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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

22CV398302

JEFFREY RIVERA and NATASHA
HEACOCK, on behalf of the State of
California, as private attorney generals,

Plaintiffs,

vs.

ULBP INC., a California Corporation; UL LA
MESA LLC, a California Limited Liability
Company; UL SAN JOSE LLC, a California
Limited Liability Company; UL BENICIA
LLC, a California Limited Liability Company;
UL CHULA TWO LLC, a California Limited
Liability Company; UL KENAMAR LLC, a
California Limited Liability Company; UL
MANAGEMENT LLC, a California Limited
Liability Company; UL PRODUCTS LLC, a
California Limited Liability Company; UL
VISALIA LLC, a California Limited Liability
Company; UL HOLDINGS INC., a California
Corporation; WILLIE FRANK PENN, an
individual; and DOES 1 through 50,
inclusive,

Defendants.

Case No. _____

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 227.3, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B), and the applicable Wage Order(s).

1 Plaintiffs Jeffrey Rivera and Natasha Heacock (“PLAINTIFFS”) on behalf of the people
2 of the State of California and as “aggrieved employees” acting as private attorney generals
3 under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only,
4 allege on information and belief, except for their own acts and knowledge which are based on
5 personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFFS bring this action against Defendants ULBP Inc., UL LA Mesa LLC,
8 UL San Jose LLC, UL Benicia LLC, UL Chula Two LLC, UL Kenamar LLC, UL Management
9 LLC, UL Products LLC, UL Visalia LLC, UL Holdings Inc., Willie Frank Penn (referred to
10 as “DEFENDANT”) seeking only to recover PAGA civil penalties for themselves, and on
11 behalf of all current and former aggrieved employees that worked for DEFENDANT.
12 PLAINTIFFS do **not seek to recover anything other than penalties as permitted by**
13 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
14 violations, PLAINTIFFS do not seek underlying general and/or special damages for those
15 violations, but simply the civil penalties permitted by California Labor Code § 2699.

16 2. California has enacted the PAGA to permit individuals to bring an action on
17 behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and
18 sole nature of this action.

19 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
20 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
21 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
22 complaint should be construed as attempting to obtain any relief that would not be available in
23 a PAGA-only action.

24 **THE PARTIES**

25 4. Defendant ULBP Inc. is a California corporation that at all relevant times
26 mentioned herein conducted and continues to conduct substantial business in the state of
27 California.
28

1 5. Defendant UL LA Mesa LLC is a California limited liability company that at all
2 relevant times mentioned herein conducted and continues to conduct substantial business in the
3 state of California.

4 6. Defendant UL San Jose LLC is a California limited liability company that at all
5 relevant times mentioned herein conducted and continues to conduct substantial business in the
6 state of California.

7 7. Defendant UL Benicia LLC is a California limited liability company that at all
8 relevant times mentioned herein conducted and continues to conduct substantial business in the
9 state of California.

10 8. Defendant UL Chula Two LLC is a California limited liability company that at
11 all relevant times mentioned herein conducted and continues to conduct substantial business in
12 the state of California.

13 9. Defendant UL Kenamar LLC is a California limited liability company that at all
14 relevant times mentioned herein conducted and continues to conduct substantial business in the
15 state of California.

16 10. Defendant UL Management LLC is a California limited liability company that at
17 all relevant times mentioned herein conducted and continues to conduct substantial business in
18 the state of California.

19 11. Defendant UL Products LLC is a California limited liability company that at all
20 relevant times mentioned herein conducted and continues to conduct substantial business in the
21 state of California.

22 12. Defendant UL Visalia LLC is a California limited liability company that at all
23 relevant times mentioned herein conducted and continues to conduct substantial business in the
24 state of California.

25 13. Defendant UL Holdings Inc. is a California corporation that at all relevant times
26 mentioned herein conducted and continues to conduct substantial business in the state of
27 California.

28 14. Defendant Willie Frank Penn is an individual that at all relevant times mentioned

1 herein conducted and continues to conduct substantial business in the state of California.

2 15. PLAINTIFFS allege there has existed a unity of interest and ownership between
3 the Defendants named in paragraphs No.'s 4-14 above such that any individuality and
4 separateness between the entities has ceased and all Defendants are referred to herein as
5 "DEFENDANT."

6 16. PLAINTIFFS allege that DOES 1-50 are the partners, agents, owners, or
7 managers of DEFENDANT at all relevant times. PLAINTIFFS allege there has existed a unity
8 of interest and ownership between DEFENDANT such that any individuality and separateness
9 between the entities has ceased. The Defendants named above and DOES 1-50 are therefore
10 alter egos of each other. Adherence to the fiction of the separate existence of DEFENDANT
11 would permit an abuse of the corporate privilege, and would promote injustice by protecting
12 DEFENDANT from liability for the wrongful acts committed by them.

13 17. PLAINTIFFS further allege that Defendants are the alter egos of each other for
14 the following reasons:

15 (A) On the California Secretary of State's website
16 (<https://businesssearch.sos.ca.gov/>) Defendants have the same entity
17 address and/or mailing address and/or Agent for Service of Process; and,

18 (B) On information and belief Defendants utilize the same standardized
19 employment forms and issue the same employment policies.

20 18. DEFENDANT owns and operates cannabis dispensaries in California.

21 19. Plaintiff Rivera was employed by DEFENDANT in California from July of 2020
22 to June of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
23 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
24 of minimum and overtime wages due for all time worked.

25 20. Plaintiff Heacock was employed by DEFENDANT in California from September
26 of 2019 to May of 2021 and was at all times classified by DEFENDANT as a non-exempt
27 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
28 payment of minimum and overtime wages due for all time worked.

1 21. PLAINTIFFS, and such persons that may be added from time to time who satisfy
2 the requirements and exhaust the administrative procedures under the Private Attorney General
3 Act, bring this Representative Action on behalf of the State of California with respect to
4 themselves and all individuals who are or previously were employed by ULBP Inc. and/or UL
5 LA Mesa LLC and/or UL San Jose LLC and/or UL Benicia LLC and/or UL Chula Two LLC
6 and/or UL Kenamar LLC and/or UL Management LLC and/or UL Products LLC and/or UL
7 Visalia LLC and/or UL Holdings Inc. and/or Willie Frank Penn in California and classified as
8 non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of November
9 9, 2020 until a date as determined by the Court (the "PAGA PERIOD").

10 22. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
11 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
12 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
13 DEFENDANT’s violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
14 226(a), 226.7, 227.3, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
15 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
16 Order(s). Based upon the foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are
17 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

18 23. The true names and capacities, whether individual, corporate, subsidiary,
19 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
20 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
21 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
22 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
23 ascertained. PLAINTIFFS are informed and believe, and based upon that information and
24 belief allege, that the Defendants named in this Complaint, including DOES 1 through 50,
25 inclusive, are responsible in some manner for one or more of the events and happenings that
26 proximately caused the injuries and damages hereinafter alleged.

27 24. The agents, servants and/or employees of the Defendants and each of them acting
28 on behalf of the Defendants acted within the course and scope of his, her or its authority as the

1 agent, servant and/or employee of the Defendants, and personally participated in the conduct
2 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
3 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
4 all Defendants are jointly and severally liable to PLAINTIFFS and the AGGRIEVED
5 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
6 agents, servants and/or employees.

7 8 **THE CONDUCT**

9 25. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
10 required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked,
11 meaning the time during which an employee is subject to the control of an employer, including
12 all the time the employee is suffered or permitted to work. DEFENDANT required
13 PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying them for all the
14 time they were under DEFENDANT's control. Among other things, DEFENDANT required
15 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-
16 duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while
17 clocked out for what should have been PLAINTIFFS' off-duty meal break. PLAINTIFFS and
18 the AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent
19 undergoing mandatory drug testing or any other testing and/or examination required as a
20 condition of employment. DEFENDANT, as a matter of established company policy and
21 procedure, administered a uniform practice of rounding the actual time worked and recorded
22 by PLAINTIFFS and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT,
23 so that during the course of their employment, PLAINTIFFS and the AGGRIEVED
24 EMPLOYEES were paid less than they would have been paid had they been paid for actual
25 recorded time rather than "rounded" time. Additionally, DEFENDANT engaged in the practice
26 of requiring PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform work off the clock
27 in that DEFENDANT, as a condition of employment, required these employees to submit to
28 mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to

1 clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFFS
2 and the AGGRIEVED EMPLOYEES forfeited minimum wage, overtime wage compensation,
3 and off-duty meal breaks by working without their time being correctly recorded and without
4 compensation at the applicable rates. DEFENDANT's policy and practice not to pay
5 PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked, is evidenced by
6 DEFENDANT's business records.

7 26. State law provides that employees must be paid overtime and meal and rest break
8 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFFS and the
9 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
10 tied to specific elements of an employee's performance.

11 27. The second component of PLAINTIFFS' and the AGGRIEVED EMPLOYEES'
12 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFFS
13 and the AGGRIEVED EMPLOYEES incentive wages based on their performance for
14 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
15 hourly basis with incentive compensation when the employees met the various performance
16 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
17 overtime and meal and rest break premiums to PLAINTIFFS and the AGGRIEVED
18 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
19 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
20 break premium pay. Management and supervisors described the incentive program to potential
21 and new employees as part of the compensation package. As a matter of law, the incentive
22 compensation received by PLAINTIFFS and the AGGRIEVED EMPLOYEES must be included
23 in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime
24 compensation and meal and rest break premiums to PLAINTIFFS and the AGGRIEVED
25 EMPLOYEES by DEFENDANT.

26 28. As a result of their rigorous work schedules, PLAINTIFFS and the AGGRIEVED
27 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
28 and were not fully relieved of duty for their meal periods. PLAINTIFFS and the AGGRIEVED

1 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
2 for more than five (5) hours during some shifts without receiving a meal break. Further,
3 DEFENDANT from time to time failed to provide PLAINTIFFS and the AGGRIEVED
4 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
5 were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged
6 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFFS and
7 the AGGRIEVED EMPLOYEES. PLAINTIFFS and the AGGRIEVED EMPLOYEES
8 therefore forfeit meal breaks without additional compensation and in accordance with
9 DEFENDANT's corporate policy and practice.

10 29. During the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED EMPLOYEES
11 were also required from time to time to work in excess of four (4) hours without being provided
12 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
13 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
14 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
15 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
16 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
17 PLAINTIFFS and the AGGRIEVED EMPLOYEES were also not provided with one hour
18 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
19 to provide employees with off-duty rest periods, which the California Supreme Court defined
20 as time during which an employee is relieved from all work related duties and free from
21 employer control. In so doing, the Court held that the requirement under California law that
22 employers authorize and permit all employees to take rest period means that employers must
23 relieve employees of all duties and relinquish control over how employees spend their time
24 which includes control over the locations where employees may take their rest period.
25 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
26 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and the
27 AGGRIEVED EMPLOYEES from unconstrained walks and is unlawful based on
28 DEFENDANT's rule which states PLAINTIFFS and the AGGRIEVED EMPLOYEES cannot

1 leave the work premises during their rest period.

2 30. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
3 PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual amount of time these
4 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
5 DEFENDANT was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all
6 time worked, meaning the time during which an employee was subject to the control of an
7 employer, including all the time the employee was permitted or suffered to permit this work.
8 DEFENDANT required these employees to work off the clock without paying them for all the
9 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
10 known that PLAINTIFFS and the AGGRIEVED EMPLOYEES were under compensated for
11 all time worked. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited time
12 worked by working without their time being accurately recorded and without compensation at
13 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
14 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
15 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
16 1197.1.

17 31. During the PAGA PERIOD, pursuant to DEFENDANT's company policies and
18 practices, PLAINTIFFS and the AGGRIEVED EMPLOYEES were forced to share gratuities
19 left for them by customers to DEFENDANT's agents who provided no service to the customers
20 that resulted in the gratuity. Here, PLAINTIFFS and the AGGRIEVED EMPLOYEES earned
21 gratuities based on sales of products while under the employ of DEFENDANT, pursuant to
22 company policy. DEFENDANT maintained a policy and practice of sharing these gratuities
23 with employees who "have the authority to hire or discharge any employee" or otherwise
24 "supervise, direct, or control the acts of employees." Additionally, DEFENDANT maintained
25 a policy and practice of sharing such gratuities with those outside the chain of service, including
26 administrative, warehouse, dispatch, online, security, budbacks, inventory, stockers and office
27 employees. DEFENDANT's customers have paid these tips reasonably believing they were
28 remitted to the service staff. However, DEFENDANT has not remitted the total proceeds of

1 these gratuities to the non-managerial employees who served the customers. Instead,
2 DEFENDANT had a policy and practice of retaining for itself a portion of these gratuities
3 and/or using a portion of these gratuities to pay managers or other non-service employees. As
4 a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES have not received the total
5 proceeds of the gratuities, to which they are entitled to under California law.

6 32. PLAINTIFFS and the AGGRIEVED EMPLOYEES were forced to forfeit
7 portions of their gratuities, which said gratuities were kept by DEFENDANT and their agents
8 who were not in the chain of service from which the gratuity resulted. PLAINTIFFS and the
9 AGGRIEVED EMPLOYEES contend that any gratuities kept by DEFENDANT were illegal
10 and in violation of California law because PLAINTIFFS and the AGGRIEVED EMPLOYEES,
11 not DEFENDANT, provided the service for to whom the gratuity should have been paid.

12 33. California Labor Code § 351 establishes the requirements for an employer
13 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
14 employees. California Labor Code § 351 expressly prohibits employers and their agents from
15 collecting, taking, or receiving any portion of a gratuity. California Labor Code § 350(e)
16 defines the term “gratuity” as including any money that has been paid or given or left for an
17 employee by a patron of a business over and above the actual amount due the business for
18 services rendered or for goods, food, drink or articles sold or served to such patron. Labor Code
19 § 353 requires employers to keep accurate records of all gratuities they receive, directly or
20 indirectly.

21 34. Although tip pooling is not expressly prohibited by the Labor Code, employees
22 who mandate tip pooling must only distribute pooled tips to employees in the “chain of service.”
23 By distributing tips to DEFENDANT directly and to their agents who were not in the “chain of
24 service,” DEFENDANT has violated and continue to violate the legal requirements for handling
25 pooled tips.

26 35. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
27 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
28 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226

1 provides that every employer shall furnish each of his or her employees with an accurate
2 itemized wage statement in writing showing, among other things, gross wages earned and all
3 applicable hourly rates in effect during the pay period and the corresponding amount of time
4 worked at each hourly rate. PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid on
5 an hourly basis. As such, the wage statements should reflect all applicable hourly rates during
6 the pay period and the total hours worked, and the applicable pay period in which the wages
7 were earned pursuant to California Labor Code Section 226(a). The wage statements
8 DEFENDANT provided to PLAINTIFFS and the AGGRIEVED EMPLOYEES failed to
9 identify such information. More specifically, the wage statements failed to identify the accurate
10 total hours worked each pay period. When the hours shown on the wage statements were added
11 up, they did not equal the actual total hours worked during the pay period. Aside, from the
12 violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an
13 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
14 As a result, DEFENDANT from time to time provided PLAINTIFFS and the AGGRIEVED
15 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

16 36. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
17 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
18 wages are paid not more than seven calendar days following the close of the payroll period.
19 Cal. Lab. Code § 210 provides:

20 [I]n addition to, and entirely independent and apart from, any other penalty provided in
21 this article, every person who fails to pay the wages of each employee as provided in
22 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
23 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
24 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
25 for each failure to pay each employee, plus 25 percent of the amount unlawfully
26 withheld.

27 37. DEFENDANT from time to time failed to pay PLAINTIFFS and the
28 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro” wage
payment.

38. DEFENDANT underpaid sick pay wages to PLAINTIFFS and the AGGRIEVED

1 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
2 Code Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn non-
3 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
4 underpaid sick pay to PLAINTIFFS and the AGGRIEVED EMPLOYEES at their base rates of
5 pay.

6 39. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
7 employees be calculated by dividing the employee's total wages, not including overtime
8 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
9 of employment.

10 40. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
11 the regular rate of pay. PLAINTIFFS and the AGGRIEVED EMPLOYEES routinely earned
12 non-discretionary incentive wages which increased their regular rate of pay. However, when
13 sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and the AGGRIEVED
14 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
15 Code Section 246.

16 41. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS and
17 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
18 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and
19 believe and based thereon allege that such failure to pay sick pay at regular rate was willful,
20 such that PLAINTIFFS and the AGGRIEVED EMPLOYEES whose employment has separated
21 are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

22 42. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
23 to collect or receive from an employee any part of wages theretofore paid by said employer to
24 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and the
25 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
26 PLAINTIFFS and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
27 deductions from compensation payable to PLAINTIFFS and the AGGRIEVED EMPLOYEES,
28 and thereby failed to pay these employees all wages due at each applicable pay period and upon

1 termination.

2 43. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
3 PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business expenses incurred
4 by the PLAINTIFFS and the AGGRIEVED EMPLOYEES in direct consequence of discharging
5 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
6 are required to indemnify employees for all expenses incurred in the course and scope of their
7 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
8 her employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
10 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
11 believed them to be unlawful."

12 44. In the course of their employment PLAINTIFFS and the AGGRIEVED
13 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
14 cellular phones as a result of and in furtherance of their job duties as employees for
15 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
16 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
17 PLAINTIFFS and the AGGRIEVED EMPLOYEES were required by DEFENDANT to use
18 their personal cellular phones. As a result, in the course of their employment with
19 DEFENDANT, PLAINTIFFS and the AGGRIEVED EMPLOYEES incurred unreimbursed
20 business expenses which included, but were not limited to, costs related to the use of their
21 personal cellular phones all on behalf of and for the benefit of DEFENDANT.

22 45. All of the conduct and violations alleged herein occurred during the PAGA
23 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
24 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
25 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
26 AJDAR 12157 (Certified for Publication 12/19/18).

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1 themselves and all individuals who are or previously were employed by ULBP Inc. and/or UL
2 LA Mesa LLC and/or UL San Jose LLC and/or UL Benicia LLC and/or UL Chula Two LLC
3 and/or UL Kenamar LLC and/or UL Management LLC and/or UL Products LLC and/or UL
4 Visalia LLC and/or UL Holdings Inc. and/or Willie Frank Penn in California and classified as
5 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of November
6 9, 2020 until a date as determined by the Court (the "PAGA PERIOD").

7 51. On November 9, 2021, PLAINTIFFS gave written notice by electronic mail to
8 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
9 employer of the specific provisions of this code alleged to have been violated as required by
10 Labor Code § 2699.3. The statutory waiting period for PLAINTIFFS to add these allegations
11 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now
12 commence a representative civil action under PAGA pursuant to Section 2699 as the proxies
13 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

14 52. The policies, acts and practices heretofore described were and are an unlawful
15 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
16 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
17 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
18 to pay overtime wages and sick pay wages, (e) failed to reimburse for required expenses, (f)
19 failed to provide wages when due and (g) failed to provide gratuities, all in violation of the
20 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
21 226(a), 226.7, 227.3, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California
22 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
23 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFFS
24 hereby seek recovery of only civil penalties as prescribed by the Labor Code Private Attorney
25 General Act of 2004 as the representatives of the State of California for the illegal conduct

27 ¹Plaintiffs specifically exclude and/or do not allege any claims under California Labor
28 Code §558(a)(3).

1 perpetrated on PLAINTIFFS and the AGGRIEVED EMPLOYEES.

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3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
5 severally, as follows:

6 1. On behalf of the State of California and with respect to all AGGRIEVED
7 EMPLOYEES:

8 A) Recovery of civil penalties as prescribed by the Labor Code Private
9 Attorneys General Act of 2004; and,

10 B) An award of attorneys' fees and cost of suit, as allowable under the
11 law, including, but not limited to, pursuant to Labor Code §2699.

12 Dated: May19, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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15 By: /s/ Nicholas De Blouw
16 Nicholas J. De Blouw
17 Attorneys for Plaintiffs
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