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Superior Court of California
County of Fresno
By: Elizet Garcia, Deputy

SUPERIOR COURT STATE OF CALIFORNIA

COUNTY OF FRESNO

JACOB HAMMITT, an individual,
LOGAN CERUTTI, an individual,

Plaintiff(s),

v.

GOOBER d/b/a M CUBED
TECHNOLOGIES, a California
Corporation, DOES 1-20, inclusive,

Defendant(s).

Case No. [23CECG04290](#)

**PLAINTIFFS' COMPLAINT FOR
DAMAGES**

1. **Failure to Pay State Minimum Wage** (Lab. Code § 1197, 1194, 1194.2)
2. **Failure to Pay Overtime** (Lab. Code § 510, 1194, 1194.2)
3. **Failure to Provide Accurate Pay Stubs** (Lab. Code § 226)
4. **Failure to Provide Meal Breaks** (Lab. Code §§ 510, 226.7)
5. **Failure to Provide Rest Breaks** (Lab. Code §§ 512, 226.7)
6. **Failure to Pay All Wages on Discharge** (Lab. Code §§ 201-203)
7. **Failure to Timely Pay Wages During Employment** (Lab. Code §§ 204, 210)
8. **Violation of Unfair Competition Law** (Bus. & Prof. Code § 17200)
9. **Private Attorneys General Act** (Lab. Code § 2699, et seq.)

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1 **III. PARTIES**

2 5. Plaintiff JACOB HAMMITT is an individual over the age of eighteen (18). At all
3 relevant times herein, Plaintiff was a California resident, employed by Defendants in Fresno
4 County, California.

5 6. Plaintiff LOGAN CERUTTI is an individual over the age of eighteen (18). At all
6 relevant times herein, Plaintiff was a California resident, employed by Defendants in Fresno
7 County, California.

8 7. On information and belief, Plaintiffs allege that Defendant GOOBER d/b/a M
9 CUBED TECHNOLOGIES is a California Corporation with its principal place of business in
10 Fresno, California.

11 8. Plaintiffs do not know the true names and capacities of Defendants sued in this
12 Complaint as DOES 1 through 20, inclusive, and therefore sues these Defendants by fictitious
13 names. Plaintiffs will amend this Complaint to allege the true names and capacities of DOES 1
14 through 20, inclusive, when ascertained. Plaintiffs are informed and believe, and on that basis
15 allege, that each of the Defendants named herein as DOES 1 through 20, inclusive, is responsive
16 in some manner for the occurrence, injury, and other damages alleged in this Complaint.

17 9. Plaintiffs are informed and believe, and on that basis alleges, that each Defendant
18 was in some manner responsible for the acts and damages alleged herein, and/or are indebted to
19 Plaintiffs as alleged herein, and that each Defendant was the agent, employer and co-conspirator
20 of each other Defendant, and was acting in the course and scope of such agency and conspiracy.
21 In this Complaint where Plaintiffs refers to Defendant singularly, such reference shall be
22 construed to be a reference to all Defendants named herein, including those named fictitiously.

23 **IV. FACTUAL ALLEGATIONS**

24 10. Defendant owns and operate a business headquartered in Fresno, California that
25 provides information technology support and consultation.

26 11. Plaintiff Jacob Hammitt's employment with Defendant began in approximately
27 June 2021. Hammitt's initial job title was Systems Technician, and in May 2022 he was
28 promoted to IT Specialist Technician. Hammitt's employment ended in approximately

1 September 2022.

2 12. Plaintiff Logan Cerutti's employment with Defendant began in approximately
3 January 2022 and continues to the present date. Cerutti's job title is Systems Technician.

4 13. Plaintiffs and Aggrieved Employees were nonexempt employees as provided
5 under Labor Code § 515(a), which requires that any employee classified as exempt must earn a
6 salary no less than two times the state minimum wage for full-time employment. Plaintiffs and
7 Aggrieved Employees earned a monthly salary less than two times the applicable state minimum
8 wage for full-time employment, and were consequently nonexempt.

9 14. Plaintiffs and Aggrieved Employees were regularly required to work more than 8
10 hours in a work day and/or more than 40 hours in a work week, but were not paid for hours
11 worked in excess of 8 hours in a day or more than 40 hours in a work week. Plaintiffs and
12 Aggrieved Employees were also not paid overtime for hours worked in excess of 8 hours in a
13 day or more than 40 hours in a work week.

14 15. Plaintiffs and Aggrieved Employees were also required to be on-call at all hours
15 of the day and night, for which they were not paid.

16 16. Plaintiffs and Aggrieved Employees frequently experienced late or missed meal
17 breaks because Defendant set client appointments either during or immediately prior to
18 scheduled meal breaks. Plaintiffs and Aggrieved Employees were also required to be on-duty
19 and available at all times during the work day, and Defendant did not provide Plaintiffs and
20 Aggrieved Employees the opportunity to take duty-free meal breaks or rest breaks. Defendant
21 did not provide any additional pay for missed meal breaks or rest breaks.

22 17. Upon termination or separation from employment, Defendant failed to pay
23 Plaintiff Hammitt, Cerutti, and Aggrieved Employees all wages owed, including minimum
24 wages for hours worked off the clock, overtime wages, and missed meal and rest break
25 premiums.

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1 **V. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Failure to Pay State Minimum Wage**

4 **(Lab. Code § 1197, 1194, 1194.2)**

5 **(As to All Defendants)**

6 18. Plaintiffs incorporate in this cause of action each and every allegation of the
7 preceding paragraphs, as though fully set forth herein.

8 19. Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission ("IWC")
9 Wage Order 4-2001 sections 1 and 4, require employers to pay an amount equal to or greater
10 than the minimum wage for each hour worked.

11 20. Defendants failed to pay Plaintiffs at least the minimum wage for each hour
12 worked.

13 21. As a direct and proximate result of Defendants' unlawful conduct, as set forth
14 herein, Plaintiffs have suffered damages, including loss of earnings for time worked on behalf of
15 Defendants.

16 22. Plaintiffs request relief as described below.

17 **SECOND CAUSE OF ACTION**

18 **Failure to Pay Overtime Wage**

19 **(Lab. Code, § 510, 1194, 1194.2)**

20 **(As to All Defendants)**

21 23. Plaintiffs incorporate in this cause of action each and every allegation of the
22 preceding paragraphs, as though fully set forth herein.

23 24. Labor Code section 510 and Wage Order 4-2001 section 3 require employers to
24 pay overtime compensation to all employees, unless they are exempt from the overtime pay
25 requirements. During all periods of employment, Plaintiffs were misclassified as an
26 independent contractor and/or exempt employee.

27 25. Plaintiff has worked in excess of eight (8) hours in a workday, twelve (12) hours
28 in a workday, and forty (40) hours in a workweek.

26 26. Defendants have failed or otherwise refused to pay Plaintiffs overtime
27 compensation for all overtime hours worked in the manner required by California law.

1 27. As a direct and proximate result of Defendants' unlawful conduct, as set
2 forth herein, Plaintiffs have suffered damages, including loss of earnings for hours of overtime
3 worked on behalf of Defendants.

4 28. Plaintiff requests relief as described below.

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6 **THIRD CAUSE OF ACTION**
7 **Failure to Provide Accurate Pay Stubs**
8 **(Lab. Code § 226)**
9 **(As to All Defendants)**

10 29. Plaintiffs incorporate in this cause of action each and every allegation of the
11 preceding paragraphs, as though fully set forth herein.

12 30. Labor Code section 226(a) requires employers to provide employees with regular
13 itemized written statements showing, among other things, total hours worked, all applicable
14 hourly rates during the pay period, and the corresponding number of hours worked at each rate
15 by the employee. Defendants knowingly and intentionally failed to provide timely, accurate
16 itemized wage statements including this required information.

17 31. Labor Code § 226(e) provides that an employee suffering injury as a result of a
18 knowing and intentional failure by an employer to comply with section 226(a) is entitled to
19 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
20 a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period,
21 up to a maximum amount of \$4,000.

22 32. Labor Code § 226(e)(2) provides that an employee is deemed to suffer injury for
23 the purposes of Labor Code § 226 if the employer fails to provide the employee his/her wage
24 statement.

25 33. Defendants knowingly and intentionally failed to provide Plaintiffs with accurate
26 itemized wage statements.

27 34. Plaintiffs request relief as described below.

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FOURTH CAUSE OF ACTION

Failure to Provide Meal Breaks

(Lab. Code §§ 512, 226.7)

(As to All Defendants)

35. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

36. Under Labor Code sections 226.7 and 512, and Wage Order 4-2001 section 11, an employer's failure to provide an opportunity to take a meal break entitles the employee to an hour of pay for each day an employer fails to provide an opportunity to take a meal break.

37. At all times herein relevant, Plaintiffs were non-exempt employees and entitled to meal breaks.

38. At all times herein relevant, Defendants employed Plaintiffs for periods of five (5) hours or more without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff sworked more than ten (10) hours in a day. Plaintiffs did not waive their right to meal periods throughout their employment.

39. Defendants further failed to compensate Plaintiffs for the premium wage(s) owed resulting from their failure to provide the opportunity to take a meal break.

40. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs have suffered damages, including a loss of wages.

41. Plaintiffs request relief as described below.

FIFTH CAUSE OF ACTION

Failure to Provide Rest Breaks

(Lab. Code §§ 512, 226.7)

(As to All Defendants)

42. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

43. Labor Code sections 226.7 and 512, and Wage Order 4-2001 section 12, provide that all non-exempt employees are entitled to at least a 10-minute uninterrupted rest break for each work period of more than four (4) hours, or major fraction thereof.

44. An employer's failure to provide an opportunity to take a rest break entitles the

1 employee an hour of pay for each day an employer fails to provide an opportunity to take a rest
2 break.

3 45. At all times relevant, Plaintiffs were non-exempt employees and entitled to rest
4 breaks.

5 46. At all times relevant, Defendants failed to authorize and permit Plaintiffs to take
6 rest periods of at least 10 minutes for each work period of more than four (4) hours, or major
7 fraction thereof.

8 47. Defendants further failed to compensate Plaintiffs for the premium wage(s) owed
9 resulting from their failure to provide the opportunity to take rest breaks.

10 48. As a direct and proximate result of Defendants' unlawful conduct, as set forth
11 herein, Plaintiffs have suffered damages, including a loss of wages.

12 49. Plaintiffs request relief as described below.

13 **SIXTH CAUSE OF ACTION**

14 **Failure to Pay All Wages on Discharge**

15 **(Lab. Code §§ 201-203)**

16 **(Plaintiff Hammit as to All Defendants)**

17 50. Plaintiffs incorporate in this cause of action each and every allegation of the
18 preceding paragraphs, as though fully set forth herein.

19 51. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
20 due immediately upon discharge, or within seventy-two (72) hours of quitting without
21 notice. Labor Code § 203 provides that where an employer willfully fails to make such timely
22 payment, the employer must, as a penalty, continue to pay the subject employees' wages until
23 the back wages are paid in full or an action is commenced, up to a maximum of thirty (30) days'
24 wages.

25 52. Plaintiff Hammitt was discharged from employment by Defendants without being
26 paid all wages that were due to them within the time required by Labor Code §§ 201 and 202.
27 Defendants' failure to pay these wages to Plaintiffs has been and continues to be willful.

28 53. As a result of Defendants' conduct, Plaintiff is entitled to waiting time penalties
in the amount of up to thirty (30) days' wages under Labor Code § 203.

54. Plaintiff requests relief as described below.

SEVENTH CAUSE OF ACTION
Failure to Timely Pay Wages During Employment
(Lab. Code §§ 204, 210)
(As to All Defendants)

55. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

56. Labor Code section 204 requires employees to be paid earned wages at least twice per month. If an employer fails to pay wages during the proper pay period, the employee is entitled to a penalty of \$100 for an initial violation and \$200 for each subsequent or willful, or intentional violation. Additionally, the employee is entitled to 25% of the amount unlawfully withheld.

57. Defendants failed to properly and timely compensate Plaintiffs for all wages earned during Plaintiffs' pay period(s).

58. Defendants' acts were willful and/or intentional.

59. As a result of Defendants' conduct, Plaintiffs are entitled to the penalty set forth in section 210 of the Labor Code.

60. Plaintiffs request relief as described below.

EIGHTH CAUSE OF ACTION
Violation of Unfair Competition Law
(Business & Professions Code § 17200, et seq.)
(As to All Defendants)

61. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

62. Defendants' conduct, as alleged herein, constitutes an unlawful, unfair, and/or fraudulent business practices, as set forth in Business & Professions Code section 17200. Defendants conducted business activities while failing to comply with the legal mandates cited herein. Plaintiffs suffered injury in fact and lost money as a result of Defendants' unfair competition.

63. As a result of Defendants' unlawful and unfair business practices, Plaintiffs are entitled to and do seek restitution, and other appropriate relief available under Business & Professions Code § 17203, for four (4) years from the filing of this Action.

64. Plaintiffs request relief as described below.

NINTH CAUSE OF ACTION
Private Attorneys General Act
(Lab. Code, §§ 2698, et seq.)
(As to All Defendants)

65. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, as though fully set forth herein.

66. Plaintiffs have alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiffs and other Aggrieved Employees:

- Failure to pay State Minimum Wage (Lab. Code § 1194, Wage Order No. 4 §§ 1, 4)
- Failure to pay Overtime (Lab. Code §§ 510, 1194, 1194.2, Wage Order No. 4 § 3)
- Failure to Provide Accurate Pay Stubs (Lab. Code §§ 226)
- Failure to Provide Meal Breaks or Pay Premiums in Lieu Thereof (Labor Code §§ 226.7 and 512, and Wage Order No. 4 § 11)
- Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof (Labor Code § 226.7, and Wage Order No. 4 § 12)
- Failure to Pay All Wages on Discharge (Labor Code §§ 201-203)
- Failure to Timely Pay Wages During Employment (Labor Code §§ 204, 210)
- Violation of Unfair Competition Law (Bus. & Prof. Code § 17200)

67. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

68. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

1 69. As a proximate result of the Defendants' conduct, Plaintiff and Aggrieved
2 Employees have been damaged and request relief as described below.

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4 **PRAYER**

- 5 1. For general damages according to proof in an amount to exceed \$1,000,000;
6 2. For special damages according to proof in an amount to exceed \$1,000,000;
7 3. For unpaid wages;
8 4. For exemplary damages, according to proof;
9 5. For pre-judgment, post-judgment, and statutory interest and all amounts subject
10 herein;
11 6. For attorneys' fees according to statute including, but not limited to, Labor Code
12 sections 218.5 and 1194, and Code of Civil Procedure section 1021.5;
13 7. For costs of suit incurred in this action;
14 8. For penalties according to statute;
15 9. For injunctive relief;
16 10. For declaratory relief; and
17 11. For all other relief that this Court deems just and proper.

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20 DATED: October 5, 2023

DREW LEWIS, PC

21 By: 
22 Drew Lewis
23 Attorney for Plaintiff(s)
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