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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF ORANGE

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

OCT 22 2009

ALAN CARLSON, Clerk of the Court

BY: R. VAVRA , DEPUTY

17 SOHAM SHAW, on behalf of himself and all
18 others similarly situated

19 Plaintiff

20 vs.

21 PARASOFT CORPORATION, a California
22 Corporation, and DOES 1 through 100,
23 inclusive,

24 Defendants.

Case No. **003 14 475**

ASSIGNED FOR ALL PURPOSES TO:
JUDGE GAILA ANDLER
DEPT. CX102
CLASS ACTION COMPLAINT FOR

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)

DEMAND FOR JURY TRIAL

25 **THIS CASE IS SUBJECT TO**
26 **MANDATORY ELECTRONIC FILING**
27 **PURSUANT TO RULE 308 OF THE LOCAL RULES**
28 **OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

1 Plaintiff SOHAM SHAW ("Plaintiff") alleges, on behalf of himself and classes of those
2 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
7 PARASOFT CORPORATION (hereinafter "Defendant" or "PARASOFT"), a California
8 Corporation, who are or were employed in Defendants' locations in California in job positions
9 known as software engineer or quality assurance engineers. However, these job titles are a
10 misnomer, because most of the work performed by these employees is not and was not exempt in
11 nature. These employees thus are and were entitled to overtime and other protections as non-
12 exempt employees. It is *Defendants' burden* of pleading, evidence and proof to show that these
13 employees are and were exempt under California wage and hour law. These employees have
14 spent an insignificant amount of work time doing anything that constitutes "exempt," and for that
15 reason and others, they are and always have been entitled to overtime pay and non-exempt
16 treatment under California wage and hour law.

17 2. Plaintiff's duties and those of the Class he seeks to represent were routine in
18 nature and relied on the use of templates and other automated processes. Although, the job titles
19 suggest the performance of high level job duties for the positions described herein, the actual job
20 duties are limited to performing routine production work, not requiring special expertise, and
21 involving little or no exercise of discretion.

22 **II.**

23 **JURISDICTION AND VENUE**

24 **A. Plaintiff**

25 3. Plaintiff SOHAM SHAW is a resident of Orange County, California. Many of the
26 acts complained of occurred in Orange County and gave rise to claims alleged.

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1 **B. Defendants**

2 4. The Superior Court of the State of California for the County of Alameda has
3 personal jurisdiction over PARASOFT CORPORATION, a California Corporation, because it
4 has qualified with the California Secretary of State to do business and is doing business in,
5 California, and in this district, and because many of the acts complained of occurred in Orange
6 County and gave rise to claims alleged.

7 5. Venue as to each defendant is proper in this judicial district, pursuant to
8 California Code of Civil Procedure section 395.

9
10 6. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to
12 Plaintiff, who therefore sue Defendants by such fictitious names under California Code of Civil
13 Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
14 defendants designated herein as a DOE is legally responsible in some manner for the unlawful
15 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
16 true names and capacities of the defendants designated hereinafter as DOES when such identities
17 become known.

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19 7. Plaintiff is informed and believes, and based thereon alleges, that each defendant
20 acted in all respects pertinent to this action as the agent of the other defendants, carried out a
21 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
22 defendant are legally attributable to the other defendants. Furthermore, Defendants in all respects
23 acted as the employer and/or joint employer of Plaintiff and the Class. Plaintiff is informed and
24 believes and thereon alleges that at all times relevant to this action, the named defendant and
25 defendants DOES 1 through 100 were affiliated and were an integrated enterprise.
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IV.
CLASS ALLEGATIONS

11. Plaintiff brings this cause of action on behalf of himself 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.

12. 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 facility owned or operated by any of the Defendants in any job whose title is or was referred to by any of the Defendants as software engineer, quality assurance engineer or similar title and 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 hundred people 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;

1 (B) Whether Defendants are and were subject to overtime requirements
2 contained in the California IWC Wage Orders and other California law with
3 respect to the Class Members;

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

17 (F) Whether Defendants violated California law by their policies,
18 programs, practices, procedures and protocols regarding rest periods for Class
19 Members;

20 (G) What were and are the policies, programs, practices, procedures
21 and protocols of Defendants regarding furnishing to the Class Members, upon
22 each payment of wages, itemized statements required by Labor Code section 226;

23 (H) Whether Defendants violated California law by their policies,
24 programs, practices, procedures and protocols regarding furnishing to the Class
25 Members, upon each payment of wages, itemized statements required by Labor
26 Code section 226;

27 (I) Whether Defendants violated Business & Professions Code sections
28 17200 *et seq.* by their policies, programs, practices, procedures and conduct
referred to in this cause of action;

(J) 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;

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

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

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2 C. **Typicality:** Plaintiff's claims are typical of the claims of the Class Members.
3 Plaintiff and other Class Members sustained losses, injuries and damages arising out of the
4 Defendants' common policies, programs, practices, procedures, and course of conduct referred to
5 in each cause of action and throughout this Complaint, which were applied uniformly to Class
6 Members as well as Plaintiff. Plaintiff seeks recoveries for the same types of losses, injuries, and
7 damages as were suffered by the other Class Members as well as Plaintiff.

8
9 D. **Adequacy:** Plaintiff and her counsel will fairly and adequately protect the
10 interests of the Class Members. Plaintiff has no interest that is adverse to the interests of the
11 other Class Members.

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

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

8 V.

9 **CAUSES OF ACTION**

10 **First Cause of Action**

11 *Failure to Pay Wages at Overtime Rate*

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

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

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

17 15. Throughout the period applicable to this cause of action, Defendants did not pay
18 Plaintiff or Class Members at the required overtime rates for the work described in the preceding
19 paragraph. Also, Defendants failed to pay them for all hours worked.

20 16. Pursuant to California Labor Code section 1194, Plaintiff and the Class Members
21 are entitled to recover unpaid overtime compensation, and other unpaid wages, plus interest, plus
22 attorneys' fees and costs.

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

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4 18. WHEREFORE, Plaintiff and the Class Members he seeks to represent request
5 relief as described herein and below.

6 **Second Cause of Action**
7 *Failure to Provide Meal Periods*
8 (Lab. Code §§ 226.7 and 512)
9 (Against All Defendants)

10 19. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set
11 forth herein.

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

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

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

23 21. Similarly, Labor Code section 226.7 requires payment of one (1) hour of pay in
24 lieu of meal periods not provided by the employer. Throughout the period applicable to this
25 cause of action, Defendants failed to consistently allow and provide the meal periods required by
26 California law. Therefore, Plaintiff and the Class Members are entitled to compensation as
27 stated above, plus interest, attorneys' fees, costs and other applicable relief.

28 22. Throughout the period applicable to this cause of action, Defendants required
Plaintiff and the Class Members to work during meal periods mandated by the applicable orders
of the Industrial Welfare Commission. Therefore Plaintiff and the Class Members are entitled to

1 be paid as stated in Labor Code section 226.7, plus interest, attorneys' fees, costs and other
2 applicable relief.

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4 23. On information and belief, Plaintiff alleges that the Class Members did not
5 voluntarily or willfully waive rest and/or meal periods and were regularly required to work
6 through rest and meal periods. Defendants failed to meet the requirements for lawful on-duty
7 rest and/or meal periods and/or instituted a course of conduct that created a working environment
8 in which non-exempt employees were incapable of taking rest and/or meal periods. As such,
9 non-exempt employees were intimidated or coerced into waiving rest and/or meal periods, and
10 any written waivers were obtained without full disclosure and are thus involuntarily and without
11 consent.

12 24. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
13 described herein and below.

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

17 25. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set
18 forth herein.

19 26. By their failure to provide rest periods for every four (4) hours or major fraction
20 thereof worked per workday by non-exempt employees, and failing to provide one (1) hour's pay
21 in lieu thereof, as alleged above and herein, Defendants willfully violated the provisions of Labor
22 Code sections 226.7 and IWC Wage Orders at section (12).

23 27. By failing to keep adequate time records required by sections 226 and 1174(d) of
24 the Labor Code and IWC Wage Order at section (7), Defendants have injured Plaintiff and Class
25 Members and made it difficult to calculate the unpaid rest and meal period compensation due
26 Plaintiff and members of the Plaintiff Class. On information and belief, Plaintiff alleges that
27 Defendants' failure to maintain accurate records was willful.
28

1 41. Plaintiff brings this action on behalf of each and all members of the general
2 public, including the Class Members and Plaintiff himself, pursuant to Business and Professions
3 Code sections 17200 *et seq.* Defendants' conduct alleged above constitutes unlawful business
4 acts and practices in violation of Business & Professions Code sections 17200 *et seq.* Defendant
5 engaged in unfair competition in violation of the UCL by violating, *inter alia*, each of the
6 following laws: each of these violations constitutes an independent and separate violation of the
7 UCL:

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

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

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

1 43. The unlawful and unfair business practices and acts of Defendant, described
2 above, have injured the California Class members in that they were wrongfully denied the
3 payment of earned overtime wages.

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5 44. The California Plaintiff, on behalf of himself and the Class, seeks restitution in
6 the amount of the respective unpaid wages earned and due at a rate not less than one and one-
7 halftimes the regular rate of pay for work performed in excess of forty hours in a work week, or
8 eight hours in a day, and double the regular rate of pay for work performed in excess of twelve
9 hours per day and such other legal and equitable relief from PARASOFT's unlawful and willful
conduct as the Court deems just and proper.

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11 45. Pursuant to Business and Professions Code sections 17200 *et seq.*, for the statute
12 of limitations period covered by this cause of action, Plaintiff and the Class Members are entitled
13 to restitution for at least the following: the unpaid overtime earnings and other unpaid earnings
14 withheld and retained by Defendants referred to above.

15 46. Plaintiff and the Class Members and the general public are also entitled to
16 permanent injunctive and declaratory relief prohibiting Defendants from engaging in the
17 violations and other misconduct referred to above.

18
19 47. Defendants are also liable to pay attorneys' fees pursuant to California Code of
20 Civil Procedure section 1021.5 and other applicable law, and costs. The Plaintiff, on behalf of
21 himself and Class members, also seek recovery of attorneys' fees and costs of this action to be
22 paid by PARASOFT, as provided by the UCL and California Labor Code §§ 218, 218.5, and
23 1194.

24 48. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
25 described herein and below.
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VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and all members of the California Class,
pray for relief as follows:

1. That the Court determine that this action may be maintained as a class action;
2. That Plaintiff be appointed the representative of the Class;
3. That the attorneys of record for Plaintiff whose names appear in this Complaint be appointed Class counsel;
4. For unpaid wages at overtime rates for all overtime work and unpaid wages for all work for which they were not paid;
5. For such general and special damages as may be appropriate;
6. For waiting time penalties and civil penalties for all Class Members no longer in Defendants' employ at the time of Judgment;
7. For pre-judgment interest;
8. For the amounts provided for in Labor Code §§ 226(b), 226.7,
9. For restitution as described in the cause of action under Business & Professions Code §§ 17200 *et seq.* above;
10. For permanent injunctive and declaratory relief described in the cause of action under Business & Professions Code §§ 17200 *et seq.* above.
11. A declaratory judgment that the practices complained of herein are unlawful under California state law;
12. Attorney's fees and costs of suit, including expert fees pursuant to Ca. Lab. Code §§218.5, 1194, and Calif. Code Civ. Proc. §1021.5;

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

DATED: October 21, 2009

JOSE GARAY, *APLC*

&

HAMNER LAW OFFICES, LP



By: Christopher J. Hamner, Esq., Co-Counsel for
Plaintiff, SOHAM SHAW, on behalf of himself and
all others similarly situated