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 Superior Court of California
 County of Alameda

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Clerk of the Court, Executive Officer / Clerk of the Court

By: Cheryl Clark Deputy

C. C. Clark

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

KOURTNEY GLOR and OCTAVIA T. OCHOA, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

IHEARTMEDIA + ENTERTAINMENT, INC., a Nevada Corporation,

Defendant.

CASE NO. 22CV005286

SECOND AMENDED CLASS, COLLECTIVE, AND REPRESENTATIVE COMPLAINT FOR:

- (1) Failure to Pay Minimum Wages (Cal. Labor Code §§ 1194, 1194.2; IWC Wage Order No. 4-2001, § 4);
- (2) Failure to Pay Overtime Wages (Cal. Labor Code §§ 510, 1194; IWC Wage Order No. 4-2001, § 3);
- (3) Failure to Permit and Authorize Paid Rest Breaks (Cal. Labor Code § 226.7; IWC Wage Order No. 4-2001, § 12);
- (4) Failure to Pay Compensation Due Upon Discharge from Employment (Cal. Labor Code §§ 201-203);
- (5) Failure to Issue Accurate Itemized Wage Statements (Cal. Labor Code § 226(a), (e));
- (6) Failure to Reimburse Business Expenses (Cal. Labor Code § 2802);
- (7) Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 et seq.);
- (8) Fair Labor Standards Act (29 U.S.C. § 216(b); and
- (9) Private Attorneys' General Act, Cal. Labor Code § 2698 et seq.

DEMAND FOR JURY TRIAL

1 Plaintiffs Kourtney Glor and Octavia Tabitha Ochoa, complain and allege the following:

2 **INTRODUCTION**

3 1. This is a collective, class, and representative action to recover overtime wages owed under
4 federal and state laws by Defendant iHeartMedia + Entertainment, Inc. (“iHeart” or “Defendant”), and
5 minimum wages, statutory damages, unreimbursed expenses, restitution, and civil penalties under state
6 laws.

7 2. Plaintiffs and other similar situated persons worked as Account Executives for Defendant
8 selling radio advertising space. Defendant classified Plaintiffs as exempt outside salespersons during all
9 times relevant to this Complaint. Beginning on or about March 18, 2020, however, Defendant directed
10 Plaintiffs and other Account Executives (as well as individuals employed in other positions) to work
11 remotely from home. Plaintiffs and other Account Executives began to spend more than half of their
12 working time working from home and not engaged in outside sales and, as such, did not meet the outside
13 sales exemption. As a result of misclassifying them as exempt outside salespersons, beginning on or
14 about March 18, 2020 and continuing through to at least July 26, 2022, Defendant failed to afford them
15 protections to which they were entitled under state and federal wage and hour laws.

16 3. Plaintiff Glor brings this class action under California Code of Civil Procedure § 382
17 against Defendant iHeartMedia + Entertainment, Inc. (“iHeart” or “Defendant”) on behalf of herself and
18 all other current and former employees of Defendant who were classified as outside sales employees and
19 worked in the state of California (“Account Executive Class Members” or “AE Class Members”) from
20 March 16, 2020 through to July 26, 2022 (“Class Period”), seeking damages for the failure to pay
21 minimum and overtime wages, failure to permit and authorize paid rest breaks; failure to provide accurate
22 itemized wage statements, and failure to pay all wages due at the time of discharge in violation of
23 California Labor Code (“Labor Code”) §§ 226, 510, 1194, 226.7, 201, 202, 203, IWC Wage Order (“Wage
24 Order”) No. 4-2001 §§ 3, 12. Plaintiff Glor also brings this case as a FLSA collective action on behalf of
25 herself and all other current and former employees of Defendant who were classified as outside sales
26 employees and worked in the state of California anytime during the FLSA Period, defined as March 16,
27 2020 through to July 26, 2022 (“FLSA Class Members”), for the failure to pay overtime.

28 4. Plaintiff Glor also brings this class action on behalf of herself and all other current and
former employees of Defendant who worked in California (“Expense Reimbursement Class Members” or
“ER Class Members”) during the Class Period, seeking damages for the failure to reimburse necessary
home office business expenses, in violation of Labor Code § 2802.

1 5. Plaintiff Glor also seeks restitution, attorneys' fees and costs under California's Unfair
2 Competition Law ("UCL"), Business & Professions Code §§ 17200 *et seq.*, California Civil Procedure
3 Code § 1021.5, and other applicable laws.

4 6. Finally, Plaintiff Ochoa brings this representative action under the Private Attorneys
5 General Act of 2004, codified at California Labor Code ("Labor Code") §§ 2698 *et seq.* ("PAGA") for
6 civil penalties, reasonable attorneys' fees, and costs on behalf of Plaintiff and all other similarly situated
7 individuals currently and formerly employed in California by Defendant as Account Executives or in a
8 similar capacity ("AE Aggrieved Employees") from May 5, 2020 through to the trial date ("PAGA
9 Period") for violations of Labor Code §§ 226(a), 226.7, 246, 432.5, 510, 1174(d), 1174.5, 1194, 1197,
10 2802, 201-202 and IWC Wage Order ("Wage Order") No. 4, §§ 3, 12.

11 7. Plaintiff Ochoa also brings this representative action under PAGA for civil penalties,
12 reasonable attorneys' fees, and costs on behalf of Plaintiff and all other individuals employed by
13 Defendant in California during the PAGA Period for its failure to reimburse business expenses in violation
14 of Labor Code § 2802 ("Expense Reimbursement Aggrieved Employees or "ER Aggrieved Employees").

15 **PARTIES**

16 8. Plaintiff Glor is a resident of San Diego, California and was employed by iHeart as an
17 Account Executive from approximately October 2013 through to the end of January 2021. During her
18 employment, Plaintiff Glor was subject to Defendant's unlawful conduct described herein.

19 9. Plaintiff Ochoa is a resident of Bakersfield, California and was employed by iHeart as an
20 Account Executive at its Bakersfield location from approximately March 2019 until September 2021.
21 During her employment, Plaintiff Ochoa was subject to Defendant's unlawful conduct described herein.

22 10. Defendant iHeartMedia + Entertainment, Inc. is a global media and entertainment
23 company incorporated in Nevada, with its principal place of business located at 20880 Stone Oak
24 Parkway, San Antonio, Texas 78258.

25 **JURISDICTION**

26 11. This Court has jurisdiction over Plaintiff Glor's claims for failure to pay minimum wage
27 pursuant to Labor Code §§ 1194, 1194.2 and Wage Order No. 4-2001, § 4.

28 12. This Court has jurisdiction over Plaintiff Glor's claims for failure to pay overtime wages
pursuant to Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3.

 13. This Court has jurisdiction over Plaintiff Glor's claims for failure to permit and authorize
paid rest breaks pursuant to Labor Code § 226.7 and Wage Order No. 4-2001, § 12.

14. This Court has jurisdiction over Plaintiff Glor's claims for failure to pay all wages due and owing upon discharge pursuant to Labor Code §§ 201-203.

15. This Court has jurisdiction over Plaintiff Glor's claims for failure to issue accurate itemized wage statements pursuant to Labor Code § 226(a)(2) and (a)(9).

16. This Court has jurisdiction over Plaintiff Glor's claims for failure to reimburse business expenses pursuant to Labor Code § 2802.

17. This Court has jurisdiction over Plaintiff Glor's claims for restitution arising from Defendant's violations of Labor Code §§ 510, 226.7 1194, 2802 and Wage Order No. 4-2001, §§ 3, 12 and under the UCL, Bus. & Prof. Code §§ 17203 and 17204.

18. This Court has jurisdiction over Plaintiff Glor's claims for unpaid overtime under the FLSA, 29 U.S.C. § 216(b).

19. This Court has jurisdiction over Plaintiff Glor's claims for reasonable attorneys' fees and costs, pursuant to Labor Code §§ 1194, 226(e), 2802(c).

20. This Court has jurisdiction over Plaintiff Ochoa's PAGA claim, and reasonable attorneys' fees and costs, pursuant to California Labor Code § 2699(a) and (g).

21. On November 5, 2021, Plaintiff provided Notice pursuant to Labor Code § 2699.3 to the LWDA (via its website) and to Defendant (via certified mail). On December 3, 2021, Plaintiff Ochoa provide an Amended PAGA Notice to LWDA and to Defendant. The LWDA has not provided notice to Plaintiff regarding its intention to investigate or not investigate Plaintiff Ochoa's claims.

VENUE

22. Venue is proper in the County of Alameda pursuant to California Code of Civil Procedure §§ 395(a) and 395.5. Defendant has not designated a principal place of business anywhere in California. Venue is therefore proper in any county, including County of Alameda. The unlawful acts alleged herein have a direct effect on members of the Classes within the State of California and within Alameda County.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

23. iHeart operates as a global multimedia company specializing in radio, digital, mobile, social, live events and on demand entertainment. The company owns and operates radio stations and also manages outdoor and indoor events. iHeart employs account executives who sell media, entertainment, and advertising products and services to customers.

A. Defendant Misclassified Plaintiffs and Account Executives as Outside Salespersons under California Law and the FLSA

1 24. During all times relevant to this Complaint, Defendant maintained a policy and/or practice
2 of classifying Plaintiffs and all other Account Executives as outside salespersons. However, beginning on
3 or approximately March 18, 2020, following Governor Newsom's stay-at-home order, Defendant
4 instituted policies and/or practices of requiring and/or expecting Plaintiffs and other Account Executives
5 to work almost exclusively from their own home offices, i.e. the employer's place of business. As a result,
6 Plaintiffs and Account Executives regularly spent more than half of their working time at the Defendant's
7 place of business and, as such, did not meet the outside salesperson exemption set out in Wage Order No.
8 4, § 2(M).

9 25. Therefore, Plaintiffs and Account Executives were entitled to the protections of the
10 California minimum wage laws, including the right to paid minimum wage, off-duty rest breaks, accurate
11 itemized wage statements, and, depending on their earnings, to overtime pay.

12 26. In addition, Plaintiffs and Account Executives were entitled to the protection of the federal
13 overtime pay laws.

14 California State Minimum Wage and Overtime Violations During the Period When Account
15 Executives Were Paid on Commission Only

16 27. During some parts of the period relevant to the Complaint, Account Executives received
17 each month a draw against future commissions. Once Account Executives earned commissions, their draw
18 from prior pay periods was subject to repayment. This recovery of draw payments by Defendant reduced
19 Account Executives' pay below the state minimum wage during some pay periods. As a result, Defendant
20 failed to pay Account Executives at least minimum wage for all hours worked during those pay periods,
21 in violation of Labor Code §§ 1194, 1197.

22 28. Additionally, when paid on commission only, Account Executives' pay sometimes was
23 below one and one-half times the minimum wage. During those times, Defendant was also required to
24 pay overtime wages for all hours worked over 8 in a day and/or over 40 in a week pursuant to California
25 Labor Code § 510. Account Executives routinely worked over 8 hours in a day and/or over 40 hours in a
26 week, yet Defendant did not pay them overtime, in violation of Labor Code § 510.

27 State Overtime Violations During the Period When Account Executives Were Paid a Salary and
28 Commission

 29. As stated above, Account Executives did not qualify for the outside salesperson exemption
during some parts of the period relevant to the Complaint because they worked more than half of their
time from Defendant's office (i.e. their homes). During some parts of the period relevant to the Complaint,

1 Account Executives were also paid a salary and commissions, but less than half of their compensation
2 was earned from commissions and/or their compensation was below one and one half of minimum wage.

3 30. As a result, they were entitled to overtime pay. However, while Account Executives
4 routinely worked over 8 hours in a day and/or over 40 hours in a workweek, Defendant did not pay them
5 overtime, as required pursuant to Labor Code §§ 1194 and 510.

6 FLSA Overtime Violations

7 31. During the FLSA Period, Account Executives customarily and regularly worked from their
8 home offices, and thus could not be properly classified as outside salespersons.

9 32. As a result, Account Executives were entitled to minimum wage and overtime pay for all
10 hours worked over 40 per week.

11 33. Account Executives routinely worked more than 40 hours per week. However, Defendant
12 did not pay them overtime, as required pursuant to 29 USC § 216(b).

13 ***B. Defendant Failed to Authorize and Permit Paid Rest Breaks***

14 34. As discussed above, during some parts of the Class Period, Defendant paid Account
15 Executives on a commission only basis. Moreover, as stated above, Plaintiffs and Account Executives
16 spent more than half of their working time at Defendant's place of business (i.e. their home offices), and
17 therefore could not be properly classified as outside sales representatives. As Plaintiffs and Account
18 Executives did not fall within the outside salesperson exemption and were paid on commission only basis
19 during some parts of the Class Period, they were entitled to be paid hourly and separately for their rest
20 breaks. This is so because an employer is required to compensate employees for all hours worked,
21 including nonproductive time, and a commission agreement that advances a draw against future earned
22 commissions is analytically indistinguishable from a piece-rate compensation plan, in that both plans do
23 not directly account for rest periods.

24 35. However, Defendant did not pay Account Executives separately for their rest breaks, as
25 required pursuant to Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 12.

26 ***C. Defendant Failed to Pay All Compensation Owed to Formerly Employed Account Executives
27 Upon Discharge***

28 36. Plaintiff Glor's employment with Defendant ended in approximately January 2021.
During the Class Period, as a consequence of Defendant's failure to pay minimum wage for all hours
worked, including rest breaks, and failing to pay overtime wages, Plaintiff Glor and formerly employed
Account Executives did not receive all compensation due to them upon separation from employment as
required under Labor Code §§ 201-202.

1 37. Plaintiff Ochoa's employment with Defendant ended in approximately the end of
2 September 2021. During the PAGA Period, as a consequence of Defendant's failure to pay minimum
3 wage for all hours worked, including rest breaks, and failing to pay overtime wages, Plaintiff Ochoa and
4 formerly employed AE Aggrieved Employees did not receive all compensation due to them upon
5 separation from employment as required under Labor Code §§ 201-202.

6 ***D. Defendant Failed to Issue Accurate Itemized Wage Statements to Account Executives***

7 38. As discussed above, Defendant classified Plaintiffs and Account Executives as outside
8 salespersons during all periods relevant to this Complaint, despite the fact that Plaintiffs and Account
9 Executives spent more than 50% of their working time working from Defendant's place of business (home
10 offices). As a result, Defendant did not require Plaintiffs and Account Executives to track their hours
11 worked, and did not list the total hours worked by them on their wage statements, nor their time spent on
12 rest breaks and wages earned for rest breaks.

13 39. As a result of Defendant's failure to track Account Executives' hours worked and,
14 separately, as a result of failing to pay minimum wage, rest break time, and overtime wages, Defendant
15 failed to furnish them with wage statements containing gross and net wages earned, total hours worked,
16 all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked
17 at each hourly rate by the employee in violation of Labor Code § 226(a)(1), (a)(2), (a)(5), (a)(9).

18 ***E. Defendant Failed to Maintain Accurate Payroll Records for AE Aggrieved Employees***

19 40. Under Labor Code § 1174(d), Defendant was required to maintain accurate payroll records
20 for Plaintiff and AE Aggrieved Employees. As discussed above, Defendant failed to maintain records of,
21 among other things, the hours worked and applicable rates of pay for rest breaks, in violation of Labor
22 Code § 1174(d).

23 ***F. Defendant Failed to Provide Paid Sick Leave***

24 41. Under the Labor Code § 246(l), "an employer shall calculate paid sick leave using any of
25 the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same
26 manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether
27 or not the employee actually works overtime in that workweek; (2) Paid sick time for nonexempt
28 employees shall be calculated by dividing the employee's total wages, not including overtime premium
pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

 42. During the Class Period and the PAGA Period, the AE Class Members/AE Aggrieved
Employees were non-exempt employees because they did not meet the "outside salespersons" exemption
defined in Wage Order No. 4-2001, § 2(M). As a result, Defendant was required to calculate their paid

1 sick time using one of the methods described in Labor Code § 246(l). However, Defendant failed to do
2 so, in violation of Labor Code § 246(l).

3 ***G. Defendant Failed to Reimburse Necessary Business Expenses***

4 43. Throughout the Class Period, Defendant maintained a policy of requiring Plaintiffs and
5 Account Executives to have a car at his/ her disposal at all times during business hours for their work-
6 related use and to maintain auto liability insurance and property damage insurance on any car used by the
7 employee in connection with his/her work. This policy applied even during the time when Plaintiffs and
8 Account Executives did not drive their cars during the pandemic related shutdowns.

9 44. Under Labor Code § 2802, an employer must reimburse its employees for reasonably
10 incurred business expenses that it knows or has reason to know that its employees are incurring expenses.
11 Because Defendant maintained a policy of requiring Plaintiffs and Account Executives to maintain
12 automobiles and auto insurance throughout the Class Period and PAGA Period, Defendant knew or should
13 have known that they incurred expenses, but failed to reimburse them for a reasonable portion of their car
14 insurance expenses.

15 45. Additionally, when Plaintiffs and Account Executives began selling out in the field again
16 and were using their cars in order to carry out their job duties, Defendant was required to reimburse them
17 for their mileage and insurance expenses. However, Defendant continued to not reimburse them for any
18 of their auto-related expenses, including insurance expenses, in violation of Labor Code § 2802.

19 ***H. Defendant Violated Labor Code § 432.5***

20 46. Labor Code § 432.5 provides: “No employer, ... shall require any employee or applicant
21 for employment to agree, in writing, to any term or condition which is known by such employer, or agent,
22 manager, superintendent, or officer thereof to be prohibited by law.”

23 47. Business & Professions Code § 16660 provides “Except as provided in this chapter, every
24 contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any
25 kind is to that extent void.”

26 48. Defendant requires AE Aggrieved Employees, as a condition of their employment, to agree
27 to its non-interference with company employees and on-air talent. The relevant clause provides as follows:

28 To further preserve Company’s Confidential Information, goodwill and legitimate business
interested, during employment and for six (6) months after employment ends (the ‘Non-
Interference Period’), Employee will not, directly or indirectly, solicit any employee or on-air
talent to cease providing service to Company.

49. Defendant’s non-interference clause is prohibited by § 16600 of the Business &
Professions Code and therefore violates Labor Code § 432.5 of the Labor Code.

1 ***I. Failure to Reimburse Home Office Business Expenses***

2 50. Beginning in March 2020, Defendant instituted policies and/or practices that required ER
3 Class Members to perform work-related duties from home.

4 51. As a result of working remotely, in direct consequence of carrying out their duties, or their
5 obedience to the directions of the Defendant, ER Class Members incurred home office expenses, including
6 but not limited to charges for internet service, cellular phone service, and office supplies.

7 52. Defendant knew or should have known that ER Class Members incurred these home
8 offices expenses. However, Defendant did not maintain a policy and/or practice of reimbursing ER Class
9 Members for these expenses fully or at all.

10 53. As a result, Defendant violated Labor Code § 2802, and Plaintiffs and ER Class Members
11 are entitled to reimbursement for these home office expenses, and their reasonable attorney's fees and
12 costs.

13 **CLASS ACTION ALLEGATIONS**

14 54. Plaintiff Glor brings this action, on behalf of herself, the AE Class and ER Class, as a class
15 action pursuant to Code of Civil Procedure § 382. Upon information and belief, there are more than 150
16 members in each Class. The members of each Class are so numerous that joinder of all members is
17 impractical.

18 55. Plaintiff Glor's claims are typical of the claims of the members of the Classes she seeks to
19 represent because she was employed by Defendant and subject to its unlawful policies and/or practices,
20 including misclassification and resulting failure to issue accurate itemized wage statements, failure to pay
21 overtime wages, failure to permit and authorize paid rest breaks, failure to pay all wages due at the time
22 of discharge, and failure to reimburse business expenses incurred as a result of working from home during
23 the relevant period.

24 56. Plaintiff Glor will fairly and adequately represent the interests of the Classes. Plaintiff
25 Glor has no conflict of interest with any member of the Classes. Plaintiff Glor has retained competent
26 and experienced counsel in complex class action litigation. Plaintiff Glor's counsel has the expertise and
27 financial resources to adequately represent the interests of the Classes.
28

1 57. Common questions of law and fact exist as to all members of the Classes predominate over
2 any questions solely affecting individual members of the Classes. Among the questions of law and fact
3 common to Plaintiff and each Class are the following:

- 4 a. Is a home office considered the employer's place of business under California law;
- 5 b. Is a home office considered the employer's place of business under federal law;
- 6 c. Did Defendant maintain policies and/or practices that led to AE Class Members to work 50%
7 or more from their employers' place of business;
- 8 d. Are AE Class Members outside salespersons;
- 9 e. Did Members of the AE Class earn 50% or less of their total compensation from
10 commissions, in any given pay period;
- 11 f. Are AE Class Members inside salespersons;
- 12 g. Did Defendant maintain policies and/or practices that led to FLSA Class Members to
13 customarily and regularly work from their employers' place of business;
- 14 h. Were FLSA Class Members' primary duty making sales;
- 15 i. Did Defendant violate Labor Code § 1194, 510;
- 16 j. Did Defendant violate Labor Code § 226.7;
- 17 k. Did Defendant violated Labor Code §§ 201-203 by failing to pay Plaintiff Glor and AE
18 Class members minimum wages and overtime pay due to them upon separation from
19 employment;
- 20 l. Did Defendant violated Labor Code § 226(a) by failing to issue accurate and itemized wage
21 statements to Plaintiff Glor and AE Class Members;
- 22 m. Was Defendant's violation of Labor Code § 226(a) knowing and intentional;
- 23 n. Did Plaintiff Glor and AE Class Members suffered injury for the purposes of Labor Code
24 § 226(e);
- 25 o. Did Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff Glor and ER
26 Class Members for necessarily incurred business expenses when they worked from home;
- 27 p. Did Defendant violate 29 U.S.C. § 216(b);
- 28

- 1 q. Did Defendant violate 29 U.S.C. § 207;
- 2 r. Do Defendant's violations, including its violations of the FLSA, constitute unfair,
- 3 unlawful, and fraudulent business practices, in violation of UCL;
- 4 s. Are Plaintiff Glor and AE Class Members entitled to restitution under Bus. & Prof. Code
- 5 §§ 17200 *et seq.* for unreimbursed expenses, and uncompensated wages; and
- 6 t. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff
- 7 Glor, AE Class Members, and ER Class Members.

8 58. Class action treatment is superior to any alternative to ensure the fair and efficient

9 adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly

10 situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and

11 without duplication of effort and expense that numerous individual actions would entail. No difficulties

12 are likely to be encountered in the management of this class action that would preclude its maintenance

13 as a class action, and no superior alternative exists for the fair and efficient adjudication of this

14 controversy. Members of the Classes are readily identifiable from Defendant's employee rosters and/or

15 payroll records.

16 59. Defendant's actions are generally applicable to the entire Classes. Prosecution of separate

17 actions by individual members of the Classes creates the risk of inconsistent or varying adjudications of

18 the issues presented herein, which, in turn, would establish incompatible standards of conduct for

19 Defendant.

20 60. Because joinder of all members is impractical, a class action is superior to other available

21 methods for the fair and efficient adjudication of this controversy. Furthermore, the amounts at stake for

22 many members of the Classes, while substantial, may not be sufficient to enable them to maintain separate

23 suits against Defendant.

24 **COLLECTIVE ACTION ALLEGATIONS**

25 61. Plaintiff Glor brings a claim for violation of Fair Labor Standards Act ("FLSA") pursuant

26 to 29 U.S.C. § 216(b), on behalf of the FLSA Class, as defined above.

27 62. For purposes of this action, including notice, the names and addresses of individuals who

28 are members of the FLSA Class are readily available to Defendant.

1 63. At all times relevant, Plaintiff Glor and the members of the FLSA Class have been similarly
2 situated, have had substantially similar job requirements and pay provisions, and have been subject to
3 Defendant's common policies of misclassifying Plaintiff Glor and FLSA Class Members as exempt and
4 willfully failing and refusing to pay Plaintiff Glor and the FLSA Class overtime wages.

5
6 **FIRST CAUSE OF ACTION**
7 **Failure to Pay Minimum Wages**
8 **[Cal. Labor Code § 1194 and Wage Order No. 4-2001, § 4]**

9 64. Plaintiff Glor re-alleges and incorporates by reference each and every allegation set forth
10 in the preceding paragraphs.

11 65. Labor Code § 1194 states that any employee receiving less than the minimum wage is
12 entitled to recover in a civil action the unpaid balance of the full amount of his or her unpaid compensation,
13 including interest thereon, and reasonable attorneys' fees and costs.

14 66. During the Class Period, AE Class Members were not paid minimum wage during those
15 pay periods when recovery of draw payments by Defendant reduced their pay below the state minimum
16 wage or any applicable local minimum wage ordinance.

17 67. As a result, Defendant failed to pay AE Class Members during those pay periods at least
18 minimum wage for all hours worked, in violation of Labor Code §§ 1194, 1197.

19 68. Defendant knew or should have known that AE Class Members' pay was sometimes
20 reduced below minimum wage.

21 69. Accordingly, pursuant to § 4 of the Wage Order and Labor Code § 1194, Plaintiff Glor and
22 AE Class Members are entitled to recover, at a minimum, an amount equal to the total amount of unpaid
23 minimum wages unlawfully withheld during the Class Period.

24 70. Plaintiff Glor, on behalf of herself and all other AE Class Members, also requests relief as
25 described below.

26 **SECOND CAUSE OF ACTION**
27 **Failure to Pay Overtime**
28 **[Cal. Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3]**

 71. Plaintiff Glor re-alleges and incorporates by reference each and every allegation set forth
in the preceding paragraphs.

1 72. Labor Code § 510 and the applicable Wage Order require that an employer compensate all
2 work performed by an employee in excess of either (8) hours per workday and forty (40) hours per
3 workweek, at one and one-half times the employee's regular rate.

4 73. Labor Code § 1194 states that any employee receiving less than the legal overtime
5 compensation applicable is entitled to recover in a civil action the unpaid balance of the full amount of
6 his or her overtime compensation, including interest thereon, and reasonable attorneys' fees and costs.

7 74. During the Class Period, Plaintiff Glor and AE Class Members routinely worked more than
8 eight (8) hours per workday and more than forty (40) hours per workweek.

9 75. During all relevant times, however, Defendant knowingly and willfully failed to pay
10 overtime earned and due to Plaintiff Glor and AE Class Members. Defendant's conduct deprived Plaintiff
11 Glor and AE Class Members of full and timely payment for all overtime hours worked in violation of the
12 Labor Code and applicable Wage Order.

13 76. Accordingly, pursuant to § 3 of the Wage Order and Labor Code §§ 510, 1194, Plaintiff
14 Glor and AE Class Members are entitled to recover, at a minimum, an amount equal to the total amount
15 of unpaid overtime wages unlawfully withheld during the Class Period.

16 77. Plaintiff Glor, on behalf of herself and all other Class Members, also requests relief as
17 described below.

18 **THIRD CAUSE OF ACTION**
19 **Failure to Permit and Authorize Rest Breaks**
20 **[Cal. Labor Code § 226.7; IWC Wage Order No. 4-2001, § 12]**

21 78. Plaintiff Glor re-alleges and incorporates by reference each and every allegation set forth
22 in the preceding paragraphs.

23 79. California Labor Code § 226.7(a) provides, "No employer shall require any employee to
24 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
25 Commission."

26 80. Wage Order No. 4-2001 § 12(A) provides:

27 “(A) Every employer shall authorize and permit all employees to take rest periods, which
28 insofar as practicable shall be in the middle of each work period. The authorized rest period
time shall be based on the total hours worked daily at the rate of ten minutes net rest time
per four hours or major fraction thereof. However, a rest period need not be authorized for

1 employees whose total daily work time is less than three and one-half (3 1/2) hours.
2 Authorized rest period time shall be counted as hours worked for which there shall be no
3 deduction from wages.”

4 81. As set forth above, during the Class Period, Class Members regularly worked 3.5 hours
5 or more in a workday.

6 82. During the periods when Class Members were paid on commissions only, Defendant was
7 required, but failed to pay them for rest breaks separately and hourly. As a result, Defendant was
8 required, but failed to pay premium pay pursuant to Labor Code § 226.7 and Wage Order No. 4-2001, §
9 12.

10 83. Plaintiff Glor, on behalf of herself and all other Class Members, also requests relief as
11 described below.

12 **FOURTH CAUSE OF ACTION**
13 **Failure to Pay All Wages Due at the Time of Discharge**
14 **[Cal. Labor Code §§ 201-203]**

15 84. Plaintiff Glor re-alleges and incorporates by reference each and every allegation set forth
16 in the preceding paragraphs.

17 85. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing to
18 formerly employed AE Class Members promptly upon their discharge or resignation from employment.
19 Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon
20 discharge or resignation, as required by §§ 201 and 202, then the employer is liable for waiting time
21 penalties in the form of continued compensation up to 30 workdays.

22 86. As alleged herein, Defendant failed to pay Plaintiff Glor and AE Class Members minimum
23 wages and/or overtime pay. As a result, Defendant failed to pay all compensation due and owing to
24 Plaintiff Glor and formerly employed AE Class Members upon their termination or separation from
25 employment with Defendant, as required by Labor Code §§ 201 and 202.

26 87. As a result, Defendant is liable to Plaintiff Glor and formerly employed AE Class Members
27 for waiting time penalties amounting to thirty (30) days wages for each formerly employed AE Class
28 Member pursuant to Labor Code § 203.

88. Plaintiff Glor, on behalf of herself and all other formerly employed AE Class Members,
also requests relief as described below.

FIFTH CAUSE OF ACTION
Failure to Issue Accurate Itemized Wage Statements
[Cal. Labor Code § 226(a), (e)]

89. Plaintiff Glor re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

90. During the relevant statutory period, Defendant failed to furnish Plaintiff Glor and AE Class Members with accurate itemized wage statements containing total hours worked by the employee, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(2) and (a)(9).

91. Defendant's failure to furnish accurate itemized wage statements to Plaintiff Glor and AE Class Members was knowing and intentional.

92. Plaintiff Glor and AE Class Members suffered injury as a result of Defendant's knowing and intentional failure to comply with Labor Code § 226(a).

93. As a result, Plaintiff Glor and AE Class Members are entitled to recover \$50 for each initial pay period with a violation, and \$100 for each subsequent pay period with a violation, up to an amount not exceeding an aggregate penalty of \$4,000 for each Class Member, pursuant to Labor Code § 226(e).

94. Plaintiff Glor, on behalf of herself and all other AE Class Members, also requests relief as described below.

SIXTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
[Cal. Labor Code § 2802]

95. Plaintiff Glor re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

96. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

97. As set forth above, Plaintiff Glor and ER Class Members worked remotely from home during the Class Period. As a result, in order to discharge their duties for Defendant, Plaintiff Glor and ER Class Members incurred expenses, including but not limited to the cost of home internet service, in order to carry out their job duties for Defendant. However, Defendant did not pay for nor reimburse

1 Plaintiff Glor and ER Class Members for those expenses incurred as a result of their use for business
2 purposes.

3 98. Defendant's failure to pay for or reimburse the business expenses of Plaintiff Glor and ER
4 Class Members violated non-waivable rights secured to them by Labor Code § 2802. As a result, Plaintiff
5 Glor and ER Class Members are entitled to recover all unreimbursed business expenses, and interest
6 thereon, and reasonable attorneys' fees and costs.

7 99. Plaintiff Glor, on behalf of herself and all other ER Class Members also requests relief as
8 described below.

9 **SEVENTH CAUSE OF ACTION**
10 **Unfair, Unlawful, or Fraudulent Business Practices**
11 **[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]**

12 100. Plaintiff Glor re-alleges and incorporates by reference each and every allegation set forth
13 in the preceding paragraphs.

14 101. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code
15 § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in
16 order to ensure employees are not required to work under substandard and unlawful conditions, and to
17 protect employers who comply with the law from those who attempt to gain competitive advantage at the
18 expense of their workers by failing to comply with minimum labor standards. Through its actions alleged
19 herein, Defendant has engaged in unfair competition within the meaning of the UCL because Defendant's
20 conduct has violated state wage and hour laws as herein described.

21 102. During the Class Period, Defendant committed, and continues to commit, acts of unfair
22 competition, as defined in the UCL by wrongfully denying minimum wages and overtime pay to AE Class
23 Members, failing to permit and authorize paid rest breaks, and wrongfully failing to reimburse ER Class
24 Members for necessarily incurred business expenses, in violation of Labor Code §§ 510, 1194, 226.7,
25 2802 and Wage Order No. 4-2001, §§ 3, 12.

26 103. By its actions and omissions, Defendant has substantially injured Plaintiff Glor and Class
27 Members and ER Class Members. Defendant's conduct as herein alleged has damaged Plaintiff and AE
28 Class Members and ER Class Members, and was substantially injurious to them.

1 104. The harm to Plaintiff Glor and AE Class Members and ER Class Members resulting from
2 Defendant's labor code violations outweighs the utility, if any, of Defendant's policies and practices.
3 Therefore, Defendant's actions described herein constitute an unfair business practice or act within the
4 meaning of the UCL.

5 105. Plaintiff Glor, on behalf of herself and all other AE Class Members and ER Class
6 Members, also requests relief as described below.

7
8 **EIGHTH CAUSE OF ACTION**
9 **Violation of Fair Labor Standards Act**
10 **29 U.S.C. § 216(b)**

11 106. Plaintiff Glor re-alleges and incorporates by reference each and every allegation set forth
12 in the preceding paragraphs.

13 107. Plaintiff brings this action for violation of the FLSA as a collective action pursuant to 29
14 U.S.C. § 216(b), on behalf of herself and the FLSA Class, which includes all individuals employed by
15 Defendant as Sales Representatives or Account Executives who were classified as outside sales employees
16 and worked in the state of California at anytime during the FLSA Class Period.

17 108. Plaintiff and the members of the FLSA Class are similarly situated in that they were subject
18 to Defendant's common practice and policy of unlawfully refusing to pay them the minimum wage and
19 overtime wages in violation of the FLSA, 29 U.S.C. § 207.

20 109. This action may be brought and maintained as an "opt-in" collective action pursuant to
21 section 16(b) of the FLSA because the claims of Plaintiff are similar to the claims of the members of the
22 FLSA Class.

23 110. At all relevant times, an employment relationship existed between Defendant and the
24 members of the FLSA Class, including Plaintiff.

25 111. At all relevant times, Defendant employed and continues to employ Account Executives
26 as "employees" within the meaning of the FLSA, 29 U.S.C. § 203, as indicated by the substantial level of
27 control that Defendant wields over its Account Executive employees.

28 112. Defendants intentionally engaged in a widespread pattern and practice of violating the
provisions of the FLSA by willfully and intentionally failing to pay Plaintiff and the FLSA Class overtime

1 wages as required by 29 U.S.C. § 207. Because Defendant classified Plaintiff and members of the FLSA
2 Class as exempt employees, Defendant did not pay overtime wages for work in excess of 40 hours per
3 week, notwithstanding the fact that they were not exempt and were indeed entitled to overtime pay under
4 the FLSA. Defendant engaged in this practice throughout the three-year statute of limitations that applies
5 to this cause of action pursuant to 29 U.S.C. § 255.

6 113. As a result of Defendant's conduct, Plaintiff Glor and the members of the FLSA Class who
7 opt-in are entitled to recovery in the amount of their respective unpaid overtime wages, liquidated
8 damages, prejudgment interest, attorneys' fees and costs, and any other relief the Court deems just and
9 proper pursuant to the FLSA, 29 U.S.C. § 216(b).

10 **NINTH CAUSE OF ACTION**
11 **Civil Penalties**
12 **[Cal. Lab. Code §§ 2698 *et seq.*]**

13 114. Plaintiff Ochoa incorporates the foregoing paragraphs as fully set forth herein.

14 ***Civil Penalties Sought on Behalf of AE Aggrieved Employees***

15 115. Plaintiff Ochoa seeks PAGA penalties on behalf of herself and AE Aggrieved Employees,
16 and the State of California for violations of Labor Code §§ 226(a), 226.7, 246, 432.5, 510, 1174(d),
17 1174.5, 1194, 1197, 2802, 201-202.

18 116. During the PAGA Period, Defendant failed to issue accurate itemized wage statements to
19 AE Aggrieved Employees, in violation of Labor Code § 226(a). Pursuant to Labor Code § 226.3, Plaintiff
20 Ochoa and AE Aggrieved Employees are entitled to two hundred fifty dollars (\$250) for each initial
21 violation of Labor Code § 226(a)(2) and (a)(9), and one thousand dollars (\$1,000) for each subsequent
22 violation. Alternatively, AE Aggrieved Employees are entitled to one hundred dollars (\$100) for each
23 initial violation Labor Code § 226(a) and two hundred dollars (\$200) for each subsequent violation,
24 pursuant to Labor Code § 2699(f)(2).

25 117. During the PAGA Period, Defendant failed to pay overtime when AE Aggrieved
26 Employees worked over 8 hours in a day and/or over 40 hours in a workweek in violation of Labor Code
27 §§ 1194, 510. AE Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial
28

1 violation Labor Code § 1194, 510 and two hundred dollars (\$200) for each subsequent violation, pursuant
2 to Labor Code § 2699(f)(2).

3 118. During the PAGA Period, Defendant failed to pay at least minimum wage for all hours
4 worked in violation of Labor Code §§ 1194, 1197. AE Aggrieved Employees are entitled to one hundred
5 dollars (\$100) for each initial violation Labor Code § 1194, 1197, and two hundred dollars (\$200) for
6 each subsequent violation, pursuant to Labor Code § 2699(f)(2).

7 119. During the PAGA Period, Defendant failed to authorize and permit paid off-duty rest
8 breaks in violation of Labor Code § 226.7. AE Aggrieved Employees are entitled to one hundred dollars
9 (\$100) for each initial violation Labor Code § 226.7, and two hundred dollars (\$200) for each subsequent
10 violation, pursuant to Labor Code § 2699(f)(2).

11 120. During the PAGA Period, Defendant failed to pay AE Aggrieved Employees all wages due
12 to them at the time of discharge or resignation from employment, in violation of Labor Code §§ 201-202.
13 AE Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation of Labor
14 Code §§ 201-202, and two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code
15 § 2699(f)(2).

16 121. During the PAGA Period, Defendant failed to maintain accurate payroll records for
17 Plaintiff and AE Aggrieved Employees, in violation of Labor Code § 1174(d). AE Aggrieved Employees
18 are entitled to five hundred dollars (\$500) for each violation of Labor Code § 1174(d) pursuant to Labor
19 Code § 1174.5.

20 122. During the PAGA Period, Defendant failed to reimburse Plaintiff and AE Aggrieved
21 Employees for necessarily incurred business expenses, in violation of Labor Code § 2802. AE Aggrieved
22 Employees are entitled to one hundred dollars (\$100) for each initial violation of Labor Code § 2802, and
23 two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

24 123. During the PAGA Period, Defendant failed to calculate AE Aggrieved Employees' paid
25 sick time using one of the methods described in Labor Code § 246(l). AE Aggrieved Employees are
26 entitled to one hundred dollars (\$100) for each initial violation of Labor Code § 246(l), and two hundred
27 dollars (\$200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

124. During the PAGA Period, Defendant required AE Aggrieved Employees to agree, in writing to a term or condition known be prohibited, in violation of Labor Code § 432.5. AE Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation of Labor Code § 432.5, and two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

Civil Penalties Sought on Behalf of ER Aggrieved Employees

125. During the PAGA Period, Defendant failed to reimburse Plaintiff and ER Aggrieved Employees for necessarily incurred business expenses, including home internet and home office supplies, incurred in carrying out their job duties for Defendant from home, in violation of Labor Code § 2802.

126. ER Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation of Labor Code § 2802, and two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief on behalf of themselves, members of the AE Class, ER Class, FLSA Class, and Aggrieved Employees:

A. An Order certifying this action as a class action in accordance with Code of Civil Procedure § 382 with respect to the class claims set forth herein in the First, Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action, with the Class as designated and defined in this Complaint, and that Plaintiff Glor and her counsel be certified as representative and Counsel for the Class, respectively.

B. An Order certifying this action as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein in the Eighth Cause of Action.

C. On the First Cause of Action: That the Court find and declare that Defendant has violated California Labor Code § 1194 and IWC Wage Order No. 4-2001, § 4 by failing to pay AE Class Members minimum wage, and award Plaintiff Glor and AE Class Members, at a minimum, an amount equal to the total amount of unpaid overtime wages unlawfully withheld during the Class Period, and interest thereon, and reasonable attorneys' fees and costs.

D. On the Second Cause of Action: That the Court find and declare that Defendant has violated California Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001, § 3 by failing to pay Plaintiff Glor and AE Class Members overtime pay, and award Plaintiff and AE Class Members, at a minimum, an amount equal to the total amount of unpaid overtime wages unlawfully withheld during the CA Class Period, and interest thereon, and reasonable attorneys' fees and costs.

1 E. On the Third Cause of Action: That the Court find and declare that Defendant violated
2 Labor Code § 226.7 and Wage Order No. 4-2001, § 12 by failing to pay Plaintiff Glor and AE Class
3 Members for their time spent on rest breaks separately and in addition to commissions, and award Plaintiff
4 Glor and the AE Class Members unpaid premium pay for missed rest breaks.

5 F. On the Fourth Cause of Action: That the Court find and declare that Defendant has violated
6 California Labor Code §§ 201-203 by failing to pay Plaintiff Glor and formerly employed AE Class
7 Members promptly all compensation due upon separation from employment, and award Plaintiff Glor and
8 formerly employed AE Class Members waiting time penalties in the amount of 30 days' wages per AE
Class Member.

9 G. On the Fifth Cause of Action: That the Court find and declare that Defendant has violated
10 California Labor Code § 226(a) by failing to issue accurate itemized wage statements; award Plaintiff
11 Glor and AE Class Members statutory penalties under California Labor Code § 226(e); and award
reasonable attorneys' fees and costs.

12 H. On the Sixth Cause of Action: That the Court find and declare that Defendant has violated
13 California Labor Code § 2802 by failing to reimburse Plaintiff and ER Class Members for necessarily
14 incurred business expenses, and award Plaintiff and ER Class Members all unreimbursed business
15 expenses, and interest thereon, and reasonable attorneys' fees and costs.

16 I. On the Seventh Cause of Action: That the Court find and declare that Defendant has
17 violated the UCL by failing to reimburse necessarily incurred business expenses and by failing to pay
18 overtime pay; and award restitution to Plaintiff and AE Class Members in the amount of unpaid overtime
19 pay, and award restitution to Plaintiff and ER Class Members in the amount of their unreimbursed
expenses.

20 J. On the Eight Cause of Action: That the Court find and declare that Defendant has violated
21 29 U.S.C. § 207 by failing to pay Plaintiff and FLSA Class Members overtime pay, and award Plaintiff
22 and FLSA Class Members an amount equal to the total amount of unpaid overtime wages unlawfully
23 withheld during the FLSA Class Period, liquidated damages equal to the total amount of overtime wages
unlawfully withheld, interest, and reasonable attorneys' fees and costs.

24 K. On the Ninth Cause of Action: That the Court award PAGA civil penalties, as well as
25 attorneys' fees and costs, as provided for under Labor Code § 2699.

26 L. That the Court award attorneys' fees and costs of suit to the extent permitted by law,
27 including, but not limited to, California Labor Code §§ 226(e), 1194, 2802, 2699 and California Code of
28 Civil Procedure § 1021.5, 29 U.S.C. § 216(b), and/or other applicable law;

1 M. All other relief as this Court deems proper.

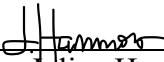
2 **JURY DEMAND**

3 Plaintiffs hereby demand trial by jury of all claims against Defendant alleged herein to the extent
4 authorized by law.

5
6 Dated: July 15, 2022

7 Respectfully submitted,

8 HammondLaw, P.C.

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10 
11 By: Julian Hammond
12 *Attorneys for Plaintiffs, Class Members, FLSA Class*
13 *Members, and Aggrieved Employees*
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