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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Donna Benz, Deputy

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Attorneys for Plaintiff Kelvin Coenen,
on behalf of himself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

KELVIN COENEN, on behalf of himself and
all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

ECONTACTLIVE, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: CV-24-007300

**REPRESENTATIVE ACTION COMPLAINT
FOR PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 227.3, 246, 510,
512, 1194, AND 2802 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**

Freeland, John D
This case has been assigned to Judge _____,
Dept. 23
Department _____, for all purposes including Trial.

1 Plaintiff KELVIN COENEN (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of
3 ECONTACTLIVE, INC., a California corporation, and any subsidiaries or affiliated companies
4 (hereinafter referred to as “Defendants”) as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly blend bonuses, commissions, and other non-base hourly
15 wages, earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for
16 purposes of paying them meal and rest period premiums, overtime wages, vacation wages,
17 and sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 227.3, 246, 510,
18 512, 558, and 1194. Defendants paid Plaintiff and other Aggrieved Employees commission
19 wages (and other non-base hourly wages); however, Defendants failed to properly blend these
20 wages, and instead paid Plaintiff and other Aggrieved Employees meal and rest period
21 premiums, overtime wages, vacation wages, and sick pay wages based only on the base hourly
22 rate of pay, thus depriving Plaintiff and other Aggrieved Employees of all meal and rest period
23 premiums, overtime wages, vacation wages, and sick pay wages earned. This violates Labor
24 Code §§ 226.7, 227.3, 246, 510, 512, 558, and 1194;

25 b. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
26 business expenses incurred in direct consequence of the discharge of their duties while
27 working from home, in violation of Labor Code § 2802, including, but not limited to, cellular
28 phone, internet, computer expenses, rent, and printer expenses. Moreover, if Plaintiff or

1 Aggrieved Employees elected to work at Defendants' office, they would be required to rent
2 space from Defendants in order to do so. Defendants also required Plaintiff and Aggrieved
3 Employees to use their cellular phone to clock in and out for their shifts via an "Offpoint"
4 cellular phone application. Labor Code § 2802 states that an employer must indemnify its
5 employees for all necessary expenditures or losses incurred by the employee in direct
6 consequence of the discharge of their duties. These instances violate Labor Code § 2802;

7
8 c. Failing to maintain a vacation wage policy that complies with California
9 law. Defendants' vacation accrual policy allows for one week of vacation accrued per year;
10 however, there is a maximum one-week accrual such that if you do not use your vacation time
11 each year, no further time will accrue, and the policy effectively operates as a forfeiture.
12 Vacation pay is a form of wages which vests as it is earned. A policy that provides the
13 forfeiture of vacation pay that is not used by a specific date ("use it or lose it") is an illegal
14 policy and constitutes a violation of Labor Code § 227.3

15 d. Failing to provide Plaintiff and other Aggrieved Employees with wage
16 statements that fully and accurately itemized the requirements set forth in Labor Code §§
17 226(a) and 226.3. Plaintiff and other Aggrieved Employees are not paid all wages due, as
18 stated above. As such, the wage statements provided by Defendants fail to accurately state all
19 gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked,
20 in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor
21 Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period
22 and the corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and
23 226.3; and
24

25 e. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
26 separation of their employment based on the time frames required by Labor Code §§ 201-203,
27 and 227.3. As stated above, Plaintiff and Aggrieved Employees were not paid all wages due
28 (including all accrued, but unused vacation wages) during the course of their employment and,

1 as a result of this failure, they were not timely paid all wages due at the separation of their
2 employment. This violates Labor Code §§ 201-202 and is alleged on behalf of certain
3 Aggrieved Employees no longer employed by Defendants.

4 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
5 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

6 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
7 The Labor Code violations alleged against Defendants herein arose in Stanislaus County, California.

8 III.

9 PARTIES

10 A. Plaintiff

11 5. Plaintiff KELVIN COENEN was employed by Defendants from September 2002
12 through July 2024 in Stanislaus County, California.

13 B. Defendant

14 6. Defendants ECONTACTLIVE, INC. is a California corporation that employed
15 Plaintiff and Aggrieved Employees in Stanislaus County, California.

16 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
17 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
18 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
19 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
20 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
21 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
22 designated hereinafter as DOES when such identities become known.

23 8. Plaintiff is informed and believes, and based thereon alleges, that each of the
24 Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried
25 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each of the
26 Defendants is legally attributable to the other Defendants.

9. The Defendants named herein as DOE 1 through DOE 10 are and are persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1194, AND 2802 AND PURSUANT
TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to civil penalties subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1194, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On July 12, 2024, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)

1 calendar days of July 12, 2024. Plaintiff may therefore commence this action to seek civil penalties
2 pursuant to Labor Code § 2698 *et seq.*

3 Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as
4 described below.

5 V.

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff prays for the following relief:

8 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
9 Aggrieved Employees;

10 2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
11 and other applicable law;

12 3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other
13 applicable law; and

14 4. Such other and further relief as this Court may deem just and proper.

15 Dated: September 16, 2024

Respectfully submitted,

16 GAINES LAW CORPORATION

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18 By: 

19 EVAN S. GAINES
20 Attorneys for Plaintiff
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