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Clerk of the Superior Court
By M. Acevedo ,Deputy Clerk

Attorneys for Plaintiff
GREGORY BROWN, individually, and in a representative capacity, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY SAN DIEGO

GREGORY BROWN, an individual, and on behalf of other members of the general public similarly situated Plaintiff, v. BIXPY, LLC, a California Limited Liability Company; HOUMAN NIKMANESH, an individual; and DOES 1 through 10, inclusive Defendant.	Case No: 24CU009376C **COMPLAINT FOR:** Individual Claims: 1. RETALIATION [Cal. Labor Code § 1102.5]; Individual and Representative Claims: 2. MINIMUM WAGE VIOLATIONS [Cal. Labor Code § 1197]; 3. OVERTIME VIOLATIONS [Cal. Labor Code § 510]; 4. WAGE STATEMENT VIOLATIONS [Cal. Labor Code § 226]; 5. MEAL AND REST PERIOD VIOLATIONS [Cal. Labor Code §§ 226.7 and 510]; 6. FAILURE TO REIMBURSE [Cal. Labor Code § 2802]; 7. FAILURE TO TIMELY PAY WAGES [Cal. Labor Code § 204]; 8. FAILURE TO PAY WAGES UPON SEPARATION [Cal. Labor Code §§ 201-203]. **[JURY TRIAL DEMANDED]**

COMES NOW Plaintiff GREGORY BROWN, individually, and on behalf of all aggrieved employees, alleging against Defendants as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).

2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff injuries occurred in the County of San Diego, State of California.

3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant BIXPY LLC, (hereinafter "BIXPY" or collectively "Defendants") was and is a California Limited Liability Company doing business throughout the state, including the County of San Diego, State of California.

4. Plaintiff is informed and believes and thereon alleges that Defendant, HOUMAN NIKMANESH (hereinafter "NIKMANESH" or collectively "Defendants"), is a natural person who is, and at all relevant times herein mentioned was, a resident of the United States and a domiciliary of the State of California, County of San Diego.

5. Plaintiff is presently unaware of the true names, capacities and liability of Defendant named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

6. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendant is responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-Defendant, and in doing the actions mentioned below, was acting within the course and scope of his or her authority as such agent, servant, partner, and employee with the permission and consent of the co-Defendant. Plaintiff's injuries as herein alleged were proximately caused by said Defendant. Wherever it is alleged herein that any act or omission was done or committed by any specially named Defendant or Defendants, Plaintiff intends thereby to allege and does allege that the same act or omission was also done and committed by each and every defendant named as a DOE, both separately and in concert with the named Defendant or Defendants.

7. Plaintiff is informed and believes and thereon alleges that Defendant, and each of them, including DOES 1 through 10, are and at all times herein mentioned were either individuals, sole proprietorships, partnerships, registered professionals, corporations, alter egos or other legal entities which were licensed to do and/or were doing business in the County of San Diego, State of California at all times relevant to the subject matter of this action.

FACTUAL BACKGROUND

8. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the proceeding paragraphs as set forth herein.

9. Plaintiff GREGORY BROWN ("Plaintiff") was employed by BIXPY from approximately September 27, 2021, to August 11, 2023. BIXPY specializes in the manufacturing and sale of outboard marine motors for kayaks, canoes, and small fishing vessels.

10. Throughout Plaintiff's employment with Defendants, Plaintiff performed his job duties in a diligent and competent manner, and was commended for doing so.

SPECIFIC FACTUAL ALLEGATIONS

11. Plaintiff began his employment with BIXPY on or around September 27, 2021, as a Sales and Support person. After successfully completing his 90-day review, Plaintiff was promoted to Sales Manager. As part of his job duties, Plaintiff was in charge of client outreach and overseeing the Customer Support Department. This would typically include product support, invoicing, and marketing.

12. Throughout the term of his employment, Plaintiff and all other aggrieved employees were, and currently are, denied the benefits and protections of the Labor Code due to Defendants' institutionalized pay practices, standard as to all of Defendants California-based employees.

Defendants Repeatedly Violated The Labor Code Resulting in Significant Economic Harm

13. BIXPY's Founder, Defendant NIKMANESH, required BIXPY employees, including Plaintiff, to work "after-hours," without compensation. From the start of Plaintiff's employment, Plaintiff was expected to perform specific demanding job functions that fell outside of a typical 8-hour workday. For example, Defendants maintained numerous clients throughout the United States spanning different time zones. Because Plaintiff was in charge of customer support, he often worked overtime to assist customers in different time zones. Further, Plaintiff was required to formulate marketing strategies and develop client outreach procedures. These tasks were extensive and typically resulted in Plaintiff working in excess of 8 hours a day or 40 hours in a week. On numerous occasions, Plaintiff was not compensated for working overtime.

14. Plaintiff's job duties required him to travel extensively to attend client meetings and sales strategy conferences. It was standard practice of Defendants to not properly compensate Plaintiff or other employees for the time spent travelling or attending such events. For example, on or around October 8, 2022, Plaintiff worked the West Coast Paddle Sports Event. When Plaintiff asked NIKMANESH for compensation for working the event, NIKMANESH told Plaintiff he would give him a "free day," meaning Plaintiff would be compensated proportional to one day's work at his regular rate, despite working the event on the weekend and in excess of his 40-hour workweek. Incidences like this were

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

common for Plaintiff and other employees. When Plaintiff and other employees would request compensation for overtime worked, NIKMANESH would typically promise Plaintiff and other employees a "free day" but would rarely compensate them. The few times Plaintiff and other employees were compensated for working overtime was always for the incorrect regular rate of pay instead of at the proper overtime or double-time rate.

15. Further, Plaintiff, and other employees, were rarely, if ever, given timely meal and rest periods. Oftentimes, Plaintiff, and other employees, missed a meal or rest periods altogether. Plaintiff's complaints of inadequate meal or rest periods was typically met with excuses. Additionally, Plaintiff never received a meal or rest period penalty premium.

16. The full extent of Defendants' unlawful labor practices are uncertain as Defendants do not maintain compliant wage records as most, if not all, of Plaintiff's wage records fail to indicate statutorily required information. For example, many wage records do not reflect all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Plaintiff, in violation of, *inter alia*, Cal. Labor Code § 226(a).

Plaintiff Was Terminated After Complaining of Defendants' Labor Code Violations

17. Defendants' constant failures to comply with the Labor Code began to wear on Plaintiff. For two years, Plaintiff was constantly having to remind and plead with NIKMANESH to ensure that he was properly compensated. In or around March 2023, Plaintiff learned that his wife was pregnant. Plaintiff was thrilled at the prospect of being a father but he also understood that Defendants' unlawful pay practices could result in financial hardship as he and his wife prepared for the birth of their child. Thus, Plaintiff emailed NIKMANESH on or around June 25, 2023, and complained of Defendants' Labor Code violations. Plaintiff stated "I understand that you would like to make things easier on yourselves but it is very dangerous to not keep track of the teams hours and pay accordingly for overtime and structured meal breaks." Plaintiff went on to request Defendants cure such violations, provide Plaintiff a pay raise, and hire additional staff so

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

that current employees do not miss or take late meal or rest periods. Plaintiff stated in this email that if Defendants were unable to meet his demand, in part to cure its violations, he would "begin looking for another job," or words to that effect. Plaintiff's request for a pay raise was actually a request that Defendants pay all wages due and owing to Plaintiff. If Defendants complied with the Labor Code, Plaintiff would have received a salary similar to, or likely exceeding, the amount requested in his email to NIKMANESH[1].

18. Shortly thereafter, NIKMANESH responded to Plaintiff's email and stated "I cannot accept the conditions you've outlined and as such will accept your resignation as you have indicated." Plaintiff was disappointed that Defendants made the choice to terminate his employment instead of attempting to cure the pervasive Labor Code violations. Plaintiff felt that his termination was in retaliation for complaining about Defendants' unlawful conduct. Plaintiff's skills were still needed by Defendants and so his employment was not terminated until August 11, 2023.

19. Due to Defendants' adverse employment actions and failure to furnish all wages due and owing to Plaintiff, he has suffered, and will continue to suffer extreme emotional distress, anxiety, loss of sleep, and physical and mental pain and anguish. As a further result of Defendant's unlawful actions, Plaintiff has suffered, and continues to suffer, from loss of earnings, employment benefits, and employment opportunities.

REPRESENTATIVE ALLEGATIONS

20. As more specifically set forth below, Plaintiff brings this action in a representative capacity on behalf of all current and former nonexempt employees of Defendant. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order(s) due to Defendants' improper and unlawful employment practices. Throughout their employment, Plaintiff and all other aggrieved employees

[1] By June 2023, Plaintiff was earning approximately $67,000 a year. In Plaintiff's June 25, 2023 email, Plaintiff requested he earn $75,000 a year. If Defendants did not constantly and pervasively violate the Labor Code, Plaintiff would have made $75,000 a year or more. Plaintiff's request for a raise was really a request that Defendants comply with the law.

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

were and are denied full and accurate compensation, including overtime and double-time compensation, in violation of, inter alia, Labor Code §§ 510 and 1194. Plaintiff and the other aggrieved employees were and are denied meal and rest periods and meal and rest period payments, in violation of, inter alia, IWC Wage Order 4 (or any other applicable Wage Order) and Labor Code §§ 226.7 and 512. Defendants failed to furnish accurate itemized wage statements in violation of, inter alia, Labor Code § 226. Defendants failed to reimburse Plaintiff and other aggrieved employees for necessary business expenditures in violation of, *inter alia*, Labor Code § 2802. Defendants failed to provide all compensation due at termination of employment in violation of, *inter alia*, Labor Code §§ 201 through 203.

21. Plaintiff brings this action on the grounds that he and other similarly situated current and former employees of Defendants were and are improperly denied the mandated wages and reimbursements resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed twenty-five (25) aggrieved employees.

22. The approximately twenty-five (25) aggrieved employees are comprised of all of Defendants' current and former California-based employees, designated as "nonexempt" by Defendants. Defendants' standard policies and practices which lead to Labor Code violations, as alleged herein, applied to all California nonexempt employees who performed client outreach, sales, and product maintenance services.

23. There are questions of fact and law common to all aggrieved employees arising from Defendants' actions including, among others, the following:

   a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and double time wages due and owing to them;

   b. Whether Defendants failed to provide its employees with statutorily-compliant Meal and/or Rest Periods, in violation of, inter alia, California Labor Code §§ 512 and 226.7, in that Defendants written policies are not compliant with California

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

law, Defendants do not allow its employees duty-free Meal and/or Rest Periods, and Defendants improperly "round" employees recorded Meal Periods;

c. Whether Defendants failed to properly provide Meal and Rest Period premiums in accordance with law;

d. Whether Defendants failed to properly calculate and pay its employees Overtime compensation or Meal and Rest Period premiums in accordance with law by failing to properly calculate, into the Regular Rate of Pay, the value of employee benefits;

e. Whether Defendants failed to properly reimburse its employees for necessary business expenditures for, inter alia, cell phone costs, in violation of Labor Code § 2802;

f. Whether Defendants failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203, due, in part, to the fact that Defendants failed to provide proper compensation for all hours worked, as discussed above; and

g. Whether Defendants failed to provide Plaintiff and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code § 266.

24. At all times mentioned herein, Defendants were subject to the Labor Code and Industrial Welfare Commission Wage Orders of the State of California, including, but not limited to, California Labor Code § 2698 et seq.

25. At all times mentioned herein, Defendants were and are an "employer" as that term is used within the relevant sections of the California Labor Code and the applicable wage order. An employer-employee relationship existed between Plaintiff and Defendants.

26. Plaintiff has exhausted his administrative remedies and pre-filing requirements of California Labor Code § 2699.3, and has also fulfilled all notice requirements under the statute. On June 24, 2024, counsel for Plaintiff prepared and electronically submitted a letter to the LWDA via the California Department of Industrial Relations' "PAGA

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

Filing" website. This letter concerned Defendants and their Labor Code violations. A copy of this letter was also mailed to Defendants, via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendant, as well as the facts and theories in support of Plaintiff's claims. (Please see **Exhibit 1**, a true and correct copy of this letter.)

27. The statutory time period for the LWDA to investigate and/or respond, and for the employers to respond, has concluded.

28. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to Defendants' standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION

Retaliation Pursuant to Labor Code § 1102.5

Individual Action

(By Plaintiff Representative against Defendant BIXPY and DOES 1 through 10 Only)

29. Plaintiffs re-allege and incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

30. California Labor Code § 1102.5(b) provides:

> An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

31. At all times relevant herein, Plaintiff was an employee of Defendant BIXPY.

32. Defendant BIXPY retaliated against Plaintiff for his complaints of conduct he reasonably believed to violate a state and/or federal statute, rule, and/or regulation, including but not limited to violating wage and hour laws.

33. Plaintiff's opposition to Defendant BIXPY's violation of a state and/or federal statute, rule, and/or regulation, including the violation of California Labor Code, was a

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

contributory factor in Defendant BIXPY's decision to retaliate against him in the terms and conditions of his employment, as described herein.

34. As a direct, foreseeable, and proximate result of Defendant BIXPY's conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.

35. As a further direct, foreseeable, and proximate result of Defendant BIXPY's conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to his damage in a sum according to proof.

36. As a result of Defendant BIXPY's deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendant BIXPY's wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

37. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to a $10,000 penalty for each violation of Cal. Labor Code § 1102.5, pursuant to Cal. Labor Code § 1102.5(f), and attorney fees pursuant to Cal. Code Civ. Proc. § 1021.5.

SECOND CAUSE OF ACTION

Overtime Violations Pursuant to Labor Code § 510

Individual and Representative Action

(By Plaintiff Representative against All Defendants and DOES 1 through 10)

38. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

39. Defendants failed to pay Plaintiff and all other aggrieved employees all compensation, including Overtime Compensation, due in violation of, among other statutes, Labor Code § 510. These violations occurred due to Defendants' illegal policies, referenced above, whereby employees experienced monetary under-compensation. Given the length of

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

Plaintiff's, and other employees, shifts the unpaid work time often would have been owed at the overtime rate of pay. These systematic failures to provide proper overtime compensation are in violation of California law.

40. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

41. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

42. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

43. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

FOURTH CAUSE OF ACTION

Wage Statement Violations Pursuant to Labor Code § 226

Representative Action

(By Plaintiff Representative against All Defendants and DOES 1 through 10)

44. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

45. Defendants willfully failed to provide Plaintiff and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code § 226. Defendants violation of Labor Code § 226 is a result of its failure to provide accurate wage statements. Defendants' had a practice of furnishing deficient wage statements that omitted the corresponding amount of hours worked and the respective pay rate.

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

46. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

47. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

48. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

49. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

FIFTH CAUSE OF ACTION

Meal and Rest Period Violations Pursuant to Labor Code §§ 226.7 and 512

Representative Action

(By Plaintiff Representative against All Defendants and DOES 1 through 10)

50. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

51. Labor Code § 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

52. Under applicable California law, "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work." Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11040 (11)(A).

53. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an "on duty" Meal Period and counted as time worked. 8 Cal. Code Regs. § 11040 (11).

54. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or "major fraction thereof." 8 Cal. Code Regs. § 11040 (12).

55. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11040 (11), (12).

56. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period policies.

57. For example, Defendants did not have any meal or rest period policy in place. Plaintiff and other aggrieved employees, did not have any procedure in place to catalog or record their meal periods. Additionally, Defendants made no efforts to ensure Plaintiff and other aggrieved employees took their meal and rest periods in a statutorily compliant manner, or at all, resulting in significant meal and rest period violations.

58. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest Periods, in that the employees are required to remain "On Call" at all times, including during the Meal and Rest Periods, in order to (among other reasons) be available to follow-up with current or potential clients at any moment. These institutional and established practices of Defendants are illegal, in that Plaintiff and all other aggrieved employees were denied proper and/or timely Meal and Rest Periods.

59. Defendants willfully failed and refused to pay Plaintiff and all other aggrieved employees one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period was not provided, as required by Labor Code § 226.7 and IWC Wage Order 4 (11), (12).

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

60. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

61. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

62. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

63. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

SIXTH CAUSE OF ACTION

Failure to Reimburse Pursuant to Labor Code § 2802

Representative Action

(By Plaintiff Representative against All Defendants and DOES 1 through 10)

64. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

65. Defendants failed to reimburse their nonexempt employees for all necessary business expenditures incurred in direct consequence of the discharge of their duties in violation of, among other statutes, Labor Code § 2802. These expenditures are the result of, *inter alia*, Defendants' standard policies which require its employees to incur cell phone costs.

66. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

67. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may

recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

68. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

69. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SEVENTH CAUSE OF ACTION

Failure to Timely Pay Wages Pursuant to Labor Code § 2698 *et seq.*

Representative Action

(By Plaintiff Representative against All Defendants and DOES 1 through 10)

70. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

71. Plaintiff and all other aggrieved employees performed work for Defendants, as an employee of Defendants, as stated herein. Throughout Plaintiff's and all other aggrieved employees' employment, they earned wages that were not paid to them, as stated herein, in an amount according to proof at trial.

72. California Labor Code § 204, applicable at all times relevant herein to Plaintiffs' and all other aggrieved employees' employment by Defendants, provides that all wages earned by any person in any employment are due and payable twice during each calendar month. Defendant failed to pay Plaintiff and all other aggrieved employees the wages they were entitled to under the Code.

73. During his employment, Plaintiff and all other aggrieved employees were denied proper wages due, in part, to Defendants' failure to accurately and timely pay overtime and double-time wages.

74. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

75. As a result of Defendants' willful failure to pay wages, in addition to such other damages and penalties as may properly be recovered herein, Plaintiff and all other aggrieved employees are entitled to back pay, waiting time penalties, interest, costs, and attorneys' fees pursuant to Labor Code §§ 206, 218.5, 218.6, 558, 1194.2, and 1197.1.

76. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

77. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

78. Plaintiff also seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

EIGHTH CAUSE OF ACTION

Failure to Pay Wages Upon Separation Pursuant to Labor Code §§ 201-203.

Representative Action

(By Plaintiff Representative against All Defendants and DOES 1 through 10)

79. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

80. Defendants willfully failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at separation in violation of, among other statutes, Labor Code §§ 201 through 203. These violations resulted from, among other unlawful actions, Defendants' willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code §§ 226.7, 510, 512, and 1197.

81. Defendants failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203 due, in part, to the fact that Defendants failed to provide proper compensation for all hours worked.

82. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

83. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

84. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

85. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on his own behalf and on behalf of all members of the general public similarly situated, prays for judgment as follows:

1. For compensatory damages, including loss of wages, promotional opportunities, benefits, and other opportunities of employment, according to proof as set forth under Labor Code §§ 510, 1194, and 2802, among other statutes;
2. For penalties and restitution of wages according to proof, as set forth under Labor Code §§ 221, 226, 226.7, 226.8, 450 and 1197.1, among other statutes;
3. For special damages in an amount according to proof;
4. For general damages in an amount according to proof;
5. For physical, mental and emotional distress damages;
6. For punitive damages in an amount necessary to make an example of and to punish Defendants, and to deter future similar misconduct;
7. For injunctive relief;
8. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 4 (or any applicable Wage Order);

9. For lost back pay in an amount to be proven;

10. Where available, for liquidated damages pursuant to Labor Code § 1194.2;

11. Where available, for an award of interest, including prejudgment interest, pursuant to Labor Code § 218.6;

12. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code §§ 218.5, 226, 1194, 2802, 1102.5 and Code of Civil Procedure § 1021.5;

13. For such other relief as the Court deems just and proper.

DATED: September 4, 2024

GRUENBERG LAW

JOSH D. GRUENBERG, ESQ.
PAMELA VALLERO, ESQ.
SAMUEL ROTSHTEIN, ESQ.
Attorneys for Plaintiff
GREGORY BROWN, individually, and in a representative capacity, and on behalf of other members of the general public similarly situated.

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101

EXHIBIT 1

(1) PLAINTIFF'S LETTER FILED WITH THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

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June 26, 2024

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: Gregory R. Brown v. Bixpy, LLC

Dear Administrator:

Please allow this correspondence to serve as an amended "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Bixpy LLC ("Bixpy"), in the above-referenced matter. This "written notice" is filed on behalf of Gregory R. Brown ("Mr. Brown"), and all current and former non-exempt employees employed by Bixpy. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Bixpy are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226.7, 512, 510, 2802 as well as IWC Wage Order 1, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11010 et seq.

Facts and theories supporting the allegations: Our client, Mr. Brown, worked as a non-exempt Sales Manager employed by Bixpy from approximately September 27, 2021 until approximately August 11, 2023.

Throughout the term of Mr. Brown's employment, Bixpy required Mr. Brown and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

Bixpy failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, as well as IWC Wage Order 1, and any other applicable wage orders. This illegal action is due, in part, to Bixpy's policies of **(1)** failing to properly retain accurate time records, in violation of California law, and **(2)** failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. Additionally, Bixpy would often require Mr. Brown to work extended hours (beyond his scheduled hours) without compensation.

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Further, Bixpy would regularly contact Mr. Brown outside of normal work hours (i.e., "after hours" or during lunch) without compensation.

Additionally, among other issues, Bixpy has notice of Mr. Brown, and others, working outside of their scheduled and/or reported hours, as well as *within* meal and rest periods, but fails to provide any compensation for this work-time.

Finally, Bixpy failed to properly calculate and pay overtime at the actual overtime rate of pay, as Bixpy ignores certain compensation when calculating the regular rate of pay. Additionally, Bixpy would improperly classify overtime as regular time, resulting in an underpayment to employees.

Failure to Provide Compliant Meal Periods

Bixpy failed to provide compliant meal periods in violation of, inter alia, Labor Code 226.7, 512, as well as IWC Wage Order 1, or any other applicable wage orders. For example, Bixpy does not possess a legal meal period policy and makes no attempt to ensure that its employees are either timely or wholly provided meal periods. The employees would often either miss a meal period entirely, or be provided a short or untimely meal period. Whether or not an employee was provided a meal period was often contingent upon how busy Bixpy was on a given day.

Bixpy would pressure its employees to either skip, or cut short, a meal period as employees were expected to respond to supervisors at all times. Oftentimes, Bixpy required its employees to constantly monitor their cellphones and be "on-call" during their meal periods. On the rare occasions when employees *were* paid meal period penalties (i.e. California Meal Period Premiums), such payments do not "cure" the stated Labor Code violation under section 226.7. The California Supreme Court held that "An employer's failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer's provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of 226.7." (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256.) Even more recently, a 2020 California Supreme Court ruling stated that, "The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy 'does not excuse a 226.7 violation.'" *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73. To be clear, payment of a meal period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Bixpy failed to pay Meal Period Premiums at the proper rate, as Bixpy fails to either **(1)** pay a full hour's worth of pay, or **(2)** properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 864.

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Finally, Bixpy illegally retained control over its employees during meal periods. For example, Bixpy required its employees to "remain on the premises" (i.e. stay in the office) and to remain "on call" (i.e. monitor their telephones) at all times, including during meal periods.

Failure to Provide Compliant Rest Periods

Bixpy failed to provide compliant rest periods or requisite rest period penalty payments, in violation of, inter alia, Labor Code sections 226.7, 512, and IWC Wage Order 1, and any other applicable wage orders. For example, Bixpy does not possess a legal rest period policy, as its rest period policy lacks required language under California law. Bixpy makes no attempt to ensure that its employees are either timely or wholly provided rest periods. The employees would often either miss a rest period entirely, be provided a short or untimely rest period, or be provided only one rest period, even when they were working in excess of 6.5 hours a day. Bixpy would pressure its employees to either skip, or cut short, a rest period as employees were expected to respond to supervisors at all times. Bixpy has never provided a compliant rest period penalty payment to any employee as to the above-referenced issues. Finally, on the rare occasions in which Bixpy would provide a rest period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the regular rate of pay.

Bixpy required its employees to constantly monitor their cellphones and be "on-call" at all times, specifically during rest periods. On occasion, Bixpy would interrupt, or cut short, its employees' rest periods and require them to return to work.

Finally, Bixpy illegally retained control over its employees' rest periods. For example, Bixpy required its employees to "remain on the premises," (i.e. stay in the office) and to remain "On Call" (i.e. monitor their cellphones) at all times, including during rest periods.

Wage Statement Violations

Bixpy violated Labor Code section 226 (a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example, Bixpy **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use improper (and lesser) overtime rate of pay, and **(c)** would fail to pay meal and/or rest period penalties when due.

Bixpy violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Mr. Brown and the other employees were not compensated for all hours worked. For example, throughout the duration of Mr. Brown's employment with Bixpy from September 27, 2021, to August 11, 2023, only two wage statements indicate the hours worked during its respective pay period.

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Bixpy violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Bixpy **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and lesser) overtime rate of pay, and **(c)** would fail to pay meal and/or rest period penalties when due. For example, Mr. Brown never received a meal or rest period penalty premium throughout his employment with Bixpy.

Bixpy violated Labor Code section 226 (a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. For example, Bixpy failed to state the hourly rates of pay – for any type of work – on its earning records.

Failure to Provide Sick Time

Bixpy failed to provide accrued sick hours in violation of, *inter alia*, Labor Code § 246. Moreover, Bixpy failed to accurately list the amount of sick time earned on its employees' wage statements.

Failure to Provide Compliant Expense Reimbursement Payments

Bixpy failed to provide compliant expense reimbursement payments in violation of, inter alia, Labor Code section 2802 by failing to provide payments for expenses incurred by Mr. Brown, and other non-exempt employees. For example, Mr. Brown was required to use his personal vehicle to attend client sales meetings and his personal cellphone to pursue new clients and correspond with Bixpy employees. Mr. Brown was never reimbursed for such expenses. Additionally, Mr. Brown was required to travel long distances to attend sales meetings around the country. Oftentimes, Mr. Brown was not fully reimbursed for travel, accommodations, and other work supplies necessary to perform his job functions.

Willful Failure to Provide All Compensation to Ex-Employees

Bixpy failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due in part, to the fact that Bixpy failed to provide proper compensation for all hours worked, and failed to pay full meal and rest period penalties, as discussed above.

To confirm, Bixpy, LLC is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction with this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

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Very Truly Yours,

Samuel F. Rotshtein, Esq.

cc: Via Certified U.S. Mail

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