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ELECTRONICALLY FILED
Superior Court of California,
County of Orange
05/26/2015 at 05:51:48 PM
Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

16 30-2015-00789540-CU-DE-CXC

17 LUANN BENTON, individually and on behalf
18 of all others similarly situated,

19 Plaintiff,

20 vs.

21 PENNYSAVER USA, LLC, a California
22 limited liability company; OPENGATE
23 CAPITAL, LLC, a California limited liability
company; and DOES 1 through 100, inclusive,

24 Defendants.

Case No.:

Judge Robert J. Moss

COMPLAINT FOR DAMAGES:

1. **VIOLATION OF CALIFORNIA
LABOR CODE § 1400 ET SEQ.; AND**
2. **ACCOUNTING.**

(DEMAND EXCEEDS \$25,000.00)

JURY TRIAL DEMANDED

25
26 Plaintiff LUANN BENTON, an individual, on behalf of herself and the Class of other
27 similarly situated individuals, complains of and alleges the following causes of action against
28 Defendants PENNYSAVER USA, LLC, a California limited liability company; OPENGATE

1 CAPITAL, LLC, a California limited liability company; and DOES 1 through 100, inclusive, as
2 follows:

3 **I.**

4 **INTRODUCTION**

5 1. This class action is brought on behalf of Plaintiff LUANN BENTON (“Plaintiff”)
6 and all others similarly situated who were employed by Defendants prior to the mass
7 layoff/termination that occurred on May 22, 2015.

8 2. Plaintiff is informed and believes, and thereon alleges, that Defendants owned and
9 operated the PennySaver publication. At all relevant times herein, Defendants employed in
10 excess of one hundred (100) full-time employees in California. As such, Defendants were
11 required to provide written notice to all such employees at least sixty (60) days prior to any
12 mass layoff/termination.

13 3. On or about May 22, 2015, without any written notice whatsoever, all or most of
14 Defendants’ California employees were subjected to a mass layoff/termination. As no exigent
15 or unforeseeable circumstances exist, Defendants were required to provide at least sixty (60)
16 days’ written notice of this mass layoff/termination, but failed to do so.

17 4. The failure to provide at least sixty (60) days’ written notice prior to the mass
18 layoff/termination is a violation of California Labor Code § 1400 *et seq.*

19 **JURISDICTION AND VENUE**

20 5. This Court has jurisdiction over all causes of action asserted herein pursuant to
21 California Labor Code § 1400 *et seq.*

22 6. This Court has jurisdiction over the Defendants identified herein because each is an
23 individual, association, or business entity that is either authorized to conduct or, in fact, does
24 conduct substantial business in the State of California, County of Orange.

25 7. Venue is proper in the County of Orange because the acts upon which this action is
26 based occurred in the County of Orange, among other places. Plaintiff was employed at
27 Defendants’ offices located in the City of Brea.

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PARTIES

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2 8. Plaintiff LUANN BENTON is, and at all relevant times herein was, an individual
3 residing in the County of San Bernardino, State of California.

4 9. Plaintiff is informed and believes, and thereon alleges, that Defendant
5 PENNYSAYER USA, LLC (“PENNYSAYER”) is, and at all relevant times herein was, a
6 California limited liability company existing under the laws of the State of California, and is
7 authorized to do business and is doing business in the State of California. Plaintiff is informed
8 and believes that Defendant PENNYSAYER has its principal place of business in Brea,
9 California. Plaintiff is also informed and believes, and thereon alleges, that Defendant
10 PENNYSAYER publishes the PennySaver publication, providing advertising services to
11 advertisers and consumers throughout California.

12 10. Plaintiff is informed and believes, and thereon alleges, that Defendant OPENGATE
13 CAPITAL, LLC (“OPENGATE”) is, and at all relevant times herein was, a California limited
14 liability company existing under the laws of the State of California, and is authorized to do
15 business and is doing business in the State of California. Plaintiff is informed and believes that
16 Defendant OPENGATE has its principal place of business in Los Angeles, California. Plaintiff
17 is also informed and believes, and thereon alleges, that Defendant OPENGATE owns and
18 operates Defendant PENNYSAYER. Plaintiff is further informed and believes, and thereon
19 alleges, that Defendant OPENGATE has owned and operated Defendant PENNYSAYER, and
20 has exercised direct and indirect control over Defendant PENNYSAYER, including, but not
21 limited to, making decisions regarding securing credit, buying and selling assets, and hiring and
22 firing employees.

23 11. Plaintiff is unaware of the true names and capacities, whether individual, corporate,
24 or otherwise, of Defendants sued herein as Does 1 through 100, inclusive, but is informed and
25 believes, and thereon alleges, that they are in some manner, individually or collectively,
26 responsible for the events, happenings and damages herein alleged and accordingly sue said
27 Defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint when
28 the true names and capacities have been ascertained.

1 12. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
2 herein each and every defendant, whether actually or fictitiously named herein, was the
3 principal, agent, servant, employee, and/or representative of each other defendant, and in doing
4 the acts alleged herein, was acting within the scope and course of their respective service,
5 employment, agency, and/or representation and with the permission and consent of each other
6 defendant. To the extent said acts, conduct, and omissions were perpetrated by certain
7 Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and
8 omissions of the acting Defendants.

9 **CLASS ALLEGATIONS**

10 13. **Definition:** the named individual Plaintiff brings this action on behalf of herself
11 and the Class pursuant to California Code of Civil Procedure §382 and California Civil Code
12 §1781(a). The Class consists of:

- 13 (1) all individuals who were employed by Defendants in
14 California, and whose employment was effectively terminated on
15 May 22, 2015 without receiving sixty (60) days' written notice of
16 such termination of employment.

17 14. **Numerosity:** the members of the Class are so numerous that joinder of all
18 members would be impractical, if not impossible. The exact number and identities of the Class
19 members are unknown at this time and can only be ascertained through appropriate investigation
20 and discovery. Plaintiff is informed and believes, and thereon alleges, that Defendants
21 employed in excess of one hundred (100) individuals during the relevant times. Plaintiff is
22 further informed and believes, and thereon alleges, that the identity of the members of the Class
23 is readily ascertainable by review of Defendants' records.

24 15. **Adequacy of Representation:** the named Plaintiff is fully prepared to take all
25 necessary steps to represent fairly and adequately the interests of the Class defined above.
26 Plaintiff does not have any irreconcilable conflicts with or interests materially different to those
27 of other Class members. Plaintiff's attorneys are ready, willing and able to fully and adequately
28 represent the Class and individual Plaintiff. Plaintiff's attorneys have prosecuted and settled

1 class actions in the past and currently have a number of class actions pending in California
2 courts.

3 16. **Common Questions of Law And Fact:** there are predominant common questions
4 of law and fact and a community of interest amongst Plaintiff and the claims of the Class.

5 These common legal and factual questions include, but are not limited to, the following:

6 a. whether Defendants had more than one hundred (100) employees in the time
7 period immediately prior to the mass layoff/termination that occurred on May 22, 2015;

8 b. whether Defendants provided written notice at least sixty (60) days prior to the
9 mass layoff/termination that occurred on May 22, 2015;

10 c. whether the mass layoff/termination that occurred on May 22, 2015 resulted in
11 the termination of employment for at least fifty (50) or more of Defendants' employees at a
12 single site of employment; and

13 d. whether the failure to provide the requisite sixty (60) days' written notice prior
14 to the mass layoff/termination was excused under a recognized exception.

15 17. **Typicality:** the claims of the named Plaintiff are typical of the claims of all
16 members of the Class. Plaintiff is a member of the Class, having been employed by Defendants
17 at the time her employment was terminated on May 22, 2015. As such, Plaintiff is entitled to
18 the relief identified in California Labor Code § 1400 *et seq.*, as are all other similarly situated
19 members of the Class.

20 18. **Superiority and Substantial Benefits of Class Litigation:** the nature of this action
21 and the format of laws available to Plaintiff and members of the Class identified herein make
22 the class action litigation format a particularly efficient and appropriate procedure to redress the
23 wrongs alleged herein. If each affected employee was required to file an individual lawsuit, the
24 Defendants would necessarily gain an unconscionable advantage since they would be able to
25 exploit and overwhelm the limited resources of each individual plaintiff with their vastly
26 superior financial and legal resources. Requiring each Class member to pursue an individual
27 remedy would also discourage the assertion of lawful claims by consumers who are unaware of
28 or uncertain regarding their rights for remedy against the wrongs identified hereinabove.

1 Further, as the damages suffered by each individual member of the Class may be relatively
2 small and the relief sought discrete, the expense and burden of individual members of the Class
3 to redress the wrongs done to them, and the cost and burden to the court system of adjudicating
4 such litigation on an individual basis, would be substantial and unreasonable.

5 19. To Plaintiff's counsel's knowledge, there has not been any substantial litigation
6 concerning the controversy commenced against the Defendants herein, and it is not anticipated
7 that there will be any difficulties in the management of this litigation due to the specific nature
8 of the defect identified herein and Defendants' conduct and knowledge of the true facts
9 regarding same.

10 20. Individualized litigation would also present the potential for varying, inconsistent, or
11 contradictory judgments and would magnify the delay and expenses to all parties and to the
12 court system resulting from multiple adjudications of the same factual issues.

13 21. Proof of the claims specified herein will establish the right of each of the members of
14 the Class to recovery on the causes of action alleged herein.

15 22. The Class is commonly entitled to a specific fund. This action is brought for the
16 benefit of the entire Class and will result in the creation of a common fund.

17 **FACTUAL ALLEGATIONS**

18 23. Plaintiff worked for the PennySaver publication since 1981, most recently in the
19 Brea facility located at 2830 Orbiter Street, Brea, California. Her most recent job title was
20 Outside Display Representative.

21 24. Plaintiff is informed and believes, and thereon alleges, that in approximately
22 September of 2013, Defendant OPENGATE purchased all of the assets and obligations of the
23 PennySaver publication, and thereafter took over control of the PennySaver publication and all
24 affiliated and associated entities thereto.

25 25. On May 22, 2015, Plaintiff, as well as all other employees at the Brea location,
26 worked her normal shift and performed her usual job functions. At the end of that business date,
27 Plaintiff and the other employees at the Brea location were informed that PENNYSAYER was
28 closing its business operations. As such, all employees of PENNYSAYER were being

1 terminated effective immediately. After this announcement was made, Plaintiff and the other
2 employees were escorted by security personnel off the Brea facility.

3 26. Prior to this May 22, 2015, Plaintiff was not provided any notice of any kind that
4 PENNYSAYER was ceasing its operations. Moreover, prior to this May 22, 2015 date, Plaintiff
5 was not provided written notice of any kind that her employment was being terminated.

6 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 effectively terminated all of its employees in all of its facilities without the notice required under
8 California Labor Code § 1400 *et seq.*

9 28. Plaintiff is informed and believes, and based thereon alleges, there were no legally
10 recognizable exigent or unforeseeable circumstances that excused Defendants from providing
11 Plaintiff and the Class the required 60-day notice.

12 29. Plaintiff is informed and believes, and based thereon alleges, that each of the
13 facilities owned and/or operated by Defendants employed at least one hundred (100) employees
14 during the twelve (12) month period prior to the mass layoff date of May 22, 2015.

15 **FIRST CAUSE OF ACTION**

16 **(BREACH OF CALIFORNIA LABOR CODE § 1400 *ET SEQ.***

17 **AGAINST ALL DEFENDANTS)**

18 30. Plaintiff repeats and incorporates the allegations set forth above in paragraphs 1
19 through 28 above, as though set forth in full.

20 31. Defendants are employers as defined by California Labor Code § 1400(b).

21 32. Defendants' facilities are "covered establishments" under California Labor Code §
22 1400(a).

23 33. Plaintiff and the putative Class were employees as defined by California Labor
24 Code § 1400(h).

25 34. California Labor Code § 1401 states that an employer may not order a mass layoff,
26 relocation, or termination at a covered establishment unless, sixty (60) days before the order
27 takes effect, the employer provides written notice to all affected employees and governmental
28 agencies of said order.

1 35. As set forth above, on May 22, 2015, all PENNYSAVER employees were notified
2 that their employment was being terminated, effective immediately.

3 36. Prior to this May 22, 2015 mass layoff date, Defendants failed to provide any written
4 notice to Plaintiff and the Class that this mass layoff/termination would be taking place.
5 Plaintiff is informed and believes, and based thereon alleges, there were no legally recognizable
6 exigent or unforeseeable circumstances that excused Defendants from providing Plaintiff and
7 the Class the required 60-day notice.

8 37. As such, Defendants violated California Labor Code § 1401.

9 38. Defendants have failed to pay Plaintiff and the Class sixty (60) days' back pay and
10 benefits owed to them under California Labor Code § 1402. Plaintiff and the Class seek all
11 applicable damages under California Labor Code § 1402, as well as prejudgment interest
12 thereon at the legal rate.

13 39. Plaintiff and the Class are also entitled to the civil penalty specified under
14 California Labor Code § 1403.

15 40. Defendants acted at all times willfully, oppressively, with malice, and with
16 conscious disregard for the rights of Plaintiff and the Class under Labor Code §1400 *et seq.* As
17 such, Plaintiff and the Class are entitled to punitive damages, in an amount to be determined at
18 trial.

19 41. Plaintiff and the Class are also entitled to attorney's fees and costs under California
20 Labor Code § 1404, in an amount to be determined at trial.

21 **SECOND CAUSE OF ACTION**

22 **(ACCOUNTING, AGAINST ALL DEFENDANTS)**

23 42. Plaintiff repeats and incorporates the allegations set forth above in paragraphs 1
24 through 52 above, as though set forth in full.

25 43. Plaintiff and the Class are owed back pay and benefits pursuant to California Labor
26 Code § 1400 *et seq.*

27 44. Plaintiff does not know the precise amount of compensation due to Plaintiff and to
28 each member of the Class. Plaintiff is are informed and believe, and based thereon alleges, that

1 Defendants possess records from which the amount of compensation due and owing to Plaintiff
2 and all members of the Class can be determined.

3 45. The amount of wages owed to each member of the Class can only be determined
4 by an accounting of the Defendants books and records.

5 46. As such, Plaintiff requests an accounting of all of Defendants' books and records in
6 a manner and to a scope necessary to determine the amount of back pay and benefits to which
7 Plaintiff and each member of the Class would be entitled.

8 **PRAYER FOR RELIEF**

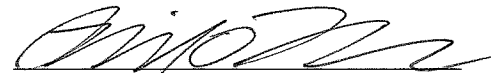
9 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
10 this suit is brought, against Defendants, and each of them jointly and severally, as follows:

- 11 1. For an Order certifying the proposed Class;
- 12 2. For an Order appointing Plaintiff as the representative of the Class;
- 13 3. For an Order appointing counsel for Plaintiff as Class counsel;
- 14 4. For compensatory damages in an amount to be determined at trial;
- 15 5. For a civil penalties in an amount to be determined at trial;
- 16 6. For punitive damages in an amount to be determined at trial;
- 17 7. For reasonable attorney's fees;
- 18 8. For costs and expenses incurred herein; and
- 19 9. For such other and further relief as the Court may deem just and proper.

20
21 Dated: May 26, 2015

MCCUNE WRIGHT LLP

22
23 By:



24 Richard D. McCune, Esq.
25 Michele M. Vercoski, Esq.
26 *Attorneys for Plaintiff and*
27 *the putative Class*
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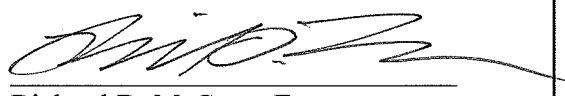
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JURY TRIAL DEMAND

Plaintiff LUANN BENTON, individually and on behalf of all others similarly situated,
hereby demands a trial by jury.

Dated: May 26, 2015

MCCUNE WRIGHT LLP

By: 

Richard D. McCune, Esq.
Michele M. Vercoski, Esq.
*Attorneys for Plaintiff and
the putative Class*