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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

**SECOND 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 Provide Meal Breaks (Lab. Code §§ 226.7, 512 and IWC Wage Order No. 4, § 11);
- (3) Failure to Permit and Authorize Rest Breaks (Lab. Code § 226.7 and IWC Wage Order No. 4, § 12);
- (4) Failure to Pay All Wages Due Upon Termination (Lab. Code §§ 201-203);
- (5) Failure to Issue Accurate Itemized Wage Statements (Lab. Code § 226(a), (e));
- (6) Failure to Reimburse Business Expenses (Lab. Code § 2802);
- (7) Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and
- (8) Civil Penalties Pursuant to Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

DEMAND FOR JURY TRIAL

Plaintiffs Yesenia Gutierrez and Kathy Chan (“Plaintiffs”), on behalf of themselves and all others similarly situated, complain and allege as follows:

OVERVIEW OF CLAIMS

1. This is a class action, under California Code of Civil Procedure § 382, seeking damages for unpaid overtime, unpaid premium pay for missed meal and rest breaks, reimbursement of business expenses, statutory penalties, interest, equitable relief, and reasonable attorney’s fees and costs under California Labor Code (“Labor Code”) §§ 201-203, 226(a), (e), 226.7, 510, 512, 1194, 2802, IWC Wage Order (“Wage Order”) No. 4-2001 § 3, 11, 12, California Code of Civil Procedure § 1021.5, and restitution under California’s Unfair Competition Law (“UCL”), Business & Professions Code § 17200 *et seq.*

2. Plaintiffs bring this class action on behalf of themselves and all other individuals employed by Environmental System Research Institute, Inc. (“ESRI” or “Defendant”) in California subject to Defendant’s Bank Time Policy and whom Defendant classified as exempt at any time from November 15, 2018 through the trial date (“Class Members”). As discussed in further detail below, Plaintiffs allege that Defendant misclassified Class Members as exempt because Defendant’s Bank Time Policy resulted in Class Members being paid on an hourly basis and their pay was subject to reduction based on quantity of work performed. As a result, Class Members were non-exempt hourly employees and Defendant was required, but failed, to pay them overtime wages, in violation of Labor Code §§ 1194, 510, and Wage Order No. 4-2001, § 3. Instead, Defendant compensated Class Members for overtime hours only at their regular hourly rate.

3. Plaintiffs allege that even those Class Members who were computer software employees and could be paid on an hourly basis yet still be properly classified as exempt under the computer software exemption, were misclassified as exempt because Defendant did not pay them enough per hour to meet the requirements of that exemption. *See* IWC Wage Order No. 4-2001, § 1(A)(3)(h).

4. In addition, pursuant to its Bank Time Policy, Defendant often paid Class Members for their hours worked at a later time, often several weeks or months later. Thus, Defendant failed to timely pay Class Members all wages they earned in the same pay period they earned them, in violation of Labor Code § 204.

1 5. As a result of misclassifying Plaintiffs and Class Members as exempt, Defendant did not
2 maintain a meal and/or rest break policy applicable to Class Members during the Class Period.
3 Moreover, Defendant maintained and promoted policies and/or practices, including a culture of working
4 lunches and working through break time, that impeded Class Members' ability to take off-duty meal and
5 rest breaks in violation of Labor Code §§ 226.7, 512 and Wage Order No. 4-2001 §§ 11, 12. Defendant
6 also had no policy and/or practice of paying Class Members premium pay for missed breaks, in violation
7 of Labor Code § 226.7 and Wage Order No. 4-2001, §§ 11, 12. As a result of Defendant failing to pay
8 Class Members overtime and premium pay for missed breaks, Plaintiffs and other Class Members who
9 were discharged or resigned from employment with Defendant ("Waiting Time Penalties Subclass
10 Members") at any time from November 15, 2019 through the trial date ("the Waiting Time Penalties
11 Subclass Period"), were not paid timely all wages owed to them upon separation from employment in
12 violation of Labor Code §§ 201 or 202.

13 6. Defendant also knowingly and intentionally failed to provide Plaintiff Chan and Class
14 Members who were employed at any time from November 15, 2021 through the trial date ("Wage
15 Statement Subclass Members" and "Wage Statement Subclass Period") with accurate itemized wage
16 statements. The wage statements Defendant provided to Plaintiff Chan and Wage Statement Subclass
17 Members did not contain accurate entries for gross wages earned, total hours worked, applicable hourly
18 rates and the corresponding number of hours worked at each hourly rate, and net wages earned.

19 7. Plaintiffs also bring this class action on behalf of themselves and all other individuals
20 (whether exempt or non-exempt) employed by Defendant in California from March 16, 2020, through
21 the trial date (the "Unreimbursed Expenses Class Period" or "UE Class Period") who were required
22 and/or expected to work remotely ("Unreimbursed Expenses Class Members" or "UE Class Members").
23 Plaintiffs and UE Class Members paid out-of-pocket for business expenses incurred by them in the
24 course of their work for Defendant as UE Class Members, for which they have not received full
25 reimbursement from Defendant.

26 8. In consequence of the violations of the above Labor Code violations, Defendant also
27 committed unfair, unlawful, and/or fraudulent business practices, in violation of the UCL, Business and
28 Professions Code § 17200, *et seq.* Plaintiffs, on behalf of themselves and members of the Class, the

1 Waiting Time Penalties Subclass, the Wage Statement Subclass, and the UE Class, seek restitution and
2 other relief as prayed below.

3 9. Plaintiff Chan also brings this action as a representative action under the Labor Code
4 Private Attorneys General Act ("PAGA"), Labor Code §§ 2698 et seq. for civil penalties on behalf of
5 herself and other aggrieved employees for failure to pay overtime, failure to provide compliant meal and
6 rest breaks, failure to issue accurate itemized wage statements, failure to pay all wages due upon
7 termination, and failure to reimburse home office expenses in violation of Labor Code §§ 1194, 510,
8 226.7, 512, 201-203, 2802.

9 JURISDICTION

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

12 11. This Court has jurisdiction over Plaintiffs' and Class Members' claims for failure to
13 provide compliant meal breaks or pay premium pay in lieu thereof pursuant to Labor Code §§ 226.7,
14 512, and Wage Order No. 4-2001, § 11.

15 12. This Court has jurisdiction over Plaintiffs' and Class Members' claims for failure to
16 permit and authorize complaint rest breaks or pay premium pay in lieu thereof pursuant to Labor Code
17 § 226.7, and Wage Order No. 4-2001, § 12.

18 13. This Court has jurisdiction over Plaintiffs' and Waiting Time Penalties Subclass
19 Members' claims for compensation due upon discharge or resignation from employment under Labor
20 Code §§ 201-203.

21 14. This Court has jurisdiction over Plaintiff Chan's and Wage Statement Subclass Members'
22 claims for Defendant's failure to issue accurate itemized wage statements pursuant to Labor Code §
23 226(a), (e).

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

26 16. This Court has jurisdiction over the claims for restitution arising from Defendant's
27 unlawful business practices, under the UCL, Business and Professions Code §§ 17203 and 17204.
28

17. 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. On April 17, 2024, Plaintiff Chan provided an amended Notice to the LWDA and to the Defendant. The PAGA Notices alleges claims for unpaid overtime, missed meal and rest breaks, inaccurate wage statements, failure to pay wages timely, and failure to pay all wages owed upon termination from employment on behalf of all employees who were paid on an hour basis because they were subject to Defendant's Bank Time Policy and were misclassified as exempt (including those employees who could have been classified as exempt computer software employees, but were not properly compensated for purposes of that exemption either). The PAGA Notices also allege claims for unreimbursed expenses on behalf of all of Defendant's employees who worked remotely during the relevant statutory period. 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 any of the PAGA Notices. Plaintiff Chan has therefore fully complied with the PAGA procedural requirements and may commence this representative action pursuant to Labor Code § 2699.

18. 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

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

PARTIES

20. Plaintiff Yesenia Gutierrez resides in San Bernardino, California. Plaintiff was employed by ESRI in California from approximately July 2020 until February 2021, as a UX Architect. During her employment, Plaintiff was subject to Defendant's Bank Time Policy and was classified as exempt.

1 Plaintiff worked more than forty hours per week and more than eight hours per day, without receiving
2 overtime compensation. Plaintiff was a computer software employee and thus could have been paid on
3 an hourly basis and classified as exempt under the computer software exemption. However, Defendant
4 did not pay her enough to meet the requirements of the computer software exemption.

5 21. Plaintiff Gutierrez often took a “working” lunch break, ate at her desk and continued to
6 work due to the work pressure created by Defendant. Plaintiff Gutierrez also routinely worked through
7 rest breaks due to work pressure. Defendant did not pay her premium pay for missed breaks.

8 22. When Plaintiff Gutierrez’s employment with Defendant ended, she was not paid the
9 overtime pay or the premium pay for missed breaks she was owed, and is still owed.

10 23. During her employment, Plaintiff Gutierrez was required and/or expected to work
11 remotely and was subject to Defendant’s unlawful business expense reimbursement policies and/or
12 practices set forth herein, and incurred unreimbursed business expenses in the course of carrying out her
13 job duties.

14 24. Plaintiff Kathy Chan is a resident of Montebello, California. Plaintiff Chan was employed
15 by ESRI in California from approximately October 2018 to September 2022, as a financial analyst.
16 During her employment, Plaintiff was subject to Defendant’s Bank Time Policy and was classified as
17 exempt. Plaintiff worked more than forty hours per week and more than eight hours per day, without
18 receiving overtime compensation as required by California law.

19 25. Plaintiff Chan often at lunch at her desk and worked through her lunch break due to the
20 work pressure created by Defendant. Plaintiff Chan also routinely worked through rest breaks due to
21 work pressure.

22 26. When Plaintiff Chan’s employment with Defendant ended, she was not paid the overtime
23 pay or the premium pay for missed breaks she was owed, and is still owed.

24 27. Moreover, during her employment with Defendant, Plaintiff Chan was issued inaccurate
25 wage statements which failed to accurately state: (1) the gross wages earned; (2) the total number of
26 hours she worked; (3) the net wages earned; and (4) all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by the employee.
28

28. 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.

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

30. 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

31. 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 Misclassified Class Members as Exempt

32. Throughout the Class Period, Class Members were subject to Defendant's Bank Time Policy.

33. Pursuant to Defendant's Bank Policy, Defendant required Class Members to track their hours and submit timesheets.

34. Hours worked over 40 in a workweek could be banked and used as “comp” time hours at a future date or could be paid out during the same pay period, which was up to each Class Member to decide.

35. Banked hours could be used as “comp” time at a 1:1 ratio or could be paid, at the Class Member’s regular hour rate.

36. Defendant required Class Members to report on each time sheet, during every pay period, at least 40 hours “worked.” The hours worked could be made up of actual hours worked, and/or sick or vacation time, and/or comp time.

1 37. If a Class Member had a negative hours balance at the end of the year or when time
2 worked/comp time was balanced by Defendant, the Bank Time Policy stated that Class Members were
3 required to speak to their supervisors. Thus, Defendant did not have a written policy of paying Class
4 Members a salary (i.e., a predetermined amount not subject to reduction based on quality or quantity of
5 worked performed), as required for most exemptions from overtime.

6 38. As a result, Defendant misclassified Class Members as exempt.

7 39. In addition, even those Class Members who could, like Plaintiff Gutierrez, be paid on an
8 hourly basis and be classified as exempt under the computer software exemption, were not paid enough
9 by the Defendant to meet the minimum pay required under the computer software exemption.

10 Defendant Failed to Pay Overtime

11 40. As non-exempt employees, Class Members were required to be paid overtime pay for all
12 hours worked over eight in a day and/or over forty in a week.

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

15 42. However, as discussed above, Defendant banked overtime hours worked by the Class
16 Members and either paid these overtime hours at the regular hourly rate or allowed Class Members to
17 use the hours as “comp” time at a 1:1 ratio.

18 43. Thus, Defendant failed to pay Class Members overtime wages, in violation of Labor Code
19 §§ 1194, 510, and Wage Order No. 4-2001, § 3.

20 Defendant Failed to Provide Meal Periods and Permit and Authorize Rest Breaks

21 44. During the Class Period, Plaintiffs and Class Members were non-exempt under California
22 law and were, as a result, entitled to be provided with compliant, off-duty meal and rest breaks and to be
23 paid premium pay in lieu of missed breaks pursuant to Labor Code §§ 226.7, 512 and Wage Order No.
24 4-2001, §§ 11, 12.

25 45. Plaintiffs and Class Members routinely worked over 8 hours in a day and over 40 (and
26 sometimes as many as 50 to 60) hours in a week. Thus, they were entitled to one and sometimes two
27 meal breaks, and several rest breaks each day.
28

1 46. However, as a result of misclassifying Plaintiffs and Class Members as exempt,
2 Defendant did not maintain any meal and/or rest break policy applicable to them.

3 47. In addition, Defendant maintained policies and/or practices, including a culture of
4 working lunch breaks and work pressures, that regularly impeded Plaintiffs' and Class Members' ability
5 to take off-duty meal and rest breaks. As a result, Plaintiffs and Class Members were not relieved of all
6 duties for at least 30 minutes before the end of their fifth hour of work, and they are also not relieved of
7 all duties for at least 30 minutes before the end of their tenth hour of work, as required under Labor Code
8 § 512(a) and Wage Order No. 4-2001, § 11. Class Members were are also routinely not able to take all
9 required off-duty rest breaks, as required under Labor Code § 226.7 and Wage Order No. 4-2001, § 12.

10 48. Thus, Defendant failed to provide compliant rest and meal breaks in accordance with
11 Wage Order No. 4, §§ 11(A), 12(A) and Labor Code §§ 226.7, 512, thereby triggering an obligation to
12 make premium payments to Plaintiffs and Class Members pursuant to Labor Code § 226.7, which
13 Defendant also did not pay.

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

15 49. During the Waiting Time Penalties Subclass Period, as a result of Defendant's failure to
16 pay overtime wages to Plaintiffs and Class Members, Plaintiffs and Class Members who were discharged
17 or resigned their employment with Defendant were not paid all wages owed to them at the time of
18 termination in violation of Labor Code §§ 201 or 202.

19 Defendant Failed to Provide Accurate Itemized Wage Statements

20 50. During the Wage Statement Subclass Period, Defendant was required to issue accurate
21 itemized wage statements to Plaintiff Chan and Class Members semimonthly or at the time of each
22 payment of wages containing: (1) gross wages earned pursuant to subdivision (a)(1) of Labor Code §
23 226(a); (2) total number of hours worked during each period, pursuant to subdivision (a)(2) of § 226(a);
24 (3) net wages earned pursuant to subdivision (a)(5) of Labor Code § 226(a); (4) all applicable hourly
25 rates in effect during the pay period and corresponding number of hours worked pursuant to subdivision
26 (a)(9) of Labor Code § 226(a).

27 51. However, as a consequence of Defendant's failure to pay Plaintiff Chan and Class
28 Members overtime, Defendant's policy/practice of banking their overtime hours worked, and a lack of

1 policy and/or practice of paying premium pay for missed breaks, Plaintiff Chan and Wage Statement
2 Subclass Members did not receive accurate itemized wage statements that included accurate entries for
3 their hours worked, all applicable hourly rates, net wages, and gross wages earned.

4 Defendant Failed to Reimburse Business Expenses

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

9 53. Throughout the UE Class Period, Defendant has maintained policies and practices
10 relating to the incurrence and reimbursement of business expenses that deny lawful reimbursement
11 and/or compensation to UE Class Members required and/or expected to work remotely. Defendant
12 required and/or expected and continues to require and/or expect UE Class Members who are required
13 and/or expected to work remotely to maintain and pay out of pocket for (1) internet service and/or
14 equipment; (2) other home office equipment and/or supplies; and (3) electricity. Defendant also requires
15 and/or expects many UE Class Members who are required and/or expected to work remotely to maintain
16 and pay out of pocket for cellular phones and/or landline phones and/or phone service.

17 54. The unreimbursed expenses incurred by all the UE Class Members, described in the
18 preceding paragraphs, are hereinafter referred to as "Home Office Expenses."

19 55. Defendant's expense-related policies and/or practices require, and/or with Defendant's
20 knowledge thereof permit, UE Class Members to pay for business expenses incurred in direct
21 consequence of discharging their job duties on behalf of Defendant, without any or full reimbursement
22 by Defendant for such expenses.

23 56. Defendant is aware or should have been aware that UE Class Members working remotely
24 regularly incur Home Office Expenses in the discharge of their duties, as employees. Defendant
25 nevertheless has, throughout the UE Class Period, failed and refused to reimburse Plaintiffs and UE
26 Class Members for such business expenses incurred by them in carrying out their job duties for
27 Defendant.
28

1 57. Defendant has maintained its policies of denying reimbursement in full of Plaintiffs and
2 UE Class Members' necessarily incurred Home Office Expenses, or substantially similar policies,
3 throughout California and throughout the UE Class Period.

4 58. Plaintiffs and UE Class Members have been harmed by Defendant's unlawful business
5 expense policies and/or practices in that they have not been paid for certain business expenses incurred
6 while employed by Defendant, thereby diminishing their agreed-upon compensation, in substantial
7 amounts to be proved at trial.

8 Factual Allegations Relevant to UCL Claims

9 59. From at least November 15, 2018 through the present, Defendant has adopted, and uses,
10 unfair business practices to reduce its Class Members' and UE Class Members' compensation and
11 increase its own earnings. These unfair and unlawful business practices include failing to pay Class
12 Members overtime and premium pay for missed breaks and failing to reimburse UE Class Members'
13 Home Office Expenses.

14 **CLASS ACTION ALLEGATIONS**

15 60. Plaintiffs bring this action pursuant to Code of Civil Procedure § 382 on behalf of the
16 Class, the Waiting Time Penalties Subclass, the Wage Statement Subclass, and the Unreimbursed
17 Expenses Class.

18 61. This action has been brought and may properly be maintained as a class action under
19 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
20 the proposed Classes and Subclasses are easily ascertainable, Plaintiffs are proper representatives of the
21 Classes and Subclasses:

22 a. Numerosity: The potential members of the proposed Classes as defined are so
23 numerous and so diversely located throughout California, that joinder of all the members of each Class
24 is impracticable. While the precise number of Members of each Class has not been determined at this
25 time, Plaintiffs are informed and believe that each Class contains more than 100 individuals.

26 b. Commonality: There are questions of law and fact common to Plaintiffs and each
27 Class and Subclasses, that predominate over any questions affecting only individual members of each
28 Class or Subclass. These common questions of law and fact include, without limitation:

- i. Whether Plaintiffs and Class Members are non-exempt employees;
- ii. Whether Defendant violated Labor Code §§ 510 and 1194 and Wage Order No. 4-2001, § 3 by failing to pay Plaintiffs and Class Members overtime wages;
- iii. Whether Defendant violated Labor Code §§ 226.7, 510 and Wage Order No. 4-2001, §§ 11, 12 by failing to maintain meal and rest break policies applicable to Plaintiffs and Class Members;
- iv. Whether Defendant impeded Plaintiffs' and Class Members' ability to take meal and/or rest breaks in violation of Labor Code §§ 226.7, 510 and Wage Order No. 4-2001, §§ 11, 12;
- v. Whether Defendant violated Labor Code §§ 226.7, 512 and Wage Order No. 4-2001, §§ 11, 12 by failing to pay premium pay for missed breaks to Plaintiffs and Class Members;
- vi. Whether Defendant violated Labor Code §§ 201-203 by failing to timely pay all compensation due and owing to Waiting Time Penalties Subclass Members upon their discharge or resignation from employment by Defendant during the Waiting Time Penalties Subclass Period;
- vii. Whether Defendant violated Labor Code § 226(a) by failing to issue accurate itemized wage statements to Plaintiff Chan and Wage Statement Subclass Members during the Wage Statement Subclass Period;
- viii. Whether Defendant's violation of Labor Code § 226(a) was knowing and intentional;
- ix. Whether Plaintiff Chan and Wage Statement Subclass Members suffered injury for the purposes of Labor Code § 226(e);
- x. Whether Plaintiffs and UE Class Members incurred unreimbursed business expenses in the discharge of their duties as employees, included but not limited to expenses for home internet, phone service, other home office supplies and equipment, and electrical service.
- xi. Whether Defendant adopted a uniform policy and/or practice of not reimbursing UE Class Members for any of their Home Office Expenses fully or at all, while at the same time having actual and/or constructive knowledge that the members of the UE Class were routinely incurring such business related expenses;

1 xii. Whether Defendant knew or should have known that Plaintiffs and the UE
2 Class were routinely incurring Home Office Expenses;

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

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

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

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

13 xvii. Whether the Labor Code violations described above constitute unfair,
14 unlawful, and fraudulent business practices, in violation of the UCL;

15 xviii. Whether Plaintiffs and members of the Classes are entitled to restitution under
16 Business and Professions Code §§ 17200 for unpaid overtime, unpaid premium pay, and unreimbursed
17 business expenses;

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

19 xx. The proper formula(s) for calculating damages, interest, and restitution owed
20 to Plaintiffs and members of the Classes.

21 c. Typicality: Plaintiffs' claims are also typical of the claims of the Classes and of
22 the Subclasses. Both Plaintiffs and members of each Class and Subclass sustained injuries and damages,
23 and were deprived of property rightly belonging to them, arising out of and caused by Defendant's
24 common course of conduct in violation of law as alleged herein, in similar ways and for the same types
25 of wages and expenses.

26 d. Adequacy of Representation: Plaintiffs are members of the Class and of the UE
27 Class, and Plaintiff Chan is a member of each Subclass. Plaintiff Gutierrez is a member of each Subclass,
28 except for the Wage Statement Subclass. Plaintiffs will fairly and adequately represent and protect the

1 interests of all members of each Class and Subclass. Plaintiffs' interests do not conflict with the interests
2 of the Classes and Subclasses. Counsel who represent Plaintiffs are competent and experienced in
3 litigating large wage and hour class actions, including business expense reimbursement cases, and other
4 employment class actions, and will devote sufficient time and resources to the case and otherwise
5 adequately represent the Classes.

6 e. Superiority of Class Action: A class action is superior to other available means
7 for the fair and efficient adjudication of this controversy. Individual joinder of all members of each class
8 is not practicable, and questions of law and fact common to the Classes predominate over any questions
9 affecting only individual members of each Class. Each Class Member has been damaged or may be
10 damaged in the future by reason of Defendant's unlawful policies and/or practices of misclassifying
11 them as exempt, failing to pay overtime, failing to provide meal breaks and permit and authorize rest
12 breaks and failing to pay premium pay for missed breaks, failing to timely pay wages, failing to timely
13 pay all compensation due and owing upon separation from employment, and failing to issue accurate
14 itemized wage statements. Each UE Class Member has been damaged or may be damaged in the future
15 by reason of Defendant's unlawful policies and/or practices of failing to fully reimbursing business
16 expenses. Certification of this case as a class action will allow these similarly-situated persons to litigate
17 their claims in the manner that is most efficient and economical for the parties and the judicial system.
18 No difficulties are likely to be encountered in the management of this class action that would preclude
19 its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication
20 of this controversy. If this action is not certified as a class action, it will be impossible as a practical
21 matter for many or most members of the Classes to bring individual actions against Defendant, due to
22 the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.
23 Members of each Class and Subclass are readily identifiable from Defendant's employee rosters and/or
24 payroll records.

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

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

63. Labor Code § 510 provides, in pertinent part:

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

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

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

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

66. As a result of Defendant’s violations of Labor Code § 1194, Defendant is also liable for attorneys’ fees and costs, and liquidated damages pursuant to Labor Code § 1194.2.

67. Plaintiffs, on behalf of themselves and the Class Members, request relief as described below.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Labor Code §§ 226.7, 512 and Wage Order No. 4-2001, § 11)

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

69. Pursuant to Labor Code § 226.7(b), “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable

1 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
2 Standards Board, or the Division of Occupational Safety and Health.”

3 70. Pursuant to Labor Code § 512(a), “(a) An employer shall not employ an employee for a
4 work period of more than five hours per day without providing the employee with a meal period of not
5 less than 30 minutes....”

6 71. Pursuant to Wage Order No. 4-2001, § 11(A), “No employer shall employ any person for
7 a work period of more than five (5) hours without a meal period of not less than 30 minutes....”

8 72. If an employer fails to provide the meal period, it shall pay the employee one hour of pay
9 at the employee’s regular rate of compensation for each workday that the meal period is not provided.
10 Wage Order No. 4-2001, § 11(B); Labor Code § 226.7(b).

11 73. Because Plaintiffs and Class Members were non-exempt under California law, Defendant
12 was required but, as alleged above, failed to provide them with off-duty meal breaks and/or impeded
13 them from taking off-duty meal periods. As a result, Defendant was required, but failed to pay premium
14 pay pursuant to Labor Code § 226.7 and Wage Order No. 4-2001, § 11(B).

15 74. Plaintiffs, on behalf of themselves and all other Class Members, request relief as
16 described below.

17
18 **THIRD CAUSE OF ACTION**
19 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
20 **(Labor Code §§ 226.7 and Wage Order No. 4-2001, § 12)**

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

23 76. Pursuant to Labor Code § 226.7(b), “(b) An employer shall not require an employee to
24 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
25 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety and Health.”

26 77. Pursuant to Wage Order No. 4, § 12(A), “(A) Every employer shall authorize and permit
27 all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.
28 The authorized rest period time shall be based on the total hours worked daily at the rate of ten minutes

1 net rest time per four hours or major fraction thereof. However, a rest period need not be authorized for
2 employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest
3 period time shall be counted as hours worked for which there shall be no deduction from wages.”

4 78. If an employer fails to provide a rest period, it shall pay the employee one hour of pay at
5 the employee’s regular rate of compensation for each workday that the rest period(s) is not provided.
6 Wage Order No. 4-2001, § 12(B); Labor Code § 226.7(b).

7 79. Because Plaintiffs and Class Members were non-exempt under California law, Defendant
8 was required but, as alleged above, failed to provide them with off-duty rest breaks and/or impeded them
9 from taking off-duty rest breaks. As a result, Defendant was required, but failed to pay premium pay
10 pursuant to Labor Code § 226.7 and Wage Order No. 4-2001, § 12(B).

11 80. Plaintiffs, on behalf of themselves and all other Class Members, request relief as
12 described below.

13
14 **FOURTH CAUSE OF ACTION**
15 **FAILURE TO PAY COMPENSATION DUE UPON DISCHARGE OR RESIGNATION**
16 **(Labor Code §§ 201-203)**

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

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

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

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

4 85. Plaintiffs, on behalf of themselves and Waiting Time Penalties Subclass Members,
5 request relief as described below.

6 **FIFTH CAUSE OF ACTION**
7 **FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS**
8 **(Labor Code §§ 226(a), (e))**

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

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

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

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

22 90. As a result of Defendant's knowing and intentional violations of Labor Code § 226(a)
23 described above, Defendant is liable for statutory penalties under Labor Code § 226(e), in the amount of
24 fifty dollars (\$50) for the initial pay period in which a violation occurred and one hundred dollars (\$100)
25 for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars
26 (\$4,000), and an award of costs and reasonable attorney's fees.

27 91. Plaintiff Chan, on behalf of herself and Wage Statement Subclass Members, requests
28 relief as described below.

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SIXTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(Labor Code § 2802)

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

93. 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.”

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

95. 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.

96. 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).

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

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

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

99. 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

1 action for violation of the UCL. Such a person may bring such an action on behalf of himself or herself
2 and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

3 100. Throughout the Class Period, Defendant committed, and continues to commit, acts of
4 unfair competition, as defined in the UCL by failing to pay overtime in violation of Labor Code §§ 1194,
5 510 and Wage Order No. 4-2001, § 3, failing to pay premium pay for missed breaks in violation of Labor
6 Code §§ 226.7, 512 and Wage Order No. 4-2001, §§ 11, 12, and failing to reimburse business expenses
7 in violation of Labor Code § 2802.

8 101. By its actions and omissions, Defendant has substantially injured and damages Class
9 Members and UE Class Members.

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

14 103. Plaintiffs, Class Members and UE Class Members are entitled to restitution pursuant to
15 Business & Professions Code §§ 17203 and 17208 for all unpaid overtime compensation, unpaid
16 premium pay for missed breaks, and unreimbursed business expenses, and interest thereon. Defendant
17 should be required to disgorge all the profits and gains it has reaped and restore such profits and gains
18 to Plaintiffs, Class Members and UE Class Members, from whom they were unlawfully taken.

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

21 105. Plaintiffs, on behalf of themselves and other Class Members and UE Class Members,
22 request relief as described below.

23 **EIGHTH CAUSE OF ACTION**

24 **Civil Penalties**

25 **(Labor Code §§ 2698 et seq.)**

26 106. Plaintiff Chan re-alleges and incorporates by reference each and every allegation set forth
27 in the preceding paragraphs.

28 107. Plaintiff Chan seeks PAGA penalties, and attorneys' fees and costs, on behalf of herself,
Misclassified Aggrieved Employees (defined as those employees who were or are subject to Defendant's

1 Bank Time Policy, including employees who were misclassified under the computer software
2 exemption), and Aggrieved Employees (defined as those employees who were required and/or expected
3 to work remotely, but were not reimbursed for their Home Office Expenses) for the following violations:

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

5 108. During the PAGA Period, as discussed above, Defendant misclassified its employees who
6 were subject to Defendant's Bank Time Policy as exempt from overtime. As a result, Defendant did not
7 pay them premium wages for hours worked over eight in a day and/or over forty in a week. Instead,
8 Defendant banked overtime hours and paid for those hours later (often several weeks or months later) at
9 their regular hourly rate, in violation of Labor Code §§ 1194, 510.

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

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

14 110. During the PAGA Period, as a result of failing to pay aggrieved employees overtime
15 pay, aggrieved employees who were discharged or resigned their employment with Defendant were not
16 timely paid all wages owed to them, in violation of Labor Code §§ 201-203.

17 111. Pursuant to Labor Code § 2699(f)(2), formerly employed Misclassified Aggrieved
18 Employees are entitled to one hundred dollars (\$100) per pay periods for each initial violation and two
19 hundred dollars (\$200) per pay period for each subsequent violation.

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

21 112. During the PAGA Period, as aggrieved employees were non-exempt, Defendant was
22 required to furnish them with accurate itemized wage statements, semi-monthly, containing entries for
23 their total hour worked, applicable hourly rates in effect during the pay period, accurate net and gross
24 wages earned. However, as a result of misclassifying them as exempt, Defendant failed to furnish them
25 with wage statements containing this required information.

26 113. Pursuant to Labor Code § 2699(f)(2), Misclassified Aggrieved Employees are entitled to
27 one hundred dollars (\$100) per pay periods for each initial violation and two hundred dollars (\$200) per
28 pay period for each subsequent violation.

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

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

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

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs request the following relief:

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

14 B. On the First Cause of Action: That the Court find and declare that Defendant violated
15 Labor Code §§ 510, 1194, and Wage Order No. 4-2001, § 3, and award Plaintiffs and Class Members at
16 a minimum, an amount equal to the total amount of unpaid overtime wages unlawfully withheld from
17 them, interest thereon, and reasonable attorneys' fees and costs;

18 C. On the Second Cause of Action: That the Court find and declare that Defendant violated
19 Labor Code §§ 226.7, 512 and Wage Order No. 4-2001, § 11, by failing to provide Plaintiffs and Class
20 Members with off-duty meal periods and to pay premium pay in lieu thereof, and award Plaintiffs and
21 Class Members at a minimum, an amount equal to the total amount of unpaid premiums unlawfully
22 withheld during the Class Period, interest thereon, and reasonable attorneys' fees and costs;

23 D. On the Third Cause of Action: That the Court find and declare that Defendant violated
24 Labor Code § 226.7 and Wage Order No. 4-2001, § 12, by failing to permit and authorize Plaintiffs and
25 Class Members to take off-duty rest breaks and to pay premium pay in lieu thereof, and award Plaintiffs,
26 and Class Members, at a minimum, an amount equal to the total amount of unpaid premiums unlawfully
27 withheld during the Class Period, interest thereon, and reasonable attorneys' fees and costs;

28 E. On the Fourth Cause of Action: That the Court find and declare that Defendant violated

1 Labor Code §§ 201-203, and award Plaintiffs and Waiting Time Penalties Subclass waiting time
2 penalties in the amount of 30 days' wages per Subclass Member.

3 F. On the Fifth Cause of Action: That the Court find and declare that Defendant violated
4 Labor Code § 226(a), and award Plaintiff Chan and Wage Statement Subclass Members statutory
5 penalties under Labor Code § 226(e);

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

11 H. On the Seventh Cause of Action: That the Court find and declare that Defendant has
12 violated the UCL, and that Defendant be ordered to pay restitution to Plaintiffs and the Class, and the
13 UE Class due to Defendant's UCL violations, pursuant to Business and Professions Code §§ 17200-
14 17205, in the amount of their unpaid wages, including unpaid premium pay, unreimbursed business
15 expenses, and interest thereon;

16 I. On the Eight Cause of Action: That the Court award PAGA Civil Penalties to Plaintiff
17 Chan, Misclassified Aggrieved Employees, and Aggrieved Employees, Employees, as provided under
18 Labor Code § 2699;

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

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

23 **DEMAND FOR JURY TRIAL**

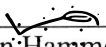
24 Plaintiffs, on behalf of themselves, the Class Members and the UE Class Members, hereby
25 demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

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27 Dated: 2/25/2025, ~~XXXX~~

Respectfully submitted,

HAMMONDLAW, P.C.

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Julian Hammond
Attorneys for Plaintiffs