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FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

APR 14 2020

CLERK OF THE COURT

BY: 
Deputy Clerk

ANGELICA SUNGA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

12 DEVONNEA SYKES, on behalf of himself,
13 all others similarly situated, and the general
14 public,

Plaintiff,

15 vs.

16 F.D. THOMAS, INC., an Oregon corporation;
17 ASRC INDUSTRIAL SERVICES, LLC, an
18 Alaska Limited Liability Company; and DOES
19 1 through 50, inclusive,

Defendants.

Case No.

CGC - 20 - 584144

REPRESENTATIVE ACTION

COMPLAINT

Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

BY FAX

1 Plaintiff DEVONNEA SYKES (referred to as "Plaintiff"), on behalf of himself, all others
2 similarly situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendants F.D. THOMAS, INC., an Oregon
5 corporation; ASRC INDUSTRIAL SERVICES, LLC, an Alaska Limited Liability Company; and
6 DOES 1 through 50, inclusive (collectively referred to as "Defendants") for alleged violations of the
7 Labor Code and Business and Professions Code. As set forth below, Plaintiff alleges that
8 Defendants have:

- 9 (1) failed to provide he and all other aggrieved employees with meal periods;
10 (2) failed to provide them with rest periods;
11 (3) failed to pay them premium wages for missed meal and/or rest periods;
12 (4) failed to pay them premium wages for missed meal and/or rest periods at the
13 regular rate of pay;
14 (5) failed to pay them at least minimum wage for all hours worked;
15 (6) failed to pay them overtime wages at the correct rate;
16 (7) failed to pay them double time wages at the correct rate;
17 (8) failed to pay them overtime and/or double time wages by failing to include all
18 applicable remuneration in calculating the regular rate of pay;
19 (9) failed to pay them for all vested vacation pay;
20 (10) failed to reimburse them for all necessary business expenses;
21 (11) failed to provide them with accurate written wage statements; and
22 (12) failed to pay them all of their final wages following separation of
23 employment.

24 Based on these alleged Labor Code violations, Plaintiff now brings this representative
25 action to recover unpaid wages, restitution and related relief on behalf of himself, all others
26 similarly situated, and the general public.

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JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction to hear this case because the monetary damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction of the Superior Court of the State of California.

3. Venue is proper in the County of San Francisco pursuant to Code of Civil Procedure sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business and/or has an agent therein.

PARTIES

4. Plaintiff DEVONNEA SYKES is, and at all relevant times mentioned herein, an individual residing in the State of California.

5. Plaintiff is informed and believes, and thereupon alleges that Defendant F.D. THOMAS, INC., is, and at all relevant times mentioned herein, an Oregon corporation doing business in the State of California.

6. Plaintiff is informed and believes, and thereupon alleges that Defendant ASRC INDUSTRIAL SERVICES, LLC, is, and at all relevant times mentioned herein, an Alaska Limited Liability Company doing business in the State of California.

7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

8. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, principals or co-participants of some or all of the

1 other defendants, and in doing the things alleged herein, were acting within the course and scope of
2 such relationship and with the full knowledge, consent and ratification by such other defendants.

3 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
4 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert
5 and conspired with one another, and aided and abetted one another to accomplish the occurrences,
6 acts and omissions alleged herein.

7 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

8 10. Plaintiff worked for Defendants as a non-exempt, hourly employee from
9 approximately July 17, 2020 through March 8, 2020.

10 **Missed/Late Meal Periods**

11 11. Plaintiff and the aggrieved employees were not provided with meal periods of at
12 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
13 scheduling meal periods for each shift; (2) Defendants' policy that employees were not to take
14 their meal periods until they were released to do so by their supervisors; (3) imposing so much
15 work on each employee such that it made it unlikely that an employee would be able to take their
16 breaks if they wanted to finish their work on time; (4) Defendants practice of making employees
17 work through their meal periods when the project was behind schedule; and (5) Defendants
18 prioritizing ensuring that that would not have to pay employees overtime above properly releasing
19 employees for their breaks.

20 12. Plaintiff and the aggrieved employees would have to wait to be released for their
21 meal periods by their supervisors at a time that was satisfactory to management. Many times, this
22 would result in Plaintiff and the aggrieved employees working through their lunch periods to meet
23 the productivity expectations of Defendants. Plaintiff and the aggrieved employees would miss
24 their meal periods entirely at least once per week.

25 13. On the dates that Plaintiff and the aggrieved employees were able to take their meal
26 periods, they were frequently taken well after their fifth hour worked. Specifically, Plaintiff and
27 the aggrieved employees would not be released until as late as their seventh hour worked at least 2-
28 3 times per week. Plaintiff and the aggrieved employees at no time ever received any premium

1 wages for their missed and/or late meal periods.

2 14. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
3 regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five
4 (5) hours worked due to complying with Defendants' productivity requirements that required
5 Plaintiff and the aggrieved employees to work through their meal periods in order to complete their
6 assignments.

7 Missed Rest Periods

8 15. Plaintiff and the aggrieved employees were not provided with rest periods of at least
9 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
10 Defendants' policy of not scheduling each rest period as part of each work shift; (2) Defendants
11 policy that employees could not take their rest periods until they were released by their
12 supervisors; (3) imposing so much work on each employee such that it made it unlikely that an
13 employee would be able to take their breaks if they wanted to finish their work on time; (4)
14 Defendants practice of making employees work through their rest periods when the project was
15 behind schedule; and (5) Defendants prioritizing ensuring that that would not have to pay
16 employees overtime above properly releasing employees for their breaks.

17 16. Plaintiff and the aggrieved employees would frequently either receive only one rest
18 break or no rest breaks at all during their employment with Defendants. Plaintiff and the aggrieved
19 employees would only receive one of their breaks at least 2-3 times per week. Furthermore,
20 Plaintiff and the aggrieved employees would not receive any break at all at least 1-2 times per
21 week. Plaintiff and the aggrieved employees were at no point provided any rest break premiums
22 for their missed rest breaks.

23 17. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
24 regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4)
25 hours worked due to complying with Defendants' productivity requirements that required Plaintiff
26 and the aggrieved employees to work through their rest periods.

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Off-the-Clock Work

18. Plaintiff and the aggrieved employees were not paid all wages earned as Defendants directed, permitted or otherwise encouraged Plaintiff and the aggrieved employees to perform off-the-clock work.

19. Specifically, Plaintiff and the aggrieved employees regularly performed work before and after their scheduled work hours and were not paid for this time. Defendants maintained a practice of logging the time worked of Plaintiff and the aggrieved employees on a physical paper time sheet. Plaintiff and the aggrieved employees would sign the time sheet upon their arrival at the job site, however at no point did they ever sign out to clock out at the end of the day. The time was logged by the supervisors of Plaintiff and the aggrieved employees and they were unable to properly check to see whether the time that they were logged as having clocked out was correct.

20. In practice, this resulted in Plaintiff and the aggrieved employees having their hours improperly logged and calculated. Plaintiff and the aggrieved employees were scheduled to work shifts from 7am until 3:30pm. However, on most days Plaintiff and the aggrieved employees would stay past 3:30 to finish the work for the day as their project was behind schedule. Plaintiff and the aggrieved employees would stay sometimes as late as 8pm, however without fail they were recorded as only having worked until 3:30. Defendants maintained a practice of shaving the hours of employees in their efforts to avoid paying Plaintiff and the aggrieved employees overtime hours. Defendants would only pay Plaintiff and the aggrieved employees the hours that they were scheduled to work and systematically manipulated their time sheets to ensure that they would not be paid for any time worked past 3:30. This was an almost daily occurrence, with Plaintiff and the aggrieved employees working off-the-clock for up to four and a half hours after their scheduled shifts.

21. Defendants knew or should have known that Plaintiff and the aggrieved employees were performing work before and after their scheduled work shifts and failed to pay Plaintiff and the aggrieved employees for these hours.

22. As a result of performing off-the-clock work that was directed, permitted or otherwise encouraged by Defendants, Plaintiff and the aggrieved employees should have been paid

1 for this time. Instead, Defendants only paid Plaintiff and the aggrieved employees based on the
2 time they were clocked in for their shifts and did not pay Plaintiff and the aggrieved employees for
3 any of the time spent working off-the-clock.

4 Wage Statements

5 23. Plaintiff and the aggrieved employees were not provided with accurate wage
6 statements as mandated by law pursuant to Labor Code section 226.

7 24. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
8 earned" were not accurately reflected in that:

9 a. all hours worked, including overtime, were not included;

10 b. any and all meal and/or rest period premium wages were not included.

11 25. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours
12 worked by the employee" were not accurately reflected in that:

13 c. all hours worked, including overtime, were not included.

14 26. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages
15 earned" were not accurately reflected in that:

16 d. all hours worked, including overtime, were not included.

17 e. any and all meal and/or rest period premium wages were not included.

18 27. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours worked at each
20 hourly rate by the employee" were not accurately reflected in that:

21 f. all hours worked, including overtime, were not included.

22 Expense Reimbursement

23 28. Plaintiff and the aggrieved employees were required to utilize purchase items to be
24 used in the workplace as a necessary precondition of employment. Specifically, Plaintiff and the
25 aggrieved employees were made to purchase steel toed boots, pants, and all of their own tools on
26 their tool belts prior to their commencing work with Defendants.

27 29. Plaintiff and the aggrieved employees were not reimbursed for business expenses
28 incurred as a necessary precondition of employment.

1 30. Defendants failed to reimburse Plaintiff and the aggrieved employees for such
2 necessary business expenses incurred by them.

3 **Vacation Pay**

4 31. Plaintiff and the aggrieved employees accrued vacation wages during their
5 employment with Defendants.

6 32. Under California law, vacation wages are considered a form of wages under Labor
7 Code section 200. Vested vacation pay and other similar forms of paid time off earned based on
8 labor performed are considered wages that cannot be subject to forfeiture without compensation for
9 forfeited days at the applicable rates required by law.

10 33. At all relevant times, Defendants maintained policies that provide for the unlawful
11 forfeiture of vested vacation pay in violation of Labor Code section 227.3 and *Suastez v. Plastic*
12 *Dress-Up Co.*, (1982) 31 Cal. 3d 774.

13 34. Plaintiff and the aggrieved employees are entitled to vacation accrued during their
14 employment with Defendants. Upon termination, Plaintiff and the aggrieved employees were not
15 paid out all accrued vacation pay.

16 **Regular Rate of Pay**

17 35. The regular rate of pay under California law includes all remuneration for
18 employment paid to, on behalf of, the employee. This requirement includes, but is not limited, to,
19 overtime and meal/rest break premiums.

20 36. During the applicable limitations period, Defendants violated the rights of Plaintiff
21 and the aggrieved employees under the above-referenced Labor Code sections by failing to pay
22 them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and
23 1198 as a result of not correctly calculating their regular rate of pay to include all applicable
24 remuneration, including, but not limited to, meal and rest break premiums.

25 **Late Payment of Final Wages**

26 37. Plaintiff and the aggrieved employees were not provided their final paychecks upon
27 their separation of employment with Defendants. Specifically, Plaintiff and the aggrieved
28 employees worked all throughout February of 2019 and were not provided with any paychecks

1 from Defendants. Defendants assured Plaintiff and the aggrieved employees that the checks were
2 coming soon and that they would give them a raise if they remained on. Plaintiff expressed his
3 frustration with this practice and was told to take the day off and that Defendants would figure it
4 out. The next day, Plaintiff was terminated and provided a check of \$300 representing his last
5 paycheck. \$300 was woefully inadequate in its reflection of payment of a month's worth of work
6 and was in no way an accurate representation of the hours that Plaintiff worked. Plaintiff has not
7 received any form of compensation for the month of February outside of this one time \$300
8 payment.

9 38. Accordingly, Plaintiff and the aggrieved employees were not timely provided with
10 their final wages owed to them upon separation.

11 **FIRST CAUSE OF ACTION**

12 **CIVIL PENALTIES**

13 **(Lab. Code §§ 2698, *et seq.*)**

14 39. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
15 herein.

16 40. During the applicable limitations period, Defendants have violated Labor Code §§
17 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198, and 2802.

18 41. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, of behalf of
19 himself and other current and former employees, to bring a representative civil action to recover
20 civil penalties pursuant to the procedures specified in Labor Code section 2699.3 that may, but need
21 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

22 42. Plaintiff, as a former employee against whom Defendants committed one or more of
23 the alleged Labor Code violations during the applicable limitations period, is an aggrieved
24 employee within the meaning of Labor Code section 2699(c).

25 43. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
26 section 2699.3.

27 44. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
28 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7.

1 227.3, 510, 512, 1194, 1197, 1198, and 2802:

- 2 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 227.3, 1194,
3 1198, and 2802, \$100 for each employee per pay period for each initial
4 violation and \$200 for each employee per pay period for each subsequent
5 violation (penalties set by Labor Code section 2699(f)(2));
- 6 B. For violations of Labor Code section 203, a penalty in an amount not
7 exceeding 30 days pay as waiting time (penalties set by Labor Code section
8 256).
- 9 C. For violations of Labor Code section 204, \$100 for each employee for each
10 initial violation that was neither willful nor intentional, \$200 for each
11 employee, plus 25% of the amount unlawfully withheld from each employee,
12 for each initial violation that was either willful or intentional, and \$200 for
13 each employee, plus 25% of the amount unlawfully withheld from each
14 employee, for each subsequent violation, regardless of whether the
15 subsequent violation was either willful or intentional (penalties set by Labor
16 Code section 210);
- 17 D. For violations of Labor Code section 223, \$100 for each employee for each
18 initial violation that was neither willful nor intentional, \$200 for each
19 employee, plus 25% of the amount unlawfully withheld from each employee,
20 for each initial violation that was either willful or intentional, and \$200 for
21 each employee, plus 25% of the amount unlawfully withheld from each
22 employee, for each subsequent violation, regardless of whether the
23 subsequent violation was either willful or intentional (penalties set by Labor
24 Code section 225.5);
- 25 E. For violations of Labor Code section 226(a), if this action is deemed to be an
26 initial citation, \$250 for each employee for each violation. Alternatively, if an
27 initial citation or its equivalent occurred before the filing of this action,
28 \$1,000 for each employee for each violation (penalties set by Labor Code

1 section 226.3);

2 F. For violations of Labor Code sections 510 and 512, \$50 for each employee
3 for each initial pay period for which the employee was underpaid, and \$100
4 for each employee for each subsequent pay period for which the employee
5 was underpaid (penalties set by Labor Code section 558); and

6 G. For violations of Labor Code section 1197, \$100 for each aggrieved
7 employee for each initial violation of Labor Code section 1197 that was
8 intentional, and \$250 for each aggrieved employee per pay period for each
9 subsequent violation of Labor Code section 1197, regardless of whether the
10 initial violation was intentional (penalties set by Labor Code section 1197.1).

11 45. Pursuant to Labor Code section 2699(g), Plaintiff seeks awards of reasonable costs
12 and attorneys' fees in connection with his claims for civil penalties.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general
15 public, prays for relief and judgment against Defendants as follows:

- 16 A. Pre-judgment interest;
17 B. Statutory penalties;
18 C. Civil penalties;
19 D. Costs of suit;
20 E. Reasonable attorneys' fees; and
21 F. Such other relief as the Court deems just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff, on behalf of himself, all others similarly situated, and the general public, hereby
24 demands a jury trial on all issues so triable.

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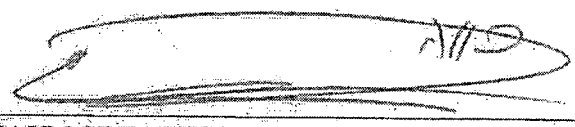
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1 DATED: April 13, 2020

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