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Clerk of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL

HENNESSEY T. HARRINGTON,	)	CASE NO.: 37-2021-00001497-CU-OE-CTL
individually and on behalf of current and	)	
former aggrieved employees in the State of	)	
California,	)	COMPLAINT FOR:
	)	
Plaintiff	)	1. PAGA CLAIM FOR CIVIL
	)	PENALTIES
vs.	)	
	)	
CBJ ASSOCIATES, INC. and DOES 1	)	DEMAND FOR JURY TRIAL
through 20, inclusive	)	
	)	
Defendants.	)	
	)	
	)	
	)	

COMES NOW Plaintiff, HENNESSEY T. HARRINGTON, by and through his undersigned counsel, hereby sues Defendants, CBJ ASSOCIATES, INC. dba SAN DIEGO BUSINESS JOURNAL, and DOES 1 through 20 (collectively referred to as "Defendants") and on behalf of all current and former aggrieved employees alleges and states as follows:

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1 **I. CERTIFICATION OF PROPER VENUE**

2 Plaintiff HENNESSEY T. HARRINGTON (hereinafter “HARRINGTON,” or “Plaintiff”)
3 hereby certifies that the California Superior Court of San Diego County is a proper venue for this
4 action by Defendants, and each of them, at all times relevant herein were conducting business in
5 San Diego County. Further, the alleged events and related acts took place within the County of
6 San Diego. Additionally, the amount in controversy exceeds the \$25,000.00 jurisdictional
7 minimum of the Superior Court.

8 **II. GENERAL ALLEGATIONS**

9 1. Plaintiff HARRINGTON, at times relevant in this complaint, was residing in San
10 Diego County, California and at all relevant times was employed by Defendants in San Diego
11 County, California.

12 2. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2699(c)
13 because he was employed by Defendants and suffered one or more of the violations committed
14 by Defendants.

15 3. Defendant, CBJ ASSOCIATES, INC. dba SAN DIEGO BUSINESS JOURNAL
16 (hereinafter “CBJ” and/or “Defendants”) at all times relevant in this complaint was a Kansas
17 corporation conducting business within the Southern California, including County of San Diego.
18 On information and belief, CBJ owns and operates several Business Journals that include the San
19 Diego Business Journal where Plaintiff was employed, the Orange County Business Journal, the
20 Los Angeles Business Journal, and the San Fernando Valley Business Journal.

21 4. Plaintiff HARRINGTON is unaware of the true names and capacities of the
22 defendants named as DOES 1-20, and therefore sues these defendants as fictitious parties.
23 Plaintiff will, upon learning the true names and capacities of these DOE defendants, seek leave
24 to amend the complaint so that the true names and capacities of these individuals may be added
25 to the complaint. At this time, Plaintiff HARRINGTON states on information and belief that
26 each of the fictitiously named defendants is and/or acted as the agent and/or contractor of the
27 other defendants and is responsible for the occurrences herein alleged, and is liable to Plaintiff
28 for the damages proximately caused thereby.

1 5. Plaintiff was employed by Defendants as Sales Executive Accountant at their
2 offices located in San Diego, CA from December 4, 2019 through October 2020 when he was
3 abruptly terminated after he complained to his employer about its failure to pay his earned
4 commissions.

5 6. CBJ publishes magazines that focus on small businesses, startups, business
6 owners, entrepreneurs and general business professionals. The company also offers a wide range
7 of editorial and advertising opportunities for local business.

8 7. At all relevant times, Defendants knowingly, voluntarily, and willfully
9 misclassified Plaintiff and other current and former aggrieved employees who have been working
10 as sales executive accountants and/or held similar job positions and/or titles as "exempt-
11 employees' and/or as "independent contractors" when they should have been properly classified
12 as an employees and subject to the protections of the California Labor Code as these employees
13 worked full-time for Defendants, the work they performed is an integral part of the company's
14 business, and Defendants provides the tools and equipment they need to work.

15 8. As result of their misclassification, Plaintiff and other current and former
16 aggrieved employees are/were not pay for all overtime, regular, and minimum wages for all hours
17 they worked as required under California Labor Code. For example, Plaintiff who routinely
18 worked more than 8 hours in one day, or more than 40 hours in one workweek, as he was required
19 to attend meetings with clients which would take place after his regular office hours, was not
20 paid at least minimum wage for all hours worked, nor was he properly paid correct overtime
21 wages for all overtime hours.

22 9. At all relevant times, Defendants failed to include all required compensation
23 received by Plaintiff and other aggrieved employees in his regular rate of pay for the purpose of
24 calculating overtime compensation. Plaintiff and other former and current employees are/were
25 paid commissions calculated based on many variables, including the amount of sales dollars
26 produced during a pay period. However, this commission was not incorporated into the regular
27 rate of pay for purposes of calculating the employees' overtime earned as required under the
28 California law. As a result, Plaintiff and other current and former aggrieved employees were

1 underpaid.

2 10. At all times relevant, Defendants did not maintain compliant meal period policies
3 for Plaintiff as required by the California Labor Code, nor did they provide meal periods
4 compliant under California law, to Plaintiff and other employees. Defendants had also a common
5 pattern and practice of failing to accurately and properly record meal periods for Plaintiff and
6 other employees.

7 11. Throughout their employment, Plaintiff and other current and former aggrieved
8 employees were not provided compliant 30-minute, uninterrupted off-duty meal periods when
9 they worked more than 5 hours in one day. Nor did Defendants provide Plaintiff with a second
10 meal period when required to be provided under California law. This was a common practice
11 applicable to Plaintiff and other current and former aggrieved employees.

12 12. Defendants failed to pay Plaintiff and other employees meal period premium
13 wages for each day in which they did not provide Plaintiff an opportunity to take a compliant
14 meal period.

15 13. Furthermore, during Plaintiff's employment, Defendants did not maintain a
16 compliant rest period policy applicable to Plaintiff and other employees. Defendants did not
17 authorize or permit Plaintiff to take compliant uninterrupted 10-minute paid rest periods, nor did
18 they ever inform them or other employees of their right to take compliant rest periods.

19 14. Defendants failed to pay Plaintiff and other employees rest period premium wages
20 for each day in which they did not authorize or permit them to take compliant rest periods.

21 15. As a result of the practices described above, Defendants failed to maintain
22 accurate time records showing when Plaintiff began and ended each work period, meal periods,
23 and total daily hours worked. Defendants further failed to maintain accurate records reflecting
24 all rates of pay.

25 16. At Defendants failed to provide all Plaintiff and other current and former
26 aggrieved employees with wage statements accurately itemizing information required by Labor
27 Code § 226(a) and Section 7 of the applicable Wage Order including, but not limited to the name
28 and address of the legal entity that is the employer, all hours worked, all rates paid, and all wages

1 earned. Defendants further failed to provide Plaintiff and other aggrieved employees with wages
2 statements accurately reflecting the total hours worked and the inclusive dates of the period in
3 which the employees were paid.

4 17. Defendants further did not provide Plaintiff and other current and former
5 aggrieved employees, the requisite writing required at the time of hiring by Labor Code § 2810.5
6 setting forth the rates of pay and basis thereof, the regular payday, the accurate name of the
7 employer, the physical address and telephone of the employer, the employer's worker's
8 compensation carrier and the employees sick pay information.

9 18. Defendants failed to pay Plaintiff and other aggrieved employees for all wages
10 due and owing and by the times required by law in the time periods set forth by Labor Code §
11 204 and Section 4 of the applicable Wage Order in that Defendants failed to properly compensate
12 said employees for all hours worked, and for meal and rest premium wages.

13 19. Defendants failed to pay Plaintiff and other similarly-situated and aggrieved
14 employees all wages due and owing at the time of termination of employment as required by
15 Labor Code §§ 201(a) and 202(a), as applicable, because Plaintiff and other similarly-situated
16 and aggrieved employees were not properly compensated for all hours worked, meal and rest
17 break premium wages. On information and belief, Defendants willingly withheld wages
18 including, but not limited to, minimum, overtime wages and rest and meal premium wages.

19 20. Defendants also had a practice and policy of passing on the costs of employment
20 directly to their employees – thereby increasing their profit at the expense of its employees.
21 Plaintiff and other employees were forced to utilize their own personal cell phones and personal
22 computers as a primary means of communication with clients. Defendant did not reimburse
23 employees for the costs associated with this necessary business expenses and instead relied upon
24 the illegal shifting of the payment of these business expenses as a primary profit-generating
25 machine.

26 **III. PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION**

27 21. The First Cause of Action alleged herein are appropriately suited for a Labor Code
28 Private Attorneys General Act of 2004 (hereinafter referred to as “PAGA”) representative action

1 because:

2 22. This action involves allegations of violations of provisions of the California Labor
3 Code that either do not provide for a civil penalty or provide for a civil penalty to be assessed
4 and collected by the Labor and Workforce Development Agency (hereinafter referred to as
5 "LWDA") or any departments, divisions, commissions, boards, agencies or employees;

6 23. Plaintiff HARRINGTON is an "aggrieved employee" because he was employed
7 by the alleged violators and had one or more of the alleged violations committed against his and,
8 therefore, is properly suited to represent the interests of all other current and former employees
9 of Defendants;

10 24. Plaintiff HARRINGTON seeks to recover all applicable penalties under PAGA
11 on behalf of himself and all other aggrieved employees including, but not limited to.

12 25. Pursuant to Labor Code § 2698, *et seq.*, Plaintiff HARRINGTON has complied
13 with his notice requirements by serving via certified mail, return receipt requested, the LWDA
14 and CBJ ASSOCIATES, INC., dba SAN DIEGO BUSINESS JOURNAL a notice with his claims
15 for wage and hour violations and penalties. The 60-day statutory period expired, and the LWDA
16 did not serve Plaintiff HARRINGTON with a notice of intent to assume jurisdiction over the
17 applicable penalty claims. Therefore, Plaintiff HARRINGTON has satisfied and exhausted the
18 procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code §
19 2699, *et seq.* Pursuant to Labor Code § 2698, *et seq.* Attached hereto as Exhibit A is Plaintiff's
20 LWDA letter dated October 23, 2020. Plaintiff hereby incorporates by reference his October 23,
21 2020 letter, and the claims asserted therein, which was properly filed with the LWDA and served
22 on his employer pursuant to Labor Code § 2699.

23 26. Plaintiff wishes to pursue only those remedies permissible to be brought in a civil
24 action in superior court and specifically excludes any claims or remedies which would be
25 compelled to arbitration.

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1 **IV. CAUSES OF ACTIONS**

2 **FIRST CAUSE OF ACTION**

3 **PRIVATE ATTORNEY GENERAL ACT (PAGA)**

4 (Alleged by Plaintiff HARRINGTON Individually and On Behalf of Current and Former
5 Aggrieved Employees Against Defendants and DOES 1 through 20)

6 (Violation of Labor Code § 2699, *et seq.*)

7 27. Plaintiff HARRINGTON realizes and incorporates by reference the foregoing
8 allegations, as though set forth herein.

9 28. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides
10 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
11 commissions, boards, agencies or employees for violation of the code may, as an alternative, be
12 recovered through a civil action brought by an aggrieved employee on behalf of himself or
13 himself and other current or former employees pursuant to the procedures specified in Labor
14 Code § 2699.3.

15 29. Plaintiff HARRINGTON is an “aggrieved employee” because he was employed
16 by the alleged violator and had one or more of the alleged violations committed against his, and
17 therefore is properly suited to represent the interests of other current and former similarly
18 aggrieved employees of Defendants.

19 30. On October 23, 2020, pursuant to Labor Code § 2698, *et seq.*, Plaintiff
20 HARRINGTON served via certified mail, return receipt requested, the LWDA, and CBJ
21 ASSOCIATES, INC. dba SAN DIEGO BUSINESS JOURNAL with his claims for wage and
22 hour violations and penalties. The 65-days have elapsed, and the LWDA did not serve Plaintiff
23 with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore,
24 Plaintiff has satisfied and exhausted the procedural notice requirement to pursue penalties against
25 Defendants pursuant to Labor Code §2698, *et seq.*

26 31. Labor Code § 1198 states “The maximum hours of work and the standard
27 conditions of labor fixed by the commission shall be the maximum hours of work and the
28 standard conditions of labor for employees. The employment of any employee for longer hours

1 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

2 32. Defendants violated Labor Code § 226.8 by voluntarily and knowingly
3 misclassifying current and former aggrieved employees as independent contractor despite the
4 fact that the employees were not independent contractors and instead employees of Defendants.
5 Pursuant to Labor Code § 226.8 (b) Defendants are subject to a civil penalty of \$5,000 for each
6 aggrieved employee per pay period for an initial violation and \$15,000 for each aggrieved
7 employee per pay period for each subsequent violation and under Labor Code § 226.8 (c) \$10,000
8 and \$25,000, respectively.

9 33. Defendants violated Labor Code §§ 1194, 1197, and 1198 by failing to pay
10 Plaintiff and current and former aggrieved employees at least minimum and regular wages for
11 the time permitted to work, engaged in work, and/or under Defendants' control as alleged herein.
12 Under Labor Code § 2699 (f)(2) Defendants are subject to a civil penalty of \$100 for each
13 aggrieved employee per pay period for an initial violation and \$200 for each aggrieved employee
14 per pay period for each subsequent violation.

15 34. Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiff and
16 current and former aggrieved employees overtime wages for the time permitted to work, engaged
17 in work, and/or under Defendants' control as alleged herein. On information and belief, at all
18 relevant times, Plaintiff and other current and former aggrieved employees were not paid
19 overtime wages when they worked in excess of eight (8) hours a day or forty (40) hours within
20 a workweek. Therefore, under Labor Code § 2699 (f)(2) Defendants are subject to a civil penalty
21 of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for each
22 aggrieved employee per pay period for each subsequent violation.

23 35. Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide
24 Plaintiff and current and former aggrieved employees lawfully complaint meal periods and by
25 failing to pay them wages for each day a meal period was not provided. Under Labor Code §
26 2699 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per
27 pay period for an initial violation and \$200 for each aggrieved employee per pay period for each
28 subsequent violation.

1 36. Defendants violated Labor Code §§ 226.7 and 1198 by failing to provide Plaintiff
2 and current and former aggrieved employees duty-free rest periods and by failing to pay them
3 premium wages for each day a rest period was not provided. Under Labor Code § 2699 (f)(2)
4 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for
5 an initial violation and \$200 for each aggrieved employee per pay period for each subsequent
6 violation.

7 37. At all relevant times herein, Defendants failed to reimburse Plaintiff and, on
8 information and belief, all other similarly-situated and current and former aggrieved employees
9 for necessary expenditures and losses incurred in direct consequence to the discharge of their
10 duties in violation of Labor Code § 2802. Under Labor Code § 2699 (f)(2) Defendants are subject
11 to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and
12 \$200 for each aggrieved employee per pay period for each subsequent violation.

13 38. Labor Code § 203(a) states, in relevant part, “If an employer willfully fails to pay,
14 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5,
15 any wages of an employee who is discharged or who quits, the wages of the employee shall
16 continue as a penalty from the due date thereof at the same rate until paid or until an action
17 therefor is commenced; but the wages shall not continue for more than 30 days.”

18 39. Labor Code § 204(a) states in pertinent part, “All wages . . . earned by any person
19 in any employment are due and payable twice during each calendar month, on days designated
20 in advance by the employer as the regular paydays.”

21 40. Section § 4(B) of a relevant IWC Wage Order states “Every employer shall pay
22 to each employee, on the established payday for the period involved, not less than the applicable
23 minimum wage for all hours worked in the payroll period, whether the remuneration is measured
24 by time, piece, commission or otherwise.”

25 41. Labor Code 432.5 states “No employer, or agent, manager, superintendent, or
26 officer thereof, shall require any employee or applicant for employment to agree, in writing, to
27 any term or condition which is known by such employer, or agent, manager, superintendent, or
28 officer thereof to be prohibited by law.”

42. Through Defendants' conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 226.8 , 510, 512, 432.5, 1194, 1197, 1198, 2802 and the applicable IWC wage order. It failed to provide compliant meal and rest periods and failed to pay Plaintiff and members of the Classes (i) all wages due and owing and (ii) all wages due and owing by the time set forth pursuant to Labor Code § 204(a) and IWC Wage Order 4-2001§ 4(B), including, but not limited to, all minimum and overtime wages and meal and rest premium wages. It further unlawfully required its employees to sign unlawful agreements and failed to provide reimbursement and indemnification for the costs of cell phones and computers.

43. As a direct result of Defendants' violations alleged herein, Plaintiff and aggrieved employees have suffered and continue to suffer substantial losses related to Defendants' requirement of employees to sign unlawful agreements and Defendants' failure to provide rest periods and rest period premium wages, failure to pay wages timely, failure to indemnify for use of cell phones and computers, failure to provide accurate wage statements, and including expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

44. As set forth herein, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 226.8, 432.5, 510, 512, 1194, 1997, 1998, 1198, and 2802. Labor Code § 2699, *et seq.*, imposes upon Defendants, and each of them, penalties for violating the Labor Code, including those penalties set forth in 210, 226.3, and 2698, *et seq.*

45. Pursuant to Labor Code § 2699, Plaintiff HARRINGTON seeks to recover civil penalties on behalf of himself and other current and former aggrieved employees of Defendants. The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

46. For bringing this action, Plaintiff HARRINGTON is entitled to attorney's fees and costs incurred herein.

1 47. Therefore, Plaintiff request(s) judgment as set forth in the prayer below:

2 **PRAYER FOR RELIEF AS TO ALL COUNTS**

3 WHEREFORE, Plaintiff prays for judgment only as to those remedies which are
4 permissible in superior court and not subject to being compelled to arbitration as follows:

- 5 a. For injunctive relief to stop Defendants CBJ ASSOCIATES, INC. dba SAN
6 DIEGO BUSINESS JOURNAL from engaging in further unfair business
7 practices and as provided by the Labor Code to the extent permitted by law
8 including, but not limited to, pursuant to § 226(h);
- 9 b. For civil penalties to the extent permitted pursuant to the Labor Code, Orders of
10 the Industrial Welfare Commission including, but not limited to, civil penalties
11 recoverable under Cal. Labor Code § 2698 et seq.
- 12 c. For attorney fees as provided for under any statutory provision and including
13 Labor Code § 2698 et seq.
- 14 d. For costs of suit herein incurred; and
- 15 e. For such other and further relief as the court may deem just and proper.

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17 Respectfully submitted,

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19 DATED: January 13, 2021

SHORTLEGAL APC

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22 By: _____
23 Brian R. Short, Esq.
24 Dorota A. James, Esq.
Attorneys for Plaintiff HENNESSEY T.
HARRINGTON

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1 **JURY TRIAL DEMAND**

2 Plaintiff requests a jury trial on all counts herein.

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4 Respectfully submitted,

5 DATED: January 13, 2021

SHORTLEGAL APC

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8 By: _____

Brian R. Short, Esq.

Dorota A. James, Esq.

9 Attorneys for Plaintiff HENNESSEY T.
10 HARRINGTON
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