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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN MATEO**

10 MATTHEW SENA, individually and on
11 behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 FACEBOOK, INC., a Delaware
Corporation; PRO UNLIMITED, INC., a
15 New York Corporation; and DOES 1-100,
16 inclusive,

17 Defendants.
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Case No.: 16CIV00496

REPRESENTATIVE AND CLASS ACTION

FIRST AMENDED 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.);**
- (6) **VIOLATION OF PRIVATE ATTORNEY GENERAL ACT OF 2004 (“PAGA”)(LAB. CODE § 2698, et seq.)**

DEMAND FOR JURY TRIAL

26
27 Plaintiff Matthew Sena (“Plaintiff” or “Sena”), brings this class and representative action
28 case on behalf of himself and other similarly situated individuals (“Class Members”), and on

ENDORSED FILED
SAN MATEO COUNTY

SEP 26 2016

Clerk of the Superior Court
By JORDAN MAXWELL
DEPUTY CLERK

1 information and belief alleges against Defendants Facebook, Inc. (“Facebook”), Pro Unlimited,
2 Inc. (“Pro Unlimited”), and Does 1-100 (collectively, “Defendants”) the following:

3 **NATURE OF THE CASE**

4 1. This case is brought as a class action under California Code of Civil Procedure
5 (“CCP”) §382 to address Defendants’ violations of California wage and hour law, including the
6 California Labor Code (“Labor Code”), the California Minimum Wage Order, the California
7 Industrial Welfare Commission wage orders (“IWC”), and the Unfair Competition Law (“UCL”).
8 This case is also brought as a representative action for recovery of penalties under the California
9 Labor Code Private Attorney General Act of 2004 (“PAGA”), Cal. Lab. Code §§ 2698, *et seq.*

10 2. Plaintiff and Class Members are current and former persons engaged by
11 Defendants as “independent contractor” employees providing “recruiting” or “talent acquisition”
12 services for various departments at Facebook (“Contract Recruiters” or “Class Members”).
13 Contract Recruiters were hired by Facebook as “independent contractors” through various third
14 party staffing agencies (“Staffing Agencies”) like Defendant Pro Unlimited to work exclusively
15 for Facebook, at Facebook’s headquarters/campus, for extended periods of time (typically 1 year
16 contracts) as talent recruiters for Facebook. Contract Recruiters would be initially “hired” by
17 Staffing Agencies like Pro Unlimited but work exclusively for Facebook, often without ever
18 meeting a representative of the Staffing Agencies in person until the Contract Recruiters
19 physically appeared at Facebook’s campus. Upon being hired the Contract Recruiters would
20 attend an “Orientation” at Facebook’s headquarters where they would meet their new manager, a
21 Facebook employee, and meet the Facebook department team they would be working with.

22 3. Contract Recruiters would then attend Facebook’s “Talent Camp”, a 6 hour-a-day-
23 week-long class, where the Contract Recruiters would learn about Facebook operations and
24 Facebook’s tools and teams. Contract Recruiters would then work directly for and under the
25 auspices of their new Facebook managers meeting with their Facebook team on a daily and
26 weekly basis to provide further education and training to ensure the Contract Recruiters
27 understood Facebook’s operations and the Contract Recruiters’ job. The Contract Recruiters
28 would then work as part of Facebook’s recruiting teams in positions such as talent acquisition

1 “Sourcers”, “Recruiters” or “Recruiting Coordinators” to find and develop relationships with new
2 Facebook candidates, guide new Facebook candidates through the hiring process, drive the
3 interview and offer process for Facebook employment, close employment offers/deals with
4 Facebook candidates, and overall fulfill the staffing needs of Facebook. Contract Recruiters
5 worked alongside permanent Facebook employees who did the same or similar work as these
6 “independent contractors” were doing. Despite these and other clear indicia that Plaintiff and
7 Class Members are and were also Facebook’s employees, Defendants intentionally misclassified
8 them as “independent contractors” in violation of Labor Code § 226.8 and/or §2753, and, in so
9 doing, have denied them the benefits and protections of California employment law.

10 4. The Contract Recruiters were hired by Defendants as non-exempt employees and
11 paid an hourly rate. Facebook established, controlled, and communicated to Contract Recruiters
12 the policies regarding the Contract Recruiters’ hour and wages that are at issue in this action.
13 Defendants’ policy and practice is to set a capped amount of overtime it pays to individual
14 Contract Recruiters regardless of the amount of overtime hours expected and actually worked by
15 Contract Recruiters at the direction of Facebook. Defendants set specific limits on the amount of
16 overtime hours that Contract Recruiters were allowed to report despite Defendants’ uniform and
17 consistent policy and practice of allowing, requiring, and pressuring Contract Recruiters to work
18 additional overtime hours, without pay, in order to for the Contract Recruiters to succeed in their
19 jobs and meet Facebook’s performance metrics. Defendants then instructed Contract Recruiters
20 to not report more than the predetermined capped amount of overtime allowed by Defendants
21 despite Defendants knowledge that Contract Recruiters were in fact working more than the
22 capped amount of overtime.

23 5. In this action, Plaintiff seeks to recover damages on behalf of himself and
24 similarly Class Members who have all been jointly employed by Defendants Facebook, Pro
25 Unlimited, and Does 1 through 100, for violations of the California wage and hour law, Labor
26 Code, IWC, and UCL. Plaintiff seeks unpaid overtime compensation (and interest thereon),
27 waiting time penalties, penalties and relief for failure to provide itemized statements of total
28 hours worked, and reasonable attorneys’ fees and costs, on behalf of himself and the proposed

1 Class. Because Defendants have willfully deprived Plaintiff and Class Members of their rights
2 and protections guaranteed by California law to all employees, as described herein, Defendants'
3 classification of Contract Recruiters as "independent contractors" and the attendant deprivation
4 of substantial rights and benefits of employment, including failure to pay minimum wage and
5 failure to pay wages for all overtime hours worked, is part of an on-going unfair and/or unlawful
6 business practice by Defendants. Plaintiff therefore also seeks declaratory and injunctive relief
7 based on Defendants' conduct of engaging in unfair and unlawful business practices prohibited
8 by California Business and Professions Code §17200 *et. seq.*

9 6. The "Class Period" is designated as four (4) years prior to the time of filing of the
10 original complaint, **July 18, 2016**, through the entry of judgment, based on the allegation that the
11 violations of California's wage and hour laws, as described herein, as have been ongoing for at
12 least the four (4) years prior to the filing of the original Complaint.

13 JURISDICTION AND VENUE

14 7. Defendant Facebook's principal place of business and corporate headquarters are
15 in Menlo Park, California in San Mateo County California, and regularly does business in
16 California and has employed and does employ numerous individuals within the State of
17 California, and within this County.

18 8. Defendant Pro Unlimited's principal place of business and corporate headquarters
19 are in Burlingame, California in San Mateo County California, and regularly does business in
20 California and has employed and does employ numerous individuals within the State of
21 California, and within this County.

22 9. Defendants have obtained the benefits of the laws of the State of California and
23 the California labor market.

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

26 11. This Court has jurisdiction over Plaintiff's and Class Members' claims: for failure
27 to pay overtime wages under Labor Code §§ 510, 1194; for failure to pay minimum wage under
28 Labor Code § 1182.12; for penalties for failure to provide accurate itemized statements of hours

1 worked and all applicable hourly rates under Labor Code § 226; for penalties for failure to pay
2 wages of discharged employees under Labor Code §§ 201, 202, and 203; and for injunctive relief
3 and restitution for Defendants' unlawful business practices under Business & Professions Code §
4 17203.

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

12 13. California Labor Code §§ 2699 *et seq.*, the "Labor Code Private Attorneys
13 Generals Act" ("PAGA"), authorizes aggrieved employees to sue directly for various civil
14 penalties under the California Labor Code.

15 14. On **July 18, 2016** Plaintiff provided written notice ("PAGA Notice") and a draft
16 copy of this First Amended Complaint by certified mail to the California Labor and Workforce
17 Development Agency ("LWDA") and to Defendant Facebook and Pro Unlimited of the specific
18 provisions of the California Labor Code alleged to have been violated, including the facts and
19 theories to support the alleged violations, pursuant to California Labor Code §2699.3. A true and
20 correct copy of the PAGA Notice showing compliance with Labor Code §2699.3 is attached
21 hereto as **Exhibit A**. No notice of cure by Defendants was provided and the LWDA has not
22 provided Plaintiff with notice that it intends to investigate this violation, although more than 65
23 days elapsed since the postmark date of Plaintiff's notice.

24 THE PARTIES

25 15. **Plaintiff Matthew Sena ("Plaintiff" or "Sena"):** Sena is a 26 year-old Latino
26 male. He was raised by his grandparents and began working at the early age of 13 to help
27 support his family. Sena graduated from High School in 2008. He does not have a college
28 degree. He had been working in the recruiting field for several years before going to work for

1 Defendants. During Sena’s employment with Defendants he was a resident of San Jose,
2 California in Santa Clara County. Plaintiff is currently a resident of Seattle, Washington. Sena
3 was hired by Defendants on January 11, 2016 as a “Contract Recruiter” for Facebook’s
4 marketing and analytics team and remained employed by Defendants at Facebook’s campus until
5 March 8, 2016. The specific job title Defendants provided to Sena was “Technical Sourcer” and
6 his duties involved recruiting and talent acquisition for Facebook. Sena was labeled by
7 Defendants as a full-time, non-exempt hourly employee by Defendants. At all relevant times
8 herein Plaintiff was under the supervision and control of both Facebook and Pro Unlimited.

9 16. **Defendant Facebook, Inc. (“Facebook”):** Facebook is a Delaware Corporation
10 whose headquarters and principal place of business is 1601 Willow Road, Menlo Park, CA
11 94025. Facebook owns and operates the largest online social networking website in the world
12 that allows its one billion plus users to communicate with each other through the sharing of text,
13 on-line chats, photographs, and video. Facebook’s revenues almost entirely derive from the sale
14 of third party advertisements, which the company is able to target towards its users based upon
15 personal data in mines and stores. On information and belief, Plaintiff alleges that the practices
16 and policies that are complained of in this Complaint have been occurring throughout the Class
17 Period and are currently applied by Facebook throughout California. Facebook is, and at all
18 relevant times has been, an employer subject to the California Labor Code.

19 17. **Defendant Pro Unlimited, Inc. (“Pro Unlimited”):** Pro Unlimited is a New
20 York Corporation whose headquarters and principal place of business is 1350 Old Bayshore
21 Highway, Suite 350, Burlingame, CA 94010. Pro Unlimited is a staffing agency that supplies
22 technology companies with “contingent” workers - temporary, independent contractors, and
23 consultants. Pro Unlimited keeps a permanent or semi-permanent physical office and presence
24 at Facebook’s campus in Menlo Park, CA. Further, the majority of Pro Unlimited senior
25 management team (7 out of 9 members of the management staff), its COO, Senior Vice VP of
26 Strategic Planning, Senior VP of Product Development, Senior VP of Operations, and VP
27 Implementation are physically located in the San Francisco or Sacramento, CA areas. On
28 information and belief, Plaintiff alleges that the practices and policies that are complained of in

1 this Complaint have been occurring throughout the Class Period and are currently applied by Pro
2 Unlimited throughout California. Pro Unlimited is, and at all relevant times has been, an
3 employer subject to the California Labor Code.

4 FICTIOUS DEFENDANTS

5 18. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their
6 true names and capacities are unknown to Plaintiff at this time. When their true names and
7 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and
8 capacities. Plaintiff is informed and believes, and thereon alleges that each of the fictitiously-
9 named Defendants is responsible in some manner for the occurrences alleged herein and that
10 Plaintiff's and the proposed Class Member's damages and penalties alleged herein were
11 proximately caused by such Defendants.

12 AGENCY

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

19 CLASS ACTION ALLEGATIONS

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

22
23 **All persons who worked for Defendants in California as**
24 **temporary or contract talent acquisition "Sourcers",**
25 **"Recruiters" and "Recruiting Coordinators" (or similarly**
26 **nomenclatured positions performing substantially identical**
27 **functions and/or duties) at Facebook during the period**
28 **beginning July 18, 2012, until the entry of judgment.**

21. Plaintiff believes this includes, but is not limited to Defendants' employees
working as "Technical Sourcers", "Technical Recruiters", "Technical Recruiting Coordinators",

1 “Non-Technical Sourcers”, “Non-Technical Recruiters”, Non-Technical Recruiting
2 Coordinators”, “Campus Sourcers”, “Campus Recruiters”, “Campus Recruit Coordinators”, and
3 other titled positions whose main function and duties were to provide recruiting and talent
4 acquisition services for Facebook’s various departments/teams. Plaintiff reserves the right under
5 Rule 3.765(b), California Rules of Court, to amend or modify the class description with greater
6 specificity or further division into a subclasses or limitations to particular issues.

7 22. Plaintiff is a member of the proposed Class referred herein to as “Contract
8 Recruiters”.

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

11 24. The Plaintiff and Class assert that Defendants’ wrongful acts against Plaintiff and
12 the Class include:

- 13 a. failure to pay all overtime compensation due;
- 14 b. failure to pay wages for all hours worked;
- 15 c. failure to pay minimum wages;
- 16 d. failure to record, maintain, and timely furnish employees with wage statements
17 and payroll records accurately showing their total hours worked; and
- 18 e. failure to pay all wages earned upon separation.

19 25. Upon information and belief, the above violations are the result of centralized
20 policies and practices created by Defendants, including Facebook’s human resources and payroll
21 departments, and implemented with the assistance of staffing agencies, including Pro Unlimited.

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

1 27. **Numerosity:** A class action is the only available method for the fair and efficient
2 adjudication of this controversy. Although the exact number and identities of Class Members are
3 unknown to Plaintiff at this time and can only be ascertained through appropriate discovery,
4 Plaintiff is informed and believes that the Class includes at least 100 persons. On information
5 and belief, therefore, Plaintiff alleges that the members of the Class are so numerous that joinder
6 of all members is impractical, if not impossible. Membership in the Class will be determined
7 upon analysis of, *inter alia*, employee and payroll records maintained by Defendants.

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

- 11 a. Whether Contract Recruiters served Defendants as employees rather than
12 independent contractors under California law;
- 13 b. Whether Defendants intentionally misclassified Class Members as
14 “independent contractors” in violation of Labor Codes §§ 226.8 and 2753;
- 15 c. Whether Defendants jointly employed Contract Recruiters;
- 16 d. Whether Defendants failed to pay Contract Recruiters,
 - 17 i. Minimum Wage for all hours worked, in violation of Labor Code §§
18 1194 and 1197;
 - 19 ii. Overtime Compensation for all hours worked in excess of eight (8)
20 hours a day or forty (40) hours in a workweek, in violation of Labor
21 Code §510;
- 22 e. Whether Defendants violated Labor Code §§226 and 1174 by failing to keep
23 accurate records of Contract Recruiters’ hours of work;
- 24 f. Whether Defendants violated Labor Code §§226 and 1174 by failing to provide
25 semi-monthly itemized statements to Contract Recruiter employees of the total
26 hours worked by each employee and all applicable hourly rates in effect during
27 the pay period;

- 1 g. Whether Defendants violated Labor Code §§201, 202, 203 by failing to pay all
2 wages due and owing at the time that certain Contract Recruiters' employment
3 with Defendants terminated;
- 4 h. Whether former Contract Recruiter employees are entitled to "waiting time"
5 penalties pursuant to Labor Code §203;
- 6 i. Whether Defendant Facebook's uniform right of control over Contract
7 Recruiters constitutes Contract Recruiters to be Facebook's employees;
- 8 j. Whether Defendants had policies and practices forbidding or discouraging the
9 reporting and claiming of overtime;
- 10 k. Whether Defendants knowingly and willfully violated the above wage and hour
11 laws; and
- 12 l. Whether Defendants violated Business and Professions Code § 17200, et seq.,
13 by virtue of its violations of the Labor Code cited herein including but not
14 limited to failing to pay minimum wages for all hours worked and all overtime
15 hour worked by Contract Recruiters in excess of eight (8) hours per day and/or
16 forty (40) hours a week;

17 29. **Typicality:** Plaintiff has suffered the same violations and similar injuries as other
18 Class Members arising out of and caused by Defendants' common course of conduct in violation
19 of law as alleged herein;

20 30. **Adequacy of representation:** Plaintiff is a member of the Class and will fairly
21 and adequately represent and protect the interests of all Class Members. Plaintiff is committed to
22 prosecution of this matter. Plaintiff is represented by counsel who are competent and
23 experienced in litigating wage and hour and other employment class actions.

24 31. **Superiority of a class action:** A class action is superior to other available means
25 for the fair and efficient adjudication of this controversy. Class action treatment will permit a
26 large number of similarly situated persons to prosecute their common claims in a single forum
27 simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that
28 numerous individual actions engender. Because the losses, injuries, and damages suffered by

1 each of the individual Class Members are relatively small, the expenses and burden of individual
2 litigation would make it extremely difficult, if not impossible, for the individual Class Members
3 to redress the wrongs done to them. Additionally, important public interests will be served by
4 addressing the matter as a class action. The adjudication of individual litigation claims as a class
5 action will result in a significant saving of these costs. The prosecution of separate actions by
6 individual members of the Class would create a risk of inconsistent and/or varying adjudications
7 with respect to the individual members of the Class, establishing incompatible standards of
8 conduct for Defendants resulting in the impairment of Class Members' rights and the disposition
9 of their interests through actions to which they were not parties. The issues in this class action
10 can be decided by means of common, class-wide proof. In addition, to Court can, and is
11 empowered to, fashion methods to efficiently manage this action as a class action.

12 FACTUAL ALLEGATIONS

13 32. Plaintiff is informed and believes and based thereon allege the following:

14 33. During the Class Period Facebook worked with staffing agencies, including Pro
15 Unlimited, to engage and employ Contract Recruiters as "independent contractors" to work
16 exclusively for Facebook. Contract Recruiters worked as part of Facebook's "Talent Acquisition
17 team" to find and develop relationships with candidates, guide candidates through the hiring
18 process, drive the interview and offer process, close the deal with candidates, and overall fulfill
19 the staffing needs of Facebook. Pro Unlimited's operations, as related to Facebook, are housed
20 on Facebook's property in one of its buildings on the Facebook Campus and Pro Unlimited keeps
21 a quasi-permanent presence on Facebook's property.

22 34. During the Class Period Pro Unlimited was a Staffing Agency funneling Contract
23 Recruiters to Facebook, and other clients. During the Class Period Pro Unlimited was an
24 employer of Plaintiff and other Class Members whom Pro Unlimited recruited to work for
25 Facebook as Contract Recruiters for the benefit of Pro Unlimited. Pro Unlimited conducted
26 screening of candidates for Facebook and processed payroll for the Contract Recruiters whom
27 they funneled to perform work for Facebook. Pro Unlimited did not hire a Contract Recruiter to
28 work at Facebook unless Facebook agreed to hire the particular person.

1 35. During the Class Period Facebook was also an employer of Plaintiff and other
2 Class Members who were recruited by Pro Unlimited to work for Facebook as Contract
3 Recruiters for the benefit of Facebook. Facebook exercised control over the wages, hours,
4 and/or working conditions of the Plaintiff and Class Members. Facebook directly interviewed
5 candidates, including Plaintiff, as if they were directly recruiting them and hiring them.

6 36. Defendants labeled Contract Recruiters as non-exempt and paid by the hour as
7 “independent contractors” at rates that are unilaterally determined by Defendants including
8 Facebook. The Contract Recruiters do not negotiate any aspect of their compensation terms and
9 Defendants reserve the right to change the compensation terms at any time. The Contract
10 Recruiters work and wages are directly controlled by Defendant Facebook. The Contract
11 Recruiters received their work computers, phones, and tools directly from Facebook.

12 37. During the Class Period the Defendants have intentionally misclassified Plaintiff
13 and the Class Members as “independent contractors” and for years unlawfully failed to
14 adequately compensate Plaintiff and the Class Members for all hours worked by failing to pay
15 minimum wage for all hours, and failing to pay for all hours worked, including overtime hours at
16 a premium rate.

17 38. Plaintiff and Contract Recruiters worked alongside permanent full time Facebook
18 employees who did the same work. Contract Recruiters were directly supervised by Facebook
19 managers within the regular Facebook hierarchy and had to follow Facebook’s policies and
20 procedures. All the terms and conditions of day-to-day work of Contract Recruiters were set by
21 Facebook. Facebook provided the office space, computers, phones, and other equipment for
22 Contract Recruiters to do their jobs for Facebook. Facebook established, controlled, and
23 communicated to Plaintiff and the other Contract Recruiters the policies regarding hour and
24 wages that are at issue in this action. For example, overtime payments are determined by
25 Facebook policy even though paychecks are paid through Pro Unlimited.

26 39. Through Pro Unlimited, Plaintiff received a one-year contract assignment to work
27 for Facebook as a Contract Recruiter and reported to a Facebook manager. The contract
28 assignment was at-will and Plaintiff was subject to termination by either Pro Unlimited or

1 Facebook. At the same time, Pro Unlimited informed Plaintiff of the opportunity for extensions
2 of his assignment at Facebook or conversion to Facebook's payroll and permanent employment.
3 Plaintiff is informed and believes and thereon alleges that Class Members work for Facebook on
4 substantially similar terms including lengthy assignments of one-year or more.

5 40. Pro Unlimited acted as Facebook's agent in setting the terms and conditions of
6 employment for Contract Recruiters at and for Facebook. Plaintiff and Contract Recruiters'
7 compensation terms and conditions were set by Facebook, and the concept of Contract Recruiters
8 being "independent contractors" is an intentional ruse by Defendants to avoid reporting to federal
9 and state authorities the wages earned by their employees and, therefore, underpaying state and
10 federal taxes, employer matching funds, unemployment premiums, Social Security, Medicare,
11 and Workers' Compensation premiums. Defendants applied the same policies and practices
12 alleged herein to all Class Members, regardless of the staffing agency involved in the
13 employment relationship.

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

21 42. Plaintiff Sena was hired by Defendants as a recruiter for Facebook's marketing
22 and analytics team. The hiring process involved a phone interview by a Pro Unlimited
23 representative, Jackie Miller, a second interview by a manager at Facebook, and a third and final
24 interview via a panel comprised of Facebook personnel, including managers Nikki Samaonte,
25 Jillian Harvey, and Joseph Rodriguez. After successfully completing the interview process Sena
26 was hired and attended an orientation at Facebook's headquarters with materials prepared by
27 Facebook. At orientation, a Facebook employee came around with a cart carrying computer and
28 other equipment to assign to the new Contract Recruiters. The Contract Recruiters were given

1 Facebook laptops and mobile phones and related equipment. The equipment was labeled
2 “Property of Facebook.” Sena, along with the other new Contract Recruiters, were given
3 Facebook ID badges. The badges are used to get into the campus, buildings on the campus, and
4 to obtain supplies from Facebook vending machines on campus.

5 43. After orientation, Sena met with his new Facebook Manager, Nikki Samaonte.
6 She showed Sena around and he met the Facebook Recruiting Analytics team that he would be
7 working with. The next day Sena began Facebook’s “Talent Camp,” a weeklong course during
8 which Facebook employees made presentations about the company and during which new
9 recruits, including Contract Recruiters, were trained regarding Facebook’s different tools and
10 teams. Each day’s class was about 6 hours long. During this period, Sena was trained on all
11 aspects of his role at Facebook, including the teams he would be working with, what the team
12 members roles were, the work they were aimed at accomplishing, and his role in helping them
13 achieve their goals. His role would be to recruit appropriate personnel whose skills and
14 background matched the goals of the teams. He was also trained on the Facebook database and
15 management systems he would use to keep track of potential candidates and to record metrics.
16 Before and after each class Sena sat at his desk to review the materials he was given by
17 Facebook.

18 44. Sena reported to Facebook manager Nikki Samaonte on a daily basis. During his
19 early period of his employment, he had a tight-knit working relationship with Samaonte, which
20 was designed to get him up to speed on the profiles he was working on and the teams he would
21 be supporting and recruiting for. During his entire employment Sena continued to provide daily
22 reports to Samaonte, giving her updates on his progress with various potential candidates for the
23 various teams he was recruiting for. Samaonte guided him on what to look for and how to handle
24 potential candidates, especially when the candidates did not neatly fit into the parameters that
25 were specified by the teams. For example, if a candidate only had six years of experience in a
26 particular skill but the team was looking for seven years, Samaonte coached Sena on how to
27 approach the teams to see if they would consider the potential candidate.

28

1 45. Sena checked with Samaonte on all aspects of his job to make sure he was on the
2 right track with regards to a candidate vis-à-vis a particular team he was recruiting for, and
3 Samaonte provided input and made decisions on how to proceed. Sena was also required to be
4 on campus for the various meetings that were scheduled during the week, including with the
5 teams he worked with, with Nikki Samaonte, and with Jillian Harvey. Facebook’s recruiting
6 department was comprised of outside “contract” workers and workers on Facebook’s payroll.
7 Recruiting was a regular part of Facebook’s business.

8 46. Sena, like other Contract Recruiters, were expected to meet certain goals and work
9 long hours. Sena typically worked fifty (50) plus hours a week. Sena communicated with other
10 Contract Recruiters at Facebook, including those who had come from Defendant Pro Unlimited,
11 who indicated they worked similar hours. Sena would also see these other Contract Recruiters at
12 the Facebook campus at the same hours early and late hours as himself. Sena’s manager,
13 Samaonte, was also aware of the number of hours Sena and other Contract Recruiters were
14 working as she was physically at Facebook for similar type hours in the same physical location.

15 47. During his employment Sena asked Samaonte whether he was allowed to report
16 the overtime hours that he and other Contract Recruiters were working in order to satisfy the job
17 requirements of Facebook. Samaonte indicated that Facebook only allowed Contract Recruiters
18 to report up to five (5) hours of overtime per week despite the fact that Sena and other Contract
19 Recruiters typically worked ten (10) plus hours of overtime per week. He was told that even
20 though he worked those hours he was to not report them.

21 48. At all times herein set forth, PAGA was applicable to the Plaintiff’s employment
22 by Defendants. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
23 employee,” who is any person that was employed by the alleged violator and against whom one
24 or more of the alleged violations was committed.

25 49. Plaintiff was employed by Defendants and the Labor Code violations alleged
26 herein were committed against him and other employees during their time of employment, and
27 they are therefore aggrieved employees. Plaintiff and other Class Members are “aggrieved
28 employees” as defined by California Labor Code §26999(c) in that they are all current or former

1 employees of Defendants, and one or more of the Labor Code violations alleged herein were
2 committed against them.

3 50. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
4 may pursue a civil action arising under PAGA after the following requirements have been met:

5 51. The aggrieved employees shall give written notice by certified mail (hereinafter
6 "PAGA Notice") to the California Labor and Workforce Development Agency ("LWDA") and
7 the employer(s) of the specific provisions of the California Labor Code alleged to have been
8 violated, including the facts and theories to support the alleged violations.

9 52. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer
10 and the aggrieved employee by certified mail that it does not intend to investigate the alleged
11 violation within sixty (60) calendar days of the postmark date of the PAGA Notice. Upon receipt
12 of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days
13 of the postmark date of the employees' PAGA Notice, the aggrieved employee may commence a
14 civil action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any
15 other penalties to which the employee may be entitled.

16 53. On July 18, 2016 Plaintiff provided a written PAGA Notice and draft copy of this
17 First Amended Complaint by certified mail to the LWDA and to the employer Defendants
18 Facebook and Pro Unlimited, of the specific provisions of the California Labor Code alleged to
19 have been violated, including the facts and theories to support the alleged violations, pursuant to
20 California Labor Code §2699.3.

21 54. Therefore, Plaintiff has complied with the PAGA written notice requirements set
22 forth in California Labor Code §2699.3(a). No notice of cure by Defendants was provided and
23 the LWDA has not provided Plaintiff with any LWDA Notice that it intends to investigate this
24 violation, although more than 65 days have elapsed since the postmark date of the Employee's
25 Notice. Therefore, as of September 22, 2016, the administrative prerequisites under California
26 Labor Code §2699.3(a) were satisfied for filing this First Amended Complaint with an additional
27 "representative" cause of action for PAGA violations, as provided by California Code of Civil
28 Procedures and recovery of civil penalties.

1 CAUSES OF ACTION

2
3 **FIRST CAUSE OF ACTION**
4 **FAILURE TO PAY OVERTIME WAGES**
5 **California Labor code §§ 510, 1194**
6 **(Against All Defendants and Does 1-100)**

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

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

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

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

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

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

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

29 Labor Code § 1198: “The maximum hours of work and the standard conditions of labor
30 fixed by the commission shall be the maximum hours of work and the standard conditions of

1 labor for employees. The employment of any employee for longer hours than those fixed by
2 the order or under conditions of labor prohibited by the order is unlawful.”

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

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

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

19
20 **SECOND CAUSE OF ACTION**
21 **FAILURE TO PAY MINIMUM WAGE**
22 **California Labor Code §§ 1182.11, 1182.12, 1194, 1197, 1197.1**
IWC Wage Order No. 4; and Minimum Wage Order
(Against All Defendants and Does 1-100)

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

26 63. Labor Code §§ 1194, 1197 and 1197.1 (and IWC Wage Orders 5-2000 and 5-
27 2001, establish and protect the right of employees in California to receive minimum wages for
28 their work, in amounts set by California law. During the applicable statutory period, California

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

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

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

16 66. Plaintiff and Class Members regularly worked each day for hours they were not
17 compensated for. However, the Defendants rejected any hours submitted by Plaintiff and Class
18 Members beyond a certain predetermined and capped number of overtime hours, citing company
19 policy, which capped overtime hours per week. Defendants instructed Plaintiff and Class
20 Members who regularly worked such overtime hours to intentionally under-report the actual
21 number of hours worked.

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

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

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

16 86. Plaintiff reserves the right to identify additional unfair and unlawful practices by
17 Defendants as further investigation and discovery warrant.

18 87. Furthermore, Defendants have under-reported to federal and state authorities the
19 wages earned by their employees and, therefore, have underpaid state and federal taxes, employer
20 matching funds, unemployment premiums, Social Security, Medicare, and Workers'
21 Compensation premiums.

22 88. Defendants' conduct as alleged herein has damaged Plaintiff and the Class
23 Members by wrongfully denying them earned overtime wages, failing to pay them all wages due
24 upon termination of employment, and failing to provide itemized wage statements. Such conduct
25 was substantially injurious to Plaintiff and the Class.

26 89. Under the circumstances alleged herein, it would be inequitable and result in a
27 miscarriage of justice for Defendants to continue to retain the property of Plaintiff and the Class
28

1 Members, entitling Plaintiff and the Class Members to restitution of the unfair benefits obtained
2 and disgorgement of Defendants' ill-gotten gains.

3 90. As a result of Defendants' unlawful and unfair business practices, Plaintiff and
4 Class Members are entitled to, and hereby do, seek restitution and disgorgement and other
5 appropriate injunctive and other relief available under California Business and Professions Code
6 §§ 17200, et seq.

7
8 **SIXTH CAUSE OF ACTION**
9 **PRIVATE ATTORNEY GENERAL ACT**
10 **California Labor Code §§ 2698, et. seq.**
11 **(Against Defendants and Does 1-100)**

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

15 92. California Labor Code §§ 2698, et seq. ("PAGA") permits Plaintiff to recover civil
16 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code § 2699.5.

17 93. PAGA provides as follows, "[n]otwithstanding any other provision of law, a
18 plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
19 under this part at any time within 60 days of the time periods specified in this part."

20 94. Defendants' conduct, as alleged herein, violates numerous sections of the
21 California Labor Code, including, but not limited to, the following: (a) Violation of Labor Code
22 §§ 510 and 1194 for Defendants' failure to pay overtime wages as herein alleged; (b) Violation of
23 Labor Code §§ 1182.12, 1194, et seq., and 1197, et seq. for Defendants' failure to pay minimum
24 wage for all hours worked; (c) Violation of Labor Code § 226(a) for failure to provide accurate
25 wage statements as herein alleged; (d) Violation of Labor Code §§ 201, 202, and 203 for failure
26 to timely pay all earned wages upon discharge as herein alleged;

27 95. California Labor Code § 1198 makes it illegal to employ an employee under
28 conditions of labor that are prohibited by the applicable wage order. California Labor Code §
1198 requires that, " ... the standard conditions of labor fixed by the commission shall be the ...

1 standard conditions of labor for employees. The employment of any employee ... under
2 conditions of labor prohibited by the order is unlawful."

3 96. California Labor Code § 204 requires that all wages earned by any person in any
4 employment between the 1st and the 15th days, inclusive, of any calendar month, other than
5 those wages due upon termination of an employee, are due and payable between the 16th and the
6 26th day of the month during which the labor was performed, and that all wages earned by any
7 person in any employment between the 16th and the last day, inclusive, of any calendar month,
8 other than those wages due upon termination of an employee, are due and payable between the
9 1st and the 10th day of the following month. California Labor Code § 204 also requires that all
10 wages earned for labor in excess of the normal work period shall be paid no later than the payday
11 for the next regular payroll period. During the relevant time period, Defendants failed to pay
12 Plaintiff and other aggrieved employees all wages due to them, including, but not limited to,
13 overtime wages, within any time period specified by California Labor Code § 204.

14 97. Defendants, at all times relevant to this complaint, were employers or persons
15 acting on behalf of an employer(s) who violated Plaintiff and other aggrieved employees' rights
16 by violating various sections of the California Labor Code as set forth above.

17 98. As set forth above, Defendants have violated numerous provisions of both the
18 Labor Code sections regulating hours and days of work as well as the applicable order of the
19 Industrial Welfare commission. Accordingly, Plaintiff seek the remedies set forth in Labor Code
20 § 558 for themselves, the State of California, and all other aggrieved employees.

21 99. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3,
22 2699.5 and 558, Plaintiff, acting in the public interest as a private attorney general, seek
23 assessment and collection of unpaid wages and civil penalties for Plaintiff, Class Members, and
24 all aggrieved employees, and the State of California against Defendants, in addition to other
25 remedies, plus reasonable attorneys' fees and costs, for violations of California Labor Code §§
26 201, 202, 203, 204, 206, 210, 218.5, 226(a), 226.3, 226.7, 510, 512, 1174, 1182.12, 1194, 1197,
27 1198, 1199, and 2802.

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PRAYER FOR RELIEF

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

A. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;

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

C. That counsel for Plaintiff be appointed as Class Counsel;

D. That the Court find that Defendants have been in violation of applicable provisions of the California Labor Code by failing to pay each member of the proposed Class for all hours worked, including minimum wage and overtime wages;

E. That the Court find that Defendants have violated the recordkeeping provisions of California Labor Code §§ 226, 1174 and 1174.5 as to Plaintiff and the Class;

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

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

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

I. That the Court find that Defendants’ violations of the California Labor Code described herein have been willful;

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

4 K. That Defendants be ordered and enjoined to pay restitution and penalties to
5 Plaintiff and Class Members due to Defendants' unlawful and/or unfair activities, pursuant to
6 Business and Professions Code §§ 17200-17205;

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

9 M. That Plaintiff and the Class be awarded reasonable attorneys' fees, costs, interest,
10 penalties and liquidated damages pursuant to Labor Code §§ 200, 201, 202, 203, 204, 218.5,
11 218.6, 225.5, 226, 226 (a), 226.8, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1,
12 2699, et seq.; Code of Civil Procedure § 1021.5; and/or other applicable law;

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

14 O. Actual and/or liquidated damages pursuant to Labor Code §226(e);

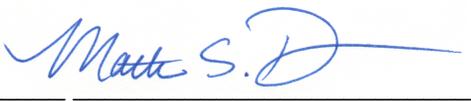
15 P. Any and all other applicable statutory penalties, as provided by California law;

16 Q. For penalties as provided, per violation, under the Private Attorneys General Act
17 (PAGA) Labor Code § 2699, et seq., and as provided by Labor Code § 558, and distributed in
18 accordance with the Act.

19 R. That the Court award any other relief this Court deems just, equitable, and proper;
20

21 **DATED: September 26, 2016**

DA VEGA | FISHER | MECHTENBERG LLP

22
23 By: 
24 Matthew S. Da Vega
25 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: September 26, 2016

DA VEGA | FISHER | MECHTENBERG LLP

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