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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

JONATHAN GERMAIN, an individual,
Plaintiff,

-v-

MICRO-TRACERS INC., a corporation;
ANRESKO, INCORPORATED, a
corporation; DAVID EISENBERG, an
individual; and DOES 1-10, inclusive,
Defendants.

No. CGC-20-585501

SECOND AMENDED COMPLAINT
FOR RELIEF FOR BREACH OF
CONTRACT, DECLARATORY
RELIEF, NONPAYMENT OF
WAGES IN VIOLATION OF LABOR
CODE, VIOLATION OF LABOR
CODE §§ 98.6 AND 1102.5,
TORTIOUS DISCHARGE IN
VIOLATION OF PUBLIC POLICY,
VIOLATION OF LABOR CODE §§
510, 1194, 1198, 1199, 1197, 1197.1,
201, 203, AND 226, SUBDIVISION
(A), VIOLATION OF UNFAIR
COMPETITION LAW, BUSINESS
AND PROFESSIONS CODE § 17200,
ET SEQ., AND LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT

FIRST CAUSE OF ACTION
Breach of Contract
(Defendants are Micro-Tracers Inc.,
Anresco, Incorporated, and Does 1-10, inclusive)

1. Plaintiff Jonathan Germain, an individual with a PhD in chemical engineering from UC Berkeley, worked for defendants Micro-Tracers Inc., a corporation, and Anresco, Incorporated, a corporation, as Senior Technologist from August 1, 2013, until his termination on July 22, 2019. David Eisenberg, an individual, is the CEO of both Micro-Tracers Inc. and Anresco, Incorporated.

2. The true names and capacities, whether individual, corporate, partnership, associate, or

1 otherwise, of defendants sued herein as Does 1-10, inclusive, are unknown to plaintiff, who therefore
2 sues said defendants by such fictitious names and will pray leave to amend this complaint together
3 with appropriate charging allegations when the same have been ascertained. Plaintiff is informed
4 and believes and thereupon alleges that each of said fictitiously named defendants are responsible
5 in some manner for the occurrences herein alleged, and that plaintiff's damages as herein alleged,
6 were proximately caused by their conduct.

7 3. Officially, Micro-Tracers and Anresco considered Germain an employee of Micro-Tracers
8 Inc. However, legally, he was an employee of both entities because Micro-Tracers Inc. and Anresco,
9 Incorporated are a single employer under the integrated enterprise test which considers four factors:
10 interrelation of operations, common management, centralized control of labor relations, and common
11 ownership or financial control.

12 4. Centralized control of labor relations exists for reasons that include without limitation the
13 following. Germain reported to David Eisenberg, the CEO of both Micro-Tracers and Anresco.
14 Shortly before Eisenberg terminated Germain, he had decided that if Germain stayed with the
15 company, his employment would officially be moved from Micro-Tracers to Anresco to save on
16 workers' compensation costs, with no change in duties. At the time of Germain's termination, the
17 HR Manager of both Micro-Tracers and Anresco was Junelyn Cabasag. Her emails indicated her
18 employer was Anresco. Micro-Tracers and Anresco had one set of written personnel policies that
19 applied to both entities.

20 5. There was interrelation of operations for reasons that include without limitation the
21 following. As indicated above, David Eisenberg, the CEO of both entities, had decided that if
22 Germain stayed with them, his official employer would be changed from Micro-Tracers to Anresco
23 to save on workers' compensation costs, with no change in duties. Marco Lobba, who assisted
24 Germain, was officially an employee of Anresco. Moreover, Micro-Tracers and Anresco have offices
25 together. Micro-Tracers' address is 1370 Van Dyke Avenue, San Francisco. Anresco's address is
26 1375 Van Dyke Avenue, San Francisco.

27 6. There is common management for reasons that include without limitation the following.
28 Micro-Tracers and Anresco have the same officers. David Eisenberg is the CEO of both, Cyrus

1 Frank is the Secretary of both, and Ngaly Frank is the Treasurer of both.

2 7. There is common ownership for reasons that include without limitation the following.
3 Germain is informed and believes that David Eisenberg and his family are the sole or predominant
4 owners of both entities.

5 8. When Germain went to work for defendants in 2013, he did so under a written contract
6 which provided that his pay would include “2% of gross revenues from sale of micro-engraved
7 magnetic tracers.” In July 2015, Germain and defendants entered into a new written agreement in
8 effect from August 1- December 31, 2015. In January 2016, Germain and defendants renewed their
9 written agreement through March 31, 2016. Section 1 of both the August-December 2015 and
10 January-March 2016 Agreements stated: “Micro-Tracers reiterates that it will pay you, as a royalty,
11 2% of gross revenues derived from the sale of ‘microengraved magnetic tracers’ developed using
12 the processes that you proposed and/or developed, or similar processes or their derivatives.” Section
13 4 of both these Agreements stated: “In addition, any products or processes that you develop for
14 Micro-Tracers under this new agreement will be included in the body of products for [which] you
15 will be paid 2% of gross revenues. . . .” Thereafter, Germain and defendants entered into repeated
16 written extensions of the agreement which all included the sentence: “The terms of your contract
17 shall remain the same.” The last extension extended the agreement from July 31, 2018 to July 31,
18 2019.

19 9. Thus, from August 1, 2015 through Germain’s termination on July 22, 2019, his contracts
20 provided that “[A]ny products or processes that you develop for Micro-Tracers under this new
21 agreement will be included in the body of products for [which] you will be paid 2% of gross
22 revenues. . . .” During the period from August 1, 2015 through July 31, 2018, Germain worked on
23 developing both edible and non-edible tracers. He developed prototypes of non-edible tracers.

24 10. In late June 2019 and continuing through Germain’s termination on July 22, 2019,
25 Eisenberg effectively communicated to Germain that in breach of the contracts, he wasn’t going to
26 pay Germain 2% of gross revenues on non-edible tracers. On June 26, 2019, he presented Germain
27 with a letter which tried to justify this by claiming that there was ambiguity in their agreements as
28 to whether Germain was entitled to 2% on non-edible tracers. He wrote:

1. Original Agreement - 1 August 2013- Employment in Developing “Microengraved magnetic tracer particles” designed for use as PCIDs in human drugs. No mention of use in labeling or packaging or of tracers without iron or not [sic] produced by gas/plasma etching- though on page 2, section 2 it states line 5- “12.5% ownership interest in such patents for the technology.... developed or derivative or similar processes.
2. Continuing Agreement- signed by David Eisenberg, 7 /15/15 and by Dr. Jonathan Germain on 7 /16/19. This is titled “Ongoing support and additional development of microengraved magnetic tracer particles”. At beginning of Section 1 it states “Micro-Tracers reiterates that it will pay you, as a royalty, 2% of gross revenues derived from the sale of "microengraved magnetic tracers" developed using the processes that you proposed and/or developed, or similar processes or their derivatives. No mention is made as to uses as PCIDs or in labeling/packaging.

Later letters simply continue the 2015 Agreement.

This creates an ambiguous situation relating to the use of the SECURtracers in labeling, especially when they are not magnetic and not made using the gas/plasma etching but rather the photolithography part of the manufacturing procedure. This may be considered ‘derivative’ but it is certainly different from the gas/plasma etching technology we are using to make PCIDs.

With the above as background, I prefer to sign a simple continuation of the 2015 Agreement without clarifying the ambiguities that exist. If these are to be clarified in Dr. Germain’s favor, I feel we must renegotiate as relates to royalties that may apply to the tracers made without gas/plasma etching and without iron for magnetic separation and made not as PCIDs but for labeling/packaging.

I feel Dr. Germain's role in this project has obviously been invaluable but other's have made important discoveries and they need to be compensated as well. I want to be fair to all people involved and to Micro-Tracers Inc. also that has invested over \$ 1 million in the project so far and I hope will invest far more as these projects develop.

11. Germain informed Eisenberg that there was no ambiguity. Some of the non-edible tracers were magnetic and thus covered by Section 1 of the 2015 Agreement. Even if they weren’t magnetic, they were derivative of the original magnetic tracers. Eisenberg himself admitted in his June 26 letter, “This may be considered ‘derivative’.” Additionally, Section 4 of the 2015 Agreement states, as quoted above on page 2, “In addition, any products or processes that you develop for Micro-Tracers under this new agreement will be included in the body of products for [which] you will be paid 2% of gross revenues. . . .” Therefore, defendants owed Germain 2% of gross revenues on all products he developed, including the non-edible micro-tracers, regardless of whether they were magnetic or derivative of magnetic tracers.

12. Eisenberg also had Nikolay Barashkov, a Ph.D. chemist employed by defendants, write a memo which asserted that Stephen Keteltas, a chemist who worked under Germain’s direction,

1 contributed 50% to the development of the non-edible tracers, Barashkov 30%, and Germain 20%.
2 Barashkov's memo said the non-edible tracers were developed from a photolithography process. The
3 memo admitted that Keteltas was exposed to photolithography only after working with Germain at
4 defendants. The memo claimed that the non-edible tracer developed by Germain bled fluorescent dye
5 when it was exposed to ink. The memo claimed that Keteltas proposed to use modified fluorescent
6 dyes which did not bleed, and he went to Barashkov who gave him these dyes.

7 13. Eisenberg also asserted in a June 30, 2019 email to Germain that defendants had decided
8 Keteltas' "direction was the best one for the company to pursue" as to non-edible tracers. Even if this
9 were true, if Keteltas' direction for non-edible tracers was derivative of a process developed by
10 Germain, then Germain would be owed the 2% on the non-edible tracers under his contracts with
11 defendants. Recognizing this fact, Eisenberg further wrote in the June 30 email, "Is Stephen's
12 process derivative of the gas/plasma etching technology you brought to Micro-Tracers? Is it
13 derivative of the stamping/photolithography method brought to Micro-Tracers by Lou Kish and
14 advanced by Joe Mohnke and Nikolay before you became involved? It is probably derivative of both,
15 though I have not had time to study the technical issues and am not qualified to evaluate them in any
16 event."

17 14. The development of the non-edible tracers involved a photolithography process in part.
18 Page 3 of Germain's initial agreement in 2013 with defendants said, "If Micro-Tracers pursues
19 instead of your processes, the stamping procedures it has been investigating, it will not owe you any
20 royalties or patent interests." In an email he sent Germain in July 2019 shortly before firing him,
21 Eisenberg changed "stamping" to "stamping/lithography."

22 15. Eisenberg therefore asserted that the non-edible tracers were only partly developed by or
23 derivative from Germain's work, and therefore Germain should get less than 2% on the non-edible
24 tracers, that the 2% should be renegotiated downward.

25 16. Eisenberg's assertion is without merit for several reasons. First, Keteltas worked under
26 Germain's direction. Germain thus replied to Eisenberg on June 29, 2019, "The fact that this
27 employee contributes to the work does not change its status as my product/process." The contract
28 provides that Germain receives 2% on products or processes he developed or derivatives thereof. The

1 fact that others, including without limitation others working under his direction, may have
2 contributed to the product or process or that the product or process was also a derivative of their
3 product or process does not alter the fact that he developed the product or process or that it was a
4 derivative of his product or process. His contracts don't say that to earn the 2%, he has to work alone
5 and be the only one to develop the product or process or that the product or process has to be a
6 derivative only of his product or process.

7 17. Second, as Germain explained in a June 29, 2019 email to Eisenberg, the "bleeding" in
8 the non-edible tracers stopped because "I [Germain] later initiated and implemented the use of cross-
9 linkable dyes. You can see this in the reports that I emailed at the time. The various emails sent over
10 the course of this project provide contemporaneous, date-stamped information regarding each
11 person's contributions to the labeling [aka non-edible] tracers. You can see from my reports when
12 I switched from non-cross-linkable to cross-linkable dyes. You can see the extent of Stephen's
13 [Keteltas's] intellectual contribution from the contemporaneous, date-stamped reports that he
14 emailed during last year's development effort." Thus, the assertion that 80% of the contribution to
15 the non-edible tracers was by Keteltas and Barashkov because they were supposedly responsible for
16 selecting the dyes that stopped the bleeding is erroneous.

17 18. Third, although the development of the non-edible tracers involved photolithography, the
18 photolithography process that was used was a process developed by Germain, not by his
19 predecessors. The predecessors applied for a patent on their process in or about 2007. Their process
20 involving photolithography produced randomly broken tracer pieces. Germain's process produced
21 tracers with neatly defined borders. Germain asked Keteltas on July 2, 2019 what process he
22 intended to use to make the non-edible tracers. Keteltas said he intended to use the process that
23 Marco Lobba trained him on which was Germain's process. Germain asked Keteltas if he had
24 consulted the 2007 patent application. Keteltas said no. In a June 29, 2019 email to Eisenberg,
25 Germain wrote, "[A] ten year-old use of photolithography that generates a completely different
26 product has little applicability." In a July 21, 2019 email to Eisenberg, Germain wrote:

27 [C]laiming that you were previously using 'photolithography' doesn't hold water. It would
28 be a bit like a clone PC maker claiming that they could use IBM's technology because they
previously used 'wires' and IBM's technology also uses 'wires.'

1 Would you really want to stand up and claim the following:

2 1. We (or was this done via contract by someone outside of Micro-Tracers) did experiments
3 with photolithography 10 years ago that produced nothing worth marketing.

4 2. We hired someone to (among other things) teach us how to do photolithography
5 in a much more useful and effective way.

6 3. This person's techniques generated a product that customers liked and we used
7 his output to show samples to customers.

8 4. We then created a new technique that looks almost exactly like the technique this person
9 taught us, and used it to produce the same product. . . . but it really stems from the work we
10 did 10 years ago rather than the techniques that he taught us yesterday.

11 19. Fourth, Germain explained to Eisenberg in a July 13, 2019 email that it was "stamping"
12 that was excluded from the 2% royalty, not "stamping/lithography."

13 20. Throughout the period from about June 26, 2019 through July 21, 2019, Germain
14 disclosed to Eisenberg, including without limitation as set forth above, the facts showing he was
15 owed 2% of the gross revenues on the non-edible tracers as part of his wages, and he opposed and
16 complained about Eisenberg's demands that he be paid less, including without limitation as follows
17 in emails he wrote to Eisenberg on June 26 and 29 and July 2, 2019. In the June 26, 2019 email, he
18 wrote Eisenberg: "For the record, I am quite disappointed that you appear to be seeking to question
19 the royalties that have been agreed upon." In the June 29, 2019 email to Eisenberg, he wrote: "The
20 royalties on various types of tracers are wages for work that has already been performed. I am not
21 willing to renegotiate wages for work that has already been performed. . . ." In the July 2, 2019 email
22 to Eisenberg, he wrote:

23 Needless to say, I am very disappointed that you have communicated to me that you do
24 not intend to honor our contracts in full. In attempting to generate 'ambiguity', attempting
25 to delegitimize the royalties in our contracts, attempting to relabel my products and processes
26 as someone else's, and then asking me to 're-negotiate' for less than I already have, you are
27 essentially tossing out our contracts and asking me to negotiate a new one. We have already
28 discussed this, but the tracer royalties in our contracts are wages already earned for work that
has already been performed.

21. Eisenberg wrote Germain an email on July 22, 2019, terminating him, which gave as the
reason "irreconcilable differences regarding your royalty rights and regarding your valuation of the
SECURtracer project."

22. As the proximate result of defendants' breach of contract in refusing to pay him the 2%

1 of gross revenues on the non-edible tracers as required by the contracts, Germain not only is not
2 being paid the 2% of gross revenues on the non-edible tracers, but was also terminated.

3 23. As the proximate result of defendants' breach of contract, Germain has suffered damages
4 to be shown according to proof, including without limitation for loss of income and benefits with
5 prejudgment interest thereon.

6 24. As the further proximate result of defendants' breach of contract, Germain has incurred
7 attorneys' fees and litigation expenses to prosecute this lawsuit and is entitled to an award of
8 attorneys' fees and litigation expenses therefor pursuant to Labor Code § 218.5 to be shown
9 according to proof.

10 WHEREFOR, plaintiff prays judgment against defendants Micro-Tracers Inc., Anresco,
11 Incorporated, and Does 1-10, inclusive, as set forth below.

12 **SECOND CAUSE OF ACTION**
13 **Declaratory Relief**
14 **(Defendants are Micro-Tracers Inc.,**
15 **Anresco, Incorporated, and Does 1-10, inclusive)**

16 25. Plaintiff refers to the allegations in paragraphs 1-21 of the complaint and incorporates the
17 same herein by this reference as though set forth in full.

18 26. An actual controversy exists between Germain and defendants as to their rights and duties
19 under the contracts between Germain and defendants, specifically as to whether defendants must pay
20 Germain 2% of gross revenues on the non-edible tracers.

21 27. Germain requests that the Court issue a declaratory judgment as to whether defendants
22 must pay Germain 2% of gross revenues on the non-edible tracers.

23 28. Germain has incurred attorneys' fees and litigation expenses to prosecute this lawsuit and
24 is entitled to an award of attorneys' fees and litigation expenses therefor pursuant to Labor Code §
25 218.5 to be shown according to proof.

26 WHEREFOR, plaintiff prays judgment against defendants Micro-Tracers Inc., Anresco,
27 Incorporated, and Does 1-10, inclusive, as set forth below.
28 /
/
/

THIRD CAUSE OF ACTION
Nonpayment of Wages in Violation of Labor Code
(Defendants are Micro-Tracers Inc.,
Anresco, Incorporated, and Does 1-10, inclusive)

29. Plaintiff refers to the allegations in paragraphs 1-21 of the complaint and incorporates the same herein by this reference as though set forth in full.

30. Labor Code § 200, subdivision (a), states: "'Wages' includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." The 2% of gross revenues owed to Germain on non-edible tracers were part of his wages since they were owed to him for his labor as an employee.

31. Defendants' conduct in refusing to pay Germain 2% of the gross revenues on non-edible tracers was a nonpayment of wages which violated the Labor Code, including without limitation Labor Code §§ 200-204 and 216.

32. As the proximate result of defendants' nonpayment of wages in refusing to pay him the 2% of gross revenues on the non-edible tracers as required by the contracts, Germain was also terminated.

33. As the proximate result of defendants' nonpayment of wages, Germain has suffered damages to be shown according to proof, including without limitation for loss of income and benefits with prejudgment interest thereon.

34. As the further proximate result of defendants' nonpayment of wages, Germain has incurred attorneys' fees and litigation expenses to prosecute this lawsuit and is entitled to an award of attorneys' fees and litigation expenses therefor pursuant to Labor Code § 218.5 to be shown according to proof.

WHEREFOR, plaintiff prays judgment against defendants Micro-Tracers Inc., Anresco, Incorporated, and Does 1-10, inclusive, as set forth below.

FOURTH CAUSE OF ACTION
Violation of Labor Code § 1102.5
(Defendants are Micro-Tracers Inc.,
Anresco, Incorporated, and Does 1-10, inclusive)

35. Plaintiff refers to the allegations in paragraphs 1-21 and 30-31 of the complaint and

1 incorporates the same herein by this reference as though set forth in full.

2 36. Labor Code § 1102.5, subdivision (b), provides: “An employer, or any person acting on
3 behalf of the employer, shall not retaliate against an employee for disclosing information, or because
4 the employer believes that the employee disclosed or may disclose information, to a . . . person with
5 authority over the employee . . . if the employee has reasonable cause to believe that the information
6 discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state,
7 or federal rule or regulation, regardless of whether disclosing the information is part of the
8 employee’s job duties.”

9 37. Germain disclosed information to Eisenberg, defendants’ CEO and thus a person with
10 authority over Germain, showing he was owed 2% of gross revenues on non-edible tracers as part
11 of the wages he had earned for work he had done. Germain reasonably believed this information
12 disclosed that defendants were violating state or federal statutes, rules and regulations by refusing
13 to pay him the 2% he was owed under his contracts with defendants for work he had already done.
14 The information disclosed that defendants were in fact violating statutes, rules and regulations, or
15 reasonably could be found to be violating statutes, rules and regulations, including without
16 limitation: (1) Business and Professions Code § 17200 et seq. in that it was an unlawful, unfair or
17 fraudulent business practice to refuse to pay Germain 2% of gross revenues on non-edible tracers
18 since the 2% was part of the wages he had earned for work he had done; (2) Penal Code § 484 in that
19 the failure to pay to him 2% of the gross revenues from the sale of non-edible tracers was a theft of
20 his property, especially since he had developed the non-edible tracers and the gross revenues on the
21 non-edible tracers would be a specific fund; (3) Labor Code §§ 200-204 and 216 which protect
22 against nonpayment of wages; and (4) Labor Code § 226 which requires the issuance of an earnings
23 statement accurately showing the wages earned and which would obviously not be provided when
24 the wages weren’t paid.

25 38. Eisenberg’s July 22, 2019 termination email to Germain, giving as the termination reason
26 “irreconcilable differences regarding your royalty rights and regarding your valuation of the
27 SECURtracer project” makes clear that Germain was terminated due to his protected conduct under
28 Labor Code § 1102.5, i.e., his disclosures and complaints about defendants’ refusal to pay him the

1 2% of gross revenues on non-edible tracers which was part of his wages he had earned for work he
2 had performed. Therefore, Germain's termination violated Labor Code § 1102.5.

3 39. As a proximate result of defendants' violation of Labor Code § 1102.5, Germain has
4 suffered damages to be shown according to proof, including without limitation for lost income and
5 benefits with prejudgment interest thereon, emotional and physical distress, inconvenience, mental
6 anguish, loss of enjoyment of life, loss of reputation, and other nonpecuniary losses.

7 40. Defendants' violations of Labor Code § 1102.5 were malicious, oppressive, fraudulent,
8 and done with reckless and conscious indifference to Germain's rights, and he is entitled to an award
9 of punitive damages therefor to be shown according to proof.

10 41. As the further proximate result of defendants' violations of Labor Code § 1102.5,
11 Germain has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is
12 entitled to an award of attorneys' fees and litigation expenses therefor to be shown according to
13 proof.

14 WHEREFOR, plaintiff prays judgment against defendants Micro-Tracers Inc., Anresco,
15 Incorporated, and Does 1-10, inclusive, as set forth below.

16 **FIFTH CAUSE OF ACTION**
17 **Violation of Labor Code § 98.6**
18 **(Defendants are Micro-Tracers Inc.,**
19 **Anresco, Incorporated, and Does 1-10, inclusive)**

20 42. Plaintiff refers to the allegations in paragraphs 1-21, 30-31 and 36-38 of the complaint
21 and incorporates the same herein by this reference as though set forth in full.

22 43. Labor Code § 98.6, subdivision (a), states: "A person shall not discharge an employee.
23 . . because the employee. . . engaged in any conduct delineated in. . . Chapter 5 (commencing with
24 Section 1101) of Part 3 of Division 2, or because the employee. . . made a written or oral complaint
25 that he or she is owed unpaid wages. . .or because of the exercise by the employee. . . on behalf of
26 himself, herself, or others of any rights afforded him or her. "

27 44. Labor Code § 1102.5 is in Chapter 5 of Part 3 of Division 2 of the Labor Code. As
28 explained in the fourth cause of action above, Germain engaged in conduct delineated in Labor Code
§ 1102.5 and exercised the rights provided him by Labor Code § 1102.5 when he disclosed to

1 Eisenberg the facts showing he was owed 2% of the gross revenues on the non-edible tracers as part
2 of his wages for work he had already performed, and he opposed and complained about Eisenberg's
3 demands that he be paid less. In doing so, he engaged in conduct protected from retaliation by Labor
4 Code § 98.6.

5 45. Germain also engaged in conduct protected from retaliation under Labor Code § 98.6
6 because in complaining to Eisenberg about Eisenberg's demands that he be paid less than the 2%
7 of gross revenues on non-edible tracers promised him under the contracts, he "made a written or oral
8 complaint that he. . . is owed unpaid wages."

9 46. Eisenberg's July 22, 2019 termination email to Germain, giving as the termination reason
10 "irreconcilable differences regarding your royalty rights and regarding your valuation of the
11 SECURtracer project" makes clear that Germain was terminated due to his protected conduct under
12 Labor Code § 98.6, i.e., his disclosures and complaints about defendants' refusal to pay him the 2%
13 of gross revenues on non-edible tracers which was part of his wages he had earned for work he had
14 performed. Therefore, Germain's termination violated Labor Code § 98.6.

15 47. As the proximate result of defendants' violation of Labor Code § 98.6, Germain has
16 suffered damages to be shown according to proof, including without limitation for lost income and
17 benefits with prejudgment interest thereon.

18 48. Pursuant to Labor Code § 98.6, subdivision (b)(3), plaintiff is entitled to a penalty not
19 exceeding \$10,000 for defendants' violation of Labor Code § 98.6.

20 49. As the further proximate result of defendants' violation of Labor Code § 98.6, Germain
21 has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is entitled to an
22 award of attorneys' fees and litigation expenses therefor to be shown according to proof.

23 WHEREFOR, plaintiff prays judgment against defendants Micro-Tracers Inc., Anresco,
24 Incorporated, and Does 1-10, inclusive, as set forth below.

25 **SIXTH CAUSE OF ACTION**
26 **Tortious Discharge in Violation of Public Policy**
27 **(Defendants are Micro-Tracers Inc.,**
28 **Anresco, Incorporated, and Does 1-10, inclusive)**

50. Plaintiff refers to the allegations in paragraphs 1-21, 30-31, 36-38 and 43-46 of the

1 complaint and incorporates the same herein by this reference as though set forth in full.

2 51. Defendants tortiously discharged plaintiff in violation of public policy, including without
3 limitation as set forth in Labor Code §§ 98.6, 1102.5, 200-204, 216 and 226, Business and
4 Professions Code § 17200, et seq., and Penal Code § 484.

5 52. As a proximate result of defendants' tortious violation of public policy, Germain has
6 suffered damages to be shown according to proof, including without limitation for lost income and
7 benefits with prejudgment interest thereon, emotional and physical distress, inconvenience, mental
8 anguish, loss of enjoyment of life, loss of reputation, and other nonpecuniary losses.

9 53. Defendants' tortious violation of public policy was malicious, oppressive, fraudulent, and
10 done with reckless and conscious indifference to Germain's rights, and he is entitled to an award of
11 punitive damages therefor to be shown according to proof.

12 54. As the further proximate result of defendants' tortious violation of public policy, Germain
13 has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is entitled to an
14 award of attorneys' fees and litigation expenses therefor to be shown according to proof.

15 WHEREFOR, Germain prays judgment against defendants Micro-Tracers Inc., Anresco,
16 Incorporated, and Does 1-10, inclusive, as set forth below.

17 **SEVENTH CAUSE OF ACTION**
18 **Failure to Pay Overtime in Violation of Labor Code §§ 510, 1194, 1198 and 1199**
19 **(Defendants are Defendants and Each of Them)**

20 55. Plaintiff refers to the allegations in paragraphs 1-7 of the complaint and incorporates the
21 same herein by this reference as though set forth in full.

22 56. Germain was paid hourly rather than salaried and was thus nonexempt. Defendants did
23 not pay him overtime, however, when he worked overtime hours, in effect treating him as exempt
24 when he was really nonexempt, thus violating Labor Code §§ 510, 1194, 1198 and 1199.

25 57. As the proximate result of defendants' overtime violations of Labor Code §§ 510, 1194,
26 1198 and 1199, Germain has suffered damages to be shown according to proof, including without
27 limitation, for the overtime pay he earned but wasn't paid plus prejudgment interest thereon.

28 58. As the further proximate result of defendants' overtime violations of Labor Code §§ 510,
1194, 1198 and 1199, Germain has had to hire attorneys and incur litigation expenses to prosecute

1 this lawsuit and is entitled to an award of attorneys' fees and litigation expenses therefor to be shown
2 according to proof.

3 WHEREFORE, Germain prays judgment against defendants and each of them as set forth
4 below.

5 **EIGHTH CAUSE OF ACTION**
6 **Failure to Pay Minimum Wage in Violation of**
7 **Labor Code §§ 1194, 1197, 1197.1, 1198 and 1199**
8 **(Defendants are Defendants and Each of Them)**

9 59. Plaintiff refers to the allegations in paragraphs 1-7 of the complaint and incorporates the
10 same herein by this reference as though set forth in full.

11 60. Germain was paid hourly rather than salaried and was thus nonexempt. Labor Code §§
12 1194, 1197, 1197.1, 1198 and 1199 require an employer to pay a nonexempt employee the minimum
13 wage for each hour they work. Hours spent traveling on the employer's business must be paid.
14 Defendants violated Labor Code §§ 1194, 1197, 1197.1, 1198 and 1199 by not paying Germain
15 anything for hours he spent traveling on defendants' business in excess of eight in a day.

16 61. As the proximate result of defendants' minimum wage violations of Labor Code §§ 1194,
17 1197, 1197.1, 1198 and 1199, Germain has suffered damages to be shown according to proof,
18 including without limitation, for the minimum wage for each hour he spent traveling on defendants'
19 business in excess of eight in a day, plus prejudgment interest thereon, plus as liquidated damages
20 an additional amount equal to the minimum wage and prejudgment interest thereon.

21 62. As the further proximate result of defendants' minimum wage violations of Labor Code
22 §§ 1194, 1197, 1197.1, 1198 and 1199, Germain has had to hire attorneys and incur litigation
23 expenses to prosecute this lawsuit and is entitled to an award of attorneys' fees and litigation
24 expenses therefor to be shown according to proof.

25 WHEREFORE, Germain prays judgment against defendants and each of them as set forth
26 below.

27 **NINTH CAUSE OF ACTION**
28 **Violation of Labor Code §§ 201 and 203**
(Defendants are Defendants and Each of Them)

63. Plaintiff refers to the allegations in paragraphs 1-7, 56 and 60 of the complaint and

incorporates the same herein by this reference as though set forth in full.

64. Labor Code § 201 requires defendants to pay immediately upon termination all wages they owe to employees they terminate. Defendants violated Labor Code § 201 by never paying Germain the overtime or travel time pay they owed him as indicated above. Defendants also violated § 201 because they failed to pay Germain his final paycheck until they mailed it to him on October 24, 2019, over three months after his termination. For an employee to whom defendants willfully fail to pay all wages owed in accordance with Labor Code § 201, defendants are required by Labor Code § 203 to continue the wages 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. Defendants' failure to pay Germain immediately upon his termination all wages owed to him was willful. Thus, they had to continue his wages for 30 days after his termination. In violation of Labor Code § 203, they failed to continue his wages at all after his termination.

65. As the proximate result of defendants' violation of Labor Code §§ 201 and 203, Germain has suffered damages to be shown according to proof, and is entitled to an award therefor, including without limitation for all wages owed to him when he was terminated that he was not paid, with prejudgment interest thereon, and for a continuation of his wages for thirty days after his termination.

66. As the further proximate result of defendants' violations of Labor Code §§ 201 and 203, Germain has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is entitled to an award of attorneys' fees and litigation expenses therefor to be shown according to proof.

WHEREFORE, Germain prays judgment against defendants and each of them as set forth below.

TENTH CAUSE OF ACTION
Violation of Labor Code § 226, Subdivision (a)
(Defendants are Defendants and Each of Them)

67. Plaintiff refers to the allegations in paragraphs 1-7, 56 and 60 of the complaint and incorporates the same herein by this reference as though set forth in full.

68. Labor Code § 226, subdivision (a), provides: “(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

1 the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal
2 check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total
3 hours worked by the employee, except as provided in subdivision (j), . . . (5) net wages earned,
4 . . . (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly
5 rates in effect during the pay period and the corresponding number of hours worked at each hourly
6 rate by the employee."

7 69. Defendants violated § 226, subdivision (a), as to Germain by: a) failing to provide him
8 with any earnings statements at all for the pay periods ending on or about July 1 and 15, 2019; b)
9 failing to include all gross and net wages he earned on some of his earnings statements, including
10 without limitation, the overtime and minimum wage payments he was owed as set forth above; b)
11 failing to include the total hours he worked on some of his earnings statements, and instead just
12 putting one hour worked when he worked much more than one hour, and failing to include the travel
13 hours in excess of eight in a day; c) failing to put the address of the legal entity that is the employer
14 on any of the earnings statements; d) failing to put all applicable hourly rates and the number of
15 hours worked at each hourly rate on some of his earnings statements, including by failing to include
16 the hourly rate for the overtime and minimum wage hours set forth above and number of hours
17 worked at those hourly rates, and listing his total pay for the pay period as his hourly rate on the
18 earnings statements which erroneously just included one hour.

19 70. Defendants' failure to comply with Labor Code § 226, subdivision (a), was knowing and
20 intentional in that they knew that the itemized statements that they provided Germain did not include
21 the items set forth in paragraph 69 above. Pursuant to Labor Code § 226, subdivision (e)(2)(B),
22 Germain is deemed to have suffered injury from defendants' knowing and intentional failure to
23 include the items set forth in paragraph 69 above since he could not promptly and easily determine
24 any of this information from the earnings statements alone.

25 71. Because Germain suffered injury as the proximate result of defendants' knowing and
26 intentional violations of Labor Code § 226, subdivision (a), he is entitled to statutory damages and
27 penalties to be shown according to proof.

28 72. As the further proximate result of defendants' violations of Labor Code § 226,

1 subdivision (a), Germain has had to hire attorneys and incur litigation expenses to prosecute this
2 lawsuit and is entitled to an award of attorneys' fees and litigation expenses therefor to be shown
3 according to proof.

4 WHEREFORE, Germain prays judgment against defendants and each of them as set forth
5 below.

6 **ELEVENTH CAUSE OF ACTION**
7 **VIOLATION OF UNFAIR COMPETITION LAW**
8 **BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.**
9 **(Defendants are Defendants and Each of Them)**

10 73. Plaintiff refers to the allegations in paragraphs 1-21, 30-31, 56, 60 and 64 of the
11 complaint and incorporates the same herein by this reference as though set forth in full.

12 74. Defendants have engaged in unfair competition in violation of the Unfair Competition
13 Law, Business and Professions Code Section 17200, et seq., in perpetrating the acts set forth in
14 paragraphs 10-21, 30-31, 56, 60 and 64.

15 75. Germain is entitled to an award of restitution to be shown according to proof, including
16 without limitation, of (1) the 2% of gross revenues on the non-edible tracers plus prejudgment
17 interest thereon, (2) the overtime pay he earned but wasn't paid plus prejudgment interest thereon,
18 and (3) the minimum wage for each hour he spent traveling on defendants' business in excess of
19 eight in a day plus prejudgment interest thereon.

20 76. Germain is entitled to injunctive and other equitable relief requiring defendants to pay
21 him 2% of the gross revenues hereinafter accruing on the non-edible tracers on at least a quarterly
22 basis and accurately and completely report to him on at least a quarterly basis the gross revenues
23 hereinafter accruing on the non-edible tracers.

24 77. As the further proximate result of defendants' violations of Business and Professions
25 Code Section 17200, et seq., Germain has had to hire attorneys and incur litigation expenses to
26 prosecute this lawsuit and is entitled to an award of attorneys' fees and litigation expenses therefor
27 to be shown according to proof.

28 WHEREFORE, Germain prays judgment against defendants and each of them as set forth
below.

**TWELFTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT
(Defendants are Defendants and Each of Them)**

78. Plaintiff—on behalf of himself and all other employees of defendants against whom defendants committed violations of Labor Code §§ 1102.5, 98.6, 510, 1194, 1198, 1199, 1197, 1197.1, 201, 203, and 226, subdivision (a),— refers to the allegations in paragraphs 1-21, 30-31, 36-38, 43-46, 56, 60, 64 and 68-69 of the complaint and incorporates the same herein by this reference as though set forth in full.

79. Pleased upon information and belief, defendants violated Labor Code § 226, subdivision (a)-- including without limitation paragraphs (2), (8) and (9) of subdivision (a)-- not just as to Germain but rather as to other employees too, including without limitation, by: (2) failing to include the total hours they worked on some of their earnings statements, including without limitation by putting that they just worked one hour on some of their earnings statements; (8) failing to put the address of the legal entity that is the employer on any of their earnings statements; and (9) failing to put all applicable hourly rates and the number of hours worked at each hourly rate on some of their earnings statements, including without limitation by listing their total pay for the pay period as their hourly rate on earnings statements which erroneously just listed one hour.

80. On July 7, 2020, Germain gave written notice of the alleged violations of Labor Code §§ 1102.5, 98.6, 510, 1194, 1198, 1199, 1197, 1197.1, 201, 203, and 226, subdivision (a), and the facts and theories to support the violations electronically to the California Labor and Workforce Development Agency (LWDA) through its website, and to defendants by certified mail. On July 22, 2020 Germain filed his original complaint in this action. It did not include a Labor Code Private Attorneys General Act (PAGA) cause of action. Germain filed a first amended complaint (FAC) on August 11, 2020, 35 days after he gave written notice of the Labor Code violations on July 7, 2020. At the time he filed it, defendants had not cured or provided any notice that they had cured their failure to put the employer's address on earning statements furnished their employees in violation of Labor Code § 226, subdivision (a), paragraph (8). Therefore, as of August 11, 2020, Germain had exhausted his administrative remedies under the PAGA for the violations of Labor Code § 226, subdivision (a), paragraph (8), so the FAC added a PAGA cause of action alleging violations of §

1 226, subdivision (a), paragraph (8).

2 81. More than 65 days have now passed since Germain provided written notice of the Labor
3 Code violations on July 7, 2020. The LWDA has not provided any notice to Germain as to whether
4 it intends to investigate the alleged violations. Therefore, Germain has now exhausted his
5 administrative remedies under the PAGA as to all of defendants' violations of Labor Code §§
6 1102.5, 98.6, 510, 1194, 1198, 1199, 1197, 1197.1, 201, 203, and 226, subdivision (a), so this second
7 amended complaint amends this PAGA cause of action to include all these violations.

8 82. Civil monetary penalties should be awarded according to proof as prescribed by the
9 PAGA against defendants and in favor of Germain and all other employees of defendants against
10 whom defendants committed violations of Labor Code §§ 1102.5, 98.6, 510, 1194, 1198, 1199,
11 1197, 1197.1, 201, 203, and 226, subdivision (a).

12 83. As the further proximate result of defendants' violations of Labor Code §§ 1102.5, 98.6,
13 510, 1194, 1198, 1199, 1197, 1197.1, 201, 203, and 226, subdivision (a), Germain has had to hire
14 attorneys and incur litigation expenses to prosecute this lawsuit and is entitled to an award of
15 reasonable attorneys' fees and litigation expenses therefor to be shown according to proof.

16 WHEREFOR, Germain—on behalf of himself on the first through eleventh causes of action,
17 and on behalf of himself and all other employees of defendants against whom defendants committed
18 violations of Labor Code §§ 1102.5, 98.6, 510, 1194, 1198, 1199, 1197, 1197.1, 201, 203, and 226,
19 subdivision (a), on the twelfth cause of action— prays judgment as follows:

20 1. On the first and third causes of action, against defendants Micro-Tracers Inc., Anresco,
21 Incorporated, and Does 1-10, inclusive, for damages and other relief to be shown according to proof,
22 including without limitation, for loss of income and benefits with prejudgment interest thereon, and
23 for reasonable attorneys' fees and litigation expenses;

24 2. On the second cause of action, for a declaratory judgment as to whether defendants Micro-
25 Tracers Inc., Anresco, Incorporated, and Does 1-10, inclusive, must pay Germain 2% of gross
26 revenues on the non-edible tracers, and for reasonable attorneys' fees and litigation expenses;

27 3. On the fourth and sixth causes of action, against defendants Micro-Tracers Inc., Anresco,
28 Incorporated, and Does 1-10, inclusive, for damages and other relief to be shown according to proof,

1 including without limitation, for lost income and benefits with prejudgment interest thereon,
2 emotional and physical distress, inconvenience, mental anguish, loss of enjoyment of life, loss of
3 reputation, and other nonpecuniary losses, punitive damages, and reasonable attorneys' fees and
4 litigation expenses;

5 4. On the fifth cause of action, against defendants Micro-Tracers Inc., Anresco, Incorporated,
6 and Does 1-10, inclusive, for damages and other relief to be shown according to proof, including
7 without limitation for lost income and benefits with prejudgment interest thereon, for a penalty of
8 \$10,000, and for reasonable attorneys' fees and litigation expenses;

9 5. On the seventh cause of action, against defendants and each of them, for damages and
10 other relief to be shown according to proof, including without limitation, for the overtime pay he
11 earned but wasn't paid plus prejudgment interest thereon, and for reasonable attorneys' fees and
12 litigation expenses;

13 6. On the eighth cause of action, against defendants and each of them, for damages and other
14 relief to be shown according to proof, including without limitation, for the minimum wage for each
15 hour he spent traveling on defendants' business in excess of eight in a day, plus prejudgment interest
16 thereon, plus as liquidated damages an additional amount equal to the minimum wage and
17 prejudgment interest thereon, and for reasonable attorneys' fees and litigation expenses;

18 7. On the ninth cause of action, against defendants and each of them, for damages and other
19 relief to be shown according to proof, including without limitation, for all wages owed to him when
20 he was terminated that he was not paid, with prejudgment interest thereon, and for a continuation
21 of his wages for thirty days after his termination, and for reasonable attorneys' fees and litigation
22 expenses;

23 8. On the tenth cause of action, against defendants and each of them, for damages and other
24 relief to be shown according to proof, including without limitation, for statutory damages and
25 penalties, and for reasonable attorneys' fees and litigation expenses;

26 9. On the eleventh cause of action, against defendants and each of them, for restitution and
27 other relief to be shown according to proof, including without limitation: (1) restitution of the 2%
28 of gross revenues on the non-edible tracers plus prejudgment interest thereon, the overtime pay he

1 earned but wasn't paid plus prejudgment interest thereon, and the minimum wage for each hour he
2 spent traveling on defendants' business in excess of eight in a day plus prejudgment interest thereon;
3 (2) injunctive and other equitable relief requiring defendants to pay him 2% of the gross revenues
4 hereinafter accruing on the non-edible tracers on at least a quarterly basis and accurately and
5 completely report to him on at least a quarterly basis the gross revenues hereinafter accruing on the
6 non-edible tracers; and (3) for reasonable attorneys' fees and litigation expenses;

7 10. On the twelfth cause of action, against defendants and each of them, for penalties and
8 other relief to be shown according to proof, including without limitation, for civil monetary penalties
9 as prescribed by the PAGA, and for reasonable attorneys' fees and litigation expenses;

10 11. For costs of suit; and

11 12. For such other and further relief as this Court deems just and proper.

12 DATED: October 19, 2020

13 HIGHMAN & HIGHMAN
14 A PROFESSIONAL LAW ASSOCIATION

15 By Bruce J. Highman
16 Bruce J. Highman
17 Attorneys for Plaintiff

18 DEMAND FOR JURY TRIAL

19 Plaintiff hereby demands a jury trial.

20 DATED: October 19, 2020

21 HIGHMAN & HIGHMAN
22 A PROFESSIONAL LAW ASSOCIATION

23 By Bruce J. Highman
24 Bruce J. Highman
25 Attorneys for Plaintiff
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I am employed in the county of San Francisco, California. I am over the age of eighteen years and not a party to the within cause; my business address is 582 Market Street, Suite 1212, San Francisco, California 94104. My Electronic Service Address is bruce.highman@highmanlaw.com. On October 19, 2020, I electronically served the SECOND AMENDED COMPLAINT FOR RELIEF FOR BREACH OF CONTRACT, DECLARATORY RELIEF, NONPAYMENT OF WAGES IN VIOLATION OF LABOR CODE, VIOLATION OF LABOR CODE §§ 98.6 AND 1102.5, TORTIOUS DISCHARGE IN VIOLATION OF PUBLIC POLICY, VIOLATION OF LABOR CODE §§ 510, 1194, 1198, 1199, 1197, 1197.1, 201, 203, AND 226, SUBDIVISION (A), VIOLATION OF UNFAIR COMPETITION LAW, BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ., AND LABOR CODE PRIVATE ATTORNEYS GENERAL ACT on the defendants in said cause, by causing it to be electronically served to the email address listed below pursuant to the E-Service procedures of File & ServeXpress emailing a true copy thereof from my email address, bruce.highman@highmanlaw.com, to:

The parties have stipulated to electronic service and that it shall constitute personal service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 19, 2020.

Bruce J. Highman
Bruce J. Highman