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Pro Hac Vice Applications Forthcoming

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

WILLIAM ORAGE, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

AMWAY CORP. and DOES 1 through 10,
inclusive,

Defendants.

ENDORSED
FILED
ALAMEDA COUNTY
JAN 10 2020
CLERK OF THE SUPERIOR COURT
By Dayana Deputy

Case No.

RG20049773

REPRESENTATIVE ACTION

COMPLAINT FOR:

**CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 et seq.) FOR:
(1) FAILURE TO PAY MINIMUM WAGE;
(2) FAILURE TO PROVIDE TOOLS
NEEDED TO PERFORM JOB; AND
(3) FAILURE TO MAINTAIN RECORDS**

COMPLAINT

1 Plaintiff William Orage (“Plaintiff”), individually and in his representative capacity, and on
2 behalf of the California Labor Workforce Development Agency (“LWDA”), pursuant to the
3 Private Attorney General Act, Labor Code §§ 2698 *et seq.* (“PAGA”), seeks civil penalties from
4 Defendant Amway Corp. (“Amway”) and alleges as follows:

5 I. INTRODUCTION

6 1. Amway describes itself as “the world’s largest direct selling company (\$8.8B
7 reported sales, 2018).”¹ Amway “manufacture[s] and distribute[s] nutrition, beauty, personal care
8 and home products—which are exclusively sold in 100 countries through Amway Independent
9 Business Owners” (“IBOs”).²

10 2. As a direct selling company, Amway sells its products to consumers in a non-retail
11 environment through a “multi-level marketing” system in which purported IBOs recruit others to
12 join the Amway “opportunity.”

13 3. Amway is in the business of recruiting IBOs, and IBOs are the core of Amway’s
14 workforce and its principal source of revenue. IBOs pay fees to join and remain part of Amway,
15 purchase Amway products for their own use, and recruit new IBOs who also pay fees and purchase
16 products. The more IBOs Amway recruits, the more money Amway makes.

17 4. To work for Amway, IBOs must pay Amway sign-up and annual renewal fees.
18 Amway encourages and incentivizes IBOs to recruit others to sign on with Amway and pay these
19 IBO fees.

20 5. Although Amway has classified Plaintiff and other Amway IBOs as “independent
21 contractors” under the terms of its form contracts, IBOs are Amway employees for purposes of the
22 Industrial Welfare Commission’s (“IWC”) Minimum Wage Order (“Minimum Wage Order”) and
23 IWC Wage Order No. 4 (“Wage Order”), and related Labor Code sections that underlie the claims
24 here.

25 6. Amway failed to pay Plaintiff and other IBOs in California minimum wage for all
26 hours worked, as required by California law.

27
28 ¹ https://www.amway.com/en_US/about-amway

² *Id.*

1 7. In exchange for the required IBO fees, Amway gives the IBOs access to the tools
2 necessary to work as Amway IBOs.

3 8. Those tools include access to Amway's web portal, which allow IBOs to sign up
4 recruits as IBOs and to sell and purchase Amway products, and brochures used to recruit IBOs and
5 sell products.

6 9. In addition, Amway also strongly encourages new IBOs to purchase its "IBO
7 Product Starter Kit,"³ a collection of Amway products to share with IBO recruit prospects and
8 customers. Amway promotes this purchase as a "smart choice" and asserts that "IBOs who
9 purchase the Product Starter Kit when they register are more productive and have a stronger start
10 than those who do not buy the kit."⁴

11 10. These compelled purchases by Plaintiff and other IBOs violate California law,
12 which requires the employer to provide such work-related tools.

13 11. Lastly, Amway failed to keep the necessary employment records for Plaintiff and
14 other IBOs in California, including documentation of hours worked and meal periods taken and/or
15 missed, and to make those records available to IBOs for review.

16 12. On October 17, 2019, Plaintiff duly filed a letter online with the California Labor
17 Workforce & Development Agency ("LWDA"). He provided a copy of the letter to Amway via
18 certified mail. The letter notified the LWDA and Amway of the violations of the Minimum Wage
19 Order, Wage Order, and Labor Code violations alleged herein.

20 13. Plaintiff has received no response from the LWDA to date. Accordingly, Plaintiff
21 now brings this representative action under PAGA, Labor Code §§ 2698 *et seq.*, solely to seek civil
22 penalties on behalf of himself and others who have worked as Amway IBOs in California during
23 the period of October 17, 2018 through the present ("PAGA Period").

24 II. VENUE

25 14. Venue is proper in the County of Alameda, pursuant to Code of Civil Procedure
26 § 395.5. Amway transacts business, and/or has agents in Alameda County. Plaintiff has performed

27
28 ³ Amway Business Reference Guide, p. 4.

⁴ *Id.*

1 work for Amway in Alameda County. The unlawful acts herein have direct effect on Plaintiff and
2 other aggrieved employees within the State of California and within the County of Alameda.
3 Amway has failed to register a California-based principal place of business office with the
4 California Secretary of State, as is required for a foreign corporation.

5 **III. PARTIES**

6 15. Plaintiff William Orage worked as an IBO for Amway within the State of California
7 and within Alameda County during the PAGA period. Plaintiff worked for Amway from
8 approximately January 2015 to February 2019. He resides in Vallejo, California.

9 16. Defendant Amway Corp. is a privately held corporation, organized and operated
10 under the laws of the Commonwealth of Virginia, with its principal executive offices in Ada,
11 Michigan.

12 17. The true names and capacities of persons or entities, whether individual, corporate,
13 associate, or otherwise, sued herein as DOES 1 through 10, inclusive, are currently unknown to
14 Plaintiff, who therefore sues Defendant by such fictitious names under Code of Civil Procedure
15 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
16 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
17 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
18 capacities of the Defendants designated herein as DOES when such identities become known.

19 18. All of Plaintiff's claims stated herein are asserted against Defendants and any of
20 their owners, predecessors, successors, subsidiaries, and/or assigns.

21 19. Plaintiff is informed and believes, and based thereon alleges, that all Defendants
22 have violated the Minimum Wage Order, Wage Order, and related Labor Code provisions acting as
23 joint employers or as a single integrated employer of Plaintiff and other IBOs working in
24 California.

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1 IV. FACTS

2 *Amway Engages IBOs to Recruit Other IBOs and to Promote its Business and Products*

3 20. To work as an Amway IBO, individuals must enter into and “comply with the IBO
4 Contract including the Rules of Conduct.”⁵

5 21. The IBO Contract labels Amway IBOs as “independent contractor[s].”

6 22. New IBOs must pay a sign-up fee.

7 23. In exchange for that fee, Amway provides IBOs with tools necessary to perform
8 their job, including Amway product brochures to share with recruits and customers and access to a
9 website portal – referred to by Amway as a “Personal Retail Website” – to register new IBO
10 recruits, register and create profiles for customers, and order Amway products and allow customers
11 to order products using the IBO’s number.

12 24. In addition, Amway also strongly encourages new IBOs to purchase its “IBO
13 Product Starter Kit,”⁶ a collection of popular Amway products to display to recruits and customers.
14 Amway promotes this purchase as a “smart choice” and asserts that “IBOs who purchase the
15 Product Starter Kit when they register are more productive and have a stronger start than those who
16 do not buy the kit.”⁷ To continue serving as IBOs and using the tools provided by Amway,
17 individuals must pay an annual business renewal fee and renew the IBO contract.

18 *Plaintiff’s Experience*

19 25. Plaintiff William Orage became an IBO in 2015. He paid Amway a sign-up fee of
20 approximately \$175.00.

21 26. Mr. Orage was recruited by his “sponsors,” a married couple that were active IBOs
22 with Amway.

23 27. Mr. Orage’s sponsors and other IBOs who joined Amway before him as part of the
24 same sponsorship chain formed Orage’s “upline.” Upline IBOs earn compensation on products
25 purchased and/or sold by their “downline” IBOs, as more fully described below. The bigger the
26 downline, the more compensation an IBO makes.

27 ⁵ Amway Business Reference Guide, p. 2.

28 ⁶ Amway Business Reference Guide, p. 4.

⁷ *Id.*

1 28. At his sponsors' urging, Mr. Orage joined an IBO organization called World Wide
2 Group, LLC, in order to access trainings, meetings, and conferences dedicated to recruiting, training,
3 and coaching Amway IBOs.

4 29. World Wide Group, LLC, is an Amway-accredited "Approved Provider," authorized
5 by Amway "to provide IBOs with support such as conferences, literature, webinars, mentoring, and
6 more."⁸

7 30. World Wide Group, LLC, is managed by Amway IBOs who have built their
8 downlines to achieve "Diamond" level or above inside Amway's IBO hierarchy.

9 31. Once in "active" IBO status, Mr. Orage spent between 10 and 20 hours per week
10 prospecting for new recruits, attending meetings and conferences, and listening to audio recordings,
11 all at the direction of his uplines.

12 32. Mr. Orage estimates that he paid Amway approximately \$450 in annual renewal fees.

13 33. During his time as an IBO, Mr. Orage personally purchased approximately \$50,000
14 in Amway products.

15 34. He made only two product sales – both to his mother – during his four-year tenure
16 with Amway.

17 35. Mr. Orage focused his efforts as an IBO on recruiting prospective IBOs but was
18 unable to convince anyone to sign up to be an Amway IBO.

19 36. Between 2015 and 2018 Amway paid Mr. Orage a total of \$12,671. Of this, all but a
20 few dollars were rebates for products he purchased for himself.

21 37. Amway paid nothing to Mr. Orage for the many hours he spent trying to recruit new
22 IBOs, including many hours of meetings and trainings.

23 ***Amway's Business Model Centers on IBO Recruitment***

24 38. Amway's business model focuses on the recruitment of IBOs and the fees that flow
25 from that recruitment.

26 39. Amway generates a substantial portion of its revenue from the recruitment of IBOs,
27 like Plaintiff.

28 ⁸ Amway Business Reference Guide, p. 4.

1 40. Amway performs this recruitment through the work of IBOs whose principal task is
2 the recruitment of more IBOs.

3 41. Whenever an IBO signs up with Amway, they pay initial sign-up fees and ongoing
4 annual fees to Amway.

5 42. The fee payments allow the IBOs to obtain and maintain an IBO number, with
6 which they can access a portal on Amway's website to (among other things) perform the work of
7 recruiting more IBOs.

8 43. Through that portal, IBOs can register new recruits, purchase products, and register
9 and create profiles for customers and allow the customers to purchase products online for which the
10 IBOs realize a commission. Amway actively encourages the IBOs to focus on recruitment of IBO
11 prospects, both directly and through its authorized IBO organizations (what Amway calls "approved
12 providers"), such as World Wide Group, LLC.

13 44. Amway authorizes such IBO groups to provide IBO trainings, coaching, mentoring,
14 and other support.

15 45. Amway has authorized IBO organizations like World Wide Group, LLC, to train,
16 coach and direct IBOs through materials and presentations at regular meetings and conferences.

17 46. These organizations disseminate audio files and other online materials that they
18 encourage the IBOs to view and/or listen to.

19 47. Plaintiff and other IBOs spend many hours a month attending these meetings and
20 conferences and listening to the trainings and coaching sessions online.

21 48. On information and belief, Amway reviews and approves of much of the content
22 presented at these trainings, meetings, conferences, and in the audios.

23 49. Much of the materials presented are devoted to instructing IBOs on how to recruit
24 new IBOs and emphasize that such recruitment is key to an IBO's success.

25 50. The primary focus of Amway-approved training and coaching materials – including
26 the audio files – is recruitment of other IBOs to participate in the Amway "opportunity."

27 51. Likewise, Amway's IBO compensation system incentivizes IBOs to recruit new
28 IBOs to join their "downline."

1 52. In its compensation plan, Amway emphasizes that it “rewards you for selling
2 products and services and for registering others as IBOs who do the same” and notes, “Experience
3 has shown that IBOs who register others generally have higher average volume than those who do
4 not.”⁹

5 53. Under Amway’s compensation plan, upline IBOs earn commission payments on
6 products bought and sold by their “downline” IBOs.

7 54. The compensation formulas used by Amway offer IBOs far more potential earnings
8 from “downline” activity than through their own direct sale of product.

9 *Amway’s Control Over IBOs*

10 55. Through its IBO Contract and the Rules of Conduct incorporated therein, Amway
11 controls, directs, and determines the manner and means by which IBOs perform their jobs.

12 56. The Rules of Conduct provide that, if Amway “detects a potential breach of the IBO
13 Contract,” Amway reserves the right to “upline or downline IBOs in the Line of Sponsorship,”
14 suspend some of the IBOs’ rights until certain conditions are satisfied, withhold bonuses or
15 incentive payments, transfer the IBOs, or terminate the IBO Contract, among other things.

16 57. The Rules of Conduct provide that IBOs must initially join Amway in their
17 individual capacity; operating through a corporation, partnership, LLC, or other fictional entity is
18 subject to Amway’s approval.¹⁰

19 58. Amway’s Rules of Conduct do not allow IBOs to sell or transfer an ownership
20 interest in their “Independent Business” without express approval of Amway in writing.¹¹

21 59. The Rules of Conduct only allow the IBO to sell online using a “Personal Retail
22 Website provided by Amway.”¹²

23 60. The Rules of Conduct prohibit an IBO from selling Amway product from any “retail
24 establishment” that the IBO works in or owns.¹³

25 //

26 ⁹ Amway Business Reference Guide, p. A-1.

27 ¹⁰ Amway Business Reference Guide, p. C-2, ¶ 3.3.

28 ¹¹ Amway Business Reference Guide, p. C-10.

¹² Amway Business Reference Guide, p. 4.

¹³ Amway Business Reference Guide, p. C-4, ¶ 4.5.

1 61. The Rules of Conduct prohibit the IBO from selling or displaying Amway product
2 at any “event” without Amway’s authorization.¹⁴

3 62. The Rules of Conduct prohibit the IBO from using any Amway product for any
4 fundraising purposes.¹⁵

5 63. Amway administers its own customer service and “satisfaction guarantee” policy on
6 its products and requires the IBO to provide the same “satisfaction guarantee” on products the IBO
7 sells directly to customers.¹⁶

8 64. The Rules of Conduct regulate how an IBO is to present the Amway business to
9 prospective IBOs, including what materials can be presented and what type of statements are
10 prohibited, and what is required and prohibited in sponsoring a new IBO.¹⁷

11 65. The Rules of Conduct require the IBO to use only Amway-approved “Business
12 Support Materials” (which includes written materials, videos, audio recordings, and online
13 materials) in presenting or promoting the Amway business and products to prospective Amway
14 IBOs and customers.¹⁸

15 66. The Rules of Conduct prohibit “husbands and wives” from registering as separate
16 IBOs; instead, “they must register together as a single IB.”¹⁹ Further, Amway provides, “An IBO
17 will be held accountable for the actions of a spouse, whether or not the spouse is an IBO, so far as
18 the Rules of Conduct are concerned.”²⁰

19 67. The Rules of Conduct include a “Non-Competition and Non-Solicitation” clause
20 that prohibits current and former IBOs from working for other direct marketing or multi-level
21 marketing companies and from selling or marketing products similar to those offered by Amway.²¹

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23 //

24 _____
25 ¹⁴ Amway Business Reference Guide, p. C-5, ¶ 4.5.1-.2.

26 ¹⁵ Amway Business Reference Guide, p. C-6, ¶ 4.21.

27 ¹⁶ Amway Business Reference Guide, p. C-5, ¶ 4.9.

28 ¹⁷ Amway Business Reference Guide, p. C-6, § 5.

¹⁸ Amway Business Reference Guide, p. C-13-C-15, § 7.

¹⁹ Amway Business Reference Guide, p. C-2, ¶ 3.4.

²⁰ Id.

²¹ Amway Business Reference Guide, p. C-8 - C-10, ¶ 6.2.1-6.3.

1 *Amway Ignores its Obligations as the Employer of its IBOs in California*

2 68. Relying on its “independent contractor” classification of the IBOs, Amway has
3 chosen to ignore its employer obligations under California’s wage orders and Labor Code.

4 69. Amway has failed to pay Plaintiff and other IBOs at least minimum wage (under
5 California law) for all hours worked.

6 70. At Amway’s direction, Plaintiff and other IBOs spend significant work time training
7 for and attempting to recruit new IBOs.

8 71. Although IBOs may be eligible to receive income from product sales made by IBOs
9 they are able to recruit, Plaintiff and many other IBOs rarely if ever succeed in recruiting new
10 IBOs.

11 72. Amway pays IBOs nothing for the time they spend on IBO recruiting that does not
12 result in signing up a new IBO.

13 73. Although Amway claims on its website that “active” IBOs in 2016 earned on
14 average \$2,484 annually, upon information and belief, this figure includes rebates on products
15 purchased for personal use.

16 74. In fact, most IBOs earn no net income at all, and many lose money on the Amway
17 “opportunity.”

18 75. Amway’s own website states, “There may also be significant expenses, mostly
19 discretionary, that may be greater in relation to income in the first years of operation.”

20 76. Amway considers an IBO “active” if they have “presented the Amway IBO
21 Compensation Plan” – that is, made a recruitment pitch – to a prospective IBO each month, among
22 other things.

23 77. Amway has failed to keep accurate records showing the actual hours worked and
24 meal periods taken and missed each day by IBOs. Amway has likewise failed to make those
25 records available to IBOs for review.

26 78. In addition, as described above, Amway charges IBOs for tools used to present and
27 promote the Amway business to recruits and promote, sell and distribute its product to customers.

28 //

1 V. CAUSES OF ACTION

2 FIRST CAUSE OF ACTION

3 **PAGA PENALTIES – FAILURE TO PAY MINIMUM WAGE**
4 **(Labor Code §§ 2689 *et seq.*; IWC Minimum Wage Order; IWC Wage Order No. 4;**
5 **Labor Code §§ 1194, 1194.2, 1197)**

6 79. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
7 fully alleged herein.

8 80. During the applicable statutory period under PAGA, Amway employed Plaintiff and
9 other California IBOs yet failed to pay the minimum wages required under the Minimum Wage
10 Order and Wage Order No. 4, and in violation of Labor Code §§ 1194, 1194.2, and 1197.

11 81. As a result of Amway’s failure to pay Plaintiff minimum wage, Plaintiff is an
12 “aggrieved employee” under Labor Code § 2699 and thus has standing to file an action for civil
13 penalties on behalf of himself and other current or former employees to address such violations.

14 82. With respect to these minimum wage violations, Labor Code § 11971.1(a)(1)
15 imposes a civil penalty of one hundred dollars (\$100) for each underpaid employee for each pay
16 period in which the employee was underpaid. For each subsequent violation for each pay period for
17 the same specific offense, the penalty is two hundred fifty dollars (\$250) for each underpaid
18 employee for each pay period for which the employee is underpaid regardless of whether the
19 violation is intentionally committed. For the aforementioned minimum wage violations, Plaintiff
20 hereby seeks recovery of these penalties for himself and all other IBOs who served in California
21 during the PAGA statutory period.

22 SECOND CAUSE OF ACTION

23 **PAGA PENALTIES – FAILURE TO PROVIDE TOOLS & EQUIPMENT**
24 **NEEDED TO PERFORM JOB**
25 **(Labor Code §§ 2689 *et seq.*; IWC Wage Order No. 4, § 9(B); Labor Code §§ 450 and 2802)**

26 83. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
27 fully alleged herein.

28 84. Amway has made Plaintiffs and other similarly situated IBOs pay for certain tools
used to recruit new IBOs and promote and sell Amway product to customers. Such tools include:
(1) access to a portal for Amway’s website used to register new IBOs and process product

1 purchases; (2) product brochures; and (3) product “starter kits” in violation of Wage Order No. 4,
2 § 9(B) and Labor Code § 450. Amway’s failure to reimburse Plaintiff and the IBOs for purchasing
3 the reasonably necessary tools and equipment likewise violates Labor Code § 2802.

4 85. As a result of these violations arising from Plaintiff’s unreimbursed purchase of the
5 tools, Plaintiff is an “aggrieved employee” under Labor Code § 2699 and thus has standing to file
6 an action for civil penalties on behalf of himself and other current or former employees to address
7 such violations.

8 86. Labor Code § 2699 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
9 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
10 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a
11 civil penalty is not specifically provided. For the aforementioned violations of the Labor Code and
12 Wage Order No. 4 provisions regarding the purchase of tools and equipment necessary for the jobs,
13 Plaintiff hereby seeks recovery of these penalties for himself and all other IBOs who served in
14 California during the PAGA statutory period.

15 **THIRD CAUSE OF ACTION**

16 **PAGA PENALTIES – FAILURE TO MAINTAIN RECORDS**
17 **(Labor Code §§ 2689 *et seq.*; IWC Wage Order No. 4, § 7; Labor Code §§ 226, 226.3, 1174,**
18 **and 1174.5)**

19 87. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
20 fully alleged herein.

21 88. Amway failed to keep accurate payroll records and failed to furnish those records to
22 IBOs, as required Wage Order No. 4, § 7 and Labor Code §§ 226, 226.3, 1174, and 1174.5.

23 89. As a result of these record keeping, Plaintiff is an “aggrieved employee” under
24 Labor Code § 2699 and thus has standing to file an action for civil penalties on behalf of himself
25 and other current or former employees to address such violations.

26 90. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a
27 civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250)
28 per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
employee for each subsequent violation of Labor Code § 226(a). With respect to violations of

1 Labor Code § 1174, Labor Code § 1174.5 imposes a civil penalty of five hundred dollars (\$500).
2 Plaintiff hereby seeks recovery of these penalties for himself and all other IBOs who served in
3 California during the PAGA statutory period.


4 **VI. PRAYER FOR RELIEF**

5 91. WHEREFORE, pursuant to PAGA, the Minimum Wage Order, the Wage Order,
6 and other Labor Code provisions listed herein, Plaintiff, in his representative capacity, requests
7 relief as follows:

- 8 a. An award of civil penalties for failure to pay minimum wage;
9 b. An award of civil penalties for failure to provide tools and equipment that
10 are required and/or necessary for IBOs to do their jobs;
11 c. An award of civil penalties for failure to provide accurate and itemized wage
12 statements and for failure to keep accurate payroll records;
13 d. An award to Plaintiff and aggrieved employees of reasonable attorneys' fees
14 and costs, pursuant to Labor Code § 2699(g) and/or other applicable law;
15 e. Pre-judgment and post-judgment interest as provided by law; and
16 f. Such other and further relief as this Court deems just and proper.

17
18 DATED: January 9, 2020

LEONARD CARDER, LLP

19
20 
By: Aaron Kaufmann

21 TOWARDS JUSTICE
22 Juno Turner (*pro hac vice* application
forthcoming)

23 JUSTICE CATALYST LAW, INC.
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