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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

Mar 08 2012

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13 *and all others similarly situated*

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15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF ORANGE

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18 ERIC COOPER and HEIDY MAGANA, on
19 behalf of themselves and all others similarly
20 situated,

21 Plaintiffs,

22 vs.

23 EASTWESTPROTO, INC., LIFELINE
24 AMBULANCE, GENADY GORIN, and Does 1
25 through 100, inclusive,

26 Defendants.
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No. 30-2012-00552236-CU-OE-CXC

Unlimited Civil Case

The Amount Demanded Exceeds \$25,000

CLASS ACTION COMPLAINT

Judicial Officer: Steven Perk

1 Plaintiffs Eric Cooper and Heidy Magana (“Plaintiffs”), by their attorneys, brings this
2 action on behalf of themselves and all others similarly situated and the general public, and on
3 information and belief, except those allegations that pertain to the named Plaintiffs and their
4 attorneys (which are alleged on personal knowledge), hereby alleges as follows:

5 1. This action alleges that Eastwestproto, Inc., LifeLine Ambulance, Genady Gorin and
6 Does 1 through 100, inclusive, (“Defendants”): (1) failed to pay employees regular and overtime
7 pay in violation of California Labor Code sections 201-204, 510, 558, and 1194, and applicable
8 Industrial Welfare Commission Orders; (2) failed to pay its employees compensation for work
9 without rest and meal periods in violation of California Labor Code sections 226.7, 512, and 558,
10 and applicable Industrial Welfare Commission Orders; and, (3) failed to provide accurate wage
11 statements to employees as required by law.

12 2. This action seeks relief for unremedied violations of California law, including, inter
13 alia; damages, and/or restitution, as appropriate, to members of the Class, and to victims of the
14 practices at issue, who have not been paid for regular and overtime hours worked, who have not
15 received regular and overtime pay for time worked, who have not received compensation for labor
16 provided without rest and meal periods, and who have failed to receive accurate wage statements.

17 3. Plaintiffs are adequate and proper class representatives. Plaintiffs bring this action in
18 their individual capacity, on behalf of all others similarly situated, as aggrieved employees, and
19 pursuant to California Business & Professions Code section 17204, on behalf of the general public.
20 Defendants employed Plaintiffs as ambulance drivers and attendants in California, within the four
21 years of the filing of this complaint. While employed by Defendants, Plaintiffs were required to
22 work regular and overtime hours on a routine basis. Defendants failed to pay Plaintiffs wages for
23 regular and overtime hours worked. As a result of these practices, Defendants paid Plaintiffs
24 overtime wages significantly less than that required by law. In addition to the foregoing,
25 Defendants failed to provide Plaintiffs and all others similarly situated with rest and meal periods,
26 failed to pay compensation for the lack of said meal periods, and failed to provide Plaintiffs and all
27 others similarly situated with accurate statement of wages.

28 4. Defendants Eastwestproto, Inc. and Lifeline Ambulance are, and at all relevant

1 times were, doing business in the State of California and an employer under applicable Industrial
2 Welfare Commission Orders. Defendant Gorin is, and at all relevant times was, either an employer
3 and/or a person acting on behalf of an employer within the meaning of Labor Code section 558.

4 5. The names and capacities of Defendants sued herein under California Code of Civil
5 Procedure section 474 as Does 1 through 100, inclusive, are presently not known to Plaintiffs, who
6 therefore sue these Defendants by such fictitious names. Plaintiffs will seek to amend this
7 Complaint and include these Doe Defendants' names and capacities when they are ascertained.
8 Each of the fictitiously named Defendants is responsible in some manner for the conduct alleged
9 herein and for the injuries suffered by Plaintiffs, the members of the Class and the general public.

10 6. At all times mentioned in the causes of action alleged herein, each and every
11 Defendant was an agent and/or employee of each and every other Defendant. In doing the things
12 alleged in the causes of action stated herein, each and every Defendant was acting within the course
13 and scope of this agency or employment and was acting with the consent, permission and
14 authorization of each of the remaining Defendants. All actions of each Defendant as alleged in the
15 causes of action stated herein were ratified and approved by every other Defendant or their officers
16 or managing agents.

17 7. This action seeks relief on behalf of a class of persons employed by Defendants in
18 California as ambulance drivers and attendants in the four years preceding the filing date of this
19 lawsuit and the present ("the Class").

20 8. The Class is sufficiently numerous such that the joinder of all Class Members in one
21 action is impracticable, and the disposition of whose claims in a class action will provide substantial
22 benefits to both the parties and the Court.

23 9. There is a well-defined community of interest in the questions of law and fact
24 involved affecting the parties to be represented. The questions of law and fact common to the Class
25 predominate over questions that may affect individual Class Members, including but not limited to
26 the following:
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- 1 a. Whether Defendants implemented and engaged in a systematic practice
- 2 whereby they unlawfully failed to pay regular and overtime pay to employees
- 3 for time worked;
- 4 b. Whether Defendants implemented and engaged in a systematic practice
- 5 whereby they unlawfully failed to provide rest and meal periods to
- 6 employees as required by law and failed to pay employees compensation for
- 7 the lack of rest and meal periods;
- 8 c. Whether Defendants implemented and engaged in a systematic practice
- 9 whereby they failed to provide accurate wage statements to employees; and,
- 10 d. Whether the systematic acts and practices of Defendants as alleged herein
- 11 violated, inter alia, applicable provisions of the California Labor Code,
- 12 including but not limited to sections 201-204, 226.7, 510, 512, 558, 1194,
- 13 and 2698, applicable Industrial Welfare Commission Orders, and California
- 14 Business & Professions Code section 17200, et seq.

15 10. Because Plaintiffs worked regular and overtime hours on a regular basis, and were

16 routinely required to work without rest or meal periods, for which Plaintiffs were not properly

17 compensated, and failed to receive timely and accurate wage statements, Plaintiffs are asserting

18 claims that are typical of the claims of the Class.

19 11. Plaintiffs will fairly and adequately represent and protect the interests of the Class in

20 that they have no disabling conflict of interest that would be antagonistic to those of the other

21 members of the Class. Plaintiffs have retained counsel who are competent and experienced in the

22 prosecution of class action wage and hour violations.

23 12. Plaintiffs and the members of the Class have all similarly suffered irreparable harm

24 and damages as a result of Defendants' unlawful and wrongful conduct, including but not limited to

25 Defendants' systematic failure to pay earned regular and overtime wages, systematic failure to

26 provide rest and meal period breaks makes class treatment especially appropriate. Because the

27 hours worked by Defendants' employees and the Class follow common patterns, all of which are

28 reflected in the records possessed by Defendants, this action will provide substantial benefits to

1 both. Absent this action, Defendants' unlawful conduct will continue unremedied and uncorrected.
2 Plaintiffs are informed and believe that the damages, back wages, restitution, penalties, interest and
3 attorneys' fees incurred and sought do not exceed an aggregate of \$4,999,999.99 and that Plaintiffs'
4 individual claims do not exceed \$74,999.99.

5 **FIRST CAUSE OF ACTION**

6 **(Failure To Pay Overtime Wages Pursuant To Labor Code Sections 510 And 1194)**

7 **(Against Defendants Eastwestproto, Inc. And LifeLine Ambulance Only)**

8 13. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
9 paragraphs as if fully set forth herein.

10 14. During all relevant periods, Defendants periodically required Plaintiffs and the
11 Class to work in excess of 8 hours per day and 40 hours per week.

12 15. During all relevant periods, both the Labor Code and the pertinent wage orders
13 required that all work performed by an employee in excess of 8 hours per day and 40 hours per
14 week, be compensated at one and one half the employee's regular rate of pay. Defendants failed to
15 compensate Plaintiffs and Class Members for overtime hours they worked at the required overtime
16 rate. As a result, Defendants failed to pay Plaintiffs and Class Members earned overtime wages.
17 Plaintiffs and Class Members are entitled to recover their unpaid overtime compensation and
18 penalties arising therefrom.

19 16. Plaintiffs and the Class are therefore entitled to the relief requested below.

20 **SECOND CAUSE OF ACTION**

21 **(Unlawful, Unfair And Fraudulent Business Practices Pursuant
22 To Business & Professions Code Section 17200, et seq.)**

23 **(Against Defendants Eastwestproto, Inc. and LifeLine Ambulance Only)**

24 17. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
25 paragraphs as if fully set forth herein.

26 18. Business & Professions Code section 17200, et seq. prohibits acts of unfair
27 competition, which shall mean and include any "unlawful business act or practice."

28 19. The policies, acts and practices heretofore described were and are unlawful business

1 acts or practices because Defendants' failure to provide rest and meal periods, failure to pay
2 compensation for work without rest or meal periods, failure to pay earned regular and overtime
3 wages, and failure to provide accurate and timely wage statements in violation of applicable Labor
4 Code sections, including but not limited to Labor Code sections 201-204, 226, 226.7, 510, 512, 558,
5 and 1194, applicable Industrial Welfare Commission Wage Orders, the Labor Code Private
6 Attorney General Act of 2004, Labor Code section 2698, et seq., and other provisions of California
7 common and/or statutory law. Plaintiffs reserve the right to allege additional statutory and common
8 law violations by Defendants. Such conduct is ongoing to this date.

9 20. Business & Professions Code section 17200, et seq. also prohibit acts of unfair
10 competition, which shall mean and include any "unfair business act or practice."

11 21. The policies, acts or practices described herein were and are an unfair business act or
12 practice because any justifications for Defendants' illegal and wrongful conduct were and are vastly
13 outweighed by the harm such conduct caused Plaintiffs, the Class Members, and the members of the
14 general public. Such conduct is ongoing to this date.

15 22. Plaintiffs and the Class are therefore entitled to the relief requested below.

16 **THIRD CAUSE OF ACTION**

17 **(Labor Code Private Attorneys General Act of 2004: Labor Code Section 2698, et seq.)**

18 **(Against All Defendants)**

19 23. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing
20 paragraphs as if fully set forth herein.

21 24. Defendants are persons within the meaning of Labor Code sections 18 and 2699(c).

22 25. As set forth in Labor Code section 558, Defendant Gorin, either as Plaintiffs'
23 employer and/or as a person acting on behalf of Plaintiffs' employer, violated, or caused to be
24 violated, Labor Code sections 510 and 512, and provisions regulating the hours and days of work in
25 the applicable Industrial Welfare Commission Wage Orders. As such, Defendant Gorin is liable for
26 civil penalties as provided by Labor Code section 558.

27 26. The policies, acts and practices heretofore described were and are unlawful acts in
28 violation of applicable Labor Code sections and the applicable Industrial Welfare Commission

1 Wage Orders and give rise to statutory penalties as a result of such conduct, including, but not
2 limited to, penalties as provided by the Labor Code Private Attorneys General Act of 2004
3 (“PAGA”). The unlawful policies, acts and practices include, but are not limited to, Defendants’
4 failure to pay regular and overtime wages as required by Labor Code sections 510, 558, and 1194,
5 failure to issue proper wage instruments to its California employees in violation of Labor Code
6 section 226, failure to provide required meal periods and failure to provide compensation for same
7 in violation of Labor Code sections 226.7, 512, 558, and the applicable Industrial Welfare
8 Commission Wage Orders, failure to pay all wages due upon termination in violation of Labor
9 Code sections 201, 202, 203, and 204, and failure to provide accurate wage statements in violation
10 of Labor Code section 226. Defendants’ violations give rise to statutory penalties, including but not
11 limited to penalties as provided by Labor Code sections 201, 202, 203, 204, 212, 226, 226.3, 226.7,
12 510, 512, 558, 1194, and 2699.5, and applicable Industrial Welfare Commission Wage Orders.
13 Plaintiffs, as aggrieved employees, hereby seek recovery of civil penalties as prescribed by the
14 Labor Code Private Attorney General Act of 2004 on behalf of themselves and other current and
15 former aggrieved employees of Defendants against whom one or more of the violations of the
16 Labor Code was committed.

17 27. On January 27, 2012, Plaintiff Cooper and on January 30, 2012, Plaintiff Magana
18 gave written notice by certified mail to the California Labor and Workforce Development Agency,
19 Eastwestproto, Inc., LifeLine Ambulance, and Genady Gorin of Labor Code violations as
20 prescribed by California Labor Code section 2699.3. As of March 7, 2012, neither Plaintiff has
21 received a response from the Labor and Workforce Development Agency.

22 **PRAYER FOR RELIEF**

23 WHEREFORE Plaintiffs pray for judgment and relief as follows:

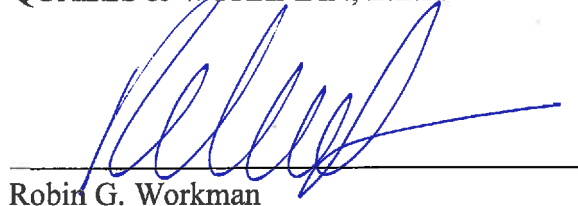
- 24 1. An order certifying that the action may be maintained as a class action;
- 25 2. Compensatory and statutory damages, penalties and restitution, as appropriate and
26 available under each cause of action;
- 27 3. For recovery of penalties as provided by the Labor Code Private Attorneys General
28 Act of 2004;

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- 4. Reasonable attorneys' fees pursuant to Labor Code sections 1194(a) and 2699(g);
- 5. Costs of this suit;
- 6. Pre- and post-judgment interest;
- 7. Such other and further relief as the Court deems just and proper; and,
- 8. Plaintiffs are informed and believe that the damages, back wages, restitution, penalties, interest and attorneys' fees do not exceed a aggregate of \$4,999,999.99 and that Plaintiffs' individual claims do not exceed \$74,999.99.

Date: March 7, 2012

QUALLS & WORKMAN, L.L.P.



Robin G. Workman
Attorneys for Plaintiffs Eric Cooper and Heidi Magana, on behalf of themselves and all others similarly situated