

JULIAN HAMMOND (SBN 268489)
jhammond@hammondlawpc.com
POLINA BRANDLER (SBN 269086)
pbrandler@hammondlawpc.com
ARI CHERNIAK (SBN 290071)
acherniak@hammondlawpc.com
ADRIAN BARNES (SBN 253131)
abarnes@hammondlawpc.com
HAMMONDLAW, P.C.
1201 Pacific Ave., Suite 600
Tacoma WA 98402
(310) 601-6766
(310) 295-2385 (Fax)

*Attorneys for Plaintiffs and the Putative Class,
and Subclasses*

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

**CHRISTOPHER FOX, THOMAS SIMS, and
KYREE WASHINGTON**, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

VERKADA, INC., a Delaware Corporation,

Defendant.

CASE NO. 23-CIV-00193

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Failure to Provide Meal Periods and Pay Premium Pay in Lieu Thereof (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 11);
- (2) Failure to Pay Overtime Wages (Cal. Labor Code §§ 510, 1194; IWC Wage Order No. 4-2001, §§ 3, 4);
- (3) Failure to Issue Accurate Itemized Wage Statements (Cal. Labor Code § 226(a), (e));
- (4) Failure to Pay Compensation Due Upon Discharge from Employment (Cal. Labor Code §§ 201-203);
- (5) Failure to Reimburse Business Expenses (Cal. Labor Code § 2802);
- (6) Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and
- (7) Private Attorneys' General Act (Cal. Labor Code §§ 2698 *et seq.*)

DEMAND FOR JURY TRIAL

Electronically
FILED
by Superior Court of California, County of San Mateo
ON **4/5/2023**
By /s/ Vanessa Jimenez
Deputy Clerk

1 Plaintiffs Christopher Fox, Thomas Sims, and Kyree Washington (“Plaintiffs”), on behalf of
2 themselves and all others similarly situated, complain and allege the following:

3 **INTRODUCTION**

4 1. This is a class action under California Code of Civil Procedure § 382 seeking damages,
5 statutory penalties, interest, and reasonable attorneys’ fees and costs under California Labor Code (“Labor
6 Code”) §§ 512, 226.7, 510, 1194, 226(a), 201-203, 2802, IWC Wage Order (“Wage Order”) No. 4-2001
7 §§ 3, 4, 11, California Code of Civil Procedure § 1021.5, and restitution under California’s Unfair
8 Competition Law (“UCL”), Business & Professions Code §§ 17200 *et seq.* on behalf of Plaintiffs and the
9 members of the class and subclasses, as defined below. Defendant’s violations of California’s wage and
10 hour laws and unfair competition laws, as described more fully below, have been ongoing for at least the
past four years and are continuing at present.

11 2. Plaintiff Washington brings this action on behalf of himself and all other similarly situated
12 individuals currently and formerly employed in California by Verkada, Inc. (“Verkada” or “Defendant”)
13 as Sales Development Representatives, Associate Account Executives, Account Executives, Senior
14 Account Executives, or in a similar capacity (“Class Members”) from four years prior to the filing of the
15 initial Complaint in this case through to the trial date (“Class Period”) for the failure to provide off-duty
16 meal periods, and pay premium pay in lieu thereof. During the Class Period, Plaintiff Washington and
17 Class Members were entitled to be provided with off-duty meal periods because the only potential
18 exemption that applied to them was the inside salesperson exemption pursuant to IWC Wage Order No.
19 4, § 3(D). However, inside salespersons are not exempt from meal break requirements under California
20 law. *See Id.* Defendant required and/or expected Plaintiff Washington and Class Members to routinely
21 work minimally 10 hours per day and Plaintiff Washington and Class Members often worked longer hours
22 in order to meet their job duties and expectations. As a result, they were entitled to two meal periods each
23 day, with the first break no more than five hours into a shift, and a second meal break no more than 10
24 hours into a shift pursuant to Labor Code §§ 512, 226.7 and IWC Wage Order No. 4, § 11. However,
25 Defendant did not maintain a meal period policy applicable to Plaintiff Washington and Class Members
26 and its policies and/or practices impeded Plaintiff Washington’s and Class Members’ ability to take off-
duty meal periods. Defendant also did not pay Plaintiff Washington and Class Members premium pay for
missed meal periods as a matter of policy and/or practice in violation of Labor Code §§ 226.7, 512, and
Wage Order No. 4, § 11.

27 3. Plaintiffs Fox and Washington also bring this action on behalf of themselves and those
28 members of the Class who either did not earn commissions at all or whose compensation was earned from

1 salary and commissions but whose commissions represented half or less than half of their total
2 compensation (“Overtime Subclass Members”) and who therefore did not fall within any exemption,
3 including the inside salesperson exemption under the Wage Order. Plaintiffs Fox and Washington and
4 Class Members routinely worked more than eight hours in a day, and/or 40 hours in a workweek and were
5 therefore entitled to overtime pay. However, Defendant maintained a practice and/or policy of not
6 tracking Plaintiffs’ and Class Members’ hours worked and of not paying them overtime (or any
7 compensation) for hours worked over eight hours in a day or 40 hours in a workweek, in violation of
8 Labor Code §§ 1194, 510, and Wage Order No. 4, §§ 3, 4.

9 4. This action is also brought on behalf of Plaintiffs Fox and Washington and those Class
10 Members who were employed during the one-year period prior to the filing of the Complaint (“WS
11 Subclass Members”), for Defendant’s failure to issue accurate itemized wage statements that included
12 their total hours worked, including regular and/or overtime hours worked, applicable hourly rates
13 including overtime rates earned, and accurate net and gross wages earned, including from premium pay
14 for missed breaks. As a result of misclassifying Class Members, including WS Subclass Members, as
15 exempt, Defendant did not track their hours worked and did not include hours and hourly rate information
16 on their wage statements, including but not limited to overtime hours and rates. As a result of Defendant’s
17 failure to include the required information, Plaintiffs Fox and Washington and WS Subclass Members
18 could not easily tell from their wage statements alone their net and gross wages earned, their actual hours
19 worked (including overtime hours), and their applicable hourly rates. As a result, they are entitled to
20 statutory penalties pursuant to Labor Code § 226(e).

21 5. In addition, as a result of failing to pay premium pay for missed meal breaks, and overtime,
22 Defendant failed to pay Plaintiffs Fox and Washington and other formerly employed Class Members all
23 wages due and owing to them at the time of their discharge, in violation of Labor Code § 201. Plaintiffs
24 Fox and Washington and Class Members whose employment with Defendant terminated within the three-
25 year period prior to the filing of the Complaint (“WTP Subclass Members”), are entitled to waiting time
26 penalties pursuant to Labor Code § 203.

27 6. Finally, Plaintiffs Fox and Washington also bring this action on behalf of themselves and
28 all Class Members employed during the Class Period for unreimbursed business expenses. During the
Class Period, Defendant required and/or expected Class Members to use and pay out of pocket for their
personal cell phones in order to carry out their job duties. In addition, beginning in approximately early
March 2020, Defendant began requiring Plaintiff Fox and other Class Members, as a matter of policy
and/or practice, to work remotely as result of the Covid-19 pandemic. In order to carry out and perform

1 their assigned work-related duties remotely, Plaintiff Fox and Class Members working remotely incurred
2 expenses including but not limited to the cost of internet service, as well as the cost of cell phone service.
3 However, throughout the Class Period, Defendant maintained a policy and/or practice of denying
4 reimbursement to Plaintiffs Fox and Washington and Class Members for their necessarily incurred
5 business expenses, in violation of Labor Code § 2802.

6 7. In consequence of the violations of Labor Code §§ 512, 226.7, 510, 1194, and 2802
7 Defendant also committed unfair, unlawful, and fraudulent business practices, in violation of California's
8 Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 et seq. Plaintiffs Fox, Sims, and
9 Washington, on behalf of themselves, the Class, and the Overtime, WS, and WTP Subclasses, seek
10 restitution and other relief as prayed for below.

11 8. Plaintiff Fox also brings this representative action under PAGA for civil penalties,
12 reasonable attorneys' fees, and costs on behalf of himself and (a) all other individuals employed by
13 Defendant in California during the PAGA Period for Defendant's failure to reimburse business expenses
14 in violation of Labor Code § 2802 ("Reimbursement Aggrieved Employees"), (b) on behalf of himself
15 and all other individuals employed by Defendant in California as Associate Account Executives, Account
16 Executives, or in a similar capacity ("Aggrieved Employees") during the PAGA Period for Defendant's
17 failure to provide compliant meal breaks, issue accurate itemized wage statements, and pay all wages due
18 upon discharge from employment in violation of Labor Code §§ 226.7, 512, 1194 and IWC Wage Order
19 No. 4-2001, §§ 3, 11, and (c) on behalf of himself and Aggrieved Employees who earned less than 50%
20 or more of their total compensation through earnings other than commissions ("Overtime Aggrieved
21 Employees") for the violation of Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001, §§ 3, 4.

22 **PARTIES**

23 9. Plaintiff Fox is a resident of Berkeley, California and was employed by Verkada as a Senior
24 Account Executive from approximately May 2020 through October 2022. During his employment,
25 Plaintiff Fox was subject to Defendant's unlawful conduct described herein.

26 10. Plaintiff Sims is a resident of Napa, California and was employed by Verkada as an
27 Account Executive from approximately February 2019 through to September 2019. During his
28 employment, Plaintiff Sims was subject to Defendant's unlawful conduct described herein.

11. Plaintiff Washington is a resident of Scottsdale, Arizona, and was employed by Verkada
as a Sales Development Representative from approximately March 2020 through September 2020, and as
an Account Executive from approximately October 2020 to June 2021. During his employment with

1 Verkada, Plaintiff Washington was a resident of San Francisco, California. During his employment,
2 Plaintiff Washington was subject to Defendant's unlawful conduct described herein.

3 12. Defendant is a Delaware corporation with its principal place of business located at 406 E.
4 3rd Avenue, San Mateo, CA 94401.

5 **JURISDICTION**

6 13. This Court has jurisdiction over Plaintiff Washington's and Class Members' claims for
7 failure to provide off-duty meal periods and failure to pay premium pay for missed meal periods under
8 Labor Code §§ 226.7, 512 and Wage Order No. 4, § 11.

9 14. This Court has jurisdiction over Plaintiffs Fox and Washington's and Overtime Subclass
10 Members' claims for failure to pay overtime (or any wages for overtime hours) pursuant to Labor Code
11 §§ 510 and 1194 and IWC Wage Order No. 4-2001, §§ 3, 4.

12 15. This Court has jurisdiction over Plaintiffs Fox and Washington's and WS Subclass
13 Members' claims for failure to issue accurate itemized wage statements pursuant to Labor Code § 226(a),
14 (e).

15 16. This Court has jurisdiction over Plaintiffs Fox and Washington's and WTP Subclass
16 Members' claims for failure to pay compensation due upon discharge from employment pursuant to Labor
17 Code §§ 201-203.

18 17. This Court has jurisdiction over Plaintiffs Fox and Washington's and Class Members'
19 claims for failure to reimburse business expenses pursuant to Labor Code § 2802.

20 18. This Court has jurisdiction over Plaintiffs' claims for restitution under the UCL.

21 19. This Court has jurisdiction over Plaintiffs' claims for reasonable attorneys' fees and costs
22 pursuant to Labor Code §§ 226(e), 1194, 2802, 2699(g), and Cal. Civ. Proc. Code § 1021.5.

23 20. This Court has jurisdiction over Plaintiff Fox's PAGA claim. On December 12, 2022,
24 PAGA Notice was provided in this case to the LWDA (via its website) and to Defendant (via certified
25 mail). On January 13, 2023, Plaintiff Fox provided an Amended PAGA Notice to the LWDA (via its
26 website) and to Defendant (via certified mail). The LWDA has not provided notice to Plaintiffs regarding
27 its intention to investigate or not investigate Plaintiff Fox's claims.

28 **VENUE**

21 21. Venue is proper in the County of San Mateo pursuant to California Code of Civil Procedure
22 §§ 395(a) and 395.5. Defendant's principal place of business is located in San Mateo. The unlawful acts
23 alleged herein have a direct effect on members of the Classes within the State of California and within
24 San Mateo County. Venue is therefore proper in San Mateo.

1 **FACTUAL ALLEGATIONS**

2 22. Verkada is a security company that develops cloud-based building security systems with
3 web-based software technology to enable remote access, encryption, and other capabilities.

4 23. During the Class Period, Defendant employed Class Members, including Overtime
5 Subclass Members, as Sales Development Representatives, Associate Account Executives, Account
6 Executives, Senior Account Executives, and other similar positions. Depending on their positions, Class
7 Members are typically paid either a salary and are eligible to receive bonuses, or a salary and commissions.
8 For example, Sales Development Representatives and Associate Account Executives are paid a salary and
are eligible to receive bonuses. Account Executives are paid a salary and commission.

9 **A. Defendant Failed to Provide Meal Breaks**

10 24. During the Class Period, Defendant misclassified Class Members as exempt. Class
11 Members, however, were not exempt from meal break requirements set out in Labor Code §§ 512, 226.7
12 and Wage Order No. 4, § 11, and they were not exempt from the wage statement laws set out in Labor
13 Code § 226. The only exemptions potentially applicable to Class Members are the outside salesperson
14 exemption and the inside salesperson exemption. Class Members did not fall within the outside
15 salesperson exemption because Class Members work primarily from Verkada's offices and/or remotely
16 from home, and do not spend more than half of their working time away from Defendant's place of
17 business.¹ Employees who are inside salespersons are only exempt from the requirement of overtime pay,
18 and are not exempt from meal break, rest breaks, and wage statement laws. *See* IWC Wage Order No. 4,
§ 3(D) (exempting insides salespersons from overtime, and other provisions not relevant here). As a
19 result, Class Members were and are entitled to be provided with off-duty meal periods.

20 25. During the Class Period, Class Members, as part of their regular daily schedule, worked a
21 minimum of 10 hours per day: typically, from 6:30 a.m. to 4:30 / 5:00 p.m. or 7:00 a.m. to 5:00 / 5:30
22 p.m. or, depending on the territory they covered, from 4:00 a.m. to 2:00 p.m. Class Members also often
23 worked additional hours to meet their job duties that included making a certain minimum number of calls
24 each day, or setting up a minimum number of meetings with potential clients each day. As such, they
were entitled to two meal periods each day, pursuant to Labor Code § 512 and Wage Order No. 4, § 11.

25 ¹ When Class Members worked remotely from home due to the Covid-19 pandemic and/or otherwise,
26 they did not qualify for the outside salesperson exemption because their home offices was considered the
27 "employer's place of business." *See* 29 C.F.R. § 541.502 (any fixed site, whether home or office, used
28 by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the
employer's places of business, even though the employer is not in any formal sense the owner or tenant
of the property).

1 26. Throughout the Class Period, however, Defendant has treated Class Members as exempt
2 and did not maintain a meal break policy and did not maintain a policy of paying premium pay for missed
3 breaks.

4 27. Defendant also maintains job expectations, policies and/or practices that impede Class
5 Members' ability to take off-duty meal breaks. Defendant provides lunch to Class Members and pressures
6 them to eat lunch quickly and at their desks and to continue working during lunch time. As a result, Class
7 Members were and are not relieved of all duties for at least 30 minutes before the end of their fifth hour
8 of work, and they are also not relieved of all duties for at least 30 minutes before the end of their tenth
hour of work, as required under Labor Code § 512(a) and Wage Order No. 4, § 11.

9 28. Thus, Defendant failed to provide compliant meal breaks in accordance with Wage Order
10 No. 4, §§ 11(A), and Labor Code §§ 226.7, 512, thereby triggering an obligation to make premium
11 payments to Plaintiff Washington and Class Members pursuant to Labor Code § 226.7, which it also did
not pay.

12 **B. Defendant Failed to Pay Overtime Wages**

13 29. As discussed above, Class Members, including Overtime Subclass Members, were not
14 exempt under the outside sales exemption. Plaintiffs and Overtime Subclass Members also did not fall
15 within the inside salesperson exemption for the following reasons. Overtime Subclass Members who were
16 employed as Sales Development Representatives and Associate Account Executives did not fall within
17 the inside salesperson exemption because they did not earn commissions and did not engage in sales.
18 Rather, they were tasked with generating leads, conducting demonstrations, generating client meetings,
19 learning about the products, and making practice calls. Even those employees, such as Account Executives
20 and Senior Account Executives, who did engage in sales, frequently did not earn more than half of their
21 compensation from commissions. Upon information and belief, the "on-target" compensation that was
22 set out in the offer letters of Account Executives and Senior Account Executives was half salary and half
23 commissions and thus did not meet the requirements for inside sales exemption set out in Wage Order No
4, § 3(D). As a result, Overtime Subclass Members did not meet the requirements for the inside
salesperson exemption and were entitled to be paid overtime.

24 30. During the Class Period, Class Members, including Overtime Subclass Members, as part
25 of their regular daily schedule, were required to work a minimum of 10 hours per day: typically, from
26 6:30 a.m. to 4:30 / 5:00 p.m. or 7:00 a.m. to 5:00 / 5:30 p.m. or 4:00 a.m. until 2:00 p.m. They also often
27 worked additional hours to meet their job duties that included making a certain minimum number of calls
28 each day, or setting up a minimum number of meetings with potential clients each day.

1 31. As a result, Plaintiffs and Overtime Subclass Members routinely worked over 8 hours in a
2 day and/or over 40 hours in a week. Defendant, however, did not pay them overtime (or any wages for
3 overtime hours worked), in violation of Labor code §§ 510, 1194 and Wage Order No. 4, §§ 3, 4.

4 **C. Defendant Failed to Issue Accurate, Itemized Wage Statements**

5 32. As a result of treating WS Subclass Members as exempt, Defendant did not track their
6 hours worked. In addition, as discussed above, as a result of treating Overtime Subclass Members as
7 exempt (i.e. those members of the WS Subclass whose earnings were half or less than half in the form of
8 commissions), Defendant also did not track their hours and did not pay overtime for hours worked over 8
9 in a day and/or over 40 in a week. Moreover, as discussed above, Defendant failed to pay premium pay
for missed meal breaks to Class Members.

10 33. Accordingly, Defendant failed to issue accurate, itemized wage statements to Plaintiffs
11 Fox and Washington and WS Subclass Members that included their total hours worked, including
12 overtime hours, applicable hourly rate(s), including overtime hourly rates, and/or accurate net and gross
13 wages earned information, including premium pay, in violation of Labor Code § 226(a)(1), (2), (5), and
(9).

14 34. Defendant's practice of furnishing Plaintiffs Fox and Washington and WS Subclass
15 Members with incomplete and/or inaccurate wage statements in violation of Labor Code § 226(a) was not
16 an isolated and unintentional payroll error due to a clerical or inadvertent mistake, but rather was willful
17 and intentional and the result of Defendant's regular classification and compensation policies. As a result,
18 Defendant's actions were knowing and intentional pursuant to Labor Code § 226(e).

19 35. Plaintiffs Fox and Washington and WS Subclass Members were injured as a result of
20 Defendant's knowing and intentional violation because they could not promptly and easily determine
21 from their wage statements alone, without reference to other documents or information, including wage
22 statements from previous pay periods, their total hours worked, their applicable hourly rate(s), and/or their
accurate net and gross wages earned during a pay period.

23 **D. Defendant Failed to Pay All Compensation Owed to Class Members Upon Discharge**

24 36. Plaintiff Fox's employment with Defendant ended in approximately October 2022.
25 Plaintiff Washington's employment with Defendant ended in approximately June 2021. During the Class
26 Period, as a consequence of Defendant's failure to pay overtime pay and premium pay for missed meal
27 periods, Plaintiffs Fox and Washington and formerly employed Class Members (WTP Subclass Members)
28 did not receive all compensation due to them upon discharge or termination from employment as required
under Labor Code §§ 201-202.

1 37. As a result, Defendant is liable for waiting time penalties amounting to thirty (30) days
2 wages for each WTP Subclass Member, pursuant to Labor Code § 203.

3 **E. Defendant Failed to Reimburse Class Members for their Business Expenses**

4 38. Throughout the Class Period, Defendant expected and/or required Class Members to use
5 their personal cellphones for work. Defendant used a voice-over-IP (“VOIP”) system that required Class
6 Members to download and install an app on their phones, and the VOIP system would route calls to Class
7 Members’ phones. Defendant did not provide Class Members with desk phones. In addition, because of
8 the poor call quality, Class Members often bypassed the VOIP system and called clients directly from
9 their cell phones. Class Members were also required to download and install an app called Okta to allow
10 for double authentication. Finally, Class Members routinely used their personal cellphones to demonstrate
Verkada apps to clients during sales calls.

11 39. In addition, beginning on or about March 4, 2020, Defendant instituted policies and/or
12 practices that required Plaintiff Fox and other Class Members to perform work-related duties from home.

13 40. As a result of working remotely, in direct consequence of carrying out their duties, or their
14 obedience to the directions of the Defendant, Plaintiff Fox and other Class Members incurred home office
expenses, including but not limited to charges for internet, cell phone service, office supplies, and utilities.

15 41. Defendant knew or should have known that Plaintiffs Fox and Washington and Class
16 Members incurred cell phone expense during the Class Period and that Plaintiff Fox and certain other
17 Class Members incurred home office expenses after March 2020. However, throughout the Class Period,
18 Defendant maintained policies and/or practices that denied full reimbursement for these expenses, in
violation of Labor Code § 2802.

19 42. Defendant was aware that Plaintiffs Fox and Washington and Class Members routinely
20 incurred business expenses in the discharge of their duties, as employees, without any reimbursement.
21 Defendant nevertheless has, throughout the Class Period, failed and refused to reimburse Plaintiffs Fox
22 and Washington and Class Members for such expenses incurred by them in their work as they carry out
23 their work duties for Defendant.

24 43. Plaintiffs Fox and Washington and Class Members have been harmed by Defendant’s
25 unlawful reimbursement policy and/or practice in that they have not been paid for any of their expenses
26 incurred in carrying out their job duties for Defendant, thereby diminishing their agreed-upon
27 compensation, in substantial amounts to be proved at trial.
28

1 44. As a result, Defendant violated Labor Code § 2802, and Plaintiffs Fox and Washington
2 and Class Members are entitled to reimbursement for their cell phone expense and home office expenses,
3 and their reasonable attorney's fees and costs.

4 **E. Defendant's Labor Code Violations Were Unfair Business Practices**

5 45. Throughout the Class Period, Defendant has adopted and used unfair business practices to
6 reduce Class Members' compensation and increase profits, including failing to pay overtime wages,
7 failing to pay premium pay, and failing to reimburse for necessarily incurred business expenses.

8 **CLASS ACTION ALLEGATIONS**

9 46. Plaintiffs bring this class action pursuant to Cal. Civ. Proc. Code § 382 on behalf of the
10 Class, and the Overtime, WS, and WTP Subclasses. Upon information and belief, there are more than
11 100 members in each Class. The members of the Classes are so numerous that joinder of all members is
12 impractical.

13 47. Plaintiffs' claims are typical of the claims of the members of the Class and Subclasses they,
14 respectively, seek to represent because they were employed by Defendant and subject to its unlawful
15 policies and/or practices.

16 48. Plaintiffs will fairly and adequately represent the interests of the Class and/or Subclasses
17 they, respectively, seek to represent. Plaintiffs have no conflict of interest with any member of the Class.
18 Plaintiffs have retained competent and experienced counsel in complex class action litigation. Plaintiffs'
19 counsel has the expertise and financial resources to adequately represent the interests of the Class and
20 Subclasses.

21 49. Common questions of law and fact exist as to all members of the Class and the Overtime,
22 WS, and WTP Subclasses, and predominate over any questions solely affecting individual members of
23 the Classes and Subclasses. Among the questions of law and fact common to Plaintiffs and each of the
24 Classes and/or Subclass are the following:

- 25 a. Whether Class Members are non-exempt employees;
- 26 b. Whether Class Members are non-exempt for purposes of the inside sales exemption;
- 27 c. Whether Class Members are non-exempt for purposes of the outside sales exemption;
- 28 d. Whether a home office is considered the employer's place of business;
- e. Whether Defendant violated Wage Order No. 4 § 11 by maintaining policies and practices
 that prevented or impeded Class Members from taking off-duty meal breaks;

- f. Whether Defendant violated Labor Code §§ 226.7 and 512 and Wage Order No. 4 § 11 failing to pay one hour of premium pay for each day that an unpaid meal period was not provided during the Class Period;
- g. Whether Class Members work over 8 hours in a day and/or over 40 hours in a week;
- h. Whether Defendant maintained policies and/or practices that led to Class Members working 50% or more from their employer's place of business;
- i. Whether Defendant violated Labor Code §§ 510, 1194 and Wage Order No. 4, §§ 3, 4 by failing to pay Class Members premium pay (or any pay) for overtime hours worked;
- j. Whether Defendant violated Labor Code § 226(a) by failing to issue accurate and itemized wage statements to Plaintiffs Fox and Washington and WS Subclass Members;
- k. Whether Defendant's violation of Labor Code § 226(a) was knowing and intentional;
- l. Whether Plaintiffs Fox and Washington and WS Subclass Members suffered injury for the purposes of Labor Code § 226(e);
- m. Whether Defendant violated Labor Code §§ 201-203 by failing to pay Plaintiffs Fox and Washington and WTP Subclass Members all wages owed to them upon separation from employment;
- n. Whether Defendant violated Labor Code § 2802 by failing to reimburse Plaintiffs Fox and Washington and Class Members for necessarily incurred business expenses;
- o. Whether Defendant's violations constitute unfair, unlawful, and fraudulent business practices, in violation of UCL;
- p. Whether Plaintiffs and members of the Class and the Overtime Subclass are entitled to restitution under Bus. & Prof. Code §§ 17200 *et seq.* for unpaid overtime and premium pay, and unreimbursed expenses; and
- q. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiffs and Class Members.

50. Class action treatment is superior to any alternative to ensure the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of

1 this controversy. Members of the Class and Subclasses are readily identifiable from Defendant's
2 employee rosters and/or payroll records.

3 51. Defendant's actions are generally applicable to the entire Class, and the Overtime, WS,
4 and WTP Subclasses. Prosecution of separate actions by individual members of the Class and Subclasses
5 creates the risk of inconsistent or varying adjudications of the issues presented herein, which, in turn,
6 would establish incompatible standards of conduct for Defendant.

7 52. Because joinder of all members is impractical, a class action is superior to other available
8 methods for the fair and efficient adjudication of this controversy. Furthermore, the amounts at stake for
9 many members of the Class and Subclasses while substantial, may not be sufficient to enable them to
10 maintain separate suits against Defendant.

11 **FIRST CAUSE OF ACTION**

12 **Failure to Authorize and Permit Meal Periods or Pay Missed Meal Period Premiums** 13 **[Cal. Labor Code §§ 226.7, 512; Wage Order No. 4, § 11]**

14 53. Plaintiff Washington re-alleges and incorporates by reference each and every allegation
15 set forth in the preceding paragraphs.

16 54. Pursuant to Labor Code § 226.7(b), "(b) An employer shall not require an employee to
17 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
18 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
19 Standards Board, or the Division of Occupational Safety and Health."

20 55. Pursuant to Labor Code § 512(a), "(a) An employer shall not employ an employee for a
21 work period of more than five hours per day without providing the employee with a meal period of not
22 less than 30 minutes...."

23 56. Pursuant to Wage Order No. 4, § 11, "No employer shall employ any person for a work
24 period of more than five (5) hours without a meal period of not less than 30 minutes...."

25 57. If an employer fails to provide the meal period, it shall pay the employee one hour of pay
26 at the employee's regular rate of compensation for each workday that the meal period is not provided.
27 Id.; Labor Code § 226.7(c).

28 58. Because Plaintiff Washington and Class Members did not fall within the inside sales
exemption, Defendant was required but, as alleged above, failed to provide them with off-duty meal
breaks and/or impeded them from taking off-duty meal periods. As a result, Defendant was required, but
failed to pay premium pay pursuant to Labor Code § 226.7 and Wage Order No. 4, § 11.

1 59. Plaintiff Washington, on behalf of himself and all other Class Members, requests relief as
2 described below.

3 **SECOND CAUSE OF ACTION**

4 **Failure to Pay Overtime**

5 **[Cal. Labor Code §§ 1194, 510; IWC Wage Order No. 4, §§ 3, 4]**

6 60. Plaintiffs Fox and Washington re-allege and incorporate by reference each and every
7 allegation set forth in the preceding paragraphs.

8 61. Labor Code § 510 and the applicable Wage Order require that an employer compensate all
9 work performed by an employee in excess of (8) hours per workday or forty (40) hours per workweek, at
10 one and one-half times the employee's regular rate.

11 62. Labor Code § 1194 states that any employee receiving less than the legal overtime
12 compensation applicable is entitled to recover in a civil action the unpaid balance of the full amount of
13 his or her overtime compensation, including interest thereon, and reasonable attorneys' fees and costs.

14 63. During the Class Period, Plaintiffs Fox and Washington and Class Members routinely
15 worked more than eight (8) hours per workday and more than forty (40) hours per workweek.

16 64. During all relevant times, however, Defendant knowingly and willfully failed to pay
17 overtime earned and due to Plaintiffs Fox and Washington and Overtime Subclass Members. Defendant's
18 conduct deprived Plaintiffs Fox and Washington and Overtime Subclass Members of full and timely
19 payment for all overtime hours worked in violation of the Labor Code and applicable Wage Order.

20 65. Accordingly, pursuant to §§ 3 and 4 of the Wage Order and Labor Code §§ 510, 1194,
21 Plaintiffs Fox and Washington and Overtime Subclass Members are entitled to recover, at a minimum, an
22 amount equal to the total amount of unpaid overtime wages unlawfully withheld during the Class Period,
23 interest thereon, and reasonable attorneys' fees and costs.

24 66. Plaintiffs Fox and Washington, on behalf of themselves and all other Overtime Subclass
25 Members, also request relief as described below.

26 **THIRD CAUSE OF ACTION**

27 **Failure to Issue Accurate Itemized Wage Statements**

28 **[Cal. Labor Code § 226(a), (e)]**

29 67. Plaintiffs Fox and Washington re-allege and incorporate by reference each and every
30 allegation set forth in the preceding paragraphs.

31 68. During the relevant period, Defendant failed to furnish Plaintiffs Fox and Washington and
32 WS Subclass Members with accurate itemized wage statements containing total hours worked by the
33 employee, all applicable hourly rates in effect during the pay period, including overtime rates, and the

1 corresponding number of hours worked at each hourly rate by the employee, and the gross and net wages
2 earned, including premium pay, during that pay period, in violation of Labor Code § 226(a)(2), (3), (5),
3 and (9).

4 69. Defendant's failure to furnish accurate itemized wage statements to Plaintiffs Fox and
5 Washington and WS Subclass Members was knowing and intentional.

6 70. Plaintiffs Fox and Washington and WS Subclass Members suffered injury as a result of
7 Defendant's knowing and intentional failure to comply with Labor Code § 226(a).

8 71. As a result, Plaintiffs Fox and Washington and WS Subclass Members are entitled to
9 recover \$50 for each initial pay period with a violation, and \$100 for each subsequent pay period with a
10 violation, up to an amount not exceeding an aggregate penalty of \$4,000 for each Class Member, pursuant
11 to Labor Code § 226(e).

12 72. Plaintiffs Fox and Washington, on behalf of themselves and all other WS Subclass
13 Members request relief as described below.

14 **FOURTH CAUSE OF ACTION**

15 **Failure to Pay All Wages Due at the Time of Discharge (Waiting Time Penalties)**
16 **[Cal. Labor Code §§ 201-203]**

17 73. Plaintiffs Fox and Washington re-allege and incorporate by reference each and every
18 allegation set forth in the preceding paragraphs.

19 74. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing to
20 Plaintiffs Fox and Washington and WTP Subclass Members promptly after discharge or termination of
21 their employment. Labor Code § 203 provides that if an employer willfully fails to pay compensation
22 promptly upon discharge or resignation, as required by §§ 201 and 202, then the employer is liable for
23 waiting time penalties in the form of continued compensation up to 30 workdays.

24 75. As alleged herein, Defendant failed to pay Plaintiffs Fox and Washington and WTP
25 Subclass Members premium pay and overtime pay. As a result, Defendant failed to pay all compensation
26 due and owing to Plaintiffs Fox and Washington and other WTP Class Members upon their termination
27 or separation from employment with Defendant, as required by Labor Code §§ 201 and 202.

28 76. As a result, Defendant is liable to Plaintiffs Fox and Washington and WTP Subclass
Members for waiting time penalties amounting to thirty (30) days wages for each WTP Subclass Member
pursuant to Labor Code § 203.

77. Plaintiffs Fox and Washington, on behalf of themselves and all other WTP Subclass
Members, request relief as described below.

FIFTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
[Cal. Labor Code § 2802]

78. Plaintiffs Fox and Washington re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

79. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

80. As set forth above, Plaintiffs Fox and Washington and Class Members incurred cell phone expenses in carrying out their job duties for Defendant during the Class Period.

81. In addition, Plaintiff Fox and other Class Members worked remotely from home during the Class Period and, in order to discharge their duties for Defendant, they incurred expenses, including but not limited to the cost of home internet service. However, Defendant did not reimburse Plaintiff Fox and other Class Members for those expenses.

82. Defendant’s failure to pay for or reimburse the business expenses of Plaintiffs Fox and Washington and Class Members violated non-waivable rights secured to them by Labor Code § 2802. As a result, Plaintiffs Fox and Washington and Class Members are entitled to recover all unreimbursed business expenses, and interest thereon, and reasonable attorneys’ fees and costs.

83. Plaintiffs Fox and Washington, on behalf of themselves, and all other Class Members also request relief as described below.

SIXTH CAUSE OF ACTION
Unfair, Unlawful, or Fraudulent Business Practices
[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]

84. Plaintiffs Fox, Sims, and Washington re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

85. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards. Through its actions alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL because Defendant’s conduct has violated state wage and hour laws as herein described.

1 86. During the Class Period, Defendant committed, and continues to commit, acts of unfair
2 competition, as defined in the UCL by wrongfully denying premium pay and overtime pay to Class
3 Members and by failing to reimburse necessarily-incurred business expenses of Class Members in
4 violation of Labor Code §§ 512, 226.7, 510, 1194, 2802, and Wage Order No. 4, § 3.

5 87. Defendant's actions and omissions as herein alleged have damaged Plaintiffs and Class
6 Members and were substantially injurious to them.

7 88. The harm to Plaintiffs and Class Members resulting from Defendant's labor code
8 violations outweighs the utility, if any, of Defendant's policies and practices. Therefore, Defendant's
9 actions described herein constitute an unfair business practice or act within the meaning of the UCL.

10 89. Plaintiffs, on behalf of themselves and all other Class Members, also request relief as
described below.

11 **SEVENTH CAUSE OF ACTION**

12 **Civil Penalties**

13 **[Cal. Lab. Code §§ 2698 *et seq.*]**

14 90. Plaintiff Fox incorporates the foregoing paragraphs as fully set forth herein.

15 ***Civil Penalties Sought on Behalf of Aggrieved Employees***

16 91. Plaintiff Fox seeks PAGA penalties on behalf of himself and Aggrieved Employees, and
17 the State of California for violations of Labor Code §§ 226.7, 512, 226(a), 201-203 and IWC Wage Order
18 No. 4-2001, § 3, 11.

19 92. During the PAGA Period, Defendant misclassified Aggrieved Employees and failed to
20 provide them with off-duty meal periods, and failed to pay premium pay in lieu thereof, in violation of
21 Labor Code §§ 226.7, 512 and IWC Wage Order No. 4-2001, § 11. Plaintiffs and Aggrieved Employees
22 are entitled to one hundred (\$100) for each initial pay period with a violation of §§ 226.7, 512 and two
23 hundred dollars (\$200) for each pay period with an initial violation of §§ 226.7, 512.

24 93. During the PAGA Period, as a result of misclassifying Aggrieved Employees as exempt,
25 Defendant also failed to furnish to them accurate itemized wage statements containing entries for their
26 total hours worked, all applicable hourly rates earned, and accurate net and gross wages, in violation of
27 Labor Code § 226(a). Pursuant to Labor Code § 226.3, Plaintiff and Aggrieved Employees are entitled
28 to two hundred fifty dollars (\$250) for each initial pay period with a violation of § 226(a), and one
thousand (\$1,000) for each subsequent pay period with a violation of § 226(a). Alternatively, Plaintiff and
Aggrieved Employees are entitled to one hundred (\$100) for each initial pay period with a violation of §
226(a), and two hundred dollars (\$200) for each pay period with an initial violation of § 226(a).

1 94. During the PAGA Period, Defendant failed to pay Aggrieved Employees all wages due to
2 them at the time of discharge or resignation from employment, in violation of Labor Code §§ 201-202.
3 Aggrieved Employees are entitled one hundred (\$100) for each initial pay period with a violation of §
4 201-202, and two hundred dollars (\$200) for each pay period with an initial violation of § 201-202.

5 ***Civil Penalties Sought on Behalf of Overtime Aggrieved Employees***

6 95. During the PAGA Period, Defendant failed to pay overtime when Overtime Aggrieved
7 Employees worked over 8 hours a day and/or over 40 hours in a week in violation of Labor Code §§ 1194,
8 510. Overtime Aggrieved Employees are entitled one hundred (\$100) for each initial pay period with a
9 violation of §§ 1194, 510, and two hundred dollars (\$200) for each pay period with an initial violation of
§§ 1194, 510.

10 ***Civil Penalties Sought on Behalf of Reimbursement Aggrieved Employees***

11 96. During the PAGA Period, Defendant failed to reimburse Reimbursement Aggrieved
12 Employees for expenses they incurred in carrying out their job duties for Defendant, including home
13 internet and cell phones expenses, in violation of Labor Code § 2802. Reimbursement Aggrieved
14 Employees are entitled one hundred (\$100) for each initial pay period with a violation of § 2802, and two
hundred dollars (\$200) for each pay period with an initial violation of § 2802.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiffs, on behalf of themselves and other members of the Class, and the
17 Overtime, WS, and WTP Subclasses, pray for the following relief:

18 A. An Order that this action may proceed and be maintained as a class action, with the Class
19 and Subclasses, as designated and defined in this Complaint, and that Plaintiffs and their counsel be
certified as representatives and Counsel for the Class, respectively.

20 B. On the First Cause of Action: That the Court find and declare that Defendant has violated
21 California Labor Code §§ 226.7, 512 and IWC Wage Order No. 4, § 11 by failing to provide Plaintiff
22 Washington and Class Members with off-duty meal periods and to pay premium pay in lieu thereof, and
23 award Plaintiff Washington and Class Members, at a minimum, an amount equal to the total amount of
24 unpaid premiums unlawfully withheld during the Class Period, interest thereon, and reasonable attorneys'
fees and costs.

25 C. On the Second Cause of Action: That the Court find and declare that Defendant has
26 violated California Labor Code §§ 510, 1194 and IWC Wage Order No. 4, § 3 by failing to pay Plaintiffs
27 Fox and Washington and Overtime Subclass Members overtime pay, and award Plaintiffs Fox and
28 Washington and Overtime Subclass Members, at a minimum, an amount equal to the total amount of

1 unpaid overtime wages unlawfully withheld during the Class Period, interest thereon, and reasonable
2 attorneys' fees and costs.

3 D. On the Third Cause of Action: That the Court find and declare that Defendant has violated
4 California Labor Code § 226(a) by failing to issue accurate itemized wage statements; award Plaintiffs
5 Fox and Washington and WS Subclass Members statutory penalties under California Labor Code §
6 226(e); and reasonable attorneys' fees and costs.

7 E. On the Fourth Cause of Action: That the Court find and declare that Defendant has violated
8 California Labor Code §§ 201-203 by failing to pay Plaintiffs Fox and Washington and WTP Subclass
9 Members promptly all compensation due upon separation from employment, and award Plaintiffs Fox
10 and Washington and WTP Subclass Members waiting time penalties in the amount of 30 days' wages.

11 F. On the Fifth Cause of Action: That the Court find and declare that Defendant has violated
12 California Labor Code § 2802 by failing to reimburse Plaintiffs Fox and Washington and Class Members
13 for necessarily incurred business expenses, and award Plaintiffs Fox and Washington and Class Members
14 all unreimbursed business expenses, and interest thereon, and reasonable attorneys' fees and costs.

15 G. On the Sixth Cause of Action: That the Court find and declare that Defendant has violated
16 the UCL; and award restitution to Plaintiffs Fox, Sims, and Washington, and Class Members, and
17 Overtime Subclass Members.

18 H. On the Seventh Cause of Action: That the Court award PAGA civil penalties, as well as
19 attorneys' fees and costs, as provided for under Labor Code § 2699.

20 I. That the Court award attorneys' fees and costs of suit to the extent permitted by law,
21 including, but not limited to, California Labor Code §§ 226(e), 1194, 2802(c), 2699(g), and California
22 Code of Civil Procedure § 1021.5.

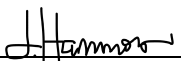
23 J. All other relief as this Court deems proper.

24 **JURY DEMAND**

25 Plaintiffs hereby demand trial by jury of all claims against Defendant alleged herein.

26 Dated: April 5, 2023

27 Respectfully submitted,

28 
By: Julian Hammond
HAMMONDLAW, P.C.
*Attorneys for Plaintiffs and the Putative Class
and Subclasses*