

1 Timothy D. Cohelan, Esq., SBN 60827
Isam C. Khoury, Esq., SBN 58759
2 Michael D. Singer, Esq., SBN 115301
Jeff Geraci, Esq., SBN 151519
3 **COHELAN KHOURY & SINGER**
605 C Street, Suite 200, San Diego, CA 92101
4 TEL: (619) 595-3001
FAX: (619) 595-3000

5 Michael J. Procopio, Esq.
6 Jill S. Kramer, Esq.
LAW OFFICES OF MICHAEL J. PROCOPIO
7 2677 N. Main Street, Suite 860
Santa Ana, CA 92705
8 Telephone: (714)541-1550
Facsimile: (714) 541-1770
9

10 Attorneys for Plaintiffs Kane Picoy and Luis Ponce
on behalf of themselves and all others similarly situated,
11

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF LOS ANGELES

14 KANE PICOY and LUIS PONCE, on behalf of
15 themselves and all others similarly situated,

16 Plaintiffs,

17 v.
18

19 20/20 COMMUNICATIONS, INC., a Delaware
20 Corporation; and DOES 1 through 100,
21 inclusive,

22 Defendants.
23
24
25

CASE NO.

**CLASS ACTION COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF, AND
RESTITUTION**

1. Failure to Reimburse Expenses
(Lab. Code, § 2802)
2. Failure to Pay Wages of Terminated or
Resigned Employees (Labor Code § 201)
3. Illegal Record Keeping
(Labor Code § 226)
4. Violations of Unfair Competition Law
(Bus. & Prof. Code §§ 17200-17208)
5. Statutory Penalties
(Labor Code §§ 2698 *et seq.*)

26 DEMAND FOR JURY TRIAL
27
28

**CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court**

DEC 24 2009

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

BC 428743

1 Plaintiffs KANE PICOY and LUIS PONCE, on behalf of themselves and all others
2 similarly situated (“Plaintiffs”), file this Complaint against Defendant 20/20
3 COMMUNICATIONS, INC., a Delaware Corporation, and DOES 1 through 100, inclusive,
4 (“Defendants”).

5 **I.**

6 **INTRODUCTION**

7 1. This is a civil action seeking recovery against defendant 20/20
8 COMMUNICATIONS, INC., (“20/20” or “Defendant”), on behalf of Plaintiffs and all Class
9 Members who were not fully reimbursed for work-related business expenses, and, were not
10 provided accurate itemized wage statements, plus interest, attorneys’ fees and costs under
11 California Labor Code sections 201, 203, 226(b), 2698, 2802. Plaintiffs, on behalf of themselves
12 and all other members of the putative class, also bring an action based on Defendants’ violations
13 of California Business and Professions Code sections 17200, et seq., as a result of its unlawful,
14 fraudulent and unfair business practices.

15 **II.**

16 **JURISDICTION AND VENUE**

17 2. Plaintiff KANE PICOY is an individual residing in the County of Los Angeles,
18 California. Plaintiff was employed by Defendants in the County of Los Angeles, California at all
19 relevant times. Plaintiff and each putative class member was an employee of Defendant, and/or
20 its operating divisions and subsidiaries, within the State of California and throughout the United
21 States, and was subject to the unlawful policies during the past four (4) years in California.

22 3. Plaintiff LUIS PONCE is an individual residing in the County of Los Angeles,
23 California. Plaintiff was employed by Defendants in the County of Los Angeles, California at all
24 relevant times. Plaintiff and each putative class member was an employee of Defendant, and/or
25 its operating divisions and subsidiaries, within the State of California and throughout the United
26 States, and was subject to the unlawful policies during the past four (4) years in California.

27 4. Plaintiffs bring this action on behalf of themselves and similarly situated
28 employees of Defendants pursuant to Business and Professions Code sections 17200, et. seq.

1 of California, including, but not limited to, the County of Los Angeles, and sells advertising for
2 Defendants' Radio Stations within the State of California.

3 10. Plaintiffs are ignorant of the true names, capacities, relationships and extent of
4 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through
5 100, inclusive, but on information and belief allege that said Defendants are now, and/or at all
6 times mentioned in this Complaint were, licenced to do business and/or actually doing business
7 in the State of California and/or throughout the United States. Plaintiffs will amend this
8 complaint to allege the true names and capacities of the DOE Defendants when ascertained.

9 11. Plaintiffs are informed and believe each Defendant acted, in whole or in part, in
10 all respects pertinent to this action as the agent of the other Defendants, carried out a joint
11 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
12 are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or
13 authorized the acts of each of the remaining Defendants.

14 12. The true names and capacities, whether individual, corporate, associate,
15 or otherwise, of Defendants sued as DOES 1 through 100, inclusive, are currently unknown to
16 Plaintiffs, who therefore sue Defendants by such fictitious names. Plaintiffs are informed and
17 believe, and based thereon allege, that each of the Defendants designated as a DOE is legally
18 responsible in some manner for the unlawful acts alleged. Plaintiffs will seek to amend this
19 Complaint to reflect the true names and capacities of the Defendants designated as DOES when
20 such identities become known.

21 IV.

22 GENERAL ALLEGATIONS

23 13. Plaintiffs bring this action on behalf of themselves and all others similarly
24 situated as a class action pursuant to the California Code of Civil Procedure. The proposed class
25 and subclasses which Plaintiffs seek to represent are composed of current and former non-exempt
26 employees of Defendant 20/20 COMMUNICATIONS, INC. or any of its operating divisions and
27 subsidiaries, with job titles including Account Executive, or Sales Consultant, and/or equivalent
28 positions and/or other similarly designated titles, within the State of California ("class

1 members”). Plaintiffs seek to represent a Class composed of and defined as follows:

2 **CLASS**: All Defendants’ California based Account Executives and other similar
3 positions employed four (4) years before the filing of the Complaint in this action, up to the trial
4 of this matter (“Class Period”).

5 14. The proposed Subclasses which Plaintiffs seek to certify
6 are currently composed of and defined as follows:

7 A. **Subclass “A”**: All of Defendants’ California Account Executives and
8 other similarly situated employee positions employed by defendants
9 throughout the California Class Period, who incurred expenses in the
10 discharge of their duties. (The “Expense Reimbursement Subclass”).

11 B. **Subclass “B”**: All of Defendants’ California Account Executives and
12 other similarly situated employee positions employed by defendants
13 throughout the California Class Period, who resigned or whose
14 employment was terminated and who were not paid all wages due upon
15 termination. (The “Termination Sub-Class”).

16 15. Plaintiffs reserve the right under Rule 3.764(a), California Rules of Court, to
17 amend or modify the class description with greater specificity or further division into subclasses
18 or limitation to particular issues.

19 16. This action has been brought and may properly be maintained as a class action
20 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
21 defined community of interest in the litigation and the proposed Class is easily ascertainable.

22 17. **Ascertainable Class**: The proposed class and each subclass are ascertainable in
23 that their members can be identified and located using information contained in Defendants’
24 payroll and personnel records.

25 18. **Numerosity**: The potential quantity of members of the Class and Subclasses as
26 defined is so numerous that joinder of all members would be unfeasible and impractical. The
27 disposition of their claims through this class action will benefit both the parties and this Court.
28 The quantity of members of the Class and Subclasses is unknown to Plaintiffs at this time,

1 however, it is estimated that each of the Class and Subclasses numbers in excess of 100
2 individuals. The quantity and identity of such membership is readily ascertainable by inspection
3 of Defendants' records.

4 19. **Commonality:** There are questions of law and fact common to the Class and
5 Subclasses which predominate over questions affecting only individual class members,
6 including, without limitation:

- 7 (1) Whether Defendants reimbursed class members for the full value of expenditures
8 and losses incurred in the discharge of their duties with Defendants;
- 9 (2) Whether Defendants' conduct constitutes unfair competition within the meaning
10 of Business and Professions Code sections 17200, *et seq.*;
- 11 (3) Whether members of the Class and Subclasses are entitled to compensatory
12 damages, and if so, the measure such damages;
- 13 (4) Whether the members of the Class and Subclasses are entitled to injunctive relief;
- 14 (5) Whether the members of the Class and Subclasses are entitled to restitution;
- 15 (6) Whether Defendants are liable for pre-judgment interest; and
- 16 (7) Whether Defendants are liable for attorneys' fees and costs.

17 20. **Typicality:** The claims of Plaintiffs are typical of the claims of all member of the
18 Class and Subclasses because all members of the Class and Subclasses sustained injuries and
19 damages arising out of Defendants' common course of conduct in violation of law.

20 21. **Adequacy of Representation:** Plaintiffs are adequate representatives of the
21 Class and Subclasses, and will fairly protect the interests of the members of the Class and
22 Subclasses, have no interests antagonistic to the members of the Class and Subclasses, and will
23 vigorously pursue this suit. Plaintiffs' attorneys are competent, skilled and experienced in
24 litigating matters of this type, including large employment class actions.

25 22. **Superiority of Class Action:** A class action is superior to other available means
26 for the fair and efficient adjudication of this controversy. Individual joinder of all Class
27 Members is not practicable, and questions of law and fact common to the Class predominate over
28 any questions affecting only individual members of the Class.

1 violation occurs; and

2 B) One hundred dollars (\$100.00) per employee for each violation in a
3 subsequent pay period, not to exceed \$4,000 per claimant; and

4 C) Pursuant to Labor Code section 226(g), the Plaintiffs and class members
5 are entitled to injunctive relief to ensure Defendants' compliance with
6 Labor Code section 226.

7 38. The Plaintiffs and class members are entitled to an award of costs and
8 reasonable attorneys' fees.

9 39. Defendants have knowingly and intentionally failed to comply with Labor
10 Code section 226(a) on each and every wage statement provided to Plaintiffs and class members.

11 **FOURTH CAUSE OF ACTION**
12 **Violation of the Unfair Competition Law**
13 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

14 40. Plaintiffs reallege each paragraph of this Complaint as though fully set forth.

15 41. Defendants' failure to reimburse business expenses under the IWC Wage Orders
16 and under the California Labor Code, is unlawful and prohibited by Business and Professions
17 Code section 17200 *et seq.*

18 42. The actions of Defendants in failing to compensate Plaintiffs and members of the
19 Plaintiff Class in a lawful manner constitute false, unfair, fraudulent and/or deceptive business
20 practices, within the meaning of Business and Professions Code section 17200, *et seq.*

21 43. Plaintiffs are entitled to an injunction, specific performance under Business and
22 Professions Code section 17202, and/or other equitable relief against such unlawful practices in
23 order to prevent future loss, for which there is no adequate remedy at law, and to avoid a
24 multiplicity of lawsuits. Plaintiffs bring this cause individually and as representatives of all
25 others subject to Defendants' unlawful acts and practices.

26 44. As a result of their unlawful acts, Defendants have reaped and continue to reap
27 unfair benefits at the expense of Plaintiffs, and the Class they seeks to represent. Defendants
28 should be enjoined from this activity, caused to specifically perform their obligations, and made
to disgorge these ill-gotten gains and restore to Plaintiffs and the members of the Plaintiff Class

1 the wrongfully withheld wages and/or other monies pursuant to Business and Professions Code
2 section 17200 *et seq.* Plaintiffs are informed and believe that Defendants are unjustly enriched
3 through their failure to reimburse business expenses to Plaintiffs and members of the Plaintiff
4 Class.

5 45. Plaintiffs are informed and believe that Plaintiffs and members of the Plaintiff
6 Class are prejudiced by Defendants' unfair trade practices.

7 46. Plaintiffs, individually and on behalf of all employees similarly situated, are
8 entitled to equitable and injunctive relief, including full restitution, specific performance, and/or
9 disgorgement of all wages unlawfully withheld as a result of Defendants' business acts and
10 practices.

11 47. The unlawful conduct alleged is continuing and there is no indication Defendants
12 will not continue such activity. Plaintiffs allege that if Defendants are not enjoined from the
13 conduct set forth in this Complaint, they will continue to fail to reimburse business expenses, and
14 will fail to pay and avoid paying appropriate taxes, insurance, and unemployment withholdings.

15 48. Plaintiffs further request that the Court issue a preliminary and permanent
16 injunction prohibiting Defendants from failing to reimburse business expenses.

17 **FIFTH CAUSE OF ACTION**
18 **Statutory Penalties**
(Labor Code §§ 2698 *et seq.*)

19 49. Plaintiffs reallege each paragraph of this Complaint as though fully set forth.

20 50. California Labor Code Division 2, Part 2, Chapter 1, Section 558 provides:

21 “(a) Any employer or other person acting on behalf of an
22 employer who violates, or causes to be violated, a section of this
23 chapter or any provision regulating hours and days of work in any
24 order of the Industrial Welfare Commission shall be subject to a
25 civil penalty as follows: (1) For any initial violation, fifty dollars
26 (\$50) for each underpaid employee for each pay period for which
27 the employee was underpaid in addition to an amount sufficient to
28 recover underpaid wages. (2) For each subsequent violation, one

1 hundred dollars (\$100) for each underpaid employee for each pay
2 period for which the employee was underpaid in addition to an
3 amount sufficient to recover underpaid wages. (3) Wages
4 recovered pursuant to this section shall be paid to the affected
5 employee.”

6 51. Defendants’ failure to provide employees with reimbursement for business
7 expenses, in accordance with California law, including California Labor Code Section 2802,
8 entitles Plaintiffs to recover a civil penalty as aggrieved employees on behalf of themselves and
9 other Account Executives, and similar positions, employed by Defendants, pursuant to California
10 Labor Code Section 558.

11 52. Defendants’ failure to provide employees with all compensation due at the time of
12 termination of employment, in accordance with California Labor Code Section 201-203, entitles
13 Plaintiffs to recover a civil penalty on behalf of other former Account Executives, and other
14 similar positions, employed by Defendants, pursuant to California Labor Code Section 2699(f).

15 53. Plaintiffs have complied with the procedural requirements specified in Labor
16 Code Section 2699.3 as to each of the alleged violations. A true and correct copy of the notice
17 sent via certified mail to the Defendant and California’s Labor and Workforce Development
18 Agency are attached as Exhibit “1.”

19 54. As a result of the violations alleged, Plaintiffs, as aggrieved employees on behalf
20 of themselves and other current and former Account Executives, and other similar positions,
21 employed by Defendants, seeks all civil penalties available pursuant to Labor Code Section 2699,
22 including all civil penalties, attorneys’ fees, expenses, and costs of suit.

23 55. Enforcement of statutory provisions to protect workers and to ensure proper and
24 prompt payment of wages is a fundamental public interest. Plaintiffs’ successful enforcement of
25 important rights affecting public interest will confer a significant benefit upon the general public.
26 Private enforcement of these rights is necessary, as no public agency has pursued enforcement.
27 Plaintiffs are incurring a financial burden in pursuing this action and it would be against the
28 interests of justice to require the payment of attorneys’ fees and costs from any recovery

1 obtained, pursuant to, among other authorities, Labor Code Sections 218.5, and 2699, and Code
2 of Civil Procedure Section 1021.5.

3 56. If Plaintiffs succeed in enforcing these rights affecting the public interest, then
4 attorneys' fees may be awarded to Plaintiffs and against Defendants under Code of Civil
5 Procedure Section 1021.5 and other applicable laws, in part because:

- 6 A. A successful outcome will enforce important rights affecting the public interest by
7 requiring Defendants to comply with California's wage and hour, and unfair
8 business practices laws;
- 9 B. This action will result in a significant benefit to Plaintiffs, the Class, and the
10 general public by bringing to a halt unlawful, unfair, deceptive, and misleading
11 activity, and by causing the return of ill-gotten gains obtained by Defendants;
- 12 C. Unless this action is prosecuted, members of the Class and general public will not
13 recover those monies, and many of Defendants' employees would not be aware
14 they were victimized by Defendants' wrongful acts and practices;
- 15 D. Unless this action is prosecuted, Defendants will continue to mislead its
16 employees about the true nature of their rights and remedies under the wage and
17 hour laws; and
- 18 E. An award of attorneys' fees and costs is necessary for the prosecution of this
19 action and will result in a benefit to Plaintiffs, the Class, and to the public in
20 general by preventing Defendants from continuing to circumvent wage and hour
21 statutes which the California legislature and courts have recognized are not merely
22 matters of private concern between employer and employee, but are matters of
23 public concern, designed to provide minimum substantive guarantees to
24 individual workers, and are essential to public welfare.

25 **VI.**
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray for judgment as follows:

- 28 1. That the Court determine this action may be maintained as a class action;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. For compensatory damages in an amount according to proof with interest;
3. For economic and/or special damages in an amount according to proof with interest;
4. That the court determine that the failure of the Defendants to fully reimburse Plaintiffs, and each Plaintiff Class member and Subclass member, for work-related expenditures and losses be adjudged and decreed a violation of applicable IWC Wage Orders, regulations and statutes;
5. For penalties for employees who were owed wages at termination under Labor Code section 203;
6. That Defendants be found to have engaged in unfair competition in violation of section 17200 of the California Business and Professions Code;
7. That Defendants be ordered and enjoined to make restitution to the Class due to its unfair competition, including disgorgement of its wrongfully-obtained revenues, earnings, profits, compensation, and benefits, pursuant to California Business and Professions Code sections 17203 and 17204;
8. That Defendants be enjoined to cease and desist from unfair competition in violation of section 17200 of the California Business and Professions Code;
9. An injunction against Defendants and their officers, agents, successors, employees, representative, and any and all persons acting in concert with them, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
10. Pre-Judgment and Post-Judgement interest, as provided by Law; and
11. For such other and further relief as the Court deems just and proper.

COHELAN KHOURY & SINGER
Counsel for Plaintiffs Kane Picoy and Luis Ponce

Dated: December 22, 2009

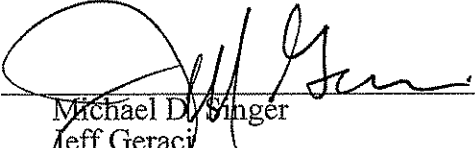
By: 
Michael D. Singer
Jeff Geraci

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN,* APLC
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER,*APLC

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

JEFF GERACI
J. JASON HILL†
KIMBERLY D. NEILSON
CHRISTOPHER A. OLSEN

(† Also admitted in Illinois)

(* Also admitted in the District of Columbia)
(* Also admitted in Colorado)

December 22, 2009

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2699.3

To: Labor and Workforce Development Agency and 20/20 Communications, Inc.

**From: Luis Ponce and Kane Picoy on behalf of themselves and all current and/or former
Sales Consultants, and other similar titles and positions**

Factual Statement:

Luis Ponce was employed, and Kane Picoy is employed by 20/20 Communications, Inc. ("20/20") as Sales Consultants, or other similar titles. During their employment, 20/20 has failed to reimburse them, and similarly situated employees, for expenses incurred in the discharge of their duties. They are informed and believe that such violations are ongoing, systematic and continuous. They intend to bring an action against 20/20 under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.

Labor Code Violations and Remedies:

Mr. Ponce worked as a Sales Consultant for 20/20 from March 2009 through November 2009. Mr. Picoy began work with the Company in May 2009. Their positions performed functions which are not exempt from California's wage and hour laws requiring reimbursement for expenses incurred by employees in the discharge of their duties. During their employment, 20/20 failed to reimburse them, and other similarly situated employees fully and/or partially, for work related expenses, including, but not limited to, automobile mileage and cell phone charges. It is believed that for a period of at least four years prior to December 2009, 20/20 committed these violations.

20/20 Communications' failure to reimburse employees, fully and/or partially, for work related expenses, establishes the right to recover wages and penalties as set forth in the Labor Code.

Mr. Ponce and Mr. Picoy, and other similarly situated employees, are entitled to recover unpaid wages, with interest, penalties, and attorneys fees as permitted by the Labor Code, including sections 203, 210, 2802, 2804. They intend to bring an action against 20/20 under the Private Attorney General Act ("PAGA") to recover wages, interest, penalties, and attorneys' fees.

Victoria Bradshaw, Secretary
California LWDA
December 22, 2009
Page 2

If permitted, they will seek any and all amounts capable of being collected by the Commission pursuant to Labor Code Section 2699.3 *et seq.*

Respectfully submitted,
COHELAN KHOURY & SINGER



Jeff Geraci

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Victoria Bradshaw, Secretary
California Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

20/20 Communications, Inc.
3575 Lone Star Circle, Suite 300
Fort Worth, TX 76617

20/20 Communications, Inc.
c/o CSC - Lawyers Incorporating Service
2730 Gateway Oaks Dr., Suite 100
Sacramento, CA 95833