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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JOHNNY LE, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

ITEST, INC., a Delaware Corporation; and
DOES 1-50, inclusive.

Defendants.

CASE NO.: 23CV417873

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) FAILURE TO IMPLEMENT LAWFUL ALTERNATIVE WORKWEEK SCHEDULE
- (4) MEAL PERIOD VIOLATIONS;
- (5) REST PERIOD VIOLATIONS;
- (6) WAGE STATEMENT VIOLATIONS;
- (7) WAITING TIME PENALTIES;
- (8) UNFAIR COMPETITION; and
- (9) PAGA PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff Johnny Le (“Plaintiff”), on behalf of himself and all other similarly situated non-
2 exempt employees, alleges and complains of Defendant iTest, Inc. (“Defendant”) and DOES 1 to 50
3 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant is a Silicon Valley testing laboratory featuring best-of-breed engineering
6 capabilities and first-class ATE and test support equipment. Plaintiff brings this class and PAGA
7 representative action against Defendants for alleged violations of the California Labor Code and
8 Business and Professions Code.

9 2. As set forth below, Plaintiff alleges that Defendants deprived Plaintiff and other non-
10 exempt employees of all minimum and overtime due to failing to pay for all time employees were
11 subject to the employer's control. Plaintiff and non-exempt employees were also not paid all minimum
12 and overtime wages based on Defendants’ invalid and unlawful alternative workweek schedule
13 arrangements. Moreover, Plaintiff alleges that Defendants’ meal and rest period policies and practices
14 failed to provide him and all other similarly situated employees with compliant meal and rest periods
15 or pay premium at the “regular rate of pay” in lieu thereof.

16 3. Finally, Plaintiff alleges that Defendants failed to provide non-exempt employees with
17 accurate written itemized wage statements and failed to pay all final wages upon separation of
18 employment timely.

19 4. Based on these alleged Labor Code violations, Plaintiff now brings this class action to
20 recover unpaid wages, restitution, penalties, and other related relief for himself and all others
21 similarly situated.

22 **JURISDICTION AND VENUE**

23 5. This class action is brought pursuant to California Code of Civil Procedure § 382.

24 6. Plaintiff, on behalf of himself and all other similarly situated employees, hereby brings
25 this class action for recovery of unpaid wages and penalties under California Labor Code §§ 200,
26 201-203, 204, 210, 218.5, 218.6, 221-223, 226(a), 226(e), 226.3, 226.7, 246, 510, 511, 512, 516, 558,
27 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1199, 2698 *et seq.*, among other, and applicable Industrial
28 Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking declaratory relief and

restitution pursuant to California Business and Professions Code § 17200, *et. seq.*

7. This Court has jurisdiction over Defendants' violations of the California Labor Code and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional minimum.

8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5. Defendants own, maintain offices, transact business, have an agent or agents within the County of Santa Clara, and/or otherwise are found within the County of Santa Clara, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

9. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California resident residing in the State of California. Defendants employed Plaintiff and other similarly situated employees as non-exempt employees in California County of Santa Clara.

10. Plaintiff is informed and believes and thereon alleges that Defendant is a California corporation authorized and doing business in Santa Clara County, California, and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods.

11. Defendants' policies and/or practices outlined herein have deprived Plaintiff and other similarly situated non-exempt employees of the rights afforded to them by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 246, 510, 512, 1194, 1197.1, 1199, among others, and California Business and Professions Code § 17200 *et seq.*, and applicable Wage Order(s).

12. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Santa Clara. Defendants, each of them, own and/or operate within Milpitas, California.

13. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or

1 corporate, were responsible in some manner for the acts and omissions alleged herein and proximately
2 caused Plaintiff and the Classes to be subject to the unlawful employment practices alleged herein.

3 14. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
4 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
5 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
6 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
7 them, were the agents, servants, and employees of each and every one of the other Defendants, as
8 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
9 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
10 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

11 15. At all times mentioned herein, Defendants, and each of them, were members of and
12 engaged in a joint venture, partnership, and common enterprise and acting within the course and
13 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
14 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
15 Classes.

16 **COMMON FACTUAL ALLEGATIONS**

17 16. Defendants are a Silicon Valley testing laboratory featuring best-of-breed
18 engineering capabilities and first-class ATE and test support equipment.

19 17. Defendants employed Plaintiff as a non-exempt employee with the title of “Tech
20 Operator” out of Defendants’ Milpitas, California location from March 17, 2022, until his separation
21 from employment on December 16, 2022. Plaintiff and other non-exempt employees (including tech
22 operator, technicians, customer service representative, receptionist, planner, and all other non-
23 exempt positions) were responsible for all of Defendant’s business in California. At all relevant
24 times, Plaintiff and the other non-exempt employees were subjected to the same policies,
25 procedures, and practices, working conditions, and corresponding wage and hour violations.

26 18. At all relevant times, Plaintiff and other non-exempt employees regularly worked
27 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a
28 workweek. Plaintiff alleges that other non-exempt employees were also subjected to the same

1 policies, procedures, and practices, working conditions, and corresponding wage and hour violations
2 to which she was subjected during his employment.

3 19. First, at all relevant times, Defendants consistently failed to accurately record all time
4 worked and time under which aggrieved employees were under the employer's control. This included
5 a policy and practice of failing to pay for all time worked properly or to which non-exempt employees
6 were subject to the employer's control, including all pre-shift and post-shift time spent working off-
7 the-clock. Further, because Defendants uniformly automatically deducted 30 minutes for meal
8 periods whether or not an actual uninterrupted net 30-minute meal break was provided or taken,
9 Plaintiff and other aggrieved employees were not paid for all hours worked or all hours when they
10 were subject to the control of the employer.

11 20. As a result of these company-wide practices, Plaintiff and other aggrieved employees
12 are not compensated for all the hours that they work and all of the overtime hours they work, in
13 violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.
14 Additionally, due to the unlawful timekeeping policy, Plaintiff and other aggrieved employees were
15 not properly paid at the correct overtime rate for hours worked in excess of eight hours per shift in
16 violation of Labor Code § 510. Accordingly, to the extent permitted by law, Plaintiff and other
17 aggrieved employees are entitled to recover unpaid wages and penalties for violations of Labor Code
18 §§ 204, 210, 510, 1194, 1197.1, 1199, and 1197.1.

19 21. Furthermore, Plaintiff and other non-exempt employees were not paid all minimum
20 and overtime wages based on Defendants' invalid and unlawful alternative workweek schedule
21 arrangements.

22 22. Next, at all relevant times, Plaintiff and other non-exempt employees were denied
23 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
24 Defendants' uniform meal period policies/practices, operational requirements, and work demands,
25 Plaintiff and other non-exempt employees often could not take timely and uninterrupted 30-minute
26 first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other non-
27 exempt employees worked more than 10.0 hours in a shift, they were not always allowed and
28 permitted to take a mandated second meal period before the end of the tenth hour of work in violation

1 of the Labor Code and applicable Wage Orders.

2 23. Additionally, for each missed or non-compliant meal period, Defendants failed to
3 maintain a mechanism by which non-exempt employees were paid meal period premiums at the
4 “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor
5 Code § 226.7. Accordingly, due to Defendants’ uniform meal period practices, Plaintiff and other
6 non-exempt employees were also regularly denied legally compliant meal periods in violation of
7 Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

8 24. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
9 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
10 to Defendants’ uniform rest period policies/practices, operational requirements and work demands.
11 As a result, Plaintiff and other non-exempt employees were and are often unable to take a net 10-
12 minute duty free rest periods for every major fraction of four hours worked. This includes a second
13 rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10.0 hours
14 in a workday. To the extent non-exempt were permitted allowed and permitted to take rest periods,
15 the rest periods were often cut short or interrupted for work reasons.

16 25. By not relieving all non-exempt employees of all duties during rest periods,
17 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*
18 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve
19 employees of all duties and relinquish control over how employees spend their time.”]. In *Augustus*,
20 the California Supreme Court expressly rejected the employers’ assertion that it could provide an on-
21 duty rest period to employees who worked as security guards and further explained “that employers
22 [must] relinquish any control over how employees spend their break time and relieve their employees
23 of all duties.” *Id.* at 273.

24 26. Each time Plaintiff and other non-exempt employees were unable to take a compliant
25 rest period, Defendants failed and continue to fail to adequately pay rest period premium payments
26 at the “regular rate of pay” as required by Labor Code § 226.7.

27 27. Accordingly, due to Defendants’ uniform rest period policies/practices and work
28 demands, Plaintiff and other non-exempt employees were also regularly denied legally compliant rest

breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

28. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees for all minimum wages and overtime wages and Defendants' failure to pay for meal and rest period premiums at the "regular rate of pay," Defendants issued wage statements which failed to identify the gross wages earned accurately, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

29. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

30. Thus, for the violations of Labor Code § 226 described above, Plaintiff and other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of Labor Code § 226(a).

31. As a further result of Defendants' failure to pay all minimum and overtime wages, and meal and rest period premiums at the "regular rate of pay," Defendants also failed and continues to fail to pay the non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203.

CLASS ACTION ALLEGATIONS

32. Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

All non-exempt employees who work or worked for Defendants in California, during the four years immediately preceding the filing of the Complaint through the date of trial. ("Class");

All non-exempt employees who worked for Defendants in California and who worked overtime hours during at least one shift, during the four years immediately preceding the filing of the Complaint through the date of trial. ("Overtime Subclass");

All non-exempt employees who work or worked for Defendants in

1 California during the one year immediately preceding the filing of the
2 Complaint through the date of trial. (“Wage Statement Subclass”)

3 All non-exempt delivery driver employees who work or worked for
4 Defendants in California, and who left their employ during the three
5 years immediately preceding the filing of the Complaint through the
6 date of trial. (“Waiting Time Penalty Subclass”)

(collectively “the Classes”)

7 33. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
8 joinder of all members would be unfeasible and not practicable. The membership of the Classes is
9 unknown to Plaintiff at this time; however, it is estimated that the Classes consist of at least one
10 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of
11 Defendants’ employment and payroll records.

12 34. **Common Questions of Law and Fact Predominate/Well Defined Community of**
13 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
14 employees, which predominate over questions affecting only individual members including, without
15 limitation to:

16 1. Whether Defendants failed to pay overtime pay at the appropriate legal rate to
17 members of the Classes;

18 2. Whether Defendants provided Plaintiff and all other similarly situated employees
19 lawful alternative workweek schedule arrangements;

20 3. Whether Defendants provided legally compliant meal and rest periods or proper
21 compensation at the “regular rate of pay” in lieu thereof to members of the Classes;

22 4. Whether Defendants furnished legally compliant wage statements to members of the
23 Classes pursuant to Labor Code § 226(a);

24 5. Whether the timing and amount of payment of final wages to members of the Class at
25 the time of separation from employment were unlawful.

26 35. **Predominance of Common Questions:** Common questions of law and fact
27 predominate over questions that affect only individual members of the Classes. The common
28 questions of law set forth above are numerous and substantial and stem from Defendants’ policies

1 and/or practices applicable to each individual class member, such as, Defendants' policy/practice of
2 failing to pay minimum and overtime wages, and Defendants' uniform policy of failing to provide
3 compliant meal and rest periods or adequate compensation in lieu thereof, and Defendants' resulting
4 failure to provide accurate itemized wage statements, and to pay for all wages due upon separation
5 of employment. As such, the common questions predominate over individual questions concerning
6 each individual class member's showing as to his or her eligibility for recovery or as to the amount
7 of his or her damages.

8 36. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
9 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
10 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
11 Plaintiff, like the members of the Classes, was deprived of all minimum and overtime wages, was
12 deprived of meal and rest period premium wages at the "regular rate of pay," was subject to
13 Defendants' uniform policies/practices, was not provided accurate itemized wage statements, and
14 was not paid all wages owed at the time of her separation of employment.

15 37. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
16 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
17 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
18 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
19 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
20 members of the Classes.

21 38. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
22 important public interest in establishing minimum working conditions and standards in California.
23 These laws and labor standards protect the average working employee from exploitation by
24 employers who have the responsibility to follow the laws and who may seek to take advantage of
25 superior economic and bargaining power in setting onerous terms and conditions of employment. The
26 nature of this action and the format of laws available to Plaintiff and members of the Classes make
27 the class action format a particularly efficient and appropriate procedure to redress the violations
28 alleged herein. If each employee were required to file an individual lawsuit, Defendants would

necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources.

39. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution, considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 35 are maintainable as Classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

41. As a result of Defendants' policies or practices described herein above, including but not limited to Defendants' failure to pay for all rest periods, Plaintiff and the Class were not paid the minimum wage for all hours worked.

42. Consequently, Defendants violated California Labor Code laws and minimum wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, applicable IWC Wage Orders, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

43. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay wages to Plaintiff and members of the Classes for each hour

1 worked in violation of Labor Code §§ 221-223, 1194 and 1197.

2 44. Defendants' conduct was willful, as Defendants knew that Plaintiff and members of
3 the Classes were entitled to be paid wages throughout the statutory period for each hour worked,
4 including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

5 45. At all material times, Defendants Does 1 through 50 were and/or are the employers of
6 Plaintiff and members of the Classes or were persons acting on behalf of said employer(s), within the
7 meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204
8 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and
9 days of work respectively.

10 46. At all relevant times, Defendants failed to pay all wages to which Plaintiff and
11 members of the Classes were entitled, thereby receiving an economic benefit.

12 47. As a result of Defendants' wrongful conduct, Plaintiff and members of the Classes
13 have been damaged in amounts to be proven at trial.

14 48. Plaintiff, on behalf of himself, and members of the Class, seeks recovery of all unpaid
15 minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to
16 Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY ALL OVERTIME WAGES**

19 **(AGAINST ALL Defendants)**

20 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 50. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198,
22 which provide that non-exempt employees are entitled to overtime wages for all overtime hours
23 worked and provide a private right of action for the failure to pay all overtime compensation for
24 overtime work performed.

25 51. At all times relevant herein, Defendants were required to properly pay Plaintiff and
26 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
27 § 1194 and the applicable Wage Orders.

28 52. Section 3 of the applicable Wage Order requires an employer to pay an employee "one

1 and one-half (1 1/2) times the employee's regular rate of pay" for work in excess of 8 hours per
2 workday and/or in excess of 40 hours of work in the workweek. The same section also requires an
3 employer to pay an employee double the employee's regular rate of pay for work in excess of twelve
4 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in
5 the workweek.

6 53. Defendants failed to conform their pay practices to the requirements of the law. This
7 unlawful conduct includes but is not limited to, Defendants' uniform and unlawful policy/practice of
8 (1) failing to pay one and a half times the regular rate of pay for all hours worked in excess of 8.0/
9 10.0 hours per day, and double time for hours in excess of 12.0 hours per day, and (2) failing to
10 include all forms of compensation in calculating the "regular rate of pay," which resulted in the
11 Classes not being paid all overtime wages owed.

12 54. The foregoing policies and practices are unlawful and create an entitlement to recovery
13 by Plaintiff and the members of the Overtime Subclass in a civil action for the unpaid amount of
14 overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit
15 according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code
16 of Civil Procedure § 1021.5.

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO IMPLEMENT LAWFUL ALTERNATIVE WORKWEEK SCHEDULES**
19 **(AGAINST ALL DEFENDANTS)**

20 55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 56. Labor Code § 510 provides, in pertinent part: "Eight hours of labor constitutes a
22 day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in
23 any one workweek and the first eight hours worked on the seventh day of work in any one workweek
24 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
25 employee. Any work in excess of 12 hours in one day shall be compensated at a rate of no less than
26 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
27 seventh day of a workweek shall be compensated at a rate of no less than twice the regular rate of pay
28 of an employee."

1 57. Labor Code § 511 states, in pertinent parts: “(a) Upon the proposal of an employer,
2 the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes
3 work by the affected employees for no longer than 10 hours per day within a 40-hour workweek
4 without the payment to the affect employees of an overtime rate of compensation pursuant to this
5 section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it
6 receives approval in a secret ballot election by at least two-thirds of affected employees in a work
7 unit [..].”

8 58. All applicable Wage Orders provide, in relevant part as follows:

9 (1) Each proposal for an alternative workweek schedule shall be in the form of a
10 written agreement proposed by the employer.

11 (2) In order to be valid, the proposed alternative workweek schedule must be
12 adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote
13 of the affected employees in the work unit. The election shall be held during regular working hours
14 at the employees’ work site.

15 (3) Prior to the secret ballot vote, any employer who proposed to institute an
16 alternative workweek schedule shall have made a disclosure in writing to the affected employees,
17 including the effects of the proposed arrangement on the employees’ wages, hours, and benefits.
18 Such a disclosure shall include meeting(s), duly noticed, held at least fourteen (14) days prior to
19 voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An
20 employer shall provide that disclosure in a non-English language, as well as in English, if at least five
21 (5) percent of the affected employees primarily speak that non-English language. The employer shall
22 mail the written disclosure to employees who do not attend the meeting. Failure to comply with this
23 paragraph shall make the election null and void.

24 (6) The results of any election conducted pursuant to this order shall be a public
25 document and shall be reported by the employer to the Division of Labor Statistics and Research
26 within 30 days after the results are final. The report of the election results shall also be posted at the
27 job site in an area frequented by employees where it may easily be read during the workday . . . that
28 an employer may not pay employees less than the applicable minimum wage for all hours worked.

1 59. At all relevant times, Defendants failed to comply with the statutorily mandated
2 election procedures required to implement a four-10-hour or 12-hour long shift day in violation of
3 Labor Code § 511 and the applicable Wage Orders and California Code of Regulations.

4 60. As a result of Defendants' failure to comply with the statutorily mandated election
5 procedures, Plaintiff and the Classes who worked in excess of eight (8) hours per day and forty (40)
6 hours per week were not properly compensated for their overtime hours worked and/or for all
7 minimum wages due.

8 61. At all relevant times, Defendants were and/or are Plaintiff's, the Classes', and
9 aggrieved employees' employers or persons acting on behalf of Defendants within the meaning of
10 Labor Code §§ 558 and 558.1, who violated or caused to be violated, the California Labor Code and
11 any provision regulating hours and days of work in the applicable Wage Orders and, as such, are
12 subject to penalties for each underpaid employee as set forth in Labor Code §§ 558 and 558.1,
13 including the payment of the underpaid wages to affected employees.

14 62. As a direct result of Defendants' violations alleged herein, Plaintiff, the Classes, and
15 aggrieved employees have suffered and continue to suffer substantial losses related to the use and
16 enjoyment of such wages, including lost interest on such monies and expenses and attorneys' fees in
17 seeking to compel Defendants to fully perform their obligation under state law, all to their respective
18 damage in amounts according to proof at trial and within the jurisdictional limits of this Court.

19 63. Accordingly, Plaintiff, on behalf of himself and the Classes, seeks to recover the
20 unpaid balance of the full amount of the unpaid wages resulting from Defendants' minimum wage
21 and overtime wage violations related to Defendants' unlawful alternative workweek schedule
22 arrangements, including interest thereon, reasonable attorneys' fees and costs of this lawsuit,
23 penalties, and liquidated damages to the fullest extent permissible, including those permitted pursuant
24 to Labor Code §§ 558, 1194, 1194.2, and Code of Civil Procedure § 1021.5, etc.

25 **FOURTH CAUSE OF ACTION**

26 **MEAL PERIOD VIOLATIONS**

27 **(AGAINST ALL Defendants)**

28 64. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

65. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their hourly non-exempt employees, including Plaintiff and members of the Class, with all required meal periods in accordance with the mandates of the California Labor Code and applicable Wage Orders, for the reasons set forth in the Common Allegations section of this Complaint. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

66. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7, 512, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL Defendants)

67. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

68. Section 12 of the applicable Wage Orders and Labor Code §§ 226.7 and 516 establish the right of non-exempt employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

69. Due to their unlawful rest period policy and practices, Defendants did not authorize and permit Plaintiff and members of the Class to take code-compliant rest periods to which they were legally entitled, including, but not limited to, failing to relieve employees of all duties and relinquishing all control over employees during their rest periods. Despite Defendants' violations, Defendants have not paid an additional hour of pay at the "regular rate of pay" to Plaintiff and members of the Class at their respective regular rates of pay for each violation, in accordance with California Labor Code § 226.7.

70. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to the applicable Wage Orders, Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(AGAINST ALL Defendants)**

4 71. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 72. Labor Code 226(a) states in pertinent part the following:

6 “(a) An employer, semimonthly or at the time of each payment of wages, shall
7 furnish to his or her employee, either as a detachable part of the check, draft, or
8 voucher paying the employee’s wages, or separately if wages are paid by personal
9 check or cash, an accurate itemized statement in writing showing (1) gross wages
10 earned, (2) total hours worked by the employee, except as provided in subdivision
11 (j), (3) the number of piece-rate units earned and any applicable piece rate if the
12 employee is paid on a piece-rate basis, (4) all deductions, provided that all
13 deductions made on written orders of the employee may be aggregated and shown
14 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
15 employee is paid, (7) the name of the employee and only the last four digits of his
16 or her social security number or an employee identification number other than a
17 social security number, (8) the name and address of the legal entity that is the
18 employer and, if the employer is a farm labor contractor, as defined in subdivision
19 (b) of Section 1682, the name and address of the legal entity that secured the services
20 of the employer, and (9) all applicable hourly rates in effect during the pay period
21 and the corresponding number of hours worked at each hourly rate by the
22 employee.”

23 73. As set forth above, during the Class Period, Defendants issued and continue to issue
24 wage statements to its employees, including Plaintiff and members of the Wage Statement Subclass,
25 which are inadequate under Labor Code Section 226(a).

26 74. As a result of Defendants’ failure to pay Plaintiff and the Wage Statement Subclass
27 for all minimum and overtime wages at the appropriate legal rate and missed meal and rest period
28 premiums at the “regular rate of pay,” Defendants failed to include required information on Plaintiff
and the Classes’ wage statements, including, but not limited to, the gross wages earned, the net wages
earned in violation of Labor Code section 226(a)(1, 2, 5, 9).

75. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
and intentional.

76. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiff

1 and members of the Wage Statement Subclass in violation of section 226(a) of the California
2 Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an
3 initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate
4 penalty of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from
5 Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

6 **SEVENTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 **(AGAINST ALL Defendants)**

9 77. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 78. The actionable period for this cause of action is three years prior to the filing of this
11 Complaint through the present and ongoing until the violations are corrected or the class is certified.

12 79. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and
13 owing to Plaintiff and the Waiting Time Penalty Subclass during the actionable period for this cause
14 of action at or around the time that their employment is or was terminated or ended.

15 80. Labor Code § 203 provides that if an employer willfully fails to pay compensation
16 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
17 employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

18 81. Defendants willfully failed to pay Plaintiff and the members of the Waiting Time
19 Penalty Subclass for all minimum and overtime wages, and their meal and rest period premiums at
20 the "regular rate of pay," prior to or upon termination or separation from employment with
21 Defendants as required by Labor Code §§ 201 and 202.

22 82. As a result, Defendants are liable to Plaintiff and the Waiting Time Penalty Subclass
23 for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Classes pursuant
24 to Labor Code § 203. *See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon*
25 *termination entitles an employee to recover waiting time penalties).*

26 **EIGHT CAUSE OF ACTION**

27 **UNFAIR COMPETITION**

28 **(AGAINST ALL Defendants)**

1 83. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

2 84. Defendants have engaged and continue to engage in unfair and/or unlawful business
3 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by
4 failing to pay all minimum and overtime wages at the appropriate legal rate, by failing to provide all
5 legally required meal and rest periods or pay premium payments at the “regular rate of pay” in lieu
6 thereof, by failing to provide accurate itemized wage statements, and by failing to pay all earned
7 wages at the time of separation from employment.

8 85. Defendants’ utilization of these unfair and/or unlawful business practices deprived
9 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
10 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
11 Defendants’ competitors who have been and/or are currently employing workers and attempting to
12 do so in honest compliance with applicable wage and hour laws.

13 86. Because Plaintiff is a victim of Defendants’ unfair and/or unlawful conduct alleged
14 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
15 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
16 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

17 87. The acts complained of herein occurred within the last four years immediately
18 preceding the filing of the Complaint in this action.

19 88. Plaintiff was compelled to retain the services of counsel to file this court action to
20 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
21 Defendants’ current hourly non-exempt employees, and to enforce important rights affecting the
22 public interest. Plaintiff has thereby incurred the financial burden of attorneys’ fees and costs, which
23 he is entitled to recover under Code of Civil Procedure § 1021.5.

24 **NINTH CAUSE OF ACTION**

25 **PRIVATE ATTORNEYS GENERAL ACT**

26 **(AGAINST ALL DEFENDANTS)**

27 89. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 90. Defendants have committed several Labor Code violations against Plaintiff and other

1 non-exempt employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698
2 *et seq.*, acting on behalf of himself and other non-exempt employees, brings this representative action
3 against Defendants to recover the civil penalties due to Plaintiff, all other similarly situated non-
4 exempt employees and the State of California according to proof pursuant to Labor Code § 2699 (a)
5 and (f) including, but not limited to (1) \$100 for each initial violation and (2) \$200 for each subsequent
6 violation per employee per pay period for those violations of the Labor Code for which no civil
7 penalty is specifically provided based on the following Labor Code violations:

8 a. Failing to provide Plaintiff and all other aggrieved non-exempt employees all
9 minimum and overtime wages (including, but not limited to, failing to provide all wages owed due
10 to an unlawful alternative workweek schedule, failure to pay the correct regular rate, failure to
11 compensate properly for all time worked at the legally mandated rate, etc.) in violation of Labor Code
12 § 204, 246, 510, 1194 & 1198, etc.;

13 b. Failing to provide Plaintiff and all other aggrieved non-exempt with all of their
14 statutorily mandated meal periods or compensation at the “regular rate of pay” in lieu thereof in
15 violation of Labor Code §§ 204, 510, 1194, and 1198;

16 c. Failing to authorize and permit Plaintiff and all other aggrieved non-exempt
17 employees with all of their statutorily mandated rest periods or compensation at the “regular rate of
18 pay” in lieu thereof in violation of Labor Code §§ 226.7, and 516;

19 d. Failing to timely compensate Plaintiff and all other aggrieved non-exempt
20 employees with all earnings upon their separation of employment in violation of Labor Code §§ 201-
21 203.

22 e. Failing to furnish Plaintiff and all other aggrieved non-exempt employees with
23 complete, accurate, itemized wage statements in violations of Labor Code § 226(a); and

24 91. Plaintiff has timely notified Defendant via certified mail and the California Labor and
25 Workforce Development Agency (“LWDA”) via its website of Defendant’s violations of the
26 California Labor Code § 2698 *et seq.*, with respect to violations of the California Labor Code
27 identified in Paragraph 114(a)-(e), including by filing an original notice and subsequent amendments
28 thereto.

92. Plaintiff has thus exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

93. Plaintiff was compelled to retain the services of counsel to file this court action to protect their interests and the interests of all other aggrieved non-exempt employees and to assess and collect the civil penalties owed by Defendants. Plaintiff has hereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First through Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
5. Upon the Fourth and Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
6. Upon the Sixth Cause of Action, penalties pursuant to Labor Code § 226(a), and reasonable costs and attorneys' fees;
7. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
8. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq*;
9. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, all other aggrieved employees (i.e., all non-exempt employees), and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of

1 the Labor Code for which no civil penalty is specifically provided under the Labor Code

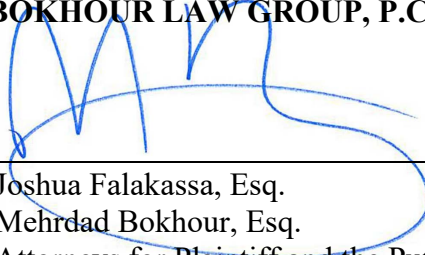
2 10. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
3 § 218.6 and Civil Code §§ 3287 and 3289;

4 11. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
5 218.5, 226, and Code of Civil Procedure § 1021.5; and

6 12. For such other relief that the Court may deem just and proper.

7
8 Dated: April 22, 2024

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

9
10
11 By: 

12 Joshua Falakassa, Esq.

13 Mehرداد Bokhour, Esq.

14 Attorneys for Plaintiff and the Putative Classes
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars,
Suite 450, Los Angeles, California 90067.

5 On April 22, 2024, I served the following document(s) described as **FIRST AMENDED**
6 **CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action by placing
true copies thereof enclosed in sealed envelopes addressed as follows:

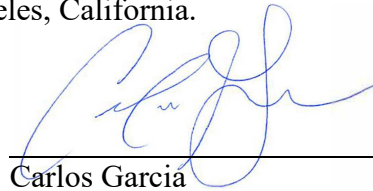
7 Mark Punzalan, Esq.
8 *mark@chanpunzalan.com*
9 A. Chowning Poppler, Esq.
10 *chowning@chanpunzalan.com*
Gabrielle Sullera, Esq.
11 *gabrielle@chanpunzalan.com*
Margo A. Crawford, Esq.
12 *margo@chanpunzalan.com*
CHAN PUNZALAN LLP
22 Battery Street, Suite 401
13 San Francisco, CA 94111

14 **Counsel for Defendant, iTest, Inc.**

15 **BY ELECTRONIC SERVICE:** I transmitted the above-referenced document(s) via
16 electronic service provider First Legal to the person(s) identified above at the email address(es)
17 indicated and did not, within a reasonable time after transmission, receive any message or
communication indicating that delivery failed or that any other error had occurred which would
18 delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

20 Executed on April 22, 2024, at Los Angeles, California.

21 
22 _____
23 Carlos Garcia