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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA**

BRUCE ZEHNTNER, individually, and on
behalf of the State of California and other
aggrieved persons,

Plaintiff

vs.

ATOMICA CORP., a Delaware corporation;
and DOES 1 through 10, inclusive,

Defendants.

CASE NO. 24CV02654
[Unlimited Jurisdiction]

*Assigned for all purposes to the Honorable
Colleen K Sterne, Dept.5*

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

Action Filed: May 13, 2024
Trial Date: None Set

1 Plaintiff Bruce Zehntner (“Plaintiff”), on information and belief, alleges as follows:

2 INTRODUCTION & PRELIMINARY STATEMENT

3 1. Plaintiff brings this action individually, and on behalf of the State of California and
4 other aggrieved persons, against Defendant Atomica Corp., and DOES 1 through 10 (collectively
5 referred to as “Defendants”) for civil penalties under the Private Attorneys General Act of 2004,
6 California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from Defendants’ failure to
7 indemnify employees for expenditures.

8 2. For over 50 years, California’s courts and Legislature have recognized that this
9 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
10 Wages are not ordinary debts. Because of the economic position of the average worker and his or
11 her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that
12 employees are promptly paid the minimum/overtime wages that the Legislature has required for
13 employees. So fundamental are California’s wage-and-hour laws that the Legislature
14 has criminalized certain types of violations. In extending extra protection to deter violations of
15 these underlying statutes—since Plaintiff is not seeking general and/or special damages,
16 restitution, or other damages other than civil penalties—California has enacted PAGA to permit
17 an individual to bring an action for PAGA penalties only, which is the precise and sole nature of
18 this action.

19 3. All California employees during the relevant period who are or were harmed
20 by Defendants’ illegal practices are “Aggrieved Employees.” The Aggrieved Employees worked
21 for Defendants as hourly-paid or non-exempt employees within the applicable period.

22 4. Plaintiff brings this action against Defendants seeking only to recover penalties on
23 behalf of Plaintiff individually, on behalf of certain Aggrieved Employees that worked
24 for Defendants, and on behalf of the State of California. Plaintiff does not seek to recover
25 anything other than penalties as permitted by California Labor Code Section 2699 at this time. To
26 the extent that statutory violations are mentioned for wage violations, Plaintiff does not seek
27 underlying general and/or special damages for those violations, but simply penalties as permitted
28

1 by California Labor Code Section 2699, declaratory relief, and injunctive relief for Plaintiff
2 individually, and certain Aggrieved Employees as permitted by the PAGA.

3 5. Defendants own/owned and operate/operated an industry, business, and
4 establishment within the State of California, including Santa Barbara County. As such and based
5 upon all the facts and circumstances incident to Defendants' businesses in California, Defendants
6 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
7 Commission ("IWC"), and the California Business & Professions Code.

8 6. On information and belief, Defendants were on actual and constructive notice of the
9 improprieties alleged herein and intentionally refused to rectify their unlawful conduct.
10 Defendants' violations, as alleged above, during all relevant times herein were willful and
11 deliberate.

12 7. At all relevant times, Defendants were and are legally responsible for all of the
13 unlawful conduct, policies, acts and omissions as described in each and all of the foregoing
14 paragraphs as the employer of Plaintiff and Aggrieved Employees. Further, Defendants are
15 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
16 "respondeat superior."

17 **THE PARTIES**

18 **A. Plaintiff**

19 8. Plaintiff Bruce Zehntner is a resident of Goleta, California who worked
20 for Defendants in Santa Barbara County, California as an hourly-paid, non-exempt employee
21 from approximately February 2016 to approximately June 2023.

22 **B. Defendants**

23 9. Plaintiff is informed and believes, and based upon that information and
24 belief alleges, that Defendant Atomica Corp. is, and at all times herein mentioned, was:

- 25 (a) A business entity conducting business in numerous counties throughout the
State of California, including Santa Barbara County; and,
- 26 (b) The former employer of Plaintiff, and the current and/or former employer of
27 Aggrieved Employees, because Defendant Atomica Corp. suffered and
28 permitted Plaintiff and Aggrieved Employees to work; and/or controlled
their wages, hours, or working conditions; and or engaged Plaintiff and

Aggrieved Employees, thereby creating a common law employment relationship.

10. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants were in some manner legally responsible for the damages suffered by Plaintiff and certain Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and Aggrieved Employees in the State of California.

12. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13. Plaintiff worked for Defendants in Santa Barbara County, California as an hourly- paid, non-exempt employee from approximately February 2016 to approximately June

2023. At all times, Defendants paid Plaintiff an hourly wage and classified Plaintiff as non-exempt.

14. Labor Code § 2802(a) provides that employers shall indemnify their employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the period applicable to this cause of action, Defendants wrongfully required Plaintiff and certain Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants. Plaintiff and similarly Aggrieved Employees, or some of them, paid out-of-pocket for necessary employment-related expenses. Plaintiff and similarly Aggrieved Employees, or some of them, incurred substantial expenses as a direct result of performing their job duties for Defendants, but Defendants failed, at times, to indemnify Plaintiff and certain Aggrieved Employees for these employment-related expenses.

15. As a result, Defendants are liable to Plaintiff and certain Aggrieved Employees for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Plaintiff and Aggrieved Employees for necessary business expenditures.

FIRST CAUSE OF ACTION

(By All Plaintiffs Against All Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.)

16. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as though fully set forth herein.

17. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself or himself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

1 18. Plaintiff gave written notice by online filing pursuant to California Labor Code
2 § 2699.3 to the Labor and Workforce Development Agency and by certified mail to Defendants
3 of the specific provisions of the Labor Code that Defendants have violated against Plaintiff
4 and certain current and former Aggrieved Employees, or some of them, including the facts and
5 theories to support the violations. Plaintiff also paid the filing fee. Plaintiff's PAGA case number is
6 LWDA- CM-1015315-24 (*Bruce Zehntner v. Atomica Corp.*). The Labor and Workforce
7 Development Agency has not indicated that it intends to investigate Defendants' Labor Code
8 violations discussed in the notice. Plaintiff hereby commences a civil action to recover penalties
9 under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in
10 this Complaint. These penalties include, but are not limited to, penalties under California
11 Labor Code §§ 2802, 1197.1, and 2699.

12 19. Based on the conduct described in this Complaint, Plaintiff is entitled to an
13 award of civil penalties individually, on behalf of the State of California and certain similarly
14 Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in
15 an amount to be shown according to proof at trial. These penalties are in addition to all other
16 remedies permitted by law.

17 20. In addition, Plaintiff seeks an award of reasonable attorneys' fees and costs pursuant
18 to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall
19 be entitled to an award of reasonable attorney's fees and costs."

20 **PRAYER FOR RELIEF**

21 Plaintiff, individually, and on behalf of the State of California, and on behalf of all
22 similarly Aggrieved Employees, prays for relief and judgment against Defendants, jointly and
23 severally, as

24 follows:

25 1. That the Court declare, adjudge and decree that Defendants violated the
26 California Labor Code by failing to indemnify for necessary expenditures

27 2. An award of civil penalties on behalf of Plaintiff, individually, and on behalf of
28 the State of California, and all similarly Aggrieved Employees pursuant to PAGA;

3. Pre-judgment and post-judgment interest at the maximum rate allowed;
4. Attorneys' fees and costs reasonably incurred;
5. Injunctive and declaratory relief to the extent allowed by PAGA; and,
6. Such other and further relief that the Court deems proper.

Dated: August 22, 2024

Respectfully submitted,

CHRISTINA HUMPHREY LAW, P.C.

/s/ Christina A. Humphrey
Christina A. Humphrey, Esq.
Attorney for Plaintiff Bruce Zehntner

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of Plaintiff's claims by jury to the extent authorized by law.

Dated: August 22, 2024

CHRISTINA HUMPHREY LAW, P.C.

/s/ Christina A. Humphrey
Christina A. Humphrey, Esq.
Attorney for Plaintiff Bruce Zehntner

PROOF OF SERVICE
(CCP §§1013(a) and 2015. 5)

Bruce Zehntner v. Atomica Corp., et al.

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 1117 State Street, Santa Barbara, CA 93101.

On August 22, 2024, I served the following document(s):

1. FIRST AMENDED COMPLAINT

On the following:

Christopher J. Boman
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Boris Sorsher
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Kristina Noel Buan
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Attorneys for Defendant, ATOMICA CORP.

☒ (BY ELECTRONIC SERVICE): On the above-mentioned date, based on a court order or an agreement of the parties to accept service by electronic transmission, I electronically served the document(s) to the person(s) at the electronic service address(es) listed above.

☐ (BY MAIL): I enclosed the document(s) in a sealed envelope or package addressed to the person(s) whose address(es) are listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in Santa Barbara, California, in a sealed envelope with postage fully prepaid.

☐ (BY OVERNIGHT DELIVERY): I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight carrier.

☐ (BY PERSONAL SERVICE): I delivered the document(s) to the person(s) at the address(es) listed above by (1) (a) personal delivery, or (b) by leaving the documents in an envelope/package with an individual in charge of the office, or (c) by leaving them in a conspicuous place in the office between the hours of 9:00 a.m. and 6:00 p.m., or (2) by messenger - a copy of the Messenger Declaration is attached.

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

3 [] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at
4 whose direction the service was made.

5 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
6 is true and correct. Executed on August 22, 2024.

7 *Stefano Congedo*

8 Stefano Congedo