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Class, Collective, and Aggrieved Members*

**SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY
OF SACRAMENTO**

BRANDON WORTHY and
RANDI RIZZARI, Individually and
on Behalf of All Others Similarly
Situated,

Plaintiffs,

v.

MALWAREBYTES, Inc.,

Defendant.

Case No. **25CV006631**

**CLASS, COLLECTIVE, AND PAGA
ACTION COMPLAINT FOR
VIOLATIONS OF CALIFORNIA LABOR
CODE, FAIR LABOR STANDARDS
ACT, AND UNFAIR COMPETITION
LAW; CLAIMS FOR DAMAGES.**

1 Plaintiffs Brandon Worthy and Randi Rizzari (together, “Plaintiffs”) on behalf of
2 themselves and all others similarly situated, by and through their attorneys, Outten & Golden LLP,
3 complaining of the conduct of Defendant Malwarebytes, Inc. (“Defendant” or “Malwarebytes”),
4 allege as follows:

5 **PRELIMINARY STATEMENT**

6 1. This lawsuit seeks to recover unpaid overtime compensation and damages for
7 Plaintiffs and similarly situated Sales Representatives who were treated as exempt from overtime
8 and worked as inside salespeople for Malwarebytes. It includes current and former employees of
9 Defendant who worked as exempt-classified sales representatives in the job profiles Inside Sales
10 Representative 3, 4 - Own Quota; Inside/Renewal Contract Sales Rep 4; and Telemarketing/Lead
11 Development Rep 4 (collectively, “Exempt Sales Representatives”).

12 2. This lawsuit also seeks to recover unpaid overtime for Plaintiffs and similarly
13 situated sales representatives who were treated as overtime eligible but were not paid for all hours
14 worked and were paid the incorrect rate, due to a failure to include the value of incentive pay in
15 the regular rate, when they were paid overtime. It includes all current and former employees of
16 Defendant who worked as non-exempt Sales Representatives in the following job profiles:
17 Telemarketing/Lead Development Rep 1, 2, 3; Inside/Contract Renewal Sales Rep 2, 3; Inside
18 Sales Representative 2 - Overlay Quota; and Inside Sales Representative 2 – Own Quota.
19 (collectively, “Non-exempt Sales Representatives”, and together with Exempt Sales
20 Representatives, “Sales Representatives”).

21 3. Malwarebytes is an internet security company with at least one office location in
22 California.

23 4. Defendant sells anti-malware products to clients nationwide. Defendant employs
24 Sales Representatives, such as Plaintiffs, to make sales to current and prospective clients.

25 5. While employed by Defendant, Plaintiffs consistently worked more than 8 hours
26 per day and more than 40 hours per workweek without receiving overtime compensation for all
27 the hours they worked. Throughout the relevant period, it was Defendant’s policy to deprive
28 Plaintiffs of their earned overtime wages in violation of the Fair Labor Standards Act (“FLSA”),

29 U.S.C. §§ 201, *et seq.*, the California Labor Code (“Cal. Lab. Code”) and applicable Wage Orders and regulations, and the California Unfair Business Practices Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (collectively with the California Labor Code, the “California Wage Laws”).

6. In order to avoid paying Plaintiffs overtime compensation for all of the overtime hours they worked, Defendant instituted a policy or practice of improperly classifying Exempt Sales Representatives as exempt from overtime.

7. Defendant also instituted a policy or practice of prohibiting Nonexempt Sales Representatives from reporting their actual overtime hours, required its Nonexempt Sales Representatives to work “off-the-clock,” and underpaid them by improperly calculating the overtime rate when it did pay overtime.

8. Plaintiffs bring this action on behalf of themselves and all similarly situated current and former Sales Representatives of Defendant nationwide who worked for Defendant from April 4, 2019 through the Release Date¹ pursuant to the FLSA.

9. Plaintiffs seeks permission to give notice of this action pursuant to 29 U.S.C. § 216(b) to all eligible employees who worked for Defendant as Sales Representatives nationwide.

10. Plaintiffs also bring this action to recover unpaid overtime compensation and other damages for themselves and similarly situated current and former employees who worked for Defendant as Sales Representatives in California from April 4, 2018 through the Release Date as a class action under Code of Civil Procedure § 382 and the California Wage Laws.

11. Plaintiffs also bring this action on behalf of themselves and all similarly situated current and former Sales Representatives who worked for Defendant in California from April 4, 2021 through the Release Date (“Aggrieved Employees”) to recover penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code. §§ 2698, *et seq.*, for violations of the California Labor Code as set forth herein.

¹ “Release Date”, as used in this Complaint, has the same definition as in the Settlement Agreement attached to Plaintiffs’ Unopposed Motion for Preliminary Settlement Approval, which will be filed not later than March 25, 2025.

12. The Parties entered a tolling agreement on April 4, 2022, which tolled the statute of limitations on Plaintiffs' claims from that date forward.

JURISDICTION & VENUE

13. This Court has jurisdiction over Plaintiffs' claims under the California Labor Code, the California Unfair Competition Law, and 29 U.S.C. § 216(b).

14. The Court can exercise personal jurisdiction over Defendant because Defendant maintains its headquarters in Santa Clara, California, conducts substantial business activity in this city and state, and engaged in the unlawful acts described herein in this city and state.

15. Venue is proper in this Court under Code of Civil Procedure § 393(a) because parts of the cause of action for civil penalties arose in this County.

16. Notice of the claims alleged herein was provided to the California Labor & Workforce Development Agency ("LWDA") and Defendant on July 24, 2023. The LWDA has not taken any action with regard to the claims, including providing notice of an intent to pursue the claims.

THE PARTIES

Plaintiff Brandon Worthy

17. Plaintiff Brandon Worthy is a resident of San Diego County.

18. Worthy was employed by Defendant in Defendant's Santa Clara, California office as an Exempt Sales Representative from approximately April 2019 to February 2021.

19. At all times relevant, Worthy was an "employee" within the meaning of all applicable statutes.

20. Worthy regularly worked more than 40 hours in a workweek, but was not paid for all hours he worked over 40. A written consent form signed by Worthy is attached to this Complaint as Exhibit A.

Plaintiff Randi Rizzari

21. Plaintiff Randi Rizzari is a resident of Alameda County, California.

1 22. Rizzari was employed by Malwarebytes from February 2020 to February 2022 in
2 Santa Clara, California. She was an Enterprise Account Manager from February 2021 to February
3 2022 and a Mid-Market Account Manager from February 2020 to January 2021.

4 23. She was initially employed as a Nonexempt Sales Representative, but was
5 reclassified after the COVID-19 pandemic and became an Exempt Sales Representative.

6 24. At all times relevant to the Class and Collective Action Complaint, Rizzari was an
7 “employee” within the meaning of all applicable statutes.

8 25. Rizzari regularly worked more than 40 hours in a workweek, but was not paid for
9 all hours she worked over 40. A written consent form signed by Rizzari is attached to this
10 Complaint as Exhibit B.

11 ***Defendant Malwarebytes Inc.***

12 26. Upon information and belief, Defendant Malwarebytes Inc. is a corporation formed
13 under the laws of the State of Delaware with a principal place of business in Santa Clara,
14 California.

15 27. Upon information and belief, Defendant has maintained control, oversight, and
16 direction over its operations and employment practices.

17 28. At all times hereinafter mentioned, Defendant was Plaintiffs’ “employer” within
18 the meaning of all applicable statutes.

19 29. At all relevant times, Defendant maintained control, oversight, and direction over
20 Plaintiffs and other Sales Representatives, including timekeeping, payroll, and other employment
21 practices that applied to them.

22 30. Defendant has applied the same employment policies, practices, and procedures to
23 all Sales Representatives in California and nationwide, including policies, practices, and
24 procedures with respect to payment of overtime compensation.

25 31. Defendant’s annual gross volume of business is not less than \$500,000 within the
26 meaning of 29 U.S.C. § 203(s)(A)(ii).

FLSA COLLECTIVE ACTION CLAIMS

32. Plaintiffs bring the First Cause of Action pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of themselves and all similarly situated persons who work or have worked for Defendant as a Sales Representative since April 4, 2019 and who elect to opt-in to this action.

33. Upon information and belief, there are hundreds of current and former Sales Representatives who are similarly situated to Plaintiffs and were denied overtime compensation and full payment of earned wages.

34. Plaintiffs are acting on behalf of Defendant's current and former Sales Representatives' interests as well as their own interests in bringing this action.

35. Defendant unlawfully required Plaintiffs and all individuals employed as Sales Representatives to work in excess of 40 hours per week without paying them overtime compensation at a rate of at least one and one-half times their regular hourly rate for all overtime hours worked.

36. Defendant is aware or should have been aware that federal law required it to include all payments other than those specifically excluded by 29 U.S.C. 207(e) in its employees' regular rate of pay.

37. Plaintiffs seek to proceed as a collective with regard to the First Cause of Action pursuant to 29 U.S.C. § 216(b) on behalf of themselves and the following group of persons:

All Sales Representatives who are currently or have been employed by Defendant at any time from April 4, 2019 through the Release Date (hereinafter referred to as the "Collective Class" and the "Collective Class Period," respectively).

38. Defendant was aware or should have been aware that the law required it to pay Exempt Sales Representatives, including Plaintiffs and the FLSA Collective Class, an overtime premium of one and one-half times their regular rate of pay for all work-hours Defendant suffered or permitted them to work in excess of 40 per workweek. Upon information and belief, Defendant applied the same unlawful policies and practices to its Sales Representatives nationwide.

39. Defendant was also aware that it employed Collective Class Members throughout the United States as Nonexempt Sales Representatives and failed to pay those hourly, Nonexempt

1 Sales Representatives, the full overtime wages they have earned and to which they are entitled by
2 law.

3 40. The Collective Class members are readily identifiable and locatable through the use
4 of the Defendant's records. The Collective Class should be notified of and allowed to opt-in to
5 this action, pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice, the
6 Collective Class, who have been unlawfully deprived of overtime pay in violation of the FLSA,
7 will be unable to secure compensation to which they are entitled, and which has been unlawfully
8 withheld from them by Defendant.

9 **CALIFORNIA CLASS ALLEGATIONS**

10 41. Plaintiffs bring the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes
11 of Action on their own behalf and as a class action, pursuant to Code Civ. Proc. § 382, on behalf
12 of the following class of persons:

13 All Sales Representatives who are currently or have been employed
14 by Defendant in the State of California from April 4, 2018 through
15 the Release Date (hereinafter referred to as the "California Class"
and the "California Class Period," respectively).

16 42. Excluded from the California Class are Defendant's legal representatives, officers,
17 directors, assigns, and successors, or any individual who has, or who at any time during the class
18 period has had, a controlling interest in Defendant; the Judge(s) to whom this case is assigned and
19 any member of the Judge(s)' immediate family; and all persons who will submit timely and
20 otherwise proper requests for exclusion from the California Class.

21 43. Numerosity – Upon information and belief, the size of the California Class is more
22 than 150 individuals.

23 44. Ascertainability – The identity of Class members is ascertainable through
24 Defendant's business records.

25 45. Commonality and predominance – The Second, Third, Fourth, Fifth, Sixth, and
26 Seventh Causes of Action are properly maintainable as a class action because there are questions
27 of law and fact common to the California Class that predominate over any questions solely
28 affecting individual members of the California Class, including but not limited to:

1 a. Whether the Defendant has unlawfully failed to pay the California Class
2 members all overtime compensation owed, in violation of the California Labor Code and related
3 regulations, Cal. Lab. Code §§ 226, 226.3, 510, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
4 1199; Cal. Wage Order Nos. 4-2001 and 7-2001; and the California Unfair Competition Law, Cal.
5 Bus & Prof. Code §§ 17200, *et seq.*;

6 b. Whether Defendant has unlawfully failed to keep and furnish the California
7 Class members with timely, accurate, and itemized records of hours worked in violation of Cal.
8 Labor Code §§ 226, 226.3 and 1174;

9 c. Whether Defendant has unlawfully failed to timely pay wages due during
10 employment and upon separation in violation of Cal. Labor Code §§ 201, 202, 203, and 204 and
11 227.3;

12 d. Whether Defendant has unlawfully failed to furnish the California Class
13 members with proper meal period and rest breaks, in violation of the California Labor Code and
14 related regulations, Cal. Lab. Code §§ 226.7, 512 and applicable wage orders; and

15 e. the nature and extent of the California Class members' injuries and the
16 appropriate measure of their damages.

17 46. Typicality – Plaintiffs' claims are typical of the claims of the Class they seek to
18 represent. Plaintiffs' claims arise from the same practice and course of conduct that give rise to
19 the Class's claims. Plaintiffs and the Class sustained similar injuries arising out of Defendant's
20 violation of the law. There is no apparent conflict of interest between Plaintiffs and the Class.

21 47. Adequacy – Plaintiffs fairly and adequately protect the interests of the California
22 Class and have no interests antagonistic to the class. Plaintiffs are represented by attorneys who
23 are experienced and competent in both class litigation and employment litigation.

24 48. A class is superior to other available methods for the fair and efficient adjudication
25 of the controversy, particularly in the context of wage-and-hour litigation where an individual
26 Plaintiff lacks the financial resources to vigorously prosecute a lawsuit in federal court against the
27 corporate Defendant. The damages sustained by individual class members are small compared to
28

1 the expense and burden of individual prosecution of this litigation. Class action treatment will
2 obviate unduly duplicative litigation and the possibility of inconsistent judgments.

3 49. Further, Plaintiffs and the California Class have been equally affected by the
4 Defendant's failure to pay proper wages and other violations. Moreover, members of the
5 California Class still employed by Defendant may be reluctant to raise individual claims for fear
6 of retaliation.

7 50. Defendant has acted or refused to act on grounds generally applicable to the
8 California Class, thereby making appropriate final injunctive relief or corresponding declaratory
9 relief with respect to the class as a whole.

10 **COMMON FACTUAL ALLEGATIONS**

11 51. Plaintiffs and the members of the FLSA Collective Class and the California Class
12 (collectively, "Class Members") have been victims of Defendant's common policy and plan that
13 has violated their rights under the FLSA and Labor Code by requiring Sales Representatives to
14 work in excess of 40 hours per week and in excess of 8 hours per day, and denying them overtime
15 compensation for all overtime hours worked or by failing to pay all overtime wages owed. At all
16 times relevant, Defendant's unlawful policy and pattern or practice has been willful.

17 ***Non-Exempt Sales Representatives***

18 52. Upon information and belief, Defendant has had a policy and pattern or practice to
19 require Nonexempt Sales Representatives to work in excess of 8 hours per workday, or 40 hours
20 per week, and requiring Nonexempt Sales Representatives, including Plaintiff Rizzari, to perform
21 additional work on weekends, without proper overtime compensation.

22 53. Upon information and belief, Defendant has a policy and pattern or practice to
23 prohibit Nonexempt Sales Representatives from recording all of their actual overtime hours
24 worked per week.

25 54. All of the work performed by Nonexempt Sales Representatives was assigned by
26 Defendant and/or Defendant was aware of the "off-the-clock" work that Non-exempt Sales
27 Representatives performed.

1 55. Defendant failed to pay Non-exempt Sales Representatives time and one-half for
2 all hours worked over 40 in a workweek in violation of the FLSA.

3 56. When Defendant did pay overtime to Non-exempt Sales Representatives, it failed
4 to do so at the proper rate because it did not include commissions and other incentive pay in the
5 calculation.

6 ***Exempt Sales Representatives***

7 57. Exempt Sales Representatives' primary duties were non-exempt duties,
8 specifically, identifying business opportunities, engaging with potential customers by phone,
9 email, social media, and web meetings, and making sales of Malwarebytes's products.

10 58. Although Exempt Sales Representatives were eligible to earn commissions based
11 on various performance indications, these commissions did not constitute a majority of their
12 earnings.

13 59. Throughout their employment, Exempt Sales Representatives consistently worked
14 more than 40 hours per week and 8 hours per day.

15 60. Defendant was aware that Exempt Sales Representatives worked more than 40
16 hours per workweek and 8 hours per day, yet Defendant failed to pay them any overtime
17 compensation.

18 61. Defendant failed to pay Exempt Sales Representatives time and one-half for all
19 hours worked over 40 in a workweek in violation of the FLSA and California Wage laws.

20 62. All of the work performed by Exempt Sales Representatives was assigned by
21 Defendant and Defendant was aware that Exempt Sales Representatives regularly worked overtime
22 hours.

23 ***All Sales Representatives***

24 63. Defendant failed to furnish Plaintiffs and Sales Representatives with an accurate
25 itemized statement showing, inter alia, wages, hours worked, and rates paid as required by the
26 California Labor Code.

1 64. Defendant did not keep accurate records of hours worked by Plaintiffs and Sales
2 Representatives. That is, Non-exempt Sales Representatives were prohibited from recording all
3 hours worked.

4 65. Defendant failed to timely pay Plaintiffs and the California Class Members all
5 wages earned and unpaid at the time of separation from employment.

6 66. Plaintiffs and all California Class members who ceased employment with
7 Defendant are entitled to unpaid compensation, but to date have not received such compensation.

8 67. Defendant failed to timely pay Plaintiffs and the California Class Members all
9 wages due and payable twice during each calendar month, on days designated in advance by the
10 employer as regular pay days.

11 68. Defendant failed to provide Plaintiffs and California Class members with at least a
12 half-hour meal break in which they were relieved of all duty for shifts of five hours or more, and,
13 for shifts of more than twelve hours, a second half-hour meal break in which they were relieved of
14 all duty, as required by the California Labor Code.

15 69. Defendant failed to provide Plaintiffs and California Class members with a 10-
16 minute rest break for each three and a half hours worked.

17 70. As part of its regular business practice, Defendant intentionally, willfully, and
18 repeatedly engaged in a pattern, practice, and/or policy that violates the FLSA and California Wage
19 Laws.

20 71. Defendant's policy and pattern or practice includes but is not limited to:

21 a. willfully failing to record all of the time that its employees, including
22 Plaintiffs and Class Members, worked for the benefit of Defendant;

23 b. willfully failing to keep payroll records as required by the FLSA and
24 California Wage Laws;

25 c. willfully requiring Plaintiffs and Class Members to work "off-the-clock"
26 and failing to pay the proper regular rate when it did pay overtime;

27 d. willfully misclassifying Exempt Sales Representatives as exempt from the
28 protections of federal and state overtime laws; and

1 e. willfully failing to pay its employees, including Plaintiffs and Class
2 Members, overtime wages for all of the overtime hours that they worked.

3 72. Defendant was or should have been aware that the FLSA required it to pay its Sales
4 Representatives overtime compensation for all hours worked in excess of 40 per week.

5 73. Defendant's failure to pay Plaintiffs and Class Members overtime wages for their
6 work in excess of 40 hours per week was willful, intentional, and in bad faith.

7 74. Defendant's unlawful conduct has been widespread, repeated, and consistent.

8 **FIRST CAUSE OF ACTION**

9 **FLSA – Overtime Wages**

10 **29 U.S.C. §§ 201, *et seq.***

11 **(Brought by Plaintiffs Individually and on Behalf of the FLSA Collective)**

12 75. Plaintiffs reallege and incorporate by reference all allegations in all preceding
13 paragraphs.

14 76. Plaintiffs and members of the FLSA Collective are Exempt Sales Representatives
15 and Nonexempt Sales Representatives entitled to be paid overtime compensation for all overtime
16 hours worked.

17 77. Defendant employed Plaintiffs and members of the FLSA Collective for
18 workweeks longer than 40 hours and willfully failed to compensate Plaintiffs for all of the time
19 worked in excess of 40 hours per week, at a rate of at least one and one-half times their regular
20 hourly rate, in violation of the requirements of Section 7 of the FLSA, 29 U.S.C. § 207(a)(1).

21 78. Plaintiffs have expressed their consent to make these claims against the Defendant
22 by filing a written consent form, pursuant to 29 U.S.C. § 216(b).

23 79. Defendant failed to make a good faith effort to comply with the FLSA with respect
24 to its compensation to Plaintiffs and the FLSA Collective.

25 80. Because Defendant's violations of the FLSA were willful, a three-year statute of
26 limitations applies, pursuant to 29 U.S.C. § 255.

27 81. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs
28 and members of the FLSA Collective have incurred damages thereby and Defendant is indebted

1 to them in the amount of the unpaid overtime compensation, together with interest, liquidated
2 damages, attorneys' fees, and costs in an amount to be determined at trial.

3 **SECOND CAUSE OF ACTION**

4 **California Labor Code – Overtime Wages**

5 **California Wage Order Nos. 4-2001 & 7-2001; Cal. Lab. Code §§ 510, 1194 (Brought by Plaintiffs Individually and on Behalf of the California Class)**

6 82. Plaintiffs reallege and incorporate by reference all allegations in all preceding
7 paragraphs.

8 83. California law requires employers, such as Defendant, to pay full overtime
9 compensation to all non-exempt employees for all hours worked over 40 per workweek and over
10 eight per day.

11 84. Plaintiffs and the California Class members are non-exempt employees entitled to
12 be paid overtime compensation for all overtime hours worked.

13 85. At all relevant times, Plaintiffs and the California Class members worked in excess
14 of 40 hours in a workweek and eight hours in a workday.

15 86. At all relevant times, Defendant failed and refused to pay Plaintiffs and the
16 California Class members the full overtime compensation owed for all of their overtime hours
17 worked.

18 87. As a direct and proximate result of Defendant's unlawful conduct, as set forth
19 herein, Plaintiffs and the California Class members have sustained damages, including loss of
20 earnings for hours of overtime worked for the benefit of Defendant in an amount to be established
21 at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable
22 law.

23 **THIRD CAUSE OF ACTION**

24 **California Labor Code – Record-Keeping Violations**

25 **California Wage Order Nos. 4-2001 & 7-2001; Cal. Lab. Code §§ 226, 226.3, 1174, & 1174.5 (Brought by Plaintiffs Individually and on Behalf of the California Class)**

26 88. Plaintiffs reallege and incorporate by reference all allegations in all preceding
27 paragraphs.

28 89. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
wage statements including, *inter alia*, all hours worked, to Plaintiffs and the California Class

1 members in accordance with California Wage Order Nos. 4-2001 and 7-2001 and California Labor
2 Code § 226(a). Such failure caused injury to Plaintiffs and the California Class members, by,
3 among other things, impeding them from knowing the amount of wages to which they are and
4 were entitled. At all times relevant herein, Defendant has failed to maintain accurate records of
5 hours worked by Plaintiffs and the California Class members as required under Labor Code §
6 1174(d).

7 90. Plaintiffs and the California Class members are entitled to and seek injunctive relief
8 requiring Defendant to comply with California Labor Code §§ 226(a) and 1174(d), and further
9 seek the amount provided under California Labor Code §§ 226(e) and 1174.5, including the greater
10 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
11 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period.

12 91. Plaintiffs and the California Class members are entitled to civil penalties pursuant
13 to the California Labor Code § 226.3 in the amount of two hundred fifty dollars (\$250) per
14 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
15 each violation in a subsequent citation, for which the employer fails to provide the employee a
16 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

17 **FOURTH CAUSE OF ACTION**

18 **California Labor Code – Wage Payment Provisions**

19 **Cal. Lab. Code §§ 201, 202, & 203**

20 **(Brought by Plaintiffs Individually and on Behalf of the California Class)**

21 92. Plaintiffs reallege and incorporate by reference all allegations in all preceding
22 paragraphs.

23 93. California Labor Code §§ 201 and 202 require Defendant to pay its employees all
24 wages due upon termination within the time specified by law. California Labor Code § 203
25 provides that if an employer willfully fails to timely pay such wages, the employer must continue
26 to pay the subject employees' wages until the back wages are paid in full or an action is
27 commenced, up to a maximum of thirty (30) days of wages.

28 94. Plaintiffs and all California Class members who ceased employment with
Defendant are entitled to unpaid compensation, but to date have not received such compensation.

1 95. More than thirty (30) days have passed since Plaintiffs and certain California Class
2 members left Defendant's employ.

3 96. Plaintiffs, on behalf of themselves and the California Class members, seeks waiting
4 time penalties pursuant to California Labor Code § 203, attorneys' fees and costs, and such other
5 legal and equitable relief as the Court deems just and proper.

6 **FIFTH CAUSE OF ACTION**

7 **California Labor Code – Wage Payment Provisions**

8 **Cal. Lab. Code §§ 204 & 210**

9 **(Brought by Plaintiffs Individually and on Behalf of the California Class)**

10 97. Plaintiffs reallege and incorporate by reference all allegations in all preceding
11 paragraphs.

12 98. Under California Labor Code § 204, labor performed between the 1st and 15th days
13 of a calendar month must be paid for between the 16th and the 26th of that month, and labor
14 performed between the 16th and the last day of a calendar month must be paid for between the 1st
15 and the 10th day of the following month. Other payroll periods such as weekly, biweekly (every
16 two weeks) or semimonthly (twice per month), when the earning period is something other than
17 between the 1st and 15th, and 16th and last day of the month, must be paid within seven calendar
18 days of the end of the payroll period within which the wages were earned.

19 99. California Labor Code § 210(a) provides that persons who fail to pay wages as
20 provided in § 204 are subject to statutory penalties of: (1) one hundred dollars (\$100) for each
21 failure to pay each employee for any initial violation; and (2) two hundred dollars (\$200) for each
22 failure to pay each employee, plus 25 percent of the amount unlawfully withheld, for each
23 subsequent violation, or any willful or intentional violation.

24 100. During the Relevant Period, Defendant failed to pay Plaintiffs and California Class
25 members all of their wages earned in a timely manner, in violation of California Labor Code §
26 204.

27 101. Plaintiffs, on behalf of themselves and the California Class members, seeks waiting
28 time penalties pursuant to California Labor Code § 210, attorneys' fees and costs, and such other
legal and equitable relief as the Court deems just and proper.

SIXTH CAUSE OF ACTION

**California Labor Code – Meal and Rest Period Provisions
California Wage Order No. 4-2001; Cal. Lab. Code §§ 218.5, 226.7, 512
(Brought by Plaintiffs Individually and on Behalf of the California Class)**

102. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

103. California law requires employers to afford all non-exempt workers a break of at least 30 minutes during all shifts worked in excess of five hours during which they are relieved of all duty.

104. California law further requires employers to afford all non-exempt workers one 10-minute rest break for each four hours of work or major fraction thereof, during which they are relieved of all duty.

105. Plaintiffs and California Class members are non-exempt employees entitled to an off-duty 30-minute meal break for each shift of at least five hours and an off-duty 10-minute rest break for each four hours worked or major fraction thereof.

106. At all relevant times Plaintiffs and California Class members regularly worked shifts of at least five hours without receiving an off-duty 30-minute meal break.

107. At all relevant times, Plaintiffs and California Class members regularly worked four hour periods, or major fractions thereof, without receiving an off-duty 10-minute rest break.

108. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiffs and California Class members have sustained damages and are entitled to one hour of additional pay at the regular rate of compensation for each workday that compliant meal periods were not provided.

109. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiffs and California Class members have sustained damages and are entitled to one hour of additional pay at the regular rate of compensation for each workday that compliant rest periods were not provided.

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SEVENTH CAUSE OF ACTION

California Unfair Competition

California Business & Professions Code §§ 17200, *et seq.*

(Brought by Plaintiffs Individually and on Behalf of the California Class)

110. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

111. The foregoing conduct, as alleged, violates the California Unfair Competition Law (“UCL”). The UCL prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair business acts or practices.

112. Beginning at a date unknown to Plaintiffs, but at least as long ago as four years prior to the filing of this action, Defendant committed, and continued to commit, acts of unfair competition, as defined by the UCL, by, among other things, engaging in the acts and practices described herein. Defendant’s conduct as alleged herein has injured Plaintiffs and the California Class members by wrongfully denying them earned wages, and therefore was substantially injurious to them.

113. Defendant engaged in unfair competition in violation of the UCL by violating, *inter alia*, each of the following laws. Each of these violations constitutes an independent and separate violation of the UCL:

- a. FLSA, 29 U.S.C. §§ 201, *et seq.*;
- b. Cal. Lab. Code §§ 201-204;
- c. Cal. Lab. Code § 226;
- d. Cal. Lab. Code § 1194;
- e. Cal. Lab. Code § 1174; and
- f. Cal. Lab. Code § 510.

114. Defendant’s course of conduct, acts, and practices in violation of the California laws mentioned in the above paragraph each constitute a separate and independent violation of the UCL. Defendant’s conduct described herein violates the policy or spirit of such laws or otherwise significantly threatens or harms competition.

115. The unlawful and unfair business practices and acts of Defendant, described above,

1 have injured Plaintiffs and the California Class members in that they were wrongfully denied the
2 payment of earned overtime wages.

3 116. Plaintiffs, individually and on behalf of the California Class, seek recovery of
4 attorneys' fees and costs of this action to be paid by Defendant, as provided by the UCL and
5 California Labor Code §§ 218, 218.5, and 1194.

6 117. Plaintiffs, individually and on behalf of the California Class, seek restitution in the
7 amount of the respective unpaid wages earned and due, including for unpaid overtime at a rate not
8 less than one and one-half times the regular rate of pay for work performed in excess of 40 hours
9 in a workweek, or eight hours in a day, and double the regular rate of pay for work performed in
10 excess of 12 hours per day.

11 118. California Plaintiffs and California Class Members' legal remedies for their unpaid
12 overtime wages are inadequate because their equitable claims under the UCL are subject to a four-
13 year statute of limitations, whereas their legal claims under the Labor Code are subject to a three-
14 year statute of limitations.

15 **EIGHTH CAUSE OF ACTION**

16 **PAGA Penalties for Overtime Violations**

17 **Cal. Labor Code §§ 510, 1194, 1198, 2699; Wage Order Nos. 4-2001 & 7-2001**
18 **(Brought by Plaintiffs on Behalf of Themselves and Aggrieved Employees)**

19 119. Plaintiffs reallege and incorporate by reference all allegations in all preceding
20 paragraphs.

21 120. The foregoing conduct, as alleged, constitutes a violation of California Labor Code
22 §§ 510, 1194, 1198, and Wage Order Nos. 4-2001 & 7-2001, which require overtime pay for time
23 worked over eight hours in a day or over 40 hours in a week.

24 121. Although Plaintiffs and Aggrieved Employees worked more than eight hours in a
25 day or 40 hours in a week, Defendant had a policy and practice of failing and refusing to pay them
26 overtime compensation for all of their overtime hours worked and thus violated the above-
27 referenced provisions of the Labor Code.
28

122. Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek to recover the appropriate civil penalties set out in California Labor Code §§ 558 and 2699 and attorneys' fees and costs.

NINTH CAUSE OF ACTION

**PAGA Penalties for Failure to Timely Pay Wages Due upon Termination
Cal. Labor Code §§ 201, 202, & 203
(Brought by Plaintiffs on Behalf of Themselves and Aggrieved Employees)**

123. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

124. California Labor Code §§ 201 and 202 requires Defendant to pay its employees all wages due within the time specified by law. California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty (30) days of wages.

125. Plaintiffs and all Aggrieved Employees who ceased employment with Defendant are entitled to unpaid compensation, but to date have not received such compensation.

126. More than thirty (30) days have passed since Plaintiffs and certain Aggrieved Employees left Defendant's employ.

127. As a consequence of Defendant's willful conduct of not paying compensation for all hours worked, Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seeks civil penalties, attorneys' fees and costs, and any other appropriate relief under PAGA.

TENTH CAUSE OF ACTION

**PAGA Penalties for Wage Statement Violations
Cal. Labor Code §§ 226(a), 226.3, 1174(d), 1174.5, & 2699
(Brought by Plaintiffs on Behalf of Themselves and Aggrieved Employees)**

128. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

129. The foregoing conduct, as alleged, constituted a violation of California Labor Code § 226, which provides requirements for properly itemized wage statements.

130. Defendant knowingly and intentionally failed to provide timely, accurate, and itemized wage statements including, *inter alia*, hours worked, to Plaintiffs and Aggrieved

1 Employees in accordance with California Wage Order Nos. 4-2001 and 7-2001 and California
2 Labor Code § 226(a). Such failure caused injury to Plaintiffs and the Aggrieved Employees, by,
3 among other things, impeding them from knowing the amount of wages to which they are and
4 were entitled.

5 131. Plaintiffs on behalf of the State of California and the Aggrieved Employees, seek
6 to recover the appropriate civil penalties set out in Labor Code §§ 226.3 and 2699, as well as
7 attorneys' fees and costs.

8 **ELEVENTH CAUSE OF ACTION**

9 **PAGA Penalties for Meal and Rest Period Violations**

10 **Cal. Labor Code §§ 218.5, 226.7, 512 & 2699, Wage Order Nos. 4-2001 & 7-2001**
11 **(Brought by Plaintiffs on Behalf of Themselves and Aggrieved Employees)**

12 132. Plaintiffs reallege and incorporate by reference all allegations in all preceding
13 paragraphs.

14 133. Plaintiffs and Aggrieved Employees regularly worked in excess of five-hour shifts
15 without being afforded at least a half-hour meal break during which they were relieved of all duty,
16 and more than ten-hour shifts without being afforded a second half-hour meal break in which they
17 were relieved of all duty, as well as four hour periods, or major fractions thereof, without being
18 afforded an off-duty 10-minute rest break, as required by California Labor Code §§ 218.5, 226.7
19 and 512 and Wage Order Nos. 4-2001 and 7-2001.

20 134. Plaintiffs, on behalf of the State of California and the Aggrieved Employees, seek
21 to recover the appropriate civil penalties, attorneys' fees and costs, and any other appropriate relief
22 pursuant to the PAGA.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiffs, individually and on behalf of the FLSA Collective, California
25 Class, and Aggrieved Employees request the following relief:

- 26 A. Designation of this action as a collective action on behalf of the FLSA
27 Collective and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all
28 similarly situated members of the FLSA Collective, apprising them of the
pendency of this action, and permitting them to assert timely FLSA claims in

1 this action by filing individual Consent to Join forms pursuant to 29 U.S.C. §
2 216(b);

3 B. Certification of this action as a class action on behalf of the California Class;

4 C. Designation of Plaintiffs as Representatives of the California Class they seek to
5 represent;

6 D. Designation of Plaintiffs' counsel of record as Class Counsel for the California
7 Class;

8 E. An award of damages, liquidated damages, and restitution, to be paid by
9 Defendant according to proof;

10 F. Appropriate statutory penalties;

11 G. Civil penalties provided, per violation, under the California Private Attorneys
12 General Act, California Labor Code §§ 2698, *et seq.*;

13 H. Appropriate equitable and injunctive relief to remedy violations, including but
14 not necessarily limited to an order enjoining Defendant from continuing its
15 unlawful practices under the FLSA and/or California Wage Laws and/or a
16 declaration that Defendant's acts violate the FLSA and/or California Wage
17 Laws;

18 I. Reasonable service awards for Plaintiffs to compensate them for the time they
19 spent attempting to recover wages for the FLSA Collective and/or California
20 Class members and for the risks they took in doing so;

21 J. Attorneys' fees and costs of suit;

22 K. Pre- and post-judgment interest, as provided by law; and

23 L. Such other relief as this Court deems necessary, just, and proper.

24 **JURY DEMAND**

25 Plaintiffs demand a trial by jury on all issues so triable.

1 Dated: March 19, 2025

Respectfully submitted,

2 By: /s/ Adam L. Koshkin

3 Adam L. Koshkin (SBN 320152)

4 Menaka N. Fernando (SBN 271380)

5 Mohsin M. Mirza (SBN 342444)

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10 *Attorneys for Plaintiffs and Proposed Class and*
11 *Collective and Aggrieved Members*

Exhibit A

CONSENT TO JOIN FORM

1. I consent to be a party plaintiff in a lawsuit against Defendant, Malwarebytes Inc., in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. I hereby designate Outten & Golden LLP to represent me in bringing such claim, and to make decisions on my behalf concerning the litigation and settlement. I agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable.

3. I also consent to join any other related action against Defendant(s) or other potentially responsible parties to assert my claim and for this Consent Form to be filed in any such action.

Signature 

Print Name Brandon Worthy

Date 11/15/2024

Exhibit B

CONSENT TO JOIN FORM

1. I consent to be a party plaintiff in a lawsuit against Defendant, Malwarebytes Inc., in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. I hereby designate Outten & Golden LLP to represent me in bringing such claim, and to make decisions on my behalf concerning the litigation and settlement. I agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable.

3. I also consent to join any other related action against Defendant(s) or other potentially responsible parties to assert my claim and for this Consent Form to be filed in any such action.

Signature 

Print Name Randi Rizzari

Date 11/15/2024