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10 Attorneys for Defendants
11 DOUGLAS EMMETT, INC., DOUGLAS
12 EMMETT MANAGEMENT, INC., DOUGLAS
13 EMMETT, LLC

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES

16 ANTOINETTE LINDSAY, individually
17 and on behalf of other members of the
18 general public similarly situated, and on
19 behalf of aggrieved employees pursuant to
20 the Private Attorney General Act
21 ("PAGA"),

22 Plaintiff,

23 v.

24 DOUGLAS EMMETT, INC., a Maryland
25 corporation; DOUGLAS EMMETT
26 MANAGEMENT, INC., a Delaware
27 corporation; DOUGLAS EMMETT, LLC,
28 an unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No. BC466315

ASSIGNED FOR ALL PURPOSES TO
JUDGE CAROLYN B. KUHL, DEPT. 1

ANSWER OF DOUGLAS EMMETT, INC.,
DOUGLAS EMMETT MANAGEMENT,
INC., DOUGLAS EMMETT, LLC TO
PLAINTIFF'S COMPLAINT

Complaint Filed: July 28, 2011

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 06 2011

John A. Clarke/Executive Officer/Clerk
By Amber Lafleur-Clayton Deputy
AMBER LAFLEUR-CLAYTON

CIT/CASE: BC466315-LEA/DEF:
RECEIPT #: CHS03057051
DATE PAID: 09/06/11 03:14:18 PM
PAYMENT: \$1,185.00
RECEIVED:
CHECK: 1,185.00
CASH:
CHANGE:
CARD:

ORIGINAL

1 COMES NOW Defendants DOUGLAS EMMETT, INC., DOUGLAS EMMETT
2 MANAGEMENT, INC. and DOUGLAS EMMETT, LLC ("Defendants") and for their Answer to
3 the Class Action Complaint ("Complaint") filed by Plaintiff ANTOINETTE LINDSAY ("Plaintiff"),
4 for themselves alone and for no other Defendants, Defendants answer Plaintiff's allegations as
5 follows:

6 **GENERAL DENIAL**

7 Defendants generally and specifically deny each and every allegation of the Complaint, and
8 the whole thereof, pursuant to section 431.30 of the California Code of Civil Procedure and further
9 deny that Plaintiff or any class that she purports to represent has been damaged in any sum or at all.

10 **AFFIRMATIVE DEFENSES**

11 Without waiving or excusing the burden of proof of Plaintiff, or admitting that
12 Defendants have any burden of proof, Defendants assert the following affirmative defenses:

13 **SEPARATE AND AFFIRMATIVE DEFENSE**

14 **(Failure To State A Claim)**

15 1. As a separate and distinct affirmative defense, Defendants allege that the Complaint,
16 and each cause of action set forth therein, or some of them, fails to state a claim against Defendants
17 on which relief can be granted.

18 **SEPARATE AND AFFIRMATIVE DEFENSE**

19 **(Waiver, Laches, Unclean Hands, Consent, and Estoppel)**

20 2. As a separate and distinct affirmative defense, Defendants allege that all or portions
21 of Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, laches, unclean hands,
22 consent, and/or estoppel.

23 **SEPARATE AND AFFIRMATIVE DEFENSE**

24 **(Unjust Enrichment)**

25 3. As a separate and affirmative defense, Defendants allege that Plaintiff and the putative
26 class members she seeks to represent would be unjustly enriched if allowed to recover on the
27 Complaint.

1 **SEPARATE AND AFFIRMATIVE DEFENSE**

2 **(Class Action Release)**

3 4. As a separate and distinct affirmative defense, Defendants allege that the Complaint,
4 and each cause of action set forth therein, or some of them, is barred to the extent Plaintiff and/or the
5 putative class she purports to represent have released Defendants from any claims he/she/they may
6 have against Defendants.

7 **SEPARATE AND AFFIRMATIVE DEFENSE**

8 **(Lack of Standing)**

9 5. As a separate and distinct affirmative defense, Defendants allege that the Complaint,
10 and each cause of action set forth therein, or some of them, is barred because the named Plaintiff
11 lacks standing as a representative of the proposed class and does not adequately represent the
12 putative class members.

13 **SEPARATE AND AFFIRMATIVE DEFENSE**

14 **(Class Action – Certification Prerequisites)**

15 6. As a separate and distinct affirmative defense, Defendants allege that Plaintiff cannot
16 satisfy the prerequisites for class certification and therefore cannot represent the interest of others.

17 **SEPARATE AND AFFIRMATIVE DEFENSE**

18 **(Class Action – Standing)**

19 7. As a separate and distinct affirmative defense, Defendants allege that Plaintiff lacks
20 standing to assert the legal rights or interests of others.

21 **SEPARATE AND AFFIRMATIVE DEFENSE**

22 **(Class Action – Lack of Predominance)**

23 8. As a separate and distinct affirmative defense, Defendants allege that the types of
24 claims alleged by Plaintiff on behalf of herself and/or the alleged putative group she purports to
25 represent are matters in which individual questions dominate and thus are not appropriate for class
26 treatment.

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1 **SEPARATE AND AFFIRMATIVE DEFENSE**

2 **(Class Action – Lack of Numerosity)**

3 9. As a separate and distinct affirmative defense, Defendants allege that the alleged
4 putative group that Plaintiff purports to represent is not so numerous that joinder is impossible.

5 **SEPARATE AND AFFIRMATIVE DEFENSE**

6 **(Class Action – Lack of Commonality)**

7 10. As a separate and distinct affirmative defense, Defendants allege that Plaintiff is not
8 similarly situated to other potential members of the alleged putative group she purports to represent
9 and thus is an inadequate representative of the alleged group.

10 **SEPARATE AND AFFIRMATIVE DEFENSE**

11 **(Class Action – Lack of Typicality)**

12 11. As a separate and distinct affirmative defense, Defendants allege that certain of the
13 interests of the alleged putative group are in conflict with the interests of all or certain subgroups of
14 the members of the putative group.

15 **SEPARATE AND AFFIRMATIVE DEFENSE**

16 **(Class Action – Lack of Superiority)**

17 12. As a separate and distinct affirmative defense, Defendants allege that Plaintiff has not
18 shown and cannot show that class treatment of the purported causes of action in her Complaint is
19 superior to other methods of adjudicating the controversy.

20 **SEPARATE AND AFFIRMATIVE DEFENSE**

21 **(Class Action – Lack of Manageability)**

22 13. As a separate and distinct affirmative defense, Defendants allege that the Complaint
23 and each purported cause of action alleged therein, cannot proceed as a purported class or collective
24 action because of difficulties likely to be encountered render the action unmanageable.

25 **SEPARATE AND AFFIRMATIVE DEFENSE**

26 **(No PAGA Determination on a Class-Wide Basis)**

27 14. As a separate and affirmative defense, Defendants allege that penalties under the
28 Labor Code Private Attorneys General Act, Labor Code sections 2698 *et seq.*, cannot be determined

1 on a class-wide basis.

2 **SEPARATE AND AFFIRMATIVE DEFENSE**

3 **(Prosecution as Class or Representative Action – Violation of Due Process Rights)**

4 15. As a separate and affirmative defense, Defendants allege that prosecution of this
5 action by Plaintiff and the putative class members as a class and/or as a representative action would
6 constitute a denial of Defendants’ substantive and procedural due process rights under the
7 Fourteenth Amendment of the United States Constitution and under the Constitution and laws of the
8 State of California.

9 **SEPARATE AND AFFIRMATIVE DEFENSE**

10 **(PAGA – Penalties on a Class-Wide Basis)**

11 16. As a separate and distinct affirmative defense, Defendants allege that penalties under
12 the Labor Code Private Attorneys General Act, Labor Code sections 2698 *et seq.*, cannot be
13 determined on a class-wide basis.

14 **SEPARATE AND AFFIRMATIVE DEFENSE**

15 **(PAGA – Failure to Provide LWDA Adequate Notice)**

16 17. As a separate and distinct affirmative defense, Defendants allege that Plaintiff failed
17 to provide the Labor Workforce Development Agency proper notification of the claims and/or the
18 names of the “aggrieved employees” on whose behalf she intends to seek penalties, pursuant to the
19 Labor Code Private Attorneys General Act, Labor Code sections 2698 *et seq.*

20 **SEPARATE AND AFFIRMATIVE DEFENSE**

21 **(PAGA – Failure to Identify Aggrieved Employees)**

22 18. As a separate and distinct affirmative defense, Defendants allege that Plaintiff has
23 failed to identify any other allegedly “aggrieved employees,” as provided in the Labor Code Private
24 Attorneys General Act, Labor Code sections 2698 *et seq.*

25 **SEPARATE AND AFFIRMATIVE DEFENSE**

26 **(PAGA – Civil Penalties)**

27 19. As a separate and distinct affirmative defense, Defendants allege that any penalties
28 awarded against it with respect to Plaintiff’s Labor Code section 1198 claim would be unjust,

1 arbitrary, oppressive or confiscatory, pursuant to the Labor Code Private Attorneys General Act,
2 Labor Code sections 2698 *et seq.*

3 **SEPARATE AND AFFIRMATIVE DEFENSE**

4 **(PAGA – Unconstitutionally Violative of Separation of Powers)**

5 20. As a separate and distinctive affirmative defense, Defendants allege that Plaintiff's
6 cause of action based upon the Labor Code Private Attorneys General Act, Labor Code sections
7 2698 *et seq.* is unconstitutional on the basis that it violates the separation of powers doctrine by
8 empowering private attorneys to prosecute public claims, thereby impairing the judiciary's inherent
9 power to regulate attorney conduct.

10 **SEPARATE AND AFFIRMATIVE DEFENSE**

11 **(Statute of Limitations)**

12 21. As a separate and affirmative defense, Defendants allege that the claims of Plaintiff
13 and the putative class members she seeks to represent are barred by the applicable statutes of
14 limitations, including but not limited to, California Code of Civil Procedure sections 338 and 340
15 and/or California Business & Professions Code section 17208.

16 **SEPARATE AND AFFIRMATIVE DEFENSE**

17 **(Lack of Subject Matter Jurisdiction)**

18 22. As a separate and affirmative defense, Defendants allege that the Court lacks subject
19 matter jurisdiction over the Complaint and each cause of action therein, or some of them, to the
20 extent that the claims contained therein are subject to a written agreement to submit such disputes to
21 binding arbitration. Defendants, by answering the Complaint, do not waive their right to demand
22 arbitration.

23 **SEPARATE AND AFFIRMATIVE DEFENSE**

24 **(Violation of Defendants' Due Process Rights – Replicating Penalties)**

25 23. As a separate and distinct affirmative defense, Defendants allege that, to the extent
26 Plaintiff seeks statutory or other penalties, such claims must comport with the due process
27 requirements of *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003) and *Roby v.*
28 *McKesson*, 47 Cal. 4th 686 (2009).

1 **SEPARATE AND AFFIRMATIVE DEFENSE**

2 **(Exempt Status)**

3 24. As a separate and distinct affirmative defense, Defendants allege that Plaintiff and/or
4 the putative class she purports to represent, were/are exempt from payment of overtime wages
5 pursuant to California statutes, regulations and/or wage orders of the Industrial Welfare
6 Commission, and therefore are not entitled to overtime wages.

7 **SEPARATE AND AFFIRMATIVE DEFENSE**

8 **(Failure to Meet Reasonable Expectations)**

9 25. As a separate and affirmative defense to all causes of action, Defendants are informed
10 and believe that a reasonable opportunity for investigation and discovery will reveal, and on that
11 basis allege, that any failure on Plaintiffs' part to meet the criteria of overtime exempt status,
12 particularly the requirement that Plaintiffs spend 50 percent or more of their time performing exempt
13 duties during any period, was the result of failure by Plaintiffs to meet Defendants' reasonable
14 expectations concerning the discharge of their duties and/or to follow Defendants' reasonable
15 instructions (Labor Code section 2856), and therefore does not render them non-exempt.

16 **SEPARATE AND AFFIRMATIVE DEFENSE**

17 **(No Knowledge of Work)**

18 26. As a separate and distinct affirmative defense, Defendants allege that if either
19 Plaintiff or any putative class member "worked" hours for which compensation was not paid,
20 Defendants had no knowledge, or reason to know, of such "work" and such overtime "work" was
21 undertaken without the consent or permission of Defendants.

22 **SEPARATE AND AFFIRMATIVE DEFENSE**

23 **(Plaintiffs' Failure to Take Breaks Provided Under the Law)**

24 27. As a separate and distinct affirmative defense, Defendants allege that Plaintiff has no
25 right to a premium payment under California Labor Code section 226.7 because, to the extent, if any,
26 that Plaintiff did not take breaks, it was because she: (1) failed to take breaks that were provided to
27 her in compliance with California law; (2) chose not to take rest breaks that were authorized and
28 permitted; or (3) waived her right to meal breaks under California Labor Code section 512(a).

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SEPARATE AND AFFIRMATIVE DEFENSE

(Bona Fide Dispute)

28. As a separate and distinct affirmative defense, Defendants allege that the Complaint fails to state a claim for penalties under the California Labor Code in that (1) there was a *bona fide*, good faith dispute as to Defendants' obligations under any applicable Labor Code provisions, including, without limitations Labor Code section 203, and (2) Defendants did not willfully violate Labor Code section 203.

SEPARATE AND AFFIRMATIVE DEFENSE

(Purported Violations Are *De Minimis*)

29. As a separate and distinct affirmative defense, to the extent Plaintiff seeks to recover for alleged violations concerning overtime and meal and rest periods, Plaintiff cannot maintain such claims, because even assuming *arguendo* that Plaintiff and/or the putative class she seeks to represent are entitled to additional compensation, such alleged violations, if any, are *de minimis*.

SEPARATE AND AFFIRMATIVE DEFENSE

(Good Faith)

30. As a separate and distinct affirmative defense, Defendants allege that the Complaint and each cause of action set forth therein cannot be maintained because, without admitting that any violation took place, Defendants allege that any violation of the California Labor Code or of a Wage Order of the Industrial Welfare Commission was an act or omission made in good faith, and that in any participation in such acts, Defendants had reasonable grounds for believing that the act or omission was not a violation of the California Labor Code or any Wage Order of the Industrial Welfare Commission.

SEPARATE AND AFFIRMATIVE DEFENSE

(Labor Code Section 226 – Lack of Injury)

31. As a separate and distinct affirmative defense, Defendants allege that Plaintiff and the alleged putative class they purport to represent, sustained no injury from any alleged failure by Defendants to comply with Labor Code section 226.

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SEPARATE AND AFFIRMATIVE DEFENSE

(Labor Code Section 226 – No “Knowing and Intentional Failure”)

32. As a separate and distinct affirmative defense, Defendants allege that, even assuming *arguendo*, that Plaintiff and/or the putative class she seeks to represent were not provided with proper itemized statements of wages and deductions, Plaintiff and/or the putative class she seeks to represent are not entitled to recover damages because Defendants’ alleged failure to comply with California Labor Code section 226 was not a “knowing and intentional failure” under California Labor Code section 226(a).

SEPARATE AND AFFIRMATIVE DEFENSE

(Avoidable Consequences)

33. As a separate and distinct affirmative defense, Defendants are informed and believe that further investigation and discovery will reveal, and on that basis allege, that Plaintiff’s damages and/or penalties, if any, are barred and/or limited pursuant to the doctrine of avoidable consequences. Defendants will amend its answer to assert further facts in support of this affirmative defense as they become known in discovery. *See Department of Health Services v. Superior Court*, 31 Cal. 4th 1026 (2003).

SEPARATE AND AFFIRMATIVE DEFENSE

(No Private Right of Action)

34. As a separate and distinct affirmative defense, Defendants allege that Plaintiff’s claim under California Business and Professions Code section 17200 is barred, in whole or in part, because Plaintiff and/or the putative class she purports to represent has suffered no injury and thus have no private right of action under this section.

SEPARATE AND AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

35. As a separate and distinct affirmative defense, Defendants allege that Plaintiff and the purported class members are not entitled to equitable relief insofar as they have an adequate remedy at law.

1 **SEPARATE AND AFFIRMATIVE DEFENSE**

2 **(Bus. & Prof. Code Section 17200 – Compliance With Obligations)**

3 36. As a separate and distinct affirmative defense, Defendants allege that Plaintiff's
4 claims are barred in whole or in part because of Defendants' compliance with all applicable laws,
5 statutes and regulations, said compliance affording Defendants a safe harbor to any claim under
6 Business and Professions Code sections 17200 *et seq.*

7 **SEPARATE AND AFFIRMATIVE DEFENSE**

8 **(Plaintiff's Claims Moot)**

9 37. As a separate and distinct affirmative defense, Defendants allege that Plaintiff's claim
10 for violations of California Business and Professions Code sections 17200 *et seq.*, is barred as moot
11 because, assuming *arguendo* that Defendants engaged in such business practices, Defendants have
12 since discontinued, modified and/or corrected its policies and practices.

13 **SEPARATE AND AFFIRMATIVE DEFENSE**

14 **(IWC Orders Unconstitutional)**

15 38. As a separate and distinct affirmative defense, Defendants allege that the Complaint
16 and each cause of action therein, or some of them, are barred because the applicable wage orders of
17 the Industrial Welfare Commission are unconstitutionally vague and ambiguous and violate
18 Defendants' rights under the United States Constitution and the California Constitution as to, among
19 other things, due process of law.

20 **SEPARATE AND AFFIRMATIVE DEFENSE**

21 **(Actions by Agents Outside the Scope of Authority)**

22 39. As a separate and distinct affirmative defense, Defendants allege that Plaintiff's
23 claims cannot be maintained against Defendants because if employees of Defendants (including
24 Plaintiff) took the actions alleged, such actions were committed outside the course and scope of such
25 employees' employment, were not authorized, adopted or ratified by Defendants and Defendants did
26 not know of nor should it have known of such conduct.

1 **SEPARATE AND AFFIRMATIVE DEFENSE**

2 **(Credit and Offset)**

3 40. As a separate and distinct affirmative defense, Defendants allege that they are entitled
4 to an offset against any relief due Plaintiff and/or those persons she seeks to represent, based upon
5 their respective wrongful conduct and/or monies owed to Defendants, including, but not limited to,
6 any overpayments made to Plaintiff and any contractual damages and/or indemnity owed by Plaintiff
7 as the result of her failure to perform her contractual obligations or overpayment for hours worked.

8 **SEPARATE AND AFFIRMATIVE DEFENSE**

9 **(No Employment Relationship)**

10 41. As a separate and affirmative defense, Defendants Douglas Emmett Management,
11 Inc. and Douglas Emmett, LLC, each allege that there was no employment relationship between
12 each of them and Plaintiff, or those persons she seeks to represent; therefore, the Complaint, and
13 each of its purported claims, fails to state a claim upon which relief can be granted as to Defendants
14 Douglas Emmett Management, Inc. and Douglas Emmett, LLC.

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16 **PRESERVATION OF RIGHT TO AMEND TO ADD DEFENSES**

17 Defendants do not presently know all of the facts respecting the conduct of Plaintiff and the
18 putative class members sufficient to allow them to state all affirmative defenses at this time.
19 Defendants are informed and believe, however, that further investigation and discovery will reveal
20 that they may have additional affirmative defenses available of which they are not fully aware at the
21 present time. Defendants reserve the right to amend this Answer to assert said additional affirmative
22 defenses should they later discover facts demonstrating the existence and applicability of same.


23 WHEREFORE, Defendants pray that:

- 24 1. Plaintiff's Complaint be dismissed in its entirety with prejudice;
- 25 2. Plaintiff and the putative class members take nothing by this action;
- 26 3. Judgment be entered in Defendants' favor and against Plaintiff and the putative class
27 members;
- 28 4. Defendants be awarded their costs of suit and attorneys' fees incurred herein; and

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2040 Century Park East
5th Floor
Los Angeles, CA 90067-3407
310 552 0308

1 5. Defendants be awarded such other and further relief as the Court deems just and
2 proper.

3 Dated: September 6, 2011

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6 _____
7 ELIZABETH STAGGS WILSON
8 JUDY M. IRIYE
9 LITTLER MENDELSON
10 A Professional Corporation
11 Attorneys for Defendants
12 DOUGLAS EMMETT, INC., DOUGLAS
13 EMMETT MANAGEMENT, INC. AND
14 DOUGLAS EMMETT, LLC

10 Firmwide:103490700.1 625000.2039

1 PROOF OF SERVICE BY MAIL

2 I am employed in Los Angeles County, California. I am over the age of eighteen
3 years and not a party to the within-entitled action. My business address is 2049 Century Park East,
4 5th Floor, Los Angeles, California 90067.3107. I am readily familiar with this firm's practice for
5 collection and processing of correspondence for mailing with the United States Postal Service. On
6 September 6, 2011, I placed with this firm at the above address for deposit with the United States
7 Postal Service a true and correct copy of the within document(s):

8 **ANSWER TO COMPLAINT**

9 in a sealed envelope, postage fully paid, addressed as follows:

<p>10 R. Rex Parris, Esq. Alexander R. Wheeler, Esq. 11 Jason P. Fowler, Esq. Kitty Szeto, Esq. 12 Douglas Han, Esq. Scott L. Tillett, Esq. 13 R. Rex Parris Law Firm 42220 10th Street West, Ste. 109 14 Lancaster, CA 93534 15 Phone: 661-949-2595 16 Fax: 661-949-7524</p>	<p>Edwin Aiwazian, Esq. Arby Aiwazian, Esq. Maria F. Nickerson, Esq. Jill J. Parker, Esq. The Aiwazian Law Firm 410 West Arden Avenue, Ste. 203 Glendale, CA 91203 Phone: 818-265-1020 Fax: 818-265-1021</p>
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17 Following ordinary business practices, the envelope was sealed and placed for
18 collection and mailing on this date, and would, in the ordinary course of business, be deposited with
19 the United States Postal Service on this date.

20 I declare under penalty of perjury under the laws of the State of California that the
21 above is true and correct.

22 Executed on September 6, 2011, at Los Angeles, California.

23 

24 _____
25 Sheila Shaw