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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

MICHELE GRAEF, on behalf of herself and
others similarly situated,

Plaintiff,

vs.

EOS IT MANAGEMENT SOLUTIONS,
INC., a Delaware corporation; EOS IT
SOLUTIONS, an entity of unknown form;
and DOES 1 through 50, inclusive

Defendants.

Case No. 24CV062923

CLASS ACTION

Assigned for All Purposes To:

Hon. Noel Wise

Dept.: 21

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
7. Failure to Produce Requested Employment Records Under Labor Code §§ 226 and 1198.5;
8. Penalties Pursuant to Labor Code § 203; and
9. Violation of Business & Professions Code § 17200 *et seq.*; and
10. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff MICHELE GRAEF, (hereinafter “Plaintiff”) on behalf of herself and all others
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of herself and all similarly situated current and
6 former Employees within the State of California who, at any time four (4) years prior to the filing
7 of this lawsuit, are or were employed as non-exempt hourly employees by Defendants EOS IT
8 MANAGEMENT SOLUTIONS, INC., a Delaware corporation, EOS IT SOLUTIONS, an entity
9 of unknown form, and DOES 1 through 50 (all defendants being collectively referred to herein as
10 “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of
11 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and
12 California Business & Professions Code, and seeks redress.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in Newark, California. Plaintiff and the other
16 Employees worked for Defendants in Alameda County and throughout California, and
17 consistently worked at Defendants’ behest without being paid all wages due. More specifically,
18 Plaintiff and the other similarly situated Employees were employed by Defendants and worked at
19 Defendants’ offices and other facilities where the conduct giving rise to the allegations in this
20 Class Action Complaint occurred. Upon information and belief, Plaintiff was employed by
21 Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same
22 policies and practices, and (3) endured similar violations at the hands of Defendants as the other
23 Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
25 and to perform work while remaining under Defendants’ control before and after being on the
26 clock for their daily work shift. Defendants further failed to accurately record time worked by
27 Plaintiff and the Employee Class members by requiring Employees to log their scheduled shift
28 times as hours worked rather than recording actual time worked. Defendants thus failed to pay

1 Plaintiff and the Employees for all hours worked, and provided them with inaccurate wage
2 statements that prevented Plaintiff and the Class from learning of these unlawful pay practices.
3 Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as
4 Employees were not provided with the opportunity to take timely, uninterrupted, and duty-free
5 meal and rest periods as required by the Labor Code.

6 **THE PARTIES**

7 **A. The Plaintiff**

8 4. Plaintiff MICHELE GRAEF has resided in California and during the time period
9 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
10 the State of California at Defendants' facilities and offices in Newark, California.

11 **B. The Defendants**

12 5. Defendant EOS IT MANAGEMENT SOLUTIONS, INC., ("EOS") is a Delaware
13 corporation with its principle executive office in Hayward, California, and has been listed on
14 Plaintiff's wage statements as Plaintiff's employer. EOS lists a California address with the
15 California Secretary of State in Hayward, California and employs Plaintiff and the Class members
16 in Alameda County, including at Defendants' offices and facilities in Newark, California, and
17 throughout California and conducts business throughout California.

18 6. Defendant EOS IT SOLUTIONS, ("EOS IT") is an entity of unknown form with its
19 principle executive office in Newark, California. EOS IT does not list a California address with
20 the California Secretary of State but upon information and belief, employees Plaintiff and the
21 Class members in Alameda County, including at Defendants' offices and facilities in Newark,
22 California, and throughout California and conducts business throughout California.

23 7. The true names and capacities, whether individual, corporate, associate, or
24 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
25 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
26 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
27 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
28 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend

1 this Complaint to reflect the true names and capacities of the Defendants designated herein as
2 Does 1 through 50 when their identities become known.

3 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
4 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out
5 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
6 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all
7 respects as the employers or joint employers of Employees. Defendants, and each of them, exercised
8 control over the wages, hours or working conditions of Employees, or suffered or permitted
9 Employees to work, or engaged, thereby creating a common law employment relationship, with
10 Employees. Therefore, Defendants, and each of them, employed or jointly employed Employees.

11 **JURISDICTION AND VENUE**

12 9. This Court has jurisdiction over this Action pursuant to California Code of Civil
13 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
14 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
15 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
16 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
17 obligations and liabilities giving rise to this lawsuit occurred at least in part in Alameda County
18 and Defendants maintain and operate company offices and facilities in Alameda County, and
19 employ Plaintiff and other Class members in Alameda County and throughout California.

20 **FACTUAL BACKGROUND**

21 10. The Employees who comprise the Class, including Plaintiff, are nonexempt
22 employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who
23 work in non-exempt positions at the direction of Defendants in the State of California. Plaintiff and
24 the Class members were either not paid by Defendants for all hours worked or were not paid at the
25 appropriate at the appropriate minimum, regular, and overtime rates. Specifically, Plaintiff and
26 Employees were systemically required to arrive to work prior to their scheduled start time due to
27 the amount of time it took to access the building, get through security and walk to their workstations
28 by their scheduled start time. Once at their workstations, the Employees were required to start

1 working regardless if their shift had started yet. At the end of their scheduled shifts, Employees had
2 to exit the building and pass through security. The time it took for the Employees to enter and exit
3 the building was uncompensated working time under the direction and control of Defendants, for
4 which no wages were paid.

5 11. Furthermore, Defendants did not maintain a time keeping device that allowed
6 Employees to accurately punch in and punch out for their shifts and meal breaks. Instead, Employees
7 were required to manually log on a paper timesheet their scheduled shift times as hours worked
8 regardless of actual time worked. Similarly, Employees were required to manually log on a paper
9 timesheet a 30-minute lunch break regardless of whether they took a full, uninterrupted 30-minute
10 lunch break. Defendants maintained this policy and practice with the ostensible intent of
11 underpaying Employees for the hours they were actually under Defendants' control. As a result,
12 Employees' timesheets did not accurately reflect all the time they were under the direction and
13 control of Defendants, for which they were not compensated.

14 12. Moreover, Plaintiff contends that Defendants failed to pay Plaintiff and the
15 Employees all wages due and owing, Defendants failure to provide meal and rest breaks, and failure
16 to furnish accurate wage statements, all in violation of various provisions of the California Labor
17 Code and applicable Wage Order provisions.

18 13. During the course of Plaintiff and the Employees employment with Defendants,
19 they were not paid all wages they were owed, including for all work performed and for all overtime
20 hours worked, and they were forced to work during their meal and rest breaks to keep labor budgets
21 low.

22 14. Further, Defendants had a consistent policy and practice of requiring Plaintiff and
23 Employees to manually log on their scheduled shift times as hours worked rather than actual time
24 worked. Similarly, Employees were required to manually log a 30-minute lunch break regardless of
25 whether they took a full, uninterrupted 30-minute lunch break. These inaccurate time entries were
26 inputted into Defendants' payroll system from which wage statements and payroll checks were
27 created.

28 15. Defendants also either failed to maintain timekeeping records for Plaintiff that

1 would permit her to discover the nature and extent of Defendants' unlawful and inaccurate time
2 entries or has refused to produce them to Plaintiff in response to her timely request to be provided
3 with them.

4 16. As a matter of uniform and unlawful Company policy, Plaintiff and Employees were
5 required to work during their meal periods and rest breaks which were not compensated by
6 Defendants in violation of the California Labor Code. Plaintiff and the Employees were also not
7 paid regular wages and overtime for the time they were required to comply with other work
8 demands and requirements imposed upon them, which they had to complete while working through
9 their meal and rest breaks and without compensation. As a result, Plaintiff and the Class members
10 worked shifts over eight (8) hours in a day and over forty (40) hours in a work week, but they were
11 not paid at the appropriate overtime rate for all such hours, including by being required to perform
12 work duties and tasks without pay and while off-the-clock and due to Defendants' unlawful and
13 inaccurate time entries, which caused overtime to begin accruing before it did in Defendants'
14 timekeeping and payroll systems. As a result, Plaintiff and the Employees worked substantial
15 overtime hours during their employment with Defendants for which they were not compensated, in
16 violation of the California Labor Code and applicable IWC Wage Orders.

17 17. As a result of the above described unlawful time keeping practices, the daily work
18 demands and pressures to work through breaks, and the other wage violations they endured at
19 Defendants' hands, Plaintiff and the Employees were not properly paid for all wages earned and for
20 all wages owed to them by Defendants, including when working more than eight (8) hours in any
21 given day and/or more than forty (40) hours in any given week. As a result of Defendants' unlawful
22 policies and practices, Plaintiff and Employees incurred overtime hours worked for which they were
23 not adequately and completely compensated, in addition to the hours they were required to work off
24 the clock. To the extent applicable, Defendants also failed to pay Plaintiff and the Employees at an
25 overtime rate of 1.5 times the regular rate for the first eight hours of the seventh consecutive work
26 day in a week and overtime payments at the rate of two times than the regular rate for hours worked
27 over eight (8) on the seventh consecutive work day, as required under the Labor Code, applicable
28 IWC Wage Orders.

1 18. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing
2 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
3 hours worked, and failing to pay minimum wage for all time worked as required by California Law.

4 19. Additionally from at least four (4) years prior to the filing of this lawsuit and
5 continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees
6 overtime compensation at premium overtime rates for all hours worked in excess of eight (8) hours
7 a day and/or forty (40) hours a week, and double-time rates for all hours worked in excess of twelve
8 (12) hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage
9 Orders.

10 20. Additionally, from at least four (4) years prior to the filing of this lawsuit and
11 continuing to the present, Defendants have regularly required Employees to work shifts in excess of
12 five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)
13 minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of
14 not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one hour of
15 wages at each Employee’s effective hourly rate of pay, for each meal period that Defendants failed
16 to provide or deficiently provided.

17 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
18 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
19 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did Defendant
20 pay Employees premium pay for each day on which requisite rest breaks were not provided or were
21 deficiently provided.

22 22. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
23 continuing to the present, Defendants have consistently failed to keep accurate time and wage
24 records as required by California wage-and-hour laws.

25 23. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
26 to the present, Defendants have had a consistent policy of denying Employees the right to inspect
27 and receive all of their payroll records, timecards, and personnel records.

28 24. From at least four (4) years prior to filing this lawsuit and continuing to the present,

Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

25. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198.5, 1199, 2698, and 2699, *et seq.* and applicable provisions of the IWC Wage Orders.

26. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

27. Plaintiff brings this class action on behalf of herself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class defined as follows: “All individuals employed by Defendants, at any time within four (4) years of the filing of this lawsuit, as non-exempt, hourly employees within the State of California.

28. Further, Plaintiff seeks to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction

thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

e. Subclass 5. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

h. Subclass 7. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

i. Subclass 8. Failure To Produce Requested Employment Records Subclass. All Class members who, within the applicable limitations period, were denied the right to inspect and receive all of their payroll records, timecards, and personnel records.

j. Subclass 9. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

29. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the Class description with greater particularity or further division into subclasses or limitation to particular issues.

30. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in litigation and proposed class is easily ascertainable.

A. Numerosity

31. The potential members of the Class as defined are so numerous that joinder of all the member of the Class is impracticable. While the precise number of Class member has not been determined at this time, Plaintiff is informed and believes that, during the time period relevant to this lawsuit, Defendants employed more than 100 individuals within the State of California.

32. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants' employment records will provide

1 information as to the number and location of all class members.

2 **B. Commonality**

3 33. There are questions of law and fact common to the Class that predominate over any
4 questions affecting only individual Class members. These common questions of law and fact
5 include:

- 6 a. Whether Defendants failed to pay Employees minimum wages;
- 7 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 8 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
9 § 510;
- 10 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
11 Wage Orders, by failing to provide Employees with requisite meal periods or
12 premium pay in lieu thereof;
- 13 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
14 Orders, by failing to provide Employees with requisite rest breaks or premium pay
15 in lieu thereof;
- 16 f. Whether Defendants violated Labor Code § 226(a);
- 17 g. Whether Defendants violated Labor Code §§ 226 and 1198.5;
- 18 h. Whether Defendants failed to keep accurate time and wage records;
- 19 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
20 wages and compensation due and owing at the time of termination of employment;
- 21 j. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- 22 k. Whether Employees are entitled to equitable relief pursuant to Business and
23 Professions Code § 17200 *et seq.*; and
- 24 l. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*

25 **C. Typicality**

26 34. The claims of the named plaintiff are typical of those of the other Employees.
27 Employees all sustained injuries and damages arising out of and caused by Defendant's common
28 course of conducts in violation of statutes, as well as regulations that have the force and effect of

1 law, as alleged herein.

2 **D. Adequacy of Representation**

3 35. Plaintiff will fairly and adequately represent and protect the interest of Employees.
4 Counsel who represents Employees are experienced and competent in litigating employment class
5 actions.

6 **E. Superiority of Class Action**

7 36. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
9 questions of law and fact common to all Employees predominate over any questions affecting only
10 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
11 Defendants' illegal policies or practices of failing to compensate Employees properly.

12 37. Class action treatment will allow those persons similarly situated to litigate their
13 claims in the manner that is most efficient and economical for the parties and the judicial system.
14 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

17 **(Against All Defendants)**

18 38. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
19 full herein.

20 39. Defendants failed to pay Employees minimum wages for all hours worked.
21 Defendants had a consistent policy of misstating Employees time records and failing to pay
22 Employees for all hours worked. Employees would work hours and not receive wages, including
23 as alleged above in connection with inaccurate timekeeping entries based on scheduled time rather
24 than actual work time and time off the clock Employees worked without compensation.
25 Specifically, Plaintiff and Employees were systemically required to arrive to work prior to their
26 scheduled start time due to the amount of time it took to access the building, get through security
27 and walk to their workstations by their scheduled start time. Once at their workstations, the
28 Employees were required to start working regardless if their shift had started yet. At the end of

1 their scheduled shifts, Employees had to exit the building and pass through security. The time it
2 took for the Employees to enter and exit the building was uncompensated working time under the
3 direction and control of Defendants, for which no wages were paid. Defendants, and each of them,
4 have also intentionally and improperly required Employees to manually log on their scheduled
5 shift times as hours worked rather than actual time worked. Similarly, Employees were required to
6 manually log a 30-minute lunch break regardless of whether they took a full, uninterrupted 30-
7 minute lunch break. Defendants maintained this policy and practice with the ostensible intent of
8 underpaying Employees for the hours they were actually under Defendants' control. During the
9 relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the
10 Employees for all hours worked. Defendants' uniform pattern of unlawful wage and hour practices
11 manifested, without limitation, applicable to the Class as a whole, as a result of implementing a
12 uniform policy and practice that denied accurate compensation to Plaintiff and the other members
13 of the Class as to minimum wage pay.

14 California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
15 states:

16 The minimum wage for employees fixed by the commission is the
17 minimum wage to be paid to employees, and the payment of a less
18 wage than the minimum so fixed is unlawful.

19 40. The applicable minimum wages fixed by the commission for work during the
20 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore
21 entitled to double the minimum wage during the relevant period.

22 41. The minimum wage provisions of California Labor Code are enforceable by private
23 civil action pursuant to California Labor Code § 1194(a) which states:

24 Notwithstanding any agreement to work for a lesser wage, any
25 employee receiving less than the legal minimum wage or the legal
26 overtime compensation applicable to the employee is entitled to
27 recover in a civil action the unpaid balance of the full amount of this
28 minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees and costs of suit.

42. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
incorporates the applicable Wage Order of the California Industrial Welfare Commission.

43. California Labor Code § 1194.2 also provides for the following remedies:

1 In any action under Section 1194 . . . to recover wages because of
2 the payment of a wage less than the minimum wages fixed by an
3 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

4 44. Defendants have the ability to pay minimum wages for all time worked and have
5 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
6 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

7 45. Wherefore, Employees are entitled to recover the unpaid minimum wages (including
8 double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully
9 unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor
10 Code § 1194(a).

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

13 **(Against All Defendants)**

14 46. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 47. By their conduct, as set forth herein, Defendants violated California Labor Code §
17 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
18 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
19 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
20 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
21 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
22 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
23 paying Employees wages for all hours worked including time off the clock when Plaintiff and
24 Employees were required to arrive to work prior to their scheduled start time due to the amount of
25 time it took to access the building, get through security and walk to their workstations by their
26 scheduled start time. Once at their workstations, the Employees were required to start working
27 regardless of if their shift had started yet. At the end of their scheduled shifts, Employees had to
28 exit the building and pass through security. The time it took for the Employees to enter and exit

1 the building was uncompensated working time under the direction and control of Defendants, for
2 which no wages were paid. Employees regularly worked over 8 hours on a given day without
3 receiving overtime compensation. Defendants also consistently improperly required Employees to
4 manually log on a paper timesheet their scheduled shift times as hours worked regardless of actual
5 time worked. Similarly, Employees were required to manually log on a paper timesheet a 30-
6 minute lunch break regardless of whether they took a full, uninterrupted 30-minute lunch break.
7 Defendants maintained this policy and practice with the ostensible intent of underpaying
8 Employees for the hours they were actually under Defendants' control.

9 48. Employees have been damaged by these violations of California Labor Code §§ 204
10 and 510 (and the relevant orders of the Industrial Welfare Commission).

11 49. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
12 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the
13 full amount of all their unpaid wages and overtime compensation, with interest, plus their
14 reasonable attorneys' fees and costs.

15 **THIRD CAUSE OF ACTION**

16 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

17 **(Against All Defendants)**

18 50. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
19 full herein.

20 51. Employees regularly worked shifts greater than five (5) hours and greater than ten
21 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more
22 than five (5) hours without providing him or her with a meal period of not less than thirty (30)
23 minutes or for a shift of more than ten (10) hours without providing him or her with a second meal
24 period of not less than thirty (30) minutes.

25 52. Defendants failed to provide Employees with meal periods as required under the
26 Labor Code. Employees were consistently required to work through their meal periods which they
27 were consistently denied. Employees were also required to take meal periods after working well
28 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more

1 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
2 period as required by law.

3 53. Moreover, Defendants failed to compensate Employees for each meal period not
4 provided or inadequately provided, as required under Labor Code § 226.7.

5 54. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an
6 amount equal to one (1) hour of wages at their effective regular rates of pay for each meal period
7 not provided or deficiently provided, a sum to be proven at trial.

8 **FOURTH CAUSE OF ACTION**

9 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

10 **(Against All Defendants)**

11 55. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 56. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
14 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
15 not less than ten (10) minutes for each consecutive four (4) hour shift.

16 57. Defendants failed to provide Employees with timely rest breaks of not less than ten
17 (10) minutes for each consecutive four (4) hour shift.

18 58. Moreover, Defendants did not compensate Employees with an additional hour of pay
19 at each Employee's effective hourly rate for each day that Defendants failed to provide them with
20 adequate rest breaks, as required under Labor Code § 226.7.

21 59. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an
22 amount equal to one (1) hour of wages at their effective regular rates of pay for each day worked
23 without the required rest breaks, a sum to be proven at trial.

24 **FIFTH CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE § 226(a)**

26 **(Against All Defendants)**

27 60. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 61. California Labor Code § 226(a) requires an employer to furnish each of his or her
2 employees with an accurate, itemized statement in writing showing the gross and net earnings, total
3 hours worked, and the corresponding number of hours worked at each hourly rate; these statements
4 must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay
5 the employee's wages; or, if wages are paid by cash or personal check, these statements may be
6 given to the employee separately from the payment of wages; in either case the employer must give
7 the employee these statements twice a month or each time wages are paid.

8 62. Defendants failed to provide Employees with accurate itemized wage statements in
9 writing, as required by the Labor Code. Specifically, Defendants failed to accurately list all
10 applicable hourly rates in effect during the pay period. Moreover, the wage statements given to
11 Employees by Defendants failed to accurately account for wages, overtime, and premium pay for
12 deficient meal and rest periods and reflected the incorrect hours worked due to the rounding, all of
13 which Defendants knew or reasonably should have known were owed to Employees, as alleged
14 hereinabove. The wage statements provided to Employees were confusing and required Employees
15 to engage in discovery and refer to outside sources to verify whether their pay was correct and
16 potentially resulting in a miscalculation by the Employees.

17 63. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
18 Employees suffered injuries, including among other things confusion over whether they received all
19 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
20 them to make mathematical computations to analyze whether the wages paid in fact compensated
21 them correctly for all hours worked.

22 64. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover the
23 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
24 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding
25 an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs
26 and reasonable attorneys' fees.

27 65. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a civil
28 penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay

1 period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each
2 pay period.

3 66. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and any
4 other applicable statute allowing recovery of penalties as alleged herein in an amount to be shown
5 according to proof.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

8 **AND 1174.5**

9 **(Against All Defendants)**

10 67. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 68. California Labor Code § 1174 requires that all employers shall keep accurate time
13 and wage records for all employees. California Labor Code § 1174.5 further requires that any
14 employee suffering injury due to a willful violation of the aforementioned obligations may seek
15 damages, including civil penalties, from the employer.

16 69. During the course of Plaintiff's and Employees' employment, Defendants
17 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
18 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
19 overtime, and premium pay as discussed above.

20 70. Accordingly, Defendants are liable for civil penalties pursuant to the California
21 Labor Code §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO PRODUCE REQUESTED EMPLOYMENT RECORDS UNDER LABOR**

24 **CODE §§ 226 and 1198**

25 **(Against All Defendants)**

26 71. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 72. Pursuant to California Labor Code § 226, current and former employees have the

1 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
2 request to their employer. Under this statute, an employer that receives a request to inspect or
3 receive a copy of records pertaining to a current or former employee must comply with the request
4 as soon as practicable, but no later than twenty-one (21) calendar days from the date of the
5 request.

6 73. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
7 or his or her representative, has the right to inspect and receive a copy of the personnel records that
8 the employer maintains relating to the employee's performance or to any grievance concerning the
9 employee. Under this statute, upon written request from a current or former employee or his or her
10 representative, an employer must make the contents of those personnel records available for
11 inspection or provide a copy of the personnel records to the current or former employee, or his or
12 her representative, not later than thirty (30) calendar days from the date the employer receives the
13 written request, subject to some limited exceptions. Failure to comply with these requests allows for
14 a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and 226(f).

15 74. Plaintiff sent written requests through his counsel to Defendants for their payroll
16 records, timecards, and personnel records. However, Plaintiff has not received all of her requested
17 records as of the date of this Complaint

18 75. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
19 produce the required records requested by Plaintiff.

20 76. On information and belief, Defendants' failure to provide Plaintiff with all of his
21 requested employment records is not an isolated incident, but was instead consistent with
22 Defendants' policy and practice that applied to Plaintiff and Employees.

23 77. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to
24 a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.
25 Pursuant to California Labor Code § 226, Plaintiff is entitled to a penalty of seven hundred fifty
26 dollars (\$750) from Defendants and attorneys' fees and cost

27 ///

28 ///

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

78. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

79. Numerous Employees are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

80. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

81. The wages withheld from these Employees by Defendants remained due and owing for more than thirty (30) days from the date of separation of employment.

82. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them; this violation entitles these Employees to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

NINTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.*
(Against All Defendants)

83. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

84. Plaintiff, on behalf of herself, Employees, and the general public, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

85. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

1 86. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
2 practices.

3 87. Wage-and-hour laws express fundamental public policies. Paying employees their
4 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental public
5 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
6 to enforce minimum labor standards, to ensure that employees are not required or permitted to work
7 under substandard and unlawful conditions, and to protect law-abiding employers and their
8 employees from competitors who lower costs to themselves by failing to comply with minimum
9 labor standards.

10 88. Defendants have violated statutes and public policies. Through the conduct alleged
11 in this Complaint Defendants have acted contrary to these public policies, have violated specific
12 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
13 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff, and
14 all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
15 guaranteed to all employees under the law.

16 89. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
17 violation of the Business & Professions Code § 17200 *et seq.*

18 90. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
19 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
20 reasonable care should have known that their conduct was unlawful; therefore their conduct violates
21 the Business & Professions Code § 17200 *et seq.*

22 91. As a proximate result of the above-mentioned acts of Defendants, Employees have
23 been damaged, in a sum to be proven at trial. Unless restrained by this Court Defendants will
24 continue to engage in such unlawful conduct as alleged above. Pursuant to the Business &
25 Professions Code this Court should make such orders or judgments, including the appointment of a
26 receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any
27 unlawful or deceptive practice prohibited by the Business & Professions Code, including but not
28 limited to the disgorgement of such profits as may be necessary to restore Employees to the money

Defendants have unlawfully failed to pay.

TENTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.*

(Against All Defendants)

92. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

93. Plaintiff and Employees are aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the alleged violators, Defendants.

94. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty provisions, without limitation, based on the following California Labor Code sections: 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198.5, 1199, 2698, and 2699, *et seq.*

95. The penalties shall be allocated as follows: 75% to the Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

96. Employees also seek any and all penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

1 (c) The civil penalties provided for in this section are in addition to any other
2 civil or criminal penalty provided by law.

3 97. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
4 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
5 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
6 for each violation in a subsequent citation, for which the employer fails to provide the employee a
7 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the
8 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

9 98. Plaintiff has exhausted her administrative remedy by sending a certified letter to the
10 LWDA and Defendants postmarked on February 14, 2024. The LWDA has not provided notice of
11 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
12 letters.

13 **RELIEF REQUESTED**

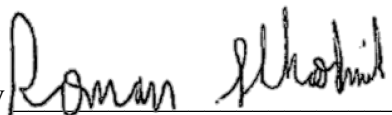
14 WHEREFORE, Plaintiff prays for the following relief:

- 15 1. For an order certifying this action as a class action;
- 16 2. For compensatory damages in the amount of the unpaid minimum wages for work
17 performed by Employees and unpaid overtime compensation from at least four (4) years prior to the
18 filing of this action, as may be proven;
- 19 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
20 thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 21 4. For compensatory damages in the amount of all unpaid wages, including overtime
22 and double-time pay, as may be proven;
- 23 5. For compensatory damages in the amount of the hourly wage made by Employees
24 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
25 years prior to the filing of this action, as may be proven;
- 26 6. For compensatory damages in the amount of the hourly wage made by Employees
27 for each day requisite rest breaks were not provided or were deficiently provided where no premium
28 pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;

7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
8. For penalties pursuant to Labor Code § 226.3, as may be proven;
9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
10. For penalties pursuant to Labor Code § 1174.5, as may be proven;
11. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;
12. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
13. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
14. For compensatory damages in the amount of all previously unreimbursed business expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants from four (4) years prior to the original filing of this action, as may be proven;
15. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
16. For all general, special, and incidental damages as may be proven;
17. For an award of pre-judgment and post-judgment interest;
18. For an award providing for the payment of the costs of this suit;
19. For an award of attorneys' fees; and
20. For such other and further relief as this Court may deem proper and just.

DATED: April 11, 2024

D.LAW, INC.

By 
Emil Davtyan
David Yeremian
Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
MICHELE GRAEF
and the putative class

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DATED: April 11, 2024

By 
 Emil Davtyan
 David Yeremian
 Roman Shkodnik
 Emma Geesaman
 Attorneys for Plaintiff
 MICHELE GRAEF
 and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Amber N. Les
amber.les@aalrr.com
ATKINSON, ANDELSON, LOYA,
RUUD & ROMO
 12800 Center Court Drive, Suite 300
 Cerritos, CA 90703

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[] (ONLY BY ELECTRONIC TRANSMISSION) I electronically served the foregoing document in PDF format. I caused a true copy of the foregoing document(s) listed above to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address(es) shown above. Each transmission was reported as complete and without error.

☐ **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 11, 2024, at Glendale, California.

Natalia Bermudes
Natalia Bermudes