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Superior Court of California
County of Los Angeles
11/18/2021
Sherri R. Carter, Executive Officer / Clerk of Court
By: C. Mason Deputy

Attorneys for Plaintiffs,
HYO KYUNG LEE

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL

HYO KYUNG LEE, an Individual,
Plaintiffs,

vs.

ELITE LOGISTICS CORP., a California
Corporation; MOON C. KANG, an
Individual; and DOES 1 through 50,
Inclusive,
Defendants.

Case No. 21STCV34748

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

- 1. Failure to Pay Overtime;**
- 2. Failure to Pay Meal Breaks;**
- 3. Failure to Pay Rest Breaks;**
- 4. Failure To Pay Earned Wages Upon Separation;**
- 5. Failure To Furnish Accurate Wage Statements;**
- 6. Unfair Competition in Violation of Cal. Business and Professions Code §17200, et. seq.**
- 7. Violation of Private Attorney's general Act of 2004 in Violation of Labor Code §2698, §2699, et. seq.**

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL

1 Plaintiff HYO KYUNG LEE, individually and in her representative capacity, hereby
2 allege and states as follows:

3 **NATURE OF THE CASE**

4 1. Plaintiff HYO KYUNG LEE brings this action against Defendants ELITE
5 LOGISTICS CORP., MOON C. KANG, and Does 1 through 50 inclusive (collectively
6 “Defendants”), for unpaid overtime wages, missed meal and rest breaks, statutory damages and
7 penalties, prejudgment interest, costs, attorneys’ fees, restitution, and other appropriate relief for
8 Defendants’ violations of various sections of the California Labor Code and Industrial Welfare
9 Commission Wage Orders. Plaintiffs further seek equitable remedies pursuant to California
10 Business & Professions Code §17200 *et seq.* including but not limited to restitution and
11 injunctive relief.

12 2. Plaintiff HYO KYUNG further brings this action to recover penalties under the
13 Private Attorney General Act of 2004 (“PAGA”), *Labor Code* §2698 *et. seq.* on behalf of the
14 State of California and on a representative basis. All California-based current and former non-
15 exempt employees of Defendants are aggrieved employees.

16 **PARTIES**

17 3. Plaintiff HYO KYUNG LEE (hereinafter, “Ms. Lee” or “Plaintiff”) was at all
18 times relevant to this Complaint a resident of the State of California.

19 4. At all relevant times herein, Defendant ELITE LOGISTICS CORP. (hereinafter,
20 “Defendant Elite”) is a Corporation and existing under the laws of the State of California, located
21 in the County of Los Angeles.

22 5. At all relevant times herein, Defendant MOON C. KANG (hereinafter,
23 “Defendant Kang”) was at all times relevant an individual who is a resident of the State of
24 California. At all relevant times, Defendant Kang was the owner and acting manager of
25 Defendant Elite.

26 6. Plaintiff is ignorant of the true names and capacities, whether individual,
27 corporate, associate, or otherwise, of Defendant DOES 1 through 50. Such DOE defendants are

1 sued pursuant to the provisions of C.C.P. §474. Plaintiff is informed, believes and thereon
2 alleges that each DOE defendant was in some manner responsible, participated in, or contributed
3 to the matters and things of which Plaintiff herein complains, and in some fashion, has legal
4 responsibility therefor. When the exact nature and identity of such DOE defendants are
5 ascertained by Plaintiff, he will seek leave to amend this complaint and all proceedings to set
6 forth the same.

7 7. Plaintiff is informed, believes and thereon alleges that, at all times mentioned
8 herein, each defendant was the agent or employee of the other defendants and was at all times
9 acting within the scope of such agency or employment, and actively participated in, or
10 subsequently ratified, or adopted, each of the acts or omissions alleged, with full knowledge of
11 all the facts and circumstances, including full knowledge of each and every violation of
12 Plaintiffs' rights.

13 8. All of Plaintiff's claims herein are the result of the intentional conduct of the
14 Defendants and their blatant disregard for the laws of California. Accordingly, this civil action
15 seeks compensatory and statutory damages against Defendants for violations of Plaintiff's rights
16 as set forth herein.

17 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

18 9. On April 29, 2021, Plaintiff, by online submission, served notice of the violations
19 alleged in this complaint, in the manner required by Labor Code §2699.3, on the California
20 Labor & Workforce Development Agency, 800 Capital Mall, Suite 5000, Sacramento, CA 95814
21 (hereinafter the "LWDA"). Said notice was also served by certified mail on Defendants, at
22 Defendants' last known address(es). Neither the Plaintiffs, nor Plaintiffs' counsel received notice
23 from the LWDA upon the expiration of thirty-three days or more following the sending of the
24 notice that said agency was accepting Plaintiffs' claim for prosecution. Accordingly, Plaintiffs
25 allege the right to proceed with all remedies provided by law, including any and all civil
26 penalties which are collectible by Plaintiffs under the provisions of Labor Code §§ 2698-2699.5,
27 the Private Attorney General Act of 2004 ("PAGA").

FACTUAL BACKGROUND

10. Defendant Elite is a logistics and trucking company. Defendant Elite hires truckers, warehouse staff, as well as office workers. Defendants operate and run their business in Compton, California.

11. Plaintiff was employed as an Assistant Accountant. Plaintiff was employed by Defendants from August 2016 to January 30, 2021. Plaintiff's daily jobs duties included inputting data into computers, inputting driver payroll, account receivables, and making cash and check deposits into the company bank account.

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

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

14. Defendants required that Ms. Lee and all aggrieved employees clock in at the exact same time every morning and clock out at the exact same time every evening regardless of the hours that Ms. Lee and the aggrieved employees actually worked.

15. Ms. Lee and all aggrieved employees regularly began work before 8 a.m. but were not permitted to clock in until 8 a.m.

16. Ms. Lee and all aggrieved employees regularly ended work after 5 p.m. but were forced to clock out at 5 p.m.

17. Defendants required that Ms. Lee and all aggrieved employees take work home for them to complete. Ms. Lee and all aggrieved employees regularly took files home and performed tasks for work at home.

18. Defendants, and each of them, were aware that Ms. Lee and all aggrieved employees took work home for them to complete and allowed and encouraged them to take work home to complete.

1 19. Further, Ms. Lee and the aggrieved employees took a lunch break, Mr. Lee and
2 aggrieved employees were required to clock out for one (1) hour per day for lunch. However,
3 Ms. Lee and other aggrieved employees were not permitted to take their full hour for lunch and
4 were required to run errands for Defendants while on their lunch break. Further, Ms. Lee and
5 other aggrieved employees were not provided an opportunity to take her ten (10) minute
6 uninterrupted break for every four (4) hours worked.

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

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

13 22. As a result of the above-mentioned violations, Plaintiff and other aggrieved
14 employees who were similarly situated, were not provided accurate wage statements.

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

17
18 **FIRST CAUSE OF ACTION**
19 **(Failure to Pay Overtime Compensation)**
20 **(Labor Code §§ 510, 558, 1194, 1198)**
21 **(Against Defendants)**

22 24. Plaintiff realleges and incorporates here paragraphs 1 through 22 above.

23 25. Plaintiff was employed as a non-exempt employee by Defendants, and each of
24 them. At all relevant times mentioned herein, Defendants, and each of them, required, permitted,
25 and suffered Plaintiffs to work hours substantially in excess of eight (8) hours per day and of
26 forty (40) hours per workweek, and sometimes 7 days per week.

27 26. Pursuant to Labor Code §§ 510, 558, 1194, 1198 and applicable wage orders,
28 Defendants, and each of them, are required to compensate Plaintiff for all overtime actually
worked, at a rate of one and one half (1½) times the regular rate of pay for hours worked in

1 excess of eight (8) hours in a work day and forty (40) hours in a work week, and a higher rate
2 when Plaintiff worked on a 7th consecutive day. Defendants, and each of them were further
3 required by law to compensate for hours worked in excess of twelve (12) per day and after the
4 eighth (8th) hour on the seventh (7th) consecutive day worked in a work week, at double the
5 regular hourly rate of pay.

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

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

13 29. Pursuant to Labor Code §§ 510, 558, 1194, 1198, Plaintiff is entitled to recover
14 unpaid overtime wages, subject to proof at trial, plus interest at the legal rate, and attorneys' fees
15 and costs.

16 **SECOND CAUSE OF ACTION**

17 **Failure to Pay Meal Periods - Cal. Labor Code §§ 226.7 and 512** 18 **(against All Defendants)**

19 30. Plaintiff realleges and incorporates by reference paragraphs 1 through 28 above.

20 31. Plaintiff worked in excess of five hours per day without being provided at least
21 one-half hour meal period in which she was relieved of her duties, as required by Labor Code §§
22 226.7, 512, and applicable wage orders.

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

28 **THIRD CAUSE OF ACTION**

COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL

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

3 33. Plaintiff realleges and incorporate by reference paragraphs 1 through 31 above.

4 34. Defendants failed to provide the rest periods that are required under the California
5 law, including Labor Code Section 226.7 and applicable wage orders.

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

10 **FOURTH CAUSE OF ACTION**

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

13 36. Plaintiff refers to Paragraph 1 to 34 of this Complaint and hereby incorporates the
14 same as fully set forth herein.

15 37. California Labor Code §§ 201, 202, and 204 require Defendants to pay all
16 compensation due and owing to Plaintiff immediately upon discharge or within seventy-two
17 hours of resignation. Defendants have operated under and continue to operate under a common
18 policy and plan of willfully failing and refusing to pay unpaid wages and overtime owed to
19 Plaintiff upon separation from employment, as required by Sections 201, 202, and 204.

20 38. As a result of Defendants' willful failure to pay Plaintiff owed wages upon
21 separation from employment, Defendants are liable for statutory waiting time penalties pursuant
22 to California Labor Code § 203.

23 39. Pursuant to Labor Code § 204, Plaintiff is entitled to recover unpaid wages,
24 subject to proof, plus interest at the legal rate.

25 **FIFTH CAUSE OF ACTION**

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

28 40. Plaintiff refers to Paragraph 1 to 38 of this Complaint and hereby incorporate the
same as fully set forth herein.

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

7 42. As a result of Defendants' failure to provide accurate itemized wage statements,
8 Plaintiff suffered actual damages and harm by being unable to determine the amount of hours,
9 including overtime, worked each pay period in a timely manner, which prevented her from
10 asserting their rights under California law.

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

15 44. Pursuant to Labor Code §§226.3, 2699 *et seq.*, Plaintiffs seek to recover the civil
16 penalty against Defendants and each of them, of \$250.00 for the first violation of Labor Code
17 §226(a) and \$1,000.00 per pay period per paycheck for each subsequent violation of this section,
18 according to proof.

19 Fsdffs

20 **SIXTH CAUSE OF ACTION**
21 **(Unfair Competition in Violation of Cal. Business and Professions Code §17200, et. seq)**
22 **(Against all Defendants)**

23 45. Plaintiffs refer to Paragraph 1 to 43 of this Complaint and hereby incorporate the
24 same as fully set forth herein.

25 46. California Business and Professional Code § 17200 defines unfair competition as
26 any unlawful, unfair, or fraudulent business act or practice.

27 47. Section 17200 applies to violations of labor laws and in the employment context.

28 48. Upon information and belief, Defendants, through their failure to: pay regular and

COMPLAINT FOR DAMAGES; DEMAND FOR JURY TRIAL

1 minimal wages, report correct work hours, provide rest breaks, and provide meal and rest times
2 violated California Labor Code. Through these acts, Defendants deprived Plaintiffs of
3 fundamental rights and privileges afforded to all gainfully employed employees. This deprivation
4 has caused Plaintiffs economic injury.

5 49. Defendants, through the acts listed above, reaped unfair and illegal profits.

6 50. Plaintiff has a vested property right and ownership interest in these profits and
7 Plaintiff should be entitled to recover these profits that were obtained through these unfair
8 business practices.

9 **SEVENTH CAUSE OF ACTION**

10 **Violation of Private Attorney's General Act of 2004 in Violation of Cal. Labor Code §2698,**
11 **§2699, et. seq.**
(Against All Defendants)

12 51. Plaintiff refers to Paragraph 1 to 48 of this Complaint and hereby incorporate the
13 same as fully set forth herein.

14 52. Under the Private Attorneys' General Act of 2006, *Labor Code* §§2698-2699.5
15 (hereinafter, "PAGA"), an aggrieved employee, on behalf of himself or herself and other current
16 or former employees, may recover penalties under any provision of the *Labor Code* that provides
17 for civil penalties. These penalties are in addition to any other relief available under the Labor
18 Code.
19 Code.

20 53. As set forth above, Defendant has committed numerous violations for which the
21 *Labor Code* provides for penalties, including violations of *Labor Code* §§204, 510, 1194, 226.7,
22 512, 1182.12, 1197, 1194, 226, 1174, 201, 202, and 203.
23

24 54. Plaintiff brings this cause of action on behalf of herself and all Aggrieved
25 Employees. All California-based current and former non-exempt employees of Defendants are
26 aggrieved employees.
27

1 55. Plaintiff is an aggrieved employee under PAGA because she was employed by
2 Defendant during the applicable statutory period and is a former California-based non-exempt
3 employee of Defendant. Plaintiff sent written notice by certified mail to Defendants notifying
4 them of the specific violations that are set forth herein and the facts and theories supporting those
5 violations.

6 56. Plaintiff by and through her counsel of record, uploaded the same written notice
7 electronically to the LWDA.

8 57. The LWDA provided no notice of investigation to Plaintiff within the statutorily
9 required period. As of the date of this Complaint, the LWDA has provided no notice of
10 investigation based on Plaintiff's Notice.

11 58. As a direct result of Defendants' conduct as described, Plaintiff is entitled to
12 recover, on her own behalf and on behalf of other similarly situated, the maximum civil penalties
13 permitted by PAGA from Defendants for all violations of *Labor Code* as alleged in this
14 Complaint.
15

16
17 **PRAYER FOR RELIEF**

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

- 20 1. For unpaid wages and compensation, and statutory penalties, according to proof;
21 2. For restitution of all compensation due, including but not limited to wages and
22 benefits, as a result of Defendants' unlawful and unfair business practices,
23 according to proof;
24 3. For reasonable attorneys' fees and costs of suit, as allowed by law;
25 4. For accrued interest on damages and penalties, including pre-judgment interest, as
26 allowed by law;
27 5. For any and all applicable PAGA civil penalties pursuant to Labor Code §§ 2698-

2699.5, for all Plaintiffs;

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

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

Dated: November 18, 2021

LAW OFFICES OF RICHARD KIM PC

By: /s/ Richard Kim
RICHARD KIM
Attorneys for Plaintiff,
HYO KYUNG LEE

1
2 **DEMAND FOR JURY TRIAL**

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

4 Dated: November 18, 2021

LAW OFFICES OF RICHARD KIM PC

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7 By: /s/ Richard Kim
RICHARD KIM
8 **Attorneys for Plaintiff,**
HYO KYUNG LEE
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