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12 LARINE SHIELDS, and TAYLOR EVANS

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

15 ADRIANA HAYTER, LARINE SHIELDS,
16 and TAYLOR EVANS; individually, and on
17 behalf of all other similarly situated persons,
18 on behalf of the CALIFORNIA LABOR
19 AND WORKFORCE DEVELOPMENT
20 AGENCY, on behalf of the STATE OF
21 CALIFORNIA; and ROES 1-100,

22 Plaintiffs,

23 v.

24 EWALD & WASSERMAN RESEARCH
25 CONSULTANTS, LLC, a California limited
26 liability corporation; KATRIN EWALD, an
27 individual; LISA WASSERMAN, an
28 individual; and DOES 1-20,

Defendants.

Case No. CGC-19-577753

**SECOND AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR JURY
TRIAL**

1. Failure to Pay All Wages Earned for Hours Worked in Violation of Labor Code §§ 204, 218.5 & 218.6 and IWC Wage Orders;
2. Failure to Pay Minimum and Regular Wages in Violation of Labor Code §§ 200 & 1197;
3. Failure to Pay Overtime Wages in Violation of Labor Code §§ 510 & 1194;
4. Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7 & 512;
5. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7
6. Failure to Provide Paid Sick Leave in Violation of California Labor Code § 246;

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7. Interference with Employee Use of Paid Sick Leave in Violation of Labor Code § 246.5;
8. Failure to Provide Paid Sick Leave in Violation of San Francisco Administrative Code, Chapter 12W;
9. Intentional Misrepresentation;
10. Fraud by Concealment;
11. Penalties for Failure to Pay Earned Wages Upon Discharge Pursuant to Labor Code § 203;
12. Penalties for Failure to Furnish Timely and Accurate Wage Statements Pursuant to Labor Code §§ 226, 1198 and IWC Wage Orders;
13. Unlawful Fraudulent and/or Unfair Business Practices in Violation of Bus. & Prof. Code § 17200, *et seq.*; and
14. Penalties for Labor Code Violations Pursuant to the PAGA.

Plaintiffs ADRIANA HAYTER (“Hayter”), LARINE SHIELDS (“Shields”), and TAYLOR EVANS (“Evans”) (collectively, “Named Plaintiffs”), on behalf of themselves and other similarly situated individuals, and ROES 1-100 (collectively, “Plaintiffs”), on behalf of the CALIFORNIA LABOR WORKFORCE DEVELOPMENT AGENCY (“LWDA”), and on behalf of THE STATE OF CALIFORNIA, complain and allege as follows:

I. INTRODUCTION

1. Named Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals who have worked or continue to work as hourly, non-exempt employees for Defendants EWALD & WASSERMAN RESEARCH CONSULTANTS, LLC (“E&W”), KATRIN EWALD (“Ewald”), LISA WASSERMAN (“Wasserman”), and DOES 1-20 (collectively, “Defendants”).

2. Defendants engaged in wage stealing practices from their hourly, non-exempt employees working for E&W by fraudulently modifying their electronic time records after-the-fact without the employees’ knowledge, consent or authorization. Defendants have modified, and on information and belief, continue to modify, employees’ time records by reducing their reported worked-time to avoid paying them for all time worked and earned overtime wages, and/or by

1 inserting uncompensable time that would falsely account for meal and rest breaks even though
2 the employees worked through their breaks.

3 3. As a consequence of the aforementioned fraudulent and unlawful practices,
4 Defendants failed to pay their hourly, non-exempt employees for all hours worked; failed to pay
5 premium wages for overtime worked; failed to compensate their employees for working through
6 meal and rest periods; and failed to provide accurate wage statement to their hourly, non-exempt
7 employees.

8 4. Named Plaintiffs, on behalf of themselves and all similarly situated employees,
9 seek unpaid wages, overtime and other premium wages, liquidated damages, punitive damages,
10 restitution, injunctive and declaratory relief, and/or other damages as permitted by applicable law,
11 penalties, interest, and attorneys' fees and costs.

11 **II. PARTIES**

12 5. Hayter worked as an hourly, non-exempt employee for E&W, working as a part-
13 time on-call Telephone Interviewer between October 23, 2014 and November 2017.

14 6. Shields worked as an hourly, non-exempt employee for E&W, working as a part-
15 time on-call Telephone Interviewer between May 2014 and February 2016.

16 7. Evans worked as an hourly, non-exempt employee for E&W, working as a part-
17 time on-call Telephone Interviewer between May 2014 and December 2014.

18 8. ROES 1 through 100 are unidentified individuals who work or worked for E&W
19 as hourly, non-exempt employees and who Named Plaintiffs anticipate will be added to this action
20 as Named Plaintiffs at a later date.

21 9. E&W is, upon information and belief, a California limited liability corporation that
22 at all times relevant hereto has been authorized to and does conduct business in the State of
23 California and maintains its headquarters at 27 Maiden Lane, Suite 500, San Francisco, CA
24 94108.

25 10. Ewald is an owner and partner of E&W. Upon information and belief, Ewald
26 knew of, created, participated and directed the unlawful labor practices and policies at E&W. At
27 all relevant times hereto, Ewald was and is a resident of San Francisco County.

28 11. Wasserman is an owner and partner of E&W. Upon information and belief,
Wasserman knew of, created, participated and directed the unlawful labor practices and policies
at E&W. At all relevant times hereto, Wasserman was and is a resident of San Francisco County.

1 12. Defendants DOES 1 through 20 are sued herein under fictitious names pursuant to
2 Code of Civil Procedure (“CCP”) § 474. These Defendants are in some way liable for the
3 damages sustained by Plaintiffs. Plaintiffs do not, at this time, know the true names or capacities
4 of said Defendants, but prays that the same may be inserted herein when ascertained.

5 13. Named Plaintiffs are informed and believe that Ewald and Wasserman each
6 inadequately capitalized E&W, co-mingled funds with E&W, using its funds for their own
7 personal use, failed to adequately finance E&W, and disregarded legal formalities with respect to
8 the operation of E&W. Moreover, Named Plaintiffs are informed and believe that Ewald and
9 Wasserman exercised domination and control over E&W and used E&W as a mere shell,
instrumentality or conduit for a single venture, business or another corporation.

10 14. Named Plaintiffs are informed and believe and thereon allege that at all times
11 herein mentioned, each of the Defendants sued herein was the agent and/or employee of each of
12 the remaining Defendants, and each of them was at all times acting within the purpose and scope
13 of such agency and employment with the knowledge and permission of the other Defendants. On
14 information and belief, the acts alleged herein were authorized and/or ratified by each and every
other Defendant.

15 **III. JURISDICTION AND VENUE**

16 15. The Superior Court of California has jurisdiction over this action pursuant to
17 California Constitution, Article VI §10.

18 16. The Superior Court of California has jurisdiction over Plaintiffs’ claims for
19 injunctive relief and restitution of ill-gotten benefits arising from Defendants’ unlawful business
20 acts and practices under Business and Professions (“B&P”) Code §§ 17203 and 17204.

21 17. Because Defendants conduct business and maintain their corporate office in San
22 Francisco County, venue is proper in San Francisco County pursuant to CCP §§ 395(a) and 395.5.

23 18. On November 9, 2020, Plaintiffs gave notice to the LWDA pursuant to Labor Code
24 § 2699.3 of Defendants’ violation of the Labor Code Private Attorneys General Act, Labor Code
25 § 2698, *et seq.* (“PAGA”). The LWDA has not notified Plaintiffs of its intent to investigate
26 Plaintiffs’ allegations within sixty-five (65) calendar days of the November 9, 2020 notice.
Therefore, the Court has jurisdiction over Plaintiffs’ claims for penalties pursuant to the PAGA.

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1 **IV. FACTUAL ALLEGATIONS**

2 **A. E&W's Business Practices and Labor Policies**

3 19. E&W is a social science survey research organization that provides consulting
4 support for academic, non-profit, and commercial clientele in the social science and behavioral
5 research field, as well as data collection services using telephone, mail, in-person, and web-based
6 survey research approaches.

7 20. To these ends, E&W employs a significant number of on-call Telephone
8 Interviewers tasked with interviewing individuals over the phone on a wide range of social science
9 topics in order to collect information and data for E&W.

10 21. Upon information and belief and at all times relevant to this action, Defendants'
11 policies and directives relevant to this litigation were and still are disseminated to all of E&W's
12 staff and employees.

13 22. Upon information and belief, the policies and directives relevant to this litigation
14 have each specifically originated from Defendants' corporate headquarters, and none of E&W's
15 supervisory staff had any discretion in implementing those policies and directives.

16 23. As labor costs are controllable by E&W, the more they are able to minimize those
17 costs, the greater their profit margin becomes. Beginning on or before October 2014 and
18 continuing through the present, E&W's drive to increase its profits led it to implement multiple
19 policies and practices that deprived their hourly, non-exempt employees of earned wages, meal
20 and rest breaks, sick leave, and other benefits that they were entitled to by law.

21 24. As part of its effort to reduce labor costs, E&W maintained, and on information
22 and belief, continues to maintain a practice of generally scheduling its Telephone Interviewers on
23 shifts of no more than 6 hours. E&W maintained, and on information and belief, continues to
24 maintain, a policy that if an employee worked a 4 or 5 hour shift, that employee was entitled to
25 one paid 10-minute rest break; and if an employee worked more than 5 hours, that employee
26 would be entitled to one paid 10-minute rest break and one 30-minute meal break. Employees
27 are told that they did not need to clock-out of E&W's timekeeping system when taking a 10-
28 minute rest break, but they had to clock-out when taking the optional 30-minute meal break.

29 25. E&W also maintained, and on information and belief, continues to maintain a
30 practice of illegally altering employees' timekeeping records without their authorization, consent
31 or knowledge. E&W manipulated, and on information and belief, continues to manipulate, the

1 timekeeping records to show that employees clocked out for a 30-minute meal break or a 10-
2 minute rest break when the employee never actually took that break.

3 26. E&W also maintained, and on information and belief, continues to maintain
4 timekeeping records to reflect that its employees worked less time than they actually did, taking
5 away several hours of work from each employee in each pay period.

6 27. E&W also maintained, and on information and belief, continues to maintain a
7 policy and practice of not paying overtime wages to its employees at the statutory overtime rate
8 of pay. Instead, E&W compensated its employees for overtime using their regular rates of pay.

9 28. Finally, E&W also maintained, and on information and belief, continues to
10 maintain, a policy and practice of denying paid sick leave to its employees.

11 **B. Named Plaintiffs' Experiences Under Defendants' Policies and Practices**

12 **(1) Hayter's Work Experience with E&W**

13 29. Hayter worked for E&W from October 23, 2014 to November 2017. Hayter was
14 paid \$16.00 per hour, except during February 2017 to May 2017, when she was paid \$18.00 per
15 hour.

16 30. Throughout the course of her employment, Hayter worked 5 days per week on
17 average. The majority of her shifts were approximately 6 hours, but she occasionally worked 8-
18 hour shifts and also worked overtime hours.

19 **(a) *E&W's Unlawful Policies Relating to Meal Periods, Rest Periods,*** 20 ***Overtime, and Sick Leave***

21 31. Hayter was routinely forced to work through her 30-minute meal breaks. Hayter
22 estimates that she was only afforded the time to take a full and uninterrupted 30-minute meal
23 break about once per month. Hayter also observed that her co-workers rarely took a full,
24 uninterrupted 30-minute meal break.

25 32. As one example of the oppressive environment, on one occasion, Hayter tried to
26 clock out for a 30-minute lunch break that she was entitled to, and when she returned to her
27 workspace, she was interrogated by Ewald in an aggressive and confrontational manner about
28 where she had been. When Hayter explained that she was taking a 30-minute lunch break, Ewald
berated her for having been gone for "a long time."

33. Though Hayter regularly had to work through her meal break, Hayter never waived
her right to a 30-minute meal break. E&W never provided Hayter with any forms regarding a

1 waiver of Hayter's 30-minute meal breaks, nor asked for any other indication that Hayter ever
2 waived a 30-minute meal break.

3 34. In a similar fashion, Hayter was routinely forced to work through her 10-minute
4 rest breaks. Hayter estimates that she was only afforded the time to take a 10-minute rest break
5 about two or three times per month.

6 35. Most of the time, even if Hayter tried to take a ten-minute break, her time in the
7 break room was interrupted by supervisors coming into the break room to discuss work-related
8 matters so that she was not relieved of her duties during her break.

9 36. Although Hayter typically worked in six-hour shifts, she was occasionally
10 assigned big projects requiring her to work more than 8 hours per day and/or more than 40 hours
11 per week. On these occasions, Hayter was not compensated for the overtime that she worked.
12 Hayter was never paid any overtime throughout her time working for E&W.

13 37. Hayter was also denied at least two requests to take paid sick leave while working
14 at E&W, and was forced to come to work while sick.

15 38. On at least two occasions, Hayter was sick enough that she felt it was necessary to
16 call to say she would be out sick for one day. When Hayter made that telephone call, Ewald or
17 another employee of the company would tell Hayter that she needed to have a doctor's note if she
18 wanted to "call out." Because Hayter did not have health insurance, she could not afford to visit
19 a doctor particularly for a minor illness that did not warrant urgent medical attention, and therefore
20 she came to work ill. As a result, she accrued numerous hours of sick time that she could not use.

21 39. Hayter had worked for more than 90 days, and for more than 30 hours, for E&W
22 in a single calendar year, at the time that she tried to use paid sick leave, and had that request
23 denied.

24 ***(b) E&W's Manipulation of Hayter's Timekeeping Records***

25 40. Throughout her employment with E&W, Hayter noticed that issues frequently
26 arose between E&W and its employees regarding irregularities with E&W's timekeeping system
27 and corresponding pay. Hayter noticed that employees frequently complained about their pay
28 being wrong and about missing time in their timekeeping records.

41. Hayter lacked any access to her own timekeeping records and had to ask a
supervisor to access those records.

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1 42. Through her employment, E&W did not inform Hayter that changes were made to
2 her timekeeping records.

3 43. Towards the end of her employment, in the fall of 2017, Hayter asked to access
4 her timekeeping records, and was granted a one-time access by a supervisor. Hayter then noticed
5 that her timekeeping records showed that she had clocked-out for a ten-minute rest break every
6 day within the past workweek, even though she had not actually taken those breaks and/or
7 recorded them.

8 44. In fact, Hayter's records should not have indicated that she had clocked out for
9 *any* ten-minute rest breaks, because she *never* clocked out for those breaks for two reasons.
10 Hayter rarely took a ten-minute rest break, and even if she had, she would not have clocked out
11 for them in accordance with E&W's policy that employees did not need to clock out for ten-
12 minute rest breaks.

13 45. Hayter also realized that she had been recorded working about 2-3 less hours per
14 pay period than she had actually worked, and she had therefore never been paid for working those
15 hours.

16 46. Upon information and belief, Hayter asserts that E&W had unilaterally changed
17 Hayter's time entries throughout her employment to falsely reflect that Hayter had taken meal
18 and rest breaks when she had not done so, or to falsely reflect that she had worked less hours than
19 she actually worked.

20 47. Shortly after this discovery, Hayter filed a wage claim with the Labor
21 Commissioner, alleging that E&W had manipulated her time records without her consent, had
22 denied her use of paid sick time, and had failed to pay her overtime wages that she was owed.

23 48. After filing her wage claim, the Labor Commissioner sought a written reply from
24 E&W. In its written reply to the Labor Commissioner, E&W asserted that no violations had
25 occurred and provided portions of Hayter's time records. Hayter noticed that the portions of her
26 time records that were provided appeared different from the time records that E&W had
27 previously allowed her to inspect. Accordingly, Hayter believes that E&W manipulated her time
28 records again for the purpose of overcoming her wage claim.

 49. Hayter never consented to alterations or modifications of her timekeeping records,
and the modifications that Hayter saw did not reflect the hours she actually worked.

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1 50. As a result of these practices, Hayter’s overtime was not always reported on her
2 pay records and she was regularly not paid for all of her worked hours, overtime work, or
3 compensated when she was forced to work through meal or rest breaks.

4 51. E&W issued paychecks to Hayter based on the manufactured and altered time
5 records, and these paychecks, and their accompanying wage statements, misrepresented and
6 underpaid the wages earned by Hayter.

7 52. Hayter is informed and believes that E&W knew or should have known at the time
8 they issued her paychecks that the paychecks did not reflect all the wages she earned.

9 53. Hayter is informed and believes that E&W intentionally concealed or failed to
10 disclose the fact that E&W had changed her timekeeping records.

11 54. Hayter is further informed and believes that E&W intended to deceive Hayter by
12 concealing the fact that some of her paychecks were not accurate reflections of all the wages she
13 earned.

14 55. Hayter is informed and believes that E&W intended for her to rely on these
15 misrepresentations and for her to accept her paycheck as an accurate reflection of the wages he
16 earned.

17 56. Hayter was justified in relying on E&W’s deceptions.

18 57. Hayter relied on Defendants’ deceptions and was thusly harmed, as to date she has
19 not been paid all of the wages that she has earned.

20 **(2) Shields’s Work Experience with E&W**

21 58. Shields worked as an hourly, non-exempt employee as a Telephone Interviewer at
22 E&W from approximately early 2014 to February 2016.

23 59. As a Telephone Interviewer, Shields worked shifts of approximately 6-7 hours per
24 day, approximately 5 days per week, thus working 30-35 hours per week on average.

25 **(a) E&W’s Unlawful Policies Relating to Meal Periods, Rest Periods,**
26 **Overtime, and Sick Leave**

27 60. During her employment with E&W, Shields never clocked out for her 10-minute
28 rest breaks, in accordance with E&W’s policy that employees did not need to click-out for their
10-minute rest breaks. Shields did clock out whenever she actually took her 30-minute meal
breaks.

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1 minute and that Shields' memory of working consistent hours week after week was probably
2 faulty.

3 69. Upon information and belief, Shields asserts that E&W had unilaterally changed
4 Shields's time entries throughout her employment to falsely reflect that Shields had taken meal
5 and rest breaks when she had not done so, or to falsely reflect that she had worked less hours than
6 she actually worked.

7 70. Shields never consented to the alterations or modifications of her timekeeping
8 records.

9 71. E&W concealed from Shields almost all of the changes it made to her timekeeping
10 records.

11 72. As a result of these practices, Shields's regular time and overtime was not always
12 reported on her pay records and she was regularly not paid for all of her worked hours, overtime
13 work, or compensated when she was forced to work through meal or rest breaks.

14 73. E&W issued paychecks to Shields based on the manufactured and altered time
15 records, and these paychecks, and their accompanying wage statements, misrepresented and
16 underpaid the wages earned by Shields.

17 74. Shields is informed and believes that E&W knew or should have known at the time
18 they issued her paychecks that the paychecks did not reflect all the wages he earned.

19 75. Shields is informed and believes that E&W intentionally concealed or failed to
20 disclose the fact that E&W had changed his time records.

21 76. Shields is further informed and believes that E&W intended to deceive Shields by
22 concealing the fact that some of her paychecks were not accurate reflections of all the wages she
23 earned.

24 77. Shields is informed and believes that E&W intended for her to rely on these
25 misrepresentations and for her to accept her paycheck as an accurate reflection of the wages he
26 earned.

27 78. Shields was justified in relying on E&W's deceptions.

28 79. Shields relied on Defendants' deceptions and was thusly harmed, as to date she
has not been paid all of the wages that she has earned.

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(3) Evans’s Work Experience with E&W

80. Evans worked as an hourly, non-exempt employee as a Telephone Interviewer at E&W from approximately May 2014 to December 2014, where she was paid \$14 per hour.

81. As a Telephone Interviewer, Evans worked shifts of approximately 6-8 hours per day. Evans work schedule varied widely depending on the projects she was assigned, and she worked anywhere between 20-40 hours per week depending on the project she was working on.

(a) E&W’s Unlawful Policies Relating to Meal Periods, Rest Periods, Overtime, and Sick Leave

82. During her employment with E&W, Evans never clocked out for her 10-minute rest breaks, in accordance with E&W’s policy that employees did not need to click-out for their 10-minute rest breaks. Evans did clock out whenever she took her 30-minute meal breaks.

83. Evans was routinely forced to work through her 30-minute meal breaks. Evans estimates that she was only afforded the time to take a 30-minute meal break about twice per month, because E&W was adamant about getting the requisite number of calls made each day.

84. In fact, Evans was routinely told by her E&W managers to “hurry up” when she took her breaks, or to “make it quick.” One of Evans’ supervisors, Kevin (last name unknown), would get angry with E&W employees who took breaks, including Evans. If an employee was in the bathroom for too long, that employee would be verbally reprimanded. This happened nearly every day that Evans worked at E&W.

85. Evans never waived her right to a 30-minute meal break. E&W never provided Evans with any forms regarding a waiver of Evans’ 30-minute meal breaks, nor asked for any other indication that Evans ever waived a 30-minute meal break.

86. Evans was routinely forced to work through her 10-minute rest breaks. Evans estimates that she was only afforded the time to take a 10-minute rest break about twice per week.

87. Evans was sick enough to be absent from work on at least two occasions, and as a result she went unpaid. It was Evans’ understanding that E&W did not provide any paid sick leave.

88. Evans had worked for more than 90 days and for more than 30 hours for E&W in a single calendar year, at the time she tried to use paid sick leave, and had those requests denied.

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(b) E&W's Manipulation of Evans's Timekeeping Records

89. As a Telephone Interviewer, Evans lacked any access to her own timekeeping records and had to ask a supervisor to access those records.

90. While working at E&W, Evans noticed that several of her paychecks were irregular and sometimes paid her less money than she earned in a given pay period and/or reflected that she worked fewer hours in a pay period than she actually did. Evans noticed this problem because she independently kept track of the amount of hours that she worked per day and these hours sometimes did not correspond to the pay that she received for the corresponding pay period.

91. Evans did not complain about this issue to her supervisors as she attributed the issue to mathematical miscalculations on her own part or errors in her memory.

92. Upon information and belief, Evans now believes and asserts that E&W had unilaterally changed Evans's time entries throughout her employment to falsely reflect that Evans had taken meal and rest breaks when she had not done so, or to falsely reflect that she had worked less hours than she actually worked.

93. E&W concealed from Evans almost all of the changes it made to her timekeeping records.

94. Evans never consented to the alterations or modifications of her timekeeping records.

95. As a result of these practices, Evans's regular time and overtime was not always reported on her pay records and she was regularly not paid for all hours worked, overtime work, or compensated when she was forced to work through meal or rest breaks.

96. E&W issued paychecks to Evans based on the manufactured and altered time records, and these paychecks, and their accompanying wage statements, therefore misrepresented and underpaid the wages earned by Evans.

97. Evans is informed and believes that E&W knew or should have known at the time they issued her paychecks that the paychecks did not reflect all the wages he earned.

98. Evans is informed and believes that E&W intentionally concealed or failed to disclose the fact that E&W had changed his time records.

99. Evans is further informed and believes that E&W intended to deceive Evans by concealing the fact that some of her paychecks were not accurate reflections of all the wages she earned.

1 100. Evans is informed and believes that E&W intended for her to rely on these
2 misrepresentations and for her to accept her paycheck as an accurate reflection of the wages he
3 earned.

4 101. Evans was justified in relying on E&W's deception.

5 102. Evans relied on Defendants' deceptions and was thusly harmed, as to date she has
6 not been paid all of the wages that she has earned.

7 **C. Delayed Discovery of Defendants' Manipulation of Timekeeping Records by
8 Named Plaintiff**

9 103. Defendants deliberately concealed from Named Plaintiffs almost all changes made
10 to their timekeeping records as those changes were made without Named Plaintiffs' knowledge,
11 authority and/or consent. Named Plaintiffs' paychecks never indicated that modifications had
12 been made to their timekeeping records to falsely reflect that Named Plaintiffs had taken meal
13 and rest breaks when they had not done so, or to falsely reflect that they had worked fewer hours
14 than they actually worked.

15 104. Named Plaintiffs only became aware of Defendants' wrongdoing recently, within
16 three years of the filing of this action, and acted promptly in filing this lawsuit upon this discovery.

17 **D. Class Members' Claims**

18 105. Named Plaintiffs bring this action on behalf of themselves and others similarly
19 situated as a class action pursuant to CCP § 382. The class that Named Plaintiffs seek to represent
20 is defined as follows:

21 All persons who have been employed or are currently employed as hourly,
22 non-exempt employees by E&W in California for either (1) the period
23 beginning with the first time E&W used an electronic timekeeping system
24 of the type described above until the resolution of this action, and/or (2) the
25 period of four years prior to the filing of this complaint until the resolution
26 of this action ("Class Members").

27 106. The persons in the class are so numerous that the joinder of all such persons is
28 impracticable, and the disposition of their claims as a class will benefit the parties and the Court.
Named Plaintiffs are informed and believe that E&W has employed Named Plaintiffs along with
numerous other hourly employees at any given time. Named Plaintiffs believe there will be at
least 100 Class Members who worked for E&W during the liability period. Although the exact
number and identities of the Class Members are unknown to Named Plaintiffs at this time, this
information is easily ascertainable from E&W through the discovery of their records.

1 107. There is a well-defined commonality of interest in the questions of law and of fact
2 involving and affecting the Class Members to be represented in that all of these employees have
3 been harmed by the aforementioned practices of E&W and its willful violations of the Labor Code
4 and applicable Industrial Welfare Commission (“IWC”) wage orders.

5 108. The claims Named Plaintiffs herein allege are typical of those claims which could
6 be alleged by any member of the class, and the relief sought is typical of the relief which would
7 be sought by each of the members of the class in separate actions. All Class Members have been
8 similarly harmed by E&W’s policies and practices set forth above. Further, E&W benefited from
9 the same wrongful and unfair policies and practices.

10 109. Named Plaintiffs will fairly and adequately represent and protect the interests of
11 all Class Members and there are no known conflicts of interest between Named Plaintiffs and
12 Class Members. Other former and current employees of E&W are also available to serve as class
13 representatives if needed.

14 110. Named Plaintiffs have retained adequate counsel who have been previously
15 certified as class counsel in wage and hour class action cases and who are experienced and
16 competent in both class action and employment litigation.

17 111. The prosecution of separate actions by individual Class Members would create a
18 risk of inconsistent and/or varying adjudications, thus establishing incompatible standards of
19 conduct for E&W and resulting in the impairment of Class Members’ rights and the disposition
20 of their interests through actions to which they were not parties.

21 112. The prosecution of separate actions by individual Class Members would also
22 create a multiplicity of suits to be adjudicated upon the same or nearly the same common body of
23 evidence, and would result in an inefficient use of judicial resources.

24 113. Questions of law and fact common to Class Members predominate over any
25 questions affecting only individual Class Members. These common questions of law and fact
26 include, but are not limited to, the following:

- 27 a) whether E&W has maintained and enforced, and on information and belief,
28 continues to maintain and enforce, common policies and procedures as company-
wide practices to fraudulently change electronic time records;
- b) whether E&W has changed the time records of Class Members without the
authorization, knowledge and/or consent of Class Members;

1 c) whether E&W has changed the time records of Class Members without the
2 consent of Class Members to create inaccurate records of the hours worked by
3 Class Members;

4 d) whether E&W has maintained and enforced, and on information and belief,
5 continues to maintain and enforce, common policies and procedures as company-
6 wide practices to unlawfully avoid paying Class Members regular, overtime, and
7 other premium wages;

8 e) whether E&W has failed to pay Class Members wages earned by Class
9 Members;

10 f) whether E&W has maintained and enforced, and on information and belief,
11 continues to maintain and enforce, common policies and procedures as company-
12 wide practices to fraudulently eliminate records that Class Members worked
13 overtime or were not provided with meal and rest breaks to which they were
14 entitled;

15 g) whether E&W has eliminated records of overtime worked by Class
16 Members;

17 h) whether E&W has failed to pay and/or continues not to pay Class Members
18 overtime wages earned by Class Members;

19 i) whether E&W has eliminated records evidencing that Class Members were
20 entitled to meal and rest breaks or premium wages for missed meal or rest breaks;

21 j) whether E&W has maintained and enforced, and on information and belief,
22 continues to maintain and enforce, common policies and procedures as company-
23 wide practices to create false records purporting to show that Class Members had
24 been provided with required meal and rest breaks when none were actually taken;

25 k) whether E&W has created false records that Class Members took meal
26 breaks when none were actually taken;

27 l) whether E&W has maintained and enforced, and on information and belief,
28 continues to maintain and enforce common policies and procedures as company-
wide practices to avoid providing Class Members with required meal or rest
breaks;

m) whether E&W has failed to provide Class Members meal breaks when they

1 worked over five hours in one shift;

2 n) whether E&W has maintained and enforced, and on information and belief,
3 continues to maintain and enforce, common policies and procedures as company-
4 wide practices to avoid providing Class Members with required rest breaks;

5 o) whether E&W has failed to provide Class Members rest breaks at the rate
6 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

7 p) whether E&W has maintained and enforced, and on information and belief,
8 continues to maintain and enforce, common policies and procedures as company-
9 wide practices to avoid providing Class Members with paid sick leave as required
10 by the City and County of San Francisco;

11 q) whether E&W has failed to promptly pay all Class Members wages due to
12 them upon the termination of their employment as a result of the common unlawful
13 practices and procedures alleged in this complaint;

14 r) whether E&W has failed to provide Class Members wage statements that
15 accurately reflect the employees' earnings, hours worked, or other items as a result
16 of the common unlawful practices and procedures alleged in this complaint;

17 s) the proper formula for calculating restitution, damages, waiting time, and
18 other penalties owed to Class Members; and

19 t) whether E&W has deliberately concealed their unlawful practices from the
20 Class Members so that they would not be subject to a lawsuit filed within the
21 statutory limitations period.

22 114. A class action is superior to other available means for the fair and efficient
23 adjudication of this controversy. Individual joinder of all Class Members is not practicable; class
24 action treatment will permit a large number of similarly situated persons to prosecute their
25 common claims in a single forum simultaneously, efficiently, and without unnecessary
26 duplication of effort and expense that numerous individual actions would engender. Each Class
27 Member has been damaged and is entitled to recovery by reason of E&W's illegal policies and
28 practices described above. Class action treatment will allow those similarly situated persons to
litigate their claims in the manner that is most efficient and economical for the parties and the
judicial system.

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1 115. E&W's policies and practices violate IWC Order 4-2001, California Code of
2 Regulations, Title 8, Chapter 5, §11070; Labor Code §§ 200, 201, 202, 204, 210, 221, 226, 226.7,
3 246, 246.5, 351, 450, 510, 512, and 1194; and B & P Code §§ 17200, *et seq.* These laws require,
4 *inter alia*, that non-exempt employees be paid for all hours worked, including overtime and that
5 all hours worked be accurately reflected on a written, itemized statement. These laws also require
6 employers to provide their non-exempt employees with a meal period of at least 30 minutes for
7 every five hours the employee spends on the job, and that employees must be relieved of all duties
8 during meal periods.

9 116. Named Plaintiffs, on behalf of themselves and all similarly situated employees,
10 seek unpaid wages, overtime and other premium wages, liquidated damages and civil penalties,
11 punitive damages, restitution, injunctive and declaratory relief, and/or other damages as permitted
12 by applicable law, penalties, interest, and attorneys' fees and costs.

13 **FIRST CAUSE OF ACTION**
14 **Failure to Pay All Wages Earned for Hours Worked in**
15 **Violation of Labor Code §§ 204, 218.5, 218.6 and IWC Wage Orders**
16 **(alleged by Hayter individually and on behalf of Class Members**
17 **against all Defendants)**

18 117. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
19 herein by reference.

20 118. E&W is liable for Ewald and Wasserman's violations, because it is nothing more
21 than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W's
22 violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

23 119. Labor Code § 204(a) provides that all wages earned by any employee are due and
24 payable twice during each calendar month.

25 120. Labor Code § 204(d) provides that the requirement that all wages be paid
26 semimonthly is satisfied if wages are paid not more than seven calendar days following the close
27 of the payroll period.

28 121. IWC Wage Order 4-2001 provides that wages must be paid for all hours worked,
meaning the time during which an employee is subject to the control of an employer, including
all the time the employee is suffered or permitted to work, whether or not required to do so.

122. As a result of E&W policies and practices, Plaintiffs were not compensated for
time spent working. Plaintiffs were working and subject to E&W's control during the entirety of
their shifts, and therefore E&W was obligated to pay them for this time. Despite this, E&W

1 engaged in a practice of “shorting” and manipulating Plaintiffs’ timekeeping records in order to
2 pay them less wages than they had actually earned.

3 123. Defendants have not paid Plaintiffs for hours worked, in violation of Labor Code
4 § 204 and IWC Wage Order 4-2001.

5 124. Pursuant to Labor Code § 218.6, Plaintiffs are entitled to recover in a civil action
6 the unpaid balance of the full amount of compensation for all hours worked, plus interest at a rate
7 of 10 percent per year.

8 125. As a direct and proximate result of Defendants’ conduct, Plaintiffs have suffered
9 damages, in an amount to be proven at trial.

10 126. As a direct and proximate result of Defendants’ conduct, Plaintiffs are also entitled
11 to attorneys’ fees under Labor Code § 218.5, in addition to expenses and costs of suit.

12 **SECOND CAUSE OF ACTION**
13 **Failure to Pay Minimum and Regular Wages in Violation of Labor Code §§ 200 & 1197**
14 **(alleged by Hayter individually and on behalf of Class Members**
15 **against all Defendants)**

16 127. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
17 herein by reference.

18 128. E&W is liable for Ewald and Wasserman’s violations, because it is nothing more
19 than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W’s
20 violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

21 129. Pursuant to Labor Code § 200, “wages” includes all amounts for labor performed
22 by employees of every description, whether the amount is fixed or ascertained by the standard of
23 time, task, piece, commission basis, or other method of calculation.

24 130. Pursuant to Labor Code § 1197, payment of less than the minimum wage fixed by
25 the commission is unlawful.

26 131. During the entire period of time that Plaintiffs were employed by Defendants, and
27 for the four (4) years preceding the filing of this lawsuit, Defendants were required to compensate
28 Plaintiffs at least at the minimum wage, but failed to carry out their duties and responsibilities as
an employer as imposed by the laws and regulations of the State of California, and violated the
law by failing to pay Plaintiffs a minimum wage for all hours worked by Plaintiffs pursuant to all
applicable wage orders and in accordance with Labor Code §§ 200, 226, 500, 510, and 1197.

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1 132. Defendants failed to pay Plaintiffs all of the wages that they earned. Specifically,
2 Defendants regularly and intentionally cut hours from Plaintiffs' timekeeping records and thus
3 from their paychecks and payments to them, thereby paying Plaintiffs zero dollars for many of
4 the hours that Plaintiffs worked. Defendants thus owe Plaintiffs for all of the hours that they cut
5 or "shorted" from their time records, in addition to all other wages Defendants owe to Plaintiffs
6 that will be proven at the time of trial.

7 133. Plaintiffs are thus entitled to recover in a civil action their earned unpaid wages
8 pursuant to Labor Code §§ 200, 203, 226, 218, 246, 1194, and 1197, and liquidated damages for
9 failure to pay at least the minimum wage for these wages earned per Labor Code § 1194.2, plus
10 interest, other penalties, and attorneys' fees and costs.

11 134. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered
12 damages, in an amount to be proven at trial.

13 135. As a direct and proximate result of Defendants' conduct, Plaintiffs are also entitled
14 to attorneys' fees under Labor Code §§ 218.5 and 1194(a), in addition to expenses and costs of
15 suit.

16 **THIRD CAUSE OF ACTION**
17 **Failure to Pay All Overtime Earned for Hours Worked in**
18 **Violation of Labor Code §§ 510, 1194, and 1198 and IWC Wage Orders**
19 **(alleged by Hayter individually and on behalf of Class Members**
20 **against all Defendants)**

21 136. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
22 herein by reference.

23 137. E&W is liable for Ewald and Wasserman's violations, because it is nothing more
24 than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W's
25 violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

26 138. Labor Code § 510(a) provides that work in excess of eight hours in a day or 40
27 hours in a week must be compensated at a rate not less than one-and-one-half times the regular
28 rate of pay for an employee.

139. Labor Code § 1198 provides that the standard conditions of labor fixed by the
wage orders are the standard condition of labor for employees, and that the "employment of any
employee ... under conditions of labor prohibited by the order is unlawful."

140. IWC Wage Order 4-2001 and 8 Cal. Code of Regulations § 11040 also provide
that work in excess of eight hours in a day, or 40 hours in a week, must be compensated at not

1 less than one and one-half times the regular rate of pay for an employee.

2 141. Plaintiffs work or have worked shifts of more than eight hours in a day and/or
3 work or have worked more than 40 hours in a week.

4 142. Defendants have not paid Plaintiffs in full for the overtime hours they worked as
5 required by Labor Code § 510(a), IWC Wage Order 4-2001 and 8 Cal. Code of Regulations
6 § 11050.

7 143. Defendants' conduct described herein violates Labor Code §§ 200, 226, 500, 510,
8 558, 1194, and 1194.2. As a proximate result of the aforementioned violations, Plaintiffs have
9 been damages in an amount to be proven at trial in owed overtime wages.

10 144. Pursuant to Labor Code §§ 200, 226, 500, 510, 558, 1194, and 1194.2, Plaintiffs
11 are entitled to recover in a civil action the unpaid balance of the full amount of overtime
12 compensation for all hours worked in excess of eight hours a day and in excess of 40 hours in a
13 week.

14 145. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered
15 damages, in an amount to be proven at trial.

16 146. As a direct and proximate result of Defendants' conduct, Plaintiffs are also entitled
17 to attorneys' fees under Labor Code §§ 218.5 & 1194, in addition to interest, expenses and costs
18 of suit.

19 **FOURTH CAUSE OF ACTION**
20 **Failure to Provide Meal Periods in Violation**
21 **of Labor Code §§ 226.7, 512, and 1198 and IWC Wage Orders**
22 **(alleged by Hayter individually and on behalf of Class Members**
23 **against all Defendants)**

24 147. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
25 herein by reference.

26 148. E&W is liable for Ewald and Wasserman's violations, because it is nothing more
27 than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W's
28 violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

149. At all times relevant herein, Labor Code §§ 226.7 and 512 and the applicable IWC
wage orders, including IWC Wage Order 4-2001, have required Defendants to provide meal
periods to their employees.

150. Labor Code § 1198 provides that the standard conditions of labor fixed by the
wage orders are the standard condition of labor for employees, and that the "employment of any

1 employee . . . under conditions of labor prohibited by the order is unlawful.”

2 151. Labor Code §§ 226.7 and 512, and the IWC wage orders, including IWC Wage
3 Order 4-2001, prohibit employers from employing an employee for more than five hours without
4 a meal period of at least 30 minutes.

5 152. Unless an employee is relieved of all duty during the 30-minute meal period, the
6 employee is considered “on duty” and the meal periods are counted as time worked.

7 153. Under Labor Code § 226.7(b) and the IWC wage orders, an employer who fails to
8 provide a required meal period must, as compensation, pay the employee one hour of pay at the
9 employee’s regular rate of compensation for each workday that the meal period was not provided.

10 154. Defendants have a policy and practice of requiring their hourly employees to
11 continue working during meal periods.

12 155. Defendants also have a policy and practice of pressuring hourly employees to skip
13 their meal breaks.

14 156. Defendants regularly alter time records to falsely reflect that employees took meal
15 breaks when they had not done so.

16 157. The aforementioned policies and practices are in violation of law, in that
17 Defendants’ policies and practices have denied Plaintiffs the full meal breaks to which they are
18 legally entitled.

19 158. As a direct and proximate result of Defendants’ conduct, Plaintiffs have suffered
20 damages, in an amount to be proven at trial.

21 **FIFTH CAUSE OF ACTION**
22 **Failure to Provide Rest Periods in Violation**
23 **of Labor Code §§ 226.7 and 1198 and IWC Wage Orders**
24 **(alleged by Hayter individually and on behalf of Class Members**
25 **against all Defendants)**

26 159. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
27 herein by reference.

28 160. E&W is liable for Ewald and Wasserman’s violations, because it is nothing more
than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W’s
violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

161. At all times relevant herein, Labor Code §§ 226.7 and the applicable IWC wage
orders, including IWC Wage Order 4-2001, have required Defendants to provide rest periods to
their employees.

1 162. Labor Code § 1198 provides that the standard conditions of labor fixed by the
2 wage orders are the standard condition of labor for employees, and that the “employment of any
3 employee . . . under conditions of labor prohibited by the order is unlawful.”

4 163. Section 12 of IWC Wage Order 4-2001 provides in relevant part:

5 (A) Every employer shall authorize and permit all employees to take rest
6 periods, which insofar as practicable shall be in the middle of each work
7 period. The authorized rest period time shall be based on the total hours
8 worked daily at the rate of ten (10) minutes net rest time per four (4) hours
9 or major fraction thereof. However, a rest period need not be authorized
for employees whose total daily work time is less than three and one-half
(3 ½) hours. Authorized rest period time shall be counted, as hours
worked, for which there shall be no deduction from wages.

10 (B) If an employer fails to provide an employee a rest period in
11 accordance with the applicable provisions of this Order, the employer
12 shall pay the employee one (1) hour of pay at the employee’s regular rate
of compensation for each work day that the rest period is not provided.

13 164. Labor Code § 226.7(b) provides:

14 (a) No employer shall require any employee to work during any meal or
15 rest period mandated by an applicable order of the Industrial Welfare
Commission.

16 (b) If an employer fails to provide an employee a meal period or rest
17 period in accordance with an applicable order of the Industrial Welfare
18 Commission, the employer shall pay the employee one additional hour of
19 pay at the employee's regular rate of compensation for each work day that
the meal or rest period is not provided.

20 165. Under Labor Code § 226.7(b) and the IWC wage orders, an employer who fails to
21 provide a required rest period must, as compensation, pay the employee one hour of pay at the
22 employee’s regular rate of compensation for each workday that the rest period was not provided.

23 166. Defendants have a policy and practice of requiring their hourly employees to
24 continue working during rest periods.

25 167. Defendants’ policies and practices applicable to their hourly employees violate
26 Labor Code § 226.7 and § 12 of the IWC Wage Order because they do not authorize and permit
27 all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours
or major fraction thereof.

28 168. The aforementioned policies and practices are in violation of law, in that
Defendants’ policies and practices have denied Plaintiffs the full rest breaks to which they are

1 legally entitled.

2 169. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered
3 damages, in an amount to be proven at trial.

4 **SIXTH CAUSE OF ACTION**

5 **Failure to Provide Paid Sick Leave in Violation of Labor Code § 246**
6 **(alleged by Hayter individually and on behalf of Class Members against all Defendants)**

7 170. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
8 herein by reference.

9 171. E&W is liable for Ewald and Wasserman's violations, because it is nothing more
10 than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W's
11 violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

12 172. Since January 1, 2015, and all relevant times thereafter herein alleged, California
13 Labor Code § 246 ("Section 246") has been applicable to Defendants, and has required them to
14 provide paid sick leave to its employees.

15 173. Under Section 246, for employees hired on or before July 1, 2015, an employee
16 who works in California for the same employer for more than 30 calendar days within a single
17 year from the commencement of their employment is entitled to paid sick leave.

18 174. Under Section 246(b)(1), an employee accrues sick days at the rate of not less than
19 one hour per every 30 hours worked, beginning at the commencement of employment, or some
20 other applicable and appropriate calculation as set forth in subsections (b)(2)-(4) and (f).

21 175. Under Section 246, employees hired on or after July 1, 2016 shall accrue paid sick
22 leave upon commencement of employment, and may use such sick leave beginning on the 90th
23 day of employment.

24 176. Defendants maintained, and upon information and belief, continue to maintain a
25 policy and practice of denying paid sick leave to their employees, telling them that the business
26 did not offer paid sick leave to its employees.

27 177. Defendants' policies and practices applicable to their hourly employees violate
28 Section 246.

178. Hayter was denied at least one request to take paid sick leave while working at
E&W, and was forced to come to work while sick. As a result, she accumulated 50 hours of sick
time.

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1 179. Hayter had worked for more than 90 days and for more than 30 hours for E&W in
2 a single calendar year at the time that she tried to use paid sick leave, and had that request denied.

3 180. The aforementioned policies and practices are in violation of law, in that
4 Defendants' policies and practices have denied Plaintiffs the paid sick leave to which they are
5 legally entitled.

6 181. As a direct and proximate result of the aforementioned acts and practices,
7 Defendants have received, and continue to receive, ill-gotten gains belonging to Plaintiffs.

8 182. Plaintiffs are entitled to restitution pursuant to Labor Code § 248.5(e) for all
9 compensation unlawfully withheld from employees as a result of Defendants' policies and
10 practices regarding paid sick leave.

11 183. Injunctive relief is necessary and appropriate to prevent Defendants from repeating
12 their violations of Section 246 as described herein.

13 184. As a direct and proximate result of Defendants' conduct, Plaintiffs are also entitled
14 to attorneys' fees under Labor Code §§ 218.5, 248.5(e) & 1194, in addition to interest, expenses
15 and costs of suit.

16 **SEVENTH CAUSE OF ACTION**
17 **Interference with Employee Use of Paid Sick Leave**
18 **in Violation of Labor Code § 246.5**
19 **(alleged by Hayter individually and on behalf of Class Members against all Defendants)**

20 185. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
21 herein by reference.

22 186. E&W is liable for Ewald and Wasserman's violations, because it is nothing more
23 than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W's
24 violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

25 187. Since January 1, 2015, and all relevant times thereafter herein alleged, California
26 Labor Code § 246.5 ("Section 246.5") has been applicable to Defendants, and requires that an
27 employee "*shall* provide paid sick days". Subsection (c)(1) of Section 246.5 prohibited
28 employers from denying "an employee the right to use accrued sick days."

188. Defendants maintained, and upon information and belief, continue to maintain, a
policy and practice of interfering with employees' use of accrued paid sick leave.

189. Defendants' policies and practices applicable to their hourly employees violate
Section 246.5.

1 190. Hayter was denied at least one request to take paid sick leave while working at
2 E&W, and was forced to come to work while sick, being told that she needed to have a doctor's
3 note to excuse even a brief absence for a minor illness that did not otherwise require medical
4 attention. As a result, she accumulated 50 hours of sick time.

5 191. Hayter had worked for more than 90 days and for more than 30 hours for E&W in
6 a single calendar year at the time that she tried to use paid sick leave, and had that request denied.

7 192. The aforementioned policies and practices are in violation of law, in that
8 Defendants' policies and practices have denied Plaintiffs the paid sick leave to which they are
9 legally entitled.

10 193. As a direct and proximate result of the aforementioned acts and practices,
11 Defendants have received, and continue to receive, ill-gotten gains belonging to Plaintiffs.

12 194. Plaintiffs are entitled to restitution pursuant to Labor Code § 248.5(e) for all
13 compensation unlawfully withheld from employees as a result of Defendants' policies and
14 practices regarding paid sick leave.

15 195. Injunctive relief is necessary and appropriate to prevent Defendants from repeating
16 their violations of Section 246.5 as described herein.

17 196. As a direct and proximate result of Defendants' conduct, Plaintiffs are also entitled
18 to attorneys' fees under Labor Code §§ 218.5, 248.5(e) & 1194, in addition to interest, expenses
19 and costs of suit.

20 **EIGHTH CAUSE OF ACTION**
21 **Failure to Provide Paid Sick Leave in Violation**
22 **of San Francisco Administrative Code, Chapter 12W**
23 **(alleged by all Named Plaintiffs individually and on behalf of Class Members against all**
24 **Defendants)**

25 197. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
26 herein by reference.

27 198. E&W is liable for Ewald and Wasserman's violations, because it is nothing more
28 than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W's
violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

199. At all relevant times herein alleged, the San Francisco Administrative Code,
Chapter 12W ("Chapter 12W") has been applicable to Defendants, and has required them to
provide paid sick leave to its employees.

1 200. Under Chapter 12W.3(a), employees hired on or before January 1, 2017, paid sick
2 leave is to begin to accrue 90 days after the commencement of employment, or on January 1,
3 2017, whichever date is earlier.

4 201. Under Chapter 12W.3(b), employees hired on or after January 1, 2017 shall accrue
5 paid sick leave upon commencement of employment. For all those employees, the employee is
6 to accrue one hour of paid sick leave per 30 hours worked for that employer.

7 202. Under Chapter 12W.3(c), employers have the option to alternatively provide each
8 employee a lump sum of paid sick leave at the beginning of each calendar year or per 12-month
9 period.

10 203. Under Chapter 12W.4, an employee may use accrued paid sick leave when she or
11 he is ill, injured, for the purpose of receiving medical care, or for the purpose of caring for family
12 members or other designated persons under state or local laws. Under this same section, the
13 employer shall provide payment for sick leave with the next regular payroll.

14 204. Under Chapter 12W.7, employers are prohibited “to interfere with, restrain, or
15 deny the exercise of, or the attempt to exercise” the employee’s right to use paid sick leave. Any
16 employer who violates Chapter 12W is subject to penalties in a civil action including
17 reinstatement, back pay, payment of sick leave unlawfully withheld, liquidated damages in the
18 amount of \$50 as to each employee or person whose rights were violated for each hour or portion
19 thereof that the violation occurred or continued, treble damages or \$250 whichever amount is
20 greater, and/or injunctive relief, as well as attorneys’ fees and costs.

21 205. Defendants maintained a policy and practice of denying paid sick leave to their
22 employees.

23 206. Defendants’ policies and practices applicable to their hourly employees violate
24 Chapter 12W.

25 207. Hayter was denied at least one request to take paid sick leave while working at
26 E&W, and was forced to come to work while sick. As a result, she accumulated 50 hours of sick
27 time.

28 208. Shields was continually denied requests to take paid sick leave while working at
E&W. Shields was told that E&W provided zero sick time. As a result, Shields was forced to
either take days off while sick and not be paid for that time off or to come to work while sick.

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1 209. Hayter, Shields, and Evans had each worked for more than 90 days and for more
2 than 30 hours for E&W in a single calendar year, at the time that each of them tried to use paid
3 sick leave, and had that request denied.

4 210. The aforementioned policies and practices are in violation of law, in that
5 Defendants' policies and practices have denied Plaintiffs the full rest breaks to which they are
6 legally entitled.

7 211. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered
8 damages, in an amount to be proven at trial.

9 **NINTH CAUSE OF ACTION**
10 **Intentional Misrepresentation**
11 **(alleged by all Named Plaintiffs individually and on behalf of Class Members**
12 **against all Defendants)**

13 212. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
14 herein by reference.

15 213. E&W is liable for Ewald and Wasserman's violations, because it is nothing more
16 than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W's
17 violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

18 214. As set forth above, Defendants knowingly, willfully, and maliciously altered
19 Plaintiffs' electronic time records without Plaintiffs' consent to falsely reflect fewer work hours
20 than Plaintiffs did, in fact, work.

21 215. Defendants altered these electronic time keeping records with the intent to avoid
22 paying employees overtime pay required by California law.

23 216. Defendants issued paychecks to Plaintiffs that were based on the aforementioned
24 changes, and these paychecks therefore misrepresented the wages Plaintiffs earned.

25 217. Defendants made the aforementioned misrepresentations intentionally, willfully,
26 knowing them to be false, with the intent to deceive and the Plaintiffs, and to induce Plaintiffs to
27 rely on these misrepresentations.

28 218. Plaintiffs relied on Defendants' misrepresentations by, among other things, failing
to take action to recover the wages about which they had been misled.

 219. At the time Defendants made the misrepresentations, Plaintiffs were ignorant of
their falsity, believed them to be true, and were justified in relying on these misrepresentations.

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1 220. Named Plaintiffs only became aware of these misrepresentations within three
2 years of the filing of this action, and acted promptly in bringing this lawsuit.

3 221. Defendants committed the acts alleged herein maliciously, fraudulently, and
4 oppressively, with the wrongful intention of injuring Plaintiffs, with an improper and evil motive
5 amounting to malice, and in conscious disregard of Plaintiffs' rights.

6 222. Because Defendants acted in a despicable, deliberate, callous, and intentional
7 manner in order to injure and damage Plaintiffs, Plaintiffs are entitled to recover damages in an
8 amount according to proof, as well as statutory penalties, interest, and punitive damages.

9 223. On information and belief, the persons who committed the unlawful acts described
10 herein were officers, directors, and/or managing agents of Defendants acting within the scope of
11 their employment. Moreover, Defendants aided, abetted, incited, compelled, and/or coerced the
12 unlawful acts.

13 224. The unlawful acts described herein were committed with oppression, fraud and/or
14 malice and were authorized, ratified or both by such officers, directors, and/or managing agents.
15 In light of Defendants' willful, knowing, and intentional misrepresentations, Plaintiffs seek an
16 award of punitive damages in an amount according to proof.

17 **TENTH CAUSE OF ACTION**
18 **Intentional Fraud by Concealment**
19 **(alleged by all Named Plaintiffs individually and on behalf of Class Members**
20 **against all Defendants)**

21 225. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
22 herein by reference.

23 226. E&W is liable for Ewald and Wasserman's violations, because it is nothing more
24 than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W's
25 violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

26 227. As set forth above, Defendants knowingly, willfully, and maliciously altered
27 Plaintiffs' time records without Plaintiffs' consent to falsely reflect fewer worked hours than
28 Plaintiffs did, in fact, work.

 228. Defendants altered these time keeping records with the intent to avoid paying
employees normal time and/or overtime pay as required by California law.

 229. Defendants altered these time keeping records with the intent to avoid
compensating employees for missed meal and rest breaks as required by California law.

1 230. Defendants issued paychecks to Plaintiffs that were based on the aforementioned
2 changes, and these paychecks therefore misrepresented the wages Plaintiffs earned.

3 231. By virtue of Defendants' position of authority and trust, and their responsibility
4 under the Wage Orders and Labor Code to accurately and responsibly maintain employee time
5 records, Defendants were under a duty to disclose the true facts to Plaintiffs.

6 232. Defendants concealed from Plaintiffs the changes they made to the time keeping
7 records.

8 233. Named Plaintiffs only became aware of Defendants' fraud within three years of
9 the filing of this action, and acted promptly in bringing this lawsuit.

10 234. Defendants concealed the truth intentionally and willfully, with the intent to
11 deceive and defraud Plaintiffs, and to induce Plaintiffs to rely on the inaccurate paychecks.

12 235. Plaintiffs relied on the information they received from Defendants by, among other
13 things, failing to take action to pursue the wages about which they had been misled.

14 236. At the time Defendants concealed the changes to the time keeping records,
15 Plaintiffs were ignorant of the changes and were justified in relying on Defendants' deception.

16 237. Defendants committed the acts alleged herein maliciously, fraudulently, and
17 oppressively, with the wrongful intention of injuring Plaintiffs, and with an improper and evil
18 motive amounting to malice and in conscious disregard of Plaintiffs' rights.

19 238. Because Defendants acting in a despicable, deliberate, callous, and intentional
20 manner in order to injure and damage Plaintiffs, Plaintiffs are entitled to recover damages in an
21 amount according to proof, as well as interest, statutory penalties, costs of suit, and punitive
22 damages.

23 239. On information and belief, the persons who committed the unlawful acts described
24 herein were officers, directors, and/or managing agents of Defendants acting within the scope of
25 their employment. Moreover, Defendants aided, abetted, incited, compelled, and/or coerced the
26 unlawful acts.

27 240. The unlawful acts described herein were committed with oppression, fraud and/or
28 malice and were authorized, ratified or both by such officers, directors, and/or managing agents.
In light of Defendants' willful, knowing, and intentional misrepresentations, Plaintiffs seek an
award of punitive and exemplary damages in an amount according to proof.

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1 **ELEVENTH CAUSE OF ACTION**
2 **Penalties for Failure to Pay Earned Wages Upon Discharge**
3 **Pursuant to Labor Code § 203**
4 **(alleged by Hayter individually and on behalf of Class Members**
5 **against all Defendants)**

6 241. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
7 herein by reference.

8 242. E&W is liable for Ewald and Wasserman's violations, because it is nothing more
9 than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W's
10 violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

11 243. Labor Code § 201(a) requires an employer who discharges an employee to pay
12 compensation due and owing to the employee immediately upon discharge.

13 244. Labor Code § 202(a) requires an employer to pay compensation due and owing to
14 an employee who has quit or resigned within seventy-two (72) hours of that the time at which the
15 employee provided notice of his intention to quit or resign.

16 245. Pursuant to Labor Code § 200(a), wages include all amounts of compensation
17 received by an employee, which includes, overtime, vacation, sick pay and other personal time
18 off if part of the employment contract and work-related expenses.

19 246. Defendants failed to pay Plaintiffs overtime wages, meal break compensation, rest
20 period compensation, and paid sick leave, as a result of their unlawful conduct of changing
21 employees' time records and denying employees paid sick leave.

22 247. Labor Code § 203 provides that if an employer willfully fails to pay any wages
23 owed to an employee under Labor Code §§ 200-202, who is discharged or quits, the wages of
24 such employee shall continue as from the due date thereof at the same rate until paid or until an
25 action therefore is commenced, for not more than 30 days.

26 248. Hayter and other Class Members have ceased being employed by Defendants but
27 have not yet been fully compensated for their wages.

28 249. Hayter and other Class Members are entitled to unpaid wages for which they have
not yet been paid.

250. Defendants have willfully failed and refused to make timely payment of wages to
Hayter and other Class Members.

251. As a direct and proximate result of Defendants' alleged conduct, Defendants are
liable to Hayter and other Class Members for up to thirty (30) days of waiting time penalties

1 pursuant to Labor Code § 203.

2 252. As a direct and proximate result of Defendants' conduct, Hayter and other Class
3 Members are also entitled to interest, expenses, attorneys' fees, and costs of suit.

4 **TWELFTH CAUSE OF ACTION**
5 **Failure to Provide an Itemized Wage Statement**
6 **in Violation of Labor Code §§ 226, 1198 and IWC Wage Orders**
7 **(alleged by Hayter individually and on behalf of Class Members**
8 **against all Defendants)**

9 253. Named Plaintiffs repeat and re-allege all of the allegations in paragraphs 1-116
10 herein by reference.

11 254. E&W is liable for Ewald and Wasserman's violations, because it is nothing more
12 than the alter ego of Ewald and Wasserman. Ewald and Wasserman are liable for E&W's
13 violations, because the company is nothing more than the alter ego of Ewald and Wasserman.

14 255. Labor Code § 226(a) provides that every employer shall, semimonthly or at the
15 time of each payment of wages, provide each employees with a written, itemized statement
16 showing, inter alia, the gross wages earned, the total hours worked by the employee, and the
17 applicable hourly rate in effect during the pay period and the corresponding number of hours
18 earned at each hourly rate. The IWC Wage Order applicable to Plaintiffs' employment contains
19 a similar requirement

20 256. Labor Code § 226(e) provides, "An employee suffering injury as a result of a
21 knowing and intentional failure by employer to comply with subdivision (a) is entitled to recover
22 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which the
23 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
24 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4000), and is entitled
25 to an award of costs and attorneys' fees."

26 257. Labor Code § 246(i) requires that employer provide written notice on an
27 employee's itemized wage statement or other written notice on the designated pay date "that sets
28 forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu
of sick leave."

29 258. Labor Code § 1198 provides that the standard conditions of labor fixed by the
wage orders are the standard condition of labor for employees, and that the "employment of any
employee... under conditions of labor prohibited by the order is unlawful."

1 substandard and unlawful conditions, and to protect employers who comply with the law from
2 those who attempt to gain competitive advantage at the expense of their workers by failing to
3 comply with the minimum standards law.

4 270. Pursuant to B & P Code § 17202, Hayter, Shields, and other similarly situated
5 employees are entitled to enforce all applicable provisions of the Labor Code.

6 271. Beginning at an exact date unknown to Hayter and Shields, but at least since the
7 date four years prior to the filing of this suit, Defendants have committed acts of unfair
8 competition as defined by B & P Code, by engaging in the unlawful, unfair and fraudulent
9 practices and acts described in this Complaint, including, but not limited to:

- 10 a. violations of Labor Code §§ 226.7 and 512, and IWC Wage Orders pertaining
11 to meal and rest periods;
- 12 b. violations of Labor Code §§ 510 and 1194, and IWC Wage Orders pertaining
13 to overtime compensation;
- 14 c. violations of Labor Code §§ 246 and 246.5 pertaining to paid sick leave;
- 15 d. violations of Labor Code §§ 201, 202, 204, and 210, pertaining to unpaid
16 wages;
- 17 e. violations of Labor Code § 226, pertaining to itemized statements of wages;
- 18 f. fraud by concealment and misrepresentation; and
- 19 g. conversion.

20 272. The violations of these laws and regulations, as well as of fundamental California
21 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
22 B & P Code §§ 17200 and 17203, *et seq.*

23 273. The acts and practices described above constitute unfair, unlawful and fraudulent
24 business practices, and unfair competition, within the meaning of B & P Code §§ 17200 and
25 17203, *et seq.* Among other things, the Defendants' acts and practices have forced Plaintiffs and
26 other similarly situated workers to labor without receiving the meal and rest periods to which they
27 were entitled by law, and have forced Plaintiffs to labor without receiving compensation.

28 274. The acts and practices described above have allowed Defendants to gain an unfair
competitive advantage over law-abiding employers and competitors.

274. As a direct and proximate result of the acts and practices described herein,
Plaintiffs have been denied compensation, in an amount to be proven at trial.

1 action.

2 286. Labor Code § 2699(a) provides in relevant part, “Notwithstanding any other
3 provisions of law, any provision of [the Labor Code] that provides for a civil penalty to be
4 assessed and collected by the Labor and Workforce Development Agency or any of its
5 departments, divisions, commissions, boards, agencies or employees, for a violation of [the Labor
6 Code], may, as an alternative, be recovered through a civil action brought by an aggrieved
7 employee on behalf of himself or herself and other current or former employees to the procedures
8 specified in Section 2699.3.”

9 287. Labor Code § 2699(f) provides in relevant part, “For all provisions of this code
10 except those for which a civil penalty is specifically provided, there is established a civil penalty
11 for a violation of these provisions, as follows: ... (2) If at the time of the alleged violation, the
12 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
13 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
14 each aggrieved employee per pay period for each subsequent violation.”

15 288. Pursuant to Labor Code § 2699(c), Named Plaintiffs are aggrieved employees and
16 bring this civil action on behalf of themselves, other current or former employees, the LWDA,
17 and the State of California.

18 289. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code §
19 2699 based on Defendants’ violation of numerous provisions of the Labor Code and an award of
20 reasonable attorneys’ fees and costs.

21 **JURY DEMAND**

22 290. Named Plaintiffs hereby demand a trial by jury in this action.

23 **PRAYER FOR RELIEF**

24 Plaintiffs pray for relief, as follows:

25 1. For an order awarding Plaintiffs compensatory damages, including but not limited
26 to wages, earnings, and other compensation, according to proof, and interest on these amounts;

27 2. For an award of restitution;

28 3. For damages and/or restitution pursuant to Labor Code §§ 200, 201, 203, 226,
226.7, 246, 246.5, 500, 510, 512, 558, 1194, 1194.2, 1197, and 1198;

4. For an order imposing all statutory and/or civil penalties provided by law,
including, but not limited to, penalties under Labor Code §§ 203, 204, 210, 211, 226(e), 226.3,

1 226.7(b), 512, 1174.5, 1197.1, and 2699, together with interest on these amounts;

2 5. For all remedies available pursuant to Business and Professions Code § 17200, *et*
3 *seq.*

4 6. For a declaratory judgment that Defendants have violated the California labor laws
5 and public policy, as alleged herein;

6 7. For a declaratory judgment that Defendants have violated B & P Code §§ 17200
7 and 17203, *et seq.*, as a result of the aforementioned violations of the Labor Code and of California
8 public policy protecting workers, ensuring that workers are paid at the legally mandated rate for
all hours worked, and prohibiting work without adequate meal breaks and rest periods;

9 8. For a permanent and mandatory injunction prohibiting Defendants, their officers,
10 agents, employees, affiliated companies, and all those working in concert with them, from
11 committing future violations of the laws and public policies described herein;

12 9. For civil penalties and punitive damages where appropriate according to proof;

13 10. For an award of reasonable attorneys' fees, provided by the Labor Code §§ 218.5,
14 226(e), 1194, 2802, 2699(g)(1), CCP § 1021.5, Chapter 12W, and/or other applicable law;

15 11. For all costs of suit; and

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

17 Dated: January 9, 2021

PERETZ & ASSOCIATES

18
19 By:  _____

Yosef Peretz

Shane Howarter

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