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all others similarly-situated
8

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 MICHAEL KARLBOM and DONALD
PRATKO on behalf of themselves and all others
12 similarly situated,

13
14 Plaintiffs,

15 v.
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17 EDS, AN HP COMPANY; HEWLETT-
18 PACKARD COMPANY, a Delaware
Corporation; ELECTRONIC DATA SYSTEMS,
19 LLC, a Delaware limited liability entity;
ELECTRONIC DATA SYSTEMS
20 CORPORATION, a Texas Corporation and
DOES 1 through 100, Inclusive,
21

22 Defendants.
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) **CASE NO. 09-CV-00849-LAB-RBB**
) **FIRST AMENDED CLASS ACTION**
) **COMPLAINT FOR DAMAGES,**
) **RESTITUTION, INJUNCTIVE AND**
) **DECLARATORY RELIEF**
) **1) Failure to Pay Overtime Wages (Lab.**
) **Code §1194)**
) **2) Waiting Time Penalties (Labor Code**
) **§203)**
) **3) Knowing and Intentional Failure to**
) **Comply With Itemized Employee Wage**
) **Statement Provisions (Lab. Code §226(b))**
) **4) Violations of the Unfair Competition**
) **Law (Bus. & Prof. Code §§17200-17208)**
) **5) Declaratory Relief;**
) **6) Violation of the Private Attorney**
) **General Act (Lab. Code §2698, et seq.)**
) **DEMAND FOR JURY TRIAL**

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1 Plaintiffs MICHAEL KARLBOM and DONALD PRATKO, on behalf of themselves and
2 all others similarly-situated (hereinafter “Plaintiffs), complain and allege as follows:

3 **I.**

4 **INTRODUCTION**

5 1. This case arises out of Defendants’ systematic mis-classification of proposed class
6 members as exempt from overtime pay, resulting in the non-payment of overtime compensation to
7 certain readily ascertainable California-based Information-Technology (IT) and Quality
8 Assurance (QA) employees of Defendants EDS, AN HP COMPANY, HEWLETT-PACKARD
9 COMPANY, as successor-in-interest to either ELECTRONIC DATA SYSTEMS, LLC, a
10 Delaware limited liability entity and/or ELECTRONIC DATA SYSTEMS CORPORATION
11 (hereinafter collectively referred to as “EDS” or “Defendants.”) On August 26, 2008,
12 HEWLETT-PACKARD completed an acquisition of EDS, and does business in the State of
13 California as “EDS, an HP COMPANY.” The job titles for these proposed EDS/HP class
14 members may have changed through the years encompassed by this action, though primary daily
15 job tasks and duties have changed very little, if at all. Indeed, after a completed acquisition of
16 EDS by HP in September 2008, job titles and codes continued to change, but the duties and tasks
17 in California remained the same or substantially identical. The positions, while related to
18 information technology and software development utterly fail to meet the required exemption
19 under California law, specifically Labor Code Section 515.5. The proposed plaintiff Class
20 covers low-level testing, information technology, and quality assurance job positions related to
21 the production of EDS software products in the following EDS/HP job titles: “Infrastructure
22 Associate,” “Infrastructure Analysts,” with job codes and/or salary grades of 34250 and 34260,
23 respectively. The proposed plaintiff class also includes a subset of “Infrastructure Specialists”
24 and “Infrastructure Specialist Senior” with job codes 34270 and 34280, but limited to those
25 operating from within the EDS’s Portfolio (New Business) Group. Further, Plaintiffs also
26 propose a second subset of employees holding job description/positions of “Infrastructure
27 Specialist” but limited to those who operate from within EDS’s Engineering Group. These
28 employees primarily performed and perform non-exempt repetitive and routine functions without

1 any significant degree of discretion and/or independent judgment and were mis-classified by the
2 Defendants as “exempt” employees even though they were expected to work overtime hours.
3 Said employees, by virtue of their “exempt” classification, were not paid overtime compensation
4 for those work days exceeding eight (8) hours per day and/or forty (40) hours per week during the
5 “Class Period,” which is defined as four years prior to the filing of the Complaint through the date
6 of commencement of trial in the action.

7 2. Class members who ended their employment with the Defendants during the Class
8 Period, but who were not timely paid all wages earned as required by the Labor Code, are entitled
9 to penalties pursuant to California Labor Code section 203. (The “Waiting Time Subclass.”)

10 3. Class members are entitled to penalties pursuant to Labor Code section 226(b) for
11 Defendants’ failure to provide accurate itemized wage statements. (The “Illegal Records
12 Subclass.”)

13 4. As used herein, the term “Plaintiffs” means MICHAEL KARLBOM and
14 DONALD PRATKO, who are the named Plaintiff Class representatives; the term “Plaintiff Class
15 I” includes the Plaintiffs and all members of the proposed Class of all current and former EDS
16 “Infrastructure Associate,” “Infrastructure Analyst,” with job codes and/or salary grades of 34250
17 and 34260, respectively, who worked in the State of California during the Class Period; “Plaintiff
18 Class II” includes Plaintiff MICHAEL KARLBOM and a subset “Infrastructure Specialists” and
19 “Infrastructure Specialist Senior” with job codes/pay grade designation 34270 and 34280, but
20 limited to those operating from within the EDS’s Portfolio (New Business) Group. “Plaintiff
21 Class III” includes employees holding job description/positions of “Infrastructure Specialist” but
22 limited to those who operate from within EDS’s Engineering Group.

23 5. Plaintiffs seek declaratory relief, restitution and compensation for work performed
24 and moneys due themselves and the Plaintiff Class and Subclasses during the Class Period, based
25 upon information and belief that the Defendants are continuing, and will continue, their unlawful
26 practices as described herein. Plaintiffs also seek to serve as representatives of the general public
27 to enforce and uphold California’s wage and hour laws as private attorneys’ general as expressly
28 permitted by Labor Code § 2698 *et seq.*, pursuant to the Private Attorneys General Act of 2004

1 (“PAGA”). Plaintiffs have complied with all notice provisions and are deemed aggrieved
2 employee as required by the Act to serve as a private attorney general in representative on behalf
3 of the general public, and recover all penalties and damages that otherwise are reserved for the
4 DLSE, the California DIR, or the Labor Commissioner of the State of California. On or about
5 September 18, 2009, Plaintiffs gave written notice to Defendant and to the California Labor and
6 Workforce Development Agency (“LWDA”) by certified mail. Plaintiffs waited in excess of 33
7 days for either Defendant to take remedial action or for the LWDA to intervene in accordance
8 with Labor Code §2699.3(c). True and correct copies of the certified letter and response are
9 attached hereto as Exhibit “A” with proof of mailing. Accordingly, Plaintiffs file this *First*
10 *Amended* Class Action Complaint as provided by California Code of Civil Procedure §472 and as
11 specifically permitted by Labor Code §2699.3(a)(2)(C). Plaintiffs were also specifically granted
12 leave to file this complaint by the District Court upon removal. Plaintiffs continue to contend that
13 remand is appropriate, that there is no subject matter jurisdiction of this matter within federal
14 district court, and that the Superior Court of the State of California is the appropriate court to hear
15 this matter.

16 **II.**

17 **JURISDICTION AND VENUE**

18 6. Venue is proper in this Judicial district and the County of San Diego because, upon
19 information and belief, Defendants reside and/or are domiciled in this county and maintain offices
20 and transacts business in this county, and work was performed by members of the class made the
21 subject of this action in the County of San Diego, California.

22 7. On information and belief, the California Superior Court has jurisdiction in this
23 matter because there is no federal question at issue as the issues herein are based solely on
24 California statutes and law including the California Labor Code, Industrial Welfare Commission
25 Wage Orders, Code of Civil Procedure, Rules of Court, and Business and Professions Code.
26 Furthermore, the case is not appropriate for removal under the Class Action Fairness Act
27 (“CAFA”) as Plaintiffs are informed and believe, and thereupon allege that the required monetary
28 amount in controversy is not satisfied. Specifically, Plaintiffs allege that their individual claims

1 and the individual claims of all putative class members are less than the required amount for
2 invocation of federal subject matter jurisdiction. No federal controversy is alleged and the
3 aggregate amount of all class member claim is less than \$5,000,000.00.

4 8. Furthermore, due to the substantial operations of EDS and HP in California, and
5 by virtue of the fact of a September 2008 acquisition of EDS by HP, HP is as a matter of law the
6 successor in interest to all EDS liabilities under California's wage and hour laws that existed at
7 the time of the acquisition. Hewlett-Packard is a local company and the operations of the
8 company are so predominant in California that this matter falls into the local case/controversy
9 exception to the CAFA and was never intended to be litigated within the original Article III
10 jurisdiction of the federal courts. Indeed, the operation of all Defendants during the class period
11 were so substantial as to make California the Defendants' headquarters and base of operations at
12 all times relevant herein. Because this case solely involves California employees under
13 California's unique wage and hour laws, federal jurisdiction is not implicated whatsoever.

14 **III.**

15 **THE PARTIES**

16 **A. The Plaintiffs**

17 9. Plaintiff MICHAEL KARLBOM was an employee of the Defendants during the
18 Class Period from 2006 through early 2009 and is entitled to overtime compensation, wage
19 statement penalties, and waiting time penalties from the Defendants. Plaintiff DONALD
20 PRATKO was employed by the Defendants as an "Infrastructure Specialist" within the
21 Engineering Group. Both Plaintiffs regularly worked overtime hours during the Class Period in a
22 salaried position. Each of the positions described herein are uniformly and systematically
23 deemed "exempt" from the requirement to pay overtime by the Defendants.

24 10. Each of the Plaintiff Class I members are identifiable persons who are or were
25 employed in the State of California by the Defendants in the positions of: "Infrastructure
26 Associate," "Infrastructure Analyst," with EDS designated job codes and/or salary grades of
27 34250 and 34260, respectively. The proposed Plaintiff Class II includes all current and former
28 "Infrastructure Specialists" and "Infrastructures Specialist Senior" with job codes 34270 and

1 34280, but limited to those operating from within the EDS's Portfolio (New Business) Group in
2 the State of California during the class period. The proposed Plaintiff Class III includes all
3 current and former employees holding job description/positions of "Infrastructure Specialist" but
4 limited to those who operate from within EDS's Engineering Group.

5 **B. The Defendants**

6 11. Plaintiffs are informed and believe, and based thereon allege, that EDS, AN HP
7 COMPANY is a division of HEWLETT-PACKARD as a result of a 2008 acquisition and
8 HEWLETT-PACKARD COMPANY is the successor-in-interest to ELECTRONIC DATA
9 SYSTEMS, LLC, and/or ELECTRONIC DATA SYSTEMS CORPORATION. Plaintiffs are
10 informed and believe that both entities are related as one entity was identified on wage statements
11 and the other on official employment correspondence. For purposes of this lawsuit, the
12 allegations contained herein, both individually and as to the putative class, EDS is and was the
13 employer of Plaintiffs and the members of Plaintiff Class and Subclasses during the Class Period.

14 12. Plaintiffs are ignorant of the true names, capacities, relationships and extent of
15 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through
16 100, inclusive, but on information and belief allege that said Defendants are legally responsible
17 for the payment of overtime compensation as well as Labor Code section 203 penalties to the
18 Plaintiff Class members by virtue of their unlawful practices, and therefore sue these Defendants
19 by such fictitious names. Plaintiffs will amend this complaint to allege the true names and
20 capacities of the DOE Defendants when ascertained.

21 13. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
22 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
23 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
24 legally attributable to the other Defendants. Plaintiffs will seek leave to amend this Complaint if
25 additional information material to the identity of the parties or their relationship with one another
26 requires such amendment for the protection of the putative class.

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1 IV.

2 **GENERAL ALLEGATIONS**

3 14. California Labor Code section 1194 provides that notwithstanding any agreement
4 to work for a lesser wage, an employee receiving less than the legal overtime compensation is
5 entitled to recover in a civil action the unpaid balance of their overtime compensation, including
6 interest thereon, reasonable attorneys' fees, and costs of suit.

7 15. Further, Business and Professions Code section 17203 provides that any person
8 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
9 Business and Professions Code section 17204 provides that any person who has suffered actual
10 injury and has lost money or property as a result of the unfair competition may bring an action for
11 restitution in a court of competent jurisdiction.

12 16. During all, or a portion, of the Class Period, Plaintiffs and each member of the
13 Plaintiff Class were employed by Defendants and each of them, in the State of California.

14 17. Plaintiffs and each Plaintiff Class member were non-exempt employees covered
15 under one or more Industrial Welfare Commission (IWC) Wage Orders, including Wage Order 4-
16 2000, 4-2001 ("Wage Orders"), Labor Code section 510, and/or other applicable wage orders,
17 regulations and statutes, and each Plaintiff Class member was not subject to an exemption for
18 computer, executive, administrative or professional employees, which imposed an obligation on
19 the part of the Defendants to pay Plaintiffs and Plaintiff Class members lawful overtime.

20 18. During the Class Period, Defendants were obligated to pay Plaintiffs and the
21 Plaintiff Class overtime compensation for all hours worked over eight (8) hours of work in one
22 (1) day or forty (40) hours in one week. Defendants regularly required Plaintiff and the Plaintiff
23 Class to work overtime hours without overtime compensation.

24 19. Plaintiffs and each Plaintiff Class member primarily performed non-exempt work
25 in excess of the maximum regular rate hours set by the IWC in the above Wage Orders,
26 regulations or statutes, and therefore entitled the Plaintiffs and Plaintiff Class members to
27 overtime compensation at the rate of time and one-half, and when applicable, double time rates as
28 set forth by the above Wage Orders, regulations and/or statutes.

1 20. During the Class Period, the Defendants, and each of them, required Plaintiffs and
2 Plaintiff Class members to regularly work overtime without lawful compensation, in violation of
3 the various above applicable Wage Orders, regulations and statutes, and the Defendants: (1)
4 willfully failed and refused, and continue to fail and refuse to pay lawful overtime compensation
5 to the Plaintiff Class members; and (2) willfully failed and refused, and continue to fail and refuse
6 to pay wages promptly when due upon termination of employment to each of the Plaintiff Class
7 members. Plaintiff Class members performed primarily non-exempt functions for the Defendants
8 and were mis-classified as exempt employees. They do not qualify under the corporate
9 professional exemption because they are not paid statutory minimum pay to qualify for this
10 exemption. They are not employed to manage Defendants' enterprise in managerial duties. They
11 do not perform work related to Defendants' general business operation but primarily perform
12 functions related to the product or service provided by Defendants and do not exercise discretion
13 and/or independent judgment to be exempt in an administrative capacity. The employees also fail
14 to meet minimum thresholds for the computer professional exemption as the duties and tasks
15 assigned lack any creative or design elements and fail to meet definitive salary minimum
16 requirements to qualify under said exemption. Further, they are not employed on an hourly basis
17 with pay not less than the statutory rate set by the IWC Wage Orders and premium overtime pay.
18 Hence, the work performed in these employee positions is not exempt work but rather is non-
19 exempt work.

20 21. Class members who ended their employment during the Class Period, but were not
21 paid the above due overtime compensation timely upon the termination of their employment as
22 required by Labor Code sections 201-203, are entitled to penalties as provided by California
23 Labor Code section 203.

24 22. Class members are likewise entitled to penalties for Defendants' failure to provide
25 accurate itemized wage statements concerning hours actually worked, and by Defendants' failure
26 to clearly identify the employer by name and lawful address.

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V.

CLASS ACTION ALLEGATIONS

23. Plaintiffs bring this action on behalf of themselves and all other similarly situated persons, as a class action pursuant to California Code of Civil Procedure section 382. The classes which Plaintiffs seek to represent is composed of and defined as follows:

Plaintiff Class I:

All Defendants’ current and former employees holding job positions of “Infrastructure Associate,” “Infrastructure Analyst,” EDS job code/pay grade designations of 34250 and 34260 and/or equivalent positions in the State of California, employed on or after four years prior to the commencement of this action through the date of trial.

Plaintiff Class II:

All Defendants’ current and former employees holding job positions of “Infrastructure Specialist” and/or “Infrastructure Specialist Senior” with EDS job code/pay grade designations of 34270 and 34280 and/or equivalent positions in the State of California, but limited to those employees working in the Portfolio (New Business) Group, employed on or after four years prior to the commencement of this action through the date of trial.

Plaintiff Class III:

All Defendants’ current and former employees holding job positions of “Infrastructure Specialist” in the State of California, but limited to those employees working in the Engineering Group, employed on or after four years prior to the commencement of this action through the date of trial.

24. Plaintiffs, on behalf of themselves and all others similarly situated, will also seek to certify a “Waiting Time Subclass ” that is currently composed of and defined as follows:

Plaintiff “Waiting Time Subclass”:

All Defendants’ former employees holding job positions of “Infrastructure Associate,” “Infrastructure Analyst,” “Infrastructure Specialist” and “Infrastructure Specialist Senior” with EDS job code/pay grade designations of 34250, 34260, 34270, 34280 and/or equivalent job positions in the State of California who voluntarily or involuntarily terminated their employment during the Class Period and to whom Defendants failed to timely pay all wages due as required by Labor Code sections 201-203 and/or applicable IWC Wage Orders.

25. Plaintiffs, on behalf of themselves and all others similarly situated, will also seek to certify an “Illegal Records Subclass” that is currently composed of and defined as follows:

1 Plaintiff “Illegal Records Subclass”:

2 All Defendants’ current and former employees holding job positions of “Infrastructure
3 Associate,” “Infrastructure Analyst,” “Infrastructure Specialist” and “Infrastructure
4 Specialist Senior” with EDS job code/pay grade designations of 34250, 34260, 34270,
5 34280 and/or equivalent job positions in the State of California in the State of California
6 who, during the Class Period, Defendants knowingly and intentionally provided inaccurate
7 itemized wage statements in violation of Labor Code section 226, et seq., and applicable
8 IWC Wage Orders.

9 Plaintiffs reserve the right under Rule 3.765(b), California Rules of Court, to amend or
10 modify the Class description with greater specificity or further division into subclasses or
11 limitation to particular issues.

12 26. **Ascertainable Class:** The proposed class and each subclass are ascertainable in
13 that their members can be identified and located using information contained in Defendants’
14 payroll and personnel records.

15 27. **Numerosity:** The potential quantity of members of the Class and Subclasses as
16 defined is so numerous that joinder of all members would be unfeasible and impractical. The
17 disposition of their claims through this class action will benefit both the parties and this Court.
18 The quantity of members of the Class and Subclasses is unknown to Plaintiffs at this time,
19 however, it is estimated that each the Class and Subclasses number is in excess of 100
20 individuals. The quantity and identity of such membership is readily ascertainable via inspection
21 of Defendants’ records.

22 28. **Typicality:** The claims of Plaintiffs KARLBOM and PRATKO for overtime
23 wages, waiting time penalties, interest, and attorneys’ fees are typical of the claims of all
24 members of the Class and Subclasses mentioned herein because all members of the Class and
25 Subclasses sustained similar injuries and damages arising out of Defendants’ common course of
26 conduct in violation of law and the injuries and damages of all members of the Class and
27 Subclasses were caused by Defendants’ wrongful conduct in violation of law, as alleged herein.

28 29. **Adequacy:** Plaintiffs KARLBOM and PRATKO are adequate representatives of
the Class and Subclasses herein, will fairly protect the interests of the members of the Class and
Subclasses, has no interests antagonistic to the members of the Class and Subclasses and will
vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating

1 matters of this type. Class Counsel are competent and experienced in litigating large employment
2 law class actions.

3 30. **Superiority:** The nature of this action and the nature of laws available to Plaintiffs
4 make use of the class action format a particularly efficient and appropriate procedure to afford
5 relief to Plaintiff for the wrongs alleged herein, as follows:

6 a. This case involves large corporate Defendants and a sufficient numerous
7 group of individual Class Members with many relatively small claims and
8 common issues of law and fact;

9 b. If each individual member of each of the Class and Subclasses was
10 required to file an individual lawsuit, the large corporate Defendants would
11 necessarily gain an unconscionable advantage because Defendants would be able
12 to exploit and overwhelm the limited resources of each individual member of the
13 Class and Subclasses with Defendants' vastly superior financial and legal
14 resources;

15 c. Requiring each individual member of each of the Class and Subclasses to
16 pursue an individual remedy would also discourage the assertion of lawful claims
17 by the members of the Class and Subclasses who would be disinclined to pursue an
18 action against Defendants because of an appreciable and justifiable fear of
19 retaliation and permanent damage to their lives, careers and well-being;

20 d. Proof of a common business practice or factual pattern, of which the
21 members of the Class and Subclasses experienced, is representative of the Class
22 and Subclasses herein and will establish the right of each of the members of the
23 Class and Subclasses to recover on the causes of action alleged herein;

24 e. The prosecution of separate actions by the individual members of the Class
25 and Subclasses, even if possible, would create a substantial risk of inconsistent or
26 varying verdicts or adjudications with respect to the individual members of the
27 Class and Subclasses against Defendants; and which would establish potentially
28 incompatible standards of conduct for Defendants; and/or legal determinations

1 with respect to individual members of the Class and Subclasses which would, as a
2 practical matter, be dispositive of the interest of the other members of the Class
3 and Subclasses who are not parties to the adjudications or which would
4 substantially impair or impede the ability of the members of the Class and
5 Subclasses to protect their interests; and

6 f. The claims of the individual members of the Class and Subclasses are not
7 sufficiently large to warrant vigorous individual prosecution considering all of the
8 concomitant costs and expenses attending thereto.

9 g. Furthermore, as the damages suffered by each individual member of the
10 class may be relatively small, the expenses and burden of individual litigation
11 would make it difficult or impossible for individual members of the class to redress
12 the wrongs done to them, while an important public interest will be served by
13 addressing the matter as a class action.

14 h. The cost to the court system of adjudication of such individualized
15 litigation would be substantial. Individualized litigation would also present the
16 potential for inconsistent or contradictory judgment.

17 i. Finally, the alternative of filing a claim with the California Labor
18 Commission is not superior, given the lack of discovery in such proceedings, the
19 availability of fewer remedies, and the fact that the losing party has the right to a
20 trial de novo in the Superior Court.

21 31. **Existence and Predominance of Common Questions of Fact and Law:** There
22 are common questions of law and fact as to the members of the Class and Subclasses which
23 predominate over questions affecting only individual members of the Class and Subclasses
24 including, without limitation:

25 a. Whether the Class Members qualify for exempt status under the
26 administrative exemption;

27 b. Whether the Class Members qualify for exempt status under the computer
28 professional exemption;

- 1 c. Whether the Class Members were improperly mis-classified by Defendants
- 2 without analysis as to job duties performed.
- 3 d. The extent to which Defendants analyzed the duties and responsibilities of
- 4 the Class Members before classifying them as exempt;
- 5 e. The number of hours per week and per day Class Members are expected to
- 6 work;
- 7 f. Defendants' expectations as to the duties and responsibilities of the Class
- 8 Members, and whether these expectations are reasonable under the circumstances;
- 9 g. Whether the various tasks performed by the Class Members qualify as
- 10 exempt or non-exempt tasks;
- 11 h. Whether Defendants' withholding of overtime pay and was willful under
- 12 the meaning of Labor Code Section 203.
- 13 i. Whether Defendants failed to keep adequate records for the members of the
- 14 Illegal Records Subclass pursuant to Labor Code 226(a) (and the consequence for
- 15 such statutory violations if Defendants did not);
- 16 j. Whether Defendants' conduct constitutes unfair competition within the
- 17 meaning of Business and Professions Code sections 17200 and 17203;
- 18 k. Whether members of the Class and Subclasses are entitled to compensatory
- 19 damages, and if so, the means of measuring such damages;
- 20 l. Whether the members of the Class and Subclasses are entitled to injunctive
- 21 and/or declaratory relief;
- 22 m. Whether the members of the Class and Subclasses are entitled to
- 23 restitution;
- 24 n. Whether Defendants are liable for pre-judgment interest; and
- 25 o. Whether Defendants are liable for attorneys' fees and costs.

26 32. **Manageability of Class and Common Proof:** The nature of this action and the
27 nature of laws available to Plaintiffs make use of the class action format a particularly efficient
28 and appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein.

1 Specifically, the primary class turns upon Defendants' own uniform, systematic practice of
2 classifying all affected job positions as "salaried exempt" without any individual scrutiny of tasks
3 and duties is in compliance with Labor Code section 1194 and the presumptions against
4 employees being deemed "exempt" from overtime payment requirements. Therefore, the
5 propriety of the classification scheme applicable to all employees holding the job titles of
6 "Infrastructure Associate" and "Infrastructure Analyst" with EDS job code/pay grade
7 designations of 34250 and 34260 is a predominant question of fact that is easily cable of being
8 discovered through manageable devices of common proof such as statistical random sampling,
9 survey evidence based on scientific principles, representative testimony, documentary evidence
10 and common practices/procedures of the Defendants in treating each of the class members as a
11 homogeneous group in the payment of their wages. Furthermore, the Plaintiff subclass relating to
12 current and former employees holding job positions of "Infrastructure Specialist" and/or
13 "Infrastructure Specialist Senior" with EDS job code/pay grade designations of 34270 and 34280
14 and/or equivalent positions in the State of California, but limited to those employees working in
15 the Portfolio (New Business) Group, is also a narrowly defined group of employees whose job
16 duties, tasks and classification scheme can be readily achieved through means of common proof.
17 Once the predominant issue of exempt classification is determined, then each of the derivative
18 Subclass claims and damages, if any, suffered by each member is capable of being shown by
19 several means of common proof and limited by individual showings of entitlement to recovery
20 that can be professionally administered and tailored to the facts and circumstances of the case.

21 **VI.**

22 **CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE §1194
(Against each Defendant and on behalf of Plaintiffs and Plaintiff Class I, II & III)**

25 33. Plaintiffs incorporate all preceding paragraphs of this complaint as if fully alleged
26 herein.

27 34. Plaintiffs and members of the Plaintiff Class were regularly required to work
28 overtime hours and are entitled to overtime compensation for overtime work performed for the

1 Defendants, in an amount according to proof. Pursuant to Labor Code section 1194, the Plaintiff
2 Class members seek the payment of all overtime compensation which they earned and accrued
3 after four (4) years prior to filing of this complaint, according to proof.

4 35. Additionally, Plaintiffs and Plaintiff Class I, Plaintiff Class II, and Plaintiff Class
5 III members are entitled to attorneys' fees, and costs, pursuant to California Labor Code section
6 1194 in addition to prejudgment interest in an amount according to proof.

7 **SECOND CAUSE OF ACTION**
8 **WAITING TIME PENALTIES IN VIOLATION OF LABOR CODE §203**
9 **(Against all Defendants on Behalf of Plaintiffs and the Waiting Time Subclass)**

10 36. Plaintiffs incorporate all preceding paragraphs of this Complaint.

11 37. Labor Code section 203 requires all employees separated from their employer be
12 timely paid all wages owed for work performed. Plaintiffs are informed and believe and based
13 thereupon allege during the relevant time period, due to the failure to pay overtime wages and the
14 taking of illegal deductions from pay, that for former employees of the company, separating from
15 their employment, the Defendants, and each of them, knowingly and intentionally failed to pay all
16 wages owed in the time limits proscribed by Labor Code section 203. As a consequence, for all
17 former employees of Defendants, during the relevant time period, Plaintiffs seek waiting time
18 penalties for all wages due and unpaid at the time of discharge, termination or voluntary
19 separation by Plaintiff Karlbom and other former employees.

20 38. By improperly categorizing Plaintiffs and the putative class as exempt, Defendants
21 did not pay for all hours actually caused or suffered to be worked by the Plaintiffs and the
22 putative class. By their acts, Defendants, and each of them, have committed acts and practices of
23 unfair competition by not paying all wages due and owed in the time period proscribed by Labor
24 Code Section 203 for employees who during the Relevant Time Period, voluntarily or
25 involuntarily terminated their employment. The wages were earned and pertain to all actual hours
26 caused or suffered to work and are vested property of Plaintiffs and the putative class, such that
27 Defendant has unjustly withheld said payments, such that a court of competent jurisdiction may
28 order equitable disgorgement and restitution, in addition to remedies available at law, including
the premium pay penalty of 30-days wage at that last hourly rate as required by Labor Code

1 Section 203.

2 39. Pursuant to Bus. & Prof. Code section 17203, Plaintiffs request an order requiring
3 Defendants to make restitution of all wages due to the Waiting Time Subclass in an amount to be
4 proven at trial, for the period commencing four years from the date of the filing of the Complaint
5 herein to the date of commencement of trial in this action. Further, as set forth in the Prayer for
6 Relief, Plaintiffs seek interest, penalties and attorneys' fees as permitted by law and/or equitable
7 principles.

8 **THIRD CAUSE OF ACTION**
9 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
10 **EMPLOYEE WAGE STATEMENT PROVISIONS**
11 **(Against each Defendant and on behalf of Plaintiffs and the Illegal Record Subclass)**

12 40. Plaintiffs incorporate all preceding paragraphs of this Complaint.

13 41. Labor Code section 226 requires an employer to furnish its employees with an
14 accurate itemized statement in writing showing, among other things, (1) gross wages earned, (2)
15 total hours worked by each respective individual, (3) all deductions, (4) net wages earned and/or
16 (5) all applicable hourly rates in effect during each respective pay period and the corresponding
17 number of hours worked at each hourly rate by each respective individual. Wage statements also
18 require accurate information as to the identity and location of the employer, which in this case is
19 also lacking on all Plaintiffs and Plaintiff class wage statements for at least all or a significant
20 portion of the Class Period. Defendants, and each of them, systematically failed to provide such
21 wage statements with accurate information and engaged in a policy of under-reporting and paying
22 for all hours actually worked in violation of law..

23 42. Moreover, pursuant to Labor Code section 226, California employers are required
24 to maintain accurate records pertaining to the total hours worked for Defendants by the members
25 of the Illegal Records Subclass, including, but not limited to, the total hours worked per pay
26 period and applicable rates of pay. Plaintiffs are informed and believe and based thereupon allege
27 that Defendants, and each of them, did not maintain accurate records of all hours worked and
28 instead failed to keep accurate time records of all hours worked and/or directed employees to
only report 8 hours per work day irrespective of actual hours worked. For all or a significant

1 portion of the Class Period, Defendant used a “SAP” time recording system but by policy, pattern
2 and practice instructed putative class members to limit their time entries and to under-report
3 actual hours caused or suffered to work.

4 43. The members of the Illegal Records Subclass include all of Defendants’ during the
5 relevant time period for employees for whom Defendants did not accurately record all hours the
6 employee was actually caused or suffered to work, nor did Defendant pay overtime compensation
7 for employees, including Plaintiffs and each of the Subclasses, based on the Defendants’
8 improper and illegal mis-classification of said employees as exempt from overtime requirements.

9 44. As a pattern and practice, in violation of Labor Code section 226(a), Defendants
10 did not furnish each of the members of the Illegal Records Subclass with an accurate itemized
11 statement in writing showing (1) gross wages earned, (2) total hours worked by each respective
12 individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect
13 during each respective pay period and the corresponding number of hours worked at each hourly
14 rate by each respective individual.

15 45. As a pattern and practice, in violation of Labor Code section 226(a), Defendants
16 did not maintain accurate records pertaining to the total hours worked for Defendants by the
17 members of the Illegal Records Subclass, including, but not limited to, beginning and ending of
18 each work period, the total daily hours worked, and the total hours worked per pay period and
19 applicable rates of pay.

20 46. Pursuant to Labor Code section 226(e), the members of the Illegal Records
21 Subclass are entitled to penalties as follows:

- 22 a. Fifty dollars (\$50.00) per employee for the initial pay period in which a
23 violation occurs; and
- 24 b. One hundred dollars (\$100.00) per employee for each violation in a
25 subsequent pay period, not to exceed \$4,000 per claimant.

26 47. Pursuant to Labor Code section 226(g), the members of the Illegal Records
27 Subclass are entitled to injunctive relief to ensure Defendants’ compliance with Labor Code
28 section 226.

1 48. The members of the Illegal Records Subclass are entitled to an award of costs and
2 reasonable attorneys' fees.

3 49. Labor Code section 226(a) requires Defendants to itemize in wage statements all
4 deductions from wages of Plaintiffs and the members of the proposed Class.

5 50. Defendants have knowingly and intentionally failed to comply with Labor Code
6 section 226(a) on each and every wage statement provided to Plaintiffs and members of the
7 proposed subclass.

8 **FOURTH CAUSE OF ACTION**
9 **VIOLATIONS OF UNFAIR COMPETITION LAW**
10 **(Against each Defendant and on Behalf of Plaintiff Class I , II & III)**

11 51. Plaintiffs incorporate all preceding paragraphs of this Complaint.

12 52. Defendants' failure to pay overtime to Plaintiffs and members of the Class and
13 Subclasses, under the IWC Wage Orders and under California Labor Code, and failure to keep
14 proper records, as alleged herein, constitute unlawful activity prohibited by Business and
15 Professions Code sections 17200, et seq.

16 53. The actions of Defendants in failing to pay Plaintiffs and members of Plaintiff
17 Class I, II & III, and each of the Plaintiff Subclasses in a lawful manner, as alleged herein,
18 constitute false, unfair, fraudulent and deceptive business acts and/or practices, within the
19 meaning of Business and Professions Code sections 17200, et seq.

20 54. Plaintiffs are entitled to an injunction and/or other equitable relief against such
21 unlawful practices in order to prevent future damage, for which there is no adequate remedy at
22 law, and to avoid a multiplicity of lawsuits. Plaintiffs bring this cause individually and as class
23 representatives of all others subject to Defendants' unlawful acts and practices. Plaintiffs have
24 suffered actual pecuniary harm as a result of each of the Defendants aforementioned acts and
25 practices.

26 55. As a result of their unlawful acts, Defendants have reaped and continue to reap
27 unfair benefits at the expense of Plaintiffs, and the Class and Subclasses they seek to represent.

28 56. Defendants should be enjoined from this activity and made to disgorge these ill-
gotten gains and restore to Plaintiffs and the members of the Class and Subclasses the wrongfully

1 withheld wages, waiting time pay and recovery for illegal record keeping, pursuant to Business
2 and Professions Code section 17200, et seq. Plaintiffs are informed and believe, and thereon
3 allege, that Defendants are unjustly enriched through their failure to pay overtime wages to
4 Plaintiffs and members of the Class and Subclasses.

5 57. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and members
6 of the Class are prejudiced and harmed by Defendants' unfair trade practices as actual earned and
7 vested wages were not paid and were instead withheld illegally by Defendants, and each of them.

8 58. As a direct and proximate result of the unfair business practices of Defendants,
9 Plaintiffs, individually and on behalf of all employees similarly situated, are entitled to equitable
10 and injunctive relief, including full restitution, disgorgement, and/or specific performance of
11 payment of all wages and pay that have been unlawfully withheld from Plaintiffs and members of
12 the Class and Subclasses as a result of the business acts and practices described herein and
13 enjoining Defendants to cease and desist from engaging in the practices described herein.

14 59. The illegal conduct alleged herein is continuing, and there is no indication that
15 Defendants will not continue such activity into the future. Plaintiffs allege that if Defendants are
16 not enjoined from the conduct set forth in this Complaint, they will continue to avoid paying
17 overtime, minimum wages, and appropriate taxes, insurance, and unemployment withholdings.

18 60. Plaintiffs further request that the court issue a preliminary and permanent
19 injunction prohibiting Defendants to continue engaging in the practices described hereinabove
20 and to specifically reclassify Plaintiffs and all members of Plaintiff Class I, Plaintiff Class II, and
21 Plaintiff Class III as non-exempt hourly employees.

22 **FIFTH CAUSE OF ACTION**
23 **DECLARATORY RELIEF**
24 **(Against All Defendants By Plaintiffs Only)**

25 61. Plaintiffs incorporate all preceding paragraphs of this Complaint.

26 62. An actual controversy has arisen and continues to exist between Plaintiffs and
27 Defendants in that Plaintiffs contend that they were not employed in an exempt capacity, whereas
28 Defendants claim they are properly classified.

63. A judicial declaration is necessary and proper at this time to resolve this actual

1 controversy between Plaintiffs and Defendants and to establish the respective rights and duties of
2 the parties.

3 **SIXTH CAUSE OF ACTION**
4 **VIOLATION OF "PAGA", Labor Code Section 2698 et seq.**
5 **(Against All Defendants By Plaintiffs as Representatives of the General Public)**

6 64. Plaintiffs incorporate all preceding paragraphs of this Complaint.

7 65. Plaintiffs, by virtue of their employment with EDS and HP and the Defendants'
8 failure to pay all overtime wages and unlawful classification scheme, is an aggrieved employee
9 with standing to bring an action under the PAGA. Plaintiffs, by virtue of Exhibit "A", have
10 satisfied all prerequisites to serve as a representative of the general public to enforce California's
11 labor laws, including, without limitation, the penalty provisions identified in Labor Code section
12 2699.5 Since the LWDA took no steps within the time period required to intervene and because
13 EDS/HP took no corrective action to remedy the allegations set forth above Plaintiffs
14 KARLBOM and PRATKO, as a representative of the people of the State of California, will seek
15 any and all penalties otherwise capable of being collected by the Labor Commission and/or the
16 Department of Labor Standards Enforcement (DLSE). This includes, each of the following, as is
17 set forth in Labor Code Section 558, which states:

18 (a) Any employer or other person acting on behalf of an employer who violates, or causes
19 to be violated, a section of this chapter or any provision regulating hours and days of work
20 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
21 follows:(1)For any initial violation, fifty dollars (\$50) for each underpaid employee for
22 each pay period for which the employee was underpaid in addition to an amount sufficient
23 to recover underpaid wages.

24 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
25 employee for each pay period for which the employee was underpaid in addition to
26 an amount sufficient to recover underpaid wages.

27 (3) Wages recovered pursuant to this section shall be paid to the affected
28 employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person
had paid or caused to be paid a wage for overtime work in violation of any provision of
this chapter, or any provision regulating hours and days of work in any order of the
Industrial Welfare Commission, the Labor Commissioner may issue a citation. The
procedures for issuing, contesting, and enforcing judgments for citations or civil penalties
issued by the Labor Commissioner for a violation of this chapter shall be the same as
those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or

1 criminal penalty provided by law.

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3 Plaintiffs allege, on behalf of the general public and acting as private attorneys generals,
4 that Defendant has violated Labor Code section 558 and additional provisions of the California
5 Labor Code which entitle the State of California to a 75% share of the recovery of penalties
6 otherwise only capable of being collected by state agencies. Since the LWDA took no steps
7 within the time period required to intervene and because EDS/HP took no corrective action to
8 remedy the allegations set forth above Plaintiffs KARLBOM and PRATKO, as a representative of
9 the people of the State of California, will seek any and all penalties otherwise capable of being
10 collected by the Labor Commission and/or the Department of Labor Standards Enforcement
11 (DLSE). This includes, any of the applicable statutes as is set forth in Labor Code Section
12 2699.5. and includes the penalty provisions, without limitation, based on the following sections:
13 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206,
14 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224,
15 subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7,
16 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, and Labor Code
17 sections 233, 510, 511, 512, & 513.

18 66. Plaintiffs are informed and believes that Defendants, and each of them, have
19 violated and continue to violate provisions of the California Labor Code related to the payment of
20 overtime wages, the failure to provide meal and rest periods to the affected group of employees,
21 the failure to provide accurate itemized wage statements, and has and continues to knowingly and
22 intentionally fail to pay all wages due in a timely fashion for all employees whose employment is
23 or has been terminated during the class period. Plaintiffs, as representatives of the general
24 public, seek to recover said penalties, damages, back wages and all relief that, in addition to their
25 individual and putative class interests, could only be obtained by the DLSE, the California DIR,
26 the IWC and/or the Labor Commissioner of the State of California.

27 67. In addition to restitution, the recovery of unpaid back wages and the recovery of
28 premium pay for unpaid overtime, and violations of the applicable Wage Orders relating thereto,

1 Plaintiff, as a personal representative of the general public, will and does seek to recovery any
2 and all penalties for each and every violation shown to exist or to have occurred during the
3 proposed Class Period, in an amount according to proof. Said funds recovered will be distributed
4 in accordance with the PAGA, with at least 75% of said PAGA penalty recovery being
5 reimbursed to the State of California and the LWDA.

6 **VII.**

7 **PRAYER FOR RELIEF**

8 1. That the Court issue an Order pursuant to Code of Civil Procedure §382 certifying
9 the Class and Subclasses herein, appointing the named Plaintiffs as representative of all others
10 similarly situated, and appointing the law firm representing the named Plaintiffs as counsel for the
11 members of the Class and Subclasses and that Plaintiffs be appointed as representatives of the
12 general public under the PAGA, and that Cohelan Khoury & Singer be appointed class counsel
13 and counsel for the general public in pursuing public remedies in addition to individual and class-
14 wide interests;

15 **As to the First Cause of Action for Overtime Pay:**

- 16 2. For payment of overtime pay and back wages owed;
- 17 3. For interest as authorized by Labor Code sections 218.6 and 1194(a) and Civil
18 Code sections 3287(b) and 3289;
- 19 4. For restitution of overtime pay by Defendants and/or disgorgement of unpaid
20 wages;
- 21 5. For an award of reasonable attorneys' fees and costs;

22 **As to the Second Cause of Action for Waiting Time "Premium Wage":**

- 23 6. Waiting time penalties not to exceed 30 days pay per former employee separated
24 from the employer during the relevant time period pursuant to Labor Code section 203;
- 25 7. For reasonable attorneys' fees and costs incurred as permitted by statute;

26 **As to the Third Cause of Action for Illegal Record Keeping:**

- 27 8. For penalties as authorized by Labor Code section 226(e);
- 28 9. For injunctive relief to ensure Defendants' compliance with Labor Code section

1 226 pursuant to Labor Code section 226(g);

2 10. For an award of costs and reasonable attorneys' fees.

3 **As to the Fourth Cause of Action for Unfair Business Practices:**

4 11. For an accounting, under administration of Plaintiffs and/or the receiver and
5 subject to Court review, to determine the amount to be returned by Defendants, and the amounts
6 to be refunded to members of the Class and Subclasses who are owed monies by Defendants;

7 12. For an Order requiring Defendants to identify each of the members of the Class
8 and Subclasses by name, home address, and home telephone number;

9 13. For an Order requiring Defendants to make full restitution and payment pursuant
10 to Labor Code sections 200, 203, 206, 221, 226.7 and 1194;

11 14. For an Order directing the Defendants to reclassify all Plaintiffs and members of
12 Plaintiff Class I, Plaintiff Class II, and Plaintiff Class III as non-exempt hourly employees and
13 eligible for overtime compensation;

14 15. For the creation of an administrative process wherein each injured member of the
15 Class and Subclasses may submit a claim in order to receive his/her money;

16 16. For all other appropriate injunctive, declaratory and/or equitable relief;

17 17. For pre-judgment and post-judgment interest to the extent permitted by law;

18 18. For an award of attorneys' fees and costs incurred in the investigation, filing and
19 prosecution of this action pursuant to Code of Civil Procedure section 1021.5, Business and
20 Professions Code sections 17200, et seq., Labor Code section 1194 and any other applicable
21 provision of law.

22 **As to the Fifth Cause of Action for Declaratory Relief:**

23 19. For a Declaration of the respective rights and responsibilities of the parties;

24 **As to the Sixth Cause of Action for Violation of the PAGA:**

25 20. For penalties as provided, per violation, under the Private Attorney General Act
26 (PAGA) Labor Code section 2698, et seq., and as provided by Labor Code Section 558, and
27 distributed in accordance with the Act;

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As to All Causes of Action:

- 21. For reasonable attorneys’ fees and costs incurred.
- 22. That, all damages, back wages, restitution, penalties and fees are limited to and are not to exceed \$4,999,999.99;
- 23. For such other and further relief as this Court may deem just and proper.

DATED: November 30, 2009

COHELAN KHOURY & SINGER

By: /s/ J. Jason Hill _____
 Michael D. Singer, Esq.
 J. Jason Hill, Esq.
 Counsel for Plaintiffs MICHAEL KARLBOM
 and DONALD PRATKO, on behalf of
 themselves, all others similarly situated, and
 on behalf of the general public as private
 attorneys’ general

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

DATED: November 30 2009

COHELAN KHOURY & SINGER

By: /s/ J. Jason Hill _____
 Michael D. Singer, Esq.
 J. Jason Hill, Esq.
 Counsel for Plaintiffs MICHAEL KARLBOM
 and DONALD PRATKO, on behalf of
 themselves, all others similarly situated, and
 on behalf of the general public as private
 attorneys’ general