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Superior Court of California,
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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **IN AND FOR THE COUNTY OF SAN DIEGO**
8 **CENTRAL DIVISION HALL OF JUSTICE**

8 SEIBERT CONSULTING GROUP,
LLC, a California Limited Liability
9 Company; PAUL SEIBERT, an
individual ,

10 Plaintiff,

11 v.

12 MARX COMPANIES, LLC, a New
13 Jersey domestic limited liability
company; FRANK
14 RECRUITEMENT GROUP, INC a
Delaware corporation; and DOES 1-
15 25, inclusive

16 Defendants.

Case No.: 37-2023-00014016-CU-OE-CTL
Judge: Hon. Timothy Taylor
Dept.: C-72
Filed: 04/05/2023

**PLAINTIFF’S FIRST AMENDED COMPLAINT
FOR DAMAGES:**

1. WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS [Lab. Code § 226.8];
2. VIOLATION OF LABOR CODE 232.5 [Lab. Code §232.5];
3. FAILURE TO PAY ALL WAGES EARNED [Cal. Lab. Code §221];
4. WAGE WAITING TIME PENALTY [Cal. Lab. Code §201-203, 206];
5. FAILURE TO PAY WAGES AT TERMINATION OF EMPLOYMENT [Cal. Lab. Code §201-203];
6. FAILURE TO PAY MINIMUM WAGES [Cal. Lab. Code §§ 1194, 1197, 1197.1, Wage Order 5];
7. FAILURE TO PAY OVERTIME WAGES [Cal. Lab. Code §§ 510, 558 and Wage Order 5];
8. FAILURE TO REIMBURSE BUSINESS EXPENSES [[Cal. Lab. Code § 2802];
9. FAILURE TO PROVIDE MEAL PERIODS [Cal. Lab. Code §§ 226.7, 512, and Wage Order 5];
10. FAILURE TO PROVIDE REST PERIODS [Cal. Lab. Code § 226.7 and Wage Order 5];
11. FAILURE TO FURNISH TIMELY AND ACCURATE ITEMIZED WAGE STATEMENTS [Cal. Lab. Code § 226 and Wage Order 5];
12. UNFAIR BUSINESS PRACTICES [Bus. & Prof. Code §§ 17200 et seq];
13. BREACH OF CONTRACT [Common Law];
14. RETALIATION IN VIOLATION OF LABOR

Exhibit "A" - Page 1

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CODE §1102.5
15. BREACH OF FIDUCIARY DUTIES.
DEMAND FOR JURY TRIAL

“Nay, take my life and all; pardon not that:
You take my house when you do take the prop
That doth sustain my house; you take my life
When you do take the means whereby I live.”
-**Merchant of Venice** Act IV Scene I.

COMES NOW THE PLAINTIFF, alleging against Defendants as follows:

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

PARTIES AND JURISDICTION

1. Plaintiff, SEIBERT CONSULTING GROUP, LLC, (hereinafter “Plaintiff” or “SEIBERT CONSULTING” or “SCG,”) is a California Limited Liability Company, and at all relevant times was, a formed and organized under the laws of the State of California with its principal place of business located at 2604-B El Camino Real, Carlsbad, CA 92008.

2. Plaintiff, PAUL SEIBERT, (hereinafter “Plaintiff” or “Mr. SEIBERT,”) is a natural person who is, and at all relevant times was, a resident of the United States and a domiciliary of the State of California, County of San Diego.

3. Plaintiff is informed and believes and thereon alleges that Defendant, MARX COMPANIES, LLC (hereinafter “MARX”) is a New Jersey domestic limited liability company with its principal place of business understood to be located at 111 W John St Ste 144, Seattle, WA, 98119-4208,, and is and was at all times relevant hereto a doing business in the County of San Diego, State of California, where it was acting as the joint employer of Plaintiffs during the times relevant to the acts and causes of action pled in this complaint.

4. Plaintiff is informed and believes and thereon alleges that Defendant, FRANK RECRUITMENT GROUP, INC (hereinafter “FRANK RECRUITMENT” or “FRG”) is a Delaware corporation with its principal place of business located at 110 Williams Street, 21st

1 Floor, New York, NY 10038, and is and was at all times relevant hereto a doing business in the
2 County of San Diego, State of California, where it was acting as the joint employer of Plaintiffs
3 during the times relevant to the acts and causes of action pled in this complaint.

4 5. Plaintiff is ignorant to the true names and capacities of the Defendants sued herein
5 as DOES 1 through 25 and therefore sues these defendants by such fictitious names. Plaintiff will
6 amend this Complaint to allege the true names and capacities when they are ascertained.

7 6. Plaintiff is informed and believes and thereon alleges that each fictitiously named
8 Defendant is responsible in some manner for the occurrences herein alleged, and Plaintiff's
9 injuries and damages as herein alleged are directly, proximately and/or legally caused by
10 Defendant.

11 7. Plaintiff is informed and believes and thereon alleges that the aforementioned
12 DOES are somehow responsible for the acts alleged herein as the agents, employers,
13 representatives or employees of other named Defendant, and in doing the acts herein alleged were
14 acting within the scope of their agency, employment or representative capacity of said named
15 Defendant.

16 8. At all times relevant, each and every Defendant was an agent and/or employee of
17 each and every other Defendant. In doing the things alleged in the causes of action stated herein,
18 each and every Defendant was acting within the course and scope of this agency or employment,
19 and was acting with the consent, permission, and authorization of each remaining Defendant. All
20 actions of each Defendant as alleged herein were ratified and approved by every other Defendant
21 or their officers, directors, supervisors, or managers.

22 9. The principal tortious acts and omissions alleged herein were performed by
23 management level employees of Defendant. Defendant allowed and/or condoned a continuing
24 pattern of discriminatory practices.

25 10. California courts may exercise personal jurisdiction on any basis consistent with
26 the Constitution of California and the United States. The primary focus of the personal jurisdiction
27 inquiry is the defendant's relationship with the forum state. *Bristol-Meyers Squibb Co. v. Sup. Ct.*

1 of Calif., *San Francisco County* (2017) 137 S. Ct. 1773, 1779.) A California court’s ability to
2 exercise personal jurisdiction over a defendant based on contacts with a state depends on the
3 nature and quality of defendant’s “contacts” with the state. U.S. Supreme Court decisions
4 recognize two types of jurisdiction: (1) general jurisdiction and (2) specific (or case-linked or
5 limited). *Bristol-Meyers Squibb Co., supra* at pp.1779-1780.

6 11. This Court’s jurisdiction over Defendant pursuant is proper pursuant to CCP
7 §410.10, which states that a Court of this state may exercise jurisdiction on any basis not
8 inconsistent with the Constitution of this state or the United States. This provision gives
9 California courts the broadest personal jurisdiction in civil actions that is constitutionally
10 permissible. *Sibley v Superior Court* (1976) 16 C3d 442, 445. It allows courts to exercise
11 personal jurisdiction to the full extent permissible under the United States Constitution. *Daimler*
12 *AG v. Bauman* (2014) 571 US 20, 134. Specifically, See Judicial Council Comments to CCP
13 §410.10 which sets forth that the bases for jurisdiction over defendant corporation is proper when
14 the corporation is doing business in California, has sufficient and continuous minimum contacts
15 and has appointed an agent for in-state service of process, all of which bases pertain to Defendant.

16 **SPECIFIC FACTUAL ALLEGATIONS**

17 12. Plaintiff re-alleges and incorporates by reference each and every allegation
18 contained in the preceding paragraphs as though fully set forth herein.

19 **Misclassification of Employees as Independent Contractors**

20 13. Recognizing the serious problem of misclassification and the harms it inflicts on
21 workers, law-abiding businesses, taxpayers, and society as a whole, the California Legislature
22 enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5, 2019-2020
23 Reg. Sess. (“A.B. 5”).) A.B. 5 codified and extended the California Supreme Court’s unanimous
24 decision in *Dynamex Operations W., Inc. v. Superior Court* (2018) 4 Cal.4th 903 (“Dynamex”).
25 California law is clear: for the full range of protections afforded by the Industrial Welfare
26 Commission (“IWC”) wage orders, the Labor Code, and the Unemployment Insurance Code,
27 workers are generally presumed to be employees unless the hiring entity can overcome this
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1 presumption by establishing each of the three factors in the strict “ABC” test: (A) the worker is
2 free from the control and direction of the hiring entity in connection with the performance of the
3 work, both under the contract for the performance of the work and in fact; (B) the worker performs
4 work that is outside the usual course of the hiring entity’s business; and (C) the worker is
5 customarily engaged in an independently established trade, occupation or business of the same
6 nature as the work performed. (Lab. Code § 2750.3(a)(1); *Dynamex, supra*, 4 Cal.5th at 957.).

7 14. Because the hiring entity must establish each of the three factors in the ABC test in
8 order to lawfully classify a worker as an independent contractor, the hiring entity’s failure to
9 establish any one part of the ABC test results in the classification of the worker as an employee
10 rather than an independent contractor. (*Dynamex, supra*, 4 Cal. 5th at 963.)

11 15. Plaintiffs, PAUL SEIBERT (hereinafter “SEIBERT”) and SEIBERT
12 CONSULTING GROUP, LLC (hereinafter “SCG”) entered into an agreement with Defendant,
13 FRANK RECRUITMENT GROUP (hereinafter “FRG”), a global leader in resourcing for IT
14 professionals to provide services to one of FRG’s clients, MARX COMPANIES, LLC (hereinafter
15 “MARX”). SCG and SEIBERT retained to provide NetSuite build-out for Marx Foods, a
16 subsidiary of MARX. SCG would perform work for MARX pursuant to its contract with FRG but
17 would be misclassified as an independent contractor, would not be paid for work performed, and
18 would be denied other benefits and protections accorded to employees under California law.
19 When demand was made to be compensated for wages earned, SCG’s engagement was summarily
20 terminated by its joint employers, FRG and MARX.

21 16. On or about October 31, 2019, PAUL SEIBERT (“SEIBERT”) and SEIBERT
22 CONSULTING GROUP, LLC (hereinafter “SCG”) entered into a contract with Defendant,
23 FRANK RECRUITMENT GROUP (FRG), whereby FRG marketed the supplier, SCG’s services
24 to clients, such as Defendant, MARX COMPANIES, LLC. SCG is a leading NetSuite ERP &
25 SuiteCommerce Agency. The SCG NetSuite consulting team provides clients with a complete
26 team of NetSuite and Shopify experts to install, customize, optimize, and integrate all aspects of
27 the client’s online retail operations. The SCG Team’s award-winning, certified NetSuite and
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1 Shopify experts have assisted many businesses in unlocking the full flexibility, power and ROI of
2 NetSuite and Shopify. When a client of FRG elected to have SCG serve as a supplier of contracted
3 services, SCG would perform services for the benefit of Defendant, FRG's Client with payment
4 coming from FRG.

5 17. FRG is an international specialist technology staffing business based in Newcastle
6 upon Tyne, England. The company consists of nine recruitment brands, focusing primarily on
7 products within the enterprise resource planning, client relationship management, big data and
8 cloud computing segments. It was established in 2006 under the Nigel Frank International brand.¹

9 18. FRG is a niche technology recruitment firm. FRG entered into a contract with Marx
10 to recruit a supplier to provide MARX with NetSuite related professional technology services.
11 FRG identified SCG as such a provider, referred SCG to MARX, who selected SCG for the
12 project. SCG agreed to work for MARX, and SCG and FRG entered into a contract for SCG to
13 provide NetSuite related technology services to MARX. FRG's only obligation to SCG was to pay
14 SCG the contractually agreed upon rate at the contractually agreed upon time after MARX
15 approved SCG's weekly timesheets.

16 19. One of FRG's clients, MARX COMPANIES, LLC (MARX), elected to have SCG
17 install NetSuite applications on a subsidiary, MARX Foods' interactive website. MARX
18 COMPANIES is a Family-Owned & Operated Group Dedicated to Sourcing the Highest Quality
19 Specialty Meats & Seafood from Around the Globe.²

20 20. MARX is a distributor for high-quality meat. MARXFoods.com is the online
21 consumer-focused division of MARX. In 2019, MARX recognized a need for a website
22 redevelopment to stay competitive in online sales. MARX sought assistance with the
23 development, design, and implementation of a new eCommerce website and connecting new web
24 features with search engine optimization through online advertising. To that end, MARX engaged
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27 ¹ https://en.wikipedia.org/wiki/Frank_Recruitment_Group

28 ² <https://www.marxcompanies.com/>

1 Anderson Frank aka FRG to assist in locating a NetSuite³ consultant to assist with backend coding
2 and technical support for MARX' website redevelopment project.

3 21. The scope of the work for the engagement entailed the integration of MARX'
4 eCommerce (i.e. shopping data) stored in NetSuite into Google's advertising system (the
5 "Project"). The stated purpose of the Project was to facilitate additional sales through Google's
6 system that auto-generates an advertising campaign on Google's search engine platform.

7 22. MARX reviewed application materials and estimates submitted by a number of
8 candidates, including Plaintiff SCG. MARX was drawn to SCG's representation in its application
9 that it had "50+" years of skill and experience in NetSuite ERP and the fact that SCG contracted
10 its services at \$168.96 per hour. Based on an assessment of SCG's technical skill and experience,
11 and the proposed cost estimate, MARX contracted with Anderson Frank aka FRG to engage SCG
12 for the Project. MARX and SCG held a kick-off meeting in fall 2019 and SCG started work on the
13 Project in February 2020.

14 23. Spring of 2020 coincided with the implementation of COVID-19 lockdowns across
15 the United States. Consumers changed their purchasing habits for products as a result of the
16 Covid-19 pandemic, with an increase in online purchasing of food products. There was an
17 unprecedented and immensely profitable demand for online food ordering, in particular for the
18 meat products distributed by MARX.

19 24. On or about February 2, 2020, SCG complete the installation of NetSuite Product
20 Feeds SuiteCommerce Extension Bundle (SCG product feed-250407), which was completed in
21 both the MARX Sandbox and production accounts on this date.

22 25. On or about 19 February 2020, SCG completed the installation of NetSuite Product
23 feeds Commerce extension bundle in MARX Foods Sandbox and Production website.

24 26. On or about March 2, 2020, SCG Team created support ticket ID 3721371 with
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26 ³ NetSuite Inc. is an American cloud-based enterprise software company that provides products and services
27 tailored for small and medium-sized businesses (SMBs) including accounting and financial management,
28 customer relationship management, inventory management, human capital management, payroll,
procurement, project management and e-commerce software. <https://en.wikipedia.org/wiki/NetSuite>

1 NetSuite Technical Support as the Google feed file did not generate desired output. As the
2 NetSuite ERP Consultant on the MARX project, Yogi Singh was tasked with assigning the
3 Official Google Shopping Category for all of the items in the MARX NetSuite inventory records
4 within their NetSuite ERP system as per the item's category. This effort required modifications on
5 over 7,000 Item Records within the MARX Foods NetSuite ERP system.

6 27. On or about March 5, 2020, these modifications to over 8,000 item records in the
7 MARX Foods NetSuite system commenced.

8 28. On or about March 5, 2020, through March 24, 2020, Netsuite Support Team
9 started working on the problem. Several issues in the quality of data were identified. The Support
10 Team had to assign Google category for 7,000 items on the MARX Foods website.

11 29. On or about March 16, 2022, SCG identified problems with MARX' food data
12 quality, which was causing related performance issues, as stated by NetSuite Technical Support.
13 SCG communicated this to MARX in SCG's meeting with Justin, Sarah and the MARX team,
14 noting that the issue is due in large part poor to the non-standard way in which data was entered
15 into the NetSuite System since 2007 by MARX. The MARX Foods team were using custom fields
16 for standard functionality such as item availability and item price, as well as several custom Item
17 Record templates, many of which are not operable, and created an operational glitch.

18 30. On or about March 17, 2020, SCG team worked on implementing changes to the
19 MARX Foods website and linked the inventory status to the item on front of the MARX food
20 website. This Google feed file was determined to be available for future use. This information and
21 procedure were presented to Justin, Sarah and Liv on the MARX Foods team during SCG's
22 "Google Feed File Review" Meeting. SCG displayed the work in progress, including the support
23 tickets from both Google and NetSuite tracking the work, to the MARX Foods team at that time
24 and in subsequent "Google Feed File Review" meetings.

25 31. On or about March 18, 2020, NetSuite Support Team created reports as per Google
26 standards which were supported by Google Merchant account. The SCG team created a number
27 of NetSuite Saved Searches within the MARX Foods NetSuite system that were in compliance and
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1 in accordance with the Official Google Feed File Specification. The SCG team then performed
2 Customizations to the NetSuite ERP Saved Search so the search within the MARX Foods
3 Sandbox and Production accounts can be used in the future to produce updated Google Merchant
4 Feed Files without the need for manual intervention. These NetSuite Saved Searches, and the
5 resulting Google Feed Files, were saved within the Marx Foods NetSuite system, in both the
6 Sandbox and Production accounts.

7 32. On or about March 19, 2020, the SCG team began generating the Google feed file
8 in batches, for the purposes of testing each batch of test items.

9 33. On or about March 20, 2020, the reports assigned to automatic Google file
10 generation in NetSuite including the Google feed file generation every hour. The desired Google
11 feed file was generated. Sarah at MARX Foods stated: "I know that fundamentally, our NetSuite
12 account isn't set up as intended by NetSuite." Liv at MARX Foods also acknowledged this fact in
13 a reply email sent on April 9, 2020, wherein she states, "As Sarah mentioned, our account was set
14 up using a lot of workarounds."

15 34. SCG immediately began to undertake tasks to attempt to resolve the problems with
16 the following issues being identified: (a) Data discrepancy with respect to data completeness,
17 cleanliness and organization within Google Merchant product account; (b) Incorrect format
18 provided for Google Merchant import; and (c) Missing items from data included: Availability,
19 Brand, MPN, Incorrect image links and shipping.

20 35. SCG first two test batches of imports to Google Merchant Center were successful,
21 at which time SCG had successfully imported, and Google had processed as Live on Google
22 Merchant Center over nearly 400 items.

23 36. On or about March 23, 2020 SCG demonstrated the products Live on Google
24 Merchant Center in a Zoom screen share call with Justin and Sarah from the MARX Foods team at
25 SCG's "Google Feed File Review Meeting." Subsequent to having completed the upload of the
26 first two test batches successfully, with items Live on Google Merchant Centeron, SCG then
27 imported an omnibus MARX Foods Google Feed file with the same syntax.

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Exhibit "A" - Page 9

1 37. MARX Foods did not provide SCG with several key values needed for a successful
2 Google feed file. SCG spent several hours correcting data, including the following tasks, which
3 were undertaken: (a) SCG wrote HTML and rendered dynamic data for the product detail pages to
4 pass Google crawler test; and (b) SCG successfully uploaded 1st batch of 107 items and 2nd batch
5 of 207 items into Google Merchant account.

6 38. On or about March 25, 2020, SCG’s engineering team performed several minor
7 SuiteCommerce Advanced Web Store template changes (SCG Ticket ID MXF-21) at the
8 suggestion of Google Technical Support, for the purposes of displaying items on the website so
9 that the correct, updated, and real time value for item availability, both “in stock” and “out of
10 stock” would appear. SCG also conducted data review on each item and cleared all coding from
11 description areas, 300+ Items. Per Google documentation requirements, specific data is needed in
12 order for data feeds to work. Some of the items missing included but are not limited to:
13 availability; brand; MPN; incorrect image links; and shipping.

14 39. Per the above linked requirements, what MARX Foods gave SCG was missing
15 several key values needed to implement a successful feed file. Considerable additional time was
16 allocated to correcting the data within the feed to include all Google required categories. SCG
17 also had to write HTML and render dynamic data for the Product Detail Pages in order to pass the
18 Google crawler test.⁴

19 40. The first batch of 107 items, and the 2nd batch of 207 items, were successfully
20 uploaded into the Google Merchants account. No errors received. These changes were presented to
21 the MARX Foods team at the SCG “Item Availability PDP Issue Review” meeting with Justin,
22 Sarah and Liv from the MARX Foods team on or about March 26, 2020.

23 41. On or about March 27, 2022, SCG received notification from Google Merchant
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25 ⁴ “Crawler” (sometimes also called a “robot” or “spider”) is a generic term for any program that is
26 used to automatically discover and scan websites by following links from one web page to another.
27 Google's main crawler is called Googlebot. Crawlability is the ability of a search engine to access a
28 web page and crawl its content. Indexability is the ability of a search engine to analyze the content
it crawls to add it to its index. A page can be crawlable but not indexable.

1 Center Support via email that the MARX Foods’ feed file was encountering an issue with the
2 Google feed file generation in the MARX Foods’ Sandbox account. The omnibus file was the final
3 Google Shopping Feed File that was imported and was in queue processing with Google Merchant
4 Center on March 27, 2020. SCG received an initial processing timeframe from Google Merchant
5 Center of 3-5 days. At that time Google Merchant Center issued an Official Notice that their
6 processing times would be delayed due to the COVID-19 outbreak. Google did not offer a
7 processing timeframe. This notice was sent to the MARX Foods’ project team and the FRG team
8 have also been provided this notice.

9 42. Justin from MARX Foods requested that SCG focus on publishing 600 Meat
10 products first. In order to meet this demand, SCG had to remove already published data. Out of
11 600 Meat products, only 200 items could be uploaded due to data inconsistencies in what was
12 provided by MARX Foods to SCG. SCG developed a simple custom-built application to quickly
13 process the new feed file within seconds by fixing errors in the required format.

14 43. After implementing all the corrections in the data provided by MARX via SCG’s
15 rendering app, SCG began the upload of the 956-item data feed. The first error appeared during
16 this upload phase: while uploading 956 items. The error was identified as ‘invalid or missing
17 required attribute id error.’

18 44. On third attempt of uploading 956 items, Google Merchant started kicking back the
19 data feed with the same error message. This was reported to the Google team. The Google team
20 responded after raising a trouble ticket for further review. Google then sent an email response
21 explaining the delay as being due to COVID-19 pandemic.

22 45. On or about April 8, 2020, Google informed the SCG team that their phone and
23 chat support was currently unavailable due to COVID-19.

24 46. The SCG team opened Google Merchant Center Support case ID 1-1047000030167
25 on April 30, 2020, with Google Support Representative Aanchal. Google Support rep., Aanchal
26 reported that SCG’s feed file was correct, and we should expect it to be consumed correctly, as
27 had the test items SCG provided written notice to FRG and MARX, advising of the reason for the
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1 problems and delays being encountered. Google support rep suggested: “This delay is mainly due
2 to the limited support option available for preventive measure in light of COVID-19.”

3 47. SCG completed over 143 hours on NetSuite ERP installation, configuration,
4 development and consulting work, the activities timeline documentation, including:

Invoice #	Date	Hours
238671	22-Mar-20	80.5
243901	29-Mar-20	22.5
247463	5-Apr-20	26
249251	12-Apr-20	9.5
	19-Apr-20	5
TOTAL		143.5

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11 48. The SCG Team provided custom software, consulting services, and Google
12 technical support and was not compensated for this time, violating California wage and labor
13 codes. A disagreement developed between SCG and MARX, and MARX ceased approving SCG’s
14 timesheets.

15 49. MARX failed to approve or, alternatively, reject the time reports and submitted
16 hours as stipulated in the RFG employment contract. Interestingly, MARX selectively approved
17 the smaller invoices out of chronological and issuance sequence, thereby violating the terms and
18 conditions of the FRG employment contract. Also concerning was the fact that MARX illegally
19 seized the custom software created by SCG for their NetSuite implementation without
20 compensating SCG for their work. Plaintiffs, SEIBERT and SCG’s employment was terminated
21 by Defendants on or about April 30, 2020, following efforts to be seek payment for work
22 performed.

23 50. On or about May 2020, MARX contacted Anderson Frank aka FRG about SCG’s
24 alleged failure to complete the Project. Anderson Frank aka FRG contracted for another consultant
25 who repaired the integration in 5.4 hours over three (3) business days.

26 **Joint Employers**

27 51. One reason the IWC defined “employer” in terms of “exercising control” was to
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1 reach situations in which multiple entities control different aspects of the employment
2 relationship. Supervision of the work, in the specific sense of exercising control over how services
3 are performed, is properly viewed as one of the “working conditions” mentioned in the wage
4 order. *Martinez v. Combs, supra*, 49 C4th at 76, 109 CR3d at 546 (rejecting claim that defendants
5 were joint employers).

6 52. A joint employer relationship exists when one entity (such as a temporary
7 employment agency) hires and pays a worker, and another entity supervises the work. *Martinez v.*
8 *Combs, supra*, 49 C4th at 76.

9 53. Corporate owners, officers, directors, managing agents personally liable for unpaid
10 wages: Labor Code § 558.1 provides that an employer or “other person acting on behalf of an
11 employer” who violates certain California wage and hour laws “may be held liable as the
12 employer for such violation.” These violations include unpaid minimum wage, unpaid overtime,
13 denied meal or rest breaks, untimely separation pay, inadequate wage statements, and failing to
14 reimburse employee business expenses. Lab.C. § 558.1(a) (emphasis added); see *Voris v. Lampert*
15 (2019) 7 C5th 1141, 1161-1162.

16 **Continuing Violations Doctrine**

17 54. Under the continuing violation doctrine, a plaintiff may recover for unlawful acts
18 occurring outside the limitations period if they continued into that period. The continuing violation
19 doctrine requires proof that (1) the defendant’s actions inside and outside the limitations period are
20 sufficiently similar in kind; (2) those actions occurred with sufficient frequency; and (3) those
21 actions have not acquired a degree of permanence.” *Wassmann v. South Orange County*
22 *Community College Dist.* (2018) 24 Cal.App.5th 825, 850-851.

23 55. A continuing violation may be established by demonstrating ‘a company wide
24 policy or practice’ or ‘a series of related acts against a single individual.’ ‘The continuing violation
25 theory generally has been applied in the context of a continuing policy and practice of
26 discrimination on a company-wide basis; a plaintiff who shows that a policy and practice operated
27 at least in part within the limitation period satisfies the filing requirements. “[A] systematic policy
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1 of discrimination is actionable even if some or all of the events evidencing its inception occurred
2 prior to the limitations period. The reason is that the continuing system of discrimination operates
3 against the employee and violates his or her rights up to a point in time that falls within the
4 applicable limitations period. Such continuing violations are most likely to occur in the matter of
5 placements or promotions.” ’ The plaintiff must demonstrate that at least one act occurred within
6 the filing period and that ‘the harassment is “more than the occurrence of isolated or sporadic acts
7 of intentional discrimination.” . . . The relevant distinction is between the occurrence of isolated,
8 intermittent acts of discrimination and a persistent, on-going pattern.’ ” *Morgan v. Regents of*
9 *University of California*, 88Cal.App.4th 52, at p. 64, internal citations omitted.

10 56. Plaintiffs allege that Defendants’ actions, as will be more particularly alleged,
11 inside and outside the limitations period are sufficiently similar in kind to constitute a continuing
12 violation with respect to the individual and systematic acts of misconduct alleged, including but
13 not exclusively, willful misclassification and failure to pay wages.

14 57. Defendant’s actions, as will be more particularly alleged herein, inside and outside
15 the limitations period occurred with sufficient frequency such that they would constitute a
16 continuous violation.

17 58. Defendant’s actions, as will be more particularly alleged herein, both inside and
18 outside the limitations period have not acquired a degree of permanence, and accordingly
19 constitute one continuous violation.

20 59. **Economic damages:** As a consequence of defendants’ conduct, plaintiff has
21 suffered and will suffer harm, including lost past and future income and employment benefits,
22 damage to his career, and lost wages, overtime, unpaid expenses, and penalties, as well as interest
23 on unpaid wages at the legal rate from and after each payday on which those wages should have
24 been paid, in a sum to be proven at trial.

25 60. **Non-economic damages:** As a consequence of defendants’ conduct, plaintiff has
26 suffered and will suffer psychological and emotional distress, humiliation, and mental and
27 physical pain and anguish, in a sum to be proven at trial.

1 61. **Punitive damages:** Defendants’ conduct constitutes oppression, fraud, and/or
 2 malice under California Civil Code section 3294 and, thus, entitles plaintiff to an award of
 3 exemplary and/or punitive damages.

4 a. **Malice:** Defendants’ conduct was committed with malice within the meaning of
 5 California Civil Code section 3294, including that (a) defendants acted with intent to cause injury
 6 to plaintiff and/or acted with reckless disregard for Plaintiffs’ rights, including by terminating
 7 plaintiff and/or taking other adverse job actions against plaintiff for seeking to exercise Plaintiffs’
 8 rights protected under the Labor Code, and/or (b) Defendants’ conduct was despicable and
 9 committed in willful and conscious disregard of Plaintiffs’ rights, including Plaintiffs’ rights as
 10 protected under the Labor Code.

11 b. **Oppression:** In addition, and/or alternatively, Defendants’ conduct was committed
 12 with oppression within the meaning of California Civil Code section 3294, including that
 13 defendants’ actions against Plaintiff for seeking to exercise rights afforded under the Labor Code
 14 were “despicable” and subjected plaintiff to cruel and unjust hardship, in knowing disregard of
 15 plaintiff’s rights provided under California law.

16 c. **Fraud:** In addition, and/or alternatively, Defendants’ conduct, as alleged, was
 17 fraudulent within the meaning of California Civil Code section 3294, including that Defendant
 18 asserted false (pretextual) grounds for terminating Plaintiffs’ employment and/or other adverse job
 19 actions, thereby to cause Plaintiffs hardship and deprive Plaintiffs of legal rights.

20 62. **Attorneys’ fees:** Plaintiffs have incurred and continues to incur legal expenses and
 21 Attorneys’ fees as seeks attorney’s fees recoverable under California law.

22 **FIRST CAUSE OF ACTION**
 23 **WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT**
 24 **CONTRACTORS**
 25 **[Lab. Code § 226.8]**
 26 **(Against All Defendants)**

27 63. The allegations of each of the preceding paragraphs are realleged and incorporated
 28 herein by reference.

1 85. Where an employer willfully fails to pay, without abatement or reduction, in
2 accordance with §§201 through 203 of the California Labor Code, all wages due to an employee
3 who has been discharged or has quit, at the time of termination or within 72 hours of resignation,
4 California Labor Code §203 entitles the affected employee to receive from the employer a penalty
5 of up to 30 days wages calculated from the due date of the wages until the time an action to
6 recover the wages is commenced.

7 86. As alleged herein, Defendants failed to pay earned wages (including but not limited
8 to overtime compensation, premium pay for missed meal and rest breaks and uncompensated time)
9 to Plaintiffs and the other aggrieved employees who are former employees at the time they became
10 due and payable, and have thus violated §§ 201, 202 and 206 of the California Labor Code.

11 87. Defendants’ failure to pay wages as alleged herein was willful in that Defendants
12 knew that the aggrieved employees were not receiving all of their earned compensation.

13 88. Plaintiffs were aggrieved employees and were employed by Defendants, and the
14 violations alleged herein were committed against Plaintiffs and Plaintiffs’ co-workers.

15 89. At the time of each violation, Defendants employed one or more employees.

16 90. As a result of the aforesaid wrongful and illegal conduct of Defendant, Plaintiff are
17 entitled to civil penalties in an amount to be determined at trial, prejudgment interest, costs and
18 attorneys’ fees.

19 **FIFTH CAUSE OF ACTION**
20 **FAILURE TO PAY WAGES AT**
21 **TERMINATION OF EMPLOYMENT**
[Cal. Lab. Code §201-203]
(Against All Defendants)

22 91. The allegations of each of the preceding paragraphs are realleged and incorporated
23 herein by reference.

24 92. California Labor Code §§ 201 and 202 require Defendants to pay all compensation
25 due and owing to former employees immediately upon discharge or within seventy-two (72) hours
26 of their termination of employment. California Labor Code § 203 provides that if an employer
27 willfully fails to pay compensation promptly upon discharge or resignation, as required by
28

1 Sections 201 and 202, then the employer is liable for such “waiting time” penalties in the form of
2 continued compensation up to thirty workdays.

3 93. Defendants willfully failed to pay Plaintiffs compensation due upon termination as
4 required by California Labor Code §§ 201 and 202. As a result, Defendants are liable to Plaintiffs
5 for waiting time penalties provided under California Labor Code § 203, plus reasonable attorneys’
6 fees and costs of suit.

7 **SIXTH CAUSE OF ACTION**
8 **FAILURE TO PAY MINIMUM WAGES**
9 **[Cal. Lab. Code §§ 1194, 1197, 1197.1, Wage Order 5]**
10 **(Against All Defendants)**

11 94. The allegations of each of the preceding paragraphs are realleged and incorporated
12 herein by reference as if alleged in their entirety.

13 95. California Labor Code §§ 1194, 1197, 1197.1 and Wage Order 5 entitle non-exempt
14 employees to an amount equal to or greater than the minimum wage for all hours worked. All hours
15 must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a
16 minimum wage obligation.

17 96. Defendants did not compensate Plaintiffs for all hours worked.

18 97. California’s minimum wage on January 1, 2019, for employers with 25 or fewer
19 employees was \$11.00/hr. and for employers with 26 or more employees it was \$12.00/hr. On
20 January 1, 2020, the minimum wage for employers with 25 or fewer employees was \$12.00/hr.
21 and for employers with 26 or more employees it was \$13.00/hr.

22 98. As a result of these violations, Defendants are liable for unpaid minimum wages,
23 liquidated damages, and attorneys’ fees and costs.

24 **SEVENTH CAUSE OF ACTION**
25 **FAILURE TO PAY OVERTIME WAGES**
26 **[Cal. Lab. Code §§ 510, 558 and Wage Order 4-2001]**
27 **(Against All Defendants)**

28 99. The allegations of each of the preceding paragraphs are realleged and incorporated
herein by reference as if alleged in their entirety.

1 100. Plaintiffs are informed, believe and thereon allege that at all times herein
2 mentioned, Defendants, employed workers in the capacity of programmers and software
3 engineers.

4 101. At all times herein mentioned, the employment of the aforementioned workers
5 employed by Defendants, were subject to the provisions of the California Labor Code and to Wage
6 Orders.

7 102. Labor Code section 558 provides for a civil penalty to be assessed against any
8 employer or other person acting on behalf of an employer who fails to compensate employees at
9 the statutory overtime rate for any work in excess of eight hours in one day or any work in excess
10 of 40 hours in any workweek or who fails to compensate employees at the statutory double time
11 rates for any work in excess of twelve hours in one day or any work in excess of 8 hours on the
12 seventh day of a workweek.

13 103. At all times material hereto, Wage Order Wage Order No. 4-2001 required
14 Defendants to pay the aforementioned employees overtime compensation at prescribed hourly
15 overtime rates for all hours worked in excess of the regular hours of work specified by law.

16 104. At all times relevant herein, Defendants routinely and systematically failed to
17 properly record accurate time records for each employee showing when each employee began and
18 ended each work period and routinely and systematically paid workers less than their full hours.
19 By failing to properly record hours and paying a fixed sum per day regardless of hours worked,
20 Defendants routinely and systematically failed to pay its employees' wages for all of their
21 overtime hours as required by the laws of the State of California.

22 105. Plaintiffs are informed and believe and thereon allege that during the period
23 December 2019 through March 2020, Defendants' employees earned and were entitled to
24 statutorily required overtime wages.

25 106. Labor Code sections 510, 1198 and Wage Order No. 4-2001 make it unlawful
26 under the laws of the State of California to pay employees for overtime work at less than the
27 applicable overtime rate.

28

Exhibit "A" - Page 21

1 107. Plaintiff also seeks to recovery reasonable attorney’s fees available to prevailing
2 party under either Labor Code Section 218.5 or Labor Code Section 1194(a).

3 **EIGHTH CAUSE OF ACTION**
4 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
5 **[Cal. Lab. Code § 2802]**
6 **(Against All Defendants)**

7 108. The allegations of each of the preceding paragraphs are realleged and incorporated
8 herein by reference as if alleged in their entirety.

9 109. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee
10 for all necessary expenditures or losses incurred by the employee in direct consequence of the
11 discharge of his or her duties.”

12 110. Plaintiffs incurred reasonable and necessary expenses in the course of completing
13 their job duties for Defendants, which were not reimbursed by Defendants. These expenses
14 included but are not limited to those performed in conjunction with discharging Plaintiffs’ duties.

15 111. Plaintiffs are entitled to reimbursement for these necessary expenditures, plus
16 interest and attorneys’ fees and costs, under Labor Code § 2802. Plaintiff also seeks to recovery
17 reasonable attorney’s fees available to prevailing party under either Labor Code Section 218.5 or
18 Labor Code Section 1194(a).

19 **NINTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE MEAL PERIODS**
21 **[Cal. Lab. Code §§ 226.7, 512, and Wage Order 4-2001]**
22 **(Against All Defendants)**

23 112. The allegations of each of the preceding paragraphs are realleged and incorporated
24 herein by reference as if alleged in their entirety.

25 113. Sprig failed to provide meal periods as required by Labor Code §§ 226.7, 512 and
26 Wage Order 4-2001.

27 114. Plaintiffs worked in excess of five (5) hours a day without being provided at least
28 half hour meal periods in which they were relieved of their duties, as required by Labor Code §§
226.7 and 512 and Wage Order 4-2001. See *Brinker Restaurant Corp., et al. v. Superior Court*

1 (2012) 53 Cal. 4th 1004, 1040-41 (“The employer satisfies this obligation if it relieves its
2 employees of all duty, relinquishes control over their activities and permits them a reasonable
3 opportunity to take an uninterrupted 30–minute period, and does not impede or discourage them
4 from doing so . . . [A] first meal period [is required] no later than the end of an employee's fifth
5 hour of work, and a second meal period [is required] no later than the end of an employee's 10th
6 hour of work.”).

7 115. Because Defendants failed to provide proper meal periods, it is liable to Plaintiffs
8 for one hour of additional pay at the regular rate of compensation for each workday that the proper
9 meal periods were not provided, pursuant to Labor Code §§ 226.7 and 512 and Wage Order 4-
10 2001, as well as interest thereon, plus reasonable attorneys’ fees and costs of suit pursuant to Civil
11 Procedure Code § 1021.5. Plaintiff also seeks to recovery reasonable attorney’s fees available to
12 prevailing party under either Labor Code Section 218.5 or Labor Code Section 1194(a).

13 **TENTH CAUSE OF ACTION**
14 **FAILURE TO PROVIDE REST PERIODS**
15 **[Cal. Lab. Code § 226.7 and Wage Order 4-2001]**
(Against All Defendants)

16 116. The allegations of each of the preceding paragraphs are realleged and incorporated
17 herein by reference as if alleged in their entirety.

18 117. Defendants failed to provide the rest periods that are required by Wage Order 4-
19 2001. See *Brinker*, 53 Cal. 4th 1004 at 1029 (“Employees are entitled to 10 minutes rest for shifts
20 from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to
21 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.”).

22 118. Because Defendants failed to provide proper rest periods, it is liable to Plaintiffs for
23 one hour of additional pay at the regular rate of compensation for each workday that the proper
24 rest periods were not provided, pursuant to Labor Code § 226.7 and Wage Order 5, as well as

25 119. Plaintiff also seeks to recovery reasonable attorney’s fees available to prevailing
26 party under either Labor Code Section 218.5 or Labor Code Section 1194(a).

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ELEVENTH CAUSE OF ACTION
FAILURE TO FURNISH TIMELY AND
ACCURATE ITEMIZED WAGE STATEMENTS
[Cal. Lab. Code § 226 and Wage Order 5]
(Against All Defendants)

120. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference as if alleged in their entirety.

121. In violation of Labor Code § 226(a), Defendants did not provide Plaintiffs with accurate itemized wage statements in writing showing: (1) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked by each respective individual; (2) number of hours worked; (3) gross wages earned; (4) net wages earned; (5) all deductions; (6) inclusive dates of the period for which the employee is paid; (7) the employee identification or social security number; and, (8) the name and address of the legal entity that is the employer.

122. Defendants knowingly and intentionally failed to comply with Labor Code § 226(a) on each and every wage statement provided to Plaintiffs.

123. As a result of Defendants’ failure to provide accurate itemized wages statements, Plaintiffs suffered actual damages and harm by being unable to determine their applicable hourly rate for each pay period, which prevented them from becoming aware of these violations and asserting their statutory protections under California law.

124. Plaintiff also seeks to recovery reasonable attorney’s fees available to prevailing party under either Labor Code Section 218.5 or Labor Code Section 1194(a).

TWELFTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
[Bus. & Prof. Code §§ 17200 et seq]
(Against All Defendants)

125. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference as if alleged in their entirety.

126. Business and Professions Code § 17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice. Business and Professions Code §

1 17204 allows “any person who has suffered injury in fact and has lost money or property” to
2 prosecute a civil action for violation of the Unfair Competition Law.

3 127. Defendants committed unlawful, unfair, and/or fraudulent business acts and
4 practices as defined by Business and Professions Code § 17200 by misclassifying Plaintiffs,
5 failing to pay minimum wage for all hours worked, failing to pay overtime wages, failing to pay
6 wages for missed meal and rest periods, and failing to reimburse business expenses.

7 128. The above-described unlawful actions of Defendants constitute false, unfair,
8 fraudulent and/or deceptive business practices, within the meaning of Business and Professions
9 Code § 17200, et seq.

10 129. As a result of its unlawful acts, Defendants reaped unfair benefits and illegal profits
11 at the expense of Plaintiffs. Sprig should be enjoined from this activity, caused to specifically
12 perform its obligations, and made to disgorge these ill-gotten gains and pay restitution to Plaintiffs
13 including, but not limited to, restitution of all unpaid wages, plus interest, as well as attorneys’
14 fees and costs.

15 **THIRTEENTH CAUSE OF ACTION**
16 **BREACH OF CONTRACT**
17 **[Common Law]**
18 **(Against All Defendants)**

19 130. The allegations of each of the preceding paragraphs are realleged and incorporated
20 herein by reference as if alleged in their entirety.

21 131. A contract is a voluntary and lawful agreement, by competent parties, for a good
22 consideration, to do or not to do a specified thing.” *Robinson v. Magee* (1858) 9 Cal. 81, 83.).

23 132. Plaintiffs entered into a valid and enforceable contract with Defendants for the
24 performance of software engineering in exchange for payment of wages.

25 133. All conditions required for performance under the contract occurred.

26 134. Plaintiffs did all or substantially all of the significant things required of Plaintiffs
27 pursuant to the contract or Plaintiffs were excused from having to perform.

28 135. Defendant breached the contract by failing to perform as agreed, as Defendants
failed to pay Plaintiffs for work performed.

Exhibit "A" - Page 25

1 136. Plaintiffs were harmed by Defendant’s breach.

2 137. Defendant’s breach was a substantial factor in causing Plaintiffs’ harm.

3 138. Plaintiffs seek recovery of all of the their damages that reasonably and foreseeably
4 resulted from the breach, as well as all recoverable consequential damages.

5 **FOURTEENTH CAUSE OF ACTION**
6 **RETALIATION IN VIOLATION OF LABOR CODE §1102.5**
7 **[Cal. Lab. Code §1102.5]**
8 **(Against All Defendants)**

9 139. The allegations of each of the preceding paragraphs are realleged and incorporated
10 herein by reference as if alleged in their entirety.

11 140. Labor Code section 1102.5, subdivision (b) provides that: “An employer . . . shall
12 not retaliate against an employee for disclosing information, or because the employer believes that
13 the employee disclosed or may disclose information, . . . to a person with authority over the
14 employee or another employee who has the authority to investigate, discover, or correct the
15 violation or noncompliance...if the employee has reasonable cause to believe that the information
16 discloses a violation of state or federal statute, or a violation of or noncompliance with a local,
17 state, or federal rule or regulation, regardless of whether disclosing the information is part of the
18 employee's job duties.”

19 141. Labor Code section 1102.5, subdivision (c) provides that: “An employer, or any
20 person acting on behalf of the employer, shall not retaliate against an employee for refusing to
21 participate in an activity that would result in a violation of state or federal statute, or a violation of
22 or noncompliance with a local, state, or federal rule or regulation.”

23 142. These provisions reflect the broad public policy interest encapsulated in the
24 California Labor Code that seeks to encourage workplace whistleblowers to report unlawful acts
25 without fearing retaliation.

26 143. Plaintiffs were employees of Defendants.

27 144. Plaintiffs engaged in a protected activity when Plaintiffs sought the enjoyment of
28 rights, privileges, and benefits protected under the California Labor Code, including proper
classification as an employee and entitlement to wages, among other rights and privileges.

Exhibit "A" - Page 26

1 145. Defendants took adverse retaliatory action against Plaintiffs.

2 146. The motivating animus for taking adverse employment action against Plaintiffs was
3 Plaintiff's protected activity as recognized under Labor Code section 1102.5.

4 147. The adverse retaliatory employment actions taken against Plaintiffs included
5 refusal to pay wages and confer rights to other benefits accorded to employees and said adverse
6 employment action ultimately culminated in Plaintiffs' discharge from employment, causing
7 Plaintiffs to suffer injury. The adverse action taken against Plaintiffs that culminated in Plaintiffs'
8 discharge from employment was a substantial factor in causing Plaintiffs to suffer damages.

9 148. As an actual and proximate result of Defendants' acts, Plaintiffs suffered economic
10 injury and became mentally upset, stressed, and aggravated. Plaintiffs have experienced mental
11 anguish, stress, aggravation, anxiety, humiliation, embarrassment, sleeplessness, and physical
12 deprivation. Plaintiff claims general damages for injury and mental distress in an amount
13 according to proof at time of trial.

14 149. Pursuant to subdivision (j) of Labor Code section 1102.5, which states that: "The
15 court is authorized to award reasonable attorney's fees to a plaintiff who brings a successful action
16 for a violation of these provisions," Plaintiffs seek to recover all attorney's fees reasonably
17 incurred in pursuit of these claims.

18
19 **FIFTEENTH CAUSE OF ACTION**
20 **BREACH OF FIDUCIARY DUTIES**
21 **[Cal. Common Law]**
22 **(Against All Defendants)**


23 150. The allegations of each of the preceding paragraphs are realleged and incorporated
24 herein by reference as if alleged in their entirety.

25 151. "A fiduciary must tell its principal of all information it possesses that is material to
26 the principal's interests. A fiduciary's failure to share material information with the principal is
27 constructive fraud, a term of art obviating actual fraudulent intent." *Michel v. Moore & Associates,*
28 *Inc.* (2007) 156 Cal.App.4th 756, 762.

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1. General and compensatory damages, including prejudgment interest, according to proof;
2. Nominal damages;
3. Special damages according to proof, including, without limitation, lost salary, both front and back pay, bonuses, and any other benefits to which Plaintiff would have been entitled to by reason of his employment with Defendants, according to proof;
4. Equitable relief in the form of back pay;
5. Punitive and exemplary damages;
6. Attorney’s fees and costs pursuant to California Govt. Code § 12965(b), Labor Code §218.5 and §1194 (a) and other applicable law.
7. Prejudgment interest; and
8. Such other and further relief as the Court may deem just and proper.

Dated: June 1, 2023

By: 
 David Kaufman
 Attorneys for Plaintiffs
 PAUL SEIBERT and SEIBERT
 CONSULTING, LLC

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SEIBERT CONSULTING GROUP,
LLC, a California Limited Liability
Company; PAUL SEIBERT, an
individual,

Plaintiffs,

vs.

MARX COMPANIES, LLC, a New
Jersey domestic limited liability
company; FRANK RECRUITMENT
GROUP, INC a Delaware corporation;
and DOES 1-25, inclusive,

Defendants.

Case No.

**FRANK RECRUITMENT GROUP,
INC.'S CONSENT TO REMOVAL**

State Court Complaint Filed: 4/5/23
State Court First Amended Complaint
Filed: 6/1/23
Trial Date: Not yet set

Defendant Frank Recruitment Group, Inc. ("FRG") in the above-captioned matter hereby consents to the removal Case No. 37-2023-00014016-CU-OE-CTL (the "Superior Court Action"), to the United States District Court for the Southern District of California.

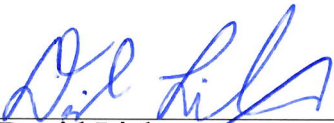
By consenting to this removal, FRG reserves all rights not expressly previously waived, including but not limited to, defenses and objections as to venue

DEFENDANT FRG'S CONSENT TO REMOVAL OF THIS ACTION TO FEDERAL COURT

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and personal and/or subject-matter jurisdiction, and the execution of this consent to removal is subject to, and without waiver of, any such defenses and objections.

FRANK RECRUITMENT GROUP, INC.

By: 
David Liebman
Chief Legal Officer

1 LAW OFFICES OF DAVID KAUFMAN
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Email: attorney@lawofficesofdavidkaufman.com
4 Attorney for Plaintiff,
PAUL SEIBERT; SEIBERT CONSULTING
5 GROUP, LLC

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/05/2023 at 05:27:15 PM
Clerk of the Superior Court
By Gabriel Lopez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION HALL OF JUSTICE

8 SEIBERT CONSULTING GROUP,
LLC, a California Limited Liability
9 Company; PAUL SEIBERT, an
individual ,

10 Plaintiff,

11 v.

12 MARX COMPANIES, LLC, a New
Jersey domestic limited liability
13 company; FRANK
RECRUITMENT GROUP, INC a
14 Delaware corporation; and DOES 1-
15 25, inclusive

16 Defendants.

Case No.: 37-2023-00014016-CU-OE-CTL

Judge: Hon.

Filed:

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS [Lab. Code § 226.8];
2. VIOLATION OF LABOR CODE 232.5 [Lab. Code §232.5];
3. FAILURE TO PAY ALL WAGES EARNED [Cal. Lab. Code §221];
4. WAGE WAITING TIME PENALTY [Cal. Lab. Code §201-203, 206];
5. FAILURE TO PAY WAGES AT TERMINATION OF EMPLOYMENT [Cal. Lab. Code §201-203];
6. FAILURE TO PAY MINIMUM WAGES [Cal. Lab. Code §§ 1194, 1197, 1197.1, Wage Order 5];
7. FAILURE TO PAY OVERTIME WAGES [Cal. Lab. Code §§ 510, 558 and Wage Order 5];
8. FAILURE TO REIMBURSE BUSINESS EXPENSES [[Cal. Lab. Code § 2802];
9. FAILURE TO PROVIDE MEAL PERIODS [Cal. Lab. Code §§ 226.7, 512, and Wage Order 5];
10. FAILURE TO PROVIDE REST PERIODS [Cal. Lab. Code § 226.7 and Wage Order 5];
11. FAILURE TO FURNISH TIMELY AND ACCURATE ITEMIZED WAGE STATEMENTS [Cal. Lab. Code § 226 and Wage Order 5];
12. UNFAIR BUSINESS PRACTICES [Bus. & Prof. Code §§ 17200 et seq];
13. BREACH OF CONTRACT [Common Law];
14. RETALIATION IN VIOLATION OF LABOR CODE §1102.5
15. COMMON LAW WRONGFUL DISCHARGE;

Exhibit "C" - Page 32

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DEMAND FOR JURY TRIAL

“Nay, take my life and all; pardon not that:
You take my house when you do take the prop
That doth sustain my house; you take my life
When you do take the means whereby I live.”
-**Merchant of Venice** Act IV Scene I.

COMES NOW THE PLAINTIFF, alleging against Defendants as follows:

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

PARTIES AND JURISDICTION

1. Plaintiff, SEIBERT CONSULTING GROUP, LLC, (hereinafter “Plaintiff” or “SEIBERT CONSULTING” or “SCG,”) is a California Limited Liability Company, and at all relevant times was, a formed and organized under the laws of the State of California with its principal place of business located at 2604-B El Camino Real, Carlsbad, CA 92008.
2. Plaintiff, PAUL SEIBERT, (hereinafter “Plaintiff” or “Mr. SEIBERT,”) is a natural person who is, and at all relevant times was, a resident of the United States and a domiciliary of the State of California, County of San Diego.
3. Plaintiff is informed and believes and thereon alleges that Defendant, MARX COMPANIES, LLC (hereinafter “MARX”) is a New Jersey domestic limited liability company with its principal place of business understood to be located at 111 W John St Ste 144, Seattle, WA, 98119-4208,, and is and was at all times relevant hereto a doing business in the County of San Diego, State of California, where it was acting as the joint employer of Plaintiffs during the times relevant to the acts and causes of action pled in this complaint.
4. Plaintiff is informed and believes and thereon alleges that Defendant, FRANK RECRUITMENT GROUP, INC (hereinafter “FRANK RECRUITMENT” or “FRG”) is a Delaware corporation with its principal place of business located at 110 Williams Street, 21st

1 Floor, New York, NY 10038, and is and was at all times relevant hereto a doing business in the
2 County of San Diego, State of California, where it was acting as the joint employer of Plaintiffs
3 during the times relevant to the acts and causes of action pled in this complaint.

4 5. Plaintiff is ignorant to the true names and capacities of the Defendants sued herein
5 as DOES 1 through 25 and therefore sues these defendants by such fictitious names. Plaintiff will
6 amend this Complaint to allege the true names and capacities when they are ascertained.

7 6. Plaintiff is informed and believes and thereon alleges that each fictitiously named
8 Defendant is responsible in some manner for the occurrences herein alleged, and Plaintiff's
9 injuries and damages as herein alleged are directly, proximately and/or legally caused by
10 Defendant.

11 7. Plaintiff is informed and believes and thereon alleges that the aforementioned
12 DOES are somehow responsible for the acts alleged herein as the agents, employers,
13 representatives or employees of other named Defendant, and in doing the acts herein alleged were
14 acting within the scope of their agency, employment or representative capacity of said named
15 Defendant.

16 8. At all times relevant, each and every Defendant was an agent and/or employee of
17 each and every other Defendant. In doing the things alleged in the causes of action stated herein,
18 each and every Defendant was acting within the course and scope of this agency or employment,
19 and was acting with the consent, permission, and authorization of each remaining Defendant. All
20 actions of each Defendant as alleged herein were ratified and approved by every other Defendant
21 or their officers, directors, supervisors, or managers.

22 9. The principal tortious acts and omissions alleged herein were performed by
23 management level employees of Defendant. Defendant allowed and/or condoned a continuing
24 pattern of discriminatory practices.

25 10. California courts may exercise personal jurisdiction on any basis consistent with
26 the Constitution of California and the United States. The primary focus of the personal jurisdiction
27 inquiry is the defendant's relationship with the forum state. *Bristol-Meyers Squibb Co. v. Sup. Ct.*

1 of Calif., *San Francisco County* (2017) 137 S. Ct. 1773, 1779.) A California court’s ability to
2 exercise personal jurisdiction over a defendant based on contacts with a state depends on the
3 nature and quality of defendant’s “contacts” with the state. U.S. Supreme Court decisions
4 recognize two types of jurisdiction: (1) general jurisdiction and (2) specific (or case-linked or
5 limited). *Bristol-Meyers Squibb Co., supra* at pp.1779-1780.

6 11. This Court’s jurisdiction over Defendant pursuant is proper pursuant to CCP
7 §410.10, which states that a Court of this state may exercise jurisdiction on any basis not
8 inconsistent with the Constitution of this state or the United States. This provision gives
9 California courts the broadest personal jurisdiction in civil actions that is constitutionally
10 permissible. *Sibley v Superior Court* (1976) 16 C3d 442, 445. It allows courts to exercise
11 personal jurisdiction to the full extent permissible under the United States Constitution. *Daimler*
12 *AG v. Bauman* (2014) 571 US 20, 134. Specifically, See Judicial Council Comments to CCP
13 §410.10 which sets forth that the bases for jurisdiction over defendant corporation is proper when
14 the corporation is doing business in California, has sufficient and continuous minimum contacts
15 and has appointed an agent for in-state service of process, all of which bases pertain to Defendant.

16 **SPECIFIC FACTUAL ALLEGATIONS**

17 12. Plaintiff re-alleges and incorporates by reference each and every allegation
18 contained in the preceding paragraphs as though fully set forth herein.

19 **Misclassification of Employees as Independent Contractors**

20 13. Recognizing the serious problem of misclassification and the harms it inflicts on
21 workers, law-abiding businesses, taxpayers, and society as a whole, the California Legislature
22 enacted Assembly Bill 5, which took effect on January 1, 2020. (Assem. Bill No. 5, 2019-2020
23 Reg. Sess. (“A.B. 5”).) A.B. 5 codified and extended the California Supreme Court’s unanimous
24 decision in *Dynamex Operations W., Inc. v. Superior Court* (2018) 4 Cal.4th 903 (“Dynamex”).
25 California law is clear: for the full range of protections afforded by the Industrial Welfare
26 Commission (“IWC”) wage orders, the Labor Code, and the Unemployment Insurance Code,
27 workers are generally presumed to be employees unless the hiring entity can overcome this
28

1 presumption by establishing each of the three factors in the strict “ABC” test: (A) the worker is
2 free from the control and direction of the hiring entity in connection with the performance of the
3 work, both under the contract for the performance of the work and in fact; (B) the worker performs
4 work that is outside the usual course of the hiring entity’s business; and (C) the worker is
5 customarily engaged in an independently established trade, occupation or business of the same
6 nature as the work performed. (Lab. Code § 2750.3(a)(1); *Dynamex, supra*, 4 Cal.5th at 957.).

7 14. Because the hiring entity must establish each of the three factors in the ABC test in
8 order to lawfully classify a worker as an independent contractor, the hiring entity’s failure to
9 establish any one part of the ABC test results in the classification of the worker as an employee
10 rather than an independent contractor. (*Dynamex, supra*, 4 Cal. 5th at 963.)

11 15. Plaintiffs, PAUL SEIBERT (hereinafter “SEIBERT”) and SEIBERT
12 CONSULTING GROUP, LLC (hereinafter “SCG”) entered into an agreement with Defendant,
13 FRANK RECRUITMENT GROUP (hereinafter “FRG”), a global leader in resourcing for IT
14 professionals to provide services to one of FRG’s clients, MARX COMPANIES, LLC (hereinafter
15 “MARX”). SCG and SEIBERT retained to provide NetSuite build-out for Marx Foods, a
16 subsidiary of MARX. SCG would perform work for MARX pursuant to its contract with FRG but
17 would be misclassified as an independent contractor, would not be paid for work performed, and
18 would be denied other benefits and protections accorded to employees under California law.
19 When demand was made to be compensated for wages earned, SCG’s engagement was summarily
20 terminated by its joint employers, FRG and MARX.

21 16. On or about October 31, 2019, PAUL SEIBERT (“SEIBERT”) and SEIBERT
22 CONSULTING GROUP, LLC (hereinafter “SCG”) entered into a contract with Defendant,
23 FRANK RECRUITMENT GROUP (FRG), whereby FRG marketed the supplier, SCG’s services
24 to clients, such as Defendant, MARX COMPANIES, LLC. SCG is a leading NetSuite ERP &
25 SuiteCommerce Agency. The SCG NetSuite consulting team provides clients with a complete
26 team of NetSuite and Shopify experts to install, customize, optimize, and integrate all aspects of
27 the client’s online retail operations. The SCG Team’s award-winning, certified NetSuite and
28

1 Shopify experts have assisted many businesses in unlocking the full flexibility, power and ROI of
2 NetSuite and Shopify. When a client of FRG elected to have SCG serve as a supplier of contracted
3 services, SCG would perform services for the benefit of Defendant, FRG's Client with payment
4 coming from FRG.

5 17. FRG is an international specialist technology staffing business based in Newcastle
6 upon Tyne, England. The company consists of nine recruitment brands, focusing primarily on
7 products within the enterprise resource planning, client relationship management, big data and
8 cloud computing segments. It was established in 2006 under the Nigel Frank International brand.¹

9 18. FRG is a niche technology recruitment firm. FRG entered into a contract with Marx
10 to recruit a supplier to provide MARX with NetSuite related professional technology services.
11 FRG identified SCG as such a provider, referred SCG to MARX, who selected SCG for the
12 project. SCG agreed to work for MARX, and SCG and FRG entered into a contract for SCG to
13 provide NetSuite related technology services to MARX. FRG's only obligation to SCG was to pay
14 SCG the contractually agreed upon rate at the contractually agreed upon time after MARX
15 approved SCG's weekly timesheets.

16 19. One of FRG's clients, MARX COMPANIES, LLC (MARX), elected to have SCG
17 install NetSuite applications on a subsidiary, MARX Foods' interactive website. MARX
18 COMPANIES is a Family-Owned & Operated Group Dedicated to Sourcing the Highest Quality
19 Specialty Meats & Seafood from Around the Globe.²

20 20. MARX is a distributor for high-quality meat. MARXFoods.com is the online
21 consumer-focused division of MARX. In 2019, MARX recognized a need for a website
22 redevelopment to stay competitive in online sales. MARX sought assistance with the
23 development, design, and implementation of a new eCommerce website and connecting new web
24 features with search engine optimization through online advertising. To that end, MARX engaged
25

26
27 ¹ https://en.wikipedia.org/wiki/Frank_Recruitment_Group

28 ² <https://www.marxcompanies.com/>

1 Anderson Frank aka FRG to assist in locating a NetSuite³ consultant to assist with backend coding
2 and technical support for MARX' website redevelopment project.

3 21. The scope of the work for the engagement entailed the integration of MARX'
4 eCommerce (i.e. shopping data) stored in NetSuite into Google's advertising system (the
5 "Project"). The stated purpose of the Project was to facilitate additional sales through Google's
6 system that auto-generates an advertising campaign on Google's search engine platform.

7 22. MARX reviewed application materials and estimates submitted by a number of
8 candidates, including Plaintiff SCG. MARX was drawn to SCG's representation in its application
9 that it had "50+" years of skill and experience in NetSuite ERP and the fact that SCG contracted
10 its services at \$168.96 per hour. Based on an assessment of SCG's technical skill and experience,
11 and the proposed cost estimate, MARX contracted with Anderson Frank aka FRG to engage SCG
12 for the Project. MARX and SCG held a kick-off meeting in fall 2019 and SCG started work on the
13 Project in February 2020.

14 23. Spring of 2020 coincided with the implementation of COVID-19 lockdowns across
15 the United States. Consumers changed their purchasing habits for products as a result of the
16 Covid-19 pandemic, with an increase in online purchasing of food products. There was an
17 unprecedented and immensely profitable demand for online food ordering, in particular for the
18 meat products distributed by MARX.

19 24. On or about February 2, 2020, SCG complete the installation of NetSuite Product
20 Feeds SuiteCommerce Extension Bundle (SCG product feed-250407), which was completed in
21 both the MARX Sandbox and production accounts on this date.

22 25. On or about 19 February 2020, SCG completed the installation of NetSuite Product
23 feeds Commerce extension bundle in MARX Foods Sandbox and Production website.

24 26. On or about March 2, 2020, SCG Team created support ticket ID 3721371 with
25 _____

26 ³ NetSuite Inc. is an American cloud-based enterprise software company that provides products and services
27 tailored for small and medium-sized businesses (SMBs) including accounting and financial management,
28 customer relationship management, inventory management, human capital management, payroll,
procurement, project management and e-commerce software. <https://en.wikipedia.org/wiki/NetSuite>

1 NetSuite Technical Support as the Google feed file did not generate desired output. As the
2 NetSuite ERP Consultant on the MARX project, Yogi Singh was tasked with assigning the
3 Official Google Shopping Category for all of the items in the MARX NetSuite inventory records
4 within their NetSuite ERP system as per the item’s category. This effort required modifications on
5 over 7,000 Item Records within the MARX Foods NetSuite ERP system.

6 27. On or about March 5, 2020, these modifications to over 8,000 item records in the
7 MARX Foods NetSuite system commenced.

8 28. On or about March 5, 2020, through March 24, 2020, Netsuite Support Team
9 started working on the problem. Several issues in the quality of data were identified. The Support
10 Team had to assign Google category for 7,000 items on the MARX Foods website.

11 29. On or about March 16, 2022, SCG identified problems with MARX’ food data
12 quality, which was causing related performance issues, as stated by NetSuite Technical Support.
13 SCG communicated this to MARX in SCG’s meeting with Justin, Sarah and the MARX team,
14 noting that the issue is due in large part poor to the non-standard way in which data was entered
15 into the NetSuite System since 2007 by MARX. The MARX Foods team were using custom fields
16 for standard functionality such as item availability and item price, as well as several custom Item
17 Record templates, many of which are not operable, and created an operational glitch.

18 30. On or about March 17, 2020, SCG team worked on implementing changes to the
19 MARX Foods website and linked the inventory status to the item on front of the MARX food
20 website. This Google feed file was determined to be available for future use. This information and
21 procedure were presented to Justin, Sarah and Liv on the MARX Foods team during SCG’s
22 “Google Feed File Review” Meeting. SCG displayed the work in progress, including the support
23 tickets from both Google and NetSuite tracking the work, to the MARX Foods team at that time
24 and in subsequent “Google Feed File Review” meetings.

25 31. On or about March 18, 2020, NetSuite Support Team created reports as per Google
26 standards which were supported by Google Merchant account. The SCG team created a number
27 of NetSuite Saved Searches within the MARX Foods NetSuite system that were in compliance and
28

1 in accordance with the Official Google Feed File Specification. The SCG team then performed
2 Customizations to the NetSuite ERP Saved Search so the search within the MARX Foods
3 Sandbox and Production accounts can be used in the future to produce updated Google Merchant
4 Feed Files without the need for manual intervention. These NetSuite Saved Searches, and the
5 resulting Google Feed Files, were saved within the Marx Foods NetSuite system, in both the
6 Sandbox and Production accounts.

7 32. On or about March 19, 2020, the SCG team began generating the Google feed file
8 in batches, for the purposes of testing each batch of test items.

9 33. On or about March 20, 2020, the reports assigned to automatic Google file
10 generation in NetSuite including the Google feed file generation every hour. The desired Google
11 feed file was generated. Sarah at MARX Foods stated: “I know that fundamentally, our NetSuite
12 account isn’t set up as intended by NetSuite.” Liv at MARX Foods also acknowledged this fact in
13 a reply email sent on April 9, 2020, wherein she states, “As Sarah mentioned, our account was set
14 up using a lot of workarounds.”

15 34. SCG immediately began to undertake tasks to attempt to resolve the problems with
16 the following issues being identified: (a) Data discrepancy with respect to data completeness,
17 cleanliness and organization within Google Merchant product account; (b) Incorrect format
18 provided for Google Merchant import; and (c) Missing items from data included: Availability,
19 Brand, MPN, Incorrect image links and shipping.

20 35. SCG first two test batches of imports to Google Merchant Center were successful,
21 at which time SCG had successfully imported, and Google had processed as Live on Google
22 Merchant Center over nearly 400 items.

23 36. On or about March 23, 2020 SCG demonstrated the products Live on Google
24 Merchant Center in a Zoom screen share call with Justin and Sarah from the MARX Foods team at
25 SCG’s “Google Feed File Review Meeting.” Subsequent to having completed the upload of the
26 first two test batches successfully, with items Live on Google Merchant Centeron, SCG then
27 imported an omnibus MARX Foods Google Feed file with the same syntax.

28

Exhibit "C" - Page 40

1 37. MARX Foods did not provide SCG with several key values needed for a successful
2 Google feed file. SCG spent several hours correcting data, including the following tasks, which
3 were undertaken: (a) SCG wrote HTML and rendered dynamic data for the product detail pages to
4 pass Google crawler test; and (b) SCG successfully uploaded 1st batch of 107 items and 2nd batch
5 of 207 items into Google Merchant account.

6 38. On or about March 25, 2020, SCG’s engineering team performed several minor
7 SuiteCommerce Advanced Web Store template changes (SCG Ticket ID MXF-21) at the
8 suggestion of Google Technical Support, for the purposes of displaying items on the website so
9 that the correct, updated, and real time value for item availability, both “in stock” and “out of
10 stock” would appear. SCG also conducted data review on each item and cleared all coding from
11 description areas, 300+ Items. Per Google documentation requirements, specific data is needed in
12 order for data feeds to work. Some of the items missing included but are not limited to:
13 availability; brand; MPN; incorrect image links; and shipping.

14 39. Per the above linked requirements, what MARX Foods gave SCG was missing
15 several key values needed to implement a successful feed file. Considerable additional time was
16 allocated to correcting the data within the feed to include all Google required categories. SCG
17 also had to write HTML and render dynamic data for the Product Detail Pages in order to pass the
18 Google crawler test.⁴

19 40. The first batch of 107 items, and the 2nd batch of 207 items, were successfully
20 uploaded into the Google Merchants account. No errors received. These changes were presented to
21 the MARX Foods team at the SCG “Item Availability PDP Issue Review” meeting with Justin,
22 Sarah and Liv from the MARX Foods team on or about March 26, 2020.

23 41. On or about March 27, 2022, SCG received notification from Google Merchant
24 _____

25 ⁴ “Crawler” (sometimes also called a “robot” or “spider”) is a generic term for any program that is
26 used to automatically discover and scan websites by following links from one web page to another.
27 Google's main crawler is called Googlebot. Crawlability is the ability of a search engine to access a
28 web page and crawl its content. Indexability is the ability of a search engine to analyze the content
it crawls to add it to its index. A page can be crawlable but not indexable.

1 Center Support via email that the MARX Foods’ feed file was encountering an issue with the
2 Google feed file generation in the MARX Foods’ Sandbox account. The omnibus file was the final
3 Google Shopping Feed File that was imported and was in queue processing with Google Merchant
4 Center on March 27, 2020. SCG received an initial processing timeframe from Google Merchant
5 Center of 3-5 days. At that time Google Merchant Center issued an Official Notice that their
6 processing times would be delayed due to the COVID-19 outbreak. Google did not offer a
7 processing timeframe. This notice was sent to the MARX Foods’ project team and the FRG team
8 have also been provided this notice.

9 42. Justin from MARX Foods requested that SCG focus on publishing 600 Meat
10 products first. In order to meet this demand, SCG had to remove already published data. Out of
11 600 Meat products, only 200 items could be uploaded due to data inconsistencies in what was
12 provided by MARX Foods to SCG. SCG developed a simple custom-built application to quickly
13 process the new feed file within seconds by fixing errors in the required format.

14 43. After implementing all the corrections in the data provided by MARX via SCG’s
15 rendering app, SCG began the upload of the 956-item data feed. The first error appeared during
16 this upload phase: while uploading 956 items. The error was identified as ‘invalid or missing
17 required attribute id error.’

18 44. On third attempt of uploading 956 items, Google Merchant started kicking back the
19 data feed with the same error message. This was reported to the Google team. The Google team
20 responded after raising a trouble ticket for further review. Google then sent an email response
21 explaining the delay as being due to COVID-19 pandemic.

22 45. On or about April 8, 2020, Google informed the SCG team that their phone and
23 chat support was currently unavailable due to COVID-19.

24 46. The SCG team opened Google Merchant Center Support case ID 1-1047000030167
25 on April 30, 2020, with Google Support Representative Aanchal. Google Support rep., Aanchal
26 reported that SCG’s feed file was correct, and we should expect it to be consumed correctly, as
27 had the test items SCG provided written notice to FRG and MARX, advising of the reason for the
28

1 problems and delays being encountered. Google support rep suggested: “This delay is mainly due
 2 to the limited support option available for preventive measure in light of COVID-19.”

3 47. SCG completed over 143 hours on NetSuite ERP installation, configuration,
 4 development and consulting work, the activities timeline documentation, including:

Invoice #	Date	Hours
238671	22-Mar-20	80.5
243901	29-Mar-20	22.5
247463	5-Apr-20	26
249251	12-Apr-20	9.5
	19-Apr-20	5
TOTAL		143.5

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10
11 48. The SCG Team provided custom software, consulting services, and Google
 12 technical support and was not compensated for this time, violating California wage and labor
 13 codes. A disagreement developed between SCG and MARX, and MARX ceased approving SCG’s
 14 timesheets.

15 49. MARX failed to approve or, alternatively, reject the time reports and submitted
 16 hours as stipulated in the RFG employment contract. Interestingly, MARX selectively approved
 17 the smaller invoices out of chronological and issuance sequence, thereby violating the terms and
 18 conditions of the FRG employment contract. Also concerning was the fact that MARX illegally
 19 seized the custom software created by SCG for their NetSuite implementation without
 20 compensating SCG for their work. Plaintiffs, SEIBERT and SCG’s employment was terminated
 21 by Defendants on or about April 30, 2020, following efforts to be seek payment for work
 22 performed.

23 50. On or about May 2020, MARX contacted Anderson Frank aka FRG about SCG’s
 24 alleged failure to complete the Project. Anderson Frank aka FRG contracted for another consultant
 25 who repaired the integration in 5.4 hours over three (3) business days.

26 **Joint Employers**

27 51. One reason the IWC defined “employer” in terms of “exercising control” was to
 28

1 reach situations in which multiple entities control different aspects of the employment
2 relationship. Supervision of the work, in the specific sense of exercising control over how services
3 are performed, is properly viewed as one of the “working conditions” mentioned in the wage
4 order. *Martinez v. Combs, supra*, 49 C4th at 76, 109 CR3d at 546 (rejecting claim that defendants
5 were joint employers).

6 52. A joint employer relationship exists when one entity (such as a temporary
7 employment agency) hires and pays a worker, and another entity supervises the work. *Martinez v.*
8 *Combs, supra*, 49 C4th at 76.

9 53. Corporate owners, officers, directors, managing agents personally liable for unpaid
10 wages: Labor Code § 558.1 provides that an employer or “other person acting on behalf of an
11 employer” who violates certain California wage and hour laws “may be held liable as the
12 employer for such violation.” These violations include unpaid minimum wage, unpaid overtime,
13 denied meal or rest breaks, untimely separation pay, inadequate wage statements, and failing to
14 reimburse employee business expenses. Lab.C. § 558.1(a) (emphasis added); see *Voris v. Lampert*
15 (2019) 7 C5th 1141, 1161-1162.

16 **Continuing Violations Doctrine**

17 54. Under the continuing violation doctrine, a plaintiff may recover for unlawful acts
18 occurring outside the limitations period if they continued into that period. The continuing violation
19 doctrine requires proof that (1) the defendant’s actions inside and outside the limitations period are
20 sufficiently similar in kind; (2) those actions occurred with sufficient frequency; and (3) those
21 actions have not acquired a degree of permanence.” *Wassmann v. South Orange County*
22 *Community College Dist.* (2018) 24 Cal.App.5th 825, 850-851.

23 55. A continuing violation may be established by demonstrating ‘a company wide
24 policy or practice’ or ‘a series of related acts against a single individual.’ ‘The continuing violation
25 theory generally has been applied in the context of a continuing policy and practice of
26 discrimination on a company-wide basis; a plaintiff who shows that a policy and practice operated
27 at least in part within the limitation period satisfies the filing requirements. “[A] systematic policy
28

1 of discrimination is actionable even if some or all of the events evidencing its inception occurred
2 prior to the limitations period. The reason is that the continuing system of discrimination operates
3 against the employee and violates his or her rights up to a point in time that falls within the
4 applicable limitations period. Such continuing violations are most likely to occur in the matter of
5 placements or promotions.” ’ The plaintiff must demonstrate that at least one act occurred within
6 the filing period and that ‘the harassment is “more than the occurrence of isolated or sporadic acts
7 of intentional discrimination.” . . . The relevant distinction is between the occurrence of isolated,
8 intermittent acts of discrimination and a persistent, on-going pattern.’ ” *Morgan v. Regents of*
9 *University of California*, 88Cal.App.4th 52, at p. 64, internal citations omitted.

10 56. Plaintiffs allege that Defendants’ actions, as will be more particularly alleged,
11 inside and outside the limitations period are sufficiently similar in kind to constitute a continuing
12 violation with respect to the individual and systematic acts of misconduct alleged, including but
13 not exclusively, willful misclassification and failure to pay wages.

14 57. Defendant’s actions, as will be more particularly alleged herein, inside and outside
15 the limitations period occurred with sufficient frequency such that they would constitute a
16 continuous violation.

17 58. Defendant’s actions, as will be more particularly alleged herein, both inside and
18 outside the limitations period have not acquired a degree of permanence, and accordingly
19 constitute one continuous violation.

20 59. **Economic damages:** As a consequence of defendants’ conduct, plaintiff has
21 suffered and will suffer harm, including lost past and future income and employment benefits,
22 damage to his career, and lost wages, overtime, unpaid expenses, and penalties, as well as interest
23 on unpaid wages at the legal rate from and after each payday on which those wages should have
24 been paid, in a sum to be proven at trial.

25 60. **Non-economic damages:** As a consequence of defendants’ conduct, plaintiff has
26 suffered and will suffer psychological and emotional distress, humiliation, and mental and
27 physical pain and anguish, in a sum to be proven at trial.

1 61. **Punitive damages:** Defendants’ conduct constitutes oppression, fraud, and/or
2 malice under California Civil Code section 3294 and, thus, entitles plaintiff to an award of
3 exemplary and/or punitive damages.

4 a. **Malice:** Defendants’ conduct was committed with malice within the meaning of
5 California Civil Code section 3294, including that (a) defendants acted with intent to cause injury
6 to plaintiff and/or acted with reckless disregard for Plaintiffs’ rights, including by terminating
7 plaintiff and/or taking other adverse job actions against plaintiff for seeking to exercise Plaintiffs’
8 rights protected under the Labor Code, and/or (b) Defendants’ conduct was despicable and
9 committed in willful and conscious disregard of Plaintiffs’ rights, including Plaintiffs’ rights as
10 protected under the Labor Code.

11 b. **Oppression:** In addition, and/or alternatively, Defendants’ conduct was committed
12 with oppression within the meaning of California Civil Code section 3294, including that
13 defendants’ actions against Plaintiff for seeking to exercise rights afforded under the Labor Code
14 were “despicable” and subjected plaintiff to cruel and unjust hardship, in knowing disregard of
15 plaintiff’s rights provided under California law.

16 c. **Fraud:** In addition, and/or alternatively, Defendants’ conduct, as alleged, was
17 fraudulent within the meaning of California Civil Code section 3294, including that Defendant
18 asserted false (pretextual) grounds for terminating Plaintiffs’ employment and/or other adverse job
19 actions, thereby to cause Plaintiffs hardship and deprive Plaintiffs of legal rights.

20 62. **Attorneys’ fees:** Plaintiffs have incurred and continues to incur legal expenses and
21 Attorneys’ fees as seeks attorney’s fees recoverable under California law.

22 **FIRST CAUSE OF ACTION**
23 **WILLFUL MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT**
24 **CONTRACTORS**
25 **[Lab. Code § 226.8]**
26 **(Against All Defendants)**

27 63. The allegations of each of the preceding paragraphs are realleged and incorporated
28 herein by reference.

1 64. Under Labor Code § 226.8, it is unlawful for any person or employer to willfully
2 misclassify an employee as an independent contractor. The statute provides that a person or
3 employer found to have engaged in a pattern or practice of willful misclassification shall be
4 subject to a civil penalty of not less than \$10,000 for each such violation (and up to \$25,000 for
5 each such violation), in addition to other penalties or fines permitted by law.

6 65. At all times relevant herein, Defendants engaged in a continuing pattern and
7 practice of willfully misclassifying all of its workers as independent contractors, notwithstanding
8 that under California law, all of these workers have been and are employees of Defendants,
9 thereby violating Labor Code § 226.8.

10 66. Defendants are liable for civil penalties under Labor Code § 226.8 in the amount of
11 not less than \$10,000 for each worker misclassified as an independent contractor.

12 67. Unless enjoined by this Court from misclassifying its workers as independent
13 contractors, and from thereby denying these workers the protections available to employees under
14 the Labor Code, Defendants will continue to misclassify its workers as independent contractors
15 and thereby continue to deny them the protections available to employees under the Labor Code.

16 **SECOND CAUSE OF ACTION**
17 **VIOLATION OF LABOR CODE 232.5**
 [Lab. Code §232.5]
 (Against All Defendants)

18
19 68. The allegations of each of the preceding paragraphs are realleged and incorporated
20 herein by reference.

21 69. Labor Code section 232.5 prohibits an employer from discharging or retaliating
22 against an employee who discusses or discloses information about the employer’s working
23 conditions. Employers also cannot require that an employee sign a waiver or other document
24 denying the employee the right to discuss or disclose information about the employer’s working
25 conditions or otherwise require that an employee refrain from disclosing information about the
26 employer’s working conditions.

27
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1 70. Plaintiff disclosed or discussed information pertaining to Defendant’s refusal to pay
2 wages, provide employees with meal and rest breaks and refusal to provide other rights and
3 benefits protected by California law.

4 71. Defendant took adverse employment action against Plaintiff that culminated in his
5 termination.

6 72. As an actual and proximate result of Defendant’s discriminatory acts, Plaintiff
7 suffered loss of employment and financial and personal injury. Plaintiff has experienced mental
8 anguish, stress, aggravation, anxiety, humiliation, embarrassment, sleeplessness, pain, and
9 difficulty accomplishing daily tasks. Plaintiff claims general damages for injury and mental
10 distress in an amount according to proof at time of trial.

11 73. As a further direct and proximate result of Defendant’s conduct, Plaintiff has
12 suffered loss of financial stability, peace of mind and future security, and has suffered
13 embarrassment, humiliation, mental and emotional pain and distress and discomfort, all to his
14 detriment and damage in amounts not fully ascertained but within the jurisdiction of this court and
15 subject to proof at the time of trial.

16 74. Plaintiff also seeks to recovery reasonable attorney’s fees available to prevailing
17 party under either Labor Code Section 218.5 or Labor Code Section 1194(a).

18 **THIRD CAUSE OF ACTION**
19 **FAILURE TO PAY ALL WAGES EARNED**
20 **[Cal. Lab. Code §221]**
(Against All Defendants)

21 75. The allegations of each of the preceding paragraphs are realleged and incorporated
22 herein by reference.

23 76. Paragraph 4(B) of the Wage Orders provides that all employers must “pay to
24 each employee, on the established payday for the period involved, not less than the applicable
25 minimum wage for all hours worked in the payroll period, whether the remuneration is measured
26 by time, piece, commission, or otherwise.”

27
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1 77. As described above, Defendants failed to pay wages to Plaintiffs for all hours
2 worked.

3 78. At times Defendants likewise required or suffered Plaintiffs to perform work and
4 Plaintiffs were never compensated for this work.

5 79. Plaintiffs are aggrieved employees and employed by Defendants, and each of them,
6 and the violations alleged herein were committed against Plaintiffs and Plaintiffs' co-workers.

7 80. At the time of each violation, Defendants employed one or more employees.
8 As a result of the aforesaid wrongful and illegal conduct of Defendants, Plaintiffs are entitled to
9 civil penalties in an amount to be determined at trial, prejudgment interest, costs and attorneys'
10 fees.

11 **FOURTH CAUSE OF ACTION**
12 **WAGE WAITING TIME PENALTY**
13 **[Cal. Lab. Code §201-203, 206]**
14 **(Against All Defendants)**

15 81. The allegations of each of the preceding paragraphs are realleged and incorporated
16 herein by reference.

17 82. California Labor Code § 201 (a) provides, in pertinent part, as follows: "If an
18 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
19 and payable immediately."

20 83. California Labor Code § 202(a) provides, in pertinent part, as follows: "If an
21 employee not having a written contract for a definite period quits his or her employment, his or her
22 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
23 given 72 hours previous notice of his or her intention to quit, in which case the employee is
24 entitled to his or her wages at the time of quitting."

25 84. California Labor Code § 206(a) provides, in pertinent part, as follows:
26 In case of a dispute over wages, the employer shall pay, without condition, and within the time set
27 by this article, all wages, or parts thereof, conceded by him to be due, leaving to the employee all
28 remedies he might otherwise be entitled to as to any balance claimed.

1 85. Where an employer willfully fails to pay, without abatement or reduction, in
2 accordance with §§201 through 203 of the California Labor Code, all wages due to an employee
3 who has been discharged or has quit, at the time of termination or within 72 hours of resignation,
4 California Labor Code §203 entitles the affected employee to receive from the employer a penalty
5 of up to 30 days wages calculated from the due date of the wages until the time an action to
6 recover the wages is commenced.

7 86. As alleged herein, Defendants failed to pay earned wages (including but not limited
8 to overtime compensation, premium pay for missed meal and rest breaks and uncompensated time)
9 to Plaintiffs and the other aggrieved employees who are former employees at the time they became
10 due and payable, and have thus violated §§ 201, 202 and 206 of the California Labor Code.

11 87. Defendants’ failure to pay wages as alleged herein was willful in that Defendants
12 knew that the aggrieved employees were not receiving all of their earned compensation.

13 88. Plaintiffs were aggrieved employees and were employed by Defendants, and the
14 violations alleged herein were committed against Plaintiffs and Plaintiffs’ co-workers.

15 89. At the time of each violation, Defendants employed one or more employees.

16 90. As a result of the aforesaid wrongful and illegal conduct of Defendant, Plaintiff are
17 entitled to civil penalties in an amount to be determined at trial, prejudgment interest, costs and
18 attorneys’ fees.

19

FIFTH CAUSE OF ACTION
FAILURE TO PAY WAGES AT
TERMINATION OF EMPLOYMENT
[Cal. Lab. Code §201-203]
(Against All Defendants)

23 91. The allegations of each of the preceding paragraphs are realleged and incorporated
24 herein by reference.

25 92. California Labor Code §§ 201 and 202 require Defendants to pay all compensation
26 due and owing to former employees immediately upon discharge or within seventy-two (72) hours
27 of their termination of employment. California Labor Code § 203 provides that if an employer
28

1 willfully fails to pay compensation promptly upon discharge or resignation, as required by
2 Sections 201 and 202, then the employer is liable for such “waiting time” penalties in the form of
3 continued compensation up to thirty workdays.

4 93. Defendants willfully failed to pay Plaintiffs compensation due upon termination as
5 required by California Labor Code §§ 201 and 202. As a result, Defendants are liable to Plaintiffs
6 for waiting time penalties provided under California Labor Code § 203, plus reasonable attorneys’
7 fees and costs of suit.

8 **SIXTH CAUSE OF ACTION**
9 **FAILURE TO PAY MINIMUM WAGES**
10 **[Cal. Lab. Code §§ 1194, 1197, 1197.1, Wage Order 5]**
11 **(Against All Defendants)**

12 94. The allegations of each of the preceding paragraphs are realleged and incorporated
13 herein by reference as if alleged in their entirety.

14 95. California Labor Code §§ 1194, 1197, 1197.1 and Wage Order 5 entitle non-exempt
15 employees to an amount equal to or greater than the minimum wage for all hours worked. All hours
16 must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a
17 minimum wage obligation.

18 96. Defendants did not compensate Plaintiffs for all hours worked.

19 97. California’s minimum wage on January 1, 2019, for employers with 25 or fewer
20 employees was \$11.00/hr. and for employers with 26 or more employees it was \$12.00/hr. On
21 January 1, 2020, the minimum wage for employers with 25 or fewer employees was \$12.00/hr.
22 and for employers with 26 or more employees it was \$13.00/hr.

23 98. As a result of these violations, Defendants are liable for unpaid minimum wages,
24 liquidated damages, and attorneys’ fees and costs.

25 **SEVENTH CAUSE OF ACTION**
26 **FAILURE TO PAY OVERTIME WAGES**
27 **[Cal. Lab. Code §§ 510, 558 and Wage Order 4-2001]**
28 **(Against All Defendants)**

99. The allegations of each of the preceding paragraphs are realleged and incorporated
herein by reference as if alleged in their entirety.

1 100. Plaintiffs are informed, believe and thereon allege that at all times herein
2 mentioned, Defendants, employed workers in the capacity of programmers and software
3 engineers.

4 101. At all times herein mentioned, the employment of the aforementioned workers
5 employed by Defendants, were subject to the provisions of the California Labor Code and to Wage
6 Orders.

7 102. Labor Code section 558 provides for a civil penalty to be assessed against any
8 employer or other person acting on behalf of an employer who fails to compensate employees at
9 the statutory overtime rate for any work in excess of eight hours in one day or any work in excess
10 of 40 hours in any workweek or who fails to compensate employees at the statutory double time
11 rates for any work in excess of twelve hours in one day or any work in excess of 8 hours on the
12 seventh day of a workweek.

13 103. At all times material hereto, Wage Order Wage Order No. 4-2001 required
14 Defendants to pay the aforementioned employees overtime compensation at prescribed hourly
15 overtime rates for all hours worked in excess of the regular hours of work specified by law.

16 104. At all times relevant herein, Defendants routinely and systematically failed to
17 properly record accurate time records for each employee showing when each employee began and
18 ended each work period and routinely and systematically paid workers less than their full hours.
19 By failing to properly record hours and paying a fixed sum per day regardless of hours worked,
20 Defendants routinely and systematically failed to pay its employees' wages for all of their
21 overtime hours as required by the laws of the State of California.

22 105. Plaintiffs are informed and believe and thereon allege that during the period
23 December 2019 through March 2020, Defendants' employees earned and were entitled to
24 statutorily required overtime wages.

25 106. Labor Code sections 510, 1198 and Wage Order No. 4-2001 make it unlawful
26 under the laws of the State of California to pay employees for overtime work at less than the
27 applicable overtime rate.

28

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1 107. Plaintiff also seeks to recovery reasonable attorney’s fees available to prevailing
2 party under either Labor Code Section 218.5 or Labor Code Section 1194(a).

3 **EIGHTH CAUSE OF ACTION**
4 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
5 **[Cal. Lab. Code § 2802]**
6 **(Against All Defendants)**

7 108. The allegations of each of the preceding paragraphs are realleged and incorporated
8 herein by reference as if alleged in their entirety.

9 109. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee
10 for all necessary expenditures or losses incurred by the employee in direct consequence of the
11 discharge of his or her duties.”

12 110. Plaintiffs incurred reasonable and necessary expenses in the course of completing
13 their job duties for Defendants, which were not reimbursed by Defendants. These expenses
14 included but are not limited to those performed in conjunction with discharging Plaintiffs’ duties.

15 111. Plaintiffs are entitled to reimbursement for these necessary expenditures, plus
16 interest and attorneys’ fees and costs, under Labor Code § 2802. Plaintiff also seeks to recovery
17 reasonable attorney’s fees available to prevailing party under either Labor Code Section 218.5 or
18 Labor Code Section 1194(a).

19 **NINTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE MEAL PERIODS**
21 **[Cal. Lab. Code §§ 226.7, 512, and Wage Order 4-2001]**
22 **(Against All Defendants)**

23 112. The allegations of each of the preceding paragraphs are realleged and incorporated
24 herein by reference as if alleged in their entirety.

25 113. Sprig failed to provide meal periods as required by Labor Code §§ 226.7, 512 and
26 Wage Order 4-2001.

27 114. Plaintiffs worked in excess of five (5) hours a day without being provided at least
28 half hour meal periods in which they were relieved of their duties, as required by Labor Code §§
226.7 and 512 and Wage Order 4-2001. See *Brinker Restaurant Corp., et al. v. Superior Court*

1 (2012) 53 Cal. 4th 1004, 1040-41 (“The employer satisfies this obligation if it relieves its
2 employees of all duty, relinquishes control over their activities and permits them a reasonable
3 opportunity to take an uninterrupted 30–minute period, and does not impede or discourage them
4 from doing so . . . [A] first meal period [is required] no later than the end of an employee's fifth
5 hour of work, and a second meal period [is required] no later than the end of an employee's 10th
6 hour of work.”).

7 115. Because Defendants failed to provide proper meal periods, it is liable to Plaintiffs
8 for one hour of additional pay at the regular rate of compensation for each workday that the proper
9 meal periods were not provided, pursuant to Labor Code §§ 226.7 and 512 and Wage Order 4-
10 2001, as well as interest thereon, plus reasonable attorneys’ fees and costs of suit pursuant to Civil
11 Procedure Code § 1021.5. Plaintiff also seeks to recovery reasonable attorney’s fees available to
12 prevailing party under either Labor Code Section 218.5 or Labor Code Section 1194(a).

13 ///
14 ///
15 ///

16 **TENTH CAUSE OF ACTION**
17 **FAILURE TO PROVIDE REST PERIODS**
18 **[Cal. Lab. Code § 226.7 and Wage Order 4-2001]**
(Against All Defendants)

19 116. The allegations of each of the preceding paragraphs are realleged and incorporated
20 herein by reference as if alleged in their entirety.

21 117. Defendants failed to provide the rest periods that are required by Wage Order 4-
22 2001. See *Brinker*, 53 Cal. 4th 1004 at 1029 (“Employees are entitled to 10 minutes rest for shifts
23 from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to
24 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.”).

25 118. Because Defendants failed to provide proper rest periods, it is liable to Plaintiffs for
26 one hour of additional pay at the regular rate of compensation for each workday that the proper
27 rest periods were not provided, pursuant to Labor Code § 226.7 and Wage Order 5, as well as
28

1 119. Plaintiff also seeks to recovery reasonable attorney’s fees available to prevailing
2 party under either Labor Code Section 218.5 or Labor Code Section 1194(a).

3 **ELEVENTH CAUSE OF ACTION**
4 **FAILURE TO FURNISH TIMELY AND**
5 **ACCURATE ITEMIZED WAGE STATEMENTS**
6 **[Cal. Lab. Code § 226 and Wage Order 5]**
7 **(Against All Defendants)**

8 120. The allegations of each of the preceding paragraphs are realleged and incorporated
9 herein by reference as if alleged in their entirety.

10 121. In violation of Labor Code § 226(a), Defendants did not provide Plaintiffs with
11 accurate itemized wage statements in writing showing: (1) all applicable hourly rates in effect
12 during each respective pay period and the corresponding number of hours worked by each
13 respective individual; (2) number of hours worked; (3) gross wages earned; (4) net wages earned;
14 (5) all deductions; (6) inclusive dates of the period for which the employee is paid; (7) the
15 employee identification or social security number; and, (8) the name and address of the legal entity
16 that is the employer.

17 122. Defendants knowingly and intentionally failed to comply with Labor Code § 226(a)
18 on each and every wage statement provided to Plaintiffs.

19 123. As a result of Defendants’ failure to provide accurate itemized wages statements,
20 Plaintiffs suffered actual damages and harm by being unable to determine their applicable hourly
21 rate for each pay period, which prevented them from becoming aware of these violations and
22 asserting their statutory protections under California law.

23 124. Plaintiff also seeks to recovery reasonable attorney’s fees available to prevailing
24 party under either Labor Code Section 218.5 or Labor Code Section 1194(a).

25 **TWELFTH CAUSE OF ACTION**
26 **UNFAIR BUSINESS PRACTICES**
27 **[Bus. & Prof. Code §§ 17200 et seq]**
28 **(Against All Defendants)**

125. The allegations of each of the preceding paragraphs are realleged and incorporated
herein by reference as if alleged in their entirety.

1 126. Business and Professions Code § 17200 prohibits unfair competition in the form of
2 any unlawful, unfair, or fraudulent business act or practice. Business and Professions Code §
3 17204 allows “any person who has suffered injury in fact and has lost money or property” to
4 prosecute a civil action for violation of the Unfair Competition Law.

5 127. Defendants committed unlawful, unfair, and/or fraudulent business acts and
6 practices as defined by Business and Professions Code § 17200 by misclassifying Plaintiffs,
7 failing to pay minimum wage for all hours worked, failing to pay overtime wages, failing to pay
8 wages for missed meal and rest periods, and failing to reimburse business expenses.

9 128. The above-described unlawful actions of Defendants constitute false, unfair,
10 fraudulent and/or deceptive business practices, within the meaning of Business and Professions
11 Code § 17200, et seq.

12 129. As a result of its unlawful acts, Defendants reaped unfair benefits and illegal profits
13 at the expense of Plaintiffs. Sprig should be enjoined from this activity, caused to specifically
14 perform its obligations, and made to disgorge these ill-gotten gains and pay restitution to Plaintiffs
15 including, but not limited to, restitution of all unpaid wages, plus interest, as well as attorneys’
16 fees and costs.

17 **THIRTEENTH CAUSE OF ACTION**
18 **BREACH OF CONTRACT**
19 **[Common Law]**
(Against All Defendants)

20 130. The allegations of each of the preceding paragraphs are realleged and incorporated
21 herein by reference as if alleged in their entirety.

22 131. A contract is a voluntary and lawful agreement, by competent parties, for a good
23 consideration, to do or not to do a specified thing.” *Robinson v. Magee* (1858) 9 Cal. 81, 83.).

24 132. Plaintiffs entered into a valid and enforceable contract with Defendants for the
25 performance of software engineering in exchange for payment of wages.

26 133. All conditions required for performance under the contract occurred.

27 134. Plaintiffs did all or substantially all of the significant things required of Plaintiffs
28 pursuant to the contract or Plaintiffs were excused from having to perform.

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1 135. Defendant breached the contract by failing to perform as agreed, as Defendants
2 failed to pay Plaintiffs for work performed.

3 136. Plaintiffs were harmed by Defendant's breach.

4 137. Defendant's breach was a substantial factor in causing Plaintiffs' harm.

5 138. Plaintiffs seek recovery of all of their damages that reasonably and foreseeably
6 resulted from the breach, as well as all recoverable consequential damages.

7 **FOURTEENTH CAUSE OF ACTION**
8 **RETALIATION IN VIOLATION OF LABOR CODE §1102.5**
9 **[Cal. Lab. Code §1102.5]**
10 **(Against All Defendants)**

11 139. The allegations of each of the preceding paragraphs are realleged and incorporated
12 herein by reference as if alleged in their entirety.

13 140. Labor Code section 1102.5, subdivision (b) provides that: "An employer . . . shall
14 not retaliate against an employee for disclosing information, or because the employer believes that
15 the employee disclosed or may disclose information, . . . to a person with authority over the
16 employee or another employee who has the authority to investigate, discover, or correct the
17 violation or noncompliance...if the employee has reasonable cause to believe that the information
18 discloses a violation of state or federal statute, or a violation of or noncompliance with a local,
19 state, or federal rule or regulation, regardless of whether disclosing the information is part of the
20 employee's job duties."

21 141. Labor Code section 1102.5, subdivision (c) provides that: "An employer, or any
22 person acting on behalf of the employer, shall not retaliate against an employee for refusing to
23 participate in an activity that would result in a violation of state or federal statute, or a violation of
24 or noncompliance with a local, state, or federal rule or regulation."

25 142. These provisions reflect the broad public policy interest encapsulated in the
26 California Labor Code that seeks to encourage workplace whistleblowers to report unlawful acts
27 without fearing retaliation.

28 143. Plaintiffs were employees of Defendants.

1 144. Plaintiffs engaged in a protected activity when Plaintiffs sought the enjoyment of
2 rights, privileges, and benefits protected under the California Labor Code, including proper
3 classification as an employee and entitlement to wages, among other rights and privileges.

4 145. Defendants took adverse retaliatory action against Plaintiffs.

5 146. The motivating animus for taking adverse employment action against Plaintiffs was
6 Plaintiff's protected activity as recognized under Labor Code section 1102.5.

7 147. The adverse retaliatory employment actions taken against Plaintiffs ultimately
8 culminated in Plaintiffs' discharge from employment, causing Plaintiffs to suffer injury. The
9 adverse action taken against Plaintiffs that culminated in Plaintiffs' discharge from employment
10 was a substantial factor in causing Plaintiffs to suffer damages.

11 148. As an actual and proximate result of Defendants' acts, Plaintiffs suffered economic
12 injury and became mentally upset, stressed, and aggravated. Plaintiffs have experienced mental
13 anguish, stress, aggravation, anxiety, humiliation, embarrassment, sleeplessness, and physical
14 deprivation. Plaintiff claims general damages for injury and mental distress in an amount
15 according to proof at time of trial.

16 149. Pursuant to subdivision (j) of Labor Code section 1102.5, which states that: "The
17 court is authorized to award reasonable attorney's fees to a plaintiff who brings a successful action
18 for a violation of these provisions," Plaintiffs seek to recover all attorney's fees reasonably
19 incurred in pursuit of these claims.

20
21 **FIFTEENTH CAUSE OF ACTION**
22 **COMMON LAW WRONGFUL DISCHARGE**
23 **[Cal. Common Law]**
24 **(Against All Defendants)**

25 150. The allegations of each of the preceding paragraphs are realleged and incorporated
26 herein by reference as if alleged in their entirety.

27 151. '[W]hile an at-will employee may be terminated for no reason, or for an arbitrary or
28 irrational reason, there can be no right to terminate for an unlawful reason or a purpose that
contravenes fundamental public policy. Any other conclusion would sanction lawlessness, which

1 courts by their very nature are bound to oppose.’ ” *Casella v. SouthWest Dealer Services, Inc.*
2 (2007) 157Cal.App.4th 1127, 1138–1139.

3 152. “[W]hen an employer’s discharge of an employee violates fundamental principles
4 of public policy, the discharged employee may maintain a tort action and recover damages
5 traditionally available in such actions.” *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167,
6 170.

7 153. “The elements of a claim for wrongful discharge in violation of public policy are
8 (1) an employer-employee relationship, (2) the employer terminated the plaintiff’s employment,
9 (3) the termination was substantially motivated by a violation of public policy, and (4) the
10 discharge caused the plaintiff harm.” *Yauv. Allen* (2014) 229 Cal.App.4th 144, 154.

11 154. “[T]his court established a set of requirements that a policy must satisfy to support
12 a tortious discharge claim. First, the policy must be supported by either constitutional or statutory
13 provisions. Second, the policy must be ‘public’ in the sense that it ‘inures to the benefit of the
14 public’ rather than serving merely the interests of the individual. Third, the policy must have been
15 articulated at the time of the discharge. Fourth, the policy must be ‘fundamental’ and
16 ‘substantial.’” *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 889–890.

17 155. The discharge of an employee in retaliation for reporting and resisting employer
18 violations of laws that secure important public policies contravenes those policies and gives rise to
19 a common law action in tort. “[T]he cases in which violations of public policy are found generally
20 fall into four categories: (1) refusing to violate a statute; (2) performing a statutory obligation (3)
21 exercising a statutory right or privilege; and (4) reporting an alleged violation of a statute of public
22 importance.” *Gantt v. Sentry Ins.* (1992) 1 Cal.4th 1083, 1090–1091, overruled on other grounds
23 in *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 80, fn. 6; accord *Stevenson, supra*, 16
24 Cal.4th at p. 889.)

25 156. “Labor Code section 1102.5, subdivision (b), which prohibits employer retaliation
26 against an employee who reports a reasonably suspected violation of the law to a government or
27 law enforcement agency, reflects the broad public policy interest in encouraging workplace
28

1 “whistleblowers,” who may without fear of retaliation report concerns regarding an employer’s
2 illegal conduct. This public policy is the modern-day equivalent of the long-established duty of the
3 citizenry to bring to public attention the doings of a lawbreaker.” *Ferrick v. Santa Clara University*
4 (2014) 231 Cal.App.4th 1337, 1355.

5 157. Complaints about wage-and-hour violations implicate fundamental public policy
6 concerns that give rise to a *Tameny* common-law wrongful discharge claim. *Gould v. Maryland*
7 *Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, [employee who complains about failure to
8 pay overtime wages and who was allegedly terminated in order to avoid payment of accrued
9 commissions and vacation pay establishes a claim of wrongful termination in violation of public
10 policy].

11 158. Defendants’ arguments for terminating Plaintiffs’ employment are pretextual in
12 nature and calculated to disguise the true motivating basis for the adverse employment action to
13 which Plaintiffs were subjected, which was to discharge Plaintiffs for reasons that implicate,
14 violate, and are offensive to significant public policies, the benefits of which identified policies
15 inure to the public.

16 159. Plaintiffs suffered adverse employment action, including the termination of
17 Plaintiff’s employment, as a result of opposing these practices that violate a clear and well-
18 articulated California public policy. Terminating someone under the circumstances under which
19 Plaintiffs’ employment was terminated would result in a violation of fundamental public policy of
20 this state.

21 160. Plaintiffs were employed by Defendant.

22 161. Plaintiffs were discharged by Defendant.

23 162. Defendants’ decision to discharge Plaintiffs from employment caused Plaintiffs to
24 experience economic harm and damages.

25 163. As a proximate result of Defendants’ conduct, Plaintiffs have suffered special
26 damages in the form of lost earnings, benefits and/or out of pocket expenses in an amount
27 according to proof at the time of trial. As a further direct and proximate result of Defendants’
28

1 conduct, Plaintiffs will suffer additional special damages in the form of lost future earnings,
2 benefits and/or other prospective damages in an amount according to proof at the time of trial.

3 164. As a further direct and proximate result of Defendants' conduct, Plaintiffs have
4 suffered loss of financial stability, peace of mind and future security, and has suffered
5 embarrassment, humiliation, mental and emotional pain and distress and discomfort, all to
6 Plaintiffs' detriment and damage in amounts not fully ascertained but within the jurisdiction of
7 this court and subject to proof at the time of trial.

8 165. Defendants committed the acts alleged herein oppressively and maliciously, with
9 the wrongful intention of injuring Plaintiffs, from an evil and improper motive amounting to
10 malice, and in conscious disregard of Plaintiffs' rights, in that Defendants retaliated against
11 Plaintiffs in violation of fundamental public policy of the state of California. Thus, Plaintiffs are
12 entitled to recover punitive damages from Defendant.

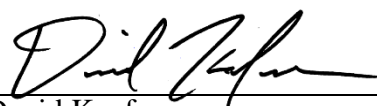
13
14 **PRAYER**

15 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 16 1. General and compensatory damages, including prejudgment interest, according to
17 proof;
- 18 2. Nominal damages;
- 19 3. Special damages according to proof, including, without limitation, lost salary, both
20 front and back pay, bonuses, and any other benefits to which Plaintiff would have been entitled to
21 by reason of his employment with Defendants, according to proof;
- 22 4. Equitable relief in the form of back pay;
- 23 5. Punitive and exemplary damages;
- 24 6. Attorney's fees and costs pursuant to California Govt. Code § 12965(b), Labor Code
25 §218.5 and §1194 (a) and other applicable law.
- 26 7. Prejudgment interest; and
- 27 8. Such other and further relief as the Court may deem just and proper.
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Dated: April 5, 2023

By: 
David Kaufman
Attorneys for Plaintiffs
PAUL SEIBERT and SEIBERT
CONSULTING, LLC

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the United States of America that on July 6, 2023, I caused the foregoing **DEFENDANT’S NOTICE OF REMOVAL OF THIS ACTION TO FEDERAL COURT** to be served, and transmitted electronically, to the following parties at their referenced email and physical addresses:

Counsel for Plaintiffs

*David A. Kaufman, Law Offices of David Kaufman,
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Defendant, Frank Recruitment Group, Inc.

David Liebman, Frank Recruitment Group, Inc., d.liebman@tenthrevolution.com