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12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 JASIBEL CANCHOLA, CARLOS
17 OCHOA, RICHARD CURTIS, and
18 ROBERT SOUZA, individually and on
19 behalf of all others similarly situated,

20 Plaintiffs,

21 vs.

22 ALLSTATE INSURANCE COMPANY,
23 an Illinois corporation,
24 Defendant.
25
26
27
28

Case No. 8:23-cv-00734-FWS-ADS

**FIRST AMENDED CLASS ACTION
COMPLAINT**

**PLAINTIFFS' CLASS ACTION
COMPLAINT FOR VIOLATIONS
OF:**

1. **Labor Code Section 2802 -
Failure To Reimburse For
Necessary Expenditures
Incurred**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Jasibel Canchola, Carlos Ochoa, Richard Curtis, and Robert Souza,
2 individually and on behalf of all others similarly situated, allege as follows upon
3 personal knowledge and upon information and belief based upon the investigation of
4 counsel:

5 **I. SUMMARY OF THE ACTION**

6 1. This Court has jurisdiction over this removed action pursuant to 28
7 U.S.C. § 1332(d).

8 2. Defendant Allstate Insurance Company (“Allstate”) and its affiliated
9 insurance companies sell insurance in California. Allstate relies on an integrated
10 distribution system of insurance agents working in Allstate agencies, the internet, and
11 call centers to sell insurance in California. This allows customers to interact with
12 Allstate when, where, and how they want: via the internet, insurance agents, call
13 centers or a mix of all three.

14 3. Allstate classifies these insurance agents as independent contractors
15 under California law and requires them to bear all or nearly all expenses to sell
16 Allstate insurance and service Allstate’s customers. At the same time, however,
17 Allstate binds the agents to its distribution strategy by requiring them to sell
18 exclusively for Allstate and calls them “exclusive agents.”

19 4. This exclusive agent relationship gives rise to a danger of Allstate
20 abusing the independent contractor designation. Allstate can structure the relationship
21 so that the exclusive agents are, essentially, at-will sales employees who work in
22 Allstate-owned agencies yet shift the expenses of running Allstate’s agencies onto the
23 exclusive agents under the guise of an independent contractor relationship.

24 5. That abuse materialized here. Plaintiffs and putative class members are
25 former and current Allstate exclusive agents whom Allstate promised to treat as
26 independent contractors who would “own their own insurance agency” and could
27 build equity in “their agency.” All exclusive agents, Plaintiffs included, relied on
28

1 Allstate's promise to make significant financial investments, including paying for
2 office space and hiring employees along with other costs.

3 6. Reality proved to be different. Although Allstate labeled the exclusive
4 agents as independent contractors, it structured the relationship so that the exclusive
5 agents do not own or operate a business independent of Allstate's integrated
6 distribution network. Exclusive agents pay the expenses of an agency over which
7 Allstate owns and retains all necessary control. Allstate owns the book of business,
8 the customers, and all the other valuable information necessary to run the business—
9 even the phone numbers the exclusive agents use to do business.

10 7. Allstate also retained the right to terminate any exclusive agent "at will,"
11 and thus, for any reason or no reason at all. If Allstate or the agent terminates the
12 exclusive agent relationship, Allstate keeps the agency, and the exclusive agent loses
13 his or her investment, including all business expenses. Allstate further requires that
14 the exclusive agents agree to noncompete provisions to restrict their ability to work in
15 the business of selling insurance if they leave or are terminated.

16 8. Other factors further demonstrate the exclusive agents' lack of economic
17 independence and Allstate's ultimate control over its business, including the agents'
18 opportunity for profit or loss.

19 9. Allstate controls what products the exclusive agents can sell, the terms,
20 and the price. For example, to further its business interests, Allstate recently stopped
21 exclusive agents from selling homeowners, condo, and exclusive lines, thus severely
22 impairing the agents' ability to compete in the market for new business or from
23 earning any commissions on these lines of business.

24 10. Allstate alone decides what to pay the exclusive agents and can change
25 the agents' compensation at any time or for any reason. The agents have no right or
26 ability to negotiate for their compensation and the compensation is untethered to the
27 work performed. For example, for no other reason other than to further its own
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1 business interests and profits, Allstate recently cut the commissions it pays to
2 exclusive agents on auto policies by 84%.

3 11. The exclusive agents bear the financial brunt of Allstate's business
4 decisions. The expenses Allstate expected the exclusive agents to bear to run the
5 Allstate agencies did not change, with the result that Allstate slashing commissions
6 and restricting what products exclusive agents could sell either severely reduced the
7 agents' income or resulted in the agents taking losses based on Allstate's business
8 needs. When exclusive agents tried to compensate for these cuts and restrictions by
9 selling more of the products Allstate allowed them to sell, Allstate warned them that
10 they were selling too much.

11 12. Allstate tells agents that they can sell their agency, but that is also false.
12 An exclusive agent has no ownership rights to sell, and no sale of an Allstate agency
13 ever occurs. Instead, Allstate decides whether to allow a third party to pay the
14 exclusive agent to step into his or her role of servicing Allstate's book of business for
15 a commission, and Allstate controls this process from start to finish. An agent does
16 not have as an alternative keeping his/her book of business if he/she chooses to leave
17 Allstate. The book of business belongs to Allstate and stays at Allstate if an agent
18 leaves or is terminated.

19 13. Allstate also controls the exclusive agents' online presence as part of its
20 integrated distribution system. Exclusive agents must maintain an Allstate website
21 that allows existing or potential customers to communicate either with the agent or
22 directly with Allstate, including by obtaining online quotes for policies directly from
23 Allstate or its affiliates.

24 14. Put otherwise, Plaintiffs and other exclusive agents work continuously
25 and regularly for Allstate as part of Allstate's integrated distribution system in
26 Allstate-branded agencies that Allstate owns to further Allstate's core business of
27 selling insurance; they rely on their earnings from Allstate to support themselves and
28 their families; they can be terminated at will by Allstate; they lose any investment

1 they made by paying expenses for the Allstate agency they worked in upon
2 termination; and their total pay is substantially influenced by Allstate who controls
3 what products they sell, on what terms, in what amounts, and for what level of
4 compensation.

5 15. Plaintiffs' experience reflects this reality. After Allstate restricted the
6 products they could sell and slashed compensation, both Plaintiffs' jobs became
7 economically unfeasible and they lost everything. Both Plaintiffs also have unpaid
8 debts because of the unreimbursed expenses they incurred working for Allstate, such
9 as the lease for an Allstate-branded agency. Upon information and belief, other
10 exclusive agents who would lose everything if they left, simply hope that Allstate
11 reverses its austerity measures before their financial situation becomes untenable.

12 16. In no meaningful way, therefore, is an Allstate exclusive agent an
13 independent contractor delivering services as part of an independent business for his
14 or her own account. Instead, an exclusive agent is just an Allstate salesperson no
15 different than any other sales employee paid on a commission basis with one key
16 exception: the exclusive agents, not Allstate, bears all the expense doing Allstate's
17 business.

18 17. But California Labor Code section 2802 prevents employers, like
19 Allstate, from protecting their bottom lines and shifting the cost and risk of their
20 business onto their workers by passing business expenses to their employees.

21 18. Because in no sense do Plaintiffs or putative class members run
22 independent businesses for their own accounts, they are employees for purposes of
23 section 2802 and are owed reimbursement from Defendant for the expenses Allstate
24 required and expected them to incur to build and maintain Allstate's business.

25 19. Plaintiffs, like all putative class members, wanted to be treated as
26 independent contractors but were not. California Labor Code section 2802 requires
27 Defendant to reimburse Plaintiff and class members for the business expenses they
28 incurred during the relevant time period. Additionally, through this lawsuit, Plaintiffs

1 seek to end Defendant's unlawful and unfair business activities and have Defendant
2 treat the putative class consistent with their independent contractor designation under
3 California law, and obtain all other relief Plaintiffs and the putative class are entitled
4 to.

5 **II. PARTIES**

6 20. Defendant Allstate Insurance Company ("Allstate") is an insurance
7 company organized under the laws of the State of Illinois having both its statutory
8 home office and main administrative office located in Northbrook, Illinois. Allstate
9 and its affiliated group of insurance companies and non-insurance companies engage
10 in the business of selling property, casualty, and life insurance throughout the State of
11 California.

12 21. In this Complaint, Plaintiffs refer to Allstate as "Allstate Defendant" or
13 "Defendant."

14 22. At all relevant times, the Defendant was engaged in selling insurance in
15 California, including in this County.

16 23. Plaintiff Jasibel Canchola is a citizen of the State of California who was
17 an exclusive agent for Allstate from June 1, 2022 until February 4, 2023 and worked
18 at an Allstate' agency located at 4945 Yorba Ranch Road, Yorba Linda, CA 92887.

19 24. Plaintiff Carlos Ochoa is a citizen of the State of California who was an
20 exclusive agent for Allstate from July 1, 2022 until January 3, 2023 and worked at an
21 Allstate' agency located at 610 E Francis Street, Ontario, CA 91761.

22 25. Plaintiff Richard Curtis is a citizen of the State of California who was an
23 employee agent for Allstate prior to the late 1990s, and then converted to an
24 exclusive agent for Allstate from the late 1990s until his termination on June 30,
25 2021. Mr. Curtis worked at an Allstate agency located at 870 Hampshire Rd,
26 Westlake Village, CA 91361.

27 26. Plaintiff Robert Souza is a citizen of the State of Nevada who was an
28 exclusive agent for Allstate from approximately 1996 until August, 2023. Mr. Souza

1 worked at an Allstate agency located at 10646 Zelzah Ave Ste 216 Granada Hills, CA
2 91344.

3 27. In this Complaint, Plaintiffs refer to “exclusive agents” or “agents” to
4 mean themselves and the class of putative class members in the State of California.

5 **III. JURISDICTION AND VENUE**

6 28. The Court has personal jurisdiction over all Defendant as it does
7 substantial business in the State of California and in this County. Allstate is licensed
8 to sell insurance and does sell insurance in the State of California and this County.

9 29. This Court has jurisdiction over this removed action under 28 U.S.C. §
10 1332(d).

11 30. Venue is proper under Code of Civil Procedure, sections 395, subd. (a),
12 because the defendant does not reside in this State and Plaintiff Jasibel Canchola
13 resides in this district.

14 **IV. BACKGROUND**

15 **A. California law prevents employers from passing the expense of** 16 **running their businesses to their workers.**

17 31. Labor Code section 2802 represents protective social welfare legislation
18 that prevents employers from passing the expenses of their businesses to their
19 workers.

20 32. Specifically, Labor Code section 2802 states that “an employer shall
21 indemnify his or her employees for all necessary expenditures or losses incurred by
22 the employee in direct consequence of the discharge of his or her duties, or of his or
23 her obedience to the directions of the employer.”

24 33. The test for employee status under section 2802 is governed by *S. G.*
25 *Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341.
26 (Lab. Code, § 2783, subd. (a).)

27 34. The California Supreme Court has emphasized that *Borello* applies a
28 statutory purpose test in order to determine which classification (employee or

independent contractor) best effectuates the underlying legislative intent and objective of the statutory scheme at issue. (*Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903, 934.)

35. *Borello*'s emphasis on statutory purpose is broader than and sets it apart from the traditional common-law agency test for employee status that gives considerable weight to an employer's right to control the manner and means by which the product is accomplished. (*Dynamex, supra*, 4 Cal.5th at p. 935.)

B. Allstate exclusive agents operate Allstate's business for Allstate's account and not for their own accounts.

36. Allstate and its affiliated companies sell property, casualty, and life insurance in California.

37. Allstate's core business is selling insurance.

38. Key factors that determine Allstate's success in selling its insurance products are its product offerings, brand recognition, financial strength, and price. The exclusive agents control none of these factors.

39. Allstate runs a profitable business selling insurance and paid over \$11.8 billion in dividends over the past three years alone—\$4.1 billion in 2022, \$3.6 billion in 2021, and \$4.1 billion in 2020—that ultimately benefit its parent, The Allstate Corporation, a publicly traded company. The Allstate Corporation is a holding company with no significant business operations of its own, and it relies on dividends from Allstate as one of the principal sources of cash to pay shareholder dividends and to meet its obligations.

40. Allstate relies on an integrated distribution system of the internet, call centers, and exclusive agents in Allstate-branded agencies, to sell its insurance products and service customers in California. This integrated distribution system furthers Allstate's core strategy of allowing customers to interact with Allstate when, where, and how they want.

1 41. Allstate calls its insurance agents in California “exclusive agents” to
2 differentiate them from independent insurance agents.

3 42. There is no dispute in the insurance industry that independent insurance
4 agents are independent contractors. They own their agencies, including their agency’s
5 books of business. They sell for multiple competing companies and select the
6 company to place their clients with based on their clients’ needs and the amount of
7 commission. If the independent agent terminates his or her relationship with a
8 company, the agent retains the book of business and the relationship with the
9 policyholders, including all the policyholders’ information, and can place that client
10 with a different company. They operate their own business for their own accounts.

11 43. Independent insurance agents also work in offices branded with their
12 individual company name, not the names of the companies they sell insurance for,
13 and they generally are not integrated into an insurance company’s distribution
14 system.

15 44. Insurance companies also generally do not maintain any management
16 structure to manage or otherwise supervise the independent agents they work with.
17 Instead, the companies work to develop relationships with their independent agents to
18 encourage them to sell their products instead of their competitors’ products.

19 45. Allstate does not on information and belief hire established independent
20 agents who own their own books of business to work as exclusive agents in
21 California.

22 46. Instead, Allstate generally recruits people having no prior experience
23 running an agency or selling insurance to work as an Allstate exclusive agent.

24 47. Potential Allstate exclusive agents are people looking for jobs who apply
25 to be an Allstate exclusive agent. They then undergo an interview and evaluation
26 process. Allstate advertises the job of Allstate exclusive agent as a career position on
27 its website along with a link where job seekers can fill out an application. A license to
28

1 sell insurance is not a prerequisite to be an Allstate exclusive agent, and Allstate
2 permits the exclusive agent's licensure after Allstate decides to hire him or her.

3 48. All new hires sign a form Allstate exclusive agent agreement with
4 Allstate and its affiliated companies to sell Allstate insurance products in California.
5 Allstate drafts the form exclusive agent agreement and the terms are non-negotiable,
6 including the classification of the exclusive agent as an independent contractor.

7 49. Allstate uses these form exclusive agent agreements, and other policies
8 and practices commonly applicable to all exclusive agents, to impose an uniform
9 structure on the Allstate-exclusive agent relationship that does not vary by agent.

10 **i. Allstate owns the Allstate agencies, including the book of business,**
11 **that the exclusive agents work in and pay all the expenses for.**

12 50. Allstate advertises its "Allstate exclusive agent" position as an
13 opportunity to "own your agency" and that agents, by paying the agency expenses,
14 will "earn equity in the business you build as an Allstate agency owner." (See e.g.,
15 <https://www.allstatecorporation.com/careers.aspx> and
16 <https://www.allstate.com/lp/allstateagent/index.htm> (last accessed, 3/6/2023).) These
17 statements are false and misleading. Allstate exclusive agents do not own a business
18 independent of Allstate's business.

19 51. Allstate owns the expirations and all policyholder information of the
20 Allstate agency the exclusive agent works in —i.e., the agency's "book of business"
21 and only income producing asset.

22 52. Expirations are an insurance agency's records about policyholders and
23 the agency's most valuable asset to carrying on the business of insurance. Plaintiffs
24 and all other exclusive agents in the putative class have no ownership rights in the
25 expirations or any other aspect of the book of business of the Allstate agency they
26 work in. The book of business and all other policyholder information are Allstate's
27 wholly owned property that Allstate considers to be its exclusive and confidential
28

1 property. Indeed, Allstate maintains that it would suffer irreparable damage if a
2 former exclusive agent kept its book of business after termination.

3 53. Allstate considers the customers of the Allstate agency the exclusive
4 agent works in to be Allstate's customers, not the exclusive agents' customers.
5 Allstate also requires all exclusive agents to agree to non-compete clauses where,
6 upon termination, the exclusive agent agrees to not contact Allstate policyholders or
7 to locate an office within one-mile of the Allstate office they worked in.

8 54. Allstate requires the exclusive agents to pay the expenses to maintain the
9 Allstate agency and grow Allstate's business.

10 55. Allstate will not allow an Allstate exclusive agent to also own an
11 independent insurance agency because Allstate considers that both a breach of the
12 Exclusive Agency Agreement and a conflict of interest. Allstate also retains the right
13 to restrict the exclusive agents from selling insurance of any kind for any other
14 company.

15 56. If the exclusive agent has an opportunity to sell a line of insurance
16 Allstate does not offer, Allstate requires them to place the business through Ivantage,
17 a brokerage owned by an Allstate affiliate who takes a commission on the business,
18 thus allowing its affiliates, and ultimately Allstate's parent company, to profit from
19 the sale.

20 57. All telephone numbers the Allstate exclusive agents use to do business,
21 and that the exclusive agents pay the expense for, are also property of Allstate that the
22 agent must surrender to Allstate upon demand after termination.

23 58. Allstate tells Allstate exclusive agents that "you can sell the business
24 when you retire."¹ That is false. An Allstate exclusive agent has no right to sell the
25 Allstate agency they work in to anyone because Allstate owns the agency.
26
27

28 ¹ <https://www.allstatecorporation.com/careers.aspx>

1 59. Instead, Allstate allows its exclusive agents to have a third party pay
2 them step into their role working in Allstate’s agency. Allstate, not the exclusive
3 agents, controls this process from start to finish. Allstate recruits persons to take over
4 existing Allstate books of business and has absolute discretion to deny a transfer for
5 any reason or no reason.

6 60. Allstate also reserves the right to terminate an exclusive agent with or
7 without cause on ninety days notice. Upon Allstate giving notice, the exclusive agent
8 must immediately cease all work as an Allstate agent.

9 61. Upon an exclusive agent’s termination, the Allstate agency, including
10 the book of business the agent paid all the expenses to build and maintain, remains
11 with Allstate and the exclusive agent keeps nothing.

12 62. Because Allstate has integrated the exclusive agents into its distribution
13 businesses, Allstate’s investment in its Allstate agencies’ business to grow that
14 business dwarfs the investment by any exclusive agent. By way of example, Allstate
15 spends tens of millions of dollars yearly to create a branded business in which agents
16 perform one part of the sales function, including (i) advertising on television, the
17 internet, and the radio; (ii) maintaining a website that includes an “agent finder” tool
18 to allow people to find Allstate agents close to their home; (iii) maintaining an app
19 that allows policyholders to communicate directly with their Allstate agent; and (iv)
20 maintaining Allstate-branded agent websites that allow potential customers to obtain
21 online quotes directly from Allstate or to communicate with the agent or Allstate.
22 Allstate also has employees whose job is to “drive product strategy across Allstate
23 digital assets,” including the agent sites.

24 **ii. Allstate exclusive agents are economically dependent on Allstate.**

25 63. Allstate tells both aspiring and current exclusive agents that they enjoy
26 unlimited earning potential and their success depends on their entrepreneurial skills.

1 64. The Allstate exclusive agents are economically dependent, however,
2 upon Allstate and their opportunity for profit or loss ultimately hinges on Allstate's
3 decisions about its business needs.

4 65. Allstate expects its exclusive agents to sell exclusively for Allstate and
5 to devote all the time they spend selling insurance to selling Allstate's products and
6 servicing Allstate customers.

7 66. Allstate pays its exclusive agents a mix of commissions and bonuses.
8 Allstate sets the exclusive agents' compensation and can lower it at any time, without
9 any negotiation or input from the agents.

10 67. Recently, Allstate cut the commissions it would pay its exclusive agents
11 by 84% for all standard auto, non-standard auto, and non-specialty auto. Previously,
12 the rate was 25% (comprised of a 9% base commission plus 16% variable
13 compensation). Allstate eliminated the variable compensation and set the commission
14 rate at 4%.

15 68. Allstate also restricted sales of its homeowners, condo, and commercial
16 lines, which not only eliminated those income sources for exclusive agents but also
17 interferes with the ability for Allstate exclusive agents to bundle for products for
18 customers or earning additional bonuses for bundling those products.

19 69. Allstate further implemented policies to either slow or even discourage
20 California consumers from either purchasing Allstate insurance products or renewing
21 existing Allstate insurance coverages. For example, Allstate required policyholders to
22 pay at least 50% of premiums for both new and renewal auto policies. Allstate also
23 announced that it was reducing its advertising spending to reduce sales.

24 70. The Allstate exclusive agents had no input into Allstate's decision to cut
25 their commissions and had no option but to accept them. Likewise, the Allstate
26 exclusive agents had no input into any other policies Allstate implemented to slow or
27 discourage sales and had no option but to accept them.

28

1 71. Allstate's commission cuts and other policies have had and continue to
 2 have a severe negative economic impact on all Allstate exclusive agents through no
 3 fault of their own. The cuts are tethered only to Allstate's financial goals rather than
 4 any fundamental change in the job Allstate hires the agents to do. Yet Allstate's
 5 ownership and control over the relationship means that Allstate's unilateral actions
 6 have in one fell swoop rendered many of the agencies its exclusive agents work in
 7 and depend on for their income either materially less profitable or unprofitable.

8 **iii. Other facts showing that Allstate treats exclusive agents in**
 9 **California as employees for purposes of section 2802.**

10 72. Allstate exclusive agents simply have a job running Allstate's agencies
 11 to sell Allstate policies and service Allstate policyholders "credited" to their account
 12 as part of Allstate's integrated distribution system.

13 73. Allstate advertises the job of exclusive agent as a career position at
 14 Allstate. There is no term and an exclusive agent can spend their careers working for
 15 Allstate to sell Allstate products and service Allstate customers.

16 74. Allstate integrates the exclusive agents into Allstate's integrated sales
 17 distribution system. The exclusive agents sit at the bottom of Allstate's top-down
 18 hierarchy of managers whose full-time job is to supervise the exclusive agents,
 19 including sales activities, to drive production and meet Allstate's sales goals. Each
 20 exclusive agent reports to a Sales Market Leader, who reports to another Allstate
 21 manager, all of whom are employees and all of whom are part of a hierarchy of
 22 Allstate managers who ultimately report to an officer of Allstate.

23 75. This hierarchy reflects how the exclusive agents are not working in
 24 businesses separate from Allstate. Rather, exclusive agents work with other Allstate
 25 employees to form one part of Allstate's integrated sales distribution system.

26 76. Allstate has the right to determine the location of the Allstate agency and
 27 has the right to approve or veto the exclusive agent's proposed location for the
 28

1 Allstate office. Allstate also retains the right to determine whether an exclusive agent
2 can open an office at a second location.

3 77. Allstate monitors the size of its Allstate agencies and can decide whether
4 it wants larger or smaller agencies. In recent years, Allstate decided that it was better
5 for business to have fewer but larger agencies, and it built larger agencies by merging
6 books of business from terminated exclusive agents and having its current exclusive
7 agents run these larger agencies.

8 78. Allstate controls whether an agent can share an office with another
9 Allstate agent, and it can veto an exclusive agent's decision to reduce costs by
10 sharing offices.

11 79. Allstate expects the undivided full-time service of each exclusive agent
12 to selling Allstate products and servicing Allstate customers.

13 80. While agents do not work in Allstate corporate headquarters, Allstate
14 requires exclusive agents to work in a Allstate-branded agency that must have a
15 standard and uniform look. Allstate retains control over the appearance of the agency
16 to ensure the Allstate brand is prominently displayed, both exterior and interior, and
17 that the Allstate agency meets whatever criteria Allstate sets for professional
18 appearance.

19 81. Allstate has the right to control the hours that the Allstate agency is open
20 for business. For example, the Allstate currently requires that the exclusive agents
21 keep the Allstate agencies open for no less than 45 hours each week.

22 82. Allstate has the right to physically inspect any Allstate agency to ensure
23 compliance with its standards. Allstate also has the right to require exclusive agents
24 to meet with its representatives at Allstate's request to discuss any business topics.

25 83. Allstate controls the exclusive agents' online presence. Allstate requires
26 the exclusive agents to do business using an approved Allstate-branded email address
27 and an Allstate-branded and controlled agency website. Allstate monitors the agents'
28

1 email and website presence, and Allstate retains the exclusive agent's website, email,
2 and email address when the agent terminates.

3 84. Allstate expects the exclusive agents to hire employees to work in the
4 Allstate agency. While Allstate refuses to pay for the expense of those employees, it
5 requires those employees to sign non-competes that restrict the employee's ability to
6 work or to compete against Allstate after termination.

7 85. Allstate has the right to determine who can work in the Allstate agency.
8 For example, an exclusive agent may want to hire a licensed person as an employee
9 in the Allstate agency, but Allstate can veto that hire by refusing to appoint them.

10 86. Allstate has created a job position for workers in Allstate agencies called
11 Licensed Sales Professional. Allstate recruits Licensed Sales Professionals on its
12 website, where it maintains a link for them to apply for that position as a staff
13 member for an Allstate exclusive agent.

14 87. Allstate trains the exclusive agents on how to do their jobs, including on
15 how to run an Allstate insurance agency, sell insurance, and service Allstate
16 customers. Training is not limited to teaching agents about Allstate products or
17 regulatory compliance issues.

18 88. Allstate can, and does, monitor and drive agent activities.

19 89. Allstate also has the right to require agents to do activities without
20 compensation.

21 90. Allstate can require exclusive agents, particularly new agents, to submit
22 business plans to Allstate's managers stating the various sales activities the agent
23 intends to pursue.

24 91. Allstate managers also have yearly meetings with the exclusive agents
25 where they lay out written sales plans that Allstate expect the agents to follow and
26 then monitors the exclusive agent's progress.

27 92. The Allstate Defendant also monitors the exclusive agents' sales
28 activities, not just production (premiums).

1 93. Allstate’s rights over the exclusive agent and the Allstate agency remain
 2 the same as those listed above regardless of whether the agent incorporates. If the
 3 exclusive agent incorporates, Allstate has developed a “C version” of the Exclusive
 4 Agent Agreement that is not materially different than the “S version” signed
 5 exclusive agents who operate as sole proprietorships. In both versions, Allstate
 6 contracts with the key person—the exclusive agent— and “C version” is only with
 7 the exclusive agent’s company in name. The material terms of the two agreements are
 8 also identical in all respects, with the only difference being that Allstate asserts
 9 control over material aspects of the incorporated entity to cement its control.

10 **C. Examples of the categories of expenses Allstate requires the**
 11 **exclusive agents to bear to do Allstate’s business.**

12 94. Defendant requires their exclusive agents to pay, without
 13 reimbursement, various categories expenses necessary to operate the Allstate’s
 14 agencies. These expenses include, among other, the following:

- 15 a. The expense of the office space for the agency, such as the lease. An
 16 exclusive agent cannot work from a home office.
- 17 b. The expense of branding the interior and exterior of the Allstate agency.
- 18 c. The expense of licensed and appointed staff that Allstate expects to work
 19 in the Allstate agency. Indeed, upon information and belief, Allstate
 20 maintains criteria for the number of staff that it expects to work in an
 21 Allstate agency based on the number of Allstate policies in force.
- 22 d. The expenses of the errors and omissions policy Allstate required
 23 exclusive agents to carry.
- 24 e. The expense for phones to do Allstate business, including Allstate
 25 Agency Voice, a centralized telephone system that Allstate requires
 26 exclusive agents to use.
- 27 f. The expense for internet access that Allstate requires all Allstate
 28 agencies must have to do business.

- g. The expense of Allstate approved computers with Allstate software that Allstate requires to be used in the Allstate agencies.
- h. The expense of advertising promoting Allstate's products and brand. Allstate requires agents to sell exclusively for Allstate, and Allstate must approve all advertising using its brand or name, but Allstate does not reimburse agents for this advertising.

V. CLASS ALLEGATIONS

95. Class Definition: Plaintiffs bring this action on behalf of themselves and the following Classes pursuant to Code of Civil Procedure section 382 and Fed. R. Civ. P. 23: All individuals who signed an Allstate Exclusive Agency Agreement and who worked as an Allstate exclusive agent in the State of California.

96. The Class Period is the three years immediately preceding the filing of the Complaint until such time as notice is mailed to the Class. Excluded from the Class are any judge, justice or judicial officer presiding over this matter and members of their immediate families and judicial staff.

97. Numerosity/Ascertainability: The members of the Class are so numerous that joinder of all members would be unfeasible and not practicable. Plaintiff estimates that there are more than 700 individuals in the Class. The identity of Class members is readily ascertainable from Defendant's records.

98. Common Questions of Law and Fact Predominate/Well Defined Community of Interest: There are common questions of law and fact which predominate over questions affecting only individual members including, without limitation to:

- a. Whether Defendant violated Labor Code section 2802 by failing to reimburse Plaintiffs and the Class for all necessary expenditures or losses incurred by them in direct consequence of the discharge of their duties; and

1 b. Whether Defendant treated Plaintiffs and Class members as employees
2 under Labor Code section 2802 and not independent contractors.

3 99. Predominance of Common Questions: The common questions of law set
4 forth above are substantial and stem from Defendant's policies and/or practices
5 applicable to each individual Class member. As such, these common questions
6 establishing Defendant's liability under the statute predominate over individual
7 questions concerning each individual Class member's amount of his or her damages.

8 100. Typicality: Plaintiffs' claims are typical of the claims of the Class
9 because, as alleged herein, Plaintiffs, like the members of the Classes, were
10 employees for purposes of Labor Code section 2802 and not reimbursed for all
11 necessary work expenditures Defendant required them to incur.

12 101. Adequacy of Representation: Plaintiffs are fully prepared to take all
13 necessary steps to represent fairly and adequately the interests of the members of the
14 Class. Moreover, Plaintiffs' attorneys are experienced in prosecuting class actions
15 and employee misclassification cases and are committed to vigorously prosecuting
16 this action on behalf of the members of the Class.

17 102. Superiority: The California Labor Code is broadly remedial in nature
18 and serves an important public interest in establishing minimum working conditions
19 and standards in California. These laws and labor standards protect the average
20 working employee from exploitation by employers who have the responsibility to
21 follow the laws and who may seek to take advantage of superior economic and
22 bargaining power in setting onerous terms and conditions of employment. The nature
23 of this action and the format of laws available to Plaintiffs and members of the Class
24 make the class action format a particularly efficient and appropriate procedure to
25 redress the violations alleged herein. If each employee/exclusive agent were required
26 to file an individual lawsuit, Defendant would necessarily gain an unconscionable
27 advantage since it would be able to exploit and overwhelm the limited resources of
28 each individual plaintiff with its vastly superior financial and legal resources.

Moreover, requiring each member of the Class to pursue an individual remedy would also discourage the assertion of lawful claims by employees, many of whom who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual Class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class members against Defendant herein; would establish potentially incompatible standards of conduct for Defendant; and/or create inconsistent legal determinations with respect to individual Class members which would, as a practical matter, be dispositive of the interest of the other Class members or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attendant thereto.

103. As such, the Class is maintainable under Code of Civil Procedure section 382 and Fed. R. Civ. P. 23.

VI. CLAIMS FOR RELIEF

COUNT ONE

FOR VIOLATION OF LABOR CODE SECTION 2802

104. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs as though fully set forth herein.

105. At all relevant times herein, Defendant was subject to Labor Code section 2802, which requires employers to reimburse the expenses incurred by their employees. At all relevant times herein, Defendant was also subject to Labor Code section 2804, which provides that a claim under section 2802 may not be waived.

106. As a proximate result of Defendant's policies and/or practices alleged above, Defendant violated Labor Code section 2802 by not reimbursing Plaintiffs and

1 members of the Class for expenses they incurred to run the Allstate agencies they
2 worked and were damaged in amounts to be shown according to proof.

3 107. Plaintiff and members of the Class are entitled to attorneys' fees and
4 costs of suit pursuant to Labor Code section 2802(c) and Code of Civil Procedure §
5 1021.5 for bringing this action plus pre-judgment interest accruing from the date on
6 which Plaintiffs and the Class members incurred the necessary expenditure through to
7 the date of payment. (Labor Code, § 2802(b).)

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for the following relief on behalf of themselves
10 and the Class against the Defendant:

11 1. Certification of this action as a class action and appointment of Plaintiffs
12 and Plaintiffs' counsel to represent the Class;

13 2. A declaratory judgment that Defendant violated Labor Code section
14 2802 by treating Plaintiffs and Class members as employees but failing to indemnify
15 Plaintiffs and Class members for necessary business expenditures;

16 3. Indemnification of the Plaintiffs' and Class Members' unreimbursed
17 business expenses;

18 4. Reasonable attorneys' fees and costs, pursuant to California Code of
19 Civil Procedure section 1021.5 and Labor Code section 2802, and/or other applicable
20 law;

21 5. Costs of suit herein;

22 6. Pre-judgment interest pursuant to Labor Code section 2802 and post
23 judgment interest; and

24 7. Such other and further relief as the Court may deem appropriate.
25

26 **JURY TRIAL DEMAND**

27 Plaintiffs hereby demand a trial by jury on all claims.
28

1 Dated: November 22, 2023

CRUEGER DICKINSON LLC

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