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8
9 Attorneys for Plaintiffs Chanielle Enomoto and Brandon Johnson,
Individually and on behalf of all others similarly situated

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF ALAMEDA**

13 Chanielle Enomoto and Brandon
14 Johnson, individually and on behalf of
all others similarly situated,
15
16 Plaintiff,
17
18 vs.
19 Siemens Industry, Inc.,
20
21 Defendant.

Case No: **23CV036600**

CLASS ACTION COMPLAINT:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Provide Rest Breaks;
5. Failure to Keep Accurate Payroll Records;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Reimburse All Business Expenses;
8. Failure to Timely Pay All Wages and Commissions Due Upon Separation of Employment
9. Failure to Provide Written Contracts to Employees;
10. Unlawful Deduction of Wages; and
11. Violation of Business and Professions Code Code §§ 17200, et seq.

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27 **DEMAND FOR JURY TRIAL**

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1 Plaintiff Chanielle Enomoto and Plaintiff Brandon Johnson, individually and on behalf
2 of all others similarly situated, allege as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. This is a class action brought by Plaintiff Chanielle Enomoto (“Plaintiff
5 Enomoto”) and Plaintiff Brandon Johnson (“Plaintiff Johnson”) (collectively, “Plaintiffs”)
6 individually and on behalf of all other similarly situated employees who have worked for
7 Defendant Siemens Industry, Inc. (“Defendant”) throughout California who were classified
8 as exempt by Defendant.

9 2. Defendant Siemens Industry, Inc. is a Delaware corporation doing business in
10 the state of California. Defendant is in the business of developing and manufacturing
11 technology in the industry, infrastructure, mobility, and healthcare sectors nationwide.

12 3. Plaintiffs bring this action based on Defendant’s policy and practice of
13 misclassifying its employees, resulting in a failure to properly compensate its employees for
14 all minimum and overtime wages owed. Defendant maintained a policy and practice of
15 misclassifying Plaintiffs and similarly situated employees as exempt from overtime. As a
16 result, Defendant failed to compensate Plaintiff and other similarly situated employees for all
17 hours worked, including all minimum wages and overtime compensation. Additionally,
18 Defendant failed to pay all overtime hours worked, including off-the-clock work, which
19 Defendant required Class Members to perform during meal periods.

20 4. Additionally, Plaintiffs allege that Defendant has engaged in a pattern of wage
21 and hour violations under the California Labor Code and Industrial Welfare Commission
22 (“IWC”) Wage Orders, all of which contribute to Defendant’s deliberate unfair competition.

23 5. Plaintiffs are informed and believe, and thereon allege, that Defendant has
24 increased their profits by violating state wage and hour laws by, among other things:

- 25 (a) Failing to pay all minimum wages owed;
- 26 (b) Failing to pay all overtime wages owed;
- 27 (c) Failing to provide meal periods, or compensation in lieu thereof;
- 28 (d) Failing to provide rest breaks, or compensation in lieu thereof;

- 1 (e) Failing to provide accurate itemized wage statements;
- 2 (f) Failing to reimburse for all business expenses;
- 3 (g) Failing to timely pay all wages and commissions due upon separation of
- 4 employment;
- 5 (h) Failure to provide written contracts; and
- 6 (i) Unlawful wage deductions.

7 6. Defendant maintained and enforced against the Class the following unlawful
8 practices and policies, in violation of California state wage and hour laws:

- 9 (a) Defendant misclassified Plaintiffs and Class Members as exempt from
- 10 California’s wage and hour protections related to the payment of overtime and
- 11 providing meal and rest breaks.
- 12 (b) Defendant failed to maintain a policy that compensates Plaintiffs and Class
- 13 Members for all hours worked, including all minimum wages and overtime
- 14 compensation.
- 15 (c) Defendant failed to provide meal and rest breaks in violation of California law.
- 16 When Class members suffered meal and rest period violations, Defendant
- 17 failed to pay an additional hour of pay at the regular rate of pay to Class
- 18 Members.
- 19 (d) Defendant failed to reimburse Plaintiffs and Class Members for all business
- 20 expenses, including home internet, automobile, and cell phone costs.
- 21 (e) Defendant failed to pay Plaintiffs and Class members all wages and
- 22 commissions they are owed.

23 7. Plaintiffs bring this case to address Defendant’s denial of minimum and
24 overtime wages and compliant meal and rest breaks, among other violations. Plaintiffs state
25 claims under the California Labor Code, the California Unfair Competition Law (“UCL”),
26 and the California Department of Industrial Relations and Industrial Welfare Commission’s
27 (“IWC”) wage orders.

28

1 8. Plaintiffs bring this lawsuit seeking monetary relief against Defendant on
2 behalf of themselves and all others similarly situated in California to recover, among other
3 things, unpaid wages and benefits, interest, attorneys' fees, costs and expenses, and penalties
4 pursuant to the California Labor Code §§ 201-203, 204, 210, 221, 226, 226.7, 510, 512, 1194,
5 1194.2, 1197, and 1198.

6 **JURISDICTION AND VENUE**

7 9. This is a class action, pursuant to California Code of Civil Procedure § 382.

8 10. Plaintiffs' individual damages are less than \$75,000. The monetary damages
9 and penalties sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior
10 Court and will be established according to proof at trial. Based on information, investigation,
11 and analysis, Plaintiffs allege that the amount in controversy, including claims for monetary
12 damages, penalties, and attorneys' fees is more than \$25,000 and that the aggregate amount
13 in controversy for the proposed action, including monetary damages penalties, and attorneys'
14 fees is less than \$5,000,000, exclusive of costs. Plaintiffs reserve the right to seek a larger
15 amount based upon new and different information resulting from investigation and discovery.

16 11. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
18 causes, except those given by statutes to other courts. The statutes under which this action is
19 brought do not specify any other basis for jurisdiction.

20 12. This Court has jurisdiction over all Defendants because, upon information and
21 belief, they are citizens of California, have sufficient minimum contacts in California, or
22 otherwise intentionally avail themselves of the California marketplace, rendering the exercise
23 of jurisdiction over them by the California courts consistent with traditional notions of fair
24 play and substantial justice.

25 13. Venue is proper in this Court because, upon information and belief, Defendant
26 resides, transacts business, or has offices in this county and the acts and omissions alleged
27 herein took place in this county. Indeed, Defendant maintains at least nine locations in
28 Alameda County and employs many putative class members throughout the County. Further,

1 Defendant failed to file and obtain a certificate of qualification and designate its principal
2 place of business in California. As a foreign corporation that is not qualified to do business
3 in California, it may be sued in any county in the state. *Easton v. Superior Court* (1970) 12
4 Cal. App. 3d 243.

5 **THE PARTIES**

6 14. Plaintiff Enomoto is an individual who was a citizen of California when she
7 worked for Defendant. Plaintiff Enomoto worked for Defendant from approximately
8 February of 2020 to March of 2020. Details regarding Plaintiff Enomoto’s precise hours, pay,
9 and revenue generated for Defendant are available by reference to Defendant’s records.

10 15. Plaintiff Johnson is an individual who was a citizen of California when he
11 worked for Defendant. Plaintiff Johnson worked for Defendant from approximately October
12 of 2019 to February of 2022. Details regarding Plaintiff Johnson’s precise hours, pay, and
13 revenue generated for Defendant are available by reference to Defendant’s records.

14 16. Defendant Siemens Industry, Inc. is a Delaware corporation doing business
15 in the state of California. Plaintiffs are informed, believe, and based thereon allege that
16 Defendant at all times hereinafter mentioned, were and are employers as defined in and subject
17 to the Labor Code and IWC Wage Orders, whose employs were and are engaged throughout
18 this county and the State of California.

19 **CLASS ACTION ALLEGATIONS**

20 17. Plaintiffs brings this action under Code of Civil Procedure § 382 on behalf of
21 themselves and all others similarly situated who were affected by Defendant’s Labor Code,
22 Business and Professions Code, and IWC Wage Order violations.

23 18. Plaintiff’s proposed Class consists of and is defined as follows:

24 **Class:**

25 All current and former commissioned employees classified as
26 exempt who worked for Defendant in the State of California from
27 four years plus 179 days before May 26, 2022 to the date of trial.¹

28 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

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19. Plaintiff also seeks to certify the following Subclass of employees:

Waiting Time Subclass:

All members of the Class who separated their employment from Defendants from three years plus 179 days before May 26, 2022 to the date of trial.

20. Members of the Class will be collectively referred to as “Class Members.”

Plaintiffs reserve the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery, and specific theories of liability.

21. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- (a) Whether Defendant paid Plaintiffs and Class Members all minimum wage compensation owed;
- (b) Whether Defendant paid Plaintiffs and Class Members all overtime wage compensation owe;
- (c) Whether Defendant deprived Plaintiffs and Class Members of compliant meal periods or required Plaintiffs and Class Members to work through meal periods without compensation;
- (d) Whether Defendant deprived Plaintiffs and Class Members of compliant rest breaks or required Plaintiffs and Class Members to work through rest breaks without compensation;
- (e) Whether Defendants failed to furnish Plaintiffs and Class Members with accurate, itemized wage statements;
- (f) Whether Defendant failed to reimburse Plaintiffs and Class Members for business expenses;
- (g) Whether Defendant failed to timely pay Plaintiffs and Class Members all wages and commissions due upon separation of employment; and

1 (h) Whether Defendant engaged in unfair business practices in violation of
2 Business & Professions Code §§ 17200, *et seq.*

3 2. There is a well-defined community of interest in this litigation and the Class is
4 readily ascertainable:

5 (a) Numerosity: The members of the Class are so numerous that joinder of all
6 members is impractical. Although the members of the Class are unknown to
7 Plaintiffs at this time, on information and belief, the Class is estimated to be
8 greater than 100 individuals. The identity of the Class Members are readily
9 ascertainable by inspection of Defendant's employment and payroll records.

10 (b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the
11 claims (or defenses, if any) of the Class because Defendant's failure to comply
12 with the provisions of California wage and hour laws entitled each Class
13 Member to similar pay, benefits, and other relief. The injuries sustained by
14 Plaintiffs are also typical of the injuries sustained by the Class because they
15 arise out of and are caused by Defendant's common course of conduct as
16 alleged herein.

17 (c) Adequacy: Plaintiffs are qualified to and will fairly and adequately represent
18 and protect the interests of all members of the Class because it is in their best
19 interest to prosecute the claims alleged herein to obtain full compensation and
20 penalties due to them and the Class. Plaintiffs' attorneys, as proposed class
21 counsel, are competent and experienced in litigating large employment class
22 actions and are versed in the rules governing class action discovery,
23 certification and settlement. Plaintiffs have incurred and, throughout the
24 duration of this action, will continue to incur attorneys' fees and costs that have
25 been and will necessarily be expended for the prosecution of this action for the
26 substantial benefit of each class member.

27 (d) Superiority: The nature of this action makes the use of class action adjudication
28 superior to other methods. A class action will achieve economies of time,

1 effort, and expense as compared with separate lawsuits and will avoid
2 inconsistent outcomes because the same issues can be adjudicated in the same
3 manner and at the same time for each Class. If appropriate this Court can, and
4 is empowered to, fashion methods to efficiently manage this case as a class
5 action.

6 (e) Public Policy Considerations: Employers in the State of California and other
7 states violate employment and labor laws every day. Current employees are
8 often afraid to assert their rights out of fear of direct or indirect retaliation.
9 Former employees are fearful of bringing actions because they believe their
10 former employers might damage their future endeavors through negative
11 references and/or other means. Class actions provide the class members who
12 are not named in the complaint with a type of anonymity that allows for the
13 vindication of their rights at the same time as affording them privacy
14 protections.

15 **FIRST CAUSE OF ACTION**

16 **Failure To Pay Minimum Wages**

17 **(Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC**

18 **Wage Order § 3)**

19 22. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above
20 as though fully set forth herein.

21 23. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
22 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
23 wage than the minimum so fixed is unlawful.

24 24. During the relevant time period, Defendant paid Plaintiffs and Class Members
25 less than minimum wages when, for example, Defendant required Plaintiffs and Class
26 Members to work off-the-clock during meal periods. To the extent these hours do not qualify
27 for the payment of overtime or double-time, Plaintiffs and Class Members were not being
28 paid at least minimum wage for their work.

1 25. During the relevant time period, Defendant regularly failed to pay at least
2 minimum wage to Plaintiffs and Class Members for all hours worked pursuant to Labor Code
3 §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and Class Members are entitled to
4 recover the unpaid balance of their minimum wage compensation as well as interest, costs,
5 and attorneys' fees.

6 26. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to
7 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
8 thereon.

9 **SECOND CAUSE OF ACTION**

10 **Failure to Pay Overtime Wages**

11 **(Violation of Cal. Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order)**

12 27. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above
13 as though fully set forth herein.

14 28. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
15 unlawful to employ persons without compensating them at a rate of pay either one and one-
16 half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
17 or days worked by the person on a daily or weekly basis.

18 29. Specifically, the applicable IWC Wage Orders provide that Defendant is and
19 was required to pay overtime compensation to Plaintiffs and Class Members at the rate of one
20 and one-half times (1½) their regular rate of pay when working and for all hours worked in
21 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
22 eight (8) hours of work on the seventh day of work in a workweek.

23 30. 36. The applicable IWC Wage Orders further provide that Defendant is and
24 was required to pay overtime compensation to Plaintiffs and Class Members at a rate of two
25 (2) times their regular rate of pay when working and for all hours worked in excess of twelve
26 (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

27 31. California Labor Code § 510 codifies the right to overtime compensation at
28 one and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8)

1 hours in a day or forty (40) hours in a week and for the first eight (8) hours worked on the
2 seventh consecutive day of work, and overtime compensation at twice the regular hourly rate
3 for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a
4 day on the seventh day of work in a workweek.

5 32. Labor Code § 510 and the applicable IWC Wage Orders provide that
6 employment of more than six days in a workweek is only permissible if the employer pays
7 proper overtime compensation as set forth herein.

8 33. Plaintiffs and Class Members were non-exempt employees entitled to the
9 protections of Labor Code §§ 510 and 1194.

10 34. During the relevant time period, Defendant failed to pay Plaintiffs and Class
11 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
12 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh
13 consecutive day of work in a workweek, or when Plaintiffs and Class Members worked in
14 excess of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of
15 work in a work week. Plaintiffs and Class Members frequently had to engage in overtime
16 work in order to keep up with the work required by Defendant.

17 35. In violation of state law, Defendant has knowingly and willfully refused to
18 perform its obligations and to compensate Plaintiffs and Class Members for all wages earned
19 as alleged above.

20 36. Defendant's failure to pay Plaintiffs and Class Members the unpaid balance of
21 overtime compensation, as required by California law, violates the provisions of Labor Code
22 §§ 510 and 1198, and is therefore unlawful.

23 37. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to
24 recover their unpaid overtime compensation as well as interest, costs, and attorneys' fees.

25 **THIRD CAUSE OF ACTION**

26 **Failure To Provide Meal Periods**

27 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)**

28 38. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above

1 as though fully set forth herein.

2 39. Labor Code § 226.7 provides that no employer shall require an employee to
3 work during any meal period mandated by the IWC Wage Orders.

4 40. Section 11 of the applicable IWC Wage Order states, “no employer shall
5 employ any person for a work period of more than five (5) hours without a meal period of not
6 less than thirty (30) minutes, except that when a work period of not more than six (6) hours
7 will complete the day’s work the meal period may be waived by mutual consent of the
8 employer and the employee.”

9 41. Labor Code § 512(a) provides that an employer may not require, cause or
10 permit an employee to work for a period of more than five (5) hours per day without providing
11 the employee with an uninterrupted meal period of not less than thirty (30) minutes, except
12 that if the total work period per day of the employee is not more than six (6) hours, the meal
13 period may be waived by mutual consent of both the employer and the employee.

14 42. Labor Code § 512(a) also provides that an employer may not employ an
15 employee for a work period of more than ten (10) hours per day without providing the
16 employee with a second meal period of not less than thirty (30) minutes, except that if the
17 total hours worked is no more than twelve (12) hours, the second meal period may be waived
18 by mutual consent of the employer and the employee only if the first meal period was not
19 waived.

20 43. During the relevant time period, Plaintiffs and Class Members did not receive
21 timely, compliant meal periods for each five (5) hours worked per day. Specifically, Plaintiffs
22 and Class Members were regularly required to consistently work through their meal periods,
23 regularly had their meal periods interrupted, were provided with meal periods that were often
24 less than thirty (30) minutes, and/or were regularly provided with meal periods after the end
25 of the fifth hour of their shifts.

26 44. For example, during her third week of employment with Defendant, beginning
27 on February 16, 2020 and through February 21, 2020, Plaintiff Enomoto was unable to take
28 at least one meal break by the fifth hour of work because of a meeting with clients.

1 45. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order
2 require an employer to pay an employee one additional hour of pay at the employee’s regular
3 rate of compensation for each workday that a meal period is not provided.

4 46. At all relevant times, Defendant failed to pay Plaintiffs and Class Members all
5 meal period premiums due for meal period violations pursuant to Labor Code § 226.7(b) and
6 section 11 of the applicable IWC Wage Order.

7 47. As a result of Defendant’s failure to pay Plaintiffs and Class Members an
8 additional hour of pay for each day a meal period was not provided, Plaintiffs and Class
9 Members suffered and continue to suffer a loss of wages and compensation.

10 **FOURTH CAUSE OF ACTION**

11 **Failure To Provide Rest Periods**

12 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

13 48. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above
14 as though fully set forth herein.

15 49. Labor Code § 226.7(a) provides that no employer shall require an employee
16 to work during any rest period mandated by the IWC Wage Orders.

17 50. Section 12 of the applicable IWC Wage Order states that “every employer shall
18 authorize and permit all employees to take rest periods, which insofar as practicable shall be
19 in the middle of each work period” and the “authorized rest period time shall be based on the
20 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
21 fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

22 51. During the relevant time period, Plaintiff and Class Members did not receive
23 a ten (10) minute rest period for every four (4) hours worked or major fraction thereof. For
24 example, during her third week of employment with Defendant, beginning on February 16,
25 2020 and through February 21, 2020, Plaintiff Enomoto was unable to take any rest periods
26 because of a meeting with clients.

27 52. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
28 requires an employer to pay an employee one additional hour of pay at the employee’s regular

1 rate of compensation for each workday that the rest period is not provided.

2 53. At all relevant times, Defendant failed to pay Plaintiff and Class members all
3 rest period premiums due for rest period violations pursuant to Labor Code § 226.7(b) and
4 section 12 of the applicable IWC Wage Order.

5 54. As a result of Defendant's failure to pay Plaintiff and Class members an
6 additional hour of pay for each day a rest period was not provided, Plaintiff and Class
7 members suffered and continue to suffer a loss of wages and compensation.

8 **FIFTH CAUSE OF ACTION**

9 **Failure To Keep Accurate Payroll Records**

10 **(Violation of California Labor Code §§ 1174 & 1174.5)**

11 55. Plaintiff re-alleges and incorporates by this reference each and every allegation
12 set forth in all previous paragraphs of the Complaint.

13 56. Labor Code § 1174 requires Defendant to maintain payroll records showing
14 the actual hours worked daily by Plaintiff and the Class members.

15 57. Defendant knowingly, intentionally, and willfully has failed to maintain
16 payroll records showing the actual hours worked by Plaintiffs and the Class Members as
17 required by California Labor Code § 1174 and in violation of § 1174.5. As a direct result of
18 Defendant's failure to maintain payroll records, Plaintiffs and the Class Members have
19 suffered actual economic harm as they have been precluded from accurately monitoring the
20 number of hours they have worked as compared with what they were paid. As a direct and
21 proximate result of the unlawful acts and omissions of Defendant, Plaintiffs and the Class
22 Members are entitled to recover damages and penalties in an amount to be determined at trial,
23 plus interest, attorneys' fees, and costs of suit.

24 **SIXTH CAUSE OF ACTION**

25 **Failure To Provide Accurate Itemized Wage Statements**

26 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

27 58. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above
28 as though fully set forth herein.

1 59. Labor Code § 226(a) requires Defendant to provide each employee with an
2 accurate wage statement in writing showing nine pieces of information, including: (1) gross
3 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
4 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
5 deductions, provided that all deductions made on written orders of the employee may be
6 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
7 for which the employee is paid, (7) the name of the employee and the last four digits of his or
8 her social security number or an employee identification number other than a social security
9 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
10 hourly rates in effect during the pay period and the corresponding number of hours worked at
11 each hourly rate by the employee.

12 60. During the relevant time period, Defendant has knowingly and intentionally
13 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
14 and Class Members. The deficiencies include, among other things, the failure to correctly
15 state the gross and net wages earned and the number of hours worked at each hourly rate by
16 Plaintiffs and Class Members.

17 61. As a result of Defendant's violation of California Labor Code § 226(a),
18 Plaintiffs and Class Members have suffered injury and damage to their statutorily protected
19 rights. Specifically, Plaintiffs and Class Members have been injured by Defendant's
20 intentional violation of California Labor Code § 226(a) because they were denied both their
21 legal right to receive, and their protected interest in receiving, accurate itemized wage
22 statements under California Labor Code § 226(a). Plaintiffs have had to file this lawsuit in
23 order to determine the extent of the underpayment of wages, thereby causing Plaintiffs to
24 incur expenses and lost time. Plaintiffs would not have had to engage in these efforts and incur
25 these costs had Defendant provided the accurate wages earned. This has also delayed
26 Plaintiffs' ability to demand and recover the underpayment of wages from Defendant.

27 62. California Labor Code § 226(a) requires an employer to pay the greater of all
28 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,

1 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,
2 plus attorneys' fees and costs, to each employee who was injured by the employer's failure to
3 comply with California Labor Code § 226(a).

4 63. Defendant's violations of California Labor Code § 226(a) prevented Plaintiffs
5 and Class Members from knowing, understanding, and disputing the wages paid to them, and
6 resulted in an unjustified economic enrichment to Defendant. As a result of Defendant's
7 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiffs and
8 Class Members have suffered an injury, and the exact amount of damages and/or penalties is
9 all in an amount to be shown according to proof at trial.

10 **SEVENTH CAUSE OF ACTION**

11 **Failure To Reimburse Business Expenses**

12 **(Violation of Labor Code §§ 2800, 2802, and the Applicable**

13 **IWC Wage Order § 9)**

14 64. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above
15 as though fully set forth herein.

16 65. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
17 indemnify his employee for losses caused by the employer's want of ordinary care."

18 66. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify
19 his or her employee for all necessary expenditures or losses incurred by the employee in direct
20 consequence of the discharge of his or her duties"

21 67. Further, Labor Code § 2802 additionally provides that "the term 'necessary
22 expenditures or losses' shall include all reasonable costs, including but not limited to,
23 attorney's fees incurred by the employee enforcing the rights granted by this section."

24 68. IWC Wage Order § 9 provides: "When tools or equipment are required by the
25 employer or are necessary to the performance of a job, such tools and equipment shall be
26 provided and maintained by the employer"

27 69. California Labor Code § 2804 mandates that this statutory right cannot be
28 waived.

1 70. During the relevant time period, Defendant was required to indemnify and
2 reimburse Plaintiffs and Class Members for all expenditures or losses caused by the
3 Defendant's want of ordinary care and/or incurred in direct consequence of the discharge of
4 their duties, but failed to indemnify and reimburse Plaintiffs and Class Members, including,
5 but not limited to automobile expenditures, home internet expenses, and cell phone costs.

6 71. As a direct and proximate result, Plaintiffs and Class Members have suffered,
7 and continue to suffer, substantial losses, related to the use and enjoyment of such monies to
8 be reimbursed, lost interest on such monies, and expenses and attorneys' fees in seeking to
9 compel Defendant to fully perform their obligations under California law, all to their damage
10 in amounts according to proof at the time of trial.

11 72. Accordingly, Plaintiffs and Class Members are entitled to recover, and hereby
12 seek, an amount equal to incurred necessary expenditures, pre- and post-judgment interest,
13 applicable penalties, attorneys' fees and costs, and any further equitable relief this Court may
14 deem just and proper. *See* Cal. Lab. Code § 2802, see also, Cal. Civ. Proc. Code § 1021.5.

15 73. Plaintiff, on behalf of herself and members of the Class, requests relief as
16 described below.

17 **EIGHTH CAUSE OF ACTION**

18 **Failure to Pay All Waiting Time Penalties**

19 **(Violation of Labor Code §§ 201-203)**

20 74. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above
21 as though fully set forth herein.

22 75. California Labor Code §§ 201 and 202 provide that if an employer discharges
23 an employee, the wages earned and unpaid at the time of discharge are due and payable
24 immediately, and that if an employee voluntarily leaves her employment, her wages shall
25 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
26 has given seventy-two (72) hours previous notice of her intention to quit, in which case the
27 employee is entitled to her wages at the time of quitting.

28 76. During the relevant time period, Defendant willfully failed to pay Plaintiffs

1 and Waiting Time Subclass Members all their earned wages upon termination including, but
2 not limited to, proper minimum wages and overtime compensation, either at the time of
3 discharge or within seventy-two (72) hours of their leaving Defendant's employ.

4 77. Defendant's failure to pay Plaintiffs and Waiting Time Subclass Members all
5 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
6 Defendant's employ is in violation of Labor Code §§ 201 and 202.

7 78. California Labor Code § 203 provides that if an employer willfully fails to pay
8 wages owed immediately upon discharge or resignation in accordance with Labor Code §§
9 201 and 202, then the wages of the employee shall continue as a penalty from the due date at
10 the same rate until paid or until an action is commenced; but the wages shall not continue for
11 more than thirty (30) days.

12 79. Plaintiffs and Waiting Time Subclass Members are entitled to recover from
13 Defendant the statutory penalty, which is defined as Plaintiffs' and Waiting Time Subclass
14 Members' regular daily wages for each day they were not paid, at their regular hourly rate of
15 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

16 **NINTH CAUSE OF ACTION**

17 **Failure to Provide Written Contracts to Employees**

18 **(Violation of California Business and Professions Code § 2751)**

19 80. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above
20 as though fully set forth herein.

21 81. California Labor Code § 2751 provides in pertinent part that "[w]henver an
22 employer enters into a contract of employment with an employee for services to be rendered
23 within this state and the contemplated method of payment of the employee involves
24 commissions, the contract shall be in writing and shall set forth the method by which the
25 commissions shall be computed and paid. The employer shall also provide a signed copy of
26 the contract to every employee who is a party thereto and shall obtain a signed receipt for the
27 contract from each employee. In the case of a contract that expires and where the parties
28 nevertheless continue to work under the terms of the expired contract, the contract terms are

1 presumed to remain in full force and effect until the contract is superseded or employment is
2 terminated by either party.”

3 82. During the relevant time period, Defendant willfully failed to provide Plaintiffs
4 and the Class Members written commission plans. For example, Plaintiffs requested their
5 employment records from Defendant through counsel; however, Defendant to date has still
6 failed to produce their written commissions plans – presumably because they were never
7 provided to Plaintiffs and Class Members in the first place.

8 83. Defendant’s violations of California Labor Code § 2751 prevented Plaintiffs
9 and Class Members from knowing, understanding, and disputing the commissions owed or
10 paid to them, and resulted in an unjustified economic enrichment to Defendant. As a result
11 of Defendant’s knowing and intentional failure to comply with California Labor Code § 2751,
12 Plaintiffs and Class Members have suffered injury, the exact amount of damages and/or
13 penalties for which is in an amount to be shown according to proof at trial.

14 **TENTH CAUSE OF ACTION**

15 **Unlawful Deduction of Wages**

16 **(Violation of Labor Code § 221)**

17 84. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above
18 as though fully set forth herein.

19 85. Labor Code § 221 provides, in pertinent part, “[i]t shall be unlawful for any
20 employer to collect or receive from an employee any part of wages theretofore paid by said
21 employer to said employee.”

22 86. During the relevant time period, Defendant made unlawful deductions from
23 Plaintiffs’ and Class Members’ wages by retroactively changing the commission plans after
24 commissions were earned.

25 87. Defendant’s violation of Labor Code § 221 caused Plaintiffs and Class
26 Members to suffer substantial monetary losses, expenses, and attorneys’ fees in seeking to
27 compel Defendant to fully perform its obligations under California law. As a result Plaintiffs
28 and Class Members suffered and continue to suffer a loss of wages and compensation.

1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of Business and Professions Code §§ 17200, *et seq.***

3 88. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above
4 as though fully set forth herein.

5 89. Defendant's conduct, as alleged herein, has been and continues to be unfair,
6 unlawful, and harmful to Plaintiffs and Class Members. Plaintiffs seek to enforce important
7 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

8 90. Defendant's activities, as alleged herein, violate California law and constitute
9 unlawful business acts or practices in violation of California Business and Professions Code
10 §§ 17200, *et seq.*

11 91. Violation of Business and Professions Code §§ 17200, *et seq.*, may be
12 predicated on the violation of any state or federal law.

13 92. Defendant's policies and practices have violated state law in at least the
14 following respects:

15 (a) Failing to pay all minimum and overtime wages owed to Plaintiffs and Class
16 Members in violation of Labor Code §§ 510, 1194, 1194.2, 1197, and 1198;

17 (b) Failing to provide timely meal periods without paying Plaintiffs and Class
18 Members premium wages for every day said meal periods were not provided
19 in violation of Labor Code §§ 226.7 and 512;

20 (c) Failing to authorize or permit rest breaks without paying Plaintiff and Class
21 Members premium wages for every day said rest breaks were not authorized
22 or permitted in violation of Labor Code § 226.7;

23 (d) Failing to provide Plaintiff and Class Members with accurate itemized wage
24 statements in violation of Labor Code § 226;

25 (e) Failing to timely pay Plaintiff and Class Members all wages and commissions
26 due upon separation of employment in violation of Labor Code §§ 201-203,
27 204; and

28 (f) Failing to indemnify all necessary business expenses in violation of Labor

1 Code §§2800, 2802.

2 93. Defendant intentionally avoided paying Plaintiffs' and Class Members' wages
3 and monies, thereby creating for Defendant an artificially lower cost of doing business in
4 order to undercut their competitors and establish and gain a greater foothold in the
5 marketplace.

6 94. Pursuant to Business and Professions Code §§ 17200, *et seq.*, Plaintiffs and
7 Class Members are entitled to restitution of the wages unlawfully withheld and retained by
8 Defendant during a period that commences four (4) years prior to the filing of the Complaint,
9 an award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
10 laws, and an award of costs.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,
13 prays for judgment against Defendant as follows:

14 1. For certification of this action as a class action, including certifying the Class
15 and Subclass alleged by Plaintiff;

16 2. For appointment of Chanielle Enomoto and Brandon Johnson as the Class
17 Representatives;

18 3. For appointment of Lebe Law, APLC as Class Counsel for all purposes;

19 4. For compensatory damages in an amount according to proof with interest
20 thereon;

21 5. For economic and/or special damages in an amount according to proof with
22 interest thereon;

23 6. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
24 by law, including pursuant to the Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e)
25 and 1194;

26 7. For statutory penalties to the extent permitted by law, including those pursuant
27 to the Labor Code and IWC Wage Orders;

28 8. For restitution as provided by Business and Professions Code §§ 17200, *et*

1 *seq.*;

2 9. For an order requiring Defendant to restore and disgorge all funds to each
3 employee acquired by means of any act or practice declared by this Court to be unlawful,
4 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
5 Professions Code §§ 17200, *et seq.*;

6 10. For an award of damages in the amount of unpaid compensation including, but
7 not limited to, unpaid wages, benefits and penalties, including interest thereon;


8 11. For pre-judgment interest; and

9 12. For such other relief as the Court deems just and proper.

10 Dated: June 22, 2023

LEBE LAW, APLC

11
12 By: _____


Jonathan M. Lebe
Shigufa K. Saleheen
Brielle D. Edborg
Ryan C. Ely

13
14
15 Attorneys for Plaintiffs Chanielle
16 Enomoto and Brandon Johnson,
17 individually and on behalf of all others
18 similarly situated


19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand a jury trial with respect to all issues triable of right by jury.

21 Dated: June 22, 2023

LEBE LAW, APLC

22
23 By: _____


Jonathan M. Lebe
Shigufa K. Saleheen
Brielle D. Edborg
Ryan C. Ely

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26 Attorneys for Plaintiffs Chanielle
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