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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED JURISDICTION

12 MICHAEL KANT, an individual,

13 Plaintiff,

14 vs.

15 BIGGE CRANE AND RIGGING CO., a
16 business entity, form unknown; and Does 1
17 through 25, inclusive,

18 Defendants.

Case No.: RG19047780

**First Amended Complaint Seeking
Damages and Penalties for Wage and
Hour Violations and Wrongful
Termination**

Demand for Jury Trial

ENDORSED
FILED
ALAMEDA COUNTY
JUL 17 2020
CLERK OF THE SUPERIOR COURT
By TANIA PIENOW
Deputy

1 Plaintiff is informed and believes and thereon alleges as follows:

2 **PARTIES**

3 1. Plaintiff MICHEL KANT is a competent adult.

4 2. Defendant BIGGE CRANE AND RIGGING CO. is a business entity, form
5 unknown, which is in the business of selling and renting cranes and providing rigging
6 services for construction projects.

7 3. Plaintiff is presently unaware of the true names and capacities of the persons named
8 as Does 1 through 25, and therefore she sues them by these fictitious names. Plaintiff will
9 amend this complaint to assert their true names and capacities when these are ascertained.
10 Except as otherwise alleged herein, each of the entities sued as Does 1 through 25 was
11 responsible for the damages to Plaintiff as alleged herein.

12 **VENUE**

13 4. Plaintiff worked in the headquarters of Defendant BIGGE CRANE AND
14 RIGGING CO., which is located in the County of Alameda, California. His discharge from
15 employment took place in the County of Alameda, California.

16 **FACTUAL BACKGROUND**

17 5. From approximately September 12, 2016 until his termination on approximately
18 October 29, 2019, Plaintiff was employed by defendants to perform sales and project
19 management.

20 **FIRST CAUSE OF ACTION**

21 **Breach of Contract – Failure to Pay Wages Due**

22 6. Plaintiff incorporates herein the foregoing paragraphs.

23 7. During Plaintiff's employment, Defendants failed to pay him all the wages that he
24 had earned.

25 **SECOND CAUSE OF ACTION**

26 **Failure to Provide Accurate Pay Stubs**
27 **Labor Code Section 226(e)**

28 8. Plaintiff incorporates herein the foregoing paragraphs.

1
2 9. Defendants often failed to furnish Plaintiff with an accurate itemized statement in
3 writing on the regular paydays showing gross wages earned, net wages earned, total hours
4 worked, and all applicable hourly rates of pay in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate.

6
7 10. Defendants knew that they were required by law to furnish accurate itemized
8 statements in writing and intentionally failed to furnish them to Plaintiff on the regular
9 paydays.

10 11. Plaintiff suffered injury from Defendants' failure to provide accurate itemized
11 statements in writing on the regular paydays. Plaintiff could not promptly and easily
12 determine the amount of wages earned or whether all wages due had been paid. Plaintiff
13 must go to the difficulty and bear the expense of reconstructing time and pay records to
14 make computations to analyze the amounts of wages that are due.
15

16
17 **THIRD CAUSE OF ACTION**
18 **Waiting Time Penalties**
Cal. Labor Code Sec. 201, 203

19 12. Plaintiff incorporates herein the foregoing paragraphs.

20 13. Because Defendants failed to pay Plaintiff the wages described in paragraph
21 seven, Defendants willfully failed to pay Plaintiff all wages due upon his discharge from
22 employment. To date, Defendants have not paid all wages due.
23

24 **FOURTH CAUSE OF ACTION**
25 **Unfair Competition Law**
Business & Professions Code Sec. 17200 *et seq.*

26 14. Plaintiff incorporates herein the foregoing paragraphs.
27
28

1 **FIFTH CAUSE OF ACTION**

2 **Wrongful Termination**

3 15. Plaintiff incorporates herein the foregoing paragraphs.

4 16. Labor Code Section 204 requires payment of all wages due on the next regular
5 payday. Labor Code Sections 201 and 203 require payment of all wages due upon discharge
6 from employment. Labor Code Section 98.6(a) prohibits discrimination against employees
7 who exercise their employment rights. These statutes manifest a fundamental public policy
8 protecting the full and prompt payment of an employee's earned wages.
9

10 17. Defendants discharged Plaintiff from employment because he complained that he
11 was not being paid the full amount he had earned.
12

13 18. This discharge contravened the public policy set forth above.

14 19. As a result of this discharge, Plaintiff has suffered, and will suffer, the loss of
15 wages and benefits, the loss of future earning capacity, emotional distress, a loss of
16 reputation, and the loss of enjoyment of life.
17

18 20. Defendants and their officers, directors, or managing agents intended to cause this
19 injury or to willfully and consciously disregard Plaintiffs' rights. The conduct described
20 above was authorized, ratified, and personally committed by Defendants' officers, directors,
21 or managing agents.
22

23 **SIXTH CAUSE OF ACTION**

24 **Discharge for Disclosing Violation of State Law**

25 **Labor Code Section 1102.5(b)**

26 21. Plaintiff incorporates herein the foregoing paragraphs.
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1 PRAYER FOR RELIEF

2 THEREFORE, Plaintiff prays for the following relief:

- 3 1. Damages in an amount to be proved at trial;
- 4 2. Penalties on the second cause of action pursuant to Labor Code Section 226(e)(1);
- 5 3. Waiting time penalties on the third cause of action pursuant to Labor Code Section
- 6 203(a);
- 7 4. Restitution of wages on the fourth cause of action;
- 8 5. Civil penalties on the seventh cause of action pursuant to Labor Code Section 2699;
- 9 6. Punitive damages;
- 10 7. Declaratory relief;
- 11 8. Pre-judgment interest;
- 12 9. Costs of suit, including expert fees;
- 13 10. Reasonable attorney's fees; and
- 14 11. All other appropriate remedies.

15

16 Dated: June 29, 2020

aiman-smith & marcy

17 
18 _____
19 Joseph Clapp, Esq.
20 Attorneys for Plaintiff

21

22 Demand for Jury Trial

23 Plaintiff hereby demands trial by jury.

24

25 Dated: June 29, 2020

aiman-smith & marcy

26 
27 _____
28 Joseph Clapp, Esq.
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 I, the undersigned, hereby declare: I am employed in the County of Alameda,
3 California; I am over eighteen years of age and not a party to the within action. I am either
4 admitted to practice before this Court or employed in the office of an attorney admitted to
practice in this Court. My business address is 7677 Oakport, Suite 1150, Oakland, California
94621.

5 On this date, I served the following:

6 **First Amended Complaint Seeking Damages and Penalties**
7 **For Wage and Hour Violations and Wrongful Termination**

8 by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

9 John L. Fitzgerald, Esq. 10 Freeman Mathis & Gary, LLP 11 44 Montgomery St., Ste. 3580 12 San Francisco, CA 94104-6702	Attorneys for Defendant Bigge Crane and Rigging Co.
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13 — [By U.S. Mail]] I caused such envelope, with postage fully prepaid, to be placed in the
United States mail at Oakland, California.

14 X [By E-Mail]] I caused such document to be electronically transmitted via the Internet to
15 (email address) from Oakland, California.

16 — [By Electronic Transmission] I hereby certify that on this date, I electronically
17 transmitted the foregoing document to the Clerk's Office using the CM/ECF System for
filing and service via transmittal of a Notice of Electronic Filing.

18 — [By Overnight Delivery] UPS and or FedEx is a provider of overnight delivery
19 services. I placed the above described document(s) in an envelope or package
20 designated for use by UPS and/or FedEx, and delivered said designated envelope to an
authorized Office or drop box of UPS at Oakland, California, with delivery fees for
overnight delivery fully prepaid, and addressed to the addressee(s) above.

21 — [By Facsimile Transmission] I caused such document to be transmitted by facsimile
22 transmission to a facsimile machine maintained by the person(s) listed in the attached
23 service list and at the fax numbers on that list which are the facsimile numbers last
given by the addressee(s) on documents filed in this cause. I received electronic
confirmation that said transmission had occurred.

24 — [By Personal Service] I caused such envelope to be delivered by hand to the above
25 address.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.

28 Dated: July 17, 2020


Alissa Cerro