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16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 **TYRELL GLASS, DUSTIN**
19 **SCHNATZ, and JORDAN**
20 **TERRADO**, individually and
21 on behalf of all other similarly situated,

22 Plaintiffs,

23 v.

24 **FMM ENTERPRISES, INC., EC**
25 **LENDING, LLC, GTPD**
26 **ENTERPRISES, INC., PREMIER**
27 **DOCUMENTS, LLC, d/b/a**
MACKLOCK NATIONAL

Case No.: '17CV563 JAH KSC

**FLSA COLLECTIVE ACTION/
CLASS ACTION COMPLAINT
AND JURY DEMAND**

1 **CREDIT, LLC, CYNTHIA WALSH,**
2 **RYAN MCAWEENEY, NEIL**
3 **BILLOCK, and DOES 1-10,** jointly
and severally, as

4 Defendants.

5
6 Plaintiffs, Tyrell Glass, Dustin Schnatz, and Jordan Terrado (hereinafter
7 “Plaintiffs”), individually and on behalf of all others similarly situated, by and through
8 their attorneys, hereby bring this Collective/Class Action Complaint against Defendants
9 FMM Enterprises, Inc., EC Lending, LLC, GTPD Enterprises, Inc., Premier Documents,
10 LLC, d/b/a Macklock National Credit, LLC, Cynthia Walsh, Ryan McAweeney, Neil
11 Billock, and Does 1-10 (hereinafter collectively referred to as “Defendants”), jointly and
12 severally, and state as follows:

13 **INTRODUCTION**

14 1. This is a collective and class action brought for violations of the Fair Labor
15 Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”); California Labor Code
16 (“Labor Code”); the California Industrial Welfare Commission Wage Order No. 4; and
17 the California Business & Professional Code section 17200, *et seq.*, as a FLSA § 216(b)
18 collective action and California state-wide class action pursuant to Fed. R. Civ. P.
19 23(b)(3).

20 2. Defendants are in the business of call center services and marketing for
21 companies to consumers via inbound and outbound calls. Examples of Defendants’
22 services include debt relief services and inside sales campaigns.

23 3. As part of their business practices, Defendants utilize questionable tactics to
24 generate their leads, including but not limited to sending misleading letters in order to
25 entice distressed consumers to pick up the phone and call.

26 ///

27 ///

1 4. In order to field these calls, Defendants employed call center employees,
2 referred to herein as call center agents (“Agents”). Defendants employed these Agents,
3 including Plaintiffs, in multiple call center facilities in California and elsewhere.

4 5. Defendants required their Agents to work a full-time schedule, plus
5 overtime. However, Defendants did not record their Agents’ compensable work time as
6 required by law.

7 6. Instead of paying Agents based on hours worked, Defendants paid their
8 Agents on a contingent, commission-only basis whereby Defendants paid commissions
9 but then “charged back” their Agents for a return of any commissions (up to 100%) on
10 sales that were cancelled within the first six months.

11 7. Defendants’ contingent, commission-only compensation system resulted in
12 Agents not being paid for all time worked, including overtime.

13 8. In the course of performing their job responsibilities, Defendants’ Agents
14 used multiple computer networks, software programs, applications, and phone systems.
15 The time Agents spent booting up and logging into these programs and applications
16 before and after their shifts was compensable because the programs and applications were
17 an integral, indispensable, and important part of the Agents’ work and they could not
18 perform their jobs effectively without them.

19 9. Defendants’ Agents performed the same basic job duties and were required
20 to use the same or similar computer networks, software programs, applications, and
21 phone systems.

22 10. The individuals Plaintiffs seek to represent in this action are current and
23 former Agents who are similarly situated to themselves in terms of their positions, job
24 duties, pay structure, and Defendants’ violations of federal and state law.

25 11. Defendants knew or could have easily determined how long it took for their
26 Agents to complete their work, and Defendants could have properly compensated
27 Plaintiffs and the putative Class for this work, but did not.

PARTIES

1
2 17. Plaintiff, Tyrell Glass, is a resident of Tampa, Florida. He was formerly
3 employed by Defendants as an Agent in San Diego, California from August 2015 until
4 July 2016, and signed a consent form to join this collective action lawsuit, which is
5 attached hereto as *Exhibit A*.

6 18. Plaintiff, Dustin Schnatz, is a resident of Oceanside, California. He was
7 employed by Defendants as an Agent in San Diego, California from August 2015 until
8 December 2015, and has consented to join this collective action lawsuit.

9 19. Plaintiff, Jordan Terrado, is a resident of El Cajon, California. He was
10 employed by Defendants as an Agent in San Diego, California from April 2016 until
11 October 2016, and signed a consent form to join this collective action lawsuit, which is
12 attached hereto as *Exhibit B*.

13 20. Additional individuals were or are employed by Defendants as hourly
14 Agents during the past four years and their consent forms will also be filed in this case.

15 21. Defendant, FMM Enterprises, Inc., is a California corporation with a service
16 of process address listed as 4875 Viewridge Ave., San Diego, California 92123 and a
17 California Corporate Number of C3554593. Its president and registered agent for service
18 in California is Cynthia Walsh.

19 22. Upon information and belief, Defendant FMM Enterprises has used a
20 number of assumed names, including but not limited to, “CW Consulting,” “SL
21 Consulting,” and “AG Cash, Inc.”

22 23. Defendant EC Lending, LLC has the same service of process address as
23 Defendant FMM Enterprises, 4875 Viewridge Ave., San Diego, California 92123 with a
24 California Secretary of State file number 200936310348. Its registered agent for service
25 in California is Corrine Lott, and its managers are listed as Defendants Neil Billock and
26 Ryan McAweeney.

1 24. Defendant GTPD Enterprises, Inc. is a California corporation with a service
2 of process address of 4241 Jutland Dr., Ste. 304, San Diego, California 92117 and a
3 California Corporate Number of C3608759. Its president and registered agent for service
4 in California is Defendant Ryan McAweeney.

5 25. Defendant Premier Documents, LLC, d/b/a Macklock National Credit, LLC
6 is a business registered with the State of Colorado, ID #20161300756 and headquartered
7 in San Juan, Puerto Rico. According to Matlock's website, they "are a company that is in
8 the process of qualifying to do business throughout the United States." Also, according
9 to Macklock's website, it offers consumers credit services such as credit repair, credit
10 monitoring, and credit validation. See <https://www.macklock.org/index.html> (last visited
11 on 3/3/17). Its registered agent for service in Colorado is The Corporation Company,
12 located at 7700 E. Arapahoe Rd., Suite 220, Centennial, Colorado 80112. Upon
13 information and belief, Macklock is owned by Defendant Ryan McAweeney.

14 26. Upon information and belief, the Defendant companies are part of an
15 extensive corporate "shell game" designed to facilitate sales for Defendants FMM
16 Enterprises, Cynthia Walsh, Neil Billock, and Ryan McAweeney.

17 27. Defendant Cynthia Walsh is an individual who is a resident and citizen of
18 California. Ms. Walsh was involved in and controlled the day-to-day business of
19 Defendants. Ms. Walsh was the operations manager for at least two of Defendants' call
20 centers and directly supervised the Plaintiffs. Ms. Walsh was heavily involved in
21 Defendants' compensation scheme in connection with their Agents.

22 28. Defendant Ryan McAweeney is an individual who is a resident and citizen
23 of California. Mr. McAweeney was involved in and controlled the day-to-day business of
24 Defendants. Mr. McAweeney maintained a presence in the call center offices, took part in
25 regular business meetings, and maintained control of Defendants' business operations
26 including Defendants' compensation scheme in connection with their Agents.

1 36. Plaintiff, Dustin Schnatz, was employed by Defendants as an Agent in San
2 Diego, California from August 2015 until December 2015. In that position, he was
3 compensated on a contingent, commission-only basis and typically worked
4 approximately 40 or more hours per week (and more than 8 hours per day).

5 37. Plaintiff, Jordan Terrado, was employed by Defendants as an Agent in San
6 Diego, California from April 2016 until October 2016. In that position, he was
7 compensated on a contingent, commission-only basis and typically worked
8 approximately 40 or more hours per week (and more than 8 hours per day).

9 38. Throughout their employment with Defendants, Plaintiffs were required to
10 work a substantial amount of unpaid time, including overtime, as part of their jobs as
11 Agents.

12 39. Defendants' Agents were responsible for, among other things: (a) booting
13 up their computers and logging into several software programs before taking/making
14 phone calls; (b) remaining on the phones for their entire shift; (c) making outbound calls
15 when no calls are incoming; (d) ensuring that every inbound call is accounted for in
16 Defendants' computer systems; (e) if needed, asking sales managers for additional sales
17 leads to call; and (f) logging out of the computer programs and shutting down their
18 computers.

19 40. Defendants required their Agents to work rigid schedules, usually consisting
20 of nine (9) hours per day and five to six (5-6) days per week and resulted in overtime
21 hours on a weekly basis.

22 41. Defendants had strict expectations that their Agents would remain on the
23 phone for their entire shift, every scheduled day, and Defendants threatened discipline if
24 an Agent failed to do so.

25 42. Defendants did not require their Agents to clock in/out for their shifts and
26 did not otherwise track the Agents' work time through any manual or computerized
27 timekeeping system. Failing to accurately account for and pay for all of the time actually
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1 worked by employees is a clear violation of FLSA's record keeping requirements. *See* 29
2 U.S.C. § 211(c).

3 **Defendants' Compensation System**

4 43. Defendants' Agents were paid on a contingent, commission-only basis.
5 Under this compensation system, Agents were paid a commission in the range of 1-6%
6 on sales to consumers. The Agents' commission percentage amount was typically
7 determined by the number of months of repayment by the consumer (*e.g.*, 24 months, 36
8 months, etc.). The shorter the repayment plan, the higher the Agents' commission
9 percentage.

10 44. Defendants' paid their Agents on a weekly basis, and pursuant to an
11 alternating schedule of draws and commissions. Defendants' payroll process generally
12 adhered to the following monthly schedule:

- 13 a. Week 1: salary draw (usually between \$800 and \$1,000); and
- 14
- 15 b. Week 2: commission check (based on last two weeks of prior
16 month) minus the draw from prior week;
- 17
- 18 c. Week 3: salary draw (usually between \$800 and \$1,000); and
- 19
- 20 d. Week 4: commission check (based on first two weeks of present
21 month) minus the draw from prior week.

22 45. An example of Defendants' compensation system is illustrated through
23 Plaintiff Tyrell Glass's paystubs for the month of March 2016, attached at *Exhibit C*.
24 Those paystubs show the following payments:

- 25 a. Period Ending March 8, 2017: \$919.95 (draw)
- 26 b. Period Ending March 15, 2016: \$2,128.88 (commission)
- 27 c. Period Ending March 23, 2016: \$1,000.00 (draw)

1 d. Period Ending March 31, 2016: \$1,778.84 (commission)

2 46. However, because Defendants failed to record their Agents' work time,
3 Defendants' compensation system failed to properly account for and compensate Agents
4 for all time worked, including their overtime hours, during each day and during each
5 workweek.

6 47. The hours reflected on the Agents' paystubs are not accurate, were contrived
7 by Defendants, and have no relation to the hours the Agents actually worked for
8 Defendants. To the best of Plaintiffs' knowledge, Defendants either estimated the hours
9 based on work schedules or simply made up the hours.

10 48. On September 1, 2015, Defendants implemented a written "chargeback
11 policy," which provided that if any consumer cancelled a sales order within the first five
12 (5) installment payments, it would result in a chargeback of commissions previously
13 credited to the Agent responsible for the sale, as follows:

# of Payments	Chargeback % of Commission
1-2	100%
3-4	50%
5	33%

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20 49. Thus, in the event an Agent's sales were cancelled within the first five (5)
21 installment payments, the chargeback was taken from the Agents' commission check(s).

22 50. The chargeback did not show up on the Agents' paystubs. Instead,
23 Defendants provided a "commission sheet" to the Agents *after* their payroll was
24 submitted which communicated any chargebacks taken against the Agents' commissions.
25 The chargebacks were taken unilaterally by Defendants.

26 51. As a result of Defendants' compensation policy, Plaintiffs and all other
27 Agents were deprived of pay for compensable time worked, including overtime.
28

Pre- and Post-Shift Off-the-Clock Work

52. In addition to their regularly scheduled shifts, Defendants’ agents performed pre- and post-shift work that went uncompensated.

53. Pursuant to Defendants’ policies, training and direction, Agents were required to startup and login to various secure computer networks, software programs, and applications in order to access information and software.

54. The Agents’ startup and login process takes substantial time on a daily basis with said time ranging from 10 to 15 minutes per day, or even as much as 30 minutes if technical issues arise. Defendants’ Agents were never compensated for time, which directly benefitted Defendants and was an essential part of the Agents’ job responsibilities.

55. Additionally, Defendants’ Agents were required to logout of and close down various programs at the end of each shift. The log-out process occurred each shift with said time ranging from 1 to 2 minutes per day.

56. Moreover, Defendants’ Agents frequently handled calls that could last 60 minutes or more past the end of their scheduled shifts and Defendants failed to pay for that work time.

57. The U.S. Department of Labor recognizes that call center jobs, like those held by Defendants’ Agents, are homogenous and it issued Fact Sheet #64 in July 2008 to alert call center employees to some of the abuses which are prevalent in the industry. One of those abuses, which is occurring in this case, is an employer’s refusal to pay for work “from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday.” DOL Fact Sheet #64.

58. The Department of Labor’s Fact Sheet #64 specifically condemns an employer’s non-payment of an employee’s necessary pre- and post-shift activities: “An example of the first principal activity of the day for agents/specialists/representatives working in call centers includes starting the computer to download work instructions,

1 computer applications and work-related emails.” See *Id.*, at p. 2. Additionally, the FLSA
2 requires that “[a] daily or weekly record of all hours worked, including time spent in pre-
3 shift and post-shift job-related activities must be kept.” *Id.*

4 **Meal Period Violations**

5 59. Defendants promised each Agent a one hour unpaid meal period during each
6 shift. However, in reality, Defendants often required Agents to work through unpaid meal
7 periods if there were not enough Agents to cover the phones.

8 60. Under the federal law, in order to deduct an unpaid meal period from an
9 employees’ compensable time, an employee must be completely relieved of his or her
10 employment duties for the entire lunch break. 29 CFR 785.19(a) states:

11 Bona fide meal periods. Bona fide meal periods are not work time. Bona fide
12 meal periods do not include coffee breaks or time for snacks. These are rest
13 periods. The employee must be completely relieved from duty for the
14 purposes of eating regular meals. Ordinarily 30 minutes or more is long
15 enough for a bona fide meal period. A shorter period may be long enough
16 under special conditions. The employee is not relieved if he is required to
17 perform any duties, whether active or inactive, while eating. For example, an
18 office employee who is required to eat at his desk or a factory worker who is
19 required to be at his machine is working while eating. (emphasis added).

20 61. However, Defendants did not provide their Agents with a legitimate bona
21 fide meal period.

22 62. Under California law, employers must provide a meal period of at least 30
23 minutes for every five (5) hours worked. Cal. Lab. Code § 512(a) states:

24 An employer may not employ an employee for a work period of more than
25 five hours per day without providing the employee with a meal period of not
26 less than 30 minutes, except that if the total work period per day of the
27 employee is no more than six hours, the meal period may be waived by
28 mutual consent of both the employer and employee. An employer may not
employ an employee for a work period of more than 10 hours per day
without providing the employee with a second meal period of not less than

1 30 minutes, except that if the total hours worked is no more than 12 hours,
2 the second meal period may be waived by mutual consent of the employer
3 and the employee only if the first meal period was not waived.

4 63. However, Defendants did not provide their Agents with a 30-minute meal
5 period for every five (5) hours worked.

6 **Defendant Unlawfully Benefitted From Their Agents' Uncompensated Work**

7 64. At all relevant times, Defendants directed and directly benefited from the
8 startup and login time, meal period time, and logout time performed by their Agents.

9 65. At all relevant times, Defendants controlled the work schedules, duties,
10 protocols, applications, assignments and employment conditions of their Agents.

11 66. At all relevant times, Defendants were able to track the amount of time their
12 Agents spent starting up, logging in to, and logging out of Defendants' computer and
13 phone systems; however, Defendant failed to document, track, or pay its Agents for all
14 the work they performed, including off-the-clock work.

15 67. At all relevant times, Plaintiffs were non-exempt employees, subject to the
16 requirements of the FLSA and the California Labor Code.

17 68. At all relevant times, Defendants used its attendance and adherence policies
18 against its Agents in order to pressure them into arriving early and working off-the-clock.

19 69. At all relevant times, Defendants' policies and practices deprived their
20 Agents of wages owed for the pre-shift, meal periods, and post-shift work activities.
21 Because Defendants' Agents typically worked 40 hours or more in a workweek, and
22 more than eight (8) hours per day, Defendants' policies and practices also deprived them
23 of overtime pay.

24 70. Defendants knew or should have known that Plaintiffs and other Agents'
25 off-the-clock work was compensable under the law. Indeed, in light of the explicit DOL
26 guidance cited above, there is no conceivable way for Defendants to establish that it acted
27 in good faith.
28

1 71. As a non-exempt employees, Defendants’ Agents were entitled to full
2 compensation for all overtime hours worked at a rate of 1.5 times their “regular rate” of
3 pay.

4 72. Under FLSA, the regular rate is the “keystone” to calculating the overtime
5 rate. *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419 (1945). It is “the
6 hourly rate actually paid the employee for the normal, nonovertime workweek for which
7 he is employed.” 29 C.F.R. §778.108.

8 73. No matter how an employee is paid—whether by the hour, by the piece, on a
9 commission, or on a salary—the employee’s compensation must be converted to an
10 equivalent hourly rate from which the overtime rate can be calculated. 29 C.F.R.
11 §778.109. “The regular hourly rate of pay is determined by dividing the employee’s total
12 remuneration for employment (except statutory exclusions) in any workweek by the total
13 number of hours actually worked by the employee in that workweek for which such
14 compensation was paid.” *Id.*

15 74. Defendants’ contingent, commission-only compensation did not fall within
16 any of the statutory exclusions from the regular rate as provided in 29 U.S.C. §§
17 207(e)(1)-(8).

18 75. A commission-based employee’s regular rate of pay is computed by
19 reference to the number of hours the commission payment is intended to compensate. 29
20 C.F.R. §778.117.

21 This is true regardless of whether the commission is the sole source of
22 the employee’s compensation or is paid in addition to a guaranteed
23 salary or hourly rate, or on some other basis, and regardless of the
24 method, frequency, or regularity of computing, allocating and paying
25 the commission. It does not matter whether the commission earnings
26 are computed daily, weekly, biweekly, semimonthly, monthly, or at
27 some other interval. The fact that the commission is paid on a basis
28 other than weekly, and that payment is delayed for a time past the
employee's normal pay day or pay period, does not excuse the
employer from including this payment in the employee’s regular rate.

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Id.

76. There is a statutory presumption that remuneration in any form must be included in the regular rate calculation. The burden is on Defendants to establish that any payment should be excluded. Thus, determining the regular rate starts from the premise that all payments made to Plaintiffs for work performed are included in the base calculation unless specifically excluded by statute.

77. Even “[w]hen the commission is paid on a weekly basis, it is added to the employee’s other earnings for that workweek (except overtime premiums and other payments excluded as provided in section 7(e) of the Act), and the total is divided by the total number of hours worked in the workweek to obtain the employee’s regular hourly rate for the particular workweek. The employee must then be paid extra compensation at one-half of that rate for each hour worked in excess of the applicable maximum hours standard.” 29 C.F.R. §778.118.

78. Once the total amount of an employee’s “regular” compensation is deduced, “the determination of the regular rate becomes a matter of mathematical computation.” *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 425 (1945). The regular rate must be expressed as an hourly rate because, although any method of compensating an employee is permitted, the FLSA imposes its overtime requirements in terms of hourly wages. Thus, if necessary, an employer must convert an employee’s wages to rate per hour to determine compliance with the statute.

79. Because Defendants’ compensation scheme failed to incorporate the regular rate of pay, Defendants failed to properly compensate Plaintiffs and its other Agents under the FLSA.

80. Under California law, employees are entitled to “no less than one and one-half times the regular rate of pay” for work in excess of eight hours in one workday. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than

1 twice the regular rate of pay for an employee. In addition, any work in excess of eight
2 hours on any seventh day of a workweek shall be compensated at the rate of no less than
3 twice the regular rate of pay of an employee. Cal. Lab. Code, § 510(a).

4 81. The California Division of Labor Standards Enforcement Manual section
5 49.2.4.2 provides a reasonable formula for calculating overtime on a flat sum bonus. The
6 flat sum bonus formula set forth in sections 49.2.4.2 and 49.2.4.3 of the Manual, which
7 uses a divisor of straight time, instead of total hours worked to set the regular bonus rate,
8 and a multiplier of 1.5, rather than 0.5, to fix the bonus overtime due, produces “a
9 premium based on bonus” that is necessary to avoid encouraging the use of overtime.

10 82. Because Defendants’ compensation scheme failed to incorporate the
11 California Division of Labor Standards Enforcement Manual formula, Defendants failed
12 to properly compensate Plaintiffs and its other Agents under the California Labor Code.

13 83. Because Defendants’ weekly pay period compensation scheme did not pay
14 commissions in the week in which they were earned, Defendants failed to properly
15 compensate Plaintiffs and its other Agents under the California Labor Code. *See e.g.*,
16 *Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662, 663 (Cal. 2014) (An employer may
17 not attribute commission wages paid in one pay period to other pay periods in order to
18 satisfy the minimum earnings prong of the commissioned employee exemption to the
19 overtime requirement in Lab. Code, § 510).

20 **FLSA COLLECTIVE ACTION ALLEGATIONS**

21 84. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) of the FLSA on
22 their own behalf and on behalf of:

23 ***All current and former Agents who worked for any Defendants at any time***
24 ***from March 1, 2014 through judgment.***

25 (hereinafter referred to as the “FLSA Collective”). Plaintiffs reserve the right to amend
26 this definition if necessary.

1 85. Defendants are liable under the FLSA for, *inter alia*, failing to properly
2 compensate Plaintiffs and other similarly situated Agents.

3 86. Excluded from the proposed FLSA Collective are Defendants' executives,
4 administrative and professional employees, including computer professionals and outside
5 sales persons.

6 87. Consistent with Defendants' policy and pattern or practice, Plaintiffs and the
7 members of the FLSA Collective were not paid premium overtime compensation when
8 they worked beyond 40 hours in a workweek.

9 88. All of the work that Plaintiffs and the FLSA Collective members performed
10 was assigned by Defendants, and/or Defendants were aware of all of the work that
11 Plaintiffs and the FLSA Collective members performed.

12 89. As part of its regular business practice, Defendants intentionally, willfully,
13 and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with
14 respect to Plaintiffs and the FLSA Collective members. This policy and pattern or
15 practice includes, but is not limited to:

- 16 a. willfully failing to pay its employees, including Plaintiffs and the FLSA
17 Collective, for all hours worked including premium overtime wages for
18 all hours worked in excess of 40 hours per workweek; and
19 b. willfully failing to record all of the time that its employees, including
20 Plaintiffs and the FLSA Collective, worked for Defendants' benefit.

21 90. Defendants are aware or should have been aware that federal law required
22 them to pay Plaintiffs and the FLSA Collective overtime premiums for all hours worked
23 in excess of 40 per workweek.
24

25 91. Defendants failed to properly maintain timekeeping and payroll records
26 pertaining to the FLSA Collective under the FLSA, 29 U.S.C. 211(c).

27 92. Defendants' unlawful conduct was widespread, repeated, and consistent.
28

1 93. A collective action under the FLSA is appropriate because the employees
2 described above are “similarly situated” to Plaintiffs under 29 U.S.C. § 216(b). The
3 employees on behalf of whom Plaintiffs bring this collective action are similarly situated
4 because (a) they have been or are employed in the same or similar positions; (b) they
5 were or are performing the same or similar job duties; (c) they were or are subject to the
6 same or similar unlawful practices, policy, or plan; and (d) their claims are based upon
7 the same factual and legal theories.

8 94. The employment relationships between Defendants and every proposed
9 FLSA Collective member are the same and differ only by name, location, and rate of pay.
10 The key issues – the amount of uncompensated pre-shift startup/login time, unpaid meal
11 period time, and the amount of post-shift log-out/shut-down time owed to each employee
12 – does not vary substantially among the proposed FLSA Collective members.

13 95. There are many similarly situated current and former Agents who were
14 underpaid in violation of the FLSA who would benefit from the issuance of a court-
15 supervised notice of this lawsuit and the opportunity to join it.

16 96. This notice should be sent to the FLSA Collective pursuant to 29 U.S.C. §
17 216(b).

18 97. Those similarly situated employees are known to Defendants, are readily
19 identifiable, and can be located through Defendants’ records.

20 98. Plaintiffs estimates the proposed FLSA Collective, including both current
21 and former employees over the relevant period will include several hundreds, if not
22 thousands, of workers. The precise number of FLSA Collective members should be
23 readily available from a review of Defendants’ personnel and payroll records.

24 **RULE 23 CLASS ACTION ALLEGATIONS**

25 99. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(3) on their own
26 behalf and on behalf of all similarly situated current and former employees of Defendants
27 who are or were employed at any time in the last four years. Plaintiffs propose the
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1 following class definition:

2 ***All current and former Agents who worked for any Defendants in***
3 ***California at any time from March 1, 2013 through judgment.***

4 Plaintiffs reserve the right to amend the putative class definition if necessary.

5 100. Plaintiffs share the same interests as the putative class and will be entitled
6 under the California Labor Code to unpaid overtime compensation, attorneys' fees, and
7 costs and lost interest owed to them under nearly identical factual and legal standards as
8 the remainder of the putative class.

9 101. The putative Class meets the numerosity requirement of Rule 23(a)(1)
10 because, during the relevant period, Defendants employed hundreds, if not thousands, of
11 Agents throughout California. The Class members are so numerous that joinder of all
12 such persons is impracticable and that the disposition of their claims in a class action
13 rather than in individual actions will benefit the parties and the Court. The precise
14 number of Class members should be readily available from a review of Defendants'
15 personnel, scheduling, time, phone, and payroll records, and from input received from the
16 putative Class members.

17 102. The putative Class meets the commonality requirement of Rule 23(a)(2)
18 because, during the relevant period, Defendants engaged in a common course of conduct
19 that violated the legal rights of Plaintiffs and the Class. Individual questions that
20 Plaintiffs' claims present, to the extent any exist, will be far less central to this litigation
21 than the numerous material questions of law and fact common to the Class, including but
22 not limited to:

- 23 a. Whether Defendants engaged in a policy or practice of failing to
24 pay each Class member regular wages for each non-overtime hour
25 worked.
- 26 b. Whether Defendants engaged in a policy or practice of failing to
27 pay each Class member overtime compensation for each overtime
28 hour worked;

- c. Whether Defendants violated Labor Code sections 221 and 223 by making unlawful deductions to Class members' wages;
- d. Whether Defendants failed to provide each Class member with at least one 30-minute meal period on every workday of at least 5 hours and a second 30-minute meal period on every workday of at least 10 hours as required by the California Employment Law and Regulations;
- e. Whether Defendants violated sections 201 to 203 of the Labor Code by willfully failing to pay all wages and compensation due each Class member who quit or who was discharged;
- f. Whether Defendants violated section 226 of the Labor Code by willfully failing to provide accurate itemized wage statements showing the number of hours worked by each Class member and the corresponding hourly rate;
- g. Whether Defendants violated sections 1174 and 1175 of the Labor Code and the applicable Industrial Welfare Commission Orders by failing to maintain records pertaining to when Class members began and ended each work period, the total daily hours worked, and the total hours worked per pay period;
- h. Whether Defendants violated section 510 of the Labor Code and the applicable Industrial Welfare Commission Orders by failing to accurately calculate regular rates of pay for overtime purposes;
- i. Whether Defendants violated section 2208 of the Labor Code by willfully failing to reimburse each Class member any reasonable business expenses incurred;
- j. Whether Defendants were unjustly enriched by the work and services performed by Class members without compensation;
- k. Whether Defendants engaged in unfair business practices in violation of Business and Professions Code section 17200, *et seq.*; and
- l. Whether Defendants should be required to pay compensatory damages, attorneys' fees, penalties, costs, and interest for violating

California state law.

1
2 103. The status of all individuals similarly situated to Plaintiffs raises an identical
3 legal question: whether Defendants' Agents are entitled to back wages, including
4 overtime.

5 104. The putative Class meets the typicality requirement of Rule 23(a)(3) because
6 Plaintiffs and the putative Class members were all employed by Defendants and
7 performed their job duties without receiving wages, including overtime wages, owed for
8 that work.

9 105. The Class meets the adequacy requirement of Rule 23(a)(4) because there is
10 no apparent conflict of interest between Plaintiffs and the putative Class members, and
11 because Plaintiffs' attorneys have successfully prosecuted many complex class actions,
12 including wage and hour class and collective actions, and will adequately represent the
13 interests of Plaintiffs and the putative Class members.

14 106. The putative Class meets the predominance requirement of Rule 23(b)(3),
15 because issues common to the Class predominate over any questions affecting only
16 individual members, including but not limited to, those listed above.

17 107. The Class meets the superiority requirement of Rule 23(b)(3) because
18 allowing the parties to resolve this controversy through a class action would permit a
19 large number of similarly situated persons to prosecute common claims in a single forum
20 simultaneously, efficiently, and without the unnecessary duplication of evidence, effort,
21 or expense that numerous individual actions would engender.

22 108. Given the material similarity of the Class members' claims, even if each
23 Class member could afford to litigate a separate claim, this Court should not countenance
24 or require the filing of hundreds or even thousands of identical actions. Individual
25 litigation of the legal and factual issues raised by Defendants' conduct would cause
26 unavoidable delay, a significant duplication of efforts, and an extreme waste of resources.
27 Alternatively, proceeding by way of a class action would permit the efficient supervision
28

1 of the putative Class’s claims, create significant economies of scale for the Court and the
2 parties and result in a binding, uniform adjudication on all issues.

3 **COUNT I**

4 **VIOLATION OF FLSA, 29 U.S.C. § 201, et seq.**

5 **FAILURE TO PAY OVERTIME WAGES**

6 109. Plaintiffs re-allege and incorporate all previous paragraphs herein.

7 110. At all times relevant to this action, Defendants were engaged in interstate
8 commerce, or in the production of goods for commerce, as defined by the FLSA.

9 111. At all times relevant to this action, Plaintiffs were “employees” of
10 Defendants within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

11 112. Plaintiffs and the FLSA Collective members, by virtue of their job duties
12 and activities actually performed, are all non-exempt employees.

13 113. Defendants are not “retail or service establishments” as defined by 29 U.S.C.
14 § 213(a)(2) of the FLSA.

15 114. Plaintiffs either: (1) engaged in commerce; or (2) engaged in the production
16 of goods for commerce; or (3) were employed in an enterprise engaged in commerce or in
17 the production of goods for commerce.

18 115. At all times relevant to this action, Defendants “suffered or permitted”
19 Plaintiffs and all similarly situated current and former employees to work and thus
20 “employed” them within the meaning of 29 U.S.C. § 203(g) of the FLSA.

21 116. At all times relevant to this action, Defendants required Plaintiffs and the
22 FLSA Collective members to perform off-the-clock work each shift, but failed to pay
23 these employees the federally mandated overtime compensation for this work.

24 117. The off-the-clock work performed every shift by Plaintiffs and the FLSA
25 Collective members is an essential part of their jobs and these activities and the time
26 associated with these activities is not *de minimis*.

27 118. In workweeks where Plaintiffs and other FLSA Collective members worked
28

1 40 hours or more, the uncompensated off-the-clock work time, and all other overtime
2 should have been paid at the federally mandated rate of 1.5 times each employee’s
3 regularly hourly wage. 29 U.S.C. § 207.

4 119. Defendants’ violations of the FLSA were knowing and willful. Defendants
5 knew or could have determined how long it took for their Agents to perform their off-the-
6 clock work. Further, Defendants could have easily accounted for and properly
7 compensated Plaintiffs and the FLSA Collective for these work activities, but did not.

8 120. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of
9 the Act, each employee is entitled to his or her unpaid wages (including unpaid
10 overtime), plus an additional equal amount in liquidated damages (double damages), plus
11 costs and reasonable attorneys’ fees.

12 **COUNT II**

13 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510, 1194, 1198**

14 **AND IWC WAGE ORDER 4 – FAILURE TO PAY OVERTIME**

15 121. Plaintiffs re-allege and incorporate all previous paragraphs herein.

16 122. At all relevant times, Defendants regularly and consistently maintained
17 corporate policies and procedures designed to reduce labor costs by reducing or
18 minimizing the amount of compensation paid to its employees, especially overtime
19 compensation.

20 123. At all relevant times, Plaintiffs and the Class regularly performed non-
21 exempt work and were thus subject to the overtime requirements of California law.

22 124. Labor Code §§ 510 and 1198 and Industrial Welfare Commission (“IWC”)
23 Wage Order No. 4 § 3(A) provide that: (a) employees are entitled to compensation at the
24 rate of one and one-half times their regular rate of pay for all hours worked in excess of
25 eight (8) hours in a workday up to twelve (12) hours in a workday, in excess of forty (40)
26 hours in a workweek, and for the first eight (8) hours of work on the seventh (7th)
27 consecutive day or a workweek; and (b) employees are entitled to compensation at the
28

1 rate of twice their regular rate of pay for all hours worked in excess of twelve (12) hours
2 in a workday, and in excess of eight (8) hours on the seventh (7th) consecutive day of
3 work in a workweek.

4 125. At all relevant times, Plaintiffs and the Class regularly worked in excess of eight
5 (8) hours in a workday and/or in excess of forty (40) hours in a workweek.

6 126. At all relevant times, Defendants failed and refused to pay Plaintiffs and the
7 Class members for any and all hours actually worked in excess of the scheduled shift.

8 127. Defendants intentionally, maliciously, fraudulently and with the intent to
9 deprive the Class of their ability to earn a living so as to reduce their labor costs, knowingly
10 and willingly implemented a scheme or artifice to avoid paying overtime by reducing the
11 rate of pay to Plaintiffs and other Class members who worked overtime hours.

12 128. Plaintiffs and the Class were entitled to receive overtime compensation at
13 their lawful regular rate of pay, including the shift differential where applicable.
14 Defendants' failure to pay lawful premium overtime wages, as alleged above, was a
15 willful violation of Labor Code §§ 510, 1198, and IWC Wage Order No. 4.

16 129. Wherefore, Plaintiffs demand payment of the unpaid balance of the full
17 amount of wages due for unpaid time worked, as well as overtime premiums owing,
18 including interest thereon, penalties, reasonable attorneys' fees, and costs of suit pursuant
19 to Labor Code §§ 1194 and 1194.2 as a result of Defendants' failure to pay for all time
20 worked and such premium compensation, as is required under California law.

21 **COUNT III**

22 **VIOLATION OF CALIFORNIA LABOR CODE §§ 221 and 223**

23 **UNLAWFUL DEDUCTIONS**

24 130. Plaintiffs re-allege and incorporate all previous paragraphs herein.

25 131. At all relevant times, Defendants regularly and consistently maintained
26 corporate policies and procedures designed to reduce labor costs by reducing or
27 minimizing the amount of compensation paid to its employees, especially overtime
28

1 compensation.

2 132. Defendants made deductions from Plaintiffs' and the Class members'
3 paychecks in the amount of the overtime premiums earned by the employee during the
4 pay period so as to avoid paying overtime compensation.

5 133. Labor Code § 221 provides it is unlawful for any employer to collect or
6 receive from an employee any part of wages theretofore paid by employer to employee.

7 134. Labor Code § 223 provides that where any statute or contract requires an
8 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a
9 lower wage while purporting to pay the wage designated by statute or by contract. Labor
10 Code section 225 further provides that the violation of any provision of Labor Code §§
11 221 and 223 is a misdemeanor.

12 135. As a result of the conduct alleged above, Defendants unlawfully collected or
13 received from Plaintiffs and the Class part of the wages paid to their employees.

14 136. Wherefore, Plaintiffs demand the return of all wages unlawfully deducted
15 from the paychecks, including interest thereon, penalties, reasonable attorneys' fees, and
16 costs of suit pursuant to Labor Code §§ 225.5 and 1194.

17 **COUNT IV**

18 **VIOLATION OF CALIFORNIA LABOR CODE §§ 226.7 and 512**

19 **FAILURE TO PROVIDE MEAL BREAKS**

20 137. Plaintiffs re-allege and incorporate all previous paragraphs herein.

21 138. Labor Code § 512, and IWC Wage Order No. 7 § 11(A) and (B) provide that
22 an employer may not employ a person for a work period of more than five (5) hours
23 without providing the employee with a meal period of not less than thirty (30) minutes, and
24 may not employ an employee for a work period of more than ten (10) hours per day
25 without providing the employee with a second meal period of not less than (30) minutes.

26 139. At all relevant times, Plaintiffs and the Class consistently worked in excess
27 of five (5) or ten (10) hours in a day.

1 140. At all relevant times, Defendants regularly required employees to perform
2 work during their first and/or second meal periods without proper compensation.
3 Defendants' practice of requiring employees to perform work during their legally
4 mandated meal periods without premium compensation is a violation of Labor Code §§
5 226.7 and 512, and IWC Wage Order No. 7.

6 141. Defendants purposefully elected not to provide meal periods to Plaintiffs and
7 Class members, and Defendants acted willfully, oppressively, and in conscious disregard
8 of the rights of Plaintiffs and the Class members in failing to do so.

9 142. Plaintiffs are informed and believe Defendants did not properly maintain
10 records pertaining to when Plaintiffs and the Class members began and ended each meal
11 period, in violation of Labor Code §1174 and IWC Wage Order No. 7 § 7(A).

12 143. As a result of Defendants' knowing, willful, and intentional failure to
13 provide meal breaks, Plaintiffs and the Class members are entitled to recover one (1)
14 additional hour of pay at the employee's regular rate of pay for each work day that a meal
15 period was not provided, pursuant to Labor Code § 226.7 and IWC Wage Order No. 7 §
16 11(D), and penalties, reasonable attorneys' fees, and costs pursuant to Labor Code §§
17 218.5.

18 144. Defendants' wrongful and illegal conduct in failing to provide Class
19 members with meal breaks or to provide premium compensation, unless and until
20 enjoined by order of this Court, will continue to cause great and irreparable injury to
21 Plaintiffs and the Class members in that Defendants will continue to violate these laws
22 unless specifically ordered to comply with the same. The expectation of future violations
23 will require current and future employees to repeatedly and continuously seek legal
24 redress in order to gain compensation to which they are already entitled. Plaintiffs and the
25 Class members have no other adequate remedy at law to insure future compliance with
26 the laws alleged herein to have been violated.

27 145. Wherefore, Plaintiffs demand pursuant to Labor Code Section 227.7(b) that
28

1 Defendants pay each Class member one additional hour of pay at the Class member’s
2 regular rate of compensation for each work day that the meal period was not provided.

3 **COUNT V**

4 **VIOLATION OF CALIFORNIA LABOR CODE § 226 and 1174**

5 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

6 146. Plaintiffs re-allege and incorporate all previous paragraphs herein.

7 147. Labor Code §§ 226 and 1174 provide that every employer shall, semi-
8 monthly or at the time of payment of wages, furnish each employee, either as a
9 detachable part of the check or separately, an accurate, itemized statement in writing
10 showing the total hours worked, and the applicable hourly rates and corresponding total
11 number of hours worked.

12 148. At all relevant times, Defendants failed to maintain proper records and
13 furnish Plaintiffs and the Class members, either semi-monthly or at the time of each
14 payment of wages, an accurate, itemized statement conforming to the requirements of
15 Labor Code §§ 226 and 1174.

16 149. At all relevant times, Defendants failed to furnish Plaintiffs and the Class
17 members with accurate wage statements in writing, showing: (1) gross wages earned; (2)
18 total hours worked by each respective employee; (3) all deductions; (4) net wages earned;
19 (5) the inclusive dates of the period for which the employee is paid; (6) the name of the
20 employee and only the last four digits of his or her social security number or an employee
21 identification number; (7) the name and address of the legal entity that is the employer;
22 and (8) all applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate.

24 150. Plaintiffs are informed and believe that Defendants knew or should have
25 known that Plaintiffs and the Class members were entitled to receive wage statements
26 compliant with Labor Code § 226 and 1174, and that Defendants willfully and
27 intentionally failed to provide Plaintiffs and the Class members with such accurate,
28

1 itemized statements showing, for example, accurate hours and overtime calculations.

2 151. Wherefore Plaintiffs demand that Defendants pay each and every Class
3 member fifty dollars (\$50.00) for the initial pay period in which the violation occurred
4 and one hundred dollars (\$100) for each subsequent violation, up to a maximum of four
5 thousand dollars (\$4,000.00) pursuant to Labor Code § 226, as well as reasonable
6 attorneys' fees and costs.

7 **COUNT VI**

8 **VIOLATION OF CALIFORNIA LABOR CODE § 2802**

9 **FAILURE TO INDEMNIFY EMPLOYEES' EXPENSES AND LOSSES**

10 152. Plaintiffs re-allege and incorporate all previous paragraphs herein.

11 153. California Labor Code § 2802 provides that an employer shall indemnify his
12 or her employee for all necessary expenditures or losses incurred by the employee in
13 direct consequence of the discharge of his or her duties.

14 154. During all relevant times, Defendants knowingly and willfully violated
15 California Labor Code § 2802 by failing to pay Plaintiffs and members of the California
16 Class who are no longer employed by Defendants all expenses and losses owed as alleged
17 herein. Defendants are therefore liable to Plaintiffs and members of the California Class
18 for expenses and losses incurred in direct consequence of the discharge of Plaintiffs'
19 duties.

20 155. Plaintiffs, individually and on behalf of the members of the California Class,
21 respectfully request that the Court award all expenses and losses due, and the relief
22 requested below in the Prayer for Relief.

23 **COUNT VII**

24 **VIOLATION OF BUSINESS AND PROFESSIONS CODE, § 17200, et seq.**

25 156. Plaintiffs re-allege and incorporate all previous paragraphs herein.

26 157. Defendants engaged and continues to engage in unfair business practices in
27 California by practicing, employing and utilizing the unlawful practices described above,
28

1 including (a) training and directing AGENTSS to work off-the-clock without
2 compensation; (b) making deductions to AGENTSS' paychecks to recover overtime
3 premiums earned by the employee; (c) requiring RNs to work overtime without lawful
4 premium compensation; (d) failing to provide lawful meal breaks or premium
5 compensation in lieu thereof; and (e) failing to provide accurate, itemized wage
6 statements.

7 158. In addition, the conduct alleged in each of the previously stated causes of
8 action constitute an unlawful and for unfair business practice within the meaning of
9 Business & Professions Code § 17200, *et seq.*

10 159. As a result of Defendants' conduct, Plaintiffs and the Class have been harmed
11 as described in the allegations set forth above.

12 160. The actions described above, constitute false, unfair, fraudulent and deceptive
13 business practices within the meaning of California Business & Professions Code §
14 17200, *el seq.* By and through such unfair, unlawful and/or fraudulent business practices,
15 Defendants obtained valuable property, money and services from Plaintiffs and the Class,
16 and have deprived Plaintiffs and the Class fundamental rights and privileges guaranteed to
17 all employees under California law.

18 161. Defendants were unjustly enriched by the policies and practices described
19 herein, and those policies and practices conferred an unfair business advantage on
20 Defendants over other businesses providing similar services which routinely comply with the
21 requirements of California law.

22 162. Plaintiffs seek, on their own behalf, and on behalf of the putative Class
23 members, full restitution of all monies withheld, acquired and/or converted by
24 Defendants by means of the unfair practices complained of herein, as necessary and
25 according to proof, and/or disgorgement of all profits acquired by Defendants by means
26 of the acts and practices described herein.

27 163. Plaintiffs seek, on their own behalf, and on behalf of other Class members
28

1 similarly situated, an injunction to prohibit Defendants from continuing to engage in the
2 unfair business practices complained of herein. Defendants' unlawful conduct, as described
3 above, unless and until enjoined and restrained by order of this Court, will cause great and
4 irreparable injury to Plaintiffs and all Class members in that Defendants will continue to
5 violate these California laws unless specifically ordered to comply with the same. This
6 expectation of future violations will require current and future employees to repeatedly and
7 continuously seek legal redress in order to gain compensation to which they are entitled
8 under California law. Plaintiffs have no other adequate remedy at law to insure future
9 compliance with the California labor laws and wage orders alleged to have been violated
10 herein.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs on their own behalf and on the behalf of the putative
13 Collective and Class members, request judgment as follows:
14

- 15 a. Certifying this case as a collective action in accordance with 29 U.S.C. §
16 216(b) with respect to the FLSA claims set forth above;
- 17 b. Designating the named Plaintiffs as Representative of the proposed FLSA
18 collective;
- 19 c. Ordering Defendant to disclose in computer format, or in print if no
20 computer readable format is available, the names and addresses of all those
21 individuals who are similarly situated, and permitting Plaintiffs to send
22 notice of this action to all those similarly situated individuals including the
23 publishing of notice in a manner that is reasonably calculated to apprise the
24 potential class members of their rights under the FLSA;
- 25 d. Certifying the proposed Rule 23 Class;
- 26 e. Designating Plaintiffs as representatives of the proposed Rule 23 Class;
- 27 f. Appointing James Hawkins, APLC and Sommers Schwartz, P.C. as Class
28

1 Counsel;

- 2 g. Declaring that Defendants willfully violated the Fair Labor Standards Act
3 and its attendant regulations as set forth above;
- 4 h. Granting judgment in favor of Plaintiffs and against Defendants and
5 awarding the amount of unpaid overtime wages calculated at the rate of one
6 and one-half (1.5) of Plaintiffs' regular rate (including the shift differential
7 where applicable) multiplied by all off-the-clock hours that Plaintiffs worked
8 in excess of eight (8) hours per day and/or forty (40) hours per week for the
9 past four years;
- 10 i. Awarding liquidated damages in an amount equal to the amount of unpaid
11 overtime wages found due and owing;
- 12 j. For statutory and civil penalties pursuant to Labor Code §§ 225.5, 226(e),
13 226.3, and 226.7;
- 14 k. For disgorgement and restitution to Plaintiffs and other similarly effected
15 Class members of all funds unlawfully acquired by Defendants by means of
16 any acts or practices declared by this Court to violate the mandate
17 established by California Business and Professions Code § 17200, *et seq.*;
- 18 l. For the appointment of a receiver to receive, manage and distribute any and
19 all funds disgorged from Defendants and determined to have been wrongfully
20 acquired by Defendants as a result of violations of California Business and
21 Professions Code § 17200, *et seq.*;
- 22 m. For an injunction prohibiting Defendants from engaging in the unfair
23 business practices complained of herein;
- 24 n. For an injunction requiring Defendants to give notice to persons to whom
25 restitution is owing of the means by which to file for restitution;
- 26 o. For actual damages or statutory penalties according to proof as set forth in
27 California Labor Code §§ 226, 1174, and IWC Wage Order No. 7, § 7(A)
28 related to record keeping;
- 29 p. For an order requiring Defendants to show cause, if any there be, why they

1 should not be enjoined and ordered to comply with the applicable California
2 Industrial Welfare Commission wage orders related to record keeping for
3 Defendants’ employees related to same; and for an order enjoining and
4 restraining Defendants and their agents, servants and employees related
5 thereto;

6 q. For pre-judgment interest as allowed by California Labor Code §§ 218.6,
7 1194 and 2802(b) and California Civil Code § 3287 and other statutes;

8 r. Awarding civil penalties pursuant to California Labor Code § 2698, *et seq.*;

9 s. For reasonable attorneys’ fees, expenses, and costs as provided by the
10 FLSA, California Labor Code §§ 218.5, 226(e) and (g), 1194, 2802 and
11 California Code of Civil Procedure § 1021.5; and

12 t. For such other and further relief the Court may deem just and proper.

13 **JURY DEMAND**

14 Plaintiffs, Tyrell Glass, Dustin Schnatz, and Jordan Terrado, individually and on
15 behalf of all others similarly situated, by and through their attorneys, hereby demand a
16 trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court
17 rules and statutes made and provided with respect to the above entitled cause.

18 Respectfully Submitted,

19 Dated: March 22, 2017

20 By: /s/ Gregory Mauro
21 Gregory Mauro

22 James Hawkins, SBN 192925
23 james@jameshawkinsaplc.com
24 Gregory Mauro SBN 222239
25 greg@jameshawkinsaplc.com
26 JAMES HAWKINS, APLC
27 9880 Research Drive, Suite 200
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1 Jason J. Thompson (*pro hac vice anticipated*)
2 jthompson@sommerspc.com
3 Jesse L. Young (*pro hac vice anticipated*)
4 jyoung@sommerspc.com
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*Counsel for Plaintiff and Proposed Class
and Collective Members*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

TYRELL GLASS, DUSTIN SCHNATZ, and JORDAN TERRADO, individually and on behalf of all other similarly situated

(b) County of Residence of First Listed Plaintiff Tampa, Florida (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James Hawkins, SBN 192925
Gregory Mauro SBN 222239
JAMES HAWKINS, APLC
9880 Research Drive, Suite 200
Irvine, CA. 92618; Tel: 949-387-7200 ("See Attachment")

DEFENDANTS

FMM ENTERPRISES, INC., EC LENDING, LLC, GTPD ENTERPRISES, INC., PREMIER DOCUMENTS, LLC, d/b/a MACKLOCK NATIONAL CREDIT, LLC, CYNTHIA WALSH, RYAN MCAWENEY, NEIL BILLOCK, and DOES 1-10, jointly and severally, County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'17CV563 JAH KSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. § 201, et seq. ("FLSA")

Brief description of cause:

Violation of the FLSA; Violation of the California Labor Code; Violation of the applicable IWC Wage Orders

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:

JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

March 22, 2017

/s/ Gregory Mauro

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

1 James Hawkins, SBN 192925
james@jameshawkinsapl.com
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14 *Counsel for Plaintiff and Proposed Class*
15 *and Collective Members*

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 **TYRELL GLASS, DUSTIN**
19 **SCHNATZ, and JORDAN**
20 **TERRADO**, individually and
21 on behalf of all other similarly situated,

22 Plaintiffs,

23 v.

24 **FMM ENTERPRISES, INC., EC**
25 **LENDING, LLC, GTPD**
26 **ENTERPRISES, INC., PREMIER**
27 **DOCUMENTS, LLC, d/b/a**
28 **MACKLOCK NATIONAL**
CREDIT, LLC, CYNTHIA WALSH,

Case No.:

ATTACHMENT DESIGNATING
ADDITIONAL ATTORNEYS
FOR PLAINTIFFS

1 **RYAN MCAWEENEY, NEIL**
2 **BILLOCK, and DOES 1-10, jointly**
3 and severally, as

4 Defendants.

5
6
7 The following individuals whose names and contact information are listed below are also
8 attorneys for Plaintiffs (*pro hac vice* anticipated).

9
10 Jason J. Thompson (*pro hac vice anticipated*)

11 jthompson@sommerspc.com

12 Jesse L. Young (*pro hac vice anticipated*)

13 jyoung@sommerspc.com

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19
20
21 Respectfully Submitted,

22 Dated: March 22, 2017

23 By:/s/ Gregory Mauro

24 Gregory Mauro

25 James Hawkins, SBN 192925

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*Counsel for Plaintiff and Proposed Class
and Collective Members*

EXHIBIT A

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4 9880 Research Drive, Suite 200
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5 Tel: 949-387-7200

6 Jason J. Thompson (*pro hac vice anticipated*)
jthompson@sommerspc.com
7 Jesse L. Young (*pro hac vice anticipated*)
8 jyoung@sommerspc.com
SOMMERS SCHWARTZ, P.C.
9 One Towne Square, Suite 1700
10 Southfield, Michigan 48076
Telephone: (248) 355-0300
11 Facsimile: (248) 436-8453

12 *Counsel for Plaintiff and Proposed Class*
13 *and Collective Members*

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 **TYRELL GLASS, DUSTIN SCHNATZ,**
17 **and JORDAN TERRADO,** individually and
on behalf of all other similarly situated,

18 Plaintiffs,

19 v.

20 **FMM ENTERPRISES, INC., EC**
21 **LENDING, LLC, GTPD ENTERPRISES,**
22 **INC., PREMIER DOCUMENTS, LLC,**
23 **d/b/a MACKLOCK NATIONAL CREDIT,**
24 **LLC, CYNTHIA WALSH, RYAN**
MCAWEENEY, NEIL BILLOCK, and
DOES 1-10, jointly and severally, as

25 Defendants.

Case No.: **'17CV563 JAH KSC**

CONSENT TO JOIN
COLLECTIVE ACTION

26
27 1. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §216(b), I hereby consent to join and
act as a plaintiff in the above-captioned lawsuit.

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2. I agree to be bound by any adjudication or court rulings in the lawsuit, whether favorable or unfavorable.

3. I hereby designate the Sommers Schwartz, P.C. and James Hawkins, APLC law firms to represent me in the lawsuit under the terms and conditions set forth on the following page.


Signature: 
Print Name: Tyrell Glase
Date Signed: 3/16/2017

EXHIBIT B

1 James Hawkins, SBN 192925
james@jameshawkinsaplc.com
2 Gregory Mauro SBN 222239
greg@jameshawkinsaplc.com
3 JAMES HAWKINS, APLC
4 9880 Research Drive, Suite 200
Irvine, CA. 92618
5 Tel: 949-387-7200

6 Jason J. Thompson (*pro hac vice anticipated*)
jthompson@sommerspc.com
7 Jesse L. Young (*pro hac vice anticipated*)
8 jyoung@sommerspc.com
SOMMERS SCHWARTZ, P.C.
9 One Towne Square, Suite 1700
10 Southfield, Michigan 48076
Telephone: (248) 355-0300
11 Facsimile: (248) 436-8453

12 *Counsel for Plaintiff and Proposed Class*
13 *and Collective Members*

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 **TYRELL GLASS, DUSTIN SCHNATZ,**
17 **and JORDAN TERRADO,** individually and
on behalf of all other similarly situated,

18 Plaintiffs,

19 v.

20 **FMM ENTERPRISES, INC., EC**
21 **LENDING, LLC, GTPD ENTERPRISES,**
22 **INC., PREMIER DOCUMENTS, LLC,**
23 **d/b/a MACKLOCK NATIONAL CREDIT,**
24 **LLC, CYNTHIA WALSH, RYAN**
MCAWEENEY, NEIL BILLOCK, and
DOES 1-10, jointly and severally, as

25 Defendants.

Case No.: **'17CV563 JAH KSC**

CONSENT TO JOIN
COLLECTIVE ACTION

26
27 1. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §216(b), I hereby consent to join and
act as a plaintiff in the above-captioned lawsuit.

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3. I hereby designate the Sommers Schwartz, P.C. and James Hawkins, APLC law firms to represent me in the lawsuit under the terms and conditions set forth on the following page.

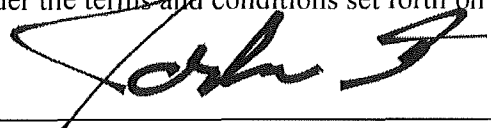
Signature: 
Print Name: Jordan Terrado
Date Signed: 03/16/2017

EXHIBIT C

CO FILE DEPT CLOCK VCHR NO. 576
 KIK 000071 000200 XN50X 0000100009 1

Earnings Statement



FMM ENTERPRISES INC
 DBA : SL CONSULTING
 4875 VIEWRIDGE DR
 SAN DIEGO, CA 92123

Period Beginning: 02/24/2016
 Period Ending: 03/08/2016
 Pay Date: 03/15/2016

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 2
 CA: 0

0000000009
TYRELL GLASS
3842 JEWELL ST
K102
SAN DIEGO CA 92109

Social Security Number: ██████████

Earnings	rate	hours	this period	year to date
Regular	10.0000	72.00		1,360.00
Overtime	15.0000	13.33	199.95	999.90
Draw			720.00	2,480.00
Commission				8,226.98
Gross Pay			\$919.95	13,066.88

Your CA taxable wages this period are \$851.16

Important Notes

ADP TotalSource, Inc., A Professional Employer Organization
 10200 Sunset Drive, Miami, FL 33173
 1-800-554-1802

Deductions	Statutory		
Federal Income Tax	-43.68		1,149.16
Social Security Tax	-52.77		788.82
Medicare Tax	-12.34		184.48
CA State Income Tax	-11.42		361.56
CA SUI/SDI Tax	-7.66		114.51
Other			
Medical	-62.25*		311.25
Ts Dental	-3.31*		16.55
Ts Vision	-3.23*		16.15
Advance			944.04
Reimbursement			-7.50
Net Pay	\$723.29		
Checking	-723.29		9,187.86
Net Check	\$0.00		

* Excluded from federal taxable wages
 Your federal taxable wages this period are \$851.16

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A Professional Employer Organization
 5800 Windward Parkway
 Alpharetta, GA 30005

Advice number: 00000100009
 Pay date: 03/15/2016

Deposited to the account of	account number	transit ABA	amount
TYRELL GLASS	xxxxx8181	xxxx xxxx	\$723.29

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CO FILE DEPT CLOCK VOHR NO 976
 KIK 000071 000200 XN50X 0000110008 1

Earnings Statement



FMM ENTERPRISES INC
 DBA : SL CONSULTING
 4875 VIEWRIDGE DR
 SAN DIEGO, CA 92123

Period Ending: 03/15/2016
 Pay Date: 03/18/2016

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 2
 CA: 0

0000000008
TYRELL GLASS
3842 JEWELL ST
K102
SAN DIEGO CA 92109

Social Security Number: ██████████

Earnings	rate	hours	this period	year to date
Commission			2,128.88	10,355.86
Regular				1,360.00
Overtime				999.90
Draw				2,480.00
Gross Pay			\$2,128.88	15,195.76

Your CA taxable wages this period are
 \$2,128.88

Important Notes

ADP TotalSource, Inc., A Professional Employer Organization
 10200 Sunset Drive, Miami, FL 33173
 1-800-554-1802

Deductions	Statutory		
Federal Income Tax		-248.23	1,397.39
Social Security Tax		-131.99	920.81
Medicare Tax		-30.87	215.35
CA State Income Tax		-87.56	449.12
CA SUI/SDI Tax		-19.16	133.67
Other			
Advance			944.04
Medical			311.25
Reimbursement			-7.50
Ts Dental			16.55
Ts Vision			16.15
Net Pay		\$1,611.07	
Checking		-1,611.07	10,798.93
Net Check		50.00	

Your federal taxable wages this period are
 \$2,128.88

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A Professional Employer Organization
 5800 Windward Parkway
 Alpharetta, GA 30005

Advice number: 00000110008
 Pay date: 03/18/2016

Deposited to the account of	account number	transit ABA	amount
TYRELL GLASS	XXXXX8181	XXXX XXXX	\$1,611.07

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 KIK 000071 000200 XN50X 0000130009

Earnings Statement



FMM ENTERPRISES INC
 DBA : SL CONSULTING
 4875 VIEWRIDGE DR
 SAN DIEGO, CA 92123

Period Beginning: 03/09/2016
 Period Ending: 03/23/2016
 Pay Date: 03/31/2016

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 2
 CA: 0

0000000009
TYRELL GLASS
3842 JEWELL ST
K102
SAN DIEGO CA 92109

Social Security Number: ██████████

Earnings	rate	hours	this period	year to date
Regular	10.0000	88.00		1,360.00
Overtime	15.0000	8.00	120.00	1,119.90
Draw			880.00	3,360.00
Commission				10,355.86
Gross Pay			\$1,000.00	16,195.76

Your CA taxable wages this period are \$931.21

Important Notes

ADP TotalSource, Inc., A Professional Employer Organization
 10200 Sunset Drive, Miami, FL 33173
 1-800-554-1802

Deductions	Statutory		
Federal Income Tax		-55.69	1,453.08
Social Security Tax		-57.74	978.55
Medicare Tax		-13.50	228.85
CA State Income Tax		-13.18	462.30
CA SUI/SDI Tax		-8.38	142.05
Other			
Medical		-62.25*	373.50
Ts Dental		-3.31*	19.86
Ts Vision		-3.23*	19.38
Advance			944.04
Reimbursement			-7.50
Net Pay		\$782.72	
Checking		-782.72	11,581.65
Net Check		\$0.00	

* Excluded from federal taxable wages
 Your federal taxable wages this period are \$931.21

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A Professional Employer Organization
 5800 Windward Parkway
 Alpharetta, GA 30005

Advice number: 00000130009
 Pay date: 03/31/2016

Deposited to the account of	account number	transit ABA	amount
TYRELL GLASS	XXXXX8181	XXXX XXXX	\$782.7

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Earnings Statement



FMM ENTERPRISES INC
 DBA SIL CONSULTING
 4875 VIEWRIDGE DR
 SAN DIEGO, CA 92123

Period Ending: 03/31/2016
 Pay Date: 04/05/2016

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 2
 CA: 0

0000000008
TYRELL GLASS
3842 JEWELL ST
K102
SAN DIEGO CA 92109

Social Security Number: ██████████

Earnings	rate	hours	this period	year to date
Commission			1,778.84	12,134.70
Regular				1,360.00
Overtime				1,119.90
Draw				3,360.00
Gross Pay			\$1,778.84	17,974.60

Your CA taxable wages this period are
 \$1,778.84

Deductions	Statutory		
Federal Income Tax		-182.83	1,635.91
Social Security Tax		-110.29	1,088.84
Medicare Tax		-25.80	254.65
CA State Income Tax		-58.70	521.00
CA SUI/SDI Tax		-16.01	158.06
Other			
Advance			944.04
Medical			373.50
Reimbursement			-7.50
Ts Dental			19.86
Ts Vision			19.38
Net Pay		\$1,385.21	
Checking		-1,385.21	12,966.86
Net Check		\$0.00	

Important Notes

ADP TotalSource, Inc., A Professional Employer Organization
 10200 Sunset Drive, Miami, FL 33173
 1-800-554-1802

Your federal taxable wages this period are
 \$1,778.84

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ADP TotalSource
 A Professional Employer Organization
 5800 Windward Parkway
 Alpharetta, GA 30005

Advice number: 0000140008
 Pay date: 04/05/2016

Deposited to the account of	account number	transit ABA	amount
TYRELL GLASS	xxxxx8181	xxxx xxxx	\$1,385.21

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Commission-Only Pay System at Heart of Call Center Agents' FLSA Suit](#)
