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*Superior Court of California,
County of San Francisco*
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Deputy Clerk

**THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

LAUREN DANN, individually and on behalf
of themselves and all others similarly situated,

Plaintiff,

v.

THE RODAN + FIELDS COMPANY,
RODAN + FIELDS LLC, DR. KATIE
RODAN, DR. KATHY FIELDS, DIMITRI
HALOULOS, TIM ENG, LAURA BETTLER,
DALIA STODDARD, JESSICA RAEFIELD,
JANINE WEBER, and DOES 1–100,

Defendants.

Case No. CGC-24-612800

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

- (1) Failure to Pay Minimum Wage and Liquidated Damages (Labor Code §§ 1182.12, 1194, 1197, 1197.1, at 1198)
- (2) Failure to Provide Meal Periods or Meal Premium Wages (Labor Code §§ 226.7, 512(a), 1198; IWC Wage Order 4-2001);
- (3) Failure to Provide Rest Periods or Rest Break Premium Wages (Labor Code §§ 226.7, 558.1);
- (4) Failure to Keep Requisite Payroll Records (Labor Code § 1174(d));
- (5) Failure to Provide Timely and Accurate Wage Statements (Labor Code § 226(a), 226(e));
- (6) Failure to Timely Pay Wages (Labor Code § 204)
- (7) Failure to Pay Wages Upon Separation (Labor Code § 201-203);
- (8) Failure to Reimburse Business Expenses (Labor Code §§ 450, 2802; IWC Wage Order 4-2001);
- (9) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.)
- (10) Violations of the Private Attorney General Act (Labor Code §§ 2698-2699.8)

1 Plaintiff LAUREN DANN (“Plaintiff”) brings this action, individually, and on behalf of a class of
2 similarly situated individuals against RODAN + FIELDS, LLC., DR. KATIE RODAN, DR. KATHY
3 FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER, DALIA STODDARD, JESSICA
4 RAEFIELD, and JANINE WEBER (collectively, “Defendants” or “R+F”). Plaintiff’s allegations
5 against Defendants are based upon investigation carried out by Plaintiff’s counsel, except for
6 allegations pertaining specifically to Plaintiff, which are based upon Plaintiff’s personal knowledge.

7 **I. INTRODUCTION**

8 1. Rodan and Fields, LLC (“Rodan + Fields” or “R+F”) is a massively successful
9 company that, for years, has exploited its California salesforce by misclassifying them as independent
10 contractors rather than as employees. These sales and marketing personnel comprise the Independent
11 Consultant workforce (or “Consultant Community,” as referred to by R+F) and work under R+F’s
12 rigid direction to promote and sell a variety of R+F skincare cosmetics products (collectively, the
13 “Products” or “R+F Products”). In exchange for Consultants’ work promoting and educating the
14 public about the brand and Products on online social media, acquiring new customers, engaging
15 existing customers, recruiting and training new Consultants, and driving traffic to R+F owned
16 websites, R+F pays Consultants at most a paltry commission when customers purchase products
17 from their own Personal R+F Website (“Consultant Websites”).

18 2. Dermatologists Dr. Katie Rodan and Dr. Kathy Fields founded the skincare brand
19 Rodan + Fields in 2002. In 2003, they sold their company to Estée Lauder Companies who launched
20 their products in department stores. Then in 2007, the duo repurchased R+F, launched their online
21 platform, and shifted R+F’s business model entirely to online sales and independent Consultants
22 rather than department stores.¹

24 ¹ *About Us*, Rodan + Fields, [https://www.rodanandfields.com/en-us/about-](https://www.rodanandfields.com/en-us/about-us#:~:text=Rodan%20%2B%20Fields%20is%20a%20leading,confidence%20that%20comes%20with%20it)
25 [us#:~:text=Rodan%20%2B%20Fields%20is%20a%20leading,confidence%20that%20comes%20with%20it](https://www.rodanandfields.com/en-us/about-us#:~:text=Rodan%20%2B%20Fields%20is%20a%20leading,confidence%20that%20comes%20with%20it)
[\[https://perma.cc/YW88-6AG3\]](https://perma.cc/YW88-6AG3).

3. R+F achieved tremendous success through 2018 as it grew its workforce of Consultants and it increased its revenue in tandem. Revenues skyrocketed an average of 93% per year between 2010 and 2015, growing from \$24 million to \$627 million during those six years.² In 2016, R+F had around 200,000 Consultants, and it exceeded \$1 billion in sales for the first time.³ In 2018, private equity firm Texas Pacific Group (“TPG”) valued R+F at \$4 billion and purchased a minority stake in the company.⁴ That year, R+F had 411,000 Consultants,⁵ and Moody’s Investors Service (“Moody’s”) reported that R+F “generate[d] about \$1.7 billion in annual revenue.”⁶ Each year since, Consultant enrollment figures have declined. Predictably, annual revenues have, too. In 2022, R+F’s revenue reduced to \$700 million, and it had a workforce of only 197,000 Consultants.⁷ Since 2018, Moody’s, which periodically evaluates R+F’s creditworthiness, has issued multiple downgrades and reported that “continued underperformance with sales . . . [has been] fueled by a significant decline in new enrollment of its Independent Sales Consultants.”⁸

4. R+F’s success—and ability to avoid accountability for its employees thus far—turns on the fact that it operates as multi-level marketing business (“MLM”). R+F’s recruitment tactics

² Kate Vinton, *How Two Dermatologists Built A Billion Dollar Brand In Their Spare Time*, Forbes (Jun. 1, 2016), <https://www.forbes.com/sites/katevinton/2016/06/01/billion-dollar-brand-proactiv-rodan-fields/?sh=79662f2c3bfe> [https://perma.cc/E3VF-UGQ5].

³ See e.g., Michelle Castillo, *How Rodan + Fields bought back their skincare company and topped \$1 billion in sales*, CNBC (Jan. 17, 2018), <https://www.cnbc.com/2017/12/30/rodan-fields-selfies-and-social-media-1-billion-revenue.html> [https://perma.cc/N5K5-KYME].

⁴ Lisette Voytko, *A Wrinkle In Time: Why Rodan + Fields’ Founders Lost Their Billionaire Status*, Forbes (October 13, 2020); <https://www.forbes.com/sites/lisettevoytko/2020/10/13/a-wrinkle-in-time-why-rodan-fields-founders-lost-their-billionaire-status/?sh=4f634a2064b2> [https://perma.cc/7TRX-BXPP]; see also Megan Carroll, *Leading Skincare Brand Rodan + Fields Partners With TPG* (May 3, 2018), <https://www.rodanandfields.com/en-us/press/leading-skincare-brand-rodan-and-fields-partners-with-tpg> [https://perma.cc/G36P-CUJ4].

⁵ Voytko, *supra*, n.4.; see also Carroll, *supra*, n.4.

⁶ *Moody’s assign B1 CFR to Rodan & Fields; outlook stable*, Rating Action (May 23, 2018), https://www.moodys.com/research/Moodys-assign-B1-CFR-to-Rodan-Fields-outlook-stable-Rating-Action--PR_383607 [https://perma.cc/MSF6-GN7A] (reporting that R+F “generates about \$1.7 billion in annual revenue”).

⁷ R+F *Income Disclosure Statements 2022-2019* (Exh. C) at p. 2.

⁸ *Moody’s downgrades Rodan + Fields’ CFR to B3; ratings remain on review for downgrade*, Rating Action (Jan. 24, 2020); https://www.moodys.com/research/Moodys-downgrades-Rodan-Fields-CFR-to-B3-ratings-remain-Rating-Action--PR_417592 [https://perma.cc/TQK8-VBNT] (reporting that the company “generates about \$1.3 billion in annual revenue”).

1 purportedly promise its prospective Consultants the opportunity to build a business.⁹ The reality of
2 working for R+F is starkly different, though. Consultants supply free brand awareness and perform
3 uncompensated marketing of R+F Products, sales support for existing and new customers, and
4 onboarding support and periodic trainings for other Consultants that would otherwise cost R+F
5 millions of dollars annually.

6 5. R+F Consultants market and sell R+F Products under its pervasive control and
7 direction. Selling product—the main responsibility of Consultants—is work that is precisely in line
8 with R+F’s usual course of business. Despite their title as a Consultant,” they function as R+F’s
9 salesforce and are not engaged in an independently established trade, occupation, or business as
10 salespeople.

11 6. While the MLM industry has long relied on “direct sales” exemptions to justify its
12 exploitation of sales personnel, the California Exemption was written 40 years ago, and among other
13 things, is expressly limited only to those salespersons making “in person” sales, such as door-to-door
14 salespeople and home “Tupperware party” hosts. It does not cover R+F’s modern, online business
15 model, where Consultants drive social media engagement under its guidance and direction, directing
16 consumers to R+F-controlled websites, where R+F accepts and processes the sales and fulfills the
17 orders, while also collecting and benefiting from the consumer data it acquires from these leads.

18 7. To protect its intellectual property, brand image, and legal interests, R+F requires
19 Consultants to comply with a byzantine series of rules and regulations. The central document is the
20 “Policies and Procedures,” a massive document spanning more than 100 pages when taking into
21 account its many appendices. There, R+F includes directives for Consultants to learn and utilize to
22 market Products consistent with its instructions and any additional documents, notices, and guidelines
23 provided to Consultants by R+F throughout their working relationship with the company. Together,

24
25 ⁹ See Exh. C at p. 1 (describing the work of a Consultant as “build[ing] an R+F business,” comprised of “Product Ambassadors” and three types of “Business Builders”).

1 these documents detail the ways in which R+F exerts significant control over Consultants in their
2 limited, but critical role as social media marketers.

3 8. R+F does not require or even suggest that sales be made “in person.” R+F places
4 cumbersome restrictions on when and how Consultants may order products and limits the locations
5 in which the products may be sold, effectively preventing any meaningful sales that are “in person.”
6 R+F treats “in person” sales as outside of its elaborate “Compensation Plan,” in other words,
7 Consultants cannot build out their business through in person sales because they are not calculated
8 for the purposes of Achievement Rewards or advancing commissions brackets. R+F explicitly
9 “discourages Consultants from engaging in door-to-door solicitation for sales.” *Policies & Procedures*
10 (Exh. B) § 6o(iv). The result is that virtually all sales occur via R+F-controlled websites, where R+F
11 supplies the content, sets the prices, and fulfills the order.

12 9. R+F has been able to recruit Consultants in part because its Products offerings and
13 business model lend itself so well to online marketing, and because R+F prioritizes business resources
14 to streamline the Consultants’ online marketing work. R+F leadership touts that they “don’t use the
15 regular marketing and advertising” and that “everything in Rodan + Fields is run on [Consultants’]
16 smartphone[s].”¹⁰

17 10. The lack of discretion R+F gives to its Consultants is evidenced by the fact that few
18 can or do actually earn money under its compensation structure. For instance, in 2022, 33% of
19 Consultants, did not receive a single commission check during the entire year.¹¹ Many more saw their
20 meager commissions erased by R+F’s monthly fee of \$24.95—required for anyone wanting access to
21 their own Consultant Websites and the various online tools and platforms needed to perform their
22 work. R+F only tracks the percentage that received commission, not whether Consultants earned net
23 income from their hard work after deducting for purchases necessary to perform the work.

24 ¹⁰ Castillo, *supra*, n.3.

25 ¹¹ Exh. C at p. 2.

1 11. The willful, intentional nature of R+F’s decision to misclassify its California
2 Consultants is apparent from its decision to operate as an MLM, a business model that virtually
3 guarantees the company will secure hundreds of thousands of hours of free or below-market labor
4 each year to execute a centralized marketing and growth strategy. Moreover, R+F’s willful decision to
5 misclassify its salesforce is evident from its choice to remain organized in this way years after the
6 California Supreme Court’s seminal decision in *Dynamex v. Superior Court*, 4 Cal. 5th 903 (2018) and the
7 California legislature’s codification of the “ABC Test” in AB 5, both of which made clear that its
8 salesforce were in fact employees, in the manner R+F deploys and relies on them. In press releases
9 and interviews over the years, R+F executives have repeated extolled the work of the Consultant
10 Community and its low-cost compensation scheme. As both an MLM and a California-based
11 company, R+F knew the law. It is a sophisticated corporate actor and an active member of a national
12 trade association (Direct Selling Association) that issues guidance and warnings to MLMs as to the
13 changing law on misclassification.

14 12. Plaintiff Lauren Dann was one such victim of Rodan + Fields’s practices. Like all
15 Consultants, Plaintiff was trained by other Consultants and R+F materials, and she was required to
16 market and sell Products to the public in accordance with R+F’s directives and strict limitations. In
17 return, Plaintiff was paid virtually nothing, while incurring unreimbursed personal costs to perform
18 the work on R+F’s behalf.

19 13. For these reasons, Plaintiff brings this action to recover unpaid wages, overtime
20 compensation, penalties, interest, injunctive relief, other equitable remedies, damages, and reasonable
21 attorneys’ fees and costs under the California Labor Code, Cal. Lab. Code §§ 201, 202, 203, 204,
22 226(a), 226.7, 226.8, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 and 2698 *et seq.* (the “CLC”),
23 IWC Wage Order 4 (8 Cal. Code Regs. § 11040), and California Unfair Competition Law (Cal Bus. &
24 Prof Code §§ 17200 *et seq.*). Plaintiff asserts allegations as a Private Attorney General Pursuant to the
25 Private Attorneys General Act (Cal. Labor Code §§ 2698-2699.8). In addition, Rodan + Fields’s

1 conduct violates various municipal and county codes in California, including but not limited to City
2 of L.A. Cal. Code art. 7-7.5; County of Los Angeles Code § 8.100.040, *et seq.*, San Francisco Cal. Code
3 12R.

4 14. Upon information and belief, R+F has not addressed and/or changed its unlawful
5 practices and has continued to deprive employees of millions of dollars in straight and overtime
6 compensation. By bringing this action, Plaintiff intends to stop this ongoing and unlawful practice and
7 recover back wages and overtime to which she is rightfully entitled.

8 **II. JURISDICTION AND VENUE**

9 15. The monetary damages, civil penalties, restitution, and equitable relief sought by
10 Plaintiff and the class members exceed the minimal jurisdiction limits of the Superior Court and will
11 be established according to proof at trial.

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

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

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

24 **III. THE PARTIES**

25 19. Plaintiff Lauren Dann is an individual and resident of Ventura, California.

20. Rodan + Fields, LLC, known as Rodan + Fields or R+F. R+F has its principal place of business in San Ramon, California, and is incorporated under the laws of the State of Delaware.

21. Plaintiff is informed and believes and based thereon alleges that DR. KATIE RODAN is, and at all times relevant hereto was, an individual residing in California, as well as Founder for Rodan + Fields, LLC, and DOES 1-100, as further defined below. Plaintiff is further informed and believes and based thereon alleges that DR. KATIE RODAN, in her capacity as Founder of Rodan + Fields, LLC, exercised control over the wages, hours and/or working conditions of Plaintiff and other aggrieved employees, including by informing employees when to report to work and what work hours should actually be recorded, violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

22. Plaintiff is informed and believes and based thereon alleges that DR. KATHY FIELDS is, and at all times relevant hereto was, an individual residing in California, as well as Founder for Rodan + Fields, LLC, and DOES 1-100, as further defined below. Plaintiff is further informed and believes and based thereon alleges that DR. KATHY FIELDS, in her capacity as Founder of Rodan + Fields, LLC, exercised control over the wages, hours and/or working conditions of Plaintiff and other aggrieved employees, including by informing employees when to report to work and what work hours should actually be recorded, violated, or caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

23. Plaintiff is informed and believes and based thereon alleges that DIMITRI HALOULOS is, and at all times relevant hereto was, an individual residing in California, as well as Chief Executive Officer for Rodan + Fields, LLC, and DOES 1-100, as further defined below. Plaintiff is further informed and believes and based thereon alleges that DIMITRI HALOULOS, in his capacity as the Chief Executive Officer of Rodan + Fields, LLC, exercised control over the wages, hours and/or working conditions of Plaintiff and other aggrieved employees, including by informing employees when to report to work and what work hours should actually be recorded, violated, or

1 caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation
2 of Labor Code section 558.1.

3 24. Plaintiff is informed and believes and based thereon alleges that TIM ENG is, and at
4 all times relevant hereto was, an individual residing in California, as well as Interim Chief Financial
5 Officer for Rodan + Fields, LLC, and DOES 1-100, as further defined below. Plaintiff is further
6 informed and believes and based thereon alleges that TIM ENG, in his capacity as the Interim Chief
7 Financial Officer of Rodan + Fields, LLC, exercised control over the wages, hours and/or working
8 conditions of Plaintiff and other aggrieved employees, including by informing employees when to
9 report to work and what work hours should actually be recorded, violated, or caused to be violated,
10 the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section
11 558.1.

12 25. Plaintiff is informed and believes and based thereon alleges that LAURA BEITLER
13 is, and at all times relevant hereto was, an individual residing in California, as well as Chief Global
14 Sales Officer for Rodan + Fields, LLC, and DOES 1-100, as further defined below. Plaintiff is further
15 informed and believes and based thereon alleges that LAURA BEITLER, in her capacity as the Chief
16 Global Sales Officer of Rodan + Fields, LLC, exercised control over the wages, hours and/or working
17 conditions of Plaintiff and other aggrieved employees, including by informing employees when to
18 report to work and what work hours should actually be recorded, violated, or caused to be violated,
19 the above-referenced and below-referenced Labor Code provisions in violation of Labor Code section
20 558.1.

21 26. Plaintiff is informed and believes and based thereon alleges that DALIA STODDARD
22 is, and at all times relevant hereto was, an individual residing in California, as well as Chief Brand and
23 Innovation Officer for Rodan + Fields, LLC, and DOES 1-100, as further defined below. Plaintiff is
24 further informed and believes and based thereon alleges that DALIA STODDARD, in her capacity
25 as the Chief Brand and Innovation Officer of Rodan + Fields, LLC, exercised control over the wages,

1 hours and/or working conditions of Plaintiff and other aggrieved employees, including by informing
2 employees when to report to work and what work hours should actually be recorded, violated, or
3 caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation
4 of Labor Code section 558.1.

5 27. Plaintiff is informed and believes and based thereon alleges that JESSICA RAEFIELD
6 is, and at all times relevant hereto was, an individual residing in California, as well as Chief Human
7 Resources Officer for Rodan + Fields, LLC, and DOES 1-100, as further defined below. Plaintiff is
8 further informed and believes and based thereon alleges that JESSICA RAEFIELD, in her capacity
9 as the Chief Human Resources Officer of Rodan + Fields, LLC, exercised control over the wages,
10 hours and/or working conditions of Plaintiff and other aggrieved employees, including by informing
11 employees when to report to work and what work hours should actually be recorded, violated, or
12 caused to be violated, the above-referenced and below-referenced Labor Code provisions in violation
13 of Labor Code section 558.1.

14 28. Plaintiff is informed and believes and based thereon alleges that JANINE WEBER is,
15 and at all times relevant hereto was, an individual residing in California, as well as Senior Vice
16 President, North American Sales for Rodan + Fields, LLC, and DOES 1-100, as further defined
17 below. Plaintiff is further informed and believes and based thereon alleges that JANINE WEBER, in
18 her capacity as the Senior Vice President, North American Sales of Rodan + Fields, LLC, exercised
19 control over the wages, hours and/or working conditions of Plaintiff and other aggrieved employees,
20 including by informing employees when to report to work and what work hours should actually be
21 recorded, violated, or caused to be violated, the above-referenced and below-referenced Labor Code
22 provisions in violation of Labor Code section 558.1.

23 29. Plaintiff alleges that Defendants RODAN + FIELDS, LLC, DR. KATIE RODAN,
24 DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER, DALIA
25 STODDARD, JESSICA RAEFIELD, and JANINE WEBER are “persons” who violated or caused

1 to be violated California Labor Code §§ 558, and 1197.1 and the Industrial Welfare Commission
2 (“IWC”) Wage Orders.

3 30. The true names and capacities of Defendants sued as DOES 1-100, inclusive, are
4 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names pursuant to section
5 474 of the California Code of Civil Procedure. Plaintiff will seek leave to amend this Demand when
6 said true names and capacities have been ascertained.

7 **IV. FACTS COMMON TO ALL CLASS MEMBERS**

8 **A. Rodan + Fields Is a Successful Multilevel Marketing Company That Is** 9 **Dependent on its Consultants to Engage in Social Media Marketing on Its** 10 **Behalf**

11 31. Rodan + Fields was founded 2002 by dermatologists Dr. Katie Rodan and Dr. Kathy
12 Fields with the mission of “giv[ing] consumers the best skin of their lives.”¹² The founders describe
13 their company and brand as “Born in the digital era and designed to directly reach consumers where
14 they live and shop via mobile and social networks, Rodan + Fields is disrupting the industry with its
15 regimen-based skincare and powerful Independent Consultant community.”¹³ Accordingly, Rodan +
16 Fields promotes the positive impact that it has on Consultants’ by providing them opportunities to
17 build their own businesses.

18 32. In 2003, the Dr. Katie Rodan and Dr. Kathy Fields sold their company to Estée Lauder
19 Companies, which launched their products in department stores. In 2007, after observing for that
20 “retail was dying,”¹⁴ the founders bought back their company. It remains privately held.

21 33. Believing that word-of-mouth was an authentic way to share information about
22 its products, the 2008 relaunch used a “Consumer Connected Commerce business model.”¹⁵

23 ¹² *RODAN + FIELDS’ INNOVATION PREVAILS; COMPANY NAMED THE #1 SKINCARE BRAND*
24 *IN U.S. AND NORTH AMERICA IN 2018*, Rodan + Fields, [https://www.rodanandfields.com/en-](https://www.rodanandfields.com/en-us/press/rodan-and-fields-named-number-one-skincare-brand-us-north-america-2018)
25 [us/press/rodan-and-fields-named-number-one-skincare-brand-us-north-america-2018](https://www.rodanandfields.com/en-us/press/rodan-and-fields-named-number-one-skincare-brand-us-north-america-2018)
[<https://perma.cc/9CHD-TLG3>].

¹³ *Id.*

¹⁴ Castillo, *supra*, n.3.

¹⁵ *About Us*, *supra*, n1.

1 In other words, the entire business model—and the founder’s decision to repurchase their
2 company—rested on the opportunity to shift to online sales and work to be performed by
3 Consultants.¹⁶

4 34. After repurchasing R+F, Dr. Rodan and Dr. Fields launched their online platform and
5 shifted R+F’s business model entirely to online sales and decided to rely predominantly on
6 independent contractors to sell their Products rather than department stores.¹⁷ It began operating as
7 an MLM, “powered by a direct selling business model and Independent Consultant Community.”¹⁸
8 By 2016, R+F had enrolled approximately 200,000 Consultants to sell its Products, and that year
9 exceeded \$1 billion in sales.¹⁹ In 2017, it reached over \$1.5 billion in sales.²⁰ Then, R+F’s annual
10 revenue peaked in 2018 at \$1.7 billion²¹—the same year that private equity firm TPG valued the
11 company at \$4 billion and purchased a minority stake in the company.²² Subsequently, Moody’s
12 Investors Services began reviewing the business to evaluate its creditworthiness,²³ and has repeatedly
13 recognized that “Independent Sales Consultants are a significant driver of growth across the
14 company’s multi-level marketing business model.”²⁴

15 ¹⁶ *Id.*

16 ¹⁷ *Id.*

17 ¹⁸ *Rodan + Fields Adds New Talent To Their Leadership Team As Together With Their Consultant Community They Power Forward Their Life-Changing Mission*, PR Newswire, <https://www.prnewswire.com/news-releases/rodan--fields-adds-new-talent-to-their-leadership-team-as-together-with-their-consultant-community-they-power-forward-their-life-changing-mission-301359190.html> [https://perma.cc/K89F-N37E].

18 ¹⁹ See e.g., Castillo, *supra*, n.3.

19 ²⁰ *RODAN + FIELDS NAMED THE #1 SKINCARE BRAND IN THE U.S. AND NORTH AMERICA IN 2017*, Rodan + Fields, <https://www.rodanandfields.com/en-us/press/rodan-and-fields-number-one-skincare-brand-us-north-america> [https://perma.cc/SR5Z-JJAH].

20 ²¹ *Moody’s assign B1 CFR to Rodan & Fields; outlook stable*, *supra*, n.6 (reporting that R+F “generates about \$1.7 billion in annual revenue”).

21 ²² Voytko, *supra*, n.4; see also Carroll, *supra*, n.4.

22 ²³ See generally, *Rodan & Fields, LLC, Moody’s Investor Services Rating Action*, <https://www.moodys.com/credit-ratings/Rodan-Fields-LLC-credit-rating-830322318/reports?category=Rating and Assessments Reports rc|Issuer Reports rc&type=Rating Action rc|Announcement of Periodic Review rc,Credit Opinion ir rc|Issuer Reports rc> [https://perma.cc/77NC-XHUW].

24 ²⁴ See e.g., *Moody’s downgrades Rodan + Fields’ CFR to Caa2; outlook negative*, Moody’s Investors Services Ratings Action (April 7, 2020), https://www.moodys.com/research/Moodys-downgrades-Rodan-Fields-CFR-to-Caa2-outlook-negative-Rating-Action--PR_422039 [https://perma.cc/4BQ7-HJW7] (“Weak operating

1 35. While all Consultants are engaged in work marketing the products to consumers, those
2 who have not built a Downline are sometimes referred to as “Product Ambassadors,” whereas those
3 with at least one Downline are sometimes referred to as “Business Builders.”

4 36. Consultants are responsible for marketing and generating brand awareness; they drive
5 social media engagement, posting on Instagram and other social media outlets. For example, in
6 advance of the launch of a new Product, R+F urges its Consultants to purchase and promote the
7 product on social media using R+F talking points and graphics and to direct customers to R+F-
8 controlled websites to make their purchases. Consultants heed to R+F’s directives and also pass this
9 information on to their Downlines, who in turn promote the product to customers on social media as
10 well. The result is a coordinated marketing campaign that increases exposure and awareness of the
11 product release— and the R+F brand more broadly, and is a critical part of R+F’s marketing strategy.
12 The reality is, R+F expects and incentivizes Consultants to be generating brand awareness and
13 marketing products all the time— and to instruct and coach their Downlines’ to do the same.

14 37. R+F Leadership continuously praises the Consultants for their work promoting the
15 R+F brand and attributes R+F’s success to their commitment and hard work. After R+F was named
16 the number one in skincare brand in the United States and across North America, both for the second
17 time, former CEO and President, Diane Dietz, shared:

18 “‘We’re excited to be recognized in so many great categories by Euromonitor but what really
19 inspires us is seeing our Founders’ vision come to life and giving people healthy skin and the
20 confidence that goes with it. These accolades are a testament to our powerful Independent
Consultant community who are tremendous brand advocates and who energize us to bring
more innovative and life-changing products to markets around the world.”²⁵

21 38. R+F views Consultants as the product of a product, in that the Consultant’s own
22

23 performance has been a result of significant declines in the company’s independent sales consultants. The
24 company’s independent consultants and their preferred customers are a significant revenue driver across the
company’s direct selling business model, and the ongoing declines in active representatives continues to
negatively affect business performance.”).

25 ²⁵ *RODAN + FIELDS’ INNOVATION PREVAILS; COMPANY NAMED THE #1 SKINCARE BRAND
IN U.S. AND NORTH AMERICA IN 2018, supra*, n.12.

1 personal skincare success is the “product” of using R+F Products, and it directs them to market R+F
2 Products accordingly. R+F encourages and incentivizes Consultants to purchase products for personal
3 consumption,²⁶ and accordingly urges Consultants to regularly post about their R+F skincare regimen
4 and write testimonials about the products, both on social media and through R+F developed
5 marketing campaigns.²⁷ To facilitate their marketing work, R+F continuously develops internal tools
6 for the Consultants to more efficiently share their experiences on social media, i.e., “to share in a
7 repeatable way over and over again”—both using the products and as a Consultant for R+F.²⁸

8 39. R+F has had a salesforce of between ~200,000 and ~400,000 Consultants each year
9 for the past seven years, comprised almost exclusively of women²⁹, that it relies on to build brand
10 awareness and to increase its salesforce of Consultants, i.e., to recruit other Consultants. R+F ensures
11 that social media is saturated with posts about R+F Products and testimonials as to the quality and
12 effectiveness of its Products. R+F’s millions and even a few years of over a billion dollars is revenue
13 is attributable to the Consultants. Meanwhile, in 2022, the median earnings across Consultants who
14 were paid was a measly \$366; notably, 33% of the 192,000 Consultants did not receive a single
15 paycheck that year.³⁰ R+F has profited for the past 16 years off of the unpaid labor of the Consultants.

16 40. But despite their inextricably vital role to R+F’s success, R+F has never properly
17

18 ²⁶ R+F created the Consultant Replenishment Program, “an optional auto-ship program that provides you with
19 the convenience of receiving regular monthly shipments of your Rodan + Fields (R+F) products.” *How do I*
20 *enroll in the Consultant Replenishment Program (CRP)?*, Rodan + Fields, https://www.rodanandfields.com/helpcenter/s/article/How-do-I-enroll-in-the-Consultant-Replenishment-Program-CRP?language=en_US [https://perma.cc/E87F-QDDH].

21 ²⁷ See, e.g., Jenny Vetter, *Rodan + Fields: A Season of Transformation and Celebration*, Direct Selling News (April 4,
22 2022), <https://www.directsellingnews.com/2022/04/04/rodan-fields-a-season-of-transformation-and-celebration/> [https://perma.cc/K553-CJP2] (describing changes R+F implemented under new leadership after
23 extensive efforts to better understand the Consultant experience and re-engage Consultants, including the 2022
24 “Make It Yours” Campaign,” which advertised how current Consultants have leveraged opportunities with
25 R+F).

26 ²⁸ *Id.*

27 ²⁹ This is consistent with the gender distribution of Consultants across MLMs. See generally, *Direct Selling in the*
28 *United States 2022 Industry Overview*, Direct Selling Association, https://www.dsa.org/docs/default-source/industry-fact-sheets/dsa-2022g-ofactsheetv4.pdf?sfvrsn=c51ed2a5_2 [https://perma.cc/G9K5-A8FT].

29 ³⁰ Exh. C at pp. 1-2. 2019-2021 Income Statements show similar poor outcomes. See generally *id.* at pp. 3-8.

1 classified its salesforce—Consultants—as employees. Rather, R+F transitioned into an MLM in 2007,
2 in which it would offer people the purported “opportunity” to develop their own business earning
3 commission by selling R+F Products and recruiting others to do the same, designating them as
4 “independent contractors.” *Independent Consultant Agreement*, last updated Jul. 2023 (Exh. A).

5 41. However, these Consultants are not independent contractors under applicable law.
6 Rather, R+F created the Independent Consultant “opportunity” to secure an expansive marketing and
7 sales network for minimal to no cost. It has reaped enormous profits by deliberately avoiding paying
8 wages and benefits to those performing the sales work that forms the backbone of R+F’s business
9 model and revenue generation. R+F charges its Consultants for access to the instrumentalities needed
10 to sell products online, specifically a Business Starter Kit and an R+F Personal Website, further
11 increasing R+F’s profits and/or reducing its operating costs and decreasing Consultants’ income, in
12 violation of California law. The intended result is for Consultants to receive, at most, de minimis profit
13 for their work, while providing free labor and shouldering the costs of doing business that R+F should
14 be bearing.

15 **B. Rodan + Fields Consultants Are Employees**

16 **1. Controlling Law**

17 42. Companies like R+F were never supposed to be allowed to run an entire business on
18 the backs of independent contractors. People who work in a company’s core line of business are its
19 “employees.” *United States v. Silk*, 331 U.S. 704, 718 (1947).

20 43. R+F claims an unprecedented portion of its workforce as “independent contractors;”
21 whereas hundreds of thousands of Consultants work for R+F, the private company appears to have
22 fewer than 500 employees. And while R+F continues to invest more funds in the Consultant
23 experience to recover from the dip in Consultant enrollment the past couple of years,³¹ R+F has
24

25 ³¹ *Moody’s downgrades Rodan + Fields’ CFR to B3; supra*, n.8 (explaining R+F’s underperformance in sales due to

1 completed multiple rounds of layoffs of its “employees,” including most recently laying off 70
2 employees in October 2023.³² R+F employees workers in a variety of roles, such as accounting and
3 finance, supply chain management, product development, sales managers, and field specialists. For
4 example, in 2021, R+F hired a Chief Global Sales Officer, “responsible for the Global Sales
5 Organization and business related to the brand’s Independent Consultant salesforce[.]” and tasked
6 with “lead[ing] he Business Development, Field Operations, Field Marketing and Communications,
7 and the Recognition and Learning + Development functions.”³³ These teams are comprised of
8 employees with diverse skillsets, including marketing and strategy professionals that “optimiz[e]
9 business marketing via social media platforms,” work directly with Consultants to drive success and
10 engagement of Consultants, and develop tools and materials to support Consultants.³⁴ These workers
11 receive competitive benefits from R+F, including health insurance, tuition reimbursement, paid time
12 off (for holidays and paternity leave), and annual bonus opportunity, as well as perks, like monthly
13 complimentary R+F Products.³⁵ Consultants receive none these perks or benefits.

14 44. But the Consultants, referred to by R+F as the “Consultant Community,” who make
15 up the bulk of R+F workforce, are denied even the most basic protections of federal and state labor
16 laws. R+F does not pay them minimum wage; it does not pay overtime; and it does not reimburse
17 business expenses, such as internet connections, laptops, smart phones, R+F Products, hosting events,
18 or expenses incurred from social media video production over Facebook, YouTube, and Instagram.

19
20 the decrease in Independent Consultants, and noting that, “[a]t the same time, the company continues to make
21 significant investment in systems, tools and capability to drive Independent Sales Consultant enrollment, which
22 hurt profit margins.”).

23 ³² See, e.g., *San Ramon Company To Lay Off 76 Workers*, Patch.com (Sept. 20, 2023),
24 <https://patch.com/california/sanramon/san-ramon-company-lay-76-workers> [https://perma.cc/V4DY-
25 R8PG]; see also *Vetter*, *supra*, n.27 (describing the ways in which it was enhancing the Consultant experience to
26 continue building out the community and increasing brand awareness).

³³ *Rodan + Fields Adds New Talent To Their Leadership Team As Together With Their Consultant Community They Power
27 Forward Their Life-Changing Mission*, *supra*, n.18.

³⁴ See e.g., *Job Postings* for Associate Manager of Global Programs & Incentives; Field Marketing Manager; Field
28 Communications Specialist (2023) (Exh. D).

³⁵ *Careers*, Rodan + Fields, <https://www.rodanandfields.com/en-us/careers> [https://perma.cc/QZ99-HX3F].

1 R+F's classification of its Consultants also deprives them of basic protections against discrimination
2 and sexual harassment.

3 45. By design, "independent contractors" are exempted from "nearly every" labor law, but
4 this classification was not meant to be a loophole for companies like R+F, whose Consultants are
5 effectively modern day telemarketers.³⁶ "Historically, firms reserved the independent contractor
6 designation for entrepreneurial individuals whose skills demanded higher pay in the open market."³⁷
7 With this in mind, "[l]egislatures rationalized excluding [independent contractors] from most
8 employment laws because these individuals did not require the same legal protections as potentially
9 more vulnerable, less-skilled 'employees.'"³⁸

10 46. Today, R+F preys upon many of the most vulnerable members of society. Despite
11 MLMs being a \$40 billion industry, "the vast majority of people involved in them don't make money
12 off of MLMs, and many people lose money."³⁹ R+F Consultants are no exception: according to R+F's
13 Income Disclosure Statement in 2022, 33% of Consultants received no commission payment that
14 year, and the median earnings of those that received at least one paycheck was a mere \$366 over the
15 course of the entire year.⁴⁰

16 47. In recent years, state legislatures have taken action to send a clear message that most
17 workers should be "employees."

18 48. California has adopted the "ABC test" to determine whether a company, like R+F,
19 has misclassified its workers as "independent contractors." Because employee status was meant to be
20 the default, the ABC test "presumptively considers all workers to be employees and permits workers

21 ³⁶ Keith Cunningham-Parmeter, *From Amazon to Uber: Defining Employment in the Modern Economy*, 96 B.U. L. Rev.
22 1673, 1683–84 (2016).

23 ³⁷ *Id.*

24 ³⁸ *Id.*

25 ³⁹ Emily Stewart, *\$5 Jewelry and an MLM Conference Gone Wrong: Multilevel marketing companies were the "perfect" pandemic business*, VOX (Sept. 23, 2021), <https://www.vox.com/the-goods/22688317/mlm-covid-19-pandemic-recruiting-sales-paparazzi> [https://perma.cc/8SC6-P9FF] (citing study finding that 99 percent of MLM participants lose money).

⁴⁰ Exh. C at p. 1.

1 to be classified as independent contractors only if the hiring business demonstrates that the worker in
2 question satisfies *each* of three conditions:

- 3 a. that the worker is free from the control and direction of the hirer in connection with
4 the performance of the work . . . ***and***
- 5 b. that the worker performs work that is outside the usual course of the hiring entity's
6 business; ***and***
- 7 c. that the worker is customarily engaged in an independently established . . . business of
8 the same nature as that involved in the work performed.”

8 *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903, 956–57 (2018) (emphasis in original).

9 **2. R+F Exerts Control Over Consultants**

10 49. To engage in marketing and sales work for R+F, the company does not require
11 Consultants to hold any special experience, skills, license, or education level. In fact, there is no space
12 in the application to document prior work experience or ability to upload one's resume. Exh. A at 1.
13 As of August 2023, 67% of the Independent Consultants had no prior direct sales experience.⁴¹

14 50. Rather, R+F requires only that a prospective Consultant complete a short application
15 that requires her to disclosing basic contact information necessary for communication, providing a
16 “Sponsor's” name (i.e., referring Consultant, for designating Downline Consultant relationships) and
17 agreeing to pay R+F \$75 for a “Business Starter Pack,” which is the cost of a 3-month subscription
18 to PULSE Pro, R+F's proprietary tool for Consultants. The PULSE Pro subscription gives
19 Consultants access to an online dashboard for use in marketing, selling, and recruiting, as well as
20 enhanced tools for the Consultants' Websites.

21 51. The application process suggests to Consultants that this initial payment is the only
22 payment to R+F required to become a Consultant. In reality, Consultants must pay additional fees to
23 R+F to be able to perform their work. Namely, after the initial three months, Consultants typically

24
25 ⁴¹ *Rodan + Fields At-A-Glance*, Rodan + Fields (Aug. 2023), <https://www.rodanandfields.com/en-us/assets/us/at-a-glance.pdf>.

1 pay \$24.95 a month for the “PULSE by Penny Pro” subscription program (“PULSE Subscription”).
2 While R+F suggests that the PULSE Subscription is optional, in reality, Consultants who do not
3 subscribe have even fewer meaningful opportunities for sales, as the PULSE Subscription is the only
4 way to obtain a personalized Consultant Website. Consultants can direct sales leads to their
5 customized domain (<https://<customsitename>.myrandf.com>), and any purchase made through their
6 Consultant Website is automatically credited to the Consultant. On the other hand, Consultants who
7 do not obtain a PULSE Subscription do not have their own unique domain and instead must direct
8 customers to the main R+F home page; from there, the customer must undertake a more convoluted
9 process to go to a Consultant lookup page, and search for the Consultant’s name before placing their
10 order. Because Consultants can only receive commissions from online sales through R+F-controlled
11 websites, and they are prohibited from selling on any other online platform, the *only* way to guarantee
12 the receipt of commission from generating leads is to buy the PULSE Subscription, so that all leads
13 are directed to the Consultant’s custom domain, where commission will be credited without additional
14 work on the part of the customer. The PULSE Subscription is so important that R+F encourages
15 Consultants to tell their recruits about its importance.

16 52. Although the Application lists the Business Starter Kit as the only expense to become
17 a Consultant all Consultants are also required to pay an annual renewal rate of \$25 to maintain their
18 status as a Consultant.

19 53. Upon acceptance of their application, all Consultants are required to adhere to a series
20 of terms and conditions, as well as documents purportedly incorporated by into those terms by
21 reference, all of which that R+F collectively refers to as the “Consultant Agreement.” Exh. A at 1.
22 While the complicated ways in which the documents refer to one another makes it difficult, if not
23 impossible, to ascertain the complete set of terms and conditions consisting of the “Consultant
24
25

Agreement,”⁴² it currently appears to consist of documents such as:

- o the Independent Consultant Application, available at Exh. A
- o the R+F Policies and Procedures (“P&P”), available at Exh. B, which in turn includes various appendices, including most critically:
 - o the R+F Compensation Plan (“Compensation Plan”), Appx. B
 - o the R+F Code of Business Ethics, Appx. C.
- o the PULSE by Penny Business Management Suite Terms & Conditions (“PULSE Terms & Conditions”), Exh. E
- o additional terms in the paywall-protected Consultant “Library”
- o the Privacy Policy (Exh. G) and R+F Terms and Conditions (Exh. H) associated with the use of the rodanandfields.com website.

54. Both the “Independent Consultant Application” and the P&P provide that Consultants are to be considered independent contractors. Exh. A at 2; Exh. B § 3b. While R+F periodically updates the documents to make minor, routine updates, all versions contain language providing that Consultants are to be considered independent contractors, including the version in use at the time of Plaintiff’s enrollment in 2019.

55. The P&P alone are approximately 100 pages plus long and set out most of the requirements of the Consultants. In particular, the “R+F Code of Business Ethics,” requires Consultants to “comply with all legal obligations that apply under your Rodan + Fields Consultant Agreement,” which incorporates all restrictions laid out in the P&P, including those governing marketing and sales in accordance with R+F directives. Exh. B, Appx C at C1.; *see also* Exh. A at 2, § 5 (“Consultant agrees to . . . otherwise comply at all times with all applicable laws, regulations and rules in addition to all terms of the Consultant Agreement.”).

⁴² R+F routinely revises and updates certain terms in the various documents comprising the Consultant Agreement; the attached documents are the most recent versions. While some minor changes have been made over the years, the general nature of the consultant role and responsibilities have not.

1 56. Because R+F treats the Consultants as independent contractors, it does not pay them
2 any salary, wages, or benefits or offer reimbursement for business related expenses. Rather, as is typical
3 in the MLM industry, the R+F Compensation Plan provides for two overarching types of
4 compensation: (1) for sales the Consultant made to consumers through R+F controlled websites,⁴³
5 the Consultant receives a small percentage as a commission, either 17% or 24%, depending certain
6 factors, *see infra*, ¶ 168; and (2) if the Consultant builds a “Downline,” i.e., recruits other new
7 Consultants to market and sell R+F Products and recruit more Consultants, then the “Upline”
8 Consultant receives commissions for sales made by those Consultants in their downline.⁴⁴

9 57. All Product sales “directly to [one’s] personal Customers for a profit that [are] earned
10 outside the Compensation Plan.” Exh. B, Appx A at A1. Notably, the P&P does not indicate whether
11 sales when the Consultant takes a loss are captured by the Compensation Plan, i.e., whether the
12 Consultant is eligible to earn commissions since they did not profit or whether the sale counts as
13 “Sales Volume” to achieve status as an “Active Consultant” and advance to a higher commissions
14 bracket for those traditionally under the Compensation Plan. *See infra*, ¶ 168. Whether or not the
15 product is even resellable to customer is heavily restricted. *See* Exh. B § 10e (listing five restrictions on
16 the items themselves which Consultants purchase with their personal funds).

17 58. Under the Compensation Plan, Consultants are responsible for all expenses. The one-
18 time Business Starter Kit fee is non-waivable. R+F does not reimburse Consultants for the purchases,
19

20 ⁴³ When a customer purchases from R+F’s website directly or by telephone, rather than a Consultant’s Website,
21 a Consultant will only receive commissions if the customer provides the Consultant’s Customer Identification
22 Number (CID) “to assist Rodan + Fields in connecting [Customers] and business prospects to the Consultant’s
23 account.” Exh. B, Appx. B at B2-3; *see also* Exh. B § 8 (listing telephone as an approved ordering method that
24 may be linked to Commissions and Achievement Awards under the Compensation Plan).

25 ⁴⁴ The “Upline” and “Downline” concepts are the hallmark of the MLM structure. To illustrate, when an
established Consultant, whom we will call “Amy,” recruits a friend, whom we will call “Sarah,” to be a
Consultant, Sarah is in Amy’s Downline; and Amy is in Sarah’s Upline. If Sarah in turn recruits a new
Consultant, whom we will call “Rachel,” then Sarah has an Upline (to Amy) and a Downline (to Rachel); the
established Consultant Amy now has two levels to her Downline, to Sarah (first level), and Rachel (second
level). Should Rachel then recruit someone, the established Consultant Amy would have three levels to her
Downline.

1 or for the costs of a cell phone, internet, and other routine business expenses. And as set forth above,
2 Consultants also typically pay \$24.95/month (\$299.40 annually) for the PULSE Subscription.

3 59. These fees do not cover all expenses, however. Consultants must independently
4 purchase samples or Products to be able to market them truthfully and honestly in promotional posts
5 and testimonials on social media, as required under the Consultant Agreement. *See* Exh. A at 2, § 5;
6 Exh. B, Appx. C at C1.

7 60. In the Consultant Agreement, R+F gives itself broad rights to control Consultants and
8 mandate conformance with its directives, and authorizes itself to amend those directives, i.e., the
9 Consultant Agreement, at any time. *See* Exh. A at 2, § 1 (requiring Consultants to “check the R+F
10 Website, and/or the Library frequently for revisions or amendments to the Consultant Agreement”
11 because it “may at any time revise the Consultant Agreement in its sole discretion”); Exh. B, Appx.
12 B at B4 (granting itself the authority to update its P&P and requiring Consultants to “review and
13 accept all updates in order to access PULSE by Penny or other Company systems”). Moreover, the
14 Consultant Agreement requires that Consultants agree to adhere to the obligations set forth in the
15 P&P, as well as “to (a) conduct their R+F business activities in a professional manner that reflects
16 favorably at all times on R+F and the R+F Products; (b) avoid deceptive, misleading, and/or
17 unethical practices; (c) make no representations, warranties, or other statements about the R+F
18 Products or business that are different from or in addition to those in the Consultant Agreement and
19 R+F Marketing Materials; (d) make no attempt to bind R+F to any agreement, or pursue, waive, or
20 compromise rights of R+F; (e) periodically review the R+F Website and the Library for amendments
21 to the Consultant Agreement; and (f) otherwise comply at all times with all applicable laws, regulations
22 and rules in addition to all terms of the Consultant Agreement.” Exh. A at 2, § 5; *see also* Exh. A at 2,
23 § 1 (“Consultants must check the R+F Website, and/or the Library frequently for revisions or
24 amendments to the Consultant Agreement.”); Exh. B, Appx. B, at B3 (“Consultants are expected to
25 read the Insider Scoop [weekly email], which contains important information regarding Rodan +

1 Fields events, Products, recognition of Consultants, compliance issues, special editions and other
2 matters useful to Consultants in conducting their Rodan + Fields activities.”).

3 61. Throughout the Consultant Agreement, R+F makes clear it has the exclusive authority
4 to terminate the Consultant for failure to comply with the terms. *See, e.g.*, Exh. A at 4, § 15 (“reserv[ing]
5 right to right to terminate the Consultant Agreement or take other remedial action if R+F determines,
6 in its sole discretion, that Consultant has violated any provision or term of the Consultant
7 Agreement”). For example, R+F can terminate Consultants for violating various express rules how
8 products are to be advertised and other, *see, e.g.*, Exh. B § 11k(i) (termination for non-compliant posts
9 on Consultant’s social media pages); § 13 (termination or notice of non-compliance for “use of the
10 word Practiv”) But R+F can also terminate Consultants for exercising discretion over the best ways
11 to sell the product, *see, e.g., id.* § 11h (termination for selling via third-party sites); or for seeking out
12 other business opportunities; *id.* § 6r (termination for inquiring into another Consultant’s other direct
13 selling business opportunities). And many of the grounds for terminating a Consultant give R+F
14 limitless discretion to terminate a Consultant. *See, e.g., id.* § 16a (termination based on “any act or
15 omission that Rodan + Fields determines in its sole discretion may damage its reputation or
16 goodwill”); *id.* § 6k (termination for non-compliance of professional, lawful and ethical conduct which
17 may include “activity that could damage the company’s good reputation”); *id.* § 5k (termination for
18 policy violations by Consultant’s household members, employees, agents, etc.). In addition, R+F has
19 various other miscellaneous grounds for termination. *See, e.g., id.* § 10a (termination for excessive or
20 improper return activity); *id.* § 12d (same); *id.* § 5b (termination for misrepresenting to R+F the use
21 or sale of product, i.e., purchases for the purpose of qualifying to Recognition Titles or Achievement
22 Rewards).

23 62. Moreover, R+F exerts substantial control and direction over how the Consultants
24 perform their work, both under the terms of the Consultant Agreement and in practice. While R+F
25 permits Consultants to set their own work hours and work as little or as many as they desire, the

1 Consultant's discretion ends there. Because of the control and direction exerted by R+F, the
2 Consultant has virtually no discretion over how they are to actually do the job.

3 63. R+F exerts additional forms of control on Consultants that recruit others to become
4 Consultants who then form their "Downline" team. These Consultants take on the additional duty
5 of being a "Sponsor," which requires them to undertake additional responsibilities and perform
6 specific tasks. *Id.* § 7b. For example, R+F mandates that Consultants who take on sponsorship duties
7 "educate Downline Consultants about, and answer questions regarding, the Policies and Procedures."
8 *Id.*

9 64. R+F also exerts control over a Consultant's ability to earn income from sources
10 outside of R+F. For example, Consultants are "[p]rohibited from participating in Rodan + Fields
11 affiliate programs and/or receiving any commission or cash back from sales resulting through the use
12 of an affiliate link, such as Rakuten, Skimlinks, rewardStyle, Honey, Extrabux, Cartera, etc." *Id.* § 11s.
13 Furthermore, R+F restricts income opportunities of its highest achieving Consultants by effectively
14 punishing them for "promoting, marketing or selling the products, services or programs offered by
15 any other direct selling business, regardless of whether the products, services or programs are related
16 to skincare or haircare or whether they compete with Rodan + Fields." *Id.* § 6r (describing non-
17 solicitation policy). If these Consultants engage in that activity, they "may not be eligible for trips,
18 training, programs, access to early product releases, global expansion, recognition, Corporate
19 sponsored opportunities, and/or other similar remedial measures." *Id.*

20 65. R+F also controls Consultants' ability to temporarily pause their work. R+F requires
21 Consultants to request permission to place their account on hold, and R+F reviews these requests on
22 a case-by-case basis and has sole discretion to approve or reject. *Id.* § 12h. When R+F does not
23 approve a Consultant's request, the Consultant may lose their status and other privileges.

1 Products). Even for events sponsored by exclusively by Consultants, R+F provides templates for
2 creating event invitations; R+F recommends Consultants utilize R+F event descriptions rather than
3 exercising their own creativity and it requires Consultants to use R+F provided event images to
4 achieve “brand consistency.”

5 69. While R+F encourages Consultants to market their own experience with the Products,
6 R+F’s general restrictions on the claims they can make and content they can generate whenever they
7 mention R+F prevents the meaningful exercise of Consultants’ discretion.

8 70. *Third, to discourage Consultants from exercising discretion in creating*
9 *marketing materials, R+F provides Consultants with content to use.* Specifically, R+F provides
10 all Consultants with access to the “Library” and “Comms Corner,” where they can find “a suite of
11 engaging shareables” for online marketing efforts. And the PULSE Subscription provides
12 Consultants with access to additional advertising and marketing materials, as well as “R+F Social,”
13 which offers “ready-to-use and customizable content plus analytical tools to evaluate engagement
14 [with one’s online content.]” *PULSE by Penny Comparison Chart* (Exh. F).

15 71. The Library contains the strictly limited universe of the content (“R+F Content”)⁴⁵
16 that R+F permits Consultants use to market and sell R+F Products, with the clear directive that
17 Consultants may only use these materials “as they originally appeared in the Library.” Exh. B § 11o;
18 *see also id.* § 11e(iii) (requiring “[c]orporate videos [to] be re-posted in their entirety and may not be
19 modified in any way”). These images and videos are often the same content that R+F uses in the
20 company-run advertisements.

23 ⁴⁵ R+F Content is defined as: “ (i) all R+F Trademarks; (ii) all text, images, graphics and other content and
24 materials used or displayed on or in connection with any R+F Product (or any related packaging), R+F
25 Marketing Materials, R+F Business Supplies or the R+F Website; and (iii) the names, images and likenesses of
the principals or officers or other employees of Rodan + Fields, including Dr. Katie Rodan and Dr. Kathy
Fields.” Exh. B, Appx. B, at B5.

72. Moreover, R+F limits content that Consultants may include if they choose to generate their own marketing videos. *See id.* § 11e(iii). R+F permits Consultants to “share content such as their own personal ‘why,’ and information on R+F Products or the Program, provided they comply with the requirements of Section 6c regarding Product Claims and Section 6d regarding Income Claims.” *Id.* § 11e(iv). Even for R+F sponsored events, R+F requires Consultants to obtain permission to video stream live on their personal social media pages to market R+F Products. *Id.*

73. ***Fourth, R+F uses the PULSE Subscription service to exert greater control over Consultants*** by providing them with more R+F proprietary tools to use, including the Consultant Websites. The template for the Consultant Websites is designed by R+F and restricts the Consultants’ from exercising discretion over content, as R+F generates the Product pages, prices, and descriptions appearing on the Consultant Websites, maintaining exclusive control over the storefront. Consultants may customize only their “Personal Story” on their “About Me” page, text which appears with the disclaimer: “This is my unique story,” but R+F even provides a template for this section, too. The Consultant Websites are little more than a personalized domain or affiliate link by which consumers can access the same content that appears on the R+F Website, Consultants have no ability to sell non-R+F Products, offer discounts or provide free gifts to customers through their Consultant Websites; they are relegated to the features R+F provides in the template.

74. ***Fifth, R+F uses other tools to ensure Consultants comply with its advertising and marketing rules.*** For example, R+F publishes a weekly newsletter, Insider Scoop, which appears both in the Library and gets emailed directly to Consultants, which contains news and important information about products. R+F also provides those with a PULSE Subscription access to a “Daily” feature, wherein R+F provides “a curated list of tasks personal to [that Consultant’s work]” encouraging them to perform “key business-building activities.” Exh. F. Other sales tips and new product information is sent out regularly by R+F directly or disseminated throughout the Consultant workforce via emails from Upline Consultants to those in their Downlines.

1 75. R+F Consultants are incentivized to adhere to R+F’s instructional guides and prompts
2 in marketing the Products. Because they are only paid if they make sales, rather than their marketing
3 efforts, *see* Exh. B, Appx A (Compensation Plan), they are incentivized to follow the suggestions and
4 directives of R+F, and their Upline Consultants, on what kinds of marketing efforts are likely to result
5 in successful sales.

6 76. ***Sixth, R+F controls the online channels by which Consultants can market the***
7 ***Products.*** R+F monitors and controls the content Consultants generate via the PULSE Penny
8 platform and post to their personal Consultant Websites and has the right to “remove any
9 noncompliant postings.” Exh. F. R+F prohibits Consultants from promoting their Consultant
10 Websites in third-party online marketplaces (e.g., Facebook Marketplace), *see* Exh. B § 11g, and from
11 partnering with Influencers, companies, or brands to leverage their social media pages to drive users
12 to their personal Consultant Website to generate sales, *id.* § 11k (permitting Consultant to advertise
13 and promote their own Consultant Website, Consultant opportunity, and R+F Products exclusively
14 on their own personal social networking profiles). Additionally, R+F prohibits advertising the
15 Products on third-party online marketplaces, and on television, radio, billboards, national print, as
16 well as through mass mailings or through any other channels otherwise deemed inappropriate by
17 Rodan + Fields. *Id.* § 11g. Rather, R+F limits “appropriate locations” for distribution of advertising
18 and marketing materials to bulletin boards, message boards and digital message boards located in
19 public places and private businesses. *Id.* § 11f.

20 77. Moreover, R+F has an exhaustive list of rules that govern R+F’s posting on acceptable
21 social media sites. For example, R+F has instructions on how the Consultant opportunity must be
22 described when engaging in recruiting. *See id.* § 11k(i)-(xii) (detailing restrictions and policies for
23 interacting online with social media Influencers, prohibited postings, ethical and legal compliance,
24 etc.); *id.* § 6c (detailing strict prohibitions on product claims and income claims, rules governing
25 Consultant’s posting of “before and after” photos, etc.).

1 78. R+F even exerts control over Consultants' internet activity outside of the R+F
2 controlled platforms. For example, R+F regularly monitors Consultant conduct on Facebook and
3 Instagram and will take action against any Consultant to enforce compliance.

4 79. Finally, R+F restricts Consultants from engaging with media, instructing that they
5 must refer all media inquiries to R+F, but in the instances where R+F approves communication with
6 media regarding R+F, Consultant is forbidden from directing traffic to their Consultant Website or
7 providing direct referrals by providing their contact information, and may only promote the R+F
8 website. Exh. B § 6a.

9 **b. R+F Reliance on an E-Commerce Platform Limits Consultants'**
10 **Discretion and Promotes Online Sales over In Person**
11 **Interactions**

12 80. R+F has developed numerous online tools and resources, including the Consultant
13 Websites, R+F Social, Comms Corner, and R+F Solution Tool, which reflects a decision to exert
14 control over the Consultants, ensure they conform to the directives contemplated under the
15 Consultant Agreement, and influence Consultants to sell online via R+F-controlled websites. That
16 Consultants do not receive commissions on in person sales through R+F's Compensation Plan
further exemplifies the central nature of online sales to R+F's business model.

17 81. **First**, R+F relies on an e-commerce platform to sell its products and authorizes
18 Consultants' online sales exclusively through R+F-controlled systems. *Id.* § 11h (instructing
19 Consultants to sell Products through R+F's websites, including the Consultant Websites; prohibiting
20 Consultants from advertising and selling Products directly to consumers on e-commerce platforms
21 such as Facebook Marketplace, Amazon, independent personal websites, or other social networking
22 profiles or groups).

23 82. **Second**, as discussed in Paragraph 73, *supra*, the Consultant Websites are designed in
24 a way that ensures Consultants operate in compliance with R+F's marketing directives. And in relying
25 on R+F controlled websites to perform sales, Consultants are subject to R+F's controls over order

1 processing, cancelations, and refunds, further limiting Consultants’ exercise of business discretion.
2 *See* Exh. A at 3, § 7 (“R+F reserves the right to accept or decline any order for R+F Products, and
3 may cancel or delay shipment of R+F Products for any reason, including without limitation if
4 Consultant fails to make any required payment or otherwise fails to comply with the Consultant
5 Agreement.”); *id.* 3, § 8 (“Consultant acknowledges that R+F offers all Customers a ‘Customer
6 Satisfaction Guarantee,’ which includes the right to return R+F Products within 60 days of purchase
7 for a full refund.”); Exh. B § 9f (describing “non-deliverable” orders that result in refunds and lost
8 sales credit to Consultant and Upline); *id.* § 10c (describing refunds under the Customer Satisfaction
9 Guarantee policy, applicable to online sales and in person); *id.* § 12d (describing downward adjustment
10 to Consultant commissions after product return).

11 83. ***Third***, R+F’s own compensation scheme creates incentives for Consultants to sell
12 directly from R+F online systems, rather than conduct in person sales, because only the sales made
13 through R+F controlled platforms are included in calculations of customer commissions to
14 determine eligibility of Achievement Rewards or advance in Recognition Title. *Id.*, Appx. A
15 “Compensation Plan.” Advancement in title drastically increases a Consultant’s earning potential. For
16 example, advancing from “Consultant” to “Active Consultant” increases future customer
17 commission from 17% to 24%. *Id.*

18 84. ***Fourth***, R+F further promotes online sales through its online its proprietary online
19 sales tools, available through the PULSE Subscription. For example, subscribing Consultants receive
20 access to the “R+F Solution Tool,” which facilitates exclusively online interactions between
21 Consultants, and customers or prospective customers, as it is designed to make it easy for Consultants
22 to provide personalized R+F product recommendations. The tool also includes a quiz for
23 Consultants to share with customers to answer questions about their skincare habits and concerns,
24 and the results allow Consultants to identify the Products to sell them.

1 85. **Fifth**, R+F relies on Consultants to drive traffic to its website and their personal
2 Consultant Website through the use of their personal social media networks. But it controls
3 Consultants’ online marketing on their personal social media pages and imposes such strict
4 regulations over Consultants’ ability to creatively or strategically market R+F Products, that it
5 effectively discourages anything but online sales on its platform using R+F’s content to remain in
6 compliance with R+F directives. R+F requires Consultants to engage only in “appropriate” ways to
7 generate brand awareness, which it has sole discretion to evaluate. *Id.* § 11k (authorizing R+F “sole
8 discretion . . . [in] [t]he determination of what is inappropriate” and warning that “offending
9 Consultants will be subject to disciplinary action”); *see generally id.*, Appx C (R+F’s Code of Business
10 Ethics).

11 86. **Sixth**, R+F’s imposes broad restrictions on where and how Consultants are permitted
12 to market or sell the Products, furthermore promoting and incentivizing reliance on its e-commerce
13 platforms to remain in compliance. *See, e.g., id.* § 6o(i) (prohibiting sales, displaying, and distribution
14 of Products at kiosks, stores, or other general public retail outlets where customers can simply “walk-
15 in”); *id.* § 6o(ii) (permitting selling and displaying products as personal service facilities, which are
16 private or by appointment offices or spaces). R+F also restricts the types of events Consultants can
17 engage in marketing and sales to those that “promot[e] Rodan + Fields’ brand integrity.” *Id.* § 6o(iii).
18 Events consistent with Rodan + Fields’ brand integrity may include trade shows, professional
19 expositions, state fairs, health fairs, conventions and bridal shows. On the other hand, swap meets,
20 garage sales, flea markets, farmers’ markets, and other similar events are not conducive to Rodan +
21 Fields’ professional image. *Id.*

22 87. **Seventh**, R+F’s reliance on its e-commerce platform for Consultants and customers
23 to purchase products allows R+F “to ensure compliance with legal prohibitions on inventory
24 loading,” or “advancement buying.” *Id.* § 5b (inventory loading); *id.* § 5c(ii) (advancement buying).
25 These terms refer to situations in which a Consultant purchases products for purposes other than

1 personal use or to sell to a consumer, typically a strategy a Consultant would use to meet a sales quota,
2 qualify for achievement rewards or recognition, or other incentives under the Compensation Plan.
3 R+F e-commerce system handles payments and allows consultants to “receive full credit . . . [for all
4 sales] transacted directly with the Company on behalf of the Consultant through the R+F Website
5 and/or a Consultant’s Website,” and then R+F handles the shipments, “without the need [for
6 Consultants] to carry any inventory.” *Id.* § 5b. If and when Consultants make bulk purchases, they
7 are required to “retain[] receipts showing that at least 70% of those R+F Products were resold to one
8 or more different Retail Customers or were otherwise used in support of business activities (e.g.,
9 incentives or demonstrations) within thirty (30) days of the last applicable order delivery date.” *Id.* §
10 5b; *see also id.* § 5c(i) (requiring sale/distribution to at least three individuals). If a Consultant purchases
11 \$1000 of Product in a single month, R+F reserves the right to request their receipts at any time and
12 to require them to fill out extensive forms available in the Library detailing the transaction date, Retail
13 Customer name, products sold, method of payment, and total sale value. *Id.* § 5c(i). This sort of
14 bookkeeping deters Consultants from making bulk purchases to engage in direct sales to customers,
15 whereas purchases through the R+F platforms track total allow R+F to monitor and ensure
16 Consultant engaging and selling to sufficient retail customers, or it can decline sales if it suspects they
17 are for a prohibited purpose. Thus, a Consultant who wants to increase their earnings, or merely
18 retain their commissions bracket, through strategic purchases of inventory is not permitted to exercise
19 that discretion.

20 88. By relying on R+F’s e-commerce platform for selling, handling payments, and
21 shipping orders, Consultants save time and reduce expenses, given that in person sales would require
22 them to create or identify and attend suitable and compliant in person events, operate or have access
23 to a “personal services facility,” handle payment and shipment for in person orders, performance
24 exhaustive bookkeeping and forecast and make advance purchase of extra inventory to have in stock
25 while remaining in compliance with strict prohibitions on inventory loading.

1 **c. R+F Exerts Control Over Consultants in Recruiting and in**
2 **Relationships with Other Consultants and with Prospective and**
3 **Existing Customers**

4 89. R+F's control over Consultant's marketing and conduct extends to controlling their
5 recruiting efforts and their relationships and interactions with prospective Consultants (prospective
6 Downlines), as well as the Consultant-Downline relationship, and the Consultant-customer
7 relationship.

8 90. R+F controls how Consultants market the Consultant experience and the Program
9 generally to recruit Downlines. *Id.* § 6b (requiring Consultants to “present the Program in a truthful
10 and accurate manner consistent with the Consultant Agreement and the R+F Marketing Materials.”
11 R+F permits Consultants to “share content such as their own personal ‘why,’ and information on
12 R+F Products or the Program, provided they comply with the requirements of Section 6c regarding
13 Product Claims and Section 6d regarding Income Claims.” *Id.* § 11e(iv); *see also id.* § 6d (prohibiting
14 income claims when promoting the Consultant opportunity). R+F prohibits Consultants from
15 disclosing their own income or earnings or from making ‘lifestyle claims,’ or claims about what their
16 experience as a Consultant has afforded them, both of which it considers “equivalent to income
17 claims.” For example, R+F prohibits claims like “My Rodan + Fields business allowed me to buy a
18 house, retire from my other job, allow my spouse to quit their job, or take a luxury vacation.” *Id.* §
19 6d; *see also supra*, n.69 (Federal Trade Commission warning to Rodan + Fields that it must enforce
20 rules that Consultants cease and refrain from posting online income-related statements as a marketing
21 tactic to recruit Consultants). R+F also prohibits Consultants from advertising under the “help
22 wanted” section of publications or imply that they are recruiting for R+F or that they are seeking to
23 hire or employ someone for R+F. Exh. B § 11g. The Agreement prohibits Consultants from
24 executing any agreement or contract directly with the people they recruit; the only way the only way
25 to become a Consultant is to complete the R+F Independent Consultant Application. *Id.* § 6b.; *see*
also id. § 6r (prohibiting Consultants from competing with R+F under its non-solicitation policy).

1 91. While Consultants are encouraged and incentivized to engage in recruiting, R+F
2 restricts their discretion to build their own team, too. For example, once a Consultant joins another's
3 Downline, R+F imposes strict regulations over when and how the Downline can "Line Switch,"
4 meaning change who their Sponsor is, i.e., whose Consultants' team they are on. *See generally, id.* § 7d
5 ("Once a Consultant is sponsored, Rodan + Fields requires that the relationship between the
6 Consultant and their Sponsor be maintained and protected."). In effect, it prevents competition
7 between Consultants by prohibiting them from recruiting another Consultant's Downlines and
8 imposing the strict procedures for switching described below. *Id.* ("Under no circumstance shall any
9 Consultant offer or provide any financial or other consideration or incentive to another Consultant
10 in exchange for such other Consultant's agreement to terminate their existing Consultant Agreement
11 and re-apply under another Sponsor.").

12 92. R+F disincentivizes Consultant's from changing their Sponsor because R+F requires
13 them to terminate their existing Consultant Agreement, refrain from participating in the Program for
14 6-months, i.e., continuing to sell and earn income, and then re-enroll. *Id.* § 7d(i)–(ii) (required
15 procedures for changing lines). Upon voluntary or involuntary termination, including for the
16 purposes of re-enrolling under a new Sponsor, "the former Consultant shall have no right, title, claim
17 or interest to the Consultant Agreement or Downline that they operated, or to the opportunity to
18 receive any Commissions or Achievement Rewards from future sales generated by the Consultant
19 Agreement or Downline. A Consultant whose Consultant Agreement is terminated will lose all rights
20 to participate in or benefit from the Program." *Id.* § 15c.

21 93. In other words, even upon re-enrollment, there is no transfer of status for the
22 Consultant switching Sponsors, i.e., commission level preciously attained and awards, and they do
23 not retain any of the Consultants as their Downlines that they recruited or of the customers they
24 retained from whom they previous were entitled to commissions. *Id.* They start from square one. *See*
25 *e.g., id.*, Appx A at A14 (describing one example in which a Title loses their Paid-As Title when they

do not satisfy requirements for that Title for three consequence months, as would be the case if the Consultant was unable to participate for 6-months).

94. When a Preferred Customer enrolls as a Consultant, R+F also exerts controls over which Consultant team that Preferred Customer can join (i.e., who Sponsors them/becomes their Upline). *Id.* § 7c. That prospective Consultant “must either (i) apply as a Consultant under the Consultant with whom they originally enrolled as a Preferred Customer; or (ii) close their account [as a Preferred Customer] and wait a total of ninety (90) days before enrolling as a Consultant with a different Sponsor.” *Id.* When a Consultant is successful in recruiting someone, that Consultant becomes their Enrollment Sponsor and the new Consultant becomes part of their Downline. *See id.*, Appx. B (defining Sponsor as “A Consultant who enrolls another Consultant into the Program and is listed as the Sponsor on the Consultant Application (Enrollment Sponsor)”).⁴⁶ When there is a dispute over which Consultant sponsors the new Consultant and who will acquire this new Downline, “Rodan + Fields” reserves the sole and exclusive right to determine the final disposition of such disputes[,]” thus stripping away Consultants’ autonomy in building out their teams or, for example, negotiating among one another. *Id.* § 7c. R+F also reserves the right to assign a Downline Consultant to a Sponsor/Consultant that is not of either Consultant’s choose, thus limiting Consultants’ autonomy in building their sales team. *Id.*, Appx B at B6 (defining “Sponsor”).

95. When a Consultant recruits new Consultants, i.e., tries to build out their team by Sponsoring a new Consultant, Consultants assume additional responsibilities, in accordance with the Policies and Procedures. R+F dictate that:

Sponsors must:

⁴⁶ The Policies & Procedures also defines a Sponsor as a Consultant “to whom a Downline Consultant has been assigned through Compression or Roll Around (Performance Sponsor)[.]” Exh. B, Appx. B; however Plaintiff was never assigned any Downline. She independently recruited and cultivated relationships with each of her Downlines.

- provide prospective Consultants with a copy of, or access to, the current Policies and Procedures (found on rodanandfields.com) prior to submission of a new Consultant Application;
- ensure that prospective Consultants complete and submit the Consultant Application themselves. If extraordinary circumstances prevent a prospective Consultant from submitting the online Consultant Application, the sponsoring Consultant may do so for the prospective Consultant so long as the prospective Consultant completes and signs a hard copy of the Consultant Application in advance, is provided access to the Policies and Procedures and has the opportunity to review the Consultant Application Terms and Conditions before enrolling in which case the signed Consultant Application must be sent to the Sales Support Department, Rodan + Fields, 3001 Bishop Drive, Suite 450, San Ramon, CA, 94583. Additionally, the Sponsor must advise the new Consultant to change their password as soon as possible; and
- explain to prospective Consultants that the only required purchase to become a Consultant is a Business Starter Pack;
- explain to prospective Consultants that the Consultant Replenishment Program (CRP) and PULSE Pro are optional, subscription programs.

Id. § 7b.

96. When the prospective Consultant's application is completed and accepted, the recruiting Consultant typically becomes their Sponsor, i.e., they become the recruiting Consultant's Downline. R+F imposes even more responsibilities on Sponsoring Consultants, thus setting parameters for the relationship between the Consultant and their Downline. The Sponsor is required to "educate Downline Consultants about, and answer questions regarding, the Policies and Procedures ("P&P") and direct them to the Compliance Department for additional assistance." *Id.* Sponsors are responsible for ensuring their Downlines understand the Compensation Plan, too, as outlined in the P&P and expanded upon in an additional 18-page document. *Id.*; *Compensation Plan Overview U.S. 2023* (Exh. I). Consultants are actively encouraged to ask their Sponsoring Consultant questions, i.e., a Sponsoring Consultant, like Plaintiff, is a new Consultant's main point of contact for onboarding and is responsible for setting their Downlines up for success. Exh. B § 7b.

97. R+F also regularly initiates communication with Consultants with Downlines regarding the Downline's performance metrics to exert influence over the Consultant-Downline

1 relationship. For example, based on a Downline's Sales Volume, R+F instructs Consultants to "Take
2 Action: Coach to Sell Now!" so that the Consultant "[doesn't] let [their] team member miss out on
3 the chance to boost their payday!" R+F provides suggestions of exactly which R+F Product it
4 recommends the Downline sell to achieve those goals, and resources for the Consultant to "help
5 [their] Downline put [those] suggestions into action." In other words, R+F directly pushes content
6 and marketing strategy and tactics to Consultants, thus directing their relationship and engagement
7 with other Consultants and limiting their independence to engage with their team members.

8 98. R+F also exerts control over the Consultant-customer relationship. It heavily
9 encourages Consultants to convert "Retail Customers" into "Preferred Customers," customers who
10 subscribe to "PC Perks," a Customer Loyalty Program, to receive personalized recommendations
11 advice, and bi-monthly auto-replenishment shipments with extra discounts. Preferred Customs also
12 have Sponsors, which is the Consultant who receives commissions from that Preferred Customer's
13 purchases.⁴⁷ R+F also mandates specific procedures for when a Preferred Customer wishes to switch
14 Sponsors, but remain a Preferred Customer, rather than enrolling as a Consultant, as well as if the
15 Preferred Customer wishes to enroll but under a different Sponsor. *See generally*, Exh. B § 7d(iii)–(vi).
16 These mandates limit a Consultant's ability to choose their own customers and interact with existing
17 customers.

18 99. R+F assigns Consultants to Preferred Customers, who enroll as Preferred Customers
19 but do not know any Consultants to Sponsor them, thus limiting Consultants' discretion over their
20 relationship with customers.⁴⁸ The Consultant is expected to reach out to them, provide ongoing

22 ⁴⁷ *See* Exh. B, Appx B, at B4 ("A Preferred Customer's QV [Qualifying Volume] is included in the calculation
23 of Sponsor's PV [Personal Volume] and GV [Group Volume]. The Sponsor is paid Customer Commissions
on the [Preferred Customer's] purchases of Commissionable Products.").

24 ⁴⁸ *PC Perks*, Rodan + Fields, <https://www.rodanandfields.com/en-us/pc-perks/learn-more>
25 [<https://perma.cc/8EZM-SR8M>], (explaining that "[i]f [a prospective Preferred Customer] [doesn't] know any
Consultants, [R+F] provide[s] the names of a few at checkout [when enrolling as a Preferred Customer] who
[they] can choose from based on various factors such as [their] location," and that they will be matched with a
Consultant).

1 customer service, periodically reach out in accordance with marketing efforts, and more. Additionally,
2 R+F automatically generates an email notifying Consultants of a lead (prospective customer or
3 Consultant) when an individual fills out a templated form on that Consultant's Website, with whom
4 that Consultant is expected to develop a relationship with.

5 100. Moreover, under the Consultant Agreement, "R+F reserves the right to communicate
6 and do business with any Customers acquired through Consultant's efforts without restriction of any
7 kind." Exh. A at 3, § 7. As such, R+F sends Preferred Customers exclusive offers and promotions
8 directly that R+F identifies, not the Consultant, thereby limiting Consultant's discretion in cultivating
9 and engaging with her Preferred Customers. R+F then emails Consultants to instruct them to reach
10 out this Preferred Customer, with suggested prompts. R+F also heavily encourages Consultants to
11 recruit their Preferred Customers to enroll as Consultants. R+F authorizes Consultants to run
12 promotions as well. Exh. B § 11k(xii). However, any sales made resulting from those promotions
13 would not be through an R+F-controlled website, but instead directly to the consumer, and therefore
14 would not be within the Compensation Plan, i.e., be eligible for commissions, count toward volume
15 requirements to advance in title/Consultant status for purposes of higher commissions bracket,
16 Achievement Awards or special Incentives from R+F. *See generally, id.*, Appx. A (Compensation Plan).
17 Exh. C at pp. 1-2.

18 101. Lastly, R+F limits Consultants' ability to help other Consultants' grow out their
19 businesses. It prohibits Consultants from "sell[ing], assign[ing] or otherwise transfer[ing] their
20 Consultant Agreement without the prior written approval of Rodan + Fields." Exh. B § 14a. R+F
21 imposes numerous requirements both on the desired Seller/Transferor and on the desired
22 Buyer/Transferee to be approved, which include that the Buyer must be an Active Consultant for at
23 least the prior 12-months and have earned either 50% of the seller's annualized earnings (which must
24 be a minimum of \$25,000) or have had an annualized earnings of at least \$15,000 during the prior 12-
25 month period. *Id.* § 14(i)-(ii). Given that the average annual income for Consultants who did receive

1 at least one payment in 2022 was \$366 (although 33% received no income in 2022),⁴⁹ R+F effectively
2 prohibits Consultants from selling, assigning, or transferring their Consultant Agreement.

3 102. In the narrow instances where the Buyer/Seller satisfies these criteria, R+F
4 disincentivizes a Consultant from selling to any other Consultant other than their immediate Upline
5 (Sponsoring Consultant), further limiting Consultants' relationships with one another and one's
6 discretion over their own business. When a Consultant sells to their Upline, the Consultant's
7 Downline Consultants become the Upline's new Downlines ("compress" or "Roll Up"). However,
8 when a Consultant does not sell to their immediate Upline, that Upline must forfeit the team and
9 future commissions of all of the Consultants they had previously recruited as Downlines. Exh. B §
10 14a(ii) ("[T]he buying Consultant must terminate their Consultant Agreement, leave behind their
11 existing Downline and assume the Seller's position; the two organizations will not merge. The buying
12 Consultant's existing Downline will then compress (Roll Up) to their former Sponsor.").

13 103. R+F also has a strict non-solicitation policy that restricts Consultants' interactions with
14 other Consultants, which restrict Consultants ability to earn income from outside opportunities. n
15 outside earning opportunities *Id.* B § 6r. R+F both prohibits Consultants from recruiting other
16 Consultants to join other MLMs or even to market other MLM products to Consultants and prohibits
17 Consultants from inquiring about another Consultant's separate direct selling or other business
18 opportunities. *Id.*

19 **d. R+F Exerts Control to Ensure Consultants Are Engaging in**
20 **Approved Online Marketing and Sales Activities and Monitors**
Their Activity Closely

21 104. R+F restricts online selling of R+F Products other than R+F-controlled websites, *Id.*
22 § 11h, or their use of trademark merchandise or other R+F Branded Assets, *id.* § 11e, and heavily
23 monitoring Consultants' online marketing activity to ensure compliance.

24
25 ⁴⁹ Exh. C at pp. 1-2.

1 105. Under the PULSE Subscription terms, R+F “reserves the right to monitor
2 [Consultants’] PULSE by Penny and [personal Consultant Website] content, including
3 communications made on or through these tools, and to remove any noncompliant postings.” Exh.
4 E.

5 106. In addition to controlling Consultants’ content and use of their Consultant Website
6 and their social media presence and ways in which they market R+F Products, R+F also exerts
7 control over Consultants’ internet activity more broadly – outside of the R+F controlled platforms –
8 monitoring postings to ensure compliance with its policy prohibiting “advertis[ement of] the R+F
9 Products or the Program on channels including third-party online marketplaces. Exh. B § 11g. And
10 R+F reminds Consultants that their posts are monitored. For example, in December 2020, R+F sent
11 an email to Consultants, informing them that “it is imperative that we continue to carefully follow
12 the compliance policies” and that R+F has “a dedicated Compliance team in place, as well as a robust
13 monitoring system, to proactively track, monitor and enforce income and lifestyle claims that may
14 appear in social media posts, videos, blogs, websites, etc.” R+F also severely limits Consultants’
15 online marketing efforts by prohibiting sales of R+F Products and even references to pricing on non-
16 R+F-controlled websites, and requires Consultants to remove such content. *See id.* (“The only
17 approved form of selling/advertising via the internet is through the Pulse Personal Websites that
18 Consultants have, or through the R+F website (Section 11h of the Policies & Procedures).”); Exh. B
19 § 11k (prohibiting pricing in an image or post by Consultant on their personal social media profile);
20 *id.* § 11k(i) (“Rodan + Fields reserves the right to require the removal of noncompliant or infringing
21 posts from any Consultant’s social media pages.”).

22 107. In addition, R+F directs how the Consultants hold themselves out on social media so
23 that it can effectively monitor conduct and compliance. For example, Consultants are required to
24 disclose their full names and conspicuously identify themselves as a Rodan + Fields Independent
25 Consultant. *Id.* § 11k(ii). They are prohibited from using anonymous posts or aliases. *Id.*

1 108. R+F encourages Consultants to monitor one another as well. For example,
2 Consultants are told to direct any complaints or concerns about other Consultants' conduct to the
3 Compliance Department. *Id.* § 6k (encouraging reporting of other Consultants who violate the
4 Consultant Agreement, including R+F's policy of professional standards it expects of Consultants);
5 *id.* § 6j (disparaging remarks).

6 109. Under the Consultant Agreement, R+F requires Consultants agree to refrain from
7 engaging in activities, e.g., solicitation, upon termination commonly found in noncompete
8 agreements. *Id.* § 6r. Even after termination, R+F controls former Consultants' online activities by
9 R+F prohibiting communication about R+F as well as sharing with or tagging other R+F Consultants
10 or other R+F employees on social media in relation to other direct selling or network marketing
11 business opportunities. *Id.* R+F continues to monitor activity to ensure compliance.

12 **3. R+F Cannot Meet its Burden to Show that Consultants are**
13 **"Customarily Engaged" in a Separate Business**

14 110. R+F cannot meet its burden to show that Consultants are "customarily engaged" in
15 an independently established sales and marketing business. Instead, most R+F Consultants are
16 recruited regardless of their skill or experience, exclusively perform sales and marketing for R+F
17 (using R+F controlled systems and R+F Materials) and maintain no separate sales or marketing
18 business.

19 111. R+F Consultants are not required to have any background in sales, dermatology, or
20 cosmetics prior to becoming a Consultant. Consultants are not required to have any licensure or meet
21 any educational requirements, either. For example, they do not need to be licensed cosmetologists or
22 aestheticians, nor have any schooling, training, or prior employment in fields relating to cosmetology
23 or skincare. Nor does R+F require that they have schooling, training, or prior employment in
24 marketing, sales, or general business. With few exceptions, Consultants have not ever owned or
25 operated their own separate sales business outside of R+F. In fact, 67% of the Independent

1 Consultants had no prior direct sales experience.⁵⁰ This is expected, given that applications do not
2 submit their resumes and are only required to complete a short application with basic personal
3 information and agree to pay for the Business Starter Kit. Exh. A. After becoming Consultants, most
4 do not maintain any registered or incorporated sales or marketing business, for their work with R+F
5 or otherwise. Consultants generally do not hold themselves out to others as sales or marketing
6 professionals or maintain any office or business address.

7 112. As discussed throughout, rather than rely on Consultants' own sales experience to
8 market products, R+F provides the instrumentalities of Consultants' sales and marketing work
9 through R+F's online enterprise management system ("PULSE by Penny"), from which Consultants
10 access the Library and other proprietary resources and tools, like shareables, and business reporting
11 and analytic tools. R+F designs, and publishes to the Library, the overall social media advertising
12 campaign, and supplies the Consultants with hashtags, scripts, promotional photos and video clips,
13 and other strategic online advertising directives for the Consultants to use to the Products on social
14 media. And R+F controls all Consultant Websites.⁵¹

15 113. Ultimately, R+F intends for Consultants to view R+F as their employer. This is
16 evident because R+F policies require that Consultants rely on its materials and tools; regardless of
17 whether a Consultant maintains any kind of independent business, R+F's policies and mandated
18 instrumentalities of work make it so the Consultant responsibilities are not those that are of the sort
19 that would be performed by an independent and trained professional. *See generally, infra*, ¶¶ 173-82
20 (detailing R+F's willful misclassification of Consultants as independent contractors rather than
21 employees). For example, because R+F provides Consultants with the platform, apps, websites, and
22 other tools to sell the Products, the Consultants are using the R+F brand to sell, not their own

24 ⁵⁰ *Rodan + Fields At-A-Glance, supra*, n.41.

25 ⁵¹ *See e.g., supra*, ¶ 71 (describing Library "universe of the content"); ¶ 73 (describing how R+F leverages PULSE subscription to exert control); *see generally, supra*, ¶¶ 80-88 (describing R+F's reliance on e-commerce and online tools to control how Consultants perform marketing and sales work.).

1 business's identity. Those experienced in social media marketing are not allowed to use the kinds of
2 tools used by professionals in that field; as discussed above, R+F prohibits them from advertising
3 through mass media, Exh. B § 11g, or from leveraging using Influencers or other brands' social media
4 pages to drive traffic to their Consultant Websites. *Id.* § 11k.

5 **4. R+F Consultants Are Not “Direct Sellers”**

6 114. Despite classifying the Consultants as independent contractors, they are employees
7 under California law. As set forth below, while some MLM workers might meet the narrow statutory
8 exemption for those employed in “direct sales,” the Consultants do not.

9 **5. Consultants' Work is not Outside Rodan + Fields' “Usual Course of 10 Business”**

11 115. R+F views the work of the Consultants to market the Products online as central to its
12 business model, which in turn is built on the belief that social media posts from friends and
13 community members with shared interests may be more persuasive in for driving interest and
14 generating paying customers than a paid advertisement. Through its Consultant program, R+F has
15 been able to leverage this idea into increased visibility on social media and traffic to its websites,
16 enabling it to compete in a saturated cosmetics market very cheaply.

17 116. Accordingly, Rodan + Fields celebrates and prides itself on the work of the
18 Consultants to market and sell the Products online as central to its business model – work itself that
19 R+F does not compensate for—and as core to its past and future successes. R+F describes its
20 renowned brand as “powered by a direct selling business model and Independent Consultant
21 Community.”⁵² Direct Selling News, a trade publication for the MLM and direct selling industries,

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23
24
25 ⁵² *Rodan + Fields Adds New Talent To Their Leadership Team As Together With Their Consultant Community They Power Forward Their Life-Changing Mission*, *supra*, n.18.

1 has consistently reported that R+F's Consultant Community is the "powerful Independent
2 Consultant Community" as a key ingredient to R+F's financial success over the years.⁵³

3 117. R+F's 2023 marketing materials offers more of the same, celebrating its Consultant
4 Community alongside both its groundbreaking successes in the skincare market. For example, the
5 Rodan + Fields "At-A-Glance" graphic, featured below, describes its direct selling model, comprised
6 of Consultants, as "the core of WHO we ARE."⁵⁴ R+F irrefutably relies on the work of Consultants
7 in its usual course of business and recognizes their value and importance in R+F's ability to soar and
8 seize its multi-billion-dollar growth opportunities.

24 ⁵³ "The female-led company achieved more than \$1.5 billion in revenue in 2017 thanks to its innovative skincare
25 products, disruptive consumer connected commerce model and powerful Independent Consultant
Community." *Rodan + Fields Named No. 1 Skincare Brand in the U.S. and North America in 2017*, *supra*, n.20.

⁵⁴ *Rodan + Fields At-A-Glance*, *supra*, n.41.

RODAN+FIELDS AT-A-GLANCE

THE COMPANY

Premium skincare company offering innovative dermatology-inspired products backed by clinical results.

FOUNDED

by Stanford-trained
Dermatologists
Dr. Katie Rodan and
Dr. Kathy Fields

\$1.5B⁺

annual sales in
less than ten years

\$18M⁺

Awarded in grants by the
Rodan + Fields Prescription
for Change Foundation

3 countries in
operation
so far

THE INDEPENDENT CONSULTANTS

An amazing community of business leaders

67%

had no direct sales
experience prior
to joining

70%

work full or part-time
in addition to R+F

91%

of Preferred Customers
are very satisfied with
their Consultant

THE RESULTS

At the core of WHO we ARE.

#1

Dermatologist Founded Premium Skincare Brand in North America in 2022¹

Premium Skincare Regimen Brand in the U.S. for 5 Consecutive Years
(2018 – 2022)²

Premium Anti-Aging Regimen Brand in North America in 2022³

Premium Acne Brand in the U.S. in 2022⁴

Direct Selling Premium Skincare Brand in North America in 2022⁵

THE OPPORTUNITY

Rodan + Fields is all about innovation and growth,
with new opportunities for global expansion on the horizon.

ONLY
29%
R+F brand⁶
awareness

\$18B⁺
opportunity remains within U.S.
skincare categories

NEW
innovations
every year

\$37B
opportunity within the U.S.
in adjacent categories

¹ Source: Euromonitor International Limited; Beauty and Personal Care 2022 Edition, retail value RSP terms; all channels; Premium Skincare.

² Source: Euromonitor International Limited; Beauty and Personal Care 2022 Edition, all channels; Premium Skin Care Regimen includes Sets and Kits; retail value RSP terms.

³ Source: Euromonitor International Limited; Beauty and Personal Care 2022 Edition, retail value RSP terms; all channels; Premium Anti-Aging including Premium Anti-Aging products sold as part of Sets and Kits.

⁴ Source: Euromonitor International Limited; Beauty and Personal Care 2022 Edition, retail value RSP terms; all channels; Premium Acne Treatments.

⁵ Source: Euromonitor International Limited; Beauty and Personal Care 2022 Edition; all channels; Premium Skin Care Regimen includes Sets and Kits; retail value RSP terms.

⁶ 2021 U.S. study conducted with 1500 skincare users ages 18-74.

08/2023

life-changing SKINCARE

RODAN+FIELDS

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1 118. In 2017, after R+F was named the number one skincare brand in the United States
2 for the second time and the number one skincare brand in North America for the first time, then
3 President and CEO, Diane Dietz, attributed R+F's success as follows:

4 “This is a testament to our products that deliver visible results, our personalized,
5 direct-to-consumer approach and the entrepreneurial power of our Consultant
6 Community. We look forward to the continued momentum and sharing our life-
7 changing skincare with more consumers globally.”⁵⁵

8 In 2018, after being named the number one in skincare brand again in the United States and
9 across North America, again, Dietz credited and praised the Consultants:

10 “We’re excited to be recognized in so many great categories by Euromonitor but what really
11 inspires us is seeing our Founders’ vision come to life and giving people healthy skin and the
12 confidence that goes with it. These accolades are a testament to our powerful Independent
13 Consultant community who are tremendous brand advocates and who energize us to bring
14 more innovative and life-changing products to markets around the world.”⁵⁶

15 119. Because the work of Consultants is so fundamental to R+F's future success, in August
16 2021, R+F announced expansions to its leadership team exclusively to improve upon and support
17 the Consultant Community, describing this business decision as part of its “renewed commitment to
18 double down on their roots as a direct seller and advance their life-changing mission around the globe.

19 120. Specifically, R+F added a Chief Global Sales Officer, Laura Beitler, who is
20 “responsible for the Global Sales Organization and business related to the brand’s Independent
21 Consultant salesforce.” She was hired to “lead the Business Development, Field Operations, Field
22 Marketing and Communications, and the Recognition and Learning + Development functions.” R+F
23 also hired a Chief Marketing Officer, Elana Gold, for the first time, was to “drive the strategy and
24 vision for the R+F brand. She is responsible for Brand Strategy, Creative, Innovation, Corporate
25 Strategy + Insights, Social Media, Loyalty, Digital Marketing + eCommerce, and the Corporate

⁵⁵ *Rodan + Fields Named No. 1 Skincare Brand in the U.S. and North America in 2017*, *supra*, n.21.

⁵⁶ *RODAN + FIELDS’ INNOVATION PREVAILS; COMPANY NAMED THE #1 SKINCARE BRAND IN U.S. AND NORTH AMERICA IN 2018*, *supra*, n.12.

Communications functions.”⁵⁷ *See generally, infra*, ¶¶ 173-82 (outlining that R+F’s decision to misclassify Consultants as independent contractors rather than employees was willful).

121. The CEO described their roles as integral to its strategy to grow its business and community:

“There couldn’t be a more important time for two trailblazers in their own right, Laura and Elana, to join Rodan + Fields as we become a leading direct selling company recognized industry-wide for our community, products and people,” said Chief Executive Officer (CEO) & President, Dimitri Haloulos. “It is undeniable that their leadership, passion, and expertise come at a unique stage in our Company’s evolution to bring together our Consultant Community, direct selling business model, and product innovation in a more powerful way as we welcome our next era of growth.”⁵⁸

122. Mr. Haloulos, the President and CEO himself, also committed over 100 hours to working closely with Consultants, recognizing how critical their work is to the overall business. He shared:

“In my first three months as CEO, I spent about 125 hours with our consultants and got to know their stories at a pretty granular level,” he shared. “The diversity of story, regardless of level, whether they were a long-time leader or new to the company, Rodan + Fields, and how it fits in their lives can play such a different role. The symbiotic relationship is pretty phenomenal. It’s like nothing I’ve ever seen. I learned so much—and most of all, saw the shared passion they all have about Rodan + Fields.”⁵⁹

123. Relatedly, because the work and success of Consultants is so core to the success of the R+F business, R+F hires employees to work directly with the Consultants, for example, to develop content for them, to work on programming to keep them engaged, as well as to manage them. For example, as of November 6, 2023, R+F was looking to fill two full-time employment positions on two separate teams devoted to driving success and engagement of Consultants and traditional managerial duties over Consultants.

⁵⁷ Rodan + Fields Adds New Talent To Their Leadership Team As Together With Their Consultant Community They Power Forward Their Life-Changing Mission, *supra*, n.18.

⁵⁸ Rodan + Fields Adds New Talent To Their Leadership Team As Together With Their Consultant Community They Power Forward Their Life-Changing Mission, *supra*, n.18.

⁵⁹ Vetter, *supra*, n.27.

124. R+F's business and leadership strategies revolve heavily on ensuring the success of the Consultant Community, to which they devote impressive resources (e.g., technology and engineering, professional development, executive engagement). After expanding its leadership team, R+F launched changes to the Consultant experience, including new digital tools to streamline Consultants' work and make it simpler to reach customers online. The new Chief Global Sales Officer, Lauren Beitler, spearheading these improvements, described its success:

"Since launch, results have been really great. The combination of this simple way to share in a repeatable way over and over again that gets results and that's very systematic is what we've been focused on."⁶⁰

125. In April 2022, an interview with Direct Sellers News, the Chief Executive Officer and President, Dimitri Haloulos, credited employees and Consultants alike, as collaborators, for R+F's launch into a phase of growth, stating:

"We did a tremendous amount of work and pivoted the business all while being remote. That to me is probably the most amazing thing. It was a mix of our consultants and our employees coming together on a shared goal to make things happen."⁶¹

Because the Consultants work is a core part of R+F's business, R+F strategically, exclusively prioritized work on digitization and re-engaging the Consultants and enhancing their experience to "pivot the business."⁶²

126. R+F's product vision, and therefore their product development plans, also reflects how intertwined and central the Consultant's work is to the business. R+F conceives of new skincare products to target untapped market segments in reliance on the Consultants' ability to market and sell products as well as the countless hours R+F can rely upon Consultants devoting to the business. For example, in fall of 2021, R+F released a new multi-function anti-aging product, Total RF Serum,

⁶⁰ Vetter, *supra*, n.27.

⁶¹ *Id.*

⁶² *See id.* (quoting Chief Global Sales Officer Laura Beitler and describing changes R+F implemented under new leadership after extensive efforts to better understand the Consultant experience and re-engage Consultants, including the 2022 "Make It Yours" Campaign," which advertised how current Consultants have leveraged opportunities with R+F).

1 targeted toward skincare product users who were reluctant to invest in a regimen and therefore did
2 not use R+F's regimen-based products. After a successful launch, Haloulos celebrated Consultants'
3 role and responsibility of targeting and acquiring those new customers; again, attributing R+F's ability
4 to further penetrate the skincare market on the power of the Consultants' community. Haloulos
5 stated:

6 "We're a regimen-based company, and we believe that the combination of the products
7 really makes a difference—they do clinically. Total RF Serum accelerates those results.
8 So, if you use a regimen, you'll get better, faster results. But there are people that don't
9 want to start with a regimen, and they can start with this one product and also get visible
10 results. It gives our consultants a way to grow incremental penetration in the consumer
11 market."⁶³

12 127. R+F also underscores how essential the Community is to its business by investing
13 specifically in product development opportunities to expand that workforce. In 2022, R+F launched
14 its haircare product line, which it described as a significant and meaningful opportunity for their
15 business that would allow R+F to attract new Consultants and customer bases.⁶⁴ R+F is also able to
16 innovate and grow because of the work performed by the Consultants.

17 128. R+F's annual revenue and the company's creditworthiness are integrally related to the
18 number of Consultants enrolled, which highlights the Consultant's essential role in R+F's ability to
19 generate revenue and expand R+F's consumer base. As the number of Consultants have dropped
20 year-over-year, so has revenue, and Moody's Investors' Service has downgraded R+F's credit rating
21 4 times since its first assignment in 2018.⁶⁵ Moody's attributed each downgrade, at least in part, to the
22 decline in Independent Consultants working for R+F. For example, in 2019, Moody's stated that the
23 company's underperformance "was fueled by a significant decline in new enrollment of its
24 Independent Sales Consultants . . . [which were] a significant driver of growth across the company's
25

⁶³ *Id.*

⁶⁴ *Rodan + Fields Expands in Haircare Category*, KRQE, (Oct. 23, 2023); <https://www.krqe.com/business/press-releases/cision/20221101SF21416/rodan-fields-enters-haircare-category-with-a-scalp-first-approach/>
[<https://perma.cc/FA76-QDQ9>].

⁶⁵ *See Rodan & Fields, LLC*, Moody's Investor Services Rating Action *supra*, n.23.

1 multi-level marketing business model, and the decline in enrollment negatively impacted business
2 performance.”⁶⁶

3 **a. Background on MLMs and the Direct Sales Exemption**

4 129. For many years, the MLM industry has enjoyed notoriety for its ability to carve out
5 legal loopholes that exempted them from federal and state employment laws, thereby permitting
6 MLMs to treat its sales personnel as independent contractors rather than employees. These
7 exemptions were enacted in the 1970s and 1980s. However, the California Exemption describes a
8 different job or function than what is performed by R+F Consultants.

9 130. When AB 5 was passed in 2019, it codified the opinion in *Dynamex Operations West, Inc.*
10 *v. Superior Court of Los Angeles County*, 4 Cal. 5th 903 (2018), in which it set forth a new test for
11 misclassification (the “Dynamex Test”). When the bill was being debated, many in the MLM industry
12 recognized that the Dynamex Test would require them to classify their workers as employees. The
13 Direct Selling Association (“DSA”), the industry lobbying group, pushed for an exemption. As a
14 result of those efforts, AB 5 exempts from the Dynamex Test any salesperson “described in Section
15 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment
16 under that section are met.” (“Direct Sales Exemption”). For such workers who fall within the
17 Exemption, the old common law test (rather than the ABC test) would govern the question of
18 employee status.

19 131. For an entity to be covered under the Direct Sales Exemption, the hiring entity must
20 show that the work satisfies all three criteria set forth in the statute, namely that (a) the worker
21 performs one of two specific types of work; (b) the worker’s compensation is directly tied to sales or
22 output, and not hours worked; and (c) the worker and business have an agreement that the worker
23 will be treated as a contractor for tax purposes. If all three criteria are not met, then the Exemption
24

25 ⁶⁶ *Moody’s downgrades Rodan + Fields’ CFR to B3; ratings remain on review for downgrade, supra*, n.8 (reporting that the company “generates about \$1.3 billion in annual revenue”).

1 does not apply, and if the worker otherwise meets the Dynamex Test, they are misclassified. While
2 the third of these criteria—services performed pursuant to a contract identifying the person as an
3 independent contractor—is only facially met, and even if it were an enforceable contract, that factor
4 is not dispositive. As discussed below, the Consultant job does not satisfy the other two criteria.

5 **b. R+F Consultants Do Not Perform the Jobs Identified in the**
6 **Direct Sales Exemption**

7 132. First, for the Direct Sales Exemption to apply, the salesperson must be performing
8 one of two narrowly defined jobs. Specifically, the Exemption requires that one be “engaged in the
9 trade or business of primarily inperson [sic] demonstration and sales presentation of consumer
10 products, including services or other intangibles, in the home or sales to any buyer on a buy-sell basis,
11 a deposit-commission basis, or any similar basis, for resale by the buyer or any other person in the
12 home or otherwise than from a retail or wholesale establishment.” In other words, section (a) of the
13 Direct Sales Exemption is best understood as identifying two specific categories of direct sales jobs,
14 ***Primarily In Person Consumer Sales Work***, and ***Wholesale/Resale Work***, that could trigger the
15 applicability of the Direct Sales Exemptions. The work of an R+F Consultant does not fall under
16 either of these categories.

17 133. ***R+F Consultants Are Not Engaged Primarily in In Person Consumer Sales***
18 ***Work***. This job category covers those who are “engaged in the trade or business of primarily in person
19 [sic] demonstration and sales presentation of consumer products, including services or other
20 intangibles, in the home.” Thus, the Direct Sales Exemption is limited to those who are *primarily*
21 selling consumer products *in person* and *in the home*. These terms are significant, as they do not appear
22 in the analogous job category of “direct sellers” under a later federal statute. *See* 26 U.S.C. §
23 3508(b)(2)(ii). Thus, the California Exemption applies narrowly to jobs like door-to-door
24 salespersons, or the direct sellers who work almost exclusively through the home party circuit, i.e.,
25 people who sell consumer products by meeting with other consumers in their homes.

1 134. R+F Consultants do not “primarily” sell “in person” because the job of the
2 Independent Contractor was never intended to be in person sales work. Founder Dr. Katie Rodan
3 shared that they created the role of the Independent Consultant (and the Consultant Community
4 generally) as a direct response to “witnessing this whole decline for retail and the rise of social
5 media.”⁶⁷ See, *infra*, ¶¶ 173-82 (detailing R+F’s willful misclassification of its Consultants as
6 independent contractors rather than employees). By design, as discussed in Paragraphs 66-88, *infra*,
7 the R+F’s technology, strategies, processes (e.g., fulfillment), policies, and Compensation Plan
8 encourage and promote online sales over in person interactions. Co-Founder Dr. Fields takes pride
9 in the fact that they “don’t use the regular marketing and advertising,” and instead built “everything
10 in Rodan + Fields [to] run on [Consultants’] smartphone[s],” such as tools, resources, incentives, and
11 promotions that drive marketing and sales online.⁶⁸ In doing so, R+F made direct, in person sales
12 more cumbersome and challenging, if not impossible, and certainly less strategic or profitable.

13 135. At most, any in person sales that occur are merely incidental to online marketing and
14 selling. As discussed in Paragraphs 8 and 66, *supra*, door-to-door sales are discouraged, and R+F
15 restricts the use of kiosks and the like, all while R+F requires the use of various tools, which it
16 designed to promote online sales. Moreover, R+F does not track in person sales and does not
17 consider them for purposes of advancement or for satisfying obligations under the compensation
18 plan. R+F’s Income Disclosure Statement only tracks online sales. While R+F requires Consultants
19 to personally record and track in person sales, it is only to establish to R+F that they are not violating
20 inventory loading or advance buying rules.

21 136. Consultants market the Consultant Opportunity, i.e., recruit new Consultants, as
22 entirely online, not in person, sales work. Even the Federal Trade Commission addressed this facet
23 of Consultants’ marketing responsibilities when, in 2020, it released a warning to Rodan + Fields to
24

⁶⁷ Castillo, *supra*, n.3.

⁶⁸ *Id.*

1 enforce rules that Consultants cease and refrain from making certain online income-related
2 statements when they market the opportunity itself.⁶⁹

3 137. To the extent that any R+F Consultant was conducting “in person” sales, the COVID-
4 19 pandemic would have pushed more sales online for safety reasons. And in 2021, R+F made
5 additional investments to drive business growth and facilitate online sales; specifically, R+F hired
6 new leadership to restructure the online Consultants’ platform and build tools to make online
7 marketing and sales simpler. *See supra*, ¶¶ 119-121; ¶ 124; ¶ 125, n.62.

8 138. ***R+F Consultants are not engaged in Wholesale/Resale Work.*** This job category
9 covers those “individuals . . . engaged in the trade or business of . . .”:

10 [a] “sales to any buyer”

11 [b] “[i]on a buy-sell basis, [ii] a deposit-commission basis, or any similar basis,”

12 [c] “for resale by the buyer or any other person”, and

13 [d] “in the home or otherwise than from a retail or wholesale establishment.”

14 This classification also has a federal parallel, 26 U.S.C. § 3508(b)(2)(i). While California law does not
15 define the terms buy-sell or deposit-commission in [b], federal law does. The term “buy-sell basis” is
16 one in which one buys the product to sell the product and gets paid for selling the product with the
17 spread between the purchase price and the resale price. *See* 26 U.S.C. 6041A(b)(2)(A) & (B). The term
18 “deposit-commission basis” applies where the buyer keeps as commission for a sale of a product the
19 deposit received from the buyer. *See id.*

20 139. The “Wholesale/Resale Work” category is even narrower than “In Person Home Sales
21 Work” and does not apply to R+F. Rather, R+F requires that Consultants sell only to themselves or

23 ⁶⁹ Warning Regarding Earnings Claims Related to Coronavirus Disease 2019 (COVID-19), Federal Trade
24 Commission (April 24, 2020), [https://www.ftc.gov/system/files/warning-letters/covid-19-](https://www.ftc.gov/system/files/warning-letters/covid-19-letter-to-rodan-fields-llc.pdf)
25 [letter to rodan fields llc.pdf](https://www.ftc.gov/system/files/warning-letters/covid-19-letter-to-rodan-fields-llc.pdf) [https://perma.cc/6XAU-4HVJ] (providing examples of Consultants’ social
media posts regarding their lucrative work performed exclusively from home during the height of the COVID-
19 pandemic).

1 to retail customers. Nowhere in the Agreement or in Consultants' public materials does it state that
2 compensation is on a buy-sell or deposit-commission basis.

3 140. To illustrate what is meant by "Wholesale/Resale Work," a hypothetical Upline
4 Consultant Sue would be performing this work if:

5 [a] Sue (the "seller") sold a widget to her Downline Consultant Barb (the "buyer") for \$50;

6 [b] for Barb (or "any other person" Barb transfers the widget to) to re-sell to another person,
7 Paula, for \$60; and

8 [c] Sue compensated Barb for Barb's successful effort to re-sell the widget to Paula by
9 permitting Barb to keep the difference between the price Barb paid to Sue (\$50) and price at
10 which Barb re-sold the widget to Paula (\$60), either on

11 [i] a buy-sell basis, in which Barb pays \$50 to Sue, then Barb sells the product to Paula
12 for \$60, and Sue permits Barb to keep the difference; or

13 [ii] a deposit-commission basis, in which Paula pays Barb a \$10 deposit, Barb pays Sue
14 \$50 to buy the product to sell to Paula, and upon delivery, Paula pays \$60 to Barb, and Sue
15 permits Barb to keep the \$ 10 deposit.

16 Because Wholesale/Resale Work category applies to the "individual[] . . . engaged in the trade or
17 business of . . ." sales to buyers on resale bases, in this example, the only worker subject to its coverage
18 the person doing the *selling* on a wholesale or resale basis (Sue), not the buyer (Barb). If Barb were
19 selling in person, she would be performing In Person Consumer Sales Work.

20 141. However, R+F Consultants do not work in this way because they do not sell Products
21 to other Consultants for those Consultants to re-sell, and R+F controls compensation. If Barb directs
22 Paula her Consultant Website, and Paula purchases a product from R+F, both Barb and her Upline
23 consultant Sue would receive a commission for sales from R+F. But Sue did not perform
24 Wholesale/Resale Work, because Sue did not sell the Products to Barb, i.e., [a] is not met, nor did
25 Sue pay Barb on a buy-sell or deposit-commission basis, i.e., [c] is not met. Rather, Paula purchased
directly from R+F's e-commerce platform at R+F's set price, R+F took the full payment at the point
of sale, sent the Product directly to the Paula, and paid commission to Barb and Sue.

1 142. Indeed, Wholesale/Resale Work cannot occur because R+F imposes restrictions on
2 bulk purchasing that make it so Consultants would not sell to their own Downline for those Downline
3 purchasers to sell at retail. Under the Consultant Agreement, Consultants are only permitted to
4 purchase R+F Products in bulk for their own personal use, for use in support of R+F business
5 activities (such as to provide samples), or to resell to Retail Customers – not to sell to other
6 Consultants for those Consultants in turn to sell at retail. Exh. B § 5b. Consultants that wish to
7 purchase Products for the purposes of selling directly Customers purchase directly from R+F's e-
8 commerce platform, not from their Upline.

9 143. Even in the narrow instances where the Consultant sells Products directly to
10 customers, i.e., in person, rather than directing the Customer to her Consultant Website, Consultants
11 do not engage in Wholesale/Resale Work, because the sale to consumers is not for purposes of
12 reselling.

13 144. Even if R+F does not expressly prohibit an Upline Consultant to sell to her Downline
14 Consultants for those Downline Consultants to sell to retail customers, in practice, this is unlikely to
15 occur and not how R+F intends for Consultants to work. First, this kind of arrangement could not
16 actually be carried out on R+F's platforms. Rather, for this to happen, the Upline consultant would
17 have to buy the products from R+F, and once received, physically hand them over to the Downline
18 consultant for them to sell in person. But the R+F compensation and advancement plans key off of
19 both the Consultants' purchases and their online sales. Thus, neither the Upline nor Downline
20 consultant would get any credit for any sales that resulted, and the Downline consultant would not
21 get credit for having purchased Products. In any event, all Consultants pay R+F the same discounted
22 rate for Products, so to incentivize a Downline Consultant to engage in resale work under this model,
23 the Upline Consultant would need to sell them the Products at a price lower than the R+F discounted
24 rate. This is an illogical and unlikely outcome because the Upline would lose money if they chose to
25 participate in Wholesale/Resale Work.

1 145. *The job descriptions in the Direct Sales Exemption predate significant changes*
2 *to how MLMs now operate.* By way of background, these two categories of jobs outlined in the
3 Direct Sales Exemption were how MLMs organized at the time the Direct Sales Exemption was
4 enacted. In the 1970s and 1980s, Downline sellers hosted parties, traveled door-to-door, had booths
5 at local fairs, or visited friends and family in their homes to hand out samples, catalogs, and sales
6 sheets. They took orders and payment directly from the customer. Once the seller had enough orders,
7 the seller placed the order with the company, received the shipment from the company, and then met
8 with the customer again in person to deliver the product and if necessary, collect any further payment
9 that might be due. The direct seller engaged with consumers both directly and personally; the
10 consumers had little to no interaction with the company.

11 146. In some instances, instead of placing the order with the company, the seller performing
12 “In Person Home Sales” would place the order with the person in their “Upline,” who was engaged
13 in “Wholesale/Resale Work.” The Upline seller acquired products from the company and sold them
14 to the Downline “In Person Home Sales” worker on a buy-sell or commission deposit basis for them
15 to sell to end consumers (or to their Downlines). The seller was able to do “Wholesale/Resale Work”
16 because at the time, MLMs permitted direct sellers to fulfill their sales quotas by either selling the
17 product to retail consumers or selling it to Downline sellers.

18 147. Since the Direct Sales Exemption was enacted, various changes in the MLM industry
19 occurred to move away from this model. Most notably is the fact that over the last few decades,
20 MLMs have been forced to make changes to their operations in response to regulatory actions and
21 civil lawsuits by private litigants to enforce anti-pyramid scheme laws. Courts and regulators have
22 made clear that to avoid violating criminal and civil pyramid scheme laws, MLMs needed to conduct
23 operations so as to ensure that real, meaningful sales were happening directly to consumers—instead
24 of primarily to sellers’ own Downlines. *See, e.g., Webster v. Omnitrition Int’l*, 79 F.3d 776, 782 (9th Cir.
25 1996). It was not enough to simply have a policy that sales should be at retail; the law has evolved to

1 require MLMs to enforce that policy and to demonstrate its effectiveness at ensuring participants
2 were not merely stockpiling inventory and seeking to recoup losses by recruiting new sellers to buy
3 the product from them.

4 148. These legal developments have prompted two important changes. First, because
5 MLMs must ensure retail sales are occurring, few if any MLMs permit sellers to perform
6 “Wholesale/Resale Work.” As discussed herein, R+F does not. Second, the work undertaken by
7 MLMs to enforce policies as to sales at retail results in them exercising far more control than they
8 might have decades ago. Indeed, the R+F Consultant Agreement contains numerous restrictions to
9 ensure Consultants are not buying more inventory than can be sold at retail or selling inventory to
10 other Consultants. *E.g.*, Exh. B § 11h (prohibition on Consultants selling products online on non-
11 R+F websites); *id.* § 5b (prohibiting inventory loading and requiring retention of receipt of bulk
12 purchase to prove at least 70% were resold or used in business activities, or alternatively, requiring
13 Consultant to use all product within 30 days of purchase)); *id.* § 5c(i) (setting limitations on
14 Consultants’ personal purchases and subjecting them to R+F review when they exceed \$1000 any
15 given month); *id.* § 5c(ii) (prohibiting “advancement”); *id.* § 6i (requiring Consultants to keep receipt
16 records on retail sales for two years and to provide to R+F at its request). Under the Consultant
17 Agreement, Consultants must sell Product – and often do so at a financial loss – to comply with
18 R+F’s prohibition on retaining more than 30% of the products they personally purchased. *Id.* § 5b.

19 149. Furthermore, by implementing platforms such as the Consultant Website and
20 imposing such strict regulations on any sales outside of R+F’s e-commerce platforms, R+F can better
21 oversee and control sales of R+F Products and ensure Consultants are not engaging in activities that
22 could run afoul of anti-pyramid scheme laws. R+F essentially oversees all retail sales, given the vast
23 majority occur on R+F controlled websites, not in person. While this control may protect Consultants
24 from being a victim of one kind of legal violation, they also remove much of the discretion that other
25 independent MLM contractors had.

1 c. **The Direct Sales Exemption requires specific compensation**
2 **practices, and R+F's complicated Compensation Plan does not**
 conform with the requirement.

3 150. For a position to qualify for the Direct Sales Exemption, “[s]ubstantially all of the
4 remuneration (whether or not paid in cash) for the services performed by that individual is directly
5 related to sales or other output (including the performance of services) rather than to the number of
6 hours worked by that individual.” While R+F claims that Consultants are paid commissions based
7 on their sales, remuneration is not “directly related” to the sales and marketing services Consultants
8 perform for R+F, both because of how R+F’s policies and procedures structure pay and because of
9 the outsized role that chance plays. Ultimately, R+F has designed the Consultant Program such that
10 Consultants are required to perform extensive unpaid labor promoting the brand – for purposes of
11 sales and marketing the Program itself, from which R+F, but not the individual Consultant, directly
12 benefits. And even when R+F does pay Consultants for their work, it is not “directly related” to the
13 output of the Consultant.

14 151. **First**, R+F ultimately closes the sale, which can result in a Consultant earning income
15 that is not “directly related” to their output, but intertwined and dependent on R+F’s discretion and
16 efforts. R+F sets and controls prices that Consultants display on their Consultant Websites, writes
17 up the product descriptions, controls the point-of-sale platform and the decision on whether to
18 accept payment and fulfill the order, and packages and ships the Products to the end consumer. R+F
19 can decline a customer’s payment method, cancel the order due to a shortage or a suspicion of fraud,
20 err in its fulfillment and must refund the consumer, have a website outage that prevents the order
21 from going through, or otherwise decline or reject the sale for any reason. *See* Exh. A at 3, § 7 (“R+F
22 reserves the right to accept or decline any order for R+F Products, and may cancel or delay shipment
23 of R+F Products for any reason, including without limitation if Consultant fails to make any required
24 payment or otherwise fails to comply with the Consultant Agreement.”); *id.* § 8 (“Consultant
25 authorizes R+F to deduct from any payments due to them the difference between the price paid by

1 Consultant for any R+F Products and any refunds actually paid by R+F to Customers or credit card
2 chargebacks processed, consistent with [its policy providing] . . . the right to return R+F Products
3 within 60 days of purchase for a full refund.”); Exh. B § 10c (describing refunds under the Customer
4 Satisfaction Guarantee policy, applicable to online sales and in person); *id.* § 12c–d (detailing
5 commissions and rewards deducted from Consultant’s current and future qualifications related to
6 “Commission and Achievement Rewards”). In those instances, the Consultant will not receive a
7 commission even though the Consultant referred the customer. Where direct sellers are not
8 dependent on a company-controlled e-commerce platform, their commission for sales is more likely
9 to reflect sales made. They do not run the risk of company interference if they elect to permit a
10 customer to defer payment and can choose to invest in good inventory management practices.

11 152. ***Second***, because R+F has a “Preferred Customer” program, by which the customer
12 can elect to automate the purchase and shipment of refills of products (e.g., customer can set up an
13 auto-ship, where refills are re-ordered and re-shipped on a set schedule), the Consultant’s
14 remuneration after the initial sale depends in substantial part on R+F’s efforts. Customers may
15 choose to cancel auto-shipments because of any number of things in the exclusive control of R+F,
16 such as their dissatisfaction or boredom with the product, billing errors, price increases, or changes
17 to the terms of service. While a Consultant may be able to assist in the troubleshooting of some kinds
18 of concerns raised by their Preferred customers, ultimately R+F’s outsized role in delivering the
19 goods, means that remuneration will never “directly relate” to the Consultant’s output.

20 153. R+F has further divorced a Consultant’s output from remuneration in how it credits
21 the Consultant for auto-ship sales by Preferred Customers, as under the Compensation Plan, R+F
22 does not pay Consultants commissions on all of their sales. *See generally*, Exh. I; Exh. B, Appx A.
23 While Consultants are directed to market the program to customers and tout the benefits of enrolling
24 in auto-ship, R+F imposes barriers to receiving compensation for this work. For example, R+F does
25 not pay Consultants commission on the auto-ship purchases made by those Preferred Customers

1 unless the Consultant has satisfied other sales metrics and/or purchased a certain volume of Products
2 directly from R+F. Because of this barrier, Consultants risk lose commissions every time they
3 successfully enroll a new Preferred Customer.

4 154. **Third**, the realities of online advertising throws to chance whether a Consultant can
5 be compensated in a way that “directly relates” to their output and sales. While R+F claims a
6 Consultant will receive commission for the sales they generate, because R+F intends for its
7 Consultants to generate online sales through collective, coordinated social media marketing
8 campaigns, R+F cannot always connect an individual Consultant’s marketing efforts to the sales leads
9 the Consultants collectively directed to R+F, leaving the Consultant uncompensated for those sales.
10 For example, a retail customer may choose to purchase R+F Products specifically because of a
11 Consultant’s marketing efforts, but if they do not purchase through the Consultant’s Website or go
12 through the cumbersome process of looking the Consultant up on the R+F website to provide her
13 Consultant ID upon purchase the Consultant will not receive any commission for the purchase.

14 155. As another example, R+F will often communicate to Consultants an urgent need to
15 market a Product, such as when there is a new launch or when it wants to offer a special promotional
16 price. But these reflect a decision by R+F to push a given product in a way that will cause it to trend
17 and gain traction on social media in a way that is beneficial to R+F, but not necessarily to the
18 Consultant. Where a Consultant conforms with R+F’s directives to post within their groups or
19 networks on social media, they will not receive any compensation for contributing to the trend that
20 will drive overall sales. They only receive commission if social media algorithms display to a potential
21 or existing customer their social media post, and a consumer elects to visit their Consultant Website
22 (perhaps randomly selecting it from the many other Consultant Websites being simultaneously
23 promoted to them in connection with the viral campaign), and then elects to make their purchase
24 through that Consultant’s Website.

1 156. ***Fourth***, remuneration is not “directly related” to sales or other output, as Consultants
2 generate revenue for R+F separate from Product sales, but R+F does not compensate Consultants
3 for this output. For example, each visit to a website has economic value, regardless of whether a
4 purchase is made, and Consultants receive no compensation for their work to drive that traffic. As
5 with any modern e-commerce company, R+F’s Privacy Policy gives it the right to acquire and retain
6 all information provided by visitors to its website (including the Consultant’s Personal Websites).
7 Exh. G. Its Privacy Policy permits R+F to utilize tracking pixels, cookies, and other internet tracking
8 tools to monitor the browsing habits of the visitors to its website, and engage in direct advertising to
9 them—broad rights not given to the Consultants who found and referred these customers. *Id.* Thus,
10 R+F benefits from the leads and marketing done by its Consultants, even when consumer sales are
11 not immediately made (and thus, no compensation is to be paid to the Consultant). The data the leads
12 provide allow R+F to not only expand its advertising reach but acquire information that can be used
13 to develop new campaigns and products or inform strategy. R+F could also sell data it acquires as a
14 result of Consultants’ hard work recruit and generating leads and referrals but under their
15 Compensation Plan does not pay any commissions to the Consultant in those instances. R+F
16 exclusively owns the data and cuts off Consultants’ access to the data they generated through their
17 customer engagement and sales work, either through their own Consultant Website or by directing
18 traffic to the R+F Website, after they stop paying for their PULSE Pro subscription or their
19 Consultant Agreement terminates. Exh. F. (“Pro features will be downgraded to Basic and all
20 previously entered data will be deleted including, but not limited to, your [Consultant Website],
21 contacts, and advanced reporting.”).

22 157. Moreover, because of R+F’s ability to acquire data from Consultant leads, R+F can
23 continue to track and advertise to customers who were originally brought to R+F’s-controlled
24 websites by the Consultant. R+F has the power to target ads directly at these prospective RCs. Unlike
25 the Consultant, R+F knows exactly Products the lead viewed, and can engage in ongoing display

1 advertising to that person. Notably, R+F does not agree at any time that it will not compete with
2 Consultants or poach their customers. Exh. B § 6r.

3 158. Consultants do not own any of the data they generate or acquire and are provided by
4 R+F based on their own sales performances, purchasing patterns of their Preferred Customers, or
5 the performance of their Downlines, even though all this information is reflective of the Consultant's
6 hard work and output. *Id.* § 6r (prohibiting Consultants from disclosing any material in Performance
7 Reports). Consultants lose access to all of this data upon termination of their Consultant Agreement.
8 *Id.* § 15c (effect of termination).

9 159. R+F also requires that Consultants “authorize[] R+F to use Consultant’s name,
10 photograph or personal story, as well as any photos, videos or other testimonial or endorsement
11 material submitted by Consultant to the Company, in R+F promotional materials and waives any
12 claims for remuneration for such use by R+F.” Exh. A at 2, § 5. In other words, R+F profits not
13 only from the Consultant’s sales and marketing work, but R+F owns and profits – at no expense to
14 them – from content that Consultants generate and any branding associated with their own personal
15 image, i.e., a Consultant’s creative output, they’ve developed in purportedly running their own
16 independent businesses.

17 160. Furthermore, “R+F reserves the right to communicate and do business with any
18 Customers acquired through Consultant’s efforts without restriction of any kind[,]” which further
19 obfuscates the relationship between a Consultant’s output and remuneration. *Id.* at 3, § 7. Here, R+F
20 capitalizes on the relationship the Consultant spent time and effort into cultivating and authorizes
21 itself to conduct business with the Customer without directly relating any sales generated back to the
22 Consultant.

d. R+F's Modern E-Commerce Business Is Unlike Past and Present Direct Sales Companies.

161. The Direct Sales Exemption and its inclusion in AB 5 was based on the MLM industry's claim that it is needed to ensure the industry could continue to offer people the opportunity to create and run their own businesses. Some MLM businesses do run operations that are predominately based on around in person sales, promoting home parties and sales at community events, like Parent Teacher Association meetings or similar. Some do not allow consumers to buy products via a company website or they utilize pricing and purchasing policies that give the seller more control. In the primarily face-to-face, in person sales context, the direct line between a person's effort and a closed sale may still be possible to draw and may allow for the kind of independent business operations contemplated by the statute.

162. R+F's operations, however, are a stark departure because sales are almost exclusively made online on R+F's e-commerce platform. And the way in which it operates its platforms, including the non-customizable Consultant Website, backend resources it provides to Consultants, and the constraints on where and how to market and sell the Products, eliminates nearly all the work for the Consultant associated with operating a business, as compared to MLMs of the past, and of some in the present. By removing many of the functions performed by sellers in the past, Consultants with expertise, skills, or a willingness to invest in certain areas are unlikely to realize a material change in their earnings prospects.

163. For example, the use of the Consultant Sites to make and process orders means that skills or investment in inventory management or distribution processes are irrelevant to one's business operations. When customers place orders on the Consultant Sites, R+F fulfills them. Unlike some MLMs, both current and historic, as well as in the traditional wholesale context, Consultants do not need to plan to have Product on hand or collect bulk orders.

1 164. Similarly, expertise or support in accounting, finance, economics or pricing will not
2 impact a Consultant's success, because Consultants are not able to adjust prices at which the Products
3 are sold on their Consultant Website; R+F sets pricing at a rate that it determines will cover R+F's
4 expenses, regardless of whether the Consultant's compensation is enough to cover the Consultant's
5 expenses. R+F calculates, collects, and remits sales taxes for all sales, except in the narrow instances
6 where the Consultant resold Products directly to Customers and made a profit on that sale. Exh. B §
7 6q. Therefore, Consultants do not need, nor would they benefit from, experience in that area,
8 especially given all of the disadvantages and disincentivizes to sell in person. Unlike some MLMs,
9 both current and historic, as well as in the traditional wholesale context, R+F does not give a larger
10 discount or if the Consultant purchases a larger amount of Products to resell in person nor does it
11 increase the percentage basis for a commission on a per-order-basis if a Customer orders a larger
12 amount of Products from the Consultant's Website.

13 165. R+F is exclusively responsible for paying Upline and Downline Consultants and
14 determines any compensation owed to them, and thus, a Consultant does not negotiate or set anyone
15 else's rates of pay. R+F handles the payment interface, and thus Consultants do not need expertise
16 in electronic payments, data security and privacy, credit card processing regulations, or similar.
17 Consultants also require no skill in management other individuals since R+F provides tools to track
18 Downline performance and R+F sets Downline compensation.

19 **e. The Terms and Conditions in the Consultant Agreement are**
20 **Unconscionable, Unfair, and Unlawful**

21 166. The Consultant Agreement between R+F and Consultants is a tool and mechanism
22 by which R+F exerts control over the Consultant while maximizing R+F's profits. The Consultant
23 Agreement is a take-it-or-leave it deal, with no opportunity for negotiation. Only after enrolling and
24 beginning the work do Consultants discover that the arrangement is one in which they will spend
25

1 extraordinary amounts of time and money promoting the company with little payoff.⁷⁰ Indeed, the
2 effect of the Consultant Agreement, when considered in tandem with R+F's other business practices,
3 grossly restricts Consultants' ability to profit from their work, and may cause Consultants to turn
4 attention to recruiting more Consultants into a futile business endeavor.

5 167. Indeed, MLMs like R+F have been criticized for the fact that few of the sellers manage
6 to profit. At least one study concluded that 99% of MLM participants do not earn money;⁷¹ another
7 found that only 25% earned a profit.⁷² R+F's numbers are consistent with this low rate of success; as
8 discussed in, Paragraph 177, *infra*, regarding R+F's willful misclassification of its Consultant
9 workforce as Independent Contractors, R+F Consultants rarely make any money. In 2019, 2020,
10 2021, and 2022, 45%, 50%, 56%, and 33% of Consultants, respectively, did not receive a single
11 commission check during the entire year. Exh. C. But most Consultants who *did* receive a commission
12 check did not fare much better. R+F's annual Income Disclosure Statement reports that median
13 annual income for Consultants who did receive at least one payment in 2022 (67% of the Consultants
14 enrolled) was \$366. *Id.* at pp. 1-2. 56% of these Consultants (equivalent to 73,920 Consultants of the
15 197,000 enrolled Consultants in 2023) had fewer than 5 Preferred Customers, and this group's median
16 commissions was \$143, and some earned as little as \$20 last year, which does not account for their
17 business expenses. *Id.* In other words, their net income from their work as a Consultant was
18 substantially lower. As described throughout, Consultants purchase a Business Starter Kit in their
19 first year for \$75, most Consultants subscribe to PULSE by Penny Pro for \$24.95 (\$299.40 annually),
20 Consultants purchase hundreds of dollars in Products to both reach their 100 "Sales Value threshold

23 ⁷⁰ See, e.g., Abby Vesoulis & Eliana Dockterman, *Pandemic Schemes: How Multilevel Marketing Distributors Are Using*
24 *the Internet—and the Coronavirus—to Grow Their Businesses*, TIME (Jul. 9, 2020),
<https://time.com/5864712/multilevel-marketing-schemes-coronavirus/> [https://perma.cc/F79C-8ZSD].

24 ⁷¹ *Id.*

25 ⁷² *What is Multilevel Marketing (MLM)?*, AARP Foundation, <https://www.aarp.org/aarp-foundation/our-work/income/multilevel-marketing/> [https://perma.cc/9X2C-QBNU].

1 and so that they can honestly and authentically market the Products,⁷³ as required under the
2 Consultant Agreement, and they pay for their internet and phones which they rely on to conduct
3 business and other incidental expenses.

4 168. The Consultant Agreement is designed in a way that all but guarantees Consultants
5 receive low commissions in exchange for hard work advertising and selling R+F Products. While the
6 Consultant Agreement entitles Consultants to receive 17% commission for each consumer product
7 purchased by non-Preferred Customers that can be linked back to that Consultant, or 24% for
8 Products purchased by Preferred Customers, the Consultant Agreement operates to limit a
9 Consultant's earning potential in unforeseeable, surprising, and unfair ways, particularly for
10 Consultants who are not experienced in sales or business.

11 169. To make a sale, Consultants must compete not only with other Consultants, while
12 abiding by R+F's non-solicitation policies, but with a multi-million-dollar corporation that is selling
13 the same Products to the same general public through its own R+F website. While the Consultant
14 Agreement restricts Consultants from exercising discretion in areas such as marketing, pricing, and
15 use of the intellectual property, R+F itself is not subject to these same rules and regulations. And, as
16 discussed, R+F's Privacy Policy gives R+F the exclusive right to advertise directly to any customer
17 that was driven to the R+F Website by a Consultant's marketing work. Exh. G.

18 170. Moreover, as discussed throughout, while Consultants are limited in terms of where
19 they may market, display, and sell R+F Products and prohibits mass media advertising, R+F has no
20 such limitations. It can buy paid advertisements through social media and other mediums, a privilege
21 its Consultant Agreement prohibits Consultants from utilizing. And while Consultants cannot sell at
22 various retail establishments and may not sell at wholesale, R+F authorizes itself to sell in stores and
23
24

25 ⁷³ R+F actually markets Consultants has having "experience using . . . the Rodan + Fields products." *General FAQ*, Rodan + Fields, <https://www.rodanandfields.com/en-us/r-and-f-faqs> [https://perma.cc/5CBY-2A46].

1 therefore have negotiating power that Consultants do not have.⁷⁴ In other words, while this
2 arrangement may stop counterfeiters or what R+F refers to as “a matter of fairness,” it also allows
3 R+F to stop Consultants from selling on Amazon or other third-party marketplaces to attract more
4 customers or offer lower prices. *See generally*, Exh. B §11g-l. And it allows R+F itself to advertise and
5 sell directly to more customers, possibly poaching Consultants’ existing customer bases and diverting
6 more of the public to R+F and away from the Consultants, which R+F has authorized itself to do.

7 171. Moreover, R+F has structured its business operations to benefit from the addition of
8 more Consultants, i.e., more brand awareness, sales, in addition to free recruiting and training labor
9 by Consultants, while Consultants lose. R+F receives a minimum of \$24.95 a month from each
10 PULSE by Penny Pro subscribing Consultant, without incurring additional expenses for these
11 acquisitions, but as discussed, the reality is they purchase hundreds of dollars in Product per year.
12 While R+F benefits from an oversaturation of Consultants, the individual Consultants, only have
13 more competitors and a harder time setting themselves apart. And nowhere in the Consultant
14 Agreement does R+F promise to limit the number of Consultants retained in any way.

15 172. Given that Consultants must compete with R+F and other Consultants for retail sales,
16 Preferred Customers, and new Downline Consultants under such oppressive and onerous terms, it is
17 no surprise that the overwhelming majority never receive commission and struggle to break even.
18 But because Consultants receive commission from the retail sales made by any Consultants they
19 recruit and ultimately sponsor, R+F’s own Income Disclosure Statements indicate that those who
20 advance to higher levels through recruiting more Consultants on average earn more money. *See*
21 *generally*, Exh. C. Thus, Consultants have a financial incentive—and are expected to— promote the
22 opportunity to work for R+F under these unfair, unconscionable, and oppressive terms. Those new
23 Consultants in turn usually pay R+F \$24.95 monthly, purchase merchandise including but not limited
24

25 ⁷⁴ *General FAQ*, *supra*, n.73 (providing that they sell through products “primarily” through Consultants).

1 to Products, promote R+F on all of their social media networks, are subject to the same restrictions
2 on selling as those who recruited them, and like those before them, find profiting from selling to be
3 futile and turn to recruiting, which is also often fruitless.

4 **C. R+F's Misclassification of Plaintiff and Consultants Was Willful**

5 173. R+F's decision to misclassify the Consultants as independent contractors was willful
6 and intentional.

7 174. **First**, R+F is based in San Ramon, California, and employs personnel in a variety of
8 roles there, and thus, it is implementing California's labor and employment laws as a matter of regular
9 practice. It is a highly sophisticated, large company, whose legal team includes California lawyers,
10 both those at the prestigious law firms that provide it representation in other matters, as well as those
11 comprising its team of in-house counsel. Both its management and its legal team would be exposed
12 to news about changes in California law with respect to misclassification.

13 175. **Second**, as detailed above, R+F's Consultant Agreement, as well as the materials in
14 the Library on its proprietary platform exclusively available to Consultants, set forth detailed codes
15 of conduct. R+F knew and intended for Consultants to conform to these codes of conduct –
16 mandated under the Consultant Agreement and Policies and Procedures – and ensured adherence
17 through its platforms and other instrumentalities, including the use of the tools to monitor
18 Consultants' online conduct. *See, supra*, ¶¶ 78, 104-109 (describing R+F exerting control through its
19 monitoring practices).

20 176. **Third**, R+F knows and depends on the Consultants and even the highest levels of the
21 company understand that the Consultants have immense value to the success of the company and
22 play an essential role in R+F's revenue, growth, and business model. *See generally, supra*, ¶¶ 115-172
23 (detailing how Consultant work is part of R+F's usual course of business). The management team,
24 including but not limited to the CEO, CFO, and Chief Global Sales Officer not only understand the
25 essential role the Consultants play, but know they are classified as independent contractors, as

1 evidenced both the Founders decision to repurchase their company for the purposes of relaunching
2 R+F with a Consumer Connected Commerce business model, i.e., dependent on a workforce
3 of Consultants (“Consultant Community”) to leverage social media rather than R+F’s
4 previous retail strategy. *See, supra*, ¶¶ 32, 124. Thus, the decision was not a singular decision by a
5 low-level employee, but a conscious and knowing choice envisioned and strategized by the Founders
6 and continuously endorsed and improved upon by the highest levels of the Company. *See generally*,
7 *supra*, ¶ 34, n.18 (discussing strategic decision to hire additional leadership to manage and optimize
8 Consultant workforce and workflow); *supra*, ¶ 125, n.62 (discussing strategic infusion of “digital
9 world” in Consultant experience).

10 177. **Fourth**, R+F further knows and understands as an MLM, only a small fraction will
11 make money under its commission structure and reports data that highlight that exact outcome.
12 Indeed, the commission structure here represents a significant cost savings over the payment of
13 wages. R+F publishes an annual Income Disclosure Statement of Consultant earnings, which shows
14 that the median annual income for Consultants who did receive at least one payment in 2022 (67%
15 of the Consultants enrolled) was \$366. Exh. C at pp. 1-2. Notably, an even greater percentage of
16 Consultants enrolled received zero commissions in 2019, 2020, and 2021, 45%, 50%, 56%,
17 respectively. *Id.* at pp. 1-8. As mentioned, none of those reported income values account for
18 Consultants’ out-of-pocket costs. In 2022, only 42,000 of 132,000 Consultants that received a
19 paycheck that year had Downlines – likely that the remaining 65,000 that received zero commissions
20 that year also did not have any Downlines. *Id.* at pp. 1-2. In other words, only 25% had Downlines
21 and thus benefited by earning commissions on sales made by other Consultants. Thus, R+F is well
22 aware that it is receiving inexpensive, commission-based work from the Consultants and intentionally
23 structured the Consultant Program to leverage word of mouth efforts it does not have to pay for.

24 178. **Fifth**, R+F knew that its Consultants were not engaged in either type of work
25 protected under the Direct Sales Exemption. It does not use terms like “buy-sell” or “deposit-

commission” in its compensation documents or Consultant Agreement. It also knows that its Consultants engage primarily in social media marketing on its behalf, and are rarely, if ever, engaging in person sales or hosting parties in others’ homes, particularly during and since the COVID pandemic. And it designs platforms, such as the R+F e-commerce platforms, including the Consultant’s Personal Website, to facilitate online sales and marketing. *See generally, supra*, ¶¶ 80-88 (describing how R+F’s reliance on its e-commerce platforms pushes Consultants into online sales).

179. ***Sixth***, R+F knew the Direct Sales Exemption was enacted years ago, and there was no guarantee that all MLMs could enjoy its protection. Rather, R+F has been an MLM since 2007 and thus, would know that the classification of MLM workers has for years been one of the most critical legal and policy issues for the industry.

180. Specifically, R+F is a member of the Direct Selling Association (“DSA”), an MLM lobbying association, which disseminates updates about its activities to its members, including its lobbying efforts for exemptions to wage and hour laws for its members. For years, it has issued warnings and information to its members, advising them to review their agreements to ensure conformity.

181. For example, in 2018, the DSA filed an amicus brief in a misclassification case pending before the Oregon Supreme Court. There, the court determined that the MLM had misclassified its sales personnel as independent contractors. *See ACN Opportunity, LLC v. Employment Department*, 362 Or. 824 (2018). The decision was based in part on the fact that the statute exempted sales “in the home,” and the legislative history indicated that this Exemption was narrowly tailored to apply to things like Tupperware parties. Notably, the concurrence made clear that the direct sales laws on the books reflect outdated direct selling practices and may not reach many modern MLMs.

182. It is hard to imagine that R+F would not have learned of a decision by a neighboring state supreme court, particularly given the decision’s significance to its industry, the role played by the DSA, and the timing in the wake of the *Dynamex* decision locally. And shortly after its passage,

the DSA announced the creation of an “Independent Contractor Initiative” to combat the consequences of that decision and ensure stronger state laws.⁷⁵

D. R+F’s Misclassification of Consultants and Unfair Business Practices Harm the California Public

183. R+F’s misclassification of its workers and unfair and unconscionable business model threatens the general public. Because R+F has no incentive to stop these practices and boasts its efforts to expand these practices, a public injunction is necessary to stop these practices.

1. R+F Utilizes Widespread Marketing Practices Directed at the General Public to Recruit New Consultants

184. R+F has eschewed traditional recruiting practices in lieu of widespread advertising. Because of how R+F recruits, nearly everyone in the state of California is likely to be targeted for recruiting and engagement in R+F’s unfair and unlawful business model.

185. Rather than market job opportunities to job seekers meeting certain criteria, R+F uses its Consultants to promote the R+F Consultant Program in the same way they market its Products, i.e., it publishes advertising, marketing and information materials for the Program, too, not just the Products. Exh. B, Appx B at B5 (defining R+F Marketing Materials). Moreover, R+F’s marketing restrictions apply to Consultants’ marketing of not just the Products, but also the Program. *See e.g., id.*, Appx. C (detailing requirements “[w]hen sharing information about the R+F Products and Programs” under the R+F Consultant Code of Business Ethics). R+F has made clear that it views every Retail or Preferred Customer as a prospective Consultant. For example, in the same form that a consumer or visitor to a Consultant’s Website submits to request speaking with the Consultant,

⁷⁵ See Jeff Babener, *Op-Ed by Jeff Babener in the World of Direct Selling: DSA Launches Independent Contractor Initiative*, Direct Selling Association (Sept. 10, 2018), <https://www.dsa.org/events/news/individual-press-release/op-ed-by-jeff-babener-in-the-world-of-direct-selling-dsa-launches-independent-contractor-initiative> [https://perma.cc/EQ89-CP8K].

1 R+F provides the option for the viewer to select I am interested in “learning more about R+F
2 products” or “Becoming a Consultant.”⁷⁶

3 186. As discussed in Paragraphs 8, 56, 80-88, *supra*, and generally throughout, R+F has set
4 up its compensation structure and business model to incentivize Consultants to turn to recruiting,
5 and those Consultants in turn will promote the opportunity to their customers, as well as their family
6 and friends. Thus, the public does not need to be affirmatively seeking out job opportunities; merely
7 buying a routine consumer good or having a friend or family member working as a Consultant may
8 subject them to recruiting messaging, and by extension, could lead them to complete an application,
9 agree to the terms of the Consultant Agreement, and become a Consultant.

10 187. Moreover, R+F’s reliance on its Consultant Community to market the Consultant
11 opportunity is likely to cause the message to reach the general public at large, as its network is
12 enormous. At its peak in 2018, R+F’s Consultant Community consisted of 411,000 Consultants.⁷⁷
13 The most recent data reported, for 2022, shows there were 197,000 Consultants enrolled in the
14 Program in the United States. Exh. C at p. 2.

15 188. Consultants need not respect geographic boundaries when marketing the opportunity
16 to become a Consultant for R+F. *See* Exh. B § 5h (authorizing Consultants to sell anywhere in their
17 Home Country or other Authorized Country). Thus, any member of the California public who either
18 personally knows an R+F Consultant or follows one on social media, regardless of where the
19 Consultant lives, is likely to receive messages about the Consultant opportunity. *See id.* § 6r
20 (recognizing that trying to limit geographic scope of policies related to marketing or soliciting direct
21 selling business opportunities “would render them wholly ineffective” because “network marketing
22 is conducted through networks of independent contractors, and business is commonly conducted via
23 the Internet and telephone”).

24
25 ⁷⁶ *See e.g.*, <https://eylajosiemore.myrandf.com/en-us/pws/pwsAboutMe> [https://perma.cc/EAH5-4PRF].

⁷⁷ Voytko, *supra*, n.4; *see also* Carroll, *supra*, n.4.

189. Because of the financial incentives those Consultants receive, members of the public may sometimes repeatedly and consistently receive marketing about the Consultant opportunity over weeks or months at a time, and perhaps from multiple Consultants. Indeed, each newly accepted Consultant presents the risk of an exponential increase of Consultants. Consultants can maintain their status and receive additional compensation based on the sales volume of the Downline Consultants that they recruited. Therefore, the more Consultants recruit to join their Downline, the more likely it is that they will be able to generate more income.

190. Because Consultants are incentivized to aggressively recruit new Consultants, and R+F considers every customer to be a potential Consultant, California's residents are vulnerable to long-term consequences of R+F's rampant misclassification. Notably, R+F is not a selective employer; it requires little in the way of experience or other criteria like minimum education level. The overwhelming majority of adults in the state of California are likely qualified for the job, and millions of people in the state may seek out this opportunity. Indeed, it is estimated that one in every thirteen Americans will participate in an MLM at some point in their lifetimes.⁷⁸ This could translate into hundreds of thousands of Californians, if not millions of Californians, who are at risk of being recruited into an illegal and unfair working arrangement.⁷⁹ Notably, in 2022 California had 1,525,948 individuals involved in direct selling, i.e., working under an independent contractor sales contract – the highest number in the country.⁸⁰

⁷⁸ Marguerite DeLiema, et al., *AARP Study of Multilevel Marketing: Profiling Participants and their Experiences in Direct Sales*, AARP Foundation (2018), at 13, https://www.aarp.org/content/dam/aarp/aarp_foundation/2018/pdf/AARP%20Foundation%20MLM%20Research%20Study%20Report%2010.8.18.pdf [https://perma.cc/7T9E-QE5Y].

⁷⁹ To further contextualize, R+F has over two million Preferred Customers across the U.S., Canada, and Australia, and many more Retail Customers, all of whom are exposed to marketing and recruiting efforts to become a Consultant, because as discussed, both R+F and its Consultants market Products and the Program simultaneously, which does not even account for exposure to individuals who as of yet have never purchased R+F Products. *About Us*, *supra*, n1.

⁸⁰ *Impact of Direct Selling by State, 2022*; Direct Selling Education Foundation, https://www.dsa.org/docs/default-source/industry-fact-sheets/2023statestatsfactsheetv2.pdf?sfvrsn=c11ed2a5_2 [https://perma.cc/HRS5-3UUG].

2. R+F's Unfair and Unlawful Conduct Harms California In Other Ways

191. R+F is responsible for perpetrating economic and social harms on Californians through its misclassification of its Consultant workforce. By choosing not to compensate Consultants for their time or reimbursing their business expenses, R+F siphons away their time and resources, which harms them and their families. For example, it is well documented, including in R+F's very own Income Disclosure Statements, that most MLM salespeople do not earn money. Exh. C. One study, published in 2017 by the Consumer Awareness Institute, analyzed 350 MLMs with publicly available data and reported that 99% of MLM sellers lost money, after deducting upfront and recurring costs.⁸¹ Another study of 1,049 MLM salespeople revealed that the median hourly rate among sellers was equivalent to less than 70 cents per hour.⁸² This is particularly troubling given MLM companies, including R+F, continue to market and promote the Consultant "opportunity" as an "income" or "business" opportunity, knowing full well that the vast majority of its Consultant workforce will experience losses. It is also not uncommon for Consultants to accumulate credit card debt due to their non-reimbursed business expenses.⁸³

192. R+F's unfair and unlawful practices leave Consultants with fewer resources to invest in their families or in legitimate businesses and less time to spend working for real, guaranteed wages. Instead of the opportunity being a "side hustle" that allows them to pay off mortgages or student loan debt, cover costs of childcare, or otherwise advance financially, the loss of money from fruitless financial investments as a Consultant could cause them greater economic hardship.

⁸¹ Consumer Awareness Institute, Taylor, Jon M., MBA, Ph.D., *The Case (for and) against Multi-level Marketing* (2011) Multi-Level Marketing Unmasked—Why Multilevel Marketing Is Unfair and Deceptive; available https://www.ftc.gov/sites/default/files/documents/public_comments/trade-regulation-rule-disclosure-requirements-and-prohibitions-concerning-business-opportunities-ftc.r511993-00008%C2%A0/00008-57281.pdf [https://perma.cc/RU2J-JJ4Q] (cited by the Federal Trade Commission).

⁸² Brittney Laryea, *Survey: Vast Majority of Multilevel Marketing Participants Earn Less Than 70 Cents an Hour*, Magnify Money (Sept. 17, 2018), <https://www.magnifymoney.com/news/mlm-participants-survey/>.

⁸³ *Id.*

1 193. MLMs notoriously target women to sell health and wellness, beauty, and household
2 products by marketing an unattainable dream of financial freedom, particularly stay-at-home mothers,
3 who may be boxed out of traditional workforce opportunities due to lack of flexibility in setting their
4 own work schedules. Through this strategy, they succeed in “manipulat[ing] the existing cultural
5 context surrounding women . . . [of] homemaking and feminism”⁸⁴ to sell these products designed
6 for women, evidenced by the fact that 75% of the MLM workforce across industries consisted of
7 women.⁸⁵

8 194. Rodan + Fields is no exception, and through its unlawful and intentionally predatory
9 practices, Rodan + Fields has accumulated a vast network of predominately women to sell cosmetics
10 and skincare products to other women.⁸⁶ This outcome is by design and consistent with R+F’s brand
11 messaging around female empowerment.⁸⁷ Consequentially, R+F has disproportionately harmed and
12 disempowered thousands of Californian women, who have wasted thousands of dollars with no
13 return on their investment to become and maintain their status as Consultants thanks to R+F’s
14 unlawful conduct.

22 ⁸⁴ T. True Fullmer, *Multilevel Marketing: A Tax on Our Communities*, Marriott Student Review,
23 <https://marriottstudentreview.org/weekly-blog/multilevel-marketing-a-tax-on-our-communities/>
[<https://perma.cc/YW5V-67U4>].

24 ⁸⁵ *Direct Selling in the United States 2022 Industry Overview*, *supra*, n.29.

24 ⁸⁶ *Multilevel Marketing: A Tax on Our Communities*, *supra*, n.84.

25 ⁸⁷ Rodan + Fields, official Facebook page (Mar. 6, 2019), <https://www.facebook.com/rodanandfields>
[<https://perma.cc/WWH9-5ABB>].



195. Beyond recruitment, R+F's misclassification of their Consultants harms Californians both economically and socially, and disproportionately impacts women, who make up 75% of consultants in direct selling businesses, and a far greater percentage when the products are cosmetics.⁸⁸ When Consultants lose money and accumulate credit card debt, they and their families are harmed by the siphoning away of their uncompensated time and lost money on business expenses. This results in them and their families having fewer resources to invest in legitimate businesses and less time to spend working for real, guaranteed wages. And instead of the opportunity being a "side hustle" that allows them to pay off mortgages or student loan debt, cover costs of childcare, or

⁸⁸ *Direct Selling in the United States 2022 Industry Overview*, *supra*, n.29.

1 otherwise advance financially, the loss of money from fruitless financial investments as a Consultant
2 could cause them more economic hardship.

3 196. This public harm intensifies during periods of crisis. There was an increase in deceptive
4 marketing at the start of the COVID-19 pandemic, whereby Consultants were “unlawfully
5 misrepresent[ing] that consumers who become Rodan + Fields business opportunity participants are
6 likely to earn substantial income.”⁸⁹ The Federal Trade Commission was compelled to issue a warning
7 to Rodan + Fields regarding its Consultants’ claims on social media and advising R+F to require
8 Consultants to cease making these misleading statements.⁹⁰

9 197. Many MLMs have grown during the COVID-19 pandemic, recruiting salespeople by
10 promising remote work for the unemployed.⁹¹ At the onset of the pandemic, Consultants posted on
11 social media that R+F provided them the chance to earn extra income in a time when so many were
12 struggling.⁹² The Federal Trade Commission cracked down on Rodan + Fields on April 24, 2020,
13 almost immediately after the pandemic began, issuing a warning to the company related to its
14 Consultants’ misleading representations about the likelihood of earning substantial income by
15 becoming a Consultant.⁹³ R+F was forced to reign in its Consultants’ recruitment posts, sending out
16 the compliance reminder email in December 2020 discussed in paragraph 106. Ultimately, the
17 Consultants salesforce shrunk in 2020 and has continued to shrink due to “the reduced attractiveness
18 of the business opportunity as an independent consultant,”⁹⁴ and R+F has been working hard to
19 revamp its platform and Compensation Plan to grow its Consultant Community and reap the benefits

21 ⁸⁹ *Warning Regarding Earnings Claims Related to Coronavirus Disease 2019 (COVID-19)*, *supra*, n.69.

22 ⁹⁰ *Id.*

23 ⁹¹ *Id.*

24 ⁹² *Id.*

25 ⁹³ *Id.*

⁹⁴ *Moody’s downgrades Rodan + Fields’ CFR to Caa3; outlook remains negative*, Moody’s Investor Services Rating Action (April 6, 2022), https://www.moody.com/research/Moodys-downgrades-Rodan-Fields-CFR-to-Caa3-outlook-remains-Rating-Action--PR_464782 [https://perma.cc/ZZ8C-CHE6]; *see also* *Moody’s downgrades Rodan + Fields’ CFR to Caa2; outlook negative*, *supra*, n.24 (downgrading credit and issuing negative outlook, citing unattractive business opportunity).

1 of their unpaid labor.⁹⁵ These are the precise individuals that legislatures meant to shield with
2 minimum wage and other workplace protections.

3 198. Most MLMs benefited from greater recruitment of participants during COVID-19⁹⁶
4 because they recruit new Consultants under the guise that they will be able to grow their own business
5 with a sustainable income. These claims, whether or not they are made during times of global financial
6 crisis, siphons potential workers away from legitimate opportunities with the promises of building a
7 personal business, when these individuals are under the control of MLM companies, like R+F, with
8 none of the benefits of proper classification, hurting California families and increasing reliance on
9 public benefits, such as federal and state COVID relief.

10 199. R+F's practices also harm competitors, such as legitimate companies in cosmetics
11 space, who must and do pay wages and benefits at prevailing market rates to market and sell their
12 products. By misclassifying its workers, and paying them only for certain sales, R+F incurs lower
13 expenses, giving them a competitive advantage over other market participants in the cosmetics
14 industry.

15 200. The California Legislature specifically considered harms like these in passing AB-5.
16 The legislature recognized "harm to misclassified workers who lose significant workplace protections,
17 the unfairness to employers who must compete with companies that misclassify, and the loss to the
18 state of needed revenue from companies that use misclassification to avoid obligations such as
19 payment of payroll taxes, payment of premiums for workers' compensation, Social Security,
20 unemployment, and disability insurance" and that "the misclassification of workers as independent
21 contractors has been a significant factor in the erosion of the middle class and the rise in income
22
23

24 ⁹⁵ Vetter, *supra*, n.27; see also Moody's downgrades Rodan + Fields' CFR to Caa2; outlook negative, *supra*, n.24 (noting
25 "R + F is executing on plans to stabilize the consultant base including recent category expansion to haircare").

⁹⁶ *Warning Regarding Earnings Claims Related to Coronavirus Disease 2019 (COVID-19)*, *supra*, n.69.

1 inequality.” R+F’s continued misclassification of California workers will exacerbate all these harms
2 to the California public.

3 201. Absent an injunction protecting the public from the negative impacts of Defendants’
4 illegal activities, including by and through their officers and/or entities in their control, the California
5 public remains at risk from R+F’s deceptive recruitment strategies and the economic and social harms
6 created by their unlawful practices.

7 **E. Plaintiff’s Experiences as an R+F Consultant**

8 202. Plaintiff worked as an R+F Consultant from February 2019 through March 3, 2023.

9 203. Before becoming a Consultant, Plaintiff had been purchasing the Products for several
10 years and was a Preferred Customer of another Consultant. In 2019, Plaintiff was recruited by another
11 Consultant to sign up to join the R+F Independent Consultant Community. With the guidance and
12 encouragement of this Consultant (her “Sponsor,”) she downloaded and filled out the Independent
13 Consultant Application. At that time, Plaintiff had no experience in sales, marketing, business, and
14 had not worked in the cosmetics or skincare industry.

15 204. The application did not ask Plaintiff for her resume or any details about her work
16 experience, qualifications, licensure, skills, or social media handles. The terms and conditions attached
17 to the application stated that to be eligible to become a Consultant, she was required to purchase a
18 Business Enrollment Kit. On the application, she checked a box indicating she met this eligibility
19 requirement, among others. She chose a custom domain prefix for her R+F Personal Website. She
20 signed the application, agreeing to comply with all terms and conditions of the Independent
21 Consultant Agreement, which incorporated the Policies and Procedures, among other documents.
22 She also agreed to pay an annual renewal fee of \$25 to remain active as a Consultant, as required by
23 the P&P.

24 205. Plaintiff had four Business Enrollment Kit options; she selected the “RF Express
25 Business Kit” for \$995 and the domain <https://www.mrsldann.myrandf.com/>.

1 206. Plaintiff paid the fee to complete and submit her application. Her Business Kit
2 included shareable materials and tools for prospecting customers and Consultants as well as product
3 samples. She also gained access to the R+F “Library.”

4 207. After becoming a Consultant, she worked to generate awareness around her new
5 business and to try to sell R+F Products. She purchased R+F Marketing Materials and Business
6 Supplies from R+F directly, as required by the Independent Consultant Agreement, for marketing
7 purposes, as well as for training purposes, i.e., to help her learn about and test the products she was
8 responsible for selling. Excluding home office supplies necessary to run her business, her initial
9 expenses summed to over \$2,500. It took her multiple months to recuperate the funds she invested
10 to become a Consultant and start selling R+F Products.

11 208. After working 3-months as a Consultant, her limited subscription to PULSE Pro,
12 which provided her access to her R+F-controlled Consultant Website, expired. She elected to
13 subscribe to PULSE Pro for \$24.95 per month to maintain it, so that customers could make purchases
14 through her website directly and she could earn commission on those sales. This subscription also
15 entitled her to receive discounts on the R+F Products she needed to purchase in order to effectively
16 and honestly market and sell them, as required by the P&P.

17 209. R+F paid commissions differently, depending on whether a customer held a
18 “Preferred Customer” status. While R+F paid commissions on regular customers for each purchase
19 they made, R+F would only pay commissions on Preferred Customer purchases if the Plaintiff, like
20 all Consultants, either had already obtained a threshold level of sales for a given month (worth
21 approximately \$120-\$125 in retail value), or purchased the equivalent amount of R+F Products for
22 personal use or to attempt to resell to customers.

23 210. Because the only way to start earning commission each month for every sale to a
24 Preferred Customer was to have earned \$100 from products purchased e wholesale purchase of
25 products from R+F, Plaintiff typically purchased the minimum amount of products each month to

1 achieve that threshold, spending approximately \$1500 annually. Plaintiff often featured these
2 Products in her marketing work, but usually was unable to resell any of the products she purchased.

3 211. During her tenure, she relied heavily on the R+F tools and resources available only to
4 Consultants on its platform, designed and provided by R+F. Plaintiff leveraged the R+F platform to
5 assist her in her marketing and sales work, to gain insights on how to best interact with customers,
6 manage and oversee her Downlines, generate leads (including R+F recommendations) on which
7 Preferred Customers or Downlines to target, and to directly engage with and provide service to
8 customers. She also regularly sought guidance from other Consultants and relied on their knowledge
9 and support.

10 212. Although Plaintiff did not provide her social media profiles to R+F when she
11 completed her application, she agreed to adhere to the exhaustive rules and regulations governing her
12 online conduct, sales, and marketing efforts. In May 2019, Plaintiff learned R+F was monitoring her
13 accounts after she received an email from R+F's compliance team demanding she remove certain
14 content in compliance with the P&P to which she was required to adhere.

15 213. Plaintiff was successful in recruiting two Downlines, who in turn each recruited 1-2
16 Downlines. After building her small team, for the remainder of her time as an R+F Consultant,
17 Plaintiff spent approximately a third of her time supporting her Downlines, and the remainder
18 marketing, promoting, and learning about R+F Products—almost all of which was performed online,
19 as well as engaging with customers. Plaintiff very rarely sold Products or recruited in person.

20 **1. Plaintiff Was Required to Adhere to R+F's Policies and Procedures**

21 214. As required for eligibility to become a Consultant, R+F required to meet the
22 requirements set forth in the Independent Consultant Agreement, which included the lengthy P&P
23 document.

24 215. When Plaintiff's Application was accepted by R+F, R+F provided Plaintiff access to
25 its proprietary, password-protected PULSE digital platform. It contained a "Library," that served as

1 a Consultant's portal for resources, analytics, and tools related to work as Consultants. R+F stored
2 key documents in the Library, such as all documents incorporated in the Consultant Agreement,
3 training tools; marketing instructions and guidance; approved R+F Marketing Materials and Business
4 Supplies; marketing and communications templates, a catalog of products, prices, and corresponding
5 commissions rates, and other important reference materials, including additional rules and regulations
6 governing social media conduct and PWS content requirements, not included in the P&P. R+F
7 required her to understand, abide by, and utilize these materials.

8 216. During Plaintiff's approximately four years with R+F, R+F frequently released new
9 products, rebranded existing products, launched marketing campaigns, shifted advertising strategies,
10 updated approved Marketing Materials, made changes to the Compensation Plan, released training
11 videos for Consultants, hosted virtual live events, and other initiatives to engage Consultants,
12 encourage them to market and sell, and educate about R+F Products and policies.

13 217. As required by the Consultant Agreement, Plaintiff regularly accessed and reviewed
14 amendments to R+F's documents and other terms incorporated into the Consultant Agreement to
15 ensure she remained in compliance with all of R+F's requirements and directives. Accordingly,
16 Plaintiff was frequently assigned to watch training videos, amend their own marketing and sales
17 strategies, and update her custom social media content to incorporate the most recently approved
18 marketing materials. Plaintiff understood that performing these types of tasks were required in order
19 to remain an active Consultant, i.e., in compliance. Because she "Sponsored" other Consultants, who
20 became her Downlines, she was required to expend time engaging with her Downlines to ensure they
21 understood changes to R+F's Consultant Agreement, too. She also had both in person and video
22 meetings with her team. Over the years, Plaintiff's commitment to these tasks ranged from twenty-
23 five hours per month to ten hours per month. She also spent additional money purchasing new
24 products so that she could test them and market them authentically and several hours reviewing
25 content R+F content pertaining to those products, as required under R+F's Code of Business Ethics.

218. Plaintiff worked as a Consultant from February 2019 through March 2023, in accordance with the R+F directives previously outlined.

2. Plaintiff Spent Many Hours Performing Marketing, Sales, and Customer Service Work in Accordance with R+F's Policies.

219. During Plaintiff's tenure, Plaintiff used her personal social media to promote R+F Products and the Consultant Opportunity, i.e., market and recruit, regularly. This work was involved and time consuming and involved multiple phases. Plaintiff often would spend several hours throughout the week planning posts and sales strategies for the upcoming week, engaging other Consultants, and performing other tasks, elaborated below.

220. *First*, to start, Plaintiff needed to spend time planning for and the content that would ultimately be the subject matter of any given post. In accordance with R+F's policies, Plaintiff devoted time to study and select which of the many available R+F Products she would promote.

221. R+F heavily encouraged Plaintiff to use R+F Products, i.e., subscribe to the Consultant Replenishment Program, and post content tracking her skincare regimen and her positive results on her social media. Because R+F encouraged Consultant's to publish their own personal experiences with the Products, Plaintiff's planning and preliminary work included using the Products for sufficient time to see results. Plaintiff was required to purchase these Products from R+F to create any personalized content. Plaintiff frequently reviewed the P&P and R+F materials because R+F imposed strict parameters on before and after videos, e.g., requiring specific statements about use and disclaimers, and other product marketing efforts.

222. She also reviewed R+F materials that provided strategies and guidance for advertising and selling. She dedicated a lot of time to preparing her marketing posts to share with her network. She was intentional about marketing to both existing and prospective customers and the different strategies required for each market segment. Plaintiff would brainstorm content, draft and edit the text, and take photographs and video recordings for her posts. She regularly consulted R+F Content

1 for inspiration. Because of the time-intensive commitment to develop her own content, she utilized
2 R+F templates and other R+F generated content like hashtags and graphics for the majority of her
3 work, curating them to suit her needs. The amount of time Plaintiff spent varied over the years,
4 ranging from approximately ten hours per month developing content and marketing products to ten
5 hours per week on these tasks.

6 223. At times, Plaintiff used her own content and media, such as taking her own
7 photographs and recordings. When doing so, she devoted time into making sure the images were
8 attractive and that the lighting and background was suitable and consistent with R+F's expectations,
9 and fully in compliance with the regulations governing "Before and After" Photos. Indeed, when she
10 posted on social media about results from her own use of R+F Products, she received more
11 engagement on her posts, which led to more sales. Additionally, she spent several hours each week
12 navigating R+F tools intended to help her evaluate customer engagement and her own sales
13 performance, so she could leverage these metrics to improve upon her marketing tactics.

14 224. **Second**, in addition to spending time marketing the products, Plaintiff marketed the
15 Consultant experience. She created and published content online about the impact the Consultant
16 experience had on her life (but, in accordance with R+F's P&P, refraining from making any "Income
17 and Lifestyle" claims) or her positive skincare results from using the products. Because she was
18 prohibited from making any representation inconsistent with R+F Marketing Materials, she
19 frequently reviewed them and paid close attention to any new R+F regulations to develop content
20 strictly in accordance with R+F policies, e.g., statements she was permitted to make and others she
21 was prohibited from making, as well as disclaimers she was required to make. The amount of time
22 Plaintiff spent marketing her experience and on other recruiting efforts varied over the years, ranging
23 from approximately five hours per week to five hours per month.

24 225. **Third, in addition to creating and publishing marketing content about her**
25 **experience as a Consultant**, Plaintiff strategically targeted people in her personal networks to build

1 out her team of Consultants. R+F heavily encouraged Consultants to build out their teams of
2 Downlines and recommended this strategy. R+F provided training tools for recruiting purposes.
3 Plaintiff spent additional time each month engaging friends and family, separate from her broader
4 online marketing efforts to recruit Consultants.

5 226. ***Fourth***, Plaintiff's social media-based marketing work was not limited to crafting and
6 publishing posts, but included ongoing oversight of her social media accounts to reply to public
7 comments as well as engage with existing customers and leads who would send her direct online
8 messages to her social media inboxes. Because it was critical for customer acquisition and retention,
9 she constantly monitored responses to posts, and expediently replied to any direct messages from
10 interested customers. Plaintiff spent ample time to thoughtfully prepare these responses, often a few
11 hours a week engaging in text and email messaging with existing Retail Customers, Preferred
12 Customers, and prospective Consultants.

13 227. ***Fifth***, Plaintiff spent time monitoring her personal email for inquiries submitted to
14 her directly through her Personal Website using an R+F-generated form that Plaintiff had not been
15 able to customize or remove from her PWS. Because her R+F-controlled PWS included a standard
16 form that allowed visitors to her website to contact her online directly and select the "I am interested
17 in Becoming a Consultant" and/or "I am interested in Learning more about R+F products"
18 checkboxes, R+F required Plaintiff to use its platform to generate leads for prospective customers
19 and prospective Consultants and to follow up with these individuals. Whenever someone filled out
20 the form, Plaintiff automatically received an R+F-generated e-mail prompting her to reach out.

21 228. Additionally, potential and Preferred Customers would fill out the R+F Solution Tool
22 Quiz on her Consultant Website, and the R+F Platform would generate an email to Plaintiff with
23 results for her to reach out to answer their skincare questions and offer guidance. She was not paid
24 for these consultations.

229. Plaintiff was consistently prompt in responding to these and similar requests submitted through her PWS. If she waited hours or days to respond, she risked losing a potential sale or building her team of Downlines. As a result, to be successful, Plaintiff regularly monitored her social media accounts and messages, so she could respond immediately to interested customers—at any time of day or night. Where Plaintiff could not respond to a customer or Downline lead immediately, Plaintiff would respond as soon as she was able, even if it meant answering the request in an inconvenient location, such as in her car in a parking lot. While the time each day she spent varied, she would check her phone when alerts came in, continuously keeping track of when a customer might need her. Plaintiff rarely, if ever, sold to customers in person, and she conducted her marketing and communications with prospective customers, existing customers, prospective consultants, and her existing Downlines online.

230. *Sixth*, Plaintiff received targeted emails from R+F on a monthly basis instructing her to follow up with her Preferred Customers on exclusive offers R+F had sent them directly and separate frequent emails from R+F instructing her to reach to her Downlines to coach them on how to sell specific Products R+F recommended to accrue Achievement Rewards. Plaintiff spent approximately ten hours per month following these directives from R+F. She was not paid for any of her work fielding R+F tasks regardless of whether her follow up efforts resulted in personal sales or sales of her Downlines.

3. Plaintiff Spent Many Hours Using R+F's Platforms and Tools to Market and Sell Products and the Consultant Experience in Accordance with Its Directives

231. Plaintiff leveraged R+F's online Platforms and Tools to satisfying R+F's expectations of Consultants, in a manner consistent with how R+F markets the Consultant's role and responsibilities. And Plaintiff spent time directing customers to R+F's online skincare solution quiz ("R+F Solution Tool"). She leveraged its results to assist customers in purchasing the Products recommended based on the customer's responses through her online through her PWS. In other

1 words, this tool guided some of her marketing and sales efforts. And as described above, she used
2 R+F platforms for email.

3 232. R+F heavily encouraged Plaintiff to market the “PC Perks” subscription, a Customer
4 Loyalty Program; her efforts were concentrated on converting Retail Customers into Preferred
5 Customers who receive bi-monthly auto-replenishment shipments with extra discounts. She
6 leveraged various R+F tools and resources. She was not paid for this work unless she was successful
7 in enrolling customers, in which case she received commissions from their purchases, but not the
8 Preferred Customer acquisition itself.

9 **4. Plaintiff Spent Many Additional Hours on Other Responsibilities**

10 233. Plaintiff’s tasks were not limited only to developing advertising and engaging with
11 customers but also included other necessary work to remain in compliance with their obligations as
12 Consultants and try to generate income after becoming a Consultant.

13 234. When Plaintiff began working as a Consultant, Plaintiff reviewed the training materials
14 on R+F’s platform, PULSE by Penny, in particular the contents in the “Library” to learn about R+F
15 and marketing and sales generally. This included several hours of watching training videos and
16 studying the materials published by R+F specific on R+F’s brand identity; marketing tactics, e.g., and
17 promotion best practices; how to market the R+F brand and the Products, etc. Plaintiff was not well
18 versed in R+F’s expansive product line, so she studied the Products catalog. As part of her
19 onboarding Plaintiff also expended hours consuming content specific to her role as a Consultant
20 published by both R+F and original content created by other Consultants, where she learned R+F’s
21 expectations of Consultants, how to perform the day-to-day work, and compensation structure.
22 Additionally, she attended up to two meetings a day with her Sponsoring Consultant, where she was
23 trained on R+F policies, strategies, and tactics. During these first couple of weeks, Plaintiff invested
24 approximately 35 hours each week to fully onboard as a Consultant and then recruit two Downline
25 Consultants to join her team.

1 235. The activities and tasks she undertook for recruiting purposes were distinct from her
2 work marketing both the Products and her own experience as a Consultant. Plaintiff personally
3 cultivated each of those relationships to convert customers into Consultants. To recruit other
4 Consultants, she spent many hours reviewing R+F's resources for updates to its policies to ensure
5 she abided by R+F's strict limitations on who she could recruit, statements she was permitted to
6 make on social media and others she was prohibited from making when recruiting, as well as
7 disclaimers she was required to make. To enroll a new Consultant, she was required to explain the
8 financial expectations of Consultants to complete enrollment (Business Start Pack purchase
9 requirement), the PULSE Pro subscription, and Consultant discounts for product subscriptions. She
10 was also required to oversee the application process to ensure prospective Consultants complete it
11 themselves.

12 236. Plaintiff became the "Sponsor" of Consultants she recruited in her Downline. Once
13 she had Downlines, she was required to onboard her Downlines, e.g., to explain R+F's business
14 model, educate them on the Policies and Procedures, and provide resources to start selling. After
15 onboarding, she was required to take on additional responsibilities, e.g., tracking their performance
16 using R+F tools, coaching them to sell specific products as directed by R+F in its email outreach to
17 Plaintiff, and sending weekly communications, and to be available whenever they reached out
18 frequently with questions. Plaintiff was committed to ensuring her Downlines were successful and
19 remained in compliance with R+F's directives, and she received no compensation for this work. She
20 spent over five hours per day training and supporting her Downlines their first week, then was able
21 to reduce this commitment to approximately fifteen hours per month. She never received any
22 compensation associated with satisfying these responsibilities set forth by R+F.

23 237. Plaintiff tried recruiting additional Downlines later during her tenure but did not end
24 up sponsoring any additional Consultants. Plaintiff did not receive any compensation for the
25 countless hours she spent recruiting, and she did not receive compensation when she successfully

1 brought on a new Consultant to her Downline. Her two Downlines each in turn recruited 1–2
2 Downlines. She hosted team meetings.

3 238. Throughout her tenure, she stayed in contact with her Upline to perform her job. For
4 example, for most of her employment, Plaintiff's Upline Consultant held weekly meetings, which
5 Plaintiff often attended. The meetings lasted about an hour. These were important for her continued
6 learning about the brand, R+F Products, evolving expectations R+F had of Consultants, and changes
7 to the Compensation Plan. She leveraged this content to help educate her own Downlines.

8 239. Because Consultants are responsible for learning about any substantive changes to the
9 Policies and Procedures, i.e., the Consultant Agreement, she was expected to read the weekly Insider
10 Scoop published and distributed to Consultants to stay abreast on compliance matters, Products
11 releases and information, R+F events, and matters that R+F coined "useful to Consultants in
12 conducting their Rodan + Fields activities." For example, R+F also regularly changed its marketing
13 strategies for Consultants. Whenever R+F changed its marketing strategies, Plaintiff would spend
14 time familiarizing herself and adapting to these new strategies to ensure her posts reflected the
15 changes and learning any corresponding updates to the policies and procedures. R+F frequently
16 released new products that Plaintiff needed to invest time in learning about. Plaintiff attended
17 monthly virtual product launches at the encouragement of R+F for which she was not compensated
18 but had the opportunity to win product giveaways. Although they were not required, Plaintiff found
19 these to be necessary trainings to learn about the new products and be able to effectively market
20 them.

21 240. Plaintiff also watched additional periodic training videos to learn how to use the
22 various tools on the R+F Pro Penny Platform. These types of trainings were necessary not only for
23 onboarding at the start of her tenure, but also when R+F released new technology that Consultants,
24 including Plaintiff, were required to use to perform her work. For example, when R+F changed its
25 Consultant enrollment process, Plaintiff was required to spend time learning both changes to the

1 P&P as well as how to use the new technology intended to streamline the process, since R+F
2 required Consultants to provide prospective Consultants with assistance in completing and
3 submitting their application under the Consultant Agreement. Plaintiff was not compensated for
4 the time spent learning about changes to R+F platforms or technology that she was required to
5 understand to perform her work and adhere to the Policies and Procedures.

6 241. Moreover, the R+F Compensation Plan changed frequently, and Plaintiff spent
7 countless hours trying to understand the nuances of these changes during her tenure, and R+F sent
8 communications to Consultants regarding broader scale changes for her to commit uncompensated
9 time to learn.

10 242. Plaintiff spent time directly engaging with customers virtually, not just for the purposes
11 of selling products, because it was critical for customer retention. For example, she was responsible
12 for providing direct customer service to resolve their concerns and issues in compliance with R+F's
13 Consultant Agreement. She also spent time responding to and engaging with Customers who
14 submitted requests to be contacted through her PWS which were sometimes unrelated to product
15 inquiries likely to generate sales, such as when they provided her feedback about their product
16 experience, asked her questions about discounts generally or the PC Perks program, and more.

17 243. Plaintiff received multiple marketing emails from R+F encouraging her to attend its
18 annual R+F conference. R+F marketed the conference as an opportunity to receive trainings to
19 improve sales metrics, hear inspirational speakers and field leaders present, learn more about what
20 R+F has been working on and receive exclusive opportunities to save on R+F's "next innovation,"
21 available only to attendees, and capitalize on networking opportunities with the Consultant
22 Community.⁹⁷ She spent time consulting her Uplines about these opportunities and weighing its costs
23 and benefits for helping her generate sales. Ultimately Plaintiff opted not to attend because of
24

25 ⁹⁷ <https://www.rfconvention.com/#> [https://perma.cc/EHF7-62GJ].

1 expenses she would incur, none of which were reimbursed by R+F, like flights, meals, lodging,
2 ground transportation, and the admissions ticket to the 3-day conference itself. Nevertheless, the
3 hours she spent contemplating these opportunities were necessary aspects of her regular work
4 evaluating her current performance and honing her strategies for generating sales.

5 **5. Plaintiff Spent Many Hours, Sometimes Without Breaks, and Paid for**
6 **Business Expenses**

7 244. Plaintiff would often work at least four hours without a break or rest period. On weeks
8 when R+F had new product launches and team meetings, Plaintiff spent more than four hours
9 without break or rest period attending trainings and learning about the products. There were also
10 many weeks when she spent over four hours without break or rest conducting marketing and sales
11 activities online and/or engaging with her Downline to satisfy expectations of her as a Sponsor. She
12 was effectively required to perform multiple activities related to product launches to stay in
13 compliance.

14 245. During her tenure, Plaintiff was not compensated for her time doing any of the
15 forementioned activities or fulfilling any of the aforementioned responsibilities, nor paid any
16 overtime.

17 246. Plaintiff was not compensated or reimbursed for out-of-pocket expenses – even
18 expenses R+F's Compensation Plan incentivized her to make. Factoring in her expenses to become
19 a Consultant and her monthly product purchases to expedite her eligibility to earn commissions on
20 sales to PC immediately at the start of each new month described above, Plaintiff estimates that she
21 spent approximately \$10,500 of her personal funds during the four years she worked for R+F.
22 Plaintiff purchased the PULSE by Penny Pro monthly subscription for \$24.95 monthly to gain access
23 to a Personal Website, expending approximately \$300 per year to maintain her website subscription.
24 She was heavily encouraged to do this by her Sponsor because Consultants are only eligible to earn
25 commissions and Achievement Rewards for online sales on R+F controlled websites, and almost all

1 sales were transacted through one's PWS, rather than the R+F general website. She spent over \$100
2 each month on Products and paid \$25 annually to renew her Consultant Agreement. She also spent
3 personal funds to cover expenses for team meetings. In addition to the \$10,500, Plaintiff's monthly
4 business expenses included her monthly cell phone bill (\$150) and internet access (\$100), and she was
5 not reimbursed any proportion of these expenses.

6 247. Additionally, Plaintiff sometimes purchased monthly samples that R+F and her Upline
7 encouraged her to. Not only did R+F not reimburse her for these business expenses, but these
8 purchases did also not qualify for the monthly sales threshold she was required to meet before she
9 was entitled to earn commissions from her Preferred Customers.

10 248. At times, Plaintiff was successful in her sales and marketing efforts, receiving
11 approximately \$400–\$500 per week in commission, but some months she received \$0. Her best sales
12 week was \$1000. These earnings include a small commission percentage of their Downlines' sales, as
13 provided for in the R+F's Compensation Plan. R+F never provided transparency about the portion
14 of her income was attributable to Downline sales. Notably, her net income was substantially lower
15 when factoring in her expenses, and some months, she made no income from her work, and therefore
16 lost money.

17 249. The commissions were paid via direct deposit. No paystub was provided that identified
18 hours worked, nor were any employment taxes withheld at any time. The paystubs did not identify
19 commission rate. Plaintiff did not receive any breakdown or calculation of monthly pay. For some of
20 Plaintiff's sales, R+F did not pay her commissions because the customer returned the products.

21 **CLASS ALLEGATIONS**

22 250. Plaintiff incorporates and realleges the above paragraphs.

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

1 252. All claims alleged herein arise under California law for which Plaintiff seeks relief
2 authorized by California law.

3 253. Plaintiff's proposed class consists of and is defined as follows:

4 All current and former Rodan + Fields Consultants who resided in the State of
5 California or who performed marketing or sales activities in California during the
6 applicable statutes of limitations through the date a class is certified.

7 254. Plaintiff also alleges the following subclasses:

8 The Los Angeles County Subclass

9 All current and Former Rodan + Fields Consultants who resided in Los Angeles
10 County or who performed marketing and sales activities in Los Angeles County during
the applicable statutes of limitations through the date a class is certified.

11 The Los Angeles City Subclass

12 All current and Former Rodan + Fields Consultants who resided in the City of Los
Angeles or who performed marketing and sales activities in the City of Los Angeles
during the applicable statutes of limitations through the date a class is certified.

13 The San Francisco Subclass

14 All current and Former Rodan + Fields Consultants who resided in San Francisco or
who performed marketing and sales activities in San Francisco during the applicable
statutes of limitations through the date a class is certified.

15 255. Members of the Class will hereinafter be referred to as "Class Members." Plaintiff
16 reserves the right to redefine the Class and to add subclasses as appropriate based on further
17 investigation, discovery, and specific theories of liability.

18 256. ***Ascertainable and numerous.*** The Class is ascertainable and numerous such that
19 joinder is impractical. The membership of the entire class is unknown to Plaintiff at this time.
20 However, the class will likely consist of thousands of members, the precise number which is within
21 the knowledge of and can be readily ascertained through Rodan + Fields' records.

22 257. ***Community of Interest.*** There is a well-defined community of interest amongst Class
23 Members. A class action is superior to all other available methods for the fair and efficient
24 adjudication of this lawsuit because the Class is both numerous and its membership is geographically
25 widespread across California. A class action will achieve economies of time, effort and expense as

1 compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can
2 be adjudicated in the same manner and at the same time for the entire class. In addition:

3 a. ***Predominating Common Questions.*** There are numerous questions of law and fact
4 common to the Class which predominate over any questions affecting only individual
5 members of the Class. Among the questions of law and fact common to the Class are:

- 6 i. Whether Rodan + Fields misclassified its Consultants as independent
7 contractors when in fact they were Rodan + Fields employees;
- 8 ii. Whether Rodan + Fields failed to pay Plaintiff and Class Members the legally
9 mandated minimum wage for all hours worked;
- 10 iii. Whether Rodan + Fields failed to timely pay wages due to Plaintiff and Class
11 Members during their employment;
- 12 iv. Whether any misclassification by Rodan + Fields was voluntary and knowing;
- 13 v. Whether Rodan + Fields Consultants' duties fall within the Direct Sales
14 Exemption to AB5;
- 15 vi. Whether Rodan + Fields controlled the manner and means of the Consultants'
16 work;
- 17 vii. Whether Rodan + Fields failed to reimburse Consultants' business expenses;
- 18 viii. Whether Rodan + Fields failed to maintain accurate time records for its
19 Consultants;
- 20 ix. Whether Rodan + Fields failed to provide complete and accurate wage
21 statements to its Consultants;
- 22 x. Whether Rodan + Fields failed to pay Consultants their wages due at
23 termination; and
- 24 xi. Whether Rodan + Fields should be enjoined from continuing the practices
25 described herein.

22 b. ***Typicality.*** Plaintiff's claims are typical of the claims of Class Members because
23 Plaintiff, like all members of the Class, worked as a Consultant for Rodan + Fields in
24 California, was required to adhere to Rodan and Field's policies, and was paid on a
25 commission basis. Furthermore, like all members of the Class, Plaintiff sustained

1 damages from Rodan + Fields's wrongful conduct. Accordingly, Plaintiff has no
2 interests antagonistic to the interests of any other member of the Class.

3 c. **Adequacy.** Plaintiff will fully and adequately assert and protect the interests of the
4 Class and has retained counsel who are experienced in prosecuting class actions.
5 Plaintiff acknowledges that she has an obligation to make known to the Court any
6 relationship, conflicts or differences with any Class Member. Plaintiff's attorneys, the
7 proposed class counsel, are versed in the rules governing class action discovery,
8 certification, and settlement. Accordingly, Plaintiff is an adequate representative and
9 will fairly and adequately protect the interests of the Class.

10 **FACTS RELATING TO PLAINTIFF AS A PRIVATE ATTORNEY GENERAL**

11 258. At all times set forth herein, PAGA was applicable to Plaintiff's employment by
12 Defendants.

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

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

23 261. Plaintiff was employed by Defendants and the alleged violations were committed
24 against her and she is, therefore, an aggrieved employee. Likewise, the other Consultants who worked
25 within the relevant time are "aggrieved employees" as defined by California Labor Code section

2699(c) in that they are current or former employees of Defendants and one of more of the alleged violations were committed against them.

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

- a. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

263. Plaintiff has satisfied these statutory exhaustion requirements. On February 6, 2024, Plaintiff provided notice by electronic submission to the LWDA and by certified mail to Rodan + Fields regarding the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, pursuant to Labor Code section 2699.3. A true and correct copy of that notice letter is attached as “Exhibit J.” The LWDA has not expressly stated that it will intervene or investigate, or otherwise responded regarding Plaintiff’s asserted PAGA claims against Rodan + Fields herein. If the LWDA does not respond to the February 6, 2024 letter within 65 days, or elects to investigate but issues no citation within 120 days, Plaintiffs will amend their complaint to assert PAGA claims seeking civil penalties against the remaining Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802.

1 **FIRST CAUSE OF ACTION**

2 (Recovery of Unpaid Minimum Wages and Liquidated Damages)

3 **Against THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, DR. KATIE**
4 **RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER,**
5 **DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100, inclusive**

6 264. Plaintiff realleges and incorporates by reference all preceding allegations as though
7 fully set forth herein.

8 265. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
9 1198 have provided that the minimum wage for employees fixed by the Industrial Welfare
10 Commission is the minimum wage to be paid to employees, and the payment of a wage less than the
11 minimum so fixed is unlawful. California law provides employees in California must be paid for all
12 hours worked, up to 40 per week or eight (8) per day, at a regular time rate no less than the mandated
13 minimum wage. Compensable work time is defined by the applicable wage order as “the time during
14 which an employee is subject to the control of an employer, and includes all the time the employee
15 is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, section
16 11070(2)(G) (defining “Hours Worked”).

17 266. As alleged herein, during the relevant time, Rodan + Fields maintained and still
18 maintains a policy of requiring employees to work off-the-clock, without compensation. Rodan +
19 Fields only compensates Consultants, including Plaintiff, based on specific sales placed through
20 Plaintiff’s Consultant Site, and does not pay wages for other hours worked. These hours include time
21 spent:

- 22 a. in training and learning about R+F Products;
- 23 b. making and responding to social media posts;
- 24 c. preparing for and participating in team meetings and R+F organized activity;
- 25 d. communicating with other Rodan + Fields Consultants about policies, practices, and sales
instructions and guidance, and conducting onboarding and training;

- e. communicating with customers after their purchases were made to handle routine customer service; and
- f. handling other responsibilities as needed as required in the P&P.

Plaintiff and Class Members performed these activities throughout the day, nearly every day, often in short increments adding up to one to two hours a day.

267. Rodan + Fields provided no way for Plaintiff and Class Members to log time spent and submit to Rodan + Fields.

268. Rodan + Fields's failure to pay Plaintiff and Class Members for work, and failure to pay overtime wages owed, also resulted in failures to pay Plaintiff and Class Members the minimum wage required, in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198. In addition, Rodan + Fields's failure to pay for work and overtime is a violation of various municipal and county codes across the state, including, but not limited to City of L.A. Cal. Code art. 7-7.5; County of Los Angeles Code § 8.100.040, *et seq.*, San Francisco Cal. Code 12R.

269. California Labor Code § 558.1 states that any employer or person acting on behalf of an employer who causes a violation is liable, among other things, for minimum wage violations. *See* Cal. Labor Code § 558.1. Defendants THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, DR. KATIE RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER, DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100, inclusive, failed to pay Plaintiff and other aggrieved employees the minimum wage and all Defendants are liable for causing this violation under Labor Code § 558.1.

270. As such, pursuant to California Labor Code sections 558(a) and 2699(f), Plaintiff and Class Members are entitled to recover civil penalties, attorney's fees and costs pursuant to Labor Code section 2699(g), and interest pursuant to Labor Code section 218.6.

1 **SECOND CAUSE OF ACTION**

2 **(Failure to Provide Meal Periods or Meal Period Premium Wages)**

3 **Against THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, DR. KATIE**
4 **RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER,**
5 **DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100, inclusive**

6 271. Plaintiff realleges and incorporates by reference all preceding allegations as though
7 fully set forth herein.

8 272. Under Cal. Lab. Code §§ 226.7, 512(a), 1198, and IWC Wage Order 4-2001, Rodan +
9 Fields was required to provide Plaintiff and Class Members with one thirty-minute meal break free
10 from all duties for all shifts longer than five (5) hours, and a second thirty-minute meal break free
11 from all duties for all shifts longer than 10 hours and a third thirty-minute meal break free from all
12 duties for all shifts longer than 15 hours. Employers covered by the Wage Orders have an obligation
13 to both (1) relieve their employees for at least one meal period for shifts over five hours, and (2) to
14 record having done so. If the employer fails to properly record a valid meal period, it is presumed no
15 meal period was provided. Cal. Lab. Code § 226.7 also requires an employer to pay mandated
16 premiums of an extra hour of wages to any employees who have not been provided with a timely
17 meal or rest break.

18 273. As alleged herein, Plaintiff and the Class regularly worked periods of more than five
19 (5), ten and fifteen hours in a workday without being provided requisite mandatory timely, thirty-
20 minute, duty-free meal periods. Rodan + Fields also failed to pay Plaintiff and the Class an additional
21 hour of wages at her regular rate for each workday a meal period and/or a legally compliant meal
22 period was not provided.

23 274. California Labor Code § 558.1 states that any employer or person acting on behalf of
24 an employer who causes a violation is liable, among other things, for meal period violations. *See* Cal.
25 Labor Code § 558.1. Defendants THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC,
DR. KATIE RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA

1 BEITLER, DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100,
2 inclusive, inclusive, failed to provide Plaintiff and other aggrieved employees all meal periods or
3 compensation in lieu thereof and all Defendants are liable for causing this violation under Labor
4 Code § 558.1.

5 275. As a result, under Labor Code section 226.7, Plaintiff and the Class are entitled to one
6 additional hour's pay for each day a meal period was missed, late or interrupted, all in an amount
7 according to proof.

8 **THIRD CAUSE OF ACTION**

9 **(Failure to Provide Rest Periods or Rest Break Premium Wages)**

10 **Against THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, DR. KATIE**
11 **RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER,**
12 **DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100, inclusive**

13 276. Plaintiff realleges and incorporates by reference all preceding allegations as though
14 fully set forth herein.

15 277. Cal. Lab. Code § 226.7 requires an employer to authorize or permit an employee to
16 take a rest period of ten net minutes for every four hours worked, or major fraction thereof, and such
17 rest periods must be in the middle of the four-hour period insofar as practicable. If the employer fails
18 to provide any required rest periods or fails to provide a fully compliant rest break for a net ten
19 minutes wherein the employee is fully relieved of all duties and all employer control, the employer
20 must pay the employee one hour of pay at the employee's regular rate of compensation for each
21 workday the employer did not provide a legally required and/or fully compliant rest period.

22 278. Rodan + Fields failed to provide Plaintiff and the Class all required and/or fully
23 compliant rest periods, or compensation in lieu thereof. Rodan + Fields employed policies and
24 procedures that ensured Plaintiff and the Class would not receive all legally required rest periods as
25 Rodan + Fields improperly classified Plaintiff and the Class as independent contractors rather than
as employees and did not authorize nor permit all required rest periods in strict accordance with the

1 timing requirements of all applicable Wage Orders. Rodan + Fields similarly employed policies and
2 procedures that rendered rest periods non-compliant with the requirements of California law by, inter
3 alia, failing to relieve Plaintiff and the Class of all duties and all employer control. Rodan + Fields
4 further employed policies and procedures ensuring Plaintiff and the Class never received a rest period
5 premium during employment.

6 279. California Labor Code § 558.1 states that any employer or person acting on behalf of
7 an employer who causes a violation is liable, among other things, for rest period violations. *See* Cal.
8 Labor Code § 558.1. Defendants THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC,
9 DR. KATIE RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA
10 BEITLER, DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100,
11 inclusive, failed to provide Plaintiff and the Class all rest periods or compensation in lieu thereof and
12 all Defendants are liable for causing this violation under Labor Code § 558.1.

13 280. As a result, under Labor Code section 226.7, Plaintiff and the Class are entitled to one
14 additional hour's pay for each day a rest break was missed, late or interrupted, all in an amount
15 according to proof.

16 **FOURTH CAUSE OF ACTION**

17 **(Failure to Keep Requisite Payroll Records)**

18 **Against THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, DR. KATIE**
19 **RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER,**
20 **DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100, inclusive**

21 281. Plaintiff realleges and incorporates by reference all preceding allegations as though
22 fully set forth herein.

23 282. Cal. Labor Code § 1174(d) requires an employer to keep, at a central location in the
24 state or at the plants or establishments at which employees are employed, payroll records showing
25 the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and
any applicable piece rate paid to, employees employed at the respective plants or establishments.

1 These records shall be kept in accordance with rules established for this purpose by the commission,
2 but in any case, shall be kept on file for not less than two years.

3 283. At all times herein set forth, Cal. Labor Code § 1174.5 has imposed a civil penalty of
4 \$500 per aggrieved employee for each willful failure “to maintain . . . accurate and complete records
5 required by subdivision (d) of Section 1174[.]”

6 284. Rodan + Fields has intentionally and willfully failed to keep accurate and complete
7 payroll records showing the hours worked daily and the wages paid to Plaintiff and the Class. For
8 example, any records kept by Rodan + Fields did not include the hours worked off-the-clock, the
9 premium wages owed, and for missed and non-compliant meal and rest breaks.

10 285. Plaintiff and the Class have been injured by Rodan + Fields’s intentional and willful
11 violation of Cal. Labor Code § 1174(d) because they were denied both their legal right and protected
12 interest, in having available, accurate and complete payroll records pursuant to Cal. Labor Code §
13 1174(d).

14 **FIFTH CAUSE OF ACTION**

15 **(Failure to Provide Accurate Wage Statements)**

16 **Against THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, DR. KATIE**
17 **RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER,**
18 **DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100, inclusive**

19 286. Plaintiff realleges and incorporates by reference all preceding allegations as though
20 fully set forth herein.

21 287. At all relevant times herein set forth, Cal. Labor Code § 226(a) provides that, at the
22 time of each payment of wages, the employer must provide each employee with an itemized statement
23 showing gross wages earned, total hours worked, all deductions taken, net wages earned, the inclusive
24 dates for which the employee is being paid, the employee’s name and last four digits of their social
25 security number, the name and address of the legal entity that is the employer, and all applicable
hourly rates in effect during the pay period and all hours worked at each rate.

1 288. Cal. Labor Code § 1198 provides that the maximum hours of work and the standard
2 conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable
3 IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for
4 longer hours than those fixed by the order or under conditions of labor prohibited by the order is
5 unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time
6 records showing when the employee begins and ends each work period and meal period.

7 289. At all times herein set forth, Cal. Labor Code § § 226.3 has imposed a civil penalty in
8 addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved
9 employee for the first violation of Cal. Labor Code § 226(a), and one thousand dollars (\$1,000) per
10 aggrieved employee for each subsequent violation.

11 290. As alleged herein, Rodan + Fields knowingly and willfully failed to provide Plaintiff
12 and the Class with proper, itemized wage statements. Wage statements provided to Plaintiff and the
13 Class did not show total/actual hours worked and all applicable hourly rates in effect during the pay
14 period and all hours worked at each rate. The wage statements provided to Plaintiff and the Class
15 failed to reflect all time spent in training, crafting and responding to social media posts, preparing for
16 and participating in team meetings and R+F organized activity, and communicating with other Rodan
17 + Fields Consultants about policies, practices, and sales instructions and guidance. Rodan + Fields’s
18 refusal to properly record this time, and to include it in its itemized wage statements, or to properly
19 pay its employees for this time was willful and intentional. As a result of these violations, Plaintiff
20 and the Class suffered injury because they were not paid for all hours worked.

21 291. California Labor Code § 558.1 states that any employer or person acting on behalf of
22 an employer who causes a violation is liable, among other things, for wage statement violations. *See*
23 Cal. Labor Code § 558.1. Defendants THE RODAN + FIELDS COMPANY, RODAN + FIELDS
24 LLC, DR. KATIE RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA
25 BEITLER, DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100,

1 inclusive, failed to provide Plaintiff and the Class accurate wage statements and all Defendants are
2 liable for causing this violation under Labor Code § 558.1.

3 292. Pursuant to Cal. Lab. Code § 226(e), Plaintiff and the Class are entitled to a penalty in
4 the amount of fifty dollars (\$50) for the initial pay period in which a violation occurred, and a penalty
5 of one-hundred dollars (\$100) for each violation in a subsequent pay period, up to an aggregate
6 penalty of four-thousand dollars (\$4,000), as well as costs of suit and attorneys' fees, all in an amount
7 according to proof.

8 **SIXTH CAUSE OF ACTION**

9 **(Failure to Timely Pay Wages During Employment)**

10 **Against THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, DR. KATIE**
11 **RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER,**
12 **DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100, inclusive**

13 293. Plaintiff realleges and incorporates by reference all preceding allegations as though
14 fully set forth herein.

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

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

23 296. At all times herein set forth, Cal. Labor Code § 204 provides that all wages earned for
24 labor in excess of the normal work period shall be paid no later than the payday for the next regular
25 payroll period.

1 297. As alleged herein, during the relevant time period, Rodan + Fields intentionally and
2 willfully failed to pay Plaintiff and the Class all wages due to them, within any time period permissible
3 under Cal. Labor Code § 204, including wages for minimum wage compensation, overtime
4 compensation, meal period premiums, and rest period premiums.

5 **SEVENTH CAUSE OF ACTION**

6 **(Failure to Pay All Earned and Unpaid Wages Upon Separation of Employment)**

7 **Against THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, DR. KATIE**
8 **RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER,**
9 **DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100, inclusive**

10 298. Plaintiff realleges and incorporates by reference all preceding allegations as though
11 fully set forth herein.

12 299. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if
13 an employer discharges an employee, the wages earned and unpaid at the time of discharge are due
14 and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her
15 wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the
16 employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which
17 case the employee is entitled to his or her wages at the time of quitting.

18 300. Cal. Lab. Code § 203 provides that, at the time of termination of employment, the
19 employer must pay an employee all wages due and owing within the time frames set forth in Cal. Lab.
20 Code §§ 201, *et seq.* If an employer willfully refuses to pay, without abatement or reduction, in
21 accordance with Cal. Lab. Code §§ 201 and 202, any wages of an employee who is discharged or who
22 quits, the employee's wages shall continue as a penalty for up to thirty (30) days from the due date,
23 until paid or until an action to recover those wages is commenced.

24 301. As alleged herein, following his final day of employment, Rodan + Fields willfully
25 failed to pay Plaintiff and the Class all wages due and owing within the deadlines set forth in Cal. Lab.

Code §§ 201, *et seq.*, including unpaid overtime wages and wages for missed/noncompliant meal and rest periods.

302. California Labor Code § 558.1 states that any employer or person acting on behalf of an employer who causes a violation is liable, among other things, for failure to pay all wages at the time of termination. *See* Cal. Labor Code § 558.1. Defendants THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, DR. KATIE RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER, DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100, inclusive, inclusive, failed to pay all wages at the time of termination of Plaintiff and Class Members and all Defendants are liable for causing this violation under Labor Code § 558.1.

303. Pursuant to Cal. Lab. Code § 203, Plaintiff and the Class are entitled to recover waiting time penalties of up to thirty (30) days’ pay, plus attorneys’ fees and costs, in an amount according to proof.

EIGHTH CAUSE OF ACTION

(Failure to Reimburse Business Expenses)

Against THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, DR. KATIE RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER, DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1–100, inclusive

304. Plaintiff realleges and incorporates by reference all preceding allegations as though fully set forth herein.

305. At all times herein set forth, Cal. Lab. Code § 2802 has provided and provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 4-2001, ¶9(B) provides that: “When tools or equipment are required

1 by the employer or are necessary to the performance of a job, such tools and equipment shall be
2 provided and maintained by the employer, except that an employee whose wages are at least two (2)
3 times the minimum wage provided herein may be required to provide and maintain hand tools and
4 equipment customarily required by the trade or craft.” Rodan + Fields’s conduct, in misclassifying
5 Consultants as independent contractors and failing to reimburse them for expenses they paid that
6 should have been borne by their employer, constitutes a violation of California Labor Code Sections
7 450 and 2802.

8 306. Rodan + Fields violates Labor Code section 2802 by having failed, and failing, to
9 reimburse Plaintiff and the Class for their business-related expenses. Rodan + Fields charged Plaintiff
10 and the Class a “PULSE Subscription” fee of \$24.99/month, which Rodan + Fields did not
11 reimburse. And during the relevant period, Rodan + Fields, required that Plaintiff and the Class use
12 their own personal cellular phones and/or cellular phone data to carry out Rodan + Fields’s business
13 operations, but failed to reimburse them for the full costs of their work-related cellular phone
14 expenses. For example, Plaintiff and the Class were required to use a personal cellular phone to make
15 social media posts, participate in team meetings and R+F organized activity, and communicate with
16 customers and their Upline. Plaintiff and the Class also incurred expenses associated with maintaining
17 a home internet connection. Rodan + Fields did not reimburse Consultant for these expenses.

18 307. Rodan + Fields’s company-wide policy and/or practice of passing on their operating
19 costs to Plaintiff and the Class violates California Labor Code section 2802. At all times described
20 herein, Rodan + Fields has acted willfully, and deliberately with oppression, fraud and malice to
21 unlawfully deprive their employees of the employees’ own personal resources in furtherance of Rodan
22 + Fields’s profits.

23 308. California Labor Code § 558.1 states that any employer or person acting on behalf of
24 an employer who causes a violation is liable, among other things, for failure to reimburse business
25 expenses. *See* Cal. Labor Code § 558.1. Defendants THE RODAN + FIELDS COMPANY,

1 RODAN + FIELDS LLC, DR. KATIE RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS,
2 TIM ENG, LAURA BEITLER, DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER,
3 and DOES 1–100, inclusive, failed to reimburse business expenses to Plaintiff and the Class and all
4 Defendants are liable for causing this violation under Labor Code § 558.1.

5 309. As a result of Rodan + Fields’s failure to reimburse Plaintiff and the Class for all
6 business-related expenses, pursuant to Cal. Lab. Code § 2802, Plaintiff and the Class are entitled to
7 recover unreimbursed business expenses, plus attorneys’ fees and costs, in an amount according to
8 proof.

9 **NINTH CAUSE OF ACTION**

10 **(Unfair Competition)**

11 **Against THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, and DOES 1–**
12 **100, inclusive**

13 310. Plaintiff realleges and incorporates by reference all preceding allegations as though
14 fully set forth herein.

15 311. From a date unknown to Plaintiffs and continuing to the present, Rodan + Fields has
16 and continues to engage in business acts or practices that constitute unfair competition as defined in
17 the Unfair Competition Law, Business and Professions Code § 17200 *et seq.*, in that such business
18 acts and practices are unlawful and unfair within the meaning of that statute.

19 **Violation of the Unlawful Prong of the UCL**

20 312. Rodan + Fields has violated section 17200’s prohibition on unlawful conduct through
21 the following violations:

- 22 a. Failing to pay minimum wages, as set forth in Paragraphs 264-70;
- 23 b. Failing to provide meal periods and/or pay associated premium wages, as set forth in
24 Paragraphs 271-75;
- 25 c. Denying rest periods and/or failing to pay rest break premium wages, as set forth in
Paragraphs 276-80;
- d. Failing to keep requisite payroll records, as set forth in Paragraphs 281-85;

- e. Failing to provide accurate wage statements, as set forth in Paragraphs 286-92;
- f. Failing to timely pay wages during employment, as set forth in Paragraphs 293-97;
- g. Failing to pay all earned and unpaid wages upon separation of employment, as set forth in Paragraphs 298-303;
- h. Failing to reimburse business expenses, as set forth in Paragraphs 304-09;
- i. Willfully misclassifying Consultants as independent contractors, in violation of Labor Code Section 226.8 and 2775, as set forth in Paragraphs 173-82.

313. Over the last four years, Rodan + Fields has also violated California's laws relating to the recovery of unpaid overtime. Specifically, Cal. Lab. Code § 510 provides employees in California must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or eight (8) per day and must be paid double wages for all hours worked in excess of 12 per day, unless they are exempt. California law also provides that any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. As alleged herein, during Plaintiff's tenure, Plaintiff worked more than eight (8) hours per day but was not paid all overtime wages, including but not limited to, "double time" wages, due and owing under California law.

314. The forgoing unlawful conduct of Rodan + Fields alleged herein constitutes unfair competition within the meaning of California Business and Professions Code section 17200 *et seq.*

Violation of the Unfair Prong of the UCL

315. Rodan + Fields has violated section 17200's prohibition on unfair conduct by engaging in each of the forgoing unlawful acts.

316. Furthermore, as set forth in Paragraphs 56-59, 93, 167, 191-92, Rodan + Fields has violated section 17200's prohibition on unfair conduct by unfairly and unconscionably structuring its Agreement and business activities in a way that does not create meaningful opportunities for Consultants earn a fair wage and/or commission for their work. Rodan + Fields used its superior bargaining power, superior market power, and take-it-or-leave-it Agreement to prevent Consultants

1 from exercising discretion and accessing tools and resources needed to market the Products
2 effectively and competitively to generate profits. And Rodan + Fields further undermined
3 Consultants' ability to earn compensation by engaging in activities in competition with the
4 Consultants, by for example, maintaining the exclusive right to disseminate online advertising to any
5 customer sales leads generated by the Consultants and selling Products via Amazon.com. By denying
6 Consultants meaningful opportunities to earn fair commission, Rodan + Fields also unfairly
7 incentivized Consultants to divert time and attention away from marketing the sale of products to
8 retail customers to marketing the opportunity to become a Consultant to unsuspecting members of
9 the California public. So long as Defendants continue these unfair practices, the California public
10 remains at risk for being recruited into Rodan + Fields and similarly harmed.

11 317. Rodan + Fields's unfair acts were in contravention of public policy. California public
12 policy encourages the proper classification of workers to ensure that workers are fairly compensated
13 and provided the full benefits and protections of employment, competitors are operating in a fair and
14 honest marketplace, and the state is not deprived of tax revenue.

15 318. Rodan + Fields's unfair acts were immoral, unethical, oppressive, unscrupulous, and
16 substantially injurious to the Class and general public. Rodan + Fields knowingly and willfully
17 classified the Consultants as independent contractors. And it knowingly and willfully structured an
18 unfair and unconscionable Agreement that did not provide for meaningful opportunities to earn
19 compensation, while engaging in business activities that would further frustrate Consultants' efforts
20 to earn compensation.

21 319. The impact on the Class and general public is not outweighed by any countervailing
22 benefits. To the extent any benefits inured to Plaintiff, the Class, and the general public, those benefits
23 are outweighed by the impact of Defendants' unfair acts. Consultants, including Plaintiff, incurred
24 substantial costs in working as Consultants, and were not paid appropriately and fairly for their time
25

1 and efforts. They could have chosen other opportunities or invested that time and money into other
2 legitimate and fairly paying endeavors.

3 320. As a result of Rodan + Fields's unfair competition as alleged herein, Plaintiff and the
4 Class have suffered injury in fact and lost money or property, as described in more detail above.
5 Pursuant to California Business and Professions Code section 17200, *et seq.*, Plaintiff and the Class
6 are entitled to restitution of all wages and other monies rightfully belonging to them that Rodan +
7 Fields failed to pay and wrongfully retained by means of its unlawful and unfair business practices,
8 and and/or all other equitable remedies that may be available.

9 321. To prevent Rodan + Fields from continuing to prey on the California public through
10 their misclassification of their Consultants, and recruitment of new Consultants under these false
11 pretenses, Plaintiff and the Class also seek a public injunction against Defendants enjoining Rodan +
12 Fields, and any and all persons acting in concert with them, from engaging in each of the California
13 Labor Code violations set forth herein and from recruiting new Consultants or authorizing others to
14 recruit new Consultants, under a misclassified status, including making representations about that
15 status and the commission-based compensation structure.

16 **TENTH CAUSE OF ACTION**

17 **(Violation of Labor Code §§ 2698-2699.8)**

18 **Against THE RODAN + FIELDS COMPANY, RODAN + FIELDS LLC, DR. KATIE**
19 **RODAN, DR. KATHY FIELDS, DIMITRI HALOULOS, TIM ENG, LAURA BEITLER,**
20 **DALIA STODDARD, JESSICA RAEFIELD, JANINE WEBER, and DOES 1-100, inclusive**

21 316. Plaintiff realleges and incorporates by reference all preceding allegations as though
22 fully set forth herein.

23 317. PAGA establishes that, notwithstanding any other provision of law, any provision of
24 the California Labor Code which provides for a civil penalty to be assessed and collected by the
25 LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a
violation of the California Labor Code, may be recovered through a civil action brought by an

aggrieved employee on behalf of himself or herself, and other current or former employees.

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

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

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

- a. Failing to pay minimum wages, as set forth in Paragraphs 264-70;
- b. Failing to provide meal periods and/or pay associated premium wages, as set forth in Paragraphs 271-75;
- c. Denying rest periods and/or failing to pay rest break premium wages, as set forth in Paragraphs 276-80;
- d. Failing to keep requisite payroll records, as set forth in Paragraphs 281-85;
- e. Failing to provide accurate wage statements, as set forth in Paragraphs 286-92;
- f. Failing to timely pay wages during employment, as set forth in Paragraphs 293-97;
- g. Failing to pay all earned and unpaid wages upon separation of employment, as set forth in Paragraphs 298-303;
- h. Failing to reimburse business expenses, as set forth in Paragraphs 304-09;
- i. Willfully misclassifying Consultants as independent contractors, in violation of Labor Code Section 226.8 and 2775, as set forth in Paragraphs 173-82.

321. Over the last four years, Rodan and Fields has also violated California’s laws relating to the recovery of unpaid overtime. Specifically, Cal. Lab. Code § 510 provides employees in California must be paid overtime, equal to 1.5 times the employee’s regular rate of pay, for all hours worked in excess of 40 per week or eight (8) per day and must be paid double wages for all hours worked in excess of 12 per day, unless they are exempt. California law also provides that any work in

1 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less
2 than twice the regular rate of pay of an employee. As alleged herein, during Plaintiff's tenure as a
3 Consultant with Rodan and Fields, Plaintiff worked more than eight (8) hours per day but was not
4 paid all overtime wages, including but not limited to, "double time" wages, due and owing under
5 California law.

6 322. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5,
7 Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of
8 civil penalties for Plaintiff, all other aggrieved employees, and the State of California against
9 Defendants, in fixed amounts for each aggrieved employee for every pay period in which there was
10 a violation, per section 2699(f), in addition to other remedies, for violations of Labor Code sections
11 set forth herein.

12 323. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
13 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for the
14 enforcement of labor laws and education of employers and employees about their rights and
15 responsibilities and twenty-five (25%) to the aggrieved employees.

16 324. Further, and as authorized by the California Labor Code sections 2699(g), Plaintiff
17 seeks recovery of his attorneys' fees and costs.

18 **PRAYER FOR RELIEF**

19 WHEREFORE Plaintiff and the Class pray for judgment and relief as follows:

- 20 (1) An order certifying that this action may be maintained as a class action, that Plaintiff
21 be appointed Class Representative, and that Plaintiff's counsel be appointed Class
22 Counsel;
23 (2) Statutory penalties and compensatory damages as authorized under the California
24 Labor Code;
25 (3) Civil penalties pursuant to California's Private Attorneys General Act;
(4) Restitution and all other equitable remedies pursuant to California's Unfair
Competition Law;

- (5) Public Injunctive relief, pursuant to California's Unfair Competition Law, prohibiting Rodan + Fields, its officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, whether acting directly or indirectly, in connection with the management, hiring, or coordination of Consultants, or the advertising, promotion, or recruitment of new Consultants, from:
- a. Engaging in the California Labor Code violations as alleged herein, including classifying Consultants as non-employees or independent contractors;
 - b. Recruiting new Consultants or authorizing others to recruit new Consultants, under a misclassified status, including making representations about that status and the commission-based compensation structure.
- (6) Punitive damages against the individual officer, director or managing agent Defendants pursuant to Cal. Civil Code § 3294;
- (7) Reasonable attorneys' fees pursuant to the California Labor Code, including section 226(e), and Code of Civil Procedure section 1021.5;
- (8) Pre- and post-judgment interest pursuant to Labor Code section 218.6; and
- (9) Such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs and the Class hereby demand trial by jury on all issues in this complaint that are so triable as a matter of right.

Date: May 14, 2024

/s/ Kristen G. Simplicio

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