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Attorneys for Plaintiff SHANNON MULLIN
on behalf of herself and similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER**

S-CV-0046899

SHANNON MULLIN, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

S&G DISCOUNT OUTLET, INC.; MARK
WAGNER, an individual; Does 1 through
20, inclusive,

Defendants.

CLASS ACTION

COMPLAINT FOR DAMAGES:

- 1. Violation of California Unfair Competition Law (Business & Professions Code § 17200 *et seq.***
- 2. Failure to Pay Wages;**
- 3. Waiting Time Penalties;**
- 4. Failure to Provide Accurate Wage Statements;**
- 5. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq.***

JURY TRIAL DEMANDED

1 Plaintiff SHANNON MULLIN (“Plaintiff”), on behalf of herself and all other similarly
2 situated employees hereby files this Complaint against Defendants S&G DISCOUNT OUTLET,
3 INC.; MARK WAGNER, an individual; Does 1 through 20 (collectively referred to as
4 “Defendants”). Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a class and representative action brought by Plaintiff on behalf of herself and
7 other similarly situated sales employees of Defendants. Plaintiff, a former sales representative
8 employed by Defendants, brings this class and representative lawsuit against Defendants on behalf
9 of herself and all others similarly situated to recover commission wages unlawfully withheld by
10 Defendants in violation of contract and the California Labor Code. Plaintiff seeks these damages and
11 applicable penalties, plus interest and attorney’s fees, on behalf of herself and similarly situated
12 employees.

13 2. Defendants have knowingly, intentionally, and willfully failed and refused to pay to
14 Plaintiff and Class members the full and complete amount of the commissions they earned.
15 Defendants operated under and continue to operate under a common policy and plan of failing and
16 refusing to pay fully earned commissions through the operation of its commission pay practices by
17 claiming that commissions are not owed under the commission agreement Defendants drafted,
18 thereby denying timely payment of commissions during employment and unpaid but earned
19 commissions upon the termination of employment of their sales employees.

20 **JURISDICTION AND VENUE**

21 3. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
22 violations of California Labor Code §§ 201-203, 204, 226, 2698 *et seq.*, Business and Professions
23 Code § 17200 *et seq.*

24 4. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some
25 of the wrongful acts and violations of law asserted herein occurred within Placer County.

26 **PARTIES**

27 5. Plaintiff SHANNON MULLIN is over the age of eighteen (18) and is a resident of
28 the State of California and an employee of Defendants.

1 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant S&G
2 DISCOUNT OUTLET, INC. is now and/or at all times mentioned in this Complaint a California
3 Corporation and the owner and operator of an industry, business and/or facility licensed to do
4 business and actually doing business in the State of California.

5 7. Plaintiff is further informed and believe, and thereon allege, that Defendant Mark
6 Wagner is the Director of Finance and Administration for Defendant S&G DISCOUNT OUTLET,
7 INC. and had direct control over the commission pay policies and practices alleged in this Complaint
8 and can be found personally liable for wage and hour violations pursuant to Labor Code section
9 558.1.

10 8. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
11 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
12 employees. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
13 were at all relevant times advised by skilled California employment law attorneys and knew the
14 requirements of the California Labor Code with respect to employee wage statements, payment of
15 wages, reimbursement of business expenses, and provision of meal and rest periods.

16 9. Defendants proximately caused Plaintiff and similarly situated employees to be
17 subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this
18 Complaint.

19 10. Plaintiff is further informed and believes, and thereon alleges, that each of the
20 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
21 joint venturer of the remaining defendants and was acting within the course and scope of that
22 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
23 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
24 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
25 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
26 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
27 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
28 through 20, inclusive, when they have been determined.

1 11. On April 12, 2021, Plaintiff filed her Labor Code § 2699.3 Private Attorney General
2 Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”).
3 The LWDA did not respond within 65 days of filing of the PAGA notice.

4 **CLASS ALLEGATIONS**

5 12. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
6 class action pursuant to California Code of Civil Procedure section 382. The classes that Plaintiff
7 seeks to represent are composed of and defined as follows:

8 All commissioned sales employees who were employed by Defendants in California
9 at any time four (4) years prior to the filing of this Action up to the date that this
10 matter is certified as a class action.

11 13. This action has been brought and may be properly maintained as a class action,
12 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
13 defined community of interest in the litigation and the proposed classes are easily ascertainable.

14 (a) Numerosity: The Plaintiff Class is so numerous that the individual joinder of all
15 members is impracticable under the circumstances of this case. While the exact
16 number of class members is unknown to Plaintiff at this time, Plaintiff is informed
17 and believes that Defendants may have employed dozens of individuals falling within
18 the above stated class definitions throughout the State of California during the
19 applicable statute of limitations, who were subjected to the practices outlined in this
20 Complaint. As such, joinder of all members of the Plaintiff Class is not practicable.

21 (b) Common Questions Predominate: Common questions of law and fact exist as to all
22 members of the Plaintiff Class and predominate over questions that affect only
23 individual members of the class. These common questions of law and fact include,
24 without limitation, the following: Whether Defendants accurately paid all
25 commissions owed to members of the Plaintiff Class upon separation or termination
26 of employment.

27 (c) Typicality: Plaintiff’s claims are typical of the claims of the members of the Plaintiff
28 Class. Plaintiff also sustained damages arising out of Defendants’ common course of

conduct in violation of the law as complained of herein. Defendants failed to pay all commissions owing to Plaintiff and members of the Class upon the termination of their employment with Defendants. As a result, each putative class member will have the same basis for their legal claims.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. Plaintiff resides in California and is an adequate representative of the putative class as she has no interests that are adverse to those of absent class members. Additionally, Plaintiff has retained counsel who have substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the classes is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

14. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully set forth herein.

16. Defendants own and manage a chain of flooring stores in Northern California.

1 17. Plaintiff and similarly situated employees worked for Defendants as in-house sales
2 consultants in California.

3 18. Defendants did not pay Plaintiff and similarly situated employees all commission
4 pay earned following their termination or resignation from employment. Defendants' written
5 commission agreement, which was drafted by Defendants, states that commissions are deemed
6 "earned" when the following conditions are met:

7 "1) Employee satisfactorily completes all paperwork necessary to complete the sale to the
8 customer; 2) the sale is invoiced to the customer; and 3) the sale is paid for in full by the
9 customer."

10 19. The commission agreement also states that commission will not be paid if the
11 "customer" has not paid for the sale within 30 days following the end of employment.

12 20. However, following the end of employment, Defendants refused to pay Plaintiff
13 and similarly situated employees the commission earned under the agreement. Defendants
14 claimed that the "customer" referred to in the agreement is a third party, and not the customer
15 that Plaintiff and similarly situated employees sold the product to. The customer that Plaintiff
16 and similarly situated employees had sold the products to had already paid for the products.

17 21. Defendants further claim that the third party had failed to pay Defendants within
18 30 days after the end of employment of Plaintiff and similarly situated employees and therefore
19 no commission was due. However, the customers had all paid in full at the beginning of the
20 process, and therefore all conditions had been met under the commission agreement. Defendants
21 have used this scheme to defraud Plaintiff and similarly situated employees of their commission
22 pay which had been earned under the commission agreement.

23 22. As a result, Defendants did not provide Plaintiff and similarly situated aggrieved
24 employees all wages earned following termination of their employment.

25 23. Defendants also used this justification to delay commission payments to its
26 commissioned sales employees even after all conditions for earning commissions had been
27 satisfied. Defendants delayed payment of commissions to its sales staff until payment was
28 received from a third party even though the customer had previously paid in full.

1 24. At Plaintiff's resignation from her employment with Defendants, she asked
2 Defendant Mark Wagner in writing when she could expect to receive the commissions she had
3 earned but had not yet been paid. Mr. Wagner responded in writing by stating that those
4 commissions would not be paid to Plaintiff due to Defendants' practice pursuant to the written
5 commission agreement.

6 25. Plaintiff brings this Class Action on behalf of herself and similarly situated
7 employees in order to fully compensate himself and Class Members for their losses incurred
8 during the class period caused by Defendants' uniform policies and practices which failed to
9 lawfully compensate these employees.

10 26. Defendants' uniform policies and practices alleged herein were unlawful, unfair,
11 and deceptive business practices whereby Defendants retained and continue to retain wages due
12 Plaintiff and the other Class Members. Plaintiff and the other Class Members seek an injunction
13 enjoining such conduct by Defendant in the future, relief for the named Plaintiff and the other
14 Class Members who have been economically injured by Defendant' past and current unlawful
15 conduct, and all other appropriate legal and equitable relief.

16 27. Defendants' uniform policies and practices to not provide Plaintiff and Class
17 Members all commission pay owed are evidenced by Defendants' business records.

18 28. Plaintiff is informed and believes that Defendants committed numerous other
19 violations of the California Labor Code, including but not limited to those identified in this
20 Complaint. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018),
21 Plaintiff intends to seek civil penalties for all violations of the California Labor Code, whether
22 she experienced them personally or not.

23 29. Upon information and belief, all transactions regarding compensation, hiring,
24 terminations, promotions, pay increases, etc. relating to Defendants' California employees were
25 submitted to and processed by Defendant in its California headquarters. Additionally, on
26 information and belief, Defendants' corporate records, in particular HR and pay records
27 pertaining to Defendants' California employees, are also maintained at Defendants' California
28 headquarters.

1 30. Upon information and belief, Defendants maintain a central Payroll department at
2 its California headquarters which processes payroll for all Defendants' employees, including
3 Plaintiff and similarly situated, aggrieved employees.

4 31. At all times herein set forth, PAGA provides that any provision of law under the
5 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
6 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
7 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
8 behalf of themselves and other current or former employees pursuant to procedures outlined in
9 California Labor Code section 2699.3.

10
11 **FIRST CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

13 **(As to Defendant S&G DISCOUNT OUTLET, INC.)**

14 32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as
15 though fully set forth herein.

16 33. Unfair competition shall mean and include any unlawful, unfair or fraudulent
17 business act or practice and unfair, deceptive, untrue or misleading advertising and any act
18 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
19 Business and Professions Code. *See* Cal. Bus. and Prof. Code §§ 17200 *et seq.*

20 34. Defendants committed numerous violations of the California Labor Code
21 throughout the employment relationship.

22 35. Plaintiff is also informed and believes and thereon alleges that such actions and/or
23 conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and
24 Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products*
Co., 23 Cal. 4th 163 (2000).

25 36. As a direct and legal result of Defendant's conduct, as alleged herein, pursuant to
26 the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
27 restitution as a result of its unfair business practices, including, but not limited to, public
28 injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§

1 17203, 17208, violations of Labor Code § 226, all in an amount as yet unascertained but subject
2 to proof at trial, for four (4) years from the filing of this Action.

3
4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO TIMELY PAY WAGES**
6 **(As to Defendant S&G DISCOUNT OUTLET, INC.)**

7 37. Plaintiff hereby incorporates by reference Paragraphs 1 through 36 of this
8 Complaint as if fully set forth herein and for a cause of action alleges as follows:

9 38. Defendant's commission agreement provides that commission wages are paid on a
10 bi-weekly basis. However, Defendants delayed the payment of commissions even after all
11 conditions had been met and commissions had been "earned" under the agreement. As a result of
12 Defendants' delay in paying commission wages, they were not paid during the period in which
13 they were earned.

14 39. Labor Code § 204 provides that, "[a]ll wages ... earned by any person in any
15 employment are due and payable twice during each calendar month...." Labor Code § 204 further
16 requires that any labor performed between the first and 15th day of any month must be paid for
17 no later than the 26th day of that month, and that any labor performed between the 16th and last
18 day of any month must be paid for no later than the 10th day of the following month.

19 40. Defendant's conduct as described herein constitutes a violation of Labor Code §
20 204 because Defendant did not pay the commissions on a semi-monthly basis during the
21 mandated time periods and did not pay the commission wages during the pay period in which
22 they were earned.

23 41. Plaintiff and similarly situated aggrieved employees customarily and regularly
24 earned commissions and were not paid the commissions on a semi-monthly basis or in the time
25 period in which they were earned. Plaintiff, on behalf of herself and similarly situated aggrieved
26 employees, requests relief, including, but not limited to, unpaid wages and other relief as
27 described below.

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THIRD CAUSE OF ACTION
WAITING TIME PENALTIES
(As to All Defendants)

42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41 as though fully set forth herein.

43. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. California Labor Code § 201.

44. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. California Labor Code § 203.

45. Plaintiff and similarly situated employees did not receive all wages at their termination or separation from employment, including, but not limited to, earned but unpaid commissions.

46. Also, California Labor Code section 203 has been violated by, or was caused to be violated by, Defendant MARK WAGNER. Plaintiff is informed and thereon believes that Defendant MARK WAGNER was a person acting on behalf of Defendants, including as a managing agent of Defendants, within the meaning of California Labor Code section 558.1. Therefore, Defendant MARK WAGNER may be held liable as the employer for the violations California Labor Code section 203.

47. Defendants knew of their obligation to pay Plaintiff and Class Members and Defendants' failure to pay all wages was in complete disregard of their obligations. Such conduct shows Defendants' knowledge of their obligation to pay all wages owed upon termination and willful refusal.

48. As a proximate result of the Defendants' conduct, Plaintiff and Class members have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

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FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
(As to all Defendants)

49. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 48 as though fully set forth herein.

50. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 payment 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 and the 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.

51. Defendants failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in Labor Code section 226(a). Defendants failed to list on the wage statements provided to Plaintiff and similarly situated employees all wages earned during the applicable pay period. Plaintiff alleges that Defendants failed to provide accurate itemized wage statements in accordance with Labor Code section 226(a) to Plaintiff all members of the Class.

52. Also, California Labor Code section 226 has been violated by, or was caused to be violated by, Defendant MARK WAGNER. Plaintiff is informed and thereon believes that Defendant MARK WAGNER was a person acting on behalf of Defendants, including as a managing agent of Defendants, within the meaning of California Labor Code section 558.1. Therefore, Defendant MARK WAGNER may be held liable as the employer for the violations California Labor Code section 226.

53. Additionally, Plaintiff alleges She suffered injury as a result of Defendants' knowing and intentional failure to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and Plaintiff cannot promptly and easily determine (*i.e.* a reasonable person in each Plaintiff's position would not be able to readily ascertain the information without reference to other documents or information) from the wage statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).

54. As a proximate cause of Defendants' failure to provide accurate statements, Plaintiff and Class Members were damaged and are entitled to statutory and civil penalties under the Labor Code, and attorney's fees and costs, in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.
(As to All Defendants)

55. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 54 as though fully set forth herein.

56. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violations of the California Labor Code, including but not necessarily limited to, those Labor Code violations identified above.

57. On or about April 12, 2021, Plaintiff sent written notice to the LWDA regarding Defendants' violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*, PAGA. As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff

whether the LWDA intends to investigate Plaintiff's PAGA claims. As such, Plaintiff has exhausted her administrative remedies under PAGA and may proceed in this Court.

58. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and all Aggrieved Employees for all violations of the Labor Code from April 12, 2020, through trial on this matter.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. For an order certifying the class;
3. For an order certifying Plaintiff's counsel as class counsel;
4. For an order appointing Plaintiff as class representative;
5. For penalties and liquidated damages under the California Labor Code according to proof allowed by law;
6. For compensatory damages, including, but not limited to, unpaid wages, plus interest, according to proof allowed by law;
7. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;
8. For injunctive relief;
9. For an award of prejudgment and post-judgment interest; and
10. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: June 22, 2021

Castle Law: California Employment Counsel, PC

By: 

Timothy B. Del Castillo
Kent L. Bradbury
Attorneys for Plaintiff SHANNON MULLIN and the
Class

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: June 22, 2021

Castle Law: California Employment Counsel, PC

By:  _____
Timothy B. Del Castillo
Kent L. Bradbury
Attorneys for Plaintiff SHANNON MULLIN and the
Class