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14 **Pro hac vice application forthcoming*

15 Attorneys for Plaintiff and those similarly situated

16 **IN THE UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 Aaron Kudatsky, individually and on behalf
19 of all others similarly situated,

20 Plaintiff,

21 v.

22 Tyler Technologies,

23 Defendant.

Case No.:

**COLLECTIVE AND CLASS ACTION
COMPLAINT**

**(1) Failure to Pay Overtime Compensation in
Violation of the Fair Labor Standards Act (29
U.S.C. § 201, et seq.)**

**(2) Failure to Pay Overtime Compensation in
Violation of California Law (Cal. Lab. Code
§§ 510, 1194, and 1198, and IWC Wage
Order(s))**

**(3) Waiting Time Penalties (Cal. Lab. Code
§§ 201–203)**

**(4) Failure to Provide Itemized Wage
Statements (Cal. Lab. Code § 226)**

(5) Violation of California Business and Professions Code §§ 17200 et seq.

PRELIMINARY STATEMENT

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5 1. This is a class and collective action brought by Plaintiff Aaron Kudatsky
6 (“Plaintiff”), on behalf of himself and all others similarly situated. Plaintiff and those similarly
7 situated are or were employed by Defendant Tyler Technologies (“Tyler” or “Defendant”), as
8 Implementation Coordinators, Implementation Consultants, or other positions with similar titles
9 and/or duties (collectively “Implementation Reps”) and were denied proper compensation as
10 required by federal wage and hour laws. These employees are similarly situated under the Fair
11 Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

12 2. The FLSA Collective is made up of all persons employed by Defendant as
13 Implementation Reps within the United States and any time from three years prior to the filing of
14 this Complaint (the “Collective Period”).

15 3. The California Class is made up of all persons employed by Defendant as
16 Implementation Reps within the State of California at any time from four years prior to the filing of
17 this Complaint (the “Class Period”).

18 4. During the Class and Collective Periods, Defendant failed to pay overtime
19 compensation to Plaintiff and each member of the putative class and the FLSA Collective as
20 required by state and federal law. Plaintiff seeks relief for the California Class under California
21 wage and hour law, and for the FLSA Collective under the FLSA, to remedy Defendant’s failure to
22 pay appropriate overtime compensation, to pay waiting penalties, and to provide accurate wage
23 statements.

JURISDICTION AND VENUE

24
25 5. This Court has original jurisdiction to hear this Complaint and to adjudicate the
26 claims stated herein under 28 U.S.C. § 1331, this action being brought under the FLSA, 29 U.S.C.
27 § 201, et seq.

1 14. Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully set
2 forth herein.

3 15. Defendant has thousands of public sector clients including cities, states, counties,
4 federal agencies, states and school districts throughout the United States.

5 16. Defendant's principal place of business is in Plano, Texas.

6 17. Defendant develops and creates software solutions and provides support services to
7 various clients. To assist its clients, Defendant employs Implementation Reps such as Plaintiff and
8 others similarly situated at its offices across the country.

9 18. Regardless of their office location or specific job title, Implementation Reps have
10 similar job responsibilities and perform similar duties.

11 19. Implementation Reps primarily provide on-site and remote services to Tyler's
12 clients during the software or application implementation process, including assisting with setting
13 up applications, gathering information from clients regarding data conversion, assisting with the
14 roll-out process and providing training relating to the administration and use of applications to the
15 client.

16 20. In providing training to Defendant's clients, Plaintiff and other Implementation
17 Reps were required to follow specific procedures and guidelines outlined in reference documents,
18 training guideline documents, and other written materials.

19 21. For example, Defendant provided Plaintiff with instructions on how to properly train
20 clients to configure and use software on their computers. Defendant also provided Plaintiff and those
21 similarly situated with materials that outlined how to train clients on the overall use and functionality
22 of the software. These materials, which included following scripted training guidelines, were
23 typically used in conjunction with training sessions and/or presentations Plaintiff provided to
24 Defendant's clients.

25 22. Defendant also provided Plaintiff and other Implementation Reps instructions
26 regarding procedures to follow when assisting clients with basic troubleshooting and answering
27 basic questions.
28

1 23. Plaintiff and other Implementation Reps were provided weekly agendas from their
2 project managers which detailed their expected duties for the specific modules that they were
3 completing.

4 24. Plaintiff and other Implementation Reps performed their work from home, at
5 Defendant's office locations and on-site where Defendant's clients were located. Plaintiff and
6 Implementation Reps were required to travel to Defendant's clients' locations and remain on-site
7 until the training and the weekly agendas were completed.

8 25. While working on-site, Plaintiff and other Implementation Reps faced situations
9 where they would need the assistance of the support department. There were instances when
10 Plaintiff and other Implementation Reps worked with the support department during working hours.
11 However, at times, Plaintiff and other Implementation Reps worked with the support department
12 after hours while they were at their hotel.

13 26. After completing an on-site visit, Plaintiff and other Implementation Reps were
14 required to perform certain follow-up work, including completing expense reports and other reports
15 summarizing the work they completed on-site. Following the completion of these reports, Plaintiff
16 and other Implementation Reps would begin preparing for the next client project by completing
17 research on the client and communicating with previous Implementation Reps who have worked
18 with that client. Plaintiff and other Implementation Reps would complete this preliminary work on
19 the weekends in order to be prepared to work with the new client.

20 27. Plaintiff and other Implementation Reps were paid a salary with no overtime pay.

21 28. From approximately July 2016 to March 2019, Plaintiff was paid an annual salary
22 of approximately \$50,000.00-\$54,000.00. Plaintiff also received additional pay per completed client
23 billable day ranging between \$30-\$120 per billable day.

24 29. Plaintiff and other similarly situated Implementation Reps were classified as exempt
25 from state and federal overtime laws.

26 30. Defendant suffered and permitted Plaintiff and the similarly situated individuals to
27 work more than forty (40) hours per week, and over eight (8) hours per day without overtime pay.
28

1 Plaintiff or other Implementation Reps meant Defendant never paid them all wages due at the time
2 of discharge.

3 47. The California Representative Plaintiff and California Class bring this action as a
4 class action pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure on behalf of the
5 following defined class:

6 **California Class:** All persons who worked for Defendant as Implementation
7 Coordinators, Implementation Consultants, or other positions with similar job duties
8 and/or job titles within the State of California at any time during the last four (4)
9 years prior to the filing of this Complaint.

10 48. Numerosity: Upon information and belief, the California Class are so numerous
11 that joinder of all members is impracticable. Upon information and belief, during the relevant time
12 period, Defendant employed over 40 people who satisfy the definition of the proposed Class.

13 49. Typicality: The California Representative Plaintiff's claim is typical of the
14 members of the California Class. He seeks application of California state law only for the time
15 periods when he worked in California. Plaintiff is informed and believes that, like other
16 Implementation Reps, he routinely worked more than forty hours per week, and more than eight
17 hours per day, during the Class Period. The California Representative Plaintiff had the same duties
18 and responsibilities as other Class members. The California Representative Plaintiff and the
19 California Class were subject to Defendant's policy and practice of improperly classifying
20 Implementation Reps as "exempt" from federal and state wage and hour laws, failing to pay
21 appropriate overtime compensation, failing to pay waiting time penalties, and failing to maintain
22 accurate records of hours worked.

23 50. Superiority: A class action is superior to other available methods for the fair and
24 efficient adjudication of the controversy, particularly in the context of wage and hour litigation
25 where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits in
26 federal court against large corporate defendants.

27 51. Adequacy: The California Representative Plaintiff will fairly and adequately
28 protect the interests of the California Class, and has retained counsel experienced in complex wage
and hour class and collective action litigation.

1 52. Commonality: Common questions of law and fact exist to all members of
2 the California Class and predominate over any questions solely affecting individual members of
3 the Class, including but not limited to:

- 4 a. Whether Defendant improperly treated Plaintiff and the members of the California
5 Class as exempt from California’s overtime requirements;
- 6 b. Whether Defendant unlawfully failed to pay appropriate overtime compensation to
7 the California Representative Plaintiff and the members of the California Class in
8 violation of the California Labor Code §§ 510 and 1194, California Industrial Wage
9 Order No. 4 (8 C.C.R. § 11040), and the FLSA;
- 10 c. Whether the California Representative Plaintiff and the members of the California
11 Class who are no longer employed by Defendant are entitled to waiting time
12 penalties pursuant to California Labor Code § 203;
- 13 d. Whether Defendant provided adequate itemized wage statements to the California
14 Representative Plaintiff and the members of the California Class pursuant to
15 California Labor Code § 226;
- 16 e. Whether Defendant’s conduct violated the California Unfair Practices Act set forth
17 in the Business and Professions Code § 17200 *et seq.* by violating the state and
18 federal laws as set forth herein;
- 19 f. The proper measure of damages sustained by the California Representative Plaintiff
20 and the California Class; and
- 21 g. Whether Defendant’s actions were “willful” and/or “knowing and intentional.”

22 53. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because
23 prosecution of actions by or against individual members of the Class would result in inconsistent
24 or varying adjudications and create the risk of incompatible standards of conduct for Defendant.
25 Further, adjudication of each individual member’s claim as a separate action would be dispositive
26 of the interest of other individuals not party to this action, impeding their ability to protect their
27 interests.

1 71. The California Labor Code requires employers, such as Defendant, to pay overtime
2 compensation to all non-exempt employees.

3 72. The California Representative Plaintiff and the California Class were non-exempt
4 employees entitled to be paid proper overtime compensation for all hours worked.

5 73. During the relevant statutory period, the California Representative Plaintiff and the
6 California Class worked in excess of eight hours in a work day and/or forty hours in a work week
7 for Defendant.

8 74. During the relevant statutory period, Defendant failed and refused to pay the
9 California Representative Plaintiff and the California Class proper overtime compensation for
10 overtime hours worked.

11 75. Defendant had a policy and practice of failing and refusing to pay proper overtime
12 pay to the California Representative Plaintiff and the California Class for their overtime hours
13 worked.

14 76. As a result of Defendant's failure to pay wages earned and due, Defendant violated
15 the California Labor Code.

16 77. As a direct and proximate result of Defendant's unlawful conduct, as set forth
17 herein, Plaintiff and the California Class have sustained damages, including loss of earnings for
18 hours of overtime worked on behalf of Defendant, prejudgment interest, and attorneys' fees and
19 costs.

20 **THIRD CLAIM FOR RELIEF**

21 **CALIFORNIA WAGE PAYMENT PROVISIONS OF LABOR CODE**

22 **Cal. Labor Code §§ 201, 202 & 203**

23 (On Behalf of the California Representative Plaintiff and the California Class)

24 78. Plaintiff, individually and on behalf of the California Class, alleges and incorporates
25 by reference the allegations in the preceding paragraphs.

26 79. California Labor Code §§ 201 and 202 require Defendant to pay employees all
27 wages due within the time specified by law. California Labor Code § 203 provides that if an
28 employer willfully fails to timely pay such wages, the employer must continue to pay the subject

1 employees' wages until the back wages are paid in full or an action is commenced, up to a maximum
2 of thirty days of wages.

3 80. The California Representative Plaintiff and the California Class are entitled to
4 unpaid wages and overtime compensation, but to date have not received all such compensation.

5 81. As a consequence of Defendant's willful conduct in not paying proper compensation
6 for all hours worked, the California Representative Plaintiff and those members of the California
7 Class whose employment with Defendant has ended are entitled to up to thirty days' wages under
8 Labor Code § 203, together with interest thereon, and attorneys' fees and costs.

9 **FOURTH CLAIM FOR RELIEF**

10 **CALIFORNIA WAGE STATEMENT PROVISIONS OF LABOR CODE**

11 Cal. Labor Code § 226

12 (On Behalf of the California Representative Plaintiff and the California Class)

13 82. Plaintiff, individually and on behalf of the California Class, alleges and incorporates
14 by reference the allegations in the preceding paragraphs.

15 83. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
16 wage statements including, *inter alia*, hours worked and hourly rates paid, to the California
17 Representative Plaintiff and the California Class in accordance with Labor Code § 226(a) and the
18 IWC Wage Orders. Such failure caused injury to Plaintiff and the California Class, by, among
19 other things, impeding them from knowing the amount of wages to which they were and are
20 entitled.

21 84. The California Representative Plaintiff and the California Class seek the amount
22 provided under Labor Code 226(e), including the greater of all actual damages or fifty dollars for
23 the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation
24 in a subsequent pay period and their attorneys' fees and costs.

25 **FIFTH CLAIM FOR RELIEF**

26 **CALIFORNIA UNFAIR COMPETITION LAW**

27 Cal. Bus. & Prof. Code §§ 17200 et seq.

28 (On Behalf of the California Representative Plaintiff and the California Class)

1 85. Plaintiff, individually and on behalf of the California Class, alleges and incorporates
2 by reference the allegations in the preceding paragraphs.

3 86. The foregoing conduct, as alleged, violates the California Unfair Competition Law
4 (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.* The UCL prohibits unfair competition by
5 prohibiting, *inter alia*, any unlawful or unfair business acts or practices.

6 87. Beginning at a date unknown to the California Representative Plaintiff, but at least
7 as long ago as the year 2015 Defendant committed acts of unfair competition, as defined by the
8 UCL, by, among other things, engaging in the acts and practices described herein. Defendant’s
9 conduct as herein alleged has injured the California Representative Plaintiff and the California
10 Class by wrongfully denying them earned wages, and therefore was substantially injurious to
11 Plaintiff and the California Class.

12 88. Defendant engaged in unfair competition in violation of the UCL by violating, *inter*
13 *alia*, each of the following laws. Each of these violations constitutes an independent and separate
14 violation of the UCL:

15 A. Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*; and

16 B. California Labor Code §§ 510 & 1194.

17 89. Defendant’s course of conduct, acts, and practices in violation of the California laws
18 mentioned in the above paragraph constitute a separate and independent violation of the UCL.
19 Defendant’s conduct described herein violates the policy or spirit of such laws or otherwise
20 significantly threatens or harms competition.

21 90. The harm to the California Representative Plaintiff and the California Class in being
22 wrongfully denied lawfully earned wages outweighed the utility, if any, of Defendant’s policies or
23 practices and therefore, Defendant’s actions described herein constitute an unfair business practice
24 or act within the meaning of the UCL.

25 91. Pursuant to Business and Professions Code § 17200 *et seq.*, the California
26 Representative Plaintiff and the California Class are entitled to restitution of the overtime earnings
27 and other unpaid wages alleged herein that were withheld and retained by Defendant during a period
28

1 that commences four years prior to the filing of this action, an award of attorneys' fees pursuant to
2 Code of Civil Procedure § 1021.5 and other applicable law, and costs.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff, individually and on behalf of the FLSA Collective, prays for
5 relief as follows:

6 a. Designation of this action as a collective action on behalf of Plaintiff and those
7 similarly situated, and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all those similarly
8 situated apprising them of the pendency of this action, and permitting them to assert timely FLSA
9 claims by filing individual consent forms pursuant to 29 U.S.C. § 216(b);

10 b. Judgment that Plaintiff and the FLSA Collective are non-exempt employees entitled
11 to protection under the FLSA;

12 c. Judgment against Defendant for violations of the overtime provisions of the FLSA;

13 d. Judgment against Defendant for an amount equal to Plaintiff's and the FLSA
14 Collective's unpaid back wages at the applicable overtime rates;

15 e. A finding that Defendant's violations of the FLSA are willful;

16 f. An amount equal to Plaintiff's and the FLSA Collective's damages as liquidated
17 damages;

18 g. All costs and attorneys' fees incurred prosecuting this claim;

19 h. An award of any pre- and post-judgment interest; and

20 i. For such other and further relief, in law or equity, as this Court may deem
21 appropriate and just.

22 **WHEREFORE**, the California Representative Plaintiff, on behalf of himself, and all
23 members of the California Class, and on behalf of the general public, prays for relief as follows:

24 a. Unpaid overtime wages and other due wages pursuant to California law;

25 b. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules
26 of Civil Procedure;

27 c. Designation of the California Representative Plaintiff as representative of the
28 California Class and counsel of record as Class Counsel;

- 1 d. Appropriate equitable relief to remedy Defendant's violations of state law;
- 2 e. Appropriate statutory penalties;
- 3 f. An award of damages and restitution to be paid by Defendant according to proof;
- 4 g. Attorneys' fees and costs of suit, including expert fees pursuant to Cal. Labor Code
- 5 § 1194 and California Code of Civil Procedure § 1021.5;
- 6 h. Pre-judgment and post-judgment interest, as provided by law; and
- 7 i. Such other equitable relief as the Court may deem just and proper.

8
9 Dated: November 20, 2019

NICHOLS KASTER, LLP

10 By: /s/ Matthew C. Helland
11 Matthew C. Helland

12 ATTORNEYS FOR PLAINTIFF AND THE
13 PUTATIVE CLASSES
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