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16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 **JORDAN TERRADO, PAKTIN**
19 **KARIM, and JOSHUA ATOE**
20 individually and on behalf of all others
21 similarly situated,

22 Plaintiffs,

23 v.

24 **ACCREDITED DEBT RELIEF, LLC,**
25 **SHAWN R. SYNDERGAARD,**
26 **BENJAMIN P. SCHWAN, and**
27 **BRIAN M. STONE,** jointly and
28 severally, as

Defendants.

Case No.: '17CV2509 CAB NLS

**FLSA COLLECTIVE ACTION/
CLASS ACTION COMPLAINT
AND JURY DEMAND**

1 Plaintiffs, JORDAN TERRADO, PAKTIN KARIM, and JOSHUA ATOE
2 (hereinafter “Plaintiffs”), individually and on behalf of all others similarly situated, by
3 and through their attorneys, hereby bring this Collective/Class Action Complaint against
4 Defendants ACCREDITED DEBT RELIEF, LLC, SHAWN R. SYNDERGAARD,
5 BENJAMIN P. SCHWAN, and BRIAN M. STONE (hereinafter collectively referred to
6 as “Defendants”), jointly and severally, and state as follows:

7 **INTRODUCTION**

8 1. This is a collective and class action brought for violations of the Fair Labor
9 Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”) as a FLSA § 216(b) collective
10 action and California state-wide class action pursuant to Fed. R. Civ. P. 23(b)(3) for state
11 law claims, including California Labor Code (“Labor Code”); the California Industrial
12 Welfare Commission Wage Order No. 4; the California Business & Professional Code
13 section 17200, *et seq.*; and others as pleaded below.

14 2. Defendants are in the debt-relief business.

15 3. As part of their business practices, Defendants utilize tactics to generate
16 their leads, including but not limited to contacting and enticing financially distressed
17 consumers to hire Accredited Debt Relief to connect them with debt relief providers over
18 the phone. Defendants describe and advertise their business on their internet web site:
19 <http://www.accrediteddebtrelief.com/>.

20 4. Defendants operate under State and Federal regulations and CA Finance
21 Lenders License #60DBO 64392. They publically claim to be accredited by the Better
22 Business Bureau, the International Association of Professional Debt Arbitrators, and the
23 American Fair Credit Council.

24 5. Defendants employed call center sales employees, referred to herein as call
25 center agents (“Agents”). Defendants employed these Agents, including Plaintiffs, in call
26 center facilities in San Diego and La Jolla, California, respectively.

27 6. Defendants employ over one hundred Agents to make sales calls on
28 prospective customer leads in the form of a call center with inbound and outbound calls.

1 7. The individuals Plaintiffs seek to represent in this action are current and
2 former Agents who are similarly situated to themselves in terms of their positions, job
3 duties, pay structure, and Defendants' violations of federal and state law.

4 8. Defendants required their Agents to work a full-time schedule, plus
5 overtime. However, Defendants did not actually or accurately record their Agents'
6 compensable work time as required by law.

7 9. Instead of paying Agents based on hours worked, Defendants paid their
8 Agents on a contingent, commission-only basis.

9 10. Defendants' contingent, commission-only compensation system required
10 payment of overtime based on actual wages, including commissions, during each work
11 week.

12 11. Defendants did not calculate overtime payments, when they were paid, using
13 the correct regular rate for the Agents, but rather, for example, a fixed hourly rate of
14 \$15.80.

15 12. Furthermore, Defendants' required Managers to manually alter and falsify
16 time records, giving them direct access to the data in the Paychex system. Defendants'
17 Paychex pay stubs are in large part inaccurate, unreliable, and do not comply with the
18 law.

19 13. Defendants also failed to pay Agents for all hours worked. For example, in
20 the course of performing their job responsibilities, Defendants' Agents used multiple
21 computer networks, software programs, applications, and phone systems. The time
22 Agents spent booting up and logging into these programs and applications before and
23 after their shifts was compensable because the programs and applications were an
24 integral, indispensable, and important part of the Agents' work and they could not
25 perform their jobs effectively without them.

26 14. The Agents performed the same basic job duties and were required to use the
27 same or similar computer networks, software programs, applications, and phone systems.

28 15. Defendants knew or could have easily determined how long it took for their

1 Agents to complete their unpaid work, and Defendants could have properly compensated
2 Plaintiffs and the putative Class for this work, but they did not.

3 16. In addition, Defendants imposed sales quotas and otherwise operated a
4 compensation plan that encouraged Agents to skip rest and meal periods. Knowing this,
5 Defendants did nothing to ensure the Agents were afforded their rest and meal periods,
6 and instead, actually changed time records to bury the fact that the rest and meal periods
7 were often not taken.

8 17. Plaintiffs seek a declaration that their rights, and the rights of the putative
9 Class, were violated, an award of unpaid wages, an award of liquidated damages,
10 injunctive and declaratory relief, attendant penalties, and award of attorneys' fees and
11 costs to make them whole for damages they suffered, and to ensure that they and future
12 workers will not be subjected by Defendants to such illegal conduct in the future.

13 **JURISDICTION AND VENUE**

14 18. This Court has subject-matter jurisdiction over Plaintiffs' FLSA claim
15 pursuant to 29 U.S.C. §216(b), which provides that suit under the FLSA "may be
16 maintained against any employer ... in any Federal or State court of competent
17 jurisdiction."

18 19. This Court has supplemental jurisdiction over Plaintiffs' state law claims
19 pursuant to 28 U.S.C. § 1367(a) because this claim arises from a common set of operative
20 facts and is so related to the claims within this Court's original jurisdiction that they form
21 a part of the same case or controversy.

22 20. This Court has general personal jurisdiction over Defendants because
23 Defendants are residents of and conduct business in this State, had systematic and
24 continuous ties with this state, and had agents and representatives in this state. Thus,
25 Defendants have sufficient minimum contacts with or otherwise purposefully avail
26 themselves of the markets in the State of California, or otherwise has sufficient contacts
27 with this District to justify them being fairly brought into court in this District.

28 21. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)-(d) because

1 Plaintiffs and at least some of the putative Class members worked and were paid in this
2 District and the obligations, liabilities, and breaches complained of herein arose or
3 occurred in this District. Defendants own, operate, and/or maintain offices, transact
4 business, employ Agents within the District, or otherwise are found within the District.
5 Defendants are within the jurisdiction of this Court for purpose of service of process.

6 **PARTIES**

7 22. Plaintiff, Jordan Terrado, is a resident of El Cajon, California. He was
8 employed by Defendants as an Agent in San Diego, California from October 24, 2016
9 through the present date, and will file a consent form to join this collective action lawsuit.

10 23. Plaintiff, Paktin Karim, is a resident of San Diego, California. He was
11 employed by Defendants as an Agent in San Diego, California from November 7, 2016
12 through the present date, and will file a consent form to join this collective action lawsuit.

13 24. Plaintiff, Joshua Atoe, is a resident of San Diego, California. He was
14 employed by Defendants as an Agent in San Diego, California from April 10, 2017
15 through the present date, and will file a consent form to join this collective action lawsuit.

16 25. Additional individuals were or are employed by Defendants as Agents
17 during the past four years and their consent forms will also be filed in this case.

18 26. Defendant, Accredited Debt Relief, LLC (“ADR”) is a California Limited
19 Liability Company (State No. 201100310151) with a headquarters and service of process
20 address listed as 591 Camino de la Reina, Suite 818, San Diego, California 92108. Its
21 registered agent for service in California is Shawn Syndergaard.

22 27. Defendant ADR is owned and operated by LLC Managers and Defendants
23 Shawn R. Syndergaard, Benjamin P. Schwan, (acting as managing member per California
24 Form LLC-12NC No. 16-496689 filed on Nov. 10, 2016) and Brian M. Stone
25 (collectively “Owner Defendants”).

26 28. Defendant Syndergaard is believed to be a resident of Arizona, but regularly
27 and systematically does business in San Diego, California through ADR.

28 29. Defendant Schwan is believed to be a resident of San Diego, California, and

regularly and systematically does business in San Diego, California through ADR.

30. Defendant Stone is believed to be a resident of San Diego, California, and regularly and systematically does business in San Diego, California through ADR.

JOINT EMPLOYER ALLEGATIONS

31. Under the FLSA, “employer” is defined as “any person acting directly or indirectly in the interest of an employer in relation to an employee. 29 U.S.C. § 203(d).

32. The definition of “employer” under the FLSA is not limited by the common law concept of “employer,” and is to be given an expansive interpretation in order to effectuate the FLSA’s broad remedial purposes. *Real v. Driscoll Strawberry Assocs.*, 603 F.2d 748, 754 (9th Cir. 1979).

33. Congress defined “employee” as “any individual employed by an employer,” 29 U.S.C. § 203(e)(1), describing this language as “the broadest definition that has ever been included in any one act.” *United States v. Rosenwasser*, 323 U.S. 360, 363 n.3, 65 S.Ct. 295, 89 L.Ed. 301 (1945) (quoting 81 Cong. Rec. 7657 (1937) (statement of Sen. Hugo Black)); *Tony & Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 300 n.21, 105 S.Ct. 1953, 85 L.Ed.2d 278 (1985) (same).

34. The determination of whether an employer-employee relationship exists does not depend on “isolated factors but rather upon the circumstances of the whole activity.” *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730, 67 S.Ct. 1473, 1477, 91 L.Ed. 1772 (1947). The touchstone is “economic reality.” *Goldberg v. Whitaker House Cooperative, Inc.*, 366 U.S. 28, 33, 81 S.Ct. 933, 936, 6 L.Ed.2d 100 (1961).

35. Two or more employers may jointly employ someone for purposes of the FLSA. *Falk v. Brennan*, 414 U.S. 190, 195, 94 S. Ct. 427, 431, 38 L.Ed.2d 406 (1973).

36. All joint employers are individually responsible for compliance with the FLSA. 29 C.F.R. § 791.2(a) (1981).

37. Regulations issued by the Department of Labor give the following examples of joint employment situations:

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

29 C.F.R. § 791.2(b) (footnotes omitted).

38. The ultimate question of whether a party is an “employer” is a legal issue. *Bonnette v. California Health & Welfare Agency*, 704 F.2d 1465, 1469–70 (9th Cir. 1983). The ultimate determination must be based “upon the circumstances of the whole activity.” *Id.* at 1470 (citing *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 67 S.Ct. 1473, 1477, 91 L.Ed. 1772 (1947)).

39. Defendant ADR entered into written agreements with the Agents regarding, *inter alia*, their compensation, job duties, and job expectations. (*Exhibit A*).

40. Defendant ADR contracted with PayChex to handle payroll duties, including issue all of the ADR employee paychecks. More specifically, during the applicable statutory period, Pamela Baglieri, an employee of ADR, collected the Agents’ payroll and commission data and submitted the data to Defendant Schwan for review and approval. Defendant Schwan then reviewed, approved, and/or changed the payroll information and sent it back to Ms. Baglieri to process the Agents’ paychecks via Paychecks.

41. Plausibly, by Defendant Schwan’s exercise of control, input, and responsibility for issuing accurate, legitimate, and proper paychecks for the Plaintiffs’ and all other Agents, he meets the test for joint employer.

42. The Owner Defendants controlled the rate and method of wage payment for the Agents, including making changes to their commission structure. *Conde v. Open Door Mktg., LLC*, 223 F. Supp. 3d 949, 967 (N.D. Cal. 2017) (finding multiple companies and individual defendants were joint employers of sales and marketing workers).

43. The Owner Defendants employed Tsuba Ted Tsuji to serve as Vice

1 President of Sales and Operations and act on their behalf. Together, they controlled the
2 rate and method of lead allocations to the Agents, including making changes to their
3 amount of new customer leads through computer programs and other systems commonly
4 referred to as being placed on “limited leads”.

5 44. Defendant Schwan, with the help of Tsuba Ted Tsuji and the ADR Mangers,
6 enforced the Owner Defendants’ changes to the rate and method of lead allocations.

7 45. Plausibly, through Defendant Shawn’s exercise of control, input, and
8 responsibility over the rate and method of wage payment and limited leads policies and
9 practices for Plaintiffs, he meets the test for joint employer.

10 46. Plausibly, through Owner Defendants’ exercise of control, input, and
11 responsibility over the rate and method of lead allocation for Plaintiffs, they meet the test
12 for joint employer. *Conde, supra*.

13 47. Defendants controlled and dictated when each Agent could take their meal
14 breaks, and discouraged taking of meal breaks by their policies.

15 48. Plausibly, by Owner Defendants’ exercise of control, input and
16 responsibility over the Agents’ meal periods, they meet the test for joint employer.

17 49. Likewise, Owner Defendants controlled and dictated when each Agent could
18 take their rest periods, and would discourage the use of rest periods by their policies.

19 50. Plausibly, by Owner Defendants’ exercise of control, input and
20 responsibility over the Agents’ rest periods, they meet the test for joint employer.

21 51. Defendants maintained employment records in connection with the Agents.
22 Furthermore, Defendants actively kept, updated, and maintained the Agents’ payroll
23 records, commission reports, agreements, and performance evaluations related to their
24 employment.

25 52. Plausibly, by all Defendants’ exercise of control, input and responsibility
26 over the Agents’ employment records, they meet the test for joint employer.

27 53. Defendants controlled the training, structure and conditions of employment
28 for Plaintiffs.

1 54. Plausibly, by Defendants' exercise of control, input, and responsibility over
2 the training, structure and conditions of employment of the Agents, they meet the test for
3 joint employer.

4 55. Defendant Schwan was also responsible for the day-to-day supervision of
5 Defendants' Agents. Specifically, he was present in the San Diego office regular basis,
6 directing the Agents' work, making sure the Agents were on the phones, and enforcing
7 Defendants' employment policies and practices.

8 56. Plausibly, by Defendant Schwan's exercise of control, input, and
9 responsibility over the day-to-day supervision of Agents, he meets the test for joint
10 employer.

11 57. Defendants provided all the necessary tools, equipment and materials used
12 by the Agents. Specifically, they provided the computers, hardware, software, and
13 telephones necessary for the Agents to perform their work. Most importantly, this
14 included the leads.

15 58. Plausibly, by Defendants providing all necessary tools, equipment and
16 materials used by the Agents, they meet the test for joint employer.

17 59. The Owner Defendants created and controlled the setting and monitoring of
18 performance goals for the Agents. Specifically, they set quotas and goals, including
19 making changes to commission structures.

20 60. Plausibly, by Owner Defendants' exercise of control, input and
21 responsibility over the setting and monitoring of performance goals of Plaintiffs, they
22 meet the test for joint employer. *Conde, supra*.

23 61. Defendant Shawn Syndergaard was responsible for origination of the actual
24 consumer leads provided to the Agents and Defendant Brian Stone implemented the
25 marketing strategies to obtain consumer leads.

26 62. All Owner Defendants funded Defendants' marketing and lead generation
27 growth and efforts.

28 63. Plausibly, by the Owner Defendants' origination and supplying of consumer

1 leads to the Agents, they meet the test for joint employer. *Conde, supra*.

2 64. Defendant Schwan controlled the hiring and firing of Agents. Specifically,
3 Schwan had the authority to hire and fire Agents as she saw fit, and carried out the hiring
4 and firing of Agents on a regular basis.

5 65. Plausibly, by Defendant Schwan's exercise of control, input, and
6 responsibility over the hiring and firing of Agents, he meets the test for joint employer.

7 66. Regardless of which of the Defendants is viewed as having had the power to
8 hire and fire, their power over the employment relationship by virtue of their overarching
9 control over the purse strings was substantial, and thus each Defendant meets the test for
10 joint employer. *Bonnette, supra* at 1470.

11 67. Regardless of any of the individual criteria for joint employer, as active
12 business owners, Defendants Shawn Syndergaard, Ben Schwan, and Brian Stone also had
13 complete economic control over the employment relationship. The "economic reality"
14 was that they employed Agents to perform sales and call center services for their benefit,
15 and thus they meet the test for joint employer. *Bonnette, supra* at 1470.

16 68. The fact that some Defendants may not have exercised each and every
17 aspect of the test for employer under the law, and may have delegated some of the
18 responsibilities to others, does not alter their status as employer; it merely makes them
19 joint employers. *Id.*

20 69. Whether employers, or joint employers, each Defendant is nevertheless
21 liable for the wage violations pleaded in this Complaint. *Falk, supra*; 29 C.F.R. §
22 791.2(a).

23 70. The above well-pleaded facts all support Plaintiffs' standing to sue each and
24 every Defendant named herein as a joint employer and seek damages for the alleged
25 violations under a joint employment theory. *Conde v. Open Door Mktg., LLC*, 223 F.
26 Supp. 3d 949, 966 (N.D. Cal. 2017); *Haralson v. United Airlines, Inc.*, 224 F. Supp. 3d
27 928, 940 (N.D. Cal. 2016).

28 71. Upon information and belief, Defendants jointly employed hundreds of

1 Agents – including Plaintiffs – in California during the last four years to perform debt
2 relief services which include selling the above mentioned services over the phone.

3 72. Plaintiffs are informed and believe, and allege thereon, that Defendants are
4 jointly and severally responsible for the circumstances alleged herein, and proximately
5 caused Plaintiffs the fraudulent, unlawful, unfair, and deceptive acts and wage violations
6 complained of herein.

7 73. At all times herein mentioned, Defendants approved of, condoned, and/or
8 otherwise ratified each and every one of the acts or omissions complained of herein.

9 74. Defendants acted willfully in violating the laws and regulations pleaded in
10 this Complaint.

11 75. At all times herein mentioned, Defendants' acts and omissions proximately
12 caused the complaints, injuries, and damages alleged herein.

13 **GENERAL ALLEGATIONS**

14 76. Plaintiff, Jordan Terrado, was employed by Defendants as an Agent in San
15 Diego, California from October 24, 2016 through the present date. In that position, he
16 was compensated on a contingent, commission-only basis and typically worked
17 approximately 40 or more hours per week (and more than 8 hours per day).

18 77. Plaintiff, Paktin Karim, was employed by Defendants as an Agent in San
19 Diego, California from November 7, 2016 through the present date. In that position, he
20 was compensated on a contingent, commission-only basis and typically worked
21 approximately 40 or more hours per week (and more than 8 hours per day).

22 78. Plaintiff, Joshua Atoe was employed by Defendants as an Agent in San
23 Diego, California from April 10, 2017 through the present date. In that position, he was
24 compensated on a contingent, commission-only basis and typically worked
25 approximately 40 or more hours per week (and more than 8 hours per day).

26 79. Defendants' business model relies upon generating new sales leads, and
27 distributing those leads to the Agents who are responsible for selling Defendants' debt-
28 relief services.

1 80. Defendants procure their leads from other companies including lending
2 exchange brokers like LendingTree, for example.

3 81. Defendants' leads are then distributed to Agents based on certain
4 performance and attendance criteria as dictated by Defendants. For example, if an Agent
5 misses a day of work, they are given fewer and less quality leads upon their return and
6 must work to rebuild their pipeline of leads from Defendants.

7 82. For Agents who the Defendants simply didn't like, Defendants also
8 manipulated the leads given to these Agents in an attempt to force them to perform
9 poorly and to give Defendants a reason to fire them. Defendants did this to at least two
10 former Agents, Mike and Casey.

11 83. Throughout their employment with Defendants, Agents were required to
12 work a substantial amount of unpaid off-the-clock time, including overtime, as part of
13 their jobs.

14 84. Defendants' Agents were responsible for, among other things: (a) booting
15 up their computers and logging into several software programs before taking/making
16 phone calls; (b) remaining on the phones for their entire shift; (c) making outbound calls
17 when no calls are incoming; (d) ensuring that every inbound call is accounted for in
18 Defendants' computer systems; (e) if needed, asking sales managers for additional sales
19 leads to call; and (f) logging out of the computer programs and shutting down their
20 computers.

21 85. Defendants required their Agents to work rigid schedules, usually consisting
22 of many overtime hours on a weekly basis.

23 86. Defendants had strict expectations that their Agents would remain on the
24 phone for their entire shift, every scheduled day, and Defendants threatened discipline if
25 an Agent failed to do so.

26 87. Defendants failed to accurately account for and pay for all of the time
27 actually worked by employees which is a clear violation of FLSA's record keeping
28 requirements. *See* 29 U.S.C. § 211(c).

Defendants Falsified Their Agents' Time Records

88. Defendants did not accurately record the hours the Agents worked, but instead instructed managers to falsify the Agents' time records to reflect a lesser number of hours than those actually worked.

89. Specifically, Defendants instructed its managers to fill out the Agents' time cards to reflect exactly 40 hours per week and then to collect the Agents' signatures on the timecards, regardless of any overtime the Agents worked.

90. Additionally, Defendants' managers were instructed to access the ADR payroll system (i.e., Paychex) twice per month and go through each Agents' time records, including clock-ins, meal periods, and clock-outs, in order to: (a) falsely reflect that the Agents were clocking out for meal periods within the first 5 hours of their shifts; (b) limit recorded overtime to 3 hours for good performers; and (c) eliminate any recorded overtime for poor performers.

91. Because Defendants intentionally falsified the Agents' recorded work time, Defendants' compensation system failed to properly account for and compensate Agents for all time worked, including their overtime hours, during each day and during each workweek.

92. The hours reflected on the Agents' paystubs are not accurate, were contrived by Defendants, and have no relation to the hours the Agents actually worked for Defendants. This is a violation of Cal. Lab. Code § 226, which requires that the employer provide accurate wage statements.

93. As a result of Defendants' timekeeping policies and intentional falsification of records, Plaintiffs and all other Agents were deprived of pay for compensable time worked, including overtime.

Defendants' Commission-Only Compensation System

94. Defendants' Agents were paid on a contingent, commission-only basis. Under this compensation system, Agents were paid a commission of 1% of total paid debt enrolled by consumers (with the exception of certain states that cap fees).

95. Defendants paid their Agents on a bi-monthly basis, and pursuant to an alternating schedule of draws and commissions pursuant to a written commission & bonus plan. Defendants' payroll process generally adhered to the following monthly schedule:

- a. Advance in commission paid on the 7th of every month (for period 16th through end of month); and
- b. Earned commission paid on the 21st of every month (for period 1st through the 15th; less previous advance).

96. The payment on the 7th of each month is determined by an hourly rate of \$15.80 per hour for each hour “recorded” by Defendants.

97. An example of Defendants' compensation system is illustrated through Plaintiff Atoe's paystubs from November 2017. (*Exhibit B*). Those paystubs show the following payments:

- a. Check date November 7, 2017: \$1,371.05 (advance based on hours); and
- b. Check date November 21, 2017: \$1,692.97 (commission minus the November 7th advance).

98. By way of further example, Defendants provided the Agents with a breakdown of these payments by way of an Excel spreadsheet. (*Exhibit C*).

Off-the-Clock Work

99. In addition to their regularly scheduled shifts, Defendants' Agents performed off-the-clock work that went uncompensated.

100. Pursuant to Defendants' policies, training and direction, Agents were required to startup and login to various secure computer networks, software programs, and applications in order to access information and software.

101. The Agents' startup and login process takes substantial time on a daily basis with said time ranging from 10 to 15 minutes per day, or even as much as 30 minutes if technical issues arise. Defendants' Agents were never compensated for this time, which directly benefitted Defendants and was an essential part of the Agents' job

responsibilities.

102. Additionally, Defendants' Agents were required to logout of and close down various programs at the end of each shift. The log-out process occurred each shift with said time ranging from 1 to 2 minutes per day.

103. Moreover, Defendants' Agents frequently handled calls that could last 60 minutes or more past the end of their scheduled shifts and Defendants failed to pay for that work time.

104. The U.S. Department of Labor recognizes that call center jobs, like those held by Defendants' Agents, are homogenous and it issued Fact Sheet #64 in July 2008 to alert call center employees to some of the abuses which are prevalent in the industry. One of those abuses, which is occurring in this case, is an employer's refusal to pay for work "from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday." DOL Fact Sheet #64.

105. The Department of Labor's Fact Sheet #64 specifically condemns an employer's non-payment of an employee's necessary pre- and post-shift activities: "An example of the first principal activity of the day for agents/specialists/representatives working in call centers includes starting the computer to download work instructions, computer applications and work-related emails." See *Id.*, at p. 2. Additionally, the FLSA requires that "[a] daily or weekly record of all hours worked, including time spent in pre-shift and post-shift job-related activities must be kept." *Id.*

Meal And Rest Period Violations

106. Defendants promised each Agent one unpaid meal period during each shift. However, in reality, Defendants often required Agents to work through unpaid meal periods if there were not enough Agents to cover the phones.

107. Under the federal law, in order to deduct an unpaid meal period from an employees' compensable time, an employee must be completely relieved of his or her employment duties for the entire lunch break. 29 CFR 785.19(a) states:

1 Bona fide meal periods. Bona fide meal periods are not work time. Bona fide
2 meal periods do not include coffee breaks or time for snacks. These are rest
3 periods. The employee must be completely relieved from duty for the
4 purposes of eating regular meals. Ordinarily 30 minutes or more is long
5 enough for a bona fide meal period. A shorter period may be long enough
6 under special conditions. The employee is not relieved if he is required to
7 perform any duties, whether active or inactive, while eating. For example, an
8 office employee who is required to eat at his desk or a factory worker who is
9 required to be at his machine is working while eating. (emphasis added).

10 108. However, Defendants did not provide their Agents with a legitimate bona
11 fide meal period.

12 109. Under California law, employers must provide a meal period of at least 30
13 minutes for every five (5) hours worked. Cal. Lab. Code § 512(a) states:

14 An employer may not employ an employee for a work period of more than
15 five hours per day without providing the employee with a meal period of not
16 less than 30 minutes, except that if the total work period per day of the
17 employee is no more than six hours, the meal period may be waived by
18 mutual consent of both the employer and employee. An employer may not
19 employ an employee for a work period of more than 10 hours per day
20 without providing the employee with a second meal period of not less than
21 30 minutes, except that if the total hours worked is no more than 12 hours,
22 the second meal period may be waived by mutual consent of the employer
23 and the employee only if the first meal period was not waived.

24 110. Additionally, the applicable Industrial Welfare Commission Wage Order
25 states that an employee is also entitled to a ten (10) minute break for each four (4) hour
26 period, or major fraction thereof, worked.

27 111. However, Defendants failed to provide their Agents with a 30-minute meal
28 period for every five (5) hours worked, or a rest period for each four (4) hour period
worked. Accordingly, Plaintiff and the class are entitled to one additional hour of
compensation per workday for a missed meal and rest period.

112. On or about December 6, 2017, by way of an e-mail from Pamela Baglieri to

1 an Agent, it appears that Defendants began implementing a timekeeping policy whereby
2 Agents were required to take a meal period “before the 6th hour” of their shifts.

3 **Defendant Unlawfully Benefitted From Their Agents’ Uncompensated Work**

4 113. At all relevant times, Defendants directed and directly benefited from the
5 uncompensated off-the-clock work performed by their Agents.

6 114. At all relevant times, Defendants controlled the work schedules, duties,
7 protocols, applications, assignments and employment conditions of their Agents.

8 115. At all relevant times, Defendants were able to track the amount of time their
9 Agents spent working; however, Defendant failed to document, track, or pay its Agents
10 for all the work they performed, including off-the-clock work.

11 116. At all relevant times, Plaintiffs were non-exempt employees, subject to the
12 requirements of the FLSA and the California Labor Code.

13 117. At all relevant times, Defendants’ policies and practices deprived their
14 Agents of wages owed for the off-the-clock work activities and their required meal
15 periods. Because Defendants’ Agents typically worked over 40 hours in a workweek, and
16 more than eight (8) hours per day, Defendants’ policies and practices also deprived them
17 of overtime pay.

18 118. Defendants knew or should have known that Plaintiffs and other Agents’
19 off-the-clock work was compensable under the law. Indeed, in light of the explicit DOL
20 guidance cited above, there is no conceivable way for Defendants to establish that it acted
21 in good faith.

22 **Defendants Failed to Properly Calculate the Regular Rate of Pay**

23 119. As non-exempt employees, Defendants’ Agents were entitled to full
24 compensation for all overtime hours worked at a rate of 1.5 times their “regular rate” of
25 pay.

26 120. Under FLSA, the regular rate is the “keystone” to calculating the overtime
27 rate. *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419 (1945). It is “the
28 hourly rate actually paid the employee for the normal, nonovertime workweek for which

1 he is employed.” 29 C.F.R. §778.108.

2 121. No matter how an employee is paid—whether by the hour, by the piece, on a
3 commission, or on a salary—the employee’s compensation must be converted to an
4 equivalent hourly rate from which the overtime rate can be calculated. 29 C.F.R.
5 §778.109. “The regular hourly rate of pay is determined by dividing the employee’s total
6 remuneration for employment (except statutory exclusions) in any workweek by the total
7 number of hours actually worked by the employee in that workweek for which such
8 compensation was paid.” *Id.*

9 122. Defendants’ contingent, commission-only compensation did not fall within
10 any of the statutory exclusions from the regular rate as provided in 29 U.S.C. §§
11 207(e)(1)-(8).

12 123. A commission-based employee’s regular rate of pay is computed by
13 reference to the number of hours the commission payment is intended to compensate. 29
14 C.F.R. §778.117.

15 This is true regardless of whether the commission is the sole source of
16 the employee’s compensation or is paid in addition to a guaranteed
17 salary or hourly rate, or on some other basis, and regardless of the
18 method, frequency, or regularity of computing, allocating and paying
19 the commission. It does not matter whether the commission earnings
20 are computed daily, weekly, biweekly, semimonthly, monthly, or at
21 some other interval. The fact that the commission is paid on a basis
22 other than weekly, and that payment is delayed for a time past the
23 employee’s normal pay day or pay period, does not excuse the
24 employer from including this payment in the employee’s regular rate.
25 *Id.*

26 124. There is a statutory presumption that remuneration in any form must be
27 included in the regular rate calculation. The burden is on Defendants to establish that any
28 payment should be excluded. Thus, determining the regular rate starts from the premise
that all payments made to Plaintiffs for work performed are included in the base
calculation unless specifically excluded by statute.

1 125. Even “[w]hen the commission is paid on a weekly basis, it is added to the
2 employee’s other earnings for that workweek (except overtime premiums and other
3 payments excluded as provided in section 7(e) of the Act), and the total is divided by the
4 total number of hours worked in the workweek to obtain the employee’s regular hourly
5 rate for the particular workweek. The employee must then be paid extra compensation at
6 one-half of that rate for each hour worked in excess of the applicable maximum hours
7 standard.” 29 C.F.R. §778.118.

8 126. Once the total amount of an employee’s “regular” compensation is deduced,
9 “the determination of the regular rate becomes a matter of mathematical computation.”
10 *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 425 (1945). The regular
11 rate must be expressed as an hourly rate because, although any method of compensating
12 an employee is permitted, the FLSA imposes its overtime requirements in terms of hourly
13 wages. Thus, if necessary, an employer must convert an employee’s wages to rate per
14 hour to determine compliance with the statute.

15 127. Because Defendants’ compensation scheme failed to incorporate the regular
16 rate of pay, Defendants failed to properly compensate Plaintiffs and their other Agents
17 under the FLSA.

18 128. Under California law, employees are entitled to “no less than one and one-
19 half times the regular rate of pay” for work in excess of eight hours in one workday. Any
20 work in excess of 12 hours in one day shall be compensated at the rate of no less than
21 twice the regular rate of pay for an employee. In addition, any work in excess of eight
22 hours on any seventh day of a workweek shall be compensated at the rate of no less than
23 twice the regular rate of pay of an employee. Cal. Lab. Code, § 510(a).

24 129. The California Division of Labor Standards Enforcement Manual section
25 49.2.4.2 provides a reasonable formula for calculating overtime on a flat sum bonus. The
26 flat sum bonus formula set forth in sections 49.2.4.2 and 49.2.4.3 of the Manual, which
27 uses a divisor of straight time, instead of total hours worked to set the regular bonus rate,
28 and a multiplier of 1.5, rather than 0.5, to fix the bonus overtime due, produces “a

premium based on bonus” that is necessary to avoid encouraging the use of overtime.

130. Because Defendants’ compensation scheme failed to incorporate the California Division of Labor Standards Enforcement Manual formula, Defendants failed to properly compensate Plaintiffs and its other Agents under the California Labor Code.

131. Because Defendants’ weekly pay period compensation scheme did not pay commissions in the week in which they were earned, Defendants failed to properly compensate Plaintiffs and its other Agents under the California Labor Code. *See e.g., Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662, 663 (Cal. 2014) (An employer may not attribute commission wages paid in one pay period to other pay periods in order to satisfy the minimum earnings prong of the commissioned employee exemption to the overtime requirement in Lab. Code, § 510).

FLSA COLLECTIVE ACTION ALLEGATIONS

132. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) of the FLSA on their own behalf and on behalf of:

All current and former Agents who worked for any Defendants at any time from December 14, 2014 through judgment.

(hereinafter referred to as the “FLSA Collective”). Plaintiffs reserve the right to amend this definition if necessary.

133. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and other similarly situated Agents.

134. Excluded from the proposed FLSA Collective are Defendants’ executives, administrative and professional employees, including computer professionals and outside sales persons.

135. Consistent with Defendants’ policy and pattern or practice, Plaintiffs and the members of the FLSA Collective were not paid premium overtime compensation when they worked beyond 40 hours in a workweek.

136. All of the work that Plaintiffs and the FLSA Collective members performed

1 was assigned by Defendants, and/or Defendants were aware of all of the work that
2 Plaintiffs and the FLSA Collective members performed.

3 137. As part of its regular business practice, Defendants intentionally, willfully,
4 and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with
5 respect to Plaintiffs and the FLSA Collective members. This policy and pattern or
6 practice includes, but is not limited to:

- 7 a. willfully failing to pay its employees, including Plaintiffs and the FLSA
8 Collective, for all hours worked including premium overtime wages for
9 all hours worked in excess of 40 hours per workweek; and
10 b. willfully failing to accurately record all of the time that its employees,
11 including Plaintiffs and the FLSA Collective, worked for Defendants'
12 benefit.

13 138. Defendants are aware or should have been aware that federal law required
14 them to pay Plaintiffs and the FLSA Collective overtime premiums for all hours worked
15 in excess of 40 per workweek.

16 139. Defendants failed to properly maintain timekeeping and payroll records
17 pertaining to the FLSA Collective under the FLSA, 29 U.S.C. 211(c).

18 140. Defendants' unlawful conduct was widespread, repeated, and consistent.

19 141. A collective action under the FLSA is appropriate because the employees
20 described above are "similarly situated" to Plaintiffs under 29 U.S.C. § 216(b). The
21 employees on behalf of whom Plaintiffs bring this collective action are similarly situated
22 because (a) they have been or are employed in the same or similar positions; (b) they
23 were or are performing the same or similar job duties; (c) they were or are subject to the
24 same or similar unlawful practices, policy, or plan; and (d) their claims are based upon
25 the same factual and legal theories.

26 142. The employment relationships between Defendants and every proposed
27 FLSA Collective member are the same and differ only by name, location, and rate of pay.
28

1 The key issues – the amount of uncompensated off-the-clock work owed to each
 2 employee – does not vary substantially among the proposed FLSA Collective members.

3 143. There are many similarly situated current and former Agents who were
 4 underpaid in violation of the FLSA who would benefit from the issuance of a court-
 5 authorized notice of this lawsuit and the opportunity to join it.

6 144. Notice should be sent to the FLSA Collective pursuant to 29 U.S.C. §
 7 216(b).

8 145. Those similarly situated employees are known to Defendants, are readily
 9 identifiable, and can be located through Defendants' records.

10 146. Plaintiffs estimate the proposed FLSA Collective, including both current and
 11 former employees over the relevant period will include several hundreds, if not
 12 thousands, of workers. The precise number of FLSA Collective members should be
 13 readily available from a review of Defendants' personnel and payroll records.

14 **RULE 23 CLASS ACTION ALLEGATIONS**

15 147. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(3) on their own
 16 behalf and on behalf of all similarly situated current and former Agents of Defendants
 17 who are or were employed at any time in the last four years. Plaintiffs propose the
 18 following class definition:

19 *All current and former Agents who worked for any Defendants in*
 20 *California at any time from December 14, 2013 through judgment.*

21 Plaintiffs reserve the right to amend the putative class definition if necessary.

22 148. Plaintiffs share the same interests as the putative class and will be entitled
 23 under the California Labor Code to unpaid overtime compensation, attorneys' fees, and
 24 costs and lost interest owed to them under nearly identical factual and legal standards as
 25 the remainder of the putative class.

26 149. The putative Class meets the numerosity requirement of Rule 23(a)(1)
 27 because, during the relevant period, Defendants employed hundreds, if not thousands, of
 28

1 Agents throughout California. The Class members are so numerous that joinder of all
2 such persons is impracticable and that the disposition of their claims in a class action
3 rather than in individual actions will benefit the parties and the Court. The precise
4 number of Class members should be readily available from a review of Defendants'
5 personnel, scheduling, time, phone, and payroll records, and from input received from the
6 putative Class members.

7 150. The putative Class meets the commonality requirement of Rule 23(a)(2)
8 because, during the relevant period, Defendants engaged in a common course of conduct
9 that violated the legal rights of Plaintiffs and the Class. Individual questions that
10 Plaintiffs' claims present, to the extent any exist, will be far less central to this litigation
11 than the numerous material questions of law and fact common to the Class, including but
12 not limited to:

- 13 a. Whether Defendants engaged in a policy or practice of failing to
14 pay each Class member regular wages for each non-overtime hour
15 worked.
- 16 b. Whether Defendants engaged in a policy or practice of failing to
17 pay each Class member overtime compensation for each overtime
18 hour worked;
- 19 c. Whether Defendants violated Labor Code sections 221 and 223 by
20 making unlawful deductions to Class members' wages;
- 21 d. Whether Defendants failed to provide each Class member with at
22 least one 30-minute meal period on every workday of at least 5
23 hours and a second 30-minute meal period on every workday of at
24 least 10 hours as required by the California Employment Law and
25 Regulations;
- 26 e. Whether Defendants violated sections 201 to 203 of the Labor
27 Code by willfully failing to pay all wages and compensation due
28 each Class member who quit or who was discharged;
- f. Whether Defendants violated section 226 of the Labor Code by
willfully failing to provide accurate itemized wage statements
showing the number of hours worked by each Class member and

the corresponding hourly rate;

- g. Whether Defendants violated sections 1174 and 1175 of the Labor Code and the applicable Industrial Welfare Commission Orders by failing to maintain records pertaining to when Class members began and ended each work period, the total daily hours worked, and the total hours worked per pay period;
- h. Whether Defendants violated section 510 of the Labor Code and the applicable Industrial Welfare Commission Orders by failing to accurately calculate regular rates of pay for overtime purposes;
- i. Whether Defendants violated section 2208 of the Labor Code by willfully failing to reimburse each Class member any reasonable business expenses incurred;
- j. Whether Defendants were unjustly enriched by the work and services performed by Class members without compensation;
- k. Whether Defendants engaged in unfair business practices in violation of Business and Professions Code section 17200, *et seq.*;
- l. Whether Defendants breached their duty of good faith and fair dealing by limiting or manipulating the leads given to their Agents; and
- m. Whether Defendants should be required to pay compensatory damages, attorneys' fees, penalties, costs, and interest for violating California state law.

151. The status of all individuals similarly situated to Plaintiffs raises an identical legal question: whether Defendants' Agents are entitled to back wages, including overtime.

152. The putative Class meets the typicality requirement of Rule 23(a)(3) because Plaintiffs and the putative Class members were all employed by Defendants and performed their job duties without receiving wages, including overtime wages, owed for that work.

153. The Class meets the adequacy requirement of Rule 23(a)(4) because there is

1 no apparent conflict of interest between Plaintiffs and the putative Class members, and
2 because Plaintiffs' attorneys have successfully prosecuted many complex class actions,
3 including wage and hour class and collective actions, and will adequately represent the
4 interests of Plaintiffs and the putative Class members.

5 154. The putative Class meets the predominance requirement of Rule 23(b)(3),
6 because issues common to the Class predominate over any questions affecting only
7 individual members, including but not limited to, those listed above.

8 155. The Class meets the superiority requirement of Rule 23(b)(3) because
9 allowing the parties to resolve this controversy through a class action would permit a
10 large number of similarly situated persons to prosecute common claims in a single forum
11 simultaneously, efficiently, and without the unnecessary duplication of evidence, effort,
12 or expense that numerous individual actions would engender.

13 156. Given the material similarity of the Class members' claims, even if each
14 Class member could afford to litigate a separate claim, this Court should not countenance
15 or require the filing of hundreds or even thousands of identical actions. Individual
16 litigation of the legal and factual issues raised by Defendants' conduct would cause
17 unavoidable delay, a significant duplication of efforts, and an extreme waste of resources.
18 Alternatively, proceeding by way of a class action would permit the efficient supervision
19 of the putative Class's claims, create significant economies of scale for the Court and the
20 parties and result in a binding, uniform adjudication on all issues.

21 **COUNT I**

22 **VIOLATION OF FLSA, 29 U.S.C. § 201, et seq.**

23 **FAILURE TO PAY OVERTIME WAGES**

24 157. Plaintiffs re-allege and incorporate all previous paragraphs herein.

25 158. At all times relevant to this action, Defendants were engaged in interstate
26 commerce, or in the production of goods for commerce, as defined by the FLSA.

27 159. At all times relevant to this action, Plaintiffs were "employees" of
28 Defendants within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

1 160. Plaintiffs and the FLSA Collective members, by virtue of their job duties
2 and activities actually performed, are all non-exempt employees.

3 161. Defendants are not “retail or service establishments” as defined by 29 U.S.C.
4 § 213(a)(2) of the FLSA.

5 162. Plaintiffs either: (1) engaged in commerce; or (2) engaged in the production
6 of goods for commerce; or (3) were employed in an enterprise engaged in commerce or in
7 the production of goods for commerce.

8 163. At all times relevant to this action, Defendants “suffered or permitted”
9 Plaintiffs and all similarly situated current and former employees to work and thus
10 “employed” them within the meaning of 29 U.S.C. § 203(g) of the FLSA.

11 164. At all times relevant to this action, Defendants required Plaintiffs and the
12 FLSA Collective members to perform off-the-clock work each shift, but failed to pay
13 these employees the federally mandated overtime compensation for this work.

14 165. The off-the-clock work performed every shift by Plaintiffs and the FLSA
15 Collective members is an essential part of their jobs and these activities and the time
16 associated with these activities is not *de minimis*.

17 166. In workweeks where Plaintiffs and other FLSA Collective members worked
18 40 hours or more, the uncompensated off-the-clock work time, and all other overtime
19 should have been paid at the federally mandated rate of 1.5 times each employee’s
20 regularly hourly wage. 29 U.S.C. § 207.

21 167. Defendants’ violations of the FLSA were knowing and willful. Defendants
22 knew or could have determined how long it took for their Agents to perform their off-the-
23 clock work. Further, Defendants could have easily accounted for and properly
24 compensated Plaintiffs and the FLSA Collective for these work activities, but did not.

25 168. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of
26 the Act, each employee is entitled to his or her unpaid wages (including unpaid
27 overtime), plus an additional equal amount in liquidated damages (double damages), plus
28 costs and reasonable attorneys’ fees.

COUNT II

VIOLATION OF CALIFORNIA LABOR CODE §§ 510, 1194, 1198

AND IWC WAGE ORDER 4 – FAILURE TO PAY OVERTIME

169. Plaintiffs re-allege and incorporate all previous paragraphs herein.

170. At all relevant times, Defendants regularly and consistently maintained corporate policies and procedures designed to reduce labor costs by reducing or minimizing the amount of compensation paid to its employees, especially overtime compensation.

171. At all relevant times, Plaintiffs and the Class regularly performed non-exempt work and were thus subject to the overtime requirements of California law.

172. Labor Code §§ 510 and 1198 and Industrial Welfare Commission (“IWC”) Wage Order No. 4 § 3(A) provide that: (a) employees are entitled to compensation at the rate of one and one-half times their regular rate of pay for all hours worked in excess of eight (8) hours in a workday up to twelve (12) hours in a workday, in excess of forty (40) hours in a workweek, and for the first eight (8) hours of work on the seventh (7th) consecutive day or a workweek; and (b) employees are entitled to compensation at the rate of twice their regular rate of pay for all hours worked in excess of twelve (12) hours in a workday, and in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

173. At all relevant times, Plaintiffs and the Class regularly worked in excess of eight (8) hours in a workday and/or in excess of forty (40) hours in a workweek.

174. At all relevant times, Defendants failed and refused to pay Plaintiffs and the Class members for any and all hours actually worked in excess of the scheduled shift.

175. Defendants intentionally, maliciously, fraudulently and with the intent to deprive the Class of their ability to earn a living so as to reduce their labor costs, knowingly and willingly implemented a scheme or artifice to avoid paying overtime by reducing the rate of pay to Plaintiffs and other Class members who worked overtime hours.

176. Plaintiffs and the Class were entitled to receive overtime compensation at

1 their lawful regular rate of pay, including the shift differential where applicable.
2 Defendants' failure to pay lawful premium overtime wages, as alleged above, was a
3 willful violation of Labor Code §§ 510, 1198, and IWC Wage Order No. 4.

4 177. Wherefore, Plaintiffs demand payment of the unpaid balance of the full
5 amount of wages due for unpaid time worked, as well as overtime premiums owing,
6 including interest thereon, penalties, reasonable attorneys' fees, and costs of suit pursuant
7 to Labor Code §§ 1194 and 1194.2 as a result of Defendants' failure to pay for all time
8 worked and such premium compensation, as is required under California law.

9 **COUNT III**

10 **VIOLATION OF CALIFORNIA LABOR CODE §§ 221 and 223**

11 **UNLAWFUL DEDUCTIONS**

12 178. Plaintiffs re-allege and incorporate all previous paragraphs herein.

13 179. At all relevant times, Defendants regularly and consistently maintained
14 corporate policies and procedures designed to reduce labor costs by reducing or
15 minimizing the amount of compensation paid to its employees, especially overtime
16 compensation.

17 180. Defendants made deductions from Plaintiffs' and the Class members'
18 paychecks in the amount of the overtime premiums earned by the employee during the
19 pay period so as to avoid paying overtime compensation.

20 181. Labor Code § 221 provides it is unlawful for any employer to collect or
21 receive from an employee any part of wages theretofore paid by employer to employee.

22 182. Labor Code § 223 provides that where any statute or contract requires an
23 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a
24 lower wage while purporting to pay the wage designated by statute or by contract. Labor
25 Code section 225 further provides that the violation of any provision of Labor Code §§
26 221 and 223 is a misdemeanor.

27 183. As a result of the conduct alleged above, Defendants unlawfully collected or
28 received from Plaintiffs and the Class part of the wages paid to their employees.

184. Wherefore, Plaintiffs demand the return of all wages unlawfully deducted from the paychecks, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

COUNT IV

VIOLATION OF CALIFORNIA LABOR CODE §§ 226.7 and 512

FAILURE TO PROVIDE MEAL AND REST BREAKS

185. Plaintiffs re-allege and incorporate all previous paragraphs herein.

186. Labor Code § 512, and IWC Wage Order No. 7 § 11(A) and (B) provide that an employer may not employ a person for a work period of more than five (5) hours without providing the employee with a meal period of not less than thirty (30) minutes, and may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than (30) minutes.

187. Additionally, Defendants are required to provide a rest period of ten (10) minute break for each four (4) hour period, or major fraction thereof, worked.

188. At all relevant times, Plaintiffs and the Class consistently worked in excess of five (5) or ten (10) hours in a day.

189. At all relevant times, Defendants regularly required employees to perform work during their first and/or second meal periods, without proper compensation. Further, Defendants did not provide rest breaks as is required by California law. Defendants' practice of requiring employees to perform work during their legally mandated meal and rest periods without premium compensation is a violation of Labor Code §§ 226.7 and 512, and IWC Wage Order No. 7.

190. Defendants purposefully elected not to provide meal and rest periods to Plaintiffs and Class members, and Defendants acted willfully, oppressively, and in conscious disregard of the rights of Plaintiffs and the Class members in failing to do so.

191. Plaintiffs are informed and believe Defendants did not properly maintain records pertaining to when Plaintiffs and the Class members began and ended each meal

1 period, in violation of Labor Code §1174 and IWC Wage Order No. 7 § 7(A).

2 192. As a result of Defendants' knowing, willful, and intentional failure to
3 provide meal and rest breaks, Plaintiffs and the Class members are entitled to recover one
4 (1) additional hour of pay at the employee's regular rate of pay for each work day that a
5 meal and/or rest period was not provided, pursuant to Labor Code § 226.7 and IWC
6 Wage Order No. 7 § 11(D), and penalties, reasonable attorneys' fees, and costs pursuant
7 to Labor Code §§ 218.5.

8 193. Defendants' wrongful and illegal conduct in failing to provide Class
9 members with meal or rest breaks or to provide premium compensation, unless and until
10 enjoined by order of this Court, will continue to cause great and irreparable injury to
11 Plaintiffs and the Class members in that Defendants will continue to violate these laws
12 unless specifically ordered to comply with the same. The expectation of future violations
13 will require current and future employees to repeatedly and continuously seek legal
14 redress in order to gain compensation to which they are already entitled. Plaintiffs and the
15 Class members have no other adequate remedy at law to insure future compliance with
16 the laws alleged herein to have been violated.

17 194. Wherefore, Plaintiffs demand pursuant to Labor Code Section 227.7(b) that
18 Defendants pay each Class member one additional hour of pay at the Class member's
19 regular rate of compensation for each work day that the meal and/or rest period was not
20 provided.

21 **COUNT V**

22 **VIOLATION OF CALIFORNIA LABOR CODE § 226 and 1174**

23 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

24 195. Plaintiffs re-allege and incorporate all previous paragraphs herein.

25 196. Labor Code §§ 226 and 1174 provide that every employer shall, semi-
26 monthly or at the time of payment of wages, furnish each employee, either as a
27 detachable part of the check or separately, an accurate, itemized statement in writing
28 showing the total hours worked, and the applicable hourly rates and corresponding total

1 number of hours worked.

2 197. At all relevant times, Defendants failed to maintain proper records and
3 furnish Plaintiffs and the Class members, either semi-monthly or at the time of each
4 payment of wages, an accurate, itemized statement conforming to the requirements of
5 Labor Code §§ 226 and 1174.

6 198. At all relevant times, Defendants failed to furnish Plaintiffs and the Class
7 members with accurate wage statements in writing, showing: (1) gross wages earned; (2)
8 total hours worked by each respective employee; (3) all deductions; (4) net wages earned;
9 (5) the inclusive dates of the period for which the employee is paid; (6) the name of the
10 employee and only the last four digits of his or her social security number or an employee
11 identification number; (7) the name and address of the legal entity that is the employer;
12 and (8) all applicable hourly rates in effect during the pay period and the corresponding
13 number of hours worked at each hourly rate.

14 199. Plaintiffs are informed and believe that Defendants knew or should have
15 known that Plaintiffs and the Class members were entitled to receive wage statements
16 compliant with Labor Code § 226 and 1174, and that Defendants willfully and
17 intentionally failed to provide Plaintiffs and the Class members with such accurate,
18 itemized statements showing, for example, accurate hours and overtime calculations.

19 200. Wherefore Plaintiffs demand that Defendants pay each and every Class
20 member fifty dollars (\$50.00) for the initial pay period in which the violation occurred
21 and one hundred dollars (\$100) for each subsequent violation, up to a maximum of four
22 thousand dollars (\$4,000.00) pursuant to Labor Code § 226, as well as reasonable
23 attorneys' fees and costs.

24 **COUNT VI**

25 **VIOLATION OF CALIFORNIA LABOR CODE § 2802**

26 **FAILURE TO INDEMNIFY EMPLOYEES' EXPENSES AND LOSSES**

27 201. Plaintiffs re-allege and incorporate all previous paragraphs herein.

28 202. California Labor Code § 2802 provides that an employer shall indemnify his

1 or her employee for all necessary expenditures or losses incurred by the employee in
2 direct consequence of the discharge of his or her duties.

3 203. During all relevant times, Defendants knowingly and willfully violated
4 California Labor Code § 2802 by failing to pay Plaintiffs and members of the California
5 Class who are no longer employed by Defendants all expenses and losses owed as alleged
6 herein. Defendants are therefore liable to Plaintiffs and members of the California Class
7 for expenses and losses incurred in direct consequence of the discharge of Plaintiffs'
8 duties.

9 204. Plaintiffs, individually and on behalf of the members of the California Class,
10 respectfully request that the Court award all expenses and losses due, and the relief
11 requested below in the Prayer for Relief.

12 **COUNT VII**

13 **VIOLATION OF BUSINESS AND PROFESSIONS CODE, § 17200, *et seq.***

14 205. Plaintiffs re-allege and incorporate all previous paragraphs herein.

15 206. Defendants engaged and continues to engage in unfair business practices in
16 California by practicing, employing and utilizing the unlawful practices described above,
17 including: (a) training and directing Agents to work off-the-clock without compensation;
18 (b) making deductions to Agents' paychecks to recover overtime premiums earned by
19 the employee; (c) requiring Agents to work overtime without lawful premium
20 compensation; (d) failing to provide lawful meal breaks or premium compensation in
21 lieu thereof; and (e) failing to provide accurate, itemized wage statements.

22 207. In addition, the conduct alleged in each of the previously stated causes of
23 action constitute an unlawful and for unfair business practice within the meaning of
24 Business & Professions Code § 17200, *et seq.*

25 208. As a result of Defendants' conduct, Plaintiffs and the Class have been harmed
26 as described in the allegations set forth above.

27 209. The actions described above, constitute false, unfair, fraudulent and deceptive
28 business practices within the meaning of California Business & Professions Code §

1 17200, *el seq.* By and through such unfair, unlawful and/or fraudulent business practices,
2 Defendants obtained valuable property, money and services from Plaintiffs and the Class,
3 and have deprived Plaintiffs and the Class fundamental rights and privileges guaranteed to
4 all employees under California law.

5 210. Defendants were unjustly enriched by the policies and practices described
6 herein, and those policies and practices conferred an unfair business advantage on
7 Defendants over other businesses providing similar services which routinely comply with the
8 requirements of California law.

9 211. Plaintiffs seek, on their own behalf, and on behalf of the putative Class
10 members, full restitution of all monies withheld, acquired and/or converted by
11 Defendants by means of the unfair practices complained of herein, as necessary and
12 according to proof, and/or disgorgement of all profits acquired by Defendants by means
13 of the acts and practices described herein.

14 212. Plaintiffs seek, on their own behalf, and on behalf of other Class members
15 similarly situated, an injunction to prohibit Defendants from continuing to engage in the
16 unfair business practices complained of herein. Defendants' unlawful conduct, as described
17 above, unless and until enjoined and restrained by order of this Court, will cause great and
18 irreparable injury to Plaintiffs and all Class members in that Defendants will continue to
19 violate these California laws unless specifically ordered to comply with the same. This
20 expectation of future violations will require current and future employees to repeatedly and
21 continuously seek legal redress in order to gain compensation to which they are entitled
22 under California law. Plaintiffs have no other adequate remedy at law to insure future
23 compliance with the California labor laws and wage orders alleged to have been violated
24 herein.

25 **COUNT VIII**

26 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

27 213. Plaintiffs re-allege and incorporate all previous paragraphs herein.

28 214. A special relationship existed between Plaintiffs and Defendants as

1 employee and employer.

2 215. The employment relationship between the parties included an implied
3 covenant of good faith and fair dealing, which required Defendant to act with fairness
4 toward the other and to refrain from any action that would prevent Plaintiffs from
5 realizing the potential benefits of their employment.

6 216. Plaintiffs and the other Agents agreed to work on a commission basis.

7 217. The commissions were in large part dependent on Defendants obtaining and
8 providing leads to the Agents. The volume, quality and timeliness of the leads directly
9 translated into the likelihood of closing sales, and in turn, earning commissions.

10 218. Defendants breached the covenant by limiting and manipulating the quality
11 and volume of leads given to Agents.

12 219. For example, when hiring Agents, Defendants did not advise the Agents that
13 the leads would be subject to limitations and other manipulations. It was implied that the
14 Agents would receive viable leads with which to work on, free from improper limits and
15 manipulation by Defendants.

16 220. Defendants also breached the covenant by supplying leads from customers
17 who wanted loans.

18 221. Further, Defendants required Agents to make misleading statements to
19 customers, or face limitations on their leads, but still be required to meet sales quotas for
20 performance purposes, employment and bonuses.

21 222. By reason of said breach, Plaintiffs performance was materially hindered to
22 the point of being impossible as promised, represented and contemplated at the time of
23 hire, and they sustained damages in the form of monetary losses.

24 **COUNT IX**

25 **DETRIMENTAL RELIANCE/PROMISSORY ESTOPPEL**

26 223. Plaintiffs re-allege and incorporate all previous paragraphs herein.

27 224. As more fully stated herein, Defendants made promises to each of the
28 Plaintiffs, specifically to provide them with sales leads in a fair manner, including

1 especially not in a manner that required misstatements and fraud on behalf of the Agents,
2 but ultimately failed to distribute the leads in a fair manner.

3 225. In reliance on Defendants' promise of commission payments based on leads
4 received from Defendants, Plaintiffs decided to pursue efforts to acquire "consumers" for
5 Defendants' debt relief programs rather than pursue other more lucrative employment
6 endeavors.

7 226. Plaintiffs expended their limited time, money, and other resources in pursuit
8 of and for the benefit of Defendants' interest. Plaintiffs did so due to a reasonable
9 reliance on Defendants' representations, including, but not limited to, those made in the
10 employment offer

11 227. Had Defendants' above-described representations not induced Plaintiffs'
12 subsequent actions and reliance thereon, Plaintiffs' limited resources would have been
13 available to be used in a more profitable manner.

14 228. As a direct and proximate result of Defendants' actions, Plaintiffs have
15 suffered damages such as monetary income.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs on their own behalf and on the behalf of the putative
18 Collective and Class members, request judgment as follows:
19

- 20 a. Certifying this case as a collective action in accordance with 29 U.S.C. §
21 216(b) with respect to the FLSA claims set forth above;
- 22 b. Designating the named Plaintiffs as Representative of the proposed FLSA
23 collective;
- 24 c. Ordering Defendant to disclose in computer format, or in print if no
25 computer readable format is available, the names and addresses of all those
26 individuals who are similarly situated, and permitting Plaintiffs to send
27 notice of this action to all those similarly situated individuals including the
28 publishing of notice in a manner that is reasonably calculated to apprise the
potential class members of their rights under the FLSA;

- d. Certifying the proposed Rule 23 Class;
- e. Designating Plaintiffs as representatives of the proposed Rule 23 Class;
- f. Appointing Plaintiffs' counsel as Class Counsel;
- g. Declaring that Defendants willfully violated the Fair Labor Standards Act and its attendant regulations as set forth above;
- h. Granting judgment in favor of Plaintiffs and against Defendants and awarding the amount of unpaid overtime wages calculated at the rate of one and one-half (1.5) of Plaintiffs' regular rate (including the shift differential where applicable) multiplied by all off-the-clock hours that Plaintiffs worked in excess of eight (8) hours per day and/or forty (40) hours per week for the past four years;
- i. Awarding liquidated damages in an amount equal to the amount of unpaid overtime wages found due and owing;
- j. For statutory and civil penalties pursuant to Labor Code §§ 225.5, 226(e), 226.3, and 226.7;
- k. For disgorgement and restitution to Plaintiffs and other similarly effected Class members of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to violate the mandate established by California Business and Professions Code § 17200, *et seq.*;
- l. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business and Professions Code § 17200, *et seq.*;
- m. For an injunction prohibiting Defendants from engaging in the unfair business practices complained of herein;
- n. For an injunction requiring Defendants to give notice to persons to whom restitution is owing of the means by which to file for restitution;
- o. For actual damages or statutory penalties according to proof as set forth in California Labor Code §§ 226, 1174, and IWC Wage Order No. 7, § 7(A)

related to record keeping;

- p. For an order requiring Defendants to show cause, if any there be, why they should not be enjoined and ordered to comply with the applicable California Industrial Welfare Commission wage orders related to record keeping for Defendants' employees related to same; and for an order enjoining and restraining Defendants and their agents, servants and employees related thereto;
- q. For pre-judgment interest as allowed by California Labor Code §§ 218.6, 1194 and 2802(b) and California Civil Code § 3287 and other statutes;
- r. Awarding civil penalties pursuant to California Labor Code § 2698, *et seq.*;
- s. For reasonable attorneys' fees, expenses, and costs as provided by the FLSA, California Labor Code §§ 218.5, 226(e) and (g), 1194, 2802 and California Code of Civil Procedure § 1021.5; and
- t. For such other and further relief the Court may deem just and proper.

JURY DEMAND

Plaintiffs, , individually and on behalf of all others similarly situated, by and through their attorneys, hereby demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above entitled cause.

Respectfully Submitted,

Dated: December 14, 2017

By: /s/ Trenton R. Kashima
 Trenton R. Kashima
 Trenton R. Kashima, Esq.
 FINKELSTEIN & KRINSK, LLP
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 San Diego, CA 92101
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9 Jesse L. Young (*pro hac vice forthcoming*)
10 jyoung@sommerspc.com
11 SOMMERS SCHWARTZ, P.C.
12 One Towne Square, Suite 1700
13 Southfield, Michigan 48076
14 Telephone: (248) 355-0300
15 Facsimile: (248) 436-8453

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*Counsel for Plaintiff and Proposed Class
and Collective Members*



EMPLOYMENT AGREEMENT

This Agreement is entered into by and between Accredited Debt Relief, LLC, a California limited liability company ("Employer" or "the Company"), located at 591 Camino de la Reina, Suite 818, San Diego, California 92108, and Jordan Terrado, an individual ("Employee"), who agree as follows:

1. **Employment.** Employer hereby hires Employee as, and Employee hereby agrees to act as a Sales Consultant. This position is subject to completion of a 90-day introductory period. Employee shall faithfully and diligently perform the duties set forth below, as may be updated from time to time and any and all duties reasonably related thereto.

1.1 **Job Duties.** Build a consistent base of clients by closing the call-ins and referrals that come from the marketing department of the Company; Service all accounts set up by Employee and answer all questions associated with those accounts; Meet and/or exceed Company's monthly quotas and quarterly sales goals; Work shift assigned by Company on a timely basis; other duties and responsibilities as necessary.

2. **At-Will Employment.** The term of this Agreement shall commence on the date upon which this Agreement is signed and dated by the Employee ("Effective Date") and may be terminated with or without cause and with or without notice at any time by the Employee or Employer. Nothing in this Agreement or in any document or statement shall limit either party's right to terminate employment at-will. No Manager, Supervisor or employee of Employer has any authority to enter into an agreement for employment for any specified period of time or to make an agreement for employment other than at-will. Only the President of Employer has the authority to make any such agreement and then only in writing.

3. **Working Hours:** Your working hours will be those of a full-time employee under California law, or 40 hours per week. Employee is required to keep accurate time records of all hours worked during each day, including the time an Employee begins work, the time an Employee leaves work for the day, and all meal and rest breaks. Employer may vary the pattern of your working shift as required on a temporary or permanent basis should the needs of the Company and the position require it. Employee is required to work the specific shifts Employer designates as needed. Any hours worked which exceed eight (8) hours per day and/or forty (40) hours per week must have prior approval from an Employee's manager or supervisor.

4. **Compensation.** Employee's total compensation under this Agreement shall be payable semi-monthly in accordance with and at the same times as Employer's ordinary payroll procedures. Compensation shall be paid as follows:

4.1 **Hourly Advance on Commissions:** Employee shall receive an advance on commission at the rate of \$15.80 per hour worked, which hourly rate shall in no event be less than the higher of the prevailing state or federal minimum wage. The hourly advance may be deducted from Employee's commission, as set forth in Exhibit A.



Said hourly wage shall be subject to any and all withholdings and/or deductions under Federal and California law.

4.2 **Commissions and Bonuses:** Employee shall receive commissions and bonuses, as set forth in Exhibit A, attached hereto. Commissions shall be paid in the next payroll period following the month in which the commission was earned. Bonuses shall be awarded solely in the Employer's discretion. The amount of commissions paid are subject to state law and may vary from state to state.

4.3 **Impact of Termination or Resignation on Compensation:** Commissions and bonuses shall not be paid once employment ceases if Employee is terminated for gross misconduct. If, however, employment is terminated for any reason other than gross misconduct, Employee shall be entitled to receive commissions and/or bonuses Employee has earned under the terms of this agreement as of the date employment terminates, but which are not yet paid as of such date, provided that Employee is in compliance with all of the terms of this agreement.

4.4 **Discrepancies:** If Employee believes there is any error in the manner in which a commission or bonus has been calculated or paid, Employee must report the discrepancy to Shawn Syndergaard, or other management level person as designated by Employer, as soon as practicable, and in no event later than 60 days after the close of the relevant pay period. It is in Employee's interest to regularly check his or her paycheck.

5. **Other terms and conditions:** Employee is expected to comply with the Employer's dress code policy, and additional terms and conditions of employment as set forth in the ADR Employee Handbook.

6. **Benefits.** Employee shall be entitled to the following benefits during the term of this Agreement:

6.1 **Participation in the Employer-sponsored 401K plan,** in accordance with the terms set forth in the 401K plan documents. Employee will be eligible to participate in Employer-sponsored 401K plan after 12 months of continuous employment.

6.2 **All benefits generally available to other employees of Employer.**

6.3 **Employee shall be entitled to take unpaid vacation time at the Employer's discretion.** Employee shall give Employer as much notice as possible of the desired time off, and no less than two weeks in advance. Requests for unpaid vacation time off shall be made in writing, and will be based on seniority in order to assure shift coverage at all times.

6.4 **After satisfactory completion of the 90 day introductory period,** Employee shall be eligible to participate in employer Medical Insurance, Dental and Vision Benefits.



6.5 After satisfactory completion of the 90 day introductory period, Employee shall be eligible to use paid sick days. Days requested off prior to the completion of 90 day probationary period require manager approval and are unpaid.

6.6 Employee shall not be entitled to any other compensation or benefits.

7. Disputes/Mediation and Arbitration Procedure. Any dispute, claim or controversy arising out of or relating to this Agreement, the Employee's employment relationship with the Employer, and/or the termination of that relationship shall be subject to Mediation and Arbitration procedure, as set forth below:

7.1 Internal Efforts: Employee agrees as a prerequisite to instituting any formal arbitration or mediation demand that the Employee and Employer will engage in good faith efforts at resolving any dispute internally and on an informal basis through management channels appropriate to the particular dispute. An Employee's first point of contact for resolution of a dispute would be the Employee's immediate supervisor. An Employee may also contact the Employer's human resources department.

7.2 Non-binding Mediation: If internal efforts at informal resolution fail, disputes arising out of or relating to this Agreement, the Employee's employment relationship with the Employer, and/or termination of that relationship shall be next submitted for non-binding mediation before a neutral third party which the parties shall jointly select. Mediation is an information process where the parties to a dispute meet in an attempt to reach a voluntary resolution using the third party as a facilitator.

7.3 Binding Arbitration: If a dispute remains unresolved at the conclusion of the mediation process, either party may submit the dispute for resolution by final binding confidential arbitration. The arbitration will be conducted under the employment dispute resolution rules of the American Arbitration Association (AAA) or other applicable rules and the procedure shall be conducted on a confidential basis. Arbitration under this section shall be conducted by a neutral arbitrator which the parties shall jointly select. The arbitrator shall have the authority to allow for appropriate discovery and exchange of information prior to any hearing, including but not limited to, exchange of documents, information requests, depositions, and subpoenas. The arbitrator shall render a written decision and award, if applicable, within 30 days after the close of the arbitration hearing, or at any later date on which the parties may agree. The parties agree that Employer will bear the costs of any AAA administrative fees, however the arbitrator's fees and expenses will be shared equally between the parties. All other costs and expenses associated with the arbitration, including but not limited to each party's respective attorneys' fees, shall be borne by the party incurring the expense. A copy of the complete AAA employment dispute resolution rules may be obtained through AAA's website: www.adr.org.

7.4 Claims Covered and Not Covered: The agreement to submit to mediation, and if necessary, arbitration covers the following controversy and/or claims: Any claim that could be asserted in court or before an administrative agency or claims for which Employee has an alleged cause of action, including but not limited to claims for breach of contract or covenant (express or implied); wage, meal and rest break claims; tort claims; claims for discrimination, including but not limited to discrimination based on sex, pregnancy, race, national or ethnic

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origin, age, religion, creed, marital status, sexual orientation, mental or physical disability or medical condition, or any other characteristics protected by statute; Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; sections 1981 through 1988 of Title 42 of the United States Code, as amended; the Employee Retirement Income Security Act of 1974, as amended; the Americans with Disabilities Act of 1990, as amended; the Workers Adjustment and Retraining Notification Act, as amended; the Age Discrimination in Employment Act of 1967, as amended; California Labor Code; California Family Rights Act – Cal. Govt. Code § 12945.2 et seq.; California Unruh Civil Rights Act – Civ. Code § 51 et seq.; any claim for unfair competition in violation of Business & Professions Code § 17200; claims for wrongful discharge; violation of the Family and Medical Leave Act (FMLA); violations of confidentiality or breaches of trade secrets; and/or claims for violation of any federal, state or other governmental law, statute, regulation, or ordinance. Nothing in this Agreement shall preclude Employee from filing a charge or complaint for workers' compensation benefits, unemployment benefits, a wage and hour matter within the jurisdiction of the California Labor Commissioner, with or through the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB) or any other similar state or federal agency seeking administrative resolution of a dispute or claim.

7.5 **Class Action Waiver:** Accept as otherwise required under applicable law, Employee and Employer expressly intend and agree that class action procedures shall not be asserted, nor will they apply, in any arbitration pursuant to this Agreement. Employer and Employee agree that each will not assert class action claims against the other in arbitration or otherwise, and Employer and Employee shall only submit their own, individual claims in arbitration.

8. **Non-Solicitation.** Employee shall not, during his or her employment, or for a period of one year immediately following termination of employment, either directly or indirectly, call on, solicit, or take away, or attempt to call on, solicit, or take away, any of the customers or clients of Employer on whom Employee called or became acquainted with during the terms of his or her employment, either for their own benefit, or for the benefit of any other person, firm, corporation, or organization.

9. **Non-Recruit.** Employee shall not, during his or her employment, and for a period of one year immediately following termination of employment, either directly or indirectly, recruit any of Company's employees for the purpose of any outside business.

10. **Return of Property.** Upon termination of employment, Employee shall immediately deliver to Employer all property under his or her possession, or under their care and control, belonging to Employer, including but not limited to, proprietary information, customer lists, trade secrets, intellectual property, computers, equipment, mobile phones, tools, documents, plans, recordings, software, and all related records or accounting ledgers. Keys to the restroom, cubicle and building should be returned prior to termination. If keys are not returned, a \$25 replacement fee per key, will be charged to the Employee.

11. **Work Performed For Employer is Employer's Property.** Employee agrees that all tasks, duties, results, inventions, intellectual property, including modifications and improvements



on existing processes, procedures, or methodologies, developed or performed during Employee's employment by Employer and their results are assigned to and considered to be the sole property of Employer for all purposes, including, but not limited to, copyright, trademark, service mark, patent, and trade secret laws.

12. Confidentiality. Employee hereby acknowledges that Employer has made (or may make) available to Employee certain customer lists, product and concept design information, recipes, performance standards and other confidential and/or proprietary information of Employer or licensed to Employer, including without limitation trade secrets and copyrighted materials (collectively, the "Confidential Material"). Except as essential to Employee's obligations under this Agreement, neither Employee nor any agent, employee, officer, or independent contractor of or retained by Employee shall make any disclosure of this Agreement, the terms of this Agreement, or any of the Confidential Material. Except as essential to Employee's obligations under this Agreement, neither Employee nor any agent, employee, officer, or independent contractor of or retained by Employee shall make any duplication or other copy of any of the Confidential Material. Immediately upon request from Employer, Employee shall return to Employer all Confidential Material. Employee shall notify each person to whom any disclosure is made that such disclosure is made in confidence, that the Confidential Material shall be kept in confidence by such person, and that such person shall be bound by the provisions of this Paragraph.

13. Other Employment. Employee shall devote his/her full-time efforts in performing his/her duties under this Agreement during its effective term.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15. Modification. This Agreement may be modified only by a contract in writing executed by the party(ies) to this Agreement against whom enforcement of such modification is sought.

16. Headings. The headings of the Paragraphs of this Agreement have been included only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Agreement, or be used in any manner in the interpretation of this Agreement.

17. Prior Understandings. This Agreement contains the entire agreement between the parties to this Agreement with respect to the subject matter of this Agreement, is intended as a final expression of such parties' agreement with respect to such terms as are included in this Agreement, is intended as a complete and exclusive statement of the terms of such agreement, and supersedes all negotiations, stipulations, understandings, agreements, representations and warranties, if any, with respect to such subject matter, which precede or accompany the execution of this Agreement.

18. Partial Invalidity. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons

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or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, unless such provision or such application of such provision is essential to this Agreement.

19. Drafting Ambiguities. Each party to this Agreement has reviewed and had an opportunity to revise this Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

By providing your signature below, you acknowledge that you read, understand, and agree to comply with the contents of this Agreement as set forth above.


Employee Signature

2/1/2017
Date

Jordan Torredo
Employee Printed Name



Commission Structure for Debt Settlement Deals

(Exhibit "A")

2017 Commission Plan

Who is Eligible for Commissions

This Commission Plan applies to associates working for the Company as Sales Consultant during the effective dates of this Plan.

When Commissions Are Earned

Commissions are earned at the close of a commission month, once commission-eligible debt and the applicable commission rate can be ascertained.

Calculation of Commissions

The commission earned is the applicable Commission % multiplied by the Total Paid Debt Enrolled in the calendar month.

A new client contract is eligible for inclusion in the calculation of eligible commission when the following conditions are satisfied:

- The client has successfully completed one full cleared payment into their settlement account and still be an ACTIVE client in the program at the time when commission report is completed. Commission reports are completed between the 15th-21st of the following month.
 - FDR files – Must have at least one split/biweekly payment or a full month payment
 - CNI/CSS Files – Must have made a full month payment, or have completed the second split payment.
- Draft date must be within commission month.
- The account has not terminated within the commission period AND the account has drafted the initial payment.

The commission cycle will begin at the beginning of the calendar month and end on the last day of the calendar month.

The Commission and/or Hourly Wage

All Sales Consultants earn an applicable commission rate of 1% of total PAID debt enrolled except for any Fee Capped states (ID, IA, MN, MT), where the commission rate is 0.5%.



Please note that if commission earned in calendar month at ANY time is larger than hourly wage in the calendar month, Accredited Debt Relief will ONLY pay the commission earned. Accredited Debt Relief will NOT pay both hourly and commission earned in above mentioned. If commission earned is LESS than hourly wage worked, Sales Consultant will be paid the hourly wage worked.

Advance on Commission = Guaranteed Hourly Wage of \$15.80/hr

Commission vs. Hourly: Sales Consultant gets paid whichever number is larger.
(*The lowest you can be paid is your hourly wage times hours worked.*)

Example 1

If your hourly wage for the 7th and the 21st totals \$2,528
You have \$600,000 in debt pay = 1% commission equals \$6,000
\$6,000 in commission is greater, so you are paid \$6,000

Example 2

If your hourly wage for the 7th and the 21st totals \$2,528
You have \$150,000 in debt pay = 1% commission equals \$1,500
\$1,500 in commission is less than the hourly, so you are paid \$2,528

1st – 15th hourly wage paid on the 21st
16th – 31st hourly wage paid on the 7th
Commission paid on the 21st

\$600k Paid Debt Bonus

All Sales Consultants will receive an additional bonus when the amount of paid debt is larger than \$600,000.

The bonus calculation is an additional .1% of the commission paid.
For example, if there is a total of \$650,000 in paid debt, and the commission at 1% = \$6,500.00.
Then an additional \$650 ($\$650,000 \times .1\%$) is earned as a bonus.

FDR 4 Month Retention Bonus Policy

All FDR clients that enroll into program, makes a successful draft and Sales Consultant gets commission on file will be eligible for 4 month Retention Bonus Policy. Each group of clients that make their first payment in a calendar month are considered a class of clients.

- After the client makes their 1st payment, the retention period starts. After the 4th month of retention (end of retention period), we will calculate how much total commission was earned back in the 1st month of retention (base hourly wage NOT included) and multiply the bonus % for bonus earned or subtracted.

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- Client must have made 3 successful monthly drafts in a 4 month period and still be an ACTIVE client (not terminated) when commission report is created at ADR. Commission reports are created between the 15th-21st of the following month after the 4 month retention period.

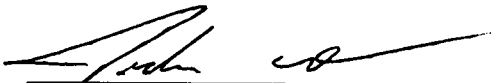
Rep Bonus Chart

high	low	bonus
100%	95%	15.00%
95%	93%	12.50%
93%	91%	10.00%
91%	89%	7.50%
89%	87%	5.00%
87%	85%	2.50%
85%	0%	0.00%

Acknowledgement

I acknowledge that I have read and understand the information provided to me in the Commission Plan. This Plan supersedes any prior commission or bonus plan applicable to the employees eligible for commissions under this Plan.

Nothing in this Agreement affects the Company's at-will employment relationship. Either the Company or the employee may terminate employment at any time, for any reason, with or without notice or cause. The Company's at will employment relationship cannot be changed, except in an express, written agreement signed by the Management Team at ADR and the employee.


Employee Signature

2/1/2017
Date

Jordan Terrado
Employee Printed Name

ACCREDITED DEBT RELIEF LLC
591 CAMINO DE LA REINA STE 818
SAN DIEGO CA 92108

EE ID: 241

DD

11/21/2017

15842

DATE

CHECK NO.

PAY TO THE
ORDER OF

JOSHUA ATOE
8560 GLENHAVEN STREET
SAN DIEGO CA 92123

Total Net Direct Deposit(s)
****\$1046.41****

AMOUNT

VOID THIS IS NOT A CHECK DOLLARS

****NON-NEGOTIABLE****

AUTHORIZED SIGNATURE(S)

TO VERIFY AUTHENTICITY OF THIS DOCUMENT, THE BACK CONTAINS HEAT SENSITIVE INK THAT CHANGES FROM BLUE TO CLEAR AND ALSO CONTAINS AN ARTIFICIAL WATERMARK WHICH CAN BE VIEWED WHEN HELD AT AN ANGLE

FOLD AND REMOVE

FOLD AND REMOVE

PERSONAL AND CHECK INFORMATION

Joshua Aloe
8560 Glenhaven Street
San Diego, CA 92123
Soc Sec #: xxx-xx-xxxx Employee ID: 241

Pay Period: 11/01/17 to 11/15/17
Check Date: 11/21/17 Check #: 15842

NET PAY ALLOCATIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	0.00	0.00
Chkg 3088	1046.41	24125.09
NET PAY	1046.41	24125.09

EARNINGS

DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Regular				673.36	32008.92
Regular	M81.73		1692.67	M485.07	
Overtime				16.03	379.93
Overtime	M0.02			M13.14	
Sick				16.00	252.80
Total Hours	81.75			1203.60	
Gross Earnings			1692.67		32641.65
Total Hrs Worked	81.75				

WITHHOLDINGS

DESCRIPTION	FILING STATUS	THIS PERIOD (\$)	YTD (\$)
Social Security		72.49	1861.49
Medicare		16.95	435.35
Fed Income Tax	S 1 No Withholding		1926.81
CA Income Tax	S 0 0	22.78	1405.07
CA Disability		10.52	270.24
TOTAL		122.74	5898.96

DEDUCTIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Anthem Health P	523.52	2617.60
TOTAL	523.52	2617.60

NET PAY

THIS PERIOD (\$)
1046.41

YTD (\$)
24125.09

ACCREDITED DEBT RELIEF LLC
591 CAMINO DE LA REINA STE 818
SAN DIEGO CA 92108

EE ID: 241

DD

Case 3:17-cv-02509-CAB-NLS Document 1-2 Filed 12/14/17 PageID.49 Page 2 of 2

11/07/2017

15665

DATE

CHECK NO.

PAY TO THE
ORDER OF

JOSHUA ATOE
8560 GLENHAVEN STREET
SAN DIEGO CA 92123

Total Net Direct Deposit(s)
****\$1222.16****

AMOUNT

VOID THIS IS NOT A CHECK DOLLARS

****NON-NEGOTIABLE****

AUTHORIZED SIGNATURE(S)

TO VERIFY AUTHENTICITY OF THIS DOCUMENT, THE BACK CONTAINS HEAT SENSITIVE INK THAT CHANGES FROM BLUE TO CLEAR AND ALSO CONTAINS AN ARTIFICIAL WATERMARK WHICH CAN BE VIEWED WHEN HELD AT AN ANGLE

FOLD AND REMOVE

FOLD AND REMOVE

PERSONAL AND CHECK INFORMATION

Joshua Atoe
8560 Glenhaven Street
San Diego, CA 92123
Soc Sec #: xxx-xx-xxxx Employee ID: 241

Pay Period: 10/16/17 to 10/31/17

Check Date: 11/07/17 Check #: 15665

NET PAY ALLOCATIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	0.00	0.00
Chkg 3088	<u>1222.16</u>	<u>23078.68</u>
NET PAY	1222.16	23078.68

EARNINGS

DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Regular	86.07	15.8000	1359.91	673.36	30316.25
Regular				M403.34	
Overtime	0.47	23.7000	11.14	16.03	379.93
Overtime				M13.12	
Sick				<u>16.00</u>	<u>252.80</u>
Total Hours	86.54			1121.85	
Gross Earnings			1371.05		30948.98
Total Hrs Worked	86.54				

WITHHOLDINGS

DESCRIPTION	FILING STATUS	THIS PERIOD (\$)	YTD (\$)
Social Security		85.00	1789.00
Medicare		19.88	418.40
Fed Income Tax	S 1 No Withholding		1926.81
CA Income Tax	S 0 0	31.67	1382.29
CA Disability		12.34	259.72
TOTAL		148.89	5776.22

DEDUCTIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Anthem Health P		2094.08
TOTAL		2094.08

NET PAY

THIS PERIOD (\$)
1222.16

YTD (\$)
23078.68

Payrolls by Paychex, Inc.

Joshua Atoe

Hire Date

4/10/2017

Understanding Your Commission Report:

1. Total Debt
2. Gross Commission = Commission from customers who made their 1st payment last month
3. Bonus \$600,000+ = Verified Debt = at or above \$600,000 x .01% (\$0 if <\$600K)
4. 7th Pay Advance = Advance amount you were paid on the 7th
5. Retention bonus = percent of your retention files from the month listed
6. Reviews = \$5 for each customer review received online
7. Hours if > Commission = if your hours worked are higher than commission paid, you will be paid hourly

FOR PAYDATE OF**11/21/2017**

1st Pay Rate - Total Debt	Active w/Payment	Clients Missing Payment	Rate
\$502,649.00	\$293,239.00	Gonzalez, Loza, Collins, Dixon, Snyder, Biller, Shollenberger	58.34%
<i>*This 1st Payrate is informational and here to help to help you measure your performance for this past month. This does not affect your paycheck.*</i>			

FDR Client	Customer ID	Verified FDR Debt	Commission
Michelle Merrifield	AFFQB681991	\$ 15,371	\$ 153.71
Diana Loza	AFFQB663189	\$ 13,133	\$ 131.33
Michael Martin	AFFQB659139	\$ 16,976	\$ 169.76
Chris Boggs	AFFQB669502	\$ 18,005	\$ 180.05
Mary Cobb	AFFQB669505	\$ 26,107	\$ 261.07
Shawn Boyer	AFFQB678113	\$ 36,232	\$ 362.32
Bob Jackson	AFFQB673171	\$ 37,320	\$ 373.20
Michael Lyman	AFFQB667642	\$ 52,600	\$ 526.00
Mollie Ross-McMillan	AFFQB669743	\$ 53,631	\$ 536.31
Jennifer Smith	AFFQB665168	\$ 23,566	\$ 235.66
Total FDR		\$ 292,941.00	\$ 2,929.41

Joshua Atoe

Hire Date

4/10/2017

Fee Cap Client	Customer ID	Verified Debt	Commission
			\$ -
<i>Total Fee Cap States</i>		\$ -	\$ -

CNI Client	Customer ID	Verified Debt	Commission
Julia Hidalgo	AFFQB651316	13431	\$ 134.31
			\$ -
<i>Total CNI</i>		\$ 13,431.00	\$ 134.31

FDR Retention # of Paid files	Clients Missing Debt	Retention Rate	Bonus
9 of 11	Yon, Shimizu	81.8%	\$ (182.34)
<i>Total Retention bonus</i>			

Total Debt	\$ 306,372.00
Gross Commission	\$ 3,063.72
Bonus on Paid Debt \$600,000+	\$ -
7th Paycheck Advance	\$ (1,371.05)
July Retention Bonus	\$ -
Reviews	\$ -
Hours if > Commission	
Total Gross Amount	\$ 1,692.67

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

JORDAN TERRADO, PAKTIN KARIM, and JOSHUA ATOE individually and on behalf of all others similarly situated

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

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

Trenton R. Kashima
Finkelstein & Krinsk LLP
550 West C Street, Ste. 1760, San Diego, CA 92101

DEFENDANTS

ACCREDITED DEBT RELIEF, LLC, SHAWN R. SYNDERGAARD, BENJAMIN P. SCHWAN, and BRIAN M. STONE, jointly and severally

County of Residence of First Listed Defendant San Diego, CA
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'17CV2509 CAB NLS

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

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

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

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: Nature of Suit Code Descriptions.

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

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

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

VI. CAUSE OF ACTION

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

29 U.S.C. Section 216

Brief description of cause:

Wage and Hour Class Action

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/14/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Trenton R. Kashima

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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

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

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

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Accredited Debt Relief Owes Employees Unpaid Wages](#)
