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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

15 ERIC BENEDICT, RICHARD
 16 BOWDERS, and KILRICANOS VIEIRA,
 on behalf of themselves and classes of
 17 those similarly situated,

18 Plaintiffs,

19 v.

20 HEWLETT-PACKARD COMPANY,

21 Defendant.

Case No. C 13-0113 LHK

**FIRST AMENDED COMPLAINT FOR
 VIOLATIONS OF THE FAIR LABOR
 STANDARDS ACT AND STATE WAGE
 AND HOUR LAWS**

COLLECTIVE ACTION

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiffs Eric Benedict, Richard Bowders, and Kilricanos Vieira (“Plaintiffs”)
2 allege, on behalf of themselves and classes of those similarly situated, as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has federal question jurisdiction over this action pursuant to
5 28 U.S.C. § 1331 and section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C.
6 § 216(b).

7 2. This Court also has original jurisdiction over this action under the Class
8 Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1) there are
9 100 or more members in the proposed class; (2) at least some members of the proposed class have
10 a different citizenship from Defendant; and (3) the claims of the proposed class members exceed
11 \$5,000,000 in the aggregate.

12 3. In addition, this Court has supplemental jurisdiction under 28 U.S.C. §
13 1367 over Plaintiffs’ state law wage and hour claims because those claims derive from a common
14 nucleus of operative fact.

15 4. This Court is empowered to issue a declaratory judgment pursuant to
16 28 U.S.C. §§ 2201 and 2202.

17 5. The United States District Court for the Northern District of California has
18 personal jurisdiction over Hewlett-Packard Company (“Defendant” or “HP”), because HP
19 maintains offices in this District, does business in California and in this District, and because
20 many of the acts complained of and giving rise to the claims alleged occurred in California and in
21 this District.

22 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a
23 substantial part of the events giving rise to the claims occurred in this District.

24 7. Intradistrict assignment: Pursuant to N.D. Cal. Local Rule 3-2(c) and (e),
25 intradistrict assignment to the San Jose Division is proper because a substantial part of the events
26 that give rise to the claims asserted occurred in Santa Clara County.

SUMMARY OF CLAIMS

1
2 8. Plaintiffs were employed as technical support workers. Technical support
3 workers at HP have the primary duties of installing, maintaining, and/or supporting computer
4 software and/or hardware for HP. They were and/or are misclassified by HP as exempt from the
5 overtime provisions of the FLSA and/or state wage and hour laws, as described below.

6 9. Plaintiffs bring this action on behalf of themselves and all persons who
7 were, are, or will be employed by HP nationwide as technical support workers with the primary
8 duties of installing, maintaining, and/or supporting computer software and/or hardware for HP,
9 including but not limited to Technical Solutions Consultants, Field Technical Support
10 Consultants, Technical Consultants, and Technology Consultants (collectively, the “Class
11 Positions”), at any time within the three years prior to the filing of the initial Complaint through
12 the date of the final disposition of this action (the “Nationwide FLSA Period”), and who were,
13 are, or will be classified by HP as exempt from overtime pay under federal law. This group is
14 hereinafter referred to as the “Nationwide FLSA Plaintiffs.”

15 10. Plaintiff Eric Benedict (the “California Named Plaintiff”) also brings this
16 action on behalf of all persons who were, are, or will be employed by HP in California in the
17 Class Positions (hereinafter “the California Class”), at any time within the four years prior to the
18 date of the filing of the initial Complaint through the date of the final disposition of this action
19 (the “California Class Period”), and who were, are, or will be improperly classified as exempt
20 from overtime pay under California law.

21 11. Plaintiff Richard Bowders (the “Maryland Named Plaintiff”) also brings
22 this action on behalf of all persons who were, are, or will be employed by HP in Maryland in the
23 Class Positions (hereinafter “the Maryland Class”), at any time within the three years prior to the
24 date of the filing of the initial Complaint through the date of the final disposition of this action
25 (the “Maryland Class Period”), and who were, are, or will be improperly classified as exempt
26 from overtime pay under Maryland law.

27 12. Plaintiff Kilricanos Vieira (the “Massachusetts Named Plaintiff”) also
28 brings this action on behalf of all persons who were, are, or will be employed by HP in

1 Massachusetts in the Class Positions (hereinafter “the Massachusetts Class”), at any time within
2 the three years prior to the date of the filing of the initial Complaint through the date of the final
3 disposition of this action (the “Massachusetts Class Period”), and who were, are, or will be
4 improperly classified as exempt from overtime pay under Massachusetts law.

5 13. HP has unlawfully classified Plaintiffs, Nationwide FLSA Plaintiffs, and
6 members of the State Law Classes as exempt from overtime payments under federal and state
7 law, despite the fact that they should have been classified as nonexempt. Plaintiffs, Nationwide
8 FLSA Plaintiffs, and State Law Class Members worked overtime hours, as defined by the
9 applicable federal and state laws, and are and have been entitled to premium compensation at the
10 appropriate rate (“overtime compensation”) for all overtime hours worked.

11 14. HP has willfully refused to pay Plaintiff, Nationwide FLSA Plaintiffs, and
12 members of the State Law Classes the required overtime compensation for overtime hours
13 worked, and has failed to keep time records as required by law.

14 15. HP’s practices violate the FLSA and state laws pled herein. Plaintiffs seek
15 declaratory and injunctive relief, overtime compensation for all overtime work required, suffered,
16 or permitted by HP, liquidated and/or other damages and penalties as permitted by applicable law,
17 interest, and attorneys’ fees and costs.

18 **THE PARTIES**

19 16. Plaintiff Eric Benedict was employed by HP in Cupertino, California from
20 approximately April 2011 to February 2012 as a member of HP’s technical support staff.
21 Mr. Benedict had the primary duties of installing, maintaining, and supporting computer software
22 and/or hardware. He worked for HP in a Class Position during the FLSA Class Period and the
23 California Class Period. Mr. Benedict worked hours in excess of forty hours per week and in
24 excess of eight hours per day, without receiving overtime compensation as required by both
25 federal and California law.

26 17. Plaintiff Richard Bowders has been employed by HP in Annapolis,
27 Maryland from approximately May 2008 through the present as a member of HP’s technical
28 support staff. Mr. Bowders has the primary duties of installing, maintaining, and supporting

1 computer software and/or hardware. He has worked for HP in a Class Position during the FLSA
2 Class Period and the Maryland Class Period. Mr. Bowders has worked hours in excess of forty
3 hours per week, without receiving overtime compensation as required by both federal and
4 Maryland law.

5 18. Plaintiff Kilricanos Vieira was employed by HP in Marlborough,
6 Massachusetts from approximately April 2010 to July 2012 as a member of HP's technical
7 support staff. Mr. Vieira had the primary duties of installing, maintaining, and supporting
8 computer software and/or hardware. He worked for HP in a Class Position during the FLSA
9 Class Period and the Massachusetts Class Period. Mr. Vieira worked hours in excess of forty
10 hours per week, without receiving overtime compensation as required by both federal and
11 Massachusetts law.

12 19. Plaintiffs consent to sue for violations of the FLSA, pursuant to 29 U.S.C.
13 §§ 216(b) and 256.

14 20. Defendant HP is a corporation that provides information technology
15 products and services throughout the United States and the world, with its principal place of
16 business located in Palo Alto, California. The practices described herein were performed in and
17 emanated from the Cupertino, California office where HP employed Plaintiff.

18 **COLLECTIVE ACTION ALLEGATIONS**

19 21. Plaintiffs bring the First Claim for Relief for violation of the FLSA as a
20 collective action pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of the
21 Nationwide FLSA Plaintiffs.

22 22. Plaintiffs and Nationwide FLSA Plaintiffs are similarly situated in that they
23 have substantially similar job requirements and pay provisions, and are subject to HP's common
24 practice, policy, or plan of unlawfully characterizing Nationwide FLSA Plaintiffs as exempt
25 employees and refusing to pay them overtime in violation of the FLSA.

26 23. The First Claim for Relief for violations of the FLSA may be brought and
27 maintained as an "opt-in" collective action pursuant to section 16(b) of the FLSA, 29 U.S.C.
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1 § 216(b), since the claims of Plaintiffs are similar to the claims of the Nationwide FLSA
2 Plaintiffs.

3 24. The names and addresses of the Nationwide FLSA Plaintiffs are available
4 from HP's records. Notice should be provided to the Nationwide FLSA Plaintiffs via first class
5 mail, e-mail, and posting in the offices where they have worked as soon as possible.

6 **CALIFORNIA CLASS ACTION ALLEGATIONS**

7 25. The California Named Plaintiff brings the Second, Third, Fourth, Fifth,
8 Sixth, and Seventh Claims for Relief for violation of California's wage and hour and unfair
9 competition laws as a class action, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), on behalf of all
10 California Class Members, defined in paragraph 10.

11 26. Numerosity (Fed. R. Civ. P. 23(a)(1)) – The California Class is so
12 numerous that joinder of all members is impracticable. The California Named Plaintiff is
13 informed and believes, and on that basis alleges, that during the California Class Period, HP has
14 employed at least fifty persons who satisfy the definition of the California Class.

15 27. Commonality (Fed. R. Civ. P. 23(a)(2)) – Common questions of law and
16 fact exist as to members of the California Class, including, but not limited to, the following:

17 a. Whether HP unlawfully failed to pay overtime compensation in
18 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and
19 the California Labor Code and related regulations, Cal. Labor Code §§ 201, 202, 203, 204, 226,
20 510, 1174, 1174.5, and 1194, Cal. Wage Order No. 4-2001.

21 b. Whether the California Named Plaintiff and California Class
22 Members are nonexempt employees entitled to overtime compensation for overtime hours worked
23 under the overtime pay requirements of California law;

24 c. Whether HP's policy and practice of classifying the California
25 Class Members as exempt from overtime entitlement under California law and HP's policy and
26 practice of failing to pay overtime to California Class Members violate applicable provisions of
27 California law, including applicable statutory and regulatory authority;

28

1 d. Whether HP unlawfully failed to keep and furnish California Class
2 Members with records of hours worked, in violation of Labor Code §§ 226 and 1174;

3 e. Whether HP unlawfully failed to provide California Class Members
4 with meal and rest breaks, in violation of Labor Code §§ 226.7 and 512;

5 f. Whether HP's policy and practice of failing to pay its employees all
6 wages due within the time required by law after their employment ended violates California law;
7 and

8 g. The proper measure of damages sustained and the proper measure
9 of restitution recoverable by members of the California Class.

10 28. Typicality (Fed. R. Civ. P. 23(a)(3)) – The California Named Plaintiff's
11 claims are typical of California Class Members' claims. The California Named Plaintiff, like
12 other California Class Members, was subjected to HP's policy and practice of refusing to pay
13 overtime in violation of California law. The California Named Plaintiff's job duties were typical
14 of those of other California Class Members.

15 29. Adequacy (Fed. R. Civ. P. 23(a)(4)) – The California Named Plaintiff will
16 fairly and adequately represent and protect the interests of the California Class.

17 30. Adequacy of counsel (Fed. R. Civ. P. 23(g)) – The California Named
18 Plaintiff has retained counsel competent and experienced in complex class actions, the FLSA, and
19 state labor and employment litigation. The California Named Plaintiff's counsel have litigated
20 numerous class actions on behalf of technical support workers asserting overtime
21 misclassification claims under the FLSA and state law. The California Named Plaintiff's counsel
22 intend to commit the necessary resources to prosecute this action vigorously for the benefit of all
23 Class Members.

24 31. Predominance and superiority (Fed. R. Civ. P. 23(b)(3)) – Class
25 certification of the Second, Third, Fourth, Fifth, Sixth, and Seventh Claims for Relief is also
26 appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the
27 California Class predominate over any questions affecting only individual members of the
28 California Class, and because a class action is superior to other available methods for the fair and

1 efficient adjudication of this litigation. HP's common and uniform policies and practices
2 unlawfully treat California Class Members as exempt from overtime pay requirements. The
3 damages suffered by individual California Class Members are small compared to the expense and
4 burden of individual prosecution of this litigation. In addition, class certification is superior
5 because it will obviate the need for unduly duplicative litigation that might result in inconsistent
6 judgments about HP's practices.

7 32. Notice (Fed. R. Civ. P. 23(c)(2)(B)) – The California Named Plaintiff
8 intends to send notice to all California Class Members consistent with the requirements of Fed. R.
9 Civ. P. 23.

10 **MARYLAND CLASS ACTION ALLEGATIONS**

11 33. The Maryland Named Plaintiff brings the Eighth Claim for Relief for
12 violation of Maryland's wage and hour law as a class action, pursuant to Fed. R. Civ. P. 23(a),
13 (b)(2) and (b)(3), on behalf of all Maryland Class Members, defined in paragraph 11.

14 34. Numerosity (Fed. R. Civ. P. 23(a)(1)) – The Maryland Class is so
15 numerous that joinder of all members is impracticable. The Maryland Named Plaintiff is
16 informed and believes, and on that basis alleges, that during the Maryland Class Period, HP has
17 employed at least fifty persons who satisfy the definition of the Maryland Class.

18 35. Commonality (Fed. R. Civ. P. 23(a)(2)) – Common questions of law and
19 fact exist as to members of the Maryland Class, including, but not limited to, the following:

20 a. Whether HP unlawfully failed to pay overtime compensation in
21 violation of the Md. Code Ann. Labor & Employment §§ 3-415 & 3-420.

22 b. Whether the Maryland Named Plaintiff and Maryland Class
23 Members are nonexempt employees entitled to overtime compensation for overtime hours worked
24 under the overtime pay requirements of Maryland law;

25 c. Whether HP's policy and practice of classifying the Maryland Class
26 Members as exempt from overtime entitlement under Maryland law and HP's policy and practice
27 of failing to pay overtime to Maryland Class Members violate applicable provisions of Maryland
28 law, including applicable statutory and regulatory authority;

1 d. Whether HP unlawfully failed to keep records of hours worked by
2 Maryland Class Members, in violation of Md. Code Ann. Labor & Employment § 3-424;

3 e. Whether HP's policy and practice of failing to pay its employees all
4 wages due within the time required by law after their employment ended violates Maryland law;
5 and

6 f. The proper measure of damages sustained and the proper measure
7 of restitution recoverable by members of the Maryland Class.

8 36. Typicality (Fed. R. Civ. P. 23(a)(3)) – The Maryland Named Plaintiff's
9 claims are typical of Maryland Class Members' claims. The Maryland Named Plaintiff, like
10 other Maryland Class Members, was subjected to HP's policy and practice of refusing to pay
11 overtime in violation of Maryland law. The Maryland Named Plaintiff's job duties were typical
12 of those of other Maryland Class Members.

13 37. Adequacy (Fed. R. Civ. P. 23(a)(4)) – The Maryland Named Plaintiff will
14 fairly and adequately represent and protect the interests of the Maryland Class.

15 38. Adequacy of counsel (Fed. R. Civ. P. 23(g)) – The Maryland Named
16 Plaintiff has retained counsel competent and experienced in complex class actions, the FLSA, and
17 state labor and employment litigation. The Maryland Named Plaintiff's counsel have litigated
18 numerous class actions on behalf of technical support workers asserting overtime
19 misclassification claims under the FLSA and state law. The Maryland Named Plaintiff's counsel
20 intend to commit the necessary resources to prosecute this action vigorously for the benefit of all
21 Class Members.

22 39. Injunctive Relief (Fed. R. Civ. P. 23(b)(2)) – Class certification of
23 the Eighth Claim for Relief is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because HP has
24 acted or refused to act on grounds generally applicable to the Maryland Class, making appropriate
25 declaratory and injunctive relief with respect to the Maryland Named Plaintiff and the Maryland
26 Class Members as a whole. The Maryland Named Plaintiff and the Maryland Class Members are
27 entitled to injunctive relief to end HP's common and uniform practice of failing to properly
28 compensate its employees for all overtime work performed for the benefit of HP.

1 40. Predominance and superiority (Fed. R. Civ. P. 23(b)(3)) – Class
2 certification of the Eighth Claim for Relief is also appropriate under Fed. R. Civ. P. 23(b)(3)
3 because questions of law and fact common to the Maryland Class predominate over any questions
4 affecting only individual members of the Maryland Class, and because a class action is superior
5 to other available methods for the fair and efficient adjudication of this litigation. HP’s common
6 and uniform policies and practices unlawfully treat Maryland Class Members as exempt from
7 overtime pay requirements. The damages suffered by individual Maryland Class Members are
8 small compared to the expense and burden of individual prosecution of this litigation. In
9 addition, class certification is superior because it will obviate the need for unduly duplicative
10 litigation that might result in inconsistent judgments about HP’s practices.

11 41. Notice (Fed. R. Civ. P. 23(c)(2)(B)) – The Maryland Named Plaintiff
12 intends to send notice to all Maryland Class Members consistent with the requirements of Fed. R.
13 Civ. P. 23.

14 **MASSACHUSETTS CLASS ACTION ALLEGATIONS**

15 42. The Massachusetts Named Plaintiff brings the Ninth Claim for Relief for
16 violation of Massachusetts’s wage and hour law as a class action, pursuant to Fed. R. Civ. P.
17 23(a) and (b)(3), on behalf of all Massachusetts Class Members, defined in paragraph 12.

18 43. Numerosity (Fed. R. Civ. P. 23(a)(1)) – The Massachusetts Class is so
19 numerous that joinder of all members is impracticable. The Massachusetts Named Plaintiff is
20 informed and believes, and on that basis alleges, that during the Massachusetts Class Period, HP
21 has employed at least fifty persons who satisfy the definition of the Massachusetts Class.

22 44. Commonality (Fed. R. Civ. P. 23(a)(2)) – Common questions of law and
23 fact exist as to members of the Massachusetts Class, including, but not limited to, the following:

24 a. Whether HP unlawfully failed to pay overtime compensation in
25 violation of Mass. Gen. Laws ch. 151 § 1A.

26 b. Whether the Massachusetts Named Plaintiff and Massachusetts
27 Class Members are nonexempt employees entitled to overtime compensation for overtime hours
28 worked under the overtime pay requirements of Massachusetts law;

1 c. Whether HP's policy and practice of classifying the Massachusetts
2 Class Members as exempt from overtime entitlement under Massachusetts law and HP's policy
3 and practice of failing to pay overtime to Massachusetts Class Members violate applicable
4 provisions of Massachusetts law, including applicable statutory and regulatory authority;

5 d. Whether HP unlawfully failed to keep and furnish Massachusetts
6 Class Members with records of hours worked, in violation of Mass. Gen. Laws ch. 151 § 15;

7 e. Whether HP's policy and practice of failing to pay its employees all
8 wages due within the time required by law after their employment ended violates Massachusetts
9 law; and

10 f. The proper measure of damages sustained and the proper measure
11 of restitution recoverable by members of the Massachusetts Class.

12 45. Typicality (Fed. R. Civ. P. 23(a)(3)) – The Massachusetts Named
13 Plaintiff's claims are typical of Massachusetts Class Members' claims. The Massachusetts
14 Named Plaintiff, like other Massachusetts Class Members, was subjected to HP's policy and
15 practice of refusing to pay overtime in violation of Massachusetts law. The Massachusetts
16 Named Plaintiff's job duties were typical of those of other Massachusetts Class Members.

17 46. Adequacy (Fed. R. Civ. P. 23(a)(4)) – The Massachusetts Named Plaintiff
18 will fairly and adequately represent and protect the interests of the Massachusetts Class.

19 47. Adequacy of counsel (Fed. R. Civ. P. 23(g)) – The Massachusetts Named
20 Plaintiff has retained counsel competent and experienced in complex class actions, the FLSA, and
21 state labor and employment litigation. The Massachusetts Named Plaintiff's counsel have
22 litigated numerous class actions on behalf of technical support workers asserting overtime
23 misclassification claims under the FLSA and state law. The Massachusetts Named Plaintiff's
24 counsel intend to commit the necessary resources to prosecute this action vigorously for the
25 benefit of all Class Members.

26 48. Predominance and superiority (Fed. R. Civ. P. 23(b)(3)) – Class
27 certification of the Ninth Claim for Relief is also appropriate under Fed. R. Civ. P. 23(b)(3)
28 because questions of law and fact common to the Massachusetts Class predominate over any

1 questions affecting only individual members of the Massachusetts Class, and because a class
2 action is superior to other available methods for the fair and efficient adjudication of this
3 litigation. HP's common and uniform policies and practices unlawfully treat Massachusetts Class
4 Members as exempt from overtime pay requirements. The damages suffered by individual
5 Massachusetts Class Members are small compared to the expense and burden of individual
6 prosecution of this litigation. In addition, class certification is superior because it will obviate the
7 need for unduly duplicative litigation that might result in inconsistent judgments about HP's
8 practices.

9 49. Notice (Fed. R. Civ. P. 23(c)(2)(B)) – The Massachusetts Named Plaintiff
10 intends to send notice to all Massachusetts Class Members consistent with the requirements of
11 Fed. R. Civ. P. 23.

12 **FIRST CLAIM FOR RELIEF**
13 **(Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.,**
14 **Brought by Plaintiffs on Behalf of Themselves and the Nationwide FLSA Plaintiffs)**

15 50. Plaintiffs, on behalf of themselves and all Nationwide FLSA Plaintiffs,
16 realleges and incorporates by reference paragraphs 1 through 49 as if they were set forth again
17 herein.

18 51. At all relevant times, HP has been, and continues to be, an “employer”
19 engaged in interstate “commerce” and/or in the production of “goods” for “commerce,” within
20 the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, HP has employed, and
21 continues to employ, “employee[s],” including Plaintiffs and each of the Nationwide FLSA
22 Plaintiffs. At all relevant times, HP has had gross operating revenues in excess of \$500,000.

23 52. The Consent to Sue forms Plaintiffs signed pursuant to section 16(b) of the
24 FLSA, 29 U.S.C. §§ 216(b) and 256 appear at Docket Nos. 1, 23-1, and 25-1. It is likely that
25 other similarly situated individuals will sign consent forms and join as Plaintiffs on this claim in
26 the future.

1 53. The FLSA requires each covered employer, including HP, to compensate
2 all nonexempt employees at a rate of not less than one and one-half times the regular rate of pay
3 for work performed in excess of forty hours in a workweek.

4 54. The Nationwide FLSA Plaintiffs are entitled to be paid overtime
5 compensation for all overtime hours worked.

6 55. At all relevant times, HP, pursuant to its policies and practices, failed and
7 refused to pay overtime premiums to the Nationwide FLSA Plaintiffs for their hours worked in
8 excess of forty hours per week.

9 56. By failing to compensate Plaintiffs and the Nationwide FLSA Plaintiffs at
10 a rate not less than one and one-half times the regular rate of pay for work performed in excess of
11 forty hours in a workweek, HP has violated, and continues to violate, the FLSA, 29 U.S.C. §§ 201
12 *et seq.*, including 29 U.S.C. § 207(a)(1) and § 215(a).

13 57. By failing to record, report, and/or preserve records of hours worked by
14 Plaintiffs and the Nationwide FLSA Plaintiffs, HP has failed to make, keep, and preserve records
15 with respect to each of its employees sufficient to determine their wages, hours, and other
16 conditions and practice of employment, in violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*,
17 including 29 U.S.C. § 211(c) and § 215(a).

18 58. The foregoing conduct, as alleged, constitutes a willful violation of the
19 FLSA within the meaning of 29 U.S.C. § 255(a).

20 59. Plaintiffs, on behalf of themselves and the Nationwide FLSA Plaintiffs,
21 seeks recovery of attorneys' fees and costs of action to be paid by HP, as provided by the FLSA,
22 29 U.S.C. § 216(b).

23 60. Plaintiffs, on behalf of themselves and the Nationwide FLSA Plaintiffs,
24 seeks damages in the amount of unpaid overtime compensation, liquidated damages as provided
25 by the FLSA, 29 U.S.C. § 216(b), interest, and such other legal and equitable relief as the Court
26 deems just and proper.

SECOND CLAIM FOR RELIEF

(Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 510, 1194, Brought by the California Named Plaintiff on Behalf of Himself and the California Class)

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61. The California Named Plaintiff, on behalf of himself and all members of the California Class, realleges and incorporates by reference paragraphs 1 through 60 as if they were set forth again herein.

62. California law requires an employer, such as HP, to pay overtime compensation to all nonexempt employees for all hours worked over forty per week, or over eight per day.

63. The California Named Plaintiff and California Class Members are nonexempt employees entitled to be paid overtime compensation for all overtime hours worked.

64. Throughout the California Class Period, and continuing through the present, the California Named Plaintiff and California Class Members worked in excess of eight hours in a workday and/or forty hours in a workweek. The California Named Plaintiff and certain California Class Members also worked in excess of twelve hours in a workday.

65. During the California Class Period, HP misclassified the California Named Plaintiff and California Class Members as exempt from overtime pay entitlement and failed and refused to pay them overtime premium pay for their overtime hours worked.

66. As a direct and proximate result of HP's unlawful conduct, as set forth herein, the California Named Plaintiff and California Class Members have sustained damages, including loss of earnings for hours of overtime worked on behalf of HP in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

THIRD CLAIM FOR RELIEF

(California Wage Payment Provisions, Cal. Labor Code §§ 201, 202, & 203, Brought by the California Named Plaintiff on Behalf of Himself and the California Class)

67. The California Named Plaintiff, on behalf of himself and all members of the California Class, realleges and incorporates by reference paragraphs 1 through 66 as if they were set forth again herein.

1 68. California Labor Code sections 201 and 202 require HP to pay its
 2 employees all wages due within the time specified by law. California Labor Code section 203
 3 provides that if an employer willfully fails to timely pay such wages, the employer must continue
 4 to pay the subject employees’ wages until the back wages are paid in full or an action is
 5 commenced, up to a maximum of thirty days of wages.

6 69. The California Named Plaintiff and all California Class Members who
 7 ceased employment with HP are entitled to unpaid compensation, but to date have not received
 8 such compensation.

9 70. More than thirty days have passed since the California Named Plaintiff and
 10 certain California Class Members left HP’s employ.

11 71. As a consequence of HP’s willful conduct in not paying compensation for
 12 all hours worked, the California Named Plaintiff and California Class Members whose
 13 employment ended during the class period are entitled to thirty days’ wages under Labor Code
 14 section 203, together with interest thereon and attorneys’ fees and costs.

15 **FOURTH CLAIM FOR RELIEF**
 16 **(California Record-Keeping Provisions,**
 17 **Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 226, 1174, & 1174.5,**
 18 **Brought by the California Named Plaintiff on Behalf of Himself and the California Class)**

19 72. The California Named Plaintiff, on behalf of himself and all members of
 20 the California Class, realleges and incorporates by reference paragraphs 1 through 71 as if they
 21 were set forth again herein.

22 73. HP knowingly and intentionally failed to provide timely, accurate, itemized
 23 wage statements including, *inter alia*, hours worked, to the California Named Plaintiff and
 24 California Class Members in accordance with Labor Code section 226(a) and the IWC Wage
 25 Orders. Such failure caused injury to the California Named Plaintiff and California Class
 26 Members, by, among other things, impeding them from knowing the amount of wages to which
 27 they are and were entitled. At all times relevant herein, HP has failed to maintain records of
 28 hours worked by the California Named Plaintiff and California Class Members as required under
 Labor Code section 1174(d).

1 74. The California Named Plaintiff and California Class Members are entitled
 2 to and seek injunctive relief requiring HP to comply with Labor Code sections 226(a) and
 3 1174(d), and further seek the amount provided under Labor Code sections 226(e) and 1174.5,
 4 including the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
 5 a violation occurred and one hundred dollars (\$100) per employee for each violation in a
 6 subsequent pay period.

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 8 **FIFTH CLAIM FOR RELIEF**
(California Meal And Rest Period Provisions,
Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 218.5, 226.7, & 512,
 9 **Brought by the California Named Plaintiff on Behalf of Himself and the California Class)**

10 75. The California Named Plaintiff, on behalf of himself and all members of
 11 the California Class, realleges and incorporates by reference paragraphs 1 through 74 as if they
 12 were set forth again herein.

13 76. Plaintiff and California Class Members regularly work and have worked in
 14 excess of five-hour shifts without being afforded at least a half-hour meal break in which they
 15 were relieved of all duty and more than ten-hour shifts without being afforded a second half-hour
 16 meal break in which they were relieved of all duty, as required by Labor Code sections 226.7 and
 17 512 and Wage Order No. 4-2001, section 11(a).

18 77. In addition, the California Named Plaintiff and California Class Members
 19 regularly work and have worked without being afforded at least one ten-minute rest break, in
 20 which they were relieved of all duty, per four hours of work performed or major fraction thereof,
 21 as required by Labor Code section 226.7 and Wage Order No. 4-2001, section 12.

22 78. As a result of HP's failure to afford proper meal periods, it is liable to the
 23 California Named Plaintiff and California Class Members for one hour of additional pay at the
 24 regular rate of compensation for each workday that the proper meal periods were not provided,
 25 pursuant to Labor Code section 226.7 and Wage Order No. 4-2001, section 11(b).

26 79. As a result of HP's failure to afford proper rest periods, it is liable to the
 27 California Named Plaintiff and California Class Members for one hour of additional pay at the
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1 regular rate of compensation for each workday that the proper rest periods were not provided,
2 pursuant to Labor Code section 226.7 and Wage Order No. 4-2001, section 12(b).

3 **SIXTH CLAIM FOR RELIEF**
4 **(California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq.,**
5 **Brought by the California Named Plaintiff on Behalf of Himself and the California Class)**

6 80. The California Named Plaintiff, on behalf of himself and all members of
7 the California Class, realleges and incorporates by reference paragraphs 1 through 79 as if they
8 were set forth again herein.

9 81. The foregoing conduct, as alleged, violates the California Unfair
10 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 et seq. Section 17200 of the Cal.
11 Bus. & Prof. Code prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair
12 business acts or practices.

13 82. Beginning at a date unknown to the California Named Plaintiff, but at least
14 as long ago as four years before the filing of this action, HP committed, and continues to commit,
15 acts of unfair competition, as defined by the UCL, by, among other things, engaging in the acts
16 and practices described herein. HP’s conduct as herein alleged has injured the California Named
17 Plaintiff and California Class Members by wrongfully denying them earned wages, and therefore
18 was substantially injurious to the California Named Plaintiff and to California Class Members.

19 83. HP engaged in unfair competition in violation of the UCL by violating,
20 *inter alia*, each of the following laws. Each of these violations constitutes an independent and
21 separate violation of the UCL:

- 22 a. The Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.;
- 23 b. California Labor Code § 1194;
- 24 c. California Labor Code §§ 201, 202, 203, 204, 226, 226.7, and
25 512;
- 26 d. California Labor Code § 1174; and
- 27 e. California Labor Code § 510, which provides in relevant part:

28 Any work in excess of eight hours in one workday and any
work in excess of 40 hours in any one workweek and the

1 first eight hours worked on the seventh day of work in any
 2 one workweek shall be compensated at the rate of no less
 3 than one and one-half times the regular rate of pay for an
 4 employee. Any work in excess of 12 hours in one day shall
 5 be compensated at the rate of no less than twice the regular
 6 rate of pay for an employee. In addition, any work in
 7 excess of eight hours on any seventh day of a workweek
 8 shall be compensated at the rate of no less than twice the
 9 regular rate of pay of an employee.

10 84. HP's course of conduct, acts, and practices in violation of the California
 11 laws mentioned in the above paragraph constitute a separate and independent violation of the
 12 UCL. HP's conduct described herein violates the policy or spirit of such laws or otherwise
 13 significantly threatens or harms competition.

14 85. The unlawful and unfair business practices and acts of HP, described
 15 above, have injured California Class Members in that they were wrongfully denied the payment
 16 of earned overtime wages.

17 86. The California Named Plaintiff, on behalf of himself and the California
 18 Class, seeks restitution in the amount of the respective unpaid wages earned and due at a rate not
 19 less than one and one-half times the regular rate of pay for work performed in excess of forty
 20 hours in a workweek, or eight hours in a day, and double the regular rate of pay for work
 21 performed in excess of twelve hours per day.

22 87. The California Named Plaintiff, on behalf himself and the California Class
 23 Members, seeks recovery of attorneys' fees and costs of this action to be paid by HP, as provided
 24 by the UCL and California Labor Code §§ 218, 218.5, and 1194.

25 **SEVENTH CLAIM FOR RELIEF**
 26 **(California Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698-2699.5, Brought**
 27 **by the California Named Plaintiff on Behalf of Himself and All Aggrieved Employees)**

28 88. The California Named Plaintiff, on behalf of himself and all aggrieved
 employees, as well as on behalf of the general public of California, realleges and incorporates by
 reference paragraphs 1 through 87 as if they were set forth again herein.

89. Under the California Private Attorneys General Act ("PAGA") of 2004,
 Cal. Lab. Code §§ 2698-2699.5, an aggrieved employee, on behalf of himself or herself and other
 current or former employees as well as the general public, may bring a representative action as a

1 private attorney general to recover penalties for an employer's violations of the California Labor
2 Code and IWC Wage Orders. These civil penalties are in addition to any other relief available
3 under the California Labor Code, and must be allocated 75% to California's Labor and Workforce
4 Development Agency ("LWDA") and 25% to the aggrieved employee, pursuant to California
5 Labor Code section 2699.

6 90. The California Named Plaintiff alleges, on behalf of himself and all
7 aggrieved employees, as well as the general public, that HP has violated the following provisions
8 of the California Labor Code and the following provisions of the IWC Wage Orders that are
9 actionable through the California Labor Code and PAGA, as previously alleged herein: Cal. Lab.
10 Code §§ 201-03, 218.5, 226, 226.7, 510, 512, 1174, 1174.5, and 1194, and IWC Wage Order No.
11 4-2001. Each of these violations entitles the California Named Plaintiff, as a private attorney
12 general, to recover the applicable civil penalties on his own behalf, on behalf of all aggrieved
13 employees, and on behalf of the general public.

14 91. California Labor Code section 2699(a), which is part of PAGA, provides in
15 pertinent part:

16 Notwithstanding any other provision of law, any provision of this
17 code that provides for a civil penalty to be assessed and collected
18 by the Labor and Workforce Development Agency or any of its
19 departments, divisions, commissions, boards, agencies, or
20 employees, for a violation of this code, may, as an alternative, be
21 recovered through a civil action brought by an aggrieved employee
22 on behalf of himself or herself and other current or former
23 employees pursuant to the procedures specified in § 2699.3.

24 92. California Labor Code section 2699(f), which is part of PAGA, provides in
25 pertinent part:

26 For all provisions of this code except those for which a civil penalty
27 is specifically provided, there is established a civil penalty for a
28 violation of these provisions, as follows: . . . (2) If, at the time of
the alleged violation, the person employs one or more employees,
the civil penalty is one hundred dollars (\$100) for each aggrieved
employee per pay period for the initial violation and two hundred
dollars (\$200) for each aggrieved employee per pay period for each
subsequent violation.

93. The California Named Plaintiff is entitled to civil penalties, to be paid by
HP and allocated as PAGA requires, pursuant to California Labor Code § 2699(a) for HP's

1 violations of the California Labor Code and IWC Wage Orders for which violations a civil
2 penalty is already specifically provided by law. Furthermore, the California Named Plaintiff is
3 entitled to civil penalties, to be paid by HP and allocated as PAGA requires, pursuant to
4 California Labor Code § 2699(f) for HP's violations of the California Labor Code and IWC Wage
5 Orders for which violations a civil penalty is not already specifically provided.

6 94. On January 29, 2013, the California Named Plaintiff provided written
7 notice by certified mail to the LWDA of the legal claims and theories of this case
8 contemporaneous with the filing of the First Amended Complaint in this action. On January 30,
9 2013, the California Named Plaintiff provided the same written notice by certified mail to HP.

10 95. On March 15, 2013, the LWDA notified the California Named Plaintiff and
11 Hewlett-Packard Company that it "does not intend to investigate the[se] allegations." The letter
12 noted that "Labor Code Section 2699(i) provides that '. . . civil penalties recovered by aggrieved
13 employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor
14 laws and education of employers and employees about their rights and responsibilities under this
15 code.'" The letter further explained that "Labor Code Section 2699(l) specifies '[T]he superior
16 court shall review and approve any penalties sought as part of a proposed settlement agreement
17 pursuant to this part.'" The letter concluded by instructing the California Named Plaintiff that he
18 "must advise [LWDA] of the results of the litigation, and forward a copy of the court judgment or
19 court-approved settlement agreement." A true and correct copy of the letter from the LWDA is
20 attached hereto as Exhibit A.

21 96. Under PAGA, the California Named Plaintiff and the State of California
22 are entitled to recover the maximum civil penalties permitted by law for the violations of the
23 California Labor Code and IWC Wage Order No. 4-2001 that are alleged in this complaint.
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1 **EIGHTH CLAIM FOR RELIEF**
2 **(Maryland Code Ann. Labor & Employment §§ 3-401 et seq.,**
3 **(Brought by the Maryland Named Plaintiff**
4 **on Behalf of Himself and the Maryland Class)**

5 97. The Maryland Named Plaintiff, on behalf of himself and all members of
6 the Maryland Class, realleges and incorporates by reference paragraphs 1 through 60 as if they
7 were set forth again herein.

8 98. The foregoing conduct, as alleged, violates the Maryland Wage and Hour
9 Law, Md. Code Ann. Labor and Employment §§ 3-401, *et seq.*

10 99. At all relevant times, HP has been, and continues to be, an “employer”
11 within the meaning of the Maryland Wage and Hour Law, Md. Code Ann. Labor and
12 Employment § 3-401(a). At all relevant times, HP has employed, and/or continues to employ,
13 “employee[s],” including the Maryland Named Plaintiff, and each of the members of the
14 prospective Maryland Class, within the meaning of the Maryland Wage and Hour Law.

15 100. The Maryland Wage and Hour Law requires an employer, such as HP, to
16 pay overtime compensation to all nonexempt employees. The Maryland Named Plaintiff and
17 members of the Maryland Class are not exempt from overtime pay requirements under the
18 Maryland Wage and Hour Law.

19 101. At all relevant times, HP had a policy and practice of failing and refusing
20 to pay overtime pay to the Maryland Named Plaintiff and the Maryland Class Members for their
21 hours worked in excess of forty hours per workweek.

22 102. As a result of HP’s failure to pay wages earned and due, and its decision to
23 withhold wages earned and due, to the Maryland Named Plaintiff and the Maryland Class
24 Members at a rate not less than one and one-half times the regular rate of pay for work performed
25 in excess of forty hours in a workweek, HP has violated, and continues to willfully violate the
26 Maryland Wage and Hour Law, Md. Code Ann. Labor and Employment §§ 3-415 & 3-420.

27 103. As a result of HP’s failure to record, report, credit, and furnish to the
28 Maryland Named Plaintiff and Maryland Class Members their respective wage and hour records
showing all wages earned and due for all work performed, HP has failed to make, keep, preserve,

1 and furnish such records in violation of the Maryland Wage and Hour Law, Md. Code Ann. Labor
2 and Employment § 3-424.

3 104. The Maryland Named Plaintiff, on behalf of himself and the Maryland
4 Class Members, seeks recovery of attorneys' fees, costs, and expenses of this action to be paid by
5 HP.

6 105. The Maryland Named Plaintiff, on behalf of himself and the Maryland
7 Class Members, seek damages in the amount of the respective unpaid wages earned and due at the
8 regular hourly wage rate, and at a rate not less than one and one-half times the regular rate of pay
9 for work performed in excess of forty hours in a workweek; punitive damages; and such other
10 legal and equitable relief as the Court deems just and proper.

11 **NINTH CLAIM FOR RELIEF**
12 **(Massachusetts Wage and Hour Law, Mass. Gen. Laws Ch. 151 §§ 1A, et seq.,**
13 **Brought by the Massachusetts Named Plaintiff**
14 **on Behalf of Himself and the Massachusetts Class)**

15 106. The Massachusetts Named Plaintiff, on behalf of himself and all members
16 of the Massachusetts Class, realleges and incorporates by reference paragraphs 1 through 60 as if
17 they were set forth again herein.

18 107. The foregoing conduct, as alleged, violates Massachusetts's wage and hour
19 law, Mass. Gen. Laws Ch. 151 §§ 1A, et seq.

20 108. At all relevant times, HP has been, and continues to be, an employer that
21 "employs" individuals within the meaning of Mass. Gen. Laws Ch. 151 §§ 1A, et seq. At all
22 relevant times, HP has employed, and continues to "employ," "employees," including the
23 Massachusetts Named Plaintiff and each of the Massachusetts Class Members, within the
24 meaning of Mass. Gen. Laws Ch. 151 §§ 1A, et seq.

25 109. Massachusetts wage and hour law, Mass. Gen. Laws ch. 151 § 1A, requires
26 an employer, such as HP, to pay overtime compensation to all nonexempt employees. The
27 Massachusetts Named Plaintiff and the Massachusetts Class Members are not exempt from
28 overtime pay requirements under Massachusetts wage and hour law.

1 110. At all relevant times, HP had a policy and practice of failing and refusing
2 to pay overtime pay to the Massachusetts Named Plaintiff and the Massachusetts Class Members
3 for their hours worked in excess of forty (40) hours per week.

4 111. As a result of HP's failure to pay wages earned and due, and its decision to
5 withhold wages earned and due, to the Massachusetts Named Plaintiff and the Massachusetts
6 Class Members at a rate not less than one and one-half times the regular rate of pay for work
7 performed in excess of forty (40) hours in a workweek, HP has violated, and continues to violate
8 Massachusetts wage and hour law.

9 112. Massachusetts wage and hour law, Mass. Gen. Laws ch. 151 § 15, requires
10 employers to keep records of each employee's hours worked and wages earned, at the place of
11 employment, for at least two years.

12 113. Because HP willfully and unlawfully misclassified the Massachusetts
13 Named Plaintiff and the Massachusetts Class Members as exempt from overtime pay
14 requirements, the company failed and continues to fail to keep and furnish records of those
15 employees' hours, as required under Massachusetts wage and hour law.

16 114. By failing to record and maintain wage and hour records for its nonexempt
17 employees, including the Massachusetts Named Plaintiff and the Massachusetts Class Members,
18 HP has failed to make, furnish, and keep such records in violation of Massachusetts wage and
19 hour law.

20 115. HP's failure to keep and furnish the required records of hours worked for
21 the Massachusetts Named Plaintiff and the Massachusetts Class Members was done with reckless
22 indifference to the rights of others and is willful, knowing, and intentional. Allowing HP's
23 record-keeping violations to continue would be a gross injustice to the Massachusetts Named
24 Plaintiff and the Massachusetts Class Members, and all future HP employees.

25 116. The Massachusetts Named Plaintiff, on behalf of himself and the
26 Massachusetts Class Members, seeks recovery of attorneys' fees and costs of this action to be
27 paid by HP, as provided by Massachusetts wage and hour law.
28

1 H. Such other legal equitable relief as this Court deems necessary, just, and
2 proper.

3 WHEREFORE, each Named Plaintiff on behalf of himself and all members of the
4 Class he represents, prays for relief as follows:

5 I. Certification of this action as a class action on behalf of each proposed
6 Class;

7 J. Designation of each Named Plaintiff as a Representative of the Class he
8 seeks to represent;

9 K. A declaratory judgment that the practices complained of herein are
10 unlawful under applicable state law;

11 L. Appropriate equitable and injunctive relief to remedy HP's violations of
12 state law, including but not necessarily limited to an order enjoining HP from continuing its
13 unlawful practices;

14 M. Appropriate statutory penalties;

15 N. An appropriate award of damages, liquidated damages, treble damages, and
16 restitution to be paid by HP according to proof;

17 O. Restitution;

18 P. Pre-Judgment and Post-Judgment interest, as provided by law;

19 Q. Such other injunctive and equitable relief as the Court may deem just and
20 proper; and

21 R. Attorneys' fees and costs of suit, including expert fees and costs.

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Respectfully submitted,

Dated: May 31, 2013

By: 
Kelly M. Dermody

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they have a right to a jury trial.

Respectfully submitted,

Dated: May 31, 2013

By: 
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