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ENDORSED
FILED
ALAMEDA COUNTY
SEP 20 2021
CLERK OF THE SUPERIOR COURT
By Molly Katz
Deputy

Attorneys for Plaintiff Marites Perez, individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

Marites Perez, individually and on behalf of all others similarly situated, Plaintiffs, vs. It Works Marketing, Inc. and Does 1 through 20, inclusive, Defendants.	Case No. RG21113277 **REPRESENTATIVE ACTION COMPLAINT FOR:** **VIOLATION OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LABOR CODE § 2698, *ET SEQ.*)**

Plaintiff Marites Perez, individually and on behalf of other aggrieved employees, hereby allege as follows:

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff Marites Perez ("Plaintiff") brings this representative action against defendants It Works Marketing, Inc. and Does 1 through 20, inclusive (collectively, "Defendants"), on behalf of herself individually and all other aggrieved employees employed by Defendants throughout California.

2. Defendant It Works Marketing, Inc. is a corporation doing business in the state of California.

3. Through this action, Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code ("Labor Code").

4. Plaintiff is informed and believes, and thereon alleges, during the relevant time period, Defendants had a consistent policy of violating state wage and hour laws by, among other things:

(a) misclassification of employees as independent contractors;

(b) failing to pay minimum wages for all hours worked;

(c) failing to pay overtime wages for all hours worked;

(d) failing to timely pay all earned wages;

(e) failing to provide lawful meal periods or compensation in lieu thereof;

(f) failing to authorize or permit lawful rest breaks or provide compensation in lieu thereof;

(g) failing to provide sick pay;

(h) unlawfully deducting wages;

(i) failing to provide accurate itemized wage statements;

(j) failing to reimburse all business expenses;

(k) failing to provide worker's compensation insurance; and

(l) failing to pay all wages due upon separation of employment.

5. Plaintiff brings this representative action seeking monetary relief against Defendants on behalf of themselves and other aggrieved employees to recover, among other things, penalties, attorney's fees, costs and expenses pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* ("PAGA").

JURISDICTION AND VENUE

6. The monetary relief sought by Plaintiffs exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. The Superior Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes, except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. The Superior Court has jurisdiction over all Defendants because, upon information and belief, they 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 the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in the Superior Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a citizens of California and worked for Defendants in California during the relevant time periods as alleged herein.

11. Plaintiff is informed and believes, and thereon alleges, that Defendants are corporations doing business throughout the State of California, and at all times hereinafter mentioned, an employer as defined in and subject to the California Labor Code and Industrial Welfare Commission ("IWC") Wage Orders, whose employees are and were engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, Defendants in all respects acted as the employers and/or joint employers of Plaintiffs and other aggrieved employees.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

16. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

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

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GENERAL ALLEGATIONS

A. Plaintiff Satisfies the Legal Test for Employee Status

18. Defendants are a multi-level marketing company in the business of recruiting distributors ("It Works Distributors"), which are the core of It Works' workforce and business.

19. It Works Distributors, among other tasks, would engage in recruiting other individuals to join Defendants as distributors, thereby advancing this core business model described above.

20. Indeed, It Works Distributors' compensation plan is based primarily on this recruitment of other distributors to work under themselves, which Defendants refer to as a "leg."

Leg:
Each Independent Distributor on your first level represents a separate "Leg" in your team. Legs in your organization grow as your first-level Distributors begin to build their own teams (downlines).

Qualified Leg:
A Qualified Leg is one with an Active Distributor and at least 400 total Group Volume coming from anywhere in the depth of the Leg. The top Distributor of a Leg does not have to be Commission Qualified for the Leg to be considered a Qualified Leg.

21. By having these legs who work underneath them, It Works Distributors are able to make money by the purchases from Defendants that these It Works Distributors make, and they also receive income based on the legs that these It Works Distributors build underneath them. The way that It Works Distributors can advance in their employment is to increase their "rank," starting at "Level 1" and increasing to "Level 6-Infinity," which is determined by how many legs (i.e., distributors) they have recruited underneath them:

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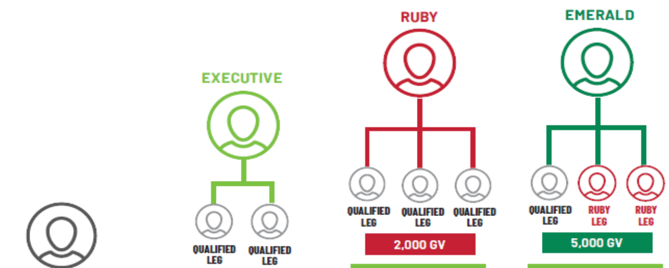
IT WORKS!
RANK & BONUS STRUCTURE



RANKS & LEVELS	DISTRIBUTOR	EXECUTIVE	RUBY	EMERALD
Initial/Monthly Qualification Requirements	Commision Qualified*	Commission Qualified* **PLUS** 2 Qualified Legs	Commission Qualified* **PLUS** 3 Qualified Legs **AND** a minimum of 2,000 GV	Commission Qualified* **PLUS** 3 Qualified Legs (2 being Ruby legs) **AND** a minimum of 5,000 GV
Level 1	10%	10%	10%	10%
Level 2	10%	10%	10%	10%
Level 3	→	5%	5%	5%
Level 4	→	→	5%	5%
Level 5	→	→	→	5%
Level 6-Infinity	Emerald Bonus Level		→	2%

MANAGEMENT LEVELS

EXECUTIVE

To qualify to be paid as an Executive, you must complete the same steps as a Distributor AND have a minimum of 2 Qualified Legs.

As an Executive, you are eligible to be paid on three levels of your downline orders after compression. *See Management Bonuses chart, page 7.*

RUBY

To qualify to be paid as a Ruby, gather and build to 3 Qualified Legs with at least 1 of the 3 Legs being an **Executive Leg**.

Executive Leg: a Leg with an Executive somewhere in the depth of the Leg.

As a Ruby, you are eligible to be paid on four levels of your downline orders after compression. *See Management Bonuses chart, page 7.*

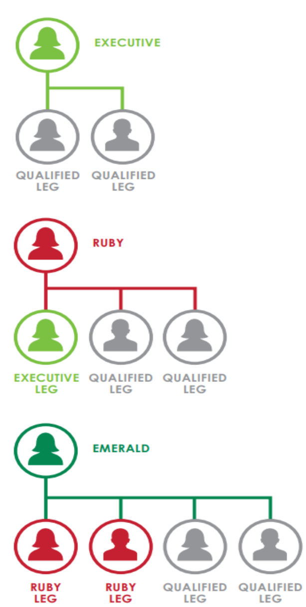
EMERALD

To qualify to be paid as an Emerald, gather and build to 4 Qualified Legs with at least 2 of the 4 Legs being **Ruby Legs**.

Ruby Leg: a Leg with a Ruby somewhere in the depth of the Leg.

As an Emerald, you are eligible to be paid on five levels of your downline orders after compression. *See Management Bonuses chart, page 7.*

As an Emerald, you will also earn the **Emerald Bonus**. With the Emerald Bonus, you'll earn an additional 2% payout on the Bonus Volume on unlimited levels starting with the sixth level and going through the fifth level of the first Emerald or higher in any Leg after compression is applied.



22. This company structure is what enables the usual course of business of Defendants: the recruitment of new It Works Distributors.

23. As part of their illegal scheme of misclassifying their employees as independent contractors, Defendants require their distributors to bear the costs of business expenses for the company and indeed are illegally making a profit by forcing their employees to pay for such business expenses plus a markup. Indeed, Defendants will charge their It Works Distributors for the ability to begin employment with them and start selling for them, in the form of a "starter kit." Defendants will also charge It Works Distributors to make use of Defendant It Works' web services, as well as require It Works Distributors to maintain a certain amount of purchase volume each month in order to maintain their Distributor status (which leads distributors to often be their own biggest customers). Defendants will also require an annual fee from It Works Distributors for the privilege of being one of their employees. Each of these charges is in effect an illegal wage deduction and/or an illegal business expense being transferred from Defendants to their employees.

24. Defendants are not merely a platform or uninterested bystander which enables It Works Distributors to engage in their own truly independent business. Rather, Defendants set the compensation policies of the It Works Distributors (based primarily off their ability to recruit other It Works Distributors below them in legs), provide training for their It Works Distributors, and always retain the right to terminate It Works Distributors if they violate any of the company's numerous policies.

25. As a result, It Works Distributors lack business autonomy. It Works Distributors are each not engaged in an independently-established business. Instead, the It Works Distributors are dependent on Defendants to provide them with products, marketing tools, and a website for a fee. Indeed, It Works Distributors may not have their own company website – any website must be on Defendants' platform. The strict control that Defendants assert over their distributors is codified in the Statement of Policies and Procedures that It Works Distributors are required to follow: "Distributors must submit all proposed personal development system, coaching system, sales aid, lead generation systems, promotional

materials, advertisements, and other literature to the Company for approval to compliance@itworks.com. Unless the Distributor receives specific written approval to use such tools, the request shall be deemed denied. Independently produced websites are not permitted unless approved by the Company."

26. By working for Defendants, It Works Distributors have not gone into business for themselves. Instead, Defendants have unilaterally determined that Plaintiff and It Works Distributors are independent contractors while precluding them from taking the usual steps towards promoting and establishing an independent business. It Works Distributors were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

27. Defendants control the terms of employment. Defendants maintains uniform policies and terms of service with which all It Works Distributors, including Plaintiff, must comply. Such guidelines included training materials on how to perform work as an It Works Distributors, strict adherence to the Compensation Plan described above, and even the purported requirement It Works Distributors agree not to solicit other It Works Distributors to work for a competing company within twenty-four months after such an It Works Distributor leaves Defendants company or is terminated.

28. In sum, Defendants control the terms of employment of their distributors.

B. Defendant's Misclassification of Plaintiff and other Aggrieved Employees Violates Their Rights Under California Law

29. At all relevant times mentioned herein, Defendants employed Plaintiff and other persons as non-exempt employees.

30. Defendants employed Plaintiff during the relevant time period.

31. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees, and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

32. Through this action, Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and IWC Wage Orders.

33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to timely receive wages for all time worked (including minimum wages, regular, and overtime wages) and that they were not receiving all wages earned for work that was required to be performed. For example, Defendants failed to pay all commissions earned by Plaintiff and the aggrieved employees twice during each calendar month and failed to pay Plaintiff and other aggrieved employees for the time spent attending training meetings. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and other aggrieved employees were not paid all wages (including minimum wages and overtime wages) for all hours worked.

34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that aggrieved employees were entitled to receive all required meal periods or payment of one (1) additional hour of pay at the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC Wage Orders, aggrieved employees did not receive all meal periods or payment of one (1) additional hour of pay at the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.

35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that aggrieved employees were entitled to receive all rest breaks or payment of one (1) additional hour of pay at the aggrieved employees' regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, aggrieved employees did not receive all rest breaks or payment of one (1) additional hour of pay at the aggrieved employees' regular rate of pay when a rest break was missed, interrupted, or on-duty.

36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive itemized wage statements that accurately showed the following information pursuant to the

Labor Code: (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 only 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 (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 deficiencies include, among other things, the failure to correctly state the gross and net wages earned by Plaintiff and other aggrieved employees, and all hours worked. In violation of the Labor Code, Plaintiff and aggrieved employees were not provided with accurate itemized wage statements.

37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to sick leave, and notice on their wage statements or other separate written statements that listed the balance of paid sick leave that they should have been accruing. In violation of the California Labor Code, Plaintiff and other aggrieved employees did not receive sick leave and notice on their wage statements or other separate written statements that listed the balance of paid sick leave that they should have been accruing.

38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that they were prohibited from withholding amounts from the wages of Plaintiff and other aggrieved employees, aside for certain statutory exceptions. However, for example, Defendants would only pay employees wages if they were able to sell a certain amount of product during a sales period, which encouraged Plaintiff and other aggrieved employees to purchase product themselves so they could receive payment, resulting in a deduction of wages. Moreover, for example, Defendants would charge Plaintiff and other aggrieved employees other deductions and penalties, including in the event of a chargeback.

39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to reimbursement for necessary expenditures incurred in connection with the performance and execution of their job duties. In violation of the California Labor Code, Plaintiff and other aggrieved employees did not receive adequate reimbursement for necessary business expenses, including but not limited to reimbursement for use of their home internet, cell-phone expenses, and computer expenses. Furthermore, Defendants would require Plaintiff and the aggrieved employees to pay each month a fee for these employees to make use of its web services, for which they were not reimbursed. Finally, Defendants would require that aggrieved employees purchase an amount of product each month in order to maintain their distributor status, regardless of whether such product was sold or not. The aggrieved employees were not reimbursed for the entire cost of this unsold product, if at all.

40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that it was required under California law to provide worker's compensation insurance for Plaintiff and other aggrieved employees. However, in violation of the California Labor Code, Defendants failed to secure worker's compensation insurance for the aggrieved employees.

41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiffs and aggrieved employees who separated from Defendants were entitled to timely payment of wages upon separation of employment. In violation of the California Labor Code, Plaintiffs and these aggrieved employees did not receive payment of all wages including, but not limited to, unpaid minimum and overtime wages, meal periods premiums, and rest break premiums within permissible time periods.

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<u>FIRST CAUSE OF ACTION</u>

<u>ENFORCEMENT OF LABOR CODE § 2698 *ET SEQ.* ("PAGA")</u>

42. Plaintiffs hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

43. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

44. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars ($100.00) for each aggrieved employee per pay period for the initial violations and two hundred dollars ($200.000) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

45. Defendants' conduct with respect to Plaintiffs and other aggrieved employees violates numerous Labor Code sections including, but not limited to, the following:

a. Violation of Labor Code § 226.8 for willful misclassification;

b. Violation of Labor Code §§ 201-204, 210, 510, 1194, 1194.2, 1197, 1198, and the IWC Wage Orders for failure to timely pay all earned wages (including minimum and overtime wages) owed to Plaintiffs and other aggrieved employees during employment and upon separation of employment as herein alleged;

c. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;

d. Violation of Labor Code § 226.7 for failure to permit paid rest breaks to Plaintiffs and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

e. Violation of Labor Code § 246 *et seq.* for failure to provide sick pay;

f. Violation of Labor Code § 221 for the unlawful deduction of wages;

g. Violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiffs and other aggrieved employees for all reasonable and necessary business expenses as herein alleged;

h. Violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiffs and other aggrieved employees as herein alleged; and

i. Violation of Labor Code § 3700 for failing to secure worker's compensation for the aggrieved employees.

46. Plaintiff is an "aggrieved employee" because she was employed by the alleged violator and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of all other aggrieved employees.

47. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and all other aggrieved employees under PAGA.

48. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties for violations of the Labor Code sections cited above.

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

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of all others similarly situated, pray for judgment against Defendants as follows:

1. For civil penalties against Defendants on behalf of all aggrieved employees.

2. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to California Labor Code §§ 2699(g) and California Code of Civil Procedure § 1021.5; and

3. For such other relief as the Court deems just and proper.

Dated: September 20, 2021 **LEBE LAW, APLC**

By: ______________________________
Jonathan M. Lebe
Zachary T. Gershman
Attorneys for Plaintiff Marites Perez,
Individually and on behalf of all
others similarly situated