

CHARLES H. JUNG (217909)
ANDREW R. KISLIK (118772)
NASSIRI & JUNG LLP
707 Wilshire Boulevard, 46th Floor
Los Angeles, CA 90017
Telephone: (213) 626-6200
Facsimile: (213) 284-3900

Attorneys for Plaintiffs
DON LUCAS, MARLON OLIVA
and LANA LOVE NGUYEN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DON LUCAS, MARLON OLIVA, and
LANA LOVE NGUYEN, individually, and
on behalf of all others similarly situated,

Plaintiffs,

v.

GIVEMART US, INC., a Georgia
Corporation; BENJAMIN O'SHEA, an
individual; 501 AUCTIONS LLC, an LLC;
and DOES 4 through 100, inclusive,

Defendants.

Case No. 20STCV01437

CLASS ACTION

**SIXTH AMENDED COMPLAINT FOR
DAMAGES, PENALTIES AND
INJUNCTIVE RELIEF**

1. Failure To Pay All Wages Due
2. Failure To Pay Overtime
3. Failure To Provide Meal Periods
4. Failure To Provide Rest Periods
5. Failure To Timely Pay All Wages Earned
6. Failure To Furnish Accurate Itemized Wage Statements
7. Failure To Keep Required Payroll Records
8. Failure To Pay All Wages Upon Termination
9. Violation of Labor Code § 2802
10. Violation Of Cal. Business & Professions Code § 17200 et seq.
11. Violation of Cal. Labor Code § 2698 et seq.

JURY TRIAL DEMANDED

Plaintiffs DON LUCAS, MARLON OLIVA and LANA LOVE NGUYEN (“Plaintiffs”)
complain and allege as follows:

INTRODUCTION

1. On behalf of themselves and other current and former aggrieved employees, Plaintiffs Don Lucas, Marlon Oliva and Lana Love Nguyen bring these claims for unfair competition and violations by GiveSmart US, Inc. (“GiveSmart”) and 501 Auctions LLC (collectively, the “GiveSmart Defendants”) of the provisions of the California Labor Code (and, if applicable to overtime and/or minimum wages, the laws of other states) relating to minimum wages, payment of wages due, final pay, time records, meal breaks, rest breaks, itemized wage statements, reimbursement of business expenses, and failure to pay applicable overtime premiums. In addition, Plaintiffs bring claims against Defendant Benjamin O’Shea (“O’Shea”) for causing one or more Defendant to fail to provide Plaintiffs and other Class members with required meal breaks.

2. From at least 2015, Defendants had a policy of: (1) failing to pay employees a permissible minimum hourly wage rate for all time worked, and in fact, paying employees based on an unlawful piece-rate basis (or otherwise unlawful basis) that includes no reimbursement for some of the time of employees' work; (2) failing to pay employees at the proper overtime rate (or in some cases, at all) for overtime worked; (3) requiring employees not to accurately record all of their time worked; (4) failing to provide employees with Code-compliant meal breaks, or to pay employees one hour of regular pay for failing to provide Code-compliant meal breaks; (5) failing to provide employees with Code-compliant rest breaks, or to pay employees one hour of regular pay for failing to provide Code-compliant rest breaks; (6) willfully failing to provide employees with accurate and complete itemized pay statements; (7) willfully failing to pay former employees with all of their wages within 72 hours after the end of such individuals' employment; (8) failing to maintain accurate time records for hours that its employees worked; and (9) failing to reimburse employees for all reasonable business expenses they incurred.

1 **JURISDICTION AND VENUE**

2 3. The Court has jurisdiction over Plaintiffs' claims because Defendants maintain
3 their offices and transact business within the County of Los Angeles. Further, a substantial part of
4 the events giving rise to the injuries sustained by the Plaintiffs occurred in the County of Los
5 Angeles.

6 4. The amount in controversy is in excess of \$25,000, exclusive of interest and costs.

7 **PARTIES**

8 5. Plaintiffs are residents of the County of Los Angeles, State of California. During
9 the period at issue in this lawsuit, Plaintiffs resided in Los Angeles County, in the State of
10 California. Plaintiffs worked for Defendants in Los Angeles County, California throughout their
11 employment.

12 6. GiveSmart is a corporation doing business in the County of Los Angeles, in the
13 State of California.

14 7. O'Shea is an individual who resides, and works and has worked for GiveSmart
15 within the last four years in the County of Los Angeles, California.

16 8. 501 Auctions LLC is an LLC that, during times relevant to this action, did business
17 in California before being acquired and, on information and belief, merged, combined, or
18 otherwise affiliated with GiveSmart.

19 9. Plaintiffs are informed and believe, and thereon allege, that each of the Defendants
20 was, at all times herein mentioned, the agent, employee, partner and/or representative of one of
21 more of the remaining Defendants and was acting within the course and scope of such
22 relationship. Plaintiffs are informed and believe that each of the Defendants herein gave consent
23 to, ratified and authorized the acts alleged herein of each of the remaining Defendants.

24 10. The true names and capacities of Defendants named herein as Does 4 through 100,
25 inclusive, whether individual, corporate, associate or otherwise are unknown to Plaintiff, as are
26 their participation in the violations set forth herein, who therefore sues said Defendants by
27 fictitious names pursuant to California Code of Civil Procedure Section 474. Plaintiffs will amend
28

1 this Complaint to show such true names and capacities of Does 4 through 100, inclusive, when
2 they have been determined.

3 **FACTUAL BACKGROUND**

4 11. Plaintiffs Don Lucas, Marlon Oliva and Lana Love Nguyen were hired in the
5 position of customer service representative (“CSR”) or the equivalent, and then promoted the
6 position of Event Specialist (“ES”), and were subjected to each of the illegal policies described
7 herein.

8 12. Plaintiff Don Lucas had three ES positions with GiveSmart: Assistant Event
9 Specialist, Event Specialist, and Senior Event Specialist.

10 13. Plaintiff Marlon Oliva worked for 501 Auctions LLC in a position equivalent to a
11 customer representative at GiveSmart. He worked first directly for 501 Auctions LLC. He
12 subsequently was employed as an ES by GiveSmart.

13 14. While working for 501 Auctions LLC, Marlon Oliva was misclassified as an
14 independent contractor although he actually was an employee. 501 Auctions LLC told Marlon
15 Oliva when and where he was to do his work and how he was to do his work, and a 501 Auctions
16 LLC employee closely supervised him while he worked, telling him what he should do when. 501
17 Auctions LLC provided Marlon Oliva with the materials he needed to perform his job. In
18 addition, Marlon Oliva performed work that was within the usual course of 501 Auctions LLC’s
19 business. Furthermore, Mr. Oliva did not independently decide to go into business for himself and
20 generally take steps to establish his business and promote his business to the public or other
21 customers. He was paid by the hour, and what he did was part of 501 Auction LLC’s regular
22 business.

23 15. Plaintiffs and other employees often worked more than 8 hours in a day and
24 sometimes worked more than 40 hours a week.

25 16. Plaintiffs and other employees of GiveSmart and 501 Auctions LLC were paid a
26 flat rate for all the hours worked in a day, and hence were not paid overtime at the proper rate or
27 paid the minimum wage (or anything) for all hours worked, including for preparation time, client
28

1 calls, travel, and training.

2 17. Plaintiffs, and other employees of GiveSmart and 501 Auctions LLC who
3 functioned as customer representatives or event specialists were not provided with accurate
4 itemized paystubs showing the number of hours they worked and the proper rates for regular pay
5 and overtime pay.

6 18. Plaintiffs and other employees of GiveSmart, and 501 Auctions LLC did not
7 receive all of the wages due to them within 72 hours after terminating employment, or at any time
8 thereafter.

9 19. GiveSmart and 501 Auctions LLC failed to keep accurate time records for the
10 hours worked by Plaintiffs and many other employees who were event specialists or were, or
11 functioned as, customer service representatives).

12 20. GiveSmart and 501 Auctions LLC failed to reimburse Plaintiffs and other
13 employees who were event specialists or were, or functioned as, customer service representatives
14 for all reasonably necessary business expenses, including travel expenses, cellphone expenses, and
15 the cost of laundering their uniforms.

16 **CLASS ALLEGATIONS**

17 21. Plaintiffs bring the wage and hour claims in this case in their individual capacity
18 and as a class action pursuant to California Code of Civil Procedure § 382 on behalf of themselves
19 and all similarly situated employees of Defendants during the applicable statute of limitations
20 period in California.

21 22. The putative class that Plaintiffs seek to certify is composed of and defined as
22 follows:

23 *All individuals who worked in California at any time*
24 *commencing four (4) years prior to the filing of this action (or, as*
25 *to 501 Auctions, commencing October 27, 2016) and the date of*
26 *certification of the class, as: (1) a customer service representative*
27 *("CSR") or the equivalent directly employed by a GiveSmart*
28 *Defendant; and/or (2) as an event specialist ("ES") of any type for*
one of Defendants who was not salaried (including but not limited
to those with titles of Assistant Event Specialist, Event Specialist,
and Senior Event Specialist), and including all such individuals
who were classified as independent contractors, but excluding any
claims and allegations related to work performed or services

1 *rendered for the GiveSmart and 501 Defendants by any individuals*
2 *furnished by or obtained through Wonolo Inc. or Victory*
3 *Marketing Agency or another staffing agency during the putative*
4 *class period (the "CLASS").*

5 23. Plaintiffs reserve the right under Rule 3.765 of the California Rules of Court to
6 amend or modify the class description with greater specificity or further division into subclasses or
7 limitation to particular issues.

8 24. This action has been brought and may be maintained as a class action pursuant to
9 California Code of Civil Procedure § 382 because there is a well-defined community of interest
10 among the many persons who comprise the readily ascertainable CLASS.

11 25. **Numerosity and Ascertainability.** The number of members in the CLASS
12 identified herein is so numerous that joinder of all members is impracticable. The quantity and
13 identity of the members of the CLASS is readily ascertainable via inspection of Defendants'
14 records.

15 26. **Superiority.** The nature of this action and the nature of the laws available to
16 Plaintiffs make use of the class action format particularly efficient and appropriate. By
17 establishing a technique whereby the claims of many individuals can be resolved at the same time,
18 the class suit both eliminates the possibility of repetitious litigation and provides small claimants
19 with a method of obtaining redress for claims that would otherwise be too small to warrant
20 individual litigation. Class action treatment will allow a large number of similarly situated
21 persons to prosecute their common claims in a single forum, simultaneously, efficiently, and
22 without the unnecessary duplication of effort and expense that numerous individual actions would
23 require. The actual monetary recovery due to most of the individual CLASS members is likely to
24 be relatively small, and the burden and expense of individual litigation could make it prohibitive
25 for individual putative class members to seek relief. A class action will serve an important public
26 interest by permitting such individuals to effectively pursue recovery of the sums owed to them.
27 Class litigation prevents the potential for inconsistent or contradictory judgments if individual
28 putative class members were to litigate separately. Further, individual joinder of all CLASS
 members as parties to this action is not practicable.

1 27. **Well-Defined Community of Interest.** Plaintiffs also meet the established
2 standards for class certification as follows:

3 28. **Typicality.** Plaintiffs' claims are typical of the claims of the CLASS. Plaintiffs
4 and CLASS members sustained injuries and damages arising out of and caused by Defendants'
5 common course of conduct in violation of the law as alleged herein.

6 29. **Adequacy.** Plaintiffs will fairly and adequately represent and protect the interests
7 of the CLASS. Plaintiffs have retained counsel who is competent and experienced in complex
8 class actions, California's wage and hour law, California's unfair competition law, and the
9 intersection thereof.

10 30. **Predominant Common Questions of Law or Fact.** There are questions of law
11 and fact common to the CLASS, and these questions predominate over any questions affecting
12 only individual members. Common questions include, at a minimum:

- 13 (a) Whether Defendants failed to pay the CLASS for all hours worked;
 - 14 (b) Whether Defendants failed to pay the CLASS proper overtime wages for all
15 overtime hours worked;
 - 16 (c) Whether Defendants failed to provide the CLASS with proper meal periods;
 - 17 (d) Whether Defendants failed to provide the CLASS with proper rest periods;
 - 18 (e) Whether Defendants failed to provide the CLASS with one hour's pay for each
19 meal period missed;
 - 20 (f) Whether Defendants failed to provide the CLASS with one hour's pay for each rest
21 period missed;
 - 22 (g) Whether Defendants failed to pay the CLASS all wages earned timely;
 - 23 (h) Whether Defendants failed to pay members of the CLASS who are no longer
24 employed all wages owed upon termination of their employment;
 - 25 (i) Whether Defendants failed to furnish the CLASS with accurate wage statements;
 - 26 (j) Whether Defendants failed to maintain accurate payroll records;
 - 27 (k) Whether Defendants failed to reimburse necessary business expenses of Plaintiffs
- 28

1 and the CLASS;

2 (l) Whether Defendants' conduct is "unlawful," "unfair," or "fraudulent" under
3 California Business & Professions Code § 17200 *et seq.*;

4 (m) Whether Defendants are liable to the CLASS;

5 (n) Whether the CLASS can be made whole by payment of damages; and

6 (o) Whether injunctive relief, restitution and other equitable remedies, and penalties for
7 Plaintiffs and the CLASS are warranted.

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **Failure to Pay All Wages Due Including Minimum Wage--**
11 **Cal. Labor Code §§ 221, 223, 1182.12, 1194 and 1194.2, and**
12 **Wage Order Nos. 4 and/or 9-2001, and any Other Applicable State Statute**
(On Behalf of Plaintiffs and the CLASS, Against Defendants and Does 1 through 100)

13 31. Plaintiffs re-allege and incorporate by reference the allegations contained in the
14 paragraphs above as if fully set forth herein.

15 32. During all relevant times, Plaintiffs and CLASS members earned "wages" for labor
16 or services rendered to Defendants within the meaning of California Labor Code § 200(a) and/or
17 "hours worked" within the meaning of the applicable IWC Wage Order.

18 33. California Labor Code § 1194 states that any employee receiving less than the
19 minimum wage for hours worked is entitled to recover in a civil action the unpaid balance of the
20 full amount of their wages, including interest thereon, reasonable attorneys' fees, and costs of suit.

21 34. During all relevant times, Defendants engaged in a widespread pattern and practice
22 of failing to pay Plaintiffs and CLASS members for all hours they worked, all hours they were
23 subject to Defendants' control, and/or all wages they were owed.

24 35. Defendants' conduct deprived Plaintiffs and CLASS members of full and timely
25 payment for all hours they worked, all hours they were subject to Defendants' control, and/or all
26 wages they were owed, in violation of the California Labor Code (and, if applicable, other States'
27 statutes).

1 36. As a result of Defendants' willful and unlawful failure to pay Plaintiffs and CLASS
2 members their earned wages, Plaintiffs and CLASS members are entitled to recover their unpaid
3 wages and the relief requested below in the Prayer for Relief, as well as liquidated damages
4 pursuant to California Labor Code Section 1194.2 and reasonable attorneys' fees and costs.

5
6 **SECOND CAUSE OF ACTION**

7 **Failure to Pay Overtime in Violation of Cal. Labor Code §§ 510, 558, and 1194, and Any
8 Other Applicable State Statute**

9 **(On Behalf of Plaintiffs and the CLASS, Against Defendants and Does 1 to 100)**

10 37. Plaintiffs incorporate in this cause of action each and every allegation of the
11 preceding paragraphs, with the same force and effect as though fully set forth herein.

12 38. During all relevant times, Defendants required Plaintiffs to work in excess of eight
13 (8) hours per workday and/or forty (40) hours per workweek.

14 39. California Labor Code Section 510 and the applicable Wage Order requires that an
15 employer compensate all work performed by an employee in excess of eight (8) hours per
16 workday or forty (40) hours per workweek, at one-and-one-half times the employee's regular rate
17 of pay. California Labor Code Section 510 and the applicable Wage Order also require that an
18 employer compensate all work performed by an employee in excess of twelve (12) hours in one
19 day, or in excess of eight (8) hours on the seventh day of a workweek, at twice the employee's
20 regular rate of pay. The laws of other States provide for overtime pay for all work in excess of
21 forty hours in a workweek.

22 40. California Labor Code Section 1194 states that any employee receiving less than
23 the legal overtime compensation applicable to the employee is entitled to recover in a civil action
24 the unpaid balance of the full amount of their wages, including interest thereon, reasonable
25 attorneys' fees, and costs of suit.

26 41. During all relevant times, Defendants knowingly and willfully failed to pay
27 overtime earned and due to Plaintiffs and CLASS members. Defendants' conduct deprived
28 Plaintiffs and CLASS members of full and timely payment for all overtime hours worked in
violation of the California Labor Code (and, to the extent applicable, in violation of other States'

1 statutes requiring that overtime be paid for working more than 40 hours in a week).

2 42. As a result of Defendants' willful and unlawful failure to pay Plaintiffs and CLASS
3 members all earned overtime wages, Plaintiffs and the CLASS are entitled to recover the unpaid
4 overtime wages, as well as interest and reasonable attorneys' fees and costs.

5 **THIRD CAUSE OF ACTION**

6 **Failure to Provide Required Meal Periods and to Pay Premium Wages**
7 **Cal. Labor Code § 226.7 and 512, and Wage Order Nos. 4 and/or 9-2001**
8 **(On Behalf of Plaintiffs and the CLASS, Against Defendants and O'Shea)**

9 43. Plaintiffs re-allege and incorporate by reference the allegations contained in the
10 paragraphs above as if fully set forth herein.

11 44. California Labor Code § 512(a) states in pertinent part: "[A]n employer may not
12 employ an employee for a work period of more than five hours per day without providing the
13 employee with a meal period of not less than 30 minutes. An employer may not employ an
14 employee for a work period of more than 10 hours per day without providing the employee with a
15 second meal period of not less than 30 minutes"

16 45. The applicable Wage Order states in pertinent part, "No employer shall employ any
17 person for a work period of more than five (5) hours without a meal period of not less than 30
18 minutes. . . . If an employer fails to provide an employee a meal period in accordance with the
19 applicable provision of this order, the employer shall pay the employee one (1) hour of pay at the
20 employee's regular rate of compensation for each workday that the meal period is not provided."
21 California Labor Code § 226.7(a) explains that "no employer shall require any employee to work
22 during any meal or rest period mandated by an applicable order of the Industrial Welfare
23 Commission."

24 46. California Labor Code § 226.7(c) requires that an employer provide an employee
25 with an additional hour of pay for each workday that a meal period is not provided.

26 47. Defendants and O'Shea instructed, pressured, encouraged, and/or incentivized
27 employees to perform their duties in ways that shortened and/or eliminated their legally-mandated
28 meal periods.

48. Defendants and O'Shea often did not permit employees to take meal breaks during the first five hours of employment, and sometimes did not permit employees to take any meal break.

49. As a result of Defendants' and O'Shea's willful and unlawful failure to provide Plaintiffs and CLASS members mandated meal periods, Plaintiffs and CLASS members are entitled to recover from them one (1) hour of pay at their regular rate of compensation for each workday that a meal period was not provided as a result, and the relief requested below in the Prayer for Relief.

FOURTH CAUSE OF ACTION

**Failure to Provide Required Rest Periods and to Pay Premium Wages--
Cal. Labor Code § 226.7, and Wage Order Nos. 4 and/or 9-2001
(On Behalf of Plaintiffs and the CLASS, Against Defendants and Does 1 Through 100)**

50. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

51. The applicable Wage Order states in pertinent part, “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. . . . If any employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.” California Labor Code § 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

52. California Labor Code § 226.7(c) requires that an employer provide an employee with an additional hour of pay for each workday that a rest period is not provided.

53. Defendants failed to advise Plaintiffs and other employees of their right to take legally-mandated rest periods, and instructed, pressured, encouraged, and/or incentivized

1 employees to perform their duties without taking legally-mandated rest periods.

2 54. As a result of Defendants' willful and unlawful failure to provide Plaintiffs and
3 CLASS members mandated rest periods, Plaintiffs and CLASS members are entitled to recover
4 from them one (1) hour of pay at their regular rate of compensation for each workday that a rest
5 period was not provided and the relief requested below in the Prayer for Relief.

6 **FIFTH CAUSE OF ACTION**

7 **Failure to Timely Pay All Wages Earned--**

8 **Cal. Labor Code §§ 204 and 210, and Wage Order Nos. 4 and/or 9-2001**

9 **(On Behalf of Plaintiffs and the CLASS, Against Defendants and Does 1 Through 100)**

10 55. Plaintiffs re-allege and incorporate by reference the allegations contained in the
11 paragraphs above as if fully set forth herein.

12 56. California Labor Code § 204 requires employers to pay all wages twice during each
13 calendar month, on days designated in advance by the employer as the regular paydays.

14 57. Defendants failed to pay Plaintiffs and CLASS members for all hours worked and
15 all wages earned no later than the payday for the following pay period.

16 58. Defendants' conduct deprived Plaintiffs and CLASS members of full and timely
17 payment for all hours worked and wages earned in violation of the California Labor Code.

18 59. As a result of Defendants' willful and unlawful failure to pay Plaintiffs and CLASS
19 members their earned wages, Plaintiffs and CLASS members are entitled to recover their unpaid
20 wages, and the relief requested below in the Prayer for Relief.

21 **SIXTH CAUSE OF ACTION**

22 **Failure to Furnish Accurate Itemized Wage Statements**

23 **Cal. Labor Code §§ 226 and 226.3, and Wage Order Nos. 4 and/or 9-2001**

24 **(On Behalf of Plaintiffs and the CLASS, Against Defendants and Does 1 Through 100)**

25 60. Plaintiffs re-allege and incorporate by reference the allegations contained in the
26 paragraphs above as if fully set forth herein.

27 61. California Labor Code § 226 provides, in relevant part, that every employer must
28 furnish each employee with an itemized wage statement that shows the total number of hours
worked each pay period, gross wages, net wages, all deductions, all applicable hourly rates of pay,

1 and other information.

2 62. During all relevant times, Defendants willfully failed to furnish to Plaintiffs and
3 CLASS members, upon each payment of compensation, itemized wage statements accurately
4 showing, at a minimum: the total hours worked, all gross wages, all net wages, applicable hourly
5 wages, and the corresponding hours worked at each hourly rate.

6 63. During all relevant times, Plaintiffs and CLASS members were damaged by these
7 failures because, among other things, they were led to believe that they were not entitled to be paid
8 overtime or premium wages owed to them, even though they were so entitled, and because the
9 failures hindered them from determining the proper amounts of overtime compensation owed to
10 them.

11 64. California Labor Code § 226(e) provides that an employee suffering injury as a
12 result of not being provided with an accurate itemized wage statement is entitled to recover the
13 greater of all actual damages suffered or fifty (\$50) dollars for the initial violation and one-
14 hundred (\$100) dollars for each subsequent violation.

15 65. Plaintiffs and CLASS members are entitled to the amounts provided in California
16 Labor Code § 226(e), plus costs and reasonable attorneys' fees, and the relief requested below in
17 the Prayer for Relief.

18 **SEVENTH CAUSE OF ACTION**

19 **Failure to Keep Required Payroll Records**

20 **Cal. Labor Code §§ 1174 and 1174.5, and Wage Order Nos. 4 and/or 9-2001**

21 **(On Behalf of Plaintiffs and the CLASS, Against Defendants and Does 1 to 100)**

22 66. Plaintiffs re-allege and incorporate by reference the allegations contained in the
23 paragraphs above as if fully set forth herein.

24 67. During all relevant times, Defendants violated California Labor Code § 1174 by
25 willfully failing to maintain payroll records accurately showing the hours worked daily by
26 Plaintiffs and CLASS members and wages paid thereto.

27 ///

28 ///

EIGHTH CAUSE OF ACTION
Failure to Pay All Wages Upon Termination
Cal. Labor Code §§ 201, 202, 203 and 256, and Wage Order Nos. 4 and/or 9-2001
(On Behalf of Plaintiffs & Former Employee CLASS Members, Against Defendants and Does 1 to 100)

68. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

69. California Labor Code § 201 provides that any discharged employee is entitled to all wages due at the time of discharge.

70. Where an employer willfully fails to pay discharged or quitting employees all wages due as required under the California Labor Code, the employer is liable to such employees under California Labor Code § 203 for waiting time penalties in the amount of one (1) day's compensation at the employees' regular rate of pay for each day the wages are withheld, up to thirty (30) days.

71. During all relevant times, Defendants knowingly and willfully violated California Labor Code §§ 201 and 202 by failing to pay Plaintiffs and members of the CLASS who are no longer employed by Defendants all wages owed as alleged herein. Defendants are therefore liable to Plaintiffs and members of the CLASS who are no longer employed by Defendants for waiting time penalties as required by California Labor Code § 203.

72. Plaintiffs, individually, and on behalf of members of the CLASS who are no longer employed by Defendants, respectfully request that the Court award all waiting time penalties due and the relief requested below in the Prayer for Relief.

NINTH CAUSE OF ACTION
Unreimbursed Business Expenses--Violation of Labor Code § 2802
(On Behalf of Plaintiffs and the CLASS, Against Defendants and Does 1 Through 100)

73. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

74. California Labor Code section 2802 requires employers to reimburse employees for all business expenses necessarily incurred in the discharge of his or her duties.

75. Defendants failed to reimburse Plaintiffs and the CLASS for business expenses they necessarily incurred in the discharge of their duties.

76. As a proximate result of Defendants' failure to reimburse Plaintiffs and the CLASS for business expenses, they have incurred damages.

77. Plaintiffs have incurred and continue to incur legal expenses and attorneys' fees enforcing the right to reimbursement of business expenses. Pursuant to Labor Code Section 2802(c), Plaintiffs are entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

TENTH CAUSE OF ACTION

**Remedies for Violations of the California Unfair Business Practices Code
California Business & Professions Code §§ 17200 *et seq.*
(On Behalf of Plaintiffs and the CLASS, Against Defendants)**

78. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

79. Plaintiffs bring this cause of action seeking equitable and statutory relief to stop Defendants' misconduct, as complained herein, and to seek restitution of the amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices described herein.

80. Defendants' knowing conduct, as alleged herein, constitutes an unlawful business practice, as set forth in California Business & Professions Code Sections 17200-17208. Specifically, Defendants conducted business activities while failing to comply with the legal mandates cited herein.

81. Defendants established a policy of accepting a certain amount of collateral damage, as represented by the damages to Plaintiffs and CLASS members herein alleged, as incidental to its business operations, rather than to accept the alternative costs of full compliance with fair, lawful, and honest business practices ordinarily borne by its responsible competitors and as set forth in legislation.

ELEVENTH CAUSE OF ACTION

**Violation of Labor Code The PAGA, Labor Code § 2698 et seq.
(On Behalf of Plaintiffs and the CLASS, Against Defendant GiveSmart)**

82. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein by reference

1 the preceding paragraphs of this Complaint.

2 83. Each Plaintiff is an “aggrieved employee” under the Private Attorneys General Act
3 of 2004 (the “PAGA”), as each was employed during the applicable statutory period and suffered
4 one or more of the Labor Code violations alleged herein. As such, Plaintiffs seek to recover, on
5 behalf of themselves and all other current and former aggrieved employees of Defendant
6 GiveSmart, the civil penalties provided by the PAGA, plus reasonable attorney’s fees and costs.

7 84. Plaintiffs Lucas submitted to the California Labor & Workforce Development
8 Agency (“LWDA”) the notice required by California Labor Code § 2699.3 as to each of the
9 alleged violations, and the LWDA has taken no action in response to this notice within 65 days.

10 85. During all relevant times, each Plaintiff and similarly situated employees earned
11 “wages” for labor or services rendered to Defendant GiveSmart within the meaning of California
12 Labor Code Section 200(a) and/or for “hours worked” within the meaning of the applicable IWC
13 Wage Order.

14 86. During all relevant times, Defendant GiveSmart failed to pay Plaintiffs and
15 similarly situated employees for all hours they worked and all hours they were subject to
16 Defendants’ control, and thus failed to pay all wages Plaintiffs were owed.

17 87. Defendant GiveSmart’s conduct deprived Plaintiffs and similarly situated
18 employees of full and timely payment for all hours they worked, all hours they were subject to
19 Defendant’s control, and all wages they were owed, in violation of the California Labor Code.

20 88. Defendant GiveSmart did not pay Plaintiffs, or similarly situated employees, for all
21 hours worked in violation of California Labor Code Sections 221, 223, 1182.12, and/or 1194.

22 89. California Labor Code Section 2698, et seq. impose a civil penalty of one hundred
23 dollars (\$100) per pay period, per aggrieved employee for the initial violation of California Labor
24 Code Sections 221, 223, and/or 1194, and two hundred dollars (\$200) for each aggrieved
25 employee per pay period for each subsequent violation.

26 90. During relevant times, Defendant GiveSmart required Plaintiffs and similarly
27 situated employees to work in excess of eight (8) hours per workday and/or forty (40) hours per
28

1 workweek.

2 91. California Labor Code Section 510 and the applicable Wage Order requires that an
3 employer compensate all work performed by an employee in excess of eight (8) hours per
4 workday or forty (40) hours per workweek, at one-and-one-half times the employee's regular rate
5 of pay. California Labor Code Section 510 and the applicable Wage Order also require that an
6 employer compensate all work performed by an employee in excess of twelve (12) hours in one
7 day, or in excess of eight (8) hours on the seventh day of a workweek, at twice the employee's
8 regular rate of pay.

9 92. During all relevant times, Defendant GiveSmart knowingly and willfully failed to
10 pay overtime earned and due to Plaintiffs and similarly situated employees. Defendant's conduct
11 deprived Plaintiffs and similarly situated employees of full and timely payment for all overtime
12 hours worked in violation of the California Labor Code.

13 93. California Labor Code Section 2698, et seq. imposes a civil penalty of one hundred
14 dollars (\$100) per pay period, per aggrieved employee for the initial violation of California Labor
15 Code Sections 510, 1194, and/or 1198, and two hundred dollars (\$200) for each aggrieved
16 employee per pay period for each subsequent violation.

17 94. In addition, Plaintiffs are entitled to recover, on behalf of themselves and similarly
18 situated employees, civil penalties pursuant to California Labor Code Section 210 in the amount of
19 one hundred dollars (\$100) per employee per initial violation of the timely payment requirements
20 of California Labor Code Section 204, and two hundred dollars (\$200) per employee for each
21 subsequent violation, plus twenty-five percent (25%) of the amount unlawfully withheld.

22 95. In addition, Plaintiffs are entitled to recover, on behalf of themselves and similarly
23 situated employees, civil penalties pursuant to California Labor Code Section 558. California
24 Labor Code Section 558 subjects any employer who violates Part 2, Chapter 1 of the California
25 Labor Code (Cal. Lab. Code §§ 500-558) or any provision regulating the hours and days of work
26 in any IWC Wage Order to a civil penalty in the amount of fifty dollars (\$50) for any initial
27 violation for each pay period in which an employee is underpaid in addition to an amount
28

1 sufficient to recover underpaid wages, and one hundred dollars (\$100) for each subsequent
2 violation, in addition to an amount sufficient to recover underpaid wages.

3 96. As set forth above, Defendant GiveSmart underpaid Plaintiffs, and other similarly-
4 situated aggrieved employees, by failing to pay them the correct amount of overtime premium pay,
5 business expenses, and pay for all hours work, as required by California Labor Code Section 510,
6 the California Labor Code provisions listed above, and the applicable IWC Wage Order. As a
7 result, Defendants are liable for civil penalties under California Labor Code Section 558.

8 97. Defendant GiveSmart willfully failed to provide Plaintiffs and similarly situated
9 employees with accurate itemized pay stubs showing the number of hours they worked and the
10 wages to which they were entitled.

11 98. Defendants are required under California Labor Code Section 226(a) to furnish
12 each of their employees an accurate itemized statement in writing showing: (1) gross wages
13 earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned, (5) the
14 inclusive dates of the period for which the employee is paid, (6) the name of the employee and the
15 last four digits of the social security number or an employee identification number, (7) the name
16 and address of the legal entity that is the employer, and (8) all applicable hourly rates in effect
17 during the pay period and the corresponding number of hours worked at each hourly rate by the
18 employee.

19 99. Due to the California Labor Code violations described herein, Defendant
20 GiveSmart did not provide Plaintiffs, and other similarly-situated employees, with accurate
21 itemized wage statements complying with the requirements of California Labor Code Section
22 226(a) including, but not limited to, providing the total hours worked by the employee, gross
23 wages earned, all applicable hourly rates, and the corresponding number of hours worked at each
24 hourly rate. As a result, Plaintiffs and other similarly situated employees were prevented from
25 ascertaining the true amount of wages due and owing to them.

26 100. California Labor Code Section 226.3 imposes a civil penalty of two hundred fifty
27 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
28

1 per aggrieved employee for each subsequent violation, of California Labor Code Section 226(a).

2 101. Defendant GiveSmart willfully failed to provide Plaintiffs and similarly situated
3 employees with all of the wages due to them within 72 hours after their employment was
4 terminated, or at any time thereafter.

5 102. Pursuant to California Labor Code Section 203, for an employer who willfully fails
6 to pay any wages of an employee who is discharged or quits, that employee's wages shall continue
7 as a penalty from the due date at the same rate until paid, but shall not continue for more than
8 thirty (30) days. Defendant GiveSmart failed to pay Plaintiffs, and other similarly-situated
9 employees, all of their wages owed, including overtime compensation, at the time they left
10 Defendants' employ.

11 103. California Labor Code Section 256 imposes a civil penalty in an amount not
12 exceeding thirty (30) days' pay as waiting time under the terms of California Labor Code Section
13 203. For the foregoing reasons, Defendant GiveSmart is liable for civil penalties under California
14 Labor Code Section 256 on behalf of Plaintiffs and other similarly situated employees.

15 104. Defendant GiveSmart failed to keep accurate time records of the hours worked by
16 Plaintiffs and others similarly situated.

17 105. California Labor Code Section 1174(d) requires, in part, that employers maintain
18 payroll records showing the hours worked daily by their employees and wages paid to their
19 employees. Pursuant to California Labor Code Section 1174.5, any person employing labor who
20 willfully fails to maintain accurate and complete records required by California Labor Code
21 Section 1174(d) is subject to a penalty. Defendant GiveSmart did not maintain accurate and
22 complete records, for it failed to properly record all hours worked by Plaintiffs and other similarly
23 aggrieved employees. The failure to maintain accurate records deprived Plaintiffs, and other
24 employees of the ability to know, understand, and question the calculation, rate of pay, and hours
25 used to calculate the wages paid to them by Defendant GiveSmart.

26 106. California Labor Code Section 2698, et seq. imposes a civil penalty of one hundred
27 dollars (\$100) per pay period, per aggrieved employee for the initial violation of California Labor
28

1 Code Section 1174, and two hundred dollars (\$200) for each aggrieved employee per pay period
2 for each subsequent violation. Plaintiffs are entitled to recover these civil penalties.

3 107. Additionally, Plaintiffs allege on information and belief that these violations were
4 willful, and hence that Defendant GiveSmart is subject to the penalty set forth in California Labor
5 Code Section 1174.5.

6 108. Plaintiffs were not reimbursed for all of their business-related expenses. On
7 information and belief, other similarly situated employees were not reimbursed for all business-
8 related expenses.

9 109. Pursuant to California Labor Code Section 2802, employers are compelled to
10 indemnify employees for all “necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
12 employer.”

13 110. Defendant GiveSmart is liable for penalties under the PAGA as a result of its
14 failure to reimburse employees for all business-related expenses.

15 111. Plaintiffs are entitled to their attorneys’ fees and costs pursuant to the PAGA.
16

17 **PRAYER FOR RELIEF**

18 Plaintiffs, on behalf of themselves and the CLASS, prays for relief as follows:

- 19 1. Certifying this action as a class action;
- 20 2. Designating Plaintiffs as the representatives of the class;
- 21 3. Designating NASSIRI & JUNG LLP as class counsel for all class members;
- 22 4. Declaring that Defendants’ policies and/or practices of failing to pay for all hours
23 worked, pay overtime wages, provide proper meal and rest periods, timely pay all wages earned,
24 provide accurate itemized wage statements, and maintain accurate payroll records violate
25 California law;
- 26 5. Declaring that Defendants’ above-mentioned policies and/or practices violate
27 California Business and Professions Code § 17200, *et seq.*;
28

6. Preliminary, permanent, mandatory injunctive relief prohibiting Defendants, their officers, agents, and all those acting in concert with them, from committing in the future those violations of law alleged herein;

7. Awarding damages, restitution, and statutory penalties to be paid by Defendants (and, as to meal break penalties for which he was responsible, by Defendant O'Shea) for the causes of action alleged herein;

8. Awarding costs and expenses, including reasonable attorneys' fees and expert fees, pursuant to California Labor Code §§ 226(e), 1194 & 2699(g)(1), California Code of Civil Procedure § 1021.5, or as otherwise permitted by law;

9. Awarding pre-judgment and post-judgment interest, as provided by law; and

10. Ordering such other and further legal and equitable relief the Court deems just, necessary, and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby respectfully demand a trial by jury.

DATED: February 24, 2023

NASSIRI & JUNG LLP

By:

Charles H. Jung
Attorneys for Plaintiffs DON LUCAS,
MARLON OLIVA AND LANA LOVE
NGUYEN

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

PROOF OF SERVICE

CASE NAME: LUCAS, et al. v. GIVESMART US, INC., et al.
COURT: LOS ANGELES COUNTY SUPERIOR COURT
CASE NO: 20STCV01437

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 707 Wilshire Blvd, 46th Floor, Los Angeles, California 90017. On the date below, I served the within document(s) described as follows:

• **SIXTH AMENDED COMPLAINT FOR DAMAGES, PENALTIES AND INJUNCTIVE RELIEF**

on the interested parties in this action as follows:

[X] ONLY BY ELECTRONIC TRANSMISSION. A true and correct copy of the aforementioned document(s) was electronically served on counsel of record listed below by transmission to CASE ANYWHERE.

Sean T. Kingston
(skingston@fisherphillips.com)
Lonnie D. Giamela
(lgiamela@fisherphillips.com)
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614

Caroline Donelan, Esq.
(cdonelan@blankrome.com)
Blank Rome LLP
2029 Century Park East 6th Floor
Los Angeles, CA 90067

Caroline Dickey, Esq.
(caroline.dickey@btlaw.com)
John Kuentler, Esq.
(john.kuentler@btlaw.com)
Barnes & Thornburg LLP
2029 Century Park East, Suite 300
Los Angeles, CA 90067

Gary D. Friedman (gary.friedman@weil.com)
Justin M. Digennaro (justin.digennaro@weil.com)
Nicole Jibrine (nicole.jibrine@weil.com)
Ami Zweig (ami.zweig@weil.com)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153

John Jo, Esq. (jjo@smithlaw.com)
Christopher Smith, Esq. (csmith@smithlaw.com)
Smith Anderson
150 Fayetteville Street, Suite 2300
Raleigh, NC 27601

Brook Barnes (brook.barnes@procopio.com)
Clint Engleson (clint.engleson@procopio.com)
Marie Kenny (marie.kenny@procopio.com)
Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101

David Fishman, Esq. (dfishman@brgslaw.com)
Ballard Rosenberg Golper & Savitt, LLP
15760 Ventura Boulevard, 18th Floor
Encino, CA 91436

[X] STATE. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed February 24, 2023 at Los Angeles, California.



CALEB PETERSON