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2020-10-22 18:20:50 (GMT)

From: Shaun Setareh

FILED BY FAX
ALAMEDA COUNTY

October 22, 2020

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

RG20077641

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA
10 UNLIMITED JURISDICTION

11 MARK SUTTLES on behalf of himself, all
12 others similarly situated,

13 *Plaintiff,*

14 vs.

15 DIRECTAPPS, INC., a Delaware corporation;
EDGE SOLUTIONS & CONSULTING, INC.,
16 a California corporation; DIRECT
TECHNOLOGY, a business entity of
17 unknown form; LAUNCH CONSULTING
GROUP, business entity of unknown form;
18 AVERRO, business entity of unknown form;
and DOES 1 through 50, inclusive,

19 *Defendants.*
20
21
22

Case No.

CLASS ACTION COMPLAINT FOR:

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Indemnify (Lab. Code § 2802);
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);

JURY TRIAL DEMANDED

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

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendants DIRECTAPPS, INC., a Delaware
5 corporation; DIRECTAPPS, INC., a Delaware corporation; EDGE SOLUTIONS & CONSULTING,
6 INC., a California corporation; DIRECT TECHNOLOGY, a business entity of unknown form;
7 LAUNCH CONSULTING GROUP, business entity of unknown form; AVERRO, business entity of
8 unknown form; and DOES 1 through 50, inclusive (collectively referred to as "Defendants") for
9 alleged violations of the Fair Credit Reporting Act ("FCRA") and similar California laws.

10 2. Plaintiff brings this class action against Defendants for alleged violations of the
11 California Labor Code and California Business and Professions Code. As set forth below, Plaintiff
12 alleges that Defendants have

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

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

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1 **JURISDICTION AND VENUE**

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

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

9 5. Venue is proper in Alameda County because Defendants' have at all times alleged
10 herein, conducted business in Alameda County, and throughout California. As such, venue is proper
11 in any county in California.

12 **PARTIES**

13 6. Plaintiff MARK SUTTLES is, and at all relevant times mentioned herein, an
14 individual residing in the State of California.

15 7. Plaintiff is informed and believes, and thereupon alleges that Defendant
16 DIRECTAPPS, INC. is, and at all relevant times mentioned herein, a Delaware corporation doing
17 business in the State of California.

18 8. Plaintiff is informed and believes, and thereupon alleges that DIRECTAPPS, INC., a
19 Delaware corporation, and at all relevant times mentioned herein, a corporation doing business in the
20 State of California.

21 9. Plaintiff is informed and believes, and thereupon alleges that Defendant EDGE
22 SOLUTIONS & CONSULTING, INC. is, and at all relevant times mentioned herein, a California
23 corporation doing business in the State of California.

24 10. Plaintiff is informed and believes, and thereupon alleges that Defendant DIRECT
25 TECHNOLOGY, a business entity of unknown form is and at all relevant times mentioned herein, a
26 business entity doing business in the State of California.

27 11. Plaintiff is informed and believes, and thereupon alleges that Defendant LAUNCH
28 CONSULTING GROUP, a business entity of unknown form is and at all relevant times mentioned

1 herein, a business entity doing business in the State of California.

2 12. Plaintiff is informed and believes, and thereupon alleges that Defendant AVERRO, a
3 business entity of unknown form is and at all relevant times mentioned herein, a business entity doing
4 business in the State of California.

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

13 14. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
14 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
15 directors, associates, joint venturers, joint employers, principals or co-participants of some or all of
16 the other defendants, and in doing the things alleged herein, were acting within the course and scope
17 of such relationship and with the full knowledge, consent and ratification by such other defendants.

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

22 CLASS ALLEGATIONS

23 16. This action has been brought and may be maintained as a class action pursuant to Code
24 of Civil Procedure section 382 because there is a well-defined community of interest among the
25 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
26 unaware of any difficulties likely to be encountered in managing this case as a class action.

27 17. **Relevant Time Period:** The relevant time period is defined as the time period
28 beginning four years prior to the filing of this action until judgment is entered.

1 **Hourly Employee Class:** All persons employed by Defendants, collectively or separately,
2 and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions
3 in California four years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action ("Hourly Employee Class").

5 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in a
6 shift in excess of five hours during the four years prior to the filing of this action and
7 ending on the date that final judgment is entered in this action.

8 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a shift
9 of at least three and one-half (3.5) hours the four years prior to the filing of this action
10 and ending on the date that final judgment is entered in this action.

11 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
12 separated from their employment with Defendants during the period beginning three
13 years before the filing of this action and ending when final judgment is entered.

14 **Wage Statement Class:** All persons employed by Defendants in California during the period
15 beginning one year before the filing of this action and ending when final judgment is entered.

16 **Reimbursement Class:** All persons employed by Defendants in California who incurred
17 unreimbursed business expenditures for Defendants during the period beginning four years
18 before the filing of this action and ending when final judgment is entered.

19 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in California
20 during the four years prior to the filing of this action and ending on the date that final judgment
21 is entered in this action.

22 18. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right
23 to amend or modify the class definitions with greater specificity, by further division into sub-classes
24 and/or by limitation to particular issues.

25 19. **Numerosity:** The class members are so numerous that the individual joinder of each
26 individual class member is impractical. While Plaintiff does not currently know the exact number of
27 class members, Plaintiff is informed and believes, and thereupon alleges that the actual number
28 exceeds the minimum required for numerosity under California law.

20. **Commonality and Predominance:** Common questions of law and fact exist as to all
class members and predominate over any questions which affect only individual class members.
These common questions include, but are not limited to:

A. Whether Defendants maintained a policy or practice of failing to provide
employees with their meal periods;

- 1 B. Whether Defendants maintained a policy or practice of failing to provide
2 employees with their rest periods;
- 3 C. Whether Defendants failed to pay premium wages to class members when they
4 have not been provided with required meal and/or rest periods;
- 5 D. Whether Defendants failed to pay minimum and/or overtime wages to class
6 members as a result of policies that fail to provide meal periods in accordance
7 with California law;
- 8 E. Whether Defendants failed to pay minimum and/or overtime wages to class
9 members for all time worked;
- 10 F. Whether Defendants failed to provide class members with accurate written
11 wage statements as a result of providing them with written wage statements
12 with inaccurate entries for, among other things, amounts of gross and net
13 wages, and total hours worked;
- 14 G. Whether Defendants applied policies or practices that result in late and/or
15 incomplete final wage payments;
- 16 H. Whether Defendants are liable to class members for waiting time penalties
17 under Labor Code section 203;
- 18 I. Whether Defendants failed to reimburse class members for necessary business
19 expenditures incurred; and
- 20 J. Whether class members are entitled to restitution of money or property that
21 Defendants may have acquired from them through unfair competition;

22 21. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
23 is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to
24 comply with the FCRA, ICRAA and/or the CCRAA and the California Labor Code and Business and
25 Professions Code as alleged in this Complaint.

26 22. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
27 that he has no interests that are adverse to, or otherwise conflict with, the interests of absent class
28 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly

1 and adequately represent and protect the interests of the other class members.

2 23. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
3 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
4 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf
5 of Plaintiff and absent class members.

6 24. **Superiority:** A class action is vastly superior to other available means for fair and
7 efficient adjudication of the class members' claims and would be beneficial to the parties and the
8 Court. Class action treatment will allow a number of similarly situated persons to simultaneously and
9 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
10 effort and expense that numerous individual actions would entail. In addition, the monetary amounts
11 due to many individual class members are likely to be relatively small and would thus make it difficult,
12 if not impossible, for individual class members to both seek and obtain relief. Moreover, a class
13 action will serve an important public interest by permitting class members to effectively pursue the
14 recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent
15 or contradictory judgments inherent in individual litigation.

16 **GENERAL ALLEGATIONS**

17 25. Plaintiff worked for Defendants as a non-exempt, hourly employee from
18 approximately June of 2019 through March of 2020.

19 26. Plaintiff and Class members were not paid proper wages for all hours worked. Plaintiff
20 and class members were regularly required to work pre-shift and post-shift hours, off the clock, for
21 which they were never paid wages. Defendants also had a policy of automatically deducting thirty
22 minutes from Plaintiff's and class members' paychecks for unpaid meal periods, regardless of
23 whether they took a meal period or not. These uncompensated hours include transporting necessary
24 tools and equipment in executing their duties under Defendants' employ. Additionally, Plaintiff and
25 Class Members were regularly required to work during unpaid meal periods which they were
26 systemically denied. These uncompensated hours were worked in excess of eight (8) hours a day
27 and/or forty (40) hours a week entitled Plaintiff and Class Members to overtime wages which they
28 were systemically denied.

1 27. Plaintiff and the putative class members were not provided with meal periods of at
2 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy and practice
3 of not scheduling each meal period as part of each work shift; (2) no formal written meal period
4 policy that encouraged employees to take their meal or advising them of their rights to take compliant
5 meal periods; and (4) required Plaintiff and putative class members to work through their meal
6 periods which they were systemically denied.

7 28. Plaintiff and the putative class members were not provided with rest periods of at
8 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
9 Defendants' policy and practice of not scheduling each rest period as part of each work shift; (2) no
10 formal written rest period policy that encouraged employees to take their rest periods or advising
11 them of their rights to take compliant rest periods; and (4) required Plaintiff and putative class
12 members to work through their rest periods which they were systemically denied.

13 29. As such, Plaintiff alleges that, at relevant times during the applicable limitations
14 period, due to Defendants above-mentioned policies or practices, Plaintiff and the putative class did
15 not receive their full, uninterrupted, thirty (30) minute meal periods that they were entitled under
16 California law.

17 30. As such, Plaintiff alleges that, at relevant times during the applicable limitations
18 period, due to Defendants above-mentioned policies or practices, Plaintiff and the putative class did
19 not receive their full, uninterrupted, ten (10) minute rest periods for every four hours of work, or
20 major fraction thereof, that they were entitled under California law.

21 31. Plaintiffs and the putative class members were not provided with meal periods of at
22 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
23 scheduling each meal period as part of each work shift; (2) chronically understaffing each work shift
24 with not enough workers; (3) imposing so much work on each employee such that it made it unlikely
25 that an employee would be able to take their breaks if they wanted to finish their work on time; and
26 (4) no formal written meal and rest period policy that encouraged employees to take their meal and
27 rest periods.

28 32. As a result of Defendants' policy, Plaintiffs and the putative class were regularly not

1 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
2 worked due to complying with Defendants' productivity requirements that required Plaintiffs and
3 the putative class to work through their meal periods in order to complete their assignments on time.

4 33. As such, Plaintiff alleges that, at relevant times during the applicable limitations
5 period, due to Defendants above-mentioned policies or practices, Plaintiff and the putative class did
6 not receive their full, uninterrupted, thirty (30) minute meal periods that they were entitled under
7 California law.

8 34. As such, Plaintiff alleges that, at relevant times during the applicable limitations
9 period, due to Defendants above-mentioned policies or practices, Plaintiff and the putative class did
10 not receive their full, uninterrupted, ten (10) minute rest periods for every four hours of work, or
11 major fraction thereof, that they were entitled under California law. Plaintiff and the putative class
12 were required to work through their rest periods which they were systemically denied.

13 35. Plaintiff and the putative class were not provided with accurate wage statements as
14 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
15 statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or
16 separately if wages are paid by personal check or cash, an accurate itemized statement in writing."
17 Additionally, the wage statements issued to Plaintiff and class members were not recorded in "ink
18 or other indelible form."

19 36. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
20 earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

21 37. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
22 by the employee" were not accurately reflected in that: all hours worked, including overtime, were
23 not included.

24 38. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned"
25 were not accurately reflected in that: all hours worked, including overtime, were not included.

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

1 overtime, were not included.

2 40. Defendants also failed to reimburse Plaintiff and class members for necessary
3 expenditures in violation of Labor Code § 2802. Plaintiff and class members were required to
4 purchase their own tools and equipment, and incur fuel and mileage costs, in executing their duties
5 under Defendants' employ and for which they were never reimbursed.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

8 **(Lab. Code §§ 004, 223, 226.7, 512 and 1198)**

9 **(Plaintiff and Meal Period Sub-Class)**

10 41. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
11 fully alleged herein.

12 42. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
13 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
14 Code and the applicable Industrial Welfare Commission Wage Order.

15 43. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
16 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt
17 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
18 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
19 minutes for each work period of ten hours.

20 44. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
21 Commission Wage Order ("Wage Order") both prohibit employers from requiring employees to work
22 during required meal periods and require employers to pay non-exempt employees an hour of
23 premium wages on each workday that the employee is not provided with the required meal period.

24 45. Compensation for missed meal periods constitutes wages within the meaning of Labor
25 Code section 200.

26 46. Labor Code section 1198 makes it unlawful to employ a person under conditions that
27 violate the applicable Wage Order.

28 47. Section 11 of the applicable Wage Order states:

1 “No employer shall employ any person for a work period of more than five (5) hours
2 without a meal period of not less than 30 minutes, except that when a work period of
3 not more than six (6) hours will complete the day’s work the meal period may be
4 waived by mutual consent of the employer and employee. Unless the employee is
5 relieved of all duty during a 30 minute meal period, the meal period shall be considered
6 an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall
7 be permitted only when the nature of the work prevents an employee from being
8 relieved of all duty and when by written agreement between the parties an on-the-job
9 paid meal period is agreed to. The written agreement shall state that the employee
10 may, in writing, revoke the agreement at any time.”

11 48. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
12 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
13 members were not subject to valid on-duty meal period agreements with Defendants.

14 49. Plaintiff alleges that, at all relevant times during the applicable limitations period,
15 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
16 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
17 hour work period, as required by Labor Code section 512 ad the applicable Wage Order.

18 50. Plaintiff alleges that, at all relevant times during the applicable limitations period,
19 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
20 **Class** members when they worked five (5) hours without clocking out for any meal period.

21 51. Plaintiff alleges that, at all relevant times during the applicable limitations period,
22 Defendants maintained a policy or practice of automatically deducting one-half hour or one hour for
23 a meal period from the paychecks of **Meal Period Sub-Class** members on each day they worked,
24 regardless of whether or not they were able to take an uninterrupted, duty-free meal period.

25 52. Plaintiff alleges that, at all relevant times during the applicable limitations period,
26 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
27 **Sub-Class** with a second meal period when they worked shifts of ten or more hours and failed to pay
28 them premium wages as required by Labor Code 512 and the applicable Wage Order.

53. Moreover, Defendants written policies fail to inform Meal period Class Members of
their meal period rights under the Labor Code and applicable Wage Orders.

54. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
Class members additional premium wages, and/or were not paid premium wages at the employees’

1 regular rates of pay when required meal periods were not provided.

2 55. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
3 himself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest
4 thereon, and costs of suit.

5 56. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
6 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the
7 **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REST PERIODS**

10 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

11 **(Plaintiff and Rest Period Sub-Class)**

12 57. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
13 herein.

14 58. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
15 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
16 Code and the applicable Wage Order.

17 59. Section 12 of the applicable Wage Order imposes an affirmative obligation on
18 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
19 minutes of net rest time for each four hour work period, or major fraction thereof, that must be in the
20 middle of each work period insofar as practicable.

21 60. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
22 employers from requiring employees to work during required rest periods and require employers to
23 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
24 workday that the employee is not provided with the required rest period(s).

25 61. Compensation for missed rest periods constitutes wages within the meaning of Labor
26 Code section 200.

27 62. Labor Code section 1198 makes it unlawful to employ a person under conditions that
28 violate the Wage Order.

1 63. Plaintiff alleges that, at all relevant times during the applicable limitations period,
2 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
3 with net rest period of at least ten minutes for each four hour work period, or major fraction thereof,
4 as required by the applicable Wage Order.

5 64. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**
6 members additional premium wages when required rest periods were not provided.

7 65. Specifically, Defendants written policies do not provide that employees may take a
8 rest period for each four hours worked, or major fraction thereof, and that rest periods should be taken
9 in the middle of each work period insofar as practicable.

10 66. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of herself
11 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
12 costs of suit.

13 67. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
14 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest**
15 **Period Sub-Class** members, seek to recover reasonable attorneys' fees.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

18 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

19 **(Plaintiff and Hourly Employee Class)**

20 68. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
21 herein.

22 69. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been
23 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
24 applicable Wage Order.

25 70. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
26 which an employee is subject to the control of the employer, and includes all the time the employee
27 is suffered or permitted to work, whether or not required to do so."

28 71. Section 4 of the applicable Wage Order requires an employer to pay non-exempt

1 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours
2 that an employer has actual or constructive knowledge that employees are working.

3 72. Labor Code section 1194 invalidates any agreement between an employer and an
4 employee to work for less than the minimum or overtime wage required under the applicable Wage
5 Order.

6 73. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
7 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
8 to the underlying unpaid minimum wages and interest thereon.

9 74. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
10 than the minimum wage required under the applicable Wage Order for all hours worked during a
11 payroll period.

12 75. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
13 person acting either individually or as an officer, agent or employee of another person, to pay an
14 employee, or cause an employee to be paid, less than the applicable minimum wage.

15 76. Labor Code section 1198 makes it unlawful for employers to employ employees under
16 conditions that violate the applicable Wage Order.

17 77. Labor Code section 204 requires employers to pay non-exempt employees their earned
18 wages for the normal work period at least twice during each calendar month on days the employer
19 designates in advance and to pay non-exempt employees their earned wages for labor performed in
20 excess of the normal work period by no later than the next regular payday.

21 78. Labor Code section 223 makes it unlawful for employers to pay their employees lower
22 wages than required by contract or statute while purporting to pay them legal wages.

23 79. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
24 to pay non-exempt employees overtime wages of no less than one and one-half times their respective
25 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in
26 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh
27 consecutive day of one workweek.

28 80. Labor Code section 510 and Section 3 of the applicable Wage Order also require

1 employers to pay non-exempt employees overtime wages of no less than two times their respective
2 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
3 worked in excess of eight hours on a seventh consecutive workday during the workweek.

4 81. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
5 centrally devised policies and practices to her and **Hourly Employee Class** members with respect to
6 working conditions and compensation arrangements.

7 82. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
8 **Employee Class** members for all time worked, including but not limited to, overtime hours at
9 statutory and/or agreed rates.

10 83. At all relevant times during the applicable limitations period, Defendants maintained
11 a policy or practice of automatically deducting one-half hour or one hour from Plaintiff's timecard on
12 every workday for a meal period, regardless of whether or not Plaintiff was provided with a meal
13 period.

14 84. As a result of Defendants' policy or practice of automatically deducting one-half hour
15 or one hour from employees' timecards for every workday for a meal period, Plaintiff and **Hourly**
16 **Employee Class** members were required to perform off-the-clock work that Defendants either knew
17 or should have known they were working.

18 85. Plaintiff is informed and believes that, at all relevant times during the applicable
19 limitations period, Defendants maintained a policy or practice of not paying hourly wages to **Hourly**
20 **Employee Class** members for all time worked, including but not limited to, overtime hours at
21 statutory and/or agreed rates by suffering or permitting them to work during unpaid meal periods.

22 86. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
23 **Employee Class** members all earned wages every pay period at the correct rates, including overtime
24 rates, because Defendants directed, permitted or otherwise encouraged Plaintiff and **Hourly**
25 **Employee Class** members to perform off-the-clock work. Specifically, Plaintiff and **Hourly Class**
26 **Members** were required to perform pre-shift and post-shift duties for which they were never paid
27 wages.

28 87. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**

1 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
2 full amount of wages earned during each pay period during the applicable limitations period,
3 including overtime wages.

4 88. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
5 behalf of herself and **Hourly Employee Class** members, seek to recover unpaid straight time and
6 overtime wages, interest thereon and costs of suit.

7 89. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
8 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and
9 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

12 **(Lab. Code § 226)**

13 **(Plaintiff and Wage Statement Penalties Sub-Class)**

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

16 91. Labor Code section 226(a) states:

17 "An employer, semimonthly or at the time of each payment of wages, shall furnish to
18 his or her employee, either as a detachable part of the check, draft, or voucher paying
19 the employee's wages, or separately if wages are paid by personal check or cash, an
20 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
21 worked by the employee, except as provided in subdivision (j), (3) the number of
22 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
23 rate basis, (4) all deductions, provided that all deductions made on written orders of
24 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
25 inclusive dates of the period for which the employee is paid, (7) the name of the
26 employee and only the last four digits of his or her social security number or an
27 employee identification number other than a social security number, (8) the name and
28 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

1 employee or a computer-generated record that accurately shows all of the information
2 required by this subdivision.”

3 92. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the
4 “detachable part of the check” provision and the “accurate itemized statement in writing” provision
5 of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
6 retains the right to elect to receive a written paper stub or record and that those who are provided with
7 electronic wage statements retain the ability to easily access the information and convert the electronic
8 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

9 93. Plaintiff is informed and believes that, at all relevant times during the applicable
10 limitations period, Defendants have failed to provide **Wage Statement Class** members with written
11 wage statements as described above. Additionally, the wage statements issued to class members
12 failed to account for the unpaid minimum wages, overtime, and premium pay wages described
13 above.

14 94. Plaintiff is informed and believes that Defendants’ failure to provide her and **Wage**
15 **Statement Class** members with accurate written wage statements were intentional in that Defendants
16 have the ability to provide them with accurate wage statements but have intentionally provided them
17 with written wage statements that Defendants have known do not comply with Labor Code section
18 226(a).

19 95. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
20 Defendants have violated their legal rights to receive accurate wage statements and have misled them
21 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
22 statements have prevented immediate challenges to Defendants’ unlawful pay practices, has required
23 discovery and mathematical computations to determine the amount of wages owed, has caused
24 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
25 submission of inaccurate information about wages and deductions to federal and state government
26 agencies.

27 96. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
28 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in

1 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
2 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
3 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO INDEMNIFY**

6 **(Lab. Code § 2802)**

7 **(Plaintiff and Expense Reimbursement Class)**

8 97. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
9 herein.

10 98. Labor Code section 2802(a) states:

11 "An employer shall indemnify his or her employee for all necessary expenditures or
12 losses incurred by the employee in direct consequence of the discharge of his or her
13 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful."

14 99. At all relevant times during the applicable limitations period, Plaintiff and the **Expense**
15 **Reimbursement Class** members incurred necessary business related expenses and costs, including
16 but not limited to, tools, equipment, fuel, and mileage costs, in executing their duties under
17 Defendants' employ and for which they were never reimbursed.

18 100. Plaintiff is informed and believes, and thereupon alleges that the reimbursement paid
19 by Defendants was insufficient to indemnify Plaintiff and **Expense Reimbursement Class** members
20 for all necessary expenses incurred in the discharge of their duties.

21 101. At all relevant times during the applicable limitations period, Defendants required
22 Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused
23 by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense**
24 **Reimbursement Class** members for all such expenditures.

25 102. Plaintiff is informed and believes that, during the applicable limitations period,
26 Defendants maintained a policy or practice of not reimbursing Plaintiff and **Expense**
27 **Reimbursement Class** members for all necessary business expenses.

28 103. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to

1 restitution for all unpaid amounts due and owing to within four years of the date of the filing of the
2 Complaint and until the date of entry of judgment.

3 104. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seek
4 interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees
5 pursuant to Code of Civil Procedure section 1021.5.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

8 **(Lab. Code §§ 201-203)**

9 **(Plaintiff and Waiting Time Penalties Sub-Class)**

10 105. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
11 herein.

12 106. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
13 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
14 earned and unpaid before termination or resignation.

15 107. At all relevant times, pursuant to Labor Code section 201, employees who have been
16 discharged have been entitled to payment of all final wages immediately upon termination.

17 108. At all relevant times, pursuant to Labor Code section 202, employees who have
18 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
19 payment of all final wages at the time of resignation.

20 109. Plaintiff is informed and believes that, at all relevant time during the applicable
21 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
22 members all of their final wages in accordance with the Labor Code.

23 110. Plaintiff is informed and believes that, at all relevant times during the applicable
24 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
25 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
26 sections 201 or 202 by failing to timely pay them all final wages.

27 111. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
28 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful

1 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
2 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
3 requirements.

4 112. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of himself and
5 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their
6 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

7 113. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
8 and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-**
9 **Class** members, seek awards of reasonable attorneys' fees and costs.

10 SEVENTH CAUSE OF ACTION

11 UNFAIR COMPETITION

12 (Bus. & Prof. Code §§ 17200 *et seq.*)

13 (Plaintiff and UCL Class)

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

16 115. Business and Professions Code section 17200 defines "unfair competition" to include
17 any unlawful business practice.

18 116. Business and Professions Code section 17203-17204 allow a person who has lost
19 money or property as a result of unfair competition to bring a class action in accordance with Code
20 of Civil Procedure section 382 to recover money or property that may have been acquired from
21 similarly situated persons by means of unfair competition.

22 117. California law requires employers to pay hourly, non-exempt employees for all hours
23 they are permitted or suffered to work, including hours that the employer knows or reasonable should
24 know that employees have worked.

25 118. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST,
26 SECOND, THIRD, and FIFTH, causes of action herein.

27 119. Plaintiff lost money or property as a result of the aforementioned unfair competition.

28 120. Defendants have or may have acquired money by means of unfair competition.

1 121. Plaintiff is informed and believes and thereupon alleges that by committing the Labor
2 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
3 226.6, 226.7, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and 2802,
4 which make it a misdemeanor to commit the Labor Code violations alleged herein.

5 122. Defendants have committed criminal conduct through their policies and practices of,
6 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
7 employees with compliant meal and rest periods; pay non-exempt employees for all hours worked;
8 and reimburse them for all expenses.

9 123. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
10 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
11 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
12 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
13 unlawful or fraudulent business practice to seek restitution on her own behalf and on behalf of
14 similarly situated persons in a class action proceeding.

15 124. As a result of Defendants' violations of the Labor Code during the applicable
16 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
17 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

18 125. Plaintiff is informed and believes that other similarly situated persons have been
19 subject to the same unlawful policies or practices of Defendants.

20 126. Due to the unfair and unlawful business practices in violation of the Labor Code,
21 Defendants have gained a competitive advantage over other comparable companies doing business in
22 the State of California that comply with their legal obligations.

23 127. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
24 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates
25 or is considered unlawful under any other state or federal law.

26 128. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
27 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
28 Defendants, and each of them, and their agents and employees, from further violations of the Labor

1 Code and applicable Wage Orders.

2 129. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiffs
3 request the issuance of temporary, preliminary and permanent injunctive relief enjoining Defendants,
4 and each of them, and their agents and employees, from further violations of the Labor Code and
5 applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an order
6 permanently enjoining Defendants, and each of them, and their respective agents and employees,
7 from further violations of the Labor Code and applicable Industrial Welfare Commission Wage
8 Orders.

9 130. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
10 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
11 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
12 and unfair business practices.

13 131. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
14 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
15 reasonable attorneys' fees in connection with their unfair competition claims.

16 132. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
17 herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
18 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
19 and unfair business practices.

20 133. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
21 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
22 reasonable attorneys' fees in connection with their unfair competition claims.

23 **PRAYER FOR RELIEF**

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

- 26 (1) An order that the action be certified as a class action;
27 (2) An order that Plaintiff be appointed class representative;
28 (3) An order that counsel for Plaintiff be appointed class counsel;

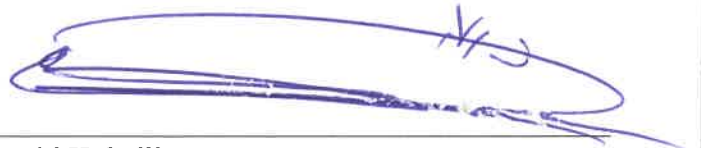
- 1 (4) Unpaid wages;
2 (5) Actual damages;
3 (6) Liquidated damages;
4 (7) Restitution;
5 (8) Declaratory relief;
6 (9) Pre-judgment interest;
7 (10) Statutory penalties;
8 (11) Civil penalties;
9 (12) Costs of suit;
10 (13) Reasonable attorneys' fees; and
11 (14) Such other relief as the Court deems just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby
14 demands a jury trial on all issues so triable.

15
16 Dated: October 21, 2020

SETAREH LAW GROUP

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20 David Keledjian
21 Attorneys for Plaintiff
22 MARK SUTTLES
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