

HUNTER PYLE, SBN 191125
ANDREA A. NÚÑEZ, SBN 340062
HUNTER PYLE LAW
505 14th Street, Suite 600
Oakland, California 94612
Telephone: (510) 444-4400
Facsimile: (510) 444-4410
Email: hunter@hunterpylelaw.com
anunez@hunterpylelaw.com

Attorneys for Plaintiff JULIE DEAN
and the Putative Class

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
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Chad Finke, Executive Officer / Clerk of the Court
By: D. Drew, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

JULIE DEAN, on behalf of herself and all
others similarly situated;

Plaintiff,

v.

FREEMODEL, INC.; JOHN GERALD
GARNER; and DOES 1 through 10, inclusive;

Defendants.

Case No. 23CV038315

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

- 1. FAILURE TO REIMBURSE BUSINESS EXPENSES (Lab. Code § 2802)**
- 2. FAILURE TO PAY MINIMUM WAGES (Lab. Code §§ 226.2, 1182.11–1182.13, 1194, 1194.2, 1197 & 1198, IWC Wage Order No. 4-2001)**
- 3. FAILURE TO PAY OVERTIME WAGES (Lab. Code §§ 510 & 1194, IWC Wage Order No. 4-2001)**
- 4. FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (Lab. Code §§ 226.7 & 512, IWC Wage Order No. 4-2001)**
- 5. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS (Lab. Code §§ 226.2 & 226.7, IWC Wage Order No. 4-2001)**
- 6. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (Lab. Code § 226, IWC Wage Order No. 4-2001)**
- 7. UNLAWFUL BUSINESS PRACTICES (Bus. & Prof. Code § 17200 *et seq.*)**
- 8. WRONGFUL TERMINATION IN**

VIOLATION OF PUBLIC POLICY
9. BREACH OF CONTRACT
10. PENALTIES UNDER THE PRIVATE
ATTORNEYS GENERAL ACT (Lab. Code
§ 2698 *et seq.*)

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. This is a class action under Code of Civil Procedure section 382 and a representative action under Labor Code section 2698, *et seq.*, brought by plaintiff JULIE DEAN (“Plaintiff”).

2. Plaintiff seeks to represent a class comprised of all individuals who entered into Project Director Agreements with defendant FREEMODEL, INC. (“Freemodel”) and/or worked as Project Directors for Freemodel in California (“Class Members” or “Project Directors”).

3. This is an action for relief from Freemodel’s unlawful misclassification of its Project Directors as independent contractors.

4. Freemodel has engaged Plaintiff and similarly situated Project Directors to provide home renovation project management services for Freemodel’s clients.

5. Project Directors do not meet the requirements of *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018) or Labor Code section 2750.3 to be classified as independent contractors rather than employees. Alternatively, Project Directors have not been properly classified as independent contractors based on the factors described in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341 (1989).

6. First, Project Directors are not free from the control and direction of Freemodel. Second, Project Directors perform work that is in the usual course of Freemodel’s business, i.e., providing home renovation services. And third, Project Directors are not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

7. Plaintiff challenges Freemodel’s policy of willfully and unlawfully misclassifying Project Directors as independent contractors and thereby failing to indemnify them for employment-related expenses; failing to pay minimum wages for all hours worked; failing to pay overtime wages; failing to provide off-duty meal periods; failing to permit and authorize paid, off-duty rest periods; and failing to provide accurate wage statements; all in violation of the California Labor Code and California’s Industrial Welfare Commission Wage Order No. 4-2001 (“IWC Wage Order No. 4-2001”).

8. Freemodel’s misclassification policy has been in effect during the four years prior to

1 the filing of this action.

2 9. Plaintiff brings claims under California law for reimbursement of business expenses
3 and losses, unpaid minimum wages, unpaid overtime wages, premium pay for missed meal periods,
4 premium pay for missed and unpaid rest periods, unprovided wage statements, unlawful business
5 practices, and liquidated damages, restitution, interest, penalties, and attorneys' fees and costs.
6 These are class claims brought on behalf of a class of Project Directors employed by Freemodel
7 during the period commencing four years prior to the filing of this action (the "Class Period").

8 10. Plaintiff also brings a claim seeking penalties under the Private Attorneys General
9 Act, Labor Code section 2698, *et seq.* ("PAGA").

10 11. In addition to her class and representative claims, Plaintiff brings individual claims
11 for wrongful termination in violation of public policy and breach of contract. These claims stem
12 from Freemodel's retaliatory termination of Plaintiff following the filing of her original complaint.

13 II. VENUE AND JURISDICTION

14 12. Venue is proper in this judicial district pursuant to Code of Civil Procedure section
15 395(a). Freemodel transacts business and has employed Plaintiff and other Class Members in
16 Alameda County. The unlawful acts alleged here have occurred in and have a direct effect on
17 Plaintiff and those similarly situated within the State of California and Alameda County.

18 13. This Court has jurisdiction over this class action pursuant to Article 6, section 10 of
19 the California Constitution and California Code of Civil Procedure section 410.10.

20 14. Plaintiff is informed and believes and thereon alleges that Plaintiff's and Class
21 Members' monetary claims total less than \$75,000.00 per person.

22 III. PARTIES

23 A. PLAINTIFF

24 15. Plaintiff JULIE DEAN was a Project Director employed by Freemodel in
25 California.

1 16. Plaintiff worked for Freemodel pursuant to a “Project Director Agreement,” which
2 misclassified her as an independent contractor. Plaintiff performed work for Freemodel across
3 different counties in the San Francisco Bay Area, including Alameda County.

4 17. Freemodel did not reimburse Plaintiff for her employment-related expenses and
5 losses; failed to pay her minimum and overtime wages; failed to provide off-duty meal periods;
6 failed to permit and authorize paid, off-duty rest periods; and failed to provide her accurate wage
7 statements.

8 **B. DEFENDANTS**

9 18. Freemodel is a Delaware corporation. It provides home renovation services to
10 clients in northern and southern California, including in Alameda County.

11 19. John Gerald Garner (“Garner”) is the Chief Executive Officer, Chief Financial
12 Officer, and Secretary for Freemodel. Upon information and belief, in this capacity Garner is and
13 was a director, officer, and/or managing agent of Freemodel. Garner is therefore personally liable
14 under Labor Code section 558.1, which allows for “an owner, director, officer, or managing agent
15 of the employer” to be held personally liable as the employer for violations of “any provision
16 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
17 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
18 2802.” In his capacity as CEO, Garner signed Plaintiff’s Project Director Agreement on behalf of
19 Freemodel. In signing this Agreement, Garner had advance knowledge of Plaintiff’s
20 misclassification as an independent contractor and the corresponding legal violations pleaded here.

21 20. The true names and capacities, whether individual, corporate, associate, or
22 otherwise, of the defendants sued as DOES 1 through 10 are currently unknown to Plaintiff, who
23 therefore sues these defendants by fictitious names under Code of Civil Procedure section 474.
24 Plaintiff is informed and believes and thereon alleges that each of the defendants designated as a
25 DOE is legally responsible in some manner for the unlawful acts referred to here. Plaintiff will
26 seek leave of court to amend this Complaint to include the true names and capacities of the
27 defendants designated as DOES when these identities become known.

21. Plaintiff and Class Members are informed and believe that each defendant is liable to Plaintiff and the Class Members as an “employer,” as defined in section 2(H) of Wage Order No. 4-2001. As employers of Plaintiff and Class Members during the Class Period, defendants, and each of them, are either solely or jointly and severally liable for the economic damages, including statutory penalties, owed to Plaintiff and Class Members under common law and by statute.

IV. STATEMENT OF FACTS

22. Freemodel is a licensed general contractor that provides home renovation services in northern and southern California. Freemodel assigns these renovation contracts to its Project Directors, who provide a variety of project management services to oversee the completion of each project.

23. On April 30, 2022, Plaintiff signed a “Project Director Agreement” (the “Contract”) that initiated her services as a Project Director for Freemodel. Defendant John Gerald Garner acted in his capacity as Chief Executive Officer and signed the Contract on behalf of Freemodel.

24. Under the Contract and in fact, Plaintiff's primary job duty was to provide project management services for Freemodel's home renovations. Plaintiff's Contract describes her job duties, stating that the Project Director "will visit properties, take photos, capture LIDAR scans, draft scopes of work, select and manage subcontractors, purchase finish materials, and provide regular progress reports to agents and homeowners."

25. The Contract further provides that the “Project Director is an independent contractor and is not an employee, agent, partner or joint venturer of Freemodel” (emphasis in original).

26. Project Directors' services are integral to Freemodel's business because the home renovation contracts that they manage are Freemodel's core business and sole or primary source of revenue.

27. Project Directors perform their project management services under Freemodel's control and direction using highly systematized processes developed and required by Freemodel and using tools, products, and equipment supplied by Freemodel. For example, Freemodel requires Project Directors to use a prewritten pitch of services to homeowners, use Freemodel-provided

1 email and spreadsheet templates for creating project proposals, track their opportunities and
2 contracts in Freemodel's Customer Relationship Management platform, use an application
3 developed by Freemodel for logging project updates, choose from Freemodel's preselected
4 subcontractors, use a Freemodel credit card and follow the company's purchase reporting
5 requirements, communicate with clients and Freemodel using a freemodel.com email address, and
6 have regular, mandatory meetings with management when a Project Director's performance does
7 not meet expectations.

8 28. In performing their job duties, Plaintiff and Class Members regularly worked more
9 than eight hours in a day, more than forty hours in a workweek, and for seven consecutive days.

10 29. Freemodel requires Project Directors to pay for certain business-related expenses,
11 including costs associated with travel and driving their own vehicles, using their personal cell
12 phones and home internet, copying and printing documents, and acquiring tools necessary for
13 creating renovation estimates. Freemodel does not reimburse its Project Directors for these
14 expenses.

15 30. Freemodel pays Project Directors on a purely commission basis, regardless of hours
16 worked. The Contract sets their compensation at fifty percent of the actual profit earned per
17 assigned contract. Project Directors earn twenty-five percent of a contract's estimated profit when
18 the contract is executed. Then, when the contract is completed, they earn fifty percent of the
19 contract's actual profit minus the amount previously received.

20 31. Payment to Project Directors is therefore irregular and inconsistent. For many two-
21 week periods, Freemodel has not paid Plaintiff and Class Members anything, despite Plaintiff and
22 Class Members working during those periods.

23 32. When Freemodel pays a Project Director a commission, the Project Director
24 receives an email confirmation of payment that contains only the payment amount and the name of
25 the associated project. Project Directors do not receive wage statements that accurately state the
26 number of hours worked with applicable pay rates or that account for paid rest breaks.

27 33. At all relevant times, the California Labor Code and Wage Order No. 4-2001 have
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1 applied to Plaintiff and Class Members.

2 34. Defendants' uniform classification and treatment of Plaintiff and Class Members as
3 independent contractors rather than employees has been unlawful at all relevant times.

4 35. As a result of Defendants misclassifying Plaintiff and Class Members as
5 independent contractors, Defendants have willfully and knowingly failed to reimburse them for
6 necessary employment-related expenditures and losses, including costs associated with travel and
7 driving Class Members' own vehicles, using their personal cell phones and home internet, copying
8 and printing documents, acquiring necessary tools, and other costs expended in service of
9 Freemodel and its clients.

10 36. As a result of Defendants misclassifying Plaintiff and Class Members as
11 independent contractors, Defendants have failed to pay them minimum wage compensation for all
12 hours worked.

13 37. As a result of Defendants misclassifying Plaintiff and Class Members as
14 independent contractors, Defendants have failed to pay them overtime wage compensation for
15 hours worked in excess of eight per day, in excess of forty per workweek, and for a seventh
16 consecutive workday.

17 38. As a result of Defendants misclassifying Plaintiff and Class Members as
18 independent contractors, Defendants have regularly failed to provide a thirty-minute off-duty meal
19 period to Plaintiff and Class Members who worked more than five hours in a day. Defendants have
20 also regularly failed to provide a second thirty-minute meal period to Plaintiff and Class Members
21 who worked more than ten hours in a day.

22 39. As a result of Defendants misclassifying Plaintiff and Class Members as
23 independent contractors, Defendants have regularly failed to authorize and permit ten-
24 minute off-duty, paid rest periods to Plaintiff and Class Members for every four hours worked or
25 major fraction thereof.

26 40. Plaintiff is informed and believes and thereon alleges that, through common
27 practices, policies, or schemes, Defendants misclassified Plaintiff and Class Members as
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1 independent contractors and failed to reimburse them for business expenses and failed to pay them
2 wages owed and compensation for missed meal and rest breaks in order to systematically deprive
3 them of the benefits and protections applicable to employees under California law.

4 41. Plaintiff's written Contract with Freemodel ended on December 31, 2022.
5 Freemodel informed Plaintiff and other Project Directors that it would issue new written contracts
6 after it revised the contracts' non-compete provision. Freemodel, Plaintiff, and other Project
7 Directors continued to perform as if their prior written contracts were still in effect.

8 42. On July 14, 2023, Plaintiff filed her original complaint in this action. On July 25,
9 Plaintiff discovered that Freemodel had locked her out of her company email account, her company
10 credit card account, and her account for Slack, a messaging and productivity platform used by
11 Freemodel.

12 43. Plaintiff's Contract provides:

13 Freemodel also may terminate this Agreement at any time, with or without cause,
14 upon thirty (30) days' notice, but, if (and only if) such termination is without cause,
15 Freemodel shall upon such termination pay Project Director all unpaid, undisputed
amounts due for the Services completed prior to notice of such termination.

16 44. Freemodel did not provide Plaintiff with thirty days' notice that it was terminating
17 her Contract. Freemodel also did not pay Plaintiff all amounts due to her under the Contract upon
18 termination.

19 V. CLASS ACTION ALLEGATIONS

20 45. Plaintiff brings this lawsuit as a class action pursuant to Code of Civil Procedure
21 section 382 on behalf of herself and all similarly situated employees. The class Plaintiff seeks to
22 represent (the "Class") is defined as:

23 All individuals who entered into Project Director Agreements with Freemodel
24 and/or worked as Project Directors for Freemodel in California at any time
25 during the Class Period.

26 46. The claims here have been brought and may properly be maintained as a class action
27 under Code of Civil Procedure section 382 because there is a well-defined community of interest
28 among Class Members with respect to the claims asserted, and the Class is easily ascertainable:

1 a. Ascertainability and Numerosity: The potential members of the Class are so
2 numerous that joinder would be impracticable. Plaintiff is informed and believes and on such
3 information and belief alleges that Freemodel has employed more than fifty (50) Class Members in
4 California during the Class Period. The names and addresses of the Class Members are available
5 from Freemodel. Notice can be provided to the Class Members via First-Class Mail using
6 techniques and a form of notice similar to those customarily used in class action lawsuits of this
7 nature.

8 b. Commonality: There are questions of law and fact common to Plaintiff and
9 Class Members that predominate over any questions affecting only individual members of the
10 Class. These common questions of law and fact include but are not limited to:

- 11 i. Whether Defendants misclassified Project Directors as independent
12 contractors;
- 13 ii. Whether Defendants have violated Labor Code sections 1182.11–1182.13,
14 1194, 1194.2, 1197, and 1198, and IWC Wage Order No. 4-2001 by failing
15 to pay the minimum wage for all work performed and for rest breaks;
- 16 iii. Whether Defendants have violated Labor Code sections 510 and 1194 and
17 IWC Wage Order No. 4-2001 by failing to pay overtime wages;
- 18 iv. Whether Defendants have violated Labor Code sections 226.7 and 512 and
19 IWC Wage Order No. 4-2001 by failing to provide meal periods and by
20 failing to authorize and permit rest periods;
- 21 v. Whether Freemodel has violated Labor Code section 2802 by failing to
22 reimburse or indemnify Project Directors for business-related expenses,
23 including but not limited to costs associated with travel and driving Class
24 Members' own vehicles, using their personal cell phones and home internet,
25 copying and printing documents, and acquiring necessary tools;
- 26 vi. Whether Freemodel has knowingly and intentionally failed to provide
27 Project Directors with an itemized statement showing all hours worked,
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1 time paid for rest breaks, and applicable wage rate information, as required
2 by Labor Code section 226, IWC Wage Order No. 4-2001, section 7, and
3 the UCL;

4 vii. What relief is necessary to remedy Defendants' unfair and unlawful
5 conduct as alleged; and

6 viii. Other questions of law and fact.

7 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Plaintiff
8 and all Class Members have sustained injuries-in-fact due to their damages arising out of and
9 caused by Defendants' common course of conduct in violation of law as alleged.

10 d. Adequacy of Representation: Plaintiff is a member of the Class that she
11 seeks to represent and will fairly and adequately represent and protect the interests of Class
12 Members. Counsel representing Plaintiff is competent and experienced in litigating wage and hour
13 class actions.

14 e. Superiority of Class Action: A class action is superior to other available
15 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
16 Members is not practicable, and questions of law and fact common to the Class predominate over
17 any questions affecting only individual members of the Class. Each Class Member has suffered
18 injury and is entitled to recover due to Defendants' illegal policies or practices as alleged. Class
19 action treatment will allow those similarly situated persons to litigate their claims in the manner
20 that is most efficient and economical for the parties and the judicial system. Further, the
21 prosecution of separate actions against Defendants by individual Class Members would create a
22 risk of inconsistent or varying adjudications that would establish incompatible standards of conduct
23 for Freemodel.

24 VI. DAMAGES

25 47. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff and
26 similarly situated Project Directors are owed, among other damages, reimbursement for business
27 expenses plus interest, compensation for all hours worked plus interest, payments for meal and rest
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1 period violations plus interest, wage statement penalties under Labor Code section 226, and other
2 statutory penalties in an amount that exceeds \$25,000, the precise amount of which will be proven
3 at trial.

4 **VII. CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO INDEMNIFY EMPLOYEES FOR BUSINESS-RELATED EXPENSES**

7 **(Labor Code § 2802)**

8 **(Class Members Against All Defendants)**

9 48. The allegations of each of the preceding paragraphs are realleged and incorporated
10 here by reference, and Plaintiff alleges as follows a cause of action on behalf of herself and the
11 above-described Class of similarly situated Project Directors employed by Freemodel in California.

12 49. Labor Code section 2802 provides: “An employer shall indemnify his or her
13 employee for all necessary expenditures or losses incurred by the employee in direct consequence
14 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
15 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
16 be unlawful. . . . For purposes of this section, the term ‘necessary expenditures or losses’ shall
17 include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee
18 enforcing the rights granted by this section.”

19 50. While acting on the direct instruction of Freemodel and discharging their duties for
20 Freemodel, Plaintiff and other Class Members incurred work-related business expenses, including
21 costs associated with travel and driving Class Members’ own vehicles, using their personal cell
22 phones and home internet, copying and printing documents, and acquiring necessary tools.
23 Freemodel did not reimburse them.

24 51. By requiring Plaintiff and Class Members to incur business expenses in direct
25 consequence of the discharge of their duties for Freemodel or in obedience to Freemodel’s
26 direction without fully reimbursing or indemnifying employees for these expenses, Freemodel
27 violated and continues to violate Labor Code section 2802.

52. As a direct and proximate result of Freemodel's unlawful practices and policies, Plaintiff and Class Members have suffered monetary losses and are entitled to restitution of all expenses incurred in the performance of their work duties, including interest, reasonable attorneys' fees and costs, and all applicable statutory penalties available for Freemodel's violations of Labor Code section 2802.

53. Plaintiff, on behalf of herself and the proposed Class, requests reimbursement or indemnification for the required business expenses as stated here and other relief as described below.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED

(Labor Code §§ 226.2, 1182.11–1182.13, 1194, 1194.2, 1197 & 1198;

Wage Order No. 4-2001; Cal. Code of Regs., tit. 8 § 11090)

(Class Members Against All Defendants)

54. The allegations of each of the preceding paragraphs are realleged and incorporated here by reference, and Plaintiff alleges as follows a cause of action on behalf of herself and the above-described Class of similarly situated Project Directors employed by Freemodel in California.

55. Throughout the Class Period, Labor Code sections 1182.11–1182.13, 1194, 1197, and Wage Order No. 4-2001 were in full force and effect and required that Freemodel’s non-exempt employees receive at least the minimum wage for all hours worked.

56. Throughout the Class Period, as a result of Freemodel's policies and practices, Freemodel failed to pay Class Members, and continually fails to pay them, minimum wages as required by law for all hours worked. Specifically, Freemodel paid Class Members on a purely commission basis and did not compensate them for all hours worked while carrying out their project management duties in service of Freemodel and for rest breaks. The commissions that Freemodel paid Plaintiff regularly failed to meet the requirements of applicable minimum wage laws.

57. As a direct and proximate result of Defendants' acts or omissions, Plaintiff and

1 Class Members have suffered economic damages in amounts to be determined at trial.

2 58. Labor Code section 1194(a) provides that an employee who has not been paid
3 minimum wages as required by section 1197 may recover the unpaid balance of the full amount of
4 those wages, interest thereon, attorneys' fees, and the costs of suit.

5 59. Labor Code section 1194.2 provides that employees who have not been paid at least
6 minimum wages for their hours worked are entitled to recover liquidated damages in an amount
7 equal to the minimum wages that a defendant unlawfully failed to pay them in amounts according
8 to proof at the time of trial.

9 60. Additionally, Defendants did not maintain adequate and accurate records of all
10 wages earned, hours worked, and meal and rest breaks taken in violation of Wage Order No. 4-
11 2001, section 7.

12 61. Plaintiff, on behalf of herself and the Class, requests restitution of unpaid wages,
13 liquidated damages, attorneys' fees and costs under Labor Code section 1194, and other relief as
14 described below.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME WAGES**

17 **(Labor Code §§ 510 & 1194, IWC Wage Order No. 4-2001)**

18 **(Class Members Against All Defendants)**

19 62. The allegations of each of the preceding paragraphs are realleged and incorporated
20 here by reference, and Plaintiff alleges as follows a cause of action on behalf of herself and the
21 above-described Class of similarly situated Project Directors employed by Freemodel in California.

22 63. Labor Code section 510 and Wage Order 4-2001, section 3(A) provide that any
23 work in excess of eight hours in one workday, any work in excess of forty hours in one workweek,
24 and the first eight hours worked on the seventh consecutive day of work in any workweek must be
25 compensated at the rate of at least one and one-half times the employee's regular rate of pay.

26 These sections further provide that any work in excess of twelve hours in one day and any work in
27 excess of eight hours on any seventh consecutive day of a workweek must be compensated at the
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1 rate of at least twice the employee's regular rate of pay.

2 64. Class Members have worked and continue to work in excess of eight hours per day,
3 in excessive of forty hours per workweek, and for seven consecutive days. Yet, Defendants have
4 unlawfully failed to pay Plaintiff and Class Members proper overtime compensation.

5 65. As a result of these violations and pursuant to Labor Code section 1194, Plaintiff
6 and Class Members are entitled to their unpaid overtime compensation, interest thereon, and
7 attorney's fees and costs.

8 66. Plaintiff, on behalf of herself and the Class, requests restitution of these unpaid
9 overtime wages and other relief as described below.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS**

12 **(Labor Code §§ 226.7 and 512, and Wage Order No. 4-2001)**

13 **(Class Members Against All Defendants)**

14 67. The allegations of each of the preceding paragraphs are realleged and incorporated
15 here by reference, and Plaintiff alleges as follows a cause of action on behalf of herself and the
16 above-described Class of similarly situated Project Directors employed by Freemodel in California.

17 68. Throughout the Class Period, California Labor Code sections 226.7 and 512 and
18 Wage Order No. 4-2001, section 11(A) were in full force and effect. Defendants were required to
19 provide employees who worked in excess of five hours a day at least a thirty-minute meal period in
20 which they were relieved of all duties and a second thirty-minute meal period to employees who
21 worked in excess of ten hours a day. Defendants were required to pay one hour of additional pay at
22 the regular rate of compensation for each workday that the proper meal periods were not provided.

23 69. Plaintiff and other Class Members have regularly worked in excess of five hours a
24 day and ten hours a day without being provided at least a thirty-minute meal period in which they
25 were relieved of all duties.

26 70. Because Defendants failed to provide meal periods, they are liable to Plaintiff and
27 other Class Members for one hour of additional pay at the regular rate of compensation for each
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1 workday that the proper meal periods were not provided, pursuant to Labor Code section 226.7(b)
2 and IWC Wage Order No. 4-2001, section 11(B).

3 71. By violating Labor Code section 226.7 and IWC Wage Order No. 4-2001, section
4 11, Defendants are also liable for interest under Labor Code section 218.6 and reasonable
5 attorneys' fees and costs under Labor Code section 218.5.

6 72. Additionally, Freemodel did not maintain adequate and accurate records of all
7 wages earned, hours worked, and meal and rest breaks taken, in violation of Wage Order No. 4-
8 2001, section 7.

9 73. Plaintiff, on behalf of herself and the Class, requests restitution of unpaid wages and
10 other relief as described below.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

13 **(Labor Code §§ 226.2 and 226.7, IWC Wage Order No. 4-2001)**

14 **(Class Members Against All Defendants)**

15 74. The allegations of each of the preceding paragraphs are realleged and incorporated
16 here by reference, and Plaintiff alleges as follows a cause of action on behalf of herself and the
17 above-described Class of similarly situated Project Directors employed by Freemodel in California.

18 75. Plaintiff and other Class Members have regularly worked in excess of three and
19 one-half hours a day without being permitted to take at least a ten minute rest period for every four
20 hours worked, or major fraction thereof, as required by Wage Order No. 4-2001, section 12 and
21 Labor Code section 226.7.

22 76. Because Defendants failed to permit proper rest periods, they are liable to Plaintiff
23 and other Class Members for one hour of additional pay at the regular rate of compensation for
24 each workday that the proper rest periods were not authorized, pursuant to Labor Code section
25 226.7(b) and Wage Order No. 4-2001, section 12(B).

26 77. Additionally, Defendants failed to separately compensate Class Members for their
27 rest periods in violation of Labor Code section 226.2.

28 78. By violating Labor Code section 226.7 and Wage Order No. 4-200, section 12

1 Defendants are also liable for interest under Labor Code section 218.6 and reasonable attorneys'
2 fees and costs under Labor Code section 218.5.

3 79. Additionally, Freemodel did not maintain adequate and accurate records of all
4 wages earned, hours worked, and meal and rest breaks taken, in violation of Wage Order No. 4-
5 2001, section 7.

6 80. Plaintiff, on behalf of herself and the Class, requests restitution of unpaid wages and
7 other relief as described below.

8 **SIXTH CAUSE OF ACTION**

9 **WAGE STATEMENT PENALTIES**

10 **(Labor Code § 226)**

11 **(Class Members Against All Defendants)**

12 81. The allegations of each of the preceding paragraphs are realleged and incorporated
13 here by reference, and Plaintiff alleges as follows a cause of action on behalf of herself and the
14 above-described Class of similarly situated Project Directors employed by Freemodel in California.

15 82. Labor Code section 226(a) requires employers semi-monthly or at the time of each
16 payment of wages to furnish each employee with a statement itemizing, among other things, the
17 total hours worked and wages earned by the employee. Labor Code section 226(e) provides that if
18 an employer knowingly and intentionally fails to provide a statement itemizing, among other
19 things, the total hours worked by the employee, then the employee is entitled to recover the greater
20 of all actual damages or fifty dollars for the initial violation and one hundred dollars for each
21 subsequent violation, up to a maximum of four thousand dollars.

22 83. Freemodel knowingly and intentionally failed to furnish Plaintiff and other Class
23 Members with timely, accurate, itemized statements showing the actual total hours worked by each
24 of them as required by Labor Code section 226(a), including time paid for rest breaks.

25 84. Plaintiff and other Class Members were damaged by this failure because, among
26 other things, they could not determine whether Freemodel had paid them all wages due.

27 85. As a result, Freemodel is liable to Plaintiff and Class Members for the amounts
28 provided by Labor Code section 226(e).

1 86. Plaintiff, on behalf of herself and the proposed Class, requests wage statement
2 penalties pursuant to Labor Code section 226 and other relief as described below.

3 **SEVENTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES**

5 **(Business & Professions Code § 17200 *et seq.*)**

6 **(Class Members Against Freemodel and Doe Defendants)**

7 87. The allegations of each of the preceding paragraphs are realleged and incorporated
8 here by reference, and Plaintiff alleges as follows a cause of action on behalf of herself and the
9 above-described Class of similarly situated Project Directors employed by Freemodel in California.

10 88. Freemodel's failure to pay legally required compensation under the applicable
11 provisions of Wage Order No. 4-2001 and the Labor Code, failure to furnish Project Directors with
12 wage statements accurately showing hours worked in accordance with Labor Code section 226,
13 failure to provide meal periods as required by Labor Code sections 226.7 and 512, failure to
14 authorize and permit rest periods as required by Labor Code section 226.7, and failure to reimburse
15 Class Members' business expenses, as alleged above, constitute unlawful or unfair activities
16 prohibited by Business and Professions Code section 17200. Plaintiff reserves the right to identify
17 additional unfair and unlawful practices by Freemodel as further investigation and discovery
18 warrants.

19 89. As a result of its unlawful or unfair acts, Freemodel has reaped and continues to
20 reap unfair benefits and illegal profits at the expense of Plaintiff and other Class Members.
21 Freemodel should be enjoined from this activity and made to restore to Plaintiff and other Class
22 Members their wrongfully withheld wages, interest thereon, and related statutory penalties,
23 pursuant to Business and Professions Code sections 17202 and 17203.

24 90. Moreover, Business and Professions Code section 17203 provides that the Court
25 may restore to an aggrieved party any money or property acquired by means of unlawful and unfair
26 business practices. Plaintiff seeks a court order requiring an audit and accounting of Freemodel's
27 payroll records to determine the amount of restitution of all unpaid wages owed to herself and
28 Class Members, according to proof, as well as a determination of the amount of funds to be paid to

1 current and former employees that can be identified and located pursuant to a court order and
2 supervision.

3 91. Plaintiff and all Class Members are “persons” within the meaning of Business and
4 Professions Code section 17204 who have suffered injury in fact as a result of Freemodel’s unfair
5 competition and who comply with the requirements of Code of Civil Procedure section 382, as set
6 forth above, and therefore have standing to bring this claim for injunctive relief, restitution, and
7 other appropriate equitable relief.

8 92. Private enforcement of these rights is necessary, as no other agency has raised a
9 claim to protect these workers. There is a financial burden incurred in pursuing this action that
10 would be unjust to place upon Plaintiff, as the burden of enforcing workforce-wide rights is
11 disproportionately greater than that of enforcing only Plaintiff’s individual claims. Additionally,
12 Plaintiff and Project Directors cannot afford to spend part of their wages on enforcing others’ wage
13 rights. Therefore, it would be against the interests of justice to force payment of attorneys’ fees
14 from Plaintiff’s recovery in this action. Accordingly, attorneys’ fees are appropriate and sought
15 under Code of Civil Procedure section 1021.5.

16 93. Plaintiff, on behalf of herself and the Class, requests restitution of unpaid wages,
17 wage premiums, injunctive relief, and other relief as described below.

18 **EIGHTH CAUSE OF ACTION**

19 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

20 **(Plaintiff Against Freemodel and Doe Defendants)**

21 94. The allegations of each of the preceding paragraphs are realleged and incorporated
22 here by reference.

23 95. Terminating an employee because the employee seeks to recover unpaid wages
24 violates a fundamental public policy of California. *See Vasquez v. Franklin Management Real*
25 *Estate Fund, Inc.*, 222 Cal.App.4th 819, 830–32 (2013); *Gould v. Maryland Sound Industries, Inc.*,
26 31 Cal.App.4th 1137, 1150 (1995).

27 96. Freemodel terminated Plaintiff, and Plaintiff’s lawsuit against Freemodel seeking to
28 recover her and other Class Members’ unpaid wages was a substantial motivating reason for the

1 termination.

2 97. Plaintiff was harmed, and her termination was a substantial factor in causing her
3 harm.

4 98. As a result of Defendants' unlawful acts, Plaintiff is entitled to compensatory
5 damages, equitable relief, attorneys' fees, and costs.

6 99. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff suffered
7 and continues to suffer economic and non-economic compensatory damages, including but not
8 limited to emotional distress, humiliation, reputational damage, and the loss of past and future
9 wages, benefits, and other privileges and conditions of employment in an amount to be proven at
10 trial.

11 100. Defendants committed these acts maliciously, fraudulently, and oppressively in
12 conscious disregard for Plaintiff's rights. Plaintiff is informed and believes and on that basis
13 alleges that Defendants, and each of them, were at all relevant times aware of the conduct of each
14 of the other Defendants and approved and ratified that conduct. Under California Civil Code
15 section 3294, Plaintiff is entitled to recover punitive damages from Defendants.

16 **NINTH CAUSE OF ACTION**

17 **BREACH OF CONTRACT**

18 **(Plaintiff Against Freemodel and Doe Defendants)**

19 101. The allegations of each of the preceding paragraphs are realleged and incorporated
20 here by reference.

21 102. A contract may be express or implied. Cal. Civ. Code § 1619. An implied contract is
22 one whose existence and terms are manifested by conduct. Cal. Civ. Code § 1621.

23 103. Plaintiff and Freemodel entered into their written Contract on April 30, 2022. The
24 written Contract ended on December 31, 2022. Freemodel informed Plaintiff that it would issue a
25 new written contract after it revised its non-compete provision. Freemodel and Plaintiff continued
26 to perform as if their prior written Contract was still in effect.

27 104. Until July 25, 2023, Plaintiff performed all, or substantially all, of her significant
28

1 obligations under the Contract.

2 105. On or around July 25, 2023, Freemodel locked Plaintiff out of her company email
3 account, her company credit card account, and her company Slack account. Freemodel thus ended
4 Plaintiff's ability to perform under the contract.

5 106. Plaintiff's Contract provides:

6 Freemodel also may terminate this Agreement at any time, with or without cause,
7 upon thirty (30) days' notice, but, if (and only if) such termination is without cause,
8 Freemodel shall upon such termination pay Project Director all unpaid, undisputed
amounts due for the Services completed prior to notice of such termination.

9 107. Freemodel did not provide Plaintiff with thirty days' notice that it was terminating
10 the Contract. Freemodel also did not pay Plaintiff all amounts due to her under the contract upon
11 termination. Furthermore, Freemodel's interference with Plaintiff's performance prevented her
12 from earning her full commissions on several in progress home renovation projects.

13 108. As a direct and proximate result of Defendants' breach, Plaintiff has incurred
14 significant economic losses and seeks general and special damages in an amount to be proven at
15 trial.

16 **TENTH CAUSE OF ACTION**

17 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

18 **(Labor Code § 2698 *et seq.*)**

19 **(Aggrieved Employees Against All Defendants)**

20 109. The allegations of each of the preceding paragraphs are realleged and incorporated
21 here by reference.

22 110. Plaintiff brings this cause of action on behalf of herself and all other individuals
23 who entered into Project Director Agreements with Freemodel and/or worked as Project Directors
24 for Freemodel in California ("Aggrieved Employees").

25 111. Per Labor Code section 2699.3(a), on July 20, 2023, Plaintiff gave notice by
26 electronic filing and certified mail to Freemodel, Garner, and the Labor Workforce Development
27 Agency ("LWDA") of the factual and legal bases for the labor law violations alleged in this
28 complaint. The LWDA has not provided notice per Labor Code section 2699.3(a)(2)(A), and sixty-

1 five calendar days have passed since the postmark date of Plaintiff's notice. Therefore, Plaintiff is
2 entitled to commence a civil action under Labor Code section 2699.

3 112. Labor Code section 2699(f) provides: "For all provisions of this code except those
4 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
5 of these provisions, as follows: . . . If, at the time of the alleged violation, the person employs one
6 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
7 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
8 per pay period for each subsequent violation."

9 113. Labor Code section 2699(g)(1) provides: "[A]n aggrieved employee may recover
10 the civil penalty described in subdivision (f) in a civil action . . . filed on behalf of himself or
11 herself and other current or former employees against whom one or more of the alleged violations
12 was committed. Any employee who prevails in any action shall be entitled to an award of
13 reasonable attorney's fees and costs."

14 114. Plaintiff is an aggrieved employee as defined by Labor Code section 2699(a).

15 115. Plaintiff's cause of action under Labor Code section 2698 *et seq.* is based on the
16 following allegations:

17 a. Violations of Labor Code section 558 for failing to pay minimum wages due.

18 Freemodel does not pay minimum wages to Plaintiff and other aggrieved employees
19 for all hours worked as required by Labor Code sections 1182.11–1182.13, 1194,
20 1194.2, 1197, and 1198.

21 b. Violations of Labor Code section 558 for failing to pay overtime wages due.

22 Freemodel does not pay overtime wages to Plaintiff and other aggrieved employees
23 for hours worked in excess of eight per day, in excess of forty per workweek, or for
24 hours worked on a seventh consecutive workday as required by Labor Code sections
25 510 and 1194.

26 c. Violations of Labor Code section 558 for failing to pay wages due, including those for
27 missed meal and rest periods, as required by Labor Code sections 226.7 and 512.
28

1 Freemodel does not permit Plaintiff and other aggrieved employees to take off-duty
2 meal periods and does not pay one additional hour of pay at their regular rate of
3 compensation for each missed meal period. Freemodel also does not pay Plaintiff and
4 other aggrieved employees for their rest periods. Nor does it pay one additional hour
5 of pay at their regular rate of compensation for each missed rest period.

- 6 d. Violations of Labor Code section 2802, which requires employers to indemnify
7 employees for all work-related expenditures. Freemodel does not indemnify Plaintiff
8 and other aggrieved employees for business-related expenses they incur in the
9 discharge of their work duties, including but not limited to: driving-related costs,
10 including fuel, maintenance, tolls, and insurance; the use of personal cell phones and
11 home internet; copying and printing documents; and acquiring necessary tools.
- 12 e. Violations of Labor Code section 226, which requires employers to provide specific
13 information on employees' itemized wage statements. Freemodel does not provide
14 statements to Plaintiff and aggrieved employees that include their total hours worked,
15 the applicable hourly rates, or the pay period dates.
- 16 f. Violations of Labor Code section 226.3, based on Freemodel's failure to provide
17 Plaintiff and other aggrieved employees with the itemized wage statements required
18 by Labor Code section 226.
- 19 g. Violations of Labor Code sections 201 through 203, which require the timely payment
20 of wages. Freemodel has not timely paid those aggrieved employees who are no
21 longer employed by Freemodel all wages owed and due after termination of
22 employment.
- 23 h. Violations of Labor Code sections 204 and 210, based on Freemodel's failure to pay
24 Plaintiff and other aggrieved employees all wages owed on their regular pay day.
- 25 i. Violations of Labor Code section 226.8, based on Freemodel's pattern or practice of:
26 (1) willfully misclassifying aggrieved employees as independent contractors; and (2)
27 charging willfully misclassified aggrieved employees a fee or deduction for purposes
28

1 that include, but are not limited to, goods, materials, space rental, services,
2 government licenses, repairs, equipment maintenance, or fines arising from the
3 aggrieved employees' employment where any of the acts described would have
4 violated the law if the individual was not misclassified.

5 116. As a direct and proximate result of Defendants' unlawful practices and policies,
6 Plaintiff and other aggrieved employees have suffered and continue to suffer monetary losses.

7 117. Plaintiff, on behalf of herself and other aggrieved employees, requests civil
8 penalties against Defendants for violations of the Labor Code, as provided under Labor Code
9 section 2699(f), plus reasonable attorneys' fees and costs, as provided under Labor Code section
10 2699(g)(1), in amounts to be proven at trial.

11 **VIII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of herself and the Class of similarly situated Project
13 Directors, requests relief as follows:

- 14 a. Certification of the above-described Class as a class action pursuant to Code of Civil
15 Procedure section 382;
- 16 b. Certification of the above-described Class as a representative class under Business
17 and Professions Code section 17200;
- 18 c. Provision of Class Notice to all Project Directors who have worked for Freemodel
19 during the Class Period;
- 20 d. A declaratory judgment that Freemodel has knowingly and intentionally violated
21 Business and Professions Code sections 17200–17208 by the conduct set forth above;
- 22 e. A declaratory judgment that Defendants' violations as described were willful;
- 23 f. An equitable accounting to identify, locate, and restore to all current and former
24 Project Directors the wages, business expenses, and interest that are due;
- 25 g. An award to Plaintiff and Class Members in the amount of unpaid minimum and
26 overtime wages pursuant to Labor Code section 1194, including interest thereon,
27 subject to proof at trial;

- 1 h. An award to Plaintiff and Class Members of liquidated damages pursuant to Labor
2 Code section 1194.2 for Defendants' failure to pay the minimum wage;
- 3 i. An award to Plaintiff and Class Members of damages in the amount of unpaid wages
4 and meal and rest period premiums, including interest thereon, subject to proof at
5 trial;
- 6 j. An award to Plaintiff and Class Members of damages in the amount of unreimbursed
7 business expenses, including interest thereon, subject to proof at trial;
- 8 k. An award to Plaintiff and Class Members of statutory penalties because of
9 Defendants' failure to provide Plaintiff and Class Members with itemized wage
10 statements that comply with Labor Code section 226;
- 11 l. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff and
12 Class Members for Defendants' failure to pay legally required minimum and overtime
13 wages, meal and rest period premiums, and unreimbursed business expenses, and
14 interest thereon, in an amount according to proof, pursuant to Business & Professions
15 Code section 17203;
- 16 m. An award to Plaintiff of economic and non-economic compensatory damages,
17 including for emotional distress, humiliation, reputational damage, and the loss of past
18 and future wages, benefits, and other privileges and conditions of employment
19 according to proof;
- 20 n. An award to Plaintiff of punitive damages under California Civil Code section 3294;
- 21 o. An award to Plaintiff of general and special damages according to proof;
- 22 p. An award of civil penalties under Labor Code section 2698 *et seq.*;
- 23 q. An award to Plaintiff and Class Members of reasonable attorneys' fees and costs
24 pursuant to Code of Civil Procedure section 1021.5; Labor Code sections 218.5,
25 218.6, 226(e), 226.7, 512, 558, 1194, and 2699(g)(1); and other applicable law; and
- 26 r. An award to Plaintiff and Class Members of other and further relief the Court deems
27 just and proper.
28

DATED: October 16, 2023

HUNTER PYLE LAW

By: 
Hunter Pyle

Attorneys for Plaintiff JULIE DEAN
and the Putative Class

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff Julie Dean, individually and on behalf of all Class Members, demands a jury trial
3 of this matter on all triable claims.
4

5 DATED: October 16, 2023

HUNTER PYLE LAW

6
7 By:  _____
8
9 Hunter Pyle

10 Attorneys for Plaintiff JULIE DEAN
11 and the Putative Class
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