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Individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CRAIG RUSSELL, individually and on
behalf of all others similarly situated

Plaintiff,

vs.

NUTANIX, INC.; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 20CV366943

Honorable Patricia M. Lucas – Dept. 3

**SECOND AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Timely Pay All Earned Wages;
4. Failure to Provide Meal Periods;
5. Failure to Permit Rest Breaks;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Upon Separation of Employment;
8. Failure to Reimburse Necessary Business Expenses;

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 11/1/2021 9:34 AM
Reviewed By: R. Walker
Case #20CV366943
Envelope: 7573836**

9. Violation of Business and Professions Code §§ 17200, *et seq.*; and
10. Enforcement of Labor Code § 2698 *et. seq.* (“PAGA”)

DEMAND FOR JURY TRIAL

Plaintiff Craig Russell, individually and on behalf of others similarly situated, alleges as follows:

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff Craig Russell (“Plaintiff”) brings this putative class action against Defendants Nutanix, Inc., (“Defendant Nutanix”) and DOES 1 through 20, inclusive (collectively, “Defendants”), on behalf of himself individually and a putative class of employees working throughout California.

2. Defendant Nutanix is a cloud-computing company that sells software, cloud services, and software-defined storage.

3. Through this action, Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair competition. These wage and hour violations arise from, Defendants’ misclassification of salaried employees as exempt from California’s wage and hour laws, the failure to pay overtime, the incorrect listing of the hours worked on wage statements as 86.77 instead of the actual hours worked, and the failure to reimburse employees for their business expenses, among other violations.

4. Plaintiff is informed and believes, and thereon alleges, that Defendants have increased their profits by violating state wage and hour laws by, among other things:

- (a) Failing to pay all wages for all hours worked, including minimum and overtime wages;
- (b) Failing to pay overtime wages at the proper rates;
- (c) Failing to timely pay all earned wages;

- 1 (d) Failing to provide meal periods or compensation in lieu thereof;
- 2 (e) Failing to authorize or permit rest breaks or provide compensation
- 3 in lieu thereof;
- 4 (f) Failing to provide accurate itemized wage statements;
- 5 (g) Failing to pay all wages due upon separation of employment; and
- 6 (h) Failing to reimburse all business expenses incurred by employees in
- 7 direct consequence of the discharge of his or her duties.

8 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf

9 of himself and all others similarly situated in California to recover, among other things, unpaid

10 wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to Labor

11 Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,

12 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

13 **JURISDICTION AND VENUE**

14 6. This is a class action, pursuant to California Code of Civil Procedure § 382. The

15 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits

16 of the Superior Court and will be established according to proof at trial.

17 7. This Court has jurisdiction over this action pursuant to the California Constitution,

18 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

19 given by statutes to other courts. The statutes under which this action is brought do not specify

20 any other basis for jurisdiction.

21 8. This Court has jurisdiction over all Defendants because, upon information and

22 belief, they are citizens of California, have sufficient minimum contacts in California or

23 otherwise intentionally avail themselves of the California market so as to render the exercise of

24 jurisdiction over them by the California courts consistent with traditional notions of fair play and

25 substantial justice.

26 9. Venue is proper in this Court because, upon information and belief, Defendants

27 reside, transact business or have offices in this county and the acts and omissions alleged herein

28 took place in this county.

THE PARTIES

10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during the Class Period in California.

11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the class members.

14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

15. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

16. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

1 **CLASS ACTION ALLEGATIONS**

2 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
3 himself and all others similarly situated who were affected by Defendants' Labor Code, Business
4 and Professions Code §§ 17200 and IWC Wage Order violations.

5 18. All claims alleged herein arise under California law for which Plaintiff seeks relief
6 authorized by California law.

7 19. Plaintiff's proposed Class consists of and is defined as follows:

8 Class

9 All current and former employees of Defendant that occupied a position within the
10 Job Categories of: Inside Account Executives, Sales Development Representatives,
11 Commercial Account Executives, Global Account Executives, Enterprise Account
12 Executives, and Channel Account Executives in California from April 6, 2016 to
13 the date the class is certified.¹

14 20. Plaintiff also seeks to certify the following Subclass of employees:

15 Waiting Time Subclass

16 All members of the Class who separated their employment from Defendants from
17 April 6, 2017 to the date the class is certified.

18 21. Members of the Class and Subclass described above will be collectively referred
19 to as "class members." Plaintiff reserves the right to establish other or additional subclasses, or
20 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
21 specific theories of liability.

22 22. This action has been brought and may properly be maintained as a class action
23 under the California Code of Civil Procedure § 382 because there are common questions of law
24 and fact as to the Class that predominate over questions affecting only individual members
25 including, but not limited to:

- 26 (a) Whether Defendants misclassified Plaintiff and class members as exempt from the
27 payment of overtime under any available exemption, and forced them to work off-
28 the-clock, resulting in a failure to pay all minimum wages and overtime wages;

¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- 1 (b) Whether Defendants paid Plaintiff and class members overtime compensation at the
2 proper rates;
- 3 (c) Whether Defendants failed to timely pay all wages earned by Plaintiff and class
4 members;
- 5 (d) Whether Defendants deprived Plaintiff and class members of compliant meal
6 periods or required Plaintiff and class members to work through meal periods
7 without compensation;
- 8 (e) Whether Defendants deprived Plaintiff and class members of compliant rest breaks;
- 9 (f) Whether Defendants failed to timely pay Plaintiff and former class members all
10 wages due upon termination or within 72 hours of resignation;
- 11 (g) Whether Defendants failed to furnish Plaintiff and class members with accurate,
12 itemized wage statements;
- 13 (h) Whether Defendants required Plaintiff and class members to use their personal
14 cellular devices for work-related purposes, without paying a reasonable percentage
15 of their cell phone bills;
- 16 (i) Whether Defendants required Plaintiff and class members to use tablet devices for
17 work-related purposes, without reimbursing Plaintiff and class members for the cost
18 of these devices;
- 19 (j) Whether Defendants failed to reimburse Plaintiff and class members for the work-
20 related cost of their home-internet and other home office expenses; and
- 21 (k) Whether Defendants engaged in unfair business practices in violation of Business
22 & Professions Code §§ 17200, *et seq.*

23 23. There is a well-defined community of interest in this litigation and the Class is
24 readily ascertainable:

- 25 (a) Numerosity: The members of the Class are so numerous that joinder of all
26 members is impractical. Although the members of the Class are unknown
27 to Plaintiff at this time, on information and belief, the Class is estimated to
28 be greater than 100 individuals. The identity of the class members are

1 readily ascertainable by inspection of Defendants' employment and payroll
2 records.

3 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
4 claims (or defenses, if any) of the Class because Defendants' failure to
5 comply with the provisions of California wage and hour laws entitled each
6 class member to similar pay, benefits and other relief. The injuries sustained
7 by Plaintiff are also typical of the injuries sustained by the Class because
8 they arise out of and are caused by Defendants' common course of conduct
9 as alleged herein.

10 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
11 and protect the interests of all members of the Class because it is in his best
12 interest to prosecute the claims alleged herein to obtain full compensation
13 and penalties due to him and the Class. Plaintiff's attorneys, as proposed
14 class counsel, are competent and experienced in litigating large employment
15 class actions and are versed in the rules governing class action discovery,
16 certification and settlement. Plaintiff has incurred and, throughout the
17 duration of this action, will continue to incur attorneys' fees and costs that
18 have been and will be necessarily expended for the prosecution of this action
19 for the substantial benefit of each class member.

20 (d) Superiority: The nature of this action makes the use of class action
21 adjudication superior to other methods. A class action will achieve
22 economies of time, effort and expense as compared with separate lawsuits,
23 and will avoid inconsistent outcomes because the same issues can be
24 adjudicated in the same manner and at the same time for each Class. If
25 appropriate this Court can, and is empowered to, fashion methods to
26 efficiently manage this case as a class action.

27 (e) Public Policy Considerations: Employers in the State of California and
28 other states violate employment and labor laws every day. Current

1 employees are often afraid to assert their rights out of fear of direct or
2 indirect retaliation. Former employees are fearful of bringing actions
3 because they believe their former employers might damage their future
4 endeavors through negative references and/or other means. Class actions
5 provide the class members who are not named in the complaint with a type
6 of anonymity that allows for the vindication of their rights at the same time
7 as affording them privacy protections.

8 **GENERAL ALLEGATIONS**

9 24. At all relevant times mentioned herein, Defendants employed Plaintiff and other
10 persons as salaried employees throughout California.

11 25. Plaintiff was employed as a Commercial Account Manager or other similar
12 position by Defendants.

13 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants were advised by skilled lawyers, employees and other professionals who
15 were knowledgeable about all applicable wage and hour laws, employment and personnel
16 practices and all related legal requirements.

17 27. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive wages for all hours
19 worked and that they were not receiving all wages earned for work that was required to be
20 performed, including overtime. Plaintiff and class members were not lawfully paid all wages
21 due (including minimum, regular, and overtime wages) as a result of Defendants
22 misclassification of Plaintiff and class members as exempt from the payment of overtime under
23 any available exemption. Defendants failed to properly track and pay all overtime hours worked
24 by Plaintiff and class members, including for off-the-clock work which Defendants required its
25 employees to perform during meal periods. Because Plaintiff and class members worked more
26 than eight hours in a day and/or more than forty hours in a workweek, this unpaid time qualified
27 for overtime premium payment. Further, Defendants failed to pay Plaintiff and class members
28 all overtime and double-time wages earned at the correct regular rate because they failed to

1 include commissions and other non-discretionary performance-based pay in the regular rate of
2 pay.

3 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive itemized wage
5 statements that accurately showed their gross and net wages earned, total hours worked and all
6 applicable hourly rates in effect and the number of hours worked at each hourly rate in accordance
7 with California law, among the other items required by Labor Code section 226. However,
8 Defendants failed to accurately provide the information required by Labor Code section 226. For
9 example, Defendants simply listed the hours worked on the wage statements of Plaintiff and class
10 members as 86.67; however, this did not reflect the actual hours worked by those employees. In
11 violation of the Labor Code, Plaintiff and class members were not provided with accurate
12 itemized wage statements.

13 29. Plaintiff is informed and believes, and thereon alleges, Defendants failed to
14 provide Plaintiff and class members timely, uninterrupted, off-duty meal periods of no less than
15 thirty minutes before their fifth hour of work. Plaintiff and class members would also often be
16 required to work through meal periods. These policies, among others, have resulted in a denial
17 of these employees' rights to 30-minute meal periods in violation of California law.

18 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive all required meal
20 periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate
21 of pay when they did not receive a timely meal period. In violation of the Labor Code and IWC
22 Wage Orders, Plaintiff and class members did not receive all timely meal periods or payment of
23 one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when they did
24 not receive a timely, uninterrupted meal periods.

25 31. Plaintiff is informed and believes, and thereon alleges, Defendants failed to
26 provide Plaintiff and class members timely, uninterrupted, on-the-clock rest period of no less
27 than ten minutes for every four hours worked, or every major fraction thereof. Instead,
28 Defendants would often require Plaintiff and class members to work through their rest periods.

1 These policies, among others, have resulted in a denial of these employees' rights to a ten-minute
2 rest period in violation of California law.

3 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive all rest breaks or
5 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
6 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
7 and class members did not receive all rest breaks or payment of one (1) additional hour of pay at
8 Plaintiff and class members' regular rate of pay when a rest break was missed.

9 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
11 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
12 and Waiting Time Subclass members did not receive payment of all wages within permissible
13 time periods.

14 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to reimbursement for necessary
16 expenditures incurred in connection with the performance and execution of their job duties. In
17 violation of the California Labor Code, Plaintiff and class members did not receive adequate
18 reimbursement for necessary business expenses, including but not limited to reimbursement for
19 use of their personal cellular devices to communicate with customers and other employees,
20 expenses related to their use of a tablet device for work, home office expenses, and home internet
21 expenses as they related to employment.

22 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known they had a duty to compensate Plaintiff and class members, and Defendants
24 had the financial ability to pay such compensation but willfully, knowingly and intentionally
25 failed to do so all in order to increase Defendants' profits.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order § 3)**

4 36. Plaintiff hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 37. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
7 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
8 wage than the minimum so fixed is unlawful.

9 38. During the relevant time period, Defendants paid Plaintiff and class members less
10 than minimum wages due to Defendants classifying Plaintiff and class members as exempt, and
11 when, for example, Plaintiff and class members were forced to work off-the-clock during meal
12 breaks.

13 39. During the relevant time period, Defendants regularly failed to pay at least
14 minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code §§
15 1194 and 1197.

16 40. Defendants' failure to pay Plaintiff and class members the minimum wage as
17 required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class
18 members are entitled to recover the unpaid balance of their minimum wage compensation as well
19 as interest, costs and attorney's fees.

20 41. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to
21 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
22 thereon.

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME WAGES**

25 **(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)**

26 42. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein.

28 43. Labor Code § 1198 and the applicable IWC Wage Order provide that it is

1 unlawful to employ persons without compensating them at a rate of pay either one and one-half
2 or two times the person's regular rate of pay, depending on the number of hours worked by the
3 person on a daily or weekly basis.

4 44. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
5 period, Defendants were required to compensate Plaintiff and class members for all overtime
6 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked
7 in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
8 hours of the seventh consecutive work day, with double time after eight (8) hours on the seventh
9 day of any work week, or after twelve (12) hours in any work day.

10 45. Plaintiff and class members were non-exempt employees entitled to the
11 protections of California Labor Code §§ 510 and 1194.

12 46. During the relevant time period, Defendants failed to pay Plaintiff and class
13 members overtime wages at the correct rate due to Defendants having classified Plaintiff and
14 class members as exempt from the payment of overtime under various available exemptions to
15 the payment of overtime. Defendants failed to properly track and pay all overtime hours worked
16 by Plaintiff and class members, including for off-the-clock work which Defendants required its
17 employees to perform during meal periods. Because Plaintiff and class members worked more
18 than eight hours in a workday and/or more than 40 hours in workweek, this unpaid time qualified
19 for overtime premium payment. Further, Defendants failed to pay Plaintiff and class members
20 all overtime and double-time wages earned at the correct regular rate because they failed to
21 include commissions and other non-discretionary performance-based pay in the regular rate of
22 pay.

23 47. In violation of state law, Defendants have knowingly and willfully refused to
24 perform their obligations and compensate Plaintiff and class members for all wages earned as
25 alleged above.

26 48. Defendants' failure to pay Plaintiff and class members the unpaid balance of
27 overtime compensation, as required by California law, violates the provisions of Labor Code §§
28 510 and 1198, and is therefore unlawful.

1 49. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to
2 recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO TIMELY PAY ALL EARNED WAGES**

5 **(Violation of Labor Code §§ 204 and 210; Violation of IWC Wage Order)**

6 50. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
7 though fully set forth herein.

8 51. Labor Code § 204 provides that all wages earned by an employee are due and
9 payable twice during each calendar month.

10 52. Defendants failed to timely pay Plaintiff and class members all of their earned
11 wages as required by Labor Code Section 204.

12 53. Plaintiff and class members have been deprived of their rightfully earned wages
13 as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff and
14 class members are entitled to recover such amounts, plus interest thereon, attorney's fees and
15 costs.

16 54. In addition, Plaintiff and class members are entitled to penalties pursuant to Labor
17 Code § 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay each
18 Class Member; and (2) for each of Defendants' subsequent violations, or any willful or intentional
19 violation, \$200 for each failure to pay each class member, plus 25 percent of the amount
20 unlawfully held.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL PERIODS**

23 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

24 55. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
25 though fully set forth herein.

26 56. Labor Code § 226.7 provides that no employer shall require an employee to work
27 during any meal period mandated by the IWC Wage Orders.

28 57. Section 11 of the applicable IWC Wage Order states, "no employer shall employ

1 any person for a work period of more than five (5) hours without a meal period of not less than
2 30 minutes, except that when a work period of not more than six (6) hours will complete the day's
3 work the meal period may be waived by mutual consent of the employer and the employee."

4 58. Labor Code § 512(a) provides that an employer may not require, cause or permit
5 an employee to work for a period of more than five (5) hours per day without providing the
6 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
7 total work period per day of the employee is not more than six (6) hours, the meal period may be
8 waived by mutual consent of both the employer and the employee.

9 59. Labor Code § 512(a) also provides that an employer may not employ an employee
10 for a work period of more than ten (10) hours per day without providing the employee with a
11 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
12 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
13 employer and the employee only if the first meal period was not waived.

14 60. During the relevant time period, Plaintiff and class members did not receive
15 compliant meal periods for each five (5) hours worked because their meal periods were missed,
16 late, short, interrupted, and/or they were required to work through their meal period.

17 61. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
18 an employer to pay an employee one additional hour of pay at the employee's regular rate of
19 compensation for each work day that a meal period is not provided.

20 62. At all relevant times, Defendants failed to pay Plaintiff and class members all meal
21 period premiums due for meal period violations pursuant to Labor Code § 226.7(b) and section
22 11 of the applicable IWC Wage Order.

23 63. As a result of Defendants' failure to pay Plaintiff and class members an additional
24 hour of pay for each day a meal period was not provided, Plaintiff and class members suffered
25 and continue to suffer a loss of wages and compensation.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PERMIT REST BREAKS**

3 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

4 64. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 65. Labor Code § 226.7(a) provides that no employer shall require an employee to
7 work during any rest period mandated by the IWC Wage Orders.

8 66. Section 12 of the applicable IWC Wage Order states “every employer shall
9 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
10 the middle of each work period” and the “authorized rest period time shall be based on the total
11 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
12 thereof” unless the total daily work time is less than three and one-half (3½) hours.

13 67. During the relevant time period, Plaintiff and class members did not receive a ten
14 (10) minute rest period for every four (4) hours or major fraction thereof worked.

15 68. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
16 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
17 compensation for each workday that the rest period is not provided.

18 69. At all relevant times, Defendants failed to pay Plaintiff and class members all rest
19 period premiums due for rest period violations pursuant to Labor Code § 226.7(b) and section 12
20 of the applicable IWC Wage Order.

21 70. As a result of Defendants’ failure to pay Plaintiff and class members an additional
22 hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and
23 continue to suffer a loss of wages and compensation.

24 **SIXTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

26 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

27 71. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 72. Labor Code § 226(a) requires Defendants to provide each employee with an
2 accurate wage statement in writing showing nine pieces of information, including: (1) gross
3 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
4 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
5 provided that all deductions made on written orders of the employee may be aggregated and
6 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
7 employee is paid, (7) the name of the employee and the last four digits of his or her social security
8 number or an employee identification number other than a social security number, (8) the name
9 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
10 during the pay period and the corresponding number of hours worked at each hourly rate by the
11 employee.

12 73. During the relevant time period, Defendants have knowingly and intentionally
13 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
14 and class members. The deficiencies include, among other things, the failure to correctly state
15 the gross and net wages earned, accurate inclusive dates of the pay period, and all applicable
16 hourly rates in effect and the number of hours worked at each hourly rate by Plaintiff and class
17 members.

18 74. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
19 and class members have suffered injury and damage to their statutorily protected rights.
20 Specifically, Plaintiff and class members have been injured by Defendants' intentional violation
21 of California Labor Code § 226(a) because they were denied both their legal right to receive, and
22 their protected interest in receiving, accurate itemized wage statements under California Labor
23 Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the
24 underpayment of wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would
25 not have had to engage in these efforts and incur these costs had Defendants provided the accurate
26 wages earned. This has also delayed Plaintiff's ability to demand and recover the underpayment
27 of wages from Defendants.

28 75. California Labor Code § 226(a) requires an employer to pay the greater of all

1 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
2 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,
3 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
4 comply with California Labor Code § 226(a).

5 76. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
6 class members from knowing, understanding and disputing the wages paid to them, and resulted
7 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
8 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members
9 have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to
10 be shown according to proof at trial.

11 77. Plaintiff and class members are also entitled to injunctive relief under California
12 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
13 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND**

16 **WITHIN THE REQUIRED TIME**

17 **(Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)**

18 78. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
19 though fully set forth herein.

20 79. California Labor Code §§ 201 and 202 provide that if an employer discharges an
21 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
22 and that if an employee voluntarily leaves his employment, his wages shall become due and
23 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
24 two (72) hours previous notice of his intention to quit, in which case the employee is entitled to
25 his wages at the time of quitting.

26 80. During the relevant time period, Defendants willfully failed to pay Plaintiff and
27 Waiting Time Subclass members all their earned wages upon termination including, but not
28 limited to, proper minimum wages and overtime compensation, either at the time of discharge or

1 within seventy-two (72) hours of their leaving Defendants' employ.

2 81. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all their
3 earned wages at the time of discharge or within seventy-two (72) hours of their leaving
4 Defendants' employ is in violation of Labor Code §§ 201 and 202.

5 82. California Labor Code § 203 provides that if an employer willfully fails to pay
6 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
7 and 202, then the wages of the employee shall continue as a penalty from the due date at the same
8 rate until paid or until an action is commenced; but the wages shall not continue for more than
9 thirty (30) days.

10 83. Plaintiff and Waiting Time Subclass members are entitled to recover from
11 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
12 members' regular daily wages for each day they were not paid, at their regular hourly rate of pay,
13 up to a thirty (30) day maximum pursuant to Labor Code § 203.

14 **EIGHTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

16 **(Violation of Labor Code §§ 2800, 2802)**

17 84. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
18 though fully set forth herein.

19 85. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
20 indemnify his employee for losses caused by the employer's want of ordinary care."

21 86. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify his
22 or her employee for all necessary expenditures or losses incurred by the employee in direct
23 consequence of the discharge of his or her duties..."

24 87. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the term
25 'necessary expenditures or losses' shall include all reasonable costs, including but not limited to,
26 attorney's fees incurred by the employee enforcing the rights granted by this section."

27 88. During the relevant time period, Defendants were required to indemnify and
28 reimburse Plaintiffs and class members for all expenditures or losses caused by the employer's

1 want of ordinary care and/or incurred in direct consequent of the discharge of their duties, but failed
2 to indemnify and reimburse Plaintiffs and class members in violation of Labor Codes §§ 2800 and
3 2802.

4 89. During the relevant time period, Plaintiff and class members did not receive
5 adequate reimbursement for necessary business expenses, including but not limited to
6 reimbursement for use of their personal cellular devices to communicate with customers and other
7 employees, expenses related to their use of a tablet device for work, home office expenses, and
8 home internet expenses as they related to employment.

9 90. As a direct and proximate result, Plaintiffs and class members have suffered, and
10 continue to suffer, substantial losses, related to the use and enjoyment of such monies to be
11 reimbursed, lost interest on such monies, and expenses and attorney's fees in seeking to compel
12 Defendants to fully perform their obligations under California law, all to their damage in amounts
13 according to proof at the time of trial.

14 **NINTH CAUSE OF ACTION**

15 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

16 91. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
17 though fully set forth herein.

18 92. Defendants' conduct, as alleged herein, has been and continues to be unfair,
19 unlawful and harmful to Plaintiff and class members. Plaintiff seeks to enforce important rights
20 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

21 93. Defendants' activities, as alleged herein, violate California law and constitute
22 unlawful business acts or practices in violation of California Business and Professions Code
23 §§ 17200, *et seq.*

24 94. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated
25 on the violation of any state or federal law.

26 95. Defendants' policies and practices have violated state law in at least the following
27 respects:

28 (a) Failing to pay all minimum wages to Plaintiff and class members in

violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

(b) Failing to pay all overtime wages to Plaintiff and class members in violation of Labor Code §§ 510, 1194 and 1198;

(c) Failing to timely pay all wages earned by Plaintiff and class members in violation of Labor Code §§ 204, and 210;

(d) Failing to provide timely meal periods without paying Plaintiff and class members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512;

(e) Failing to authorize or permit rest breaks without paying Plaintiff and class members premium wages for every day said rest breaks were not authorized or permitted in violation of Labor Code § 226.7;

(f) Failing to provide Plaintiff and class members with accurate itemized wage statements in violation of Labor Code § 226;

(g) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass members upon separation of employment in violation of Labor Code §§ 201, 202 and 203; and

(h) Failing to reimburse all necessary business expenses incurred by Plaintiff and class members in violation of Labor Code §§ 2800, and 2802.

96. Defendants intentionally avoided paying Plaintiff and class members' wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and gain a greater foothold in the marketplace.

97. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class members are entitled to restitution of the wages unlawfully withheld and retained by Defendants during a period that commences four years prior to the filing of the Complaint; an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

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1 (f) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
2 accurate records.

3 101. Plaintiff is an “aggrieved employee” because he was employed by the alleged
4 violator and had one or more of the alleged violations committed against him, and therefore is
5 properly suited to represent the interests of all other aggrieved employees.

6 102. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
7 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
8 other aggrieved employees under PAGA.

9 103. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved
10 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
11 aggrieved employee per pay period for each subsequent violation.

12 104. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
13 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
14 cited above.

15 105. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
16 herein.

17 **PRAYER FOR RELIEF**

18 Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief
19 and judgment against Defendants, jointly and severally, as follows:

20 1. For certification of this action as a class action, including certifying the Class and
21 Subclass alleged by Plaintiff;

22 2. For appointment of Craig Russell as the class representative;

23 3. For appointment of Lebe Law, APLC, and Aegis Law Firm, PC as class counsel
24 for all purposes;

25 4. For compensatory damages in an amount according to proof with interest thereon;

26 5. For economic and/or special damages in an amount according to proof with
27 interest thereon;

28 6. For reasonable attorneys’ fees, costs of suit and interest to the extent permitted by

1 law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 226(e) and 1194;

2 7. For statutory penalties to the extent permitted by law, including those pursuant to
3 the Labor Code and IWC Wage Orders;

4 8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

5 9. For an order requiring Defendants to restore and disgorge all funds to each
6 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
7 or fraudulent and, therefore, constituting unfair competition under Business and Professions
8 Code §§ 17200, *et seq.*;

9 10. For an award of damages in the amount of unpaid compensation including, but
10 not limited to, unpaid wages, benefits and penalties, including interest thereon;

11 11. For pre-judgment interest;

12 12. For liquidated damages as authorized by law;

13 13. For civil penalties; and

14 14. For such other relief as the Court deems just and proper.

15 Dated: November 1, 2021

AEGIS LAW FIRM, PC

16
17 By: _____

Joseph M. Szilagyi
Attorney for Plaintiff Craig Russell

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19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

22
23 Dated: November 1, 2021

AEGIS LAW FIRM, PC

24
25 By: _____

Joseph M. Szilagyi
Attorney for Plaintiff Craig Russell

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On November 1, 2021, I served the foregoing document entitled:

• SECOND AMENDED CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT

on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true copy thereof on the party(ies) addressed below as follows:

Elizabeth Staggs-Wilson LITTLER MENDELSON, P.C. 633 West 5 th Street, 63 rd Floor Los Angeles, CA 90071 Telephone: 213.443.4300 Facsimile: 213.443.4299 Estaggs-wilson@littler.com	Elisa Nadeau LITTLER MENDELSON, P.C. 50 West Fernando Street, Fl. 7 San Jose, CA 95113 enadeau@littler.com
Courtney O. Chambers LITTLER MENDELSON, P.C. 333 Bush Street, 34 th Floor San Francisco, CA 94104 cchambers@littler.com <i>Attorneys for Defendant:</i> NUTANIX, INC.	LEBE LAW, APLC JONATHAN M. LEBE (State Bar No. 284605) Jon@lebelaw.com zachary@lebelaw.com 777 S. Alameda Street, Second Floor Los Angeles, CA 90021 Telephone: (213) 358-7046 Facsimile: (310) 820-1258 <i>Co-Counsel for Plaintiff</i> CRAIG RUSSELL

☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic transmission via the above listed email addresses on the date below. (*Cal. Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.* 5(b)(2)(A).)

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on November 1, 2021, at Irvine, California.

4
5 
6 Andrea Drocco