

CLARKSON LAW FIRM, P.C.

Glenn A. Danas (SBN 270317)
gdanas@clarksonlawfirm.com
22525 Pacific Coast Highway
Malibu, CA 90265
Tel: (213) 788-4050
Fax: (213) 788-4070

SHENKMAN & HUGHES PC

Kevin I. Shenkman (SBN 223315)
kishenkman@shenkmanhughes.com
Mary Ruth Hughes (SBN 222662)
mrhughes@shenkmanhughes.com
Andrea A. Alarcon (SBN 319536)
aalarcon@shenkmanhughes.com
28905 Wight Road
Malibu, CA 90265
Tel: (310) 457-0970

Attorneys for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ROBERT SCHEFF, individually, and on
behalf of all other aggrieved employees
pursuant to the California Private Attorneys
General Act,

Plaintiff,

vs.

THE HARTFORD GOLD GROUP, LLC, a
California limited liability corporation; and
DOES 1 through 25, inclusive,

Defendant.

Case No. 20STCV47565

FIRST AMENDED COMPLAINT

FILED

Superior Court of California
County of Los Angeles

11/04/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: K. Ghazarian Deputy

COMES NOW, Plaintiff ROBERT SCHEFF (“Plaintiff”), individually, and on behalf of a class of similarly situated employees, and other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

1. The monetary damages, civil penalties, and restitution sought by Plaintiff, the class members, and other aggrieved employees exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice. Moreover, the acts and omissions detailed herein occurred largely in California.

4. Venue is proper in this Court because a majority of the acts, events, and violations occurred in this County. Upon information and belief, Defendants maintain offices—indeed, its principal office—and have agents, employ individuals, and/or transact business in the State of California, County of Los Angeles.

THE PARTIES

5. Plaintiff ROBERT SCHEFF (“Plaintiff”), at all times herein mentioned, is an individual residing in the County of Los Angeles, State of California.

6. Plaintiff is informed and believes, and based thereon alleges, that Defendant THE HARTFORD GOLD GROUP, LLC is a California limited liability corporation that transacts business throughout the State of California and is an employer whose employees are engaged in the State of California, including the County of Los Angeles.

7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and

1 serve such fictitiously named Defendants once their names and capacities become known.

2 8. Plaintiff is informed and believes, and based thereon alleges, that each and all of the
3 acts and omissions alleged herein were performed by, or are attributable to Defendant THE
4 HARTFORD GOLD GROUP, LLC and/or DOES 1 through 25 (collectively “Defendants”), each
5 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of
6 the other co-Defendants and within the course and scope of such agency, employment, joint venture,
7 or concerted activity with legal authority to act on the others’ behalf. The acts of any and all
8 Defendants represent and were in accordance with Defendants’ official policy.

9 9. At all relevant times, Defendants were the employer of Plaintiff, the class members,
10 and the other aggrieved employees within the meaning of all applicable state laws and statutes.
11 Defendants directly or indirectly controlled or affected the working conditions, wages, working
12 hours, and conditions of employment of Plaintiff, the class members, and the other aggrieved
13 employees so as to make each of said Defendants employers and employers liable under the statutory
14 provisions set forth herein.

15 10. At all relevant times, Defendants, and each of them, ratified each and every act or
16 omission complained of herein. At all relevant times, Defendants, and each of them, aided and
17 abetted the acts and omissions of each and all the other Defendants in proximately causing the
18 damages herein alleged.

19 11. Plaintiff is informed and believes, and based thereon alleges, that each of said
20 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
21 omissions, occurrences, and transactions alleged herein.

22 **CLASS ALLEGATIONS**

23 12. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other
24 persons similarly situated, and thus seeks class certification under California Code of Civil Procedure
25 section 382.

26 13. All claims alleged herein arise under California law for which Plaintiff seeks relief
27 authorized by California law.

28 14. Plaintiffs proposed class consists of and is defined as follows:

1 All persons who are or were employed by Defendant as nonexempt, hourly-
2 paid employees at any of Defendant's locations within the State of California
3 within four years of the filing of the initial complaint until the date of final
4 court approval ("Class").

5 15. Members of the Class will hereinafter be referred to as "class members."

6 16. Plaintiff reserves the right to redefine the Class and to add subclasses as appropriate
7 based on further investigation, discovery, and specific theories of liability.

8 17. There are common questions of law and fact as to class members that predominate
9 over questions affecting only individual members, including, but not limited to:

10 (a) Whether Defendant failed to pay Plaintiffs and the other class members the
11 legally-mandated minimum-wage for all hours worked;

12 (b) Whether Plaintiffs and the other class members worked over eight hours in a
13 single day and Defendant failed to pay them the legally required overtime
14 compensation;

15 (c) Whether Defendant failed to provide Plaintiffs and class members with the
16 opportunity to take timely and compliant meal periods;

17 (d) Whether Defendant failed to provide Plaintiffs and class members with the
18 opportunity to take timely and compliant rest periods;

19 (e) Whether Defendant failed to pay premium compensation for missed meal and
20 rest periods;

21 (f) Whether Defendant failed to reimburse Plaintiffs for business related
22 expenses;

23 (g) Whether Defendant failed to timely pay wages during employment;

24 (h) Whether Defendant failed to timely pay wages due upon termination;

25 (i) Whether Defendant failed to provide complete and accurate wage statements;

26 (j) Whether Defendant failed to maintain the requisite payroll records;

27 (k) The appropriate amount of damages, restitution, and/or statutory penalties
28 resulting from Defendant's violation of California law; and,

(l) Whether Plaintiffs and the class are entitled to compensatory damages

pursuant to the California Labor Code.

18. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be almost two-hundred (200) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- (d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.
- (e) Public Policy Considerations: Employers in the State of California violate

employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means, and often because employees are unaware of their rights in the first place. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

GENERAL ALLEGATIONS

19. From approximately August 21, 2019 to September 25, 2020, Defendants, jointly and severally, employed Plaintiff, the class members, and the other aggrieved employees as non-exempt Sales Representatives in the County of Los Angeles.

20. Defendants sell precious metals, including gold, silver, and platinum, in both bars and coins, to consumers.

21. As Sales Representatives, Plaintiff, the class members, and the other aggrieved employees' job duties included making calls to existing and potential consumers and making sales of precious metals.

22. Defendants hired Plaintiff, the class members, and the aggrieved employees but failed to properly pay them all overtime wages and minimum wages due, failed to provide them with all meal periods and rest periods to which they were entitled, failed to pay premium wages for missed meal and rest periods, failed to timely pay them all wages during their employment, failed to timely pay them all wages due upon termination of their employment, failed to provide them with accurate itemized wage statements, failed to maintain accurate payroll records, failed to reimburse them for necessary business expenses, and failed to provide and adhere to other related protections afforded by the California Labor Code and applicable Industrial Welfare Commission Wage Order.

23. Defendants had the authority to hire, promote, demote and terminate Plaintiff, the class members, and the other aggrieved employees, to set work rules and conditions governing Plaintiff's, the class members, and the other aggrieved employees' employment, and to supervise their daily

employment activities.

24. Defendants exercised sufficient authority over the terms and conditions of Plaintiff, the class members, and the other aggrieved employees' employment for them to be joint employers of Plaintiff, the class members, and the other aggrieved employees.

25. Defendants directly hired and paid wages and benefits to Plaintiff, the class members, and the other aggrieved employees.

26. Defendants continue to employ hourly paid and/or non-exempt employees within the State of California.

27. Plaintiff, the class members, and the other aggrieved employees worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff, the class members, and the other aggrieved employees were entitled to receive certain wages for overtime compensation and that Plaintiff, the class members, and the other aggrieved employees were not receiving certain wages for overtime compensation.

29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff, the class members, and the other aggrieved employees were entitled to receive at least minimum wages for hours worked and that Plaintiff, the class members, and the other aggrieved employees were not receiving minimum wages for all hours worked.

30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff, the class members, and the other aggrieved employees were entitled to receive all meal periods or payment of one (1) additional hour of pay at their regular rate of compensation when they were not provided with an uninterrupted meal period of no less than thirty (30) minutes for a work period of more than five hours per day, and that Plaintiff, the class members, and the other aggrieved employees did not receive all meal periods or payment of one (1) additional hour of pay at their regular rate of compensation when a meal period was missed, shortened, taken late, and/or interrupted.

31. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff, the class members, and the other aggrieved employees were entitled

1 to receive all meal periods or payment of one (1) additional hour of pay at their regular rate of
2 compensation when they were not provided with an uninterrupted second meal period of no less than
3 thirty (30) minutes for a work period of more than ten (10) hours per day, and that Plaintiff, the class
4 members, and the other aggrieved employees did not receive all second meal periods or payment of
5 one (1) additional hour of pay at their regular rate of compensation when a second meal period was
6 missed, shortened, taken late, and/or interrupted.

7 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
8 should have known that Plaintiff, the class members, and the other aggrieved employees were entitled
9 to receive all rest periods or payment of one (1) additional hour of pay at their regular rate of
10 compensation when they were not provided with an uninterrupted and separately compensated rest
11 period of no less than ten (10) minutes for every four hours, or major fraction thereof, worked, and
12 that Plaintiff, the class members, and the other aggrieved employees did not receive all rest periods
13 or payment of one (1) additional hour of pay at their regular rate of compensation when a rest period
14 was missed, shortened, taken late, and/or interrupted.

15 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
16 should have known that Plaintiff, the class members, and the other aggrieved employees were entitled
17 to timely payment of wages during their employment. In violation of the California Labor Code,
18 Plaintiff, the class members, and the other aggrieved employees did not receive payment of all wages,
19 including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest
20 period premium wages within permissible time periods.

21 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
22 should have known that Plaintiff, the class members, and the other aggrieved employees were entitled
23 to receive all wages upon termination of employment or when they became due following
24 termination, including, without limitation, overtime wages, minimum wages, commissions, non-
25 discretionary bonuses, meal period premium wages, and rest period premium wages, and that
26 Plaintiff, the class members, and the other aggrieved employees did not receive payment of all wages
27 upon termination of employment or when they became due following termination.

28 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or

1 should have known that Plaintiff, the class members, and the other aggrieved employees were entitled
2 to receive complete and accurate wage statements in accordance with California law, but, in fact,
3 Plaintiff, the class members, and the other aggrieved employees did not receive complete and accurate
4 wage statements from Defendants.

5 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
6 should have known that Defendants had to keep complete and accurate payroll records for Plaintiff,
7 the class members, and the other aggrieved employees in accordance with California law, but, in fact,
8 did not keep complete and accurate payroll records.

9 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
10 should have known that Plaintiff, the class members, and the other aggrieved employees were entitled
11 to reimbursement for necessary business-related expenses, but, in fact, did not reimburse Plaintiff,
12 the class members, and the other aggrieved employees for necessary business-related expenses.

13 38. At all times set forth herein, PAGA was applicable to Plaintiff's employment by
14 Defendants.

15 39. At all times set forth herein, PAGA provides that, notwithstanding any other provision
16 of law, any provision of law under the California Labor Code that provides for a civil penalty,
17 including unpaid wages and premium wages, to be assessed and collected by the California Labor &
18 Workforce Development Agency ("LWDA") for violations of the California Labor Code may, as an
19 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of the
20 aggrieved employee and other current or former employees pursuant to procedures set forth in
21 California Labor Code section 2699.3.

22 40. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who
23 is any person that was employed by the alleged violator and against whom one or more of the alleged
24 violations was committed.

25 41. Plaintiff was employed by Defendants and the alleged violations were committed
26 against him and he is, therefore, an aggrieved employee. Plaintiff and the other employees are
27 "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are current
28 or former employees of Defendants and one or more of the alleged violations were committed against

1 them.

2 42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
3 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
4 requirements have been met:

5 (a) The aggrieved employee shall give written notice (hereinafter "Employee's Notice")
6 to the LWDA and the employer of the specific provisions of the Labor Code alleged
7 to have been violated, including the facts and theories to support the alleged violations.

8 (b) The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and
9 the aggrieved employee that it does not intend to investigate the alleged violation
10 within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon
11 receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty five
12 (65) calendar days of the Employee's Notice, the aggrieved employee may commence
13 a civil action pursuant to California Labor Code section 2699 to recover civil penalties
14 in addition to any other penalties to which the employee may be entitled.

15 42. Plaintiff has satisfied all of the statutory exhaustion requirements described above. On
16 November 9, 2020, Plaintiff provided notice by electronic submission to the LWDA and by certified
17 mail to Defendants regarding the specific provisions of the Labor Code alleged to have been violated,
18 including the facts and theories to support the alleged violations, pursuant to Labor Code section
19 2699.3. Plaintiff amended his notice by electronic submission to the LWDA and by certified mail to
20 Defendants regarding the specific provisions of the Labor Code alleged to have been violated,
21 including the facts and theories to support the alleged violations, pursuant to Labor Code section
22 2699.3. Upon expiration of the notice period, the administrative prerequisites under California Labor
23 Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies
24 for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194,
25 1197, 1197.1, 1198, 2800 and 2802 were satisfied.

26 **FIRST CAUSE OF ACTION**

27 **Violation of Labor Code §§ 1194, 1197 and 1197.1 (Failure to Pay Minimum Wages)**

28 43. Plaintiff incorporates herein by specific reference, as though fully set forth, the

allegations in all preceding paragraphs.

44. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

45. During the relevant time period, Defendants regularly failed to pay minimum wage to Plaintiff and the class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

46. Defendants' failure to pay Plaintiff and the class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

47. Pursuant to California Labor Code section 1197.1, Plaintiff and the class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

48. Pursuant to California Labor Code section 1194.2, Plaintiff and the class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

Violation of CA Labor Code §§ 510 and 1198 (Failure to Pay Overtime)

49. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

50. Pursuant to California Labor Code section 1198, it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

51. Pursuant to California Labor Code section 1198, the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the

standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

52. Pursuant to the applicable IWC Wage Order, Plaintiff and the class members were not to be employed more than eight (8) hours in any one workday or more than forty (40) hours in a workweek, unless they received one-and-one-half (1 1/2) times their regular rate of pay for all hours worked over eight (8) hours in any workday or more than forty (40) hours in a workweek.

53. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the class members overtime compensation at a rate of two (2) times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

54. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and no overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

55. During the relevant time period, Plaintiff and the class members worked in excess of eight (8) hours in a day and/or in excess of forty (40) hours in a week, but did not receive overtime pay.

56. During the relevant time period, even after hours, on weekends and when Plaintiff and the class members were not on Defendants' office premises, Plaintiff and the class members were required to remain on-call and responsive to Defendants' communications using a "Telegram" system through which they were required to promptly respond to Defendants' questions and client emails.

57. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the class members.

58. Defendants' failure to pay Plaintiff and the class members overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

59. Pursuant to California Labor Code section 1194, Plaintiff and the class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

**Violation of Labor Code §§ 226.7 and 512 (Failure to Provide Compliant Meal & Rest Breaks,
or Pay Premiums for Missed Breaks)**

60. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

61. At all relevant times, California Labor Code section 226.7, subdivision (a) was applicable to Plaintiff and the class members' employment by Defendants.

62. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

63. At all relevant times, the applicable IWC Wage Order provides that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

64. During the relevant time period, Plaintiff and the class members were scheduled to work for a period of time in excess of six (6) hours and were required to actually work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

65. During the relevant time period, Defendants intentionally and willfully required Plaintiff and the class members to work during meal periods and failed to compensate Plaintiff and the class members the full meal period premium for work performed during meal periods.

66. During the relevant time period, Defendants intentionally and willfully did not permit Plaintiff and the class members to leave the Defendants' office premises during meal and/or rest breaks, unlawfully maintaining control over Plaintiff and the class members such that Plaintiff and the class members either skipped their breaks altogether or took them but remained under Defendants' control and were not fully relieved of all duty during those periods.

67. During the relevant time period, Defendants penalized Plaintiff and the class members for simply leaving their desks by refusing to distribute potential customer leads to Plaintiff and the

1 class members when, for instance, they stepped away from their work desks to use the restroom.

2 68. During the relevant time period, Defendants treated wages corresponding to meal and
3 rest breaks as part of a draw on commissions and, in doing so, Defendants unlawfully failed to pay
4 Plaintiff and the class members any wages for time during meal and rest periods.

5 69. During the relevant time period, Defendants failed to pay Plaintiff and the class
6 members the full meal period premiums due pursuant to California Labor Code section 226.7.

7 71. During the relevant time period, Defendants failed to pay Plaintiff and the class
8 members the full rest period premiums due pursuant to California Labor Code section 226.7.

9 72. To the extent that Defendants paid Plaintiff and the class members any meal or rest
10 break premiums, those payments were deficient because they were not calculated based on Plaintiff
11 and the class members' regular rate of compensation.

12 73. Defendants' conduct violates applicable IWC Wage Orders and California Labor
13 Code section 226.7.

14 74. Pursuant to applicable IWC Wage Orders and California Labor Code section 226.7
15 subdivision (b), Plaintiff and the class members are entitled to recover from Defendants one
16 additional hour of pay at Plaintiff and the class members' regular rate of compensation for each work
17 day that the meal or rest period was not provided.

18 **FOURTH CAUSE OF ACTION**

19 **Violation of Labor Code § 2802 (Failure to Reimburse Business Related Expenses)**

20 75. Plaintiff incorporates herein by specific reference, as though fully set forth, the
21 allegations in all preceding paragraphs.

22 76. At all times herein set forth, the applicable IWC Wage Orders and California Labor
23 Code section 2802 were applicable to Plaintiff and the class members' employment by Defendants.

24 77. At all relevant times, Labor Code section 2802 required Defendants to indemnify
25 Plaintiff and the class members for all business-related expenses, so as to ensure that none of
26 Defendants' costs of doing business are borne by Plaintiff and the class members.

27 78. During the relevant time, Defendants failed to indemnify Plaintiff and the class
28 members and the class members for all business-related expenses, including but not limited to the use

of personal cell phones, iPads, and computers for work-related purposes. Additionally, during the Covid-19 pandemic, Plaintiff and the class members were required to lease and build out their own remote workspaces, use their own laptops, and secure an internet connection, all at their own expense and without reimbursement by Defendants.

79. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 2802.

FIFTH CAUSE OF ACTION

Violation of Labor Code § 204 (Failure to Timely Pay Wages During Employment)

80. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

81. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

82. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

83. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

84. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the class members all wages due to them, within any time period permissible under California Labor Code section 204.

85. Plaintiff and the class members are entitled to recover all remedies available for violations of California Labor Code section 204.

SIXTH CAUSE OF ACTION

Violation of Labor Code §§ 201, 202 and 203 (Failure to Timely Pay Wages Upon Termination)

86. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

87. Pursuant to California Labor Code sections 201, 202 and 203 and the applicable IWC Wage Orders, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

88. During the relevant period, Defendants intentionally and willfully failed to pay Plaintiff and the class members their wages, earned and unpaid, within seventy-two (72) hours of Plaintiff and other class members leaving Defendants' employ.

89. During his period of employment, Plaintiff and other class members received commission payments for Plaintiff's and the class members' roles in selling Defendants' precious metals. Plaintiff substantially completed his role in several sales transactions prior to Defendants terminating his employment; however, Defendant never paid Plaintiff the commissions corresponding to those sales for which money was received by Defendants after Defendants' termination of Plaintiff's employment. Other class members suffered this same failure to pay commissions owing prior to termination of employment by Defendants.

90. Upon completion of Plaintiff's and the other class members' respective roles in the aforementioned sales-transactions, commissions could be calculated and were, thus, "earned" under California law.

91. The California Division of Labor Standards Enforcement issued a public opinion affirming that commissions are due and payable when they can be calculated and are, thus, "earned."

92. Defendants' failure to pay Plaintiff and the class members their wages upon termination included the failure to pay the earned commissions corresponding to work prior to termination where at the time of termination some condition precedent, for example receipt of the customer's payment by wire payments in transit or checks in the mail, had yet to be completed. Defendant failed to pay those commissions even upon completion of the condition precedent.

93. Defendants' failure to pay Plaintiff and other class members their wages, earned and unpaid, upon Defendants' termination of Plaintiff's other class members' employment, or even seventy-two (72) hours thereafter, or when those wages otherwise became due after termination of Plaintiff's employment, violated California Labor Code sections 201, 202 and 203 and the applicable IWC Wage Orders.

94. Pursuant to California Labor Code section 203, if an employer willfully fails to pay, without abatement or reduction, in accordance with sections 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

95. Plaintiff and other class members are entitled to recover the statutory penalty for each day each of them was not paid, at each of their regular rates of pay, for thirty (30) working days pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of Labor Code § 226 (Failure to Furnish Wage Statements)

96. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

97. Pursuant to California Labor Code section 226, subdivision (a), and the applicable IWC Wage Orders, every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a

record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

98. Defendants intentionally and willfully failed to provide Plaintiff and the class members with complete and compliant wage statements.

99. As a result of Defendants' violation of California Labor Code section 226, subdivision (a), and the applicable IWC Wage Orders, Plaintiff and the class members have experienced actual injury because it: (1) resulted in the non-payment of wages; (2) deprived Plaintiff and the class members of the information necessary to identify discrepancies in Defendant's reported data; (3) created confusion over whether they received all wages owed to them; (4) created difficulty and expense involved in reconstructing pay records; and (5) forced Plaintiff and the class members to make mathematical computations to analyze whether the wages paid in fact properly compensated them.

EIGHTH CAUSE OF ACTION

Violation of Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records)

100. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

101. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plant or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

102. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Plaintiff and the class members.

103. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff and the class members have suffered injury and damage to their statutorily protected rights.

Wrongful Termination in Violation of Public Policy

105. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

106. Plaintiff was employed by Defendants beginning on or about August 21, 2019. During the course of his employ with Defendants, Plaintiff was an exemplary employee; he was consistently among the top-selling salespersons and had completed more transactions in 2020 than any other of Defendants' salespersons. Defendants discharged Plaintiff on or about September 25, 2020.

107. While performing his job duties, Plaintiff consulted Defendants' price sheet and discovered that Defendants were unlawfully and fraudulently charging customers above the advertised thirty-five (35) percent maximum spread on precious metals, instead charging up to a sixty (60) percent spread.

108. Plaintiff raised concern with Defendants' President Scott Gerlis and others about Defendants' unlawful and fraudulent practice of charging above the advertised maximum spread.

109. While performing his job duties, Plaintiff also learned that Defendants were unlawfully and fraudulently selling precious metals to customers that Defendants had not yet procured and did not have in their inventory or stock.

110. Plaintiff raised concern to Defendants' President Scott Gerlis and others about Defendants' unlawful and fraudulent practice of selling products that Defendants had not yet procured and did not have in their inventory or stock.

111. Plaintiff is informed and believes, and based thereon alleges, that Defendants had actual knowledge of these unlawful and/or fraudulent practices because they utilize a third-party company to monitor and record all customer calls, among other reasons.

1 112. Plaintiff is informed and believes, and based thereon alleges, that Defendants did not
2 investigate the issues and concerns raised by Plaintiff. Rather, Defendants retaliated against Plaintiff,
3 including but not limited to relocating Plaintiff's work desk to a remote corner of the office,
4 transferring Plaintiff out of his existing pod comprised of those with whom he had strong,
5 longstanding work relationships and, instead, reassigning Plaintiff to a different pod comprised of the
6 lowest performing salespeople in the office. Shortly thereafter, on or about September 25, 2020,
7 Defendants abruptly terminated Plaintiff.

8 113. Plaintiff's opposition to Defendants' fraudulent and unlawful conduct was a
9 substantial motivating reason for Plaintiff's discharge.

10 114. Plaintiff's termination was in violation of fundamental, basic and substantial public
11 policies of the State of California, including but not limited to the violation of the state's consumer
12 protection statutes and long-standing public policy against fraud.

13 115. The discharge caused Plaintiff significant harm.

14 116. As a direct and legal result of Defendants' conduct, and each of them, as set forth
15 above, Plaintiff suffered and will suffer special damages for lost earnings and wages.

16 117. As a direct and legal result of the Defendants' conduct, and each of them, as set forth
17 above, Plaintiff suffered general damages including, but not limited to, damage to his reputation, pain
18 and suffering, humiliation, embarrassment, and emotional distress, all in an amount to be proved at
19 trial.

20 118. Defendants, by their conduct as set forth above, have engaged in despicable conduct,
21 exposing Plaintiff to cruel and unjust hardship, with the intention to cause injury to Plaintiff, and with
22 conscious disregard of his rights. Defendants occupied a position of trust which gave them power to
23 damage Plaintiff's ability to earn a livelihood. Defendants abused that position of trust by maliciously,
24 fraudulently, and oppressively discharging Plaintiff and discriminating against him under the
25 circumstances described herein. Defendants' conduct was carried out by and ratified by one or more
26 of Defendants' managing agents, including but not limited to President Scott Gerlis and Chief
27 Executive Officer Sanford Mann. Plaintiff is therefore entitled to punitive damages in an amount to
28 be proven at trial. Defendants' conduct in discriminating against Plaintiff was willful and oppressive

1 and done in conscious disregard of his rights.

2 119. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
3 each of them, were at all relevant times aware of the conduct of each of the other Defendants and
4 approved and ratified that conduct.

5 **TENTH CAUSE OF ACTION**

6 **Violation of California Labor Code § 1102.5**

7 120. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in all preceding paragraphs.

9 121. California's whistleblower statute, set forth in California Labor Code section 1102.5,
10 protects employees who report or refuse to participate in unlawful conduct.

11 122. Section 1102.5(b) specifically addresses the reporting of unlawful conduct and states
12 that "an employer, or any person acting on behalf of the employer, shall not retaliate against an
13 employee for disclosing information...to a person with authority over the employee or another
14 employee who has the authority to investigate, discover, or correct the violation or
15 noncompliance...if the employee has reasonable cause to believe that the information discloses a
16 violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal
17 rule or regulation."

18 123. Section 1102.5(c) specifically addresses the refusal to participate in unlawful Conduct,
19 providing that "an employer, or any person acting on behalf of the employer, shall not retaliate against
20 an employee for refusing to participate in an activity that would result in a violation of state or federal
21 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

22 124. As set forth in the preceding paragraphs, Plaintiff reported Defendants' unlawful and
23 fraudulent sales practices to Defendants' officers, including Scott Gerlis, who had the authority to
24 investigate, discover and correct Defendants' unlawful and fraudulent practices.

25 125. In contravention of California Labor Code Section 1102.5 and California's well-
26 founded public policies and whistleblower protections, Defendants discharged Plaintiff shortly after
27 he reported the unlawful and fraudulent conduct to Defendants' corporate officers.

28 126. The discharge caused Plaintiff significant harm.

128. As a direct and legal result of Defendants' conduct, and each of them, as set forth above, Plaintiff suffered general damages including, but not limited to, damage to his reputation, pain and suffering, humiliation, embarrassment, and emotional distress, all in an amount to be proved at trial.

Violation of Labor Code §§ 2698, et seq.

129. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

130. PAGA establishes that, notwithstanding any other provision of law, any provision of the California labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

131. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

132. Plaintiff and the other employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

133. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of California Labor Code sections 510 and 1198 for failure to pay overtime wages, as set forth more fully below;

(b) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to pay

minimum wages, as set forth more fully below;

(c) Violation of California Labor Code sections 226.7 and 512(a) for failure to provide legally required meal periods, as set forth more fully below;

(d) Violation of California Labor Code section 226.7 for failure to provide legally required rest periods, as set forth more fully below;

(e) Violation of California Labor Code section 204 for failure to timely pay wages to Plaintiff and other aggrieved employees during employment, as set forth more fully before;

(f) Violation of California Labor Code sections 201, 202, and 203 for failure to pay all wages at time of discharge from employment, as set forth more fully below;

(g) Violation of California Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and other aggrieved employees, as set forth more fully below;

(h) Violation of California Labor Code section 1174(d) for failure to keep complete and accurate payroll records relating to Plaintiff and other aggrieved employees, as set forth more fully below; and

(i) Violation of California Labor Code sections 2800 and 2802 for failure to reimburse Plaintiff and other aggrieved employees for necessary business-related expenses, as set forth more fully below.

134. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for Plaintiff, all other aggrieved employees, and the State of California against Defendants, in addition to other remedies, for violations of Labor Code sections set forth herein. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five (25%) to the aggrieved employees. Further, and as authorized by the California Labor Code sections 210, 218.5, and 2699, Plaintiff seeks recovery of his attorneys' fees and costs.

Failure to Pay Overtime Wages

136. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and aggrieved employees employed by Defendants, and working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

137. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and aggrieved employees employed by Defendants, and working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.

138. California Labor Code section 510 codifies the right to overtime compensation at one-and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

139. During the relevant time period, Plaintiff and aggrieved employees regularly worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week performing work duties “off-the-clock,” including, but not limited to reviewing and/or responding to phone calls and text messages.

140. Defendants' failure to pay Plaintiff and aggrieved employees the unpaid balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

141. Pursuant to California Labor Code section 1194, Plaintiff and aggrieved employees are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

Failure to Pay Minimum Wages

142. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide

1 that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum
2 wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
3 Defendants' failure to pay minimum wages included, inter alia, Defendants' effective payment of
4 zero dollars per hour for time spent working "off-the-clock" performing duties, including, but not
5 limited to, reviewing and/or responding to phone calls and text messages. Accordingly, Defendants
6 regularly failed to pay at least minimum wages to Plaintiff and aggrieved employees for all of the
7 hours they worked in violation of California Labor Code sections 1194, 1197 and 1197.1.

8 143. Defendants' failure to pay Plaintiff and aggrieved employees the minimum wage as
9 required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections,
10 Plaintiff and aggrieved employees are entitled to recover the unpaid balance of their minimum wage
11 compensation, as well as interest, costs, and attorney's fees.

12 **Failure to Provide Meal Periods and/or Pay Meal Period Premiums for Missed Breaks**

13 144. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California
14 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff's and the other aggrieved
15 employees' employment by Defendants and each of them.

16 145. At all relevant times herein set forth, California Labor Code section 226.7 provides
17 that no employer shall require an employee to work during any meal period mandated by an
18 applicable IWC Order.

19 146. At all relevant times herein set forth, California Labor Code section 512(a) provides
20 that an employer may not require, cause, or permit an employee to work for a period of more than
21 five (5) hours per day without providing the employee with a meal period of not less than thirty (30)
22 minutes, except that if the total work period per day of the employee is not more than six (6) hours,
23 the meal period may be waived by mutual consent of both the employer and the employee.

24 147. During the relevant time period, Plaintiff and other aggrieved employees scheduled to
25 work for a period of time no longer than six (6) hours, and who did not waive their legally mandated
26 meal periods by mutual consent, were required to work for periods longer than five (5) hours without
27 a meal period of not less than thirty (30) minutes.

28 148. During the relevant time period, Plaintiff and the other aggrieved employees, who

1 were scheduled to work for a period of time in excess of six (6) hours, were required to work for
2 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
3 minutes.

4 149. During the relevant time period, Plaintiff and the other aggrieved employees, who
5 were scheduled to work for a period of time in excess of ten (10) hours but no longer than twelve (12)
6 hours, and who did not waive their legally-mandated meal periods by mutual consent, were required
7 to work in excess of ten (10) hours without receiving a second uninterrupted meal period of not less
8 than thirty (30) minutes.

9 150. During the relevant time period, Plaintiff and the other aggrieved employees, who
10 were scheduled to work for a period of time in excess of twelve (12) hours, were required to work for
11 periods longer than ten (10) hours without a second uninterrupted meal period of not less than thirty
12 (30) minutes.

13 151. Pursuant to the applicable IWC Wage Order and California Labor Code section
14 226.7(b), Plaintiff and other aggrieved employees are entitled to recover from Defendants one (1)
15 additional hour of pay at the employee's regular hourly rate of compensation for each work day that
16 the meal period was not provided.

17 152. During the relevant time period, Defendants willfully required Plaintiff and aggrieved
18 employees to work during meal periods and failed to compensate Plaintiff and aggrieved employees
19 for work performed during meal periods. By way of example, Defendants altered Plaintiff's time
20 records to make it appear that he was taking meal periods when he was not in fact taking meal periods.
21 In addition, Defendants created financial incentives for Plaintiff and aggrieved employees to forego
22 their meal periods.

23 153. Defendants failed to pay Plaintiff and aggrieved employees the full meal period
24 premium due in violation of California Labor Code sections 226.7 and 512 on each occasion when a
25 timely, uninterrupted meal period was not provided.

26 154. Defendants' conduct violates applicable IWC Wage Order(s), and California Labor
27 Code sections 226.7 and 512(a).

28 **Failure to Provide Rest Periods and/or Pay Rest Break Premiums for Missed Rest Breaks**

1 155. At all relevant times herein set forth, the applicable IWC Wage Order and California
2 Labor Code section 226.7 were applicable to Plaintiff's and aggrieved employees' employment by
3 Defendants.

4 156. At all relevant times, California Labor Code section 226.7 provides that no employer
5 shall require an employee to work during any rest period mandated by an applicable order of the
6 California IWC.

7 157. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
8 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
9 the middle of each work period" and that the "rest period time shall be based on the total hours worked
10 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless
11 the total daily work time is less than three and one-half (3½) hours.

12 158. Pursuant to the applicable IWC Wage Order and California Labor Code section
13 226.7(b), Plaintiff and aggrieved employees are entitled to recover from Defendants one (1)
14 additional hour of pay at the employee's regular hourly rate of compensation for each work day that
15 the rest period was not provided.

16 159. During the relevant time period, Defendants required Plaintiff and aggrieved
17 employees to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
18 period per each four (4) hour period, or major fraction thereof worked. During the relevant time
19 period, Defendants willfully required Plaintiff and the other aggrieved employees to work during rest
20 periods. By way of example, Defendants failed to relieve Plaintiff of all duties such that Plaintiff
21 could take compliant rest breaks. As a result, Plaintiff worked through mandated rest periods. In
22 addition, Defendants created financial incentives for Plaintiff and aggrieved employees to forego their
23 rest periods. For instance, Defendant did not separately compensate Plaintiff and aggrieved
24 employees for time during rest periods, and instead treated any wages corresponding to any rest
25 breaks as a draw on commissions, in violation of California law.

26 160. Defendants failed to pay Plaintiff and aggrieved employees the full rest-period
27 premium due in violation of California Labor Code sections 226.7 and 512 on each occasion when a
28 timely, uninterrupted rest period was not provided.

1 161. Defendants’ conduct violates the applicable IWC Wage Orders and California Labor
2 Code section 226.7.

3 **Failure to Timely Pay Wages During Employment**

4 162. At all relevant times herein set forth, California Labor Code section 204 provides that
5 all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
6 calendar month, other than those wages due upon termination of an employee, are due and payable
7 between the 16th and the 26th day of the month during which the labor was performed.

8 163. At all times herein set forth, California Labor Code section 204 provides that all wages
9 earned by any person in any employment between the 16th and the last day, inclusive, of any calendar
10 month, other than those wages due upon termination of an employee, are due and payable between
11 the 1st and the 10th day of the following month.

12 164. At all times herein set forth, California Labor Code section 204 provides that all wages
13 earned for labor in excess of the normal work period shall be paid no later than the payday for the
14 next regular payroll period.

15 165. During the relevant time period, Defendants intentionally and willfully failed to pay
16 Plaintiff and the other aggrieved employees all wages due to them, within any time period permissible
17 under California Labor Code section 204, including wages for overtime compensation, minimum
18 wage compensation, commissions, meal period premiums, and rest period premiums.

19 **Failure to Timely Pay Wages Upon Termination**

20 166. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
21 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code section
22 201 mandates that if an employer discharges an employee, the employee’s wages accrued and unpaid
23 at the time of discharge are due and payable immediately. California Labor Code section 202
24 mandates that if an employee quits, his or her wages shall become due and payable not later than
25 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of
26 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
27 quitting.

28 167. California Labor Code section 203 provides that if an employer willfully fails to pay,

1 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
2 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
3 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
4 continue for more than thirty (30) days.

5 168. At the time that Plaintiff and the other aggrieved employees' employment with
6 Defendants ended, Defendants knowingly and willfully failed to pay Plaintiff and the other aggrieved
7 employees all wages owed to them pursuant to California Labor Code sections 201 and 202,
8 including, without limitation, overtime wages, minimum wages, commissions, meal period premium
9 wages, rest period premium wages, and non-discretionary bonuses.

10 **Failure to Provide Compliant Wage Statements**

11 169. At all relevant times set forth herein, California Labor Code section 226(a) provides
12 that every employer shall furnish each of its employees an accurate itemized statement in writing
13 showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
14 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
15 deductions, provided that all deductions made on written orders of the employee may be aggregated
16 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
17 employee is paid, (7) the name of the employee and his or her social security number, (8) the name
18 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
19 the pay period and the corresponding number of hours worked at each hourly rate by the employee.
20 The deductions made from payments of wages shall be recorded in ink or other indelible form,
21 properly dated, showing the month, day, and year, and a copy of the statement or a record of the
22 deductions shall be kept on file by the employer for at least three years at the place of employment
23 or at a central location within the State of California.

24 170. Defendants have intentionally and willfully failed to provide employees with complete
25 and accurate wage statements. The deficiencies include, among other things, the failure to state all
26 rates of pay, all hours worked, all meal period premium wages, and all rest period premium wages.

27 171. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
28 and aggrieved employees have suffered injury and damage to their statutorily protected rights.

173. At all relevant times set forth herein, California Labor Code section 1174(d) requires an employer to keep, at 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, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

174. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other aggrieved employees.

175. As a result of Defendants' violation of California Labor Code section Plaintiff and the other aggrieved employees have suffered injury and damage to their statutorily-protected rights.

176. More specifically, Plaintiff and the other aggrieved employees have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they

1 were denied both their legal right and protected interest, in having available, accurate and complete
2 payroll records pursuant to California Labor Code section 1174(d).

3 **Failure to Reimburse Necessary Business Expenses**

4 177. Pursuant to California Labor Code sections 2800 and 2802, an employer must
5 reimburse its employees for all necessary expenditures incurred by the employee in direct
6 consequence of the discharge of his or her job duties or in direct consequence of his or her job duties
7 or in direct consequence of his or her obedience to the directions of the employer.

8 178. Plaintiff and the other aggrieved employees incurred necessary business-related
9 expenses and costs that were not fully reimbursed by Defendants, including, but not limited to, the
10 use of personal cell phones and computers for work-related purposes.

11 179. Defendants intentionally and willfully failed to reimburse Plaintiff and the other
12 aggrieved employees for all necessary business-related expenses and costs.

13 **TWELFTH CAUSE OF ACTION**

14 **Violation of California Civil Code § 3344**

15 180. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in all preceding paragraphs.

17 181. Defendants maintain a website for advertising, marketing and other commercial
18 purposes to advance their precious metals sales business.

19 182. Defendants' posted on their website, in its "About Us" section, Plaintiff's name and a
20 photograph of Plaintiff such that Plaintiff is readily identifiable.

21 183. Plaintiff did not provide prior consent and never authorized Defendants to use
22 Plaintiff's name or photograph on their website. Even after Defendants terminated Plaintiff's
23 employment, they still persisted in including his name and image on their website.

24 184. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
25 should have known that Plaintiff did not authorize Defendants to use Plaintiffs photograph on their
26 website.

27 185. Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 unauthorized use of Plaintiff's name and photograph was directly connected to Defendants'

1 advertising efforts to solicit new customers' purchase of their precious metals.

2 186. The unauthorized use of Plaintiff's name and photograph caused Plaintiff injury to his
3 business reputation and other economic losses.

4 PRAYER FOR RELIEF

5 Plaintiff, on behalf of himself and all others similarly situated, prays for relief and judgment
6 against Defendants, jointly and severally, as follows:

- 7 1. That this case be certified as a class action;
- 8 2. That Plaintiff be appointed as the representative of the Class;
- 9 3. That counsel for Plaintiff be appointed as class counsel;
- 10 4. A judgment in favor of Plaintiff on all claims;
- 11 5. Statutory damages according to proof;
- 12 6. Compensatory damages according to proof;
- 13 7. General damages according to proof;
- 14 8. An award of exemplary damages according to proof;
- 15 9. Civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g),
16 plus costs and attorneys' fees for violation of California Labor Code sections 201, 202,
17 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802;
- 18 10. For reasonable attorneys' fees pursuant to California Labor Code section 2802(c);
- 19 11. For reasonable attorneys' fees pursuant to California Code of Civil Procedure section
20 1021.5;
- 21 12. For reasonable attorneys' fees pursuant to Labor Code § 2699(g);
- 22 13. For Reasonable attorneys' fees pursuant to Labor Code § 1194;
- 23 14. For pre- and post-judgment interest at the legal rate on all amounts awarded;
- 24 15. For costs of suit; and,
- 25 16. For such other and further relief as the Court may deem proper.

27 Dated: October 21, 2022

CLARKSON LAW FIRM, P.C.

28 /s/ Glenn Danas

Glenn Danas

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SHENKMAN & HUGHES PC
Kevin I. Shenkman (SBN 223315)
kishenkman@shenkmanhughes.com
Mary Ruth Hughes (SBN 222662)
mrhughes@shenkmanhughes.com
Andrea A. Alarcon (SBN 319536)
aalarcon@shenkmanhughes.com
28905 Wight Road
Malibu, CA 90265
Tel: (310) 457-0970

Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 SUPERIOR COURT OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles. I am over the age of eighteen years and not a party
5 to the within entitled action. My business address is 22525 Pacific Coast Highway, Malibu, CA 90265.

6 On **November 4, 2022** (date of service), I served a copy of the following document(s) on the
interested party(ies) and/or person(s) identified on the Service List in the manner set forth below.

7 **Documents Served**

8 • **FIRST AMENDED COMPLAINT**

9 **Method of Service**

10 **[X] BY ELECTRONIC MEANS:** I caused to be transmitted a true and correct copy of the
11 foregoing document(s) via electronic mail to the interested party(ies)/person(s) as set forth on
the attached Service List pursuant to law, local rules, court order, and/or agreement amongst said
party(ies)/person(s) to accept service thereby.

12
13 I declare under penalty of perjury under the laws of the State of California that the above is true
and correct

14 Executed on **November 4, 2022**

15 Vanessa Vargas
Vanessa Vargas

SERVICE LIST

SHENKMAN & HUGHES PC Kevin I. Shenkman (SBN 223315) kishenkman@shenkmanhughes.com Mary Ruth Hughes (SBN 222662) mrhughes@shenkmanhughes.com Andrea A. Alarcon (SBN 319536) aalarcon@shenkmanhughes.com 28905 Wight Road Malibu, CA 90265 Tel: (310) 457-0970 Attorneys for Plaintiff	BALLARD ROSENBERG GOLPER & SAVITT LLP David J. Fishman (SBN 217608) dfishman@brgslaw.com 15760 Ventura Blvd., 18th Floor Encino, CA 91436 Tel: (818) 508-3707 Attorneys for Defendant
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