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

DANIEL KAUFMAN, individually, and on
behalf of other aggrieved employees pursuant
to the California Private Attorneys General
Act;

Plaintiff,

vs.

ZYPDAH, INC., a Nevada corporation;
JONATHAN GREENBURG, an individual; and
DOES 1 through 25, inclusive.

Defendants.

Case No. **21STCV22821**

**COMPLAINT FOR DAMAGES AND
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET
SEQ.**

1. Violation of California Labor Code §§ 201 and 203 (Wages Not Timely Paid Upon Termination);
2. Violation of California Labor Code § 226(a) (Failure to Issue Wage Statements);
3. Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
4. Violation of California Business and Professions Code §§ 17200, et seq;
5. Wrongful Termination in Violation of Public Policy;
6. Violation of California Labor Code § 1102.5 (Whistleblower Retaliation);
7. Violation of California Labor Code §§ 2698, et seq. (California Labor Code Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff DANIEL KAUFMAN (“Plaintiff”), and alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

2. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

3. Venue is proper in this Court because a majority of the acts, events, and violations occurred in this County. Upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Los Angeles.

THE PARTIES

4. At all times herein mentioned Plaintiff was a resident of the County of Los Angeles, State of California.

5. At all times herein mentioned, Defendant ZYPPAH, INC. (“Zyppah”) was and is, upon information and belief, a Nevada corporation with its principal place of business at 23975 Park Sorrento, Suite 200, Calabasas, California 91302.

6. At all times herein mentioned, Defendant JONATHAN GREENBURG (“Dr. Greenburg”) was and is, upon information and belief, an individual residing in the County of Los Angeles.

7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

8. Plaintiff is informed and believes, and based thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, ZYPPAH, INC., JONATHAN GREENBURG, and/or DOES 1 through 25 (collectively “Defendants”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other

1 co-Defendants and within the course and scope of such agency, employment, joint venture, or
2 concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants
3 represent and were in accordance with Defendants' official policy.

4 9. At all relevant times, Defendants were the employer of Plaintiff within the meaning of
5 all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the
6 working conditions, wages, working hours, and conditions of employment of Plaintiff so as to make
7 each of said Defendants employers and employers liable under the statutory provisions set forth herein.

8 10. At all relevant times, Defendants, and each of them, ratified each and every act or
9 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
10 the acts and omissions of each and all the other Defendants in proximately causing the damages herein
11 alleged.

12 11. Plaintiff is informed and believes, and based thereon alleges, that each of said
13 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
14 omissions, occurrences, and transactions alleged herein.

15 **GENERAL ALLEGATIONS**

16 12. From approximately October 2018 to January 2020, Defendants, jointly and severally,
17 employed Plaintiff as its Chief Marketing Officer, but willfully misclassified him as an independent
18 contractor. In addition to Plaintiff, Defendants willfully misclassified other employees as independent
19 contractors.

20 13. Defendants failed to timely pay Plaintiff all wages due upon termination of his
21 employment, failed to provide Plaintiff with wage statements, failed to reimburse Plaintiff for
22 necessary business expenses, and failed to provide and adhere to other related protections afforded by
23 the California Labor Code and applicable Industrial Welfare Commission Wage Order.

24 14. Defendants had the authority to hire and terminate Plaintiff, to set work rules and
25 conditions governing Plaintiff's employment, and to supervise his daily employment activities.

26 15. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's
27 employment for them to be joint employers of Plaintiff.

28 16. Defendants directly hired and paid wages to Plaintiff.

1 17. At all relevant times set forth herein Plaintiff was not free from the control and direction
2 of Defendants in connection with the performance of his work.

3 18. At all relevant times set forth herein Plaintiff performed work that was not outside the
4 usual course of Defendants' business.

5 19. At all relevant times set forth herein Plaintiff was not customarily engaged in an
6 independently established trade, occupation, or business of the same nature as that involved in the
7 work performed for Defendants.

8 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
9 should have known that Plaintiff was entitled to receive all wages due upon termination of
10 employment.

11 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
12 or should have known that Plaintiff was entitled to receive complete and accurate wage statements
13 in accordance with California law, but, in fact, Plaintiff did not receive complete and accurate wage
14 statements from Defendants.

15 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
16 or should have known that Plaintiff was entitled to reimbursement for necessary business-related
17 expenses, but, in fact, did not reimburse Plaintiff for necessary business-related expenses.

18 23. Plaintiff requested that Defendants classify him properly as an employee on several
19 occasions, but was told by Dr. Greenburg that the company could not afford to do so.

20 24. In addition to repeated requests that he be classified properly, Plaintiff inquired into the
21 misappropriation of funds from Zyppah to two companies owned and/or managed by Dr. Greenburg,
22 Sleep Certified, Inc. and Snore Experts, Inc. Plaintiff challenged Dr. Greenburg's misappropriation
23 of funds, his failure to vet individual investors, his failure to disclose Dr. Greenburg's ownership of
24 the Zyppah trademark, and his failure to disclose that the patent to the Zyppah mouthpiece is registered
25 to his wife, Laura Greenburg, to investors as a breach of his fiduciary duty to Zyppah's shareholders.

26 25. As retaliation for his requests to be classified as an employee and his inquiries
27 regarding Dr. Greenburg's breach of his fiduciary duties to Zyppah shareholders, Defendants fired
28 Plaintiff in January 2020.

PAGA ALLEGATIONS

26. At all times set forth herein, PAGA was applicable to Plaintiff's employment by Defendants.

27. At all times set forth herein, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the California Labor & Workforce Development Agency ("LWDA") for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

28. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

29. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants and one of more of the alleged violations were committed against them.

30. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

(a) The aggrieved employee shall give written notice by certified mail (hereinafter "Employee's Notice") to the LWDA and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is

1 not provided within sixty five (65) calendar days of the postmark date of the
2 Employee's Notice, the aggrieved employee may commence a civil action pursuant
3 to California Labor Code section 2699 to recover civil penalties in addition to any
4 other penalties to which the employee may be entitled.

5 31. On June 7, 2021, Plaintiff provided notice by electronic submission to the LWDA and
6 by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to have
7 been violated, including the facts and theories to support the alleged violations, pursuant to Labor
8 Code section 2699.3.

9 32. Therefore, the administrative prerequisites under California Labor Code section
10 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of
11 California Labor Code sections 201, 202, 203, 226(a), 226.8, 2800, and 2802 will be satisfied upon
12 expiration of the 65-day notice period.

13 **FIRST CAUSE OF ACTION**

14 **Violation of California Labor Codes §§ 201 and 203**

15 **(Against ZYPPAH INC., JONATHAN GREENBURG, and DOES 1-25)**

16 33. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in all preceding paragraphs.

18 34. Pursuant to California Labor Code sections 201 and 203, Defendants are required to
19 pay all earned and unpaid wages to an employee who is discharged. California Labor Code section
20 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
21 at the time of discharge are due and payable immediately.

22 35. California Labor Code section 203 provides that if an employer willfully fails to pay,
23 in accordance with California Labor Code sections 201, any wages of an employee who is discharged,
24 the wages of the employee shall continue as a penalty from the due date thereof at the same rate until
25 paid or until an action therefore is commenced; but the wages shall not continue for more than thirty
26 (30) days.

27 36. Labor Code section 558.1 provides that an employer or a natural person who is an
28 owner, director, officer, or managing agent of the employer, and who violates or causes to be violated

1 Labor Code section 203 may be held liable as the employer for such violation.

2 37. At all relevant times set forth herein, Defendants were employers or persons acting on
3 behalf of an employer, who violated California Labor Code section 203.

4 38. At the time of Plaintiff's termination, Defendants knowingly and willfully failed to pay
5 timely Plaintiff all wages owed to him pursuant to California Labor Code section 201. Defendants did
6 not pay Plaintiff his final wages until 11 days after it discharged him.

7 39. As a result, Plaintiff is entitled to all available statutory penalties, including the waiting
8 time penalties provided in California Labor Code section 203, together with interest thereon, as well
9 as other available remedies.

10 **SECOND CAUSE OF ACTION**

11 **Violation of California Labor Code § 226(a)**

12 **(Against ZYPPAH INC., JONATHAN GREENBURG, and DOES 1-25)**

13 40. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in all preceding paragraphs.

15 41. At all relevant times set forth herein, California Labor Code section 226(a) provides
16 that every employer shall furnish each of its employees an accurate itemized statement in writing
17 showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
18 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
19 deductions, provided that all deductions made on written orders of the employee may be aggregated
20 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
21 employee is paid, (7) the name of the employee and his or her social security number, (8) the name
22 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
23 the pay period and the corresponding number of hours worked at each hourly rate by the employee.
24 The deductions made from payments of wages shall be recorded in ink or other indelible form,
25 properly dated, showing the month, day, and year, and a copy of the statement or a record of the
26 deductions shall be kept on file by the employer for at least three years at the place of employment or
27 at a central location within the State of California.

28 42. Labor Code section 558.1 provides that an employer or a natural person who is an

owner, director, officer, or managing agent of the employer, and who violates or causes to be violated Labor Code section 226 may be held liable as the employer for such violation.

43. At all relevant times set forth herein, Defendants were employers or persons acting on behalf of an employer, who violated California Labor Code section 226.

44. At all relevant times set forth herein, Defendants have intentionally and willfully failed to provide Plaintiff with wage statements.

45. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff has suffered injury and damage to his statutorily-protected rights.

46. More specifically, Plaintiff has been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because he was denied both his legal right to receive, and his protected interest in receiving, wage statements pursuant to California Labor Code section 226(a).

47. Plaintiff is entitled to recover from Defendants the greater of his actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars.

THIRD CAUSE OF ACTION

Violation of California Labor Code §§ 2800 and 2802

(Against ZYPPAH INC., JONATHAN GREENBURG, and DOES 1-25)

48. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

49. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

50. Labor Code section 558.1 provides that an employer or a natural person who is an owner, director, officer, or managing agent of the employer, and who violates or causes to be violated Labor Code section 2802 may be held liable as the employer for such violation.

51. At all relevant times set forth herein, Defendants were employers or persons acting on

1 behalf of an employer, who violated California Labor Code section 2802.

2 52. Plaintiff incurred necessary business-related expenses and costs that were not fully
3 reimbursed by Defendants, including, but not limited to, the use of his personal cell phone, computer,
4 and home internet for work purposes.

5 53. Defendants intentionally and willfully failed to reimburse Plaintiff for all necessary
6 business-related expenses and costs. Plaintiff is entitled to recover from Defendants his business-
7 related expenses and costs incurred during the course and scope of his employment, plus interest
8 accrued from the date on which Plaintiff incurred the necessary expenditures at the same rate as
9 judgments in civil actions in the State of California.

10 **FOURTH CAUSE OF ACTION**

11 **Violation of California Business & Professions Code §§ 17200, Et Seq.**

12 **(Against ZYPPAH INC. and DOES 1-25)**

13 54. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in all preceding paragraphs.

15 55. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
16 and harmful to Plaintiff, to other employees, to the general public, and to Defendants' competitors.
17 Accordingly, Plaintiff seeks to enforce important rights affecting the public interest within the
18 meaning of Code of Civil Procedure section 1021.5.

19 56. Defendants' activities as alleged herein are violations of California law, and constitute
20 unlawful business acts and practices in violation of California Business & Professions Code sections
21 17200, et seq.

22 57. A violation of California Business & Professions Code section 17200, et seq. may be
23 predicated on the violation of any state or federal law. In the instant case, Defendants' policy and
24 practice of misclassifying employees, including Plaintiff, as independent contractors violates
25 California Labor Code section 2775. Additionally, Defendants' policies and practices of failing to
26 timely pay wages upon termination violates California Labor Code sections 201 and 203. Defendants
27 also violated California Labor Code sections 226(a), 2800 and 2802.

28 58. As a result of the herein described violations of California law, Defendants unlawfully

1 gained an unfair advantage over other businesses.

2 59. Plaintiff has been personally injured by Defendants' unlawful business acts and
3 practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

4 60. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff
5 is entitled to restitution during a period that commences four years from the filing of this complaint;
6 an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other
7 applicable laws; and an award of costs.

8 **FIFTH CAUSE OF ACTION**

9 **Wrongful Termination in Violation of Public Policy**

10 **(Against ZYPPAH INC. and DOES 1-25)**

11 61. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in all preceding paragraphs.

13 62. Plaintiff was wrongfully terminated from his position for reasons that violate public
14 policy.

15 63. Defendants terminated Plaintiff's employment because he requested that he be
16 classified properly as an employee rather than as an independent contractor. Defendants terminated
17 Plaintiff's employment for the additional reason that he questioned Dr. Greenburg's diversion of funds
18 from Zyppah to Sleep Certified, Inc. and Snore Experts, Inc., his failure to vet individual investors,
19 his failure to disclose to investors Dr. Greenburg's ownership of the Zyppah trademark, and his failure
20 to disclose to investors that the patent to the Zyppah mouthpiece is registered to his wife, Laura
21 Greenburg.

22 64. It is the public policy of the State of California to prevent employers from requiring
23 employees to engage and/or coverup illegal or fraudulent activity.

24 65. As a proximate result of Defendants' willful, knowing, and intentional illegal or
25 fraudulent activities, Plaintiff has suffered and continues to suffer damages in a sum according to
26 proof.

27 66. Defendants' wrongful termination of Plaintiff's employment by engaging in illegal or
28 fraudulent activity was intentionally done in a malicious, oppressive manner, entitling Plaintiff to

1 punitive damages.

2 67. Plaintiff has incurred and continues to incur legal expenses and attorney fees in a sum
3 according to proof.

4 **SIXTH CAUSE OF ACTION**

5 **Violation of California Labor Code § 1102.5**

6 **(Against ZYPPAH INC. and DOES 1-25)**

7 68. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in all preceding paragraphs.

9 69. At all times material to this Complaint, California Labor Code section 1102.5 was in
10 effect and binding on Defendants. Section 1102.5 requires Defendants to refrain from retaliating
11 against an employee whom the employer believes may disclose information to a government or law
12 enforcement agency, to a person with authority over the employee or another employee who has the
13 authority to investigate, discover, or correct the violation or noncompliance.

14 70. Plaintiff had a reasonable belief that Defendants were violating state and/or federal
15 laws as alleged above, and reported those violations to Defendants.

16 71. In retaliation against Plaintiff for reporting these violations, Defendants terminated his
17 employment.

18 72. As the direct and legal result of Defendants' retaliation for whistleblowing, Plaintiff
19 has suffered and will continue to suffer reasonable, foreseeable, and ascertainable damages, including
20 but not limited to, loss of earnings and other employment benefits, emotional distress, attorney's fees
21 and costs, and the imposition of a civil penalty of \$10,000.00 for each violation pursuant to Labor
22 Code section 1102.5(f).

23 73. The conduct of Defendants and/or its agents/employees, as described herein, was
24 malicious and oppressive and done with a willful and conscious disregard for Plaintiff's rights
25 entitling Plaintiff to an award of punitive damages from Defendants.

26 **SEVENTH CAUSE OF ACTION**

27 **Violation of California Labor Code §§ 2698, et seq.**

28 **(Against ZYPPAH INC. and DOES 1-25)**

1 74. Plaintiff incorporates herein by specific reference, as though fully set forth, the
2 allegations in all preceding paragraphs.

3 75. PAGA expressly establishes that any provision of the California Labor Code which
4 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
5 divisions, commissions, boards, agencies or employees for a violation of the California Labor Code,
6 may be recovered through a civil action brought by an aggrieved employee on behalf of himself or
7 herself, and other current or former employees.

8 76. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
9 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to
10 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

11 77. Plaintiff and the other individuals misclassified as independent contractors are
12 “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current
13 or former employees of Defendants, and one or more of the alleged violations were committed against
14 them.

15 78. Defendants’ conduct, as alleged herein, violates numerous sections of the California
16 Labor Code, including, but not limited to, the following:

- 17 (a) Violation of California Labor Code section 226.8 for willful misclassification of
18 the aggrieved employees as independent contractors;
- 19 (b) Violation of California Labor Code sections 201, 202, and 203 for failure to pay
20 the aggrieved employees all wages owed upon termination of employment;
- 21 (c) Violation of California Labor Code section 226(a) for failure to provide accurate
22 wage statements to Plaintiff and the aggrieved employees;
- 23 (d) Violation of California Labor Code sections 2800 and 2802 for failure to reimburse
24 Plaintiff and the aggrieved employees for necessary business-related expenses;

25 79. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5,
26 Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of
27 civil penalties for Plaintiff, all other aggrieved employees, and the State of California against
28 Defendants, in addition to other remedies, for violations of Labor Code sections set forth herein.

Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five (25%) to the aggrieved employees. Further, and as authorized by the California Labor Code sections 210, 218.5, and 2699, Plaintiff seeks recovery of his attorneys' fees and costs.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

PRAYER FOR RELIEF

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

As to the First through Sixth Causes of Action

1. For all actual, consequential, and incidental losses and damages, according to proof;
2. For pre-judgment interest on any unpaid compensation from the date such amounts were due;
3. For restitution of unreimbursed business expenses and all pre-judgment interest from the day such amounts were due and payable;
4. For statutory penalties pursuant to California Labor Code section 203;
5. For statutory penalties pursuant to California Labor Code section 226(e);
6. For punitive damages and/or exemplary damages according to proof at trial;
7. For reasonable attorneys' fees and costs of suit incurred herein; and
8. For such other and further relief as the Court may deem proper.

As to the Seventh Cause of Action

9. For civil penalties pursuant to California Labor Code sections 226.8 and 2699(a), (f), and (g), plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 226(a), 226.8, 2800, and 2802; and

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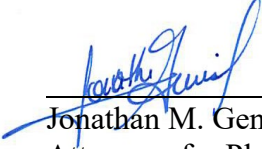
1 10. For such other and further relief as the Court may deem proper.

2 Respectfully Submitted,

3 DATED: June 18, 2021

BLACKSTONE LAW, APC

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5 By: _____


Jonathan M. Genish

Attorneys for Plaintiff Daniel Kaufman