

Richard Kim (SBN 272184)
LAW OFFICES OF RICHARD KIM PC
6131 Orangethorpe Ave., Suite 370
Buena Park, CA 90620
Telephone: (714) 276-1122
Facsimile: (714) 276-1120
Rkim@Richkimlaw.com

Assigned for all Purposes
Judge Glenda Sanders
CX-101

Attorneys for Plaintiffs,
WAYNE ERIC FAN

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ORANGE

WAYNE ERIC FAN, an Individual, for
himself, on behalf of all others similarly
situated, and as aggrieved employees under
the California Private Attorney General Act,

Plaintiffs,

vs.

CYBERCODERS, INC., a California
Corporation, and DOES 1 through 50,
Inclusive,

Defendants.

Case No. 30-2021-01207940-CU-OE-CXC

COMPLAINT FOR DAMAGES FOR:

1. Failure to Pay Overtime;
2. Failure to Pay Meal Breaks;
3. Failure to Pay Rest Breaks;
4. Failure To Pay Earned Wages Upon Separation;
5. Failure To Furnish Accurate Wage Statements;
6. Violation of Private Attorney's general Act of 2004 in Violation of Labor Code §2698, §2699, et. seq.

JURY TRIAL DEMANDED

Plaintiff WAYNE ERIC FAN, in his representative capacity, hereby allege and states as follows:

NATURE OF THE CASE

1. Plaintiff WAYNE ERIC FAN brings this action for himself and on behalf of all

COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL

1 others similarly situated, against Defendant CYBERCODERS, INC. and Does 1 through 50
2 inclusive (collectively “Defendants”), for unpaid overtime wages, missed meal and rest breaks,
3 statutory damages and penalties, prejudgment interest, costs, attorneys’ fees, restitution, PAGA
4 civil penalties, and other appropriate relief for Defendants’ violations of various sections of the
5 California Labor Code and Industrial Welfare Commission Wage Orders. Plaintiffs further seek
6 equitable remedies pursuant to California Business & Professions Code §17200 *et seq.* including
7 but not limited to restitution and injunctive relief.

8 PARTIES

9 2. Plaintiff WAYNE ERIC FAN (hereinafter, “Fan” or “Plaintiff”) was at all times
10 relevant to this Complaint a resident of California.

11 3. At all relevant times herein, Defendant Cybercoders, Inc. (hereinafter,
12 “Cybercoders” or “Defendant”) is a Corporation and existing under the laws of the State of
13 California, located in the County of Los Angeles.

14 4. Plaintiff is ignorant of the true names and capacities, whether individual,
15 corporate, associate, or otherwise, of Defendant DOES 1 through 50. Such DOE defendants are
16 sued pursuant to the provisions of C.C.P. §474. Plaintiff is informed, believes and thereon
17 alleges that each DOE defendant was in some manner responsible, participated in, or contributed
18 to the matters and things of which Plaintiff herein complains, and in some fashion, has legal
19 responsibility therefor. When the exact nature and identity of such DOE defendants are
20 ascertained by Plaintiff, he will seek leave to amend this complaint and all proceedings to set
21 forth the same.

22 5. Plaintiff is informed, believes and thereon alleges that, at all times mentioned
23 herein, each defendant was the agent or employee of the other defendants and was at all times
24 acting within the scope of such agency or employment, and actively participated in, or
25 subsequently ratified, or adopted, each of the acts or omissions alleged, with full knowledge of
26 all the facts and circumstances, including full knowledge of each and every violation of
27 Plaintiffs’ rights.

1 6. All of Plaintiff's claims herein are the result of the intentional conduct of the
2 Defendants and their blatant disregard for the laws of California. Accordingly, this civil action
3 seeks compensatory and punitive damages against Defendants for violations of Plaintiff's rights
4 as set forth herein.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 7. On February 26, 2021 Plaintiffs, by online submission, served notice of the
7 violations alleged in this complaint, in the manner required by Labor Code §2699.3, on the
8 California Labor & Workforce Development Agency, 800 Capital Mall, Suite 5000, Sacramento,
9 CA 95814 (hereinafter the "LWDA"). Said notice was also served by certified mail on
10 Defendants, at Defendants' last known address(es). Neither the Plaintiffs, nor Plaintiffs' counsel
11 received notice from the LWDA upon the expiration of thirty-three days or more following the
12 sending of the notice that said agency was accepting Plaintiffs' claim for prosecution.
13 Accordingly, Plaintiffs allege the right to proceed with all remedies provided by law, including
14 in addition to any compensatory damages awarded on Plaintiffs' complaint herein, any and all
15 statutory penalties which are collectible by Plaintiffs under the provisions of Labor Code §§
16 2698-2699.5, the Private Attorney General Act of 2004 ("PAGA").

17 **FACTUAL BACKGROUND**

18 8. Defendant is a permanent placement recruiting firm that hires individuals who act
19 as recruiters to place candidates in jobs in all industries, including finance, engineering,
20 education, and healthcare. Defendants operate and run their business in Orange County
21 California.

22 9. Plaintiff was employed as a recruiter by Defendants since January 2020.
23 Plaintiff's employment with Defendants ended in March of 2020. Plaintiff's daily jobs duties
24 included finding candidates for open job positions and placing them at the proper positions. The
25 days and hours worked by Plaintiff were controlled by Defendants. Plaintiff's work for
26 Defendants was a regular part of Defendants' business operation and essential to Defendants'
27 day-to-day operations.

1 10. At all times relevant, Defendants significantly controlled the details and manner
2 of Plaintiff's work.

3 11. Defendants strictly imposed various policies, instructions, work rules and
4 regulations on Plaintiff, violations of which would result in some form of discipline, up to and
5 including termination. Defendants maintained the right to terminate and could terminate
6 Plaintiff at any time without cause.

7 12. Specifically, Defendants required that Mr. Fan and all aggrieved employees clock
8 in at the exact same time every morning and clock out at the exact same time every evening
9 regardless of the hours that Mr. Fan and the aggrieved employees actually worked.

10 13. Further, whether or not Mr. Fan and the aggrieved employees took a lunch break,
11 Mr. Fan and aggrieved employees were required to clock out at noon everyday to take their
12 lunch break and clock back at 1 pm. Further, Mr. Fan and other aggrieved employees were not
13 provided an opportunity to take his ten (10) minute uninterrupted break for every four (4) hours
14 worked.

15 14. As a result of Defendants' policies and practices, Defendants failed to provide
16 Plaintiff and aggrieved employees an uninterrupted, off-duty meal break of at least thirty (30)
17 consecutive minutes in duration for all shifts in excess of five (5) hours.

18 15. As a result of Defendants' policies and practices, Defendants refused to authorize
19 or permit Plaintiff and aggrieved employees to take an uninterrupted 10-minute rest break for
20 every four (4) hours worked or major fraction thereof.

21 16. As a result, Plaintiff and other aggrieved employees who were similarly situated,
22 were not provided accurate wage statements.

23 17. Defendants willfully failed to immediately pay Plaintiff and aggrieved employees
24 all earned wages, including overtime, at the end of the employment relationship.

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FIRST CAUSE OF ACTION
(Failure to Pay Overtime Compensation)
(Labor Code §§ 510, 558, 1194, 1198)
(Against Defendants)

18. Plaintiff realleges and incorporates here paragraphs 1 through 17 above.

19. Plaintiffs were employed as non-exempt workers by Defendants, and each of them. At all relevant times mentioned herein, Defendants, and each of them, required, permitted, and suffered Plaintiffs to work hours substantially in excess of eight (8) hours per day and of forty (40) hours per workweek, and sometimes 7 days per week.

20. Pursuant to Labor Code §§ 510, 558, 1194, 1198 and applicable wage orders, Defendants, and each of them, are required to compensate Plaintiffs for all overtime actually worked, at a rate of one and one half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours in a work day and forty (40) hours in a work week, and a higher rate when Plaintiffs worked on a 7th consecutive day. Defendants, and each of them were further required by law to compensate for hours worked in excess of twelve (12) per day and after the eighth (8th) hour on the seventh (7th) consecutive day worked in a work week, at double the regular hourly rate of pay.

21. At all relevant times, Defendants and each of them willfully, knowingly, and intentionally failed and refused to properly calculate and to pay proper overtime and double-time compensation to Plaintiffs as required by law.

22. Defendants, and each of them, further willfully, knowingly, and intentionally falsified, altered, edited, and/or fabricated the time records of Plaintiffs, to limit the recorded hours worked sufficiently to eliminate any obligation to pay overtime or double-time premium wages to Plaintiffs.

23. Pursuant to Labor Code §§ 510, 558, 1194, 1198, Plaintiffs are entitled to recover unpaid overtime wages, subject to proof at trial, plus interest at the legal rate, and attorneys' fees and costs.

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**Failure to Pay Meal Periods - Cal. Labor Code §§ 226.7 and 512
(against All Defendants)**

25. Plaintiffs worked in excess of five hours per day without being provided at least

26. Because Defendant failed to provide proper meal periods, they are liable to
 27. for one hour of additional pay at the regular rate of compensation for each workday
 28. the proper meal periods were not provided, pursuant to Labor Code §§ 226.7 and 512, as
 29. interest thereon, plus reasonable attorneys' fees and costs of suit pursuant to Civil
 30. Procedure Code § 1021.5.

**Failure to Pay Missed Rest Periods - Cal. Labor Code §§ 226.7
(Against All Defendants)**

28. Defendants failed to provide the rest periods that are required under the California
cluding Labor Code Section 226.7 and applicable wage orders.

29. Because Defendants failed to provide proper rest periods, they are liable to Plaintiff for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to Labor Code § 226.7, plus reasonable attorneys' fees and costs of suit pursuant to Civil Procedure Code § 1021.5.

**Failure to Pay Earned Wages Upon Separation - Cal. Labor Code §§ 201, 202, 204
(Against All Defendants)**

31. California Labor Code §§ 201, 202, and 204 require Defendants to pay all compensation due and owing to Plaintiff immediately upon discharge or within seventy-two

1 hours of resignation. Defendants have operated under and continue to operate under a common
2 policy and plan of willfully failing and refusing to pay unpaid wages and overtime owed to
3 Plaintiff upon separation from employment, as required by Sections 201, 202, and 204.

4 32. As a result of Defendants' willful failure to pay Plaintiffs owed wages upon
5 separation from employment, Defendants are liable for statutory waiting time penalties pursuant
6 to California Labor Code § 203.

7 33. Pursuant to Labor Code § 204, Plaintiffs are entitled to recover unpaid wages,
8 subject to proof, plus interest at the legal rate.

9 **FIFTH CAUSE OF ACTION**

10 **Failure to Furnish Accurate Wage Statements Pursuant to Labor Code §§ 226, 558**
11 **(Against All Defendants)**

12 34. Plaintiff refers to Paragraph 1 to 41 of this Complaint and hereby incorporate the
13 same as fully set forth herein.

14 35. California Labor Code § 226(a) requires employers to provide employees, semi-
15 monthly or at the time of each payment of wages, with a statement that accurately reflects certain
16 itemized information, including total number of hours worked. Defendants knowingly and
17 intentionally failed to furnish and continue to fail to furnish Plaintiff with timely and accurate
18 wage statements that accurately reflect total number of hours worked and wages earned, as
19 required by Section 226.

20 36. As a result of Defendants' failure to provide accurate itemized wage statements,
21 Plaintiff suffered actual damages and harm by being unable to determine the amount of hours,
22 including overtime, worked each pay period in a timely manner, which prevented him from
23 asserting their rights under California law.

24 37. As a result, Defendants are liable to Plaintiff for the amounts provided by
25 California Labor Code § 226(e): the greater of actual damages or fifty dollars (\$50) for the initial
26 violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand
27 dollars (\$4,000).

28 38. Pursuant to Labor Code §§226.3, 2699 *et seq.*, Plaintiffs seek to recover the civil

1 penalty against Defendants and each of them, of \$250.00 for the first violation of Labor Code
2 §226(a) and \$1,000.00 per pay period per paycheck for each subsequent violation of this section,
3 according to proof.

4 **SIXTH CAUSE OF ACTION**

5 **Violation of Private Attorney's General Act of 2004 in Violation of Cal. Labor Code §2698,**
6 **§2699, et. seq.**
7 **(Against All Defendants)**

8 39. Plaintiffs reallege and incorporate by reference each and every paragraph of this
9 complaint as though fully set forth herein.

10 40. Plaintiff M. Fan brings this cause of action on behalf of himself and all current
11 and former employees of Defendants aggrieved by Defendants' *Labor Code* violations alleged in
12 this Complaint.

13 41. Under the Private Attorneys' General Act of 2006, *Labor Code* §§2698-2699.5
14 (hereinafter, "PAGA"), an aggrieved employee, on behalf of himself or herself and other current
15 or former employees, may recover penalties under any provision of the *Labor Code* that provides
16 for civil penalties. These penalties are in addition to any other relief available under the Labor
17 Code.
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19 42. As set forth above, Defendant has committed numerous violations for which the
20 *Labor Code* provides for penalties, including violations of *Labor Code* §§204, 510, 1194, 226.7,
21 512, 1182.12, 1197, 1194, 226, 1174, 201, 202, and 203.

22 43. Plaintiff Mr. Fan sent written notice by certified mail to Defendants notifying
23 them of the specific violations that are set forth herein and the facts and theories supporting those
24 violations.

25 44. Plaintiff Mr. Fan by and through his counsel of record, uploaded the same written
26 notice electronically to the LWDA.

27 45. The LWDA provided no notice of investigation to Plaintiff Mr. Fan within the
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1 statutorily required period. As of the date of this Complaint, the LWDA has provided no notice
2 of investigation based on Plaintiff Mr. Fan'S Notice.

3 46. As a direct result of Defendants' conduct as described, Plaintiff is entitled to
4 recover, on his own behalf and on behalf of other similarly situated, the maximum civil penalties
5 permitted by PAGA from Defendants for all violations of *Labor Code* as alleged in this
6 Complaint.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT AND RELIEF AGAINST**
9 **DEFENDANTS AND EACH OF THEM AS FOLLOWS:**

- 10 1. For unpaid wages and compensation, and statutory penalties, according to proof;
11 2. For restitution of all compensation due, including but not limited to wages and
12 benefits, as a result of Defendants' unlawful and unfair business practices,
13 according to proof;
14 3. For reasonable attorneys' fees and costs of suit, as allowed by law;
15 4. For accrued interest on damages and penalties, including pre-judgment interest, as
16 allowed by law;
17 5. For any and all applicable PAGA civil penalties pursuant to Labor Code §§ 2698-
18 2699.5, for all Plaintiffs;

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COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL

1 6. For any and all other applicable statutory and/or civil penalties, as provided by
2 law;

3 7. For such other and further relief as this Court deems just and proper.
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6 Dated: June 29, 2021

LAW OFFICES OF RICHARD KIM PC

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8 By: /s/ Richard Kim
9 RICHARD KIM
10 Attorneys for Plaintiff,
11 WAYNE ERIC FAN
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DEMAND FOR JURY TRIAL

Plaintiff further requests a trial by jury on all issue so triable.

Dated: June 29, 2021

LAW OFFICES OF RICHARD KIM PC

By: /s/ Richard Kim
RICHARD KIM
Attorneys for Plaintiff,
WAYNE ERIC FAN