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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Alexus Fierro, DEPUTY

Attorneys for Plaintiff MOESAEAH A KING,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

MOESAEAH A KING, on behalf of himself and
current and former aggrieved employees

Plaintiff,

vs.

ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC.; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: CIVSB2503235

PAGA ACTION

**PLAINTIFF MOESAEAH A KING'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff MOESAEAH A KING ("Plaintiff"), who alleges and complains
against Defendants ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.; and DOES
1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-exempt
employees in California during the relevant time period seeking civil penalties associated with
Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all hours

1 worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to pay
2 overtime wages at the proper overtime rate of pay; failure to authorize or permit all legally required
3 and/or compliant rest periods or pay rest period premium wages; statutory penalties for failure to
4 timely pay earned wages during employment; statutory penalties for failure to provide accurate wage
5 statements. . Plaintiff experienced these violations personally, as well as is informed and believes
6 other aggrieved employees did as well. Plaintiff seeks on a representative basis, following notice
7 to the Labor and Workforce Development Agency, civil penalties, reasonable attorneys' fees
8 pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of
9 California, and others aggrieved.

10 **II. JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
12 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
13 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
14 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
15 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
16 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
17 aggrieved California-based hourly non-exempt employees occurred in locations throughout
18 California, including but not limited to San Bernardino County, at 380 New York Street, Redlands,
19 CA 92372.

20 **III. PARTIES**

21 3. Plaintiff brings this action as a representative of the Labor and Workforce
22 Development Agency on behalf of himself and other current and former employees subject to
23 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
24 filed include current, former and/or future employees of Defendants who work, worked, or will work
25 for Defendants as direct employees as well as temporary employees employed through temp
26 agencies as hourly non-exempt employees in California. At all times mentioned herein, the currently
27 named Plaintiff is and was domiciled and a resident and citizen of California and was employed by
28 Defendants in an hourly position at Defendants' location in San Bernardino County from in or

1 around March 2022 to present.

2 4. Plaintiff is informed and believes and thereon alleges that Defendant
3 ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. is authorized to do business
4 within the State of California and is doing business in the State of California and/or that Defendants
5 DOES 1-50 are, and at all times relevant hereto were persons acting on behalf of Defendant
6 ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. in the establishment of, or
7 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
8 ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. operates in Riverside County
9 and employed Plaintiff and aggrieved employees in Riverside County, including but not limited to,
10 at 380 New York Street, Redlands, CA 92372.

11 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
12 through 50 are corporations, or are other business entities or organizations of a nature unknown to
13 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
14 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working
15 conditions of employment of Plaintiff and aggrieved employees.

16 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
17 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
18 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
19 supervisor, independent contractor and/or employee of each defendant who violated or caused to be
20 violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the
21 Industrial Welfare Commission's wage orders regulating hours and days of work.

22 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
23 sues said defendants by said fictitious names, and will amend this complaint when the true names
24 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
25 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
26 named defendants is in some manner responsible for the events and allegations set forth in this
27 complaint.

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8. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

**CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE SECTIONS 2698, ET SEQ.**

**(Against all Defendants by Plaintiff on behalf of Themselves, the State of California, and
Other Current and Former Aggrieved Employees)**

9. Plaintiff incorporates all paragraphs above as though fully set forth herein.

10. During Plaintiff's employment and continuing through the present, Plaintiff alleges Defendants violated Labor Code sections 204, 223, 226, 226.7, 510, 512, 1194, 1197, and the applicable Wage Orders.

11. Specifically, Defendants have committed the following violations of California Labor Code:

12. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all “hours worked,” which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

13. Labor Code sections 1194 and 1197 require an employer to compensate employees for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the Wage Orders.

14. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but not limited

1 to:

2 (a) "Rounding down" or "shaving down" Plaintiff and other current and former
3 aggrieved California-based hourly non-exempt employees total daily hours at the time of their clock-
4 ins and clock-outs, including clock-ins and clock-outs for meal breaks, to the nearest quarter of an
5 hour, to the benefit of Defendants; and

6 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
7 non-exempt employees to be on-call without compensating them for on-call time.

8 15. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
9 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
10 control without paying wages for that time. This resulted in Plaintiff and other current and former
11 aggrieved California-based hourly non-exempt employees working time for which they were not
12 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
13 Wage Order.

14 16. Employee is further informed and believes, and based thereon alleges, that
15 Employer's conduct above that gave rise to such violations was malicious, fraudulent, or oppressive.
16 Employer would further be liable for civil penalties pursuant to Labor Code section
17 2699(f)(2)(B)(ii).

18 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay**
19 **and/or failure to pay overtime wages at the proper rate of pay:** Defendants employed many of
20 their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer
21 is required to pay hourly employees for all "hours worked," which includes all time that an employee
22 is under control of the employer and all time the employee is suffered and permitted to work. This
23 includes the time an employee spends, either directly or indirectly, performing services that inure to
24 the benefit of the employer.'

25 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
26 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40)
27 hours in a workweek, and on any seventh consecutive day of work in a workweek:

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Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

19. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Failing to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees' overtime wages and instead offering "Time off in Lieu" (Bank time) for the extended hours they worked.

20. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510, 1194 and 1198, and the applicable Wage Order.

21. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant rest periods and/or failure to pay rest period premium:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than three-and-a-half (3.5) hours.

22. California law requires every employer to authorize and permit an employee a rest period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code section 226.7; Wage Order 4 at §12. Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker*

1 *Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7;
2 Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of each work period.
3 Wage Order 4 at §12. Additionally, the rest period requirement “obligates employers to permit –
4 and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*,
5 (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all
6 duties and relinquish control over how employees spend their time. *Id.*

7 23. If the employer fails to authorize or permit a required rest period, the employer must
8 pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday the
9 employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Wage
10 Order 4 at § 12.

11 24. In this case, Defendants failed to authorize or permit all legally required and
12 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
13 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
14 limited to:

15 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
16 hourly non-exempt employees with net ten (10) minute rest breaks for every four (4) hours worked
17 or major fraction thereof.

18 25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
19 procedure of failing to compensate Plaintiff and other current and former aggrieved California-based
20 hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each workday
21 they did not receive legally required and compliant rest periods, in violation of Labor Code section
22 226.7.

23 26. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff and
24 other current and former aggrieved California-based hourly non-exempt employees not receiving
25 wages to compensate them for workdays in which Defendants did not provide them with rest periods
26 in compliance with California law.

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1 27. Employee is further informed and believes, and based thereon alleges, that
2 Employer's conduct above that gave rise to such violations was malicious, fraudulent, or oppressive.
3 Employer would further be liable for civil penalties pursuant to Labor Code section
4 2699(f)(2)(B)(ii).

5 28. **Failure to timely pay earned wages during employment:** In California, wages
6 must be paid at least twice during each calendar month on days designated in advance by the
7 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages earned
8 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and
9 the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any
10 calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll
11 periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7)
12 calendar days following the close of the payroll period in which wages were earned. Labor Code
13 section 204(d).

14 29. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
15 timely pay Plaintiff's and other current and former aggrieved California-based hourly non-exempt
16 employees' earned wages (including minimum wages, overtime wages, and/or rest period premium
17 wages), in violation of Labor Code section 204. Defendants' aforementioned policies, practices,
18 and/or procedures resulted in their failure to pay Plaintiff's and other current and former aggrieved
19 California-based hourly non-exempt employees' their earned wages within the applicable time
20 frames outlined in Labor Code section 204.

21 30. Plaintiff also believes these failures were malicious, fraudulent, or oppressive.
22 Employer would further be liable for civil penalties pursuant to Labor Code section
23 2699(f)(2)(B)(ii).

24 31. **Secret payment of lower wages than designated by statute:** Labor Code section
25 223 provides that, where any statute or contract requires an employer to maintain the designated
26 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
27 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including by
28 failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and lawful

1 sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7, 246,
2 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by Labor
3 Code section 1198, the Defendant secretly paid a lower wage than designated by statute while
4 purporting to pay the wages designated by statute, in violation of Labor Code section 223.

5 32. Plaintiff also believes these failures were malicious, fraudulent, or oppressive.
6 Employer would further be liable for civil penalties pursuant to Labor Code section
7 2699(f)(2)(B)(ii).

8 33. **Failure to provide complete and accurate wage statements:** Labor Code section
9 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an employee
10 his or her wages, the employer must "furnish each of his or her employees ... an itemized statement
11 in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any
12 employee whose compensation is solely based on a salary and who is exempt from payment of
13 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
14 Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee
15 is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders
16 of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
17 dates of the pay period for which the employee is paid, (7) the name of the employee and his or her
18 social security number, (8) the name and address of the legal entity that is the employer, and (9) all
19 applicable hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate by the employee."

21 34. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
22 and other current and former aggrieved California-based hourly non-exempt employees all wages
23 earned (including minimum wages, overtime wages, and/or rest period premium wages) rendered
24 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
25 wage statements inaccurate, in violation of Labor Code section 226(a)(1, 2, 5 & 9).

26 35. Plaintiff believes these failures were willful and intentional.

27 36. Plaintiff also believes these failures were malicious, fraudulent, or oppressive.
28 Employer would further be liable for civil penalties pursuant to Labor Code section

1 2699(f)(2)(B)(ii).

2 37. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved employee,
3 on behalf of himself or herself and other current or former employees, to bring a civil action to
4 recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code
5 section 2699.3.

6 38. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
7 section 2699.3. On November 25, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA and
8 provided notice to Defendants by certified mail which provided notice of the specific provisions of
9 the Labor Code alleged to have been violated, including the facts and theories to support the
10 violations alleged.

11 39. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
12 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
13 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
14 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
15 to investigate Plaintiff's claims.

16 40. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
17 penalties for Defendants' violations of Labor Code sections 204, 223, 226, 226.7, 510, 512, 1194,
18 and 1197. During Plaintiff's employment and continuing through the present, preceding Plaintiff
19 sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

20 a. For violations of Labor Code sections 226(a) and 226.7; one hundred dollars
21 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
22 (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty amounts
23 established by Labor Code section 2699(f)(2)].

24 b. For violations of Labor Code section 226(a), alternatively, two hundred fifty
25 dollars (\$250) for each employee for each pay period for the initial violation, and for each
26 subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period
27 [penalty amounts established by Labor Code section 226.3].

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1 c. For violations of Labor Code section 510 and 512, fifty dollars (\$50) for each
2 employee for each pay period for the initial violation, and for each subsequent violation, one
3 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
4 established by Labor Code section 558].

5 d. For violations of Labor Code section 204, one hundred dollars (\$100) for
6 each failure to pay each employee in any initial violation, and for each subsequent violation, or any
7 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
8 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
9 section 210].

10 e. For violations of Labor Code section 223, one hundred dollars (\$100) for
11 each failure to pay each employee in any initial violation, and for each subsequent violation, or any
12 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
13 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
14 section 225.5].

15 41. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
16 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER AGGRIEVED**
19 **EMPLOYEES, PRAYS AS FOLLOWS:**

20 **ON THE FIRST CAUSE OF ACTION:**

21 1. That Defendants be found to have violated the provisions of the Labor Code and the
22 IWC Wages Orders as to the Plaintiff and aggrieved employees;

23 2. For any and all legally applicable penalties during the relevant statute of limitations
24 subject to any permissible tolling, including but not limited to those recoverable under the California
25 Labor Code, including but not limited to sections 210, 225.5, 226.3, 558, 2699(f);

26 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
27 under California Labor Code section 2699(g); and

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1 4. For such and other further relief, in law and/or equity, as the Court deems just or
2 appropriate.

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7 Dated: January 30, 2025

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

8
9 By:



10 Joseph Lavi, Esq.
11 Vincent C. Granberry, Esq.
12 Jeffrey D. Klein, Esq.
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16 on behalf of himself and current and former
17 aggrieved employees
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