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Attorneys for Plaintiff Donovan Last

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

Donovin Last, an individual, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

M-I, L.L.C. and Does 1 through 10,
Defendants.

Case No. BCV-20-101210
CLASS ACTION

Complaint for:

- 1. Failure to Pay Compensation Due**
- 2. Meal Period Violations**
- 3. Rest Period Violations**
- 4. Wage Statement Violations**
- 5. Failure to Pay Wages Timely Upon Termination**
- 6. Violation of Cal. Business & Professions Code Section 17203**

Demand for Jury Trial

Plaintiff Donovan Last ("Plaintiff"), individually and on behalf of all other persons similarly situated, alleges:

1. At times relevant to this complaint, Plaintiff was employed in Kern County, California by Defendants as a drilling fluids specialist, also known as a mud engineer or mud-man. Although

1 Defendants treated Plaintiff as an independent contractor, Plaintiff was actually Defendants' non-
2 exempt employee, and Defendants misclassified Plaintiff and other class members as exempt
3 employees or independent contractors rather than non-exempt employees. Plaintiff's
4 employment terminated within a year before the filing of this complaint

5 2. Defendant M-I L.L.C. is a company with its address listed on the California Secretary of State
6 website as 5950 North Course Dr., Houston, TX 77072.

7 3. Defendants acted as employers, co-employers and/or joint employers of Plaintiff and the class
8 members in that Defendants controlled the wages, hours or working conditions of Plaintiff and
9 the class members.

10 4. Plaintiff does not presently know the true names and capacities of the defendants named as Does
11 1 through 10 and therefore sues such defendants by these fictitious names. Plaintiff believes that
12 the Doe defendants are persons or entities who are involved in the acts set forth below, either as
13 employers, independent contractors, suppliers, agents, servants or employees of the known
14 defendants, or through conspiring with the known Defendants to perform these acts for financial
15 gain and profit in violation of Plaintiff's and class members' rights. Plaintiff will request leave of
16 Court to amend this Complaint to set forth their true names, identities and capacities when
17 Plaintiff ascertains them.

18 5. Each of the Defendants has been or is the principal, officer, director, agent, employee, employer,
19 joint employer, representative and/or co-conspirator of each of the other defendants and in such
20 capacity or capacities participated in the acts or conduct alleged herein and incurred liability
21 therefor. At an unknown time, some of the Defendants conspired with other Defendants to
22 commit the wrongful acts described herein. These wrongful acts were committed in furtherance
23 of such conspiracy. Defendants aided and abetted each other in committing the wrongful acts
24 alleged herein. Each of the Defendants acted for personal gain or in furtherance of their own
25 financial advantage in committing the acts alleged herein.
26
27
28

- 1 6. The named Defendants and the Doe defendants are hereinafter referred to collectively as
2 “Defendants.”
3

4 **CLASS ACTION ALLEGATIONS**

- 5 7. Plaintiff brings the claims alleged herein for himself and on behalf of the following classes:

6 **Class 1.**

7 All persons who at any time during four years prior to the beginning of the applicable
8 limitations period to the date established by the Court worked as employees of
9 Defendants in California or provided services on behalf of Defendants in California in
10 job positions titled “Drilling Fluid Specialist” (mud man, Levels I-IV and mud man
11 Senior), mud engineer,” “mud man,” “mud man Trainee”, “mud man consultant,” and/or
12 equivalent job titles.
13

14 **Class 2. Wage Statement Subclass**

15 All members of Class 1 who at any time during one year prior to the beginning of the
16 applicable limitations period to the date established by the Court were not provided with
17 accurate wage statements containing all of the information required by Labor Code
18 Section 226.

19 **Class 3. Section 203 Subclass**

20 All members of Class 1 who at any time during three years prior to the beginning of the
21 applicable limitations period to the date established by the Court were either voluntarily
22 or involuntarily separated from their employment and did not timely receive all wages
23 owing pursuant to Labor Code Section 201 or 202.

- 24 8. The term “class members” includes Plaintiff and all class members.
25 9. During all or a portion of the class period, Plaintiff and class members were either directly
26 employed by Defendants or are deemed to have been employees of Defendants under applicable
27 California law in California.
28 10. **Numerosity.** The number of class members is so numerous that joinder of all members is
impractical. The names and addresses of the class members are identifiable through documents
maintained by the Defendants, and the class members may be notified of the pendency of this
action by published and/or mailed notice. There are believed to be more than 100 class members.
11. **Existence and Predominance of Common Questions of Law and Fact.** Common questions of
law and fact exist as to all class members. These questions predominate over the questions

affecting only individual members. These common legal and factual questions include, among other things:

- a. Whether Plaintiff and class members were non-exempt employees of Defendants.
- b. Whether Defendants paid class members for all hours worked at the legally required rate of pay under California law.
- c. Whether Defendants violated their meal period obligations to Plaintiff and class members.
- d. Whether Defendants violated their rest period obligations to Plaintiff and class members.
- e. Whether Defendants willfully failed to timely pay all wages due to Plaintiff and class members upon the termination of their employment.
- f. Whether Defendants engaged in unfair competition in violation of California Business & Professions Code Section 17200, *et seq.*

12. **Typicality.** Plaintiff's class claims are typical of the class members' claims. Plaintiff and all class members sustained injuries and damages arising out of Defendants' common course of conduct in violation of the law as alleged herein. Plaintiff is entitled to the same relief under the class action causes of action as the class members.

13. **Adequacy.** Plaintiff will adequately and fairly protect the interests of the class members. Defendants employed Plaintiff during the class period and was subject to the violations alleged herein. Plaintiff is an adequate representative for the class members because Plaintiff has no interest adverse to the interests of the class members and Plaintiff has retained legal counsel with substantial experience in civil litigation, employment law and class action litigation. Plaintiff and Plaintiff's counsel will fairly and adequately protect the class members' interests.

14. **Superiority.** A class action is superior to other available means of fair and efficient adjudication of the class members' claims. Joinder of all class members is impractical. Class action treatment will allow numerous similarly situated persons to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense

1 that numerous individual actions would cause to such plaintiffs or to the court system. Further,
2 the damages of many class members may be relatively small and the burden and expenses of
3 individual litigation would make it difficult or impossible for individual class members to seek
4 and obtain relief, while a class action will serve an important public interest. Furthermore,
5 questions of law and fact common to the class members predominate over questions affecting
6 only individual members, and a class action is superior to other available methods for fair and
7 efficient adjudication of the controversy. Individual litigation would present the potential for
8 inconsistent or contradictory judgments. By contrast, the class action device will result in
9 substantial benefits to the litigants and the Court by allowing the Court to resolve numerous
10 individual claims based upon a single set of proof in one case.

11 **First Cause of Action**
12 **Failure to Pay Wages for Hours Worked**
13 **(Against All Defendants)**

14 15. Plaintiff realleges all the preceding paragraphs.

15 16. Labor Code Section 1197 in relevant part provides:

16 The minimum wage for employees fixed by the commission or by any applicable state or
17 local law, is the minimum wage to be paid to employees, and the payment of
a lower wage than the minimum so fixed is unlawful.

18 17. Paragraph 4 of the applicable Wage Order provides in relevant part:

19 (B) Every employer shall pay to each employee, on the established payday for the period
20 involved, not less than the applicable minimum wage for all hours worked in the payroll
period, whether the remuneration is measured by time, piece, commission, or otherwise.

21 18. Plaintiff and other class members typically worked 12 hours or more per shift and were required
22 to be at the drill site 24 hours per day and seven days per week for at least two weeks straight
23 every four-week period.

24 19. Defendants did not properly compensate Plaintiff and other class members for the hours they
25 worked at the legally required rates.

26 20. Plaintiff and class members are entitled to liquidated damages pursuant to Labor Code Section
27 1194.2.
28

1 21. Plaintiff has incurred and is entitled to attorneys' fees, costs and interest.

2 **Second Cause of Action**
3 **Meal Period Violations**
4 **(Against All Defendants)**

5 22. Plaintiff realleges all the preceding paragraphs.

6 23. Because Defendants improperly treated Plaintiff and class members either as non-exempt
7 employees or as independent contractors who were not entitled to meal periods, Defendants
8 failed to provide Plaintiff and other class members with legally required timely, duty-free meal
9 periods to which they were entitled for numerous days worked.

10 24. Defendants required Plaintiff and other class members to work during meal periods.

11 25. Defendants failed to pay Plaintiff and class members the compensation due them pursuant to
12 Labor Code Section 226.7 and the applicable Wage Order.

13 **Third Cause of Action**
14 **Rest Period Violations**
15 **(Against All Defendants)**

16 26. Plaintiff realleges all the preceding paragraphs.

17 27. Because Defendants improperly treated Plaintiff and class members either as non-exempt
18 employees or as independent contractors who were not entitled to rest periods, Defendants failed
19 to provide Plaintiff and other class members with legally required timely, duty-free rest periods
20 to which they were entitled for numerous days worked.

21 28. Defendants required Plaintiff and other class members to work during rest periods.

22 29. Defendants failed to pay Plaintiff and class members the compensation due them pursuant to
23 Labor Code Section 226.7 and the applicable Wage Order.

24 **Fourth Cause of Action**
25 **Wage Statement Violations**
26 **(Against All Defendants)**

27 30. Plaintiff realleges all the preceding paragraphs.

28 31. Labor Code Section 226 provides in relevant part:

(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

...

(e)(1) An employee suffering injury as a result of a knowing and intentional failure by 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.

(2)(A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability

of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

(C) For purposes of this paragraph, “promptly and easily determine” means a reasonable person would be able to readily ascertain the information without reference to other documents or information. . . .

32. California Labor Code Section 1174 provides in relevant part:

Every person employing labor in this state shall:

. . . (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.

33. Paragraph 6 of the applicable Wage Order provides in relevant part:

6. RECORDS

(A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following: (1) The employee’s full name, home address, occupation, and social security number. The employee’s date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on

written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.) This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

(C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Employers performing work on public works projects should refer to Labor Code Section 1776 for additional payroll reporting requirements.

34. Labor Code Section 1174.5 provides:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

35. Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to maintain and furnish Plaintiff and other class members with accurate and complete wage statements containing all the information required by Labor Code Section 226.

36. Defendants failed to provide Plaintiff and other class members with the legally required wage statements because, among other reasons, Defendants illegally treated them as exempt employees or as independent contractors.

37. Because Defendants failed to pay for all hours worked at the proper rates, Defendants violated Section 226(a)(1) as to Plaintiff and other class members by failing to provide them statements of wages that accurately showed gross wages actually earned.

38. Because Defendants failed to pay for all hours worked, Defendants violated Section 226(a)(2) by failing to provide Plaintiff and other class members statements of wages that accurately showed the total hours worked.

39. Because Defendants failed to pay for all hours worked at the proper rates, Defendants violated Section 226(a)(5) by failing to provide Plaintiff and other class members with statements of wages that accurately showed net wages earned.

- 1 40. Defendants violated Section 226(a)(6) by failing to provide Plaintiff and other class members
2 with statement of wages that accurately showed the inclusive dates of the period for which the
3 employee is paid.
- 4 41. Defendants violated Section 226(a)(7) by failing to provide Plaintiff and other class members
5 with statements of wages that accurately showed the name of the employee and only the last four
6 digits of his or her social security number or an employee identification number other than a
7 social security number.
- 8 42. Defendants violated Section 226(a)(8) by failing to provide Plaintiff and other class members
9 with statements of wages that accurately showed the name and address of the legal entity that is
10 the employer.
- 11 43. Because Defendants failed to pay for all hours worked, including overtime, Defendants violated
12 Section 226(a)(9) by failing to provide Plaintiff and other class members with statements of
13 wages that accurately showed the applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate.
- 15 44. Plaintiff and class members are deemed to have suffered injury as a result of Defendants'
16 violations. Moreover, Defendants' failure to furnish Plaintiff and class members with complete
17 and accurate itemized wage statements resulted in actual injury because such failures led to,
18 among other things, the deprivation of the information necessary to identify whether they are
19 owed additional money and if there are mistakes on their wage statements and the deprivation of
20 the ability to "promptly and easily determine from the wage statement alone" items required to
21 be disclosed on a wage statement under Section 226(a).
- 22 45. Plaintiffs and other class members are entitled to damages and/or penalties pursuant to Labor
23 Code Section 226.

24 **Fifth Cause of Action**
25 **Failure to Pay Waiting Time Wages Pursuant to Labor Code Section 203**
26 **(Against All Defendants)**

- 27 46. Plaintiff realleges all the preceding paragraphs.
- 28

1 47. Labor Code Section 201 in relevant part provides:

2 (a) If an employer discharges an employee, the wages earned and unpaid at the time of
3 discharge are due and payable immediately. . . .

4 48. Labor Code Section 202 in relevant part provides:

5 (a) If an employee not having a written contract for a definite period quits his or her
6 employment, his or her wages shall become due and payable not later than 72 hours
7 thereafter, unless the employee has given 72 hours previous notice of his or her intention
to quit, in which case the employee is entitled to his or her wages at the time of quitting...

8 49. Labor Code Section 203 provides in relevant part:

9 (a) If an employer willfully fails to pay, without abatement or reduction, in accordance
10 with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an
11 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. . . .

12 (b) Suit may be filed for these penalties at any time before the expiration of the statute of
13 limitations on an action for the wages from which the penalties arise.

14 50. The employment of Plaintiff and Section 203 Subclass members with Defendants terminated.

15 51. When the employment of Plaintiff and Section 203 Subclass members terminated, Defendants
16 violated Labor Code Sections 201 or 202 by willfully failing to pay the wages earned and unpaid
17 that were due them within the time required by Sections 201 or 202.

18 52. Labor Code Section 218.5 provides in relevant part:

19 (a) In any action brought for the nonpayment of wages, fringe benefits, or health and
20 welfare or pension fund contributions, the court shall award reasonable attorney's fees
and costs to the prevailing party if any party to the action requests attorney's fees and
costs upon the initiation of the action. . . .

21 53. Plaintiff has incurred attorneys' fees and costs in pursuing this claim.

22 **Sixth Cause of Action**
23 **Violation of California Business and Professions Code Section 17200, et seq.**
24 **(Against All Defendants)**

25 54. Plaintiff realleges all the preceding paragraphs.

26 55. Business & Professions Code Section 17200 provides:

27 As used in this chapter, unfair competition shall mean and include any **unlawful, unfair**
28 or fraudulent business act or practice and unfair, deceptive, untrue or misleading

advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

56. Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

57. Business & Professions Code Section 17203 provides:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

58. Defendants have been unjustly enriched because of Defendants' unlawful and/or unfair business acts and/or practices.

59. Plaintiff and the class members are entitled to restitution of the money and/or property by which Defendants were unjustly enriched.

60. Plaintiff and the class members are further entitled to and seek a declaration that the above-described business practices are unfair, unlawful and/or fraudulent and injunctive relief restraining Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

61. Plaintiff and the class members have no plain, speedy, and/or adequate remedy at law to redress the injuries that they have suffered because of Defendants' unfair, unlawful and/or fraudulent business practices.

62. If Defendants are not enjoined from the conduct alleged herein, they will continue to violate their legal obligations.

63. Plaintiff is entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure Section 1021.5.

WHEREFORE, Plaintiff demands a jury trial and requests that judgment be entered against all Defendants as follows:

1. Certification of this action as a class action and the appointment of Plaintiff as the representative of the classes and Plaintiff's counsel as lead counsel for the classes;
2. Damages for unpaid wages;
3. Liquidated damages;
4. Compensatory damages according to proof;
5. An award to Plaintiffs and members of the class of any itemized wage statement penalties pursuant to Labor Code Section 226;
6. Waiting time penalties due pursuant to Labor Code Section 203;
7. Restitution pursuant to Business & Professions Code Sections 17200, *et seq.*;
8. Prejudgment interest;
9. Reasonable attorneys' fees;
10. Costs as allowed by law;
11. A declaratory judgment that the practices complained of herein are unlawful under the Labor Code and/or the Unfair Competition Law and injunctive relief requiring termination or modification of the unlawful practices alleged;
12. Such other relief as this Court shall deem just and proper.

Dated: May 20, 2020

THE DION-KINDEM LAW FIRM

BY: _____



PETER R. DION-KINDEM, P.C.
PETER R. DION-KINDEM
Attorney for Plaintiff Donovan Last

Demand for Jury Trial

Plaintiff demands a jury trial.

Dated: May 20, 2020

THE DION-KINDEM LAW FIRM

BY: _____

A handwritten signature in black ink, reading "Peter R. Dion-Kindem", is written over a horizontal line.

PETER R. DION-KINDEM, P.C.

PETER R. DION-KINDEM

Attorney for Plaintiff Donovan Last