

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq., Cal. Bar No. 185123
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq., Cal. Bar No. 260264
kelsey@kingsleykingsley.com
DAVID KELEDJIAN, Esq., Cal. Bar No. 309135
davidk@kingsleykingsley.com
JESSICA ADLOUNI, Esq., Cal. Bar No. 328571
jessica@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Telephone: (818) 990-8300
Fax: (818) 990-2903

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TOJARIEH LAW FIRM, PC
JOSEPH TOJARIEH, ESQ. (SBN-71075)
jft@tojariehlaw.com
10250 Constellation Blvd #100
Los Angeles, CA 90067
Tel: (310) 553-5533, Ext. 1001/Fax: (310) 553-5536

Attorneys for Plaintiff and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SACHA ROBERTS, an individual, on behalf
of himself and others similarly situated

PLAINTIFF,

v.

OSTENDO TECHNOLOGIES, INC., a
corporation; HUSSEIN S. EL-GHOROURY,
an individual; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 37-2020-00015752-CU-OE-CTL

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 558.1, 1194, and 1199
2. Failure to Pay Timely Wages Pursuant to Labor Code §§ 204 and 558.1
3. Violation of Labor Code § 226(a) and 558.1
4. Penalties Pursuant to Labor Code § 203 and 558.1
5. Violation of Business & Professions Code § 17200
6. Penalties Pursuant to Labor Code § 2699, *et seq.*

1 Plaintiff SACHA ROBERTS, an individual, on behalf of himself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under the Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter “PAGA”)
4 complains of Defendant OSTENDO TECHNOLOGIES, INC (“OSTENDO”); Defendant
5 HUSSEIN EL-GHOROURY (“EL-GHOROURY”); and DOES 1 thru 50; (collectively,
6 “Defendants”) and each of them, as follows:

7 **I.**

8 **INTRODUCTION**

9 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
10 382 and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined as:

11 All persons who are employed or have been employed by
12 OSTENDO TECHNOLOGIES, INC., in the State of California who
13 worked one or more pay periods since four (4) years prior to the
filing of this action to the present. (“Proposed Class”)

14 2. Plaintiff submitted his Class Action Complaint to the Court on March 25, 2020.
15 Due to the unprecedented Court closure reflected in the Superior Court of California County of
16 San Diego News Release issued on March 19, 2020, the Clerk of this Court conformed the
17 Complaint on May 26, 2020.

18 3. Any limitations period referenced in this complaint is extended pursuant to
19 Emergency Rule 9 of the “Emergency Rules Related to COVID-19,” Appendix I to the California
20 Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation for
21 civil actions are tolled from April 6, 2020 until 90 days after the Governor of California lifts the
22 state of emergency related to the COVID-19 pandemic. Any reference to the class period or statute
23 of limitations is extended into the past by the number of days in which this tolling was in effect.

24 4. From January 1, 2020 to the present, Defendants failed to pay wages/overtime to
25 Plaintiff and all Proposed Class members. Specifically, Plaintiff and other Proposed Class
26 members were not compensated for all hours worked at the appropriate rate of pay.

27 5. For at least four (4) years prior to the filing of this action continuing to the present,
28 Defendants failed to timely pay wages due and owing to Plaintiff all members of the Proposed

1 Class after the conclusion of each pay period in compliance with Labor Code § 204.

2 6. For at least one (1) year prior to the filing of this action continuing to the present,
3 Defendants failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 4-2001
4 and Labor Code § 226(a) by failing to issue Plaintiff and the Proposed Class compliant itemized
5 wage statements.

6 7. For at least three (3) years prior to the filing of this action continuing to the present,
7 Defendants failed to pay all wages due at the time of termination or resignation to Plaintiff and the
8 Proposed Class.

9 8. Plaintiff, on behalf of himself and all Proposed Class Members brings this action
10 pursuant to Labor Code §§ 201, 202, 203, 204, 226(a), 510, 558.1, 1194, and 1199; Wage Order
11 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid wages,
12 accurate itemized wage statements, other penalties, injunctive and other equitable relief, and
13 reasonable attorneys’ fees and costs.

14 9. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to
15 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
16 disgorgement of all benefits Defendants enjoyed from the unlawful conduct as described herein.

17 10. For at least one (1) year prior to the date of the letter sent to the Labor and
18 Workforce Development Agency (“LWDA”) and Defendants giving notice of the claims pursuant
19 to PAGA and continuing to the present, Defendants have violated Labor Code §§201, 202, 203,
20 204, 210, 226(a), 510, 1194.2, 1194, and 1199 giving rise to a claim pursuant to PAGA. Plaintiff,
21 on behalf of himself and all aggrieved employees presently or formerly employed by Defendants
22 during the liability period as defined in his PAGA notice letter (*see* Exhibit “1”), brings this
23 representative action pursuant to Labor Code §2699, *et seq.* seeking penalties for Defendants’
24 failure to pay wages and/or overtime, pay timely wages, provide accurate itemized wage
25 statements, and pay all wages due upon termination.

26 **II.**

27 **JURISDICTION AND VENUE**

28 11. This Court has subject matter jurisdiction over all causes of action asserted herein

pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

12. This Court has personal jurisdiction over Defendants because Defendants have caused injuries in the County of San Diego and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

13. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendants operate within California and do business within San Diego County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class Members within the State of California and the county of San Diego.

14. Pursuant to Labor Code § 558.1, any owner, director, officer, and/or managing agent of Defendant OSTENDO, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Labor Code sections 203, 204, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. Defendant EL-GHOROURY is an owner, director, officer, and/or managing agent of Defendant OSTENDO. Defendant EL-GHOROURY violated, or caused to be violated, provisions regulating minimum wages or hours and days of work in Wage Order 4-2001 and/or Sections 203, 204, 226, 1193.6, and 1194, and therefore may be held personally liable for such violations as though he was Plaintiff's and the Proposed Class Members' employer. Therefore, it is proper to seek individual liability of Defendant EL-GHOROURY as though he were Plaintiff's and the Proposed Class Members' employer.

15. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III.
PARTIES

A. PLAINTIFF

16. Plaintiff SACHA ROBERTS is a resident of California.

17. Plaintiff and all Proposed Class Members, were regularly required to:

- a. Work without being paid for all wages at the appropriate rate of pay;
- b. Work without being paid wages in a timely manner;
- c. Work without being provided itemized wage statements.

18. Defendants willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant.

19. As a result of this conduct, Defendant OSTENDO has engaged in unfair competition and unlawful business practices.

20. Plaintiff and all current and former employees are aggrieved employees within the meaning of Labor Code §2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

21. Defendant OSTENDO TECHNOLOGIES, INC. is believed to be a California corporation operating within the State of California. Defendant's corporate address is believed to be 6185 Paseo Del Norte Ste 200, Carlsbad, CA 92011. Upon information and belief, Defendant employed Plaintiff and similarly situated persons within California. Defendant has done and does business throughout the State of California.

22. Defendant EL-GHOROURY is named as an individual Defendant under Labor Code § 558.1, as the owner, director, officer, managing agent and/or "other person" acting on behalf of one or more of the other Defendants who violated or caused to be violated the provisions regulating minimum wages or hours and days of work in Wage Order 4-2001 and/or Labor Code sections 203, 226, 1193.6, and 1194, as alleged herein.

23. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure

§ 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

24. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class Members.

25. Furthermore, Defendants acted in all respects as the employers or joint employers of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or engaged, thereby creating a common law employment relationship, with the Proposed Class. Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

IV.

FACTUAL BACKGROUND

26. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as employees by Defendants.

27. Upon information and belief, Plaintiff and the Proposed Class are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal. Code of Regs. § 11040).

28. On a regular and consistent basis, Plaintiff and the Proposed Class members were not paid all wages at the appropriate rate of pay. Specifically, Plaintiff and Proposed Class members were not compensated for all hours worked at the regular rate of pay and were not compensated for hours worked over eight (8) hours in one day or forty (40) hours in one week on a timely or promptly basis. Defendant regularly failed to pay wages/overtime at all.

29. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid timely at the conclusion of the pay period. Defendants' employees are regularly issued their wages

1 after the seventh (7th) day following the close of the payroll period in violation of Labor Code §§
2 204(d) and 210.

3 30. Defendants have failed to comply with Industrial Welfare Commission (“IWC”)
4 Wage Order 4-2001(7) and Labor Code § 226(a) by failing to issue Plaintiff and the Proposed
5 Class itemized wage statements at all.

6 31. Defendants willfully failed to pay all wages due, when Plaintiff and all Proposed
7 Class Members quit or were discharged. This failure was willful, without legal justification, and
8 interfered with Plaintiff’s and Class Members’ rights.

9 32. As a result of the acts alleged herein, Defendants violated Labor Code §2699, *et*
10 *seq.*

11 **V.**

12 **CLASS ACTION ALLEGATIONS**

13 33. Plaintiff brings this action on behalf of himself and all others similarly situated as
14 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
15 proposed class composed of and defined as follows:

16 All persons who are employed or have been employed by
17 OSTENDO TECHNOLOGIES, INC., in the State of California who
18 worked one or more pay periods since four (4) years prior to the
filing of this action to the present. (“Proposed Class”)

19 34. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
20 amend or modify the class description with greater specificity, by division into subclasses, or by
21 limitation to particular issues.

22 35. This action has been brought and may properly be maintained as a class action
23 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
24 community of interest in the litigation and the Proposed Classes are easily ascertainable.

25 **A. NUMEROSITY**

26 36. The potential members of the Proposed Class as defined are so numerous that
27 joinder of all the members of the Proposed Class is impracticable. While the precise number of
28 proposed Class Members has not been determined at this time, Plaintiff is informed and believes

1 that Defendants currently employ, and during the relevant time periods employed over 50 members
2 of the Proposed Class.

3 37. Plaintiff alleges that Defendants' employment records would provide information
4 as to the number and location of all Proposed Class members. Joinder of all members of the
5 Proposed Class is not practicable.

6 **B. COMMONALITY**

7 38. There are questions of law and fact common to the Proposed Class that predominate
8 over any questions affecting only individual Proposed Class members. These common questions
9 of law and fact include, without limitation:

10 a. Whether Defendants failed to pay all wages due as required by the Labor
11 Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

12 b. Whether Defendants fail to timely pay wages to Plaintiff and the Proposed
13 Class in violation of Labor Code § 204;

14 c. Whether Defendants violated Labor Code § 226(a) and Wage Order 4-2001
15 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to
16 provide compliant itemized wage statements;

17 d. Whether Defendants violated §§ 201-203 of the Labor Code by failing to
18 pay wages due and owing at the time that any Proposed Class member's separated from
19 employment with Defendant;

20 e. Whether Defendants violated § 17200, *et seq.* of the Business & Professions
21 Code by engaging in the acts previously alleged; and

22 f. Whether Plaintiff and the members of the Proposed Class are entitled to
23 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

24 g. Whether Defendants violated Labor Code §2699, *et seq.* by engaging in the
25 acts alleged herein.

26 **C. TYPICALITY**

27 39. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
28 all members of the Proposed Class sustained injuries and damages arising out of and caused by

Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. ADEQUACY OF REPRESENTATION

40. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed Class.

41. Counsel who represent Plaintiff and the Proposed Class are competent and experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

42. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class Members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to pay all wages due, failing to pay wages in a timely manner, failing to issue itemized wage statements, and failing to pay all wages upon resignation or termination.

43. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI.

FIRST CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

FAILURE TO PAY WAGES AND/OR MINIMUM WAGES AND/OR OVERTIME

UNDER LABOR CODE §§ 510, 558.1, 1194, AND 1199

44. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

45. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that

1 eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday
2 and any work in excess of 40 hours in any one workweek must be compensated at the rate of no
3 less than one and one-half times the regular rate of pay for an employee. Plaintiff and the Proposed
4 Class were forced to work on a regular and consistent basis without receiving wages. Specifically,
5 Plaintiff and the Proposed Class were not compensated for all hours worked at the regular rate of
6 pay and were not compensated for all hours when they were working more than eight (8) hours in
7 one day or forty (40) hours in one week on a timely or promptly basis. Instead Defendants
8 frequently failed to pay wages at all and often delayed their payment of wages for weeks or more
9 at a time.

10 46. By their policy of failing to pay wages at the appropriate of pay, Defendants
11 willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

12 47. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Class
13 Members have been deprived of wages and/or overtime in amounts to be determined at trial, and
14 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
15 costs.

16 48. Labor Code § 558.1(a) provides that "[a]ny employer or other person acting on
17 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum
18 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
19 or causes to be violated, . . . [Labor Code §] 1194 . . . may be held liable as the employer for such
20 violation." Labor Code § 558.1(b) provides that "the term 'other person acting on behalf of an
21 employer' is limited to a natural person who is an owner, director, officer, or managing agent of
22 the employer, and the term 'managing agent' has the same meaning as in subdivision (b) of Section
23 3294 of the Civil Code."

24 49. Defendant EL-GHOROURY was an employer or "other person" acting on behalf
25 of Defendants, Plaintiff and Proposed Class Members' employer, as defined by Labor Code §
26 558.1(b), who violated or caused to be violated Wage Order 4-2001 and/or labor code sections
27 1194 as alleged herein. As such, Defendant EL-GHOROURY may be held personally liable for
28 the violations alleged in this cause of action.

1 **VII.**

2 **SECOND CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**
4 **FAILURE TO TIMELY PAY WAGES PURSUANT TO LABOR CODE §§ 204 AND**

5 **558.1**

6 **(From January 1, 2020 to the present)**

7 50. Plaintiff incorporates each and every allegation set forth in all of the foregoing
8 paragraphs as if fully set forth herein.

9 51. Labor Code § 204(d) requires that employees paid on a weekly, biweekly, or
10 semimonthly basis be paid no later than seven (7) calendar days after the payroll period ends.

11 52. Plaintiff and the Proposed Class were not paid timely at the conclusion of each pay
12 period. Defendants' employees are issued their wages after the seventh (7th) day following the
13 close of the payroll period. Thus, Defendants' practice violates Labor Code §§ 204(d) and 210.

14 53. As a proximate result of Defendants' violations of Labor Code § 204, Plaintiff and
15 the Proposed Class have been damaged in an amount according to proof at the time of trial.

16 54. Labor Code § 558.1(a) provides that "[a]ny employer or other person acting on
17 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum
18 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
19 or causes to be violated, . . . [enumerated Labor Code sections] . . . may be held liable as the
20 employer for such violation." Labor Code § 558.1(b) provides that "the term 'other person acting
21 on behalf of an employer' is limited to a natural person who is an owner, director, officer, or
22 managing agent of the employer, and the term 'managing agent' has the same meaning as in
23 subdivision (b) of Section 3294 of the Civil Code."

24 55. Defendant EL-GHOROURY was an employer or "other person" acting on behalf
25 of Defendants, Plaintiff and Proposed Class Members' employer, as defined by Labor Code §
26 558.1(b), who violated or caused to be violated Wage Order 4-2001 and/or labor code sections as
27 alleged herein. As such, Defendant EL-GHOROURY may be held personally liable for the
28 violations alleged in this cause of action.

1 **VIII.**

2 **THIRD CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **VIOLATION OF LABOR CODE § 226(A) AND 558.1**

5 56. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 57. California Labor Code § 226(a) requires that employers furnish to his or her
8 employee, either as a detachable part of the check, draft, or voucher paying the employee's wages,
9 or separately if wages are paid by personal check or cash, an accurate itemized statement in writing
10 showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
11 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
12 deductions, provided that all deductions made on written orders of the employee may be
13 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
14 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
15 social security number or an employee identification number other than a social security number,
16 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates
17 in effect during the pay period and the corresponding number of hours worked at each hourly rate
18 by the employee. (Labor Code §§ 226(a).)

19 58. Defendants failed to issue Plaintiff and the Proposed Class itemized wage
20 statements in writing showing this required information as required by the Labor Code.

21 59. Defendants' failure to provide itemized wage statements according to Labor Code
22 § 226(a) was all done on a regular and consistent basis.

23 60. An employee suffering injury as a result of a knowing and intentional failure by an
24 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
25 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
26 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
27 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
28 reasonable attorneys' fees.

61. Labor Code § 558.1(a) provides that “[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, . . . [Labor Code §] 226 . . . may be held liable as the employer for such violation.” Labor Code § 558.1(b) provides that “the term ‘other person acting on behalf of an employer’ is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term ‘managing agent’ has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.”

62. Defendant EL-GHOROURY was an employer or “other person” acting on behalf of Defendants, Plaintiff and Proposed Class Members’ employer, as defined by Labor Code § 558.1(b), who violated or caused to be violated Wage Order 4-2001 and/or labor code sections 226 as alleged herein. As such, Defendant EL-GHOROURY may be held personally liable for the violations alleged in this cause of action.

IX.

FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES UNDER LABOR CODE § 203 AND 558.1

63. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

64. Numerous members of the Proposed Class, including the Plaintiff, are no longer employed by Defendants. They were either fired or quit Defendants' employ.

65. Labor Code § 203 provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

66. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them thus entitling Plaintiff and the Proposed Class to penalties under Labor Code § 203.

67. Defendants have failed to pay Plaintiff and others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and

1 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
2 Members' daily wage multiplied by thirty (30) days.

3 68. Labor Code § 558.1(a) provides that "[a]ny employer or other person acting on
4 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum
5 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
6 or causes to be violated, . . . [Labor Code §] 203 . . . may be held liable as the employer for such
7 violation." Labor Code § 558.1(b) provides that "the term 'other person acting on behalf of an
8 employer' is limited to a natural person who is an owner, director, officer, or managing agent of
9 the employer, and the term 'managing agent' has the same meaning as in subdivision (b) of Section
10 3294 of the Civil Code."

11 69. Defendant EL-GHOROURY was an employer or "other person" acting on behalf
12 of Defendants, Plaintiff and Proposed Class Members' employer, as defined by Labor Code §
13 558.1(b), who violated or caused to be violated Wage Order 4-2001 and/or labor code sections 203
14 as alleged herein. As such, Defendant EL-GHOROURY may be held personally liable for the
15 violations alleged in this cause of action.

16 **X.**

17 **FIFTH CAUSE OF ACTION**

18 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

19 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

20 70. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
21 by reference all previous paragraphs.

22 71. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
23 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
24 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
25 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
26 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
27 interest within the meaning of Code of Civil Procedure § 1021.5.

28 72. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,

1 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
2 appropriate equitable relief.

3 73. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
4 practices.

5 74. California's wage and hour laws express fundamental public policies. Providing
6 employees with proper wages and compensation are fundamental public policies of this State and
7 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
8 vigorously minimum labor standards, to ensure that employees are not required or permitted to
9 work under substandard and unlawful conditions, and to protect law-abiding employers and their
10 employees from competitors who lower their costs by failing to comply with minimum labor
11 standards.

12 75. Defendants have violated statutes and public policies as alleged herein. Through
13 the conduct alleged in this Complaint, Defendants have acted contrary to these public policies,
14 have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
15 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
16 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
17 guaranteed to all employees under law.

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

20 77. Defendants, by engaging in the conduct herein alleged, either knew or in the
21 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
22 violation of § 17200, *et seq.* of the Business & Professions Code.

23 78. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and
24 others similarly situated have been damaged in a sum as may be proven.

25 79. Unless restrained, Defendants will continue to engage in the unlawful conduct as
26 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
27 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
28 employment by Defendants, its agents, or employees, of any unlawful or deceptive practices

1 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
2 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
3 proposed Class the money Defendants have unlawfully failed to pay.

4 **XI.**

5 **SIXTH CAUSE OF ACTION**

6 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

7 80. Plaintiff, on behalf of himself and the aggrieved employees, reallege and
8 incorporate by reference all previous paragraphs.

9 81. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
10 seeks penalties under Labor Code § 2699, *et seq.* because of Defendants' violation of Labor Code
11 §§ 201, 202, 203, 204, 210, 226(a), 510, 1194.2, 1194, and 1199, which calls for civil penalties.

12 82. Additionally, Labor Code § 204(d) requires that employees paid on a weekly,
13 biweekly, or semimonthly basis be paid no later than seven (7) calendar days after the payroll
14 period ends. Defendants' California employees are paid after the seventh (7th) day following the
15 close of the payroll period in violation of these statutes. Plaintiff asserts these allegations pursuant
16 to PAGA on behalf of himself and aggrieved employees for violation of Labor Code §§204(d) and
17 210 as to the relevant period of the 2019 calendar year only.

18 83. Thus, Plaintiff also seeks penalties under Labor Code §2699, *et seq.* because of
19 Defendants' violation of Labor Code §§ 204 and 210.

20 84. For each such penalty, Plaintiff and aggrieved employees are entitled to penalties
21 in an amount to be shown at trial, subject to the following formula:

22 a. \$100 for the initial violation per employee per pay period.

23 b. \$200 for each subsequent violation per employee per pay period.

24 85. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
25 twenty-five percent (25%) to the affected employees.

26 86. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
27
28

1 LWDA¹ and mailed a letter by certified mail to Defendant Ostendo Technologies, Inc.'s entity
2 address, which is 6185 Paseo Del Norte Ste 200, Carlsbad, CA 92011, as proscribed by the Code
3 on March 25, 2020, describing Defendant's conduct in violation of Labor Code §226(a). (See
4 Exhibit "1".) Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt
5 of the notice (see Exhibit "2").

6 87. As no letter evidencing the LWDA's intention to investigate was received by
7 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
8 action as though the LWDA had not chosen to investigate pursuant to Labor Code
9 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
10 Amended Class and Representative Action Complaint immediately.

11 **RELIEF REQUESTED**

12 **WHEREFORE**, Plaintiff prays for the following relief:

13 1. For compensatory damages in the amount of wages not paid to Plaintiff and each
14 Proposed Class Member at the appropriate rate from at least four (4) years prior to the filing of
15 this action to the present as may be proven;

16 2. For penalties pursuant to Labor Code §210 for violation of Labor Code § 204 in the
17 amount of one hundred dollars (\$100) for the initial pay period in which a violation occurs and
18 two hundred dollars (\$200) per employee for each violation in a subsequent pay period, plus 25
19 percent of the amount unlawfully withheld;

20 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
21 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
22 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
23 an aggregate penalty of four thousand dollars (\$4,000);

24 4. For penalties pursuant to Labor Code § 203 for all employees who were terminated
25 or resigned equal to their daily wage times thirty (30) days;

26 _____
27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/266>).

5. For all such damages alleged pursuant to Labor Code § 558.1.
6. An award of prejudgment and post judgment interest;
7. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from failing to pay wages, pay timely wages, provide itemized wage statements, and pay wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 204, 226(a), 510, 558.1, 1194, 1199, and IWC 4-2001;
8. For restitution for unfair competition pursuant to Business & Professions Code § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;
9. For penalties under Labor Code §2699, *et seq.* for Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 510, 1194.2, 1194, and 1199, and IWC 4-2001.
10. An award providing for payment of costs of suit;
11. An award of attorneys' fees; and
12. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

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

DATED: May 29, 2020

KINGSLEY & KINGSLEY, APC

By: _____

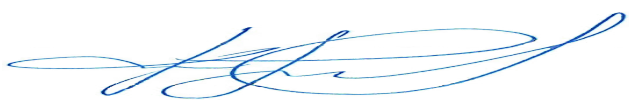

Kelsey M. Szamet
Attorneys for Plaintiff SACHA ROBERTS and the
Proposed Class

EXHIBIT “1”



March 25, 2020

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Ostendo Technologies, Inc.
6185 Paseo Del Norte Ste 200
Carlsbad, CA 92011
7019 2280 0001 9316 0258

Re: SACHA ROBERTS v. OSTENDO TECHNOLOGIES, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents SACHA ROBERTS (“Plaintiff”) and a proposed group of current and former employees working for OSTENDO TECHNOLOGIES, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004 (“PAGA”), pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed by OSTENDO TECHNOLOGIES, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Defendant failed to pay wages to Plaintiff and all aggrieved employees. Plaintiff and all other aggrieved employees were not compensated for all hours worked at the minimum wage rate or all hours worked over eight (8) hours in one day or forty (40) hours in one week.

Defendant failed to pay Plaintiff and all aggrieved employees all wages for a biweekly payroll period within seven (7) calendar days following the close of the payroll period in violation of Labor Code §§ 204(d) and 210. Plaintiff and all aggrieved employees were paid after the seventh (7th) day following the close of the payroll period in violation of these statutes. Plaintiff asserts these allegations pursuant to PAGA on behalf of himself and aggrieved employees’ for violation

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

March 25, 2020

Page 2 of 2

of Labor Code §§ 204(d) and 210 as to the relevant period of the 2019 calendar year only.

Defendant failed to issue Plaintiff and the aggrieved employees with compliant itemized wage statements that. Labor Code §226(a) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing nine specific categories of information. Here, Defendant failed to issue Plaintiff and all aggrieved employees itemized wage statements at all. As such, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

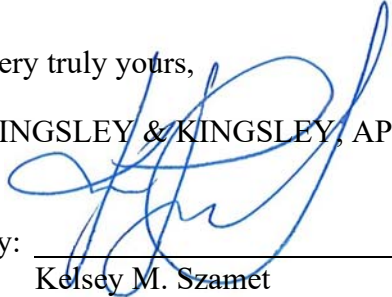
Labor Code section 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

Given these allegations, Plaintiff requests that Defendant pay back any wages owed from one year prior to the date of this letter to the present, pursuant to Labor Code § 558.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 510, 1194.2, 1194, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/dm

Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/266>

EXHIBIT “2”



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard,

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California ▼

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Sacha Roberts

Plaintiff/Aggrieved Employee Occupation *

Hourly Employee

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

Ostendo Technologies, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

Employer City

Employer State

Employer Zip/Postal Code

Employer Industry

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☒ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☐ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☒ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Child Labor – Specify Ages

Provide Details of Other Violation *

Other(Maybe Multiple)

- ☐ Other Violation

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice. Filing fees should be paid by check, made out to LWDA, and sent by regular mail to:

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

The check should be accompanied by a cover letter with sufficient information to identify the notice, including the LWDA case number assigned upon submission of this form.

Parties requesting in forma pauperis status should complete a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form and submit it online with the notice below.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.
- ☒ I declare that I have or will pay the filing fees required by statute [Labor Code section 2699.3(a)(1) (B)] according to the instructions on the PAGA home page, unless I have claimed in forma pauperis by checking the box below.

Notice and Other Attachments**PAGA Claim Notice (must be a .pdf) ***

LWDA letter – ...gies, Inc..pdf

Other Attachment – (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

- ☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Doug Menendez

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, March 25, 2020 2:19 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

3/25/2020

LWDA Case No. LWDA-CM-780225-20
Law Firm : Kingsley & Kingsley
Plaintiff Name : Sacha Roberts
Employer: Ostendo Technologies, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



March 25, 2020

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LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

March 25, 2020

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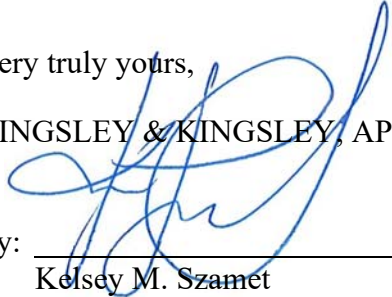
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KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/dm

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