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CORINNE GERARD, individually  
and on behalf of other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

CORINNE GERARD, an individual,

Plaintiff,

vs.

YEC, INC., a Nevada corporation, RONALD W.  
BURKLE, an individual, and DOES 1 through  
25, inclusive,

Defendants.

Case No. 23STCV01060

**COMPLAINT FOR DAMAGES**

- 1. FAILURE TO PAY OVERTIME;**
- 2. FAILURE TO PROVIDE MEAL PERIODS;**
- 3. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS;**
- 4. FAILURE TO PAY TIMELY WAGES DUE AT TERMINATION/WAITING TIME PENALTIES;**
- 5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 6. FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN;**
- 7. FAILURE TO MAINTAIN REQUIRED RECORDS;**
- 8. FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 9. VIOLATION OF LABOR CODE SECTION 558.1;**
- 10. UNFAIR AND UNLAWFUL BUSINESS PRACTICES;**
- 11. PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**

**DEMAND FOR JURY TRIAL.**

1 Plaintiff CORINNE GERARD (hereinafter "PLAINTIFF") brings this action as an  
2 individual and on behalf of other aggrieved employees against YEC, INC., RONALD W.  
3 BURKLE, and Does 1 through 25 ("DOES"), inclusive. YEC, INC., RONALD W. BURKLE  
4 ("BURKLE"), and DOES are hereinafter collectively referred to as "DEFENDANTS."  
5 PLAINTIFF complains and alleges as follows on the basis of personal knowledge and/or  
6 information and belief:

### 7 **JURISDICTION AND VENUE**

8 1. The Superior Court of the State of California has jurisdiction over this action pursuant  
9 to California Constitution Article VI, section 10, which grants the Superior Court "original  
10 jurisdiction in all cases except those given by statute to other trial courts."

11 2. The Superior Court of the State of California has jurisdiction in this matter because  
12 PLAINTIFF is a resident of the State of California. Moreover, upon information and belief,  
13 BURKLE is a citizen of California, the alleged unlawful employment acts occurred in California,  
14 and significant relief is being sought against DEFENDANTS whose violations of California  
15 employment laws form the significant basis for PLAINTIFF'S claims. Further, no federal question  
16 is at issue because the claims are based solely on California law.

17 3. Venue is proper in this judicial district and the County of Los Angeles, California  
18 because PLAINTIFF performed work for DEFENDANTS in the County of Los Angeles,  
19 DEFENDANTS maintain offices and facilities and transact business in the County of Los Angeles,  
20 and DEFENDANTS' illegal acts, which are the subject of this action, were applied, at least in part,  
21 to PLAINTIFF, in the County of Los Angeles. Thus, a substantial portion of the transactions and  
22 occurrences related to this action occurred in this county pursuant to Cal. Civ. Proc. Code § 395.

23 4. Prior to filing this action, Pursuant to California Labor Code Section 2699.3,  
24 PLAINTIFF gave written notice to the California Labor and Workforce Development Agency  
25 ("LWDA") and DEFENDANTS of the specific provisions of the California Labor Code and IWC  
26 Wage Orders alleged to have been violated, including the facts and theories to support the alleged  
27 violations. PLAINTIFF's notice to the LWDA is attached as Exhibit A. Within sixty-five (65)  
28 calendar days of PLAINTIFF's notice, the LWDA did not provide notice to PLAINTIFF that it

intends to investigate the alleged violations. Therefore, PLAINTIFF has complied with all of the requirements set forth in California Labor Code Section 2699.3 to commence an action under the California Private Attorneys General Act (“PAGA”).

#### **PARTIES**

5. PLAINTIFF is an individual who is, and at all times herein mentioned was, a resident of California.

6. YEC, INC. is, and at all times mentioned in this Complaint was, a corporation organized and existing under the laws of the State of Nevada, with its principal place of business located at 9130 W. Sunset Boulevard, Los Angeles, California 90069.

7. BURKLE is, and at all times mentioned in this Complaint was a California resident, serving as a Director of YEC, INC. and PLAINTIFF’s direct supervisor.

8. At all relevant times herein, YEC, INC. employed PLAINTIFF within the meaning of California Government Code section 12926(d).

9. The true names and capacities of DOES are unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such Doe Defendants under fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and that PLAINTIFF’S injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the court to amend this complaint to allege the true names and capacities of such DOE Defendants when ascertained.

10. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control of, each of the other DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

11. PLAINTIFF is informed and believes, and based thereon alleges, that each DEFENDANT acted in all respects pertinent to this action as the agent of the other DEFENDANTS,

1 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of  
2 each DEFENDANT are legally attributable to the other DEFENDANTS.

3 12. As a direct and proximate result of the unlawful actions of DEFENDANTS,  
4 PLAINTIFF has suffered, and continues to suffer, from loss of earnings in amounts as yet  
5 unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 13. Throughout PLAINTIFF's employment with DEFENDANTS, DEFENDANTS  
8 improperly classified her as an exempt employee.

9 14. In March 2021, PLAINTIFF was employed as an Executive Assistant for BURKLE  
10 at YEC, INC. In violation of California law and as a condition of her employment, DEFENDANTS  
11 required PLAINTIFF to sign an illegal Employment Agreement purporting to waive her right to  
12 overtime compensation and contending that she was exempt from California and Federal wage and  
13 hour laws. *See* California Labor Code § 1194, *Pellegrino v. Robert Half Internat., Inc.* (2010) 181  
14 Cal.App.4th 713, 714 (holding that the statutory right to receive overtime pay is a matter of public  
15 importance and is unwaivable).

16 15. As an Executive Assistant to BURKLE, PLAINTIFF did not primarily spend her  
17 working time performing exempt duties. In fact, the job duties that regularly consumed more than  
18 half of PLAINTIFF's time were menial, routinized functions, including setting meetings on  
19 BURKLE's calendar, notifying other employees of BURKLE'S meetings, and making travel or other  
20 arrangements BURKLE requested, either directly or through his head assistant or Chief of Staff.  
21 DEFENDANTS repeatedly made clear to PLAINTIFF that she was to follow specific directions  
22 given to her, and that she did not have authority to exercise independent discretion and judgment in  
23 carrying out her job duties.

24 16. As an Executive Assistant for BURKLE, PLAINTIFF also did not manage the  
25 enterprise of YEC, INC., she also did not regularly supervise the work of at least two full-time  
26 employees, and did not have authority to hire, fire, promote, or change the status of other employees.  
27 Nor did PLAINTIFF perform work directly related to YEC, INC.'s management policies or general  
28 business operations.

1           17. At all relevant times herein, YEC, INC. paid PLAINTIFF an annual salary,  
2 irrespective of the number of hours she actually worked. Although DEFENDANTS required  
3 PLAINTIFF to work in excess of eight hours per day and/or 40 hours per week, DEFENDANTS did  
4 not pay PLAINTIFF at one and one-half times the regular rate of pay for such hours worked.  
5 Similarly, although DEFENDANTS required PLAINTIFF to work in excess of 12 hours per day,  
6 DEFENDANTS did not pay PLAINTIFF at two times the regular rate of pay for such hours worked.  
7 Indeed, PLAINTIFF was instructed to respond to communications and requests from BURKLE  
8 within three minutes, no matter what time of day he communicated with PLAINTIFF.

9           18. As described in the Employment Agreement DEFENDANTS presented to  
10 PLAINTIFF, PLAINTIFF's position *"as the Executive Assistant for Ronald W. Burkle entails a*  
11 *significant amount of time where you will be 'on-call.'* Specifically, *that means you will have a cell*  
12 *phone or other electronic device in your possession and will be available for contact to and from*  
13 *Mr. Burkle during the on-call times. This may take some getting used to."*

14           19. PLAINTIFF typically worked "on-call" hours from 6 am to 9 am or from 6 pm to 10  
15 pm or later Monday through Thursday, in addition to her regularly scheduled worktime of 9 am to 6  
16 pm Monday through Friday, without uninterrupted duty-free meal periods or rest periods.

17           20. In addition, on alternating weekends on which another assistant was not covering the  
18 "on-call" hours, PLAINTIFF was required to be "on-call" from 6 pm Friday to 10 pm Sunday.

19           21. As described in the Employment Agreement presented to PLAINTIFF, PLAINTIFF  
20 was required to have her cellular phone and laptop by her at all times to send reminders to BURKLE  
21 and in case BURKLE needed her immediate assistance with travel or other arrangements.  
22 PLAINTIFF received no overtime compensation or meal and rest break premium pay for her work  
23 as an Executive Assistant as required by California law.

24           22. In addition, although DEFENDANTS frequently required PLAINTIFF to work seven  
25 consecutive days in a workweek, including responding to BURKLE's frequent after-hours messages  
26 via the telegram messaging app or other communications, DEFENDANTS did not pay PLAINTIFF  
27 at one and one-half times the regular rate of pay for the first eight hours worked on the seventh  
28 consecutive day, or at double the regular rate of pay for hours in excess of eight on the seventh

consecutive day.

23. At all relevant times herein, PLAINTIFF routinely took late, short, or missed meal periods, due to the workload DEFENDANTS required her to complete during the workday and to be immediately available for contact to and from BURKLE, in violation of California law. Although PLAINTIFF worked in excess of five hours each workday, due to PLAINTIFF's workload and need to be available at BURKLE's beck and call, she was not permitted a timely uninterrupted, duty-free, 30-minute meal period. Instead, PLAINTIFF often ate lunch at her desk while continuing to work, having to hide her food if BURKLE was nearby since BURKLE did not allow anyone to eat in front of him.

24. Additionally, on days in which PLAINTIFF worked more than 10 hours, she was not provided, and accordingly did not take, a second uninterrupted, duty-free, 30-minute meal period, as required by California law.

25. At all relevant times herein, PLAINTIFF routinely was unable to take 10-minute, duty-free rest breaks, due to the workload DEFENDANTS required her to complete during the workday, in violation of California law. Although PLAINTIFF worked in excess of 3.5 hours each workday, due to PLAINTIFF's workload, she was not authorized and permitted to take a 10-minute, duty-free rest break for each four hours worked, or major fraction thereof. This was a result of BURKLE messaging PLAINTIFF and DEFENDANTS insisting that PLAINTIFF be available on each such occasion, without exception. Consequently, PLAINTIFF had her cellular phone with her at all times when she was working and did not have a single 10-minute period to step away from work during the course of the workday, let alone two or more such periods, as required by California law.

26. In perpetrating the acts and omissions alleged herein, DEFENDANTS intentionally and willfully violated the Industrial Welfare Commission Orders, the California Code of Regulations, and the California Labor Code.

27. As a misclassified Executive Assistant, PLAINTIFF frequently worked from home due to the ongoing COVID-19 pandemic and was required to pay for her own internet service, monitor, and printer to conduct work for DEFENDANTS in violation of California law.

28. Per the terms of the Employment Agreement, PLAINTIFF was not eligible for paid vacation during the first year of employment. After the completion of her first year of employment, PLAINTIFF was eligible for one week of paid vacation. Although PLAINTIFF took no duty-free vacation time during her time working for DEFENDANTS, DEFENDANTS failed to pay her accrued and unused vacation time at the time of her separation of employment on or about September 2022 in violation of California law.

### FIRST CAUSE OF ACTION

## Failure to Pay Overtime

**Violation of Cal. Lab. Code §§ 510, 1194, 1194.2, 1198; Cal. Code Regs. tit. 8 § 11040**

**(Against DEFENDANTS and DOES)**

29. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

30. At all relevant times herein, California Labor Code section 510 mandates that any time worked beyond eight hours in one workday or beyond 40 hours in any workweek must be compensated at no less than one and one-half times the regular wage. *See* Cal. Lab. Code § 510(a).

31. IWC Wage Order 4-2001 further provides that employees “shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.” IWC Wage Order No. 4-2001(3)(A), *codified* at Cal. Code Regs. tit. 8 § 11040.

32. At all relevant times herein, YEC, INC. misclassified PLAINTIFF as an exempt employee. In violation of California law and as a condition of her employment, DEFENDANTS required PLAINTIFF to sign an illegal Employment Agreement purporting to waive her right to overtime compensation and contending that she was exempt from California and Federal wage and hour laws. *See* California Labor Code § 1194, *Pellegrino v. Robert Half Internat., Inc.* (2010) 181 Cal.App.4th 713, 714 (holding that the statutory right to receive overtime pay is a matter of public importance and is unwaivable).

33. In actuality, YEC, INC. was required to compensate PLAINTIFF for all overtime,

1 calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of  
2 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the  
3 seventh consecutive workday, with double-time for all hours worked in excess of twelve (12) hours  
4 in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day  
5 of work in any workweek. Cal. Lab. Code §§ 510, 1194. 1194.2.

6 34. Instead, at all relevant times herein, YEC, INC. only paid PLAINTIFF an annual  
7 salary, irrespective of her actual hours worked. Although PLAINTIFF routinely worked more than  
8 eight hours per day, forty hours per week, twelve hours per day, and/or seven consecutive days in a  
9 workweek, YEC, INC. failed to pay PLAINTIFF any overtime wages. Thus, YEC, INC. violated  
10 California Labor Code sections 510 and 1198, and IWC Wage Order No. 4-2001(3), *codified* at Cal.  
11 Code Regs. tit. 8 § 11040.

12 35. As a result of YEC, INC.'S conduct, PLAINTIFF has been damaged in an amount  
13 according to proof at trial, and seeks all wages earned and due, penalties, interest, expenses,  
14 attorneys' fees and costs of suit.

## 15 **SECOND CAUSE OF ACTION**

### 16 **Failure to Provide Meal Periods**

#### 17 **Violation of Cal. Lab. Code §§ 226.7, 512(a); Cal. Code Regs. tit. 8 § 11040**

#### 18 **(Against DEFENDANTS and DOES)**

19 36. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and  
20 every allegation set forth above.

21 37. At all relevant times, California Labor Code section 226.7 provides that no employer  
22 shall require an employee to work during any meal period mandated by an applicable order of the  
23 IWC. *See also* IWC Wage Order 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

24 38. At all relevant times herein, California Labor Code section 512 provides that “[a]n  
25 employer may not employ an employee for a work period of more than five hours per day without  
26 providing the employee with a meal period of not less than 30 minutes,” except that if the total work  
27 period per day of the employee is not more than six (6) hours, the meal period may be waived by  
28 mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal

1 period of not less than thirty (30) minutes, the employee is to be completely free of the employer's  
2 control and must not perform any work for the employer. If the employee does perform work for the  
3 employer during this thirty (30) minute meal period, the employee has not been provided with a duty-  
4 free meal period, in accordance with California law, and is to be compensated for any work  
5 performed during this (30) minute meal period in addition to one (1) additional hour of compensation  
6 at each employee's regular rate of pay for each workday that a meal period was not provided. *See*  
7 Cal. Lab. Code § 226.7; IWC Wage Order 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

8 39. At all relevant times herein, pursuant to Labor Code section 512(a) and IWC Wage  
9 Order 4-2001(11), an employer may not employ an employee for a work period of more than ten  
10 (10) hours per day without providing the employee with another meal period of not less than thirty  
11 (30) minutes, or to pay an employee one (1) additional hour of pay at the employee's regular rate,  
12 except that if the total hours worked is no more than twelve (12) hours, the second meal period may  
13 be waived by mutual consent of the employer and the employee only if the first meal period was not  
14 waived.

15 40. In violation of California law and as a condition of her employment, DEFENDANTS  
16 required PLAINTIFF to sign an illegal Employment Agreement purporting to waive her right to  
17 itemized wage statements and contending that she was exempt from California and Federal wage and  
18 hour laws. *See* California Labor Code § 1194; *Pellegrino v. Robert Half Internat., Inc.* (2010) 181  
19 Cal.App.4th 713, 714 (holding that the statutory right to receive itemized wage statements is a matter  
20 of public importance and is unwaivable).

21 41. At all relevant times herein, although PLAINTIFF regularly worked more than five  
22 and/or ten hours per day, as a result of YEC, INC'S misclassification of PLAINTIFF as an exempt  
23 employee, YEC, INC. failed to provide PLAINTIFF with timely thirty (30) minute meal periods free  
24 from job duties, as required by California Labor Code sections 226.7, 512(a), and IWC Wage Order  
25 No. 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

26 42. At all relevant times herein, YEC, INC. further violated California Labor Code  
27 section 226.7 and IWC Order No. 4-2001 by failing to compensate PLAINTIFF one (1) additional  
28 hour of compensation at her regular rate of pay for each workday that YEC, INC. failed to provide

compliant meal periods. *See* Cal. Lab. Code § 226.7(c); IWC Wage Order No. 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

43. PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all wages earned and due, penalties, interest, expenses, attorneys' fees, and costs of suit.

### **THIRD CAUSE OF ACTION**

#### **Failure to Authorize and Permit Rest Breaks**

#### **Violation of Cal. Lab. Code § 226.7; Cal. Code Regs. tit. 8 § 11040**

#### **(Against DEFENDANTS and DOES)**

44. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

45. At all relevant times herein, IWC Wage Order 4-2001 states that “[e]very employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3.5) hours. IWC Order No. 4-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11040.

46. At all relevant times herein, California Labor Code section 226.7 provides that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute....” Cal. Lab. Code § 226.7(b).

47. At all relevant times herein, as alleged above, although PLAINTIFF regularly worked more than 3.5 hours per day, as a result of YEC, INC.’s misclassification of PLAINTIFF as an exempt employee, its illegal Employment Agreement, and its work demands on PLAINTIFF, YEC, INC. regularly failed to authorize or permit PLAINTIFF to take ten (10) minute rest periods for each four (4) hours worked, or major fraction thereof. PLAINTIFF was regularly denied rest periods in violation of the California Labor Code. *See* IWC Wage Order 4-2001, *codified* at Cal. Code Regs. tit. 8 § 11040; Cal. Lab. Code § 226.7(b).

48. At all relevant times herein, YEC, INC. further violated California Labor Code section 226.7 and IWC Wage Order No. 4-2001 by failing to compensate PLAINTIFF one (1) additional hour of compensation at her regular rate of pay for each workday that YEC, INC. failed to authorize and permit compliant rest breaks. *See* Cal. Lab. Code § 226.7(c); IWC Wage Order No.

1 4-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11040.

2 49. PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all  
3 wages earned and due, penalties, interest, expenses, attorneys' fees, and costs of suit.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Pay Timely Wages Due at Termination/Waiting Time Penalties**

6 **Violation of Cal. Lab. Code §§ 201, 202, 203**

7 **(Against DEFENDANTS and DOES)**

8 50. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and  
9 every allegation set forth above.

10 51. At all relevant times herein, California Labor Code sections 201 and 202 require  
11 employers to pay all wages due upon separation. If an employer terminates an employee, the  
12 employee's wages are "due and payable immediately." Cal. Lab. Code § 201. Similarly, employers  
13 are required to pay all wages due to an employee no later than 72 hours after the employee quits  
14 employment, unless the employee provided 72 hours of notice of the intention to quit, in which case  
15 the employee is entitled to those wages at the time of quitting. Cal. Lab. Code § 202.

16 52. At all relevant times herein, California Labor Code section 203 provides that "[i]f an  
17 employer willfully fails to pay... any wages of an employee who is discharged or who quits, the  
18 wages of the employee shall continue as a penalty from the due date thereof at the same rate until  
19 paid or until an action therefor is commenced; but the wages shall not continue for more than 30  
20 days." Cal. Lab. Code § 203.

21 53. Following PLAINTIFF'S termination from YEC, INC., PLAINTIFF was entitled to  
22 all wages owed within the period required under the Labor Code. YEC, INC. willfully failed to pay  
23 all wages owed, including but not limited to overtime pay and accrued and unused vacation time pay,  
24 in violation of California Labor Code sections 201, 202, and 203. As a consequence, PLAINTIFF is  
25 entitled to 30 days' worth of wages as a penalty under California Labor Code section 203.

26 54. PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all  
27 wages earned and due, penalties, interest, expenses, attorneys' fees and costs of suit.

**FIFTH CAUSE OF ACTION**

**Failure to Provide Accurate Itemized Wage Statements**

**Cal. Labor Code §§ 226(a), 226(e), 226.3, Cal. Code Regs. tit. 8 § 11040)**

**(Against DEFENDANTS. and DOES)**

53. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

54. At all relevant times herein, California Labor Code section 226 requires employers to furnish each employee an accurate and itemized wage statement in writing that includes, but is not limited to, total daily hours worked by each employee; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; all deductions; and total hours worked. *See* Cal. Labor Code § 226(a); IWC Wage Order 4-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11040.

55. At all relevant times herein, DEFENDANT systematically provided PLAINTIFF other aggrieved employees with incomplete and inaccurate wage statements. The violations include, without limitation, the failure to accurately list the total daily hours worked by PLAINTIFF, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by PLAINTIFF, or total regular and overtime wages earned by other aggrieved employees.

56. At all relevant times herein, DEFENDANT's failure to provide accurate itemized wage statements was a knowing and intentional act based on its misclassifying employees, its illegal misclassification of PLAINTIFF as an exempt employee, and its practice of paying PLAINTIFF the same amount at a pre-determined rate of pay regardless of the hours she worked and the applicable hourly rates for overtime and doubletime compensation, in violation of California Labor Code. Cal. Labor Code §§ 226(a), 226(e), 226.3.

57. By DEFENDANT's practice of inaccurately reflecting the time during which PLAINTIFF and other aggrieved employees worked, and failing to record actual work times, including times taken for meal and rest periods, DEFENDANT knowingly and intentionally failed

1 to maintain records as required by California Labor Code. Cal. Labor Code §§ 226(a), 226(e),  
2 226.3; IWC Wage Order 4-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11040.

3 58. PLAINTIFF has been damaged in an amount according to proof at trial, and seeks  
4 all wages earned and due, penalties, interest, attorneys' fees, expenses, and costs of suit.

5 **SIXTH CAUSE OF ACTION**

6 **Failure to Provide One Day's Rest in Seven**

7 **Cal. Lab. Code §§ 551, 552**

8 **(Against YEC, INC. and DOES)**

9 59. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and  
10 every allegation set forth above.

11 60. At all times herein, California Labor Code section 551 provides that "[e]very person  
12 employed in any occupation of labor is entitled to one day's rest therefrom in seven." Cal. Labor  
13 Code § 551.

14 61. At all times herein, California Labor Code section 552 provides that "[n]o employer  
15 of labor shall cause his employees to work more than six days in seven." Cal. Labor Code § 552.

16 62. At all times herein, YEC, INC. failed to provide to PLAINTIFF the legally-  
17 mandated rest days as required by California law. Further, "an employer's obligation is to apprise  
18 employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality as to  
19 the exercise of that right." *Mendoza v. Nordstrom, Inc.*, (2017) 2 Cal. 5th 1074, 1091. YEC, INC.  
20 failed to provide this notice to PLAINTIFF, and YEC, INC. was not neutral and did not permit  
21 PLAINTIFF to exercise that right, instead making it a job requirement to consistently work more  
22 than seven consecutive days without a day of rest.

23 63. YEC, INC.'s conduct violates California Labor Code sections 551 and 552.  
24 PLAINTIFF has been damaged in an amount according to proof at trial, and seek all wages earned  
25  
26  
27  
28

1 and due, penalties, interest, attorneys' fees, expenses, and costs of suit.

2 **SEVENTH CAUSE OF ACTION**

3 **Failure To Maintain Required Records**

4 **Violation of Cal. Lab. Code §§ 1174(d); Cal. Code Regs. tit. 8 § 11040(7)(A)(3)**

5 **(Against DEFENDANTS and DOES)**

6 64. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and  
7 every allegation set forth above.

8 65. At all relevant times herein, California Labor Code section 1174 provides that every  
9 employer shall "[k]eep, at a central location in the state or at the plants or establishments at which  
10 employees are employed, payroll records showing the hours worked daily by and the wages paid to,  
11 and the number of piece-rate units earned by and any applicable piece rate paid to, employees  
12 employed at the respective plants or establishments. These records shall be kept .... on file for not  
13 less than three years." Cal. Lab. Code § 1174(d). Pursuant to IWC Wage Order 4-2001, employers  
14 are required to keep accurate time records including, but not limited to, when the employee begins  
15 and ends each work period and meal period. IWC Order No. 4-2001(7), *codified* at Cal. Code Regs.  
16 tit. 8 § 11040(7)(A)(3)-(5).

17 66. At all relevant times herein, DEFENDANTS failed to keep records for PLAINTIFF,  
18 due to DEFENDANTS' misclassification of PLAINTIFF as an exempt employee, in violation of the  
19 California Labor Code. *See* Cal. Lab. Code § 1174, IWC Order No. 4-2001(7), *codified* at Cal. Code  
20 Regs. tit. 8 § 11040.

21 67. PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all  
22 wages earned and due, penalties, interest, attorneys' fees, expenses, and costs of suit.

23 **EIGHTH CAUSE OF ACTION**

24 **Failure to Reimburse for Employment Related Expenses**

25 **Labor Code § 2802**

26 **(Against DEFENDANTS and DOES)**

27 68. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and  
28 every allegation set forth above.

1           69.     At all relevant times herein, Labor Code section 2802 has required an employer to  
2 indemnify an employee “for all necessary expenditures or losses incurred by the employee in direct  
3 consequence of the discharge of his or her duties....” Cal. Lab. Code § 2802(a). This includes costs  
4 associated with internet service, electricity, computer monitors and printers for work-related  
5 purposes.

6           70.     At all relevant times herein, PLAINTIFF incurred necessary business-related  
7 expenses and costs that were not reimbursed by DEFENDANTS, including, but not limited to, the  
8 cost for home internet service, electricity, computer monitor and printer. PLAINTIFF was required  
9 to incur costs for internet service, electricity, computer monitor and printer to work from home as  
10 required by YEC, INC.’s management. DEFENDANTS did not reimburse PLAINTIFF for the  
11 necessary expenses she incurred in using her home internet, electricity, computer monitor and printer  
12 for DEFENDANTS’ business, in violation of Labor Code section 2802.

13           71.     PLAINTIFF has been damaged in an amount according to proof at trial, and seeks all  
14 expenses incurred and due, penalties, interest, attorneys’ fees, expenses, and costs of suit.

15                           **NINTH CAUSE OF ACTION**

16                           **Violation of Cal. Lab. Code § 558.1**

17                           **(Against DEFENDANTS and DOES)**

18           72.     PLAINTIFF incorporates by reference and realleges as if fully stated herein each and  
19 every allegation set forth above.

20           73.     At all relevant times herein, California Labor Code section 558.1 has stated that  
21 “any employer or other person acting on behalf of an employer, who violates, or causes to be  
22 violated, any provision regulating minimum wages or hours and days of work in any order of the  
23 Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7,  
24 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

25           74.     At all relevant times, BURKLE, in his capacity as President and/or Director of  
26 YEC, INC.’s Board of Trustees, was a director, officer, and/or managing agent of YEC, INC., and  
27 therefore was an “other person acting on behalf of an employer.”

28           75.     As a result, BURKLE may be held liable for the violations of the provisions

1 regulating hours and days of work in the relevant order of the Industrial Welfare Commission and  
2 Labor Code sections 203, 226, 226.7, 1194, and 2802 alleged herein, and responsible for all  
3 resulting damages alleged herein, including recovery of unpaid wages, including unpaid overtime  
4 wages, unpaid meal and rest break premium pay, unreimbursed business expenses, associated  
5 penalties, attorneys' fees and costs of suit.

6 **TENTH CAUSE OF ACTION**

7 **Unfair and Unlawful Business Practices**

8 **Violation of Cal. Bus. & Prof. Code § 17200, *et seq.***

9 **(Against YEC, INC. and DOES)**

10 76. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and  
11 every allegation set forth above.

12 77. At all times herein, California Business & Professions Code provides that "person"  
13 shall mean and include "natural persons, corporations, firms, partnerships, joint stock companies,  
14 associations and other organizations of persons." Bus. & Prof. Code § 17201.

15 78. At all times herein, YEC, INC.'s conduct, as alleged herein, was unfair, unlawful and  
16 harmful to PLAINTIFF, the general public, and YEC, INC.'s competitors. PLAINTIFF has suffered  
17 injury in fact and has lost money as a result of YEC, INC.'s unlawful business practices.

18 79. At all times herein, YEC, INC.'s activities, as alleged herein, violated California law,  
19 and constituted false, unfair, fraudulent and deceptive business acts and practices in violation of  
20 California Business & Professions Code sections 17200, *et seq.*

21 80. Each and every one of YEC, INC.'s acts and omissions in violation of the Labor Code,  
22 as alleged herein, constitutes an unfair and unlawful business practice under California Business &  
23 Professions Code sections 17200, *et seq.*

24 81. As a result of the violations of California law herein described, YEC, INC.'s  
25 unlawfully gained an unfair advantage over other businesses. PLAINTIFF has suffered pecuniary  
26 loss by YEC, INC.'s unlawful business acts and practices alleged herein.

27 82. Pursuant to California Business & Professions Code sections 17200 *et seq.*,  
28 PLAINTIFF is entitled to restitution of the wages withheld and retained by YEC, INC.; a

1 permanent injunction requiring YEC, INC. to pay all outstanding wages due to PLAINTIFF; an  
2 award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other  
3 applicable laws; and an award of costs.

4 **ELEVENTH CAUSE OF ACTION**

5 **Representative Action for Civil Penalties**

6 **Cal. Labor Code Sections 2698-2699.5**

7 **(Against DEFENDANTS. and DOES)**

8 83. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and  
9 every allegation set forth above.

10 84. PLAINTIFF is an "aggrieved employee" within the meaning of California Labor  
11 Code Section 2699(c), and a proper representative to bring a civil action on behalf of herself and  
12 other current and former employees of YEC, INC. pursuant to the procedures specified in California  
13 Labor Code Section 2699.3, because PLAINTIFF was employed by YEC, INC. and the alleged  
14 violations of the California Labor Code were committed against PLAINTIFF.

15 85. California Labor Code section 204, provides, in relevant part: "All wages, other  
16 than those mentioned in Section[s] [not applicable here] earned by any person in any employment  
17 are due and payable twice during each calendar month." Cal. Labor Code § 204. In short, this  
18 means an employee must be paid for *all* hours worked at the time those wages were due.

19 86. Here, Ms. Gerard and other aggrieved employees were not compensated for all  
20 hours worked because they were improperly classified as exempt employees when they did not  
21 meet the requirements of an exemption. Based on information and belief, other aggrieved  
22 employees frequently worked overtime and never received compensation for the same. Because  
23 Respondent improperly misclassified Ms. Gerard, and other aggrieved employees, as exempt,  
24 Respondent failed to pay her overtime for the time spent working more than eight (8) hours in a  
25 workday and forty (40) hours in a workweek and failed to issue premium pay for missed meal and  
26 rest periods.

27 87. As such, Ms. Gerard and other employees were never compensated for all time  
28 worked. Therefore, Respondents have violated Labor Code sections 204, 1194, 1194.2, and 1197.

1  
2 88. Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code  
3 Sections 2698-2699.5, PLAINTIFF seeks to recover civil penalties from DEFENDANTS in both an  
4 individual and representative action, including but not limited to penalties under California Labor  
5 Code Sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 551, 552, 558.1, 1174, 1194, 1194.2,  
6 1198, 2802 and/or 2699(f) pursuant to California Labor Code § 2699 *et seq.*, PLAINTIFF is also  
7 entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code  
8 Section 2699(g)(1).

9 89. Pursuant to California Labor Code Section 2699.3, PLAINTIFF gave written notice  
10 by electronic submission to the California Labor and Workforce Development Agency ("LWDA")  
11 via its website and gave notice via certified mail and electronic mail to YEC, INC. and BURKLE of  
12 the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been  
13 violated, including the facts and theories to support the alleged violations. PLAINTIFF's notice to  
14 the LWDA is attached as Exhibit A. Within sixty-five (65) calendar days of PLAINTIFF's notice  
15 submission, the LWDA did not provide notice to PLAINTIFF that it intends to investigate the alleged  
16 violations.

17 90. Therefore, PLAINTIFF has complied with all of the requirements set forth in  
18 California Labor Code Section 2699.3 to commence a representative action under PAGA.

19 **PRAYER FOR RELIEF**

20 Wherefore PLAINTIFF CORINNE GERARD respectfully prays for judgment and relief  
21 against DEFENDANTS YEC, INC., BURKLE, and DOES 1 through 25, inclusive, and each of them,  
22 as follows:

23 1. For compensatory damages, including emotional distress damages, in an amount to  
24 be ascertained at trial;

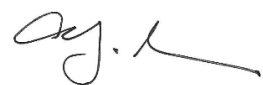
25 2. For restitution of all monies due to PLAINTIFF as well as disgorged profits from the  
26 unfair and unlawful business practices of YEC, INC.

27 3. For unpaid wages (including minimum wages and overtime), and meal period and  
28 rest break premiums;

4. For unreimbursed necessary business expenses;
5. For liquidated damages as permitted by law;
6. For statutory and civil penalties according to proof;
7. For punitive damages against YEC, INC., RON BURKLE, and DOES in an amount sufficient to punish or make an example of them;
8. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code Sections 226(e) and 2699;
9. For restitution of all monies due to PLAINTIFF;
10. For all available injunctive, equitable and other relief, including remedies authorized by Labor Code section 1197.5;
11. For interest on unpaid wages at 10% per annum, pursuant to California Labor Code sections 218.6 and 1194, California Civil Code sections 3287 and 3288, and/or any other applicable provisions;
12. For reasonable attorneys' fees and costs, including expert costs;
13. For declaratory relief; and
14. For such further relief that the Court may deem just and proper.

DATED: January 17, 2023

GUNN COBLE LLP

By: 

Beth Gunn  
Catherine J. Coble

Attorneys for Plaintiff  
CORINNE GERARD individually  
and on behalf of other aggrieved employees

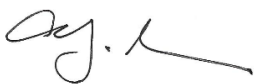
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**DEMAND FOR JURY TRIAL**

PLAINTIFF CORINNE GERARD hereby demands a jury trial with respect to all issues triable of right by jury. The amount demanded exceeds \$25,000.

DATED: January 17, 2023

GUNN COBLE LLP

By:   
Beth Gunn  
Catherine J. Coble  
Attorneys for Plaintiff  
CORINNE GERARD individually  
and on behalf of other aggrieved employees

## **EXHIBIT A**



Cathy Coble  
818.573.6392  
cathy@gunncoble.com

November 10, 2022

**VIA ONLINE FILING**

Natalie Palugyai, Secretary  
California Labor and Workforce Development Agency

**RE: Labor Code Private Attorneys General Act of 2004 –  
Notice on behalf of Corinne Gerard Regarding Employer YEC, Inc.**

Dear Secretary Palugyai:

This letter is intended to comply with the requirements of California Labor Code § 2699.3(a)(1).

Gunn Coble LLP represents Corinne Gerard (“Ms. Gerard”) and all other aggrieved employees in the claims arising from their employment with YEC, Inc. (“YEC”) and Ronald W. Burkle (“Burkle”) (hereinafter collectively “Respondents”). The “aggrieved employees” are all current and former employees of Respondents in the State of California who were misclassified and/or had one or more of the below California Labor Code violations committed against them. This letter is being submitted to you pursuant to the Private Attorneys General Act of 2004 (“PAGA”). Cal. Labor Code § 2698, *et seq.*

Below we set forth the facts and theories which we believe support our contention that Respondents have violated and continue to violate provisions of the California Labor Code.

**FACTUAL BACKGROUND**

In March 2021, Ms. Gerard was employed as an Executive Assistant for Burkle at YEC. In violation of California law and as a condition of her employment, Respondents required Ms. Gerard to sign an illegal Employment Agreement purporting to waive her right to overtime compensation and contending that she was exempt from California and Federal wage and hour laws. *See* California Labor Code § 1194, *Pellegrino v. Robert Half Internat., Inc.* (2010) 181 Cal.App.4th 713, 714 (holding that the statutory right to receive overtime pay is a matter of public importance and is unwaivable). Throughout her employment with Respondents, Respondents improperly willfully classified her as an exempt employee. On information and belief, Ms. Gerard believes other aggrieved employees of Respondents were misclassified and/or required to sign illegal employment agreements purporting to waive their rights to overtime compensation and contending they were exempt from California and Federal wage and hour laws, when in fact they were not and such rights are unwaivable. In addition, on information and belief, Ms. Gerard believes that other aggrieved employees worked in excess of the Labor Code’s hours and days of

work requirements, including for on-call work, in a manner similar to that described below. Respondent willfully misclassified its employees to avoid compliance with the California Labor Code.

As an Executive Assistant to Burkle, Ms. Gerard did not primarily spend her working time performing exempt duties. In fact, the job duties that regularly consumed more than half of Ms. Gerard's time were menial, routinized functions, including setting meetings on Burkle's calendar, notifying other employees of Burkle's meetings, and making travel or other arrangements Burkle requested, either directly or through his head assistant or Chief of Staff. Respondent repeatedly made clear to Ms. Gerard that she was to follow specific directions given to her, and that she did not have authority to exercise independent discretion and judgment in carrying out her job duties.

As an Executive Assistant for Burkle, Ms. Gerard also did not manage the enterprise of YEC, she also did not regularly supervise the work of at least two full-time employees, and did not have authority to hire, fire, promote, or change the status of other employees. Nor did Ms. Gerard perform work directly related to YEC's management policies or general business operations.

Respondents paid Ms. Gerard an annual salary, irrespective of the number of hours she actually worked. Although Respondents required Ms. Gerard to work in excess of eight hours per day and/or 40 hours per week, Respondents did not pay Ms. Gerard at one and one-half times the regular rate of pay for such hours worked. Similarly, although Respondents required Ms. Gerard to work in excess of 12 hours per day, Respondents did not pay Ms. Gerard at two times the regular rate of pay for such hours worked. Indeed, Ms. Gerard was instructed to respond to communications and requests from Burkle within three minutes, no matter what time of day he communicated with Ms. Gerard.

As described in the Employment Agreement Respondent presented to Ms. Gerard, Ms. Gerard's position "as the Executive Assistant for Ronald W. Burkle entails a significant amount of time where you will be 'on-call.' Specifically, that means you will have a cell phone or other electronic device in your possession and will be available for contact to and from Mr. Burkle during the on-call times. This may take some getting used to."

Ms. Gerard typically worked "on-call" hours from 6 am to 9 am or from 6 pm to 10 pm or later Monday through Thursday, in addition to her regularly scheduled worktime of 9 am to 6 pm Monday through Friday, without uninterrupted duty-free meal periods or rest periods. In addition, on alternating weekends on which another assistant was not covering the "on-call" hours, Ms. Gerard was required to be "on-call" from 6 pm Friday to 10 pm Sunday.

As described in the Employment Agreement presented to Ms. Gerard, Ms. Gerard was required to have her cellular phone and laptop by her at all times to send reminders to Burkle and in case Burkle needed her immediate assistance with travel or other arrangements. Ms. Gerard received no overtime compensation or meal and rest break premium pay for her work as an Executive Assistant as required by California law.

In addition, although Respondents frequently required Ms. Gerard to work seven consecutive days in a workweek, including responding to Burkle's frequent after-hours messages via the telegram messaging app or other communications, Respondent did not pay Ms. Gerard

at one and one-half times the regular rate of pay for the first eight hours worked on the seventh consecutive day, or at double the regular rate of pay for hours in excess of eight on the seventh consecutive day.

Ms. Gerard routinely took late, short, or missed meal periods, due to the workload Respondent required her to complete during the workday and to be immediately available for contact to and from Burkle, in violation of California law. Although Ms. Gerard worked in excess of five hours each workday, due to Ms. Gerard's workload and need to be available at Burkle's beck and call, she was not permitted an uninterrupted, duty-free, 30-minute meal period. Instead, Ms. Gerard often ate lunch at her desk while continuing to work, having to hide her food if Burkle was nearby since Burkle did not allow anyone to eat in front of him. Additionally, on days in which Ms. Gerard worked more than 10 hours, she was not provided, and accordingly did not take, a second uninterrupted, duty-free, 30-minute meal period, as required by California law.

Ms. Gerard routinely was unable to take 10-minute, duty-free rest breaks, due to the workload Respondent required her to complete during the workday, in violation of California law. Although Ms. Gerard worked in excess of 3.5 hours each workday, due to Ms. Gerard's workload, she was not authorized and permitted to take a 10-minute, duty-free rest break for each four hours worked, or major fraction thereof. This was a result of Burkle messaging Ms. Gerard and Respondent insisting that Ms. Gerard be available on each such occasion, without exception. Consequently, Ms. Gerard had her cellular phone with her at all times when she was working and did not have a single 10-minute period to step away from work during the course of the workday, let alone two or more such periods, as required by California law.

In perpetrating the acts and omissions alleged herein, Respondents intentionally and willfully violated the Industrial Welfare Commission Orders, the California Code of Regulations, and the California Labor Code.

As a misclassified Executive Assistant, Ms. Gerard frequently worked from home due to the ongoing COVID-19 pandemic and was required to pay for her own internet service, monitor, and printer to conduct work for Respondent in violation of California law.

Per the terms of the Employment Agreement, Ms. Gerard was not eligible for paid vacation during the first year of employment. After the completion of her first year of employment, Ms. Gerard was eligible for one week of paid vacation. Although Ms. Gerard took no duty-free vacation time during her time working for Respondents, Respondents failed to pay her accrued and unused vacation time at the time of her separation of employment on or about September 2022 in violation of California law. From her tenure working for Respondents, Ms. Gerard observed other employees whom she believes were similarly misclassified as exempt by Respondents.

## **SUMMARY OF LEGAL THEORIES**

### **1. Failure to Pay Overtime – Violation of Cal. Lab. Code §§ 510, 1194, 1194.2, 1198, Cal. Code Regs. tit. 8 § 11040**

California Labor Code section 510 mandates that any time worked beyond eight hours in one workday or beyond 40 hours in any workweek must be compensated at no less than one and one-half times the regular wage. See Cal. Lab. Code § 510(a).

IWC Wage Order 4-2001 further provides that employees “shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.” IWC Wage Order No. 4-2001(3)(A), *codified* at Cal. Code Regs. tit. 8 § 11040.

At all relevant times herein, Respondents misclassified Ms. Gerard and other aggrieved employees as exempt. In actuality, Respondents were required to compensate Ms. Gerard and other aggrieved employees for all overtime, calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double-time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab. Code §§ 510, 1194.

Instead, Respondents only paid Ms. Gerard an annual salary, irrespective of her actual hours worked. Although Ms. Gerard routinely worked more than eight hours per day, forty hours per week, twelve hours per day, and/or seven consecutive days in a workweek, Respondents failed to pay Ms. Gerard any overtime wages. Thus, Respondents violated California Labor Code sections 510 and 1198, and IWC Wage Order No. 4-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11040.

The California Legislature, authorized the Industrial Welfare Commission to establish exemptions from the overtime pay requirements for “executive, administrative, and professional employees” when certain conditions are met. *Kizer v. Trister Risk Management*, 13 Cal. App. 5th 830, 838 (2017). For the exemption to apply, “[t]he employee must (1) perform ‘office or non-manual work directly related to management policies or general business operations’ of the employer or its customers, (2) ‘customarily and regularly exercise discretion and independent judgment,’ (3) ‘perform under only general supervision work along specialized or technical lines requiring special training’ or ‘execute under only general supervision special assignments and tasks,’ (4) be engaged in activities meeting the test for the exemption at least 50 percent of the time, and (5) earn twice the state minimum wage.” *Id.* quoting *Eicher v. Advanced Business Integrators, Inc.*, 151 Cal. App. 4th 1363, 1371 (2007). These exemptions are narrowly construed, and the burden lies with the employer to prove the employee’s exemption as an affirmative defense.

Whether an employee is exempt depends not only upon factors related to the job, itself (e.g. “employer’s realistic job expectations” and “realistic requirements of the job”), but also “first and foremost” upon what an employee actually does on the job (e.g., “work actually performed”). *Duran v. U.S. National Assn.*, 59 Cal.4th 1, 27 (2014). Here, there is no feasible argument that the executive or the professional exemptions were applicable to Ms. Gerard at any time during her employment with Respondents. Ms. Gerard did not supervise any employees, which means she could not qualify for the executive exemption. Additionally, Ms. Gerard did not qualify for the professional exemption because she was not primarily engaged in an occupation commonly recognized as a learned or artistic profession nor was she licensed by the State of California to practice law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting.

As the facts above demonstrate, Ms. Gerard's job duties and job performance did not qualify her for the administrative exemption because she did not customarily and regularly exercise the requisite discretion and independent judgment nor was she executing under only general supervision special assignments and tasks at least 50 percent of the time. Nor did Ms. Gerard perform work directly related to YEC's management policies or general business operations. From her tenure working for Respondents, Ms. Gerard observed other employees whom she believes were similarly misclassified as exempt by Respondents.

**2. Failure to Provide Meal Periods in Violation of California Labor Code §§ 226.7, 512; Cal. Code Regs. tit. 8 § 11040**

California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC. *See also*, IWC Wage Order 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040. California Labor Code section 512 provides that "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes," except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during this thirty (30) minute meal period, the employee has not been provided with a duty-free meal period, in accordance with California law, and is to be compensated for any work performed during this (30) minute meal period in addition to one (1) additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided. *See* Cal. Lab. Code § 226.7; IWC Wage Order 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

Pursuant to California Labor Code section 512(a) and IWC Wage Order 4-2001(11), an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes, or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Although Ms. Gerard regularly worked more than five or ten hours per day, as a result of Respondents' misclassification of Ms. Gerard and aggrieved employees as exempt, Respondents failed to provide Ms. Gerard and aggrieved employees with timely thirty (30) minute meal periods free from job duties, as required by California Labor Code sections 226.7, 512(a), and IWC Wage Order No. 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

Respondents further violated California Labor Code section 226.7 and IWC Order No. 4-2001 by failing to compensate Ms. Gerard and aggrieved employees with one (1) additional hour of compensation at her regular rate of pay for each workday that Respondent failed to provide compliant meal periods. *See* Cal. Lab. Code § 226.7(c); IWC Wage Order No. 4-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11040.

**3. Failure to Authorize and Permit Rest Breaks in Violation of California Labor Code §§ 226.7; Cal. Code Regs. tit. 8 § 11040**

IWC Wage Order 4-2001 states that “[e]very employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3.5) hours. IWC Order No. 4-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11040. California Labor Code section 226.7 provides that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute....” Cal. Lab. Code § 226.7(b).

At all relevant times herein, as alleged above, although Ms. Gerard regularly worked more than 3.5 hours per day, as a result of Respondents’ misclassification of her and other aggrieved employees as exempt, its illegal Employment Agreement, and its work demands, Respondents regularly failed to authorize or permit Ms. Gerard and aggrieved employees to take ten (10) minute rest periods for each four (4) hours worked, or major fraction thereof. Ms. Gerard was regularly denied rest periods in violation of the California Labor Code. *See* IWC Wage Order 4-2001, *codified* at Cal. Code Regs. tit. 8 § 11040; Cal. Lab. Code § 226.7(b).

At all relevant times herein, Respondents further violated California Labor Code section 226.7 and IWC Wage Order No. 4-2001 by failing to compensate Ms. Gerard and aggrieved employees one (1) additional hour of compensation at her regular rate of pay for each workday that Respondents failed to authorize and permit compliant rest breaks. *See* Cal. Lab. Code § 226.7(c); IWC Wage Order No. 4-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11040.

**4. Failure to Pay Wages Upon Discharge in Violation of Labor Code §§ 201, 202 and 203**

California Labor Code sections 201 and 202 require Respondents to pay all compensation due and owing immediately at the time of discharge, layoff, or resignation made with at least seventy-two (72) hours’ notice, or within seventy-two (72) hours of resignation made without seventy-two (72) hours’ notice. As discussed above, Respondents willfully failed to pay all wages owed, including but not limited to overtime pay and accrued and unused vacation time pay, in violation of California Labor Code sections 201, 202, and 203. As a consequence, Ms. Gerard and aggrieved employees are entitled to 30 days’ worth of wages as a penalty under California Labor Code section 203.

**5. Failure to Furnish Timely and Accurate Wage Statements in Violation of Labor Code § 226**

California Labor Code § 226 requires an employer to provide an accurate itemized statement in writing showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive

dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As discussed above, Respondents systematically provided Ms. Gerard and other aggrieved employees with incomplete and inaccurate wage statements. The violations include, without limitation, the failure to accurately list the total daily hours worked by each employee, total regular and overtime wages earned, or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by each employee.

Respondents' failure to provide accurate itemized wage statements was a knowing and intentional act based on its company-wide policy and practice of misclassifying employees to avoid paying penalty pay and overtime premiums to employees in violation of the California Labor Code. See Cal. Labor Code §§ 226(a), 226(e), 226.3. By Respondents' company-wide failure to record the time in which Ms. Gerard and other aggrieved employees worked, Respondents knowingly and intentionally failed to maintain records as required by the California Labor Code and the IWC Wage Order. See Cal. Labor Code §§ 226(a), 226(e), 226.3; IWC Wage Order 4-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11040.

#### **6. Failure to Provide One Day's Rest in Seven in Violation of Labor Code §§ 551, 552**

California Labor Code section 551 provides that "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Cal. Labor Code § 551. California Labor Code section 552 provides that "[n]o employer of labor shall cause his employees to work more than six days in seven." Cal. Labor Code § 552. As set forth above, Respondents failed to provide to Ms. Gerard and other aggrieved employees the legally-mandated rest days as required by California law. Further, "an employer's obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality as to the exercise of that right." *Mendoza v. Nordstrom, Inc.*, (2017) 2 Cal. 5th 1074, 1091. Respondents failed to provide this notice to Ms. Gerard and other aggrieved employees.

#### **7. Failure to Maintain Required Records in Violation of Labor Code §§ 1174**

California Labor Code section 1174 provides that every employer shall "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept .... on file for not less than three years." Cal. Lab. Code § 1174(d). Pursuant to IWC Wage Order 4-2001, employers are required to keep accurate time records including, but not limited to, when the employee begins and ends each work period and meal period. IWC Order No. 4-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11040.

As set forth above, Respondents failed to keep records for Ms. Gerard and other aggrieved employees, due to the Respondents' willful misclassification of Ms. Gerard and other aggrieved employees as exempt, in violation of the California Labor Code. See Cal. Lab. Code § 1174, IWC Order No. 4-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11040.

## **8. Failure to Reimburse For Employment Related Expenses in Violation of Labor Code § 2802**

California Labor Code section 2802 requires an employer to indemnify an employee “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties....” Cal. Lab. Code § 2802(a). This includes costs associated with internet service, electricity, computer monitors and printers for work-related purposes.

At all relevant times herein, Ms. Gerard and other aggrieved employees incurred necessary business-related expenses and costs that were not reimbursed by Respondents, including, but not limited to, the cost for home internet service, electricity, computer monitor and printer. Ms. Gerard and other aggrieved employees were required to incur costs for internet service, computer monitor and printer to work from home as required by Respondents’ management. Respondents did not reimburse Ms. Gerard and other aggrieved employees for the necessary expenses incurred in using home internet, electricity, computer monitor, and printer for Respondents’ business, in violation of Labor Code section 2802.

## **9. Violation of Labor Code § 558.1**

California Labor Code section 558.1 states that “any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” As set forth herein, Burkle, in his capacity as President and/or Director of YEC’s Board of Trustees, was a director, officer, and/or managing agent of YEC, and therefore was an “other person acting on behalf of an employer.” As a result, Burkle may be held liable for the violations of the provisions regulating hours and days of work in the relevant order of the Industrial Welfare Commission and Labor Code sections 203, 226, 226.7, 1194, and 2802 alleged above, and responsible for all resulting damages alleged herein, including recovery of unpaid wages, including unpaid overtime wages, unpaid meal and rest break premium pay, unreimbursed business expenses, associated penalties, attorneys’ fees and costs of suit.

## **10. Violation of Labor Code § 204**

California Labor Code section 204, provides, in relevant part: “All wages, other than those mentioned in Section[s] [not applicable here] earned by any person in any employment are due and payable twice during each calendar month.” Cal. Labor Code § 204. In short, this means an employee must be paid for *all* hours worked at the time those wages were due. Here, Ms. Gerard and other aggrieved employees were not compensated for all hours worked because they were improperly classified as exempt employees when they did not meet the requirements of an exemption. Based on information and belief, other aggrieved employees frequently worked overtime and never received compensation for the same. Because Respondent improperly misclassified Ms. Gerard, and other aggrieved employees, as exempt, Respondent failed to pay her overtime for the time spent working more than eight (8) hours in a workday and forty (40) hours in a workweek and failed to issue premium pay for missed meal and rest periods.

As such, Ms. Gerard and other employees were never compensated for all time worked. Therefore, Respondents have violated Labor Code sections 204, 1194, 1194.2, and 1197.

Based upon these facts, Ms. Gerard intends to pursue a claim in civil court based upon violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 551, 552, 558.1, 1174, 1194, 1194.2, 1198, 2802 and/or 2699(f) pursuant to California Labor Code § 2699 *et seq.*

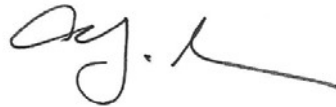
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This notice is provided pursuant to California Labor Code section 2699.3 and hereby provides the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate. We respectfully request a timely response as to the LWDA's decision(s), as required by California Labor Code section 2699.3. If the LWDA elects not to take any action, Ms. Gerard intends to file a complaint on behalf of herself and all other aggrieved employees in the California Superior Court seeking unpaid wages, including unpaid overtime wages, meal and rest period premiums, recovery of amounts of unreimbursed expenses, unpaid vacation wages, interest, penalties, attorneys' fees, costs, and any other relief available under California law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Thank you for your attention to this matter.

Sincerely,



Cathy Coble  
Gunn Coble LLP

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