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CLERK OF SUPERIOR COURT  
SANTA CLARA COUNTY

Attorneys for Plaintiff, SUMIT AMBOKAR, on behalf of himself and all other similarly situated

[Additional counsel listed on next page]

**Clark Sakai**

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SANTA CLARA

**109CV156231**

10 SUMIT AMBOKAR, on behalf of himself and  
11 all others similarly situated

Case No.

ASSIGNED FOR ALL PURPOSES TO:

12 Plaintiff

**CLASS ACTION COMPLAINT FOR**

14 vs.

1. Failure to Pay Overtime Wages
2. Failure to Provide Meal periods
3. Failure to Provide Rest Periods
4. Labor Code § 203 Penalties
5. Failure to Provide Itemized Statements
6. Unfair Business Practices (B&P § 17200)

16 EBAY, INC., a Delaware Corporation, and  
17 DOES 1 through 100, inclusive,

18 Defendants.

**DEMAND FOR JURY TRIAL**

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1 Plaintiff SUMIT AMBOKAR ("Plaintiff") alleges, on behalf of himself and classes of  
2 those similarly situated, as follows:

3  
4 **I.**

5 **INTRODUCTION**

6 1. This is an action by and on behalf of current and former employees of EBAY,  
7 INC. (hereinafter "Defendant" or "EBAY"), a Delaware Corporation, who are or were employed  
8 in Defendants' locations in California in positions misclassified in Information Technology,  
9 WEB based technology, and Engineering and hired under a matrix (both within skill-sets, job  
10 descriptions, and pay grades) of titles such Analyst(s), Administrators, Desktop Support,  
11 Technician(s), Web Administrator(s), Network Engineer(s), Program Analyst, Information  
12 Technology ("IT") Specialist, IT Consultant(s), IT Support, Customer Support Specialist,  
13 Customer Care Specialist, Desktop Systems Engineers, IT Remote Support, Customer Care,  
14 HelpDesk, Software Engineer(s), and similarly situated titled, yet misclassified, positions  
(hereinafter, "**THE CLASS**").

15 2. Such job categories, titles, and positions were not realistic and the expectations  
16 were inconsistent with the duties actually performed. As such, EBAY did not satisfy the legally  
17 required minimum to unilaterally designate this class of employees as exempt from overtime.  
18 These job titles were, are, and continue to be a misnomer, because the majority of the work  
19 performed by this class of employees is not and was not exempt in nature. Furthermore, the  
20 titles themselves do not reflect the true nature of the duties performed by these employees.  
21 These employees thus are and were entitled to overtime and other protections as non-exempt  
22 employees. It is *Defendants' burden* of pleading, evidence and proof to show that these  
23 employees are and were exempt under California wage and hour law. These employees have  
24 spent an insignificant amount of work time doing anything that constitutes "exempt," and for that  
25 reason and others, they are and always have been entitled to overtime pay and non-exempt  
26 treatment under California wage and hour law.

27 3. Plaintiff's duties and those of **THE CLASS** she seeks to represent were routine in  
28 nature and relied on the use of templates and other automated processes. Although, the job titles

1 suggest the performance of high level job duties for the positions described herein, the actual job  
2 duties are limited to performing routing production work, not requiring special expertise, and  
3 involving little or no exercise of discretion.

4 **II.**

5 **JURISDICTION AND VENUE**

6 **Plaintiff**

7 4. Plaintiff SUMIT AMBOKAR is a resident of SANTA CLARA COUNTY,  
8 California.

9 **Defendants**

10 5. The Superior Court of the State of California for the County of SANTA CLARA  
11 COUNTY has jurisdiction over EBAY Inc., a Delaware Corporation, because it has qualified  
12 with the California Secretary of State to do business and is doing business in, California, and in  
13 SANTA CLARA COUNTY.

14 6. Venue as to each defendant is proper in this judicial district, pursuant to  
15 California Code of Civil Procedure section 395.

16 7. The true names and capacities, whether individual, corporate, associate, or  
17 otherwise, of defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to  
18 Plaintiff, who therefore sue Defendants by such fictitious names under California Code of Civil  
19 Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the  
20 defendants designated herein as a DOE is legally responsible in some manner for the unlawful  
21 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the  
22 true names and capacities of the defendants designated hereinafter as DOES when such identities  
23 become known.

24 8. Plaintiff is informed and believes, and based thereon alleges, that each defendant  
25 acted in all respects pertinent to this action as the agent of the other defendants, carried out a  
26 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each  
27 defendant are legally attributable to the other defendants. Furthermore, Defendants in all respects  
28 acted as the employer and/or joint employer of Plaintiff and **THE CLASS**. Plaintiff is informed

1 and believes and thereon alleges that at all times relevant to this action, the named defendant and  
2 defendants DOES 1 through 100 were affiliated and were an integrated enterprise.

3 9. Plaintiff is informed and believes and thereon alleges that at all relevant times  
4 each defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and  
5 the other Class Members, and exercised control over the wages, hours, and working conditions  
6 of Plaintiff and the other Class Members. Plaintiff is informed and believes and thereon alleges  
7 that, at all relevant times, each defendant was the principal, agent, partner, joint venturer, officer,  
8 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest  
9 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some  
10 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to  
11 some or all of the other Defendants so as to be liable for their conduct with respect to the matters  
12 alleged below. Plaintiff is informed and believes and thereon alleges that each defendant acted  
13 pursuant to and within the scope of the relationships alleged above, that each defendant knew or  
14 should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted  
15 the conduct of all other Defendants; and that each defendant acted pursuant to a conspiracy and  
16 agreement to do the things alleged herein.

17 **III.**

18 **SUMMARY OF CLAIMS**

19 10. Plaintiff is a former EBAY employee whose primary duties were non-exempt and  
20 who was misclassified by EBAY as exempt from the overtime provisions of the applicable state  
21 wage and hour laws of California, as described in this complaint.

22 11. Plaintiff SUMIT AMBOKAR brings this action on behalf of all persons who  
23 were, are, or will be employed by EBAY in California as defined in the complaint at any time  
24 within the four years prior to the date of the filing of this Complaint through the date of the final  
25 disposition of this action (the "California Class Period"), and who were, are, or continue to be  
26 improperly misclassified as exempt from overtime pay under California law.  
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IV.

**CLASS ALLEGATIONS**

12. Plaintiff brings this cause of action on behalf of herself and on behalf of **THE CLASS** of all persons similarly situated, as more fully explained below. This action is brought and may properly be maintained as a class action pursuant to the provisions of California Code of Civil Procedure section 382 and other applicable law pertaining to class actions.

13. The proposed Class Plaintiff seeks to represent, sometimes referred to herein as the "Class Members," is presently defined as follows: all employees of any of the Defendants who are, have been, or will be employed in any California location owned or operated by any of the Defendants in any job whose title is or was referred to by any of the Defendants as defined above or any similar derivative title that is better defined by a "skill set" that describes realistic descriptions and expectations of the duties performed by **THE CLASS** or sub-classes; and, that were so employed during the period of time covered by the statute of limitations applicable to the particular cause of action in which the terms "Class Members" or "Class" appear, including periods of time during which the statute of limitations was or may have been tolled or suspended. There is a well defined community of interest in the litigation and **THE CLASS** is ascertainable.

A. **Numerosity:** **THE CLASS** is so numerous that individual joinder of all members is impractical under the circumstances of this case. While the exact number of Class Members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that it is several thousand employees or more.

B. **Common Questions Predominate:** Common questions of law and fact exist as to all Class Members, and predominate over any questions that affect only individual members of **THE CLASS**. The common questions of law and fact include, but are not limited to:

(A) What were and are the policies, programs, practices, procedures and protocols of Defendants regarding Class Members' actual work and tasks, and their job duties irrespective of job titles;

(B) Whether Defendants are and were subject to overtime requirements contained in the California IWC Wage Orders and other California law with

1 respect to **THE CLASS** Members pursuant to Labor Code Section 510, and Wage  
2 Order, No. 4-2001, for the period commencing four years prior to the date of the  
3 filing of this complaint and continuing through the date of judgment;

4 (C) Whether Defendant's policy and practice of classifying Class  
5 Members as exempt from overtime entitlement under California law and  
6 Defendant's policy and practice of failing to pay overtime to the California Class  
7 members violate applicable provisions of California law, including applicable  
8 statutory and regulatory authority;

9 (D) Whether Defendant unlawfully failed to pay overtime  
10 compensation in violation of the California Unfair Competition Law, Cal. Bus. t&  
11 Prof. Code §17200 et seq., and the California Labor Code and related regulations,  
12 Cal. Labor Code §§ 201, 202, 203, 226, 510, 1174, 1174.5, and 1194, the  
13 applicable Cal. Wage Orders;

14 (E) Whether Defendants violated California law by their policies,  
15 programs, practices, procedures and protocols regarding rest periods for Class  
16 Members;

17 (F) What were and are the policies, programs, practices, procedures  
18 and protocols of Defendants regarding furnishing to **THE CLASS** Members,  
19 upon each payment of wages, itemized statements required by Labor Code section  
20 226;

21 (G) Whether Defendants violated California law by their policies,  
22 programs, practices, procedures and protocols regarding furnishing to **THE**  
23 **CLASS** Members, upon each payment of wages, itemized statements required by  
24 Labor Code section 226;

25 (H) Whether Defendants violated Business & Professions Code  
26 sections 17200 *et seq.* by their policies, programs, practices, procedures and  
27 conduct referred to in this cause of action;

28 (I) Whether Defendants obtained voluntarily waivers with consent and  
full disclosure, and whether a written signed waiver is effective as to all future  
meal and rest periods;

(J) The proper *measure of* damages sustained and the proper measure  
of restitution recoverable by members of the California Class; and,

(K) Additional common questions of law and fact may develop as the  
litigation progresses.

C. **Typicality:** Plaintiff's claims are typical of the claims of **THE CLASS** Members.  
Plaintiff and other Class Members sustained losses, injuries and damages arising out of the

1 Defendants' common policies, programs, practices, procedures, and course of conduct referred to  
2 in each cause of action and throughout this Complaint, which were applied uniformly to Class  
3 Members as well as Plaintiff. Plaintiff seeks recoveries for the same types of losses, injuries, and  
4 damages as were suffered by the other Class Members as well as Plaintiff.

5 D. **Adequacy**: Plaintiff and her counsel will fairly and adequately protect the  
6 interests of **THE CLASS** Members. Plaintiff has no interest that is adverse to the interests of the  
7 other Class Members.

8 E. **Superiority**: A class action is superior to other available means for the fair and  
9 efficient adjudication of this controversy. Individual joinder of all Class Members is impractical.  
10 Class action treatment will permit a large number of similarly situated persons to prosecute their  
11 common claims in a single forum simultaneously, efficiently, and without the unnecessary  
12 duplication of effort and expense that numerous individual actions engender. Also, because the  
13 losses, injuries and damages suffered by each of the individual Class Members are small in the  
14 sense pertinent to class action analysis, the expenses and burden of individual litigation would  
15 make it extremely difficult or impossible for the individual Class Members to redress the wrongs  
16 done to them. On the other hand, important public interests will be served by addressing the  
17 matter as a class action. The cost to the court system and the public of adjudication of individual  
18 litigation and claims would be substantial, and substantially more than if the claims are treated as  
19 class action. Individual litigation and claims would also present the potential for inconsistent or  
20 contradictory results.

21 F. **Public Policy Considerations**: Defendants and other employers throughout the  
22 state violate wage and hour laws. Their current employees are often afraid to assert their rights  
23 out of fear of direct or indirect retaliation. Their former employees are fearful of bringing claims  
24 because doing so can harm their employment and future employment and future efforts to secure  
25 employment. Class actions provide Class Members who are not named in the complaint a degree  
26 of anonymity that allows for vindication of their rights while eliminating these risks, or at least  
27 enormously reducing them.  
28

V.

**CAUSES OF ACTION**

**First Cause of Action**

*Failure to Pay Wages at Overtime Rate*

(Lab. Code §§ 510, 1194 and 1199, IWC Wage Orders, and Related Violations)

14. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth herein.

15. Throughout the period applicable to this cause of action, Plaintiff and **THE CLASS** Members worked in excess of forty (40) hours per week and in excess of excess of eight (8) hours per day.

16. Throughout the period applicable to this cause of action, Defendants did not pay Plaintiff or Class Members at the required overtime rates for the work described in the preceding paragraphs.

17. Pursuant to California Labor Code section 1194, Plaintiff and **THE CLASS** Members are entitled to recover unpaid overtime compensation, and other unpaid wages, plus interest, plus attorneys' fees and costs.

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

19. WHEREFORE, Plaintiff and **THE CLASS** Members she seeks to represent request relief as described herein and below.

**Second Cause of Action**

*Failure to Provide Meal Periods*

(Lab. Code §§ 226.7 and 512)

(Against All Defendants)

20. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth herein.

21. Throughout the period applicable to this cause of action, California law, as set forth in relevant part by the Industrial Welfare Commission Wage Orders at section (11), provided as follows:

1 (A) No employer shall employ any person for a work  
2 period of more than five (5) hours without a meal period of not less  
3 than 30 minutes . . .

4 (B) If an employer fails to provide an employee a meal  
5 period in accordance with the applicable provisions of this Order,  
6 the employer shall pay the employee one (1) hour of pay at the  
7 employee's regular rate of compensation for each work day that  
8 the meal period is not provided.

9 22. Similarly, Labor Code section 226.7 requires payment of one (1) hour of pay in  
10 lieu of meal periods not provided by the employer. Throughout the period applicable to this  
11 cause of action, Defendants failed to consistently allow and provide the meal periods required by  
12 California law. Therefore, Plaintiff and **THE CLASS** Members are entitled to compensation as  
13 stated above, plus interest, attorneys' fees, costs and other applicable relief.

14 23. Throughout the period applicable to this cause of action, Defendants required  
15 Plaintiff and **THE CLASS** Members to work during meal periods mandated by the applicable  
16 orders of the Industrial Welfare Commission. Therefore Plaintiff and **THE CLASS** Members  
17 are entitled to be paid as stated in Labor Code section 226.7, plus interest, attorneys' fees, costs  
18 and other applicable relief.

19 24. On information and belief, Plaintiff alleges that **THE CLASS** Members did not  
20 voluntarily or willfully waive rest and/or meal periods and were regularly required to work  
21 through rest and meal periods. Defendants failed to meet the requirements for lawful on-duty  
22 rest and/or meal periods and/or instituted a course of conduct that created a working environment  
23 in which non-exempt employees were incapable of taking rest and/or meal periods. As such,  
24 non-exempt employees were intimidated or coerced into waiving rest and/or meal periods, and  
25 any written waivers were obtained without full disclosure and are thus involuntarily and without  
26 consent.

27 25. WHEREFORE, Plaintiff and **THE CLASS** she seeks to represent request relief as  
28 described herein and below.

**Third Cause of Action**  
*Failure to Provide Rest Periods*  
(Lab. Code § 226.7)

26 26. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set  
27 forth herein.  
28





1 Professions Code sections 17200 *et seq.* Defendants' conduct alleged above constitutes unlawful  
2 business acts and practices in violation of Business & Professions Code sections 17200 *et seq.*  
3 Defendant engaged in unfair competition in violation of the UCL by violating, *inter alia*, each of  
4 the following laws: each of these violations constitutes an independent and separate violation of  
5 the UCL:

- 6 a. California applicable Wage Orders
- 7 b. California Labor Code § 1194;
- 8 c. California Labor Code §§ 201, 202, 203, 204, and 226;
- 9 d. California Labor Code § 1174; and
- 10 e. California Labor Code § 510, which provides in relevant part:

11 *(B) Any work in excess of eight hours in*  
12 *one workday and any work in excess of 40 hours in*  
13 *any one workweek and the first eight hours worked*  
14 *on the seventh day of work in any one workweek*  
15 *shall be compensated at the rate of no less than one*  
16 *and one-half times the regular rate of pay for an*  
17 *employee. Any work in excess of 12 hours in one*  
18 *day shall be compensated at the rate of no less than*  
19 *twice the regular rate of pay for an employee. In*  
20 *addition, any work in excess of eight hours on any*  
21 *seventh day of a workweek shall be compensated at*  
22 *the rate of no less than twice the regular rate of pay*  
23 *of an employee.*

24 43. Defendant's course of conduct, acts, and practices in violation of the California  
25 laws mentioned in the above paragraph constitute a separate and independent violation of the  
26 UCL. Defendant's conduct described herein violates the policy or spirit of such laws or otherwise  
27 significantly threatens or harms competition. The harm to California Plaintiff and the California  
28 Class in being wrongfully denied lawfully earned wages outweighs the utility, if any, of  
29 Defendant's policies or practices and, therefore, Defendant's actions described herein constitute  
30 an unfair business practice or act within the meaning of the UCL.

31 44. The unlawful and unfair business practices and acts of Defendant, described  
32 above, have injured the California Class members in that they were wrongfully denied the  
33 payment of earned overtime wages.

34 45. The California Plaintiff, on behalf of herself and **THE CLASS**, seeks restitution  
35 in the amount of the respective unpaid wages earned and due at a rate not less than one and one-

1 halftimes the regular rate of pay for work performed in excess of forty hours in a work week, or  
2 eight hours in a day, and double the regular rate of pay for work performed in excess of twelve  
3 hours per day and such other legal and equitable relief from EBAY's unlawful and willful  
4 conduct as the Court deems just and proper.

5 46. Pursuant to Business and Professions Code sections 17200 *et seq.*, for the statute  
6 of limitations period covered by this cause of action, Plaintiff and **THE CLASS** Members are  
7 entitled to restitution for at least the following: the unpaid overtime earnings and other unpaid  
8 earnings withheld and retained by Defendants referred to above.

9 47. Plaintiff and **THE CLASS** Members and the general public are also entitled to  
10 permanent injunctive and declaratory relief prohibiting Defendants from engaging in the  
11 violations and other misconduct referred to above.

12 48. Defendants are also liable to pay attorneys' fees pursuant to California Code of  
13 Civil Procedure section 1021.5 and other applicable law, and costs. The Plaintiff, on behalf of  
14 herself and Class members, also seek recovery of attorneys' fees and costs of this action to be  
15 paid by EBAY, as provided by the UCL and California Labor Code §§ 218, 218.5, and 1194.

16 49. WHEREFORE, Plaintiff and **THE CLASS** she seeks to represent request relief as  
17 described herein and below.

18 **VI.**

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff on behalf of herself and all members of **THE CLASS**, pray for  
21 relief as follows:

- 22 1. That the Court determine that this action may be maintained as a class action;
- 23 2. That Plaintiff be appointed the representative of **THE CLASS**;
- 24 3. That the attorneys of record for Plaintiff whose names appear in this Complaint be  
25 appointed Class counsel;
- 26
- 27
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1 4. For unpaid wages at overtime rates for all overtime work and unpaid wages for all  
2 work for which they were not paid;

3 5. For such general and special damages as may be appropriate;

4 6. For waiting time penalties and civil penalties for all Class Members no longer in  
5 Defendants' employ at the time of Judgment;

6 7. For pre-judgment interest;

7 8. For the amounts provided for in Labor Code §§ 226(b), 226.7,

8 9. For restitution as described in the cause of action under Business & Professions  
9 Code §§ 17200 *et seq.* above;

10 10. For permanent injunctive and declaratory relief described in the cause of action  
11 under Business & Professions Code §§ 17200 *et seq.* above.

12 11. A declaratory judgment that the practices complained of herein are unlawful  
13 under California state law;

14 12. Attorney's fees and costs of suit, including expert fees pursuant to Ca. Lab. Code  
15 §§218.5, 1194, and Calif. Code Civ. Proc. §1021.5;

16 13. Such other injunctive and equitable relief as the Court may deem proper.

17 **DATED:** October 29, 2009

18 **JOSE GARAY, APLC**

19 **&**

20 **THE NUNES LAW GROUP**  
21 **HAMNER LAW OFFICES, LP**

22 

23 By: Christopher J. Hamner, Esq., Co-Counsel for  
24 Plaintiff, SUMIT AMBOKAR, on behalf of himself  
25 and all others similarly situated