

FILEDSuperior Court of California
County of Los Angeles

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

OLRIM KANG, individually and on
 behalf of all others similarly situated,

Plaintiff,

v.

SAMSUNG ELECTRONICS
 AMERICA, INC.; STAFFMARK
 INVESTMENT LLC d/b/a ATTERRO
 WORKFORCE SOLUTIONS; and DOES
 1 through 10, inclusive,

Defendants.

Case No. 20STCV09407

Unlimited Civil Case Over \$25,000

**FIRST AMENDED COMPLAINT
 [CLASS ACTION]**

1. Cal. Lab. Code §§ 510, 558, 1174, 1194—
Recovery of Unpaid Minimum Wage and
Overtime
2. Cal. Lab. Code §§ 226.7, 510, 512, 558,
1198—Meal and Rest Period Violations
3. Cal. Lab. Code §§ 201-203, and 204—
Timely Payment of Final Wages at
Separation Violation
4. Cal. Lab. Code §§ 226 *et seq.*, 1174—
Maintenance of Required Business
Records and Itemized Wage Statements
Violation
5. Cal. Bus. & Prof. Code § 17200 *et*
seq.—Disgorgement of Profits
6. Violation of Cal. Labor Code § 2699

[DEMAND FOR JURY TRIAL]

COMES NOW Plaintiff, and for his causes of action against Defendants, allege:

1 **PARTIES AND JURISDICTION**

2 1. Plaintiff Olrim Kang (“Plaintiff”) is an individual who, during the time periods relevant
3 to this Complaint, was employed by Defendant Samsung Electronics America, Inc. and Defendant
4 Staffmark Investment LLC d/b/a/ Atterro Workforce Solutions (hereinafter collectively referred to as
5 “Defendants”) located in Rancho Dominguez, California.

6 2. Defendants manufacture electronic products including, but not limited to, televisions, cell
7 phones, storage devices, home appliances, and computer products, and have continuous and systematic
8 business activities in the State of California. At all relevant times herein, Defendants served as one of
9 the employers of Plaintiff and Class members.

10 3. Plaintiff brings this claim on behalf of himself and all others similarly situated as a class
11 action.

12 4. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as
13 Does One through Ten, but Plaintiff will seek leave to amend this Complaint to allege their true names
14 and capacities once they are ascertained. Upon information and belief, Plaintiff make all allegations
15 contained in this Complaint against all of the Defendants, including Does One through Ten.

16 **FACTUAL BACKGROUND**

17 5. This Complaint asserts claims against Defendants for violations of California Labor Code
18 sections 201-203, 226(a), 226.7, 510, 512, 558, 558.1, 1174, 1182.12, 1194, and 1198 of the California
19 Labor Code, violations of the applicable Commission wage order, and violations of section 17200 *et seq.*
20 of the California Business and Professions Code.

21 6. Defendants employed non-exempt workers to perform various activities in California.

22 7. Employees are subject to identical or nearly identical policies and procedures related to
23 employee compensation. Defendants maintained a highly standardized human resources and
24 management structure. These systematic and companywide policies were a cause of the illegal pay
25 practices. Plaintiff and other class members were:

26 a. Not paid for all hours worked in violation of the California Labor Code;

27 b. Not paid all overtime wages at correctly computed rates in violation of the
28 California Labor Code; and

c. Not provided with accurate written wage statements in violation of the California Labor Code.

8. Employees are classified as non-exempt by Defendants and entitled to receive overtime pay.

9. Defendants employed Plaintiff from in or around February 2016 to on or about August 27, 2019. Defendants employed Plaintiff in a non-exempt position where his duties included without limitation, handling accounts receivables, producing monthly financial reports, and generating invoices. Throughout his employment, Plaintiff performed daily overtime (approximately two to five hours, Monday to Friday) without proper compensation as required by California State wage and hour laws.

10. Defendants engaged in activities including without limitation, forcing Plaintiff and other employees to stay late to finish the workload for that day, and refusing to properly pay overtime payment requests.

11. At all relevant times mentioned herein, section 510(a) of the California Labor Code provided, in part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

Cal. Lab. Code § 510(a).

12. Section 1194 of the California Labor Code provided:

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

Cal. Lab. Code § 1194(a).

13. Defendants' failure to timely pay Plaintiff and other employees after discharge was in

1 violation of California Labor Code sections 510 and 1194.

2 14. Defendants' employees are similarly situated in that Defendants failed to provide them
3 with all required meal periods and rest periods, and failed to timely furnish them with a final paycheck
4 encompassing all unpaid earned wages following separation of employment.

5 15. Defendants failed to provide Plaintiff and other employees the required meal periods by
6 having Defendants' employees work through their lunches to perform work on their behalf, without
7 being compensated for the missed meal periods.

8 16. The right to meal and rest periods has been codified in sections 226.7 and 512 of the
9 California Labor Code. At all relevant times mentioned herein, section 226.7 provided:

10 (a) No employer shall require any employee to work during any meal or rest period
11 mandated by an applicable order of the Industrial Welfare Commission.

12 (b) If an employer fails to provide an employee a meal period or rest period in
13 accordance with an applicable order of the Industrial Welfare Commission, the employer
shall pay the employee one additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest period is not provided.

14 Cal. Lab. Code § 226.7.

15 17. Employers are required to schedule meal periods before the end of the fifth hour of work.
16 At all relevant times herein, the applicable Commission wage order provided in relevant part:

17 11. Meal Periods

18 (A) No employer shall employ any person for a work period of more than five (5) hours
19 without a meal period of not less than 30 minutes, except that when a work period of not more
20 than six (6) hours will complete the day's work the meal period may be waived by mutual
consent of the employer and the employee.

21 ...

22 (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal
period shall be considered an "on duty" meal period and counted as time worked. An "on duty"
meal period shall be permitted only when the nature of the work prevents an employee from
being relieved of all duty and when by written agreement between the parties an on-the-job paid
meal period is agreed to. The written agreement shall state that the employee may, in writing,
revoke the agreement at any time.

24 (D) If an employer fails to provide an employee a meal period in accordance with the
25 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at
26 the employee's regular rate of compensation for each workday that the meal period is not
provided.

27 (E) In all places of employment where employees are required to eat on the premises, a
suitable place for that purpose shall be designated.

28 ...

12. Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

Wage Order No. 4-2001.

18. Defendants' employees were not provided with an additional hour of pay for each workday that the meal period was not properly provided. Defendants' employees were either precluded from enjoying their meal period or were denied a meal period before the end of the fifth hour of work because they were required to remain at the workplace and standby for duty.

19. Plaintiff and other employees were not provided a second 30-minute meal period despite working more than ten (10) hours in a workday as required by law.

20. In addition to being prevented from enjoying their legally mandated meal periods, Plaintiff and other employees were prevented from enjoying their rest period. Plaintiff and other employees were not provided with an additional hour of pay for each workday that the rest period was not properly provided.

21. Defendants' failure to pay Plaintiff and other employees for missed meal and rest periods systematically violated the mandatory requirements of sections 226.7 and 512 of the California Labor Code and the applicable wage order. As a result, Defendants' employees were routinely denied proper compensation for missed meal and rest periods.

22. Defendants' practices violate section 1198 of the California Labor Code which provided:

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.

Cal. Lab. Code § 1198.

23. While employed by Defendants, Plaintiff did not get paid the minimum wage for all

1 hours worked. California Labor Code section 1182.12 outlines the minimum wage rates for all
2 industries, including Defendants.

3 24. At all relevant times herein mentioned herein, section 1182.12 of the California Labor
4 Code provided:

5 (a) Notwithstanding any other provision of this part, on and after July 1, 2014, the
6 minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on
7 and after January 1, 2016, the minimum wage for all industries shall be not less than ten
8 dollars (\$10) per hour.

9 (b) Notwithstanding subdivision (a), the minimum wage for all industries shall not be
10 less than the amounts set forth in this subdivision, except when the scheduled increases in
11 paragraphs (1) and (2) are temporarily suspended under subdivision (d).

12 (1) For any employer who employs 26 or more employees, the minimum wage shall
13 be as follows:

14 (A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty
15 cents (\$10.50) per hour.

16 (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11)
17 per hour.

18 (C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12)
19 per hour.

20 (D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13)
21 per hour.

22 Cal. Lab. Code § 1182.12.

23 25. In light of Defendants' failure to pay wage premiums for missed meal and rest periods,
24 Defendants willfully failed to pay wages promptly upon Plaintiff and other employees' termination or
25 resignation.

26 26. California Labor Code sections 201 and 202 provided that employees must receive wages
27 earned and unpaid promptly upon termination or resignation. At all relevant times mentioned herein, the
28 relevant portion of section 201(a) of the California Labor Code provided: "If an employer discharges an
employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Cal.
Lab. Code § 201(a).

29 27. At all relevant times mentioned herein, the relevant portion of section 202(a) of the
30 California Labor Code provided: "If an employee not having a written contract for a definite period quits
his or her employment, his or her wages shall become due and payable not later than 72 hours
thereafter." Cal. Lab. Code § 202(a).

1 28. At all relevant times mentioned herein, section 203 of the California Labor
2 Code provided:

3 If an employer willfully fails to pay, without abatement or reduction, in accordance with
4 Sections 201, 201.5, 202 and 202.5, any wages of an employee who is discharged or who
5 quits, the wages of the employee shall continue as a penalty from the due date thereof at
6 the same rate until paid or until action therefore is commenced; but the wages shall not
7 continue for more than 30 days.

8 Cal. Lab. Code § 203.

9 29. Because Plaintiff who was separated from his employment did not receive wage
10 premiums for missed meal and rest periods and did not receive all his final wages at the time required by
11 California Labor Code sections 201-202, Plaintiff is entitled to continuing wages under Labor Code
12 section 203.

13 30. Defendants violated section 204 of the California Labor Code by failing to provide
14 Plaintiff wages earned for labor of the normal work, which are due and payable twice during each
15 calendar month.

16 31. At all times relevant herein, section 204 of the California Labor Code provided, in part:
17 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned
18 by any person in any employment are due and payable during each calendar month, on days
19 designated in advance by the employer as the regular paydays. Labor performed between the 1st
20 and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th
21 day of the month during which the labor was performed, and labor performed between the 16th
22 and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day
23 of the following month.

24 Cal. Lab. Code § 204.

25 32. Defendants' conduct of willfully failing to pay wages earned and unpaid promptly upon
26 employee's termination or resignation violates the California Labor Code and also constitutes unfair
27 competition and unlawful, unfair, and fraudulent acts and practices within the meaning of section 17200
28 *et seq.* of the California Business and Professions Code.

 33. Defendants' failure to keep and furnish accurate itemized wage statements to each
employee for all hours worked by employees is a violation of California Labor Code Sections 226.

1 Defendants' employees were systematically deprived of wage statements that complied with
2 requirements of section 226 of the California Labor Code.

3 34. At all relevant times mentioned herein, section 226 of the California Labor Code
4 provided:

5 (a) An employer, semimonthly or at the time of each payment of wages, shall furnish
6 to his or her employee, either as a detachable part of the check, draft, or voucher paying
7 the employee's wages, or separately if wages are paid by personal check or cash, an
8 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
9 worked by the employee, except as provided in subdivision (j), (3) the number of piece-
10 rate units earned and any applicable piece rate if the employee is paid on a piece-rate
11 basis, (4) all deductions, provided that all deductions made on written orders of the
12 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
13 inclusive dates of the period for which the employee is paid, (7) the name of the
14 employee and only the last four digits of his or her social security number or an employee
15 identification number other than a social security number, (8) the name and address of the
16 legal entity that is the employer and, if the employer is a farm labor contractor, as defined
17 in subdivision (b) of Section 1682, the name and address of the legal entity that secured
18 the services of the employer, and (9) all applicable hourly rates in effect during the pay
19 period and the corresponding number of hours worked at each hourly rate by the
20 employee and, beginning July 1, 2013, if the employer is a temporary services employer
21 as defined in Section 201.3, the rate of pay and the total hours worked for each temporary
22 services assignment.

23 The deductions made from payment of wages shall be recorded in ink or other indelible
24 form, properly dated, showing the month, day, and year, and a copy of the statement and
25 the record of the deductions shall be kept on file by the employer for at least three years
26 at the place of employment or at a central location within the State of California.

27 (e) An employee suffering injury as a result of a knowing and intentional failure by
28 an employer to comply with subdivision (a) is entitled to recover the greater of all actual
damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney's fees.

Cal. Lab. Code § 226.

35. Defendants willfully and knowingly failed to accurately account and record the hours
worked by Plaintiff and other employees.

36. Defendants' failure to maintain required payroll records showing the hours worked daily
by and the wages paid to Defendants' employees is a violation of sections 226(a) and 1174 of the
California Labor Code.

37. At all relevant times mentioned herein section 1174 of the California Labor Code provided, in part:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Cal. Lab. Code § 1174.

38. The net effect of Defendants' policy and practice, instituted and approved by company managers, is that Defendants willfully fail to pay wage premiums on account of missed meal and rest periods, fail to timely pay minimum wages and overtime, and fail to maintain required business records to save payroll costs. Defendants enjoy ill-gained profits at the expense of their employees.

CLASS-ACTION ALLEGATIONS

39. Plaintiff brings this action individually and as a class action pursuant to California Code of Civil Procedure section 382.

40. The Class members are defined as follows:

Class: All non-exempt employees of Defendant Samsung Electronics America, Inc. and Defendant Staffmark Investment LLC d/b/a/ Atterro Workforce Solutions, who worked at any time during the period from four years before the filing of the Complaint through the date of the filing of a motion for class certification in this case.

41. Plaintiff reserves the right to modify the Class definition after further discovery.

42. Plaintiff contends Defendants, as to each Class member, failed to pay overtime compensation to those who worked in excess of 40 hours per week and/or eight hours a day.

43. Plaintiff contends Defendants, as to each Class member, failed to provide meal and rest periods, as required by sections 226.7 and 512 of the California Labor Code, and that Defendants' failure to provide the legally mandated meal and rest periods entitles them to one additional hour of pay

1 for each workday he or she was not provided the proper meal period and one additional hour of pay for
2 each workday he or she was not provided the proper rest period.

3 44. Plaintiff contends that Defendants' failure to make wage payments within the time
4 provided by sections 201, 202, and/or 204 of the California Labor Code has been and is "willful" within
5 the meaning of section 203 of the California Labor Code and that, accordingly, each Class member who
6 separated from his/her employment is entitled to the continuing wages provided for by section 203.

7 45. Plaintiff contends that Defendants' failure to record the proper beginning and end of each
8 work period, the meal periods, the total hours work during the pay period, the applicable rates of pay,
9 and the wages paid and that, accordingly, each Class member who separated from his or her
10 employment is entitled to civil penalties as provided in the California Labor Code section 226.3.

11 46. Numerosity. The number of Class members is great, believed to be in excess of 100
12 current and former employees. It therefore is impractical to join each class member as a named plaintiff.
13 Accordingly, utilization of a class action is the most economically feasible means of determining the
14 merits of this litigation.

15 47. Ascertainability. Despite the size of the proposed classes, the Class members are readily
16 ascertainable through an examination of the records that Defendants are required by law to keep.
17 Likewise, the dollar amount owed to each class member is readily ascertainable by an examination of
18 those same records.

19 48. Commonality. Common questions of fact and of law predominate in the class member's
20 claims over individual issues regarding the money owed to each class member. The questions include,
21 but are not limited to, the following:

22 a. Whether Defendants violated the applicable wage order and Labor Code section
23 510 by failing to pay overtime compensation to employees who worked in excess of 40 hours per
24 week and/or eight hours a day.

25 b. Whether the policies and practices of Defendants described in this Complaint
26 were and are illegal.

27 c. Whether Defendants failed to provide legally mandated meal and rest periods to
28 their employees.

1 d. Whether Defendants failed to pay one additional hour of pay at the employees'
2 regular rate of pay for each workday that the meal period was not provided and one additional
3 hour of pay at the employees' regular rate of pay for each workday that the rest period was not
4 provided.

5 e. Whether Defendants failed to pay minimum wages to their employees in violation
6 of section 1194 of the California Labor Code.

7 f. Whether Defendants failed to pay all wages in a timely fashion upon each and
8 every employee's discharge or resignation of employment, in violation of sections 201 and/or
9 202 of the California Labor Code.

10 g. Whether Defendants failed to pay all wages that were due and payable twice
11 during each calendar month during employment, in violation of section 204 of the California
12 Labor Code.

13 h. Whether Defendants failed to keep accurate itemized wage statements showing
14 employees' gross wages earned and failed to make the contents of those personnel records
15 available to the current and/or former employees at reasonable intervals and at reasonable times,
16 in violation of sections 226 and 1174 of the California Labor Code.

17 i. Whether the conduct of Defendants constitutes unlawful, unfair, or fraudulent
18 business practices.

19 j. Whether the conduct of Defendants constitutes unfair competition.

20 k. Whether their employees are entitled to restitution as a result of the conduct of
21 Defendants in not providing employees with all wages earned and unpaid promptly upon
22 termination or resignation.

23 l. Whether the misconduct of Defendants as alleged herein was intentional.

24 49. Community of Interest. There is a well-defined community of interest in the questions of
25 law and fact common to the Class members.

26 50. Typicality. Plaintiff's claims are typical of the claims of the Class Members, whose
27 claims all arise from the same general of operative facts, namely, Samsung Electronics America, Inc.
28 and Defendant Staffmark Investment LLC d/b/a/ Atterro Workforce Solutions did not compensate and

1 keep itemized records of gross wages and overtime hours of their employees as required by sections
2 201-203, 204, 226, 226.7, 510, 512, 1194, and 1198 of the California Labor Code, and the applicable
3 wage orders. The Plaintiff has no conflict of interest with the other Class members and are able to
4 represent the Class members' interests fairly and adequately.

5 51. Superiority. A class action is a superior method for the fair and efficient adjudication of
6 this controversy. The persons within the Class are so numerous that joinder of all of them is
7 impracticable. The disposition of all claims of the members of the Class in a class action, rather than in
8 individual actions, benefits the parties and the Court. The interest of the Class members in controlling
9 the prosecution of separate claims against Defendants is small when compared with the efficiency of a
10 class action.

11 52. Adequacy of Representation. Plaintiff is an adequate representative of the class, in that
12 Plaintiff's claims are typical of those of the Class, and Plaintiff has the same interest in the litigation of
13 this case as the Class members. Plaintiff is committed to vigorous prosecution of this case and has
14 retained competent counsel, experienced in litigation of this nature. Plaintiff is not subject to any
15 individual defenses unique from those conceivably applicable to the Class as a whole.

16 53. Manageability. Although the number of Class members is great, believed to be in excess
17 of 40 current and former employees, the matter is manageable as a class action and the data required to
18 establish liability and prove damages is readily available, and almost all of it is available in
19 computerized databases.

20 54. In addition to asserting class-action claims, pursuant to California Business and
21 Professions Code section 17200 *et seq.*, Plaintiff asserts a claim on behalf of the general public. Plaintiff
22 seeks to require Defendants to pay restitution of all monies wrongfully obtained by them through their
23 unfair, unlawful, and/or deceptive business practices. A class action is necessary and appropriate
24 because Defendants have engaged in the wrongful acts described herein as a general business practice.

25 **FIRST CAUSE OF ACTION**

26 (Cal. Lab. Code §§ 510, 1194, Failure to Pay Minimum Wage and Overtime—Against Defendants)

27 55. Plaintiff pleads, alleges, and incorporates by reference each and every allegation set forth
28 in this Complaint.

1 56. Failure of an employer to pay its employees the legal minimum wage and/or the legal
2 overtime compensation applicable to the employee violates, *inter alia*, sections 510 and 1194 of the
3 California Labor Code.

4 57. During the relevant time period, Defendants failed to timely pay Plaintiff and Class
5 members their minimum wages and overtime compensation due and owing to them, and thereby
6 violated sections 510 and 1194 of the California Labor Code.

7 58. Pursuant to California Labor Code section 558, violations of the Labor Code sections
8 500-558 or any provision regulating hours and days of work in any wage order, the civil penalty is \$50
9 for the initial violation and \$100 for each subsequent violation for each underpaid employee in addition
10 to “an amount sufficient to recover underpaid wages.” Cal. Lab. Code § 558.

11 59. Accordingly, Plaintiff and Class members are entitled to recover their liquidated damages
12 under sections 1194.2 and 558 of the California Labor Code, and Plaintiff is entitled to costs and
13 attorney’s fees as provided for in section 1194 of the California Labor Code.

14 **SECOND CAUSE OF ACTION**

15 (Cal. Lab. Code §§ 226.7, 512, Failure to Provide Meal and Rest Periods—Against Defendants)

16 60. Plaintiff pleads, alleges, and incorporates by reference each and every allegation set forth
17 in this Complaint.

18 61. Plaintiff and Class members were not provided time to take all required meal and rest
19 periods during their work shifts as required by law.

20 62. Pursuant to California Labor Code section 558, violations of the Labor Code sections
21 500-558 or any provision regulating hours and days of work in any wage order, the civil penalty is \$50
22 for the initial violation and \$100 for each subsequent violation for each underpaid employee in addition
23 to “an amount sufficient to recover underpaid wages.” Cal. Lab. Code §558.

24 63. Accordingly, Plaintiff and Class members are entitled to compensation of at least one
25 hour of pay for each workday during which they were not provided the proper meal period and one hour
26 of pay for each workday during which they were not provided the proper rest period, and the civil
27 penalties as provided in section 558 of the California Labor Code.

28 **THIRD CAUSE OF ACTION**

(Cal. Lab. Code §§ 201, 202, 203, Failure to Pay Final Wages Timely—Against Defendants)

64. Plaintiff pleads, alleges, and incorporates by reference each and every allegation set forth in this Complaint.

65. At all times herein relevant, Labor Code sections 201 and 202 provided that employees must receive wages earned and unpaid promptly upon termination or resignation.

66. Because Defendants have willfully failed to promptly pay lawful minimum wages earned, overtime compensation and compensation for meal and rest periods and other premiums as required by law upon termination or resignation, Defendants are liable for continuing wages under Labor Code section 203.

67. Accordingly, Plaintiff and Class members who separated from their employment are entitled to continuing wages from the date on which their final wages were due until the date on which Defendants failed to make payment of such wages, not to exceed thirty (30) days.

FOURTH CAUSE OF ACTION

(Cal. Lab. Code §§ 226, 1174, Failure to Maintain and Furnish Accurate Itemized Wage Statements—Against Defendants)

68. Plaintiff pleads, alleges, and incorporates by reference each and every allegation set forth in this Complaint.

69. At all times herein relevant, Labor Code section 226(a) requires an employer to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by its employees.

70. Defendants have knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage statement provided to Plaintiff and Class members.

71. California Labor Code section 1174 requires Defendants to keep, at a central location, accurate information with respect to each employee.

72. Defendants failed to maintain accurate time-keeping records of the hours worked by Plaintiff and Class members including without limitation, Defendants' failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the wages paid.

73. Accordingly, Plaintiff and Class members are entitled to the civil penalties, for which the employer failed to provide wage deduction statements or failed to keep the records required as prescribed in the California Labor Code sections 226 and 1174.

FIFTH CAUSE OF ACTION

(Violations of Section 17200 *et seq.* of the California Business and Professions Code—Against Defendants)

74. Plaintiff pleads, alleges, and incorporates by reference each and every allegation set forth in this Complaint.

75. Plaintiff suffered direct harm from the illegal business practices herein alleged.

76. Beginning at an exact date unknown, Defendants have committed acts of unfair business practice as defined in Business and Professions Code section 17200 *et seq.* by engaging in the following acts and practices: (1) failing to pay overtime compensation to employees who worked in excess of 40 hours per week and/or eight hours a day in violation of the California Labor Code; (2) failing to provide employees with legally mandated meal and rest periods in accordance with sections 226.7 and 512 of the California Labor Code, and the applicable wage order; (3) failing to pay minimum wages to employees at termination in violation of the California Labor Code; (4) requiring employees to work without paying wages earned and unpaid promptly upon termination or resignation, in violation of California Labor Code sections 201 and 202; and (5) failing to maintain and furnish a wage deduction statement of payroll records.

77. The violation of Defendants of the applicable wage order is in contravention of state law and, consequently, constitutes an unlawful business act or practice within the meaning of Business and Professions Code section 17200 *et seq.*

78. Labor Code section 90.5(a) articulates the public policy of this State to enforce minimum labor standards vigorously.

79. Through the wrongful and illegal conduct alleged herein, Defendants have acted contrary to the public policy of this State.

80. As a result of the violations of the UCL, Defendants have unjustly enriched themselves at the expense of their employees.

1 81. To prevent this unjust enrichment, Defendants should be required to make restitution to
2 their employees, as identified in this Complaint (and as will be identified through discovery into
3 Defendants' books and records, if any).

4 82. Plaintiff requests that the Court enter such orders or judgments as may be necessary to
5 restore to any person in interest any money that may have been acquired by means of such unfair
6 practices, as provided in section 17203 of the California Business and Professions Code.

7 83. Plaintiff is a "person" within the meaning of section 17204 of the California Business and
8 Professions Code, and have standing to bring this cause of action.

9 84. Pursuant to section 17203 of the California Code of Civil Procedure, Plaintiff requests
10 restitution of all sums obtained by Defendants in violation of section 17200 *et seq.* of the California
11 Business and Professions Code for the period of time from the four years preceding the filing of the
12 Complaint.

13 85. The named Plaintiff is a person who has suffered damage as a result of the unlawful
14 actions of Defendants herein alleged. The actions of Defendants herein alleged are in violation of
15 statute, the applicable wage order and in contravention of established public policy, and, accordingly, a
16 court order compelling them to make restitution is a vindication of an important public right. The extent
17 to which Defendants have been unjustly enriched as a result of their unlawful and unfair business
18 practices is a matter that can be ascertained by examination of the payroll and accounting records that
19 Defendants are required by law to keep and maintain and that Defendants have kept and maintained.

20 86. The conduct of Defendants, as alleged herein, has been deleterious to Plaintiff. Plaintiff's
21 efforts in securing the requested relief will result "in the enforcement of an important right affecting the
22 public interest." Cal. Civ. Proc. Code § 1021.5. Moreover, because "the necessity and financial burden
23 of private enforcement . . . are such as to make [an attorney's fee] award appropriate, and [because
24 attorney's] fees should not in the interest of justice be paid out of the recovery, if any," Cal. Civ. Proc.
25 Code § 1021.5, Plaintiff requests that the Court also award reasonable attorney's fees pursuant to the
26 provisions of section 1021.5 of the California Code of Civil Procedure.

27 87. Pursuant to section 17205, the remedies and penalties provided by section 17200 *et seq.*
28 are cumulative to the remedies and penalties available under all other laws of this state.

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(Violation of California Private Attorney General Act—Against Defendants)

88. Plaintiff re-alleges and incorporates by reference all preceding paragraphs herein as if alleged herein.

89. Plaintiff seeks recovery of penalties under the California Labor Code Private Attorney
 1 Act of 2004 (“PAGA”), California Labor Code §§2698 et seq.

90. Pursuant to California Labor Code section 2699.3(a)(1), on February 21, 2020, Plaintiff
wrote a written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and
advised LWDA of the specific provisions of the California Labor Code alleged to have been violated,
including the facts and theories specified in the Complaint. Attached hereto as Exhibit A is a true and
correct copy of the February 21, 2020 letter.

91. The Labor and Workforce Development Agency has not provided Plaintiff with any information that it intends to investigate the alleged violations, and more than 65 calendar days have elapsed since the postmark date on Plaintiff's notice.

92. A conformed copy of this amended complaint, shall be submitted to the LWDA pursuant to Code §2699(l)(1).

93. Plaintiff has therefore exhausted the administrative requirements.

94. Section 2699(f) of the California Labor Code provides for civil penalties for violations of California Labor Code, for which a specific civil penalty is not provided, which here includes, *inter alia*, sections 201-203, 226(A), 226.7, 510, 512, 558, 558.1, 1174 and related sections, and the minimum wage order of the Commission.

95. Plaintiff is informed and believes Defendant at all relevant times employed one or more employees.

96. For those code sections that provide for the recovery of civil penalties, Plaintiff will seek half of all aggrieved employees those penalties. For those sections of the Labor Code that do not actually provide for civil penalties, Plaintiff will seek civil penalties of one hundred dollars (\$100) on an aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for an aggrieved employee per pay period for each subsequent violation pursuant to Labor Code section

2699(f). The “initial violation” occurs during the first pay period following notice of such violations served on Defendant through the letter to the LWDA.

97. Section 2699(a) provides that civil penalties may be “recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.” Cal. Cal. Code. § 2699(a). Section 2699(g) provides that an employee who prevails in a civil action under section 2699 shall be entitled to an award of reasonable attorney’s fees and costs.

98. The State of California, Plaintiff and Aggrieved Employees are, therefore, entitled to civil penalties, attorney’s fees and costs, according to proof.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. That, with respect to the First Cause of Action, it be adjudged that the failure of Defendants to timely provide Plaintiff and Class members their overtime wages and/or minimum wages entitle them to liquidate damages in an amount according to proof, interest thereon, reasonable attorney’s fees and cost of suit. That, the failure to make payment of wages within the time prescribed by sections 201 and/or 202 of the California Labor Code was “willful” within the meaning of section 203 of the California Labor Code, and that this Court award Plaintiff and Class members continuing wages in an amount according to proof.

2. That, with respect to the Second Cause of Action, it be adjudged that the failure of Defendants to provide Plaintiff and Class members proper meal and rest periods entitles them to one additional hour of pay for each day a meal period was missed, and one additional hour of pay for each day a rest period was missed, in an amount according to proof.

3. That, with respect to the Third Cause of Action, it be adjudged that the failure of Defendants to timely provide Plaintiff and Class members their unpaid minimum wages and overtime entitles them to damages in an amount according to proof, interest thereon, reasonable attorney’s fees and cost of suit.

4. That, with respect to the Fourth Cause of Action, it be adjudged that the failure of Defendants to keep and maintain required payroll records and furnish accurate itemized statements entitles Plaintiff and Class members to two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent

1 citation under Labor Code section 226.3, in addition to five hundred dollars (\$500) under Labor Code
2 section 1174.5.

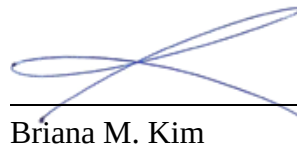
3 5. That, under the Fifth Cause of Action, it be adjudged that Defendants' violations of
4 sections 201—203, 204, 226, 226.7, 510, 1174, 1182.12, 1194, and 1198 of the California Labor Code,
5 violated section 17200 *et seq.* of the California Business and Professions Code. Accordingly, Plaintiff
6 requests that the Court order Defendants to pay restitution in the form of minimum wages as outline in
7 section 118.12 of the Labor Code, overtime compensation, underpaid compensation for missed meal
8 period and rest periods and continuing wages unlawfully retained by Defendants, with interest. Finally,
9 Plaintiff requests that the Court award Plaintiff his reasonable attorney's fees and costs incurred in the
10 prosecution of the Fifth Cause of Action pursuant to section 1021.5 of the California Code of Civil
11 Procedure.

12 6. That, under the Sixth Cause of Action, the State of California, Plaintiff and Aggrieved
13 Employees are entitled to civil penalties, attorney's fees and costs, according to proof.

14 7. For such further relief as the Court may order.
15 Plaintiff requests a trial by jury as to all causes of action.

16
17 Dated: April 2, 2021

BRIANA KIM, PC

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20 Briana M. Kim
21 Attorneys for Plaintiff Olrim Kang
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EXHIBIT A



February 21, 2020

Via LWDA website <https://dir.tfaforms.net/260>

Attn.: PAGA Administrator
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

VIA U.S. MAIL

SAMSUNG ELECTRONICS AMERICA, INC.
818 Seventh Street, Suite 930
Los Angeles, CA 90017

VIA U.S. MAIL

STAFFMARK INVESTMENT LLC
179 Southgate Road
Sacramento, CA 95815

RE: PAGA Claim Notice – *Olrin Kang v. Samsung Electronics America, Inc., et al*

To Whom It May Concern:

Please be advised that this firm has been retained to represent the interests of Olrin Kang (“Mr. Kang”) in claims arising out of his former employment with Samsung Electronics America, Inc. and Staffmark Investment LLC d/b/a Atterro Workforce Solutions (hereinafter collectively referred to as “Defendants”). Pursuant to the applicable provisions of the California Labor Code Private Attorneys’ General Act (“PAGA”), Mr. Kang hereby alleges Defendants violated multiple provisions of the California Labor Code. Mr. Kang is an “aggrieved employee” as defined by Labor Code section 2698, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below. Specifically, Mr. Kang alleges that Defendants violated sections including without limitation, 201-203, 226(a), 226.7, 510, 512, 558, 558.1, 1174, 1182.12, 1194, and 1198 of the California Labor Code and the applicable Wage Orders. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” are all current and former non-exempt employees of Defendants who work for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants manufacture electronic products including, but not limited to, televisions, cell phones, storage devices, home appliances, and computer products, and have continuous and systematic business activities in Southern California. During Mr. Kang’s employment with Defendants, Mr. Kang worked in excess of 8.0 hours per workday and/or in excess of 40.0 hours per workweek, but did not

receive overtime compensation at one and one-half times his regular rate of pay for working overtime hours. Specifically, Defendants failed to properly/timely compensate for all hours worked in excess of 8.0 hours per workday and compelled him to perform non-exempt duties throughout the average workday, including without limitation, managing accounts receivable, maintaining billing, creating monthly financial reports, and generating invoices.

Defendants failed to provide Mr. Kang and other aggrieved employees with all legally mandated meal periods because it failed to provide Mr. Kang and other aggrieved employees with a timely, duty-free, and uninterrupted 30-minute meal period commencing before the end of the fifth hour of work, and/or a second 30-minute meal period for shifts of over 10.0 hours. Specifically, upon information and belief, Mr. Kang and other aggrieved employees were not authorized and permitted to take all legally mandated 30-minute meal period before the end of the fifth hour of their shifts. Defendants' work demands and meal period policies/practices prevented them from taking a meal period. Defendants have failed to compensate Mr. Kang with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the liability period, Defendants maintained no payroll code for paying meal period premiums under Labor Code § 226.7.

Mr. Kang also was not authorized and permitted to take all required and legally-compliant rest periods due to Defendants' rest period policies/practices. Defendants failed to compensate Mr. Kang with the required premiums for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code for paying rest period premiums under Labor Code § 226.7.

As a result of the aforementioned violations, Defendants have also issued inaccurate wage statements to Mr. Kang and other aggrieved employees because, among other things, the wage statement issued fail to reflect meal and rest period premium pay for all meal and rest period violations, and failed to correctly list all overtime hours worked and/or all overtime compensation earned.

Because of the above violations, Defendants also failed to timely pay Mr. Kang and other aggrieved former employees all wages owed at the time of their respective separations from employment.

As described above, Defendants committed, and continues to commit, the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 4-2001 ("Wage Order 4"):

Overtime Violations

Defendants are required to compensate non-exempt employees, including Mr. Kang and other aggrieved employees, for all overtime hours worked pursuant to Labor Code § 510, 558, 1194, 1198 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an employee "one and one-half (1 ½) times [the] employee's regular rate of pay" for work in excess of 8 hours per workday or over 40 hours in a workweek, and for the first eight (8) hours on the seventh (7th) day of work. Wage Order 4, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work

in excess of 12 hours on any workday and for work in excess of eight hours on the seventh consecutive day of work in the workweek.

As alleged above, Defendants have caused Mr. Kang and other aggrieved employees to work overtime hours but have not compensated Mr. Kang or other aggrieved employees at one and one-half times (or two times, in the case of double-time) their "regular rate" of pay for such hours.

Meal Period Violations

Defendants failed in its affirmative obligation to provide all of its non-exempt employees in California, including Mr. Kang and other aggrieved employees, with all legally-compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 4, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Mr. Kang and other aggrieved employees at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7, and 512.

Rest Period Violations

As alleged above, Defendants also failed, and continues to fail, to authorize and permit Mr. Kang and other aggrieved employees to take all rest periods to which they are legally entitled. Wage Order 4, § 12 and California Labor Code §§ 226.7, and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minute net rest time for each four (4) hour period worked or major fraction thereof.

As a result of Defendants' failure to authorize and permit rest periods, Mr. Kang and other aggrieved employees are owed an additional hour of wage at their regular rates of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided."); *see also* Wage Order 4, § 12. As alleged above, Defendants have failed to pay Mr. Kang and other aggrieved employees the premium wages to which they are legally entitled.

Wage Statement Violations

Defendants have knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Kang and other aggrieved employees with complete and accurate wage statements with respect to their total hours worked, number of hours worked at each rate of pay total gross wages earned, total net wages earned, and meal and rest period premium wages earned in violation of Labor Code § 226 *et seq.* Defendants' failure in furnishing Mr. Kang and other aggrieved employees with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all earned wage and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

Waiting Time Penalties

As a result of the above alleged violations, Defendants have also failed to timely pay Mr. Kang and other aggrieved former employees all of their final wages at the time of separation of employment, including but not limited to all earned overtime wages, and meal and rest period premium wages, as required under Labor Code §§ 201-202.

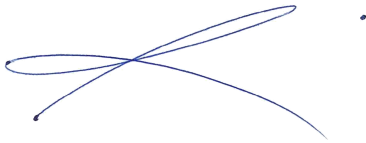
Defendants' failure to pay all final wages due to former aggrieved employees was willful and, consequently, entitles them to waiting time penalties in an amount equal to their daily wage for each day Defendants failed to pay final wages after separation of employment, accruing up to a maximum of thirty days. *See* Labor Code §§ 203 and 256.

Mr. Kang is informed and believes and based thereon alleges, that the violations alleged herein are continuing to the present. As an "aggrieved employee," Mr. Kang will initiate a civil action on behalf of himself, the State of California, and other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations alleged herein. As alleged herein, and based on Mr. Kang's own investigation and on information and belief, Defendants have committed the following Labor Code violations:

- a. Defendants have violated Labor Code §§ 510, 558, 1194, and 1198 by failing to pay Mr. Kang and other aggrieved employees all overtime and/or double-time compensation earned;
- b. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide all legally required meal periods and by failing to pay meal period premiums to Mr. Kang and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- c. Defendants have violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to authorize and permit Mr. Kang and other aggrieved employees to take all of their statutorily-mandated, duty-free rest periods and failing to pay rest period premiums to Mr. Kang and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- d. Defendants have violated Labor Code § 226 by failing to furnish Mr. Kang and other aggrieved employees with accurate and complete itemized wage statements;
- e. Defendants have violated Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Kang and other aggrieved former employees upon their separation of employment;
- f. Defendants have violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Kang and other aggrieved employees.

Pursuant to Labor Code section 2699.3, please advise us and Defendants whether the Labor and Workforce Development Agency will proceed with an investigation of this matter or whether Mr. Kang may seek civil-penalty recovery for the alleged violations of PAGA through private counsel.

Very truly yours,



Briana M. Kim