regular rate of compensation for each work day the meal or rest period is not  
2 provided. In determining the regular rate of pay for each CLASS member, all remuneration paid to  
3 each, including but not limited to commission, must be calculated.

4 108. During the RELEVANT TIME PERIOD, DEFENDANTS were and are the  
5 PLAINTIFF's employers and/or persons acting on behalf of the DEFENDANTS, within the meaning  
6 of California Labor Code § 558, who violated or caused to be violated any section of the wage order  
7 regulating the days and hours worked and, as such are individually liable to each member of the  
8 CLASS for each such violations as set forth in the California Labor Code.

9 109. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty  
10 of \$50.00 for each underpaid employee for each pay period for which the employee was underpaid  
11 in addition to an amount sufficient to recover the underpaid wages, which shall be paid to each  
12 affected employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each  
13 subsequent violation, a penalty of \$100.00 for each underpaid employee for each pay period for  
14 which the employee was underpaid, in addition to an amount sufficient to recover the underpaid  
15 wages, which shall be paid to each affected employee.

16 110. As a direct result of DEFENDANTS' violations alleged herein, PLAINTIFF and the  
17 CLASS have suffered and continue to suffer loss of wages and compensation, all in amounts to be  
18 shown according to proof at trial and within the jurisdiction limitations of this Court. PLAINTIFF  
19 and the CLASS seek all available remedies for DEFENDANTS' violations including, but not limited,  
20 to any and all wages due, penalties, monies, interest, attorney's fees, and costs to the extent permitted  
21 by law.

22 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

23 **FOURTH CAUSE OF ACTION**  
24 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**  
25 **(In Violation of IWC Wage Order 4-2001, CAL. LAB. CODE § 226.7)**  
26 **(AGAINST ALL DEFENDANTS)**

27 111. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs  
28 as though fully set forth in this cause of action, and incorporates them by reference, and further  
alleges:

1 112. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor  
2 Code sections 226.7 and 512 were applicable to PLAINTIFF and the CLASS employed by  
3 DEFENDANTS.

4 113. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS were and  
5 continue to be “non-exempt” employees of DEFENDANTS and did not receive rest periods or  
6 premium pay in lieu of rest periods.

7 114. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of and under  
8 a duty to comply with, California Labor Code §226.7 and Section 12 of Wage Order 7-2001.

9 115. California Labor Code. §226.7 states

10 “no employer shall require any employee to work during any meal or rest period mandated  
11 by an applicable order of the Industrial Welfare Commission.”

12 Section 12 of Wage Order No. 4-2001 provides in relevant part that:

13 (A) Every employer shall authorize and permit all employees to take rest periods, which in  
14 so far as practicable shall be in the middle of each work period., The authorized rest period  
15 time shall be based on the total hours worked daily at the rate of ten (10 minutes net rest time  
16 per four (4) hours or major fraction thereof. However, a rest period need not be authorized  
17 for employees whose total daily work time is less than three and one-half (3 ‘A) hours.  
Authorized rest period time shall be counted as hours worked for such there shall be no  
deduction from wages.

18 116. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required  
19 PLAINTIFF and the CLASS to work four (4) or more hours without authorizing or permitting a ten  
20 (10) minute rest period per each four (4) hours period worked.

21 117. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required  
22 PLAINTIFF and the CLASS to work during rest periods and failed to pay PLAINTIFF and the  
23 CLASS the full rest period premium for work performed during rest periods.

24 118. If an employer fails to provide an employee a rest period in accordance with the  
25 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at that  
26 employee’s regular rate of compensation for each work day that the rest period is not provided.

27 119. During the RELEVANT TIME PERIOD, DEFENDANTS failed to pay PLAINTIFF  
28 and the CLASS the full rest period premium due pursuant to California Labor Code section 226.7.

1           120. Pursuant to the applicable IWC Wage Orders and California Labor Code section  
2 226.7(b), PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one additional  
3 hour of pay at the employees' regular rate of compensation for each work day that the rest period  
4 was not provided. In determining the regular rate of pay for each CLASS member, all remuneration  
5 paid to each, including but not limited to commissions, must be calculated.

6           121. In committing the violations of state law as herein alleged, DEFENDANTS refused  
7 to perform their obligations to authorize and permit rest periods and have also failed to pay rest  
8 premium wages. As a direct result, PLAINTIFF and the CLASS have suffered, and continue to  
9 suffer, substantial losses, including those related to the use and enjoyment of such compensation,  
10 wages, and lost interest on such monies in seeking to compel DEFENDANTS to fully perform their  
11 obligation under state law, all to their respective damage in amounts according to proof at trial and  
12 within the jurisdictional limitations of this Court.

13           122. During the RELEVANT TIME PERIOD, DEFENDANTS are and/or were the  
14 PLAINTIFF's employers and/or persons acting on behalf of DEFENDANTS within the meaning of  
15 California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter I, of  
16 the California Labor Code or any provision regulating hours and days of work in any Order of the  
17 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee,  
18 which shall be paid to each affected employee, as set forth in Labor Code § 558.

19           123. Labor Code § 558 imposes upon DEFENDANTS for each initial violation a penalty  
20 of \$50.00 for each underpaid employee for each pay period for which the employee was underpaid  
21 in addition to an amount sufficient to recover the underpaid wages, which shall be paid to each  
22 affected employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS for each  
23 subsequent violation a penalty of \$100 for each underpaid employee for each pay period for which  
24 the employee was underpaid, in addition to an amount sufficient to recover the underpaid wages,  
25 which shall be paid to each affected employee.

26           124. The CLASS, including PLAINTIFF, suffered and continue to suffer loss of wages and  
27 compensation, all in an amount to be shown according to proof at trial and within the jurisdictional  
28 limitations of this Court.

1 125. PLAINTIFF and the CLASS seeks all available remedies for DEFENDANTS'  
2 violations including, but not to, any and all wages due, penalties, interest, attorney's fees, costs to  
3 the extent permitted by law.

4 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

5 **FIFTH CAUSE OF ACTION**  
6 **FAILURE TO INDEMNIFY FOR EXPENDITURES INCURRED IN DISCHARGE OF**  
7 **DUTIES (CAL. LAB. CODE §§ 450, 2802, 2804)**  
8 **(AGAINST All DEFENDANTS)**

9 126. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs  
10 as though fully set forth in this cause of action, and incorporates them by reference, and further  
11 alleges:

12 127. During the RELEVANT TIME PERIOD, the California Labor Code §§ 2802, 2804,  
13 and 450 was applicable to PLAINTIFF and the CLASS employed by DEFENDANTS.

14 128. Pursuant to Labor Code § 450(a), "no employer...may compel or coerce any  
15 employee... to patronize his or her employer, or any other person, in the purchase of any thing of  
16 value."

17 129. Pursuant to Labor Code §2802(a) "An employer shall indemnify his or her employee  
18 for all necessary expenditures or losses incurred by the employee in direct consequence of the  
19 discharge of his or her duties, or of his or her obedience to the directions of the employer...."

20 130. Pursuant to Labor Code § 2804 "Any contract or agreement, express or implied, made  
21 by any employee to waive the benefits of this article or any part thereof is null and void, and this  
22 article shall not deprive any employee or his personal representative of any right or remedy to which  
23 he is entitled under the laws of this State."

24 131. As a matter of DEFENDANTS' established company policy regarding misclassifying  
25 the CLASS as independent contractors, PLAINTIFF and the CLASS were and are required by  
26 DEFENDANTS to incur necessary expenditures in direct consequence of the discharge of their  
27 duties, including but not limited to desk space rental, supplies, marketing, computer, and equipment  
28 to conduct DEFENDANTS' business.

1           132. During THE RELEVANT TIME PERIOD, as a result of the unlawful acts of  
2 DEFENDANTS, PLAINTIFF and the CLASS have incurred expenditures and losses in an amount  
3 to be determined at trial.

4           133. Pursuant to California Labor Code § 2802, DEFENDANTS are required to fully  
5 reimburse PLAINTIFF and the CLASS for all necessary expenses incurred by them in the  
6 performance of their job duties.

7           134. DEFENDANTS failed to reimburse the PLAINTIFF and the CLASS for, *inter alia*,  
8 desk space rental, supplies, marketing, computer, and equipment deductions DEFENDANTS took  
9 out of the PLAINTIFF and the CLASS' wages.

10          135. PLAINTIFF and the CLASS suffered, and will continue to suffer, damages in  
11 amounts according to proof at the time of trial as a direct and proximate result of DEFENDANTS'  
12 willful conduct of requiring PLAINTIFF to agree to illegal terms and conditions of employment and  
13 DEFENDANTS' failure to reimbursement PLAINTIFF and the CLASS for the unlawful deductions  
14 made for desk space rental, supplies, marketing, computer, and equipment to conduct  
15 DEFENDANTS' business.

16          136. In failing to reimburse PLAINTIFF and the CLASS for the unlawful deductions,  
17 DEFENDANTS acted maliciously, oppressively, and despicably, with the wrongful intention of  
18 causing injury and hardship to PLAINTIFF and the CLASS by reaping economic gain at PLAINTIFF  
19 and the CLASS' expenses, in willful and conscious disregard of PLAINTIFF and the CLASS'  
20 statutory and regulatory rights.

21          137. PLAINTIFF and the CLASS are entitled to recovery from DEFENDANTS, and each  
22 of them, the full amount of the necessary business-related expenses and costs incurred during the  
23 course and scope of employment, incurred as a result of DEFENDANTS' unlawful policies and  
24 practices, illegal terms and conditions of employment, plus attorneys' fees and costs, interests  
25 accrued from the date on which PLAINTIFF and the CLASS incurred such expenditures.

26           WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

27 ///

28 ///

**SIXTH CAUSE OF ACTION**  
**UNLAWFUL COLLECTION OR RECEIPT OF WAGES DUE**  
**LABOR CODE §§ 221, 224, 225**  
**(AGAINST ALL DEFENDANTS)**

138. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

139. Pursuant to California Labor Code § 221 DEFENDANTS are prohibited from collecting or receiving wage from PLAINTIFF and the CLASS. Specifically, Labor Code § 221 states that “it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

140. PLAINTIFF and the CLASS were non-exempt employees misclassified as independent contractors and were entitled to the protections of California Labor Code §§ 221, and 224. During the course of PLAINTIFF and the CLASS’ employment, DEFENDANTS, engaged in a policy and practice of compelling and coercing PLAINTIFF and the CLASS to, *inter alia*, pay for desk space rental, supplies, marketing, computer, and equipment through wage deductions made by DEFENDANTS. DEFENDANTS, thereby, subjecting PLAINTIFF and the CLASS to unlawful wage collections, and deductions which DEFENDANTS fail to reimburse.

141. DEFENDANTS also engaged in a policy and practice of charging back the PLAINTIFF and the CLASS for the full amount refunded to their clients by deducting said amounts from PLAINTIFF’S and the CLASS’ wages.

142. Labor Code § 225 provides in pertinent part that “[t]he violation of any provision of Sections 221... is a misdemeanor.” Labor Code § 225.5 provides in pertinent part that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section ... 221 ... shall be subject to a civil penalty as follows:

- (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

143. In violation of state law, DEFENDANTS have knowingly and willfully refused to

1 perform their obligations to provide desk space rental, supplies, marketing, computer, and equipment  
2 free of charge, and have instead charged PLAINTIFF and the CLASS for desk space rental, supplies,  
3 marketing, computer, and equipment required in the discharge of their duties.

4 144. As a direct result, PLAINTIFF and the CLASS have suffered and continue to suffer,  
5 substantial losses related to the use and enjoyment of such wages, loss interest on such wages, and  
6 expenses and attorneys' fees, and costs in seeking to compel DEFENDANTS to fully perform their  
7 obligations under state law, all to their respective damages in amounts according to proof at times of  
8 trial, and within the jurisdiction of this Court.

9 145. DEFENDANTS committed the acts alleged herein knowingly and willfully, with the  
10 wrongful and deliberate intention of injuring PLAINTIFF and the CLASS, from improper motives  
11 amounting to malice, and in conscious disregard of employees' rights.

12 146. PLAINTIFF and the CLASS are thus entitled to recover the unpaid balance of  
13 compensation due, wages owed, interest, civil and statutory penalties, nominal, actual,  
14 compensatory, punitive, and exemplary damages, attorneys' fees, and costs of suit in amounts  
15 according to proof at time of trial, and within the jurisdiction of this Court.

16 147. WHEREFORE, PLAINTIFF seeks the relief as described below.

17 **SEVENTH CAUSE OF ACTION**  
18 **FAILURE TO PROVIDE PAID SICK DAYS**  
19 **(LABOR CODE §§ 245.5 -249)**  
20 **(AGAINST ALL DEFENDANTS)**

21 148. PLAINTIFFS repeats and re-alleges all allegations contained in preceding paragraphs  
22 as though fully set forth in this cause of action, and incorporates them by reference, and further allege:

23 149. California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide  
24 employees who have worked in California for 30 or more days from the commencement of  
25 employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant  
26 to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three  
27 (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's  
28 employment.

150. DEFENDANTS systematically failed to provide PLAINTIFF and CLASS paid sick

1 leave of no less than 24 hours or three (3) days. PLAINTIFF and CLASS worked in excess of 30  
2 days for DEFENDANTS in California and were therefore eligible to receive paid sick leave.

3 151. Additionally, DEFENDANTS failed to list the balance of paid sick leave (or paid time  
4 off) benefits available on the PLAINTIFF's wage statements as required by Labor Code § 246(i).

5 152. DEFENDANTS' ongoing and systematic failure to provide the requisite sick leave  
6 benefits to PLAINTIFF and the CLASS and failure to provide them with accurate balances of their  
7 benefits available, violates California Labor Code section 246.

8 153. PLAINTIFF and the CLASS are therefore entitled to recover civil penalties pursuant to  
9 Labor Code sections 248.5.

10 WHEREFORE, PLAINTIFF and the CLASS seek to request relief as described below.

11 **EIGHTH CAUSE OF ACTION**  
12 **FAILURE TO MAINTAIN RECORDS IN VIOLATION OF**  
13 **(LABOR CODE §§ 558, 1174, 1174.5, 274.5(a))**  
14 **(AGAINST ALL DEFENDANTS)**

15 154. PLAINTIFFS repeat and re-allege all allegations contained in preceding paragraphs as  
16 though fully set forth in this cause of action, and incorporates them by reference, and further allege:

17 155. Labor Code section 1174(d) requires DEFENDANTS to maintain and preserve in a  
18 central location in the state or at the plants or establishments at which employees are employed,  
19 payroll records showing the hours worked daily by, and the wages paid to employees employed at  
20 the respective plants or establishments. These records shall be kept on file for not less than three  
21 years.

22 156. DEFENDANTS engaged in a policy and practice of failing to maintain payroll records,  
23 and records pertaining to current and former employees in a central location in the state.

24 157. DEFENDANTS failed to comply with California Labor Code section 1174.  
25 DEFENDANTS' failure to comply with California Labor Code section 1174 is a violation  
26 of California Labor Code section 1175.

27 158. Labor Code Labor Code § 1174.5 provides that any person employing labor who  
28 willfully fails to maintain the records required by Labor Code § 1174(d), shall be subject to civil  
penalty in the amount of \$500.00.

1       159. Labor Code § 558 provides for a civil penalty to be assessed against any employer or  
2 other person acting on behalf of an employer who violates, or causes to be violated, a provision of  
3 the California Labor Code regulating wages, hours, and working conditions.

4       160. PLAINTIFF is informed and believes, and on that basis alleges that DEFENDANTS, at  
5 all relevant time herein, were PLAINTIFF'S employers or acting on behalf of PLAINTIFF'S  
6 employers pursuant to Labor Code § 558 for purposes of the Labor Code violations alleged in this  
7 cause of action, and are therefore subject to civil penalties.

8       161. As a direct and proximate result of the willful conduct of DEFENDANTS, in violation  
9 of Labor Code § 558, 1174(d), PLAINTIFF and the CLASS are entitled to an award of civil penalties  
10 in the amount of \$500 pursuant to Labor code §1174.5.

11       162. Furthermore, Labor Code Labor Code § 247.5(a) requires an employer to keep for at  
12 least three years records documenting the hours worked and paid sick days accrued and used by an  
13 employee. An employer shall make these records available to an employee in the same manner as  
14 described in Section 226.

15       163. Upon information and belief, DEFENDANTS also failed to comply with section  
16 247.5(a) in the same manner as DEFENDANTS' failed to provide PLAINTIFF with the records  
17 reflecting accrued and used paid sick days.

18       164. PLAINTIFF and the CLASS are entitled to and seek injunctive relief requiring  
19 DEFENDANTS to comply with Labor Code Sections 226, and 1174, among other provisions.  
20 PLAINTIFF and the CLASS are also entitled to and seek actual and statutory damages available for  
21 such violations under Labor Code Sections 226, and 1174.5, as well as interest, costs, penalties, and  
22 attorneys' fees.

23       WHEREFORE, PLAINTIFF and the CLASS seek to request relief as described below.

24                                   **NINTH CAUSE OF ACTION**  
25                                   **FAILURE TO PAY MINIMUM WAGE**  
26                                   **(LABOR CODE §§ 1197, 1194, 1194.2, 1197.1)**  
27                                   **(AGAINST ALL DEFENDANTS)**

28       165. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as  
though fully set forth in this cause of action, and incorporate them by reference, and further allege:

1       166.     Cal. Lab. Code §1197 provides that: “the minimum wage for employees fixed by the  
2 commission is the minimum wage to be paid to employees, and the payment of a less wage than the  
3 minimum so fixed is unlawful.”

4       167.     Cal. Lab. Code §1194 provides in relevant part that any employee receiving less than  
5 the legal minimum wage applicable to the employee is entitled to recover in a civil action the unpaid  
6 balance of the full amount of this minimum wage, including interest thereon, reasonable attorneys’  
7 fees, and costs of suit.

8       168.     Cal. Lab. Code §1194.2 provides in relevant part that: “in any action under ... Section  
9 1194 to recover wages because of a payment of wage less than the minimum wage fixed by an order  
10 of the commission, an employee shall be entitled to recover liquidated damages in an amount equal  
11 to the wage unlawfully unpaid and interest thereon.”

12       169.     PLAINTIFF and the CLASS were none-exempt employees of DEFENDANTS that  
13 were voluntarily and intentionally misclassified by DEFENDANTS as independent contractors to  
14 avoid employee status.

15       170.     DEFENDANTS failed to satisfy minimum wage requirements and secretly paid a lower  
16 wage while purposing to pay the wage designated by statute.

17       171.     During the RELEVANT TIME PERIOD, DEFENDANTS are and/or were the  
18 PLAINTIFF’s employers and/or persons acting on behalf of DEFENDANTS within the meaning of  
19 California Labor Code§ 558, who violated or caused to be violated, a section of Part 2, Chapter I, of  
20 the California Labor Code or any provision regulating hours and days of work in any Order of the  
21 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee,  
22 which shall be paid to each affected employee, as set forth in Labor Code § 558.

23       172.     Labor Code § 558 imposes upon DEFENDANTS for each initial violation a penalty of  
24 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in  
25 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected  
26 employee. Furthermore, Labor Code§ 558 imposes upon DEFENDANTS for each subsequent  
27 violation a penalty of \$100 for each underpaid employee for each pay period for which the employee  
28 was underpaid, in addition to an amount sufficient to recover the underpaid wages, which shall be

1 paid to each affected employee.

2 173. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF and the CLASS have  
3 been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of  
4 such amounts, including interest thereon, attorneys' fees, costs, liquidated damages, and any other  
5 damages as set forth under California law, including statutory and civil penalties.

6 WHEREFORE, PLAINTIFF and the CLASS seek to request relief as described below.

7  
8 **TENTH CAUSE OF ACTION**  
9 **WAITING TIME PENALTIES**  
10 **(In Violation of California Labor Code § § 201, 202, 203)**  
11 **(AGAINST ALL DEFENDANTS)**

12 174. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as  
13 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

14 175. At all times herein mentioned, PLAINTIFF and members of the CLASS were employees  
15 of DEFENDANTS. DEFENDANTS were subject to California law.

16 176. Cal. Lab. Code §201 provides in relevant part that: "[i]f an employer discharges an  
17 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

18 177. Cal. Lab. Code §202 provides in relevant part that: "[i]f an employee not having a written  
19 contract for a definite period quits his or her employment, his or her wages shall become due and  
20 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of  
21 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of  
22 quitting."

23 178. As alleged herein, DEFENDANTS failed to pay earned wages to PLAINTIFF and the  
24 CLASS who are former employees of DEFENDANTS at the time they became due and payable.

25 179. DEFENDANTS failed to timely pay PLAINTIFF and the CLASS who are former  
26 employees of DEFENDANTS, among other things, all overtime and minimum wages, wages for all  
27 hours worked, earned wages relating to meal and rest period premiums, and failed to reimburse them  
28 for necessary business-related expenses. Thus, DEFENDANTS violated Cal. Lab. Code §§201 and  
202.

1       180.     As a result of DEFENDANTS' unlawful acts, PLAINTIFF and the CLASS who are  
2 former employees of DEFENDANTS' are entitled to recover, pursuant to Cal. Lab. Code §203,  
3 continuing wages as a penalty from the due date thereof at the same rate until paid or until this action  
4 was commenced; but for no more than 30 days.

5       181.     DEFENDANTS willfully failed to provide PLAINTIFF and the CLASS with all wages  
6 due and owing, including all regular, minimum, and overtime wages, and meal and rest period  
7 premium wages, and reimbursement for necessary business expenses, as specified by Labor Code §§  
8 201 and 202, as alleged herein.

9       182.     Consequently, pursuant to Labor Code section 203, DEFENDANTS are obligated to pay  
10 PLAINTIFF and member of the CLASS that are former employees of the DEFENDANTS waiting-  
11 time penalties equivalent to thirty (30) full working days' worth of wages because certain wages  
12 were not paid within 30 days.

13       183.     DEFENDANTS' failure to pay PLAINTIFF and the members of the CLASS that were  
14 former employees all wages due were done with the wrongful and deliberate intention of injuring  
15 PLAINTIFF and the CLASS, for improper motives amounting to malice and in conscious disregard  
16 to their rights.

17       184.     DEFENDANTS' willful failure to pay PLAINTIFF and the members of the CLASS who  
18 are former employees the wages due and owing each of them constitutes violations of Labor Code  
19 §§ 201, 202, and 203.

20       185.     PLAINTIFF and the members of the CLASS who are former employees are each entitled  
21 to recover from DEFENDANTS the statutory penalty for each day they were not paid, up to a thirty  
22 (30) day maximum pursuant to California Labor Code section 203.

23       186.     PLAINTIFF seeks all available remedies for DEFENDANTS' violation including but  
24 not limited to, any and all wages due, penalties, monies, interest, attorneys' fees, and costs incurred  
25 in this action to the extent permitted by law.

26               WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

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**ELEVENTH CAUSE OF ACTION**  
**(Illegal Terms of Employment In Violation of California Labor Code §432.5)**  
**(Against All DEFENDANTS)**

187. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

188. California Labor Code § 432.5 prohibits employers from requiring any applicant or employee to agree to any illegal employment term or condition.

189. DEFENDANTS' engage in a policy and practice of coercing and compelling PLAINTIFF and the CLASS to pay DEFENDANTS for desk space rental, supplies, marketing, computer, and other equipment expenses to carry out DEFENDANTS' business. DEFENDANTS unlawfully deduct said amounts from the PLAINTIFF and the CLASS' wages.

190. PLAINTIFF and the CLASS had no choice but to agree to such illegal employment terms and conditions. Such illegal terms are unenforceable pursuant to Cal. Lab. Code § 432.5.

191. PLAINTIFF and the CLASS suffered, and will continue to suffer, damages in amounts according to proof at the time of trial as a direct and proximate result of DEFENDANTS' willful conduct of requiring PLAINTIFF and the CLASS to agree to illegal terms and conditions of employment.

192. As a direct result of DEFENDANTS' violations alleged herein, PLAINTIFF and the CLASS have suffered and continue to suffer loss of wages and compensation, all in amounts to be shown according to proof at trial and within the jurisdiction limitations of this Court. PLAINTIFF and the CLASS seek all available remedies for DEFENDANTS' violations including, but not limited, to any and all wages due, penalties, monies, interest, attorney's fees, and costs to the extent permitted by law.

WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

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**TWELFTH CAUSE OF ACTION**  
**FAILURE TO COMPLY WITH WAGE THEFT PREVENTION ACT**  
**(Violation of California Labor Code § 2810.5)**  
**(AGAINST All DEFENDANTS)**

193. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

194. The California Wage Theft Prevention Act of 2011 ("WTPA") became effective on January 1, 2012. Among other provisions, the WTPA adds section 2810.5 to the California Labor Code. The act requires that all employers provide each employee with a written notice containing specified information. The notice must be in the language the employer normally uses to communicate employment-related information to the employee. Specifically, employers are required to provide each employee, at the time of hiring, with a written notice containing the following information: (1) the rate or rates of pay "and basis thereof," whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; (2) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; (3) the regular payday designated by the employer in accordance with the requirements of the Labor Code; (4) the name of the employer, including any "doing business as" names used by the employer; (5) the physical address of the employer's main office or principal place of business, and a mailing address, if different; (6) the telephone number of the employer; (7) the name, address, and telephone number of the employer's workers' compensation insurance carrier; and (8) any other information the Labor Commissioner deems material and necessary.

195. PLAINTIFF began his employment with DEFENDANTS on or about October 2019 when Cal. Lab. Code § 2810.5 was in full force and effect.

196. PLAINTIFF was non-exempt employee entitled to notice pursuant Cal. Lab. Code § 2810.5.

197. Cal. Labor Code § 2810.5 is aimed at informing employees about such fundamental and material information concerning their pay and rates of pay under an employment relationship.

198. DEFENDANTS willfully, and intentionally failed to comply with the requirements of Cal. Lab. Code § 2810.5.

1 199. DEFENDANTS failed to provide PLAINTIFF and the CLASS with Notice to Employee.

2 200. As a direct result of DEFENDANTS' violations alleged herein, PLAINTIFF and the  
3 CLASS have suffered and continue to suffer loss of wages and compensation, all in amounts to be  
4 shown according to proof at trial and within the jurisdiction limitations of this Court. PLAINTIFF  
5 and the CLASS seek all available remedies for DEFENDANTS' violations including, but not limited,  
6 to any and all wages due, penalties, monies, commissions, interest, attorney's fees, and costs to the  
7 extent permitted by law.

8 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

9 **THIRTEENTH CAUSE OF ACTION**  
10 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
11 **(In Violation of CAL. LAB. CODE § 226(a), 246**  
**(AGAINST All DEFENDANTS)**

12 201. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as  
13 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

14 202. Labor Code § 226(a) requires employers, including DEFENDANTS, to furnish their  
15 employees with each wage payment an accurate, itemized writing that shows gross wages earned,  
16 total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the  
17 employee is paid, the name of the employee and the portion of his or her social security number as  
18 required by law, all applicable hourly rates in effect during the pay period, and the corresponding  
19 number of hours worked at each hourly rate by the employee.

20 203. During THE RELEVANT TIME PERIOD, DEFENDANTS knowingly and intentionally  
21 failed to provide to the PLAINTIFF and the CLASS with wage statements. That is, PLAINTIFF and  
22 the CLASS did not receive any wage statements.

23 204. In addition, Labor Code § 246(i) requires an employer to provide an employee with  
24 written notice that sets forth the amount of paid sick leave available, or PTO leave an employer  
25 provides in lieu of sick leave, for use on either the employee's itemized wage statement described in  
26 Section 226 or in a separate writing provided on the designated pay date with the employee's payment  
27 of wages.  
28

1       205.   DEFENDANTS not only failed to comply with the accrual rate specified in section  
2 246(a), but also, failed to comply with the written notice requirements of 246(i). The PLAINTIFF  
3 and the CLASS neither received itemized wage statements nor a written notice setting forth the  
4 amount of paid sick leave available or PTO leave in lieu of sick leave because DEFENDANTS failed  
5 to provide the PLAINTIFF and the CLASS of any paid sick leave.

6       206.   The PLAINTIFF and the CLASS, have suffered and continue to suffer injuries, including  
7 substantial losses related to the use and enjoyment of such wages, lost interest on such wages and  
8 expenses and attorney's fees in seeking to compel DEFENDANTS to fully perform their obligations  
9 under state law, all to their respective damage in amounts according to proof at trial. Pursuant to  
10 Labor Code §§ 226(e)(2) and 226(c)(2)(B)(i), PLAINTIFF and the CLASS are deemed to have  
11 suffered injury as a result of DEFENDANTS' failure to provide accurate and complete information  
12 as required by Labor Code § 226(a).

13       207.   Cal. Lab. Code §226(b) provides in relevant part that: "[a]ny employee suffering injury  
14 as a result of any knowing and intentional failure by an employer to comply with subdivision (a)  
15 shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay  
16 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation  
17 in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and  
18 shall be entitled to an award of costs and reasonable attorney's fees." PLAINTIFFS are entitled to an  
19 award of costs and reasonable attorney's fees pursuant to California Labor Code section 226(e).

20       208.   Furthermore, Labor Code § 226(g) permits an employee to bring an action for injunctive  
21 relief to ensure compliance with Labor Code § 226. Thus, PLAINTIFF and the CLASS additionally  
22 seek injunctive relief to ensure compliance with Labor Code § 226 including, but not limited to, the  
23 providing and maintenance of accurate itemized wage statements identifying, among other things,  
24 all the hours worked and their corresponding rate for each pay period and the total net wages earned  
25 during each pay period.

26       209.   In failing to comply with the requirements of section 226(a) and 246(i), DEFENDANTS  
27 acted maliciously, oppressively, and despicably, with the wrongful intention of causing injury and  
28

1 hardship to PLAINTIFF and the CLASS by reaping economic gain at PLAINTIFFS' expense, in  
2 willful and conscious disregard of PLAINTIFFS' statutory and regulatory rights.

3 210. Cal. Lab. Code §226.3 states in relevant part that "[a]ny employer who violates  
4 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty  
5 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per  
6 employee for each violation in a subsequent citation, for which the employer fails to provide the  
7 employee a wage deduction statement or fails to keep the records required in subdivision (a) of  
8 Section 226. The civil penalties provided for in this section are in addition to any other penalty  
9 provided by law." PLAINTIFF and the CLASS are entitled to amounts provided herein plus costs  
10 and attorney's fees.

11 211. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including, but  
12 not limited to, any and all wages due, actual damages, penalties, payments pursuant to Labor Code §  
13 226(e), monies, interest, attorney's fees, costs and injunctive relief.

14 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

15  
16 **FOURTEENTH CAUSE OF ACTION**  
17 **CONVERSION**  
**(Against All DEFENDANTS)**

18 212. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as  
19 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

20 213. DEFENDANTS wrongfully failed to pay the PLAINTIFF and former members of the  
21 CLASS who were employees of DEFENDANTS' their earned wages, including minimum and  
22 overtime wages, which PLAINTIFF and the CLASS are entitled to receive.

23 214. California Labor Code § 200 defines wages as,

24 (a) "Wages" includes all amounts for labor performed by employees of every description,  
whether the amount is fixed or ascertained by the standard of time, task, piece, commission  
25 basis, or other method of calculation.

26 (b) "Labor" includes labor, work, or service whether rendered or performed under contract,  
subcontract, partnership, station plan, or other agreement if the labor to be paid for is  
performed personally by the person demanding payment.

27 215. The amount of earned but unpaid hours of work that the PLAINTIFF and the CLASS  
28 are entitled to receive constitute "wages" within the meaning of § 200 of the California Labor Code

1 because PLAINTIFF and the CLASS performed labor for the to the benefit of the DEFENDANTS.  
2 DEFENDANTS unjustly reaped the benefits of the services and labor performed by PLAINTIFF and  
3 the CLASS but failed to pay them for their labor.

4 216. During THE RELEVANT TIME PERIOD, DEFENDANTS had and continue to have a  
5 legal obligation imposed by statute to pay the PLAINTIFF and the CLASS all earned wages and  
6 other compensation due to them. Such wages and compensation belonged to the PLAINTIFF and  
7 the CLASS at the time the labor and services were satisfactorily provided to DEFENDANTS, and  
8 accordingly, such wages and compensation are the property of the PLAINTIFF and the CLASS, not  
9 the DEFENDANTS.

10 217. DEFENDANTS knowingly and intentionally failed to pay PLAINTIFF and members of  
11 the CLASS compensation for all hours worked, including minimum and overtime compensation,  
12 knowingly and intentionally failed to compensate PLAINTIFF and the CLASS for missed meal and  
13 rest breaks, and knowingly and intentionally failed to provide other compensation and reimburses  
14 due to PLAINTIFF and the CLASS as specified in this Complaint. Instead, DEFENDANTS  
15 converted PLAINTIFF and the CLASS' rightfully earned wages and converted them to  
16 DEFENDANTS' own use and benefits.

17 218. PLAINTIFF and members of the CLASS have been injured by DEFENDANTS'  
18 intentional conversion of such wages and compensation. PLAINTIFF and the CLASS are entitled  
19 to immediate possession of all amounts converted by DEFENDANTS, with interest, as well as any  
20 and all profits that DEFENDANTS acquired by their unlawful conversion.

21 219. DEFENDANTS' action constituting conversion were oppressive, malicious, and  
22 fraudulent, and were concealed by DEFENDANTS, and each of them, from the PLAINTIFF and the  
23 CLASS as hereinbefore alleged.

24 220. PLAINTIFF and the CLASS have been injured by DEFENDANTS' oppressive,  
25 malicious, intentional, and fraudulent actions, entitling PLAINTIFF and the CLASS to punitive and  
26 exemplary damages.

221. PLAINTIFF on behalf of himself and the CLASS seeks all available remedies for DEFENDANTS' violations including any and all wages due, penalties, monies, interest, attorney's fees, and costs to the extent permitted by law.

WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

**FIFTEENTH CAUSE OF ACTION**  
**VIOLATION OF BUSINESS & PROFESSIONS CODE §17200**  
**(Against All DEFENDANTS)**

222. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

223. The foregoing conduct, as alleged, violates the California Unfair Competition Law ("UCL"), Cali. Bus. & Prof. Code §§ 17200 et seq., which prohibits unfair competition by prohibiting, inter alia, any unlawful or unfair business acts or practices.

224. DEFENDANTS have systematically engaged in unlawful conduct such as wage and hour violations in order to decrease their costs of doing business and gain an unfair advantage over their competitors.

225. DEFENDANTS' Labor Code and IWC Wage Orders violations include, but are not limited to, DEFENDANTS' (i) failure to provide proper meal and rest periods and pay PLAINTIFF and the CLASS meal and rest premiums for missed, short, late and/or on-duty meal and rest periods; (ii) failure to pay all minimum and overtime wages for all hours worked and under the control of DEFENDANTS; (iii) failure to maintain accurate records including accurate records of DEFENDANTS' employees' hours worked and wages earned; (iv) failure to provide accurate wage statements; (v) failure to reimburse employees for all costs and expenses incurred; (vi) failure to timely pay all wages due to their employees during employment and after separation of employment; and (vii) misclassifying employees as independent contractors to avoid employment status, and seeking to enforce illegal and unfair provisions against employees and former employees.

226. DEFENDANTS intentionally avoided paying PLAINTIFF and the CLASS all wages and monies, including all minimum and overtime wages, and other financial obligations attached thereto to create for DEFENDANTS an artificially lower cost of doing business and, thus, undercut

1 their competitors and establish and/or gain a greater foothold in the marketplace, all to the detriment  
2 of PLAINTIFF and the CLASS.

3 227. DEFENDANTS lowered their costs of doing business by paying PLAINTIFF and the  
4 CLASS amounts less than what was required under the California Labor Code and Wage Order of  
5 the Industrial Welfare Commission, thereby unfairly forcing PLAINTIFF and the CLASS to perform  
6 work without fair compensation and benefits.

7 228. DEFENDANTS held themselves out to PLAINTIFF and the CLASS as being  
8 knowledgeable and adhering to the employment laws of California at all times relevant herein.  
9 PLAINTIFF and the CLASS relied on and believed in DEFENDANTS' representation concerning  
10 their conformance with the California laws alleged herein, all to their detriment.

11 229. DEFENDANTS' scheme to lower their payroll costs by violating the California Labor  
12 Code and Wage Order of the Industrial Welfare Commission, as alleged herein, constitutes  
13 "unlawful, unfair or fraudulent business act or practice," under Business and Professions Code §  
14 17200 et seq. By engaging in the above-described acts and practices, DEFENDANTS have  
15 committed one or more acts of unfair competition within the meaning of Business & Profession Code  
16 §17200, et seq. DEFENDANTS, and each of them, have acted contrary to public policies and have  
17 engaged in other unlawful and unfair business practices in violation of Business & Profession Code  
18 §17200, et seq., depriving PLAINTIFF and the CLASS and all interested persons of rights, benefits,  
19 and privileges guaranteed to all employees under law

20 230. DEFENDANTS' conduct as herein alleged has damaged PLAINTIFF and the CLASS  
21 as described in this CROSS-COMPLAINT. The aforementioned acts of DEFENDANTS'  
22 individually, or by and through their managing agents, officers, and/or directors were willful, wanton,  
23 malicious, intentional, oppressive, and despicable, and were done in willful and conscious disregard  
24 of the rights of CROSS-COMPLAINANT, and each of them, and were done by managerial agents  
25 and employees of DEFENDANTS, or with the express knowledge, consent, and ratification of  
26 managerial employees of DEFENDANTS, with the intent to vex, injure, and annoy PLAINTIFF and  
27 the CLASS, such as to constitute oppression, fraud, or malice pursuant to California Civil Code §  
28 3294, entitling PLAINTIFF to punitive and exemplary damages in a sum which is an amount

appropriate to punish and set an example of DEFENDANTS, and each of them, to deter such conduct in the future, and to set an example for others.

231. PLAINTIFF and the CLASS suffered and continue to suffer loss of wages and monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court, as a direct result of DEFENDANTS' Labor Code and IWC Wage Orders violations.

232. PLAINTIFF seeks an order of this Court awarding restitution, injunctive relief and all other relief allowed under Business & Profession Code § 17200, et seq., plus interest, attorneys' fees and costs pursuant to, inter alia, Code of Civil Procedure Section 1021.5.

WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

**SIXTEENTH CAUSE OF ACTION**  
**INJUNCTIVE RELIEF**  
**(AGAINST ALL DEFENDANTS)**

233. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

234. DEFENDANTS unlawful conduct of failing to properly classify workers as employees entitling them to statutory mandated benefits; failing to pay payroll taxes; failing to provide compliant meal periods; failing to authorize and permit rest periods; failing to provide accurate itemized wage statements; failure to timely pay wages due upon termination of employment; failing to reimburse and indemnify PLAINTIFF and the CLASS for expenditures in discharge of their duties; failing to properly maintain records; failing to provide paid sick leave; and requiring employees and applicants to agree to illegal employment terms and conditions of employment, threatens real and immediate harm to the CLASS, who will suffer irreparable harm.

235. PLAINTIFF and the CLASS are therefore entitled to an order restraining and ordering DEFENDANTS, representatives, attorneys, servants, and agents from further harm pending final judgment on this matter.

WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

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**SEVENTEENTH CAUSE OF ACTION**  
**PENALTIES UNDER CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL  
ACT OF 2004 (CAL. LABOR CODE § 2699, *et seq.*)**  
**(AGAINST ALL DEFENDANTS)**

236. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

237. California Private Attorney General Act (“PAGA”) permits an “aggrieved employee” to recover penalties on behalf of himself or herself and other current or former employees as a result of the employer’s violations of certain sections of the California Labor Code.

238. PLAINTIFF is an aggrieved employee, in that PLAINTIFF was employed by DEFENDANTS, among other things, was misclassified as an Independent Contractor, was not provided with all lawful meal and rest breaks, was not paid all of his wages at the time of his termination and was not provided with accurate itemized wage statements. Specifically, violation of Labor Codes specified in this Complaint including, Labor Code §§ 2750.3, 226.8, 3353, 510, 558, 1198, 2751, 450, 2800, 2802, 2804, 510, 1198, 558, 226.7, 512, 201, 202, 203, 226, 226.3, 432.5, 221, 224, 225, 558, 1174, 1174.5, 274.5, 1197, 1194, 1194.2, 1197.1, 245.5-249, 2810.5, giving rise to private right of action under PAGA.

239. PLAINTIFF has complied with the PAGA notice provision set forth in Cal. Lab. Code section 2699.3(a)(j). The LWDA has not provided PLAINTIFF with notice that it intends to investigate these violations, although more than 65 days have elapsed since the date of PLAINTIFF'S notice.

240. PLAINTIFF requests penalties against DEFENDANTS as provided under Lab. Code section 2699(1), plus reasonable attorneys' fees and costs, in amounts to be proved at trial.

## DEMAND FOR JURY TRIAL

PLAINTIFF, on behalf of himself and the CLASS, demands a trial by jury on all issues so triable.

## PRAYER FOR RELIEF

PLAINTIFF, on behalf of himself and the CLASS, and all others similarly situated, prays for relief and judgment against DEFENDANTS, jointly and severally, as follows:

1. For an Order certifying the proposed CLASS and/or any other appropriate subclasses under CCP § 382;
2. For an Order appointing PLAINTIFF as the representative of the CLASS;
3. For an Order appointing counsel for PLAINTIFF as counsel for the CLASS;
4. For a finding that DEFENDANTS violated the provisions of the California Labor Code, including but not limited to, §§ 201-203, 226, 226.3, 226.7, 432.5, 510, 512, 1194, 1198, 2751, 2810.5, 2802;
5. That the Court declare, adjudge, and decree that DEFENDANTS violated California Business and Professions Code §§ 17200 *et seq.*;
6. That the Court make an award to PLAINTIFF and the CLASS of damages for the amount of unpaid wages, including interest thereon and penalties, in amounts to be proven, in a formulaic manner, at trial;
7. For all wages earned and owing, including an amount sufficient to recover unlawfully deducted and unpaid wages;
8. For an appropriate injunctive relief, including an Order directing DEFENDANTS to cease and desist from improperly requiring the CLASS to pay DEFENDANTS for desk space rental, supplies, marketing, computer, and other equipment expenses to carry out DEFENDANTS' business;
9. For an appropriate injunctive relief, including an Order directing DEFENDANTS to cease and desist from improperly requiring employees to sign independent contractors' agreements;
10. For nominal damages;
11. For special damages, according to proof;
12. For actual damages pursuant to Labor Code § 226(e);
13. For reasonable attorneys' fees as provided by statute, including but not limited to California Code of Civil Procedures § 1021.5 and California Labor Code §§ 218.5, 226, 1194, 2802;
14. For pre-judgment and post-judgment interest as provided by law;

15. For an award of damages in the amount of unpaid compensation and monies including, but not limited to, actual damages, unpaid wages, overtime wages, regular wages, consequential, and incidental losses and damages in an amount according to proof;
16. For penalties as permitted under California Labor Code for violations of each of the sections identified herein, including but not limited to §§ 225.5, 226, 226.3, 1174.5, and 558;
17. For waiting time penalties and other penalties according to proof pursuant to California Labor Code section 203 for all employees who have left DEFENDANTS' employment;
18. For injunctive relief pursuant to California Labor Code section 226(h);
19. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from DEFENDANTS and determined to have been wrongfully acquired by DEFENDANTS as a result of violations of California Business & Professions Code sections 17200 et seq.;
20. For any other such relief as the Court deems just and proper due to the misconduct committed by the DEFENDANTS as alleged herein;
21. 4. For disgorgement of all monies which DEFENDANTS have illegally gained;
22. For Punitive Damages;
23. For restitution of unpaid wages to PLAINTIFF and all the CLASS;
24. For an award of damages equal to the unpaid losses and necessary business expenses incurred pursuant to Labor Code § 2802, including interest thereon;
25. For an award of additional hour of pay at the regular rate of compensation pursuant to Labor Code §226.7(b) for each meal and rest period not in compliance with the applicable Wage Order of the IWC;
26. For penalties and subsequent violation of a section of Chapter 1 of Labor Code, Div. 2, Part 2, or any provision regulating hours and days of work in any Order of the IWC for each underpaid employee for each pay period for which the employee was underpaid, in addition to an amount sufficient to recover the underpaid wages to be paid to each

1 affected employee pursuant to Labor Code §558;

2 27. For an accounting to determine all money wrongfully obtained and held by  
3 DEFENDANTS;

4 28. For all other Orders, findings, and determinations identified and sought in this Complaint  
5 and/or the Court finds just and proper;

6 29. All penalties pursuant to PAGA;

7 30. PLAINTIFF reserves the right to amend his prayer for relief.  
8  
9

10 Dated: June 11, 2020

LAW OFFICES OF NATALIE MIRZAYAN

11  
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13 By:



14 Natalie Mirzayan, Esq.

15 Attorneys for KALVYN ESCOBAR  
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## **EXHIBIT 1**

# LAW OFFICES OF NATALIE MIRZAYAN

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February 28, 2020



**VIA ONLINE FILING**

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

**VIA CERTIFIED MAIL**

Prime Finance Consulting, Inc./dba  
Financial Amesty Document Preparation Corp.  
2575 Mccabe Way #220  
Irvine, CA 92614

Hanieh Jodat  
2575 Mccabe Way #220  
Irvine, CA 92614

Shahin Jodat  
2575 Mccabe Way #220  
Irvine, CA 92614

Re: **Notification of Labor Code Private Attorney General Action, Labor Code 2698 et. seq.  
Against Prime Finance Consulting, Inc., et al.**

This notification is provided in advance of a civil action under Labor Code Private Attorney General Act of 2004, ("PAGA"). This office represents Mr. Kalvyn Esobar ("Mr. Escobar" or "Plaintiff") who was employed by Prime Finance Consulting, Inc. ("PFC"), Shahin Joudat ("Joudat"); Hanieh Jodat ("Jodat") (collectively referred to as "Defendants") since October, 2019 until approximately February 10, 2020. This letter is a notice and a request, pursuant to California Labor Code §2699.3 that your agency investigates the claims in this civil action. This action was filed as a Class Action Complaint on February 26, 2020 in the Superior Court of California, County of Orange, Case No. 30-2020-01134584-CU-OE-CXC, "the Action". A true and correct copy of the Class Action Complaint is attached hereto as Exhibit "1" and incorporated by reference. If the agency does not intend to investigate the alleged violations, we specifically and respectfully request notification so that we can amend the Action to include our PAGA claims.

This Action is brought by Mr. Escobar on behalf of himself and other similarly situated and aggrieved current and former employees in California ("Aggrieved Employees") working for Defendants. Mr. Escobar was employed as a Student Loan Advisor. The Action would seek to recover penalties for the Labor Code Violations as detailed below.

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26632 Towne Centre Drive, Ste. # 300  
Foothill Ranch, CA 92610  
(949)-285-3550  
mirzayanlaw@outlook.com

**Introduction:** Defendants had a consistent policy of misclassifying their employees as independent contractors, instead of employees, in order to gain an unfair workforce advantage. Defendants knew or should have known that such classifications clearly violate the Labor Code and IWC Wage Orders and run afoul of public policy. By misclassifying employees as independent contractors, Defendants failed to pay them wages earned during the course of their employment and upon separation of employment, failed to provide them with meal and rest periods or compensation in lieu thereof, failed to reimburse their business expenses, failed to issue them accurate itemized wages statements, failed to comply with Cal. Lab. Code § 2751 because Defendants failed to memorialize their commission agreements in writing, explaining the methods by which commissions will be computed and paid, failed to provide them with signed copies of the applicable commission contracts, failed to obtain a signed receipt for the contracts from each employee, failed to comply with Cal. Lab. Code § 2810.5, and failed to comply with Lab. Code § 2802.

**Labor Code §§ 2750.3, 226.8, 3353:** Labor Code § 3353 defines “Independent Contractor” as “any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.”

Labor Code § 2750.3 provides in pertinent part that “a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

- (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (B) The person performs work that is outside the usual course of the hiring entity’s business.
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.”

Defendants, as a matter of established company policy and procedure consistently:

- a. Administered and continue to administer a uniform company policy and practice regarding the duties and responsibilities of the members of the Class. For instance, Loan Processors are required to
  - “Handle Customer Service Calls
  - Retrieve Necessary Documents such as proof of income
  - Submit documents accordingly to the Dept of Ed
  - Recover missed payments from clients
  - Retain clients from cancelling.”
- b. Administered and continue to administer a uniform company policy and practice regarding the payment of wages to the members of the Aggrieved Employees;
- c. Treated and continue to treat the members of the Aggrieved Employees as Independent Contractors to avoid the payment of wages and other benefits in violation of the Labor Code and IWC Wage Orders;

- d. Controlled and continue to control the work performed by, the manner, and the means in which the work was performed by the members of the Aggrieved Employees; and
- e. Disseminated false information throughout Defendants' facilities and amongst Defendants' employees reciting that, under Defendants' labor policies and practices and under California law, the members of the Aggrieved Employees were properly classified as Independent Contractors.

The Mr. Escobar and the Aggrieved Employees were inappropriately misclassified by Defendants as Independent Contractors because:

(A) Mr. Escobar and the Aggrieved Employees are not free from the control and direction of the Defendants in connection with the performance of the work. In fact, the Mr. Escobar and the Aggrieved Employees were controlled by Defendants as to both the result of their work and as to the means by which results were accomplished. Mr. Escobar and the Aggrieved Employees did not in fact have the right to control or discretion as to the manner of performance of their services.

(B) Mr. Escobar and the Aggrieved Employees do not perform work that is outside the usual course of the hiring entity's business.

(C) Mr. Escobar and the Aggrieved Employees are not customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for Defendants.

Mr. Escobar and the Aggrieved Employees did not meet the bona fide Independent Contractor status in that they did not ordinarily and customarily:

- i) substantially invest other than personal services in the business;
- ii) hold out to be in business for themselves;
- iii) bargain for contracts to complete a specific project for compensation;
- iv) control the time and place their work is performed;
- v) supply tools and instrumentalities used in the work other than those normally and customarily provided by employees;
- vi) hire employees;
- vii) perform work that is not ordinarily in the course of the principal's work;
- viii) perform work that requires a particular skill;
- ix) hold a license pursuant to the Business and Professions Code;
- x) intend a work relationship of an Independent Contractor status; and/or
- xi) intend a work relationship that is not severable or terminable at will by the principal but gives rise to an action for the breach of contract.

Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employment classification as described herein is unlawful and creates an entitlement to recovery by the members of the Aggrieved Employees, in a civil action, for reimbursement of the appropriate withholding of federal, state, and local income taxes based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented, and any corresponding state or local law, and the Aggrieved Employees

members' share of FICA, Medicare, and state and local employment taxes that were improperly not paid by Defendants as a result of the independent contractor classification.

Labor Code § 226.8(a)(1) states "It is unlawful for any person or employer to engage in any of the following activities:

- (1) Willful misclassification of an individual as an independent contractor.
- (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified."

"Willful misclassification" is defined by Labor Code § 226.8(i)(4) as "avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor."

Labor Code § 226.8(b) provides that if a court issues a determination that Defendants have violated Labor Code § 226.8(a), Defendants shall be subject to a civil penalty: between \$ 5,000 and \$ 15,000 for each violation, in addition to any other penalties or fines permitted by law.

Further, Labor Code § 226.8(c) provides that if a court issues a determination that Defendants have violated Labor Code § 226.8(a) and has engaged or is engaging in a pattern or practice of these violations, Defendants shall be subject to a civil penalty between \$ 10,000 and \$ 25,000 for each violation, in addition to any other penalties or fines permitted by law.

**Labor Code §2751:** Mr. Escobar and the Aggrieved Employees suffered various violations of California Labor Code during their employment with Defendants because Defendants, *inter alia*, failed to comply with Cal. Lab. Code § 2751 by failing to memorialize Mr. Escobar's and the Aggrieved Employees' commission agreements in writing, explaining the methods by which commissions will be computed and paid; failed to provide Mr. Escobar and the Aggrieved Employees with signed copies of the applicable commission contracts and obtain a signed receipt for the contracts from each employee.

**Labor Code §§ 450, 2800, 2802, and 2804:** Pursuant to Labor Code § 450(a), "no employer...may compel or coerce any employee... to patronize his or her employer, or any other person, in the purchase of any thing of value."

Labor Code §2802 requires an employer to indemnify its employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties, or of their obedience to the directions of their employer. Defendants engaged and continue to engage in a policy and practice that require Aggrieved Employees to pay for their desk space rental, supplies, marketing, computer, and other equipment expenses to carry out Defendants' business. Defendants willfully and intentionally failed and continue to fail to indemnify their Aggrieved

Employees for all necessary expenditures incurred by Aggrieved Employees in direct consequences and discharge of their duties and/or their obedience to Defendants' directions

**Labor Code §§ 510, 1198, 558 Payment for Overtime:** Labor Code sections 510 and 1198 requires employers to pay employees time and half (1.5) the employees' hourly rate for all hours worked in excess of eight hours per day and in excess of 40 hours per week; and double times the hourly rate for hours worked in excess of 12 hours per day, and eight hours on the seventh day worked in a week. Defendants engaged in a policy and practice of suffering their employees to work more than 8 hours per day and/or forty hours in a work week by failing to compensate them overtime and double time as required by law because Defendants misclassified their employees as independent contractors. Therefore, Mr. Escobar and other Aggrieved Employees were entitled to receive certain wages for overtime compensation but were not paid any overtime hours.

Defendants policy and practice of misclassifying their employees caused Mr. Escobar and all other similarly situated and Aggrieved Employees to be underpaid for all hours worked, including overtime wages beyond 8 hours per day and 40 hours per week.

**Labor Code §§ 226.7 and 512:** Defendants violated Labor Code § 226.7 which requires employers to provide a ten-minute rest period during each four-hour of work or major fraction thereof. Defendants further violated Labor Code § 226.7 and 512 by failing to provide Mr. Escobar and all other similarly situated and Aggrieved Employees with a meal period of not less than 30 minutes for each work period more than 5 hours per day and a second meal period of not less than 30 minutes for a work period of more than 10 hours-day. The meal period must be provided prior to the 5<sup>th</sup> hour of work.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Defendants required Mr. Escobar and other Aggrieved Employees to work during meal and rest periods and failed to compensate them properly for missed meal and rest periods, including but not limited to, failing to pay them any premium pay, additional wages, and/or penalties.

**Labor Code §§ 201, 202, 203:** California Labor Code section 201 provides that if an employer discharges an employee, the employee's wages that have been earned and are unpaid at the time of discharge shall be paid immediately. Labor Code § 202 provides that if an employee quits, his or her wages become due no later than 72 hours thereafter or if an employee gives 72-hours previous notice of his or her intention to quit, the employees' wages are due at the time of quitting. Labor Code § 203 provides that if the employer willfully fails to pay any wages of an employee who is discharged or who quits, the employee's wages shall continue as a penalty from the due date of the payment of wages, at the same rate, until such wages paid, or an action commenced, but not more than 30 days. Defendants willfully failed to provide Mr. Escobar and the Aggrieved Employees with all wages due and owing, including all regular and overtime wages, and meal and rest period premium wages, and reimbursement for necessary business expenses, as specified by Labor Code §§ 201 and 202, as alleged herein.

Defendants did not pay Mr. Escobar, and all similarly situated Aggrieved Employees' wages were due when Defendants terminated their employment. Defendants willfully failed and refused, and continue to willfully fail and refuse, to timely pay compensation and wages, including overtime payments, premiums for meal and rest periods, and indemnification for business expenses as described above. As a result, Defendants are liable for wages due, interest, and waiting time penalties, any other statutory penalties, other damages together with attorneys' fees and costs.

**Labor Code §§ 226, and 226.3:** Labor Code 226 requires employers to maintain accurate records for each employee's hours of work and to provide each employee with an accurate wage statements in writing setting forth, among other things: gross wages earned; total hours worked by the employee; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, all deductions made, and the name and address of the legal entity of the employer

Defendants engage in a policy and practice of willfully and intentionally failing to furnish their employees with accurate itemized wage statements in compliance with the statutory requirement of §226(a). During the Relevant Time Period, Defendants knowingly and intentionally failed to provide to Mr. Escobar and the Aggrieved Employees, the above described writing required by Labor Code § 226 through actions alleged herein, including a complete failure to provide any wage statements.

**Labor Code § 432.5:** Pursuant to Cal. Lab. Code §432.5, an employer may not require any applicant or employee to agree to any illegal employment terms or conditions. Defendants willfully manipulated and continue to manipulate Aggrieved Employees to agree to deductions from their wages made by Defendants to pay for desk space rental, supplies, marketing, computer, and other equipment expenses to carry out Defendants' business in direct violation of Cal. Lab. Code § 432.5.

**Labor Code §§ 221, 224, 225:** Pursuant to California Labor Code § 221 Defendants are prohibited from collecting or receiving wage from Mr. Escobar and the Aggrieved Employees. Specifically, Labor Code § 221 states that "it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

Mr. Escobar and the Aggrieved Employees were non-exempt employees misclassified as independent contractors and were entitled to the protections of California Labor Code §§ 221, and 224. During the course of Mr. Escobar and the Aggrieved Employees' employment, Defendants, engaged in a policy and practice of compelling and coercing Mr. Escobar and the Aggrieved Employees to, *inter alia*, pay for desk space rental, supplies, marketing, computer, and equipment through wage deductions made by Defendants. Defendants, thereby, subjecting Mr. Escobar and the Aggrieved Employees to unlawful wage collections, and deductions which Defendants fail to reimburse.

Defendants also engaged in a policy and practice of charging back Mr. Escobar and the Aggrieved Employees for the full amount refunded to their clients by deducting said amounts from Mr. Escobar's and the Aggrieved Employees' wages.

Labor Code § 225 provides in pertinent part that "[t]he violation of any provision of Sections 221... is a misdemeanor." Labor Code § 225.5 provides in pertinent part that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section ... 221 ... shall be subject to a civil penalty as follows:

- (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

In violation of state law, Defendants have knowingly and willfully refused to perform their obligations to provide desk space rental, supplies, marketing, computer, and equipment free of charge, and have instead charged Mr. Escobar and the Aggrieved Employees for desk space rental, supplies, marketing, computer, and equipment required in the discharge of their duties.

As a direct result, Mr. Escobar and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, loss interest on such wages, and expenses and attorneys' fees, and costs in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damages in amounts according to proof at times of trial, and within the jurisdiction of this Court.

Defendants committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Mr. Escobar and the Aggrieved Employees, from improper motives amounting to malice, and in conscious disregard of employees' rights.

**Labor Code §§ 558, 1174, 1174.5, 274.5(a):** Labor Code section 1174(d) requires Defendants to maintain and preserve in a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by, and the wages paid to employees employed at the respective plants or establishments. These records shall be kept on file for not less than three years.

Defendants engaged in a policy and practice of failing to maintain payroll records, and records pertaining to current and former employees in a central location in the state.

Defendants failed to comply with California Labor Code section 1174. Defendants' failure to comply with California Labor Code section 1174 is a violation of California Labor Code section 1175.

Labor Code Labor Code § 1174.5 provides that any person employing labor who willfully fails to maintain the records required by Labor Code § 1174(d), shall be subject to civil penalty in the amount of \$500.00.

Furthermore, Labor Code Labor Code § 247.5(a) requires an employer to keep for at least three years records documenting the hours worked and paid sick days accrued and used by an employee. An employer shall make these records available to an employee in the same manner as described in Section 226.

Upon information and belief, Defendants also failed to comply with section 247.5(a) in the same manner as Defendants' failed to provide Mr. Escobar with the records reflecting accrued and used paid sick days.

**Labor Code §§ 1197, 1194, 1194.2, 1197.1:** Cal. Lab. Code §1197 provides that: "the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

Cal. Lab. Code §1194 provides in relevant part that any employee receiving less than the legal minimum wage applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

Cal. Lab. Code §1194.2 provides in relevant part that: "in any action under ... Section 1194 to recover wages because of a payment of wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wage unlawfully unpaid and interest thereon."

Mr. Escobar and the Aggrieved Employees were none-exempt employees of Defendants that were voluntarily and intentionally misclassified by Defendants as independent contractors to avoid employee status.

Defendants failed to satisfy minimum wage requirements and secretly paid a lower wage while purposing to pay the wage designated by statute.

**Labor Code §§ 245.5 -249:** California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment.

Defendants systematically failed to provide Mr. Escobar and Aggrieved Employees paid sick leave of no less than 24 hours or three (3) days. Mr. Escobar and Aggrieved Employees worked in

excess of 30 days for Defendants in California and were therefore eligible to receive paid sick leave.

Additionally, Defendants failed to list the balance of paid sick leave (or paid time off) benefits available on the Mr. Escobar's wage statements as required by Labor Code § 246(i). Defendants' ongoing and systematic failure to provide the requisite sick leave benefits to Mr. Escobar and the Aggrieved Employees and failure to provide them with accurate balances of their benefits available, violates California Labor Code section 246.

Mr. Escobar and the Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5.

**Labor Code § 2810.5:** The California Wage Theft Prevention Act of 2011 ("WTPA") became effective on January 1, 2012. Among other provisions, the WTPA adds section 2810.5 to the California Labor Code. The act requires that all employers provide each employee with a written notice containing specified information. The notice must be in the language the employer normally uses to communicate employment-related information to the employee. Specifically, employers are required to provide each employee, at the time of hiring, with a written notice containing the following information: (1) the rate or rates of pay "and basis thereof," whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; (2) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; (3) the regular payday designated by the employer in accordance with the requirements of the Labor Code; (4) the name of the employer, including any "doing business as" names used by the employer; (5) the physical address of the employer's main office or principal place of business, and a mailing address, if different; (6) the telephone number of the employer; (7) the name, address, and telephone number of the employer's workers' compensation insurance carrier; and (8) any other information the Labor Commissioner deems material and necessary.

Mr. Escobar began his employment with Defendants on October, 2019 when Cal. Lab. Code § 2810.5 was in full force and effect. Mr. Escobar was a non-exempt employee, misclassified as an independent contractor, entitled to notice pursuant Cal. Lab. Code § 2810.5. Cal. Labor Code § 2810.5 is aimed at informing employees about such fundamental and material information concerning their pay and rates of pay under an employment relationship. Defendants willfully, and intentionally failed to comply with the requirements of Cal. Lab. Code § 2810.5. Specifically, Defendants completely failed to provide Mr. Escobar with a Notice to Employee.

All the above violations, including the violations stated in the attached Class Action Complaint, incorporated by reference herein, Exhibit "1", were suffered by Mr. Escobar and all other similarly situated and Aggrieved Employees working for Defendants in California daily as a result of Defendants' uniform policies and practices, and managerial instructions. Defendants knowingly, intentionally and willfully refused and continue to refuse to comply with California law.

The purpose of this letter is to satisfy the requirements created by California Labor Code section 2699 prior to seeking penalties allowed by law for the aforementioned violations.

February 28, 2020  
Page 10

We look forward to hearing from you whether the agency intends to take any action in reference to these violations.

Sincerely,

A handwritten signature in black ink, appearing to read "Natalie Mirzayan", with a long horizontal flourish extending to the right.

Natalie Mirzayan, Esq.

Attorney for Mr. Escobar and Aggrieved Employees

## **EXHIBIT 1**

**LAW OFFICES OF NATALIE MIRZAYAN**

Natalie Mirzayan, Esq. (SBN 272217)  
26632 Towne Centre Drive, Suite 300  
Foothill Ranch, California 92610  
Telephone: (949) 285-3550  
mirzayanlaw@outlook.com

Attorneys for Plaintiff  
KALVYN ESCOBAR

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

Judge Randall J. Sherman

KALVYN ESCOBAR, individually and on  
behalf of all current and former similarly situated  
employees in the State of California,

Plaintiff,

v.

PRIME FINANCE CONSULTING, INC., a  
California Corporation; HANIEH JODAT, an  
individual; SHAHIN JOUDAT, an individual,  
and DOES 1 to 50, inclusive,

Defendants.

) CASE NO.: 30-2020-01134584-CU-OE-CXC

) ASSIGNED FOR ALL PURPOSES TO:

) **CLASS ACTION COMPLAINT:**

- ) **1. MISCLASSIFICATION AS**  
) **INDEPENDENT CONTRACTOR**  
) **(VIOLATION OF CALIFORNIA**  
) **LABOR CODE §§ 2750.3, 226.8);**  
) **2. FAILURE TO PAY ALL WAGES**  
) **(VIOLATION OF CALIFORNIA**  
) **LABOR CODE §§ 510, 1194, 1198;**  
) **IWC WAGE ORDER NO.4);**  
) **3. FAILURE TO PROVIDE MEAL**  
) **PERIODS OR COMPENSATION**  
) **IN LIEU THEREOF (VIOLATION**  
) **OF IWC WAGE ORDER 4-2001,**  
) **CAL. LAB. CODE §§ 226.7, 512);**  
) **4. FAILURE TO AUTHORIZE AND**  
) **PERMIT REST BREAKS**  
) **(VIOLATION OF IWC WAGE**  
) **ORDER 4-2001, CAL. LAB. CODE**  
) **§ 226.7);**  
) **5. FAILURE TO INDEMNIFY FOR**  
) **EXPENDITURES INCURRED IN**  
) **DISCHARGE OF DUTIES (CAL.**  
) **LAB. CODE §§ 450, 2802, 2804);**

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- ) 6. UNLAWFUL COLLECTION OR RECEIPT OF WAGES DUE (VIOLATION OF CALIFORNIA LABOR CODE §§ 221, 224, 225);
- ) 7. FAILURE TO PROVIDE PAID SICK DAYS (VIOLATION OF CALIFORNIA LABOR CODE §§ 245.5 -249);
- ) 8. FAILURE TO MAINTAIN RECORDS IN VIOLATION OF (VIOLATION OF CALIFORNIA LABOR CODE §§ 558, 1174, 1174.5, 274.5(a));
- ) 9. WAITING TIME PENALTIES (VIOLATION OF CALIFORNIA LABOR CODE §§ 201, 202, 203);
- ) 10. FAILURE TO PAY MINIMUM WAGE (VIOLATION OF CALIFORNIA LABOR CODE §§ 1197, 1194, 1194.2, 1197.1);
- ) 11. ILLEGAL TERMS OF EMPLOYMENT (VIOLATION OF CALIFORNIA LABOR CODE §432.5);
- ) 12. FAILURE TO COMPLY WITH WAGE THEFT PREVENTION ACT (VIOLATION OF CALIFORNIA LABOR CODE § 2810.5);
- ) 13. FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS (VIOLATION OF CALIFORNIA LABOR CODE § 226(a));
- ) 14. CONVERSION;
- ) 15. VIOLATION OF BUSINESS & PROFESSIONS CODE §17200;
- ) 16. INJUNCTIVE RELIEF

**DEMAND FOR JURY TRIAL**

1 COMES NOW Plaintiff KALVYN ESCOBAR, (hereinafter “PLAINTIFF” or  
2 “ESCOBAR”) on behalf of himself and all other similarly situated individuals (hereinafter  
3 “CLASS”), and on behalf of the general public, and alleges as follows:

#### 4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of  
6 PLAINTIFF and all individuals who currently work or formerly worked for Defendants PRIME  
7 FINANCE CONSULTING, INC. (“PFC”); SHAHIN JOUDAT (“JODAT”); HANIEH JODAT  
8 (“JODAT”) and DOES 1 to 50, inclusive (collectively referred to as “DEFENDANTS”) who were  
9 knowingly and intentionally misclassified as independent contractors within the State of California.

10 2. DEFENDANTS had a consistent policy of misclassifying their employees as  
11 independent contractors, instead of employees, in order to gain an unfair workforce advantage.  
12 DEFENDANTS knew or should have known that such classifications clearly violate the Labor Code  
13 and IWC Wage Orders and run afoul of public policy. By misclassifying employees as independent  
14 contractors, DEFENDANTS failed to pay them wages earned during the course of their employment  
15 and upon separation of employment, failed to provide them with meal and rest periods or  
16 compensation in lieu thereof, failed to reimburse their business expenses, failed to issue them  
17 accurate itemized wages statements, failed to comply with Cal. Lab. Code § 2751 because  
18 DEFENDANTS failed to memorialize their commission agreements in writing, explaining the  
19 methods by which commissions will be computed and paid, failed to provide them with signed copies  
20 of the applicable commission contracts, failed to obtain a signed receipt for the contracts from each  
21 employee, failed to comply with Cal. Lab. Code § 2810.5, and failed to comply with Lab. Code §  
22 2802.

#### 23 **THE PARTIES**

##### 24 **A. Plaintiff**

25 3. Plaintiff KALVYN ESCOBAR is an individual residing in Lake Forest, County of  
26 Orange, California.

1       4.       PLAINTIFF is a former employee of DEFENDANTS who began his employment with  
2 DEFENDANTS from approximately October, 2019 until February 10, 2020. ESCOBAR held the  
3 position of a Student Loan Advisor with DEFENDANTS.

4       5.       PLAINTIFF on behalf of himself and the CLASS brings this Class Action to recover,  
5 statutorily mandated employee benefits, among other things, unpaid wages for all hours worked,  
6 including minimum and overtime wages, commissions, premiums for missed meal and rest break  
7 periods, indemnification of business expenses, injunctive relief, declaratory relief, penalties for  
8 failure to comply with various California Labor Code sections and the Industrial Welfare  
9 Commission Wage Order 4-2001, (“IWO Wage Order 4”), out of pocket expenses (including payroll  
10 taxes) that should have been paid by DEFENDANTS, interest, restitution, attorneys’ fees, and costs,  
11 and any other appropriate relief for DEFENDANTS’ systematic pattern of violations of California  
12 law which contributed to PFC’s deliberate unfair competition in direct violation of Bus. & Prof. Code  
13 § 17200.

14       **A. Defendants**

15       6.       At all relevant times alleged herein, PLAINTIFF and the CLASS are informed and  
16 believe, and based thereon allege that Defendant PRIME FINANCE CONSULTING, INC, dba,  
17 Financial Amnesty (hereinafter, “PFC”) is a corporation duly organized and existing under the laws  
18 of the State of California, with its principle place of business located at located at 2575 MCCABE  
19 WAY #220, Irvine, CA 92614.

20       7.       At all relevant times alleged herein, PLAINTIFF and the CLASS are informed and  
21 believe, and based thereon allege that Defendant SHAHIN JOUDAT(“JUDAT”), is an individual,  
22 and at all times material hereto, was a resident of the State of California, County of Orange.  
23 PLAINTIFF and the CLASS are informed and believe, and thereon allege, that Defendant JOUDAT  
24 is the owner and Chief Executive Officer (“CEO”) of PFC who directly oversees and controls PFC’s  
25 operation in California and who managed the PLAINTIFF and continues to manage and the CLASS  
26 members in the state of California and exercises significant control over their overall working  
27 conditions.  
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1           8.       PLAINTIFF and the CLASS are informed and believe, and based thereon allege, that  
2 JODAT permitted, authorized, approved, and ratified the wrongful acts and practices against the  
3 PLAINTIFF and the CLASS.

4           9.       JODAT, as the owner and CEO, had the authority to hire and terminate the  
5 PLAINTIFF and the other members of the CLASS; to set work rules and conditions governing  
6 PLAINTIFF and the CLASS members' employment; and to supervise their daily employment  
7 activities, including but not limited to the payment of their wages and commissions.

8           10.      At all relevant times alleged herein, PLAINTIFF and the CLASS are informed and  
9 believe, and based thereon allege that Defendant HANIEH JODAT ("JODAT"), is an individual,  
10 and at all times material hereto, was a resident of the State of California, County of Orange.  
11 PLAINTIFF and the CLASS are informed and believe, and thereon allege, that Defendant JODAT  
12 is the owner, Chief Financial Officer ("CFO"), and Director of PFC who directly oversees and  
13 controls PFC's operation in California and who managed the PLAINTIFF and continues to manage  
14 the CLASS members in the state of California and exercises significant control over their overall  
15 working conditions.

16           11.      PLAINTIFF and the CLASS are informed and believe, and based thereon allege, that  
17 JODAT permitted, authorized, approved, and ratified the wrongful acts and practices against the  
18 PLAINTIFF and the CLASS.

19           12.      JODAT, as the owner, Director, and CFO, had the authority to hire and terminate the  
20 PLAINTIFF and the other members of the CLASS; to set work rules and conditions governing  
21 PLAINTIFF and the CLASS members' employment; and to supervise their daily employment  
22 activities, including but not limited to the payment of their wages and commissions.

23           13.      PLAINTIFF and the CLASS are unaware of the true names and capacities, whether  
24 individual, corporate, associate, or otherwise of the DEFENDANTS sued herein as DOES 1 through  
25 50, inclusive, and for that reason PLAINTIFF sues said DEFENDANTS by such fictitious names  
26 pursuant to § 474 of the California Code of Civil Procedure. PLAINTIFF will file and serve an  
27 amendment to this Cross-Complaint alleging the true names and capacities of these fictitiously  
28 named DEFENDANTS when PLAINTIFF knows such true names and capacities. PLAINTIFF and

1 the CLASS are informed and believe, and based thereon allege, that each of the DOE  
2 DEFENDANTS are in some manner liable to PLAINTIFF and the CLASS for the events and actions  
3 alleged herein. PFC, JOUDAT, JODAT, and DOES 1 through 50, inclusive, are referred to  
4 collectively herein as “DEFENDANTS”.

5 14. PLAINTIFF and the CLASS are informed and believe, and based thereon allege that  
6 at all times herein mentioned, each of the DEFENDANTS, whether named or fictitious, exercised  
7 sufficient authority over the terms and conditions of PLAINTIFF and the CLASS’ employment for  
8 them to be liable as the “employer” and/or “person” for the claims asserted in this Complaint,  
9 including but not limited to, under Labor Code § 558.1 and §18, who violated or caused to be  
10 violated California Labor Code or any provision regulating hours and days of work in any order of  
11 the Industrial Welfare Commissions, as such are subject to penalties for each underpaid employee,  
12 which includes an amount equal to the underpaid wages, which shall be paid to each affected  
13 employee, as set forth in Labor Code § 558.

14 15. DEFENDANTS, including but not limited to JOUDAT and JODAT’s conduct forms  
15 significant basis for the PLAINTIFF’S claims alleged herein. JOUDAT and JODAT are sued  
16 individually pursuant to Cal. Labor Code § 558, and 588.1 which defines “employer or other person  
17 acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or  
18 managing agent of the employer.” Each JOUDAT and JODAT in performing their duties, knew  
19 that their actions were unlawful and intentionally acted anyway in denying PLAINTIFF and the  
20 CLASS their rights under California law.

21 16. JOUDAT and JODAT each violated or caused the violations alleged herein because  
22 each created, implemented, directed and/or enforced PFC’s employment practices and policies,  
23 including but not limited to, misclassifying employees as independent contractors, meal and rest  
24 period polices, overtime policies, and failure to reimburse for necessary business expenses.

25 17. JOUDAT and JODAT each created, set and/or implemented PFC’s policies, practices,  
26 and procedures regarding misclassifying employees as independent contractors, payment of wages  
27 and commissions, overtime wages, and meal and rest period premiums that resulted in the failure to  
28 pay PLAINTIFF and the CLASS proper wages for all hours worked.

1           18.       JOUDAT and JODAT each exercised day-to-day control over PLAINTIFF and the  
2 CLASS' employment, controlled and authorized payroll transactions, and supervised PFC's current  
3 and former employees.

4           19.       PLAINTIFF and the CLASS are informed and believe, and based thereon allege that  
5 at all times relevant herein, each of the DEFENDANTS, whether named or fictitious, was an  
6 employer, was the principle, agent, co-conspirator, partner, joint venturer, officer, director,  
7 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or  
8 predecessor in interest of each of the other DEFENDANTS named herein, and, in doing the acts and  
9 in carrying out the wrongful conduct alleged herein, was engaged with some or all of the other  
10 DEFENDANTS in a joint enterprise for profit, and bore such other relationships to some or all of  
11 the other DEFENDANTS so as to be liable for their conduct with respect to the matters alleged in  
12 this CROSS-COMPLAINT.

13          20.       At all times mentioned herein, PLAINTIFF and the CLASS are further informed and  
14 believe and thereon allege that each and every of the acts and omissions alleged herein were  
15 performed by, and/or attributable to each of the DEFENDANTS, whether named or fictitious, each  
16 acting as agents and/or employees, and/or under the directions and control of each of the other  
17 DEFENDANTS and acting pursuant to and within the course and scope of the relationships alleged  
18 above, and that all relevant times, each of the DEFENDANTS knew or should have known about,  
19 authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other  
20 DEFENDANTS.

21          21.       PLAINTIFF and the CLASS are informed and believe and thereupon allege that  
22 DEFENDANTS, and each of them, exercised sufficient degree of control over PLAINTIFF and the  
23 CLASS to render each of the DEFENDANTS the employer or joint employers of PLAINTIFF and  
24 the CLASS. Throughout PLAINTIFF's employment the DEFENDANTS assigned work to  
25 PLAINTIFF and the CLASS, and directed each in the performance thereof, to which end  
26 PLAINTIFF and the CLASS were required to report to each of the DEFENDANTS on a regular  
27 basis and did so report. DEFENDANTS each had the authority to control the terms and condition  
28 of PLAINTIFF's employment; set work rules and conditions governing PLAINTIFF's employment;

1 and to supervise his daily employment activities. As result of sufficient authority and exercise of  
2 control over the terms and conditions of PLAINTIFF and the CLASS' employment,  
3 DEFENDANTS, and each of them, are joint employers of PLAINTIFF and the CLASS, and each  
4 of them, is jointly and severally liable to PLAINTIFF and the CLASS for the damages alleged  
5 herein.

6 22. As a direct and proximate result of the unlawful actions of DEFENDANTS,  
7 PLAINTIFF and the CLASS have suffered and continue to suffer from loss of earnings in amounts  
8 as yet unascertained, but subject to proof at trial and within the jurisdiction of this Court.

9 23. At all relevant times herein, PLAINTIFF and the CLASS were employed by  
10 DEFENDANTS under employment agreements, including commissions agreement, that were oral,  
11 and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each  
12 of them, acted pursuant to and in furtherance of their policies and practices of not paying PLAINTIFF  
13 for all hours worked, including minimum and overtime wages; failing to properly classify workers  
14 as employees entitling to statutory mandated benefits; failing to pay payroll taxes; failing to provide  
15 compliant meal periods; failing to authorize and permit rest periods; failing to provide accurate  
16 itemized wage statements; failure to timely pay wages due upon termination of employment; failing  
17 to reimburse and indemnify PLAINTIFF and the CLASS for expenditures in discharge of their  
18 duties; failing to properly maintain records; failing to provide paid sick leave; and requiring  
19 employees and applicants to agree to illegal employment terms and conditions of employment. By  
20 doing the unlawful acts alleged herein, DEFENDANTS decreased their employment-related costs  
21 and obtained unfair advantage over their law-abiding competitors; therefore, engaged in unfair  
22 competition.

23 24. PLAINTIFF brings this lawsuit seeking injunction, declaratory relief, restitution, and  
24 monetary relief against DEFENDANTS on behalf of himself and all other current and former  
25 employees of DEFENDANTS to recover, among other things, restitution, unpaid wages, interest,  
26 penalties, liquidated damages, attorney's fees and costs pursuant to California Labor Code 201, 202,  
27 203, 226, 226.3, 226.7, 432.5, 510, 512, 558, 558.1, 1194, 1198, and 2802, 2751, 2810.5 and the  
28 Business and Professions Code §§ 16600, 17200 *et seq.*

1 **JURISDICTION**

2 25. This Court has jurisdiction over this action pursuant to the California Constitution,  
3 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”  
4 except those given by statute to other courts. The statutes under which this action is brought do not  
5 specify any other basis for jurisdiction.

6 26. Venue is proper in this Court because, upon information and belief, DEFENDANTS  
7 maintain offices, have agents, and/or transact business in the State of California, county of Orange.  
8 DEFENDANTS’ illegal policies and practices which are the subject of this action were also applied  
9 in the State of California, County of Orange, and because records relevant and related to this action  
10 are maintained in this county. PFC’s main place of business is in this judicial district.

11 **FACTUAL BACKGROUND**

12 27. PLAINTIFF makes the allegations in this Complaint without any admission to any  
13 particular allegation. PLAINTIFF bears the burden of pleading, proving, or persuading and  
14 PLAINTIFF reserves all of complainant’s rights to plead the alternative.

15 28. As part of their compensation, PLAINTIFF and the CLASS received commissions,  
16 as the term is defined under Cal. Lab. Code § 204.1, for the work performed while employed with  
17 DEFENDANTS to sell DEFENDANTS’ services of document preparation. Commissions are  
18 25% of the amount or value of such services. However, despite the fact that California employers  
19 are required to memorialize all commission agreements in writing, explaining the methods by which  
20 commissions will be computed and paid, DEFENDANTS failed to do so. Additionally, Cal. Lab.  
21 Code § 2751 requires employers to provide each affected employee with a signed copy of the  
22 applicable commission contract and obtain a signed receipt of the contract from each employee.  
23 DEFENDANTS failed to do so in direct violation of Cal. Lab. Code § 2751.

24 29. DEFENDANTS’ failure to comply with the requirement of Cal. Lab. Code § 2751 is  
25 an unfair business practice under California law (Cal. Business and Professions Code, section 17200  
26 *et. seq.*), entitling PLAINTIFF to penalties under the Private Attorneys General Act<sup>1</sup> (Cal. Lab.  
27 Code § 2698 *et. seq.*), actual damages, and attorneys’ fees and costs.

28 <sup>1</sup> PLAINTIFF will amend this COMPLAINT to add such allegations after he exhausts the administrative notice requirements to Labor and Workforce Development Agency.

1           30. DEFENDANTS' held PLAINTIFF and the CLASS to a strict work schedule, set strict  
2 standards, policies, and procedures, which apply uniformly to the entire CLASS and that  
3 DEFENDANTS require and expect the CLASS to carefully follow. DEFENDANTS routinely  
4 monitor the details of the work of the CLASS to ensure strict adherence to DEFENDANTS'  
5 standards, policies, and procedures.

6           31. DEFENDANTS' policy and practice and unrealistic imposition of work schedules  
7 and work demands did not permit PLAINTIFF and the CLASS to take meal and rest breaks.  
8 PLAINTIFF and the CLASS were unable to complete their job requirements without working  
9 through meal and rest breaks and/or working before and after their scheduled shifts.

10           32. Additionally, PLAINTIFF and the CLASS' meal and rest breaks, if taken, were  
11 frequently interrupted by DEFENDANTS' practice of requiring PLAINTIFF and the CLASS to  
12 answer calls at all times in order to respond to calls from customers. PLAINTIFF and the CLASS  
13 were pressured and specifically instructed to meet their job requirement through DEFENDANTS'  
14 policy of disciplining and/or terminating those who did not meet the job requirements imposed by  
15 DEFENDANTS. For example, individuals that did not "meet a minimum of \$5000 bi-weekly"  
16 suffered a 5% commission loss (i.e. would only receive a 20% commission as opposed 25%).

17           33. As a direct result of DEFENDANTS' work demands, policies, and procedures, and  
18 directives, PLAINTIFF and the CLASS did not have the ability to regularly take a daily meal break,  
19 much less a daily one-half hour uninterrupted meal period before the end of the 1st five (5) hour of  
20 work as is required by California law. PLAINTIFF and the CLASS also did not take any rest breaks  
21 throughout the workday.

22           34. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS  
23 routinely worked through their meal and rest breaks, and before and after their scheduled shifts  
24 without compensation.

25           35. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS were  
26 entitled to receive certain wages for overtime compensation, and that they were not receiving  
27 overtime compensation.

28           36. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS were  
entitled to receive minimum wages, and that they were not receiving said minimum wages.

1           37. DEFENDANTS failed to compensate PLAINTIFF and the CLASS premium pay for  
2 missed meal and rest break periods, equal to one additional hour of pay at PLAINTIFF and the  
3 CLASS' regular rate of pay when a meal and/or a rest period was missed.

4           38. DEFENDANTS' engage in a policy and practice of coercing and compelling  
5 PLAINTIFF and the CLASS to pay DEFENDANTS for desk space rental, supplies, marketing,  
6 computer, and other equipment expenses to carry out DEFENDANTS' business. DEFENDANTS  
7 unlawfully deduct said amounts from the PLAINTIFF and the CLASS' wages.

8           39. DEFENDANTS also engaged in a policy and practice of recouping from the  
9 PLAINTIFF and the CLASS the full amounts refunded to their clients by deducting said amounts  
10 from PLAINTIFF'S and the CLASS' wages in direct violation of California Labor Code § 221.

11           40. DEFENDANTS engage in a policy and practice of violating California Labor Code  
12 246(a) by failing to provide PLAINTIFF and the CLASS with paid sick days to accrue at a rate of  
13 not less than one hour per every 30 hours worked, or in the alternative comply with the requirements  
14 of section 246(b)(1) or 246(f).

15           41. PLAINTIFF is informed and believes, and thereon allege, that DEFENDANTS knew  
16 or should have known that DEFENDANTS were obligated to provide PLAINTIFF and the CLASS  
17 with paid sick leave benefits but failed to do so.

18           42. DEFENDANTS engage in a policy and practice of violating California Labor Code  
19 §§ 246(i) by failing to provide PLAINTIFF and the CLASS with written notices setting forth the  
20 amount of paid sick leave available, or PTO leave that DEFENDANTS provide in lieu of sick leave,  
21 for use either on each employees' itemized wage statements as described in Section 226 or in a  
22 separate writing provided on the designated pay date with each employees' payment of wages.

23           43. DEFENDANTS engage in a policy and practice of completely failing to issue  
24 itemized wage statements to PLAINTIFF and the CLASS in compliance with the statutory  
25 requirement of §226(a) which requires employers to maintain accurate records for each employee's  
26 hours of work and to provide each employee with an accurate wage statements in writing setting  
27 forth, among other things, the gross wages earned; total hours worked by the employee; net wages  
28 earned; all applicable hourly rates in effect during the pay period and the corresponding number of  
hours worked at each hourly rate by the employee, and all deductions made.

44. DEFENDANTS knew or should have known that PLAINTIFF and the CLASS were entitled to receive itemized wage statements or separate written statements showing the amount of paid sick leave available, or paid time off provided in lieu of sick leave. In violation of the California Labor Code, DEFENDANTS failed to provide PLAINTIFF and the CLASS with itemized wage statements or separate written statements showing this information.

45. DEFENDANTS failed to maintain records documenting PLAINTIFF and the CLASS' accrued and used sick leave in violation of Labor Code § 247.5(a).

46. PLAINTIFF is informed and believes, and thereon alleges that DEFENDANTS engage in a policy and practice of failing to maintain payroll records, and records pertaining to current and former employees within the state in violation of Labor Code § 1174(d).

47. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS knew or should have known that they had a duty to maintain accurate and complete payroll records in this state in accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

**CLASS ACTION DESIGNATION**

48. PLAINTIFF brings this Complaint as a class action, on behalf of himself and all persons within the CLASS, pursuant to California Code of Civil Procedure §382, as the code authorizes “one or more may sue or defend for the benefit of all” “when the question is one of a common or general interest of many persons” and “its impracticable to bring them all before the court”; California Code of Civil Procedure §§ 428.10 - 428.30; and California Business and Professions Code § 17200 *et seq.* as follows:

## THE CLASS

49. All current and former employees, who were employed by DEFENDANTS in the State of California for a period of time within the four (4) years preceding the filing of this action until the time of trial, “THE RELEVANT TIME PERIOD,” in the position of Student Loan Advisors, Student Loan Processor, or similar positions, who were subjected to DEFENDANTS’ unlawful acts as stated herein.

50. PLAINTIFF reserves the right under Rule 3.765, California Rules of Court, to amend or modify the CLASS description with greater specificity or further division into subclasses or limitations to particular issues.

1           51. This action has been brought and may properly be maintained as a class action under  
2 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community  
3 of interest in the litigation and the proposed CLASS is easily ascertainable. This action is  
4 appropriately suited for a Class Action because:

5           52. **Ascertainable Class:** The CLASS is ascertainable in that its members may be  
6 identified and located using information contained in DEFENDANTS' personnel records.

7           53. **Numerosity:** The potential members of the CLASS as defined are so numerous that  
8 joinder of all members of the CLASS is impracticable. While the precise size of the CLASS has  
9 not been ascertained at this time, PLAINTIFF is informed and believes, and based thereon alleges,  
10 that DEFENDANTS currently employee, and during THE RELEVANT TIME PERIOD employed,  
approximately 35 persons in the State of California who fall within the CLASS definition.

11           54. Accounting for employees' turnover during THE RELEVANT PERIOD necessarily  
12 increases this number. PLAINTIFF alleges that DEFENDANTS' employment records would  
13 provide information as to the number and location of members of the CLASS. Joinder of members  
14 of the CLASS is not practicable.

15           55. **Common Questions of Fact or Law:** This action involves questions of law and fact  
16 common to the CLASS that predominate over questions affecting only individual class members.  
17 The common questions of law and fact focuses on DEFENDANTS' systematic course of illegal  
18 practices and policies, which were applied to the entire CLASS in violation of the California Labor  
19 Code, IWC Orders, the California Business and Professions Code, which prohibits unfair business  
20 practices arising from such violations. These common questions of law and fact include, without  
limitations:

- 21           a. Whether DEFENDANTS misclassified PLAINTIFF and the CLASS as independent  
22           contractors;
- 23           b. Whether DEFENDANTS required PLAINTIFF and the CLASS to work over eight  
24           (8) hours per day and/or over forty (40) hours per week and failed to pay for all hours  
25           worked;
- 26           c. Whether DEFENDANTS required PLAINTIFF and the CLASS to work over eight  
27           (8) hours per day and/or over forty (40) hours per week and failed to pay the legally  
28           required overtime compensation to PLAINTIFF and the CLASS;

- d. Whether DEFENDANTS deprived PLAINTIFF and the CLASS of meal periods or required PLAINTIFF and the CLASS to work during meal periods without compensation;
- e. Whether DEFENDANTS deprived PLAINTIFF and the CLASS of rest periods or required PLAINTIFF and the CLASS to work during rest periods without compensation;
- f. Whether DEFENDANTS failed to reimburse PLAINTIFF and the CLASS for necessary business expenses incurred in the performance of their job duties, in violation of Labor Code §2802;
- g. Whether DEFENDANTS' requirement that the PLAINTIFF and the CLASS to agree to pay DEFENDANTS for desk space, supplies, and marketing and other expenses to carryout DEFENDANTS' business constitutes illegal terms and conditions of employment in violation of Labor Code § 432.5;
- h. Whether DEFENDANTS failed to timely pay all wages due to PLAINTIFF and the CLASS during their employment;
- i. Whether DEFENDANTS failed to issue accurately itemized wage statements to PLAINTIFF and the CLASS, in violation of Labor Code §§ 226(a);
- j. Whether DEFENDANTS kept complete and accurate payroll records as required by California Labor Code, including, inter alia, section 1174(d);
- k. Whether DEFENDANTS paid PLAINTIFF and the former CLASS members their final wages beyond the time frames set forth in Labor Code §§ 201-203;
- l. Whether DEFENDANTS' conduct of misclassifying employees as independent contractor was voluntary and intentional;
- m. Whether DEFENDANTS failed to properly record all hours worked;
- n. Whether DEFENDANTS failed to memorialize commission agreements in writing;
- o. Whether DEFENDANTS engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*

1           56.     **Typicality:** The claims of the PLAINTIFF are typical of the CLASS because  
2 DEFENDANTS subjected all of their Student Loan Advisors, and Student Loan Processors to  
3 identical violations of the California Labor Code, IWC Wage Order, and California Business and  
4 Professions Code by, *inter alia*, misclassifying them as independent contractor; failing to pay them  
5 for all hours worked; failing to pay them minimum and overtime wages; failing to reimburse them  
6 for reasonable business expenses incurred in the discharge of their duties; failing to properly  
7 maintain their payroll records; failing to provide them with accurate itemized statements for each  
8 pay period; failing to authorize or permit them to take meal and rest breaks as required by California  
law; and requiring them to agree to illegal terms and conditions of employment.

9           57.     **Adequacy of Representation:** PLAINTIFF is fully prepared to take all necessary  
10 steps to represent fairly and adequately the interest of the members of the CLASS. PLAINTIFF has  
11 no interests that are adverse to the interests of the CLASS. PLAINTIFF'S attorneys are ready, able  
12 and willing to fully and adequately represent the CLASS and PLAINTIFF. PLAINTIFF has  
13 incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees,  
14 that have been, are and will be necessarily expended for the prosecution of this action for the  
15 substantial benefit of each CLASS member.

16           58.     **Superiority of Class Action:** A class action is superior to other available means for  
17 the fair and efficient adjudication of this controversy. Individual joinder of all proposed members  
18 of the CLASS is not practicable, and questions of law and fact common to the proposed CLASS  
19 predominate over any questions affecting only individual members of the proposed CLASS. Each  
20 member of the proposed CLASS has been damaged and is entitled to recovery by reason of  
DEFENDANTS' illegal policies and/or practices.

21           59.     **Public Policy Consideration:** Certification of this lawsuit as a class action will  
22 advance public policy objectives. Employers of this state violate employment and labor laws every  
23 day. Current employees are often afraid to assert their rights out of fear of direct or indirect  
24 retaliation. However, class actions provide the class members who are not named in the Complaint  
25 anonymity that allows for the vindication of their rights.

26           60.     Class action treatment will allow those similarly situated persons to litigate their  
27 claims in the manner that is most efficient and economical for the parties and the judicial system.  
28 PLAINTIFF is unaware of any difficulties that are likely to be encountered in the management of

1 this action that would preclude its maintenance as a class action. Individualized litigation would  
2 also present the potential for inconsistent or contradictory judgments, in addition of duplication of  
3 efforts and expenses.

4 **FIRST CAUSE OF ACTION**  
5 **MISCLASSIFICATION AS INDEPENDENT CONTRACTOR**  
6 **(LABOR CODE §§ 2750.3, 226.8)**  
7 **(AGAINST ALL DEFENDANTS)**

8 61. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs  
9 as though fully set forth in this cause of action, and incorporates them by reference, and further  
10 alleges:

11 62. Labor Code § 3353 defines "Independent Contractor" as "any person who renders  
12 service for a specified recompense for a specified result, under the control of his principal as to the  
13 result of his work only and not as to the means by which such result is accomplished."

14 63. Labor Code § 2750.3 provides in pertinent part that "a person providing labor or  
15 services for remuneration shall be considered an employee rather than an independent contractor  
16 unless the hiring entity demonstrates that all of the following conditions are satisfied:

17 (A) The person is free from the control and direction of the hiring entity in connection with  
18 the performance of the work, both under the contract for the performance of the work and in  
19 fact.

20 (B) The person performs work that is outside the usual course of the hiring entity's business.

21 (C) The person is customarily engaged in an independently established trade, occupation, or  
22 business of the same nature as that involved in the work performed."

23 64. DEFENDANTS, as a matter of established company policy and procedure  
24 consistently:

25 a. Administered and continue to administer a uniform company policy and practice  
26 regarding the duties and responsibilities of the members of the Class. For instance,

27 Loan Processors are required to

- 28 • "Handle Customer Service Calls
- Retrieve Necessary Documents such as proof of income
- Submit documents accordingly to the Dept of Ed
- Recover missed payments from clients

- Retain clients from cancelling.”

- b. Administered and continue to administer a uniform company policy and practice regarding the payment of wages to the members of the CLASS;
- c. Treated and continue to treat the members of the CLASS as Independent Contractors to avoid the payment of wages and other benefits in violation of the Labor Code and IWC Wage Orders;
- d. Controlled and continue to control the work performed by, the manner, and the means in which the work was performed by the members of the CLASS; and
- e. Disseminated false information throughout DEFENDANTS' facilities and amongst DEFENDANTS' employees reciting that, under DEFENDANTS' labor policies and practices and under California law, the members of the CLASS were properly classified as Independent Contractors.

65. The PLAINTIFF and the CLASS were inappropriately misclassified by DEFENDANTS as Independent Contractors because:

(A) PLAINTIFF and the CLASS are not free from the control and direction of the DEFENDANTS in connection with the performance of the work. In fact, the PLAINTIFF and the CLASS were controlled by DEFENDANTS as to both the result of their work and as to the means by which results were accomplished. PLAINTIFF and the CLASS did not in fact have the right to control or discretion as to the manner of performance of their services.

(B) PLAINTIFF and the CLASS do not perform work that is outside the usual course of the hiring entity's business.

(C) PLAINTIFF and the CLASS are not customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for DEFENDANTS.

66. PLAINTIFF and the CLASS did not meet the bona fide Independent Contractor status in that they did not ordinarily and customarily:

- i) substantially invest other than personal services in the business;
- ii) hold out to be in business for themselves;

- iii) bargain for contracts to complete a specific project for compensation;
- iv) control the time and place their work is performed;
- v) supply tools and instrumentalities used in the work other than those normally and customarily provided by employees;
- vi) hire employees;
- vii) perform work that is not ordinarily in the course of the principal's work;
- viii) perform work that requires a particular skill;
- ix) hold a license pursuant to the Business and Professions Code;
- x) intend a work relationship of an Independent Contractor status; and/or
- xi) intend a work relationship that is not severable or terminable at will by the principal but gives rise to an action for the breach of contract.

67. DEFENDANTS' pattern, practice and uniform administration of corporate policy regarding illegal employment classification as described herein is unlawful and creates an entitlement to recovery by the members of the CLASS, in a civil action, for reimbursement of the appropriate withholding of federal, state, and local income taxes based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented, and any corresponding state or local law, and the CLASS members' share of FICA, Medicare, and state and local employment taxes that were improperly not paid by DEFENDANTS as a result of the independent contractor classification.

68. Labor Code § 226.8(a)(1) states "It is unlawful for any person or employer to engage in any of the following activities:

- (1) Willful misclassification of an individual as an independent contractor.
- (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified."

69. "Willful misclassification" is defined by Labor Code § 226.8(i)(4) as "avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor."

70. Labor Code § 226.8(b) provides that if a court issues a determination that DEFENDANTS have violated Labor Code § 226.8(a), DEFENDANTS shall be subject to a civil penalty: between \$ 5,000 and \$ 15,000 for each violation, in addition to any other penalties or fines permitted by law.

71. Further, Labor Code § 226.8(c) provides that if a court issues a determination that DEFENDANTS have violated Labor Code § 226.8(a) and has engaged or is engaging in a pattern or practice of these violations, DEFENDANTS shall be subject to a civil penalty between \$ 10,000 and \$ 25,000 for each violation, in addition to any other penalties or fines permitted by law.

72. Here, as set forth above, DEFENDANTS willfully misclassified PLAINTIFF and the CLASS, and has engaged and are engaging in a pattern and practice of these violations. Therefore, DEFENDANTS are subject to a civil penalty between \$ 10,000 and \$ 25,000 for each violation, in addition to any other penalties or fines permitted by law.

**SECOND CAUSE OF ACTION**  
**FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**  
**(In Violation of CAL. LAB. CODE §§ 510, 1194, 1198; IWC WAGE ORDER NO.4.)**  
**(AGAINST ALL DEFENDANTS)**

73. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

74. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS are and were “non-exempt” employees of DEFENDANTS and did not receive any compensation for work performed in excess of 8 hours per day, and/or 40 hours per week regardless of the number of hours actually worked.

75. In addition, requiring the PLAINTIFF and the CLASS to work on their “on own time” deprived PLAINTIFF and the CLASS proper protections and benefits of the laws governing the payment of wages for all hours worked and overtime wages.

1           76. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS regularly  
2 and/or consistently worked in excess of eight (8) hours in a workday, and/or in excess of forty (40)  
3 hours in a workweek. The precise number of overtime hours will be proven at trial. Despite the  
4 hours worked by PLAINTIFF and the CLASS, DEFENDANTS intentionally, willfully, in bad faith,  
5 and in knowing violation of the California Labor Code, and the applicable IWC Wage Order failed  
6 and refused to compensate PLAINTIFF and the CLASS for all of the overtime wages earned.

7           77. At all relevant times, DEFENDANTS were aware of, and were under a duty to comply  
8 with, the overtime provisions of the IWO Wage Orders, and California Labor Code including, but  
9 not limited to, California Labor Code §§510, 1194 and 1198.

10          78. The IWC Wage Order provides that DEFENDANTS are and were required to pay  
11 PLAINTIFF and the CLASS employed by DEFENDANTS, and working more than eight (8) hours  
12 in a day or more than forty (40) hours in a workweek, at a rate of time-and-one half for all hours  
13 worked in excess of eight (8) hours in a day or more than forty hours (40) in a workweek.

14          79. The Applicable IWC Wage Order further provides that DEFENDANTS are and were  
15 required to pay PLAINTIFF and the CLASS overtime compensation at the rate of two times their  
16 regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

17          80. California Labor Code § 510 codifies the right to overtime compensation and  
18 provides, in pertinent part:

19            “Any work in excess of eight hours in one workday and any work in excess of 40 hours in  
20 any one workweek and the first eight hours worked on the seventh day of work in any one  
21 workweek shall be compensated at the rate of no less than one and one-half times the regular  
rate of pay for an employee.”

22          81. California Labor Code §1194, in pertinent part, provides:

23            “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than  
24 the legal minimum wage or the legal overtime compensation applicable to the employee is  
25 entitled to recover in a civil action the unpaid balance of the full amount of this minimum  
26 wage or overtime compensation, including interest thereon, reasonable attorney’s fees and  
cost of the suit.”

27          82. California Labor Code §1198, in pertinent part, provides:  
28

1 “(t) he maximum hours of work and the standard conditions of labor fixed by the commission  
2 shall be the maximum hours of work and the standard conditions of labor for employees. The  
3 employment of any employee for longer hours than those fixed by the order or under  
4 conditions of labor prohibited by the order is unlawful.”

5 83. By refusing to compensate PLAINTIFF and the CLASS for all hours worked, and for  
6 overtime wages earned, DEFENDANTS violated those California Labor Code provisions cited  
7 herein as well as the applicable IWC Wage Order, and their actions are therefore unlawful.

8 84. PLAINTIFF and the CLASS are entitled to receive overtime compensation for all  
9 hours worked in excess of eight (8) hours in one workday and any work in excess of forty (40) hours  
10 in any workweek and the first eight hours worked on the seventh day of work in any one workweek  
11 at the rate of no less than one and one half times the regular rate of pay for each employee. In  
12 determining the regular rate of pay for each CLASS member, all remuneration paid to each, including  
13 but not limited to commissions, must be calculated.

14 85. As a direct and proximate result of DEFENDANTS’ unlawful conduct, as set forth  
15 therein, PLAINTIFF and the CLASS have sustained damages, including loss of earnings for hours  
16 worked, hours of overtime worked, in an amount to be established at trial.

17 86. Pursuant to California Labor Code §1194, PLAINTIFF and the CLASS are entitled  
18 to recover unpaid overtime compensation and double time compensation, including interest thereon.

19 87. PLAINTIFF and the CLASS are also entitled to recover reasonable attorneys’ fees  
20 and costs, pursuant to California Labor Code §1194(a).

21 88. During the RELEVANT TIME PERIOD, DEFENDANTS were and are the  
22 PLAINTIFF and the CLASS employers and/or persons acting on behalf of the DEFENDANTS,  
23 within the meaning of California Labor Code § 558, who violated or caused to be violated any section  
24 of the wage order regulating the days and hours worked and, as such are individually liable to each  
25 member of the CLASS for each such violations as set forth in the California Labor Code.

26 89. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty  
27 of \$50.00 for each underpaid employee for each pay period for which the employee was underpaid  
28 in addition to an amount sufficient to recover the underpaid wages, which shall be paid to each  
affected employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each

1 subsequent violation, a penalty of \$100.00 for each underpaid employee for each pay period for  
2 which the employee was underpaid, in addition to an amount sufficient to recover the underpaid  
3 wages, which shall be paid to each affected employee.

4 90. PLAINTIFF on behalf of himself and the CLASS seeks all available remedies for  
5 DEFENDANTS' violations including any and all wages due, penalties, monies, interest, attorney's  
6 fees, and costs to the extent permitted by law.

7 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

8 **THIRD CAUSE OF ACTION**  
9 **FAILURE TO PROVIDE MEAL PERIODS**  
10 **(In Violation of IWC Wage Order 4-2001, CAL. LAB. CODE §§ 226.7, 512)**  
11 **(AGAINST All DEFENDANTS)**

12 91. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs  
13 as though fully set forth in this cause of action, and incorporates them by reference, and further  
14 alleges:

15 92. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor  
16 Code sections 226.7 and 512 were applicable to PLAINTIFF and the CLASS employed by  
17 DEFENDANTS.

18 93. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS are and were  
19 "non-exempt" employees of DEFENDANTS and did not receive meal periods or premium pay in  
20 lieu of meal periods.

21 94. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of, and under  
22 a duty to comply with, California Labor Code §§226.7 and 512.

23 95. California Labor Code §226.7 provides:

24 "(a) No employer shall require any employee to work during any meal or rest period  
25 mandated by an applicable order of the Industrial Welfare Commission.

26 (b) If an employer fails to provide an employee a meal period or rest period in accordance  
27 with an applicable order of the Industrial Welfare Commission, the employer shall pay  
28 the employee one additional hour of pay at the employee's regular rate of compensation  
for each work day that the meal or rest period is not provided."

Moreover, California Labor Code §512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ and employee for a work period of more than 10 hours per day without providing the employee with a second meal period no not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period maybe waived by mutual consent of the employer and the employee only if the first meal period was not waived.

96. Sections 11 and 12 of IWC Wage Order 4 mandate that the employer provide all applicable meal periods to employees.

97. Section 11 of the applicable IWC Wage Order provides in pertinent part:

“No employer shall employ any person for a work period of more than of not less than 30 minutes... Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked.

If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order the employer shall provide the employee one (1) hour of pay at the employee ‘s regular rate of compensation for each workday that the meal period is not provided.

98. PLAINTIFF and the CLASS regularly and consistently worked eight (8) hours or more per day but were not provided an uninterrupted, thirty-minute meal period within the first five hours of work each day. By failing to consistently provide PLAINTIFF and each member of the CLASS an uninterrupted thirty-minute meal period within the first five hours of work each day, DEFENDANTS violated the California Labor Code and applicable IWC Wage Order provisions.

99. During the RELEVANT TIME PERIOD, DEFENDANTS intentionally and willfully required PLAINTIFF and the CLASS to work during meal periods and failed to compensate PLAINTIFF and the CLASS the full meal period premium for work performed during meal periods.

100. PLAINTIFF is informed and believes and on that basis alleges, that DEFENDANTS have never paid the one-hour compensation as a premium payment for PLAINTIFF or any member of the CLASS due to their violation of the California Labor Code and applicable IWC Wage Order provisions.

1           101. DEFENDANTS' conduct violates the applicable IWC Wage Order and California  
2 Labor Code sections 226.7 and 512(a).

3           102. As a direct and proximate result of DEFENDANTS unlawful conduct, as set forth  
4 herein, PLAINTIFF and the CLASS have sustained damages including loss of compensation  
5 resulting from missed meal periods, in an amount to be established at trial.

6           103. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b),  
7 PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one additional hour of pay  
8 at the employee's regular rate of compensation for each work day the meal or rest period is not  
9 provided. In determining the regular rate of pay for each CLASS member, all remuneration paid to  
10 each, including but not limited to commission, must be calculated.

11           104. During the RELEVANT TIME PERIOD, DEFENDANTS were and are the  
12 PLAINTIFF's employers and/or persons acting on behalf of the DEFENDANTS, within the meaning  
13 of California Labor Code § 558, who violated or caused to be violated any section of the wage order  
14 regulating the days and hours worked and, as such are individually liable to each member of the  
15 CLASS for each such violations as set forth in the California Labor Code.

16           105. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty  
17 of \$50.00 for each underpaid employee for each pay period for which the employee was underpaid  
18 in addition to an amount sufficient to recover the underpaid wages, which shall be paid to each  
19 affected employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each  
20 subsequent violation, a penalty of \$100.00 for each underpaid employee for each pay period for  
21 which the employee was underpaid, in addition to an amount sufficient to recover the underpaid  
22 wages, which shall be paid to each affected employee.

23           106. As a direct result of DEFENDANTS' violations alleged herein, PLAINTIFF and the  
24 CLASS have suffered and continue to suffer loss of wages and compensation, all in amounts to be  
25 shown according to proof at trial and within the jurisdiction limitations of this Court. PLAINTIFF  
26 and the CLASS seek all available remedies for DEFENDANTS' violations including, but not limited,  
27 to any and all wages due, penalties, monies, interest, attorney's fees, and costs to the extent permitted  
28 by law.

1 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

2 **FOURTH CAUSE OF ACTION**  
3 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**  
4 **(In Violation of IWC Wage Order 4-2001, CAL. LAB. CODE § 226.7)**  
5 **(AGAINST ALL DEFENDANTS)**

6 107. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs  
7 as though fully set forth in this cause of action, and incorporates them by reference, and further  
8 alleges:

9 108. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor  
10 Code sections 226.7 and 512 were applicable to PLAINTIFF and the CLASS employed by  
11 DEFENDANTS.

12 109. During the RELEVANT TIME PERIOD, PLAINTIFF and the CLASS were and  
13 continue to be “non-exempt” employees of DEFENDANTS and did not receive rest periods or  
14 premium pay in lieu of rest periods.

15 110. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of and under  
16 a duty to comply with, California Labor Code §226.7 and Section 12 of Wage Order 7-2001.

17 111. California Labor Code. §226.7 states

18 “no employer shall require any employee to work during any meal or rest period mandated  
19 by an applicable order of the Industrial Welfare Commission.”

20 Section 12 of Wage Order No. 4-2001 provides in relevant part that:

21 (A) Every employer shall authorize and permit all employees to take rest periods, which in  
22 so far as practicable shall be in the middle of each work period., The authorized rest period  
23 time shall be based on the total hours worked daily at the rate of ten (10 minutes net rest time  
24 per four (4) hours or major fraction thereof. However, a rest period need not be authorized  
25 for employees whose total daily work time is less than three and one-half (3 ‘A) hours.  
26 Authorized rest period time shall be counted as hours worked for such there shall be no  
27 deduction from wages.

28 112. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required  
PLAINTIFF and the CLASS to work four (4) or more hours without authorizing or permitting a ten  
(10) minute rest period per each four (4) hours period worked.

1           113. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required  
2 PLAINTIFF and the CLASS to work during rest periods and failed to pay PLAINTIFF and the  
3 CLASS the full rest period premium for work performed during rest periods.

4           114. If an employer fails to provide an employee a rest period in accordance with the  
5 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at that  
6 employee's regular rate of compensation for each work day that the rest period is not provided.

7           115. During the RELEVANT TIME PERIOD, DEFENDANTS failed to pay PLAINTIFF  
8 and the CLASS the full rest period premium due pursuant to California Labor Code section 226.7.

9           116. Pursuant to the applicable IWC Wage Orders and California Labor Code section  
10 226.7(b), PLAINTIFF and the CLASS are entitled to recover from DEFENDANTS one additional  
11 hour of pay at the employees' regular rate of compensation for each work day that the rest period  
12 was not provided. In determining the regular rate of pay for each CLASS member, all remuneration  
13 paid to each, including but not limited to commissions, must be calculated.

14           117. In committing the violations of state law as herein alleged, DEFENDANTS refused  
15 to perform their obligations to authorize and permit rest periods and have also failed to pay rest  
16 premium wages. As a direct result, PLAINTIFF and the CLASS have suffered, and continue to  
17 suffer, substantial losses, including those related to the use and enjoyment of such compensation,  
18 wages, and lost interest on such monies in seeking to compel DEFENDANTS to fully perform their  
19 obligation under state law, all to their respective damage in amounts according to proof at trial and  
20 within the jurisdictional limitations of this Court.

21           118. During the RELEVANT TIME PERIOD, DEFENDANTS are and/or were the  
22 PLAINTIFF's employers and/or persons acting on behalf of DEFENDANTS within the meaning of  
23 California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter I, of  
24 the California Labor Code or any provision regulating hours and days of work in any Order of the  
25 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee,  
26 which shall be paid to each affected employee, as set forth in Labor Code § 558.

27           119. Labor Code § 558 imposes upon DEFENDANTS for each initial violation a penalty  
28 of \$50.00 for each underpaid employee for each pay period for which the employee was underpaid

1 in addition to an amount sufficient to recover the underpaid wages, which shall be paid to each  
2 affected employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS for each  
3 subsequent violation a penalty of \$100 for each underpaid employee for each pay period for which  
4 the employee was underpaid, in addition to an amount sufficient to recover the underpaid wages,  
5 which shall be paid to each affected employee.

6 120. The CLASS, including PLAINTIFF, suffered and continue to suffer loss of wages and  
7 compensation, all in an amount to be shown according to proof at trial and within the jurisdictional  
8 limitations of this Court.

9 121. PLAINTIFF and the CLASS seeks all available remedies for DEFENDANTS'  
10 violations including, but not to, any and all wages due, penalties, interest, attorney's fees, costs to  
11 the extent permitted by law.

12 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

13 **FIFTH CAUSE OF ACTION**  
14 **FAILURE TO INDEMNIFY FOR EXPENDITURES INCURRED IN DISCHARGE OF**  
15 **DUTIES (CAL. LAB. CODE §§ 450, 2802, 2804)**  
16 **(AGAINST All DEFENDANTS)**

17 122. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs  
18 as though fully set forth in this cause of action, and incorporates them by reference, and further  
19 alleges:

20 123. During the RELEVANT TIME PERIOD, the California Labor Code §§ 2802, 2804,  
21 and 450 was applicable to PLAINTIFF and the CLASS employed by DEFENDANTS.

22 124. Pursuant to Labor Code § 450(a), "no employer...may compel or coerce any  
23 employee... to patronize his or her employer, or any other person, in the purchase of any thing of  
24 value."

25 125. Pursuant to Labor Code §2802(a) "An employer shall indemnify his or her employee  
26 for all necessary expenditures or losses incurred by the employee in direct consequence of the  
27 discharge of his or her duties, or of his or her obedience to the directions of the employer...."  
28

1           126. Pursuant to Labor Code § 2804 "Any contract or agreement, express or implied, made  
2 by any employee to waive the benefits of this article or any part thereof is null and void, and this  
3 article shall not deprive any employee or his personal representative of any right or remedy to which  
4 he is entitled under the laws of this State."

5           127. As a matter of DEFENDANTS' established company policy regarding misclassifying  
6 the CLASS as independent contractors, PLAINTIFF and the CLASS were and are required by  
7 DEFENDANTS to incur necessary expenditures in direct consequence of the discharge of their  
8 duties, including but not limited to desk space rental, supplies, marketing, computer, and equipment  
9 to conduct DEFENDANTS' business.

10           128. During THE RELEVANT TIME PERIOD, as a result of the unlawful acts of  
11 DEFENDANTS, PLAINTIFF and the CLASS have incurred expenditures and losses in an amount  
12 to be determined at trial.

13           129. Pursuant to California Labor Code § 2802, DEFENDANTS are required to fully  
14 reimburse PLAINTIFF and the CLASS for all necessary expenses incurred by them in the  
15 performance of their job duties.

16           130. DEFENDANTS failed to reimburse the PLAINTIFF and the CLASS for, *inter alia*,  
17 desk space rental, supplies, marketing, computer, and equipment deductions DEFENDANTS took  
18 out of the PLAINTIFF and the CLASS' wages.

19           131. PLAINTIFF and the CLASS suffered, and will continue to suffer, damages in  
20 amounts according to proof at the time of trial as a direct and proximate result of DEFENDANTS'  
21 willful conduct of requiring PLAINTIFF to agree to illegal terms and conditions of employment and  
22 DEFENDANTS' failure to reimbursement PLAINTIFF and the CLASS for the unlawful deductions  
23 made for desk space rental, supplies, marketing, computer, and equipment to conduct  
24 DEFENDANTS' business.

25           132. In failing to reimburse PLAINTIFF and the CLASS for the unlawful deductions,  
26 DEFENDANTS acted maliciously, oppressively, and despicably, with the wrongful intention of  
27 causing injury and hardship to PLAINTIFF and the CLASS by reaping economic gain at PLAINTIFF  
28

1 and the CLASS' expenses, in willful and conscious disregard of PLAINTIFF and the CLASS'  
2 statutory and regulatory rights.

3 133. PLAINTIFF and the CLASS are entitled to recovery from DEFENDANTS, and each  
4 of them, the full amount of the necessary business-related expenses and costs incurred during the  
5 course and scope of employment, incurred as a result of DEFENDANTS' unlawful policies and  
6 practices, illegal terms and conditions of employment, plus attorneys' fees and costs, interests  
7 accrued from the date on which PLAINTIFF and the CLASS incurred such expenditures.

8 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

9  
10 **SIXTH CAUSE OF ACTION**  
11 **UNLAWFUL COLLECTION OR RECEIPT OF WAGES DUE**  
12 **LABOR CODE §§ 221, 224, 225**  
13 **(AGAINST All DEFENDANTS)**

14 134. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs  
15 as though fully set forth in this cause of action, and incorporates them by reference, and further  
16 alleges:

17 135. Pursuant to California Labor Code § 221 DEFENDANTS are prohibited from  
18 collecting or receiving wage from PLAINTIFF and the CLASS. Specifically, Labor Code § 221  
19 states that "it shall be unlawful for any employer to collect or receive from an employee any part of  
20 wages theretofore paid by said employer to said employee."

21 136. PLAINTIFF and the CLASS were non-exempt employees misclassified as  
22 independent contractors and were entitled to the protections of California Labor Code §§ 221, and  
23 224. During the course of PLAINTIFF and the CLASS' employment, DEFENDANTS, engaged in  
24 a policy and practice of compelling and coercing PLAINTIFF and the CLASS to, *inter alia*, pay for  
25 desk space rental, supplies, marketing, computer, and equipment through wage deductions made by  
26 DEFENDANTS. DEFENDANTS, thereby, subjecting PLAINTIFF and the CLASS to unlawful  
27 wage collections, and deductions which DEFENDANTS fail to reimburse.

28 137. DEFENDANTS also engaged in a policy and practice of charging back the  
PLAINTIFF and the CLASS for the full amount refunded to their clients by deducting said amounts  
from PLAINTIFF'S and the CLASS' wages.

1           138. Labor Code § 225 provides in pertinent part that “[t]he violation of any provision of  
2 Sections 221... is a misdemeanor.” Labor Code § 225.5 provides in pertinent part that “[i]n addition  
3 to, and entirely independent and apart from, any other penalty provided in this article, every person  
4 who unlawfully withholds wages due any employee in violation of Section ... 221 ...shall be subject  
5 to a civil penalty as follows:

6           (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

7           (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars  
8 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully  
9 withheld.”

10           139. In violation of state law, DEFENDANTS have knowingly and willfully refused to  
11 perform their obligations to provide desk space rental, supplies, marketing, computer, and equipment  
12 free of charge, and have instead charged PLAINTIFF and the CLASS for desk space rental, supplies,  
13 marketing, computer, and equipment required in the discharge of their duties.

14           140. As a direct result, PLAINTIFF and the CLASS have suffered and continue to suffer,  
15 substantial losses related to the use and enjoyment of such wages, loss interest on such wages, and  
16 expenses and attorneys’ fees, and costs in seeking to compel DEFENDANTS to fully perform their  
17 obligations under state law, all to their respective damages in amounts according to proof at times of  
18 trial, and within the jurisdiction of this Court.

19           141. DEFENDANTS committed the acts alleged herein knowingly and willfully, with the  
20 wrongful and deliberate intention of injuring PLAINTIFF and the CLASS, from improper motives  
21 amounting to malice, and in conscious disregard of employees’ rights.

22           142. PLAINTIFF and the CLASS are thus entitled to recover the unpaid balance of  
23 compensation due, wages owed, interest, civil and statutory penalties, nominal, actual,  
24 compensatory, punitive, and exemplary damages, attorneys’ fees, and costs of suit in amounts  
25 according to proof at time of trial, and within the jurisdiction of this Court.

26           143. WHEREFORE, PLAINTIFF seeks the relief as described below.

27 ///

28 ///

///

**SEVENTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE PAID SICK DAYS**  
**(LABOR CODE §§ 245.5 -249)**  
**(AGAINST ALL DEFENDANTS)**

144. PLAINTIFFS repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further allege:

145. California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment.

146. DEFENDANTS systematically failed to provide PLAINTIFF and CLASS paid sick leave of no less than 24 hours or three (3) days. PLAINTIFF and CLASS worked in excess of 30 days for DEFENDANTS in California and were therefore eligible to receive paid sick leave.

147. Additionally, DEFENDANTS failed to list the balance of paid sick leave (or paid time off) benefits available on the PLAINTIFF's wage statements as required by Labor Code § 246(i).

148. DEFENDANTS' ongoing and systematic failure to provide the requisite sick leave benefits to PLAINTIFF and the CLASS and failure to provide them with accurate balances of their benefits available, violates California Labor Code section 246.

149. PLAINTIFF and the CLASS are therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5.

WHEREFORE, PLAINTIFF and the CLASS seek to request relief as described below.

**EIGHTH CAUSE OF ACTION**  
**FAILURE TO MAINTAIN RECORDS IN VIOLATION OF**  
**(LABOR CODE §§ 558, 1174, 1174.5, 274.5(a))**  
**(AGAINST ALL DEFENDANTS)**

150. PLAINTIFFS repeat and re-allege all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further allege:

151. Labor Code section 1174(d) requires DEFENDANTS to maintain and preserve in a central location in the state or at the plants or establishments at which employees are employed,

1 payroll records showing the hours worked daily by, and the wages paid to employees employed at  
2 the respective plants or establishments. These records shall be kept on file for not less than three  
3 years.

4 152. DEFENDANTS engaged in a policy and practice of failing to maintain payroll records,  
5 and records pertaining to current and former employees in a central location in the state.

6 153. DEFENDANTS failed to comply with California Labor Code section 1174.  
7 DEFENDANTS' failure to comply with California Labor Code section 1174 is a violation  
8 of California Labor Code section 1175.

9 154. Labor Code Labor Code § 1174.5 provides that any person employing labor who  
10 willfully fails to maintain the records required by Labor Code § 1174(d), shall be subject to civil  
11 penalty in the amount of \$500.00.

12 155. Labor Code § 558 provides for a civil penalty to be assessed against any employer or  
13 other person acting on behalf of an employer who violates, or causes to be violated, a provision of  
14 the California Labor Code regulating wages, hours, and working conditions.

15 156. PLAINTIFF is informed and believes, and on that basis alleges that DEFENDANTS, at  
16 all relevant time herein, were PLAINTIFF'S employers or acting on behalf of PLAINTIFF'S  
17 employers pursuant to Labor Code § 558 for purposes of the Labor Code violations alleged in this  
18 cause of action, and are therefore subject to civil penalties.

19 157. As a direct and proximate result of the willful conduct of DEFENDANTS, in violation  
20 of Labor Code § 558, 1174(d), PLAINTIFF and the CLASS are entitled to an award of civil penalties  
21 in the amount of \$500 pursuant to Labor code §1174.5.

22 158. Furthermore, Labor Code Labor Code § 247.5(a) requires an employer to keep for at  
23 least three yeas records documenting the hours worked and paid sick days accrued and used by an  
24 employee. An employer shall make these records available to an employee in the same manner as  
25 described in Section 226.

26 159. Upon information and belief, DEFENDANTS also failed to comply with section  
27 247.5(a) in the same manner as DEFENDANTS' failed to provide PLAINTIFF with the records  
28 reflecting accrued and used paid sick days.

1 160. PLAINTIFF and the CLASS are entitled to and seek injunctive relief requiring  
2 DEFENDANTS to comply with Labor Code Sections 226, and 1174, among other provisions.  
3 PLAINTIFF and the CLASS are also entitled to and seek actual and statutory damages available for  
4 such violations under Labor Code Sections 226, and 1174.5, as well as interest, costs, penalties, and  
5 attorneys' fees.

6 WHEREFORE, PLAINTIFF and the CLASS seek to request relief as described below.

7 **NINTH CAUSE OF ACTION**  
8 **FAILURE TO PAY MINIMUM WAGE**  
9 **(LABOR CODE §§ 1197, 1194, 1194.2, 1197.1)**  
10 **(AGAINST ALL DEFENDANTS)**

11 161. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as  
12 though fully set forth in this cause of action, and incorporate them by reference, and further allege:

13 162. Cal. Lab. Code §1197 provides that: "the minimum wage for employees fixed by the  
14 commission is the minimum wage to be paid to employees, and the payment of a less wage than the  
15 minimum so fixed is unlawful."

16 163. Cal. Lab. Code §1194 provides in relevant part that any employee receiving less than  
17 the legal minimum wage applicable to the employee is entitled to recover in a civil action the unpaid  
18 balance of the full amount of this minimum wage, including interest thereon, reasonable attorneys'  
19 fees, and costs of suit.

20 164. Cal. Lab. Code §1194.2 provides in relevant part that: "in any action under ... Section  
21 1194 to recover wages because of a payment of wage less than the minimum wage fixed by an order  
22 of the commission, an employee shall be entitled to recover liquidated damages in an amount equal  
23 to the wage unlawfully unpaid and interest thereon."

24 165. PLAINTIFF and the CLASS were none-exempt employees of DEFENDANTS that  
25 were voluntarily and intentionally misclassified by DEFENDANTS as independent contractors to  
26 avoid employee status.

27 166. DEFENDANTS failed to satisfy minimum wage requirements and secretly paid a lower  
28 wage while purposing to pay the wage designated by statute.

167. During the RELEVANT TIME PERIOD, DEFENDANTS are and/or were the

1 PLAINTIFF's employers and/or persons acting on behalf of DEFENDANTS within the meaning of  
2 California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter I, of  
3 the California Labor Code or any provision regulating hours and days of work in any Order of the  
4 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee,  
5 which shall be paid to each affected employee, as set forth in Labor Code § 558.

6 168. Labor Code § 558 imposes upon DEFENDANTS for each initial violation a penalty of  
7 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in  
8 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected  
9 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS for each subsequent  
10 violation a penalty of \$100 for each underpaid employee for each pay period for which the employee  
11 was underpaid, in addition to an amount sufficient to recover the underpaid wages, which shall be  
12 paid to each affected employee.

13 169. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF and the CLASS have  
14 been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of  
15 such amounts, including interest thereon, attorneys' fees, costs, liquidated damages, and any other  
16 damages as set forth under California law, including statutory and civil penalties.

17 WHEREFORE, PLAINTIFF and the CLASS seek to request relief as described below.

18  
19 **TENTH CAUSE OF ACTION**  
20 **WAITING TIME PENALTIES**  
21 **(In Violation of California Labor Code § § 201, 202, 203)**  
22 **(AGAINST All DEFENDANTS)**

23 170. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as  
24 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

25 171. At all times herein mentioned, PLAINTIFF and members of the CLASS were employees  
26 of DEFENDANTS. DEFENDANTS were subject to California law.

27 172. Cal. Lab. Code §201 provides in relevant part that: "[i]f an employer discharges an  
28 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

1       173.     Cal. Lab. Code §202 provides in relevant part that: “[i]f an employee not having a written  
2 contract for a definite period quits his or her employment, his or her wages shall become due and  
3 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of  
4 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of  
5 quitting.”

6       174.     As alleged herein, DEFENDANTS failed to pay earned wages to PLAINTIFF and the  
7 CLASS who are former employees of DEFENDANTS at the time they became due and payable.

8       175.     DEFENDANTS failed to timely pay PLAINTIFF and the CLASS who are former  
9 employees of DEFENDANTS, among other things, all overtime and minimum wages, wages for all  
10 hours worked, earned wages relating to meal and rest period premiums, and failed to reimburse them  
11 for necessary business-related expenses. Thus, DEFENDANTS violated Cal. Lab. Code §§201 and  
12 202.

13       176.     As a result of DEFENDANTS’ unlawful acts, PLAINTIFF and the CLASS who are  
14 former employees of DEFENDANTS’ are entitled to recover, pursuant to Cal. Lab. Code §203,  
15 continuing wages as a penalty from the due date thereof at the same rate until paid or until this action  
16 was commenced; but for no more than 30 days.

17       177.     DEFENDANTS willfully failed to provide PLAINTIFF and the CLASS with all wages  
18 due and owing, including all regular, minimum, and overtime wages, and meal and rest period  
19 premium wages, and reimbursement for necessary business expenses, as specified by Labor Code §§  
20 201 and 202, as alleged herein.

21       178.     Consequently, pursuant to Labor Code section 203, DEFENDANTS are obligated to pay  
22 PLAINTIFF and member of the CLASS that are former employees of the DEFENDANTS waiting-  
23 time penalties equivalent to thirty (30) full working days’ worth of wages because certain wages  
24 were not paid within 30 days.

25       179.     DEFENDANTS’ failure to pay PLAINTIFF and the members of the CLASS that were  
26 former employees all wages due were done with the wrongful and deliberate intention of injuring  
27 PLAINTIFF and the CLASS, for improper motives amounting to malice and in conscious disregard  
28 to their rights.

1 180. DEFENDANTS' willful failure to pay PLAINTIFF and the members of the CLASS who  
2 are former employees the wages due and owing each of them constitutes violations of Labor Code  
3 §§ 201, 202, and 203.

4 181. PLAINTIFF and the members of the CLASS who are former employees are each entitled  
5 to recover from DEFENDANTS the statutory penalty for each day they were not paid, up to a thirty  
6 (30) day maximum pursuant to California Labor Code section 203.

7 182. PLAINTIFF seeks all available remedies for DEFENDANTS' violation including but  
8 not limited to, any and all wages due, penalties, monies, interest, attorneys' fees, and costs incurred  
9 in this action to the extent permitted by law.

10 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

11 **ELEVENTH CAUSE OF ACTION**  
12 **(Illegal Terms of Employment In Violation of California Labor Code §432.5)**  
13 **(Against All DEFENDANTS)**

14 183. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as  
15 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

16 184. California Labor Code § 432.5 prohibits employers from requiring any applicant or  
17 employee to agree to any illegal employment term or condition.

18 185. DEFENDANTS' engage in a policy and practice of coercing and compelling  
19 PLAINTIFF and the CLASS to pay DEFENDANTS for desk space rental, supplies, marketing,  
20 computer, and other equipment expenses to carry out DEFENDANTS' business. DEFENDANTS  
21 unlawfully deduct said amounts from the PLAINTIFF and the CLASS' wages.

22 186. PLAINTIFF and the CLASS had no choice but to agree to such illegal employment terms  
23 and conditions. Such illegal terms are unenforceable pursuant to Cal. Lab. Code § 432.5.

24 187. PLAINTIFF and the CLASS suffered, and will continue to suffer, damages in amounts  
25 according to proof at the time of trial as a direct and proximate result of DEFENDANTS' willful  
26 conduct of requiring PLAINTIFF and the CLASS to agree to illegal terms and conditions of  
27 employment.  
28

188. As a direct result of DEFENDANTS' violations alleged herein, PLAINTIFF and the CLASS have suffered and continue to suffer loss of wages and compensation, all in amounts to be shown according to proof at trial and within the jurisdiction limitations of this Court. PLAINTIFF and the CLASS seek all available remedies for DEFENDANTS' violations including, but not limited, to any and all wages due, penalties, monies, interest, attorney's fees, and costs to the extent permitted by law.

WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

**TWELFTH CAUSE OF ACTION**  
**FAILURE TO COMPLY WITH WAGE THEFT PREVENTION ACT**  
**(Violation of California Labor Code § 2810.5)**  
**(AGAINST All DEFENDANTS)**

189. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

190. The California Wage Theft Prevention Act of 2011 ("WTPA") became effective on January 1, 2012. Among other provisions, the WTPA adds section 2810.5 to the California Labor Code. The act requires that all employers provide each employee with a written notice containing specified information. The notice must be in the language the employer normally uses to communicate employment-related information to the employee. Specifically, employers are required to provide each employee, at the time of hiring, with a written notice containing the following information: (1) the rate or rates of pay "and basis thereof," whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; (2) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; (3) the regular payday designated by the employer in accordance with the requirements of the Labor Code; (4) the name of the employer, including any "doing business as" names used by the employer; (5) the physical address of the employer's main office or principal place of business, and a mailing address, if different; (6) the telephone number of the employer; (7) the name, address, and telephone number of the employer's workers' compensation insurance carrier; and (8) any other information the Labor Commissioner deems material and necessary.

1 191. PLAINTIFF began his employment with DEFENDANTS on or about October 2019 when  
2 Cal. Lab. Code § 2810.5 was in full force and effect.

3 192. PLAINTIFF was non-exempt employee entitled to notice pursuant Cal. Lab. Code §  
4 2810.5.

5 193. Cal. Labor Code § 2810.5 is aimed at informing employees about such fundamental and  
6 material information concerning their pay and rates of pay under an employment relationship.

7 194. DEFENDANTS willfully, and intentionally failed to comply with the requirements of  
8 Cal. Lab. Code § 2810.5.

9 195. DEFENDANTS failed to provide PLAINTIFF and the CLASS with Notice to Employee.

10 196. As a direct result of DEFENDANTS' violations alleged herein, PLAINTIFF and the  
11 CLASS have suffered and continue to suffer loss of wages and compensation, all in amounts to be  
12 shown according to proof at trial and within the jurisdiction limitations of this Court. PLAINTIFF  
13 and the CLASS seek all available remedies for DEFENDANTS' violations including, but not limited,  
14 to any and all wages due, penalties, monies, commissions, interest, attorney's fees, and costs to the  
15 extent permitted by law.

16 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

17 **THIRTEENTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

19 **(In Violation of CAL. LAB. CODE § 226(a), 246**

20 **(AGAINST All DEFENDANTS)**

21 197. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as  
22 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

23 198. Labor Code § 226(a) requires employers, including DEFENDANTS, to furnish their  
24 employees with each wage payment an accurate, itemized writing that shows gross wages earned,  
25 total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the  
26 employee is paid, the name of the employee and the portion of his or her social security number as  
27 required by law, all applicable hourly rates in effect during the pay period, and the corresponding  
28 number of hours worked at each hourly rate by the employee.

1       199.     During THE RELEVANT TIME PERIOD, DEFENDANTS knowingly and intentionally  
2 failed to provide to the PLAINTIFF and the CLASS with wage statements. That is, PLAINTIFF and  
3 the CLASS did not receive any wage statements.

4       200.     In addition, Labor Code § 246(i) requires an employer to provide an employee with  
5 written notice that sets forth the amount of paid sick leave available, or PTO leave an employer  
6 provides in lieu of sick leave, for use on either the employee's itemized wage statement described in  
7 Section 226 or in a separate writing provided on the designated pay date with the employee's payment  
8 of wages.

9       201.     DEFENDANTS not only failed to comply with the accrual rate specified in section  
10 246(a), but also, failed to comply with the written notice requirements of 246(i). The PLAINTIFF  
11 and the CLASS neither received itemized wage statements nor a written notice setting forth the  
12 amount of paid sick leave available or PTO leave in lieu of sick leave because DEFENDANTS failed  
13 to provide the PLAINTIFF and the CLASS of any paid sick leave.

14       202.     The PLAINTIFF and the CLASS, have suffered and continue to suffer injuries, including  
15 substantial losses related to the use and enjoyment of such wages, lost interest on such wages and  
16 expenses and attorney's fees in seeking to compel DEFENDANTS to fully perform their obligations  
17 under state law, all to their respective damage in amounts according to proof at trial. Pursuant to  
18 Labor Code §§ 226(e)(2) and 226(c)(2)(B)(i), PLAINTIFF and the CLASS are deemed to have  
19 suffered injury as a result of DEFENDANTS' failure to provide accurate and complete information  
20 as required by Labor Code § 226(a).

21       203.     Cal. Lab. Code §226(b) provides in relevant part that: "[a]ny employee suffering injury  
22 as a result of any knowing and intentional failure by an employer to comply with subdivision (a)  
23 shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay  
24 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation  
25 in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and  
26 shall be entitled to an award of costs and reasonable attorney's fees." PLAINTIFFS are entitled to an  
27 award of costs and reasonable attorney's fees pursuant to California Labor Code section 226(e).

28

1       204.     Furthermore, Labor Code § 226(g) permits an employee to bring an action for injunctive  
2 relief to ensure compliance with Labor Code § 226. Thus, PLAINTIFF and the CLASS additionally  
3 seek injunctive relief to ensure compliance with Labor Code § 226 including, but not limited to, the  
4 providing and maintenance of accurate itemized wage statements identifying, among other things,  
5 all the hours worked and their corresponding rate for each pay period and the total net wages earned  
6 during each pay period.

7       205.     In failing to comply with the requirements of section 226(a) and 246(i), DEFENDANTS  
8 acted maliciously, oppressively, and despicably, with the wrongful intention of causing injury and  
9 hardship to PLAINTIFF and the CLASS by reaping economic gain at PLAINTIFFS' expense, in  
10 willful and conscious disregard of PLAINTIFFS' statutory and regulatory rights.

11       206.     Cal. Lab. Code §226.3 states in relevant part that "[a]ny employer who violates  
12 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty  
13 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per  
14 employee for each violation in a subsequent citation, for which the employer fails to provide the  
15 employee a wage deduction statement or fails to keep the records required in subdivision (a) of  
16 Section 226. The civil penalties provided for in this section are in addition to any other penalty  
17 provided by law." PLAINTIFF and the CLASS are entitled to amounts provided herein plus costs  
18 and attorney's fees.

19       207.     PLAINTIFF seeks all available remedies for DEFENDANTS' violations including, but  
20 not limited to, any and all wages due, actual damages, penalties, payments pursuant to Labor Code §  
21 226(e), monies, interest, attorney's fees, costs and injunctive relief.

22               WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

23  
24                               **FOURTEENTH CAUSE OF ACTION**  
25                               **CONVERSION**  
26                               **(Against All DEFENDANTS)**

27       208.     PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as  
28 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

1       209.     DEFENDANTS wrongfully failed to pay the PLAINTIFF and former members of the  
2 CLASS who were employees of DEFENDANTS' their earned wages, including minimum and  
3 overtime wages, which PLAINTIFF and the CLASS are entitled to receive.

4       210.     California Labor Code § 200 defines wages as,

5           (a) "Wages" includes all amounts for labor performed by employees of every description,  
6 whether the amount is fixed or ascertained by the standard of time, task, piece, commission  
7 basis, or other method of calculation.

8           (b) "Labor" includes labor, work, or service whether rendered or performed under contract,  
9 subcontract, partnership, station plan, or other agreement if the labor to be paid for is  
10 performed personally by the person demanding payment.

11       211.     The amount of earned but unpaid hours of work that the PLAINTIFF and the CLASS  
12 are entitled to receive constitute "wages" within the meaning of § 200 of the California Labor Code  
13 because PLAINTIFF and the CLASS performed labor for the to the benefit of the DEFENDANTS.  
14 DEFENDANTS unjustly reaped the benefits of the services and labor performed by PLAINTIFF and  
15 the CLASS but failed to pay them for their labor.

16       212.     During THE RELEVANT TIME PERIOD, DEFENDANTS had and continue to have a  
17 legal obligation imposed by statute to pay the PLAINTIFF and the CLASS all earned wages and  
18 other compensation due to them. Such wages and compensation belonged to the PLAINTIFF and  
19 the CLASS at the time the labor and services were satisfactorily provided to DEFENDANTS, and  
20 accordingly, such wages and compensation are the property of the PLAINTIFF and the CLASS, not  
21 the DEFENDANTS.

22       213.     DEFENDANTS knowingly and intentionally failed to pay PLAINTIFF and members of  
23 the CLASS compensation for all hours worked, including minimum and overtime compensation,  
24 knowingly and intentionally failed to compensate PLAINTIFF and the CLASS for missed meal and  
25 rest breaks, and knowingly and intentionally failed to provide other compensation and reimburses  
26 due to PLAINTIFF and the CLASS as specified in this Complaint. Instead, DEFENDANTS  
27 converted PLAINTIFF and the CLASS' rightfully earned wages and converted them to  
28 DEFENDANTS' own use and benefits.

      214.     PLAINTIFF and members of the CLASS have been injured by DEFENDANTS'  
intentional conversion of such wages and compensation. PLAINTIFF and the CLASS are entitled

1 to immediate possession of all amounts converted by DEFENDANTS, with interest, as well as any  
2 and all profits that DEFENDANTS acquired by their unlawful conversion.

3 215. DEFENDANTS' action constituting conversion were oppressive, malicious, and  
4 fraudulent, and were concealed by DEFENDANTS, and each of them, from the PLAINTIFF and the  
5 CLASS as hereinbefore alleged.

6 216. PLAINTIFF and the CLASS have been injured by DEFENDANTS' oppressive,  
7 malicious, intentional, and fraudulent actions, entitling PLAINTIFF and the CLASS to punitive and  
8 exemplary damages.

9 217. PLAINTIFF on behalf of himself and the CLASS seeks all available remedies for  
10 DEFENDANTS' violations including any and all wages due, penalties, monies, interest, attorney's  
11 fees, and costs to the extent permitted by law.

12 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

13 **FIFTEENTH CAUSE OF ACTION**  
14 **VIOLATION OF BUSINESS & PROFESSIONS CODE §17200**  
15 **(Against All DEFENDANTS)**

16 218. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as  
17 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

18 219. The foregoing conduct, as alleged, violates the California Unfair Competition Law  
19 ("UCL"), Cali. Bus. & Prof. Code §§ 17200 et seq., which prohibits unfair competition by  
20 prohibiting, inter alia, any unlawful or unfair business acts or practices.

21 220. DEFENDANTS have systematically engaged in unlawful conduct such as wage and  
22 hour violations in order to decrease their costs of doing business and gain an unfair advantage over  
23 their competitors.

24 221. DEFENDANTS' Labor Code and IWC Wage Orders violations include, but are not  
25 limited to, DEFENDANTS' (i) failure to provide proper meal and rest periods and pay PLAINTIFF  
26 and the CLASS meal and rest premiums for missed, short, late and/or on-duty meal and rest periods;  
27 (ii) failure to pay all minimum and overtime wages for all hours worked and under the control of  
28 DEFENDANTS; (iii) failure to maintain accurate records including accurate records of  
DEFENDANTS' employees' hours worked and wages earned; (iv) failure to provide accurate wage

1 statements; (v) failure to reimburse employees for all costs and expenses incurred; (vi) failure to  
2 timely pay all wages due to their employees during employment and after separation of employment;  
3 and (vii) misclassifying employees as independent contractors to avoid employment status, and  
4 seeking to enforce illegal and unfair provisions against employees and former employees.

5 222. DEFENDANTS intentionally avoided paying PLAINTIFF and the CLASS all wages  
6 and monies, including all minimum and overtime wages, and other financial obligations attached  
7 thereto to create for DEFENDANTS an artificially lower cost of doing business and, thus, undercut  
8 their competitors and establish and/or gain a greater foothold in the marketplace, all to the detriment  
9 of PLAINTIFF and the CLASS.

10 223. DEFENDANTS lowered their costs of doing business by paying PLAINTIFF and the  
11 CLASS amounts less than what was required under the California Labor Code and Wage Order of  
12 the Industrial Welfare Commission, thereby unfairly forcing PLAINTIFF and the CLASS to perform  
13 work without fair compensation and benefits.

14 224. DEFENDANTS held themselves out to PLAINTIFF and the CLASS as being  
15 knowledgeable and adhering to the employment laws of California at all times relevant herein.  
16 PLAINTIFF and the CLASS relied on and believed in DEFENDANTS' representation concerning  
17 their conformance with the California laws alleged herein, all to their detriment.

18 225. DEFENDANTS' scheme to lower their payroll costs by violating the California Labor  
19 Code and Wage Order of the Industrial Welfare Commission, as alleged herein, constitutes  
20 "unlawful, unfair or fraudulent business act or practice," under Business and Professions Code §  
21 17200 et seq. By engaging in the above-described acts and practices, DEFENDANTS have  
22 committed one or more acts of unfair competition within the meaning of Business & Profession Code  
23 §17200, et seq. DEFENDANTS, and each of them, have acted contrary to public policies and have  
24 engaged in other unlawful and unfair business practices in violation of Business & Profession Code  
25 §17200, et seq., depriving PLAINTIFF and the CLASS and all interested persons of rights, benefits,  
26 and privileges guaranteed to all employees under law

27 226. DEFENDANTS' conduct as herein alleged has damaged PLAINTIFF and the CLASS  
28 as described in this CROSS-COMPLAINT. The aforementioned acts of DEFENDANTS'

1 individually, or by and through their managing agents, officers, and/or directors were willful, wanton,  
2 malicious, intentional, oppressive, and despicable, and were done in willful and conscious disregard  
3 of the rights of CROSS-COMPLAINANT, and each of them, and were done by managerial agents  
4 and employees of DEFENDANTS, or with the express knowledge, consent, and ratification of  
5 managerial employees of DEFENDANTS, with the intent to vex, injure, and annoy PLAINTIFF and  
6 the CLASS, such as to constitute oppression, fraud, or malice pursuant to California Civil Code §  
7 3294, entitling PLAINTIFF to punitive and exemplary damages in a sum which is an amount  
8 appropriate to punish and set an example of DEFENDANTS, and each of them, to deter such conduct  
9 in the future, and to set an example for others.

10 227. PLAINTIFF and the CLASS suffered and continue to suffer loss of wages and monies,  
11 all in an amount to be shown according to proof at trial and within the jurisdiction of this Court, as a  
12 direct result of DEFENDANTS' Labor Code and IWC Wage Orders violations.

13 228. PLAINTIFF seeks an order of this Court awarding restitution, injunctive relief and all  
14 other relief allowed under Business & Profession Code § 17200, et seq., plus interest, attorneys' fees  
15 and costs pursuant to, inter alia, Code of Civil Procedure Section 1021.5.

16 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

17 **SIXTEENTH CAUSE OF ACTION**

18 **INJUNCTIVE RELIEF**  
19 **(Against All DEFENDANTS)**

20 229. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as  
21 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

22 230. DEFENDANTS unlawful conduct of failing to properly classify workers as employees  
23 entitling them to statutory mandated benefits; failing to pay payroll taxes; failing to provide  
24 compliant meal periods; failing to authorize and permit rest periods; failing to provide accurate  
25 itemized wage statements; failure to timely pay wages due upon termination of employment; failing  
26 to reimburse and indemnify PLAINTIFF and the CLASS for expenditures in discharge of their duties;  
27 failing to properly maintain records; failing to provide paid sick leave; and requiring employees and  
28 applicants to agree to illegal employment terms and conditions of employment, threatens real and  
immediate harm to the CLASS, who will suffer irreparable harm.

1       231.     PLAINTIFF and the CLASS are therefore entitled to an order restraining and ordering  
2 DEFENDANTS, representatives, attorneys, servants, and agents from further harm pending final  
3 judgment on this matter.

4             WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

5                             **DEMAND FOR JURY TRIAL**

6             PLAINTIFF, on behalf of himself and the CLASS, demands a trial by jury on all issues so  
7 triable.

8                             **PRAYER FOR RELIEF**

9             PLAINTIFF, on behalf of himself and the CLASS, and all others similarly situated, prays for  
10 relief and judgment against DEFENDANTS, jointly and severally, as follows:

- 11             1. For an Order certifying the proposed CLASS and/or any other appropriate subclasses  
12                 under CCP § 382;
- 13             2. For an Order appointing PLAINTIFF as the representative of the CLASS;
- 14             3. For an Order appointing counsel for PLAINTIFF as counsel for the CLASS;
- 15             4. For a finding that DEFENDANTS violated the provisions of the California  
16                 Labor Code, including but not limited to, §§ 201-203, 226, 226.3, 226.7, 432.5,  
17                 510, 512, 1194, 1198, 2751, 2810.5, 2802;
- 18             5. That the Court declare, adjudge, and decree that DEFENDANTS violated  
19                 California Business and Professions Code §§ 17200 *et seq.*;
- 20             6. That the Court make an award to PLAINTIFF and the CLASS of damages for  
21                 the amount of unpaid wages, including interest thereon and penalties, in amounts  
22                 to be proven, in a formulaic manner, at trial;
- 23             7. For all wages earned and owing, including an amount sufficient to recover  
24                 unlawfully deducted and unpaid wages;
- 25             8. For an appropriate injunctive relief, including an Order directing  
26                 DEFENDANTS to cease and desist from improperly requiring the CLASS to  
27                 pay DEFENDANTS for desk space rental, supplies, marketing, computer, and  
28                 other equipment expenses to carry out DEFENDANTS' business;

9. For an appropriate injunctive relief, including an Order directing DEFENDANTS to cease and desist from improperly requiring employees to sign independent contractors' agreements;
10. For nominal damages;
11. For special damages, according to proof;
12. For actual damages pursuant to Labor Code § 226(e);
13. For reasonable attorneys' fees as provided by statute, including but not limited to California Code of Civil Procedures § 1021.5 and California Labor Code §§ 218.5, 226, 1194, 2802;
14. For pre-judgment and post-judgment interest as provided by law;
15. For an award of damages in the amount of unpaid compensation and monies including, but not limited to, actual damages, unpaid wages, overtime wages, regular wages, consequential, and incidental losses and damages in an amount according to proof;
16. For penalties as permitted under California Labor Code for violations of each of the sections identified herein, including but not limited to §§ 225.5, 226, 226.3, 1174.5, and 558;
17. For waiting time penalties and other penalties according to proof pursuant to California Labor Code section 203 for all employees who have left DEFENDANTS' employment;
18. For injunctive relief pursuant to California Labor Code section 226(h);
19. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from DEFENDANTS and determined to have been wrongfully acquired by DEFENDANTS as a result of violations of California Business & Professions Code sections 17200 et seq.;
20. For any other such relief as the Court deems just and proper due to the misconduct committed by the DEFENDANTS as alleged herein;
21. 4. For disgorgement of all monies which DEFENDANTS have illegally gained;
22. For Punitive Damages;

- 1 23. For restitution of unpaid wages to PLAINTIFF and all the CLASS;
- 2 24. For an award of damages equal to the unpaid losses and necessary business expenses
- 3 incurred pursuant to Labor Code § 2802, including interest thereon;
- 4 25. For an award of additional hour of pay at the regular rate of compensation pursuant to
- 5 Labor Code §226.7(b) for each meal and rest period not in compliance with the
- 6 applicable Wage Order of the IWC;
- 7 26. For penalties and subsequent violation of a section of Chapter 1 of Labor Code, Div. 2,
- 8 Part 2, or any provision regulating hours and days of work in any Order of the IWC for
- 9 each underpaid employee for each pay period for which the employee was underpaid, in
- 10 addition to an amount sufficient to recover the underpaid wages to be paid to each
- 11 affected employee pursuant to Labor Code §558;
- 12 27. For an accounting to determine all money wrongfully obtained and held by
- 13 DEFENDANTS;
- 14 28. For all other Orders, findings, and determinations identified and sought in this Complaint
- 15 and/or the Court finds just and proper;
- 16 29. PLAINTIFF reserves the right to amend his prayer for relief.
- 17
- 18

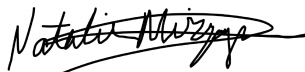
19 Dated: February 26, 2020

LAW OFFICES OF NATALIE MIRZAYAN

20

21

22 By:



23 Natalie Mirzayan, Esq.  
24 Attorneys for KALVYN ESCOBAR

25

26

27

28

**From:** noreply@salesforce.com on behalf of LWDA DO NOT REPLY  
<lwdadonotreply@dir.ca.gov>  
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**To:** mirzayanlaw@outlook.com  
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2/28/2020

LWDA Case No. LWDA-CM-761428-20  
Law Firm : Law Offices of Natalie Mirzayan Plaintiff Name : Kalvyn Escobar  
Employer: Prime Finance Consulting, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

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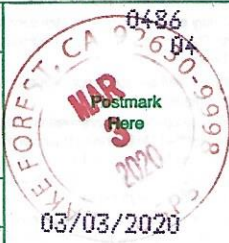
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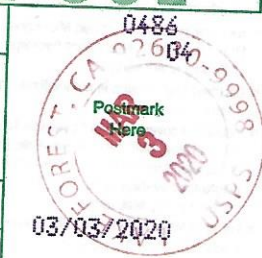
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## **EXHIBIT 2**

# LAW OFFICES OF NATALIE MIRZAYAN

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February 28, 2020



Department of Industrial Relations  
Accounting Unit  
455 Golden Gate Avenue, 10th Floor  
San Francisco, CA 94102

RE: *Kalyvn Escobar v. Prime Finance Consulting, Inc., et al., LWDA Case No. LWDA-CM-761428-20*

Enclosed please find a new Notification Filing Fee in the amount of \$75.00 made payable to LWDA in the above reference matter. Notification in advance of a civil action under Labor Code Private Attorneys General Act of 2004, ("PAGA") was filed online at on February 28, 2020.

If you have any questions, please feel free to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Natalie Mirzayan'.

Natalie Mirzayan, Esq.

**LAW OFFICES OF NATALIE MIRZAYAN**  
26632 TOWNE CENTER DRIVE STE 300  
FOOTHILL RANCH, CA 92610

90-7172/3222 1012

DATE 2/28/2020

PAY TO THE ORDER OF LWDA \$ 75 <sup>NO</sup>

Seventy five dollars DOLLARS

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MEMO LWDA - M-761428-20

[Signature]

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Escobar v. Prime Finance Consulting, Inc, et al.