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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 JESSE BUSK, LAURIE CASTRO, SIERRA
12 WILLIAMS, MONICA WILLIAMS,
13 BROOKE BOMBOY on behalf of
14 themselves and all others similarly situated,

15 Plaintiffs,

16 v.

17 INTEGRITY STAFFING SOLUTIONS
18 INC., AMAZON.COM, INC., and DOES 1-
19 50, inclusive,

20 Defendants.

Case No. 2:10-CV-01854-RLH-NJK

**SECOND AMENDED COLLECTIVE
AND CLASS ACTION COMPLAINT**

21 COMES NOW PLANTIFFS JESSE BUSK, LAURIE CASTRO, SIERRA WILLIAMS,
22 MONICA WILLIAMS, BROOKE BOMBOY, on behalf of themselves, and all others similarly
23 situated, and allege:

24 All allegations in this Complaint are based upon information and belief except for those
25 allegations that pertain to the Plaintiffs named herein and their counsel. Each allegation in this
26 Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable
27 opportunity for further investigation and discovery.

JURISDICTION AND VENUE

28 1. Pursuant to Section 16(b) of the Fair Labor Standards Act (FLSA), 29 U.S.C. §
216(b), this court has original jurisdiction over all claims for overtime and minimum wage

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1 compensation which occurred within three years from the date of the original filing the complaint
2 for the acts complained of herein by Plaintiffs, for themselves and all others similarly situated,
3 who, after notice, “opt-in” to this action by filing a consent to sue.

4 2. Pursuant to the Class Action Fairness Act, 29 U.S.C. § 1334(d), this court has
5 jurisdiction over all state law claims complained of within the relevant time period by Plaintiffs,
6 for themselves and all others similarly situated, on a traditional “opt out” basis pursuant to Rule
7 23 of the Federal Rule of Civil Procedure (“FRCP”).

8 3. The amount in controversy exceeds five million dollars and there is the requisite
9 minimum diversity of citizenship between the members of the class and Defendant.

10 4. Venue is proper in this court because the original named Plaintiff in this action
11 (Jesse Busk) resides, the work was performed, and the wages were paid in Clark County, Nevada.

12 **PARTIES**

13 5. Defendant INTEGRITY STAFFING SOLUTIONS INC. (individually referred to
14 as “Integrity”), is a foreign corporation and/or other business entity which leases warehouse and
15 other hourly paid employees to customers like Amazon.Com in the customer’s Las Vegas,
16 Nevada, location and at all other Amazon warehouse facilities throughout the United States.
17 Upon information and belief, Integrity derives over a million dollars annually from such interstate
18 business operations.

19 6. Defendant AMAZON.COM, INC. (individually referred to as “Amazon.Com”),
20 is a foreign corporation and/or other business entity that operates one of the most well-known
21 online marketplaces in the country. Amazon.Com owns and operates over 50 warehouse
22 distribution centers across the United States, including, but not limited to, the States of Arizona,
23 California, Delaware, Indiana, Kansas, Kentucky, New Hampshire, New Jersey, Nevada,
24 Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington.

25 7. Unless the name of the individual Defendant is stated, Defendant Integrity and
26 Defendant Amazon.Com are collectively referred to herein as “Defendants”.

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1 8. Plaintiff Jesse Busk is a resident of Las Vegas, Clark County, Nevada, and was
2 employed for more than three years by Integrity as an hourly warehouse employee in its Las
3 Vegas, Nevada, facility.

4 9. Plaintiff Laurie Castro is a resident of Reno, Washoe County, Nevada, and was
5 employed by Integrity as an hourly warehouse employee in its Fernley, Nevada, facility during
6 the relevant time period alleged herein. Defendant terminated Plaintiff on or about December 7,
7 2010.

8 10. Plaintiff Sierra Williams is a resident of Surprise, Arizona, and was employed by
9 Integrity and Amazon.Com from on or about August 2008 to on or about February 2011. From
10 on or about August 2008 to on or about November 2008, Ms. Sierra Williams was employed
11 directly by Amazon.Com as a “Receiver” at one of its Phoenix, Arizona, warehouse facilities.
12 From on or about November, 2009 to on or about June, 2010, Ms. Sierra Williams was employed
13 by Integrity as a “Picker/Packer” at another one of Amazon.Com’s Phoenix, Arizona, warehouse
14 facilities. From on or about July 2010 to on or about February 2011, Ms. Sierra Williams was
15 employed as a “Picker/Slam Operator” at Amazon.Com’s Las Vegas, Nevada, warehouse facility.

16 11. Plaintiff Monica Williams is a resident of Surprise, Arizona, and was employed
17 by Integrity and Amazon.Com from on or about 2007 to on or about March 2013. From on or
18 about August 2007 to on or about August 2008, Ms. Monica Williams was employed by Integrity
19 at one of Amazon.Com’s Phoenix, Arizona, warehouse facilities. On or about August 2008 Ms.
20 Monica Williams was converted from an employee on the payroll of Integrity to an employee on
21 the payroll of Amazon.Com while she continued to work at one of Amazon.com’s Phoenix,
22 Arizona, warehouse facilities until on or about June 2010. Then, from on or about June 2010 to
23 on or about August 2012, Ms. Monica Williams was employed by Amazon.Com as its Las Vegas,
24 Nevada, warehouse facility. During her tenure as an Amazon.Com employee at its Las Vegas
25 facility, Ms. Monica Williams worked approximately 2 months, from on or about August 2011 to
26 on or about October 2011, at Amazon.Com’s Nashville, Tennessee, warehouse facility. From on
27 or about August 2012 to on or about March 2013, Ms. Williams was employed by Amazon.Com
28 at its Spartanburg, South Carolina, warehouse facility.

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1 locations owned and/or maintained by Amazon.com. The services rendered by Integrity
2 employees are the very core of Amazon.com business, i.e. the selection of items from warehouse
3 stock for shipment to customers. Amazon.Com as the right to control the manner and means by
4 which Integrity’s workers accomplish the work at Amazon.com locations. Amazon.com’s
5 supervisors often directed the work of Integrity employees. Amazon.com exercises direct control
6 over the hours and other working conditions of all Plaintiffs and all similarly-situated hourly shift
7 employees who are paid on the payroll of Integrity working at all Amazon.Com’s warehouse
8 locations nationwide. Upon information and belief, employment data such as hours worked,
9 hourly rates of pay, and other benefit information is recorded the same for Integrity and
10 Amazon.Com direct employees alike. The hourly paid, warehouse employees employed on
11 Integrity’s payroll at Amazon.com locations have no unique or special skills. The work of these
12 hourly paid, warehouse employees employed on Integrity’s payroll at Amazon.com locations
13 benefits Amazon.com as well as Integrity. As set forth below, persons employed by Integrity and
14 Amazon.Com were all subjected to the same illegal policies and practices.

15 **THE UNLAWFUL SECURITY CLEARANCE POLICY**

16 17. Defendants jointly implemented, maintained, and/or enforced a uniform Security
17 Clearance policy at all Amazon.Com locations throughout the United States which required
18 Plaintiffs and all other hourly paid, non-exempt employee of either Integrity or Amazon.com or
19 both, to undergo a daily security clearance check at the end of each shift to discover and/or deter
20 employee theft of the employer’s property and to reduce inventory “shrinkage”. Plaintiffs and all
21 other hourly paid, non-exempt employee of either Integrity or Amazon.com or both were not
22 compensated for the time spent undergoing the security clearance before they were released from
23 work and permitted to leave the warehouse facility. Defendants’ policy of requiring hourly
24 warehouse employees to undergo a thorough security clearance before being released from work
25 and permitted to leave the employer’s property was solely for the benefit of the employers and
26 their customers. The search was to prevent employee theft, and it is an essential part of the job of
27 a warehouse worker that they not take items from the warehouse out of the warehouse other than
28 in the ways proscribed by the company. In fact, not contributing to “shrinkage” and abiding by

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1 company procedures for inventory control is an integral aspect of the Plaintiff's job. Upon
2 information and belief, Defendants maintained, enforced and/or implemented this same policy at
3 all warehouse locations throughout the country.

4 18. At the end of their respective shifts, hundreds, if not thousands, of warehouse
5 employees would walk to the timekeeping system to clock out and were then required to wait in
6 line in order to be searched for possible warehouse items taken without permission and/or other
7 contraband. Thus, at the direction and control of the Defendant, and solely for the benefit of the
8 employer and/or their customers, Plaintiffs and all other similarly-situated warehouse workers
9 were required to wait approximately 25 minutes each day at the end of each shift without any
10 compensation in order to undergo a search for possible contraband or pilferage of inventory of
11 his or her person. Defendants forced Plaintiffs and all other similarly situated warehouse workers
12 to undergo a post 9/11 type of airport security clearance—i.e., warehouse employees were
13 required to remove all personal belongings from their person such as wallets, keys, and belts, and
14 pass through metal detectors before being released from work and allowed to leave the facility.
15 Defendants' policies and practices required warehouse employees to leave their personal
16 belongings such as cell phones in their vehicles. Thus, warehouse employees were unable to
17 engage in any personal activities during the time spent waiting.

18 19. Defendants did not pay any of their warehouse employees anything for the time
19 spent waiting for and undergoing such daily security clearances.

20 20. Defendants did not pay any of their warehouse employees at a rate equal to or
21 greater than one and one-half her regular hourly rate of pay whenever they required, suffered, or
22 permitted the warehouse employees, including Plaintiffs, to work more than forty (40) hours per
23 week, or more than eight (8) hours in a day.

24 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

25 21. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this
26 Complaint as though fully set forth herein.

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1 22. As set forth more fully below, Plaintiffs bring this action on behalf of themselves
2 and other similarly-situated employees in two ways: a collective action under the FLSA and a
3 true class action under the various state laws alleged herein.

4 23. Plaintiffs seek to represent the following classes:

5 **FLSA Class:** All persons employed by Defendants, and/or each of them, as hourly paid
6 warehouse employees within the United States at any time within three years prior to the filing of
7 the original complaint and who file their consents to join this collective action as a party plaintiff
8 pursuant to 29 U.S.C. § 216(b).

9 **Nevada Class:** All person employed by Defendants, and/or each of them, as hourly paid
10 warehouse employees who worked for Defendant(s) within the State of Nevada at anytime within
11 three years prior to the original filing date of the complaint in this action.

12 **Arizona Class:** All person employed by Defendants, and/or each of them, as hourly paid
13 warehouse employees who worked for Defendant(s) within the State of Arizona at any time from
14 within three years prior to the filing of the original complaint until the date of judgment after trial,
15 and shall encompass all claims by such persons for the entire tenure of their employment as
16 provided in A.R.S. 23-364 (G).

17 **Pennsylvania Class:** All person employed by Defendants, and/or each of them, as hourly
18 warehouse employees who worked for Defendant(s) within the State of Pennsylvania at anytime
19 during the relevant time period alleged herein.

20 **South Carolina Class:** All person employed by Defendants, and/or each of them, as
21 hourly warehouse employees who worked for Defendant(s) within the State of South Carolina at
22 anytime during the relevant time period alleged herein.

23 24. Plaintiffs are members of the FLSA and one or more of each of the State Law
24 Classes alleged in this Complaint.

25 25. Plaintiffs have signed consents to sue that either have been, or shortly will be, filed
26 in this Court.

27 26. Each class consist of potentially hundreds if not thousands of employees of
28 Defendants, such that each class is so numerous that joinder of the class members is impracticable.

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1 The class is easily ascertainable from the records that the employer is required by law to maintain.
2 When available, a true opt-out class action is superior to individual actions because it would be
3 unjust to allow the Defendants to benefit from their unlawful behavior solely because the cost of
4 litigating individual claims would be prohibitive compared to the expected damages unless
5 aggregated.

6 27. There is a well-defined community of interest in the question of law and fact
7 affecting the class members Plaintiffs seek to represent. The class members' claims against
8 Defendants involve questions of common or general interest, in that their claims are based on
9 Defendants' implementation and utilization of a policy whereby all members of the classes were
10 required, suffered, or permitted to undergo security clearances without compensation prior to
11 being released from work and permitted to leave the warehouse facility. These questions are
12 such that proof of facts common to the members of each class will entitle such class members to
13 relief requested in this Complaint.

14 28. Plaintiffs will fairly and adequately represent the interests of the class members
15 because Plaintiffs are members of each class, have common issues of law and/or fact with all
16 members of the class, and their claim is typical of those in each class.

17 29. Plaintiffs request permission to amend the Complaint to include additional class
18 representatives if Plaintiffs individually or collectively are deemed not to be adequate
19 representatives of any class.

20 **FIRST CAUSE OF ACTION**

21 Failure to Pay Wages For Security Clearances in Violation of FLSA, 29 U.S.C. §201, et seq.

22 30. Plaintiffs reallege and incorporate by this reference all allegations contained above
23 as though fully set forth herein.

24 31. This cause of action is brought against Defendants by all Plaintiffs on behalf of
25 the FLSA Class.

26 32. Pursuant to the FLSA, 29 U.S.C. § 201, et seq., Plaintiffs and the members of the
27 FLSA Class are entitled to compensation at their regular rate for all hours actually worked, and
28

1 are also entitled to wages at a rate not less than one and one-half times their regular rate of pay
2 for all hours worked in excess of forty (40) hours in any workweek.

3 33. Defendants are engaged in communication, business, and transmission throughout
4 the United States and is, therefore, engaged in commerce within the meaning of 29 U.S.C. §
5 203(b).

6 34. 29 U.S.C. § 206(a)(1) states that “Every employer shall pay to each of his
7 employees who in any workweek is engaged in commerce or in the production of goods for
8 commerce, or is employed in an enterprise engaged in commerce or in the production of goods
9 for commerce, wages at the following rates: (1) except as otherwise provided in this section, not
10 less than (A) \$5.85 an hour beginning on the 60th day after the enactment of the Fair Minimum
11 Wage Act of 2007; (B) \$6.55 an hour, beginning 12 months after that 60th day; and C) \$7.25 an
12 hour, beginning 24 months after that 60th day.

13 35. 29 U.S.C. § 207(a)(1) provides in pertinent part: “Except as otherwise provided in
14 this section, no employer shall employ any of his employees who in any workweek is engaged in
15 commerce or in the production of goods for commerce, or is employed in an enterprise engaged
16 in commerce or in the production of goods for commerce, for a workweek longer than forty hours
17 unless such employee receives compensation for his employment in excess of the hours above
18 specified at a rate not less than one and one-half times the regular rate at which he is employed.”

19 36. There is no exception from the provisions of 29 U.S.C. §§ 206(a)(1) and/or
20 207(a)(1) applicable to the Plaintiffs and the other hourly shift workers that constitute the class
21 herein.

22 37. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful
23 violations of the FLSA.

24 38. Requiring employees to undergo security clearances herein is integral and
25 indispensable to Plaintiffs’ duties and solely for the benefit of Defendants, necessary Defendants’
26 business operations, not incidental, and not *de minimis* individually or in the aggregate.

27 39. At all relevant times, Defendants failed to pay Plaintiffs and the other members of
28 the FLSA Class their regular rate for all hours worked by not paying them for the time they were

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1 not free to leave the premises because the class members were required to undergo security
2 clearances upon exiting the work area for the benefit solely of the employer or the employer’s
3 customers.

4 40. Defendants failed to pay Plaintiffs and the other members of the FLSA Class the
5 minimum wages and, if applicable, overtime pay for all hours worked by not paying the
6 employees for time spent waiting for a mandatory post shift security check to detect and prevent
7 theft and inventory shrinkage for the benefit of the employer or the employer’s customers.

8 41. The waiting was for the benefit of the employer, necessary to the employer’s task
9 of minimizing “shrinkage” or loss of product from warehouse theft, and could have easily been
10 reduced to a de minimus amount by the addition of more security checkers and/or staggering the
11 termination of the shift so people would flow through the clearance more quickly.

12 42. Plaintiffs propose to undertake the appropriate proceedings to have the FLSA
13 Class members, aggrieved by Defendants’ unlawful conduct, notified of the pendency of this
14 action and join this action as Plaintiffs, pursuant to 29 U.S.C. § 216(b).

15 43. Therefore, Plaintiffs demand that they, and the members of the FLSA Class, be
16 paid wages at the higher of 1) their regular rate for all hours worked, including time spent at post
17 shift security clearances 2) the minimum hourly wage for all time spent at post shift security
18 clearances or 3) when applicable, the appropriate overtime hourly premium rate as required by
19 the FLSA for all time spent at post shift security clearances as provided by law.

20 44. Because the actions of Defendant were without substantial justification as required
21 by, 29 U.S.C § 260, Plaintiffs request the amount of damages be doubled, not as a penalty, but in
22 lieu of interest and as liquidated damages as provided in 29 U.S.C. § 216(b), together with
23 attorneys’ fees, costs, and interest as provided by law.

24 **SECOND CAUSE OF ACTION**

25 Failure to Pay Wages For Security Clearances in Violation of NRS 608.016, 608.018, 608.140,
26 and the Nevada Constitution

27 45. Plaintiffs reallege and incorporate by this reference all allegations contained above
28 as though fully set forth herein.

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1 53. This cause of action is brought against Defendants by Plaintiffs Busk, Castro,
2 Sierra Williams, and Monica Williams on behalf of those members of the Nevada Class who are
3 no longer employed by Defendants herein.

4 54. NRS 608.020 states “Whenever an employer discharges an employee, the wages
5 and compensation earned and unpaid at the time of such discharge shall become due and payable
6 immediately.

7 55. NRS 608.030 provides “Whenever an employee resigns or quits his or her
8 employment, the wages and compensation earned and unpaid at the time of the employee’s
9 resignation or quitting must be paid no later than 1. The day on which the employee would have
10 regularly been paid the wages or compensation; or 2. Seven days after the employee resigns or
11 quits, whichever is earlier.”

12 56. The consequence of violation of NRS 608.020 and NRS 608.030 is contained in
13 NRS 608.040(1) which states: “If an employer fails to pay: (a) Within 3 days after the wages or
14 compensation of a discharged employee becomes due; or (b) On the day the wages or
15 compensation is due to an employee who resigns or quits, the wages or compensation of the
16 employee continues at the same rate from the day the employee resigned, quit or was discharged
17 until paid or for 30 days, whichever is less.”

18 57. NRS 608.050 expressly gives the terminated employees a private cause of action
19 to collect these sums when it states: “Whenever an employer of labor shall discharge or lay off
20 employees without first paying them the amount of any wages or salary then due them, in cash
21 and lawful money of the United States, or its equivalent, or shall fail, or refuse on demand, to pay
22 them in like money, or its equivalent, the amount of any wages or salary at the time the same
23 becomes due and owing to them under their contract of employment, whether employed by the
24 hour, day, week or month, each of the employees may charge and collect wages in the sum agreed
25 upon in the contract of employment for each day the employer is in default, until the employee is
26 paid in full, without rendering any service therefore; but the employee shall cease to draw such
27 wages or salary 30 days after such default. 2. Every employee shall have a lien as provided in
28 NRS 108.221 to 108.246, inclusive, and all other rights and remedies for the protection and

1 enforcement of such salary or wages as the employee would have been entitled to had the
2 employee rendered services therefore in the manner as last employed.”

3 58. By failing to pay Plaintiffs and Nevada Class Members who no longer are
4 employed by Defendants for all hours worked in violation of state and federal law, Defendants
5 has failed to timely remit all wages due and owing to Plaintiffs and Nevada Class Members who
6 are former employees.

7 59. Thus, Plaintiffs demand that themselves and members of the Nevada Class who
8 have been terminated or laid off from employment without having been paid all wages due thirty
9 days of full wages together with attorneys’ fees, costs, and interest as provided by law.

10 **FOURTH CAUSE OF ACTION**

11 Failure to Pay Wages For Security Clearances in Violation of A.R.S. 23-363 et. seq.

12 60. Plaintiffs reallege and incorporate by this reference all allegations contained above
13 as though fully set forth herein.

14 61. This cause of action is brought against Defendants by Plaintiffs Sierra Williams,
15 Monica Williams, on behalf of the Arizona Class only.

16 62. Arizona Revised Statutes (“A.R.S.”) Section 23-363 provides that “A. Employers
17 shall pay employees no less than the minimum wage, which shall be six dollars and seventy-five
18 cents (\$6.75) an hour beginning on January 1, 2007. B. The minimum wage shall be increased on
19 January 1, 2008 and on January 1 of successive years by the increase in the cost of living. The
20 increase in the cost of living shall be measured by the percentage increase as of August of the
21 immediately preceding year over the level as of August of the previous year of the consumer price
22 index (all urban consumers, U.S. city average for all items) or its successor index as published by
23 the U.S. department of labor or its successor agency, with the amount of the minimum wage
24 increase rounded to the nearest multiple of five cents.”

25 63. A.R.S. 23-364 (H) provides that “A civil action to enforce this article may be
26 maintained in a court of competent jurisdiction by a law enforcement officer or by any private
27 party injured by a violation of this article.”
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68. This cause of action is being brought against Defendants by Plaintiffs Sierra Williams, Monica Williams, on behalf of all Arizona Class members who no longer are employed by Defendants.

69. A.R.S. § 23-353 provides as follows:

- a. When an employee is discharged from the service of an employer, he shall be paid wages due him within seven working days or the end of the next regular pay period, whichever is sooner.
- b. When an employee quits the service of an employer he shall be paid in the usual manner all wages due him no later than the regular payday for the pay period during which the termination occurred. If requested by the employee, such wages shall be paid by mail.
- c. Every employer, including this state and its political subdivisions, shall pay wages or compensation due an employee under this section in lawful money of the United States by negotiable check, draft, money order or warrant, in the case of the state or any political subdivision, which can be immediately redeemed in cash at a bank or other financial institution, payable on demand or by deposit in a financial institution of employee's choice and dated not later than the day upon which the check, draft, money order or warrant is given, and not otherwise.

70. A.R.S. Section 23-355(A) permits an employee to "recover in a civil action against an employer or former employer an amount that is treble the amount of the unpaid wages."

71. A.R.S. Section 23-355(A) is applicable even if only a portion of the wages due are unpaid. *Large v. Hilton*, 2013 U.S. Dist. LEXIS 3355 (D. Ariz. Jan. 9, 2013) (reconsidered on other grounds); *see also Crum v. Maricopa Cnty.*, 190 Ariz. 512, 513-14, 950 P.2d 171, 172-73 (Ct. App. 1997) (countenancing a claim under § 23-353(A) "because a *portion* of [the employee's] pay was mailed five business days after his discharge and not delivered, as statutorily required, within three").

1 72. By failing to pay Plaintiffs and Arizona Class Members for all hours worked in
2 violation of state and federal law, Defendants has failed to timely remit all wages due and owing
3 to Plaintiffs and Arizona Class Members who are former employees.

4 73. Thus, Plaintiffs demand for themselves and all members of the Arizona Class who
5 are former employees be paid all wages due and owing during the relevant time period alleged
6 herein, *trebled as provided by statute*, together with attorneys’ fees, costs, and interest as provided
7 by law.

8 **SIXTH CAUSE OF ACTION**

9 Failure to Timely Pay Wages Due in Violation 43 Penn. Stat. § 333.104, et. seq.

10 74. Plaintiffs reallege and incorporate by this reference all allegations contained above
11 as though fully set forth herein.

12 75. This cause of action is being brought against Defendants by Plaintiff Bomboy on
13 behalf of the Pennsylvania Class only.

14 76. The Pennsylvania Minimum Wage Act ("MWA") 43 PS. § 333.104, et. seq,
15 provides that all employees must be paid for minimum wages, regular rate wages, or overtime
16 wages, whichever are higher, for all hours worked.

17 77. The Pennsylvania Wage Payment and Collection Law ("WPCL"), 43 P.S. § 260.5
18 provides further that “Whenever an employer separates an employe[e] from the payroll, or
19 whenever an employe[e] quits or resigns his employment, the wages or compensation earned shall
20 become due and payable not later than the next regular payday of his employer on which such
21 wages would otherwise be due and payable. If requested by the employee, such payment shall be
22 made by certified mail.”

23 78. 43 P.S. § 260.9a provides a private cause of action for employees or group of
24 employees to maintain a cause of action any type of wages due including liquidated damages.

25 79. 43 P.S. § 260.9a further provides for a 10% penalty if wages due are not paid
26 within 10 days of receipt of a certified letter demanding the wages due. Plaintiffs’ counsel sent a
27 certified letter, together with a copy of the decision of the United States Court of Appeals for the
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1 Ninth Circuit in this case, *Busk v. Integrity Staffing Solutions, Inc.*, No. 10-01854 (9th Cir., Apr.
2 12, 2013) to Defendants yet no payment was received within the 10 period provided by law.

3 80. 43 P.S. § 260.10 further provides that “Where wages remain unpaid for thirty days
4 beyond the regularly scheduled payday, or, in the case where no regularly scheduled payday is
5 applicable, for sixty days beyond the filing by the employe[e] of a proper claim or for sixty days
6 beyond the date of the agreement, award or other act making wages payable, or where shortages
7 in the wage payments made exceed five percent (5%) of the gross wages payable on any two
8 regularly scheduled paydays in the same calendar quarter, and no good faith contest or dispute of
9 any wage claim including the good faith assertion of a right of set-off or counter-claim exists
10 accounting for such non-payment, the employe[e] shall be entitled to claim, in addition, as
11 liquidated damages an amount equal to twenty-five percent (25%) of the total amount of wages
12 due, or five hundred dollars (\$500), whichever is greater.”

13 81. More than 30 days has elapsed from the times wages were due for the time spent
14 waiting for security clearance (and if not paid within 60 days of this amended complaint, then 60
15 days from a proper claim being made).

16 82. Plaintiffs demand that they and the members of the Pennsylvania Class be paid
17 wages at the applicable regular or overtime rate for all hours worked including time spent waiting
18 for and undergoing security clearances during the relevant time period alleged herein, 10%
19 penalties for failing to pay these wages within 10 days of demand, and liquidated damages in the
20 amount of either 25% of wage due or \$500 per Pennsylvania class member, whichever is greater,
21 together with attorneys’ fees, costs, penalties, and interest as provided by law.

22 **SEVENTH CAUSE OF ACTION**

23 Failure to Timely Pay Wages Due in Violation of S.C. Code Ann. § 41-10-50, et. seq.

24 83. Plaintiffs reallege and incorporate by this reference all allegations contained above
25 as though fully set forth herein.

26 84. This cause of action is being brought against Defendants by Plaintiff Monica
27 Williams, on behalf of the South Carolina Class only.

28

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85. The South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-40 requires the employer to pay all wages due on the next regular payday established by the employer in cash or negotiable instrument dated the same day as the payday.

86. S.C. Code Ann. § 41-10-50, et. seq., requires that “When an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days.”

87. S.C. Code Ann. Section 41-10-80(c) provides that “In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due.”

88. By failing to pay Plaintiffs and South Carolina Class Members for all hours worked in violation of state and federal law, Defendants has failed to timely remit all wages due and owing to Plaintiffs and South Carolina Class Members on their next payday, or in the case of former employees, their next payday or within 48 hours of separation. .

89. Thus, Plaintiffs demand for themselves and members of the South Carolina Class all wages due and owing during the relevant time period alleged herein, *trebled as provided by statute*, together with attorneys’ fees, costs, and interest as provided by law.

PRAYER

WHEREFORE, PLAINTIFFS pray for judgment against the Defendants as follows:

1. An order conditionally certifying the FLSA Class as a collective action as alleged and prayed herein;
2. An order pursuant to Rule 23 of the Federal Rules of Civil Procedure, certifying the State Law Classes as alleged and prayed herein or on such terms as the Court deems applicable to this case;

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- 3. Damages according to proof for regular rate pay under federal law for all hours worked within three years of the filing of the original complaint until the date of entry of judgment;
- 4. Damages according to proof for minimum rate pay under federal law for all hours worked within three years of the filing of the original complaint until the date of entry of judgment;
- 5. Damages according to proof for overtime compensation under federal law for all hours worked over 40 per week within three years of the filing of the original complaint until the date of entry of judgment;
- 6. For liquidated damages as provide by law on the federal claims;
- 7. In the alternative, if the Court determines liquidated damages are not appropriate, then for interest at the maximum legal rate on all amounts found due from the date of the undue overtime until paid in full;
- 8. Damages according to proof for regular rate pay under all the state laws alleged herein for all hours worked during the relevant time period;
- 9. Damages according to proof for minimum rate pay under all the state laws alleged herein for all hours worked during the relevant time period;
- 10. Damages according to proof for overtime compensation under all the state laws alleged herein law for all applicable hours worked during the relevant time period;
- 11. For all statutory damages according to proof;
- 12. For reasonable attorney’s fees according to proof;
- 13. For reasonable costs according to proof;
- 14. For such other relief as the Court deems just and proper.

Dated: August 28, 2013

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