

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

APR 02 2009

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16 situated

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF ORANGE

30-2009

19 ALAN H. GEORGE, on behalf of himself and
20 all others similarly situated,

Case No.

00257292

Plaintiff

ASSIGNED FOR ALL PURPOSES TO:
JUDGE THIERRY PATRICK COLAW
DEPT. CX104
CLASS ACTION COMPLAINT FOR

vs.

1. Failure to Pay Overtime Wages
2. Failure to Provide Meal periods
3. Failure to Provide Rest Periods
4. Labor Code § 203 Penalties
5. Failure to Provide Itemized Statements
6. Unfair Business Practices (B&P § 17200)

21 ELECTRONIC DATA SYSTEMS, LLC, a
22 Delaware Limited Liability Company and
23 DOES 1 through 100, inclusive,

Defendants.

DEMAND FOR JURY TRIAL

OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
PURSUANT TO RULE 308 OF THE LOCAL RULES
MANDATORY ELECTRONIC FILING
THIS CASE IS SUBJECT TO

1 Plaintiff ALAN H. GEORGE ("Plaintiff") alleges, on behalf of himself and classes of
2 those similarly situated, as follows:

3
4 **I.**

5 **INTRODUCTION**

6 1. This is an action by and on behalf of current and former employees of
7 ELECTRONIC DATA SYSTEMS, LLC, a Delaware Limited Liability Company (hereinafter
8 "Defendant(s)" or "EDS"), who are or were employed in Defendants' locations in California in
9 positions misclassified as Computer Technical Workers or Information Technology Support
10 workers and held positions under inaccurate titles lacking the exercise of discretion and
11 independent judgment in the performance of their primary duties, and in performing such duties
12 should have been classified as non-exempt pursuant to Wage Order 4 and, therefore, paid
13 overtime. Plaintiff and the class he seeks to represent were given titles that were inconsistent
14 and unrealistic with the "job requirements and expectations" as defined by EDS. The true nature
15 and character of said positions were intended to meet only the production needs of Defendants IT
16 infrastructure and were not implemented to meet the administrative policies of Defendants. As
17 such, Plaintiff, and the class he seeks to represent, was misclassified and is owed overtime and
18 other remedies under California law (hereinafter, "**THE CLASS**").

19 2. Such job categories, titles, and positions were not realistic and the expectations
20 were inconsistent with the duties actually performed. As such, EDS did not satisfy the legally
21 required minimum to unilaterally designate this class of employees as exempt from overtime.
22 These job titles were, are, and continue to be a misnomer, because the majority of the work
23 performed by this class of employees is not, and was not, exempt in nature. Furthermore, the
24 titles themselves do not reflect the true nature of the duties performed by these employees.
25 These employees thus are and were entitled to overtime and other protections as non-exempt
26 employees. It is *Defendants' burden* of pleading, evidence and proof to show that these
27 employees are and were exempt under California wage and hour law. These employees have
28 spent an insignificant amount of work time doing anything that constitutes "exempt," and for that
reason and others, they are and always have been entitled to overtime pay and non-exempt
treatment under California wage and hour law.

1 Members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon
2 alleges that it is several thousand employees or more.

3 B. **Common Questions Predominate:** Common questions of law and fact
4 exist as to all Class Members, and predominate over any questions that affect only individual
5 members of **THE CLASS**. The common questions of law and fact include, but are not limited
6 to:

7 (A) What were and are the policies, programs, practices, procedures
8 and protocols of Defendants regarding Class Members' actual work and tasks, and
9 their job duties irrespective of job titles;

10 (B) Whether Defendants are and were subject to overtime requirements
11 contained in the California IWC Wage Orders and other California law with
12 respect to **THE CLASS** Members pursuant to Labor Code Section 510, and Wage
13 Order, No. 4-2001, for the period commencing four years prior to the date of the
14 filing of this complaint and continuing through the date of judgment;

15 (C) Whether Defendant's policy and practice of classifying Class
16 Members as exempt from overtime entitlement under California law and
17 Defendant's policy and practice of failing to pay overtime to the California Class
18 members violate applicable provisions of California law, including applicable
19 statutory and regulatory authority;

20 (D) Whether Defendant unlawfully failed to pay overtime
21 compensation in violation of the California Unfair Competition Law, Cal. Bus. t&
22 Prof. Code §17200 et seq., and the California Labor Code and related regulations,
23 Cal. Labor Code §§ 201, 202, 203, 226, 510, 1174, 1174.5, and 1194, the
24 applicable Cal. Wage Orders;

25 (E) Whether Defendants violated California law by their policies,
26 programs, practices, procedures and protocols regarding rest periods for Class
27 Members;

28 (F) What were and are the policies, programs, practices, procedures
and protocols of Defendants regarding furnishing to **THE CLASS** Members,
upon each payment of wages, itemized statements required by Labor Code section
226;

(G) Whether Defendants violated California law by their policies,
programs, practices, procedures and protocols regarding furnishing to **THE**
CLASS Members, upon each payment of wages, itemized statements required by
Labor Code section 226;

1 (H) Whether Defendants violated Business & Professions Code
2 sections 17200 *et seq.* by their policies, programs, practices, procedures and
3 conduct referred to in this cause of action;

4 (I) Whether Defendants obtained voluntarily waivers with consent
5 and full disclosure, and whether a written signed waiver is effective as to all
6 future meal and rest periods;

7 (J) The proper *measure of* damages sustained and the proper
8 measure of restitution recoverable by members of the California Class; and,

9 (K) Additional common questions of law and fact may develop as the
10 litigation progresses.

11 C. **Typicality:** Plaintiff's claims are typical of the claims of **THE CLASS**
12 Members. Plaintiff and other Class Members sustained losses, injuries and damages arising out
13 of the Defendants' common policies, programs, practices, procedures, and course of conduct
14 referred to in each cause of action and throughout this Complaint, which were applied uniformly
15 to Class Members as well as Plaintiff. Plaintiff seeks recoveries for the same types of losses,
16 injuries, and damages as were suffered by the other Class Members as well as Plaintiff.

17 D. **Adequacy:** Plaintiff and her counsel will fairly and adequately protect the
18 interests of **THE CLASS** Members. Plaintiff has no interest that is adverse to the interests of the
19 other Class Members.

20 E. **Superiority:** A class action is superior to other available means for the
21 fair and efficient adjudication of this controversy. Individual joinder of all Class Members is
22 impractical. Class action treatment will permit a large number of similarly situated persons to
23 prosecute their common claims in a single forum simultaneously, efficiently, and without the
24 unnecessary duplication of effort and expense that numerous individual actions engender. Also,
25 because the losses, injuries and damages suffered by each of the individual Class Members are
26 small in the sense pertinent to class action analysis, the expenses and burden of individual
27 litigation would make it extremely difficult or impossible for the individual Class Members to
28

1 redress the wrongs done to them. On the other hand, important public interests will be served by
2 addressing the matter as a class action. The cost to the court system and the public of
3 adjudication of individual litigation and claims would be substantial, and substantially more than
4 if the claims are treated as class action. Individual litigation and claims would also present the
5 potential for inconsistent or contradictory results.

6
7 F. **Public Policy Considerations:** Defendants and other employers
8 throughout the state violate wage and hour laws. Their current employees are often afraid to
9 assert their rights out of fear of direct or indirect retaliation. Their former employees are fearful
10 of bringing claims because doing so can harm their employment and future employment and
11 future efforts to secure employment. Class actions provide Class Members who are not named in
12 the complaint a degree of anonymity that allows for vindication of their rights while eliminating
13 these risks, or at least enormously reducing them.

14 V.

15 **CAUSES OF ACTION**

16 **First Cause of Action**

17 *Failure to Pay Wages at Overtime Rate*

18 (Lab. Code §§ 510, 1194 and 1199, IWC Wage Orders, and Related Violations)

19 14. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set
20 forth herein.

21
22 15. Throughout the period applicable to this cause of action, Plaintiff and **THE**
23 **CLASS** Members worked in excess of forty (40) hours per week and in excess of excess of eight
24 (8) hours per day.

25
26 16. Throughout the period applicable to this cause of action, Defendants did not pay
27 Plaintiff or Class Members at the required overtime rates for the work described in the preceding
28 paragraphs.

1 17. Pursuant to California Labor Code section 1194, Plaintiff and **THE CLASS**
2 Members are entitled to recover unpaid overtime compensation, and other unpaid wages, plus
3 interest, plus attorneys' fees and costs.

4
5 18. As a direct and proximate result of Defendant's unlawful conduct, as set forth
6 herein, the California Plaintiff and the California Class members have sustained damages,
7 including loss of earnings for hours of overtime worked on behalf of Defendant in an amount to
8 be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and
9 other applicable law.

10 19. WHEREFORE, Plaintiff and **THE CLASS** Members she seeks to represent
11 request relief as described herein and below.

12
13 **Second Cause of Action**
Failure to Provide Meal Periods
14 (Lab. Code §§ 226.7 and 512)

15 20. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set
16 forth herein.

17
18 21. Throughout the period applicable to this cause of action, California law, as set
19 forth in relevant part by the Industrial Welfare Commission Wage Orders at section (11),
20 provided as follows:

21 (A) No employer shall employ any person for a work
22 period of more than five (5) hours without a meal period of not less
23 than 30 minutes . . .

24 (B) If an employer fails to provide an employee a meal
25 period in accordance with the applicable provisions of this Order,
26 the employer shall pay the employee one (1) hour of pay at the
27 employee's regular rate of compensation for each work day that
28 the meal period is not provided.

29 22. Similarly, Labor Code section 226.7 requires payment of one (1) hour of pay in
30 lieu of meal periods not provided by the employer. Throughout the period applicable to this
31 cause of action, Defendants failed to consistently allow and provide the meal periods required by

1 California law. Therefore, Plaintiff and **THE CLASS** Members are entitled to compensation as
2 stated above, plus interest, attorneys' fees, costs and other applicable relief.

3
4 23. Throughout the period applicable to this cause of action, Defendants required
5 Plaintiff and **THE CLASS** Members to work during meal periods mandated by the applicable
6 orders of the Industrial Welfare Commission. Therefore Plaintiff and **THE CLASS** Members
7 are entitled to be paid as stated in Labor Code section 226.7, plus interest, attorneys' fees, costs
8 and other applicable relief.

9 24. On information and belief, Plaintiff alleges that **THE CLASS** Members did not
10 voluntarily or willfully waive rest and/or meal periods and were regularly required to work
11 through rest and meal periods. Defendants failed to meet the requirements for lawful on-duty
12 rest and/or meal periods and/or instituted a course of conduct that created a working environment
13 in which non-exempt employees were incapable of taking rest and/or meal periods. As such,
14 non-exempt employees were intimidated or coerced into waiving rest and/or meal periods, and
15 any written waivers were obtained without full disclosure and are thus involuntarily and without
16 consent.

17 25. WHEREFORE, Plaintiff and **THE CLASS** she seeks to represent request relief as
18 described herein and below.

19
20 **Third Cause of Action**
Failure to Provide Rest Periods
(Lab. Code § 226.7)

21 26. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set
22 forth herein.

23
24 27. By their failure to provide rest periods for every four (4) hours or major fraction
25 thereof worked per workday by non-exempt employees, and failing to provide one (1) hour's pay
26 in lieu thereof, as alleged above and herein, Defendants willfully violated the provisions of Labor
27 Code sections 226.7 and IWC Wage Orders at section (12).
28

Sixth Cause of Action
Violation of Unfair Competition Law
(Bus. and Prof. Code § 17200 *et seq.*)

41. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth herein.

42. Plaintiff brings this action on behalf of each and all members of the general public, including **THE CLASS** Members and Plaintiff himself, pursuant to Business and Professions Code sections 17200 *et seq.* Defendants' conduct alleged above constitutes unlawful business acts and practices in violation of Business & Professions Code sections 17200 *et seq.* Defendant engaged in unfair competition in violation of the UCL by violating, *inter alia*, each of the following laws: each of these violations constitutes an independent and separate violation of the UCL:

- a. California applicable Wage Orders
- b. California Labor Code § 1194;
- c. California Labor Code §§ 201, 202, 203, 204, and 226;
- d. California Labor Code § 1174; and
- e. California Labor Code § 510, which provides in relevant part:

(B) Any work in excess of eight hours in one workday and any work in excess of 40 hours in anyone workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee, Any work in excess of 12 hours in one 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 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.

43. Defendant's course of conduct, acts, and practices in violation of the California laws mentioned in the above paragraph constitute a separate and independent violation of the UCL. Defendant's conduct described herein violates the policy or spirit of such laws or otherwise

1 significantly threatens or harms competition. The harm to California Plaintiff and the California
2 Class in being wrongfully denied lawfully earned wages outweighs the utility, if any, of
3 Defendant's policies or practices and, therefore, Defendant's actions described herein constitute
4 an unfair business practice or act within the meaning of the UCL.

5 44. The unlawful and unfair business practices and acts of Defendant, described
6 above, have injured the California Class members in that they were wrongfully denied the
7 payment of earned overtime wages.

8
9 45. The California Plaintiff, on behalf of himself and **THE CLASS**, seeks restitution
10 in the amount of the respective unpaid wages earned and due at a rate not less than one and one-
11 halftimes the regular rate of pay for work performed in excess of forty hours in a work week, or
12 eight hours in a day, and double the regular rate of pay for work performed in excess of twelve
13 hours per day and such other legal and equitable relief from EDS's unlawful and willful conduct
14 as the Court deems just and proper.

15 46. Pursuant to Business and Professions Code sections 17200 *et seq.*, for the statute
16 of limitations period covered by this cause of action Plaintiff and **THE CLASS** Members, are
17 entitled to restitution for at least the following: the unpaid overtime earnings and other unpaid
18 earnings withheld and retained by Defendants referred to above.

19
20 47. Plaintiff and **THE CLASS** Members and the general public are also entitled to
21 permanent injunctive and declaratory relief prohibiting Defendants from engaging in the
22 violations and other misconduct referred to above.

23 48. Defendants are also liable to pay attorneys' fees pursuant to California Code of
24 Civil Procedure section 1021.5 and other applicable law, and costs. The Plaintiff, on behalf of
25 himself and Class members, also seek recovery of attorneys' fees and costs of this action to be
26 paid by EDS, as provided by the UCL and California Labor Code §§ 218, 218.5, and 1194.

1 12. Attorney's fees and costs of suit, including expert fees pursuant to Ca. Lab. Code
2 §§218.5, 1194, and Calif. Code Civ. Proc. §1021.5;

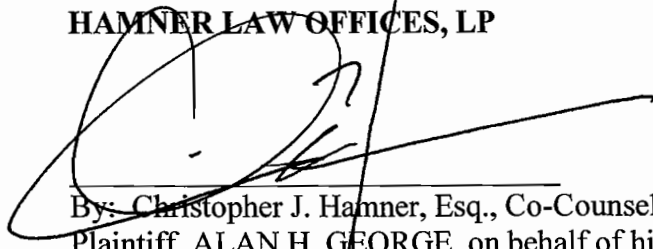
3 13. Such other injunctive and equitable relief as the Court may deem proper.
4

5
6 **DATED:** April 1, 2009

JOSE GARAY, *APLC*

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8 **&**

HAMNER LAW OFFICES, LP

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By: Christopher J. Hamner, Esq., Co-Counsel for
Plaintiff, ALAN H. GEORGE, on behalf of himself
and all others similarly situated