

WORRELL LAW FIRM, APC
Kyle C. Worrell (SBN 281287)
kcw@worrell-law.com
1717 Old Tustin Avenue, Unit E
Santa Ana, CA 92705
Telephone: (657) 232-1450
Fax: (657) 232-1430

Attorneys for Plaintiff
DUNG A. NGUYENCUU

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DUNG A. NGUYENCUU, an individual,

Plaintiff,

vs.

OSTENDO TECHNOLOGIES, INC., a
California corporation, HUSSEIN S. EL-
GHOROURY, an individual, and DOES 1
through 100, inclusive,

Defendants.

Case No.: 23STCV28621

*[Assigned For All Purposes to Hon. Colin P.
Leis, Dept. 74]*

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

- (1) Retaliation in Violation of Labor Code § 1102.5
- (2) Wrongful Termination – Constructive Discharge – In Violation of Public Policy
- (3) Failure to Pay Lawful Wages (Labor Code §§ 1194, 1197)
- (4) Failure to Pay Lawful Overtime Wages (Labor Code §§ 510, 1194)
- (5) Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 512, 226.7)
- (6) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7)
- (7) Failure to Timely Pay Wages (Labor Code §§ 204, 210)
- (8) Failure to Timely Pay Wages at End of Employment (Waiting Time Penalties) (Labor Code §§ 201-203)
- (9) Knowing and Intentional Failure to Comply with Itemized Employee Wage

Statement Provisions (Wage Statement Violations) (Labor Code § 226)
(10) Failure to Reimburse Business Expenses (Labor Code §§ 2800, 2802)
(11) Failure to Pay Vacation Time at the Appropriate Rate of Pay (Labor Code §§ 227, 227.3)
(12) Failure to Maintain and/or Provide Employment Records (Labor Code §§ 226, 1174)
(13) Violations of the Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.)
(14) Violation of the Private Attorneys General Act of 2004 (“PAGA”) [Labor Code § 2698 *et seq.*]

JURY TRIAL DEMANDED

COMES NOW Plaintiff Dung A. Nguyencuu (“Plaintiff”), who alleges and complains, based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, as follows:

I. INTRODUCTION

1. Plaintiff was employed by Defendants (defined below) and worked for them in the manufacturing and technology industry throughout Southern California as Process Engineer from approximately June 2011, through March 2023. Defendants operate a manufacturing and technology company doing business in California including hiring California residents as employees within the State of California. Plaintiff is informed and believes that Defendants generally employs more than fifty (50) employees working within California.

2. At all pertinent times during the applicable limitations period, Defendants have implemented a uniform policy to willfully misclassify its California Process Engineer(s) and upon information and belief other management employees as exempt when they are plainly non-exempt employees under California law, and to pay employees improperly under the applicable California Wage Orders.

1 3. Going back many years, Defendants have blatantly and intentionally misclassified
2 Plaintiff and, upon information and belief, other managerial employees as exempt employees
3 when they are plainly non-exempt, hourly employees under California law.

4 4. From approximately 2019, through the end of Plaintiff's employment, Defendants
5 misclassified Plaintiff as an exempt employee by, among other things, wantonly and inexplicitly
6 failing to meet the minimum salary threshold required for Plaintiff to be classified as "exempt."
7 This misclassification has deprived Plaintiff of various protections under the California Labor
8 Code.

9 5. On one or more occasions, and increasing towards the end of 2022, and early 2023,
10 Plaintiff raised this issue and related issues to Defendants to see whether the issues could be
11 addressed and remedied. But rather than fixing the pay issues and/or proposing any agreement
12 or plan to repay the substantial amounts of wrongfully withheld wages and underpayments from
13 the prior four years, Defendants continued to fail to pay the minimum salary threshold. Moreover,
14 when Plaintiff inquired about the prior years of substantial underpayment, Defendants failed to
15 provide any rational explanation whatsoever for these failures and offered no recourse for
16 recouping the underpaid wages. Given the failure of Defendants to pay Plaintiff the minimum
17 salary threshold to be exempt, and given various occasions where Defendants failed to pay
18 Plaintiff at all, Plaintiff was forced to take out loans to pay for Plaintiff's daily costs of living,
19 eventually causing him to resign his employment with Defendants.

20 6. Plaintiff was misclassified by Defendants because: (1) Plaintiff does not
21 customarily and regularly exercise discretion and independent judgment in matters of
22 consequence to Defendants' business and was not and/or are not "primarily engaged" (more than
23 one-half of the employee's work time) in performing managerial tasks; (2) Plaintiff does not spend
24 at least half of their work time doing office or non-manual work directly related to managerial
25 policies or the general business operations of Defendants; and/or (3) as noted above, Plaintiff does
26 not receive a salary that was or is equivalent to no less than two times the state minimum wage
27 for full-time employment. Therefore, Plaintiff was and is entitled to various forms of
28 compensation, for which Plaintiff was excluded, because Defendants misclassified Plaintiff as

1 "exempt."

2 7. Given these facts, Defendants have violated, and continue to violate, numerous
3 provisions of the California Labor Code, including failing to meet the minimum salary threshold
4 for Plaintiff (and potentially other employees) to be properly classified as exempt.

5 8. Defendants subjected Plaintiff and others to various additional unlawful wage and
6 hour practices, including but not limited to, as stated herein: (1) willfully misclassifying Plaintiff
7 and others as exempt employees; (2) failing to pay overtime pay and/or minimum wages; (3)
8 failing to provide uninterrupted off-duty meal periods and/or required penalties; (4) failing to
9 provide uninterrupted off-duty rest periods and/or required penalties; (5) failing to pay out
10 accrued but unused vacation time; (6) failing to timely pay all wages due upon termination; (7)
11 failing to timely pay wages during employment; (8) failing to maintain adequate records including
12 but not limited to failing to furnish accurate wage statements; (9) failing to pay or reimburse
13 work-related expenses; (10) violating California's PAGA statute; and (11) violating California's
14 Unfair Business Practices statute.

15 9. Based on the following facts and theories, Defendants have violated and/or
16 continue to violate, among other provisions of the California Labor Code and applicable wage
17 law, California Labor Code sections 201-203, 204, 204c, 206, 206.5, 207, 210, 216, 226, 226(a)-
18 (f), 226.3, 226. 6, 226.7, 227.3, 233-234, 245-249, 432, 432.5, 510, 512(a), 558, 558.1, 1102.5,
19 1102.6, 1174(d), 1174.5, 1182.12, 1183, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198-1198.5, 2800,
20 2802, 2810.5, and all applicable IWC Wage Orders including inter alia, Wage Orders 1-2001, 4-
21 2001, 7-2001, and 17-2001.

22 **II. THE PARTIES**

23 10. Plaintiff is, and at all times relevant to this action, a resident of Riverside County,
24 California. Plaintiff worked for Defendants throughout Southern California, including San Diego
25 County, as a Process Engineer, from approximately June 2011, through March 2023.

26 11. Plaintiff is informed and believes that Defendant OSTENDO TECHNOLOGIES,
27 INC. ("OSTENDO"), is and was, a California corporation, authorized to transact, and transacting,
28 business in the State of California and in the Counties of Los Angeles, San Diego, and Orange,

1 among others. Plaintiff is informed and believes, and thereon alleges that, at part of the relevant
2 times herein, OSTENDO had its headquarters and principal place of business at 6185 Paseo Del
3 Norte, Ste. 200, Carlsbad, County of San Diego, State of California, 92011, and/or 679 Brea
4 Canyon Rd., Walnut, County of Los Angeles, State of California, 91789. Plaintiff is informed
5 and believed, and thereon alleges that, at all times relevant herein, OSTENDO employed more
6 than fifty (50) employees for each working day during each of twenty (20) or more calendar
7 weeks in each relevant calendar year.

8 12. Plaintiff is informed and believes that Defendant HUSSEIN S. EL-GHOROURY
9 (“EL-GHOROURY”), is and was an individual, acting on behalf of OSTENDO pursuant to
10 California Labor Code 558.1, and had control over employee payments and wages including in
11 his role as CEO and/or CFO, and was working and/or residing in California during the relevant
12 time period. Plaintiff is informed and believes, and thereon alleges that, at all relevant times
13 herein, EL-GHOROURY, acting on behalf of OSTENDO, is an owner, director, officer, or
14 managing agent of OSTENDO and in that role violated or caused to be violated certain provisions
15 of the California Labor Code at 6185 Paseo Del Norte, Ste. 200, Carlsbad, County of San Diego,
16 State of California, 92011, and/or 679 Brea Canyon Rd., Walnut, County of Los Angeles, State
17 of California, 91789.

18 13. Defendants OSTENDO and EL-GHOROURY are collectively known as
19 “Defendants.”

20 14. The true names and capacities of the defendants named herein as Does 1 through
21 100, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff
22 who therefore sues such defendants by fictitious names pursuant to California Code of Civil
23 Procedure section 474. Plaintiff is informed and believes that all of the Doe defendants are
24 California residents. Plaintiff will amend this Complaint to show such true names and capacities
25 when they have been determined.

26 15. Plaintiff is informed and believes that at all times relevant herein, each Defendant
27 designated, including Defendants, and Does 1 through 100, was the agent, managing agent,
28 principal, owner, partner, joint venturer, representative, manager, servant, employee and/or co-

1 conspirator of each of the other defendants, and was at all times mentioned herein acting within
2 the course and scope of said agency and employment, and that all acts or omissions alleged herein
3 were duly committed with the ratification, knowledge, permission, encouragement, authorization
4 and consent of each Defendants designated herein. Defendants, if not separately noted, are
5 collectively liable under either a joint employer or a single enterprise theory, or in the alternative
6 that each is an alter ego of one another.

7 16. Defendants are, and at all times herein mentioned were, (a) conducting business
8 in the County of Los Angeles, State of California, and (b) the employer (or other person acting
9 on behalf of the employer) of Plaintiff consistent with the California Labor Code and Industrial
10 Welfare Commission Wage Orders (“Wage Orders”).

11 17. Plaintiff further alleges that Defendants, directly or indirectly controlled or
12 affected the working conditions, wages, working hours, and conditions of employment of Plaintiff
13 so as to make each of said Defendant employers jointly liable under the statutory provisions set
14 forth herein.

15 **III. JURISDICTION AND VENUE**

16 18. This Court has jurisdiction over this action pursuant to the California Constitution
17 Article VI section 10, which grants the California Superior Court original jurisdiction in all causes
18 except those given by statute to other courts. The monetary damages and restitution sought by
19 Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established
20 according to proof at trial.

21 19. Plaintiff is a resident of Riverside County and is a citizen of the State of California
22 and domiciled in the State of California.

23 20. Plaintiff brings the First through Thirteenth Causes of Action on Plaintiff’s own
24 behalf.

25 21. Plaintiff’s Fourteenth Cause of Action is brought as a representative action on
26 behalf of himself and certain other current and former employees of Defendants against whom
27 one or more of the alleged violations was committed (hereinafter collectively referred to as the
28 “Aggrieved Employees”) pursuant to California Labor Code sections 2698, *et seq.* Plaintiff is an

1 aggrieved employee against whom one or more of the alleged violations occurred. The civil
2 penalties and other restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
3 Superior Court and will be established according to proof at trial.

4 22. This Court has jurisdiction over this matter under PAGA and this Court's general
5 powers granted by statutory law and the California Constitution. This Court has jurisdiction over
6 this action pursuant to the California Constitution Article VI section 10, which grants the
7 California Superior Court original jurisdiction in all causes except those given by statute to other
8 courts.

9 23. Defendants OSTENDO and EL-GHOROURY are residents of California, have
10 sufficient minimum contacts in California, and/or otherwise intentionally avails themselves of the
11 California market so as to render the exercise of jurisdiction over it by the California Courts
12 consistent with traditional notions of fair play and substantial justice.

13 24. Venue is proper in this Court because upon information and belief, one or more of
14 the Defendants reside, transact business, or have offices in this County and the acts or omissions
15 alleged herein took place in this County.

16 **IV. DESCRIPTION OF WRONGFUL EMPLOYMENT PRACTICES**

17 25. Plaintiff began working for Defendants in June 2011, as a Process Engineer.
18 During Plaintiff's employment with Defendants, Plaintiff has provided substantial amounts of
19 Plaintiff's valuable time and effort as a loyal and dedicated employee of Defendants.
20 Unbeknownst to Plaintiff, Defendants were exploiting and taking advantage of Plaintiff's labor
21 and efforts to their benefit and Plaintiff's detriment.

22 26. Throughout Plaintiff's employment up through and including the end of Plaintiff's
23 employment in around March 2023, Defendants misclassified Plaintiff as an exempt employee
24 by, among other things, wantonly and inexplicitly failing to meet the minimum salary threshold
25 required for Plaintiff to be classified as "exempt." This misclassification has deprived Plaintiff
26 of various protections under the California Labor Code. Defendants have continued to engage in
27 these wrongful practices despite being advised of the improper practices and have engaged in
28 conduct demonstrating willful violations of their obligations under the Labor Code.

1 27. Throughout the time period involved in this case, Defendants had the authority to
2 hire and terminate Plaintiff; to directly or indirectly control work rules, working conditions,
3 wages, working hours, and conditions of employment of Plaintiff; and to hire and terminate the
4 employment of Plaintiff.

5 28. At all times herein mentioned, Defendants were subject to the Labor Code of the
6 State of California and the applicable Industrial Welfare Commission Orders.

7 29. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in
8 an ongoing and systematic scheme of wage abuse against Plaintiff including, but not limited to,
9 misclassifying Plaintiff as exempt, when Plaintiff is, in-fact, non-exempt. As set forth in more
10 detail below, this scheme involved, *inter alia*, failing to pay Plaintiff for all hours worked,
11 including minimum and overtime wages. Defendant also implemented policies that prohibited
12 Plaintiff from accurately recording the actual time worked, resulting in a failure to pay Plaintiff
13 all wages owed. In addition, Defendant routinely failed to permit Plaintiff to take timely and duty-
14 free meal periods and rest periods in violation of California law. Defendant also failed to
15 reimburse Plaintiff for all necessary business-related expenses.

16 30. More specifically, Defendants violated the applicable IWC Wage Orders by
17 engaging in the following conduct described more fully below.

18 **V. EXHAUSTION**

19 31. On November 22, 2023, Plaintiff complied with the notice requirements pursuant
20 to California Labor Code § 2699.3 and gave written notice via online filing and certified mail of
21 the specific provisions alleged to have been violated to the Labor and Workforce Development
22 Agency (“LWDA”) and Defendants. A true and correct copy of the notice sent to Defendants is
23 attached hereto as **Exhibit 1** and incorporated herein by reference.

24 32. The LWDA has not provided notice of its intention to investigate Defendants’
25 violations.

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1 **VI. LEGAL CLAIMS**

2 **FIRST CAUSE OF ACTION**

3 **Retaliation in Violation of Labor Code § 1102.5**

4 **(By Plaintiff Against Defendant OSTENDO, and Does 1 through 100)**

5 33. Plaintiff incorporates by this reference the relevant allegations contained in this
6 pleading as if fully set forth herein.

7 34. Plaintiff claimed, protested, and complained about Defendants' unlawful practices
8 and procedures of repeatedly violating California Labor Code laws including, but not limited to,
9 wrongful pay structures, failing to pay Plaintiff timely, failing to pay Plaintiff and other
10 employees in full, failing to pay Plaintiff and other employees owed wages, failing to properly
11 reimburse business expenses, interfering with and discouraging employees from taking proper
12 sick days and vacation time. In response, Defendants retaliated against Plaintiff by, among other
13 things, refusing to pay Plaintiff owed wages; refusing to pay Plaintiff timely wages; refusing to
14 pay Plaintiff back wages; and ultimately caused or permitted working conditions to be so
15 intolerable that Plaintiff and/or any reasonable person in Plaintiff's position would have no
16 reasonable alternative except to resign. Accordingly, Plaintiff resigned because of these working
17 conditions.

18 35. Defendants retaliated against Plaintiff for disclosing information to a person with
19 authority over Plaintiff or another employee who had the authority to investigate, discover or
20 correct what Plaintiff had reasonable cause to believe were violations of, or noncompliance with
21 state or federal statute(s) or local, state, or federal rule(s) or regulation(s), including, but not
22 limited to, unpaid wages conditions. Defendants' conduct violated the provisions of California
23 Labor Code section 1102.5(b).

24 36. Defendants' conduct violated the provisions of California Labor Code section
25 1102.5.

26 37. Defendants are also liable for a civil penalty not exceeding ten thousand dollars
27 (\$10,000) for each violation of Labor Code section 1102.5.

28 38. As a proximate result of the wrongful acts of Defendants, and each of them,

1 Plaintiff has been harmed in that Plaintiff has suffered actual, consequential, and incidental
2 financial losses, including without limitation, loss of wages and benefits, and the intangible loss
3 of employment-related opportunities and damage to Plaintiff's professional reputation, all in an
4 amount subject to proof at the time of trial. Plaintiff claims such amounts as damages together
5 with prejudgment interest pursuant to California Civil Code sections 3287, 3288, and/or any other
6 provision of law providing for prejudgment interest.

7 39. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
8 and continues to suffer severe anxiety, worry, embarrassment, humiliation, shame, mental
9 anguish, and emotional distress. Plaintiff is informed and believes and thereon alleges that
10 Plaintiff will continue to experience said emotional suffering for a period in the future Plaintiff
11 cannot presently ascertain, all in an amount subject to proof at the time of trial.

12 40. The above recited actions of Defendants were done with malice, fraud, and/or
13 oppression and in reckless disregard of the rights of Plaintiff. Plaintiff is informed and believes
14 and on that basis alleges that the acts taken towards Plaintiff were carried out by officers,
15 directors, and/or managing agents of Defendants and/or with the ratification and approval of
16 officers, directors, and/or managing agents of Defendants in a malicious, oppressive, and
17 fraudulent manner in order to harm Plaintiff, or with a willful and conscious disregard of
18 Plaintiff's rights, thereby causing Plaintiff unjust hardship, humiliation, and/or emotional distress.
19 Such conduct was despicable and justifies an award of punitive damages against Defendants in
20 an amount sufficient to punish and make an example of Defendants, and each of them, and to
21 deter them from engaging in such conduct again in the future, in an amount according to proof at
22 time of trial.

23 **SECOND CAUSE OF ACTION**

24 **Wrongful Termination – Constructive Discharge – In Violation of Public Policy**

25 **(By Plaintiff Against Defendant OSTENDO, and Does 1 through 100)**

26 41. Plaintiff incorporates by this reference the relevant allegations contained in this
27 pleading as if fully set forth herein.

28 42. Throughout all times relevant herein, Defendants engaged in a number of improper

1 employment practices including, but not limited to, improper wage payments, improper wage
2 withholding and wage theft, and other conditions that made Plaintiff's employment so intolerable
3 that Plaintiff had no reasonable alternative except to resign.

4 43. Plaintiff resigned because of the intolerable working conditions set forth herein that
5 were encouraged, maintained, and approved by Defendants' management.

6 44. Defendants' adverse employment actions against Plaintiff and constructive
7 termination of Plaintiff's employment violated the public policy of the State of California against
8 retaliation for voicing complaints of illegality and improper wage payments, as stated in Article I,
9 Section 8 of the California Constitution, Labor Code sections 1102.5, and as set forth in *Vazquez*
10 *v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 831-832
11 ("California's minimum wage law represents a fundamental policy for purposes of a claim for
12 wrongful termination or constructive discharge in violation of public policy.")

13 45. As a proximate result of the wrongful acts of Defendants, and each of them,
14 Plaintiff has been harmed in that Plaintiff has suffered actual, consequential, and incidental
15 financial losses, including without limitation, loss of salary and benefits, and the intangible loss of
16 employment-related opportunities and damage to his professional reputation, all in an amount
17 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
18 prejudgment interest pursuant to California Civil Code sections 3287, 3288, and/or any other
19 provision of law providing for prejudgment interest.

20 46. As a proximate result of the wrongful acts of Defendants, and each of them,
21 Plaintiff has suffered and continues to suffer severe anxiety, worry, embarrassment, humiliation,
22 shame, mental anguish, and emotional distress. Plaintiff is informed and believes and thereon
23 alleges that Plaintiff will continue to experience said emotional suffering for a period in the future
24 Plaintiff cannot presently ascertain, all in an amount subject to proof at the time of trial.

25 47. The above recited wrongful acts of Defendants against Plaintiff were done with
26 malice, fraud, and/or oppression and in reckless disregard of the rights of Plaintiff. Plaintiff is
27 informed and believes and on that basis alleges that the wrongful acts taken towards him were
28 carried out by officers, directors, and/or managing agents of Defendants and/or with the ratification

1 and approval of officers, directors, and/or managing agents of Defendants in a malicious,
2 oppressive, and fraudulent manner in order to harm Plaintiff, or with a willful and conscious
3 disregard of Plaintiff's rights, thereby causing him unjust hardship, humiliation, and/or emotional
4 distress. Such conduct was despicable and justifies an award of punitive damages against
5 Defendants in an amount sufficient to deter them from engaging in such conduct again in the
6 future, in an amount according to proof at time of trial.

7 48. Plaintiff requests relief as described below

8 **THIRD CAUSE OF ACTION**

9 **Failure to Pay Lawful Wages (Labor Code §§ 1194, 1197)**

10 **(By Plaintiff Against All Defendants)**

11 49. Plaintiff incorporates by this reference the relevant allegations contained in this
12 pleading as if fully set forth herein.

13 50. At all relevant times during Plaintiff's employment, Plaintiff was a non-exempt
14 employee of Defendants and entitled to the benefits and protections of the California Labor Code
15 sections 204, 510, 1194, and 1198, and the applicable Wage Order(s).

16 51. Employers must compensate non-exempt employees for "off-the-clock" work if
17 the employers knew or should have known that the employees were working those hours.
18 (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

19 52. Defendants required Plaintiff to work in excess of eight hours per day and/or 40
20 hours in a week. Defendants maintained policies and procedures that prevented Plaintiff from
21 reporting work hours beyond eight hours per day and 40 hours per week. Defendants failed to pay
22 Plaintiff wages for all hours worked beyond eight hours in a day and 40 hours in a week.
23 Defendants knew or should have known that Plaintiff was performing work in excess of eight
24 hours per day and 40 hours per week without separate compensation for such work.

25 53. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
26 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
27 failure to compensate Plaintiff for all hours worked at the correct rate(s) of pay.

28 54. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an

1 amount, subject to proof, to the extent Plaintiff was not paid the full amount of wages earned
2 during each pay period of Plaintiff's employment, including overtime wages.

3 55. Pursuant to Labor Code section 1194, Plaintiff is entitled to recover unpaid
4 minimum wages, overtime wages, interest thereon, and awards of costs and reasonable attorneys'
5 fees, all in amounts subject to proof.

6 56. Defendants have failed to maintain policies that compensates Plaintiff and an
7 amount equal to or greater than the minimum wage for all hours worked, as required by California
8 Labor Code sections 1182.12, 1194, 1197, 1197.1, and applicable wage orders. All hours must be
9 paid at the statutory or agreed rate and no part of this rate may be used as a credit against a
10 minimum wage obligation. Among other things, Plaintiff was required to perform an array of
11 "off-the-clock" work, including performing work before or after scheduled shifts and working
12 through or during meal periods and rest periods. As a result, Defendants do not pay Plaintiff for
13 the minimum wages worked on a daily basis, weekly basis, and/or due to untimely, interrupted,
14 or non-duty free meal periods or rest periods.

15 57. The applicable IWC Wage Order, the California Minimum Wage Order, and Labor
16 Code sections 1182.11, 1182.12, 1194, and 1197, all require that employees receive the minimum
17 wage for all hours worked.

18 58. Labor Code section 1194 entitles an employee receiving less than the legal
19 minimum wage to recover the unpaid balance of the full amount of the minimum wage, including
20 interest thereon, reasonable attorneys' fees, and costs of suit.

21 59. Labor Code section 1194.2 entitles an employee receiving less than the legal
22 minimum wage to recover liquidated damages in an amount equal to the wages unlawfully unpaid
23 and interest thereon.

24 60. Defendants also violated municipal minimum wage ordinances. Municipal
25 minimum wage ordinances across the State of California require all employees who work within
26 the geographic boundaries of a city to be paid at least the municipal minimum wage for all hours
27 worked.

28 61. Plaintiff worked in one or more cities that have municipal minimum wage

ordinances.

62. By failing to compensate Plaintiff for all hours worked, Defendants has violated one or more minimum wage ordinances, including without limitation the minimum wage ordinance(s) of Los Angeles and Los Angeles County, among others.

63. As a result of Defendants' unlawful acts, Plaintiff has been deprived of wages owed to Plaintiff in an amount to be determined at trial, and Plaintiff is entitled to recover such amount, plus interest thereon, liquidated damages, attorneys' fees and costs, and such other legal and equitable relief as may be just and proper.

64. Plaintiff requests relief as described below.

FOURTH CAUSE OF ACTION

Failure to Pay Lawful Overtime Wages (Labor Code §§ 510, 1194)

(By Plaintiff Against All Defendants)

65. Plaintiff incorporates by this reference the relevant allegations contained in this pleading as if fully set forth herein.

66. Labor Code section 510 *et seq.* requires an employer to pay 1.5 times an employee's regular rate of pay for any hours worked over eight hours in a day and/or 40 hours in a week.

67. On information and belief, Plaintiff at times worked more than eight hours in a day and more than forty hours in a week while completing services as an Assistant Marketing Director and/or Marketing Director for Defendants, for which Defendants did not pay Plaintiff overtime premium compensation.

68. By failing to pay overtime compensation to Plaintiff, as alleged herein, Defendants violated the applicable IWC Wage Order and Labor Code section 510 *et seq.*

69. As a result of Defendants' unlawful acts, Plaintiff has been deprived of overtime compensation in an amount to be determined at trial, and is entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, under Labor Code section 1194.

70. Plaintiff requests relief as described below.

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1 **FIFTH CAUSE OF ACTION**

2 **Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof (Labor Code §§**
3 **512, 226.7)**

4 **(By Plaintiff Against All Defendants)**

5 71. Plaintiff incorporates by this reference the relevant allegations contained in this
6 pleading as if fully set forth herein.

7 72. California Labor Code section 512 and Work Order 5, section 12(A)-(C) require
8 every California employer to provide all non-exempt employees a duty-free meal period of not
9 less than 30 minutes, for a work period of more than five (5) hours, “except that if the total work
10 period per day is not more than six (6) hours, the meal period may be waived by mutual consent
11 of the employer and employee. An employer may not employ an employee for a work period of
12 more than ten (10) hours per day without providing the employee with a second meal period of
13 not less than 30 minutes, except that if the total hours work is no more than 12 hours, the second
14 meal period may be waived by mutual consent of the employer and the employee only if the first
15 meal period was not waived.” Under subdivision (a) of Labor Code section 226.7, an employer
16 shall not require an employee to work during meal periods mandated by state law. Subdivision
17 (c) provides that “[i]f an employer fails to provide an employee a meal . . . period in compliance
18 with an applicable statute, wage order, etc. . . . the employer shall pay the employee one (1)
19 additional hour of pay at the employee’s regular rate of compensation for each workday that the
20 meal . . . period is not provided.”

21 73. Labor Code section 512(a) requires employers to provide unpaid meal periods to
22 all employees.

23 74. IWC Wage Order, section 11(A), provides that all employees working shifts of at
24 least five hours be provided an unpaid meal period.

25 75. Defendants failed to authorize or permit Plaintiff to take an unpaid meal period for
26 each shift of at least five hours.

27 76. On information and belief, Plaintiff regularly worked in excess of five hours a day
28 without being provided an unpaid meal period while relieved of all duties, as required by the

1 applicable IWC Wage Order, section 11(A) and Labor Code section 512(a).

2 77. Because Defendants failed to authorize and permit Plaintiff to take compliant meal
3 periods, it is liable to Plaintiff for one hour of additional pay at the regular rate of compensation
4 for each workday that the compliant meal periods were not taken, penalties, and interest, pursuant
5 to Labor Code section 226.7(b), and the applicable IWC Wage Order, section 11(D), and
6 attorneys' fees pursuant to Labor Code section 218.5.

7 78. Plaintiff requests relief as described below.

8 **SIXTH CAUSE OF ACTION**

9 **Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof (Labor Code §§**
10 **226.7)**

11 **(By Plaintiff Against All Defendants)**

12 79. Plaintiff incorporates by this reference the relevant allegations contained in this
13 pleading as if fully set forth herein.

14 80. Labor Code section 226.7 and Work Order 5 section 12(A) require every
15 California employer to authorize and permit all non-exempt employees to take rest periods at the
16 rate of ten (10) minutes net rest time per four (4) hours, or a major fraction thereon. Under
17 subdivision (a), an employer shall not require an employee to work during rest periods mandated
18 by state law. Subdivision (c) provides that "[i]f an employer fails to provide an employee a rest
19 period in compliance with an applicable statute, wage order, etc . . . the employer shall pay the
20 employee one (1) additional hour of pay at the employee's regular rate of compensation for each
21 workday that the rest . . . period is not provided."

22 81. Labor Code section 226.7 requires employers to provide paid rest periods to all
23 employees.

24 82. The applicable IWC Wage Order, section 12(A), provides in pertinent part as
25 follows: "Every employer shall authorize and permit all employees to take rest periods The
26 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
27 minutes net rest time per four (4) hours or major fraction thereof Authorized rest period time
28 shall be counted as hours worked for which there shall be no deduction from wages.

83. Defendants failed to authorize or permit Plaintiff to take a ten-minute paid rest period for each four hours of work or major fraction thereof.

84. Plaintiff regularly worked in excess of three and a half hours a day without being provided at least one paid 10-minute rest period in which Plaintiff was relieved of all duties, as required by the applicable IWC Wage Order, section 12(A) and Labor Code section 226.7.

85. Because Defendants failed to authorize and permit Plaintiff to take compliant rest periods, it is liable to Plaintiff for one hour of additional pay at the regular rate of compensation for each workday that the compliant rest periods were not taken, penalties, and interest, pursuant to Labor Code section 226.7(b), and the applicable IWC Wage Order, section 12(B), and attorneys' fees pursuant to Labor Code section 218.5.

86. Plaintiff requests relief as described below.

SEVENTH CAUSE OF ACTION

Failure to Timely Pay Wages (Labor Code §§ 204, 210)

(By Plaintiff Against Defendants OSTENDO, and Does 1 through 100)

87. Plaintiff incorporates by this reference the relevant allegations contained in this pleading as if fully set forth herein.

88. California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and 26th day of the month during which the labor was performed.

89. California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

90. California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

91. During the relevant time period, Defendants intentionally and willfully failed to

1 pay Plaintiff all wages due to them, within any time period permissible under California Labor
2 Code section 204.

3 92. Plaintiff is entitled to recover all available remedies for Defendants' violations of
4 California Labor Code section 204, including statutory penalties pursuant to Labor Code section
5 210(b).

6 93. Plaintiff requests relief as described below.

7 **EIGHTH CAUSE OF ACTION**

8 **Failure to Timely Pay Wages at End of Employment (Waiting Time Penalties) (Labor**
9 **Code §§ 201-203)**

10 **(By Plaintiff Against All Defendants)**

11 94. Plaintiff incorporates by this reference the relevant allegations contained in this
12 pleading as if fully set forth herein.

13 95. Labor Code section 201 requires an employer who discharges a California
14 employee to pay all compensation due and owing to that employee immediately upon discharge.

15 96. Labor Code section 202 requires an employer to pay all compensation due and
16 owing to a California employee who quits within 72 hours of that employee quitting, unless the
17 employee provides at least 72 hours-notice of quitting, in which case all compensation is due at
18 the end of the employee's final day of work.

19 97. Labor Code section 203 provides that if an employer willfully fails to pay
20 compensation promptly upon discharge, as required by section 201 or section 202, then the
21 employer is liable for waiting time penalties in the form of continued compensation in the amount
22 of the employee's average daily wage for up to 30 work days.

23 98. Defendants willfully failed to timely pay compensation and wages, including
24 unpaid minimum wage pay, unpaid sick leave, unpaid premium pay for missed meal and rest
25 periods, to Plaintiff when Plaintiff's employment was terminated. As a result, Defendants are
26 liable to Plaintiff for waiting time penalties, together with reasonable attorneys' fees and costs,
27 under Labor Code section 203.

28 99. Plaintiff requests relief as described below.

1 **NINTH CAUSE OF ACTION**

2 **Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement**

3 **Provisions (Wage Statement Violations) (Labor Code § 226)**

4 **(By Plaintiff Against All Defendants)**

5 100. Plaintiff incorporates by this reference the relevant allegations contained in this
6 pleading as if fully set forth herein.

7 101. Labor Code Section 226 requires employers semi-monthly or at the time of each
8 payment of wages to furnish each employee with an itemized statement showing “(1) gross wages
9 earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6)
10 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
11 . . . the last four digits of his or her social security number . . . , (8) the name and address of the
12 legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay
13 period and the corresponding number of hours worked at each hourly rate by the employee.

14 102. The applicable IWC Wage Order, section 7(B) requires the same statement to
15 include “(1) all deductions, (2) the inclusive dates of the period for which the employee is paid;
16 (3) the name of the employee or the employee’s social security number; and (4) the name of the
17 employer.

18 103. Labor Code section 226(e) provides that if an employer knowingly and
19 intentionally fails to provide such a statement, then the employee is entitled to recover the greater
20 of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100)
21 for each subsequent violation, up to four thousand dollars (\$4,000).

22 104. Defendants knowingly and intentionally failed to furnish Plaintiff with timely,
23 itemized statements showing all information required under Labor Code section 226(a) and the
24 applicable IWC Wage Order, section 7(B). As a result, Defendants is liable to Plaintiff for the
25 amounts provided for by Labor Code section 226(e) and for penalties, and attorneys’ fees.

26 105. Plaintiff requests relief as described below.

27 ///

28 ///

1 **TENTH CAUSE OF ACTION**

2 **Failure to Reimburse Business Expenses (Labor Code §§ 2800, 2802)**

3 **(By Plaintiff Against All Defendants)**

4 106. Plaintiff incorporates by this reference the relevant allegations contained in this
5 pleading as if fully set forth herein.

6 107. Labor Code section 2802 requires an employer to reimburse employees for any
7 work-related expenses.

8 108. While acting on the direct instructions of Defendants and discharging duties for
9 Defendants, Plaintiff incurred work-related expenses. Such expenses include but are not limited to
10 home office equipment, internet and cellular phone and associated data costs.

11 109. Plaintiff necessarily incurred these expenses and losses as a direct result of
12 performing job duties for Defendants.

13 110. Defendants failed to indemnify or reimburse Plaintiff for these expenditures and
14 losses. By requiring Plaintiff to pay expenses and cover losses that Plaintiff incurred in direct
15 consequence of the discharge of Plaintiff's duties for Defendants and/or in obedience to
16 Defendants' direction, Defendants violated the applicable IWC Wage Order and Labor Code
17 section 2802.

18 111. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to
19 damages in the amount of Plaintiff's suffered substantial losses, as well as pre-judgment interest,
20 costs, and attorneys' fees for the prosecution of this action.

21 112. Plaintiff requests relief as described below.

22 **ELEVENTH CAUSE OF ACTION**

23 **Failure to Pay Vacation Time at the Appropriate Rate of Pay (Labor Code §§ 227, 227.3)**

24 **(By Plaintiff Against Defendants OSTENDO, and Does 1 through 100)**

25 113. Plaintiff incorporates by this reference the relevant allegations contained in this
26 pleading as if fully set forth herein.

27 114. Labor code section 227 requires that, "Whenever an employer has agreed with any
28 employee to make payments to a health or welfare fund, pension fund or vacation plan, or other

1 similar plan for the benefit of the employees, or a negotiated industrial promotion fund, or has
2 entered into a collective bargaining agreement providing for these payments, it shall be unlawful
3 for that employer willfully or with intent to defraud to fail to make the payments required by the
4 terms of that agreement. A violation of any provision of this section where the amount the
5 employer failed to pay into the fund or funds exceeds five hundred dollars (\$500) shall be
6 punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in
7 a county jail for a period of not more than one year, by a fine of not more than one thousand dollars
8 (\$1,000), or by both that imprisonment and fine. All other violations shall be punishable as a
9 misdemeanor.”

10 115. Defendants violated their agreement to make payments to Plaintiff’s vacation plan
11 by, among other things, failing to compensate Plaintiff at the proper rate of pay to meet the
12 exemption threshold. As a result, Defendants are liable to Plaintiff for the unpaid and/or underpaid
13 vacation wages.

14 116. Labor Code sections 201 & 227.3 requires an employer who discharges an
15 employee to pay all compensation due and owing to that employee immediately upon discharge.
16 Labor Code section 202 requires an employer to pay all compensation due and owing to an
17 employee who quits within 72 hours of that employee quitting, unless the employee provides at
18 least 72 hours’ notice of quitting, in which case all compensation is due at the end of the
19 employee’s final day of work. Labor Code section 203 provides that if an employer willfully fails
20 to pay compensation promptly upon discharge, as required by section 201 or section 202, then the
21 employer is liable for waiting time penalties in the form of continued compensation of up to 30
22 workdays.

23 117. Unless otherwise provided by a collective-bargaining agreement, whenever a
24 contract of employment or employer policy provides for paid vacations, and an employee is
25 terminated without having taken off Plaintiff’s vested vacation time, all vested vacation shall be
26 paid to Plaintiff as wages at Plaintiff’s final rate in accordance with such contract of employment
27 or employer policy respecting eligibility or time served; provided, however, that an employment
28 contract or employer policy shall not provide for forfeiture of vested vacation time upon

1 termination.

2 118. Defendants willfully failed to timely pay compensation and wages, including
3 vested and unused vacation time to Plaintiff when Plaintiff's employment was terminated. As a
4 result, Defendants are liable to Plaintiff for the unpaid and/or underpaid vacation wages, in
5 addition to, waiting time penalties, together with reasonable attorneys' fees and costs, under Labor
6 Code section 203.

7 119. Plaintiff requests relief as described below.

8 **TWELFTH CAUSE OF ACTION**

9 **Failure to Maintain and/or Provide Employment Records (Labor Code §§ 226, 1174)**

10 **(By Plaintiff Against All Defendants)**

11 120. Plaintiff incorporates by this reference the relevant allegations contained in this
12 pleading as if fully set forth herein.

13 121. Labor Code section 1174 states, in pertinent part, that "[e]very person employee
14 labor in this state shall . . . (c) Keep a record showing the names and addresses of all employees
15 employed . . . [and] (d) Keep, at a central location in the state . . . or establishments at which
16 employees are employed, payroll records showing the hours worked daily by and the wages paid
17 to . . . employees employed at the respective . . . establishments. These records shall be kept . . . in
18 a file for not less than three years. . . Likewise, Wage Order 5, section 7 requires that "(A) [e]very
19 employer shall keep accurate information with respect to each employee including the following:
20 (1) the full name, home address, occupation and social security number (2) Birth date . . . (3) Time
21 records showing when the employee begins and ends each work period, meal periods, split shift
22 intervals and total daily hours worked shall also be recorded . . . (5) Total hours worked in the
23 payroll period and the applicable rates of pay. This information shall be made readily available to
24 the employee upon reasonable request" In addition, Labor Code section 353 also requires
25 employers to keep accurate records of all gratuities or tips they receive, directly or indirectly,
26 which may not be collected by "managers" or owners under Labor Code section 351. Labor Code
27 section 1174.5 provides that "any person employing labor who willfully fails to maintain the
28 records required under subdivision (c) of section 1174 or accurate or complete records required by

subdivision (d) of section 1174 . . . shall be subject to a civil penalty of five hundred dollars (\$500). Subdivision (d) of section 1174.5 states that “[a]ny person, or officer or agent thereof, is guilty of a misdemeanor who fails to keep any of the records required by section 1174.

122. For the reasons and bases noted here, Defendants have, among other things, willfully failed to keep, maintain, or provide adequate records regarding Plaintiff.

123. As a result of Defendants’ violations of California Labor Code sections 201-204, 206, 216, and 512, 1174, Defendants are liable to Plaintiff for any applicable penalties, together with reasonable attorneys’ fees and costs, under the applicable Labor Code sections.

124. Plaintiff requests relief as described below.

THIRTEENTH CAUSE OF ACTION

Violations of the Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.)

(By Plaintiff Against All Defendants)

125. Plaintiff incorporates by this reference the relevant allegations contained in this pleading as if fully set forth herein.

126. California Business & Professions Code section 17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

127. California Business & Professions Code section 17204 allows any person acting “for the interests of itself, its members or the general public” to prosecute a civil action for violation of the UCL.

128. Beginning in or around 2019, Defendants improperly, fraudulently, and unlawfully classified Plaintiff as an “exempt” employee and thereby committed unlawful, unfair, and/or fraudulent business acts and practices as defined by California Business & Professions Code sections 17200, by engaging, among other things, in the following:

- a. failing to indemnify Plaintiff for employment-related business expenses and losses;
- b. failing to pay the minimum wage to Plaintiff required under California law;
- c. failing to pay overtime compensation to Plaintiff required by California law;
- d. failing to authorize and permit paid rest periods and unpaid meal periods;

- e. failing to provide accurate itemized wage statements to Plaintiff; and
- f. failing to provide paid sick leave in compliance with the California Healthy Workplaces, Healthy Families Act of 2014.

129. Defendants' violations of these laws were unlawful, unfair, and/or fraudulent predicate acts and practices for purposes of California Business and Professions Code section 17200.

130. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent acts and practices described herein, Defendants received and continues to hold ill-gotten gains belonging to Plaintiff. As a direct and proximate result of Defendants' unlawful business practices, Plaintiff suffered economic injuries including, but not limited to, unreimbursed out-of-pocket business expenses, unpaid minimum wage, unpaid compensation for missed rest and meal breaks, and unpaid sick leave, among other things. Defendants have profited from these unlawful, unfair, and/or fraudulent acts and practices in the amount of those business expenses and compensation.

131. Plaintiff is entitled to restitution pursuant to California Business & Professions Code sections 17203 and 17208 for all unpaid business expenses, rest and meal period compensation, unpaid minimum wages, unpaid sick leave, and interest.

132. Plaintiff is entitled to enforce all applicable penalty provisions of the California Labor Code pursuant to California Business & Professions Code section 17202.

133. By all of the foregoing alleged conduct, Defendants has committed, and is continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the meaning of California Business & Professions Code section 17200 *et seq.*

134. As a direct and proximate result of the unfair business practices described above, Plaintiff has suffered significant losses and Defendants have been unjustly enriched.

135. Pursuant to California Business & Professions Code section 17203, Plaintiff is entitled to: (a) restitution of money acquired by Defendants by means of their unfair business practices; and (b) a declaration that Defendants' business practices are unfair and unlawful.

136. Plaintiff has assumed the responsibility of enforcement of the laws and lawful claims specified herein. There is a financial burden incurred in pursuing this action which is in the

1 public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to California Code
2 of Civil Procedure section 1021.5.

3 137. Plaintiff requests relief as described below.

4 **FOURTEENTH CAUSE OF ACTION**

5 **Violations of the PAGA [California Labor Code § 2698 et seq.]**

6 **(By Plaintiff Against All Defendants)**

7 138. Plaintiff incorporates by this reference the relevant allegations contained in this
8 pleading as if fully set forth herein.

9 139. Plaintiff is an "Aggrieved Employee" under PAGA, as Plaintiff was employed by
10 Defendants during the applicable statutory period and suffered one or more of the Labor Code
11 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other
12 current and former Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable
13 attorney's fees and costs.

14 140. Plaintiff seeks to recover the PAGA civil penalties through a representative action
15 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal 4th 969
16 (2009). Therefore, class certification of the PAGA claims is not required.

17 141. PAGA specifically provides for a private right of action to recover civil penalties
18 for violations of the Labor Code as follows: "Notwithstanding any other provision of law, any
19 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
20 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
21 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
22 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
23 or former employees pursuant to the procedures specified in Section 2699.3." Cal. Lab. Code §
24 2699(a).

25 142. Plaintiff was employed by Defendants and the Labor Code violations alleged above
26 were committed against Plaintiff during Plaintiff's time of employment. Plaintiff is therefore, an
27 "aggrieved employee" under PAGA.

28 143. As set forth in detail above, during all times relevant to this Action, Defendants

1 have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
2 Codes by:

- 3 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
4 compensation in violation of Labor Code §§ 1194 and 1198 et seq.
- 5 b. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
6 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional
7 hour of premium pay for meal period violations in violation of Labor Code §§
8 226.7 and 512.
- 9 c. Failing to provide, authorize, and permit Plaintiff and the Aggrieved Employees to
10 take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved
11 Employees an additional hour of premium pay for rest period violations in
12 violation of Labor Code §§ 226.7 and 512.
- 13 d. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end
14 of their employment in violation of Labor Code § 203.
- 15 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during
16 employment in violation of Labor Code § 204.
- 17 f. Failure to provide written notice of paid sick leave and supplemental sick paid sick
18 leave in violation of Labor Code §§ 226, 246, and 1174.
- 19 g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
20 itemized wage statements in violation of Labor Code § 226.
- 21 h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved
22 Employees' work periods, meal periods, total daily hours, hours per pay period,
23 total wages and compensation, and applicable pay rates in violation of Labor Code
24 § 1174(d) and the applicable IWC Wage Order.
- 25 i. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary
26 business-related expenses in violation of Labor Code §§ 2800 and 2802.

27 144. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually
28 and on behalf of the Aggrieved Employees and the State of California, requests and is entitled to

1 recover penalties against Defendant for the Labor Code violations described above, including but
2 not limited to penalties under California Code of Regulations Title 8 section 11010, penalties under
3 California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3 and 1174.5, and 1197.1, and
4 any and all additional penalties and sums as provided by the California Labor Code and/or other
5 statutes. The exact amount of the applicable penalties, in all, is in an amount to be shown according
6 to proof at trial.

7 145. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect Plaintiff's interests and the Aggrieved Employees, and to assess and collect the civil
9 penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees and
10 costs pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

11 146. Plaintiff may amend this complaint as a matter of right pursuant to California Labor
12 Code § 2699.3 as this complaint has been filed within sixty days of the time periods specified in
13 Labor Code §2699.3.

14 147. Plaintiff requests relief as described below.

15 **VII. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, jointly and
17 severally, as follows:

18 1. All actual, consequential, and incidental financial losses, including but not limited
19 to loss of earnings and benefits, according to proof, together with prejudgment interest pursuant to
20 the Civil Code sections 3287 and/or 3288;

21 2. Emotional distress and general damages in a sum in excess of the jurisdictional
22 minimum of the Superior Court;

23 3. Wages, civil penalties, and applicable statutory penalties;

24 4. For the imposition of civil penalties pursuant to California Labor Code §§ 2699,
25 210, 558, 558.1, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor
26 Code and/or other applicable statutes;

27 5. Prejudgment and post-judgment interest;
28

1 6. Attorneys' fees and costs reasonably incurred pursuant to the California Labor Code
2 sections 218.5, 226(e), 1102.5(j), and 2699(g)(1), and Code of Civil Procedure section 1021.5, or
3 any other provision allowed by law;

4 7. Punitive and/or exemplary damages;

5 8. Equitable relief in the nature of declaratory relief and restitution of all monies due
6 to Plaintiffs, disgorgement of profits from Defendants' unlawful business practices, and an
7 accounting; and

8 9. Such other and further relief that the Court deems proper.
9

10 Dated: January 30, 2024

WORRELL LAW FIRM, APC

11
12 By:



13 KYLE C. WORRELL
14 *Attorneys for Plaintiff*
15 Dung A. Nguyencuu
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1 **DEMAND FOR TRIAL BY JURY**

2 Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in
3 this lawsuit.

4
5 Dated: January 30, 2024

WORRELL LAW FIRM, APC

6
7 By: 

8 KYLE C. WORRELL
9 *Attorneys for Plaintiff*
10 Dung A. Nguyencuu

EXHIBIT 1



WORRELL LAW FIRM, APC

1717 Old Tustin Ave., Unit E
Santa Ana, CA 92705
(347) 991-9411
kcw@worrell-law.com

November 22, 2023

Via LWDA Website by Online Submission

California Labor & Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Ste 801

Oakland, CA 94612

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified Mail

OSTENDO TECHNOLOGIES, INC. Agent for Service of Process: HUSSEIN S. EL-GHOROURY RE: Ostendo Technologies, Inc.	HUSSEIN S. EL-GHOROURY, an individual, acting on behalf of Ostendo Technologies, Inc., pursuant to California Labor Code 558.1
6185 Paseo Del Norte, Ste. 200 Carlsbad, CA 92011	6185 Paseo Del Norte, Ste. 200 Carlsbad, CA 92011

**Re: PAGA Notice Pursuant to California Labor Code § 2698, et seq.; Claims of
*Dung A. Nguyencuu v. Ostendo Technologies, Inc., et al.***

Dear Representative:

PLEASE TAKE NOTICE that plaintiff Dung A. Nguyencuu (“Plaintiff”) individually and on behalf of all others similarly situated and representative, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice via online filing and certified mail, as appropriate, of the specific provisions alleged to have been violated to the Labor and Workforce Development Agency (“LWDA”) and to defendants Ostendo Technologies, Inc., a California corporation, (including any and all affiliates, subsidiaries, parents, directors, officers, and managing employees) (collectively referred to as “Ostendo”), and Hussein S. El-Ghoroury, an individual, (“El-Ghoroury”) (collectively,

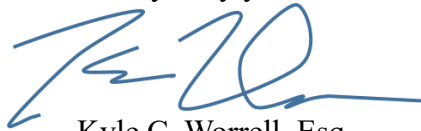
“Defendants”).

Plaintiff hereby attaches a copy of the Complaint to be filed in Los Angeles County Superior Court. All labor provisions in the Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Thank you in advance for your attention to this letter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'K. Worrell', with a stylized flourish at the end.

Kyle C. Worrell, Esq.

Enclosure: Complaint

EXHIBIT A

WORRELL LAW FIRM, APC

Kyle C. Worrell (SBN 281287)

kcw@worrell-law.com

1717 Old Tustin Avenue, Unit E

Santa Ana, CA 92705

Telephone: (657) 232-1450

Fax: (657) 232-1430

Attorneys for Plaintiff

DUNG A. NGUYENCUU

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DUNG A. NGUYENCUU, an individual, on
behalf of himself and in a representative capacity
as private attorney general

Plaintiff,

vs.

OSTENDO TECHNOLOGIES, INC., a California
corporation, HUSSEIN S. EL-GHOROURY, an
individual, and DOES 1 through 100, inclusive,

Defendants.

Case No.:

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

(1) VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA") [Lab. Code § 2698 *et seq.*]

JURY TRIAL DEMANDED

COMES NOW Plaintiff Dung A. Nguyencuu (“Plaintiff”), individually and on behalf of other members of the general public who have been aggrieved, and as a private attorney general, who alleges and complains, based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, as follows:

I. INTRODUCTION

1. Plaintiff was employed by Defendants (defined below) and worked for them in the manufacturing and technology industry throughout Southern California as Process Engineer from approximately June 2011, through March 2023. Defendants operate a manufacturing and technology company doing business in California including hiring California residents as employees within the State of California. Plaintiff is informed and believes that Defendants generally employs more than fifty (50) employees working within California.

2. At all pertinent times during the applicable limitations period, Defendants have implemented a uniform policy to willfully misclassify its California Process Engineer(s) and upon information and belief other management employees as exempt when they are plainly non-exempt employees under California law, and to pay employees improperly under the applicable California Wage Orders.

3. Going back many years, Defendants have blatantly and intentionally misclassified Plaintiff and, upon information and belief, other Aggrieved Employees as exempt employees when they are plainly non-exempt, hourly employees under California law.

4. From approximately 2019, through the end of Plaintiff’s employment, Defendants misclassified Plaintiff and other Aggrieved Employees as exempt employees by, among other things, wantonly and inexplicitly failing to meet the minimum salary threshold required for Plaintiff and other exempt personnel to be classified as “exempt.” This misclassification has deprived, and continues to deprive, Plaintiff and Aggrieved Employees of various protections under the California Labor Code.

5. On one or more occasions, and increasing towards the end of 2022, and early 2023, Plaintiff raised this issue and related issues to Defendants to see whether the issues could be addressed and remedied. But rather than fixing the pay issues and/or proposing any agreement or plan to repay

1 the substantial amounts of wrongfully withheld wages and underpayments from the prior four years,
2 Defendants continued to fail to pay the minimum salary threshold. Moreover, when Plaintiff inquired
3 about the prior years of substantial underpayment, Defendants failed to provide any legitimate excuse
4 for these failures and offered no recourse for recouping the underpaid wages. Given the failure of
5 Defendants to pay Plaintiff the minimum salary threshold to be exempt, and given various occasions
6 where Defendants failed to pay Plaintiff at all, Plaintiff was forced to take out loans to pay for Plaintiff's
7 daily costs of living, eventually causing him to resign his employment with Defendants.

8 6. Plaintiff and other Aggrieved Employees were misclassified by Defendants because: (1)
9 Plaintiff and other Aggrieved Employees did not and/or do not customarily and regularly exercise
10 discretion and independent judgment in matters of consequence to Defendants' business and was not
11 and/or are not "primarily engaged" (more than one-half of the employee's work time) in performing
12 managerial tasks; (2) Plaintiff and other Aggrieved Employees did not and/or do not spend at least half
13 of their work time doing office or non-manual work directly related to managerial policies or the
14 general business operations of Defendants; and/or (3) as noted above, Plaintiff and other Aggrieved
15 Employees did not, and do not, receive a salary that was or is equivalent to no less than two times the
16 state minimum wage for full-time employment. Therefore, Plaintiff and other Aggrieved Employees
17 was and are entitled to various forms of compensation, for which Plaintiff and other Aggrieved
18 Employees were excluded, because Defendants misclassified them as "exempt."

19 7. Given these facts, Defendants have violated, and continue to violate, numerous
20 provisions of the California Labor Code, including failing to meet the minimum salary threshold for
21 Plaintiff other Aggrieved Employees to be properly classified as exempt.

22 8. Accordingly, Defendants regularly fail to, among other things: (1) pay overtime pay; (2)
23 pay minimum wages; (3) provide uninterrupted off-duty meal periods and/or required premium wages;
24 (4) provide uninterrupted off-duty rest periods and/or required premium wages; (5) maintain adequate
25 records including tracking hours worked; (6) furnish proper and/or accurate wage statements; and (7)
26 timely pay all wages due upon termination, among other things. The Defendants' time records and
27 policies will confirm some of these violations including numerous violations of the PAGA and the
28

1 California Labor Code, as well as other laws, decisions, orders, or rulings that are enforceable through
2 the PAGA.

3 9. For over 50 years, California's courts and legislature have recognized that this State's
4 wage-and-hour laws serve a compelling public interest of fostering a stable job market. Wages are not
5 ordinary debts. Because of the economic position of the average worker and his or her family, it is
6 essential to the public welfare that employers obey the wage-and-hour laws so that employees are
7 promptly paid the minimum wages that the Legislature has required for employees. So fundamental are
8 California's wage-and-hour laws that the Legislature has criminalized certain types of violations.

9 10. Plaintiff brings this action pursuant to PAGA and seeks to obtain all applicable relief for
10 Defendants' violations, including all available relief under PAGA and the applicable Labor Code
11 provisions or other law enforceable through PAGA. As a result of Defendants' unlawful conduct alleged
12 herein, Defendants violated California Labor Code sections 201-203, 204, 204c, 206, 206.5, 207, 210,
13 216, 226, 226(a)-(f), 226.3, 226. 6, 226.7, 227.3, 233-234, 245-249, 432, 432.5, 510, 512(a), 558, 558.1,
14 1174(d), 1174.5, 1182.12, 1183, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198-1198.5, 2800, 2802, 2810.5,
15 and all applicable Industrial Welfare Commission Wage Orders ("Wage Orders"), all applicable Wage
16 Orders as well as interpretations of these laws by California courts and administrative bodies.

17 **II. THE PARTIES**

18 11. Plaintiff is, and at all times relevant to this action, a resident of Riverside County,
19 California. Plaintiff worked for Defendants throughout Southern California, including San Diego
20 County, as a Process Engineer, from approximately June 2011, through March 2023.

21 12. Plaintiff is informed and believes that Defendant OSTENDO TECHNOLOGIES, INC.
22 ("OSTENDO"), is and was, a California corporation, authorized to transact, and transacting, business in
23 the State of California and County of Los Angeles, San Diego, and Orange, among others. Plaintiff is
24 informed and believes, and thereon alleges that, at part of the relevant times herein, OSTENDO had its
25 headquarters and principal place of business at 6185 Paseo Del Norte, Ste. 200, Carlsbad, County of San
26 Diego, State of California, 92011. Plaintiff is informed and believed, and thereon alleges that, at all

times relevant herein, OSTENDO employed more than fifty (50) employees for each working day during each of twenty (20) or more calendar weeks in each relevant calendar year.

13. Plaintiff is informed and believes that Defendant HUSSEIN S. EL-GHOROURY (“EL-GHOROURY”), is and was an individual, acting on behalf of OSTENDO pursuant to California Labor Code 558.1, and had control over employee payments and wages including in his role as CEO and/or CFO, and was working and/or residing in California during the relevant time period. Plaintiff is informed and believes, and thereon alleges that, at all relevant times herein, EL-GHOROURY, acting on behalf of OSTENDO, is an owner, director, officer, or managing agent of OSTENDO and in that role violated or caused to be violated certain provisions of the California Labor Code at 6185 Paseo Del Norte, Ste. 200, Carlsbad, County of San Diego, State of California, 92011, and in Los Angeles County.

14. Defendants OSTENDO and EL-GHOROURY are collectively known as “Defendants.”

15. The true names and capacities of the defendants named herein as Does 1 through 100, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff is informed and believes that all of the Doe defendants are California residents. Plaintiff will amend this Complaint to show such true names and capacities when they have been determined.

16. Plaintiff is informed and believes that at all times relevant herein, each Defendant designated, including Defendants, and Does 1 through 100, was the agent, managing agent, principal, owner, partner, joint venturer, representative, manager, servant, employee and/or co-conspirator of each of the other defendants, and was at all times mentioned herein acting within the course and scope of said agency and employment, and that all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and consent of each Defendants designated herein. Defendants, if not separately noted, are collectively liable under either a joint employer or a single enterprise theory, or in the alternative that each is an alter ego of one another.

17. Defendants are, and at all times herein mentioned were, (a) conducting business in the County of Los Angeles, State of California, and (b) the employer (or other person acting on behalf of the employer) of Plaintiff consistent with the California Labor Code and Industrial Welfare

Commission Wage Orders (“Wage Orders”).

18. Plaintiff further alleges that Defendants, directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff so as to make each of said Defendant employers jointly liable under the statutory provisions set forth herein.

19. At all relevant times, Defendants were, and are, legally responsible for all of the unlawful conduct, policies, practices, acts and omissions complained of herein as the employer of Plaintiff and Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of *respondeat superior*. The conduct of Defendants’ managers and supervisors was at all relevant times undertaken as employees of Defendants, acting within the scope of their employment or authority in all of the unlawful activities described herein.

III. JURISDICTION AND VENUE

20. Plaintiff’s First Cause of Action is brought as a representative action on behalf of himself and certain other current and former employees of Defendants against whom one or more of the alleged violations was committed (hereinafter collectively referred to as the “Aggrieved Employees”) pursuant to California Labor Code sections 2698, *et seq.* Plaintiff is an aggrieved employee against whom one or more of the alleged violations occurred. The civil penalties and other restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

21. This Court has jurisdiction over this matter under PAGA and this Court’s general powers granted by statutory law and the California Constitution. This Court has jurisdiction over this action pursuant to the California Constitution Article VI section 10, which grants the California Superior Court original jurisdiction in all causes except those given by statute to other courts.

22. Plaintiff is a resident of Riverside County and is a citizen of the State of California and domiciled in the State of California.

23. Defendants OSTENDO and EL-GHOROURY are residents of California, have sufficient minimum contacts in California, and/or otherwise intentionally avails themselves of the California market so as to render the exercise of jurisdiction over it by the California Courts consistent

1 with traditional notions of fair play and substantial justice.

2 24. Venue is proper in this Court because upon information and belief, one or more of the
3 Defendants reside, transact business, or have offices in this County and the acts or omissions alleged
4 herein took place in this County.

5 **IV. EXHAUSTION**

6 25. On November 22, 2023, Plaintiff complied with the notice requirements pursuant to
7 California Labor Code § 2699.3 and gave written notice via online filing and certified mail of the specific
8 provisions alleged to have been violated to the Labor and Workforce Development Agency (“LWDA”)
9 and Defendants. A true and correct copy of the notice sent to Defendants is attached hereto as **Exhibit**
10 **A** and incorporated herein by reference

11 26. The LWDA has not provided notice of its intention to investigate Defendants’ violations.

12 **V. LEGAL CLAIMS**

13 **FIRST CAUSE OF ACTION**

14 **Violation of California Labor Code § 2698 *et seq.***

15 **(By Plaintiff Against All Defendants)**

16 27. Plaintiff incorporates by this reference the relevant allegations contained in this pleading
17 as if fully set forth herein.

18 28. Plaintiff is an “Aggrieved Employee” under PAGA, as Plaintiff was employed by
19 Defendants during the applicable statutory period and suffered one or more of the Labor Code violations
20 set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and
21 former Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney’s fees
22 and costs.

23 29. Plaintiff seeks to recover the PAGA civil penalties through a representative action
24 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal 4th 969 (2009).
25 Therefore, class certification of the PAGA claims is not required.

26 30. PAGA specifically provides for a private right of action to recover civil penalties for
27 violations of the Labor Code as follows: “Notwithstanding any other provision of law, any provision
28

1 of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
2 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
3 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
4 brought by an aggrieved employee on behalf of himself or herself and other current or former
5 employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code § 2699(a).

6 31. Plaintiff was employed by Defendants and the Labor Code violations alleged above were
7 committed against Plaintiff during Plaintiff’s time of employment. Plaintiff is therefore, an “aggrieved
8 employee” under PAGA.

9 32. As set forth in detail above, during all times relevant to this Action, Defendants have
10 routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor Codes by:

- 11 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
12 compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*
- 13 b. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
14 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional
15 hour of premium pay for meal period violations in violation of Labor Code §§
16 226.7 and 512.
- 17 c. Failing to provide, authorize, and permit Plaintiff and the Aggrieved Employees to
18 take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved
19 Employees an additional hour of premium pay for rest period violations in
20 violation of Labor Code §§ 226.7 and 512.
- 21 d. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end
22 of their employment in violation of Labor Code § 203.
- 23 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed
24 during employment in violation of Labor Code § 204.
- 25 f. Failure to provide written notice of paid sick leave and supplemental sick paid sick
26 leave in violation of Labor Code §§ 226, 246, and 1174.
- 27 g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
28

1 itemized wage statements in violation of Labor Code § 226.

- 2 h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved
3 Employees' work periods, meal periods, total daily hours, hours per pay period,
4 total wages and compensation, and applicable pay rates in violation of Labor Code
5 § 1174(d) and the applicable IWC Wage Order.
- 6 i. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary
7 business-related expenses in violation of Labor Code §§ 2800 and 2802.

8 33. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually and
9 on behalf of the Aggrieved Employees and the State of California, requests and is entitled to recover
10 penalties against Defendant for the Labor Code violations described above, including but not limited to
11 penalties under California Code of Regulations Title 8 section 11010, penalties under California Labor
12 Code sections 2699, 558, 210, 1197.1, 226, 226.3 and 1174.5, and 1197.1, and any and all additional
13 penalties and sums as provided by the California Labor Code and/or other statutes. The exact amount of
14 the applicable penalties, in all, is in an amount to be shown according to proof at trial.

15 34. Plaintiff was compelled to retain the services of counsel to file this court action to protect
16 Plaintiff's interests and the Aggrieved Employees, and to assess and collect the civil penalties owed by
17 Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees and costs pursuant to Labor
18 Code § 2699(g)(1), and any other applicable statute.

19 35. Plaintiff may amend this complaint as a matter of right pursuant to California Labor Code
20 § 2699.3 as this complaint has been filed within sixty days of the time periods specified in Labor Code
21 §2699.3.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public
24 similarly situated, and as a private attorney general act, prays for relief and judgment against Defendants,
25 jointly and severally, as follows:

26 **As to the First Cause of Action**

- 27 1. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor Code;
28

2. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210, 558, 558.1, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor Code and/or other applicable statutes; and

3. Pre-judgment and post-judgment interest;

4. Punitive and/or exemplary damages, if allowed;

5. Such other and further relief that the Court deems proper.

Dated: November 22, 2023

WORRELL LAW FIRM, APC

By: 

KYLE C. WORRELL
Attorneys for Plaintiff
Dung A. Nguyencuu

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Dated: November 22, 2023



By:

KYLE C. WORRELL
Attorneys for Plaintiff
Dung A. Nguyencuu