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Attorneys for Plaintiff, EDUARDO DOMINGUEZ VALERO,
as an aggrieved employee, and on behalf of all other
aggrieved employees

Assigned for All Purposes:

Judge Melissa R. McCormick

Dept. CX104

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

EDUARDO DOMINGUEZ VALERO, as an
aggrieved employee, and on behalf of all other
aggrieved employees under the Labor Code
Private Attorneys' General Act of 2004,

Plaintiff,

v.

MKS INSTRUMENTS, a Massachusetts
Corporation; NEWPORT CORPORATION, a
Nevada Corporation; BHAVIK PATEL, an
individual and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 30-2025-01481897-CU-OE-CXC

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1197.1 and 2699**

[Amount in Controversy Greater Than
\$35,000.00]

1
2 Plaintiff Eduardo Dominguez Valero, as an aggrieved employee, and on behalf of all other
3 aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, alleges as
4 follows:

5 **JURISDICTION AND VENUE**

6 1. This is a representative action, pursuant to the Labor Code Private Attorneys'
7 General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against MKS
8 INSTRUMENTS, a Massachusetts Corporation, and any of its respective subsidiaries or affiliated
9 companies within the State of California ("MKS"), and NEWPORT CORPORATION, a Nevada
10 Corporation, and any of its respective subsidiaries or affiliated companies within the State of
11 California ("NEWPORT") as a proxy of the Labor and Workforce Development Agency of the State
12 of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt
13 employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as
14 it pertains to the alleged claims for failure to comply with the Labor Code. Specifically, in
15 connection with the alleged claims for failure to comply with Labor Code sections 96, 98.6, 200,
16 201, 203, 210, 226, 226.3, 232, 232.5, 432, 432.5, 1197.5, 1198, and 1198.5, Plaintiff seeks to
17 represent all employees of MKS, NEWPORT, and each of them, DOES 1 through 100, as well as
18 their parents, subsidiaries and affiliates (hereinafter, collectively, "Defendants") working within
19 three years preceding the date of filing Notice with the LWDA and continuing past the LWDA
20 Notice filing date into perpetuity ("Civil Penalty Period"). On all other claims mentioned herein,
21 Plaintiff seeks to represent only non-exempt employees of Defendants working within the Civil
22 Penalty Period. Collectively, those employees shall be known as "Aggrieved Employees" herein.

23 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
24 of Civil Procedure section 410.10.

25 3. Venue is proper in Orange County, California pursuant to Code of Civil Procedure
26 sections 392, *et seq.* because, among other things, Orange County is where the causes of action
27 complained of herein arose; the county in which the employment relationship began; the county in
28 which performance of the employment contract, or part of it, between Plaintiff and Defendants was

1 due to be performed; the county in which the employment contract, or part of it, between Plaintiff
2 and Defendants was actually performed; and the county in which Defendants, or some of them,
3 reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Aggrieved
4 Employees in Orange County, and because Defendants employ Aggrieved Employees in Orange
5 County.

6 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
7 Defendants during the Civil Penalty Period and suffered the Labor Code violations set forth herein,
8 even if not in the precise exact fashion as other Aggrieved Employees. Accordingly, Plaintiff seeks
9 to recover civil penalties under the Labor Code Private Attorneys’ General Act of 2004, codified at
10 Labor Code section 2698, *et seq.* (“PAGA”), as amended, plus reasonable attorneys’ fees and costs,
11 for Plaintiff and all other current and former Aggrieved Employees of Defendants during the Civil
12 Penalty Period.

13 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
14 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
15 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
16 PAGA allegations described herein is not required.

17 6. During the Civil Penalty Period, Defendants violated, *inter alia*, Labor Code sections
18 96, 98.6, 200, 201, 203, 210, 226, 226.3, 226.7, 232, 232.5, 432, 432.5, 510, 512, 551, 552, 558, ,
19 1182.12, 1197.5, 1198, 1198.5, 2800, 2802, and 2699, among others, Business and Professions Code
20 sections 16600, 16700, and 17200, Government Code section 12952, as well as applicable Wage
21 Orders.

22 7. Labor Code section 2699, subdivisions (a) and (g), authorizes Aggrieved Employees
23 such as Plaintiff, on behalf of Plaintiff and all other current and former Aggrieved Employees within
24 the Civil Liability Period, to bring a civil action to recover civil penalties pursuant to the procedures
25 specified in Labor Code section 2699.3.

26 8. On or around June 21, 2024, Plaintiff provided written notice pursuant to Labor Code
27 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation
28 of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as

1 by certified mail, with return receipt requested to Defendants, and each of them.

2 9. To the extent Defendants, or either of them, previously used the notice and cure
3 provision of Labor Code section 2699.3 within the last twelve months, under section 2699.3(d), then
4 Defendants, or those who have availed themselves of the cure provisions validly, are not eligible to
5 cure the violations discussed herein under section 2699.3 or otherwise use the early evaluation
6 conference process pursuant to section 2699.3(f).

7 10. In the event that Defendants, or either of them, is/are determined to have satisfied
8 sections 2699(g), 2699(h), or otherwise 2699(d)(1), Defendants, or any that is determined to have
9 satisfied sections 2699(g), 2699(h), is also, in the alternative, liable for civil penalties pursuant to
10 Labor Code sections 2699(j), 2699(e)(2), and 2699(f)(2).

11 11. In the event that Defendants, or either of them, is/are determined to have, prior to
12 this notice or a request for records pursuant to Labor Code section 226, 432, or 1198.5, from Plaintiff
13 and/or his/her counsel, adequately taken all reasonable steps to be in compliance with all provisions
14 identified in this notice, said defendant(s) is/are still liable for civil penalties pursuant to section
15 2699(g)(1)-(3).

16 12. In the event that Defendants, or either of them is/are deemed to have adequately taken
17 all reasonable steps to be in compliance with all provisions identified in this notice within sixty (60)
18 days of receiving this notice, said defendant(s) is/are still liable for civil penalties pursuant to Labor
19 Code section 2699(h)(1)-(3).

20 13. Plaintiff is further informed and believes that within five (5) years of any of
21 violations described above, the LWDA or a court has issued a finding or determination to the
22 Defendants, or either of them, that its/their policy or practice giving rise to such violations was
23 unlawful, and thus Defendants, or any of them, is/are further liable for civil penalties pursuant to
24 Labor Code section 2699(f)(2)(B)(i). Plaintiff is informed that Defendants, or any of them,
25 was/were found to have unlawfully committed some or all of the above-related Labor Code
26 violations, and thus is/are subject to increased penalties, as applicable, under Labor Code sections
27 2699(f)(2)(B)(i), 2699(g)(3) and 2699(h)(3), and is/are **not** eligible for reduced penalties under
28 either Labor Code sections 2699(g) or 2699(h) for remedying violations either prior to or after the

1 serving of this notice. Regardless, as the Defendants' conduct giving rise to the violations detailed
2 herein was and is malicious, fraudulent, and/or oppressive, the Employer thus is subject to increased
3 penalties under Labor Code section 2699(f)(2)(B)(ii) and, per Labor Code sections 2699(g)(3) and
4 2699(h)(3), are **not** eligible for reduced penalties under either 2699(g) or 2699(h), for remedying
5 violations either prior to or after the Employer's receipt of this notice.

6 14. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
7 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
8 calendar days of the June 21, 2024 postmarked date of the herein-described notice sent by Plaintiff
9 to the LWDA and Defendants.

10 **PAGA REPRESENTATIVE ALLEGATIONS**

11 15. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
12 each of them, had and have a policy or practice of requiring Plaintiff and other Aggrieved Employees
13 to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight
14 workdays in a workweek (in violation of Labor Code sections 551 and 552) without paying them
15 proper overtime wages every day, as a result of, without limitation, failing to accurately track and/or
16 pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the
17 clock, including, without limitation, by requiring employees: to come early to work and leave late
18 work without being able to clock in for all that time, to complete pre-shift tasks before clocking in
19 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to don
20 and doff uniforms and/or safety equipment off the clock, to make phone calls off the clock,
21 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
22 less hours than actually worked, and for paying straight pay instead of overtime pay. Consequently,
23 Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code
24 sections , 510551, 552, and applicable Wage Orders based on its practice of providing total
25 compensation that is less than the required legal overtime compensation for the overtime worked,
26 entitling Employee and other aggrieved employees to damages, including, without limitation, at
27 least one hour of unpaid overtime wages each day worked by each Aggrieved Employee during the
28 Civil Penalty Period. Employee further informed and believes, and based thereon alleges, that

1 Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive.
2 Employer would also be liable for civil penalties pursuant to Labor Code sections 210 (for failure
3 to timely pay these wages), 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and
4 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section
5 2699(f)(2)(B)(ii). Plaintiff is informed and believes, and based thereon alleges, that Defendants,
6 and each of them, had and have a practice or policy of failing to compensate Plaintiff and other
7 Aggrieved Employees with minimum wages for all hours worked or otherwise under Employer's
8 control every day as a result of, without limitation, failing to accurately track and/or pay for all
9 minutes actually worked; engaging, suffering, or permitting employees to work off the clock,
10 including, without limitation, by requiring employees: to come early to work and leave late work
11 without being able to clock in for all that time, to complete pre-shift tasks before clocking in and
12 post-shift tasks after clocking out, to clock out for meal periods and continue working, to don and
13 doff uniforms and/or safety equipment off the clock, to make phone calls, receive and respond to
14 emails and/or texts off-the-clock; detrimental rounding of employee time entries; and editing and/or
15 manipulation of time entries to show less hours than actually worked. As such, Plaintiff is informed
16 and believes, and based thereon alleges, that Defendants violated, without limitation, Labor Code
17 sections 1197, 1182.12, Cal. and applicable Wage Orders based on its continued failure to pay
18 minimum wages for all hours worked, that Plaintiff and other Aggrieved Employees personally
19 suffered these violations, and that Plaintiff and other Aggrieved Employees are entitled to actual
20 and liquidated damages under, without limitation, Labor Code sections 1194, 1194.2, and 1198 to
21 compensate them for at least one unpaid hour of work per day for each Aggrieved Employee in the
22 Civil Penalty Period. Employee further informed and believes, and based thereon alleges, that
23 Defendants' conduct above gave rise to such violations was malicious, fraudulent, or oppressive.
24 Plaintiff would also be liable for civil penalties pursuant to Labor Code sections 210 (for failure to
25 timely pay these wages), 558, 1197.1, 1198 and 2699, or injunctive relief under sections 2699(e)(1)
26 and 2699(k). Plaintiff would further be liable for civil penalties pursuant to Labor Code section
27 2699(f)(2)(B)(ii).
28

1 16. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
2 and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with
3 minimum wages for all hours worked or otherwise under Employer's control every day as a result
4 of, without limitation, failing to accurately track and/or pay for all minutes actually worked;
5 engaging, suffering, or permitting employees to work off the clock, including, without limitation,
6 by requiring employees: to come early to work and leave late work without being able to clock in
7 for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking
8 out, to clock out for meal periods and continue working, to don and doff uniforms and/or safety
9 equipment off the clock, to make phone calls, receive and/or respond to emails and/or texts, off-the-
10 clock; detrimental rounding of employee time entries; and editing and/or manipulation of time
11 entries to show less hours than actually worked. In addition, Plaintiff and other Aggrieved
12 Employees were required to report to work, and did report, but were not put to work and/or were
13 furnished less than half their usual or scheduled day's work without being paid for half the usual or
14 scheduled work at their regular rate of pay. These acts and/or omissions violated Labor Code
15 sections 1198, and, thus Plaintiff would be liable for civil penalties pursuant to these sections and
16 Labor Code section 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff further
17 informed and believes, and based thereon alleges, that Plaintiff's conduct above gave rise to such
18 violations was malicious, fraudulent, or oppressive. Plaintiff would further be liable for civil
19 penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

20 17. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
21 each of them, had and have a policy or practice of compelling Plaintiff and other Aggrieved
22 Employees during the Civil Penalty Period to work every day in excess of five (5) and ten (10) hours
23 per day, without being afforded uninterrupted, timely, and complete 30-minute meal periods or
24 compensation in lieu thereof including, each workday, without limitation: by interrupting meal
25 periods; not providing timely meal periods; failing to provide first and second meal periods;
26 providing short meal periods, including without, limitation meal periods that were recorded for less
27 than thirty minutes, and meal periods that may appear on the record to be thirty minutes or longer
28 but in practice were shorter than thirty minutes due to time required to walk to and from a suitable

1 break area, and/or and/or having to don and doff safety gear during the meal period; and not
2 providing time for employees to enter and/or exit clean rooms. . Plaintiff and other Aggrieved
3 Employees personally suffered these violations. Consequently, Plaintiff is informed and believes,
4 and based thereon alleges, that Defendants violated Labor Code sections 512 and 1198 each day for
5 each Aggrieved Employee during the Civil Penalty Period, and that, thus each Aggrieved Employee
6 was owed one hour of premium pay at their regular rate of pay for each day worked during the Civil
7 Penalty Period under Labor Code section 226.7. However, Plaintiff is informed and believes that
8 those premium payments under Labor Code section 226.7 were not made, either, for these non-
9 compliant meal periods, either at all or at the proper regular rate of pay. Plaintiff would thus be
10 liable for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages),
11 558, 1198 and 2699 for both failing to authorize the taking of compliant meal periods and for failing
12 to provide premium pay under Labor Code section 226.7, or injunctive relief under sections
13 2699(e)(1) and 2699(k). Plaintiff further informed and believes, and based thereon alleges, that
14 Defendants' conduct above gave rise to such violations was malicious, fraudulent, or oppressive.
15 Employer would further be liable for civil penalties pursuant to Labor Code section
16 2699(f)(2)(B)(ii).

17 18. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 maintain policies or practices of compelling Plaintiff and other Aggrieved Employees every day to,
19 including, without limitation, work over four-hour periods (or major fractions thereof) without
20 authorizing and permitting Plaintiff and other Aggrieved Employees to take uninterrupted, timely,
21 and complete ten-minute rest periods in which the employees are completely relieved of all of their
22 duties, including, without limitation: by failing to provide rest periods altogether; failing to provide
23 rest periods that were at least ten minutes in length, including rest periods that were shorter than ten
24 minutes, or rest periods that may have encompassed a total of ten minutes but were in practice less
25 than ten uninterrupted minutes due to, without limitation, due to time required to walk to and from
26 a suitable break area and/or time spent having to don and doff safety gear during the rest period, ;
27 interrupting them; and not providing rest periods in a timely fashion; not permitting employees to
28 leave the premises; not providing time for employees to enter and/or exit clean rooms; and otherwise

1 requiring on-duty/on-call rest periods. Employee and other Aggrieved Employees personally
2 suffered these violations. Consequently, Plaintiff is informed and believes, and based thereon
3 alleges, that Defendants violated the applicable Wage Order(s) each day for each Aggrieved
4 Employee during the PAGA Period, and that, thus each Aggrieved Employee was owed one hour
5 of premium pay at their regular rate of pay for each day worked during the PAGA Period under
6 Labor Code section 226.7. However, Plaintiff is informed and believes that those premium
7 payments under Labor Code section 226.7 were not made, either, for these non-compliant rest
8 periods, either at all or at the proper regular rate of pay, in violation of Labor Code sections 226.7
9 and 1198. Defendants would thus be liable for civil penalties pursuant to Labor Code sections 210
10 (for failure to timely pay these wages), 558, 1198 and 2699 for both failing to authorize the taking
11 of compliant rest periods and for failing to provide premium pay under Labor Code section 226.7,
12 or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff is further informed and believes,
13 and based thereon alleges, that Defendants' conduct above gave rise to such violations was
14 malicious, fraudulent, or oppressive. Defendants would further be liable for civil penalties pursuant
15 to Labor Code section 2699(f)(2)(B)(ii).

16 19. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 maintain policies or practices of failing to maintain adequate temperatures which created excessive
18 heat or humidity exposing Plaintiff and Aggrieved Employees to temperature related hazards and/or
19 comfortable working environments, as required under California Code of Regulations Title 8,
20 section 3396. Plaintiff is informed and believes, and based thereon alleges that Defendants failed
21 to maintain temperatures at comfortable levels in violation of section 15 of the applicable Wage
22 Orders, which requires temperature be maintained in each work area to be reasonably comfortable,
23 consistent with industry-wide standards for the nature of the process and the work performed.
24 Defendants, as required by the same wage order provisions, also: and failed and fails to take all
25 feasible means to reduce excessive heat or humidity created by the work process to provide
26 reasonable comfort. Consequently, Plaintiff is informed and believes, and based thereon alleges, that
27 Defendants violated California Code of Regulations, Title 8, Sections 3395 and 3396 each day for
28 each Aggrieved Employee during the PAGA Period, and that, thus each Aggrieved Employee was

1 owed one hour of premium pay at their regular rate of pay for each day worked during the PAGA
2 Period under Labor Code section 226.7. In addition, for the failure each day of the PAGA Period
3 by Defendants to provide rest and recovery periods under Labor Code section 226.2, each Aggrieved
4 Employee was owed compensation at a regularly hourly rate that is no less than the higher of the
5 amounts set forth in Labor Code section 226.2(a)(3)(A)(i) or 226.2(a)(3)(A)(ii). However, Plaintiff
6 is informed and believes that those premium payments under Labor Code section 226.7, and rest
7 and recovery periods under Labor Code section 226.2(a)(3)(A) were not made for these non-
8 compliant cooldown periods and/or rest and recovery periods, either at all or at the proper rate of
9 pay, in violation of Labor Code sections 226.2, 226.7 and/or 1198. Defendants would also be liable
10 for their failures to provide comfortable levels of temperatures to employees under the wage orders,
11 including Section 15 thereof. Defendants would thus be liable for civil penalties pursuant to Labor
12 Code sections 210 (for failure to timely pay these wages), 221, 222 (for employees governed by a
13 CBA), 223, 558, 1198 and 2699 for both failing to authorize the taking of compliant rest periods
14 and for failing to provide premium pay under Labor Code section 226.7, or injunctive relief under
15 sections 2699(e)(1) and 2699(k). Plaintiff is further informed and believes, and based thereon
16 alleges, that Defendants' conduct above gave rise to such violations was malicious, fraudulent, or
17 oppressive. Defendants would further be liable for civil penalties pursuant to Labor Code section
18 2699(f)(2)(B)(ii).

19 20. As a result of, among other things, Defendants' herein-described policy or practice
20 of failing to: accurately record time; failing to pay overtime and minimum wages; failing to provide
21 meal periods; failing to provide rest periods; and failing to provide compensation in lieu of meal or
22 rest periods, as described above, and due to independent failures in connection therewith, Plaintiff
23 is informed and believes, and based thereon alleges, that Defendants also intentionally failed and
24 continues to fail to furnish Aggrieved Employees, including, without limitation, Plaintiff, with
25 itemized wage statements that accurately reflect: gross wages earned; total hours worked by the
26 employee; net wages earned; the inclusive dates of the period for which the employee is paid; the
27 name of the employee and only the last four digits of their social security number or an employee
28 identification number other than a social security number; all deductions; all applicable hourly rates

1 in effect during the pay period and the corresponding number of hours worked at each hourly rate
2 by the employee; the legal name and address Defendants; and other such information as required by
3 Labor Code section 226, subdivision (a). Specifically, Defendants intentionally failed to furnish
4 employees with itemized wage statements that accurately reflect the hours worked by Plaintiff and
5 other Aggrieved Employees and the rates of pay at which they were or should have been paid
6 (including due to failure to pay at the proper regular rate), thus resulting in a failure to reflect gross
7 and net wages earned and paid at each rate, as well. Consequently, Employee is informed and
8 believes, and based thereon alleges, that Employer violated Labor Code sections 226 and 1198 each
9 day for each Aggrieved Employee during the PAGA Period, and that, thus Employee and each
10 Aggrieved Employee personally suffered these violations and was owed penalties under Labor Code
11 section 226 for each pay period worked during the PAGA Period. Plaintiff is informed and believes
12 that those penalties under Labor Code section 226 were not paid for these violations of Labor Code
13 section 226. Defendants would thus be liable for civil penalties pursuant to Labor Code sections
14 226.3, 558, 1198, and 2699. Plaintiff is further informed and believes, and based thereon alleges,
15 that Defendants' conduct above gave rise to such violations was malicious, fraudulent, or
16 oppressive. Defendants would also be liable for civil penalties pursuant to Labor Code sections
17 226.3, 558, and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would
18 further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

19 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants also
20 willfully or intentionally failed and refused, and continue to fail and refuse, to timely pay
21 compensation to Plaintiff and other terminated or resigned employees, including but not limited to,
22 all overtime wages owed; all minimum wages owed; all paid sick leave and paid time off; and all
23 premium pay owed as set out above, including, without limitation, for failure to pay at the proper
24 regular rate of pay, among other things. Consequently, Plaintiff is informed and believes, and based
25 thereon alleges, that Defendants violated Labor Code sections 201, 202 203, and 1198 each pay
26 period for each Aggrieved Employee during the PAGA Period, and that, thus Plaintiff and each
27 Aggrieved Employee personally suffered these violations and was owed penalties under Labor Code
28 section 203 for each pay period worked during the PAGA Period. Plaintiff is further informed and

1 believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations was
2 malicious, fraudulent, or oppressive. Defendants would also be liable for civil penalties pursuant to
3 Labor Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(j).
4 Defendants would further be liable for civil penalties pursuant to Labor Code section
5 2699(f)(2)(B)(ii).

6 22. Plaintiff is informed and believes, and based thereon alleges that Defendants also
7 failed and refused, and continues to fail and refuse, to reimburse employees, including, without
8 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for the purchase and
9 maintenance of cellular phones and cellular phone plans, which employees used for, without
10 limitation, clocking in and out, as required by Labor Code sections 2800, 2802, and other statutory
11 and common law offenses. As a result, Plaintiff and other Aggrieved Employees have personally
12 suffered these violations and Defendants are liable to reimburse Plaintiff and other Aggrieved
13 Employees for these costs incurred in furtherance of work duties. Plaintiff further informed and
14 believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations was
15 malicious, fraudulent, or oppressive. In addition, Defendants would be liable for civil penalties
16 pursuant to Labor Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1)
17 and 2699(k). Defendants would further be liable for civil penalties pursuant to Labor Code section
18 2699(f)(2)(B)(ii).

19 23. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
20 have a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor
21 Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive,
22 of any calendar month shall be paid for between the 16th and 26th day of the month during which
23 the labor was performed, and labor performed between the 16th and the last day, inclusive of any
24 calendar month, shall be paid for between the 1st and 10th day of the following month." Plaintiff
25 is informed and believes and based thereon alleges that Defendants did not and do not pay Plaintiff
26 and other Aggrieved Employees every day and every workweek in accordance with Labor Code
27 sections 204 and 1198. As such, Plaintiff is informed and believes, and based thereon alleges that
28 Defendants violated Labor Code section 204 and that Plaintiff and other Aggrieved Employees have

1 personally suffered these violations. Plaintiff further informed and believes, and based thereon
2 alleges, that Defendants' conduct above gave rise to such violations was malicious, fraudulent, or
3 oppressive. Plaintiff would be liable for civil penalties pursuant to Labor Code sections 210, 558,
4 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff would further
5 be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

6 24. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
7 have a policy or practice of failing to provide all working employees, including without limitation
8 Plaintiff, with suitable seats when the nature of the work reasonably permits the use of seats.
9 Plaintiff is further informed and believes, and based thereon alleges that Defendants have failed to
10 place an adequate number of seats in reasonable proximity to the work areas, including, without
11 limitation, clean rooms.. Plaintiff and other Aggrieved Employees have personally suffered these
12 violations. Plaintiff is informed and believes that this has resulted in a violation of Labor Code
13 section 1198. As a result, Plaintiff and other Aggrieved Employees have personally suffered
14 violations thereto and Defendants would be liable for civil penalties under Labor Code sections 1198
15 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Plaintiff is further informed
16 and believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations
17 was malicious, fraudulent, or oppressive. Defendants would further be liable for civil penalties
18 pursuant to Labor Code section 2699(f)(2)(B)(ii).

19 25. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
20 have a policy or practice of preventing Plaintiff and other Aggrieved Employees from using or
21 disclosing the skills, knowledge and experience they obtained with Defendants for purposes of
22 competing with Defendants, including, without limitation, preventing Plaintiff and Aggrieved
23 Employees from disclosing their wages in negotiating a new job with a prospective employer, and
24 from disclosing who else works with Defendants and under what circumstances that they might be
25 receptive to an offer from a rival employer. As such, Plaintiff is informed and believes that this
26 violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof,
27 various provisions of the Labor Code, including Labor Code sections 232, 232.5, 1197.5,
28 subdivision (k), and 1198, and that Plaintiff and other Aggrieved Employees have personally

1 suffered these violations. Plaintiff is further informed and believes, and based thereon alleges, that
2 Defendants' conduct above gave rise to such violations was malicious, fraudulent, or oppressive.
3 Defendants would be liable for civil penalties pursuant to Labor Code sections 1198 and 2699, or
4 injunctive relief under sections 2699(e)(1) and 2699(k). Defendants would further be liable for civil
5 penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

6 26. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
7 have a policy or practice of preventing Plaintiff and other Aggrieved Employees from engaging in
8 lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose
9 wages, , without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, 1197.5,
10 subdivision (k), and 1198. Plaintiff and other Aggrieved Employees personally suffered these
11 violations. Plaintiff is informed and believes that this lawful conduct includes, without limitation,
12 the exercise of Plaintiff and other Aggrieved Employee's constitutional rights of freedom of speech
13 and economic liberty and would thus expose Defendant to liability for civil penalties pursuant to
14 Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).
15 Plaintiff further informed and believes, and based thereon alleges, that Defendants' conduct above
16 gave rise to such violations was malicious, fraudulent, or oppressive. Defendants would further be
17 liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

18 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
19 including their agents, managers, superintendents, and/or officers, required Plaintiff and/or
20 Aggrieved Employees to agree, in writing, to terms and conditions known by Defendants (and their
21 agents, managers, superintendents and/or officers) to be prohibited by law, including, without
22 limitation, purported confidentiality agreements, and/or other written documents presented for
23 signature and/or assent to Plaintiff and/or Aggrieved Employees by Defendants. And, even more
24 specifically, Plaintiff is informed and believes, and based thereon alleges, that Defendants had and
25 have a practice or policy of requiring Plaintiff and other Aggrieved Employees to agree in writing
26 to confidentiality policies that unlawfully restrain trade by prohibiting employees from speaking
27 with prospective employers about their work with Defendants, including but not limited to their
28 wages and working conditions. Defendants also required Plaintiff and Aggrieved Employees to

1 inform prospective employers of Defendants' restrictions of Plaintiff's and Aggrieved Employees'
2 freedom to work. As a result, Employee is informed and believes that Employer violated Labor
3 Code sections 432.5 and 1198. As such, Plaintiff is informed and believes, and based thereon
4 alleges, that Plaintiff and other Aggrieved Employees personally suffered these violations, and that
5 Defendants violated, without limitation, Labor Code section 432.5 and Government Code section
6 12952, entitling Plaintiff and other Aggrieved Employees to damages. Plaintiff further informed and
7 believes, and based thereon alleges, that Defendants' conduct above gave rise to such violations was
8 malicious, fraudulent, or oppressive. Defendants would also be liable for civil penalties pursuant to
9 Labor Code sections 432.5, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and
10 2699(k). Defendants would further be liable for civil penalties pursuant to Labor Code section
11 2699(f)(2)(B)(ii).

12 28.

13 29. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
14 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
15 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
16 Employees pursuant to PAGA.

17 **PARTIES**

18 **A. Plaintiff**

19 30. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
20 is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-
21 exempt employee, although Plaintiff was misclassified as an exempt employee. Plaintiff is informed
22 and believes that Plaintiff worked for Defendants from approximately May of 2023 through
23 approximately March of 2024.

24 **B. Defendants**

25 31. Plaintiff is informed and believes and based thereon alleges that defendant MKS is,
26 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
27 laws of the State of California and doing business in the County of Orange, State of California.

28 32. Plaintiff is informed and believes and based thereon alleges that defendant

1 NEWPORT is, and at all times relevant hereto was, a corporation organized and existing under and
2 by virtue of the laws of the State of California and doing business in the County of Orange, State of
3 California.

4 33. The true names and capacities, whether individual, corporate, associate, or otherwise,
5 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
6 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
7 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
8 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
9 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
10 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
11 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
12 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
13 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
14 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
15 include MKS, NEWPORT, and any of their parent, subsidiary, or affiliated companies within the
16 State of California, as well as DOES 1 through 100 identified herein.

17 **JOINT LIABILITY ALLEGATIONS**

18 34. Plaintiff is informed and believes, and based thereon alleges, that at all times
19 mentioned herein, each of the defendants was the agent, principal, employee, employer,
20 representative, joint venture or co-conspirator of each of the other defendants, either actually or
21 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
22 employment, joint venture, and conspiracy.

23 35. All of the acts and conduct described herein of each and every corporate defendant
24 was duly authorized, ordered, and directed by the respective and collective defendant corporate
25 employers, and the officers and management-level employees of said corporate employers. In
26 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
27 their said employees, agents, and representatives, and each of them; and upon completion of the
28 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant

1 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
2 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
3 aforementioned corporate employees, agents and representatives.

4 36. Plaintiff is informed and believes, and based thereon alleges, that despite the
5 formation of the purported corporate existence of MKS, NEWPORT, and DOES 1 through 50,
6 inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with DOES
7 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following
8 reasons:

9 a. The Alter Ego Defendants are completely dominated and controlled by the
10 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws
11 as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego
12 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
13 inequitable purpose;

14 b. The Individual Defendants derive actual and significant monetary benefits by
15 and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants as
16 the funding source for the Individual Defendants’ own personal expenditures;

17 c. Plaintiff is informed and believes, and thereon alleges, that the Individual
18 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
19 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
20 accomplishing some other wrongful or inequitable purpose;

21 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
22 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
23 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
24 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
25 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
26 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
27 herein were, the alter egos of the Individual Defendants;

28 e. The recognition of the separate existence of the Individual Defendants from

1 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
2 insulate themselves from liability to Plaintiff for violations to the Civil Code, Government Code,
3 and other statutory violations. The corporate existence of these defendants should thus be
4 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
5 and injustice to Plaintiff herein;

6 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
7 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
8 disregarded.

9 37. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
10 thereon alleges that Defendants, and each of them, are joint employers.

11 38. Moreover, Plaintiff is informed and believes, and based thereon alleges, that
12 Individual Defendants, and each of them, are liable for the civil penalties, or some of them, described
13 herein because Individual Defendants, and each of them, caused or are otherwise contributed to the
14 violations described herein, or some of them.

15 **FIRST AND ONLY CAUSE OF ACTION**

16 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

17 39. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
18 preceding paragraphs as though fully set forth hereat.

19 **Civil Penalties Under Labor Code § 210**

20 40. At all relevant times herein, Labor Code section 204, requires and required that:
21 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
22 between the 16th and 26th day of the month during which the labor was performed, and labor
23 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
24 between the 1st and 10th day of the following month.”

25 41. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
26 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
27 article, every person who fails to pay the wages of each employee as provided in Sections 204, and
28 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars

1 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
2 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
3 percent of the amount unlawfully withheld.”

4 42. At all relevant times herein, Defendants have had a consistent policy or practice of
5 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
6 per Labor Code section 204 including, without limitation, for the reasons and in a manner set forth
7 in the preceding paragraphs. Thus, pursuant to Labor Code section 210, Plaintiff and other
8 Aggrieved Employees are entitled to recover as civil penalties injunctive relief and monetary civil
9 penalties in the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial
10 violation per employee, and two hundred dollars (\$200) for each failure to pay each employee, plus
11 25 percent of the amount unlawfully withheld for each Aggrieved Employee for each subsequent
12 violation in connection with each payment that was made in violation of Labor Code section 204.

13 Civil Penalties Under Labor Code § 226.3

14 43. Defendants had and have a policy or practice of failing to comply with Labor Code
15 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
16 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
17 wages earned; the name and address of each employer with whom they have been placed to work;
18 all applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate; the legal name of the employer; and other such information as required
20 by Labor Code section 226, subdivision (a).

21 44. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
22 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
23 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
24 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
25 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

26 45. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
27 this section are in addition to any other penalty provided by law.”

28 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants had

1 and have a policy or practice of failing to furnish Aggrieved Employees with itemized wage
2 statements as set forth in the preceding paragraphs.

3 47. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
4 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
5 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
6 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
7 period for each subsequent violation.

8 Violation of Labor Code § 558

9 48. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
10 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
11 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
12 penalty as follows:

13 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
14 pay period for which the employee was underpaid in addition to an amount sufficient
15 to recover underpaid wages;

16 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
17 employee for each pay period for which the employee was underpaid in addition to
18 an amount sufficient to recover underpaid wages;

19 (3) Wages recovered pursuant to this section shall be paid to the affected employee."

20 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
21 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
22 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
23 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
24 regular payday designated by employer, and other pertinent information.

25 50. As a direct and proximate result of the herein-described Labor Code violations,
26 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
27 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars
28 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars

1 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

2 Violation of Labor Code § 1197.1

3 51. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
4 person acting either individually or as an officer, agent, or employee of another person, who pays
5 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
6 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
7 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
8 Section 203 as follows:

9 (1) For any initial violation that is intentionally committed, one hundred dollars
10 (\$100) for each underpaid employee for each pay period for which the
11 employee is underpaid. This amount shall be in addition to an amount
12 sufficient to recover underpaid wages, liquidated damages pursuant to Section
13 1194.2, and any applicable penalties imposed pursuant to Section 203.

14 (2) For each subsequent violation for the same specific offense, two hundred fifty
15 dollars (\$250) for each underpaid employee for each pay period for which the
16 employee is underpaid regardless of whether the initial violation is
17 intentionally committed. This amount shall be in addition to an amount
18 sufficient to recover underpaid wages, liquidated damages pursuant to Section
19 1194.2, and any applicable penalties imposed pursuant to Section 203.

20 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
21 Section 203, recovered pursuant to this section shall be paid to the affected
22 employee.”

23 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
24 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
25 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all
26 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
27 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
28 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at

1 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
2 entitling Plaintiff and other Aggrieved Employees to actual and liquidated damages.

3 53. As a direct and proximate result of the herein-described Labor Code violations,
4 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
5 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of one
6 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
7 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
8 subsequent violation.

9 Civil Penalties Under Labor Code § 2699

10 54. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
11 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
12 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
13 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
14 action brought by an aggrieved employee on behalf of himself or herself and other current or former
15 employees pursuant to the procedures specified in Labor Code section 2699.3.

16 55. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
17 each of them, violated the Labor Code sections described in the preceding paragraphs.

18 56. As such, Plaintiff and aggrieved employees are entitled to injunctive relief, one
19 hundred dollars (\$100) for each Aggrieved Employee for each pay period in the PAGA Period, and
20 two hundred dollars (\$200) for each Aggrieved Employee for each pay period in the PAGA Period
21 to the extent Defendants' conduct is found to be malicious, fraudulent and/or oppressive.

22 57. Moreover, Plaintiff and other Aggrieved Employees within the State of California
23 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
24 connection with their herein-described claims for civil penalties.

25 **PRAYER**

26 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for
27 judgment against Defendants as follows:

28 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,

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- 1174.5, 1197.1, and 2699;
- B. An award of reasonable attorneys’ fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- C. For equitable, including, without limitation, injunctive relief;
- C. Pre-judgment and post-judgment interest;
- D. For costs of suit incurred herein; and
- E. Such other and further relief as the Court deems just and proper.

Dated: May 8, 2025 BIBIYAN LAW GROUP, P.C.

BY: /s/ Faik Yetgin
DAVID D. BIBIYAN
MOLLY DESARIO
FAIK YETGIN
Attorneys for Plaintiff EDUARDO
DOMINGUEZ VALERO, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys’ General Act of 2004,