

Benjamin Davidson, Esq. – State Bar No. 241859
 E-mail: bdavidson@bendavidsonlaw.com
 LAW OFFICES OF BENJAMIN DAVIDSON, P.C.
 116 S. Catalina Ave., Suite 101
 Redondo Beach, CA 90277
 Telephone: (323) 713-0010
 Facsimile: (323) 488-688

Attorneys for Plaintiff,
 MARK STEELE, individually, and on behalf of all others
 similarly situated and other aggrieved employees

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MARK STEELE, individually, and on
 behalf of all others similarly situated
 and other aggrieved employees,

Plaintiff,

vs.

ASSURANCE IQ, LLC;
 PRUDENTIAL FINANCIAL, INC.;
 and DOES 1-20, inclusive,

Defendants.

Case No. **'25CV1614 BEN AHG**

**CLASS AND REPRESENTATIVE
 ACTION COMPLAINT FOR**

- 1. Misclassification (Lab. Code § 226.8);**
- 2. Violation of Federal WARN Act (29 U.S.C. § 2101, et. seq.);**
- 3. Violation of Cal-WARN Act (Lab. Code § 1400, et. seq.);**
- 4. Failure to Pay Overtime (Lab. Code § 510, et seq.);**
- 5. Failure to Pay Minimum Wages (Lab. Code §§ 1194, 1197, 1197.1);**
- 6. Failure to Provide Meal Periods (Lab. Code §§ 226.7 & 512);**
- 7. Failure to Provide Accurate Wage Statements (Lab. Code § 226);**
- 8. Violation of California Sick Leave Law (Lab. Code § 246, et seq.);**
- 9. Waiting Time Penalties (Lab. Code §§ 201, 203);**
- 10. Unfair Business Practices (BPC § 17200, et seq.); and**
- 11. Violations of PAGA (Cal. Lab. Code § 2698, et seq.)**

1 Plaintiff Mark Steele (“PLAINTIFF”), on behalf of himself and all others
2 similarly situated, for his Complaint against Defendants Assurance IQ, LLC
3 (“ASSURANCE”), Prudential Financial, Inc. (“PRUDENTIAL”), and Does 1
4 through 20, inclusive (“DOES”) (collectively, “DEFENDANTS”), states and alleges
5 as follows:

6 **I. JURISDICTION AND VENUE**

7 1. This Court's jurisdiction is based on 28 U.S.C. § 1332, on the grounds
8 the PLAINTIFF is a citizen of the State of California, while Defendants
9 ASSURANCE and PRUDENTIAL are incorporated and have their principal places
10 of business in other states, and the amount in controversy exceeds \$75,000.

11 2. In addition, the Court has jurisdiction based on 29 U.S.C. § 1331, on
12 the grounds that the matter is brought under the Worker Adjustment and Retraining
13 Notification Act (WARN Act), including but not limited to 29 U.S.C. §§ 2102,
14 2104(a)(5). This Court has supplemental jurisdiction over PLAINTIFF’s state law
15 claims under 28 U.S.C. § 1367.

16 3. In addition, PLAINTIFF is informed and believes that jurisdiction is
17 proper pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), on the
18 grounds that the proposed class exceeds the 100-class-member, \$5 million threshold.

19 4. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), and
20 section 5(a)(5) of the WARN Act (29 U.S.C. § 2104(a)(5)) because DEFENDANTS
21 do business in this district, employed PLAINTIFF and many other individuals in
22 this district, and the acts underlying the WARN Act claims occurred in this district.

23 **II. PARTIES**

24 **A. Plaintiff.**

25 5. At all relevant times, PLAINTIFF was employed by DEFENDANTS as
26 an insurance sales agent, in which capacity he was misclassified. He was damaged
27 by DEFENDANTS’ acts in violation of the Federal and California WARN Act, and
28 various provisions of the Labor Code.

1 6. PLAINTIFF also brings this case as a representative action under the
2 Private Attorneys General Act (“PAGA”), Labor Code §§ 2698-2699, on behalf of
3 former employees of DEFENDANTS.

4 7. PLAINTIFF resides, and at all times relevant to this Complaint has
5 resided, in San Diego County, California.

6 8. PLAINTIFF reserves the right to seek leave to amend this complaint to
7 add new plaintiffs, if necessary, in order to establish suitable representative(s)
8 pursuant to *La Sala v. American Savings and Loan Ass’n* (1971) 5 Cal.3d 864, 872,
9 and other applicable law.

10 **B. Defendants.**

11 9. On information and belief, Defendant ASSURANCE is, and at all
12 relevant times was, a Washington corporation with its principal place of business at
13 920 5th Ave., Suite 3600, Seattle, WA 98104. At all relevant times, ASSURANCE
14 serviced clients throughout the United States, including throughout the State of
15 California and in this District. At all relevant times, ASSURANCE maintained
16 facilities (collectively, “the Facilities”) that qualified for protection under the federal
17 and state WARN Acts.

18 10. On information and belief, Defendant PRUDENTIAL is, and at all
19 relevant times has been, a New Jersey corporation, with its principal place of
20 business at 751 Broad St., Newark, NJ 07102. At all relevant times, PRUDENTIAL
21 maintained facilities (collectively, “the Facilities”) that qualified for protection
22 under the federal and state WARN Acts. On information and belief, and based on
23 public records, PRUDENTIAL maintained an office at 920 5th Ave., Suite 3600,
24 Seattle, WA 98104, through which it served as a Manager or Member of
25 ASSURANCE. On information and belief, PRUDENTIAL acquired ASSURANCE
26 in or around September 2019, after which ASSURANCE remained a wholly owned
27 subsidiary of PRUDENTIAL.

1 11. PLAINTIFF is unaware of the true names and capacities of defendants
2 named herein as DOES 1-20 (“DOE DEFENDANTS”), and as such names these
3 DOE DEFENDANTS by such fictitious names. Plaintiff will amend this complaint
4 to identify the true names and capacities of the DOE DEFENDANTS when
5 ascertained.

6 12. PLAINTIFF alleges, upon information and belief, that each of the
7 DEFENDANTS bears legal responsibility for the events and allegations described in
8 this complaint and for PLAINTIFF’s damages.

9 13. PLAINTIFF is informed and believes that in doing the things alleged in
10 this complaint, each DEFENDANT was acting as an agent or employee of every
11 other DEFENDANT, was acting within the course and scope of this agency or
12 employment, and was acting with the consent, permission, and authorization of each
13 of the remaining DEFENDANTS. PLAINTIFF is also informed and believes that all
14 actions of each DEFENDANT alleged in this complaint were ratified and approved
15 by the officers or managing agents of every other DEFENDANT.

16 **III. FACTUAL ALLEGATIONS**

17 14. ASSURANCE is an insurance technology company that offered life
18 insurance, health insurance, property insurance, and the like to customers, until it
19 ceased operations on or about April 30, 2024.

20 15. PRUDENTIAL is a multinational financial services company offering a
21 various products and services, including life insurance, annuities, retirement-related
22 services, mutual funds, and investment management.

23 16. On information and belief, at all relevant times, PRUDENTIAL, in its
24 capacity as the parent company of ASSURANCE, and as the sole Manager or
25 Member of ASSURANCE, directly controlled and operated ASSURANCE, and the
26 management and executives of PRUDENTIAL oversaw and directed all major
27 strategic, operational, and financial decisions at ASSURANCE.
28

1 17. On information and belief, PRUDENTIAL directed and controlled the
2 transfer, disposition and/or unwinding of ASSURANCE's assets, including its liquid
3 monetary, financial and intellectual property assets, in connection with the cessation
4 of ASSURANCE's operations on or about April 30, 2024.

5 18. During the time period relevant to this action, on information and
6 belief, DEFENDANTS employed approximately 1700 insurance sales agents
7 nationwide, including several hundred in the State of California, including
8 PLAINTIFF, all of which were misclassified as independent contractors, as alleged
9 herein.

10 19. PLAINTIFF's relationship with DEFENDANTS began in July 2023,
11 when he was hired by DEFENDANTS in the position of "Senior Agent,"
12 responsible for selling insurance policies on behalf of DEFENDANTS.
13 DEFENDANTS hired PLAINTIFF as an independent contractor, and he remained
14 classified as an independent contractor throughout his employment. PLAINTIFF
15 worked remotely on a full-time basis for DEFENDANTS as a Senior Agent from his
16 home in San Diego.

17 20. As alleged herein, PLAINTIFF was misclassified as an independent
18 contractor, and should properly have been classified as an employee. He was not
19 free from the control and direction of ASSURANCE in connection with the
20 performance of his work. For example:

21 a. PLAINTIFF was required to log into DEFENDANTS' web-
22 based CRM platform in order to receive calls and otherwise communicate with
23 clients. It was necessary to be constantly logged on to DEFENDANTS' system
24 during work hours to maintain an employee's place in the call queue, which
25 discouraged agents from taking off-duty breaks. A sales agent who logged off the
26 system in order to take an off-duty break would be placed at the very end of the
27 queue when he or she logged back in;

28 b. PLAINTIFF's communications with clients were monitored and

1 recorded by DEFENDANTS;

2 c. PLAINTIFF was expected to work set hours and maintain a
3 consistent work schedule, and to report his upcoming work schedule to
4 DEFENDANTS;

5 d. PLAINTIFF was subject to DEFENDANTS' policies and
6 procedures;

7 e. PLAINTIFF was expected to frequently check in with his
8 supervisors and managers, including Sales Manager Joshua Travers (who on
9 information and belief was classified as an employee), regarding his duties and
10 responsibilities;

11 f. PLAINTIFF was subject to DEFENDANTS' EVQ ("Efficiency,
12 Volume and Quality") metrics and compliance. Twice a week, his calls were
13 "scored," with 85% or higher a passing score. If he did not meet that threshold, he
14 was required to file a report within the system explaining what happened and how
15 he intended to correct it.

16 g. PLAINTIFF was expected or required to attend mandatory
17 product trainings on the ASSURANCE platforms, and to attend regular meetings on
18 sales techniques and motivation. In fact, He himself was called upon to lead some of
19 the trainings.

20 21. PLAINTIFF and, on information and belief, other sales agents were
21 paid on a strict commission basis, and he was not paid unless he made sales, no
22 matter how many hours he worked. PLAINTIFF's typical schedule was 5:00 a.m. to
23 2:00-3:00 p.m., 5 or 6 days per week. Moreover, due to the needs of the business,
24 including in order to attend to questions by and otherwise assist other sales agents,
25 he worked an additional 3-4 hours per week on average. He also was constantly on-
26 call, and that my bosses expected me to respond quickly whenever anything came
27 up, as it often did. However, he was never paid an hourly wage because he was
28 misclassified as an independent contractor from the start of his employment. He

1 received no additional compensation – either straight time or overtime – regardless
2 of how many hours he worked in a week.

3 22. DEFENDANTS were aware of PLAINTIFF working overtime. The
4 expectation was that he would stay logged into the system as long as his supervisors
5 and managers needed him. Because PLAINTIFF was paid only on commissions, he,
6 and on information and belief other insurance sales agents, were burdened with the
7 tasks of those who were classified as employees, which on information and belief
8 was done to reduce DEFENDANTS' payroll costs. DEFENDANTS were aware
9 that PLAINTIFF would not receive additional pay for hours worked

10 23. On or about April 30, 2024, ASSURANCE ceased operations selling
11 insurance policies. DEFENDANTS furloughed the entire workforce of sales agents
12 who were paid through ASSURANCE, including PLAINTIFF, and directed that the
13 relationship with such sales agents would be terminated without further pay. At the
14 time, due to their misclassification, DEFENDANTS' employees, including
15 PLAINTIFF, were owed wages and compensation, which they have still not
16 received. In addition, many misclassified employees were also owed out-of-pocket
17 work-related expenses for which they paid but for which they were not reimbursed.
18 Moreover, at the time of the cessation of ASSURANCE's operations, PLAINTIFF
19 and similarly situated misclassified employees were laid off and/or terminated
20 without 60 days' advance notice as required by the Federal and California WARN
21 Act. On information and belief, PLAINTIFF's termination was effective on May 5,
22 2024.

23 24. Through their actions, DEFENDANTS violated, *inter alia*, Labor Code
24 §§ 201-203 (waiting time penalties); Labor Code §§ 204(b),(d) & 210 (failure to pay
25 for all work performed, and for excessive labor no later than next payroll period;
26 penalties thereon); Labor Code §§ 225 and 225.5 (criminal and civil penalties for
27 wage violations); Labor Code §§ 226(a), (e) and 226.3 (failure to furnish accurate
28 itemized wage statements; penalties); Labor Code § 226.7 (meal period violations);

1 Labor Code § 226.8 (misclassification); Labor Code § 246 (failure to provide
 2 accrued sick leave or include in separate writing); Labor Code § 510 (failure to
 3 provide overtime compensation); Labor Code § 512(a) (failure to provide meal and
 4 rest periods); Labor Code § 553 and 558 (criminal and civil penalties for wage
 5 violations); Labor Code § 1402 and 1403 (California WARN Act); Labor Code §
 6 1174(d), 1174.5, 1175 (failure to keep at central location accurate payroll records
 7 showing hours worked, wages paid, and other required information); Labor Code §§
 8 1182.12, 1194, 1197, 1197.1 and 1199 (failure to pay minimum wage and/or
 9 overtime compensation); Labor Code § 1198 (right of action for violation of IWC
 10 Wage Orders); and IWC Wage Order No. 4-2001, and/or any other applicable wage
 11 order, as described herein.

12 **IV. CLASS ACTION ALLEGATIONS**

13 25. PLAINTIFF brings this action as a class action under Federal Rule of
 14 Civil Procedure 23(a), (b)(1) and (3); the WARN Act (29 U.S.C. § 2104(a)(5)) and
 15 California's comparable state law, Labor Code § 1404); Labor Code §§ 204(b),
 16 204(d), 210, 226(a) & (e), 226.3, 226.7, 226.8, 246, 510, 512(a), 553 and 558
 17 (criminal and civil penalties for wage violations); Labor Code §§ 1402 and 1403
 18 (California WARN Act); Labor Code §§ 1174(d), 1174.5, 1175 (failure to keep at
 19 central location accurate payroll records showing hours worked, wages paid, and
 20 other required information); Labor Code §§ 1182.12, 1194, 1197, 1197.1 and 1199
 21 (failure to pay minimum wage and/or overtime compensation); Labor Code § 1198.
 22 Plaintiff also brings this case as a representative action under Labor Code § 2698, et
 23 seq. ("PAGA").

24 26. PLAINTIFF brings this action on behalf of himself and all other
 25 similarly situated employees. PLAINTIFF seeks to represent a Class initially
 26 defined as:

27 *All of Defendants' California-based sales agents who were classified*
 28 *as independent contractors on or before April 30, 2024, and whose*

relationship with Defendants was terminated as part of a mass layoff or plant closing involving Assurance IQ on or about April 30, 2024.

27. PLAINTIFF and proposed Class members are “affected employee(s)” subject to an “employment loss,” as those terms are defined in the WARN Act, 29 U.S.C. § 2101(a)(5) and (6).

28. PLAINTIFF and proposed Class members were subjected to “plant closings” and/or “mass layoffs” as those terms are defined in the federal WARN Act, 29 U.S.C. § 210.

29. PLAINTIFF and the proposed Class members are “employees” at a “covered establishment” subject to a “mass layoff” and/or “termination” as those terms are defined in the California WARN Act, Labor Code § 1400(h), (a), (d) and (f), respectively.

30. PLAINTIFF'S claims satisfy the numerosity, commonality, typicality, adequacy and superiority requirements of a class action.

31. On information and belief, the members of the class exceed 200 in number. Joinder is therefore impracticable. The precise number of Class members and their addresses are readily determinable from the books and records of DEFENDANTS.

32. There are common questions of fact and law as to the class that predominate over any questions affecting only individual Class members. The questions of law and fact common to the class arising from DEFENDANTS' actions include, without limitation, the following:

- a. whether DEFENDANTS' sales agents were misclassified as independent contractors;
- b. whether the provisions of the WARN Act (under both federal and California state law) apply;
- c. whether DEFENDANTS' employee terminations on or about April 30, 2024, constitute “plant closings,” “terminations,” and/or “mass layoffs”

1 under the WARN Act;

2 d. whether DEFENDANTS failed to provide the notices required
3 by the WARN Act (29 U.S.C. § 2102(b); Labor Code § 1401);

4 e. whether DEFENDANTS can avail themselves of any of the
5 provisions the WARN Act that permit shorter notice periods;

6 f. the appropriate formulae to measure damages under the WARN
7 Act (29 U.S.C. § 2104(a)) as well as Labor Code § 1402);

8 g. whether DEFENDANTS, in violation of Labor Code §§ 201-203
9 and/or 558.1, failed to timely pay PLAINTIFF and Class Members all wages due
10 upon termination or resignation;

11 h. whether PLAINTIFF and other Class Members are entitled to
12 “waiting time” penalties pursuant to Labor Code § 203;

13 i. whether DEFENDANTS, in violation of Labor Code §§ 204(b)
14 and 204(d), failed to compensate PLAINTIFF and Class Members for excess labor
15 no later than the next payroll period and/or to timely pay for all work performed
16 during each payroll period;

17 j. whether PLAINTIFF and other Class Members are entitled to
18 penalties under Labor Code § 210 on account of DEFENDANTS’ alleged violations
19 of Labor Code §§ 204(b) and/or 204(d);

20 k. whether DEFENDANTS, in violation of Labor Code §§ 226(a),
21 (e) and 226.3, failed to furnish accurate itemized wage statements to PLAINTIFF
22 and other Class Members, and are therefore liable to statutory penalties thereon;

23 l. whether DEFENDANTS, in violation of Labor Code § 226.7,
24 failed to provide PLAINTIFF and other Class Members with required meal and rest
25 periods and/or an additional hour of pay at the employee’s regular rate of
26 compensation for each day in which a meal or rest period was not provided;

27 m. whether DEFENDANTS, in violation of Labor Code § 226.8,
28 misclassified PLAINTIFF and other Class Members as independent contractors, and

1 whether DEFENDANTS are liable for civil penalties for engaging in a pattern or
2 practice of these violations;

3 n. whether DEFENDANTS, in violation of Labor Code § 246,
4 failed to provide PLAINTIFF and, on information and belief, other current and
5 former employees a written notice setting forth the amount of paid sick leave
6 available, or paid time off leave provided in lieu of sick leave, for use on
7 PLAINTIFF's and other Class Members' itemized wage statements or in a separate
8 writing provided on the designated pay date with the employees' payment of wages;

9 o. whether DEFENDANTS, in violation of Labor Code § 510,
10 employed PLAINTIFF and other Class Members in excess of eight hours in one
11 workday and/or in excess of 40 hours in one workweek without compensating them
12 for all hours worked at one and a half times their regular hourly rate;

13 p. whether DEFENDANTS, in violation of Labor Code § 512(a),
14 employed PLAINTIFF and other Class Members for work periods of more than five
15 hours per day without providing them with a meal period of not less than 30
16 minutes, and/or employed them for work periods of more than 10 hours per day
17 without providing them with a second meal period of not less than 30 minutes;

18 q. whether PLAINTIFF and other Class Members are entitled to
19 penalties under Labor Code § 553 on account of DEFENDANTS' alleged violations
20 of Labor Code §§ 510 and 512(a);

21 r. whether DEFENDANTS violated Labor Code §§ 1174(d),
22 1174.5, and 1175 as to PLAINTIFF and other Class Members by failing to keep at a
23 central location accurate payroll records showing hours worked, wages paid, and
24 other required information;

25 s. whether DEFENDANTS violated Labor Code §§ 1182.12, 1194,
26 1197, 1197.1 and 1199 by compensating PLAINTIFF and other Class Members less
27 than the legal minimum wage or the legal overtime compensation applicable to
28 them, including by failing to compensate them for all hours worked (failure to pay

1 minimum wage and/or overtime compensation); Labor Code § 1198 (right of action
2 for violation of IWC Wage Orders)

3 t. the appropriate definitions and formulae to measure payments to
4 potentially offset damages.

5 33. The questions set forth above predominate over any questions affecting
6 only individual persons. A class action is superior to other available methods for the
7 fair and efficient adjudication of the claims, particularly with respect to
8 considerations of consistency, economy, efficiency, fairness and equity. The
9 conduct of this action as a class action, with respect to some or all of the issues
10 presented herein, presents few management difficulties, conserves the resources of
11 the parties and the court system, and protects the rights of each class member.

12 34. A class action is the superior method for the fair and efficient
13 adjudication of this controversy. DEFENDANTS have acted, or refused to act, on
14 grounds generally applicable to the class. The presentation of separate actions by
15 individual Class members could create a risk of inconsistent and varying
16 adjudications, establish incompatible standards of conduct for DEFENDANTS,
17 and/or substantially impair or impede the ability of Class members to protect their
18 interests.

19 35. PLAINTIFF is an affected employee who was terminated by
20 DEFENDANTS from employment at one of DEFENDANTS' Facilities on or about
21 April 30, 2024, without the notice required by the WARN Act. In addition,
22 PLAINTIFF was a sales agent who was misclassified as an independent contractor
23 and subject to the various additional violations of the Labor Code to which
24 DEFENDANTS are alleged herein to have subjected other California sales agents.
25 He is, therefore, a member of the class. PLAINTIFF is committed to pursuing this
26 action and has retained counsel with extensive experience prosecuting complex
27 wage, employment, and class action litigation. Accordingly, PLAINTIFF is an
28 adequate representative of the class and has the same interests as all of its members.

1 36. PLAINTIFF's claims are typical of the claims of the class. PLAINTIFF
2 and all Class members sustained injuries and damages arising out of and caused by
3 DEFENDANTS' common course of conduct in terminating them without adequate
4 notice and in failing to pay them all wages, paid time off, and unreimbursed
5 expenses due to them at the time of termination, as alleged herein.

6 37. DEFENDANTS have acted or refused to act in respects generally
7 applicable to the class, thereby making appropriate relief with regard to the
8 members of the class as a whole, as requested herein.

9 38. Further, class action treatment of this action is authorized and
10 appropriate under the WARN Act (29 U.S.C. § 2104(a)(5); Labor Code § 1404),
11 which provides that a plaintiff seeking to enforce liabilities under the WARN Act
12 may sue either on behalf of his or her self, for other persons similarly situated, or
13 both.

14 **V. CAUSES OF ACTION.**

15 **COUNT ONE**

16 **Misclassification as Independent Contractor**

17 **Labor Code § 226.8**

18 **(Individual Claim against All Defendants)**

19 39. PLAINTIFF reasserts and re-alleges the allegations set forth above as
20 though fully set forth herein.

21 40. Labor Code § 226.8(a) provides that it is unlawful for "any person or
22 employer" to willfully misclassify an employee as an independent contractor."

23 41. DEFENDANTS, and each of them, constitute a "person or employer"
24 within the meaning of Labor Code § 226.8(a).

25 42. At all times within the applicable statute of limitations, PLAINTIFF
26 and, on information and belief, other Class members (a) were not free from the
27 control and direction of DEFENDANTS in connection with the performance of their
28 work, either under the contract for the performance of the work and in fact; (b) their

1 work was not outside the usual course of DEFENDANTS’ business; and/or (c) they
2 were not customarily engaged in an independently established trade, occupation, or
3 business of the same nature as that involved in the work performed, and therefore
4 PLAINTIFF and, on information and belief, other Class members were misclassified
5 pursuant to the holding in *Dynamex Operations W. Inc. v. Superior Court* (2018) 4
6 Cal.5th 903, as codified in Labor Code § 2775. Nor, to the extent applicable, were
7 PLAINTIFF and other Class members properly classified pursuant to the holding in
8 *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d
9 341.

10 43. DEFENDANTS, and each of them, voluntarily and knowingly
11 misclassified PLAINTIFF and other insurance sales agents who are members of the
12 Class as independent contractors, which constitutes “willful misclassification”
13 within the meaning of Labor Code §§ 226.8 and 226.8(i)(4) and each of them is
14 individually liable to PLAINTIFF and to the Class.

15 44. Pursuant to California law and Labor Code §§ 226.8(b) and (j),
16 PLAINTIFF and the Class are entitled to recover, and all DEFENDANTS are
17 subject to, civil penalties, including, but not limited to, a civil penalty of not less
18 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
19 (\$15,000) for each violation, in addition to any other penalties or fines permitted by
20 law.

21 45. Furthermore, pursuant to Labor Code § 2753, “A person who, for
22 money or other valuable consideration, knowingly advises an employer to treat an
23 individual as an independent contractor to avoid employee status for that individual
24 shall be jointly and severally liable with the employer if the individual is found not
25 to be an independent contractor.”
26
27
28

COUNT TWO

Violation of the Federal Worker Adjustment and Retraining Notification Act

29 U.S.C. § 2101, et. seq.

(Individual and Class against all Defendants)

46. PLAINTIFF reasserts and re-alleges the allegations set forth above as though fully set forth herein.

47. At all times material herein, PLAINTIFF, and similarly situated persons, has been entitled to the rights, protections, and benefits provided under the federal WARN Act, 29 U.S.C. § 2101, et. seq. The federal WARN Act regulates the amount of notice an employer must provide to employees who will be terminated due to the employer's closing of a plant or mass layoffs, as well as the back pay and other associated benefits an affected employee is due based on a violation of the required notice period.

48. DEFENDANTS were, and are, subject to the notice and back pay requirements of the federal WARN Act because they are individually and collectively a business enterprise that employs 100 or more employees, excluding part-time employees, as defined in the Act. 29 U.S.C. § 2101(1)(A).

49. DEFENDANTS willfully violated the federal WARN Act by ordering a mass layoff of employees on or about April 30, 2014 without providing the required notice.

50. Section 2103 of the federal WARN Act exempts certain employers from the notice requirements of the Act. 29 U.S.C. § 2103(1)-(2). None of the federal WARN Act exemptions, however, applies to DEFENDANTS. Accordingly, PLAINTIFF and proposed Class members are entitled to receive the notice and back pay required by the federal WARN Act (29 U.S.C. § 2102 and 2104).

51. PLAINTIFF and all similarly situated employees have been damaged by DEFENDANTS' conduct constituting violations of the federal WARN Act and are entitled to damages for their back pay and associated benefits for each day of the

1 violation because DEFENDANTS have not acted in good faith or with reasonable
2 grounds to believe their acts and omissions were not a violation of the federal
3 WARN Act.

4 **COUNT THREE**

5 **Violation of the California Worker Adjustment and Retraining Notification**
6 **Act**

7 **Labor Code § 1400, et. seq.**

8 **(Individual and Class Claim alleged against all Defendants)**

9 52. PLAINTIFF reasserts and re-alleges the allegations set forth above.

10 53. At all times material herein, PLAINTIFF, and similarly situated
11 persons including the Class members, have been entitled to the rights, protections,
12 and benefits provided under the California WARN Act, Labor Code § 1400, et. seq.

13 54. The California WARN Act regulates the amount of notice an employer
14 must provide to employees who will be terminated due to the employer's layoffs, as
15 well as the back pay and other associated benefits an affected employee is due based
16 on a violation of the required notice period.

17 55. DEFENDANTS were, and are, subject to the notice and back pay
18 requirements of the California WARN Act because the Facilities are covered
19 establishments that employ 75 or more employees, excluding part-time employees,
20 as defined by Labor Code § 1400.

21 56. DEFENDANTS willfully violated the California WARN Act by
22 ordering a mass layoff of employees on or about April 30, 2024 without providing
23 the required notice.

24 57. The California WARN Act exempts certain employers from the notice
25 requirements of the Act. None of the California WARN Act exemptions, however,
26 apply to DEFENDANTS. Accordingly, PLAINTIFF and Class members must
27 receive the notice and back pay required by the California WARN Act.

28

58. PLAINTIFF and all similarly situated employees have been damaged by DEFENDANTS' conduct constituting violations of the California WARN Act and are entitled to damages for their back pay and associated benefits for each day of the violation because DEFENDANTS have not acted in good faith nor with reasonable grounds to believe its acts and omissions were not a violation of the California WARN Act.

COUNT FOUR

Failure to Pay Overtime Compensation

Labor Code § 510, et seq.

(Individual and Class Claim alleged against all Defendants)

59. PLAINTIFF reasserts and re-alleges the allegations set forth above.

60. PLAINTIFF and the other members of the Class for the period beginning four years prior to the filing of the Complaint and the present (“LABOR CLASS PERIOD”) bring a claim for DEFENDANTS’ willful and intentional violations of the Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS’ failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

61. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

62. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

63. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an

1 employee for longer hours than those fixed by the Industrial Welfare Commission is
2 unlawful.

3 64. During the LABOR CLASS PERIOD, PLAINTIFF and Class members
4 were required by DEFENDANTS to work for DEFENDANTS and were not paid for
5 all the time they worked or were not accurately compensated for all overtime hours
6 worked.

7 65. DEFENDANTS' uniform pattern of unlawful wage and hour practices
8 manifested, without limitation, applicable to the Class as a whole, as a result of
9 implementing a uniform policy and practice that failed to accurately record overtime
10 worked by PLAINTIFF and other Class members and denied accurate compensation
11 to PLAINTIFF and the other members of the Class for overtime worked, including,
12 the overtime work performed in excess of eight (8) hours in a workday, and/or
13 twelve (12) hours in a workday, and/or forty (40) hours in any workweek. 64. In
14 committing these violations of the Labor Code, DEFENDANTS inaccurately
15 calculated the amount of overtime worked and the applicable overtime rates and
16 consequently underpaid the actual time worked by PLAINTIFF and other members
17 of the Class. DEFENDANTS acted in an illegal attempt to avoid the payment of all
18 earned wages, and other benefits in violation of the Labor Code, the Industrial
19 Welfare Commission requirements and other applicable laws and regulations.

20 66. As a direct result of DEFENDANTS' unlawful wage practices as
21 alleged herein, PLAINTIFF and the other members of the Class did not receive full
22 compensation for all overtime worked.

23 67. Cal. Lab. Code § 515 sets out various categories of employees who are
24 exempt from the overtime requirements of the law. None of these exemptions are
25 applicable to PLAINTIFF and the other members of the Class. Further, PLAINTIFF
26 and the other members of the Class were unlawfully misclassified as independent
27 contractors in violation of California law, and are not subject to a valid collective
28 bargaining agreement that would preclude the causes of action contained herein this

1 Complaint. Rather, PLAINTIFF brings this Action on behalf of himself and the
2 Class based on DEFENDANTS' violations of nonnegotiable, non-waivable rights
3 provided by the State of California.

4 68. During the LABOR CLASS PERIOD, PLAINTIFF and the other
5 members of the Class were paid less for time worked that they were entitled to,
6 constituting a failure to pay all earned wages. DEFENDANTS failed to accurately
7 pay PLAINTIFF and the other members of the Class overtime wages for the time
8 they worked which was in excess of the maximum hours permissible by law as
9 required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the
10 other members of the Class were required to work, and did in fact work, overtime as
11 to which DEFENDANTS failed to accurately record and pay using the applicable
12 overtime rate as evidenced by DEFENDANTS' business records and witnessed by
13 employees.

14 69. By virtue of DEFENDANTS' unlawful failure to accurately pay all
15 earned compensation to PLAINTIFF and the other members of the Class for the true
16 time they worked, PLAINTIFF and the other members of the Class have suffered
17 and will continue to suffer an economic injury in amounts which are presently
18 unknown to them and which will be ascertained according to proof at trial.

19 70. DEFENDANTS knew or should have known that PLAINTIFF and the
20 other members of the Class were under compensated for all overtime worked.
21 DEFENDANTS systematically elected, either through intentional malfeasance or
22 gross nonfeasance, to not pay employees for their labor as a matter of uniform
23 company policy, practice and procedure, and DEFENDANTS perpetrated this
24 systematic scheme by refusing to pay PLAINTIFF and the other members of the
25 Class for overtime worked, under the guise of purporting to classify them as
26 independent contractors.

27 71. In performing the acts and practices herein alleged in violation of
28 California labor laws, and refusing to compensate the members of the Class for all

1 time worked and provide them with the requisite overtime compensation,
2 DEFENDANTS acted and continues to act intentionally, oppressively, and
3 maliciously toward PLAINTIFF and the other members of the Class with a
4 conscious of and utter disregard for their legal rights, or the consequences to them,
5 and with the despicable intent of depriving them of their property and legal rights,
6 and otherwise causing them injury in order to increase company profits at the
7 expense of these employees.

8 72. PLAINTIFF and the other members of the Class therefore request
9 recovery of all unpaid wages, including overtime wages, according to proof,
10 interest, statutory costs, as well as the assessment of any statutory penalties against
11 DEFENDANTS, in a sum as provided by the Labor Code and/or other applicable
12 statutes.

13 73. DEFENDANTS' conduct as alleged herein was willful, intentional and
14 not in good faith. Further, PLAINTIFF and other Class Members are entitled to seek
15 and recover statutory costs.

16 COUNT FIVE

17 Failure to Pay Minimum Wages

18 Cal. Lab. Code §§ 1194, 1197 and 1197.1

19 (Individual and Class Claim alleged against all Defendants)

20 74. PLAINTIFF reasserts and re-alleges the allegations set forth above.

21 75. PLAINTIFF and the other members of the Class bring a claim for
22 DEFENDANTS' willful and intentional violations of the Labor Code and the
23 Industrial Welfare Commission requirements for DEFENDANTS' failure to
24 accurately record, calculate and pay minimum and reporting time wages to
25 PLAINTIFF and Class members during the LABOR CLASS PERIOD.

26 76. Pursuant to Cal. Lab. Code § 204, other applicable laws and
27 regulations, and public policy, an employer must timely pay its employees for all
28 hours worked.

1 77. Cal. Lab. Code § 1197 provides the minimum wage for employees
2 fixed by the commission is the minimum wage to be paid to employees, and the
3 payment of a less wage than the minimum so fixed is unlawful.

4 78. Cal. Lab. Code § 1194 establishes an employee's right to recover
5 unpaid wages, including minimum wage compensation and interest thereon,
6 together with the costs of suit.

7 79. DEFENDANTS maintained a uniform wage practice of paying
8 PLAINTIFF and the other members of the Class for commissions only, without
9 regard to the amount of time they worked. For instance, although PLAINTIFF
10 reported his work schedule to DEFENDANTS and it was known when he was
11 logged into the system, DEFENDANTS ignored this information and at no time
12 paid him on an hourly basis. As a result, PLAINTIFF routinely earned less than
13 minimum wage for all hours worked. Further, as set forth herein, DEFENDANTS'
14 uniform policy and practice was to unlawfully and intentionally deny timely
15 payment of wages due to PLAINTIFF and the other members of the Class.

16 80. DEFENDANTS' uniform pattern of unlawful wage and hour practices
17 manifested, without limitation, applicable to the Class as a whole, as a result of
18 implementing a uniform policy and practice that denies accurate compensation to
19 PLAINTIFF and the other members of the Class in regard to minimum wage pay.

20 81. In committing these violations of the Labor Code, DEFENDANTS did
21 not compensate PLAINTIFF and other members of the Class for all hours worked;
22 indeed, they did not pay them at all for hours worked, but rather strictly for
23 commissions on sales. DEFENDANTS acted in an illegal attempt to avoid the
24 payment of all earned wages, and other benefits in violation of the Labor Code, the
25 Industrial Welfare Commission requirements and other applicable laws and
26 regulations.

1 82. As a direct result of DEFENDANTS' unlawful wage practices as
2 alleged herein, PLAINTIFF and the other members of the Class did not receive
3 minimum wage compensation for their time worked for DEFENDANTS.

4 83. During the LABOR CLASS PERIOD, PLAINTIFF and the other
5 members of the Class were paid less for time worked that they were entitled to,
6 constituting a failure to pay all earned wages.

7 84. By virtue of DEFENDANTS' unlawful failure to accurately pay all
8 earned compensation to PLAINTIFF and the other members of the Class for the true
9 time they worked, PLAINTIFF and the other members of the Class have suffered
10 and will continue to suffer an economic injury in amounts which are presently
11 unknown to them and which will be ascertained according to proof at trial.

12 85. DEFENDANTS knew or should have known that PLAINTIFF and the
13 other members of the Class were undercompensated for their time worked.
14 DEFENDANTS systematically elected, either through intentional malfeasance or
15 gross nonfeasance, to not pay employees for their labor as a matter of uniform
16 company policy, practice and procedure, and DEFENDANTS perpetrated this
17 systematic scheme by refusing to pay PLAINTIFF and the other members of the
18 Class the correct minimum wages for their time worked.

19 86. In performing the acts and practices herein alleged in violation of
20 California labor laws, and refusing to compensate the members of the Class for all
21 time worked and provide them with the requisite compensation, DEFENDANTS
22 acted and continues to act intentionally, oppressively, and maliciously toward
23 PLAINTIFF and the other members of the Class with a conscious and utter
24 disregard for their legal rights, or the consequences to them, and with the intent of
25 depriving them of their property and legal rights, and otherwise causing them injury
26 in order to increase company profits at the expense of these employees.

27 87. PLAINTIFF and the other members of the Class therefore request
28 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as

1 the assessment of any statutory penalties against DEFENDANTS, in a sum as
2 provided by the Labor Code and/or other applicable statutes. To the extent minimum
3 wage compensation is determined to be owed to the Class members who have
4 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§
5 201 and/or 202, and therefore these individuals are also be entitled to waiting time
6 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of
7 these Class members. DEFENDANTS' conduct as alleged herein was willful,
8 intentional and not in good faith. Further, PLAINTIFF and other Class members are
9 entitled to seek and recover statutory costs.

10 **COUNT SIX**

11 **Failure to Provide Required Meal Periods or Pay an Hour's Compensation in**
12 **Lieu Thereof**

13 **Labor Code §§ 226.7 & 512**

14 **(Individual and Class Claim Against All Defendants)**

15 88. PLAINTIFF reasserts and re-alleges the allegations set forth above.

16 89. During the LABOR CLASS PERIOD, from time to time,
17 DEFENDANTS failed to provide all the legally required off-duty meal breaks to
18 PLAINTIFF and the other Class members as required by the applicable Wage Order
19 and Labor Code.

20 90. The nature of the work performed by PLAINTIFF and Class members
21 did not prevent these employees from being relieved of all of their duties for the
22 legally required off-duty meal periods. As a result of their work schedules,
23 PLAINTIFF and other Class members were not fully relieved of duty by
24 DEFENDANTS for their meal periods, and DEFENDANTS represented to
25 PLAINTIFF, and on information and belief other Class members, that they did not
26 need to take meal periods because they were independent contractors, not
27 employees. In fact, however, PLAINTIFF and other Class members were
28 misclassified as independent contractors.

91. Additionally, DEFENDANTS penalized employees who desired to take an off-duty meal period by dropping them to the bottom of the queue if they logged off the system to take their meal period, which they were obliged to do in order not to receive calls while off duty. This resulted in reduced potential earnings, since sales agents relied predominantly on making sales through the call queue, and there could be a significant delay before making it back to the top of the queue.

92. DEFENDANTS' failure to provide PLAINTIFF and the Class members with legally required meal breaks prior to their fifth (5th) hour of work, or at all, is evidenced by DEFENDANTS' business records from time to time. Further, DEFENDANTS failed to provide PLAINTIFF and Class members with a second off-duty meal period on workdays in which these employees were required by DEFENDANTS to work ten (10) hours of work. As a result, PLAINTIFF and other members of the Class forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

93. DEFENDANTS further violates Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and non-exempt Class Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of compensation for each workday that a meal period was not provided.

94. As a proximate result of the aforementioned violations, PLAINTIFF and non-exempt Class Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

COUNT SEVEN

Failure to Provide Accurate Itemized Wage Statements

Labor Code §§ 226

(Individual and Class Claims Against All Defendants)

95. PLAINTIFF reasserts and re-alleges the allegations set forth above.

1 96. Labor Code § 226 provides that an employer must furnish employees
2 with an “accurate itemized” statement in writing showing:

3 1. Gross wages earned;

4 2. Total hours worked by the employee, except for any employee whose
5 compensation is solely based on a salary and who is exempt from
6 payment of overtime under subdivision (a) of Section 515 or any
applicable order of the Industrial Welfare Commission;

7 3. The number of piece-rate units earned and any applicable piece rate if
the employee is paid on a piece-rate basis;

8 4. All deductions, provided that all deductions made on written orders of
9 the employee may be aggregated and shown as one item;

10 5. Net wages earned;

11 6. The inclusive dates of the period for which the employee is paid;

12 7. The name of the employee and his or her social security number,
13 except that by January 1, 2008, only the last four digits of his or her social
security number or an employee identification number other than a social
security number may be shown on the itemized statement;

14 8. The name and address of the legal entity that is the employer; and

15 9. All applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the
employee.

17 97. During the LABOR CLASS PERIOD, DEFENDANTS failed to
18 provide PLAINTIFF and the other members of the Class with complete and accurate
19 wage statements which failed to show, among other things, (1) gross wages earned
20 (i.e., which should have been paid had PLAINTIFF and Class members been
21 properly classified); (2) total number of hours worked; (3) deductions; (4) net wages
22 earned; and (5) all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee, all in
24 violation of Labor Code Section 226.

25 98. DEFENDANTS knowingly and intentionally failed to comply with
26 Labor Code § 226, causing injury and damages to the PLAINTIFF and the other
27 members of the Class. These damages include, but are not limited to, costs expended
28

1 calculating the correct rates for the overtime worked and the amount of employment
2 taxes which were not properly paid to state and federal tax authorities. These
3 damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
4 the Class may elect to recover liquidated damages of fifty dollars (\$50.00) for the
5 initial pay period in which the violation occurred, and one hundred dollars (\$100.00)
6 for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, all
7 in an amount according to proof at the time of trial (but in no event more than four
8 thousand dollars (\$4,000.00)) for PLAINTIFF and each respective member of the
9 Class herein.

10 **COUNT EIGHT**

11 **Violation of California Sick Leave Law**

12 **Labor Code § 246, et seq.**

13 **(Individual and Class Claims Against All Defendants)**

14 99. PLAINTIFF reasserts and re-alleges the allegations set forth above.

15 100. Labor Code § 246(b) provides in relevant part that “An employee shall
16 accrue paid sick days at the rate of not less than one hour per every 30 hours
17 worked, beginning at the commencement of employment. . . .”

18 101. Labor Code § 246(c) provides in relevant part that “An employee shall
19 be entitled to use accrued paid sick days beginning on the 90th day of employment,
20 after which day the employee may use paid sick days as they are accrued.”

21 102. Labor Code § 246(i) provides in relevant part that “An employer shall
22 provide an employee with written notice that sets forth the amount of paid sick leave
23 available, or paid time off leave an employer provides in lieu of sick leave, for use
24 on either the employee’s itemized wage statement described in Section 226 or in a
25 separate writing provided on the designated pay date with the employee’s payment
26 of wages.”

27 103. At no time during PLAINTIFF’s employment and, on information and
28 belief, the employment of other Class members, were PLAINTIFF or Class

1 members permitted to accrue sick days, either at an increment of one hour per every
2 30 hours, or at any other increment, nor were they given a “pre-loaded” number of
3 hours at the start of every calendar year or anniversary date, or otherwise.

4 104. At no time during PLAINTIFF’s employment and, on information and
5 belief, the employment of other Class members, were PLAINTIFF or Class
6 members entitled to use accrued paid sick days beginning on the 90th day of
7 employment. In fact, when PLAINTIFF was unable to work due to illness,
8 following the 90th day of his employment, he was not compensated for the days that
9 he did not work, although he would have had sufficient time accrued to cover his
10 absence had DEFENDANTS been in compliance.

11 105. At no time during PLAINTIFF’s employment and, on information and
12 belief, the employment of other Class members, did DEFENDANTS provide
13 PLAINTIFF or Class members with written notice that sets forth the amount of paid
14 sick leave available, or paid time off leave that DEFENDANTS provide in lieu of
15 sick leave, either on an itemized wage statement (which DEFENDANTS did not
16 provide either), or in a separate writing provided on the designated pay date with the
17 payment of wages.

18 106. From time to time, PLAINTIFF and, on information and belief, other
19 members of the Class were compensated at an hourly rate plus bonuses. As a matter
20 of law, the bonus compensation received by PLAINTIFF and other members of the
21 Class must be included in the “regular rate of pay.”

22 107. DEFENDANT’s uniform policy and practice of failing to permit Class
23 members to accrue sick leave, of failing to compensate Class members with sick pay
24 when they were unable to work due to illness or another covered reason, and of
25 failing to notify Class members of the amount of sick leave available, resulted in the
26 nonpayment of sick pay wages to PLAINTIFF and other members of the Class.
27 PLAINTIFF and other members of the Class therefore request recovery of all unpaid
28 wages, including sick pay wages, according to proof, interest, statutory costs, as

1 well as the assessment of any statutory penalties against DEFENDANT, in a sum as
2 provided by the Labor Code and/or other applicable statutes.

3 108. Further, PLAINTIFF and other members of the CALIFORNIA CLASS
4 are entitled to seek and recover statutory costs.

5 **COUNT FOUR**

6 **Failure to Pay Waiting Time Penalties**

7 **Labor Code §§ 201, 203**

8 **(Individual and Class Claim alleged against all Defendants)**

9 109. PLAINTIFF reasserts and re-alleges the allegations set forth above.

10 110. Labor Code § 201 states that an employer is required to provide an
11 employee who is terminated all accrued wages and compensation at the time of
12 termination.

13 111. Labor Code § 203 states that if an employer willfully fails to pay
14 compensation promptly upon discharge, as required by § 201, then the employer is
15 liable for waiting time penalties equivalent to the employee's daily wage, for a
16 maximum of 30 days.

17 112. PLAINTIFF and numerous Class members who were employed by
18 DEFENDANTS were terminated on or about April 30, 2024. Upon termination,
19 however, PLAINTIFF and, on information and belief, other Class members were not
20 paid all wages and paid time off that were due within the statutory time period.

21 113. DEFENDANTS are employers who willfully failed and refused to pay
22 timely compensation and wages for, among other things, unpaid back wages and
23 personal time off.

24 114. On information and belief, some or all of the DOE Defendants are also
25 liable for violations of Section 203 of the Labor Code because they are “other
26 person[s] acting on behalf of an employer” pursuant to Labor Code § 558.1. They
27 personally and willfully acted to violate Section 203, and caused Section 203 to be
28

1 violated, by failing to pay terminated employees all accrued wages and
2 compensation at the time of their termination.

3 115. As a direct and proximate result of DEFENDANTS' willful conduct in
4 failing to pay PLAINTIFF and former employee Class members for all hours
5 worked, PLAINTIFF and affected members of the class are entitled to recover
6 "waiting time" penalties of up to thirty (30) days' wages pursuant to § 203, with
7 interest thereon, and reasonable attorneys' fees and costs.

8 **COUNT TEN**

9 **Unfair Business Practices**

10 **Business & Professions Code § 17200, et seq.**

11 **(Individual and Class Claims Against All Defendants)**

12 116. PLAINTIFF reasserts and re-alleges the allegations set forth above.

13 117. Business and Professions Code section 17200 et seq. makes it illegal to
14 engage in "unlawful, unfair, or fraudulent business act or practice and unfair,
15 deceptive, untrue or misleading advertising."

16 118. Through the acts complained of in this Complaint, DEFENDANTS
17 engaged in unfair competition within the meaning of Business and Professions Code
18 section 17200 et seq.

19 119. DEFENDANTS have committed, and continue to commit, unlawful,
20 unfair, and/or fraudulent business acts or practices, as defined in Business &
21 Professions Code section 17200, by among other things, engaging in the unlawful,
22 unfair, and/or fraudulent acts complained of by PLAINTIFF in this Complaint.

23 120. DEFENDANTS engaged in and continue to engage in acts and
24 practices in violation of Business & Professions Code section 17200 by violating,
25 among other things, California common law for tortious conduct in violation of
26 California law, of the Labor Code and FLSA as alleged herein.

1 121. DEFENDANTS' conduct, acts, and practices in violation of the
2 California statutes and common law above each constitute a separate and
3 independent violation of Business & Professions Code section 17200 et seq.

4 122. DEFENDANTS' actions have damaged and continue to damage
5 PLAINTIFF by, among other things, violating PLAINTIFF's rights under the
6 aforementioned California statutes, common law, and as otherwise alleged in this
7 Complaint.

8 123. Accordingly, PLAINTIFF is entitled to restitution of all monies that
9 DEFENDANTS have improperly, unfairly, fraudulently, and/or unlawfully withheld
10 from PLAINTIFF, to be determined according to proof at trial.

11 124. Pursuant to Business & Professions Code section 17200, PLAINTIFF
12 also seeks and are entitled to an injunction prohibiting DEFENDANTS, and each of
13 them, from engaging in any further acts of unfair competition in violation of section
14 17200 et seq.

15 **COUNT ELEVEN**

16 **Violations of Labor Code Private Attorney General Act**

17 **Labor Code § 2698, et seq.**

18 **(Individual and Collective Action against all Defendants)**

19 125. PLAINTIFF reasserts and re-alleges the allegations set forth above.

20 126. PLAINTIFF, as an aggrieved employee, brings a claim under Labor
21 Code § 2698, et seq. in a representative capacity on behalf of current and former
22 insurance sales agents of DEFENDANTS whose employment was terminated
23 pursuant to the cessation of ASSURANCE's sale of insurance policies, and were
24 subjected to the unlawful wage and hour practices alleged herein.

25 127. The Labor Code Private Attorneys General Act of 2004
26 ("PAGA"), Labor Code § 2698, et seq., grants California employees the right to
27 bring a civil action for the violation of any provision of the Labor Code on behalf of
28 themselves and other current or former employees in order to recover civil penalties.

1 PAGA is intended to assist in the achievement of maximum compliance with state
2 labor laws by empowering aggrieved employees to act as private attorneys general
3 in order to recover civil penalties for Labor Code violations that would otherwise be
4 prosecuted by the state. See *Arias v. Superior Court* 46 Cal.4th 969, 980 (2009).

5 128. PAGA permits an aggrieved employee to collect the civil penalty
6 authorized by law and normally collectible by the California Labor and Workforce
7 Development Agency. To address violations for which no penalty has been
8 established, section 2699(f) creates a private right of action for aggrieved
9 employees and a default penalty in the amount of \$100 for each aggrieved employee
10 per pay period for the initial violation, and \$200 for each aggrieved employee per
11 pay period for each subsequent violation.

12 129. PLAINTIFF hereby seeks to collect these civil penalties for the Labor
13 Code violations described above, except where the civil penalty is provided by the
14 statute itself, as well as the following:

15 130. Under Labor Code § 558, civil penalties of fifty dollars (\$50) for
16 PLAINTIFF and each aggrieved employee per pay period for the initial violation of
17 Labor Code § 558 where PLAINTIFF and aggrieved employees were not given
18 unpaid and or compensated for underpaid wages; and for each subsequent violation,
19 one hundred dollars (\$100) for each underpaid aggrieved employee for each pay
20 period.

21 131. Labor Code § 2699(g) further provides that any employee who prevails
22 in an action for civil penalties is entitled to an award of reasonable attorneys' fees
23 and costs. PLAINTIFF hereby seeks to recover his attorneys' fees and costs under
24 this fee and cost provision.

25 132. On April 30, 2025, pursuant to Labor Code § 2699.3 and Cal. Senate
26 Bill No. 838, PLAINTIFF timely submitted online notice to the Labor and
27 Workforce Development Agency (LWDA) of the specific provisions of the Labor
28

1 Code that have been violated, including the facts and theories to support the
2 violations, including the following:

- 3 a. Labor Code §§ 201-203 (waiting time penalties);
- 4 b. Labor Code §§ 204(b),(d) & 210 (failure to pay for all work
5 performed, and for excessive labor no later than next payroll period; penalties
6 thereon);
- 7 c. Labor Code §§ 225 and 225 .5 (criminal and civil penalties for
8 wage violations);
- 9 d. Labor Code §§ 226(a), (e) and 226.3 (failure to furnish accurate
10 itemized wage statements; penalties);
- 11 e. Labor Code § 226.7 (meal period violations);
- 12 f. Labor Code § 226.8 (misclassification);
- 13 g. Labor Code § 246 (failure to provide accrued sick leave or
14 include in separate writing);
- 15 h. Labor Code § 510 (failure to provide overtime compensation);
- 16 i. Labor Code § 512(a) (failure to provide meal periods);
- 17 j. Labor Code § 553 and 558 (criminal and civil penalties for wage
18 violations);
- 19 k. Labor Code § 1402 and 1403 (California WARN Act);
- 20 l. Labor Code § 1174(d), 1174.5, 1175 (failure to keep at central
21 location accurate payroll records showing hours worked, wages paid, and other
22 required information);
- 23 m. Labor Code §§ 1182.12, 1194, 1197, 1197.1 and 1199 (failure to
24 pay minimum wage and/or overtime compensation);
- 25 n. Labor Code § 1198 (right of action for violation of IWC Wage
26 Orders); and
- 27 o. IWC Wage Order No. 4-2001, and/or any other applicable wage
28 order

1 133. PLAINTIFF sent this notice to DEFENDANTS by certified mail, as
2 required by statute.

3 134. The case was subsequently assigned Case No. LWDA-CM-1095829-
4 25. LWDA has not informed PLAINTIFF that it will be pursuing any claims.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF, on behalf of himself and all similarly situated
7 employees, demands judgment against DEFENDANTS, and each of them, and
8 prays for:

9 (1) an order certifying that the action may be maintained as a class action
10 under Federal Rule of Civil Procedure 23;

11 (2) designation of the named PLAINTIFF as the representative of the class
12 and counsel of record as Class Counsel;

13 (3) that the Court declare that DEFENDANTS' policies and/or practices of
14 misclassifying PLAINTIFF and Class Members as independent contractors violated
15 California law;

16 (4) that the Court declare that DEFENDANTS' policies and/or practices
17 constituted a pattern or practice of willful misclassification in violation of Labor
18 Code § 226.8;

19 (5) an award to PLAINTIFF and Class Members of damages in the amount of
20 unpaid overtime wages, minimum wages, liquidated damages, interest, and penalties
21 subject to proof at trial;

22 (6) an award of damages and penalties to PLAINTIFF and the Class Members
23 for DEFENDANTS' failure to provide accurate itemized wage statements, pursuant
24 to Labor Code § 226(a);

25 (7) an award to PLAINTIFF and the Class Members of one (1) hour of
26 additional pay at the regular rate of compensation for each workday that meal
27 periods were not provided, pursuant to Labor Code § 226.7 and Wage Order 5(11),
28 and interest thereon;

1 (8) compensatory damages in an amount equal to at least the amounts
2 provided by the WARN Act (29 U.S.C. § 2104(a); Labor Code § 1402(a));

3 (9) reasonable attorneys' fees, costs and disbursements as allowed by the
4 WARN Act (20 U.S.C. § 2104(1)(6); Labor Code § 1404);

5 (10) "waiting time penalties" pursuant to Labor Code § 203 with interest
6 thereon, and reasonable attorneys' fees and costs;

7 (11) an order that DEFENDANTS make restitution to PLAINTIFF and Class
8 Members for DEFENDANTS due to their unlawful business practices as described
9 herein pursuant to California Business and Professions Code §§ 17200-17205 and
10 Labor Code § 1199;

11 (12) an award to Class Representative PLAINTIFF and the Class Members of
12 reasonable attorneys' fees and costs, pursuant to California Civil Procedure Code §
13 1021.5, Labor Code §§ 226, 1194, and/or other applicable law;

14 (13) PAGA civil penalties, and reasonable attorney fees and costs, under
15 Labor Code § 2698, et seq.;

16 (14) such other relief as the Court deems fair and equitable.

17 **DEMAND FOR JURY TRIAL**

18 PLAINTIFF hereby requests trial by jury of all issues triable by jury.
19

20 Dated: June 23, 2025

LAW OFFICES OF BENJAMIN DAVIDSON, P.C.

21
22 By: 

23 BENJAMIN DAVIDSON, ESQ.

24 Attorneys for Plaintiff,

25 MARK STEELE
26
27
28

CIVIL COVER SHEET
of 2

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MARK STEELE, individually, and on behalf of all other similarly situated and aggrieved employees

(b) County of Residence of First Listed Plaintiff San Diego, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Law Offices of Benjamin Davidson, P.C., 116 S. Catalina Ave. #101, Redondo Beach, CA 90277, 323.713.0010

DEFENDANTS

ASSURANCE IQ, LLC; PRUDENTIAL FINANCIAL, INC.; and DOES 1-20, inclusive

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'25CV1614 BEN AHG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | ☒ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☒ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☒ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 1332

Brief description of cause:

Misclassification as independent contractor; Federal WARN Act; Cal-WARN Act; Failure to Pay Overtime; Failure to Pay Minimum Wages; etc.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
Over \$5,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

June 23, 2025

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.