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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

YESENIA GUTIERREZ and KATHY CHAN,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE INC. a California Corporation,

Defendant.

Case No.: CIVSB2300014

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

- (1) Failure to Pay Overtime Wages (Lab. Code §§ 510, 1194; IWC Wage Order No. 4, § 3);
- (2) Failure to Pay All Wages Due Upon Termination (Lab. Code §§ 201-203);
- (3) Failure to Issue Accurate Itemized Wage Statements (Lab. Code § 226(a), (e));
- (4) Failure to Reimburse Business Expenses (Lab. Code § 2802);
- (5) Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and
- (6) Civil Penalties Pursuant to Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

DEMAND FOR JURY TRIAL

1 date (“the Waiting Time Penalties Subclass Period”), were not paid timely all wages owed to them upon
2 separation from employment in violation of Labor Code §§ 201 or 202.

3 6. Defendant also knowingly and intentionally failed to provide Plaintiff and Class Members
4 who were employed during the one year prior to the filing of this action through the trial date (“Wage
5 Statement Subclass Members” and “Wage Statement Subclass Period”) with accurate itemized wage
6 statements. The wage statements Defendant provided to Wage Statement Subclass Members did not
7 contain accurate entries for gross wages earned, total hours worked, applicable hourly rates and the
8 corresponding number of hours worked at each hourly rate, and net wages earned.

9 7. Plaintiffs also bring this class action on behalf of themselves and all other individuals
10 employed by Defendant in California from March 16, 2020, through the trial date (the “Unreimbursed
11 Expenses Class Period” or “UE Class Period”) and who were required and/or expected to work remotely
12 (“Unreimbursed Expenses Class Members” or “UE Class Members”). Plaintiffs and UE Class Members
13 paid out-of-pocket for business expenses incurred by them in the course of their work for Defendant as
14 UE Class Members, for which they have not received full reimbursement from Defendant.

15 8. In consequence of the violations of the above Labor Code violations, Defendant also
16 committed unfair, unlawful, and/or fraudulent business practices, in violation of the UCL, Business and
17 Professions Code § 17200, *et seq.* Plaintiff, on behalf of herself and members of the Class, the Waiting
18 Time Penalties Subclass, the Wage Statement Subclass, and the UE Class, seeks restitution and other
19 relief as prayed below.

20 9. Plaintiff Chan also brings this action as a representative action under the Labor Code
21 Private Attorneys General Act (“PAGA”), Labor Code §§ 2698 *et seq.* for civil penalties on behalf of
22 herself and (A) all other individual employed by Defendant in California for the failure to reimburse
23 home office expenses in violation of Labor Code § 2802 (“Aggrieved Employees”); and (B) all other
24 individuals employed by Defendant in California, who performed computer software-related duties and
25 who were and/or are improperly classified as exempt under California law, for allege violations of Labor
26 Code §§ 1194, 510, 201-203, 226(a) (“Computer Aggrieved Employees”).
27
28

JURISDICTION

10. This Court has jurisdiction over Plaintiff Gutierrez's and Class Members' claims for failure to pay overtime pursuant to Labor Code §§ 510 and 1194, and Wage Order No. 4-2001, § 3.

11. This Court has jurisdiction over Plaintiff Gutierrez's and the Waiting Time Penalties Subclass Members' claims for compensation due upon discharge or resignation from employment under Labor Code §§ 201-203.

12. This Court has jurisdiction over Plaintiff Gutierrez's and Wage Statement Subclass Members' claims for Defendant's failure to issue accurate itemized wage statements pursuant to Labor Code § 226(a), (e).

13. This Court has jurisdiction over Plaintiffs' and UE Class Members' claims for reimbursement of business expenses under Labor Code § 2802.

14. This Court has jurisdiction over the claims for restitution arising from Defendant's unlawful business practices, under the UCL, Business and Professions Code §§ 17203 and 17204.

15. This Court has jurisdiction over Plaintiff Chan's claims for civil penalties under Labor Code § 2699. On January 11, 2023, Plaintiff Chan provided Notice pursuant to Labor Code § 2699.3 to the California Labor & Workforce Development Agency ("LWDA") and to the Defendant on January 9, 2023. The LWDA has provided no notice to Plaintiff within the period specified in Labor Code § 2699.3 regarding its intention to investigate (or not investigate) any of the claims alleged in the PAGA Notice. Plaintiff Chan has therefore fully complied with the PAGA procedural requirements and may commence this representative action pursuant to Labor Code § 2699.

16. This Court has jurisdiction over Plaintiffs' claims for attorneys' fees and costs pursuant to Labor Code §§ 226(e), 1194, 2802(c), 218.5, 2699(g)(1), and Code of Civil Procedure § 1021.5.

VENUE

17. Venue as to Defendant is proper in the County of San Bernardino, pursuant to Code of Civil Procedure §§ 395(a) and 395.5. Defendant is a California corporation with its principal place of business located at 380 New York Street, Redlands, California 92373. The unlawful acts alleged herein had a direct effect on Plaintiffs and other Class Members, Waiting Time Penalties Subclass Members,

1 Wage Statement Subclass Members, and UE Class Members within the State of California, some of
2 whom are employed while conducting Defendant's business within San Bernardino County.

3 **PARTIES**

4 18. Plaintiff Yesenia Gutierrez resides in San Bernardino, California. Plaintiff was employed
5 by ESRI in California from approximately July 2020 until February 2021, as a UX Architect. During her
6 employment, Plaintiff worked in excess of forty hours per week and in excess of eight hours per day,
7 without receiving overtime compensation as required by California law. On information and belief,
8 Defendant classified Plaintiff as exempt under the FLSA's computer software employee exemption.
9 However, exemptions as to computer software employees who work in California are subject to
10 California statute and regulations. Pursuant to Labor Code § 515.5, certain employees in the computer
11 software field may be "exempt from the requirement that an overtime rate of compensation be paid
12 pursuant to Section 510" if certain criteria apply. Plaintiff did not meet the requirements for exemption
13 pursuant to § 515.5 because, *inter alia*, she was paid an annual salary that did not meet the requirements
14 of § 515.5(a)(4) as adjusted by the Department of Industrial Relations, as provided for in that subsection.

15 19. When Plaintiff Gutierrez worked overtime, that time was banked by Defendant and
16 Plaintiff was paid for that time at her regular rate of pay many weeks or even months later.

17 20. When Plaintiff Gutierrez's employment with Defendant ended, she was not paid the
18 overtime pay she was owed, and is still owed. Thus, Plaintiff is entitled to so-called waiting time
19 penalties pursuant to Labor Code §§ 201-203.

20 21. Moreover, during her employment with Defendant, Plaintiff Gutierrez was issued with
21 inaccurate wage statements which failed to accurately state: (1) the gross wages earned; (2) the total
22 number of hours she worked; (3) the net wages earned; and (4) all applicable hourly rates in effect during
23 the pay period and the corresponding number of hours worked at each hourly rate by the employee.

24 22. During her employment, Plaintiff Gutierrez was required and/or expected to work
25 remotely and was subject to Defendant's unlawful business expense reimbursement policies and/or
26 practices set forth herein, and incurred unreimbursed business expenses in the course of carrying out her
27 job duties.
28

23. Plaintiff Kathy Chan is a resident of Montebello, California. Plaintiff Chan was employed by ESRI in California from approximately October 2018 to September 2022, as a financial analyst. During her employment, Plaintiff Chan was required and/or expected to work remotely and was subject to Defendant's unlawful business expense reimbursement policies and/or practices set forth herein, and incurred unreimbursed business expenses in the course of carrying out her job duties.

24. Defendant is a California corporation with its principal executive office and principal place of business located in Redlands, California.

25. All of Plaintiffs' claims stated herein are asserted against Defendant and any of its predecessors, successors, and/or assigns that do, or have done, business, and that employ, or have employed, Class Members during the Class Period, Waiting Time Penalties Subclass Members during the Waiting Time Penalties Subclass Period, Wage Statement Subclass Members during the Wage Statement Subclass Period, and UE Class Members during the UE Class Period.

FACTUAL BACKGROUND

26. Defendant operates and, at all times during the Class Period, has done business in California. Defendant, in the course of operating its business in California during the Class Period, employs or has employed Class Members and UE Class Members in various capacities.

Defendant Failed to Pay Overtime

27. Throughout the Class Period, Defendant maintained a practice and/or policy of misclassifying Class Members as exempt from overtime. On information and belief, Defendant maintained that Class Members were exempt under the FLSA's computer software employee exemption, but Class Members did not meet the requirements for exemption pursuant to § 515.5 because, *inter alia*, they were not paid an annual salary that met the requirements of § 515.5(a)(4) as adjusted by the Department of Industrial Relations, as provided for in that subsection.

28. Class Members routinely worked more than eight hours in a day and 40 hours in a workweek and were therefore entitled to overtime pay.

29. As a result of misclassifying Class Members as exempt, Defendant did not pay Class Members for overtime hours at a rate of at least one and one-half times their respective regular rate of

1 pay. Instead, Defendant banked overtime hours worked by each Class Member and paid those hours out
2 later, often several weeks or months later, at that Class Member's regular rate of pay.

3 30. Accordingly, Defendant did not pay Class Members overtime, in violation of Labor Code
4 §§ 1194, 510, and Wage Order No. 4-2001, § 3.

5 Defendant Failed to Timely Pay all Wages Due and Owing Upon Discharge or Resignation

6 31. During the Waiting Time Penalties Subclass Period, as a result of Defendant's failure to
7 pay overtime wages to Plaintiff and Class Members, Plaintiff and those other Class Members who were
8 discharged or resigned their employment with Defendant were not timely paid all wages owed to them
9 in violation of Labor Code §§ 201 or 202.

10 Defendant Failed to Provide Accurate Itemized Wage Statements

11 32. During the Wage Statement Subclass Period, Defendant was required to issue accurate
12 itemized wage statements to Class Members semimonthly or at the time of each payment of wages
13 containing: (1) gross wages earned pursuant to subdivision (a)(1) of Labor Code § 226(a); (2) total
14 number of hours worked during each period, pursuant to subdivision (a)(2) of § 226(a); (3) net wages
15 earned pursuant to subdivision (a)(5) of Labor Code § 226(a); (4) all applicable hourly rates in effect
16 during the pay period and corresponding number of hours worked pursuant to subdivision (a)(9) of Labor
17 Code § 226(a). However, as a consequence of Defendant's failure to pay Plaintiff and Class Members
18 overtime and Defendant's policy or practice of banking Plaintiff's and Class Members' overtime hours
19 worked, Plaintiff Wage Statement Subclass Members did not receive accurate itemized wage statements
20 that included accurate entries for their hours worked, all applicable hourly rates, net wages, and gross
21 wages earned.

22 Defendant Failed to Reimburse Business Expenses

23 33. On or about March 16, 2020, at the beginning of the COVID-19 pandemic, ESRI directed
24 its non-essential employees to work remotely, and since that date ESRI has required and/or expected its
25 non-essential employees to work remotely, including those employees who previously had not been
26 working remotely.

27 34. Throughout the UE Class Period, Defendant has maintained policies and practices
28 relating to the incurrence and reimbursement of business expenses that deny lawful reimbursement

1 and/or compensation to UE Class Members required and/or expected to work remotely. Defendant
2 required and/or expected and continues to require and/or expect UE Class Members who are required
3 and/or expected to work remotely to maintain and pay out of pocket for (1) internet service and/or
4 equipment; (2) other home office equipment and/or supplies; and (3) electricity. Defendant also requires
5 and/or expects many UE Class Members who are required and/or expected to work remotely to maintain
6 and pay out of pocket for cellular phones and/or landline phones and/or phone service.

7 35. The unreimbursed expenses incurred by all the UE Class Members, described in the
8 preceding paragraphs, are hereinafter referred to as “Home Office Expenses.”

9 36. Defendant’s expense-related policies and/or practices require, and/or with Defendant’s
10 knowledge thereof permit, UE Class Members to pay for business expenses incurred in direct
11 consequence of discharging their job duties on behalf of Defendant, without any or full reimbursement
12 by Defendant for such expenses.

13 37. Defendant is aware or should have been aware that UE Class Members working remotely
14 regularly incur Home Office Expenses in the discharge of their duties, as employees. Defendant
15 nevertheless has, throughout the UE Class Period, failed and refused to reimburse Plaintiffs and UE
16 Class Members for such business expenses incurred by them in carrying out their job duties for
17 Defendant.

18 38. Defendant has maintained its policies of denying reimbursement in full of Plaintiffs and
19 UE Class Members’ necessarily incurred Home Office Expenses, or substantially similar policies,
20 throughout California and throughout the UE Class Period.

21 39. Plaintiffs and UE Class Members have been harmed by Defendant’s unlawful business
22 expense policies and/or practices in that they have not been paid for certain business expenses incurred
23 while employed by Defendant, thereby diminishing their agreed-upon compensation, in substantial
24 amounts to be proved at trial.

25 Factual Allegations Relevant to UCL Claims

26 40. From at least November 15, 2018 through the present, Defendant has adopted, and uses,
27 unfair business practices to reduce its Class Members’ and UE Class Members’ compensation and
28 increase its own earnings. These unfair business practices include failing to pay Class Members

1 overtime; failing to timely pay Class Members all wages owed them; failing to pay all wages due and
2 owing upon termination of employment; failing to issue accurate itemized wage statements; and, failing
3 to reimburse UE Class Members' Home Office Expenses.

4 **CLASS ACTION ALLEGATIONS**

5 41. Plaintiffs bring this action pursuant to Code of Civil Procedure § 382 on behalf of the
6 Class, the Waiting Time Penalties Subclass, the Wage Statement Subclass, and the Unreimbursed
7 Expenses Class.

8 42. This action has been brought and may properly be maintained as a class action under
9 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
10 the proposed Classes and Subclasses are easily ascertainable, Plaintiff Gutierrez is a proper
11 representative of each Class and Subclass, and Plaintiff Chan is a proper representative of the UE Class:

12 a. Numerosity: The potential members of the proposed Classes as defined are so
13 numerous and so diversely located throughout California, that joinder of all the members of each Class
14 is impracticable. While the precise number of Members of each Class has not been determined at this
15 time, Plaintiff is informed and believes that each Class contains more than 100 individuals.

16 b. Commonality: There are questions of law and fact common to Plaintiff Gutierrez
17 and each Class and Subclass and to both Plaintiffs and UE Class, that predominate over any questions
18 affecting only individual members of each Class or Subclass. These common questions of law and fact
19 include, without limitation:

- 20 i. Whether Class Members are non-exempt employees;
- 21 ii. Whether Defendant violated Labor Code §§ 510 and 1194 and Wage
22 Order No. 4-2001, § 3 by failing to pay Plaintiff Gutierrez and Class Members overtime;
- 23 iii. Whether Defendant violated Labor Code §§ 201-203 by failing to timely
24 pay all compensation due and owing to Waiting Time Penalties Subclass Members upon their discharge
25 or resignation from employment by Defendant during the Waiting Time Penalties Subclass Period;
- 26 iv. Whether Defendant violated Labor Code § 226(a) by failing to issue
27 accurate itemized wage statements to Plaintiff Gutierrez and Wage Statement Subclass Members during
28 the Wage Statement Subclass Period;

1 v. Whether Defendant's violations of Labor Code § 226(a) were knowing
2 and intentional;

3 vi. Whether Plaintiff Gutierrez and Wage Statement Subclass Members
4 suffered injury for the purposes of Labor Code § 226(e);

5 vii. Whether Plaintiffs and UE Class Members incurred unreimbursed
6 business expenses in the discharge of their duties as employees, included but not limited to expenses for
7 home internet, phone service, other home office supplies and equipment, and electrical service.

8 viii. Whether Defendant adopted a uniform policy and/or practice of not
9 reimbursing UE Class Members for any of their Home Office Expenses fully or at all, while at the same
10 time having actual and/or constructive knowledge that the members of the UE Class were routinely
11 incurring such business related expenses;

12 ix. Whether Defendant knew or should have known that Plaintiffs and the UE
13 Class were routinely incurring Home Office Expenses;

14 x. Whether Defendant's actual and/or constructive knowledge that Plaintiffs
15 and the UE Class were routinely incurring Home Office Expenses triggered an affirmative obligation by
16 Defendant under § 2802 of the Labor Code to reimburse Plaintiffs and the UE Class for such expenses;

17 xi. Whether Defendant failed and/or refused to fully reimburse business
18 expenses incurred by Plaintiffs and UE Class Members in the discharge of their duties;

19 xii. Whether Defendant's failure to reimburse business expenses incurred by
20 Plaintiffs and UE Class Members, fully or at all, was the result of, and/or pursuant to, a business policy
21 or regular practice of Defendant;

22 xiii. Whether Defendant violated Labor Code § 2802 by denying Plaintiffs and
23 similarly-situated UE Class Members reimbursement for their business expenses;

24 xiv. Whether the Labor Code violations described above constitute unfair,
25 unlawful, and fraudulent business practices, in violation of the UCL;

26 xv. Whether Plaintiffs and members of the Classes are entitled to restitution
27 under Business and Professions Code §§ 17200 for unpaid overtime, and unreimbursed business
28 expenses;

xvi. Whether the Classes are entitled to declaratory and injunctive relief;

xvii. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and members of the Classes.

c. Typicality: Plaintiff Gutierrez's claims are also typical of the claims of the Class, the Waiting Time Penalties Subclass, and the Wage Statement Subclass, and Plaintiffs' claims are typical of the claims of the UE Class. Both Plaintiffs and members of each Class or Subclass sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendant's common course of conduct in violation of law as alleged herein, in similar ways and for the same types of wages and expenses.

d. Adequacy of Representation: Plaintiff Gutierrez is a member of both Classes and both Subclasses and Plaintiff Chan is a member of the UE Class. Plaintiffs will fairly and adequately represent and protect the interests of all members of each Class and Subclass. Plaintiffs' interests do not conflict with those of Class Members or UE Class Members. Counsel who represent Plaintiffs are competent and experienced in litigating large wage and hour class actions, including business expense reimbursement cases, and other employment class actions, and will devote sufficient time and resources to the case and otherwise adequately represent the Class and the UE Class.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all members of each class is not practicable, and questions of law and fact common to the Classes predominate over any questions affecting only individual members of each Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or practices of misclassifying them as exempt, failing to pay overtime, failing to timely pay wages, failing to timely pay all compensation due and owing upon separation from employment, and failing to issue accurate itemized wage statements. Each UE Class Member has been damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or practices of failing to fully reimbursing business expenses. Certification of this case as a class action will allow these similarly-situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. No difficulties are likely to be encountered in the management of this class action that would preclude its

1 maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of
2 this controversy. If this action is not certified as a class action, it will be impossible as a practical matter
3 for many or most Class Members and UE Class Members to bring individual actions against Defendant,
4 due to the relatively small amounts of such individual recoveries relative to the costs and burdens of
5 litigation. Members of each Class and Subclass are readily identifiable from Defendant's employee
6 rosters and/or payroll records.

7
8 **FIRST CAUSE OF ACTION**
9 **FAILURE TO PAY OVERTIME**
10 **(Labor Code §§ 510, 1194, and Wage Order No. 4-2001, § 3)**

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

13 44. Labor Code § 510 provides, in pertinent part:

14 "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday
15 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
16 seventh day of work in any one workweek shall be compensated at the rate of no less than one
17 and one-half times the regular rate of pay for an employee."

18 45. Labor Code § 1194(a) provides, in pertinent part:

19 "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the
20 legal minimum wage or the legal overtime compensation applicable to the employee is entitled
21 to recover in a civil action the unpaid balance of the full amount of this minimum wage or
22 overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

23 46. As set forth above, during the Class Period, Plaintiff Gutierrez and Class Members were
24 non-exempt employees under California law, yet Defendant did not compensate them at a rate of at least
25 "one and one-half times the regular rate of pay" for their overtime hours worked. Accordingly, pursuant
26 to Labor Code § 1194, Class Members are entitled to recover, at a minimum, the unpaid balance of the
27 full amount of the overtime compensation owed to them, interest thereon.

28 47. As a result of Defendant's violations of Labor Code § 1194, Defendant is also liable for
attorneys' fees and costs.

48. Plaintiff Gutierrez, on behalf of herself and Class Members, requests relief as described
below.

SECOND CAUSE OF ACTION
FAILURE TO PAY COMPENSATION DUE UPON DISCHARGE OR RESIGNATION
(Labor Code §§ 201-203)

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

50. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing to Waiting Time Penalties Subclass Members promptly at the time of their discharge or separation from employment. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by §§ 201 and 202, then the employer is liable for penalties in the form of continued compensation up to 30 work days.

51. During the Waiting Time Penalties Subclass Period, Defendant employed Plaintiff and Class Members who were discharged or resigned from employment with Defendant (Waiting Time Penalties Subclass Members). As a result of Defendant failing to pay overtime to Class Members, Waiting Time Penalties Subclass Members did not timely receive all of the compensation due and owing to them at the time of their discharge or separation from employment.

52. As a result, Defendant is liable to Plaintiff and Waiting Time Penalties Subclass Members for waiting time penalties pursuant to Labor Code § 203. Defendant's failure to pay all wages owed was willful.

53. Plaintiff Gutierrez, on behalf of herself and Class Members, requests relief as described below.

THIRD CAUSE OF ACTION
FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226(a), (e))

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

55. Labor Code § 226(a) requires employers to furnish their employees with wage statements containing accurate entries for "(1) gross wages earned, (2) total hours worked by the employee, . . . (5) net wages earned, . . . (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

1 56. During the Wage Statement Subclass Period, Defendant failed to furnish Plaintiff and
2 Wage Statement Subclass Members with accurate itemized wage statements in violation of Labor Code
3 § 226(a) by failing to list on the wage statements: (1) the gross wages earned; (2) the total number of
4 hours she worked; (3) the net wages earned; and (4) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee.

6 57. Plaintiff and Wage Statement Subclass Members suffered injury as a result of
7 Defendant's knowing and intentional failure to comply with Labor Code § 226(a).

8 58. As a result of Defendant's knowing and intentional violations of Labor Code § 226(a)
9 described above, Defendant is liable for statutory penalties under Labor Code § 226(e), in the amount of
10 fifty dollars (\$50) for the initial pay period in which a violation occurred and one hundred dollars (\$100)
11 for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars
12 (\$4,000), and an award of costs and reasonable attorney's fees.

13 59. Plaintiff Gutierrez, on behalf of herself and Wage Statement Subclass Members, requests
14 relief as described below.

15
16 **FOURTH CAUSE OF ACTION**
17 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
18 **(Labor Code § 2802)**

19 60. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
20 preceding paragraphs.

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

24 62. In order to discharge their job duties for Defendant while required and/or expected to
25 work remotely, Plaintiffs and other UE Class Members employed in various positions were required and
26 expected by Defendant to use their own home internet, phone service, other home office equipment
27 and/or supplies, and electric services, as described above. However, Defendant did not pay fully, or at
28 all, for Home Office Expenses incurred by Plaintiffs and UE Class Members as described above.

63. Defendant's failure to pay for or reimburse the Home Office Expenses of Plaintiffs and other UE Class Members violated non-waivable rights secured to Plaintiffs and UE Class Members by Labor Code § 2802. Plaintiffs and UE Class Members are entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

64. As a result of Defendant's violations of Labor Code § 2802, Defendant is also liable for attorneys' fees and costs under Labor Code § 2802(c).

65. Plaintiffs, on behalf of themselves and UE Class Members, request relief as described below.

FIFTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
(Bus. & Prof. Code § 17200)

66. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

67. Business & Professions Code §§ 17200, *et seq.* prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice. Business & Professions Code § 17204 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself or herself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

68. Throughout the Class Period, Defendant committed, and continues to commit, acts of unfair competition, as defined in the UCL by failing to pay overtime in violation of Labor Code §§ 1194, 510 and Wage Order No. 4-2001 and failing to reimburse business expenses in violation of Labor Code § 2802.

69. By its actions and omissions, Defendant has substantially injured and damages Class Members and UE Class Members.

70. The harm to Class Members and UE Class Members resulting from Defendant's Labor Code violations outweigh the utility, if any, of Defendant's policies and practices. Therefore, Defendant's actions described herein constitute an unfair business practice or act within the meaning of the UCL.

1 71. Plaintiffs, Class Members, and UE Class Members are entitled to restitution pursuant to
2 Business & Professions Code §§ 17203 and 17208 for all unpaid overtime compensation and
3 unreimbursed business expenses, and interest thereon. Defendant should be required to disgorge all the
4 profits and gains it has reaped and restore such profits and gains to Plaintiffs, Class Members, and UE
5 Class Members, from whom they were unlawfully taken.

6 72. Plaintiffs, Class Members, and UE Class Members are entitled to enforce all applicable
7 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

8 73. Plaintiffs, on behalf of themselves and other Class Members and UE Class Members,
9 requests relief as described below.

10 **SIXTH CAUSE OF ACTION**
11 **Civil Penalties**
12 **(Labor Code §§ 2698 et seq.)**

13 74. Plaintiff Chan re-alleges and incorporates by reference each and every allegation set forth
14 in the preceding paragraphs.

15 75. Plaintiff Chan seeks PAGA penalties, and attorneys' fees and costs, on behalf of herself,
16 Aggrieved Employees, and Computer Aggrieved Employees, for the following violations:

17 ***a. Violation of Labor Code §§ 1194, 510 and Wage Order No. 4-2001, § 3***

18 76. During the PAGA Period, as discussed above, Defendant misclassified Computer
19 Aggrieved Employees as exempt from overtime. As a result, Defendant did not pay them premium wages
20 for hours worked over 8 in a day and/or over 40 in a week. Instead, Defendant banked hours worked
21 over 8 in a day and/or over 40 in a week, and paid those hours later (often several weeks or months later)
22 at their regular hourly rate, in violation of Labor Code §§ 1194, 510.

23 77. Pursuant to Labor Code § 2699(f)(2), Computer Aggrieved Employees are entitled to one
24 hundred dollars (\$100) per pay periods for each initial violation and two hundred dollars (\$200) per pay
25 period for each subsequent violation.

26 ***b. Violation of Labor Code Labor Code §§ 201-203***

27 78. During the PAGA Period, as a result of failing to pay Computer Aggrieved Employees
28 overtime pay, Computer Aggrieved Employees who were discharged or resigned their employment with
Defendant were not timely paid all wages owed to them, in violation of Labor Code §§ 201-203.

1 79. Pursuant to Labor Code § 2699(f)(2), Computer Aggrieved Employees are entitled to one
2 hundred dollars (\$100) per pay periods for each initial violation and two hundred dollars (\$200) per pay
3 period for each subsequent violation.

4 ***c. Violation of Labor Code § 226(a)***

5 80. During the PAGA Period, as Computer Aggrieved Employees were non-exempt,
6 Defendant was required to furnish them with accurate itemized wage statements, semi-monthly,
7 containing entries for their total hour worked, applicable hourly rates in effect during the pay period,
8 accurate net and gross wages earned. However, as a result of misclassifying Computer Aggrieved
9 Employees as exempt, Defendant failed to furnish them with wage statements containing this required
10 information.

11 81. Pursuant to Labor Code § 2699(f)(2), Computer Aggrieved Employees are entitled to one
12 hundred dollars (\$100) per pay periods for each initial violation and two hundred dollars (\$200) per pay
13 period for each subsequent violation.

14 ***d. Violation of Labor Code § 2802***

15 82. During the PAGA Period, Defendant required and/or expected Aggrieved Employees to
16 work remotely from their home offices, and, as a result, they incurred Home Office Expenses. Defendant
17 knew or should have known that Aggrieved Employees incurred these expenses, yet failed to reimburse
18 them for a reasonable portion of their expenses, in violation of Labor Code § 2802.

19 83. Pursuant to Labor Code § 2699(f)(2), Aggrieved Employees are entitled to one hundred
20 dollars (\$100) per pay periods for each initial violation and two hundred dollars (\$200) per pay period
21 for each subsequent violation.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs request the following relief:

24 A. An Order that this action may proceed and be maintained as a class action, with the
25 Classes and Subclasses as designated in this Complaint, and that the Plaintiffs and their Counsel be
26 certified as representatives and Counsel for the Classes and Subclasses, respectively;

27 B. On the First Cause of Action: That the Court find and declare that Defendant violated
28 Labor Code §§ 510, 1194, and Wage Order No. 4-2001, § 3, and award Plaintiff Gutierrez and Class

Members, at a minimum, an amount equal to the total amount of unpaid overtime wages unlawfully withheld from them, interest thereon, and reasonable attorneys' fees and costs;

C. On the Second Cause of Action: That the Court find and declare that Defendant violated Labor Code §§ 201-203, and award Plaintiff Gutierrez and Waiting Time Penalties Subclass waiting time penalties in the amount of 30 days' wages per Subclass Member.

D. On the Third Cause of Action: That the Court find and declare that Defendant violated Labor Code § 226(a), and award Plaintiff Gutierrez and Wage Statement Subclass Members statutory penalties under Labor Code § 226(e);

E. On the Fourth Cause of Action: That the Court find and declare that Defendant's business expense policies and/or practices violate Labor Code § 2802, by refusing and/or failing to reimburse business expenses incurred by Plaintiffs and UE Class Members, and that the Court award to Plaintiffs and UE Class Members all business expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802;

F. On the Fifth Cause of Action: That the Court find and declare that Defendant has violated the UCL, and that Defendant be ordered to pay restitution to Plaintiffs, the Class, and the UE Class due to Defendant's UCL violations, pursuant to Business and Professions Code §§ 17200-17205, in the amount of their unpaid wages, unreimbursed business expenses, and interest thereon;

G. On the Sixth Cause of Action: That the Court award PAGA Civil Penalties to Plaintiff Chan, the Aggrieved Employees, and Computer Aggrieved Employees, as provided under Labor Code § 2699;

H. That the Court award attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Labor Code §§ 1194, 226(e) and (h), 2802(c), 218.5, 2699(g)(1), and Code of Civil Procedure § 1021.5, and/or other applicable law; and

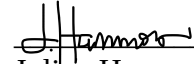
I. That the Court award such other and further relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves, the Class Members, and the UE Class Members, hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

1 Dated: April 10, 2023

Respectfully submitted,
HAMMONDLAW, P.C.

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6 Julian Hammond
7 Attorneys for Plaintiffs
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