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County of Santa Clara
17CV312254
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

10 JOEY HARSAGHY, individually and on
behalf of all others similarly situated,

11 Plaintiff,

12 v.

13 PURE STORAGE, INC., a Delaware
14 Corporation; SECURE TALENT, INC., a
15 California Corporation; and DOES 1-100,
inclusive,

16 Defendants.
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Case No.: **17CV312254**

CLASS ACTION

COMPLAINT FOR:

- (1) **FAILURE TO PAY OVERTIME WAGES (LAB. CODE §§ 1194, 510);**
- (2) **FAILURE TO PAY MINIMUM WAGE (LAB. CODE §§ 1182.12, 1194 et seq., 1197 et seq.; Minimum Wage Order);**
- (3) **FAILURE TO FURNISH TIMELY/ACCURATE WAGE STATEMENTS (RECORD-KEEPING VIOLATIONS) (LAB. CODE §§ 226, 1174);**
- (4) **WAITING TIME PENALTIES (FAILURE TO PAY FULL WAGE OF TERMINATED EMPLOYEES) (LAB. CODE §§ 201-203);**
- (5) **UNLAWFUL BUSINESS PRACTICES (BUS. & PROF. CODE §§ 17200, et seq.)**

DEMAND FOR JURY TRIAL

1 Plaintiff Joey Harsaghy (“Plaintiff” or “Harsaghy”), brings this class and representative
2 action case on behalf of himself and other similarly situated individuals (“Class Members”), and
3 on information and belief alleges against Defendants Pure Storage, Inc. (“Pure Storage”), Secure
4 Talent, Inc. (“Secure Talent”), and Does 1-100 (collectively, “Defendants”) the following:

5 **NATURE OF THE CASE**

6 1. This case is brought as a class action under California Code of Civil Procedure
7 (“CCP”) §382 to address Defendants’ violations of California wage and hour law, including the
8 California Labor Code (“Labor Code”), the California Minimum Wage Order, the California
9 Industrial Welfare Commission wage orders (“IWC”), and the Unfair Competition Law (“UCL”).

10 2. Plaintiff and Class Members are current and former persons engaged by
11 Defendants as “contingent worker” employees providing “recruiting” or “talent acquisition”
12 services for various departments at Pure Storage (“Contract Recruiters” or “Class Members”).
13 Contract Recruiters were hired by Pure Storage as “contingent workers” through various third
14 party staffing agencies (“Staffing Agencies”) like Defendant Secure Talent to work exclusively
15 for Pure Storage, at Pure Storage’s headquarters/campus for extended periods of time (typically 1
16 year contracts) as talent recruiters for Pure Storage. Contract Recruiters would be initially “hired”
17 by Staffing Agencies like Secure Talent but work exclusively for Pure Storage. Upon being
18 hired the Contract Recruiters would work at Pure Storage’s headquarters where they would meet
19 their new manager, a Pure Storage employee, and meet the Pure Storage department team they
20 would be working with.

21 3. Contract Recruiters would work directly for and under the auspices of Pure
22 Storage full time employee managers and meet with their Pure Storage team on a daily and
23 weekly basis to ensure the Contract Recruiters understood Pure Storage’s operations and the
24 Contract Recruiters’ job. The Contract Recruiters would work as part of Pure Storage’s
25 recruiting teams in positions such as talent acquisition “Sourcers”, “Recruiters” or “Recruiting
26 Coordinators” to find and develop relationships with new Pure Storage candidates, guide new
27 Pure Storage candidates through the hiring process, drive the interview and offer process for Pure
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1 Storage employment, close employment offers/deals with Pure Storage candidates, and overall
2 fulfill the staffing needs of Pure Storage.

3 4. Contract Recruiters worked alongside permanent Pure Storage employees who did
4 the same or similar work as these “contingent workers” were doing. Despite these and other
5 clear indicia that Plaintiff and Class Members are and were also Pure Storage’s employees,
6 Defendants intentionally misclassified them as “contingent workers” in violation of Labor Code
7 § 226.8 and/or §2753, and, in so doing, have denied them the benefits and protections of
8 California and Federal employment law.

9 5. The Contract Recruiters were hired by Defendants as non-exempt employees and
10 paid an hourly rate. Pure Storage established, controlled, and communicated to Contract
11 Recruiters the policies regarding the Contract Recruiters’ hour and wages that are at issue in this
12 action. Defendants’ policy and practice was to prevent, discourage and require that Contract
13 Recruiters not report any overtime hours at all regardless of the amount of actual overtime hours
14 actually worked by Contract Recruiters at the direction and expectation of Pure Storage.

15 6. Contract Recruiters were not allowed to report any overtime hours despite
16 Defendants’ uniform and consistent policy and practice of allowing, requiring, and pressuring
17 Contract Recruiters to work additional overtime hours “off the clock”, without pay, in order for
18 the Contract Recruiters to succeed in their jobs and meet Pure Storage’s performance metrics.
19 Defendants instructed Contract Recruiters to not report overtime despite Defendants knowledge
20 that Contract Recruiters were in fact working significant amounts of overtime.

21 7. In this action, Plaintiff seeks to recover damages on behalf of himself and
22 similarly Class Members who have all been jointly employed by Defendants Pure Storage,
23 Secure Talent, and Does 1 through 100, for violations of the California and Federal wage and
24 hour law, Labor Code, IWC, and UCL. Plaintiff seeks unpaid overtime compensation (and
25 interest thereon), waiting time penalties, penalties and relief for failure to provide itemized
26 statements of total hours worked, and reasonable attorneys’ fees and costs, on behalf of himself
27 and the proposed Class. Because Defendants have willfully deprived Plaintiff and Class
28 Members of their rights and protections guaranteed by California and Federal law to all

1 employees, as described herein, Defendants’ classification of Contract Recruiters as “contingent
2 workers” and the attendant deprivation of substantial rights and benefits of employment,
3 including failure to pay minimum wage and failure to pay wages for all overtime hours worked,
4 is part of an on-going unfair and/or unlawful business practice by Defendants. Plaintiff therefore
5 also seeks declaratory and injunctive relief based on Defendants’ conduct of engaging in unfair
6 and unlawful business practices prohibited by California Business and Professions Code §17200
7 *et. seq.*

8 8. The “Class Period” is designated as June 26, 2013 (4 years prior to the filing of
9 the original complaint on June 26, 2017), through the entry of judgment, based on the allegation
10 that the violations of California wage and hour laws, as described herein, as have been ongoing
11 for at least the four (4) years prior to the filing of the original Complaint.

12 **JURISDICTION AND VENUE**

13 9. Defendant Pure Storage’s principal place of business and corporate headquarters
14 are in Mountain View, California in Santa Clara County California, and regularly does business
15 in California and the United States, and has employed and does employ numerous individuals
16 within the State of California, and within this County, and throughout the United States.

17 10. Defendant Secure Talent’s principal place of business and corporate headquarters
18 are in San Diego, California in San Diego County California, and regularly does business in
19 California and has employed and does employ numerous individuals within the State of
20 California, within this County, and throughout the United States.

21 11. Defendants have obtained the benefits of the laws of the State of California and
22 the California labor market and the laws of the United States.

23 12. Many of the acts, as well as the course of conduct alleged herein, occurred within
24 this County.

25 13. This Court has jurisdiction over Plaintiff’s and Class Members’ claims: for failure
26 to pay overtime wages under Labor Code §§ 510, 1194; for failure to pay minimum wage under
27 Labor Code § 1182.12; for penalties for failure to provide accurate itemized statements of hours
28 worked and all applicable hourly rates under Labor Code § 226; for penalties for failure to pay

1 wages of discharged employees under Labor Code §§ 201, 202, and 203; and for injunctive relief
2 and restitution for Defendants' unlawful business practices under Business & Professions Code §
3 17203.

4 14. Venue is proper in this county pursuant to California Code of Civil Procedure
5 §395(a). Defendants transact business and may be found within Santa Clara County. The
6 unlawful acts, as well as the course of conduct alleged herein, occurred in Santa Clara County.
7 Defendants maintain their headquarters, transact business, have agents, and employ numerous
8 Class Members in Santa Clara County, and are otherwise within this Court's jurisdiction for
9 purposes of service of process. The unlawful acts alleged herein have had a direct effect on
10 Plaintiff and those similarly situated within the State of California and within Santa Clara
11 County.

12 THE PARTIES

13 15. **Plaintiff Joey Harsaghy ("Plaintiff" or "Harsaghy"):** Harsaghy is an
14 individual adult male. While Defendants employed Plaintiff he lived and worked in Santa Clara
15 County. Plaintiff is currently a resident of Seattle, Washington. Plaintiff was hired
16 by Pure Storage via Staffing Agency Secure Talent, Inc. He worked at Pure Storage in Mountain
17 View from June 2014 until October 2015 when his contract ended. During his entire
18 employment Plaintiff was instructed by Pure Storage's management to only report that Plaintiff
19 was working 40 hours a week. Pure Storage management instructed him not to log or report any
20 overtime hours at all despite the fact Pure Storage management knew that he, and other
21 Contingent Recruiters, were working 50 to 60 hours a week on average. Ed Campana, Pure
22 Storage's Head of Talent Acquisition (July 2014 – February 2016) told Plaintiff to only log 40
23 hours each week. Harsaghy was labeled by Defendants as a full-time, non-exempt hourly
24 employee by Defendants. At all relevant times herein Plaintiff was under the supervision and
25 control of both Pure Storage and Secure Talent.

26 16. **Defendant Pure Storage, Inc. ("Pure Storage"):** Pure Storage is a Delaware
27 Corporation whose headquarters and principal place of business is in Mountain View, California
28 in Santa Clara County. Pure Storage is an all-flash enterprise information storage company. On

1 information and belief, Plaintiff alleges that the practices and policies that are complained of in
2 this Complaint have been occurring throughout the Class Period and are currently applied by
3 Pure Storage throughout California. Pure Storage is, and at all relevant times has been, an
4 employer subject to the California Labor Code.

5 17. **Defendant Secure Talent, Inc. (“Secure Talent”)**: Secure Talent is a California
6 Corporation whose headquarters and principal place of business is San Diego, California. Secure
7 Talent is a staffing agency that supplies technology companies with “contingent” workers -
8 temporary, contingent workers, and consultants. On information and belief, Plaintiff alleges that
9 the practices and policies that are complained of in this Complaint have been occurring
10 throughout the Class Period and are currently applied by Secure Talent throughout California.
11 Secure Talent is, and at all relevant times has been, an employer subject to the California Labor
12 Code.

13 FICTITIOUS DEFENDANTS

14 18. Defendants Does 1-100, inclusive, are sued herein under fictitious names. Their
15 true names and capacities are unknown to Plaintiff at this time. When their true names and
16 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and
17 capacities. Plaintiff is informed and believes, and thereon alleges that each of the fictitiously-
18 named Defendants is responsible in some manner for the occurrences alleged herein and that
19 Plaintiff’s and the proposed Class Member’s damages and penalties alleged herein were
20 proximately caused by such Defendants.

21 AGENCY

22 19. Plaintiff is informed, believes, and thereon alleges that each of the Defendants
23 herein was, at all times relevant in this action, the agent, employee, representing partner, and/or
24 joint venture of the remaining Defendants and was acting within the course and scope of that
25 relationship. Plaintiff is further informed, believe, and thereon allege that each of the Defendants
26 herein gave consent to, ratified, and authorized the acts alleged herein to the remaining
27 Defendants.

1 CLASS ACTION

2 20. Plaintiff brings this action individually and as a class action on behalf of an opt-
3 out California class (the "Class") defined as follows:

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5 **All persons who worked for Defendants in California as**
6 **temporary or contract talent acquisition "Sourcers",**
7 **"Recruiters" and "Recruiting Coordinators" (or similarly**
8 **nomenclatured positions performing substantially identical**
9 **functions and/or duties) at Pure Storage during the period**
10 **beginning June 16, 2013, until the entry of judgment**
11 **("California Class"); and**

12 21. Plaintiff believes this includes, but is not limited to Defendants' employees
13 working as a "Sourcer", "Recruiter", "Recruiting Coordinator", "Recruiting Manager",
14 "Technical Recruiter", "Senior Technical Recruiter", "Onsite Recruiter", "University Recruiter",
15 "Recruiting Specialist", "Talent Acquisition Specialist", "Sourcer", "Technical Sourcer", "Lead
16 Recruiter" and other titled positions whose main function and duties were to provide recruiting
17 and talent acquisition services for Pure Storage's various departments/teams. Plaintiff reserves
18 the right under Rule 3.765(b), California Rules of Court, (and analogous Federal Rule of Civil
19 Procedure) to amend or modify the class description with greater specificity or further division
20 into a subclasses or limitations to particular issues.

21 22. Plaintiff is a member of the proposed Class referred herein to as "Contract
22 Recruiters".

23 23. Plaintiff is informed and believes that more than two thirds of the proposed Class
24 members are current citizens of California.

25 24. The Plaintiff and Class assert that Defendants' wrongful acts against Plaintiff and
26 the Class include:

- 27 a. failure to pay all overtime compensation due;
- 28 b. failure to pay wages for all hours worked;
- c. failure to pay minimum wages;
- d. failure to record, maintain, and timely furnish employees with wage statements
and payroll records accurately showing their total hours worked; and

1 e. failure to pay all wages earned upon separation.

2 25. Upon information and belief, the above violations are the result of centralized
3 policies and practices created by Defendants, including Pure Storage’s human resources and
4 payroll departments, and implemented with the assistance of Defendant Staffing Agencies,
5 including Secure Talent.

6 26. This action is brought, and may properly be maintained, as a class action pursuant
7 to California Code of Civil Procedure §382 (and the analogous provisions of Federal Rules of
8 Civil Procedure 23(a)(1)-(4) and 23(b).) There is a well-defined community of interest in the
9 litigation, and the proposed class is easily ascertainable. As described below, this action also
10 satisfies the numerosity, commonality, predominance, typicality, adequacy, and superiority
11 requirements of these provisions.

12 27. **Numerosity:** A class action is the only available method for the fair and efficient
13 adjudication of this controversy. Although the exact number and identities of Class Members are
14 unknown to Plaintiff at this time and can only be ascertained through appropriate discovery,
15 Plaintiff is informed and believes that the Class includes at least 40 persons. On information and
16 belief, therefore, Plaintiff alleges that the members of the Class are so numerous that joinder of
17 all members is impractical, if not impossible. Membership in the Class will be determined upon
18 analysis of, *inter alia*, employee and payroll records maintained by Defendants.

19 28. **Commonality:** Common questions of law and fact predominate over any
20 questions affecting only individual Class Members. These common questions include, but are
21 not limited to:

- 22 a. Whether Contract Recruiters served Defendants as employees rather than
23 contingent workers under California and Federal law;
- 24 b. Whether Defendants intentionally misclassified Class Members as “contingent
25 workers” in violation of Labor Codes §§ 226.8 and 2753;
- 26 c. Whether Defendants jointly employed Contract Recruiters per Labor Code
27 §2810.3 ;
- 28 d. Whether Defendants failed to pay Contract Recruiters,

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- i. Minimum Wage for all hours worked, in violation of Labor Code §§ 1194 and 1197;
- ii. Overtime Compensation for all hours worked in excess of eight (8) hours a day or forty (40) hours in a workweek, in violation of Labor Code §510 ;
- e. Whether Defendants violated Labor Code §§226 and 1174 by failing to keep accurate records of Contract Recruiters’ hours of work;
- f. Whether Defendants violated Labor Code §§226 and 1174 by failing to provide semi-monthly itemized statements to Contract Recruiter employees of the total hours worked by each employee and all applicable hourly rates in effect during the pay period;
- g. Whether Defendants violated Labor Code §§201, 202, 203 by failing to pay all wages due and owing at the time that certain Contract Recruiters’ employment with Defendants terminated;
- h. Whether former Contract Recruiter employees are entitled to “waiting time” penalties pursuant to Labor Code §203;
- i. Whether Defendant Pure Storage’s uniform right of control over Contract Recruiters constitutes Contract Recruiters to be Pure Storage’s employees;
- j. Whether Defendants had policies and practices forbidding or discouraging the reporting and claiming of overtime;
- k. Whether Defendants knowingly and willfully violated the above wage and hour laws; and
- l. Whether Defendants violated Business and Professions Code § 17200, et seq., by virtue of its violations of the Labor Code cited herein including but not limited to failing to pay minimum wages for all hours worked and all overtime hour worked by Contract Recruiters in excess of eight (8) hours per day and/or forty (40) hours a week;

1 “talent acquisition team” to find and develop relationships with candidates, guide candidates
2 through the hiring process, drive the interview and offer process, close the deal with candidates,
3 and overall fulfill the staffing needs of Pure Storage.

4 34. During the Class Period Defendant Secure Talent and Does 1-100 were Staffing
5 Agencies funneling Contract Recruiters to Defendant Pure Storage, and other clients in
6 California. During the Class Period Pure Storage, Secure Talent and Does 1-100 were the
7 employers of Plaintiff and other Class Members whom Secure Talent and these other Staffing
8 Agencies recruited to work for Pure Storage as Contract Recruiters for the benefit of Defendants
9 and/or Does 1-100. Secure Talent and Does 1-100 conducted screening of candidates for Pure
10 Storage and processed payroll for the Contract Recruiters whom they funneled to perform work
11 for Pure Storage. Secure Talent and Does 1-100 did not hire a Contract Recruiter to work at Pure
12 Storage unless Pure Storage agreed to hire the particular person.

13 35. During the Class Period Pure Storage was also an employer of Plaintiff and other
14 Class Members who were recruited by Secure Talent and Does 1-100 to work for Pure Storage as
15 Contract Recruiters for the benefit of Pure Storage. Pure Storage exercised control over the
16 wages, hours, and/or working conditions of the Plaintiff and Class Members. Pure Storage
17 directly interviewed candidates, including Plaintiff, as if they were directly recruiting them and
18 hiring them.

19 36. Defendants labeled Contract Recruiters as non-exempt and paid by the hour as
20 “contingent workers” at rates that are unilaterally determined by Defendants including Pure
21 Storage. The Contract Recruiters do not negotiate any aspect of their compensation terms and
22 Defendants reserve the right to change the compensation terms at any time. The Contract
23 Recruiters work and wages are directly controlled by Defendant Pure Storage. The Contract
24 Recruiters received their work computers, phones, and tools directly from Pure Storage.

25 37. During the Class Period the Defendants intentionally misclassified Plaintiff and
26 the Class Members as “contingent workers” and for years unlawfully failed to adequately
27 compensate Plaintiff and the Class Members for all hours worked by failing to pay minimum
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1 wage for all hours, and failing to pay for all hours worked, including overtime hours at a
2 premium rate.

3 38. Plaintiff and Contract Recruiters worked alongside permanent full time Pure
4 Storage employees who did the same work. Contract Recruiters were directly supervised by Pure
5 Storage managers within the regular Pure Storage hierarchy and had to follow Pure Storage's
6 policies and procedures. All the terms and conditions of day-to-day work of Contract Recruiters
7 were set by Pure Storage. Pure Storage provided the office space, computers, phones, and other
8 equipment for Contract Recruiters to do their jobs for Pure Storage. Pure Storage established,
9 controlled, and communicated to Plaintiff and the other Contract Recruiters the policies regarding
10 hour and wages that are at issue in this action. For example, overtime payments are determined
11 by Pure Storage policy even though paychecks are paid through Secure Talent.

12 39. Through Secure Talent, Plaintiff received a one-year contract assignment to work
13 for Pure Storage as a Contract Recruiter and reported to a Pure Storage manager. The contract
14 assignment was at-will and Plaintiff was subject to termination by either Secure Talent or Pure
15 Storage. At the same time, Secure Talent informed Plaintiff of the opportunity for extensions of
16 his assignment at Pure Storage or conversion to Pure Storage's payroll as a full time permanent
17 employment. Plaintiff is informed and believes and thereon alleges that Class Members work for
18 Pure Storage on substantially similar terms including lengthy assignments of one-year or more.

19 40. Secure Talent and Does 1-100 acted as Pure Storage's agent in setting the terms
20 and conditions of employment for Contract Recruiters at and for Pure Storage. Plaintiff and
21 Contract Recruiters' compensation terms and conditions were set by Pure Storage, and the
22 concept of Contract Recruiters being "contingent workers" is an intentional ruse by Defendants
23 to avoid reporting to federal and state authorities the wages earned by their employees and,
24 therefore, underpaying state and federal taxes, employer matching funds, unemployment
25 premiums, Social Security, Medicare, and Workers' Compensation premiums. Defendants
26 applied the same policies and practices alleged herein to all Class Members, regardless of the
27 staffing agency involved in the employment relationship.

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1 41. Plaintiff is informed and believes and thereon alleges that Defendants have
2 uniformly subjected Plaintiff and all Class Members to uniform policies and practices including
3 the unlawful labor practices cited herein, including the intentional and willful failure to: pay
4 minimum wage for all hours worked, pay for all overtime hours worked, keep accurate records of
5 total hours worked; furnish accurate itemized wage statements to Plaintiff and the other Class
6 Members that accurately stated the hours worked; and immediately pay Plaintiff and the other
7 Class Members all earned wages upon their separation from their positions at Defendants.

8 42. Plaintiff Harsaghy was hired by Defendants as a recruiter for Pure Storage's
9 Core Engineering Team. On a daily basis, he searched for very talented engineers/employees,
10 screening new candidates, and greeting candidates in the lobby for onsite interviews. His work
11 and that of other recruiters lasted into the late evening, working from both the office and home,
12 sometimes until midnight. The Contract Recruiters were given Pure Storage laptops and mobile
13 phones and related equipment. Harsaghy reported to a Pure Storage manager on a daily/weekly
14 basis. During his entire employment Harsaghy continued to provide reports to Pure Storage
15 giving managers updates on his progress with various potential candidates for the various teams
16 he was recruiting for. Pure Storage guided him on what to look for and how to handle potential
17 candidates. Pure Storage's recruiting department was comprised of outside "contract" workers
18 like Plaintiff and Class Members and Pure Storage's full time employees. Recruiting was a
19 regular part of Pure Storage's business.

20 43. Harsaghy, like other Contract Recruiters, were expected to meet certain goals and
21 work long hours. Harsaghy typically worked 50 to 60+ hours a week. Harsaghy communicated
22 with other Contract Recruiters at Pure Storage, including those who had come from Defendant
23 Secure Talent, who indicated they worked similar hours. Harsaghy would also see these other
24 Contract Recruiters at the Pure Storage campus at the same hours early and late hours as himself.
25 Harsaghy's manager was also aware of the number of hours Harsaghy and other Contract
26 Recruiters were working as he was physically at Pure Storage for similar type hours in the same
27 physical location and was the person who indicated to Harsaghy that he could not report any
28 overtime. He was told that even though he worked those hours he was to not report them.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY OVERTIME WAGES**
4 **California Labor code §§ 510, 1194)**
5 **(Against All Defendants and Does 1-100)**

6 44. Plaintiff incorporates by reference in this cause of action each allegation of all of
7 the foregoing paragraphs as if fully restated herein, and further alleges against Defendants and
8 Does 1-100, and each of them, as follows:

9 45. During the Class Period, Defendants engaged in a widespread pattern and practice
10 of failing to pay Plaintiff and Class Members for hours worked in excess of eight (8) hours per
11 workday and forty (40) hours per workweek.

12 46. During the Class Period Plaintiff and Class Members often worked in excess of
13 eight (8) hours in a work day and forty (40) hours in a work week. The precise number of hours
14 will be proven at trial.

15 47. During the Class Period, Defendants failed to compensate Plaintiff and the Class
16 Members for some or all of the overtime hours worked, in violation of Labor Code §510.

17 48. During the Class Period Defendants were aware of, and were under a duty to
18 comply with, various provisions of the California Labor Code. These provisions include:

19 Labor Code § 510: “Eight hours of labor constitutes a day’s work. Any work in excess
20 of eight hours in one workday and any work in excess of 40 hours in any one workweek and
21 the first eight hours worked on the seventh day or work in any one workweek shall be
22 compensated at the rate of no less than one and one-half times the regular rate of pay for an
23 employee. . . .”

24 Labor Code § 1194: “Notwithstanding any agreement to work for a lesser wage, any
25 employee receiving less than . . . the legal overtime compensation applicable to the employee is
26 entitled to recover in a civil action the unpaid balance of the full amount of this . . . overtime
27 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

28 Labor Code § 1198: “The maximum hours of work and the standard conditions of labor

1 fixed by the commission shall be the maximum hours of work and the standard conditions of
2 labor for employees. The employment of any employee for longer hours than those fixed by
3 the order or under conditions of labor prohibited by the order is unlawful.”

4 Labor Code § 1199: “Every employer or other person acting either individually or as an
5 officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a
6 fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days,
7 or by both, who does any of the following: (a) Requires or causes any employee to work for
8 longer hours than those fixed, or under conditions of labor prohibited by an order of the
9 commission . . . [or] (c) Violates or refuses or neglects to comply with any provision of this
10 chapter or any order of the commission.”

11 49. By refusing to compensate Plaintiff and the Class Members for overtime wages
12 earned, Defendants violated those California Labor Codes cited herein.

13 50. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
14 herein, Plaintiff and the Class Members have sustained damages, including loss of earnings for
15 hours of overtime worked on behalf of Defendants in an amount to be established at trial. As a
16 further direct and proximate result of Defendants’ unlawful conduct, as set forth herein, Plaintiff
17 and Class Members are entitled to recover interest on the overtime wages earned but not paid, at
18 a rate of 10% per year, as well as attorneys’ fees and costs (Labor Code §§218.5 and 1194), and
19 the assessment of any other statutory penalties provided by the Labor Code.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGE**
22 **California Labor Code §§ 1182.11, 1182.12, 1194, 1197, 1197.1**
23 **IWC Wage Order No. 4; and Minimum Wage Order**
(Against All Defendants and Does 1-100)

24 51. Plaintiff incorporates by reference in this cause of action each allegation of all of
25 the foregoing paragraphs as if fully restated herein, and further alleges against Defendants and
26 Does 1-100, and each of them, as follows:

27 52. Labor Code §§ 1194, 1197 and 1197.1 (and IWC Wage Orders 5-2000 and 5-
28 2001, establish and protect the right of employees in California to receive minimum wages for

1 their work, in amounts set by California law. During the applicable statutory period, California
2 Labor Code §§ 1182.11, 1182.12 and 1197, and the Minimum Wage Order were in full force and
3 effect and required that Plaintiff and Class Members receive the minimum wage for all hours
4 worked at the rate of eight dollars (\$8.00) per hour from 2012 to December 31, 2013; nine dollars
5 (\$9.00) per hour as of July 1, 2014 through December 31, 2015; and ten dollars (\$10.00) per hour
6 beginning on January 1, 2016.

7 53. During the Class Period, Defendants failed to pay Plaintiff and Class Members the
8 applicable minimum wage for all hours worked. Defendants have maintained policies and
9 procedures whereby Plaintiff and Class Members are/were required to work “off the clock” and
10 thus not compensated for all hours worked, and thus compensated at a rate less than the statutory
11 minimum wage.

12 54. California Labor Code § 1194 states: “Notwithstanding any agreement to work
13 for a lesser wage, any employee receiving less than the legal minimum wage or the legal
14 overtime compensation applicable to the employee is entitled to recover in a civil action the
15 unpaid balance of the full amount of this minimum wage or overtime compensation, including
16 interest thereon, reasonable attorneys’ fees, and costs of suit.”

17 55. Plaintiff and Class Members regularly worked overtime hours they were not
18 compensated for. Defendants actively instructed and pressured Plaintiff and Class Members to
19 not report overtime hours worked, despite Defendants’ knowledge Plaintiffs and Class Members
20 were working significant amounts of overtime. Defendants instructed Plaintiff and Class
21 Members who regularly worked such overtime hours to intentionally not report and/or under-
22 report the actual number of hours worked.

23 56. Labor Code § 1194.2 provides that, in any action under § 1194 to recover wages
24 because the payment of a wage less than minimum wage fixed by an order of the commission, an
25 employee shall be entitled to recover liquidated damages in an amount equal to the wages
26 unlawfully unpaid and interest thereon. By failing to maintain adequate time records as required
27 by California Labor Code § 1174(d) and IWC Wage Order No. 4, sub§ 7(A), Defendants have
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1 made it difficult to calculate the minimum wage compensation due to Plaintiff and Class
2 Members.

3 57. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
4 been deprived of their minimum wages in an amount to be proven at trial, and are entitled to
5 recover such amounts, plus liquidated damages, plus interest and penalties thereon, attorney's
6 fees and costs, under Labor Code §§ 203, 218.5, 226, 1194, 1194.2, 1197.1, applicable IWC
7 Wage Orders, and are entitled to injunctive relief.

8
9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PROVIDE TIMELY AND ACCURATE WAGE STATEMENTS**

11 **Labor Code § 226**

12 **(Against All Defendants and Does 1-100)**

13 58. Plaintiff incorporates by reference in this cause of action each allegation of all of
14 the foregoing paragraphs as if fully restated herein, and further allege against Defendants EAI
15 and Does 1-100, and each of them, as follows:

16 59. Labor Code § 226(a) provides as follows:

17 Every employer shall, semimonthly or at the time of each
18 payment of wages, furnish each of his or her employees, either as
19 a detachable part of the check, draft or voucher paying the
20 employee's wages, or separately when wages are paid by
21 personal check or cash, an itemized statement in writing showing
(1) gross wages earned, (2) total hours worked by the employee .
22 . . (3) the number of piece-rate units earned and any applicable
23 piece rate if the employee is paid on a piece-rate basis, (4) all
24 deductions . . . , (5) net wages earned . . . and (9) all applicable
25 hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate by the employee.

27 Labor Code § 226(e) provides as follows:

28 An employee suffering injury as a result of a knowing and
intentional failure by an employer to comply with subdivision
(a) shall be entitled to recover the greater of all actual damages or
fifty dollars (\$50) for the initial pay period in which a violation
occurs and one hundred dollars (\$100) per employee for each
violation in a subsequent pay period, not exceeding an aggregate
penalty of four thousand dollars (\$4,000), and shall be entitled to
an award of costs and reasonable attorney fees.

1 commenced. The penalty accrues for up to 30 days of wages. To this end, Labor Code § 203
2 provides as follows:

3 If an employer willfully fails to pay, without abatement or
4 reduction, in accordance with §§ 201, 201.5, 202 and 205.5, any
5 wages of an employee who is discharged or who quits, the wages
6 of the employee shall continue as a penalty from the due date
7 thereof at the same rate until paid or until an action therefore is
8 commenced; but the wages shall not continue for more than
9 30 days.

10 66. Plaintiff and Class Members who have been discharged or who have resigned are
11 entitled to unpaid compensation, pursuant to Labor Code § 203, but to date have not received
12 such compensation.

13 67. During the relevant time period, many Class Members were employed by
14 Defendants and were thereafter terminated or resigned from their positions with Defendants.
15 Defendants, however, did not pay such Class Members all wages due upon their termination or
16 within 72 hours of their resignation of employment.

17 68. On information and belief, Plaintiff alleges that such non-payment was the direct
18 and proximate result of a willful refusal to do so by Defendants.

19 69. As a consequence of Defendants' willful conduct in not paying compensation for
20 all hours worked, Plaintiff and many Class Members are entitled to up to 30 days wages as a
21 penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

22 **FIFTH CAUSE OF ACTION**

23 **UNFAIR BUSINESS PRACTICES**
24 **California Business & Professions Code §§ 17200-17208**
25 **(Against All Defendants and Does 1-100)**

26 70. Plaintiff incorporates by reference in this cause of action each allegation of all of
27 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
28 Does 1-100, and each of them, as follows:

71. Plaintiff brings this cause of action on behalf of himself and the Class as well as
on behalf of the general public, seeking equitable and statutory relief to stop the misconduct of
Defendants, as complained of herein, and to compel disgorgement of all profits obtained by
Defendants through the unfair, unlawful, and/or fraudulent business practices described herein.

1 72. The conduct of Defendants, as alleged herein, constitutes an unlawful business
2 practice as set forth in Business and Professions Code §§ 17200, *et seq.*

3 73. Specifically, Defendants conducted business activities while failing to comply
4 with California wage and hour laws as described in this Complaint. Defendants, and each of
5 them, have intentionally and improperly failed pay wages for all hours worked by their
6 employees and/or Contract Recruiters, and other benefits in violation of the California Labor
7 Code and IWC wage orders. Section 17200 of the Business and Professions Code prohibits
8 unfair competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.
9 Defendants' failure to adopt policies in accordance and/or adherence with these laws, all of
10 which are binding upon and burdensome to Defendants' competitors, engenders an unfair
11 competitive advantage for Defendants, thereby constituting an unfair business practice, as set
12 forth in California Business and Professions Code §§ 17200, *et seq.*

13 74. Defendants have been committing, and continue to commit, acts of unfair
14 competition as defined by the Unfair Competition Law, by engaging in the unlawful, unfair and
15 fraudulent business practices and acts described in this Complaint, including, but not limited to,
16 violations of: California Labor Code §§ 510; California Labor Code §§ 1182.11 and 1182.12;
17 California Labor Code §§ 1194; California Labor Code §§ 1197 and 1197.1; IWC Wage Order 4-
18 2001; California Labor Code §§ 1174 and 1174.5; California Labor Code § 226; California Labor
19 Code §§ 201-204; and California Labor Code § 226

20 75. Plaintiff reserves the right to identify additional unfair and unlawful practices by
21 Defendants as further investigation and discovery warrant.

22 76. Furthermore, Defendants have under-reported to federal and state authorities the
23 wages earned by their employees and, therefore, have underpaid state and federal taxes, employer
24 matching funds, unemployment premiums, Social Security, Medicare, and Workers'
25 Compensation premiums.

26 77. Defendants' conduct as alleged herein has damaged Plaintiff and the Class
27 Members by wrongfully denying them earned overtime wages, failing to pay them all wages due
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1 upon termination of employment, and failing to provide itemized wage statements. Such conduct
2 was substantially injurious to Plaintiff and the Class.

3 78. Under the circumstances alleged herein, it would be inequitable and result in a
4 miscarriage of justice for Defendants to continue to retain the property of Plaintiff and the Class
5 Members, entitling Plaintiff and the Class Members to restitution of the unfair benefits obtained
6 and disgorgement of Defendants' ill-gotten gains.

7 79. As a result of Defendants' unlawful and unfair business practices, Plaintiff and
8 Class Members are entitled to, and hereby do, seek restitution and disgorgement and other
9 appropriate injunctive and other relief available under California Business and Professions Code
10 §§ 17200, et seq.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of himself and the proposed Class he seeks to
13 represent in this action, requests prays for judgment and the following specific relief against
14 Defendants, jointly and separately, as follows:

15 A. That the Court determine that this action may be maintained and certified as a
16 class action under Code of Civil Procedure § 382; and an order that prompt notice may be issued
17 to potential members of the class, apprising them of the pendency of this action, and permitting
18 them to assert their claims;

19 B. That Plaintiff be appointed as the representative of the Class;

20 C. That Plaintiff be designated as representative of the Class;

21 D. That counsel for Plaintiff be appointed as Class Counsel;

22 E. Defendants share liability for the wrongful conduct and legal claims alleged herein
23 as (1) joint employers; (2) common law employers; and/or (3) strictly liable under California
24 Labor Code §2810.3.

25 F. That the Court find that Defendants have been in violation of applicable
26 provisions of the California Labor Code by failing to pay each member of the proposed Class and
27 Plaintiffs for all hours worked, including minimum wage and overtime wages;
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1 G. That the Court find that Defendants have violated the recordkeeping provisions of
2 California Labor Code §§ 226, 1174 and 1174.5 an as to Plaintiff and the Class;

3 H. That the Court find that Defendants have been in violation of California Labor
4 Code §§ 201 and 202 and therefore owe waiting time penalties under California Labor Code §
5 203 for willful failure to pay all compensation owed at the time of separation to Plaintiff and
6 other formerly employed Class Members;

7 I. That the Court find that Defendants willfully misclassified as “contingent
8 workers” Plaintiff and Class Members, and have therefore violated California Labor Code
9 § 226.8 and/or § 2753; and that all damages proximately caused by Defendants’ wrongful
10 conduct be reimbursed and/or applicable penalties be awarded to Plaintiff and the Class.

11 J. That the Court find that Defendants have committed unfair and unlawful business
12 practices in violation of California Business and Professions Code §§ 17200, et seq., by their
13 violations of the Labor Code and Wage Order(s) as described above;

14 K. That the Court find that Defendants’ violations of the California Labor Code and
15 described herein have been willful;

16 L. That the Court award to Plaintiff and the proposed Class Members restitution for
17 the amounts of unpaid wages, including interest thereon, liquidated damages and/or statutory
18 penalties as set forth herein, according to proof at trial;

19 M. That Defendants be ordered and enjoined to pay restitution and penalties to
20 Plaintiff and Class Members due to Defendants’ unlawful and/or unfair activities, pursuant to
21 Business and Professions Code §§ 17200-17205;

22 N. That Defendants further be enjoined to cease and desist from unlawful and/or
23 unfair activities in violation of Business and Professions Code § 17200, pursuant to § 17203;

24 O. That Plaintiff and the Class be awarded reasonable attorneys’ fees, costs, interest,
25 penalties and liquidated damages pursuant to California Labor Code §§ 200, 201, 202, 203, 204,
26 218.5, 218.6, 225.5, 226, 226 (a), 226.8, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197,
27 1197.1, 2699, et seq.; Code of Civil Procedure § 1021.5; and/or other applicable law;


28 P. Award pre-judgment and/or post-judgment interests, as provided by law;

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- Q. Actual and/or liquidated damages pursuant to California Labor Code §226(e);
- R. Any and all other applicable statutory penalties, as provided by California law;
- S. A declaratory judgment that the practices complained of herein are unlawful;
- T. That Court award any other relief this Court deems just, equitable, and proper.

DATED: June 26, 2017

DA VEGA | FISHER | MECHTENBERG LLP

By: 
Matthew S. Da Vega
Attorneys for Plaintiff and Proposed Class


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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demand a trial by jury for all claims so triable.

DATED: June 26, 2017

DA VEGA | FISHER | MECHTENBERG LLP

By: 
Matthew S. Da Vega
Attorneys for Plaintiff and Proposed Class