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13 **Pro hac vice application forthcoming*
14 *Attorneys for Plaintiff and Others Similarly Situated*

15
16 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

17 Jordan Chalmers, individually and on behalf
18 of all others similarly situated,

19 Plaintiff,

20 v.

21 DSSV, Inc., d/b/a Brightwheel,

22 Defendant.
23

Case No.:

COLLECTIVE ACTION COMPLAINT

**Failure to Pay Overtime Compensation in
Violation of the Fair Labor Standards Act
(29 U.S.C. § 201, et seq.)**

24 **PRELIMINARY STATEMENT**

25 1. This is a putative collective action brought by Jordan Chalmers (“Plaintiff”), on
26 behalf of himself and others similarly situated. Plaintiff and those similarly situated are or were
27 employed by DSSV, Inc. d/b/a Brightwheel (“Defendant”) as inside sales representatives and were
28

1 denied overtime compensation as required by federal law. These employees are similarly situated
2 under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

3 2. The putative FLSA Collective is defined as all inside sales employees (including
4 inside sales representatives, account executives, sales development representatives, and other
5 positions with similar job titles and/or duties) (collectively “inside sales representatives”) who have
6 worked for Defendant any time from three years prior to the filing of this action to the present (the
7 “Collective Period”).

8 3. During the Collective Period, Defendant failed to pay overtime compensation to
9 Plaintiff and the FLSA Collective as required by federal law. Plaintiff seeks relief for himself and
10 for the FLSA Collective to remedy Defendant’s failure to pay overtime compensation.

11 **JURISDICTION AND VENUE**

12 4. This Court has original jurisdiction to hear this Complaint and to adjudicate the
13 claim stated herein under 28 U.S.C. § 1331, this action being brought under the FLSA, 29 U.S.C. §
14 201 *et seq.*

15 5. Plaintiff’s consent form to join this lawsuit is attached as Exhibit A. To date, one
16 additional individual signed a consent form, which is attached as Exhibit B. As this case proceeds,
17 it is likely other individuals will file consent forms and join as opt-in plaintiffs.

18 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendant has
19 its principal place of business in San Francisco, California, and because a substantial part of the
20 events or omissions giving rise to the claims occurred in this district.

21 7. Pursuant to L.R. 3-2(c) and (d), this action is properly assigned to the San Francisco
22 Division because a substantial portion of the events giving rise to the dispute occurred in San
23 Francisco County, as Defendant is headquartered there with its principal place of business.

24 **PARTIES**

25 8. Plaintiff is an adult resident of Austin, Texas.

26 9. Defendant employed Plaintiff as an inside sales representative, working remotely
27 from his home in Austin, Texas from approximately May 2021 to May 2022.

28 10. Defendant is a Delaware corporation that does business across the United States.

1 11. According to Defendant’s website, its corporate headquarters is located at 548
2 Market Street, PMB 95237, San Francisco, California, 94104.

3 12. According to online sources, Defendant is in the business of “preschool and
4 childcare management software that integrates automatic billing and payments, real-time
5 communication, and classroom management.” It provides tools for assessment, communication,
6 and photo sharing, and administrators can manage their business with enrollment, reporting, and
7 online bill pay.

8 13. Upon information and belief, Defendant regularly receives compensation from its
9 clients for services that are delivered across state lines.

10 14. Upon information and belief, Defendant is an enterprise engaged in commerce or in
11 the production of goods for commerce as defined by Section 203(s)(1) of the FLSA and had an
12 annual gross volume of sales which exceeded \$500,000.00.

13 15. Plaintiff and other inside sales representatives were engaged in commerce or in the
14 production of goods for commerce as defined by Section 207(a)(1) of the FLSA.

15 16. Plaintiff was Defendant’s employee as defined by the FLSA, 29 U.S.C. § 203(e)(1),
16 and Defendant was Plaintiff’s employer within the meaning of the FLSA, 29 U.S.C. § 203(d), (g).

17 **FACTUAL ALLEGATIONS**

18 17. Plaintiff re-alleges and incorporates by reference the above paragraphs.

19 18. Plaintiff worked for Defendant as an inside sales representative.

20 19. Plaintiff and others similarly situated had the primary duty of selling Defendant’s
21 platform subscriptions to customers across the country and/or performing other duties incidental to
22 sales.

23 20. Plaintiff and others similarly situated performed their work for Defendant from
24 home and/or did not customarily or regularly engage in sales away from Defendant’s place or places
25 of business.

26 21. Plaintiff and others similarly situated did not perform office or non-manual work
27 directly related to the management or general business operations of Defendant or Defendant’s
28 customers, rather, their work was sales production work.

1 22. Plaintiff and others similarly situated did not exercise discretion and independent
2 judgment with respect to matters of significance in performing their job.

3 23. Defendant provided Plaintiff and others similarly situated with the sales leads and
4 expected them to follow scripts when speaking with potential customers.

5 24. Plaintiff and others similarly situated worked unpaid overtime hours to meet
6 Defendant's demands.

7 25. Defendant put pressure on Plaintiff and others similarly situated to contact and
8 respond to potential customers, and meet sales goals, which led to overtime work.

9 26. Plaintiff worked overtime regularly and often worked overtime hours at the end of
10 months, quarters, and years. In addition, Plaintiff regularly answered work-related phone calls and
11 emails prior to and after his scheduled working hours. Defendant's demands for service and
12 production also caused Plaintiff to routinely work through meal periods.

13 27. By way of example, in the workweek ending, February 20, 2022, Plaintiff estimates
14 that he worked approximately 43 hours. Defendant did not compensate him for any of the overtime
15 hours he worked during that workweek, or any other weeks.

16 28. Defendant paid Plaintiff and others similarly situated on a salary plus commissions
17 basis without any overtime compensation.

18 29. Defendant failed to maintain time records for Plaintiff and those similarly situated.

19 30. Defendant knew Plaintiff and others similarly situated worked overtime hours
20 because its job requirements and production standards required it.

21 31. In addition, Plaintiff and other inside sales representatives communicated with
22 supervisors regarding working through meal periods and after hours. Their complaints were largely
23 ignored, resulting in the requirement to work overtime.

24 32. Defendant knew or should have known that its inside sales representatives were non-
25 exempt employees entitled to overtime pay because, for example, federal courts and the U.S.
26 Department of Labor have consistently held that inside salespersons are entitled to overtime wages.
27 Defendant had a duty to investigate and research its obligations under the FLSA.
28

1 33. Defendant's conduct was willful and in bad faith. Defendant operated under a
2 scheme that has caused damages to Plaintiff and the similarly situated individuals.

3 **COLLECTIVE ACTION ALLEGATIONS**

4 34. Plaintiff brings this action on behalf of himself and the putative FLSA Collective
5 as authorized under the FLSA, 29 U.S.C. § 216(b).

6 35. Defendant operated under a scheme to deprive these employees of overtime
7 compensation by failing to pay them for overtime hours worked.

8 36. There are numerous similarly situated current and former employees of Defendant
9 who have been denied overtime pay who would benefit from the issuance of Court-supervised
10 notice of this lawsuit and the opportunity to join. Those similarly situated are known to Defendant
11 and are identifiable through its records.

12 **CLAIM FOR RELIEF**

13 **FAIR LABOR STANDARDS ACT – FAILURE TO PAY OVERTIME**

14 37. Plaintiff re-alleges and incorporates by reference the above paragraphs.

15 38. The FLSA requires employers to pay non-exempt employees no less than one-and-
16 one-half times their regular rate of pay for all hours worked in excess of forty (40) in a workweek.
17 29 U.S.C. § 207.

18 39. Defendant has not properly compensated Plaintiff or the FLSA Collective for their
19 overtime hours as required by the FLSA.

20 40. Defendant knew Plaintiff and the FLSA Collective worked overtime without
21 compensation, and it willfully failed and refused to pay Plaintiff and the FLSA Collective overtime
22 pay. *See* 29 U.S.C. § 255.

23 41. Defendant's willful failure and refusal to pay Plaintiff and the FLSA Collective for
24 overtime hours worked violates FLSA. 29 U.S.C. §§ 207, 255(a).

25 42. Defendant failed to make, keep, and preserve records of Plaintiff and the FLSA
26 Collective to determine their wages, hours, and other conditions of employment, in violation of the
27 FLSA, 29 U.S.C. § 255(a).

28

1 43. As a direct and proximate result of Defendant's conduct, Plaintiff and the FLSA
2 Collective have suffered and will continue to suffer a loss of wages. Plaintiff and the FLSA
3 Collective are entitled to liquidated damages and attorneys' fees and costs incurred in connection
4 with this claim.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff, individually and on behalf of the FLSA Collective, prays for
7 relief as follows:

8 a. Designation of this action as a collective action and authorization of the prompt
9 issuance of notice pursuant to 29 U.S.C. § 216(b) to all those similarly situated apprising them of
10 this case and permitting them to assert FLSA claims by filing consent forms;

11 b. Judgment that Plaintiff and the FLSA Collective are non-exempt employees entitled
12 to overtime compensation under the FLSA;

13 c. Judgment against Defendant for an amount equal to Plaintiff's and the FLSA
14 Collective's unpaid overtime wages at the applicable overtime rates and liquidated damages;

15 d. A finding that Defendant's violations of the FLSA are willful;

16 e. All costs and attorneys' fees incurred in prosecuting this claim;

17 f. An award of any pre- and post-judgment interest;

18 g. For such other and further relief, in law or equity, as this Court may deem
19 appropriate and just.

20 h. Plaintiff may seek to amend this Complaint to add additional named plaintiffs to
21 assert state law claims on an individual and/or class basis, or to assert claims for additional penalties
22 based on the factual allegations of this Complaint.

23 Dated: December 15, 2022

NICHOLS KASTER, LLP

24 By: /s/ Daniel S. Brome
25 Daniel S. Brome

26 ATTORNEYS FOR PLAINTIFF AND THE
27 PUTATIVE FLSA COLLECTIVE