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7 Attorneys for Plaintiff and those similarly situated

8 **IN THE UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10 Joseph Bisaccia, individually and on behalf of
all others similarly situated,

11 Plaintiff,

12 v.

13 Revel Systems, Inc.

14 Defendant.
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Case No.:

COLLECTIVE ACTION COMPLAINT

**(1) Failure to Pay Overtime Compensation
 in Violation of the Fair Labor Standards
 Act (29 U.S.C. § 201, et seq.)**

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PRELIMINARY STATEMENT

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2 1. This is a collective action brought by Individual Plaintiff Joseph Bisaccia
3 (“Plaintiff”) on his own behalf and on behalf of the proposed FLSA Collective. Plaintiff and the
4 putative Collective members are or were employed by Defendant Revel Systems, Inc. (“Revel
5 Systems” or “Defendant”), as inside sales representatives and were denied proper compensation as
6 required by federal wage and hour laws. These employees are similarly situated under the Fair
7 Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

8 2. The FLSA Collective is made up of all persons who have been employed by
9 Defendant as Associate Sales Executives, Sales Executives, Account Executives, Enterprise Sales
10 Executives, and others with similar job titles and/or duties (“Inside Sales Representatives”) at any
11 time within three years prior to this action’s filing date through the date Defendant reclassified
12 Inside Sales Representatives from exempt to non-exempt (mid-January 2017) (the “Collective
13 Period”).

14 3. During the Collective Period, Defendant failed to pay overtime compensation to
15 Plaintiff and each member of the FLSA Collective as required by federal law. Plaintiff seeks
16 relief for himself and for the FLSA Collective under the FLSA requiring Defendant to pay
17 appropriate overtime compensation.

JURISDICTION AND VENUE

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19 4. This Court has original jurisdiction to hear this Complaint and to adjudicate the
20 claims stated herein under 28 U.S.C. § 1331, this action being brought under the FLSA, 29 U.S.C.
21 § 201 *et seq.* Plaintiff and additional opt-in plaintiffs have signed consent forms to join this
22 lawsuit, which are attached as Exhibit A. As this case proceeds, it is likely other individuals will
23 file consent forms and join as opt-in plaintiffs.

24 5. Venue is proper in the United States District Court for the Northern District of
25 California pursuant to 28 U.S.C. § 1391 because Defendant operates in this district and because a
26 substantial part of the events or omissions giving rise to the claims occurred in this district.

27 6. Pursuant to L.R. 3-2(c) and (d), this action is properly assigned to the San
28 Francisco / Oakland Division of the Northern District of California because a substantial portion of

1 the events giving rise to the dispute occurred in San Francisco County.

2 **PARTIES**

3 7. Plaintiff is an adult resident of Gilbert, Arizona.

4 8. Plaintiff was employed by Defendant in Maricopa County, Arizona from May
5 2016 until February 2017. Plaintiff was Defendant's employee as defined by the FLSA, 29 U.S.C.
6 § 203(e)(1).

7 9. Defendant Revel Systems, Inc. is a Delaware corporation that does business in
8 California, Arizona, and nationwide. Its principal office is located at 170 Columbus Ave., 4th
9 Floor, San Francisco, CA 94133.

10 10. Defendant was Plaintiff's employer within the meaning of the FLSA, 29 U.S.C. §
11 203(d), (g).

12 **FACTUAL ALLEGATIONS**

13 11. Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully
14 set forth herein.

15 12. Revel Systems sells a cloud-based Point of Sale (POS) system. This system, used
16 in restaurants, retail stores, and enterprises, is an iOS-based system that integrates specifically with
17 Apple's iPad. In addition to sales tracking, the system includes payroll, inventory tracking, and
18 customer relationship management features. Revel Systems, who serves thousands of clients
19 around the United States and throughout the world, regularly receives compensation from its
20 clients for these services that are delivered across state lines.

21 13. Plaintiff worked for Revel Systems as a Sales Executive out of Defendant's office
22 in Tempe, Arizona where he cold-called potential buyers of Defendant's products. Defendant also
23 provided Plaintiff with leads, who he called in an attempt to sell Defendant's products. Revel
24 Systems employs numerous other Inside Sales Representatives who also sell Revel Systems'
25 products to its clients from inside Revel Systems' offices.

26 14. At all times material, Plaintiff and other inside salespersons were engaged in
27 commerce or in the production of goods for commerce as defined by Section 207(a)(1) of the
28 FLSA.

1 15. At all times material, Revel Systems has qualified as an enterprise engaged in
2 commerce or in the production of goods for commerce as defined by Section 203(s)(1) of the
3 FLSA, and had annual gross volume of sales which exceeded \$500,000.00.

4 ***Overtime Compensation***

5 16. The minimum wage and overtime provisions of the FLSA set forth in Sections 206
6 and 207, respectively, apply to Revel Systems.

7 17. Until mid-January 2017, Plaintiff and those similarly situated were classified as
8 exempt from FLSA's overtime requirements and paid a salary plus commissions. In or around
9 January 2017, Defendant reclassified Plaintiff and similarly situated inside salespersons and began
10 paying some overtime premiums.

11 18. Prior to the reclassification, Plaintiff and other inside salespersons employed by
12 Revel Systems during the last three years regularly worked more than forty (40) hours in a
13 workweek without receiving proper overtime compensation. During these weeks, Revel Systems
14 did not provide Plaintiff or other inside salespersons with overtime compensation at a rate of one
15 and one-half times their regular rate of pay for all hours worked over 40 during those workweeks.

16 19. Rather than pay Plaintiff and other inside salespersons one and one-half times their
17 regular hourly rate of pay for all hours worked over 40 in a given workweek, Revel Systems
18 misclassified Plaintiff and other inside salespersons as exempt from overtime pay, and did not
19 compensate them for their overtime hours worked.

20 20. Prior to Defendant's reclassification of Plaintiff and other similarly situated inside
21 salespersons to non-exempt, Plaintiff worked, on average, approximately two to six hours of
22 overtime each week. Plaintiff typically worked overtime hours on weekends, either from
23 Defendant's office or remotely from his home office, taking calls from and/or making calls to,
24 potential clients. Defendant routinely provided meals to Plaintiff and other inside salespersons. As
25 a result, Plaintiff often worked through his lunch break.

26 21. In addition, Defendant required Plaintiff and other inside salespersons to work
27 overtime the last week of each month, in order to meet Defendant's sales quotas. For example,
28 during the workweek ending October 30, 2016, Plaintiff estimates that he worked 55 hours.

1 Defendant did not compensate him for any of the overtime hours he worked that week, or in any
2 previous workweeks.

3 22. Prior to mid-January 2017, Plaintiff and other inside salespersons who worked for
4 Revel Systems were not required to keep timesheets. As a result, Defendant failed to maintain and
5 keep time records for Plaintiff and those similarly situated.

6 23. Since the reclassification, Defendant has required Plaintiff and similarly situated
7 inside salespersons to record their daily hours on an electronic timesheet.

8 24. Defendant knew Plaintiff and the Putative Collective worked overtime without
9 proper compensation, and it willfully failed and refused to pay Plaintiff and the similarly situated
10 salespersons overtime wages at the required rates. In May 2016, Revel Systems was sued behalf
11 of inside salespersons in California for its failure to pay overtime wages. Furthermore, Federal
12 courts and the U.S. Department of Labor have consistently held that inside salespersons are
13 entitled to overtime wages. Revel Systems had a duty to investigate and research its obligations
14 under the FLSA.

15 **COLLECTIVE ACTION ALLEGATIONS**

16 25. Plaintiff re-alleges and incorporates by reference the above paragraphs as if fully
17 set forth herein.

18 26. Plaintiff brings this action on behalf of himself and all other similarly situated
19 individuals pursuant to 29 U.S.C. § 216(b). Plaintiff and the similarly situated individuals
20 work(ed) as Inside Sales Representatives for Defendant. The proposed collective is defined as
21 follows:

22 All persons who worked for Defendant as Associate Sales Executives, Sales
23 Executives, Account Executives, Enterprise Sales Executives, or other
24 positions with similar job titles and/or duties who were classified as exempt at
any time since three years prior to the filing of this Complaint (the “FLSA
Collective”).

25 27. Plaintiff has consented in writing to be a part of this action pursuant to 29 U.S.C. §
26 216(b) and his consent forms is attached as Exhibit A. Other individuals have also returned
27 consent forms, which are included in Exhibit A. As this case proceeds, it is likely that additional
28 individuals will file consent forms and join as “opt-in” plaintiffs.

1 28. Plaintiff and the FLSA Collective are or were employed by Defendant within the
2 meaning of the FLSA.

3 29. Defendant paid Plaintiff and the FLSA Collective a salary and commissions, and
4 classified them as exempt employees.

5 30. Defendant improperly classified Plaintiff and the FLSA Collective as exempt from
6 the FLSA's overtime pay requirements.

7 31. Plaintiff and the FLSA Collective routinely worked over forty (40) hours in a
8 workweek and were not compensated by Defendant with overtime pay for the overtime hours they
9 worked.

10 32. Defendant was both aware of and required this overtime work. Specifically, it was
11 Defendant's policy and practice to set sales goals that required overtime work and to encourage
12 Plaintiff and members of the FLSA Collective to work on weekends and additional overtime hours
13 during the last week of each month. Defendant routinely provided meals to Plaintiff and members
14 of the FLSA Collective during their lunch periods. As a result, Plaintiff often worked through his
15 lunch break.

16 33. Defendant is and was aware that Plaintiff and the FLSA Collective worked under
17 these conditions. Despite that knowledge, Defendant denied them overtime compensation.

18 34. Defendant uniformly misrepresented to Plaintiff and the FLSA Collective that they
19 were exempt employees and therefore ineligible to receive overtime pay. In reality, Plaintiff and
20 the FLSA Collective are, and were, non-exempt employees and therefore eligible to receive
21 overtime pay. For example, Plaintiff and the FLSA Collective performed inside sales work for
22 Defendant. This entailed calling potential clients, including contacts at restaurants, retail stores,
23 and other large enterprises, to try to sell Revel Systems' products. Plaintiff and the FLSA
24 Collective did not have the authority to determine what products were offered or what price would
25 be charged. The relevant job duties of Plaintiff and the FLSA collective were substantially
26 similar, regardless of their specific job title, office location, supervisor, or assigned sales territory.

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1 35. Prior to mid-January 2017, when Defendant reclassified Plaintiff and the FLSA
2 Collective to non-exempt, Defendant failed to make, keep, and preserve records of the hours
3 worked by Plaintiff and the FLSA Collective.

4 36. Defendant's unlawful conduct is widespread, repetitious, and consistent, affecting
5 Plaintiff and the FLSA Collective.

6 37. Defendant's conduct is willful and in bad faith, and has caused significant
7 damages to Plaintiff and the FLSA Collective. Defendant is and was aware that Plaintiff and the
8 FLSA Collective performed non-exempt work that required overtime pay.

9 38. Defendant is and was aware of the FLSA's requirements.

10 39. Defendant is liable under the FLSA for failing to properly compensate Plaintiff
11 and the FLSA Collective.

12 40. Notice of this action should be sent to the FLSA Collective. There are numerous
13 similarly situated current and former employees of Defendant who have been denied appropriate
14 compensation in violation of the FLSA, who would benefit from a Court supervised notice of the
15 lawsuit and the opportunity to join the case. Those similarly situated employees are known to
16 Defendant and are readily identifiable through Defendant's records.

17 **FIRST CLAIM FOR RELIEF**

18 **FAIR LABOR STANDARDS ACT – FAILURE TO PAY OVERTIME**

19 **(On Behalf of Plaintiff and the FLSA Collective)**

20 41. Plaintiff, individually and on behalf of the FLSA Collective, re-alleges and
21 incorporates by reference the above paragraphs as if fully set forth herein.

22 42. The FLSA requires covered employers to pay non-exempt employees no less than
23 one-and-one-half times their regular rate of pay for all hours worked in excess of forty (40) in a
24 workweek. 29 U.S.C. § 207.

25 43. Defendant Revel Systems, Inc. is an "enterprise" as defined by the FLSA, 29
26 U.S.C. § 203(r)(1), and is engaged in commerce within the meaning of the FLSA, § 203(b), (s)(1).

27 44. Plaintiff and the FLSA Collective are non-exempt covered employees. 29 U.S.C.
28 § 203(e)(1).

1 45. Plaintiff and the FLSA Collective have worked more than forty hours (40) per
2 week for Defendant during the applicable time period.

3 46. Defendant has not properly compensated Plaintiff or the FLSA Collective for their
4 overtime hours as required by the FLSA.

5 47. Defendant failed to make a good-faith effort to comply with the FLSA as it relates
6 to the compensation of Plaintiff and the FLSA Collective.

7 48. Defendant knew Plaintiff and the FLSA Collective worked overtime without
8 proper compensation, and it willfully failed and refused to pay Plaintiff and the FLSA Collective
9 wages at the required overtime rates. *See* 29 U.S.C. § 255.

10 49. Defendant's willful failure and refusal to pay Plaintiff and the FLSA Collective
11 overtime wages for time worked violates FLSA. 29 U.S.C. § 207.

12 50. By failing to record, report, and/or preserve records of hours worked by Plaintiff
13 and the FLSA Collective, Defendant failed to make, keep, and preserve records with respect to
14 each of its employees sufficient to determine their wages, hours, and other conditions of
15 employment, in violation of the FLSA, 29 U.S.C. §255(a).

16 51. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA,
17 within the meaning of 29 U.S.C. § 255(a).

18 52. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff and the
19 FLSA Collective have suffered and will continue to suffer a loss of income and other damages.
20 Plaintiff and the FLSA Collective are entitled to liquidated damages and attorneys' fees and costs
21 incurred in connection with this claim.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff, individually and on behalf of the FLSA Collective, prays for
24 relief as follows:

25 a. Designation of this action as a collective action on behalf of Plaintiff and those
26 similarly situated, and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all those
27 similarly situated apprising them of the pendency of this action, and permitting them to assert
28 timely FLSA claims by filing individual consent forms pursuant to 29 U.S.C. § 216(b);

1 b. Judgment that Plaintiff and the FLSA Collective are non-exempt employees
2 entitled to protection under the FLSA;

3 c. Judgment against Defendant for violations of the overtime provisions of the FLSA;

4 d. Judgment against Defendant for an amount equal to Plaintiff's and the FLSA
5 Collective's unpaid back wages at the applicable overtime rates;

6 e. A finding that Defendant's violations of the FLSA are willful;

7 f. An amount equal to Plaintiff's and the FLSA Collective's damages as liquidated
8 damages;

9 g. All costs and attorneys' fees incurred prosecuting this claim;

10 h. An award of any pre- and post-judgment interest;

11 i. For such other and further relief, in law or equity, as this Court may deem
12 appropriate and just.

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14 Dated: May 3, 2017

NICHOLS KASTER, LLP

By: /s/ Daniel S. Brome _____
 Daniel S. Brome

ATTORNEYS FOR PLAINTIFF AND THE
PUTATIVE COLLECTIVE

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