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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KEVIN TURNER, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

ODS TECHNOLOGIES LP dba: TVG
NETWORK, a Delaware limited partnership;
TRINET HR III, INC., a California
corporation; TRINET, an entity of unknown
form; FANDUEL GROUP, an entity of
unknown form; FANDUEL an entity of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

Case No.

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Rest-Break Liability Under Labor Code § 226.7;
4. Failure to Pay Vacation Wages;
5. Failure to Comply with Labor Code §§ 245 *et seq.* and 246;
6. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
7. Violation of Labor Code § 226(a);
8. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5
9. Penalties Pursuant to Labor Code § 203; and
10. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff KEVIN TURNER, (hereinafter “Plaintiff”) on behalf of himself and all others
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants ODS
8 TECHNOLOGIES LP DBA : TVG NETWORK, a Delaware limited partnership; TRINET HR III,
9 INC., a California corporation; TRINET, an entity of unknown form; FANDUEL GROUP, an
10 entity of unknown form; FANDUEL an entity of unknown form; and DOES 1 through 50 (all
11 defendants being collectively referred to herein as “Defendants”). Plaintiff alleges that
12 Defendants, and each of them, violated various provisions of the California Labor Code, relevant
13 orders of the Industrial Welfare Commission (IWC) and California Business & Professions Code,
14 and seeks redress therefore.

15 2. Plaintiff is a resident of California and during the time period relevant to this
16 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
17 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
18 worked for Defendants in Los Angeles County, and in other nonexempt positions throughout
19 California, and consistently worked at Defendants’ behest without being paid all wages due. More
20 specifically, Plaintiff and the other similarly situated Class members were employed by
21 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
22 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
23 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
24 subjected to the same policies and practices, and (3) endured similar violations at the hands of
25 Defendants as the other Employee Class members who served in similar and related positions.

26 3. Defendants required Plaintiff and the Employees in the Class to perform work
27 while remaining under Defendants’ control before and after being on the clock for their daily work
28 shift. Defendants further failed to accurately record time worked by Plaintiff and Employee Class

1 members by rounding hours worked as opposed to accurately tracking actual hours worked.
2 Defendants thus failed to pay Plaintiff and the Class members for all hours worked and provided
3 them with inaccurate wage statements that prevented Plaintiff and the Class from learning of these
4 unlawful pay practices. Defendants also failed to provide Plaintiff and the Class with lawful rest
5 periods, as employees were not provided with the opportunity to take timely, uninterrupted, and
6 duty-free rest periods as required by the Labor Code.

7 **THE PARTIES**

8 **A. The Plaintiff**

9 4. Plaintiff KEVIN TURNER has resided in California and during the time period
10 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
11 the State of California.

12 **B. The Defendants**

13 5. Defendant ODS TECHNOLOGIES LP DBA : TVG NETWORK is a Delaware
14 limited partnership with its principle executive offices in Broomfield, Colorado and has been
15 listed as the employer on Plaintiff's paystubs and personnel file during the relevant time period.
16 ODS TECHNOLOGIES LP DBA : TVG NETWORK does not list a mailing address with the
17 California Secretary of State but employs Plaintiff and the Class members at Defendants' offices
18 and facilities in Los Angeles, California, and throughout California and conducts business
19 throughout California.

20 6. Defendant TRINET HR III, INC. is a California corporation with its principle
21 executive offices in Dublin, California and has been listed as the employer on Plaintiff's wage
22 statements during the relevant time period. TRINET HR III, INC. lists a mailing address in
23 Dublin, California with the California Secretary of State and employs Plaintiff and the Class
24 members in Los Angeles County, including at Defendants' offices and facilities in Los Angeles,
25 California, and throughout California and conducts business throughout California.

26 7. Defendant TRINET is an entity of unknown form with its principle executive
27 offices in Dublin, California and has been listed as the employer on Plaintiff's wage statements
28 during the relevant time period. TRINET does not list a California address with the California

1 Secretary of State, but upon information and belief, employs Plaintiff and the Class members in
2 Los Angeles County, including at Defendants' offices and facilities in Los Angeles, California,
3 and throughout California and conducts business throughout California.

4 8. Defendant FANDUEL GROUP is an entity of unknown form and has been listed as
5 the employer on Plaintiff's personnel file during the relevant time period. FANDUEL GROUP
6 does not list a California address with the California Secretary of State, but upon information and
7 belief, employs Plaintiff and the Class members in Los Angeles County, including at Defendants'
8 offices and facilities in Los Angeles, California, and throughout California and conducts business
9 throughout California.

10 9. Defendant FANDUEL is an entity of unknown form and has been listed as the
11 employer on Plaintiff's personnel file during the relevant time period. FANDUEL does not list a
12 California address with the California Secretary of State, but upon information and belief, employs
13 Plaintiff and the Class members in Los Angeles County, including at Defendants' offices and
14 facilities in Los Angeles, California, and throughout California and conducts business throughout
15 California.

16 10. The true names and capacities, whether individual, corporate, associate, or
17 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
18 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
19 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
20 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
21 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
22 this Complaint to reflect the true names and capacities of the Defendants designated herein as
23 Does 1 through 50 when their identities become known.

24 11. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
25 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
26 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
27 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
28 all respects as the employers or joint employers of Employees. Defendants, and each of them,

1 exercised control over the wages, hours or working conditions of Employees, or suffered or
2 permitted Employees to work, or engaged, thereby creating a common law employment
3 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
4 employed Employees.

5 **JURISDICTION AND VENUE**

6 12. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
8 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
9 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
10 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
11 obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles
12 County, Defendants maintain and operate company offices and facilities in Los Angeles County,
13 and Defendants employ Plaintiff and other Class members in Los Angeles County and throughout
14 California.

15 **FACTUAL BACKGROUND**

16 13. The Employees who comprise the Class and Collective, including Plaintiff, are
17 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
18 Employees who work in nonexempt positions at the direction of Defendants in the State of
19 California. Plaintiff and the Class members were either not paid by Defendants for all hours
20 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
21 Plaintiff and Employees were not paid for the time that they worked “pre-shift” without
22 compensation by logging into computers, connecting to the company systems, and getting
23 organized in order to take over duties at the precise moment their shift starts. Moreover,
24 Defendants required Employees to use their personal cell phones to respond to work demands
25 outside of scheduled work hours, and Employees were not compensated for this time. Defendants
26 also had a uniform policy and practice of rounding time entries rather than paying Plaintiff and the
27 Class members for all hours and minutes they actually worked. Defendants generally rounded time
28 entries to the detriment of the Employees, and these unlawfully rounded time entries were inputted

1 into Defendants' payroll system from which wage statements and payroll checks were created.
2 Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages due
3 and owing, failed to provide rest breaks, and failed to furnish accurate wage statements, all in
4 violation of various provisions of the California Labor Code and applicable Wage Orders.

5 14. During the course of Plaintiff and the Class members' employment with
6 Defendants, they were not paid all wages they were owed, including for all work performed and
7 for all overtime hours worked and were forced to work during their rest breaks. Defendants also
8 failed to maintain timekeeping records for Plaintiff that would permit him to discover the nature
9 and extent of Defendants' unlawful rounding. Additionally, Defendants paid Plaintiff and
10 Employees nondiscretionary commissions, incentive pay, shift differentials, and/or
11 nondiscretionary bonuses. However, upon information and belief, Defendants failed to
12 incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift
13 differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for
14 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and
15 Employees worked overtime and received nondiscretionary commissions, incentive pay, shift
16 differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by
17 paying a lower overtime rate than required.

18 15. From at least four (4) years prior to the filing of this lawsuit and continuing to the
19 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
20 shift differentials, and/or nondiscretionary bonuses. However, upon information and belief,
21 Defendants failed to incorporate all remunerations, including nondiscretionary commissions,
22 incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the
23 regular rate of pay for purposes of calculating sick pay. Therefore, during times when Plaintiff and
24 Employees worked overtime and received nondiscretionary commissions, incentive pay, shift
25 differentials, and/or nondiscretionary bonuses, Defendants failed to pay all sick pay by paying a
26 lower overtime rate than required.

27 16. From at least four (4) years prior to the filing of this lawsuit and continuing to the
28 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,

1 shift differentials, and/or nondiscretionary bonuses. However, upon information and belief,
2 Defendants failed to incorporate all remunerations, including nondiscretionary commissions,
3 incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the
4 regular rate of pay for purposes of calculating vacation pay. Therefore, during times when
5 Plaintiff and Employees worked overtime and received nondiscretionary commissions, incentive
6 pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all vacation pay
7 by paying a lower overtime rate than required.

8 17. As a matter of uniform Company policy, Plaintiff and the Class members were
9 required to work during their rest breaks which were not compensated by Defendants in violation
10 of the California Labor Code. Plaintiff and the Class members were also not paid regular wages
11 and overtime for the time they were required to comply with other requirements imposed upon
12 them, which they had to complete while working through their rest breaks and without
13 compensation. As a result, Plaintiff and the Class members worked shifts over eight (8) hours in a
14 day and over forty (40) hours in a work week, but they were not paid at the appropriate overtime
15 rate for all such hours, including by being required to perform work duties and tasks without pay
16 and while off-the-clock, and due to Defendants' unlawful rounding. As a result, Plaintiff and the
17 Class members worked substantial overtime hours during their employment with Defendants for
18 which they were not compensated, in violation of the California Labor Code, applicable IWC
19 Wage Orders.

20 18. As a result of the above described unlawful rounding, the daily work demands and
21 pressures to work through breaks, and the other wage violations they endured at Defendants'
22 hands, Plaintiff and the Class members were not properly paid for all wages earned and for all
23 wages owed to them by Defendants, including when working more than eight (8) hours in any
24 given day and/or more than forty (40) hours in any given week. As a result of Defendants'
25 unlawful policies and practices, Plaintiff and Class members incurred overtime hours worked for
26 which they were not adequately and completely compensated. To the extent applicable,
27 Defendants also failed to pay Plaintiff and the Class members at an overtime rate of 1.5 times the
28 regular rate for the first eight hours of the seventh consecutive work day in a week and overtime

1 payments at the rate of 2 times the regular rate for hours worked over eight (8) on the seventh
2 consecutive work day, as required under the Labor Code, applicable IWC Wage Orders.

3 19. Therefore, from at least four (4) years prior to the filing of this lawsuit and
4 continuing to the present, Defendants had a consistent policy or practice of failing to pay
5 Employees for all hours worked and failing to pay minimum wage for all time worked as required
6 by California Law.

7 20. Additionally from at least four (4) years prior to the filing of this lawsuit and
8 continuing to the present, Defendants had a consistent policy or practice of failing to pay
9 Employees overtime compensation at premium overtime rates for all hours worked in excess of
10 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
11 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
12 sections of IWC Wage Orders.

13 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
14 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
15 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
16 Defendants pay Employees premium pay for each day on which requisite rest breaks were not
17 provided or were deficiently provided at one hour of wages at each Employee's effective regular
18 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

19 22. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
20 continuing to the present, Defendants have consistently failed to provide Employees with timely,
21 accurate, and itemized wage statements as required by California wage-and-hour laws.
22 Specifically, the wage statements given to Employees by Defendants failed to accurately account
23 for wages, overtime, and premium pay for deficient rest breaks all of which Defendants knew or
24 reasonably should have known were owed to Employees, as alleged hereinabove. The wage
25 statements also reflected incorrect hours worked due to the rounding of time entries described
26 above. Defendants failed in their affirmative obligation to keep accurate records of the correct
27 overtime wages based on proper regular rate calculations that included nondiscretionary
28 commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses earned, and the

1 total amount of compensation of Employees. Additionally, the wage statements given to
2 Employees, by Defendants, failed to include the requirements enumerated above. Employees'
3 wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2)
4 and failed to accurately set forth all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9).
6 The wage statements provided to Employees were confusing and required Employees to engage in
7 discovery and refer to outside sources to verify whether their pay was correct, potentially resulting
8 in a miscalculation by the Employees. Furthermore, the wage statements given to Employees
9 failed to accurately specify the address of the employer as required under the law as the wage
10 statements provided to Employees include an address that is not registered with the California
11 Secretary of State's Office despite the fact all businesses that wish to conduct business in
12 California need to register their with the California Secretary of State's Office.

13 23. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
14 continuing to the present, Defendants have consistently failed to provide Employees with timely,
15 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

16 24. From at least four (4) years prior to the filing of this lawsuit and continuing to the
17 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
18 performance of their job duties for Defendants including, but not limited to, the cost of personal
19 cellphone usage, home internet for employees who work from home, and printer paper and ink, all
20 of which were necessary to perform their duties under Defendants' employ in violation of Labor
21 Code § 2802.

22 25. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
23 continuing to the present, Defendants have consistently failed to keep accurate time and wage
24 records as required by California wage-and-hour laws.

25 26. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
26 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
27 Employees at the time of their termination or within seventy-two (72) hours of their resignation, as
28 required by California wage-and-hour laws.

27. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1199, and 2802.

28. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

29. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: all individuals employed by Defendants within the State of California at any time within four (4) years of the filing of this lawsuit.

30. Further, Plaintiff seeks to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Rest Break Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

d. Subclass 4. Vacation Wages Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their vacation wages.

e. Subclass 5. Sick Pay Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

f. Subclass 6. Failure to Reimburse for Necessary Business Expenditures Subclass.

All Class members who were subject to Defendants' failure to reimburse for expenses necessarily

1 incurred in the performance of Employees job duties for Defendants.

2 g. Subclass 7. Wage Statement Subclass. All Class members who, within the
3 applicable limitations period, were not provided with accurate itemized wage statements.

4 h. Subclass 8. Payroll Records Subclass. All Class members who were subject to
5 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
6 by California wage-and-hour laws.

7 i. Subclass 9. Termination Pay Subclass. All Class members who, within the
8 applicable limitations period, either voluntarily or involuntarily separated from their employment
9 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
10 termination.

11 j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a
12 result of Defendants' business acts and practices, to the extent such acts and practices are found to
13 be unlawful, deceptive, and/or unfair.

14 31. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
15 modify the class description with greater particularity or further division into subclasses or
16 limitation to particular issues.

17 32. This action has been brought and may properly be maintained as a class action
18 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
19 of interest in litigation and proposed class is easily ascertainable.

20 **A. Numerosity**

21 33. The potential members of the class as defined are so numerous that joinder of all
22 the member of the class is impracticable. While the precise number of class members has not been
23 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
24 time period relevant to this lawsuit, employed more than 100 individuals within the State of
25 California.

26 34. Accounting for employee turnover during the relevant time period increases this
27 number substantially. Plaintiff alleges that Defendants' employment records will provide
28 information as to the number and location of all class members.

1 **B. Commonality**

2 35. There are questions of law and fact common to the class that predominate over any
3 questions affecting only individual class members. These common questions of law and fact
4 include:

- 5 a. Whether Defendants failed to pay Employees minimum wages;
- 6 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 7 c. Whether Defendants failed to pay Employees overtime as required under Labor
8 Code § 510;
- 9 d. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage
10 Orders, by failing to provide Employees with requisite rest breaks or premium pay
11 in lieu thereof;
- 12 e. Whether Defendants failed to pay Employees vacation wages as required under
13 Labor Code § 227.3;
- 14 f. Whether Defendants failed to pay Employees sick pay as required under Labor
15 Code § 245;
- 16 g. Whether Defendants failed to reimburse Employees for necessary business
17 expenses;
- 18 h. Whether Defendants violated Labor Code § 226(a);
- 19 i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 20 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
21 wages and compensation due and owing at the time of termination of employment;
- 22 k. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 23 l. Whether Employees are entitled to equitable relief pursuant to Business and
24 Professions Code § 17200 *et seq.*

25 **C. Typicality**

26 36. The claims of the named plaintiff are typical of those of the other Employees.
27 Employees all sustained injuries and damages arising out of and caused by Defendants' common
28 course of conduct in violation of statutes, as well as regulations that have the force and effect of

1 law, as alleged herein.

2 **D. Adequacy of Representation**

3 37. Plaintiff will fairly and adequately represent and protect the interest of Employees.
4 Counsel who represents Employees are experienced and competent in litigating employment class
5 actions.

6 **E. Superiority of Class Action**

7 38. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
9 questions of law and fact common to all Employees predominate over any questions affecting only
10 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
11 Defendants' illegal policies or practices of failing to compensate Employees properly.

12 39. Class action treatment will allow those persons similarly situated to litigate their
13 claims in the manner that is most efficient and economical for the parties and the judicial system.
14 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

17 **(Against All Defendants)**

18 40. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
19 full herein.

20 41. Defendants failed to pay Employees minimum wages for all hours worked.
21 Defendants had a consistent policy of misstating Employees time records and failing to pay
22 Employees for all hours worked. Employees would work hours and not receive wages, including
23 as alleged above in connection with rounding of timekeeping entries and working "pre-shift"
24 without compensation by logging into computers, connecting to the company systems, and
25 getting organized in order to take over duties at the precise moment their shift starts. Plaintiff and
26 Class members were also not paid for the time that they spent answering work-related phone
27 calls and texts while off-the-clock. Defendants have also intentionally and improperly rounded,
28 changed, adjusted, and/or modified Employee hours, while benefiting Defendants. Defendants

1 thus regularly failed to pay minimum wages to Plaintiff and Class members, including by
2 unlawful rounding to their detriment. Moreover, Defendants did not pay Plaintiff and Employees
3 at the applicable minimum wage for all hours worked. Defendants' uniform pattern of unlawful
4 wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a
5 result of implementing a uniform policy and practice that denied accurate compensation to
6 Plaintiff and the other members of the Class as to minimum wage pay.

7 42. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
8 states:

9 The minimum wage for employees fixed by the commission is the
10 minimum wage to be paid to employees, and the payment of a less
11 wage than the minimum so fixed is unlawful.

12 43. The applicable minimum wages fixed by the commission for work during the
13 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
14 therefore entitled to double the minimum wage during the relevant period.

15 44. The minimum wage provisions of California Labor Code are enforceable by private
16 civil action pursuant to California Labor Code § 1194(a) which states:

17 Notwithstanding any agreement to work for a lesser wage, any
18 employee receiving less than the legal minimum wage or the legal
19 overtime compensation applicable to the employee is entitled to
20 recover in a civil action the unpaid balance of the full amount of this
21 minimum wage or overtime compensation, including interest
22 thereon, reasonable attorney's fees and costs of suit.

23 45. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
24 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

25 46. California Labor Code § 1194.2 also provides for the following remedies:

26 In any action under Section 1194 . . . to recover wages because of
27 the payment of a wage less than the minimum wages fixed by an
28 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

47. Defendants have the ability to pay minimum wages for all time worked and have
willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

48. Wherefore, Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

49. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

50. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked including time off the clock working “pre-shift” without compensation by logging into computers, connecting to the company systems, and getting organized in order to take over duties at the precise moment their shift starts. Plaintiff and Class members were also not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Employees regularly worked over 8 hours on a given day or over 40 hours in a given week without receiving overtime compensation.

51. Furthermore, on information and belief, Defendants did not pay Plaintiff and Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary

1 bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime
2 wage rate.

3 52. Therefore, during times when Plaintiff and Employees worked overtime and
4 received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary
5 bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than
6 required.

7 53. Defendants' failure to pay compensation in a timely fashion also constituted a
8 violation of California Labor Code § 204, which requires that all wages shall be paid
9 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
10 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
11 and overtime compensation earned by Employees. Each such failure to make a timely payment of
12 compensation to Employees constitutes a separate violation of California Labor Code § 204.

13 54. Employees have been damaged by these violations of California Labor Code §§
14 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

15 55. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
16 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
17 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
18 reasonable attorneys' fees and costs.

19 **THIRD CAUSE OF ACTION**

20 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

21 **(Against All Defendants)**

22 56. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
23 full herein.

24 57. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
25 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
26 not less than ten (10) minutes for each consecutive four (4) hour shift.

27 58. Defendants failed to provide Employees with timely rest breaks of not less than ten
28 (10) minutes for each consecutive four (4) hour shift. What rest breaks were provided were also

1 not duty-free due to Defendants' policy and practice of interrupting rest breaks with work
2 demands.

3 59. Moreover, Defendants failed to compensate Employees for each rest period not
4 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
5 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
6 accordance with this section, the employer shall pay the employee one hour of pay at the
7 employee's regular rate of compensation for each workday that the rest period is not provided.
8 Defendants failed to compensate the Employees in the Class for each rest period not provided or
9 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
10 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
11 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
12 or by otherwise incorrectly calculating the regular rate.

13 60. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
14 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
15 worked without the required rest breaks, a sum to be proven at trial.

16 **FOURTH CAUSE OF ACTION**
17 **FAILURE TO PAY VACATION WAGES**
18 **(Against All Defendants)**

19 61. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 62. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
22 employment policy provides for paid vacation and an employee is terminated without having
23 taken off her vested vacation time, all vested vacation shall be paid to her as wages at her final rate
24 in accordance with said contract of employment or policy respecting eligibility or time served.

25 63. Defendants paid nondiscretionary commissions, incentive pay, shift differentials,
26 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
27 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

28 64. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor

1 Code § 227.3.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO COMPLY WITH LABOR CODE §§ 245 *ET SEQ.* AND 246**

4 **(Against All Defendants)**

5 65. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 66. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
8 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
9 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
10 with the pay calculation under California Labor Code § 246(1).

11 67. Defendants paid nondiscretionary commissions, incentive pay, shift differentials,
12 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
13 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
14 calculating the amount of paid sick time due when sick time is used according to the requirements
15 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
16 rate, in violation of the law.

17 68. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
18 Code §§ 245 *et seq.* and 246.

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

21 **IN VIOLATION OF LABOR CODE § 2802**

22 **(Against All Defendants)**

23 69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 70. Under Labor Code § 2802(a), an employer must indemnify its employees for all
26 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
27 of his or her duties, or of his or her obedience to the directions of the employer.

28 71. Employees incurred necessary expenditures in the performance of their job duties

1 for Defendants, including but not limited to the cost of cell phone usage, home internet for
2 employees who work from home, and printer paper and ink, all of which were necessary to
3 perform their duties under Defendants' employ. From four (4) years prior to the original filing of
4 this lawsuit and continuing to the present, Defendants consistently failed to reimburse Employees
5 for these necessarily incurred business expenses.

6 72. As a result of the unlawful acts of Defendants, Employees have been deprived of
7 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
8 plus interest and penalties thereon, attorneys' fees, and costs.

9 **SEVENTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 226(a)**
11 **(Against All Defendants)**

12 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
13 full herein.

14 74. California Labor Code § 226(a) requires an employer to furnish each of his or her
15 employees with an accurate, itemized statement in writing showing the gross and net earnings,
16 total hours worked, and the corresponding number of hours worked at each hourly rate; these
17 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
18 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
19 statements may be given to the employee separately from the payment of wages; in either case the
20 employer must give the employee these statements twice a month or each time wages are paid.

21 75. Defendants failed to provide Employees with accurate itemized wage statements in
22 writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by
23 Defendants, failed to accurately account for wages, overtime, and premium pay for deficient rest
24 breaks, and reflected incorrect hours worked due to the rounding of timekeeping entries all of
25 which Defendants knew or reasonably should have known were owed to Employees, as alleged
26 hereinabove. Additionally, Defendants failed in their affirmative obligation to keep accurate
27 records of the correct overtime wages based on proper regular rate calculations that included
28 nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary

1 bonuses earned, and the total amount of compensation of their Employees. The wage statements
2 given to Employees, by Defendants, failed to include the requirements enumerated above.
3 Employees' wage statements did not include: the total hours worked in violation of Labor Code §
4 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each such rate in violation of Labor Code
6 § 226(a)(9). The wage statements provided to Employees were confusing and required Employees
7 to engage in discovery and refer to outside sources to verify whether their pay was correct,
8 potentially resulting in a miscalculation by the Employees. Furthermore, the wage statements
9 given to Employees failed to accurately specify the address of the employer as required under the
10 law as the wage statements provided to Employees include an address that is not registered with
11 the California Secretary of State's Office despite the fact all businesses that wish to conduct
12 business in California need to register their with the California Secretary of State's Office.

13 76. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
14 Employees suffered injuries, including among other things confusion over whether they received
15 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
16 forcing them to make mathematical computations to analyze whether the wages paid in fact
17 compensated them correctly for all hours worked.

18 77. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
19 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
20 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
21 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
22 award of costs and reasonable attorneys' fees.

23 78. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
24 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
25 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
26 employee for each pay period.

27 79. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
28 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be

1 shown according to proof.

2 **EIGHTH CAUSE OF ACTION**

3 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

4 **AND 1174.5**

5 **(Against All Defendants)**

6 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 81. California Labor Code § 1174 requires that all employers shall keep accurate time
9 and wage records for all employees. California Labor Code § 1174.5 further requires that any
10 employee suffering injury due to a willful violation of the aforementioned obligations may seek
11 damages, including civil penalties, from the employer.

12 82. During the course of Plaintiff's and Employees' employment, Defendants
13 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
14 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
15 overtime, and premium pay as discussed above.

16 83. Accordingly, Defendants are liable for civil penalties pursuant to the California
17 Labor Code § 1174.5. for the three (3) years prior to the filing of this Complaint.

18 **NINTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 203**

20 **(Against All Defendants)**

21 84. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 85. Numerous Employees are no longer employed by Defendants; they either quit
24 Defendants' employ or were fired therefrom.

25 86. Defendants failed to pay these Employees all wages due and certain at the time of
26 termination or within seventy-two (72) hours of resignation.

27 87. The wages withheld from these Employees by Defendants remained due and owing
28 for more than thirty (30) days from the date of separation of employment.

88. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them; this violation entitles these Employees to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

TENTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.*

(Against All Defendants)

89. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

90. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

91. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

92. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

93. Wage-and-hour laws express fundamental public policies. Paying employees their wages and overtime, providing them with rest periods, etc., are fundamental public policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously to enforce minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their employees from competitors who lower costs to themselves by failing to comply with minimum labor standards.

94. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have violated specific

1 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
2 violation of Business & Professions Code § 17200 *et seq.* Defendants' conduct has deprived
3 Plaintiff, and all persons similarly situated, and all interested persons, of the rights, benefits, and
4 privileges guaranteed to all employees under the law.

5 95. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
6 violation of the Business & Professions Code § 17200 *et seq.*

7 96. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
8 overtime, failing to provide rest periods, etc., either knew or in the exercise of reasonable care
9 should have known that their conduct was unlawful; therefore their conduct violates the Business
10 & Professions Code § 17200 *et seq.*

11 97. As a proximate result of the above-mentioned acts of Defendants, Employees have
12 been damaged, in a sum to be proven at trial.

13 98. Unless restrained by this Court, Defendants will continue to engage in such
14 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
15 should make such orders or judgments, including the appointment of a receiver, as may be
16 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
17 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
18 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
19 have unlawfully failed to pay.

20 **RELIEF REQUESTED**

21 WHEREFORE, Plaintiff prays for the following relief:

- 22 1. For an order certifying this action as a class action;
- 23 2. For compensatory damages in the amount of the unpaid minimum wages for work
24 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
25 the filing of this action, as may be proven;
- 26 3. For liquidated damages in the amount equal to the unpaid minimum wage and
27 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 28 4. For compensatory damages in the amount of the hourly wage made by Employees

1 for each day requisite rest breaks were not provided or were deficiently provided and where no
2 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
3 be proven;

4 5. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

5 6. For penalties pursuant to Labor Code § 226.3, as may be proven;

6 7. For penalties pursuant to Labor Code § 227.3, as may be proven;

7 8. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;

8 9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
9 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

10 10. For penalties pursuant to Labor Code § 1174.5, as may be proven;

11 11. For restitution for unfair competition pursuant to Business & Professions Code
12 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

13 12. For compensatory damages in the amount of all previously unreimbursed business
14 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
15 from four (4) years prior to the original filing of this action, as may be proven;

16 13. For an order enjoining Defendants and their agents, servants, and employees, and
17 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
18 duties adumbrated in this Complaint;

19 14. For all general, special, and incidental damages as may be proven;

20 15. For an award of pre-judgment and post-judgment interest;

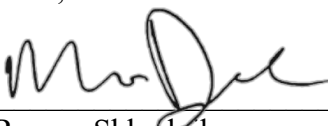
21 16. For an award providing for the payment of the costs of this suit;

22 17. For an award of attorneys' fees; and

23 18. For such other and further relief as this Court may deem proper and just.

24
25 DATED: December 2, 2024

D.LAW, INC.

26
27 By 
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
KEVIN TURNER
and the putative class

DEMAND FOR JURY TRIAL

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

DATED: December 2, 2024

D.LAW, INC.

By



Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
KEVIN TURNER
and the putative class