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Superior Court of California,
County of Alameda

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Attorneys for Plaintiff and the Putative Class

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

GABRIEL CANCHOLA, on behalf of himself
and all others similarly situated;

Plaintiffs,

v.

CORNISH & CAREY COMMERCIAL, a
California corporation dba CORNISH &
CAREY COMMERCIAL, INC.; NEWMARK
GROUP, INC., a New York corporation dba
NEWMARK; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: **25CV143464**

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

- 1. FAILURE TO REIMBURSE BUSINESS
EXPENSES (Labor Code § 2802);**
- 2. UNFAIR BUSINESS PRACTICES (Labor
Code §§ 17200 *et seq.*); and**
- 3. VIOLATIONS OF THE LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (Labor Code § 2698, *et seq.*)**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. This is a class action under Code of Civil Procedure section 382 and a representative action under the Private Attorneys General Act, Labor Code sections 2698 *et seq.* (“PAGA”) brought by plaintiff GABRIEL CANCHOLA (“Plaintiff”).

2. Plaintiff seeks to represent a class of current and former employees who are or were employed by defendants CORNISH & CAREY COMMERCIAL, a California corporation doing business as CORNISH & CAREY COMMERCIAL, INC. (“Defendant CORNISH”) and NEWMARK GROUP, INC., a New York corporation doing business as NEWMARK (“Defendant NEWMARK”) (collectively, “Defendants”) at some time during the period beginning four years prior to the filing of the original complaint through the date of notice that a class has been certified in this action (the “Class Period”) as Senior Graphic Designers, Graphic Designers, Office Administrators, Project Managers, Marketing Directors, Marketing Coordinators, and other employees who worked as part of a Data Research and Analysis Team, and whom Defendants employed in California. Such individuals are referred to herein as “Class Members.”

3. Defendants operate a real estate brokerage, portfolio and property management, consultancy, advisory, and facilities management service company. Defendants require Plaintiff and Class Members to use their personal cellular devices for work-related purposes throughout their shifts by, among other things, requiring Plaintiff and Class Members to download and use an authentication application on their personal cellular device in order to perform their job duties. Defendants did not reimburse or indemnify Plaintiff and Class Members for their work-related cell phone use.

4. Plaintiff therefore brings a claim on behalf of himself and other Class Members for Defendants’ failure to reimburse such business expenses.

5. This action seeks reimbursement of business expenses, interest thereon, civil penalties and reasonable attorneys’ fees and costs pursuant to Labor Code section 2802 and 2699 and Code of Civil Procedure section 1021.5. Plaintiff, on behalf of himself and Class Members, also seeks equitable and injunctive relief for these violations pursuant to Business and Professions Code sections 17200 *et seq.* (also referred to herein as the “UCL”).

6. Plaintiff also brings a claim seeking civil penalties under PAGA.

II. JURISDICTION

7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section 395(a). Defendants employed or has employed Plaintiff and Class Members in Oakland, California. The unlawful acts alleged herein have occurred in and have a direct effect on Plaintiff and those similarly situated within the State of California including in the County of Alameda.

8. This Court has jurisdiction over this class action pursuant to Article 6, section 10 of the California Constitution and California Code of Civil Procedure section 410.10.

9. On information and belief, Plaintiff's and Class Members' monetary claims total less than \$75,000.00 per person.

III. PARTIES

A. PLAINTIFF

10. Plaintiff GABRIEL CANCHOLA is a resident of California. Plaintiff worked for Defendants as a Graphic Designer from approximately July 2022 to February 2025. Plaintiff worked for Defendants in Oakland, California, located in Alameda County.

11. Plaintiff and Class Members are Defendants' current or former employees.

B. DEFENDANT

12. Defendant CORNISH & CAREY COMMERCIAL is a California corporation doing business as CORNISH & CAREY COMMERCIAL, INC. Defendant CORNISH is a real estate brokerage, portfolio and property management, consultancy, advisory, and facilities management service company. Plaintiff is informed and believes, and on that basis alleges, that Defendant CORNISH maintains its headquarters in Santa Clara, California at 2804 Mission College Boulevard, Suite 120 in Santa Clara, California 95054 and conducts business throughout the State of California, including in Alameda County.

13. Defendant NEWMARK GROUP, INC. is a New York corporation doing business as NEWMARK. Defendant NEWMARK is a leading advisor and service provider to large institutional investors, global corporations and other owners and occupiers of commercial real estate. Plaintiff is informed and believes, and on that basis alleges, that Defendant NEWMARK

1 maintains its headquarters in New York, New York located at 125 Park Avenue New York, New
2 York 10022 and conducts business throughout the State of California, including in Alameda
3 County. Defendants are and at all times relevant herein, have been an employer covered by the
4 Labor Code.

5 14. At all times relevant herein, Defendants were the employers and/or joint employers
6 of Plaintiff and Class Members within the meaning of the Labor Code.

7 15. As employers of Plaintiff and Class Members throughout the Class Period,
8 Defendants are liable for the economic damages, including penalties, owed to Plaintiff and Class
9 Members under common law and by statute.

10 16. Plaintiff is informed and believe, and based thereon alleges, that at all times herein
11 mentioned each of the defendants are and were the agent, employee and/or servant of each of the
12 remaining defendants, and in doing the things hereinafter alleged was acting within the scope of
13 such agency, employment, and servitude, with the knowledge and consent of each of the
14 defendants. Whenever this Complaint makes reference to a defendant, such allegations shall be
15 deemed to mean the acts of all defendants acting individually, jointly and/or severally.

16 17. The true names and capacities, whether individual, corporate, associate or
17 otherwise, of defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to
18 Plaintiff, who therefore sues such defendants by such fictitious names under Code of Civil
19 Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that each of
20 the defendants designated herein as a DOE is legally responsible in some manner for the unlawful
21 acts referred to herein. Plaintiff is further informed and believes, and alleges thereon, that at all
22 times relevant, the defendants designated herein as a DOE have acted on behalf of Defendants by
23 exercising decision-making responsibility for and by establishing unlawful wage and hour practices
24 or policies for defendants. Plaintiff will seek leave of court to amend this Complaint to reflect the
25 true names and capacities of the defendants designated hereinafter as DOES when such identities
26 become known.

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IV. STATEMENT OF FACTS

18. During the Class Period, Defendants employed Plaintiff and other similarly situated employees at worksites throughout California, including in Alameda County.

19. At all times relevant hereto, Labor Code section 2802 has applied to Plaintiff, Class Members, and Defendants.

20. Plaintiff is informed and believes and thereon alleges that, through common practices, policies and/or schemes, Defendants had failed to reimburse employees for out-of-pocket expenses for work-related use of their personal cell phones.

21. Defendants regularly require Plaintiff and the Class Members to use their personal cell phone devices as a direct consequence of the discharge of their duties and/or in obedience to Defendants' direction.

22. For example, Defendants require Plaintiff and Class Members to download an application on their personal cell phone devices called Microsoft Authenticator to perform their job duties. Microsoft Authenticator is an authentication application used for two-step verification to login to software and accounts. Defendants require Plaintiff and Class Members to use Microsoft Authenticator to perform their job duties, including accessing essential work software and email.

23. Defendants did not provide Plaintiff or Class Members with a cellular device to use to access Microsoft Authenticator.

24. Defendants have not reimbursed or indemnified Plaintiff or Class Members for the out-of-pocket expenses incurred as a result of the work-related use of their personal cell phones.

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V. CLASS ACTION ALLEGATIONS

25. Except as to the Third Cause of Action under PAGA, Plaintiff brings this lawsuit as a class action pursuant to Code of Civil Procedure section 382 on behalf of himself and all similarly situated employees.

26. The class that Plaintiff seeks to represent are defined as:

The Class: All Senior Graphic Designers, Graphic Designers, Office Administrators, Project Managers, Marketing Directors, Marketing Coordinators, and other employees who worked as part of a Data Research and Analysis Team whom Defendants employed in California during the Class Period.

1 27. The claims herein have been brought and may properly be maintained as a class
2 action under Code of Civil Procedure section 382 because there is a well-defined community of
3 interest among Class Members with respect to the claims asserted herein and the Class is easily
4 ascertainable:

5 a. Ascertainability and Numerosity: The potential members of the Class as defined herein
6 are so numerous that joinder would be impracticable. Plaintiff is informed and believes,
7 and based thereon alleges, that Defendants have employed at least three hundred (300)
8 Class Members during the Class Period. The names and addresses of the Class
9 Members are available from Defendants. Notice can be provided to the Class Members
10 via first class mail using techniques and a form of notice similar to those customarily
11 used in class action lawsuits of this nature.

12 b. Commonality: There are questions of law and fact common to Plaintiff and the Class
13 that predominate over any questions affecting only individual members of the Class.
14 These common questions of law and fact include, without limitation:

15 i. Whether Defendants have violated Labor Code section 2802 by failing to reimburse
16 or indemnify employees for employment-related expenses, including, but not
17 necessarily limited to, the costs incurred by using their personal cell phones in the
18 course of performing their work duties;

19 ii. Whether Defendants' failure to indemnify employees for their necessary
20 employment-related expenses and losses constitutes an unlawful, unfair and/or
21 fraudulent business practice under Business and Professions Code sections 17200 *et*
22 *seq.*;

23 iii. What relief is necessary to remedy Defendants' unfair and unlawful conduct as
24 herein alleged; and

25 iv. Other questions of law and fact.

26 c. Typicality: Plaintiff's claims are typical of the claims of the Class: He was employed
27 by Defendants during the Class Period in California. Plaintiff and all members of the
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Class have sustained injuries due to their damages arising out of and caused by Defendants' common course of conduct in violation of law, as alleged herein.

- d. Adequacy of Representation: Plaintiff is a member of the Class that he seeks to represent and will fairly and adequately represent and protect the interests of Class. Counsel representing Plaintiff are competent and experienced in litigating wage and hour class actions.
- e. Superiority of Class Action: A class action is superior to other available means in order to obtain fair and efficient adjudication of this controversy. Individual joinder of all putative Class Members is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the proposed Class. Each Class Member has suffered injury and is entitled to recover by reason of Defendants' unlawful policies and practices alleged herein. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Further, the prosecution of separate actions against Defendants by individual members of the proposed Class would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants.

VI. DAMAGES

28. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff and similarly situated Class Members are owed, among other things, damages, and statutory penalties, in an amount that exceeds \$25,000, the precise amount of which will be proven at trial.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSE (Labor Code § 2802)

29. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class.

30. Labor Code section 2802 provides, in pertinent part: “An 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, or of his or her obedience to the directions of the employer. . . For purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

31. While acting on the direct instruction of Defendants and discharging their duties for Defendants, Plaintiff and Class Members have incurred work-related business expenses, including but not limited to the cost of maintaining cell phones and cell phone service plans, for which Defendants have failed to reimburse them.

32. By requiring Plaintiff and Class Members to incur business expenses in direct consequence of the discharge of their duties for Defendants and/or in obedience to Defendants' direction without fully reimbursing or indemnifying employees for these expenses, Defendants have violated and continues to violate Labor Code section 2802.

33. As a direct and proximate result of Defendants' unlawful practices and policies, Plaintiff and Class Members have suffered monetary losses, and are entitled to restitution of all expenses incurred in the performance of their work duties, interest thereon, reasonable attorneys' fees and costs, and all applicable statutory penalties available for the Defendants' violations of Labor Code section 2802.

34. Plaintiff, on behalf of himself and the proposed Class, requests reimbursement and indemnification of her required business expenses as stated herein, and other relief as described below.

SECOND CAUSE OF ACTION

UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES
(Business & Professions Code §§ 17200 *et seq.*)

35. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class.

1 36. Defendants are “person[s]” as defined by California Business & Professions Code
2 section 17201, as they are people, an LLC, or a corporation.

3 37. California Business and Professions Code section 17200, *et seq.*, prohibits unfair
4 competition, including but not limited to any unlawful, unfair, or fraudulent business practices.

5 38. Labor Code section 90.5(a) provides that it is the public policy of the state of
6 California to vigorously enforce labor standards in order to ensure that employees are not required
7 to work under substandard unlawful conditions, and to protect employers who comply with the law
8 from those (such as Defendants) who attempt to gain a competitive advantage at the expense of
9 their workers by failing to comply with minimum labor standards.

10 39. Pursuant to Business and Professions Code section 17203, this Court may order
11 Defendants to pay the full amounts wrongfully withheld.

12 40. Plaintiff’s success in this action on behalf of Class Members will enforce important
13 rights affecting the public interest and therefore Plaintiff sues both individually and on behalf of
14 the public.

15 41. Defendants’ policies and practices, as set forth above, violated the UCL.
16 Defendants’ practices described in this Complaint are unlawful. Defendants’ practices are also
17 unfair, in that they are unethical, unscrupulous, and substantially injurious to consumers such as
18 Plaintiff and Class Members and members of the general public to the extent that the harm caused
19 outweighs any extant utility.

20 42. Plaintiff and Class are entitled to equitable restitution of monies due and owing as a
21 result of Defendants’ unlawful and unfair conduct (including interest thereon), and to injunctive
22 relief, as well as all other equitable relief required to remedy Defendants’ unlawful and unfair
23 conduct.

24 43. The unlawful and unfair business practices engaged in by Defendants present a
25 continuing threat to the public, in that consumers throughout California have suffered and continue
26 to suffer harm, including unpaid wages due. Defendants have been unjustly enriched as a result of
27 their conduct. Plaintiff and Class Members and members of the general public have no other
28 adequate legal remedy in the absence of equitable relief from the Court. Defendants are likely to

1 continue to injure consumers, reap unjust enrichment, and harm the public interest if their conduct
2 is not halted; thereby engendering a multiplicity of judicial proceedings. Pursuant to California
3 Code of Civil Procedure § 1021.5, Plaintiff's enforcement of important rights on behalf of Class
4 Members affecting the public interest through this action entitles Plaintiff to an award of attorneys'
5 fees, and, in the interest of justice, such fees should not be paid out of Plaintiff's recovery.

6 44. Plaintiff requests that this Court issue a preliminary and permanent injunction
7 prohibiting Defendants from engaging in the practices described above and prohibiting Defendants
8 from violating the California Labor Code now and in the future.

9 45. Plaintiff, on behalf of himself and Class Members, requests restitution of
10 unreimbursed business expenses, injunctive relief and other relief as described below.

11 **THIRD CAUSE OF ACTION**

12 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT** 13 **(Labor Code §§ 2698 *et seq.*)**

14 46. The allegations of each of the preceding paragraphs are re-alleged and incorporated
15 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and all
16 other aggrieved employees.

17 47. Pursuant to Labor Code section 2699.3(a), on March 21, 2025, Plaintiff gave notice
18 by electronic filing and by certified mail to Defendants, and the Labor and Workforce
19 Development Agency ("LWDA") of the factual and legal basis for the labor law violations alleged
20 in this complaint. The LWDA has not provided notice pursuant to Labor Code section
21 2699.3(a)(2)(A), and 65 calendar days have passed since the postmark date of Plaintiff's LWDA
22 notice. Therefore, Plaintiff is entitled to commence a civil action pursuant to Labor Code section
23 2699.

24 48. Labor Code section 2699(f) provides, in pertinent part: "For all provisions of this
25 code except those for which a civil penalty is specifically provided, there is established a civil
26 penalty for a violation of these provisions, as follows: . . . If, at the time of the alleged violation, the
27 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
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1 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
2 aggrieved employee per pay period for each subsequent violation.”

3 49. Labor Code section 2699(g)(1) provides, in pertinent part: [A]n aggrieved employee
4 may recover the civil penalty described in subdivision (f) in a civil action . . . filed on behalf of
5 himself or herself and other current or former employees against whom one or more of the alleged
6 violations was committed. Any employee who prevails in any action shall be entitled to an award
7 of reasonable attorney’s fees and costs.

8 50. Plaintiff is an aggrieved employee as defined by Labor Code section 2699(a).

9 51. Plaintiff suffered violations of Labor Code section 2802 during the Class Period.

10 52. Plaintiff’s cause of action under Labor Code section 2698, *et seq.* is based on the
11 following allegations:

12 a. Violation of Labor Code section 2802, requiring employers to indemnify employees
13 for all work-related expenditures, as Defendants do not indemnify the aggrieved
14 employees for the work-related use of their personal cell phones.

15 53. As a direct and proximate result of Defendants’ unlawful practices and policies,
16 Plaintiff and other aggrieved employees have suffered and continue to suffer monetary losses.

17 54. Plaintiff, on behalf of himself and all other aggrieved employees, requests civil
18 penalties against Defendants for violations of the Labor Code, as provided under Labor Code
19 section 2699(f), plus reasonable attorneys’ fees and costs, as provided under Labor Code section
20 2699(k)(1), in amounts to be proven at trial.

21 **VIII. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of himself and the above-described Class of similarly
23 situated Class Members, request relief as follows:

24 a. Certification of this action as a class action, pursuant to Code of Civil Procedure
25 section 382;

26 b. Declaratory judgment that Defendants have knowingly and intentionally violated
27 Labor Code section 2802 for failure to reimburse or indemnify Plaintiff and the
28 Class for work-related business expenses they have incurred in carrying out their job

1 duties and/or the Defendants' instructions, and Business and Professions Code
2 sections 17200 *et seq.*, by the conduct set forth above;

- 3 c. Declaratory judgment that Defendants' violations as described above are unlawful;
4 d. Injunctive relief requiring an equitable accounting to identify, locate and restore to
5 all current and former Class Members the reimbursement for business expenses that
6 are due;
7 e. An award of damages and restitution to be paid by Defendants, according to proof;
8 f. An award of civil penalties under Labor Code sections 2802 and 2698, *et seq.*
9 g. Pre-judgment and post-judgment interest;
10 h. An award of reasonable attorneys' fees and costs, pursuant to Labor Code section
11 2802(c), 2699, and other applicable law; and
12 i. An award of such other and further relief as this Court deems just and proper.

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14 DATED: September 16, 2025

HUNTER PYLE LAW, PC

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16 By: 
17 Hunter Pyle
Katie Fiester

18 Attorneys for Plaintiff and the Putative Class
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, on behalf of himself and the proposed Class, hereby demands a jury trial in this
3 matter for all claims so triable.
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5 DATED: September 16, 2025

HUNTER PYLE LAW, PC

6
7 By:  _____

8 Hunter Pyle

Katie Piester

9 Attorneys for Plaintiff and the Putative Class
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