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SAN LUIS OBISPO SUPERIOR COURT
BY: M. Landrum
M. Landrum, Deputy Clerk

6 Attorneys for Plaintiff Obdulia Mercado, on behalf
of herself and all others similarly situated
7

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN LUIS OBISPO**

11
12 **OBDULIA MERCADO, an individual,**

Case No.: **25CVP-0023**

13 **Plaintiff,**

**CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

14 **v.**

15
16 **CORNUCOPIA TOOL & PLASTICS,
17 INC., a California corporation; JASON
18 MONTELLO, an individual; SHANNON
19 MONTELLO, an individual; and DOES 1
through 10, inclusive,**

1. Failure to Pay Overtime Wages;
2. Failure to Provide Accurate Itemized Wage Statements;
3. Failure to Pay Wages Due at Separation;
4. Violations of the Unfair Competition Law;
5. Civil Penalties Under the PAGA for Failure to Pay Overtime Wages;
6. Civil Penalties Under the PAGA for Failure to Provide Accurate Itemized Wage Statements;
7. Civil Penalties Under the PAGA for Failure to Pay Wages Due at Separation;

20 **Defendants.**

DEMAND FOR JURY TRIAL

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NATURE OF CLAIM

1. Plaintiff OBDULIA MERCADO (“Plaintiff”) brings this action on behalf of herself and a proposed Class of all non-exempt employees against Defendants CORNUCOPIA TOOL & PLASTICS, INC., JASON MONTELLO, SHANNON MONTELLO, and DOES 1 through 10 (collectively, “Defendants”) for unlawful employment policies that denied, and continue to deny, proposed Class Members wages to which they are lawfully entitled.

2. Plaintiff, on behalf of herself and all Class Members, brings this action under the California Labor Code, including but not limited to Sections 201, 202, 203, 226, 510, and 1194, Industrial Welfare Commission (“IWC”) Wage Order 1, which regulates Wages, Hours and Working Conditions in the Manufacturing Industry, and Business and Professions Code Sections 17200, *et seq.*, seeking unpaid wages, prejudgment interest, penalties, reasonable attorneys’ fees and costs, injunctive relief, and any other relief this Court deems proper.

3. Plaintiff notified the California Labor and Workforce Development Agency (“LWDA”) of these claims, as well as Defendants by certified mail. The LWDA did not intervene, and Defendants have not attempted to cure the violations alleged. Plaintiff seeks civil penalties as a representative of the State of California, as provided by the Labor Code Private Attorneys General Act of 2004, as amended (“PAGA”), on behalf of herself as an aggrieved employee and on behalf of other aggrieved employees, all of whom personally suffered the violations alleged during the period of one year and 65 days preceding the date of filing this civil action for PAGA penalties (“PAGA Period”). A true and correct copy of the July 17, 2024 Notice showing compliance with Labor Code Section 2699.3 is attached as Exhibit 1.

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THE PARTIES

4. Plaintiff OBDULIA MERCADO is an individual who, at all relevant times alleged herein, resided in the County of San Luis Obispo, State of California. Plaintiff worked for Defendants at their manufacturing facility in the City of Paso Robles, County of San Luis Obispo, State of California, from approximately August 2020 until May 9, 2024.

5. Plaintiff is informed and believes, and based thereon alleges, that Defendant CORNUCOPIA TOOL & PLASTICS, INC. is a corporation organized and existing under the laws of the State of California which, at all relevant times alleged herein, was transacting business and operating a manufacturing facility in the City of Paso Robles, County of San Luis Obispo, State of California, from approximately August 2020 to the present.

6. Plaintiff is informed and believes, and based thereon alleges, that Defendant JASON MONTELLO is an individual who, at all relevant times alleged herein, resided in the County of San Luis Obispo, State of California and was an owner, officer, or managing agent of Defendant CORNUCOPIA TOOL & PLASTICS, INC., from approximately August 2020 to the present.

7. Plaintiff is informed and believes, and based thereon alleges, that Defendant SHANNON MONTELLO is an individual who, at all relevant times alleged herein, resided in the County of San Luis Obispo, State of California and was an owner, officer, or managing agent of Defendant CORNUCOPIA TOOL & PLASTICS, INC., from approximately August 2020 to the present.

8. The true names and capacities, whether individual, corporate, or otherwise, of Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as

1 a DOE is legally responsible in some manner for the events and happenings referred to
2 herein and caused injury and damage proximately thereby to Plaintiff as hereinafter
3 alleged. Plaintiff will seek leave of this Court to amend this Complaint to reflect the true
4 names and capacities of the Defendants designated herein as DOES when the same have
5 been finally ascertained.
6

7 9. Plaintiff is informed and believes, and based thereon alleges, that at all
8 relevant times alleged herein, each of the Defendants was the alter ego, joint venturer, co-
9 employer, joint employer, agent, servant, employee, co-venturer, or co-conspirator of
10 each of the remaining Defendants, and was at all relevant times alleged herein, acting
11 within the course, scope, purpose, consent, knowledge, ratification, and authorization of
12 such agency, employment, joint venture, and conspiracy.

13 JURISDICTION AND VENUE

14 10. Subject matter jurisdiction is met in this Court because the action involves
15 an amount in controversy exceeding \$35,000.00.

16 11. Venue is proper in this Court as to each Defendant because Plaintiff was
17 employed by Defendants in the City of Paso Robles, County of San Luis Obispo, State of
18 California, the unlawful acts and practices by Defendants alleged in this Complaint
19 occurred in the City of Paso Robles, County of San Luis Obispo, State of California,
20 Defendants were conducting business in the City of Paso Robles, County of San Luis
21 Obispo, State of California, Defendants' records relevant to the unlawful acts and
22 practices alleged in this Complaint are and were maintained and administered in the City
23 of Paso Robles, County of San Luis Obispo, State of California, and the damages Plaintiff
24 seeks were incurred in the City of Paso Robles, County of San Luis Obispo, State of
25 California.
26

27 CLASS ACTION ALLEGATIONS

28 12. Plaintiff seeks to represent a **Class** defined as:

1 All of Defendants' non-exempt employees during the four years
2 preceding the filing of this Complaint through the date of trial.

3 13. Plaintiff seeks to certify a subclass of employees defined as:

4 **"Overtime Wages Subclass"**

5 All Class Members who worked over eight (8) hours in one day for at least
6 one day of their employment with Defendants and were not paid overtime
7 wages.

8 14. Plaintiff seeks to certify a subclass of employees defined as:

9 **"Wage Statement Subclass"**

10 All Class Members who received at least one inaccurate itemized wage
11 statement during their employment with Defendants.

12 15. Plaintiff seeks to certify a subclass of employees defined as:

13 **"Waiting Time Subclass"**

14 All Class Members whose employment with Defendants has ended prior to
15 the date of trial and who have not been paid overtime wages to which they
16 were entitled.

17 16. Plaintiff seeks to certify a subclass of employees defined as:

18 **"UCL Subclass"**

19 All Class Members who were subjected to unlawful or unfair business acts
20 or practices by Defendants.

21 17. Plaintiff reserves the right to amend or modify the Class description,
22 including by division into further subclasses or limitation to particular issues, under
23 California Rule of Court 3.765(b).

24 18. **Commonality:** This action has been brought and may be maintained as a
25 class action under Code of Civil Procedure § 382 because there is a well-defined common
26 interest of many persons and it is impractical to bring them all before the Court.

27 19. **Ascertainable Class:** The proposed Class and Subclasses are ascertainable
28 because they can be identified and located using Defendants' payroll and personnel
records.

1 20. **Numerosity:** The potential members of the Class and Subclasses as
2 defined are so numerous that joinder of all members would be unfeasible and impractical.
3 The disposition of their claims through this class action will benefit the parties and this
4 Court. The number of Class and Subclass Members is unknown to Plaintiff, but is
5 estimated to be several dozen individuals and well in excess of 50 present and former
6 employees. The number and identity of Class and Subclass Members can be readily
7 ascertained from Defendants' payroll and personnel records.
8

9 21. **Typicality:** The claims of Plaintiff are typical of the claims of all members
10 of the Class and Subclasses because all members of the Class and Subclasses sustained
11 similar injuries and damages caused by Defendants' common course of conduct in
12 violation of law.

13 22. **Adequacy:** Plaintiff is an adequate representative of the Class and
14 Subclasses, will fairly protect the interests of the Class and Subclass Members and has no
15 interests antagonistic to them, and will vigorously pursue this lawsuit. Plaintiff's attorneys
16 are competent, skilled, and experienced in litigating large employment law class actions.

17 23. **Superiority:** A class action is superior to all other available means for the
18 fair and efficient adjudication of this controversy. Individual joinder of all Class Members
19 is not practicable, and questions of law and fact common to the Class predominate over
20 questions affecting only individual Class Members. A class action will allow those similarly
21 situated to litigate their claims in the most efficient and economical manner for the parties
22 and the judicial system. Plaintiff is unaware of any difficulties likely to be encountered in
23 the management of this action that precludes maintenance as a class action.
24

25 24. The predominating common questions of law and fact include:

- 26 a. Whether Defendants have a policy or practice of failing to pay
27 overtime compensation to their non-exempt employees for hours
28 worked in excess of eight (8) hours per day;

- 1 b. Whether Defendants have a policy or practice of failing to provide
2 their non-exempt employees with accurate itemized wage
3 statements;
4 c. Whether Defendants have a policy or practice of failing to pay their
5 non-exempt employees all wages due to them upon separation of
6 employment;
7 d. Whether Defendants violated Business and Professions Code
8 Sections 17200, *et seq.*, thereby entitling members of the Class to
9 equitable relief (restitution) and injunctive relief.
10

11 **FACTUAL ALLEGATIONS**

12 25. Plaintiff was hired by Defendants in or about early August 2020, as a non-
13 exempt, hourly-paid employee. Plaintiff worked in Defendants' plastics injection molding
14 and manufacturing plant as a parts finisher, whose duties included, among other things,
15 sandblasting, filing, cleaning, and packing parts.

16 26. Plaintiff worked a four-day schedule of Monday through Thursday, from
17 6:00 a.m. to 4:30 p.m. This schedule encompassed 10 hours of work per day, and a 30-
18 minute meal period.

19 27. Plaintiff was not paid any overtime wages by Defendants for hours she
20 worked in excess of eight (8) hours per day.

21 28. Plaintiff received bi-weekly wage statements from Defendants, but they did
22 not elect payment of any overtime wages to Plaintiff for hours she worked in excess of
23 eight (8) hours per day.

24 29. Defendants terminated Plaintiff's employment on or about May 9, 2024.
25 Neither at the time of Plaintiff's termination, nor at any time thereafter, did Defendants
26 pay overtime wages to Plaintiff for hours she worked in excess of eight (8) hours per day.
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1 30. Plaintiff is informed and believes, and based thereon alleges, that other
2 non-exempt employees of Defendants similarly worked a four-day-per-week, 10-hour
3 workday schedule, and similarly they were not paid any overtime wages by Defendants for
4 hours they worked in excess of eight (8) hours per day.
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6 31. Plaintiff is informed and believes, and based thereon alleges, that
7 Defendants' four-day-per-week, 10-hour workday schedule was premised on an ostensible
8 Alternative Workweek Schedule ("AWS"), but that no valid or lawful AWS had been
9 adopted by Defendants under California Labor Code § 511 and related regulations.
10

11 32. Plaintiff is informed and believes, and based thereon alleges, that on March
12 27, 2020, Defendants Jason Montello and Shannon Montello incorporated a company
13 named Grit & Glory Ventures Corporation.
14

15 33. Plaintiff is informed and believes, and based thereon alleges, that thereafter,
16 Defendants Jason Montello and Shannon Montello or their company Grit & Glory
17 Ventures Corporation acquired the assets or interests of a preexisting business entity
18 named Cornucopia Tool & Plastics, Inc., owned by Art Horn and Larry Horn, which
19 ceased operations on or about July 31, 2020 (hereinafter referred to as "Old
20 Cornucopia"). Plaintiff is informed and believes and based thereon alleges that Old
21 Cornucopia was assigned, did business under, and paid its employees through Federal
22 Employer Identification Number [REDACTED].
23

24 34. Plaintiff is informed and believes, and based thereon alleges, that on or
25 about August 1, 2020, Grit & Glory Ventures Corporation began operations based on the
26 assets and interests that had been acquired from Old Cornucopia. Plaintiff is informed
27 and believes, and based thereon alleges, that Grit & Glory Ventures Corporation was
28 assigned, did business under, and paid its employees through Federal Employer
Identification Number [REDACTED].

1 35. Plaintiff is informed and believes, and based thereon alleges, that on August
2 7, 2020, Grit & Glory Ventures Corporation amended its Articles of Incorporation and
3 changed its corporate name to its current name of “Cornucopia Tool & Plastics, Inc.,”
4 which is a named Defendant in this action. Hereinafter, Defendant Cornucopia Tool &
5 Plastics, Inc. is referred to as “New Cornucopia” to avoid confusion with Old
6 Cornucopia, which had the same name. Plaintiff is informed and believes, and based
7 thereon alleges, that New Cornucopia has continued to utilize Federal Employer
8 Identification Number [REDACTED] to pay its employees.

10 36. Plaintiff is informed and believes, and based thereon alleges, that New
11 Cornucopia changed its name to match exactly the name of Old Cornucopia to give the
12 appearance to its customers and the public that Old Cornucopia continued to be an
13 ongoing business entity and the same employer under new ownership; whereas, in reality,
14 Old Cornucopia had ceased operations and ceased being an employer to its employees,
15 nearly all of whom, including Plaintiff and other non-exempt employees, were then hired
16 by New Cornucopia, to work in New Cornucopia’s plastics manufacturing business.

17 37. Plaintiff is informed and believes, and based thereon alleges, that New
18 Cornucopia was and is a legally distinct business entity from Old Cornucopia, and, further
19 that New Cornucopia is a legally distinct employer from Old Cornucopia. Plaintiff is
20 informed and believes, and based thereon alleges, that, to the extent New Cornucopia
21 desired not to have to pay overtime wages to its non-exempt employees who worked
22 more than eight hours per day, New Cornucopia was legally required to adopt an AWS,
23 which it failed to do.

24 38. Plaintiff is informed and believes, and based thereon alleges, that Old
25 Cornucopia had been the subject of a class action lawsuit, styled *Lopez, et al. v. Cornucopia*
26 *Tool & Plastics, Inc., et al.*, San Luis Obispo County Superior Court Case No. CV138049,
27 filed on March 6, 2013. Plaintiff is informed and believes, and based thereon alleges, that
28

1 the class action lawsuit against Old Cornucopia was premised, in part, on its failure to pay
2 overtime wages to non-exempt employees based on the implementation of an allegedly
3 unlawful AWS.

4
5 39. Plaintiff is informed and believes, and based thereon alleges, that
6 Defendants were fully aware that they had not adopted an AWS and were legally required
7 to do so, even though New Cornucopia from its inception had been operating under a
8 four-day-per-week, 10-hour workday schedule for its non-exempt employees. Plaintiff is
9 informed and believes, and based thereon alleges, that on November 30, 2020, several
10 months after New Cornucopia had acquired the assets or interests of Old Cornucopia and
11 began operations, Defendant Shannon Montello, New Cornucopia's Chief Financial
12 Officer, sent an email to Defendant Jason Montello, New Cornucopia's Chief Executive
13 Officer, which stated in relevant part as follows:

14 Hi Jason,

15
16 I am going to need your help with completing and implementing the Alternative
17 Work Schedule. More importantly I need you to get on Judi with helping me with
18 this. She apparently respects you more than me since I can barely get a email
19 response if one at all.

20 The AWS is a requirement with EDD in order to allow the employees to work 4-
21 10hr days. As of right now we are in violation since we haven't been approved, we
22 haven't even applied. I have asked Judi several time to assist me with this. She has
23 yet to begin gathering information and doing any leg work. I have provided the
24 documents I need her to start working on this project and provide me with
25 updates. This is something you are going to want to keep an eye on and maybe
26 have Jonathan work with her to complete since it will require employee interaction
27 and we both know how negative she can be.

28 If we don't get this completed and If we get caught operating as Old Corn did
without qualifying ourselves, we will have to back pay every employee for daily
overtime over 8hrs plus the fines and fees; since we acquired the company.

I sent Judi another follow-up email regarding this and asked her to begin working
on understanding what we need to do to be compliant. This is a priority item that

1 could cost us heavily. It needs to be taken seriously and needs to be a priority item
2 over what she is doing for Art.

3 Shannon Montello
4 Chief Financial Officer

5 40. Plaintiff is informed and believes, and based thereon alleges, that at no time
6 after this email was sent has New Cornucopia adopted an AWS as required by law, and
7 that New Cornucopia has continued to have a four-day-per-week, 10-hour workday
8 schedule for its non-exempt employees but does not pay them overtime wages for their
9 work in excess of eight hours per day.

10 41. At all relevant times alleged herein, Plaintiff and each member of the
11 Plaintiff Class were employed by Defendants in California, and Defendants conducted
12 business in California, which entitles Plaintiff and the Plaintiff Class to the protection of
13 California wage and hour laws.

14 42. Defendants consistently and knowingly failed to pay Plaintiff and the
15 Overtime Wages Subclass overtime wages owed for hours they worked for Defendants in
16 excess of eight (8) hours per day.

17 43. Defendants consistently and knowingly failed to provide accurate itemized
18 wage statements to Plaintiff and the Wage Statement Subclass because they did not reflect
19 payment of any overtime wages to them for hours they worked in excess of eight (8)
20 hours per day. Such omissions rendered the wage statements incomplete and inaccurate.

21 44. Defendants consistently and knowingly failed to pay Plaintiff and the
22 Waiting Time Subclass all wages due upon separation of employment because they were
23 not paid overtime wages owed to them.

24 45. Defendants' violations of California law, as described above, stem from
25 Defendants' centrally devised and uniformly implemented unlawful and unfair policies
26 and practices.
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1 46. Plaintiff is informed and believes, and based thereon alleges, that at all
2 relevant times, Defendants established all employment policies related to the wages,
3 hours, and working conditions of Plaintiff and the Plaintiff Class. Plaintiff is informed
4 and believes, and based thereon alleges, that at all relevant times, Defendants set,
5 approved, controlled, enforced, and ratified the wages, hours, and working conditions of
6 Plaintiff and the Plaintiff Class.
7

8 47. Plaintiff is informed and believes, and based thereon alleges, that violations
9 of the California Labor Code and Wage Order 1 by Defendants, as alleged herein, were
10 directly the result of the employment policies established by Defendants related to the
11 wages, hours, and working conditions of Plaintiff and the Plaintiff Class, and also directly
12 the result of the manner in which Defendants set, approved, controlled, enforced, and
13 ratified the wages, hours, and working conditions of Plaintiff and the Plaintiff Class.
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15 48. Accordingly, based on the allegations herein, Defendants jointly and
16 individually were an “employer or other person acting on behalf of an employer who
17 violate[d], or cause[ed] to be violated” Chapter 1 of Part 2 of Division 2 of the Labor
18 Code (Labor Code §§ 500-558.1), and, further, Defendants jointly and individually were
19 an “employer or other person acting on behalf of an employer, who violate[ed], or
20 cause[ed] to be violated” Wage Order 1, and Labor Code §§ 203, 226, and 1194.
21

22 **FIRST CAUSE OF ACTION**

23 **Failure to Pay Overtime Wages** 24 **Labor Code §§ 510, 1194; Wage Order 1** 25 **By Plaintiff and Each Member of the Overtime Wages Subclass** 26 **Against All Defendants**

27 49. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as
28 though set forth herein in full.

 50. Labor Code §§ 510, 1194, and Wage Order 1 provide that any employee
receiving less than the legal overtime compensation applicable to the employee is entitled

1 to recover in a civil action the unpaid balance of the full amount of this overtime
2 compensation, with interest, and reasonable attorneys' fees and costs.

3
4 51. Section 3 of Wage Order 1 requires employers to pay employees one-and-
5 one-half times their regular hourly rate for all hours worked in excess of 8 hours in one
6 work day, unless such employees are exempt from the requirements of Wage Order 1.

7 52. At all relevant times, Plaintiff and Members of the Overtime Wages
8 Subclass were employees in the State of California and Defendants were employers in the
9 State of California. As such, Plaintiff and Members of the Overtime Wages Subclass were
10 the type of persons contemplated to be protected by Wage Order 1 and the Labor Code,
11 and these laws and regulations were intended to apply to Defendants and to prevent the
12 type of injury and damage set forth herein.

13 53. Plaintiff and Members of the Overtime Wages Subclass regularly worked in
14 excess of 8 hours in a work day for which they were not paid any overtime compensation
15 by Defendants. Defendants' failure to pay Plaintiff and the Overtime Wages Subclass the
16 overtime wages due to them was a pattern and practice of Defendants, not isolated
17 incidents.

18 54. Plaintiff and Members of the Overtime Wages Subclass were not exempt
19 from the requirements of Wage Order 1 because they did not meet any applicable legal
20 test for exemption.

21 55. As a result of Defendants' conduct, Plaintiff and Members of the Overtime
22 Wages Subclass have sustained damages in the amount of their unpaid overtime wages,
23 plus interest, and attorneys' fees and costs incurred to recover their unpaid overtime
24 wages. The amount of unpaid overtime wages Defendants owe to Plaintiff and the
25 Overtime Wages Subclass will be proven at trial.

26 56. Defendants' wrongful and illegal conduct in failing to pay overtime wages
27 owed to Plaintiff and the Overtime Wages Subclass, despite their clear legal obligation to
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1 do so, will cause great and irreparable injury to Plaintiff and Members of the Overtime
2 Wages Subclass in that Defendants will continue to violate the California Labor Code and
3 Wage Order 1 unless Defendants are enjoined from further violations of the law. Absent
4 such injunction, the expectation of future violations of the law by Defendants will require
5 current and future employees to seek legal redress in the courts repeatedly and
6 continuously for the same legal claims alleged in this Complaint, which will burden such
7 employees and the courts.
8

9 **SECOND CAUSE OF ACTION**

10 **Failure to Provide Accurate Itemized Wage Statements** 11 **Labor Code § 226** 12 **By Plaintiff and Each Member of the Wage Statement Subclass** 13 **Against All Defendants**

14 57. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as
15 though set forth herein in full.

16 58. Labor Code § 226 provides that every employer must furnish each
17 employee with an accurate itemized statement of wages and deductions at the time of
18 payment of wages.

19 59. As a pattern and practice, Defendants knowingly and intentionally failed to
20 provide Plaintiff and the Wage Statement Subclass with accurate itemized wage
21 statements as required by Labor Code § 226(a) because their bi-weekly wage statements
22 failed to reflect overtime wages owed to Plaintiff and the Wage Statement Subclass.

23 60. Under Labor Code § 226(e) and (g), Plaintiff and the Wage Statement
24 Subclass are entitled to payment from Defendants of the greater of actual damages or
25 \$50.00 for the initial period in which the violation occurred and \$100.00 for each
26 subsequent violation, up to a maximum amount of \$4,000.00, plus reasonable attorneys'
27 fees and costs incurred to pursue their wage statement claims.

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THIRD CAUSE OF ACTION

**Failure to Pay Wages Due at Separation
Labor Code §§ 201, 202, and 203
By Plaintiff and Each Member of the Waiting Time Subclass
Against All Defendants**

61. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though set forth herein in full.

62. Labor Code §§ 201, 202, and 203 provide that if an employer willfully fails to pay any wages owed to an employee who is terminated or quits, the wages of such employee shall continue from the due date thereof at the same daily rate until paid or until an action therefor is commenced, for not more than thirty days.

63. More than thirty days have passed since Plaintiff's employment with Defendants ended. Plaintiff is informed and believes, and based thereon alleges, that more than thirty days have passed since the employment of other members of the Waiting Time Subclass ended with Defendants.

64. Defendants failed to pay overtime wages due to Plaintiff upon the ending of her employment with Defendants. Plaintiff is informed and believes, and based thereon alleges, that Defendants have failed to pay overtime wages owed to other members of the Waiting Time Subclass upon the ending of their employment.

65. As a result of Defendants' willful conduct in not paying overtime wages owed to Plaintiff and other members of the Waiting Time Subclass upon the ending of their employment, Plaintiff and the Waiting Time Subclass are entitled to thirty days' wages at their daily rates as waiting-time penalties under Labor Code § 203, with interest thereon. The amount of recoverable waiting time penalties will be proven at trial.

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FOURTH CAUSE OF ACTION

**Violations of the Unfair Competition Law
Business & Professions Code §§ 17200, *et seq.*
By Plaintiff and Each Member of the UCL Subclass
Against All Defendants**

66. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though set forth herein in full.

67. Business & Professions Code §§ 17200, *et seq.* defines unfair competition to include any “unfair,” “unlawful,” or “deceptive” business practice, and provides equitable relief in the form of restitution and injunctive relief for violations.

68. Plaintiff brings this action for herself and the UCL Subclass, under the provisions of Business & Professions Code §§ 17200, *et seq.*, who were adversely affected by the unfair and unlawful business practices of Defendants alleged herein, including: (a) Defendants’ failure to pay overtime wages owed to Plaintiff and the Overtime Wages Subclass; (b) Defendants’ failure to provide accurate itemized wage statements to Plaintiff and the Wage Statement Subclass; and (c) Defendants’ failure to pay wages due at separation to Plaintiff and the Waiting Time Subclass.

69. Defendants’ utilization of such unfair and unlawful business practices constitutes unfair competition and provides an unfair advantage over Defendants’ competitors.

70. Based on the allegations herein, Defendants’ unfair and unlawful business practices have violated at least the following California laws: California Labor Code Sections 201, 202, 203, 226, 510, and 1194, and Industrial Welfare Commission (“IWC”) Wage Order 1. Such violations have deprived Plaintiff and the UCL Subclass of minimum working standards and conditions due to them under California law.

71. Plaintiff is informed and believes, and based thereon alleges, that Defendants personally benefited financially from their failure to comply with the

1 requirements of the Labor Code and Wage Order 1 as alleged herein regarding the
2 employment of Plaintiff and the UCL Subclass. Defendants personally established the
3 employment policies and practices that had the effect of reducing or eliminating the
4 overtime wages paid to Plaintiff and the Overtime Wage Subclass and reducing or
5 eliminating wages owed to Plaintiff and the Waiting Time Subclass.
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7 72. Plaintiff is informed and believes, and based thereon alleges, that this
8 resulted in Defendants retaining funds for themselves that otherwise properly should
9 have been paid to Plaintiff and the UCL Subclass had Defendants complied with the
10 Labor Code and Wage Order 1. Through these employment policies and practices, which
11 were intended to evade requirements of the Labor Code and Wage Order 1, Defendants
12 were able to misappropriate funds and rendered them unavailable to pay Plaintiff and the
13 UCL Subclass all amounts due to them under the Labor Code and Wage Order 1.

14 73. Defendants' unfair and unlawful business acts and practices occurred
15 within the four years preceding the filing of this Complaint.

16 74. As a direct and proximate result of Defendants' unfair and unlawful
17 business acts and practices alleged herein, Plaintiff and the UCL Subclass have been
18 financially damaged. Accordingly, Plaintiff and the UCL Subclass seek equitable relief in
19 the form of restitution to recover all monies withheld, acquired, or converted by
20 Defendants by means of the unfair and unlawful business acts and practices alleged
21 herein.
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23 75. Plaintiff and the UCL Subclass also seek injunctive relief to prohibit
24 Defendants from continuing to engage in the unfair and unlawful business practices
25 alleged herein, under Business & Professions Code § 17203.

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FIFTH CAUSE OF ACTION

Civil Penalties Under the PAGA for Failure to Pay Overtime Wages

Labor Code §§ 2698, *et seq.*

By Plaintiff and Aggrieved Employees

Against All Defendants

76. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though set forth herein in full.

77. The Labor Code Private Attorneys General Act of 2004, as amended (“PAGA”) is codified at Labor Code §§ 2698, *et seq.* Labor Code § 2699(a) states: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of the employee and other current or former employees against whom a violation of the same provision was committed pursuant to the procedures specified in Section 2699.3.”

78. Labor Code § 558(a) states in relevant part: “Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

79. During the PAGA Period, Plaintiff personally suffered from Defendants’ violations of Labor Code §§ 510 and 1194, in failing to pay her all overtime wages she was

1 entitled to during each pay period, and she personally suffered financial losses as a result
2 of Defendants' violations.

3
4 80. Plaintiff is informed and believes, and based thereon alleges, that during the
5 PAGA Period, other aggrieved employees personally suffered from Defendants'
6 violations of Labor Code §§ 510 and 1194, in failing to pay them all overtime wages they
7 were entitled to during each pay period, and they personally suffered financial losses as a
8 result of Defendants' violations.

9 81. Defendants have not attempted to cure the violations alleged herein under
10 Labor Code §§ 510 and 1194.

11 82. Under Labor Code § 2699.3(c), Plaintiff, on behalf of herself and all other
12 aggrieved employees, seeks civil penalties under PAGA, in the amounts set forth in
13 Labor Code § 558(a) for each pay period, which will be established at trial.

14 **SIXTH CAUSE OF ACTION**

15 **Civil Penalties Under the PAGA**
16 **for Failure to Provide Accurate Itemized Wage Statements**
17 **Labor Code §§ 2698, *et seq.***
18 **By Plaintiff and Aggrieved Employees**
19 **Against All Defendants**

20 83. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as
21 though set forth herein in full.

22 84. The Labor Code Private Attorneys General Act of 2004 ("PAGA") is
23 codified at Labor Code §§ 2698, *et seq.* Labor Code § 2699(a) states: "Notwithstanding any
24 other provision of law, any provision of this code that provides for a civil penalty to be
25 assessed and collected by the Labor and Workforce Development Agency or any of its
26 departments, divisions, commissions, boards, agencies, or employees, for a violation of
27 this code, may, as an alternative, be recovered through a civil action brought by an
28 aggrieved employee on behalf of the employee and other current or former employees

1 against whom a violation of the same provision was committed pursuant to the
2 procedures specified in Section 2699.3.”

3
4 85. Labor Code § 226.3 states in relevant part: “Any employer who violates
5 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two
6 hundred fifty dollars (\$250) per employee per violation in an initial citation and one
7 thousand dollars (\$1,000) per employee for each violation in a subsequent citation”

8 86. During the PAGA Period, Plaintiff personally suffered from Defendants’
9 knowing and intentional violations of Labor Code § 226, in failing to provide her with
10 accurate itemized bi-weekly wage statements.

11 87. Plaintiff is informed and believes, and based thereon alleges, that during the
12 PAGA Period, other aggrieved employees personally suffered from Defendants’ knowing
13 and intentional violations of Labor Code § 226, in failing to provide them with accurate
14 itemized bi-weekly wage statements.

15 88. Defendants have not attempted to cure the violations alleged herein under
16 Labor Code § 226.

17 89. Under Labor Code § 2699.3(c), Plaintiff, on behalf of herself and all other
18 aggrieved employees, seeks civil penalties under PAGA, in the amounts set forth in
19 Labor Code § 226.3 for each pay period, which will be established at trial.

20 **SEVENTH CAUSE OF ACTION**

21
22 **Civil Penalties Under the PAGA for Failure to Pay Wages Due at Separation**
23 **Labor Code §§ 2698, *et seq.***
24 **By Plaintiff and Aggrieved Employees**
Against All Defendants

25 90. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as
26 though set forth herein in full.

27 91. The Labor Code Private Attorneys General Act of 2004 (“PAGA”) is
28 codified at Labor Code §§ 2698, *et seq.* Labor Code § 2699(f) states in relevant part: “For

1 all provisions of this code except those for which a civil penalty is specifically provided,
2 there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If,
3 at the time of the alleged violation, the person employs one or more employees, the civil
4 penalty is as follows: (A) One hundred dollars (\$100) for each aggrieved employee per pay
5 period”

6
7 92. During the PAGA Period, Plaintiff personally suffered from Defendants’
8 willful violations of Labor Code §§ 201, 202, and 203, in failing to pay all wages owed to
9 her upon the ending of her employment.

10 93. Plaintiff is informed and believes, and based thereon alleges, that during the
11 PAGA Period, other aggrieved employees personally suffered from Defendants’ willful
12 violations of Labor Code §§ 201, 202, and 203, in failing to pay all wages owed to them
13 upon the ending of their employment.

14 94. Defendants have not attempted to cure the violations alleged herein under
15 Labor Code §§ 201, 202, and 203.

16 95. Under Labor Code § 2699.3(a), Plaintiff, on behalf of herself and all other
17 aggrieved employees, seeks civil penalties under PAGA, in the amounts set forth in
18 Labor Code § 2699(f) for each pay period, which will be established at trial.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for the following relief on behalf of herself and the
21 Plaintiff Class against Defendants:

- 22
- 23 1. For certification of this action as a class action and appointment of Plaintiff
24 and Plaintiff’s counsel to represent the Plaintiff Class;
 - 25 2. For provision of class notice to Class Members as defined above;
 - 26 3. That Defendants be permanently enjoined from engaging in the unlawful and
27 unfair business acts and practices alleged;
- 28

4. For an order requiring Defendants to pay restitution of all amounts owed to Plaintiff and Class Members, in an amount according to proof, under California Business and Professions Code § 17203;
5. For compensatory damages, according to proof;
6. For statutory damages as provided under the Labor Code, according to proof;
7. For pre-judgment interest on all sums collected, according to proof;
8. For reasonable attorneys' fees and costs, under California Code of Civil Procedure § 1021.5, under the California Labor Code, and under other applicable law;
9. That this action be maintained as a PAGA Representative Action;
10. For recovery of civil penalties against Defendants under Labor Code § 2698 *et seq.* for failure to pay all overtime wages owed under Labor Code §§ 510 and 1194, according to proof;
11. For recovery of civil penalties against Defendants under Labor Code § 2698 *et seq.* for failure to provide accurate itemized wage statements under Labor Code §§ 226 and 226.3, according to proof;
12. For recovery of civil penalties against Defendants under Labor Code § 2698 *et seq.* for failure to pay statutory waiting time penalties under Labor Code § 203, according to proof;
13. For an order that all recovered civil penalties to be distributed 65% to the LWDA and 35% to the aggrieved employees;
14. For costs of suit; and
15. For such other and further relief as the Court deems just and proper.

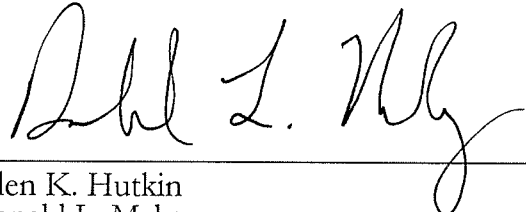
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1 Dated: January 8, 2025

HUTKIN LAW FIRM, APC

2
3
4 By: 
5 Allen K. Hutkin
6 Donald L. Mabry
7 Attorneys for Plaintiff Obdulia Mercado,
8 on behalf of herself and all others similarly
9 situated

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff demands a jury trial of all claims triable as of right by jury.

12 Dated: January 8, 2025

HUTKIN LAW FIRM, APC

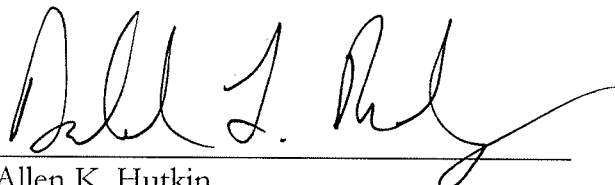
13
14 By: 
15 Allen K. Hutkin
16 Donald L. Mabry
17 Attorneys for Plaintiff Obdulia Mercado,
18 on behalf of herself and all others similarly
19 situated
20
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25
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27
28

Exhibit 1

Allen K. Hutkin
Donald L. Mabry

Maria L. Hutkin
Of Counsel

Hutkin Law Firm, APC
ATTORNEYS AT LAW
1220 MARSH STREET
SAN LUIS OBISPO, CALIFORNIA
93401

Telephone
(805) 544-1500

Facsimile
(805) 544-1532

July 17, 2024

**Sent By Certified Mail/
Return Receipt Requested**

Cornucopia Tool & Plastics, Inc.
P.O. Box 1915
Paso Robles, CA 93447

Jason Montello
P.O. Box 1915
Paso Robles, CA 93447

Shannon Montello
P.O. Box 1915
Paso Robles, CA 93447

Jay L. Raftery, Jr.
Diehl & Rodewald, PC
1043 Pacific Street
San Luis Obispo, CA 93401

Cornucopia Tool & Plastics, Inc.
448 Sherwood Rd.
Paso Robles, CA 93446

Jason Montello
448 Sherwood Rd.
Paso Robles, CA 93446

Shannon Montello
448 Sherwood Rd.
Paso Robles, CA 93446

Re: Obdulia (Lula) Mercado
California Private Attorney General Act ("PAGA") Notice of Labor Law
Violations, California Labor Code § 2699.3(a)(1)

**Attention Cornucopia Tool & Plastics, Inc., Jason Montello, Shannon Montello, and
their legal representative, Jay L. Raftery, Jr.:**

In accordance with California Labor Code § 2699.3(a)(1), aggrieved employee Obdulia (Lula) Mercado ("Complainant") hereby notifies Cornucopia Tool & Plastics, Inc., Jason Montello, and Shannon Montello (collectively "Employers"), and their legal representative, Jay L. Raftery, Jr., that Employers have violated California labor laws with respect to Complainant and other aggrieved, non-exempt employees who worked for Employers within the last year.

Cornucopia Tool & Plastics, Inc.
Jason Montello
Shannon Montello
Jay L. Raftery, Jr.
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Employers violated the California Labor Code sections cited below and California Code of Regulations, Title 8, Section 11070 and Industrial Welfare Commission Order No. 1-2001, which regulates Wages, Hours and Working Conditions in the Manufacturing Industry (collectively "Wage Order 1"), as part of a pattern and practice by Employers to deny Complainant and other aggrieved employees their rightful protections under California's labor laws. At all relevant times, Complainant and other aggrieved, non-exempt employees were employees of Employers under Labor Code §§ 558 and 558.1, as Employers were either the "employer or other person acting on behalf of an employer" as set forth in these statutes, who violated, or caused to be violated, the California Labor Code and Wage Order 1. Complainant further alleges:

1. Nonpayment of Overtime Compensation – Labor Code §§ 510, 558, 1194, 1194.2, 1197.1, 1198, and Wage Order 1.

Facts and theories supporting alleged violations:

Complainant was hired by Employers in or about August of 2020, as a non-exempt employee. Complainant worked in Employers' manufacturing plant as a parts finisher, whose duties included, among other things, sandblasting, filing, cleaning, and packing parts. Complainant worked a four-day schedule of Monday through Thursday, from 6:00 a.m. to 4:30 p.m. This schedule encompassed 10 hours of work per day. Employers terminated Complainant's employment on or about May 9, 2024, and informed Complainant that her position was being dissolved. At the end of Complainant's employment with Employers, she was earning approximately \$17.06 per hour.

Within the last year, Complainant and other aggrieved, non-exempt employees were employed by Employers in the State of California in the manufacturing industry, and were therefore covered and protected by the California Labor Code and Wage Order 1.

Labor Code §§ 510, 558, 1194, 1194.2, 1197.1, 1198, and Wage Order 1 collectively provide that any employee receiving less than the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this overtime compensation.

Section 3 of Wage Order 1 requires employers to pay employees one-and-one-half times their regular hourly rate for all hours worked in excess of 40 hours in one workweek and in excess of 8 hours in one workday, unless such employees are exempt from the requirements of Wage Order 1.

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Complainant and other aggrieved employees were not exempt from the requirements of Wage Order 1 because they did not meet any applicable legal test for exemption, based on their respective job duties, salaries, or both.

Within the last year, Complainant and other aggrieved, non-exempt employees regularly worked 10 hours per day as part of their four-day workweek schedule, which means that they regularly worked in excess of 8 hours each workday. However, Complainant and other aggrieved, non-exempt employees were never paid overtime compensation by Employers for the two hours per day they worked in excess of 8 hours. Employers' payroll records for Complainant and other aggrieved, non-exempt employees, and the testimony of Complainant and other aggrieved, non-exempt employees, will establish these facts.

No Alternative Workweek Schedule ("AWS") was adopted by Employers under Labor Code § 511 and related regulations, which would have permitted Complainant and other aggrieved, non-exempt employees to work in excess of 8 hours in a workday without Employers having to pay them overtime compensation.

On March 27, 2020, the individual Employers, Jason Montello and Shannon Montello, incorporated a company named Grit & Glory Ventures Corporation. Thereafter, they purchased the assets of a preexisting company named Cornucopia Tool & Plastics, Inc., owned by Art Horn and Larry Horn, which ceased operations on or about July 31, 2020. On August 7, 2020, Grit & Glory Ventures Corporation changed its corporate name to its current name of "Cornucopia Tool & Plastics, Inc." by amending its Articles of Incorporation. Records maintained by the California Secretary of State will establish these facts.

The Montello-owned Grit & Glory Ventures Corporation, renamed Cornucopia Tool & Plastics, Inc., was a completely separate and distinct legal entity and employer from the Horn-owned Cornucopia Tool & Plastics, Inc. Each of the companies had a different Employer Identification Number. Tax records, including W-2 forms issued to Complainant and other aggrieved, non-exempt employees who worked for each of the two companies will establish these facts.

In 1996, the Horn-owned Cornucopia Tool & Plastics, Inc. apparently had an election adopting a 4 x 10 AWS that apparently was registered with the California Department of Industrial Relations in April of 2013. Whether that election and registration were valid is not known.

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Regardless, the Montello-owned Grit & Glory Ventures Corporation, renamed Cornucopia Tool & Plastics, Inc., did not exist either in 1996 when the Horn-owned company apparently had the AWS election, or in 2013 when the election apparently was registered. The Montello-owned Grit & Glory Ventures Corporation, renamed Cornucopia Tool & Plastics, Inc., was not formed (incorporated) until 7 years later, in 2020, and operated under its own separate Employer Identification Number.

Accordingly, the Montello-owned Grit & Glory Ventures Corporation, renamed Cornucopia Tool & Plastics, Inc.—a completely separate and distinct legal entity and employer from the Horn-owned company—was legally obligated to hold its own AWS election for any 4 x 10 workweek established. By statute and applicable regulations, any newly formed (incorporated) employer, such as the case here, must separately satisfy the AWS election requirement to lawfully adopt a 4x10 workweek schedule.

However, neither the Montello-owned Grit & Glory Ventures Corporation, renamed Cornucopia Tool & Plastics, Inc., nor the individual Employers, Jason Montello and Shannon Montello, ever held an AWS election to lawfully establish a 4 x 10 workweek schedule after they became the Employers of Complainant and other aggrieved, non-exempt employees. Merely changing the corporate name of Grit & Glory Ventures Corporation to match the name of the Horn-owned company did not permit the former to utilize any AWS election the Horn-owned company may have established many years before.

Accordingly, the 4 x 10 workweek schedule which the Montello-owned Grit & Glory Ventures Corporation, renamed Cornucopia Tool & Plastics, Inc., has had in place since 2020 is invalid and unenforceable to shield it from overtime compensation liability. Therefore, Employers' non-exempt employees who have worked a 4 x 10 workweek schedule and have not been paid overtime compensation for the two hours of overtime they worked each day, including Complainant and other aggrieved, non-exempt employees, are entitled to recover unpaid overtime compensation under the Labor Code and Wage Order 1.

2. Itemized Wage Statement Violations and Penalties - Labor Code §§ 226, 226.3, 226.6, 1174, and 1174.5.

In addition to the facts and theories above, the following facts and theories support the alleged violations:

Labor Code §§ 226, 226.3, 226.6, 1174, and 1174.5 collectively provide that every employer must furnish each employee with an accurate itemized statement of wages and deductions at the time of payment of wages.

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Within the last year, Employers knowingly and intentionally (willfully) failed to provide Complainant and other aggrieved, non-exempt employees with accurate itemized wage statements. This resulted from Employers' willful failure to pay applicable overtime compensation to Complainant and other aggrieved, non-exempt employees, which rendered their wage statements inaccurate and entitles them to recover penalties for the violations.

3. Waiting-Time Penalties for Nonpayment of Wages - Labor Code §§ 201, 202, and 203.

In addition to the facts and theories above, the following facts and theories support the alleged violations:

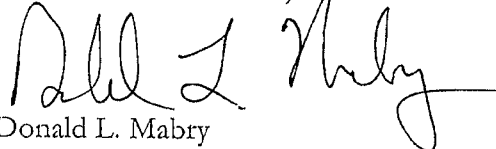
Labor Code §§ 201, 202, and 203 collectively provide that if an employer knowingly and intentionally (willfully) fails to pay any wages owed to an employee who is discharged or quits, the wages of such employee shall continue from the due date thereof at the employee's daily rate until paid or until an action therefor is commenced, for not more than thirty days.

More than thirty days have passed since the employment of Complainant and other aggrieved, non-exempt employees with Employers has ended. Employers willfully failed to pay applicable overtime compensation to Complainant and other aggrieved, non-exempt employees upon the ending of their employment with Employers. Accordingly, Complainant and other aggrieved, non-exempt employees are entitled to thirty days' wages at their daily rates as waiting-time penalties.

Please be advised that if the undersigned firm does not receive notice from the Labor and Workforce Development Agency regarding an intent to investigate the alleged violations within the time period provided by Labor Code § 2699.3(a)(2)(A), Complainant will, under Labor Code § 2699.3(a)(2)(A), commence a civil action against Employers under the Private Attorney General Act ("PAGA"), Labor Code §§ 2699, *et seq.*

Sincerely,

HUTKIN LAW FIRM, APC


Donald L. Mabry

cc: Labor and Workforce Development Agency (via online portal)