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FAYE CHAPMAN and the Proposed Class

ELECTRONICALLY FILED

Superior Court of California

County of Alameda

09/06/2023

Chad Finke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**
12 **UNLIMITED CIVIL JURISDICTION**

14 FAYE CHAPMAN, on behalf of herself and
all others similarly situated,

15 Plaintiff,

16 v.

17 WORLD’S FINEST CHOCOLATE, INC. and
18 DOES 1-10,

19 Defendants.

Case No.: **23CV038555**

The Honorable Evelio Grillo
Department 21

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **FAILURE TO PAY MINIMUM WAGE** [*Cal. Labor Code §§ 1194, 1194.2 & 1197; Wage Order 4*]
2. **FAILURE TO PAY OVERTIME** [*Cal. Labor Code §§ 510, 1194, 1198; Wage Order 4*]
3. **FAILURE TO REIMBURSE BUSINESS EXPENSES** [*Cal. Labor Code § 2802; Wage Order 4*]
4. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS** [*Cal. Labor Code § 226; Wage Order 4*]
5. **WAITING TIME PENALTIES** [*Cal. Labor Code §§ 201, 202 & 203*]
6. **FAILURE TO PROVIDE REST BREAKS** [*Cal. Labor Code § 226.7; Wage Order 4*]

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- 7. **UNFAIR COMPETITION** [*Cal. Bus. & Prof. Code §§ 17200 et seq.*]
 - 8. **BREACH OF CONTRACT**
 - 9. **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**
 - 10. **COMMON COUNT: MONEY HAD AND RECEIVED/GOODS AND SERVICES RENDERED**
 - 11. **PRIVATE ATTORNEYS GENERAL ACT** [*Cal. Labor Code § 2966 et seq.*]
- DEMAND FOR JURY TRIAL**

1 Plaintiff Faye Chapman (“Plaintiff”) alleges, on behalf of herself, all similarly situated
2 persons, and the State of California, as follows:

3 INTRODUCTION

4 1. World’s Finest Chocolate, Inc. (“WFC”) is one of the largest fundraising
5 organizations in the United States. According to its website, WFC “does more than just make
6 delicious chocolate. Since 1949, we’ve helped our fundraising customers raise over
7 \$4,000,000,000!”

8 2. WFC obtains fundraising customers and sells these customers chocolate through a
9 team of workers it calls “Independent Sales Representatives” (“ISRs”). The term is a serious
10 misnomer: WFC has misclassified ISRs as independent contractors, but they are employees who
11 plainly perform the usual work of the company. The misclassification denies ISRs such as Plaintiff
12 the fundamental protections due to employees under California law.

13 3. This class action seeks to enjoin Defendants’ unlawful conduct and to obtain from
14 Defendants on behalf of Plaintiff and ISRs restitution of unpaid wages, overtime, reimbursement
15 of business expenses incurred during the course of their employment, and statutory and civil
16 penalties under the California Labor Code, the California Industrial Welfare Commission’s
17 (“IWC”) Wage Orders, the California Business and Professions Code sections §§ 17200 et seq., the
18 Private Attorneys General Act (“PAGA”), and other statutes and regulations applicable to
19 employees in the State of California.

20 JURISDICTION AND VENUE

21 4. The Court has jurisdiction over Plaintiff’s claims under the California Labor Code.

22 5. The Court has personal jurisdiction over Defendants because each conducts
23 substantial business activity in California and engaged in the unlawful acts described herein in
24 California.

25 6. Venue is proper in this County under California Code of Civil Procedure Section
26 395(a) as the County in which Defendants reside is unknown to Plaintiff and Defendants have not
27 designated an agent for service of process with the California Secretary of State, and therefore may
28 be sued in any County in the State.

1 that the acts of each Defendant are legally attributable to the other Defendants.

2 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
3 sued in this action, including each Defendant sued by the fictitious names DOES 1 through 10,
4 inclusive, is directly or indirectly responsible in some manner for the occurrences, controversies
5 and damages alleged herein, in various capacities, including but not limited to serving as joint
6 employer, joint tortfeasor, single enterprise, alter ego, or agent of the other Defendants. Each
7 Defendant approved, participated in, controlled, or ratified the acts of all other Defendants.

8 **ALLEGATIONS COMMON TO ALL CLASSWIDE AND REPRESENTATIVE**
9 **CAUSES OF ACTION**

10 18. Defendants own and/or operate a fundraising company that, *inter alia*, markets and
11 sells chocolate to fundraising customers.

12 19. WFC contracts with ISRs to market and sell its chocolate to fundraising customers.

13 20. ISRs perform the usual work of Defendants' fundraising business and are essential
14 to their business.

15 21. Defendants could not identify fundraising customers or sell them chocolate without
16 ISRs.

17 22. WFC sets the prices that ISRs charge customers for its chocolates.

18 23. WFC prohibits ISRs from deviating from the prices that it has set without obtaining
19 its approval. WFC considers non-compliance with this requirement to be a breach of its contract
20 with ISRs.

21 24. WFC requires that all payments from its fundraising products sold to customers be
22 made directly to World's Finest Chocolate, Inc. and not to ISRs.

23 25. WFC only permits ISRs to pick up checks from customers that are payable to
24 World's Finest Chocolates, Inc. for the purpose of providing such payments to WFC.

25 26. WFC prohibits ISRs from purchasing its chocolate for resale to any third parties.

26 27. ISRs are permitted to sell chocolate only at the prices set or approved by WFC in
27 exchange for commissions.

28 28. WFC sets the commission structure that applies to ISRs.

1 29. WFC assigns ISRs to work in certain territories where they are permitted to market
2 and sell chocolates to its fundraising customers.

3 30. WFC requires ISRs to enter into agreements that designate them as independent
4 contractors.

5 31. The agreements also contain unlawful non-compete and non-solicitation clauses.

6 32. The agreements contain unlawful provisions stating that the contracts are to be
7 governed by Illinois law, rather than California law, and that claims must be brought in Illinois,
8 rather than in California.

9 33. Until approximately 2021, WFC did not require ISRs to form their own corporations.

10 34. When Plaintiff first became an ISR, she did not have her own corporation or
11 fundraising business. However, after several years of working as an ISR, WFC required Plaintiff
12 to form a corporation at great expense to Plaintiff in order to continue working with the company.

13 35. Upon information and belief, many ISRs do not have their own fundraising
14 businesses prior to working with WFC.

15 36. Plaintiff did not work for any other business while working for WFC or have her
16 own fundraising customers separate from her work for WFC.

17 37. Upon information and belief, many ISRs do not work for other businesses while
18 working for WFC or have their own fundraising customers separate from their work for WFC.

19 38. WFC provides new ISRs with a training and orientation program called World's
20 Finest Chocolate University. The training consists of a week of classroom training in Chicago plus
21 an eight-week orientation program, which includes calling on customers with the ISR's Regional
22 Manager.

23 39. In addition to the training, WFC provides ISRs with a detailed sales manual and
24 sample marketing materials to use with customers.

25 40. WFC considers the customers to whom ISRs sell WFC products to be WFC's
26 customers—not the ISRs' customers.

27 41. WFC restricts ISRs from using customer information, including the names of
28 customers and their contact information, to benefit anyone other than WFC.

1 42. When WFC terminated Plaintiff, it told customers to whom she had sold chocolates
2 that it was assigning a new salesperson to be their representative.

3 43. ISRs' primary job duties include communicating with customers and potential
4 customers from their home office locations, traveling to and from customer meetings, explaining
5 WFC's fundraising programs to customers and potential customers, helping customers to plan their
6 fundraising activities, collecting order forms from customers for WFC's chocolates, submitting
7 orders to WFCs, and completing necessary paperwork regarding customers' orders.

8 44. ISRs do not require specialized skills to perform their duties.

9 45. WFC supplies ISRs with chocolate samples to use with potential customers.

10 46. ISRs must pay out of pocket for gasoline to travel to and from customer meetings,
11 cell phone charges for use of their personal cell phones to conduct work-related calls, costs related
12 to forming their own corporations, unemployment insurance, business license costs, and corporate
13 tax filing costs, and other costs related to maintaining an office, such as internet, office supplies,
14 rent or mortgage payments, taxes, heat, electrical, and all other costs relating to the maintenance of
15 an office.

16 47. ISRs are not engaged in a separate business or profession, but instead perform the
17 usual work of Defendants' fundraising business.

18 48. Defendants prohibit ISRs from selling products to WFCs' customers that compete
19 with WFCs' products while under contract with WFC and after their contracts with WFC have
20 ended.

21 49. WFC maintains the right to terminate ISRs at any time for any reason.

22 50. WFC assigns ISRs to specific territories in which to sell its products. ISRs are not
23 permitted to sell to customers outside of these assigned territories.

24 51. WFC has willfully misclassified ISRs as independent contractors, to minimize costs
25 and unduly maximize profits at the expense of its primary workforce and Defendants' competitors.

26 52. Through their unlawful misclassification of ISRs, Defendants avoid the costs of
27 providing workers compensation/occupational accident insurance to ISRs, denying such employees
28 much needed protection in the event of work-related injuries or illnesses. Defendants also

1 unlawfully pass on to ISRs expenses such as unemployment insurance payments, fuel, vehicle
2 maintenance, office expenses, insurance, cell phone charges, among others.

3 53. Defendants' unlawful conduct of misclassifying ISRs also allows Defendants to
4 deprive Plaintiff and other ISRs of fundamental employment rights, such as the right to minimum
5 wages and overtime, the right to reimbursed work-related expenses, the right to breaks, the right to
6 accurate itemized wage statements, the right to the prompt payment of full wages within time limits
7 designated by law, and the right to workers' compensation and unemployment protection,
8 guaranteed to employees under various provisions of the Labor Code and Wage Order.

9 54. Defendants uniformly engaged in these violations of law against ISRs for the the
10 applicable class period.

11 CLASS ACTION ALLEGATIONS

12 55. Plaintiff brings this action on Plaintiff's own behalf, and on behalf of all persons
13 similarly situated, as a class action pursuant to Code of Civil Procedure section 382.

14 56. This lawsuit is brought on behalf of an ascertainable class, initially identified as:
15 **All individuals who worked as Independent Sales Representatives for Defendants**
16 **in California (hereafter, collectively referred to as "Class Members").**

17 57. The class period is four years prior to the filing of this Complaint through the date
18 of final judgment.

19 58. Excluded from the class are Defendants, their corporate parents, subsidiaries,
20 franchisees and affiliates, officers and directors, any entity in which Defendants have a controlling
21 interest, and the legal representatives, successors or assigns of any such excluded persons or entities,
22 and the Court to which this action is assigned.

23 59. The members of the class are so numerous that joinder of all members is
24 impracticable. While the exact number of class members is unknown to Plaintiff at this time, such
25 information can be ascertained through appropriate discovery, and/or from records maintained by
26 Defendants.

27 60. The Class Members are so numerous that joinder of each individual member would
28 be impracticable, and the disposition of their claims in a class action, rather than in numerous

1 individual actions, will benefit the parties, the Court, and the interests of justice.

2 61. The Class Members are readily ascertainable by their job position, by their
3 classification as independent contractors by Defendants, and from the books and records maintained
4 by the Defendants in their regular course of business.

5 62. There is a well-defined community of interest amongst the Class Members, as all of
6 these individuals have worked in California and have been similarly subjected to unlawful policies
7 and/or practices that misclassified them as independent contractors, thereby depriving them of the
8 protections afforded to employees by California's employment laws.

9 63. Through such misclassification, Class Members, including Plaintiff, were similarly
10 subjected to unlawful policies and/or practices that improperly required them to pay for expenses
11 incurred in discharging their employment duties.

12 64. In addition, Class Members, including Plaintiff, have been similarly deprived of
13 legally mandated minimum-wage compensation for all hours worked, overtime, paid rest breaks,
14 accurate, itemized wage statements reflecting all earned wages, and timely payment of all earned
15 wages.

16 65. Common questions of law and fact that affect the class predominate over questions
17 that affect only individual Class Members, including, among other things, (a) whether Defendants
18 maintained a policy and/or practice whereby Class Members were improperly classified as
19 independent contractors as opposed to employees; (b) whether Defendants maintained a policy
20 and/or practice of failing to pay Class Members overtime; (c) whether Defendants maintained a
21 policy and/or practice of failing to pay Class Members the legally-mandated minimum-wage for all
22 hours worked; (d) whether Defendants maintained a policy and/or practice of failing to pay all
23 wages owed to Class Members within the time limits prescribed by Labor Code sections 201, 202
24 and/or 204; (e) whether Defendants maintained a policy and/or practice of failing to provide
25 Plaintiff and Class Members with paid rest breaks; (f) whether Defendants maintained a policy
26 and/or practice of failing to maintain and furnish accurate, itemized wage statements to Class
27 Members; and (g) whether Defendants maintained a policy and/or practice whereby Class Members
28 are improperly required to pay for expenses incurred in discharging their duties.

1 66. Plaintiff's claims are typical of the claims of the Class Members because (a)
2 Plaintiff's job, position, and duties are similar, if not identical to, the duties and activities of other
3 Class Members; (b) Plaintiff was similarly misclassified as an independent contractor as were other
4 Class Members; (c) Plaintiff was similarly denied payment of minimum-wage and overtime
5 compensation as were other Class Members; (d) Plaintiff was not given accurate, itemized wage
6 statements, as required by Labor Code section 226, like other Class Members; (e) Plaintiff was not
7 paid all her earned wages within the time limits prescribed by the California Labor Code, like other
8 Class Members; (f) Plaintiff was not provided with legally compliant paid rest breaks; (g) Plaintiff
9 was similarly subjected to the requirement that she pay for expenses incurred in discharging her
10 duties for Defendants as other Class Members; and (h) Plaintiff was denied the foregoing rights and
11 benefits provided under California's employment laws and regulations in the same manner that
12 such rights and benefits were denied to other Class Members.

13 67. Plaintiff can adequately represent the interests of the Class Members because, like
14 them, Plaintiff was engaged by Defendants to sell their fundraising products, and Plaintiff suffered
15 the same or similar injuries as a result of Defendants' systemic failures to comply with the
16 applicable California employment laws and regulations governing classification of workers as
17 employees as opposed to independent contractors; minimum wage; overtime; requirements that
18 employers indemnify employees for expenses and losses incurred in discharging their duties; timely
19 payment of wages; and recordkeeping requirements. Furthermore, Plaintiff has retained counsel
20 who are experienced in prosecuting wage-and-hour class actions. Plaintiff and her counsel are
21 committed to vigorously prosecuting this action on behalf of the class, and have the financial
22 resources necessary to do so.

23 **ALLEGATIONS RELEVANT TO INDIVIDUAL CAUSES OF ACTION**

24 68. Defendants assign ISRs, including Plaintiff, to specific territories where they are
25 authorized to sell Defendants' products.

26 69. Defendants agreed that they would not assign their employee salespeople, including
27 inside salespeople and field marketers, to sell to Plaintiff's customers and potential customers
28 within her territory if she met her sales goals.

1 70. At all times relevant, Plaintiff met her sales goals.

2 71. Defendants also agreed that if the company made web sales within Plaintiff's
3 territory, Defendants would pay Plaintiff a commission based on the sale.

4 72. Defendants pay ISRs, including Plaintiff, by commission and determine ISRs'
5 commission structure.

6 73. Notwithstanding Defendants' promise not to assign their other salespeople to sell
7 within Plaintiff's territory and/or to pay Plaintiff a commission based on web sales made by
8 Defendants in Plaintiff's territory, Defendants did not pay Plaintiff commissions for sales that
9 Defendants' other salespeople made within her territory.

10 74. By assigning other salespeople to make sales to Plaintiff's customers within her
11 territory without paying Plaintiff commissions for those sales, Defendants have breached their
12 agreement with Plaintiff and/or unfairly frustrated Plaintiff's right to receive the benefit of her
13 commissions owed.

14 75. Plaintiff is aware of sales that Defendants' employee salespeople made within her
15 territory to customers that she had generated through her efforts.

16 76. Plaintiff estimates that she is owed substantial sums in unpaid commissions based
17 on these sales.

18 77. Plaintiff generated customers for Defendants in her assigned territory and performed
19 her duties in accordance with the expectations of her job. Nonetheless, Defendants failed to uphold
20 their agreement not to sell to Plaintiff's customers or solicit customers in her territory.

21 78. Plaintiff complained on several occasions to Defendants that Defendants' employee
22 salespeople were making sales within her territory and costing her substantial amounts in
23 commissions.

24 79. Defendants acknowledged Plaintiff's complaints but did not address her concerns or
25 pay her for the sales made by their other salespeople in her territory.

26 80. Even after Plaintiff complained, upon information and belief, Defendants' other
27 sales employees continued to solicit her customers.

28 81. Defendants were unjustly enriched when they earned money from sales to customers

1 that Plaintiff had generated through her efforts without paying Plaintiff commissions for these sales.

2 82. Upon information and belief, Defendants also were unjustly enriched by not having
3 to pay commissions to the employees who made the sales.

4 **FIRST CAUSE OF ACTION**
5 **FAILURE TO PAY MINIMUM WAGE**
6 ***(Cal. Lab. Code §§ 1194, 1194.2 & 1197; Wage Order 4)***
7 **[Brought by Plaintiff on behalf of the Class Against All Defendants]**

8 83. Plaintiff refers to and incorporates by reference each and every paragraph above as
9 though set forth fully herein.

10 84. Labor Code section 1197 and Wage Order 4 make it unlawful to pay an employee
11 less than the minimum wage, as established by the Industrial Welfare Commission, for each hour
12 worked.

13 85. Labor Code section 1194 entitles an employee receiving less than the minimum
14 wage to recover, in a civil action, the unpaid balance of minimum wages owing, plus interest
15 thereon, reasonable attorneys' fees, and costs of suit.

16 86. Labor Code section 1194.2 entitles an employee receiving less than the minimum
17 wage to recover liquidated damages in an amount equal to the unpaid minimum wages and interest
18 thereon.

19 87. Class Members, including Plaintiff, are paid by commission. Defendants do not pay
20 Class Members at least the minimum wage rate for each hour that they work.

21 88. As a result of Defendants' improper pay policies and/or practices, as described
22 herein, Defendants failed to pay Plaintiff and other Class Members at least the minimum wage for
23 each hour worked, under Labor Code section 1197 and Wage Order 4-2001.

24 89. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
25 failure to pay the minimum wage for each hour worked, as described herein, was done willfully.

26 90. Additionally, as a result of Defendants' failure to pay Plaintiff and other
27 misclassified Drivers the minimum wages for all hours worked, these workers were not timely paid
28 all earned wages as required by Labor Code section 204.

91. Based on Defendants' conduct, as alleged herein, Defendants, including Does 1

1 through 10, are liable to the Class Members, including Plaintiff, for unpaid minimum-wage
2 compensation pursuant to California Labor Code sections 1194 and 1197, and Wage Order 4-2001,
3 liquidated damages in an amount equal to the unpaid wages owed to such employees, plus interest,
4 pursuant to California Labor Code sections 1194.2, and attorneys' fees and costs of suit, pursuant
5 to California Labor Code sections 1194 and 1194.2.

6 **SECOND CAUSE OF ACTION**
7 **FAILURE TO PAY OVERTIME**

8 *(Cal. Lab. Code §§ 510, 1194, 1198; Wage Order 4)*

9 **[Brought by Plaintiff on behalf of the Class Against All Defendants]**

10 92. Plaintiff refers to and incorporates by reference each and every paragraph above as
11 though set forth fully herein.

12 93. Labor Code section 510 and Wage Order 4 require employers to pay overtime and
13 double-time when their employees work more than eight or twelve hours in a day, and/or more than
14 forty hours in a week.

15 94. Labor Code section 1194 entitles an employee who has not been paid overtime or
16 double-time to recover, in a civil action, the unpaid wages owing, plus interest thereon, reasonable
17 attorneys' fees, and costs of suit.

18 95. Class Members, including Plaintiff, are paid by commission. Defendants do not pay
19 Class Members at a premium rate when they work more than eight or twelve hours in a day, and/or
20 more than forty hours in a week.

21 96. Plaintiff and Class Members worked workdays of more than eight or twelve hours,
22 and/or workweeks of more than forty hours, for which Defendants did not pay them overtime or
23 double-time.

24 97. As a result of Defendants' improper pay policies and/or practices, as described
25 herein, Defendants failed to pay Plaintiff and other Class Members overtime and/or double-time
26 that these workers were entitled to, for each overtime or double-time hour worked, under Labor
27 Code sections 510, 1194, and 1198 and Wage Order 4-2001.

28 98. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
failure to pay overtime and/or double-time, as described herein, was done willfully.

1 **FOURTH CAUSE OF ACTION**
2 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**
3 ***(Cal. Lab. Code § 226; Wage Order 4)***
4 **[Brought by Plaintiff on behalf of the Class Against All Defendants]**

5 106. Plaintiff refers to and incorporates by reference each and every paragraph above as
6 though set forth fully herein.

7 107. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
8 statements all deductions made from wages earned by Plaintiff and other Class Members, and to
9 accurately report total hours worked, and wages earned, by such employees. Defendants have
10 knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every
11 wage statement that should have been provided to Plaintiff and other Class Members.

12 108. Wage Order 4 also requires employers to provide employees with wage statements
13 that contain specified information, including hours worked and pay rates, and maintain records for
14 their employees, including with respect to hours, rates of pay, and wages earned.

15 109. By failing to keep adequate records, as required by Labor Code section 226 and
16 Wage Order 4, Defendants have injured Plaintiff and other Class Members, and made it confusing
17 and difficult to calculate the unpaid wages earned and expenditures not indemnified by Defendants
18 (including wages, interest, and penalties thereon) due to Plaintiff and other Class Members.

19 110. Plaintiff seeks to recover, on behalf of herself and other Class Members, the statutory
20 penalties provided by Labor Code section 226(e) for the wage statement violations committed by
21 Defendants.

22 **FIFTH CAUSE OF ACTION**
23 **WAITING TIME PENALTIES**
24 ***(Cal. Lab. Code §§ 201, 202 & 203)***
25 **[Brought by Plaintiff on behalf of the Class Against All Defendants]**

26 111. Plaintiff refers to and incorporates by reference each and every paragraph above as
27 though set forth fully herein.

28 112. Sections 201 and 202 of the California Labor Code require employers to promptly
pay all wages owing to an employee at the conclusion of employment.

113. Many of the proposed Class Members, including Plaintiff, are no longer working for
Defendants. These former employees were either discharged, quit, or otherwise terminated their

1 employment with Defendants.

2 114. Defendants' failures to pay Class Members who are no longer working for
3 Defendants all wages owing to these former employees, as alleged above, were willful.

4 115. Class Members no longer working for Defendants are therefore entitled to penalties
5 against Defendants, in an amount to be determined at trial, pursuant to Labor Code section 203,
6 which provides that an employee's wages shall continue as a penalty until paid, for a period of up
7 to thirty (30) days from the time they were due.

8 **SIXTH CAUSE OF ACTION**
9 **FAILURE TO PROVIDE PAID REST BREAKS**

10 *(Cal. Lab. Code § 226.7; Wage Order 4)*

11 **[Brought by Plaintiff on behalf of the Class Against All Defendants]**

12 116. Plaintiff refers to and incorporates by reference each and every paragraph above as
13 though set forth fully herein.

14 117. Section 12 of Wage Order 4 provides "(A) Every employer shall authorize and
15 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
16 work period. The authorized rest period time shall be based on the total hours worked daily that at
17 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a
18 rest period need not be authorized for employees whose total daily work time is less than three and
19 one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which
20 there shall be no deduction from wages. (B) If an employer fails to provide an employee a rest
21 period in accordance with the applicable provisions of this order, the employer shall pay the
22 employee one (1) hour of pay at the employee's regular rate of compensation for each workday that
23 the rest period is not provided. Authorized rest period time shall be counted as hours worked for
24 which there shall be no deduction from wages."

25 118. Plaintiff and members of the Class worked at least three and one-half hours or more
26 in a day. Despite this, WFC had a policy and practice of failing to provide lawful rest breaks and
27 never paid Plaintiff or members of the Class for rest periods. WFC thus violated and continues to
28 violate the above-referenced rest break provisions of the Labor Code.

119. Pursuant to WFC's policy of classifying ISRs as independent contractors, WFC

1 lacks a rest break policy that complies with California law. In the absence of such policies, and
2 because WFC's policies and practices incentivize ISRs to work in order to get paid, Plaintiff and
3 Class Members regularly work more than three and one-half hours without taking a paid off-duty
4 rest break.

5 120. WFC's policy of misclassifying ISRs results in multiple violations of the Wage
6 Order because WFC fails to provide a paid rest break and fails to provide rest break premium wages
7 for each shift in which Plaintiff and Class Members were not provided a paid rest break despite
8 working three and one-half hours or more in a day.

9 121. Plaintiff seeks to recover, on behalf of herself and other Class Members, rest break
10 premiums and unpaid wages to which they are entitled, plus interest thereon, reasonable attorneys'
11 fees, and costs, in an amount to be proven at trial.

12 **SEVENTH CAUSE OF ACTION**
13 **VIOLATION OF THE UNFAIR COMPETITION LAW**
14 ***(Cal. Bus. & Prof. Code §§ 17200 et seq.)***

15 **[Brought by Plaintiff on behalf of the Class and Individually Against All Defendants]**

16 122. Plaintiff refers to and incorporates by reference each and every paragraph above as
17 though set forth fully herein.

18 123. California has an important public policy of protecting the welfare of employees,
19 and thus provides for statutorily guaranteed wages for all hours worked, and overtime,
20 reimbursement of work-related expenses.

21 124. Defendants' willful misclassification scheme, through which Class Members are
22 denied overtime, reimbursement of work-related expenses, and the legally mandated minimum
23 wages for all hours worked, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff,
24 the proposed Class Members, the general public, and Defendants' competitors.

25 125. Plaintiff seeks to enforce important rights affecting the public interest within the
26 meaning of Code of Civil Procedure section 1021.5.

27 126. A violation of California Business & Professions Code sections 17200 et seq. may
28 be predicated on the violation of any state or federal law.

127. Defendants' activities, as alleged herein, are violations of California law, and

1 constitute unlawful business acts and practices in violation of California Business & Professions
2 Code sections 17200 et seq.

3 128. Defendants' misclassification of Plaintiff and Class Members as independent
4 contractors, when they are truly employees who perform the usual work of Defendants' business,
5 is unlawful and unfair.

6 129. By devising a subterfuge where Class Members are required to sign agreements
7 under which Class Members are labelled as independent contractors, Defendants are able to avoid
8 their obligations to abide by the minimum employee-protection thresholds set by the State.

9 130. Throughout the time relevant to this action, Defendants, as described herein, have
10 failed and/or refused to abide by the minimum-employee protections that have long been set forth
11 in California law.

12 131. Defendants' misclassification scheme allows Defendants to strip Plaintiff and Class
13 Members of their fundamental employment rights, such as the rights to minimum wage, overtime,
14 paid rest breaks, itemized wage statements, reimbursement of work-related expenses, and the
15 prompt payment of full wages within time limits set by law, as provided under various provisions
16 of the Labor Code and Wage Order 4-2001.

17 132. Defendants also willfully deprive Plaintiff and Class Members of the protections
18 afforded to them under California Workers Compensation laws, denying said them the basic
19 medical and financial assistance guaranteed to all employees in the event of work-related injuries
20 and/or sicknesses that may occur in the course of their work for Defendants.

21 133. Under their unlawful scheme, Defendants are further able to evade their other legal
22 responsibilities as employers, and instead shift the burden of paying the costs of self-employment
23 and unemployment taxes onto Plaintiff and other Class Members.

24 134. With their unlawful scheme, Defendants are able to unjustly keep and appropriate
25 for themselves significant amounts of money that otherwise should have been paid to Class
26 Members as wages.

27 135. Defendants also fail to reimburse Plaintiff and Class Members for work-related
28 expenses they incur during the course of their employment in violation of Labor Code section 2802

1 and Wage Order 4. To the extent that Defendants require Class Members to waive the benefits of
2 said statutes, Defendants also violate Labor Code section 2804.

3 136. Defendants' unfair business practices have reaped undue benefits and illegal profits,
4 and unjustly enriched Defendants, at the expense of Plaintiff, other Class Members, and the public.

5 137. Plaintiff and other Class Members have been personally injured by Defendants'
6 unlawful business acts and practices, as alleged herein, including but not necessarily limited to the
7 loss of money or property.

8 138. Pursuant to California Business & Professions Code sections 17200 et seq., Plaintiff
9 and other Class Members currently working for Defendants, are entitled to preliminary and
10 permanent injunctive relief enjoining Defendants from continuing to commit their illegal acts, and
11 for an accounting for and restitution of the monies unlawfully withheld and retained by Defendants.

12 139. Plaintiff and other Class Members are also entitled to an award of attorneys' fees
13 and costs pursuant to the common fund doctrine, California Code of Civil Procedure section 1021.5,
14 and other applicable laws.

15 140. In addition, Defendants engaged in unlawful and unfair business practices in
16 violation of California Business & Professions Code sections 17200 et seq. with respect to Plaintiff,
17 individually, by breaching their agreement with Plaintiff, violating their covenant of good faith and
18 fair dealing with Plaintiff, and reaping benefits owed to Plaintiff when Defendants solicited
19 customers in Plaintiff's territory whom Plaintiff had generated through her own efforts and failed
20 to pay her commissions for sales to customers in her territory. Plaintiff seeks on her own behalf
21 restitution of the amounts unlawfully and unfairly gained by Defendants and other relief authorized
22 by law.

23 **EIGHTH CAUSE OF ACTION**
24 **BREACH OF CONTRACT**

25 **[Brought by Plaintiff Individually Against All Defendants]**

26 141. Plaintiff refers to and incorporates by reference each and every paragraph above as
27 though set forth fully herein.

28 142. Defendants agreed to pay Plaintiff commissions based on her sales.

143. Defendants assigned Plaintiff to a specific territory and prohibited her from selling

1 their products to customers outside of that territory. Defendants also agreed that web sales made
2 by Defendants in Plaintiff's territory would result in commissions for Plaintiff.

3 144. Defendants agreed that they would not assign their employee salespeople to solicit
4 customers in Plaintiff's territory if she met her sales goals.

5 145. Plaintiff met her sales goals and was owed commissions.

6 146. Defendants breached their agreements with Plaintiff by failing to pay her
7 commissions for sales made by Defendants' employee salespeople to customers in Plaintiff's
8 territory.

9 147. As a result of Defendants' breach, Plaintiff suffered monetary loss and other
10 damages.

11 **NINTH CAUSE OF ACTION**
12 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**
13 **[Brought by Plaintiff Individually Against All Defendants]**

14 148. Plaintiff refers to and incorporates by reference each and every paragraph above as
15 though set forth fully herein.

16 149. Defendants agreed to pay Plaintiff commissions based on her sales.

17 150. Defendants assigned Plaintiff to a specific territory and prohibited her from selling
18 their products to customers outside of that territory. Defendants also agreed that web sales made
19 by Defendants in Plaintiff's territory would result in commissions for Plaintiff.

20 151. Defendants also agreed that they would not assign their employee salespeople to
21 solicit customers in Plaintiff's territory if she met her sales goals.

22 152. Plaintiff met her sales goals.

23 153. By assigning their employee salespeople to solicit Plaintiff's customers in her
24 territory, Defendants interfered with Plaintiff's right to receive the benefits of her agreement with
25 Defendants.

26 154. By refusing to pay Plaintiff commissions for sales made by Defendants' employee
27 salespeople to customers in Plaintiff's territory, Defendants acted unfairly and in bad faith.

28 155. As a result of Defendants' conduct, Plaintiff suffered harm and was damaged.

1 **ELEVENTH CAUSE OF ACTION**
2 **PRIVATE ATTORNEYS GENERAL ACT**
3 *(Cal. Lab. Code §§ 2699 et seq.)*

4 **[Brought by Plaintiff on Behalf of Aggrieved Employees and the State of California**
5 **Against All Defendants]**

6 168. Plaintiff refers to and incorporates by reference each and every paragraph above as
7 though set forth fully herein.

8 169. At all relevant times, Defendants have been an employers, and Plaintiff and
9 Aggrieved Employees were their employees under California law entitled to the protections of the
10 California Labor Code.

11 170. The foregoing conduct, as alleged, constitutes violations of California Labor Code
12 §§ 201-204, 226, 226.7, 226.8, 246, 247.5, 423.5, 510, 925, 1194, 1197, 1198, 2802, and Wage
13 Order 4.

14 171. Plaintiff, on behalf of the State of California and Aggrieved Employees, seeks to
15 recover the appropriate civil penalties set forth in Labor Code §§ 226.3, 226.8, 558, 1197.1, 2699,
16 2802, 2810.5, and attorneys' fees and costs.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff prays that the Court award relief as follows:

- 19 1. Certification of the Class as defined above;
- 20 2. Designation of Plaintiff as Class representative and her attorneys as Class counsel;
- 21 3. Unpaid wages, overtime and double-time, unpaid expenses, and statutory penalties
22 for Plaintiff and the Class, according to proof;
- 23 4. Restitution of all compensation due for Plaintiff and the Class, including but not
24 limited to wages, unreimbursed expenses, and benefits, as a result of Defendants' unlawful and
25 unfair business practices, according to proof;
- 26 5. Civil penalties for Plaintiff, Aggrieved Employees, and the State of California,
27 according to proof;
- 28 6. Restitution, unpaid commissions, and/or other out of pocket costs owed to Plaintiff
in amounts to be determined according to proof for Plaintiff's individual claims;
7. Preliminary and permanent injunctions enjoining and restraining Defendants from

1 continuing the unfair and unlawful business practices set forth above, and requiring the
2 establishment or appropriate and effective policies, procedures, and practices in place to prevent
3 future violations including maintenance of records that comply with California Labor Code section
4 226 and Wage Order 4-2001;

5 8. Liquidated damages pursuant to section 1194.2 of the California Labor Code for
6 Defendants' violations of the minimum wage provisions of California Labor Code section 1197 and
7 IWC Wage Order 4-2001, according to proof;

8 9. Attorneys' fees and costs pursuant to, *inter alia*, California Labor Code sections
9 218.5, 226, 1194, and 2802, and California Code of Civil Procedure section 1021.5;

10 10. Interest accrued on damages and penalties, including pre-judgment interest pursuant
11 to, *inter alia*, California Labor Code sections 218.6, 1194 and 1194.2, and California Civil Code
12 sections 3287 and 3288;

13 11. A service award for Plaintiff in recognition of her services to the Class;

14 12. A determination that Plaintiff is the prevailing party; and

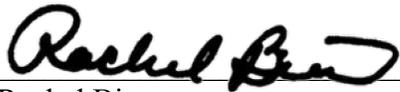
15 13. Any other and further relief the Court may deem proper.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a jury trial on all causes of action and claims with respect to
18 which she has a right to jury trial.

19
20 Dated: August 28, 2023

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