

1 Matthew A. Haulk (SBN 272457)
2 Email: mhaulk@hemploymentlaw.com
3 Jose M. Herrera (SBN 289590)
4 Email: jherrera@hemploymentlaw.com
5 HAULK & HERRERA LLP
6 100 Pine Street, Suite 1250
7 San Francisco, CA 94111
8 Telephone: (415) 745-3219
9 Facsimile: (415) 745-3301

10 Attorneys for Plaintiff and all other similarly situated
11 JAVIER JIRON

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

08/24/2023
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

14 JAVIER JIRON, an individual, on behalf of
15 himself and all others similarly situated,

16 Plaintiff,

17 vs.

18 WIPRO LIMITED, an India corporation;
19 and DOES 1 TO 50,

20 Defendants.

CASE NO.

CGC-23-608621

CLASS ACTION COMPLAINT FOR:

1. UNPAID WAGES AND OVERTIME
2. FAILURE TO PROVIDE MEAL PERIODS
3. FAILURE TO PROVIDE REST PERIODS
4. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
5. FAILURE TO REIMBURSE EMPLOYEE FOR NECESSARY EXPENDITURES OR LOSSES
6. UNFAIR/UNLAWFUL BUSINESS PRACTICES

DEMAND FOR TRIAL BY JURY

[UNLIMITED CIVIL JURISDICTION]

1 **I. INTRODUCTION**

2 1. Plaintiff Javier Jiron (“Plaintiff”) brings this action on behalf of himself for
3 violations of California statutory laws committed by Defendant Wipro Limited (the
4 “Company” or “Wipro”) and Does 1-50 (collectively, “Defendants”), including failure to pay
5 regular and overtime wages, failure to provide timely meal periods, failure to provide rest
6 periods, failure to pay premium wages for missed/delayed meal and rest periods, failure
7 to furnish wage statement, and failure to reimburse business expenses. Plaintiff also
8 brings this action as a class action for the Company’s failure to reimburse business
9 expenses to its California employees.

10 **II. JURISDICTION AND VENUE**

11 2. Plaintiff hereby brings this Complaint for recovery of unpaid wages and
12 penalties under California Business and Professions Code § 17200, *et seq.*, applicable
13 provisions of the California Labor Code, including, 204, 206, 221, 223, 224, 226, 226.3,
14 226.7, 510, 512, 1194 *et seq.*, 2810.5 ,1198, 2802, and the applicable Industrial Welfare
15 Commission Wage Order (the “IWC Wage Order”), in addition to declaratory relief and
16 restitution.

17 3. This court has jurisdiction over Defendants’ violations of the California Labor
18 Code because the amount in controversy exceeds this court’s jurisdictional minimum.
19 Venue in this court is proper because Defendants actively and regularly conducted
20 business in San Francisco County, and a significant portion of the events giving rise to
21 this action occurred here.

22 4. Plaintiff asserts no claims arising under federal law. Rather, Plaintiff brings
23 causes of action based solely on, and arising from, California law. The claims of the class
24 are also individual claims for violations of California law described herein. These claims
25 arise from Defendants’ common and systemic failure to reimburse employees for business
26 expenses, and their unfair business practices based on the foregoing.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. PARTIES

5. Plaintiff Javier Jiron is an individual over the age of eighteen. From Plaintiff's date of hire in or around July 1, 2021 through May 2023, Plaintiff resided and carried out services for Defendants in San Francisco County, California. Plaintiff now resides in New York.

6. Defendant Wipro is an information technology company, incorporated in India and has its US headquarters in New Jersey. The company employed and employs individuals in California, including Plaintiff, and regularly conducts business in California, including San Francisco County. Defendant Wipro was at all times an "employer" as defined by the California Labor Code and applicable IWC Wage Order(s).

7. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as Doe Defendants 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Class to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein. The Company and Doe Defendants 1 to 50 are referred to herein as "Defendants".

8. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein

9. At all times mentioned herein, Defendants, and each of them, were members

1 of and engaged in a joint venture, partnership, and common enterprise, and acting within
2 the course and scope of and in pursuance of said joint venture, partnership, and common
3 enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all
4 purposes of Plaintiff and all members of the Class.

5 **IV. PAGA ALLEGATIONS**

6 10. On or around the date of filing of this Complaint, Plaintiff filed a claim with
7 the California Labor and Workforce Development Agency (hereafter, "LWDA") and
8 provided a copy by certified mail to Defendant. The LWDA has 60 calendar days to
9 respond and, if it does not do so, Plaintiff will have exhausted Plaintiff's administrative
10 remedies and, pursuant to Labor Code section 2699.2, will be permitted to pursue
11 Plaintiff's PAGA claims in this court. The period for the LWDA to respond to the has not
12 expired. If the LWDA does not respond within the applicable statutory period, Plaintiff will
13 amend this Complaint to add a cause of action under PAGA.

14 **V. CLASS ACTION ALLEGATIONS**

15 11. Plaintiff brings this case as a class action pursuant to California Code of Civil
16 Procedure § 382 on behalf of a class (hereafter the "Class") consisting of the following:

- 17 a. The Class: All persons who performed services in the State of
18 California during the Class Period for the Company and incurred
19 necessary and reasonable business expenses including but not
20 limited to home internet expenses and mobile telephone expenses
21 ("Class Members"). The Class Period is the time period starting four
22 years before the filing of the initial Complaint in this action plus any
23 additional time during which the statutes of limitation for the causes
24 of action herein were tolled pursuant to Emergency Rule 9 of the
25 California Rules of Court, the "Emergency Rules Related to COVID-
26 19".

27 12. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of
28 Court to amend or modify the class description with greater specificity, by division into

1 subclasses, or by limitation to particular issue.

2 13. This action has been brought and may properly be maintained as a class
3 action under the provisions of § 382 of the Code of Civil Procedure because there is a
4 well-defined community of interest in the litigation and the Class are easily ascertainable.

5 14. Numerosity. The members of the Class are so numerous that joinder of all
6 members would be unfeasible and not practicable. The membership of the Class are
7 unknown to Plaintiff at this time; however, it is estimated that the Class number greater
8 than one hundred (100) individuals. The identity of such membership is readily
9 ascertainable via inspection of the Company's personnel records.

10 15. Typicality. Plaintiff's claims are typical of the claims of the members of the
11 Class. Defendants subjected all Class Members to identical violations of the California
12 Labor Code, the Wage Orders of the California Industrial Welfare Commission, and the
13 California Business and Professions Code. The factual grounds of Defendants' violations
14 are common to all Class Members and represent a common thread of unlawful conduct
15 resulting in injury to all members of the Class.

16 16. Commonality. Common questions of law and fact exist with respect to all
17 members of the Class and predominate over any questions solely affecting individual
18 members. Issues of law and fact common to the Class include:

- 19 a. Whether Defendants failed to reimburse Plaintiff and Class Members
20 for all necessary expenditures or losses incurred by them in direct
21 consequence to the discharge of their duties in violation of Labor
22 Code section 2802, or of their obedience of the direction of the
23 Defendants; and
- 24 b. Whether the violations alleged in (a) above constitutes unfair
25 business practices in violation of California's Unfair Competition Law,
26 Section 17200 et seq. of the Business and Professions Code.

27 17. Adequacy. Plaintiff will fairly and adequately represent the interests of the
28 Classes and has no interests adverse to or in conflict with other Class Members. Plaintiff

1 is represented by attorneys who have class action experience in wage and hour and class
2 action law and are committed to vigorously prosecuting this action on behalf of the
3 members of the Class.

4 18. Superiority. A class action is superior to the other available methods for the
5 fair and efficient adjudication of this controversy since, among other things, joinder of all
6 Class Members is impracticable, and a class action will reduce the risk of inconsistent
7 adjudications or repeated litigation over the same conduct. Further, the expense and
8 burden of individual lawsuits would make it virtually impossible for Class Members,
9 Defendants, or the court to cost-effectively redress separately the unlawful conduct
10 alleged. Plaintiff knows of no difficulties to be encountered in the management of this
11 action that would preclude its maintenance as a class action.

12 VI. GENERAL FACTUAL ALLEGATIONS

13 19. Mr. Jiron was hired as a sales associate for Wipro in or around July 1, 2021.
14 Mr. Jiron was originally based out of San Francisco, California and relocated to New York
15 in or around May 2023. Through the entirety of Mr. Jiron's employment in California, Mr.
16 Jiron was misclassified as an exempt employee.

17 20. Mr. Jiron does not fall within any exemption from the obligation to pay
18 overtime compensation, including the outside sales exemption, inside sales exemption,
19 executive exemption and administrative exemption. It is worth noting that during the
20 course of 2021, Mr. Jiron did not engage in any form of travel for work-related purposes.
21 Similarly, his work-related travel was notably limited in both 2022, amounting to less than
22 two weeks, and in 2023, with an approximate total of 30 days. This distribution of work
23 days underscores that Mr. Jiron's presence outside of the traditional office space was
24 nominal at best. Importantly, throughout his employment, Mr. Jiron never surpassed the
25 threshold of spending over 50% of his work time in a non-office setting. Moreover, Mr.
26 Jiron never received more than one-half of his compensation from commissions.

27 21. In addition, Mr. Jiron did not manage or supervise the day-to-day operations
28 of Wipro or any of its employees. The majority of Mr. Jiron's time was spent in the office

1 performing non-exempt tasks, including "hunting" for potential clients, preparing sales-
2 focused presentations to pitch to prospective clients and attending sales training meetings.

3 22. Throughout the entirety of his employment in California, Mr. Jiron functioned
4 as a remote employee, adhering to a consistent schedule from Monday to Friday,
5 spanning 7:00 a.m. to 7:00 p.m. Mr. Jiron was never compensated for overtime hours
6 worked. Defendant also failed to reimburse Mr. Jiron and other similarly situated
7 employees for internet charges incurred for business related purposes. In addition, Mr.
8 Jiron and similarly situated employees utilized their personal cell phones for business
9 purposes but were not reimbursed for such usage

10 23. Plaintiff and the Class Members, were employed in California by the
11 Defendants at various times during the Class Period.

12 **A. Failure to Reimburse Necessary Business Expenses**

13 24. During the Class Period, Plaintiff, like other Class Members, was not
14 reimbursed for necessary and reasonable business expenses including but not limited to
15 home internet expenses and mobile telephone expenses

16 **FIRST CAUSE OF ACTION**
17 **UNPAID HOURLY WAGES**
18 **(Plaintiff on Behalf of Himself against All Defendants)**

19 25. Plaintiff, on behalf of himself, incorporates by reference all other paragraphs
20 of this Complaint as if they were re-alleged and set forth herein.

21 26. Under Labor Code §§ 204, 215, 216, 218.5, 510, 1194, 1194.2, 1197, 1199,
22 and the applicable IWC Wage Order, it is unlawful for an employer to suffer or permit an
23 employee to work without paying wages for all hours worked. "Hours worked" is defined
24 to include the time an employee is suffered or permitted to work, whether or not required
25 to do so. At all relevant times, Defendants have failed to pay Plaintiff for all hours worked
26 and/or have regularly and consistently maintained policies and practices of refusing to pay
27 Plaintiff for all hours worked.

28 27. Plaintiff should have received regular wages according to the hours worked
during employment. Defendants owe Plaintiff regular wages and have failed and refused,

1 and continue to fail and refuse, to pay Plaintiff the amounts owed as regular wages.

2 28. Plaintiff was entitled to overtime compensation for all overtime hours worked
3 during his employment. Defendants failed and continue to fail to pay Plaintiff for all hours
4 worked, including overtime hours, and Plaintiff is therefore entitled to the amounts owed
5 as overtime wages.

6 29. As a direct and proximate result of Defendants' conduct, as set forth herein,
7 Plaintiff has sustained damages and been deprived of wages and overtime compensation
8 that are owed in amounts to be proven at trial. Plaintiff is entitled to recovery of such
9 amounts, plus interest, liquidated damages under Labor Code section 1194.2(a), and
10 attorneys' fees and costs.

11 **SECOND CAUSE OF ACTION**
12 **MEAL PERIOD VIOLATIONS**
13 **(Plaintiff on Behalf of Himself against All Defendants)**

14 30. Plaintiff, on behalf of himself, incorporates by reference all other paragraphs
15 of this Complaint as if they were re-alleged and set forth herein.

16 31. California Labor Code §512 provides, in pertinent part, as follows: "An
17 employer may not employ an employee for a work period of more than five hours per day
18 without providing the employee with a meal period of not less than 30 minutes, except that
19 if the total work period per day of the employee is no more than six hours, the meal period
20 may be waived by mutual consent of both the employer and employee."

21 32. California Labor Code §512 further provides: "An employer may not employ
22 an employee for a work period of more than 10 hours per day without providing the
23 employee with a second meal period of not less than 30 minutes, except that if the total
24 hours worked is no more than 12 hours, the second meal period may be waived by mutual
25 consent of the employer and the employee only if the first meal period was not."

26 33. Cal. Labor Code §226.7(a) provides: "No employer shall require an
27 employee to work during any meal . . . period mandated by an applicable order of the
28 Industrial Welfare Commission."

34. The Wage Orders provide, in pertinent part, as follows: "Unless the

1 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
2 considered an 'on duty' meal period and counted as time worked."

3 35. Pursuant to Defendants' policies, Defendants routinely fail and failed to
4 permit, authorize and/or provide Plaintiff with meal periods in violation of all applicable
5 Wage Orders, California Regulations and California Labor Code sections.

6 36. By failing to provide Plaintiff with these meal periods, Defendants violated
7 California Labor Code sections 512 and 226.7, as well as applicable provisions of the IWC
8 Wage Orders. As a result of the unlawful acts of Defendants set forth herein, Plaintiff has
9 been unfairly and illegally deprived meal periods and is entitled to one additional hour of
10 premium pay for each missed meal period.

11 **THIRD CAUSE OF ACTION**
12 **REST PERIOD VIOLATIONS**
(Plaintiff on Behalf of Himself against All Defendants)

13 37. Plaintiff, on behalf of himself, incorporates by reference all other paragraphs
14 of this Complaint as if they were re-alleged and set forth herein.

15 38. The Wage Orders authorize employees to take paid rest periods based on
16 the total hours worked daily at the rate of ten minutes rest per four hours or major fraction
17 thereof.

18 39. Cal. Labor Code §226.7(a) provides: "No employer shall require an
19 employee to work during any ... rest period mandated by an applicable order of the
20 Industrial Welfare Commission."

21 40. Defendants had and still have a uniform policy and practice of not providing
22 employees with lawful rest breaks. Plaintiff did not receive timely and full rest breaks.

23 41. By requiring Plaintiff to miss these rest periods, Defendants violated the
24 Wage Orders and California Labor Code section 226.7. As a result of the unlawful acts of
25 Defendants set forth herein, Plaintiff has been unfairly and illegally deprived of rest
26 periods, and are entitled to one additional hour of premium pay for each missed rest
27 period.

28

1 **FOURTH CAUSE OF ACTION**
2 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
3 **(Plaintiff on Behalf of Himself against All Defendants)**

4 42. Plaintiff, on behalf of himself, incorporates by reference all other paragraphs
5 of this Complaint as if they were re-alleged and set forth herein.

6 43. Defendants knowingly and intentionally failed to provide timely, accurate,
7 itemized wage statements in accordance with Cal. Lab. Code §226(a) and the applicable
8 IWC Wage Order to Plaintiff. Such failure caused injury to Plaintiff by, among other things,
9 impeding Plaintiff from knowing the amount of wages to which Plaintiff is and was legally
10 entitled. At all times relevant herein, Defendants have failed to maintain records of hours
11 worked by Plaintiff as required under Labor Code §1174(d).

12 44. Prior to the completion of discovery, and to the best of Plaintiff's knowledge
13 at the time of filing this Complaint, Plaintiff's good faith estimate of the number of pay
14 periods in which Defendants have failed to provide accurate itemized wage statements to
15 Plaintiff is each and every pay period. Plaintiff is entitled to damages in the amount
16 provided under Cal. Lab. Code §226(e), including the greater of all actual damages or fifty
17 dollars (\$50) for the initial pay period in which a violation occurred and one hundred dollars
18 (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty
19 of four thousand dollars (\$4,000) and is entitled to an award of costs and reasonable
20 attorney's fees.

21 **FIFTH CAUSE OF ACTION**
22 **FAILURE TO REIMBURSE EMPLOYEE FOR**
23 **NECESSARY EXPENDITURES OR LOSSES**
24 **(Plaintiff on Behalf of Himself and the Proposed Class against All Defendants)**

25 45. Plaintiff, on behalf of himself and the Class, incorporates by reference all
26 other paragraphs of this Complaint as if they were re-alleged and set forth herein.

27 46. Plaintiff and the Proposed Class incurred expenditures and/or losses as a
28 direct consequence of discharging Plaintiff and the Proposed Class Members' job duties
and/or obeying the directions of Defendants. The expenditures and losses that Plaintiff
and the Proposed Class Members incurred were necessary and reasonable.

1 Class's claims against Defendants.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays for judgment against Defendants:

4 1. For compensatory damages in the amount of Plaintiff's unpaid regular and
5 overtime wages, plus liquidated damages, as well as an award of costs, interest, and
6 reasonable attorney's fees.

7 2. For compensatory damages in the amount of Plaintiff's hourly wage at the
8 appropriate regular rate of compensation for each rest period that Defendants failed to
9 provide, in accordance with proof at the time of trial;

10 3. For compensatory damages in the amount of Plaintiff's hourly wage at the
11 appropriate regular rate of compensation for each meal period that Defendants failed to
12 provide, in accordance with proof at the time of trial;

13 4. For penalties pursuant to Labor Code §226(6) for violation of Labor Code §
14 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation
15 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
16 exceeding an aggregate penalty of four thousand dollars (\$4,000);

17 5. For reimbursement of business expenses expended by Plaintiff and the
18 Class Members;

19 6. For restitution for unfair competition pursuant to Business and Professions
20 Code section 17200, *et seq.*, including disgorgement of profits, in an amount as may be
21 determined;

22 7. For all statutory penalties and liquidated damages as authorized by law;

23 8. Pre-judgment interest on any damages or other amounts deemed payable;

24 9. For attorney's fees and costs of suit; and

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. For other or further relief as the Court deems just and proper.

Dated: August 24, 2023

HAULK & HERRERA LLP

By: 

MATTHEW A. HAULK, ESQ.
JOSE M. HERRERA, ESQ.
Attorneys for Plaintiff and all others
similarly situated
JAVIER JIRON