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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

Attorneys for Plaintiff HENNESSEY T. HARRINGTON

**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 of Defendants in	)	IMAGED FILE
the State of California,	)	
	)	FIRST AMENDED COMPLAINT FOR:
Plaintiff	)	
	)	1. PAGA CLAIM FOR CIVIL
vs.	)	PENALTIES
	)	
CBJ ASSOCIATES, INC. dba SDLA, Inc.,	)	
CBJ, L.P., and DOES 1 through 20, inclusive	)	DEMAND FOR JURY TRIAL
	)	
Defendants.	)	Complaint Filed: January 13, 2021
	)	Judge: Richard S. Whitney
	)	Dept.: C-68
	)	
	)	

COMES NOW Plaintiff, HENNESSEY T. HARRINGTON, by and through his undersigned counsel, hereby sues Defendants, CBJ ASSOCIATES, INC. dba SDLA, Inc., CBJ, L.P., 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, L.P. (hereinafter “CBJ, L.P.” and/or “Defendant”) is a Kansas
16 newspaper publishing corporation that conducts business in Southern California.

17 4. Defendant, CBJ ASSOCIATES, INC. dba SDLA, Inc. (hereinafter “CBJ
18 Associates, Inc.” and/or “Defendant”) at all times relevant in this complaint is a Kansas
19 corporation registered with the California Secretary of State and conducting business within the
20 Southern California, including County of San Diego. CBJ Associates, Inc. is the general partner
21 of CBJ, L.P. On information and belief, CBJ Associates, Inc. owns and operates several Business
22 Journals that include the San Diego Business Journal where Plaintiff was employed, the Orange
23 County Business Journal, the Los Angeles Business Journal, and the San Fernando Valley
24 Business Journal. The journals are weekly print and online newspapers covering businesses in
25 their respective counties, including San Diego County.

26 5. Plaintiff HARRINGTON is unaware of the true names and capacities of the
27 defendants named as DOES 1-20, and therefore sues these defendants as fictitious parties.
28 Plaintiff will, upon learning the true names and capacities of these DOE defendants, seek leave

1 to amend the complaint so that the true names and capacities of these individuals may be added
2 to the complaint. At this time, Plaintiff HARRINGTON states on information and belief that
3 each of the fictitiously named defendants is and/or acted as the agent and/or contractor of the
4 other defendants and is responsible for the occurrences herein alleged, and is liable to Plaintiff
5 for the damages proximately caused thereby.

6 6. Upon information and belief, Defendants, at all relevant times, conducted
7 business in the State of California and were employers who violated, or caused to be violated, a
8 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and
9 days of work in any order of the Industrial Welfare Commission and, as such, are subject to
10 penalties for each underpaid employee as set forth in Labor Code § 558 and or 558.1.

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

14 8. Defendants publish magazines that focus on small businesses, startups, business
15 owners, entrepreneurs and general business professionals located in San Diego County, Los
16 Angeles County, Orange County, and San Fernando Valley County. Defendants also offer a wide
17 range of editorial and advertising opportunities for local business.

18 9. At all relevant times, Defendants knowingly, voluntarily, and willfully
19 misclassified Plaintiff and other current and former aggrieved employees who have been working
20 as Sales Account Executives and/or held similar job positions and/or titles as "exempt-
21 employees' and/or as "independent contractors" when they should have been properly classified
22 as non-exempt employees and subject to the protections of the California Labor Code as these
23 employees worked full-time for Defendants, the work they performed is an integral part of the
24 company's business, and Defendants provides the tools and equipment they need to work.

25 10. As result of their misclassification, Plaintiff and other current and former
26 aggrieved employees are/were not pay for all overtime, regular, and minimum wages for all hours
27 they worked as required under California Labor Code. For example, Plaintiff who routinely
28 worked more than 8 hours in one day, or more than 40 hours in one workweek, as he was required

1 to attend meetings with clients which would take place after his regular office hours, was not
2 paid at least minimum wage for all hours worked, nor was he properly paid correct overtime
3 wages for all overtime hours.

4 11. At all relevant times, Defendants failed to include all required compensation
5 received by Plaintiff and other aggrieved employees in their regular rate of pay for the purpose
6 of calculating overtime compensation. Plaintiff and other former and current employees are/were
7 paid commissions calculated based on many variables, including the amount of sales dollars
8 produced during a pay period. However, this commission was not incorporated into the regular
9 rate of pay for purposes of calculating the employees' overtime earned as required under the
10 California law. As a result, Plaintiff and other current and former aggrieved employees were
11 underpaid.

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

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

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

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

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

3 17. As a result of the practices described above, Defendants failed to maintain
4 accurate time records showing when Plaintiff began and ended each work period, meal periods,
5 and total daily hours worked. Defendants further failed to maintain accurate records reflecting
6 all rates of pay.

7 18. At all relevant times, Defendants failed to provide all Plaintiff and other current
8 and former aggrieved employees with wage statements accurately itemizing information required
9 by Labor Code § 226(a) and Section 7 of the applicable Wage Order including, but not limited
10 to the name and address of the legal entity that is the employer, all hours worked, all rates paid,
11 and all wages earned. Defendants further failed to provide Plaintiff and other aggrieved
12 employees with wages statements accurately reflecting the total hours worked and the inclusive
13 dates of the period in which the employees were paid.

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

19 20. Defendants failed to pay Plaintiff and other aggrieved employees for all wages
20 due and owing and by the times required by law in the time periods set forth by Labor Code §
21 204 and Section 4 of the applicable Wage Order in that Defendants failed to properly compensate
22 said employees for all hours worked, and for meal and rest premium wages.

23 21. Defendants failed to pay Plaintiff and other aggrieved employees all wages due
24 and owing at the time of termination of employment as required by Labor Code §§ 201(a) and
25 202(a), as applicable, because Plaintiff and aggrieved employees were not properly compensated
26 for all hours worked, meal and rest break premium wages. On information and belief, Defendants
27 willingly withheld wages including, but not limited to, minimum, overtime wages and rest and
28 meal premium wages.

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

III. PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION

23. The First Cause of Action alleged herein is appropriately suited for a Labor Code Private Attorneys General Act of 2004 (hereinafter referred to as “PAGA”) representative action because:

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

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

c. Plaintiff HARRINGTON seeks to recover all applicable penalties under PAGA on behalf of himself and all other aggrieved employees including, but not limited to an amount sufficient to recover underpaid wages including all unpaid and/or underpaid wages pursuant to Labor Code § 558; and

d. Pursuant to Labor Code § 2698, *et seq.*, Plaintiff HARRINGTON has complied with his notice requirements by serving on October 23, 2020 via certified mail, return receipt requested, the LWDA and CBJ ASSOCIATES, INC. and CBJ, L.P. a notice with his claims for wage and hour violations and penalties. The 65-day statutory period expired, and the

1 LWDA did not serve Plaintiff HARRINGTON with a notice of intent to assume jurisdiction
2 over the applicable penalty claims. Therefore, Plaintiff HARRINGTON has satisfied and
3 exhausted the procedural notice requirement to pursue penalties against Defendants pursuant
4 to Labor Code § 2699, et seq. Pursuant to Labor Code § 2698, *et seq.* Plaintiff hereby
5 incorporates by reference his October 23, 2020 letter, and the claims asserted therein, which
6 was properly filed with the LWDA and served on his employer pursuant to Labor Code §
7 2699.

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

11 IV. CAUSES OF ACTIONS

12 FIRST CAUSE OF ACTION

13 PRIVATE ATTORNEY GENERAL ACT (PAGA)

14 (Alleged by Plaintiff HARRINGTON Individually and On Behalf of Current and Former
15 Aggrieved Employees Against Defendants and DOES 1 through 20)
16 (Violation of Labor Code § 2699, *et seq.*)

17 25. Plaintiff HARRINGTON realizes and incorporates by reference the foregoing
18 allegations, as though set forth herein.

19 26. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides
20 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
21 commissions, boards, agencies or employees for violation of the code may, as an alternative, be
22 recovered through a civil action brought by an aggrieved employee on behalf of himself or
23 himself and other current or former employees pursuant to the procedures specified in Labor
24 Code § 2699.3.

25 27. Plaintiff HARRINGTON is an “aggrieved employee” because he was employed
26 by the alleged violator and had one or more of the alleged violations committed against him, and
27 therefore is properly suited to represent the interests of other current and former aggrieved
28 employees of Defendants.

1 28. On October 23, 2020, pursuant to Labor Code § 2698, *et seq.*, Plaintiff
2 HARRINGTON served via certified mail, return receipt requested, the LWDA, and CBJ
3 Associates, Inc. and CBJ, L.P. with his claims for wage and hour violations and penalties. The
4 65-days have elapsed, and the LWDA did not serve Plaintiff with a notice of intent to assume
5 jurisdiction over the applicable penalty claims. Therefore, Plaintiff has satisfied and exhausted
6 the procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code
7 §2698, *et seq.*

8 29. Labor Code § 1198 states “The maximum hours of work and the standard
9 conditions of labor fixed by the commission shall be the maximum hours of work and the
10 standard conditions of labor for employees. The employment of any employee for longer hours
11 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

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

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

25 32. Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiff and
26 current and former aggrieved employees overtime wages for the time permitted to work, engaged
27 in work, and/or under Defendants' control as alleged herein. On information and belief, at all
28 relevant times, Plaintiff and other current and former aggrieved employees were not paid

1 overtime wages when they worked in excess of eight (8) hours a day or forty (40) hours within
2 a workweek. Therefore, under Labor Code § 2699 (f)(2) Defendants are subject to a civil penalty
3 of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for each
4 aggrieved employee per pay period for each subsequent violation.

5 33. Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide
6 Plaintiff and current and former aggrieved employees lawfully complaint meal periods and by
7 failing to pay them wages for each day a meal period was not provided. Under Labor Code §
8 2699 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per
9 pay period for an initial violation and \$200 for each aggrieved employee per pay period for each
10 subsequent violation.

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

17 35. At all relevant times herein, Defendants failed to reimburse Plaintiff and, on
18 information and belief, all other current and former aggrieved employees for necessary
19 expenditures and losses incurred in direct consequence to the discharge of their duties in violation
20 of Labor Code § 2802. 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 36. Labor Code § 203(a) states, in relevant part, “If an employer willfully fails to pay,
24 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5,
25 any wages of an employee who is discharged or who quits, the wages of the employee shall
26 continue as a penalty from the due date thereof at the same rate until paid or until an action
27 therefor is commenced; but the wages shall not continue for more than 30 days.”

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

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

8 39. Labor Code 432.5 states “No employer, or agent, manager, superintendent, or
9 officer thereof, shall require any employee or applicant for employment to agree, in writing, to
10 any term or condition which is known by such employer, or agent, manager, superintendent, or
11 officer thereof to be prohibited by law.”

12 40. Through Defendants’ conduct during the applicable statutory period including,
13 but not limited to, the conduct alleged herein, including that alleged on information and belief,
14 Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 226.8, 510, 512, 558,
15 432.5, 1194, 1197, 1198, 2802 and the applicable IWC wage order. It failed to provide compliant
16 meal and rest periods and failed to pay Plaintiff and members of the Classes (i) all wages due
17 and owing and (ii) all wages due and owing by the time set forth pursuant to Labor Code § 204(a)
18 and IWC Wage Order 4-2001§ 4(B), including, but not limited to, all minimum and overtime
19 wages and meal and rest premium wages. It further unlawfully required its employees to sign
20 unlawful agreements and failed to provide reimbursement and indemnification for the costs of
21 cell phones and computers.

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

9 42. As set forth herein, Defendants violated Labor Code sections 201, 202, 203, 204,
10 226, 226.7, 226.8, 432.5, 510, 512, 558, 1194, 1997, 1998, 1198, and 2802. Labor Code § 2699,
11 *et seq.*, imposes upon Defendants, and each of them, penalties for violating the Labor Code,
12 including those penalties set forth in 210, 226.3, and 2698, *et seq.*

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

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

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

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

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

- 23 a. For injunctive relief to stop Defendants from engaging in further unfair business
24 practices and as provided by the Labor Code to the extent permitted by law
25 including, but not limited to, pursuant to § 226(h);
- 26 b. For civil penalties to the extent permitted pursuant to the Labor Code, Orders of
27 the Industrial Welfare Commission including, but not limited to, civil penalties
28 recoverable under Cal. Labor Code § 2698 *et seq.*

- 1 c. For attorney fees as provided for under any statutory provision and including
2 Labor Code § 2698 et seq.
3 d. For costs of suit herein incurred; and
4 e. For such other and further relief as the court may deem just and proper.
5

6 Respectfully submitted,

7 DATED: February 23, 2021

SHORTLEGAL APC

8 

9 By: _____
10 Brian R. Short, Esq.
11 Dorota A. James, Esq.
12 Attorneys for Plaintiff HENNESSEY T.
13 HARRINGTON

14 **JURY TRIAL DEMAND**

15 Plaintiff requests a jury trial on all counts herein.
16

17 Respectfully submitted,

18 DATED: February 23, 2021

SHORTLEGAL APC

19 

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