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FILED
 Superior Court of California
 County of Los Angeles

09/29/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

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

DAVID VELEZ, on behalf of himself and
 all others similarly situated,

Plaintiff,

vs.

DOWN DOG LODGE, LLC, a limited
 liability company; and DOES 1 through
 100, inclusive,

Defendants.

Case No. 23STCV17285

**FIRST AMENDED CLASS AND
 REPRESENTATIVE ACTION
 COMPLAINT FOR:**

- (1) **FAILURE TO PAY OVERTIME
 WAGES (LABOR CODE §§ 204, 510,
 558, 1194, 1198);**
- (2) **MEAL PERIOD VIOLATIONS (LABOR
 CODE §§ 226.7, 512, 1198);**
- (3) **REST PERIOD VIOLATIONS (LABOR
 CODE §§ 226.7, 516, 1198);**
- (4) **WAGE STATEMENT VIOLATIONS
 (LABOR CODE § 226, *et seq.*);**
- (5) **WAITING TIME PENALTIES (LABOR
 CODE §§ 201-203);**
- (6) **FAILURE TO REIMBURSE BUSINESS
 EXPENSES (LABOR CODE §§ 2802,
 2804);**
- (7) **UNFAIR COMPETITION (BUS. &
 PROF. CODE § 17200, *et seq.*).**
- (8) **CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS GENERAL
 ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
 UNLIMITED CIVIL CASE**

1 Plaintiff David Velez (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this Class and Representative Action Complaint against Down Dog Lodge, LLC, a
3 limited liability company; and Does 1 through 100, inclusive (collectively, “Defendants”), and
4 on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 class action for recovery of unpaid wages and penalties under Business and Professions Code
8 section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7, 246, 510, 512, 516, 558, 1194,
9 1198, 2802, 2804, 2698 *et seq.*; and Industrial Welfare Commission Wage Order No. 4 (“Wage
10 Order 4”), in addition to seeking declaratory relief and restitution. This action is brought pursuant
11 to Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the
12 Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
17 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
18 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
22 the filing of this action and within the statute of limitations periods applicable to each cause of
23 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
24 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
25 and/or property, and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226,
26 226.7, 246, 510, 512, 516, 558, 1194, 1198, 2802, 2804, 2698 *et seq.*; Business & Professions
27 Code § 17200, *et seq.* (Unfair Competition), and Wage Order 4, which sets employment standards
28 for employees in the professional, technical, clerical, mechanical and similar occupations.

1 4. Plaintiff is informed and believes, and thereon alleges, that during the four years
2 preceding the filing of this lawsuit and continuing to the present, Defendants did (and do) business
3 as a dog daycare, boarding and grooming company, and that they employed Plaintiff and other
4 similarly situated non-exempt employees within Los Angeles County and the state of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
9 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and the Classes (as defined in Paragraph 20) to be subject to the
12 unlawful employment practices, wrongs, injuries, and damages complained of herein.

13 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
14 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

15 7. At all times herein mentioned, each of said Defendants participated in the acts
16 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
17 each of them, were the agents, servants, and employees of each of the other Defendants, as well
18 as the agents of all Defendants, and at all times herein mentioned were acting within the course
19 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
20 and/or otherwise ratified each of the acts or omissions alleged herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
25 Members (as defined in Paragraph 20).

26 **GENERAL FACTUAL ALLEGATIONS**

27 9. Plaintiff was employed by Defendants as a non-exempt employee from
28 approximately August 2019 until approximately November 2022.

1 10. During Plaintiff’s employment with Defendants, Plaintiff and other non-exempt
2 employees often worked over 8.0 hours in a workday and/or over 40.0 hours in a workweek, but
3 Defendants failed to pay them overtime compensation at one-and-one-half times (or two times in
4 the case of double-time) their “regular rate” of pay as required under Labor Code § 510 and Wage
5 Order 4. Specifically, Plaintiff and other non-exempt employees earned non-discretionary
6 bonuses and/or other forms of compensation not excludable from the “regular rate” of pay (these
7 forms of pay are hereinafter referred to collectively as “Incentive Pay”), but Defendants failed to
8 incorporate Incentive Pay into the “regular rate” of pay, thereby underpaying overtime wages
9 owed. For example, Plaintiff’s payroll records for the pay period of June 25, 2022 to July 8, 2022,
10 reflects that Plaintiff earned a bonus of \$25 and worked .99 hours of overtime. Defendants paid
11 Plaintiff’s overtime at a rate of \$22.50 per hour, which was 1.5 times his *base* rate of pay of
12 \$15.00 per hour. Likewise, Plaintiff’s wage statement for the pay period of October 29, 2022 to
13 November 11, 2022, reflects that Plaintiff earned a bonus of \$25 and worked .94 hours of
14 overtime. Defendants paid Plaintiff’s overtime at a rate of \$22.50 per hour, which was *less* than
15 1.5 times his *base* rate of pay of \$16.00 per hour. As a result of Defendants’ failure to incorporate
16 Incentive Pay into the regular rate of pay, Plaintiff and other non-exempt employees have been
17 underpaid their overtime and/or double-time compensation.

18 11. Defendants have also failed to compensate Plaintiff’s overtime wages at the
19 “regular rate” of pay when Plaintiff earned multiple rates of pay. Specifically, Defendants
20 sometimes paid Plaintiff at two different base rates of pay during the same workweek. However,
21 in workweeks where he earned both rates of pay, and worked overtime, Defendants paid
22 Plaintiff’s overtime at 1.5 times his *lower* base rate of pay and failed to incorporate Plaintiff’s
23 higher rate of pay during the workweek into his “regular rate” when calculating overtime, and
24 therefore failed to properly calculate Plaintiff’s regular rate of pay for overtime purposes. For
25 example, Plaintiff’s payroll records for the pay period of August 21, 2021 to September 3, 2021
26 reflects that Plaintiff worked 39.29 hours at a rate of \$14.00 per hour, as well as 8.00 hours at a
27 rate of \$15.00 per hour. Plaintiff also worked overtime but was paid for those overtime hours at
28 \$21.00 per hour, which was 1.5 times his *lower* base rate of pay of \$14.00 per hour and did not

1 incorporate the higher rate of pay. As another example, in the pay period of December 28, 2019
2 to January 10, 2020, Plaintiff’s wage statement reflects that he worked 21.72 hours at a rate of
3 \$13.00 per hour and also worked 34.58 hours at a rate of \$14.00 per hour. Plaintiff also worked
4 overtime, but he was paid for that overtime at \$19.50/hour, which is 1.5 times his *lower* base rate
5 of pay and did not incorporate the higher rate of pay at which he was paid in the same workweek

6 12. The above practice violates California law. Specifically, where an employee works
7 multiple rates of pay in a workweek and also works overtime hours, the employee must be paid
8 overtime at 1.5 times the weighted average of those rates. *See* DLSE Enforcement Manual at §
9 49.2.5: “**Weighted Average Method.** When two rates of pay are paid during a workweek, the
10 California method for determining the regular rate of pay for calculating overtime in the
11 workweek mirrors the federal method, based upon the weighted average of all hourly rates
12 paid....*The rate will be established by adding all hours worked in the week and dividing that*
13 *number into the total compensation for the week.*” (Italics added); *see also Alvarado v. Dart*
14 *Container Corp. of Calif.*, 4 Cal.5th 542, 544 (2018) (“Not all employees earn at a fixed pay rate
15 throughout a pay period, and therefore regular rate of pay is a *weighted average* reflecting work
16 done at varying times, under varying circumstances, and at varying rates.”) (emphasis in original)
17 (citing to DLSE Enforcement Manual § 49.2.5). Thus, in workweeks where Plaintiff worked at
18 multiple rates of pay, and worked overtime, his compensation for those overtime hours should
19 have been 1.5 times the *weighted average* of his rates of pay. Defendants failed to calculate
20 overtime based on the weighted average, and this practice has resulted in Plaintiff and other non-
21 exempt employees being underpaid for their overtime compensation.

22 13. In addition to failing to compensate overtime at the “regular rate” of pay,
23 beginning approximately July 2022, Defendants have failed to pay overtime at even 1.5 times
24 employees’ *base* rate of pay. For example, during the pay period of July 9-22, 2022, Plaintiff’s
25 regular wages were paid at a rate of \$16.00 per hour, but Plaintiff was paid for .70 overtime hours
26 at just \$22.50 per hour, which is 1.5 times \$15.00, not Plaintiff’s base rate of \$16.00. As another
27 example, in the pay period of October 1-14, 2022, Plaintiff’s regular wages were paid at a rate of
28 \$16.00 per hour, but Plaintiff was paid for .66 overtime hours at just \$22.50 per hour, which is

1 1.5 times \$15.00, not Plaintiff's base rate of \$16.00. As a result of this practice, Plaintiff and other
2 non-exempt employees have been further underpaid for their overtime and/or double-time
3 compensation.

4 14. As another consequence of Defendants' failure to incorporate all compensation in
5 the "regular rate," Defendants failed to pay sick pay at the proper rate, in violation of Labor Code
6 § 246. For example, in the pay period of November 14-27, 2020, Plaintiff was paid approximately
7 16 hours of sick pay, and also was paid a bonus of \$25.00. However, Defendants paid Plaintiff's
8 sick pay at his *base* rate of \$14.00 per hour, without incorporating the value of his bonus, in
9 violation of Labor Code § 246.

10 15. Defendants have also failed to provide Plaintiff and other non-exempt employees
11 with all statutorily mandated meal periods due to Defendants' meal period policies/practices.
12 Specifically, the workload placed on Plaintiff and other non-exempt employees often made it
13 impracticable for Plaintiff and other non-exempt employees to take a 30-minute off-duty meal
14 period prior to the end of the fifth hour of work. As a result, Plaintiff's meal periods were often
15 short (less than 30 minutes), late (commencing after five hours of work), or missed. In those
16 instances that Defendants failed to provide Plaintiff and other non-exempt employees with a
17 legally compliant meal period, Defendants failed to pay the meal period premiums required by
18 Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class
19 period, Defendants maintained no payroll code or other mechanism for paying meal period
20 premiums when Defendants failed to provide a legally compliant meal period.

21 16. Defendants have also failed to authorize and permit rest periods to Plaintiff and
22 other non-exempt employees. Specifically, Plaintiff and other non-exempt employees were
23 frequently unable to take rest periods to which they were entitled as a result of the workload
24 imposed by Defendants. In those instances that Defendants failed to authorize and permit Plaintiff
25 and other non-exempt employees to take a legally compliant rest period, Defendants failed to pay
26 the rest period premiums required by Labor Code § 226.7. Upon information and belief, during
27 at least a portion of the putative class period, Defendants maintained no payroll code or other
28 mechanism for paying rest period premiums.

17. Defendants have also failed to reimburse Plaintiff and other employees for expenses they incurred in the course of their employment, including the use of their personal cell phones and vehicles for work purposes. Specifically, Plaintiff was required to use his personal cell phone to download the Homebase and Gingr apps for work purposes. Defendants posted employee schedules on the Homebase app and Plaintiff was required to retrieve his schedule through Homebase. Since the work schedules constantly changed, Plaintiff generally used the Homebase app each evening to receive his schedule for the following day. Plaintiff was also required to use the Gingr app on his cell phone to accurately identify each dog and use his cell phone camera to take and send photos of the dogs in Defendants' care. In addition, Defendants required Plaintiff to use his personal vehicle to take dogs to the vet. On information and belief, other employees likewise were required to use their personal cell phones and vehicles to perform these work-related tasks. Defendants knew – or reasonably should have known – that Plaintiff and other employees had to use their personal cell phones (or other devices) for work-related purposes, but Defendants failed to reimburse them for these work-related expenses. As a result, Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

18. As a result of Defendants' failure to pay all earned wages (including but not limited to overtime wages and meal and rest period premium wages), Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

19. As a further result of Defendants' failure to pay all earned wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other non-exempt employees. These failures resulted in employee wage statements including inaccurate information regarding, *inter alia*, gross wages earned, net wages earned, and the rates of pay in effect in each pay period.

CLASS ACTION ALLEGATIONS

20. Class Definitions: Plaintiff brings this action on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

1 a. The Overtime Class consists of all of the Defendants' current and former non-
2 exempt employees in California who worked more than 8.0 hours in a workday and/or over
3 40.0 hours in a workweek, and (i) were paid overtime at less than 1.5 times the rate at
4 which they were paid for regular hours during the same pay period; (ii) worked at multiple
5 rates of pay in the same pay period and were paid for overtime or double-time at 1.5 times
6 or 2 times, respectively, their lower base rate of pay; and/or (iii) earned Incentive Pay and
7 worked overtime hours in the same pay period, at any time from four years immediately
8 preceding the filing of this lawsuit to the present.

9 b. The Meal Period Class consists of all of the Defendants' current and former non-
10 exempt employees in California who worked at least one shift in excess of 5.0 hours, at
11 any time from four years immediately preceding the filing of this action through the
12 present.

13 c. The Rest Period Class consists of all of the Defendants' current and former non-
14 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
15 time from four years immediately preceding the filing of this action through the present.

16 d. The Expense Reimbursement Class consists of all of the Defendants' employees
17 (exempt and non-exempt) in California who were required to use their personal property,
18 including but not limited to cellular phones and vehicles, for work-related purposes, at any
19 time from four years prior to the filing of this action through the present.

20 e. The Wage Statement Class consists of all members of the Overtime Class, Meal
21 Period Class, and/or Rest Period Class, who received a wage statement at any time from
22 one year immediately preceding the filing of this lawsuit through the present.

23 f. The Waiting Time Class consists of all members of the Overtime Class, Meal
24 Period Class, and/or Rest Period Class, who are no longer employed by Defendants and
25 whose employment with Defendants ended at any time from three years immediately
26 preceding the filing of this lawsuit through the present.

27 21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
28 joinder of all members would be unfeasible and impracticable. The membership of the Classes is

unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;
- ii. Whether Defendants reimbursed all work-related expenses incurred by members of the Expense Reimbursement Class;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- iv. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- vi. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment.

23. **Predominance of Common Questions:** Common questions predominate over questions that affect only individual Class members. The common questions set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each Class member, such as Defendants' timekeeping, payroll, overtime, wage statement, meal period, rest period, expense reimbursement, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

24. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime wages, was subject to Defendants' uniform meal and rest period policies/practices, was furnished with inaccurate wage statements, and was deprived of all final wages upon his separation of employment from Defendants.

25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

26. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by individual class members would create a substantial risk of

1 inconsistent or varying verdicts or adjudications with respect to the individual class members
2 against Defendants herein; and which would establish potentially incompatible standards of
3 conduct for Defendants. Further, the claims of the individual members of the Classes are not
4 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
5 costs and expenses attending thereto. As such, the Classes identified in Paragraph 20 are
6 maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY OVERTIME WAGES**

9 **(AGAINST ALL DEFENDANTS)**

10 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
12 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
13 overtime hours worked and provide a private right of action for the failure to pay all overtime
14 compensation for overtime work performed.

15 29. At all times relevant herein, Defendants were required to properly compensate
16 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
17 Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an
18 employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess
19 of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours
20 on the seventh consecutive workday in a workweek. Wage Order 4, § 3 also requires an employer
21 to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a
22 workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek.

23 30. As alleged herein, Defendants have caused Plaintiff and Overtime Class members
24 to work overtime and/or double-time hours but have not compensated them at one and one-half
25 times (or two times) their regular rate of pay for such hours.

26 31. The foregoing policies and practices are unlawful and create entitlement to
27 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
28 premiums owing, including interest thereon, statutory penalties, and attorneys’ fees and costs of

suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and Wage Order 4, and have failed to pay meal period premiums at Plaintiff's and Meal Period Class members' regular rate of compensation as required under Labor Code § 226.7, for the reasons set forth in this Complaint.

34. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 4, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

36. Labor Code §§ 226.7 and 516, and Wage Order 4, § 12 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. As alleged herein, Defendants have failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each rest period to which they were entitled while working.

37. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor

Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

39. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all wages earned, all meal and rest period premium wages earned, and each hourly rate in effect during the pay period, in violation of Labor Code § 226.

40. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their earned wages, and deprived them of the information necessary to identify and reconcile the discrepancies in Defendants' reported data.

41. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

43. This cause of action is brought under Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation if the employer discharges an employee, or the employee provides at least 72 hours of notice of their intent to quit. If the employee provides less than 72 hours of notice of intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

1 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
3 at their separation from employment, including (but not limited to) unpaid overtime wages, and
4 unpaid meal and rest period premium wages.

5 45. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
6 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
7 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
8 to the requirements of Labor Code §§ 201-203.

9 46. Defendants' failure to pay all final wages was willful within the meaning of Labor
10 Code § 203. Defendants' willful failure to timely pay Plaintiff and Waiting Time Class members
11 their earned wages upon separation from employment results in a continued payment of daily
12 wages up to thirty days from when the wages were due. Plaintiff and Waiting Time Class members
13 are entitled to compensation per Labor Code § 203, plus reasonable attorneys' fees and costs.

14 **SIXTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

16 **(AGAINST ALL DEFENDANTS)**

17 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 48. At all relevant times, Defendants were subject to Labor Code § 2802, which states
19 that "an employer shall indemnify his or her employees for all necessary expenditures or losses
20 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
21 her obedience to the directions of the employer."

22 49. At all relevant times, Defendants were subject to Labor Code § 2804, which states,
23 "any contract or agreement, express or implied, made by any employee to waive the benefits of
24 this article or any part thereof, is null and void, and this article shall not deprive any employee or
25 his personal representative of any right or remedy to which he is entitled under the laws of this
26 State."

27 50. Due to Defendants' unlawful policy and practice of requiring employees to use
28 their personal cellular phones and vehicles for work purposes, and their failure to reimburse

Plaintiff and members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

51. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class have suffered damages in sums, which will be shown according to proof.

52. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

53. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

55. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all earned overtime wages due, failing to provide meal periods or pay meal period premium wages, failing to authorize and permit rest periods or pay rest period premium wages, failing to furnish accurate and complete itemized wage statements, failing to reimburse business expenses, and failing to pay all earned wages at separation of employment.

56. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

57. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for himself, and on behalf of the members of the Classes, seeks full restitution

of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

58. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

59. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

61. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is

specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 516, 558, and 1198;
- c. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- e. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203;
- f. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198; and
- g. Failing to pay sick time hours at Plaintiff's and other aggrieved employees' respective regular rates of pay, in violation of Labor Code §§ 246.

62. On or about July 25, 2023, Plaintiff notified Defendant Down Dog Lodge, LLC via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 61 (a)-(g) above. Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

63. Based on the foregoing, Plaintiff seeks to represent himself, the State of California, and all aggrieved employees as defined by Labor Code § 2699(c), which includes all current and former employees who worked for Defendants in California at any time from one year prior to the submission of Plaintiff's PAGA notice to the present.

64. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;
7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

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1 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and the Class members
2 of all money and/or property unlawfully acquired by Defendants by means of any acts or practices
3 declared by this Court to be in violation of Business and Professions Code § 17200, *et seq.*;

4 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code § 2699,
6 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
7 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
8 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
9 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
10 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
11 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
12 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
13 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
14 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
15 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
16 Labor Code § 2699(f);

17 12. Prejudgment interest on all due and unpaid wages and other damages pursuant to
18 California Labor Code §§ 218.6, 1194(a), 2802(b), Civil Code § 3287; and Art. XV, § 1 of the
19 California Constitution;

20 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
21 226(e), 1194 *et seq.*, 2802(c), 2699(g), Code of Civil Procedure § 1021.5, and all other applicable
22 statutes; and

23 14. For such other and further relief the Court may deem just and proper.

24
25 Date: September 29, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

26
27 By:


Tuvia Korobkin
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: September 29, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By: _____



Tuvia Korobkin
Attorney for Plaintiff

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the
3 age of 18 and not a party to the within action. My business address is 11846 Ventura
4 Blvd., Suite 100, Studio City, CA 91604. On the below date, I served a true copy of the
5 foregoing documents described as:

6 **FIRST AMENDED COMPLAINT**

7 on all interested parties in this action directed as follows:

8 Collin D. Cook (SBN 251606)
9 FISHER & PHILLIPS LLP
10 1 Montgomery Street, Suite 3400
11 San Francisco, CA 94104
12 Attorneys for Defendant

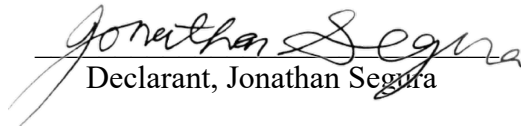
Email Address:
ccook@fisherphillips.com

13 / / (BY OVERNIGHT MAIL): I am readily familiar with the firm's practice of
14 collection and processing for overnight delivery. Under such practice, I caused the
15 aforementioned document(s) to be delivered to an overnight courier service, carrier fees
16 paid and deposited in an overnight delivery drop-box and/or delivered to an overnight
17 carrier.

18 /X / (BY ELECTRONIC SERVICE): BY ELECTRONIC TRANSMISSION) I served the
19 foregoing by electronic transmission to the email addresses listed above, pursuant to Cal. Code
20 Civ. Proc. § 1010.6 and Cal. Rules of Court Rule 2.251.

21 I declare under penalty of perjury under the laws of the State of California and the
22 United States of America that the foregoing is true and correct.

23 Executed on September 29, 2023, at Studio City, California.

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Declarant, Jonathan Segura