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8 **E-filing**
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO / OAKLAND DIVISION

10
11 SEMMANTHA CHIE and
JENNIFER DESSIN, on behalf of
12 themselves and aggrieved employees,

13 Plaintiffs,

14 vs.

15 REED ELSEVIER, INC., LEXIS/NEXIS,
INC. and MATTHEW BENDER &
16 COMPANY, INC.

17 Defendants.
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CV 11 CASE NO. **1784** **LB**

**COMPLAINT FOR VIOLATIONS OF
FLSA, ERISA, STATE WAGE AND
HOUR LAWS, PAGA, FRAUD; CLAIMS
FOR DAMAGES, RESTITUTION AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiffs Semmantha Chie and Jennifer Dessin allege as follows:

2 **JURISDICTION AND VENUE**

3 1. This Court has federal question jurisdiction over this action pursuant to 28
4 U.S.C. § 1331; section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b);
5 and section 501(e)(1) of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C.
6 § 1132(e)(1).

7 2. This Court also has diversity jurisdiction over the parties pursuant to 28 U.S.C.
8 §1332(a) because Defendants are citizens of the State of Massachusetts and Plaintiffs are
9 citizens of the State of California and the amount in controversy exceeds \$75,000.00, exclusive
10 of interest and costs.

11 3. This Court also has supplemental jurisdiction under 28 U.S.C. § 1367 over
12 Plaintiffs’ state wage and hour and associated claims because the claims originate from a
13 common nucleus of operative fact.

14 4. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C.
15 §§ 2201 and 2202.

16 5. The Northern District of California has personal jurisdiction over Reed Elsevier,
17 Inc., Lexis/Nexis, Inc., and Matthew Bender & Company, Inc. (“Defendant” or “Reed
18 Elsevier”) because Defendant is doing business in California, and in this district, and because
19 many of the acts complained of and giving rise to the claims alleged occurred in California and
20 in this District.

21 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a
22 substantial part of the events giving rise to the claims occurred in this District.

23 7. Intradistrict Assignment: Pursuant to N.D. Cal. Local Rule 3-2(c) and (d),
24 intradistrict assignment to the San Francisco / Oakland Division is proper because a substantial
25 part of the events that give rise to the claims asserted occurred in San Francisco.

26 **SUMMARY OF CLAIMS**

27 8. Semmantha Chie and Jennifer Dessin (“Plaintiffs”) were and are employees at
28 Lexis/Nexis, Inc. (“Lexis”) and Matthew Bender & Company, Inc. (“Matthew Bender”) and at

1 all relevant times have worked in San Francisco. On knowledge and belief, Lexis and Matthew
2 Bender are subsidiaries or divisions of Reed Elsevier, Inc. Ms. Dessin has been employed with
3 the company since August 2000. Ms. Chie has been employed with the company since June
4 2001.

5 9. Plaintiffs presently work in the position titled Coordinator of Publishing
6 Operations (“Coordinator”). Coordinators have the primary duties of preparing and
7 coordinating the preparation of legal resource materials for publishing. Ms. Chie was promoted
8 to the Coordinator position in January 2005. Ms. Dessin was promoted to the Coordinator
9 position in August 2006. At the time of their respective promotions, Plaintiffs were advised by
10 their superiors that they would be reclassified as “exempt” employees.

11 10. Plaintiffs’ agreed upon work schedule, notwithstanding the promotion, has
12 always been and remains, a work schedule comprising 35 hours per week. On knowledge and
13 belief, all of Plaintiffs’ benefits were and are based on the 35 hour per week work schedule.

14 11. Plaintiffs relied on the representations of their employer that the reclassification
15 was proper at the time of their respective promotions in part because Lexis is considered an
16 authority in the national legal community and they therefore assumed Lexis would implement
17 policies in strict compliance with state and federal law.¹

18 12. Plaintiffs became aware that they had been misclassified on or around May 10,
19 2010. At that time, Plaintiffs were contacted by a company human resources representative and
20 asked to participate in a meeting. During the meeting, a group of employees including
21 Plaintiffs, were informed that they had been misclassified. During the meeting the group also
22 participated in a PowerPoint presentation titled *GCDEPS-Fair Labor Standards Act (FLSA)*
23 *Review May 2010*. The presentation was presented as a review of the law relevant to Plaintiffs’
24 reclassification however the presentation contained numerous misrepresentations, both
25 affirmative and by omission, to which Plaintiffs relied, thereby causing harm to Plaintiffs.

26 13. On knowledge and belief, Reed Elsevier employs approximately 30 similarly

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28 ¹ Lexis, a global leader in legal publishing, promotes the “rule of law” through its website which explains that “[t]he
Rule of Law, in its most basic form, is the principle that no one is above the law.” See
<http://www.lexisnexis.com/about-us/rule-of-law/>

1 situated or aggrieved employees in the San Francisco office and approximately 200 similarly
2 situated employees nationwide.

3 14. Defendant unlawfully classified Plaintiffs as exempt from federal and state laws
4 despite the fact that they are not exempt. During the misclassification period, Plaintiffs worked
5 straight-time and overtime hours, as defined by the applicable federal and state laws, and are
6 and have been entitled to straight-time and premium compensation at the appropriate rate for
7 all straight-time and overtime hours worked.

8 15. Defendant has willfully refused to pay Plaintiffs the required straight-time and
9 overtime compensation for all hours worked, and has failed to keep time records as required by
10 law.

11 16. Defendant has failed to keep records of Plaintiffs' straight-time and overtime
12 hours. In doing so, Defendant has failed to comply with ERISA's requirement that it maintain
13 records sufficient to determine benefits due or which may become due under the 401(k) Plan,
14 as required under ERISA § 404, 29 U.S.C. 1104.

15 17. Defendant has willfully refused to pay the required straight-time and overtime
16 compensation for hours worked, and has failed to keep time records as required by law for
17 numerous aggrieved employees in the State of California.

18 18. Defendant's practices violate the FLSA, ERISA, the Labor Code Private
19 Attorneys General Act of 2004 ("PAGA")² and the state law and common law causes of action
20 pled herein. Plaintiffs seek injunctive and declaratory relief; straight-time compensation and
21 overtime compensation for all hours worked; liquidated and/or other damages and penalties,
22 including punitive damages as permitted by applicable law; recovery of penalties on behalf of
23 all aggrieved employees as permitted by the Private Attorneys General Act of 2004; interest,
24 and attorneys' fees and costs.

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² All further references to statutory code are to the California Code unless otherwise indicated.

1 **THE PARTIES**

2 19. Semmantha Chie has been employed with Reed Elsevier since 2001. Ms. Chie
3 was promoted to the Coordinator position on or around January 2005. At the time of her
4 promotion Reed Elsevier misclassified Ms. Chie as exempt. During the Period January 2005
5 until May 2010, Ms. Chie worked hours in excess of forty hours per week and in excess of
6 eight hours per day, without receiving straight-time and overtime compensation as required by
7 both California and federal law.

8 20. Jennifer Dessin has been employed with Reed Elsevier since 2000. Ms. Dessin
9 was promoted to the Coordinator position on or around August 2006. At the time of her
10 promotion Reed Elsevier misclassified Ms. Dessin as exempt. During the Period August 2006
11 until May 2010, Ms. Dessin worked hours in excess of forty hours per week and in excess of
12 eight hours per day, without receiving straight-time and overtime compensation as required by
13 both California and federal law.

14 21. On information and belief, Reed Elsevier, Inc., Lexis/Nexis, Inc., and Matthew
15 Bender & Company, Inc. are each Massachusetts corporations or companies and are publishers
16 and information providers operating in the science, medical, legal, risk and business sectors.
17 On information and belief, Lexis/Nexis, Inc. (“Lexis”) is a subsidiary or division of Reed
18 Elsevier, Inc. The practices described herein were performed in and emanated from Reed
19 Elsevier’s offices located in San Francisco, California.

20 **FIRST CLAIM FOR RELIEF**
21 **(Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.)**

22 22. Plaintiffs reallege and incorporate by reference paragraphs 1 through 21 as if
23 they were set forth again herein.

24 23. At all relevant times, Reed Elsevier has been, and continues to be, an
25 “employer” engaged in interstate “commerce” and/or in the production of “goods” for
26 “commerce,” within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Reed
27 Elsevier has employed, and continues to employ, “employee[s],” including Plaintiffs. At all
28 relevant times, Reed Elsevier has had gross operating revenues in excess of \$500,000.

1 24. Plaintiffs consent to sue for violations of the FLSA, pursuant to 29 U.S.C. §
2 216(b) and 256.

3 25. The FLSA requires each covered employer, including Defendant Reed Elsevier,
4 to compensate all non-exempt employees for all straight-time hours worked.

5 26. The FLSA requires each covered employer, including Defendant Reed Elsevier,
6 to compensate all non-exempt employees at a rate of not less than one and one-half times the
7 regular rate of pay for work performed in excess of forty hours in a workweek.

8 27. Plaintiffs are entitled to be paid straight-time compensation for all straight-time
9 hours worked.

10 28. Plaintiffs are entitled to be paid overtime compensation for all overtime hours
11 worked.

12 29. At all relevant times, Reed Elsevier, pursuant to policies and practices, failed
13 and refused to pay all straight-time hours owed to Plaintiffs for all hours worked.

14 30. At all relevant times, Reed Elsevier, pursuant to policies and practices, failed
15 and refused to pay overtime premiums to Plaintiffs for their hours worked in excess of forty
16 hours per week.

17 31. By failing to compensate Plaintiffs the regular rate of pay for all worked
18 performed, Reed Elsevier has violated the FLSA, 29 U.S.C. §§ 201 *et seq.*

19 32. By failing to compensate Plaintiffs at a rate not less than one and one-half times
20 the regular rate of pay for worked performed in excess of forty hours in a workweek, Reed
21 Elsevier has violated the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. § 207(a)(1) and
22 § 215(a).

23 33. By failing to record, report and/or preserve records of hours worked by
24 Plaintiffs, Reed Elsevier has failed to make, keep, and preserve records with respect to each of
25 its employees, including Plaintiffs, sufficient to determine wages, hours, and other conditions
26 and practice of employment, in violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29
27 U.S.C. §§ 211(c) and 215(a).

28 34. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA

1 within the meaning of 29 U.S.C. § 255(a).

2 35. Plaintiffs seek recovery of attorneys' fees and costs of action to be paid by Reed
3 Elsevier, as provided by the FLSA pursuant to 29 U.S.C. § 216(b).

4 36. Plaintiffs have suffered damages as a direct and proximate result of the acts of
5 Defendant alleged herein. Plaintiffs seek damages in the amount of their respective unpaid
6 straight-time compensation, unpaid overtime compensation, liquidated damages as provided by
7 the FLSA, 29 U.S.C. § 216(b), interest, and other such legal and equitable relief as the Court
8 deems just and proper.

9 **SECOND CLAIM FOR RELIEF**
10 **(Cal. Wage Order No. 4-2001; Cal. Labor Code §§ 510, 1194)**

11 37. Plaintiffs reallege and incorporate by reference paragraphs 1 through 36 as if
12 they were set forth again herein.

13 38. California law requires each employer, including Defendant Reed Elsevier, to
14 pay straight-time compensation for all hours worked.

15 39. California law requires each employer, including Defendant Reed Elsevier, to
16 pay overtime compensation to all non-exempt employees for all hours worked over forty per
17 week, or over eight per day.

18 40. Plaintiffs are entitled to be paid straight-time compensation for all hours
19 worked.

20 41. Plaintiffs are non-exempt employees entitled to be paid overtime compensation
21 for all overtime hours worked.

22 42. Plaintiffs worked in excess of the 35 hour agreed upon workweek at all times
23 relevant herein.

24 43. Plaintiffs worked in excess of eight hours in a workday and/or forty hours in a
25 workweek. Plaintiffs also worked in excess of twelve hours in a workday at all times relevant
26 herein.

27 44. Plaintiffs were misclassified as exempt and Defendant failed and refused to pay
28 them straight-time compensation for hours worked in excess of 35 hours per week.

1 required by Labor Code §§ 267.7 and 512 and Wage Order No. 4-2001, § 11.

2 53. In addition, Plaintiffs regularly worked and have worked without being afforded
3 at least one ten-minute rest break, in which they were relieved of all duty, per four hours of
4 work performed or major fraction thereof, as required by Labor Code §§ 226.7 and Wage
5 Order No. 4-2001, § 12.

6 54. As a result of Defendant's failure to afford proper meal periods, it is liable to
7 the Plaintiffs for one hour of additional pay at the regular rate of compensation for each
8 workday that the proper meal periods were not provided, pursuant to Labor Code § 226.7 and
9 Wage Orders No. 4-2001, § 11(b).

10 55. As a result of Defendant's failure to afford proper rest periods, it is liable to the
11 Plaintiffs for one hour additional pay at the regular rate of compensation for each workday that
12 the proper rest periods were not provided, pursuant to Labor Code § 226.7 and Wage Order
13 No. 4-2001, § 12(b).

14 **FIFTH CLAIM FOR RELIEF**
15 **(California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq.)**

16 56. Plaintiffs reallege and incorporate by reference paragraphs 1 through 55 as if
17 they were set forth again herein.

18 57. The foregoing conduct, as alleged, violates the California Unfair Competition
19 Law ("UCL"), articulated at Cal. Bus. & Prof. Code §§ 17200 et seq. The UCL prohibits unfair
20 competition by prohibiting, inter alia, any unlawful or unfair business acts or practices.

21 58. Beginning at a date unknown to Plaintiffs, but at least as long ago as four years
22 before the filing of this action, Defendant committed, and continues to commit, acts of unfair
23 competition, as defined by the UCL, by, among other things, engaging in the acts and practices
24 described herein. Defendant's conduct as herein alleged has injured the Plaintiffs by
25 wrongfully denying them earned wages.

26 59. Defendant engaged in unfair competition in violation of the UCL by violating,
27 inter alia, each of the following laws — each such violation constituting an independent and
28 separate violation of the UCL:

- 1 a. The Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*;
- 2 b. Labor Code § 1194;
- 3 c. Labor Code §§ 206, 206.5, 226(a), 226.7, 227, 432.5, 512, 1197 and 1197.1;
- 4 d. Labor Code § 510, which provides in relevant part:

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6 “Any work in excess of eight hours in one workday and any work in excess of 40
7 hours in any one workweek and the first eight hours worked on the seventh day of
8 work in any one workweek shall be compensated at the rate of no less than one
9 and one-half times the regular rate of pay for an employee. Any work in excess of
10 12 hours in one day shall be compensated at the rate of no less than twice the
11 regular rate of pay for an employee. In addition, any work in excess of eight hours
12 on any seventh day of a workweek shall be compensated at the rate of no less than
13 twice the regular rate of pay of an employee.”

14 60. Defendant’s course of conduct, acts, and practices in violation of the laws
15 identified in the above paragraph constitute a separate and independent violation of the UCL.
16 Defendant’s conduct described herein violates the policy or spirit of such laws or otherwise
17 significantly threatens or harms competition.

18 61. The unlawful and unfair business practices and acts of Defendant, described
19 above, have injured Plaintiffs in that they were wrongfully denied the payment of earned
20 straight-time and overtime wages.

21 62. The Plaintiffs seek recovery of attorneys’ fees and costs of this action to be paid
22 by Reed Elsevier, as provided by the UCL and Labor Code §§ 218, 218.5, and 1194.

23 63. The Plaintiffs seek restitution in the amount of the respective unpaid wages
24 earned and due at a rate not less than one times for hours worked in excess of thirty-five (35)
25 hours in a workweek and not less than one and one-half times the regular rate of pay for work
26 performed in excess of forty (40) hours in a workweek, or eight hours in a day, and double the
27 regular rate of pay for work performed in excess of twelve (12) hours per day.

28
SIXTH CLAIM FOR RELIEF
(ERISA § 502(a)(3) Based on Failure to Maintain Records)

64. Plaintiffs reallege and incorporate by reference paragraphs 1 through 63 as if
they were set forth again herein.

65. ERISA § 209(a)(1), 29 U.S.C. 1059(a)(1), requires that an employer which

1 sponsors an employee benefit plan maintain records with respect to each of its employees
2 sufficient to determine the benefits due or which may become due to such employees.

3 66. On information and belief, the 401(k) Plan is an employee pension benefit plan
4 within the meaning of ERISA § 3(2), 29 U.S.C. § 1002(2), and an employee benefit plan
5 within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3).

6 67. On information and belief, Defendant has been and continues to be an employer
7 within the meaning of ERISA § 3(5), 29 U.S.C. § 1002(5), the administrator of the 401(k)
8 Plan, within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A), the named fiduciary
9 of that plan within the meaning of ERISA § 402(a)(1), 29 U.S.C. 1102(a)(1), and a fiduciary of
10 that Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21).

11 68. On information and belief, and at all relevant times, Defendant has been the
12 Plan sponsor of an Employee 401(k) Plan within the meaning of ERISA § 3(16)(B), 29 U.S.C.
13 § 1002(16)(B). On information and belief, Defendant has exercised actual responsibility,
14 authority, and/or control with regard to the crediting of compensation under the 401(k) Plan,
15 thereby making it a fiduciary of that Plan within the meaning of ERISA § 3(21), 29 U.S.C. §
16 1002(21).

17 69. At all relevant times, Plaintiffs were employees of Defendant, within the
18 meaning of ERISA § 3(6), 29 U.S.C. § 1002(6), and participants in the 401(k) Plan within the
19 meaning of ERISA § 3(7), 29 U.S.C. § 1102(7).

20 70. On information and belief, pursuant to the terms of the 401(k) Plan, employees'
21 rights to share in the contributions to the Plan are dependant, in part, on compensation, which
22 is defined in the Plan's governing instrument to include, among other things, employees'
23 overtime wages.

24 71. By its failure to record and/or report all of the hours worked by Plaintiffs,
25 Defendant has failed to maintain records with respect to each aggrieved employee sufficient to
26 determine the benefit accrual rights of 401(k) Plan participants, in violation of ERISA §
27 209(a)(1), 29 U.S.C. 1059(a)(1).

28 72. In order to remedy this violation of ERISA by Defendant, Plaintiffs seek

1 injunctive relief, and such other equitable relief as the Court deems just and proper, as
2 provided by section 502(a)(3) of ERISA, 29 U.S.C. § 1132(g).

3 73. Plaintiffs seek recovery of their attorneys' fees and costs of action to be paid by
4 Defendant, as provided by section 502(g)(1) of ERISA, 29 U.S.C. § 1132(g).

5 **SEVENTH CLAIM FOR RELIEF**
6 **(ERISA §§ 1001 *et seq.*)**

7 74. Plaintiffs reallege and incorporate by reference paragraphs 1 through 73 as if
8 they were set forth again herein.

9 75. ERISA § 404(a)(1), 29 U.S.C. 1104(a)(1), requires that employee benefit plan
10 fiduciaries discharge their duties with respect to the plan solely in the interest of participants
11 and beneficiaries and, inter alia, (1) for the exclusive purpose of providing benefits to
12 participants and their beneficiaries and defraying reasonable expenses of administration; (2)
13 with the care, skill, prudence, and diligence under the circumstances that a prudent person
14 acting in a like capacity and familiar with such matters would use in the conduct of an
15 enterprise of like character with like aims; and (3) in accordance with the documents and
16 instruments governing the plan.

17 76. On information and belief, the Plan's governing instrument confers on
18 Defendant discretionary authority, responsibility, and/or control with respect to the crediting of
19 compensation, thereby rendering Defendant a fiduciary in that regard.

20 77. On further information and belief, Defendant has exercised actual discretionary
21 authority, responsibility, and/or control in determining what compensation would and would
22 not be credited under the 401(k) Plan. By reason of the exercise of such discretion, Defendant
23 has been a fiduciary of that Plan with respect to crediting compensation.

24 78. Defendant has breached its fiduciary duties by failing to credit compensation
25 due for unpaid straight-time and overtime performed by Plaintiffs as compensation under the
26 401(k) Plan.

27 79. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek an
28 injunction requiring Defendant to credit compensation under the 401(k) Plan for all of the past

1 and future straight-time and overtime work performed by Plaintiffs and any other equitable
2 relief as the Court deems appropriate.

3 80. Plaintiffs seek recovery of their attorneys' fees and costs of action to be paid by
4 Defendant as provided by section 502(b)(1) of ERISA, 29 U.S.C. 1132(g).

5 **EIGHTH CLAIM FOR RELIEF**
6 **(Labor Code Private Attorneys General Act of 2004)**

7 81. Plaintiffs reallege and incorporate by reference paragraphs 1 through 80 as if
8 they were set forth again herein.

9 82. Plaintiffs bring this representative claim on behalf of themselves and all other
10 aggrieved employees of Defendant under the Labor Code Private Attorneys General Act of
11 2004, Labor Code §§ 2698 *et seq.* ("PAGA").

12 83 Defendant is a "person" as contemplated within the meaning of subdivision (b)
13 of section 2699 of the Labor Code. Plaintiffs are "aggrieved employee[s]" of Defendant within
14 the meaning of subdivision (c) of section 2699 of the Labor Code.

15 84. Plaintiffs, on behalf of all aggrieved employees, seek to recover civil penalties
16 pursuant to Labor Code § 2699(a) for Defendant's violation of, inter alia, Labor Code sections:
17 206, 206.5, 226(a), 226.7, 227, 432.5, 510, 512, 1194, 1197, 1197.1, IWC Wage Orders
18 including but not limited to 4-2001, and all other applicable Labor Code sections relating to the
19 causes of action set forth herein and as set forth in Labor Code section 2699.5 pursuant to
20 Labor Code section 2699 *et seq.*

21 85. Labor Code sections 510, 1194, 1197 and 1197.1 require each covered
22 employer, including Defendant Reed Elsevier, to compensate all non-exempt employees for all
23 hours worked including premium compensation at a rate of not less than one and one-half
24 times the regular rate of pay for worked performed in excess of eight hours in a day or forty
25 hours in a workweek.

26 86. Plaintiffs and all aggrieved employees are entitled to be paid for all hours
27 worked and premium compensation for all hours worked at the applicable statutory rate.

28 87. At all relevant times, Reed Elsevier, pursuant to policies and practices, failed

1 and refused to pay straight-time and overtime premiums to Plaintiffs and all aggrieved
2 employees for hours worked in excess of eight hours per day or forty hours in a workweek.

3 88. By failing to compensate Plaintiffs and all aggrieved employees for all straight-
4 time and overtime hours worked, Reed Elsevier has violated Labor Code sections 510, 1194,
5 1197 and 1197.1.

6 89. Labor Code section 206 requires each covered employer, including Defendant
7 Reed Elsevier, in the case of a dispute over wages, to pay without condition all wages or parts
8 thereof conceded by the employer to be due.

9 90. Reed Elsevier, pursuant to policies and practices, failed and refused to pay
10 straight-time and overtime premiums to Plaintiffs which it conceded to be due to Plaintiffs and
11 to all aggrieved employees.

12 91. By failing to compensate Plaintiffs and all aggrieved employees for straight-
13 time and overtime conceded to be due, Reed Elsevier has violated Labor Code section 206.

14 92. Labor Code section 226(a) requires each covered employer, including
15 Defendant Reed Elsevier, to provide a detachable part of a check or a separate writing showing
16 required information including: (1) gross wages earned, (2) total hours worked, (3) the number
17 of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate
18 basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which
19 the employee is paid, (7) the name of the employee and the last four digits of his or her social
20 security number or an employee identification number other than a social security number, (8)
21 the name and address of the legal entity that is the employer, (9) all applicable hourly rates in
22 effect during the pay period and the corresponding number of hours worked at each hourly rate
23 by the employee.

24 93. Defendant failed, and continues to fail, to provide Plaintiffs, and many of its
25 California employees, with paystubs that contain the information required by Labor Code
26 section 226(a). Specifically, the wage statements Defendant furnished, and continue to furnish
27 to Plaintiffs and many of Defendant's California employees, fail to set forth the total hours
28 worked and applicable hourly rates in effect during the pay period and corresponding number

1 of hours worked at each hourly rate by the employee.

2 94. On information and belief, Defendant employs more than 300 employees in the
3 State of California. The exact number of aggrieved employees can easily be ascertained by
4 reviewing Defendant's employee and payroll records.

5 95. Labor Code sections 226.7 and 512 requires each covered employer, including
6 Defendant Reed Elsevier, to provide uninterrupted meal and rest breaks.

7 96. At all relevant times, Reed Elsevier, pursuant to policies and practices, failed
8 and refused to provide all aggrieved employees with uninterrupted meal and rest breaks.

9 97. By failing to provide uninterrupted meal and rest breaks Reed Elsevier has
10 violated Labor Code sections 226.7 and 512.

11 98. Labor Code section 432.5 prohibits employers from requiring employees to
12 agree in writing to any term or condition which is known by the employer to be prohibited by
13 law.

14 99. On or about May 2010, Reed Elsevier required Plaintiffs and aggrieved
15 employees to sign an instrument containing terms and conditions that it knew to be prohibited
16 by law.

17 100. By requiring employees to sign instruments containing terms and conditions
18 prohibited by law, Reed Elsevier has violated Labor Code section 432.5.

19 101. Labor Code section 227 requires each covered employer, including Defendant
20 Reed Elsevier, to properly credit each employee's health, pension, and vacation plan.

21 102. At all relevant times, Reed Elsevier, pursuant to policies and practices, failed
22 and refused to credit each employee's health, pension, and vacation plan.

23 103. By failing to credit each employee's health, pension, and vacation plan Reed
24 Elsevier has violated Labor Code section 227.

25 104. Plaintiff has complied with PAGA's administrative requirement in the manner
26 proscribed in Labor Code section 2699.3, including providing notice as set forth in Labor Code
27 section 2699.3(a)(1). Plaintiff has either received notice from the Labor & Workforce
28 Development Agency ("LWDA") that it would not investigate the allegations in the notice

1 Plaintiff provided to the LWDA, or 33 calendar days have elapsed since the postmark date of
2 the notice provided by Plaintiff pursuant to Labor Code section 2699.3(a)(1). Evidence of
3 Plaintiffs' compliance with Labor Code section 2699.3 is attached herein as Exhibit 1.

4 105. Plaintiffs individually, and on behalf of all other current and former Reed
5 Elsevier employees within the Liability Period, seek to recover all statutory penalties for
6 Defendant's violation of any California Labor Code provision. In addition to any other civil or
7 statutory penalties, Plaintiffs seek, pursuant to Labor Code section 2699, a statutory penalty of
8 one hundred dollars (\$100) for each aggrieved employee per pay period for Defendant's first
9 violation of any provision of the California Labor Code, and two hundred dollars (\$200) for
10 each aggrieved employee per pay period for any subsequent violation by Defendant of any
11 provision of the California Labor Code.

12 106. Defendant is an employer that currently employs one or more employees,
13 therefore the civil penalties as set forth in Labor Code section 2699 apply.

14 107. Plaintiff requests penalties against Defendant as provided under Labor Code
15 section 2699, plus reasonable attorneys' fees and costs, in amounts to be proved at trial.

16 **NINTH CLAIM FOR RELIEF**
17 **(Intentional Misrepresentation;**
Violation of Cal. Civ. Code §§ 1572, 1709 and 1710)

18 108. Plaintiffs reallege and incorporate by reference paragraphs 1 through 107 as if
19 they were set forth again herein.

20 109. Plaintiffs first became aware of their misclassification on or around May 10,
21 2010. On that day, Plaintiffs were contacted by Reed Elseviers' human resources department
22 and asked to participate in a meeting. The meeting was conducted by Ashleigh Owens.

23 110. Plaintiffs are informed and believe that Ms. Owens is a human resources
24 representative and agent for Reed Elsevier, and in doing the things alleged in this complaint
25 was acting within the course and scope of such agency and employment and with the
26 permission and consent of Reed Elsevier.

27 111. Plaintiffs are informed and believe that Ms. Owens who made the
28 representations alleged in this complaint, at the time of making the representations alleged in

1 this complaint and at all times relevant, was acting within the course and scope of her
2 employment and authority for Reed Elsevier.

3 112. Plaintiffs are informed and believe that Ms. Owens, within her capacity as a
4 human resources representative for Reed Elsevier, maintains a fiduciary and/or confidential
5 relationship with Plaintiffs.

6 113. Ms. Owens, during the May 10 meeting, informed a group of employees
7 including Plaintiffs, that they had been misclassified. Plaintiffs were then required to
8 participate in a PowerPoint presentation related to the misclassification. During the meeting
9 and presentation, Ms. Owens stated that employees would be asked to “estimate” the number
10 of hours worked during the preceding two years and that the misclassified employees would be
11 paid one-half times (.5) their hourly rate of pay for any hours worked over forty per week
12 during the preceding two years. During the meeting Ms. Owens stated that the two year time
13 period for back overtime compensation and the .5 multiplier were mandated by federal law.

14 114. Ms. Owens, during the May 10 meeting, showed a PowerPoint slide
15 presentation titled *GCDEPS-Fair Labor Standards Act (FLSA) Review May 2010*. The slide
16 presentation contained a slide with the following information:

- 17
- 18 • “How will the back wages be calculated?”
- 19 • HR will work with the management team to determine an average number of hours
20 worked by all employees within the organization that encompasses the last two (2)
21 years.
- 22 • HR will then work to determine the eligible weeks the employee is eligible to earn the
23 back wages against.
- 24 • An hourly wage for that employee will be calculated by taking the base salary effective
25 for the appropriate years plus VC earned for the same years, divide the number of
26 weeks worked in that year and divided by their standard hours.
- 27 • The hourly rate will then be multiplied by the number of determined overtime hours
28 and then multiplied again by .5.”

- 1 • Under the FLSA, employees who worked overtime and were improperly classified as
2 exempt are entitled to compensation for overtime hours computed by dividing their
3 weekly salary by the number of hours worked in the week. Thus, a salaried employee
4 has already been paid his/her normal hourly rate for each hour worked over 40 and is
5 therefore, only entitled to half-time for the hours worked in excess of 40 per week.

6
7 115. Ms. Owens, during the May 10 meeting, also distributed a document titled
8 “*Fair Labor Standards Act (FLSA) FAQ’s Intended For Distribution to Affected Employees*
9 *Only.*” One question addressed in the document was: “How was back overtime calculated.”

10 The document continued:

11
12 “The back overtime was calculated in accordance with accepted Department of Labor
13 practice and there were a number of factors that helped us estimate back overtime. The
14 estimate was based on each of your individual records, including but not limited to,
15 vacations, sick days, personal days, company scheduled meetings, the organization’s
16 holiday schedules, leave records, and various other systems. In addition, your managers
were consulted and assisted us in determining the back overtime estimates. We then
multiplied the total number of estimated overtime hours per year by .5 and the earnings
annual hourly rate to get the total back payment amount.”

17 116. In a May 13 email to Ms. Owens subsequent to the meeting, Ms. Dessin asked:
18 “is there anything additional we should know since those of us in CA work a 35 hour
19 workweek and not a 40 hour?” Ms. Owens responded: “For now, no....just an estimate of
20 hours worked in excess of 40. There could be some special travel ‘pay stuff’ that we are
21 looking into... .” The same day, Ms. Dessin asked for additional clarification, again via email,
22 to which Ms. Owens responded: “. . . that is our understanding from a back wage payment
23 scenario from the DOL. As OT is only considered anything in excess of 40. Compensation
24 department is confirming this as we speak however!”

25 117. On or about May 27, Ms. Dessin in an email to Ms. Owens asked: “I had an
26 additional question – would you please explain how the two year date frame was determined?
27 Ms. Owens responded “I think it’s the statutory timeframe for backwages.”

28 118. Defendant’s representations and failures to disclose information and

1 suppressions of information was deceptive for numerous reasons including, inter alia, the
2 following:

- 3
- 4 1. The statements erroneously imply that Reed Elsevier consulted the Department
5 of Labor and complied with Department of Labor guidance or guidelines in
6 calculating back wages;
- 7 2. The statements erroneously state that the calculation of back overtime was done
8 in a matter consistent with the law relevant to such matters.
- 9 3. The statements misstate the proper calculation of overtime pursuant to the
10 FLSA;
- 11 4. The statements misstate the proper calculation of overtime pursuant California
12 law;
- 13 5. The statements misstate the manner in which back wages were calculated;
- 14 6. The statements erroneously imply that the proper time period for calculating
15 back wages relevant to the misclassification is two years when in fact it is four
16 years;
- 17 7. The statements are misleading by omission because they fail to recognize Reed
18 Elsevier's employees' right to recover straight-time wages, liquidated damages,
19 statutory penalties, civil penalties, and equitable relief under federal and state
20 law; and
- 21 8. The statements are misleading by omission because they fail to recognize each
22 employees' right to proper crediting of compensation pursuant to ERISA.
- 23

24 119. When Ms. Owens, on behalf of Defendant, made these representations,
25 Defendant knew them to be false and made these representations with the intention to deceive
26 and defraud Plaintiffs and to induce Plaintiffs to act in reliance on these representations in a
27 manner hereafter alleged, or with the expectation that Plaintiffs would so act.

28 120. Plaintiffs, at the time these representations were made by Defendant and at the

1 time Plaintiff took the actions alleged in this complaint, were ignorant of the falsity of
2 Defendant's representations and believed them to be true. Plaintiffs reasonably relied on the
3 veracity of Defendant's statements in part because Lexis is famously known as a supplier of
4 legal primary and secondary source material to the national legal community.³

5 121. Plaintiffs relied to their detriment on the affirmative misrepresentations and
6 omissions as outlined above because they delayed seeking legal counsel thereby losing the
7 right to recover wages owed due to the operation of the statute of limitations.

8 122. Based upon this fraud, Plaintiffs are entitled to recover any amounts that they
9 are now barred from recovering due to the operation of the statute of limitations, including
10 interest and fees.

11 123. The conduct of Defendant was an intentional misrepresentation, deceit or
12 concealment of a material fact known to the Defendant with the intention on the part of
13 Defendant of thereby depriving Plaintiffs of property or legal rights or otherwise causing
14 injury, and was despicable conduct that subjected plaintiffs to cruel and unjust hardship in
15 conscious disregard of Plaintiffs rights, so as to justify an award of exemplary and punitive
16 damages.

17 **TENTH CLAIM FOR RELIEF**
18 **(Equity/Unjust Enrichment)**

19 124. Plaintiffs reallege and incorporate by reference paragraphs 1 through 123 as if
20 they were set forth again herein.

21 125. Defendant received the benefit of Plaintiffs' work without compensating the
22 Plaintiffs. As a matter of equity, Defendant should not be allowed to prosper at Plaintiffs'
23 expense.

24 126. The money Defendant owes Plaintiffs as wages, all inured directly to
25 Defendant's benefit by its nonpayment to Plaintiffs for work done.

26 127. Plaintiffs should receive compensation to which Plaintiffs are entitled in equity

27 _____
28 ³ For example, Lexis publishes a variety of respected legal treatises related to employment law including California
Employment Law, which Lexis advertises as "[t]he most comprehensive treatment of California law governing
employer-employee relations in the private sector."

1 and Defendant should not be unjustly enriched by its nonpayment of wages to Plaintiffs for the
2 work Plaintiffs performed or suffered.

3
4 **ELEVENTH CLAIM FOR RELIEF**
5 **(Breach of Implied Contract)**

6 128. Plaintiffs reallege and incorporate by reference paragraphs 1 through 127 as if
7 they were set forth again herein.

8 129. Defendant entered into an implied contract with Plaintiffs to pay them wages for
9 all work done and time spent for Defendant's benefit.

10 130. Defendant breached this implied contract by failing to pay Plaintiffs all the
11 wages due for the benefit given to Defendant.

12 131. Plaintiffs are at will employees. The law implies that a contract for payment of
13 wages existed by the very nature of the employer/employee relationship.

14 132. Plaintiffs were injured by Defendant's breach of implied contract to pay wages
15 owed.

16 133. Defendant's actions were intentional, willful, malicious, and in reckless
17 disregard for the rights of the Plaintiffs.

18 134. Plaintiffs seek damages in the amount of their respective unpaid straight-time
19 compensation, unpaid overtime compensation, interest, and other such legal and equitable
20 relief as the Court deems just and proper.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for relief as follows:

23 A. A declaratory judgment that the practices complained of herein are unlawful
24 under the FLSA;

25 B. A declaration that the practices complained of herein violate ERISA;

26 C. A declaration that Defendant has breached its fiduciary duties by failing to
27 credit the Plaintiffs with compensation for all worked performed, as required by ERISA and
28 the terms of the 401(k) Plan;

1 D. A declaratory judgment that the practices complained of herein are unlawful
2 under appropriate state law;

3 E. Appropriate equitable and injunctive relief to remedy Defendant's violations of
4 all state and federal law claims, including but not necessarily limited to an order enjoining
5 Defendant from continuing unlawful practices;

6 F. An order requiring that Defendant remedy its breaches of fiduciary duty by
7 crediting Plaintiffs' compensation for all of their past, present and future uncompensated work;

8 G. Appropriate equitable and injunctive relief to remedy Defendant's violation of
9 ERISA;

10 H. An award of damages, liquidated damages, and restitution to be paid by
11 Defendant according to proof;

12 I. Appropriate statutory penalties according to proof;

13 J. Punitive damages according to proof;

14 K. The maximum civil penalty specifically provided by state statute for each
15 aggrieved employee for each violation of the California Labor Code as described herein;

16 L. Except for penalties specifically provided for in the California Labor Code, a
17 civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for
18 each initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
19 period for each subsequent violation for each separate violation of the California Labor Code
20 as described herein;

21 M. Pre-judgment and post-judgment interest, as provided by law;

22 N. Costs of action incurred herein, including expert fees;

23 O. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216;

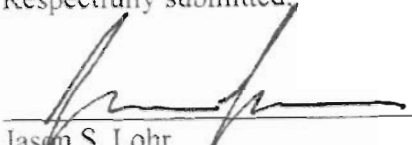
24 P. Such other legal, injunctive and equitable relief as the Court may deem just and
25 proper.

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Dated: April 12, 2011

Respectfully submitted,

By: 
Jason S. Lohr

Jason S. Lohr (Cal. Bar No. 262267)
LOHR LAW FIRM
140 Geary Street 4th Floor
San Francisco, CA 94108
Telephone: (415) 294-0448
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*Attorney for Plaintiffs Semmantha Chie
and Jennifer Dessin*

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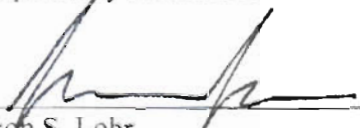
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Dated: April 12, 2011

Respectfully submitted,

By:



Jason S. Lohr

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Email: lohr@lohrlaw.com

*Attorney for Plaintiffs Semmantha Chie
and Jennifer Dessin*

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Exhibit 1

JASON S. LOHR
lohr@lohrlaw.com
(415) 690-0406

LOHRLAW
Legal Solutions

140 GEARY STREET, 4th FLOOR
SAN FRANCISCO, CA 94108

February 4, 2011

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Douglas Hoffner, Acting Secretary
California Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Reed Elsevier, Inc.
Yvette Politis, Esq.
Employment Counsel
Two Newton Place, Suite 350
Newton, MA 02458

Reed Elsevier Inc.
Brett C. Bartlett, Esq.
Jeffrey A. Berman, Esq.
Seyfarth Shaw LLP
1075 Peachtree Street NE, Suite 2500
Atlanta, GA 30309

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2699.3

To: Labor and Workforce Development Agency and Reed Elsevier, Inc.

From: Jennifer Dessin and Semmantha Chie on behalf of themselves and all current and former similarly situated employees.

Factual Statement

Jennifer Dessin and Semmantha Chie are employees of Lexis Nexis ("Lexis"), a division of Reed Elsevier, Inc. ("Reed"). On information and belief, Reed Elsevier, Inc. is a foreign corporation qualified to do business in the State of California.

Ms. Dessin and Ms. Chie work in Reed's San Francisco office. Ms. Dessin has been employed in the position titled Coordinator of Publishing Operations ("Coordinator") since August 2006. Ms. Chie has been employed in the Coordinator position since January 2005.

The Coordinator position does not, and has never, had any of the attributes required for an exemption from overtime under Federal or California State law. Nevertheless, Ms. Dessin and Ms. Chie were classified as exempt employees until May 2010 at which time the two were informed by Reed's Human Resource department that they had been wrongfully classified. Shortly thereafter, the two were

February 4, 2011

reclassified as non-exempt employees. Ms. Dessin and Ms. Chie are informed and believe that approximately 200 Reed employees were similarly reclassified on or about May 2010.

As a result of the misclassification, and the failure to recognize and pay straight-time and overtime wages, Reed has failed to comply with numerous provisions set forth in Labor Code Section 2699.5. Ms. Dessin and Ms. Chie are informed and believe that such violations are ongoing, systematic and continuous. Ms. Dessin and Ms. Chie, on behalf of themselves and similarly situated employees ("aggrieved employees"), intend to bring an action against Reed pursuant to the Private Attorney General Act as provided for in Labor Code Section 2699.3.

Labor Code Violations and Remedies

Ms. Dessin and Ms. Chie were wrongfully classified as exempt employees for a period of approximately four and five years respectively. As a result of the misclassification, reclassification and events subsequent to the reclassification, Reed has failed to comply with myriad Labor Code Sections, including but not limited to Sections 206, 206.5, 226(a), 226.7, 227, 432.5, 510, 512, 1174 subsection (d), 1194, 1197, and 1197.1.¹

Specifically, the aggrieved employees have been denied straight-time and overtime pay that accrued during the misclassification period. As a result, Reed has violated Labor Code Sections 510, 1194, 1197 and 1197.1. While Reed concedes that it owes overtime wages to the aggrieved employees for a period of two years subsequent to the reclassification, Reed has failed to pay the wages it owes in violation of Labor Code 206.

In addition, during the misclassification period, Reed failed to provide accurate itemized wage statements to the aggrieved employees as required by Labor Code Section 226(a) and 1174 subsection (d). Also, as a result of the misclassification, the aggrieved employees were denied uninterrupted meal periods and rest breaks in violation of Labor Code Sections 226.7 and 512.

¹ Without limitation, Ms. Dessin and Ms. Chie, if permitted, will seek any and all penalties otherwise capable of being collected or assessed by the Commissioner. This includes each of the following, as enumerated in Labor Code Section 2699.5, which states: "[t]he provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1695.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7."

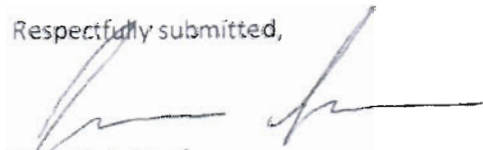
Furthermore, shortly after the aggrieved employees were reclassified, each was asked to sign an instrument indicating that Reed had satisfied its obligations with respect to straight-time and overtime pay. The request, and each executed copy of the release, contravene Labor Code Sections 206.5 and 432.5.

Finally, as a result of the misclassification, Reed has failed to properly credit each employee's health, pension and vacation plan in violation of Labor Code Section 227.

Ms. Dessin and Ms. Chie, if permitted by the Commissioner, will seek to recover the maximum civil penalty available as provided in the Labor Code, and where no civil penalty is provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code Section 2699 subsection (2).

This letter is written pursuant to the requirements identified in Labor Code Section 2699.3(a)(1) and a certified copy of this letter is being sent concurrently to Reed Elsevier, Inc. Please notify this office within 30 calendar days of the date this letter is postmarked whether or not the Commissioner intends to investigate the violation indicated above.

Respectfully submitted,



Jason S. Lohr of
Lohr Law Firm

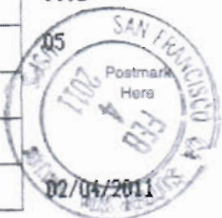
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Total Postage & Fees	\$ 6.15	02/04/2011



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 Street, Apt. No., or PO Box No.: Two Newton Place, Suite 350
 City, State, ZIP+4: Newton, MA 02458

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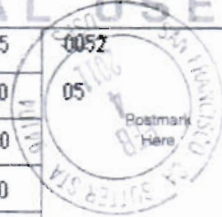
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Total Postage & Fees	\$ 6.15	02/04/2011



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 Street, Apt. No., or PO Box No.: 1075 Peachtree ST. S. # 2500
 City, State, ZIP+4: Atlanta GA 30309

PS Form 3800, August 2006 See Reverse for Instructions

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Douglas Hoffner, Acting Secretary
 California LWDA
 101 K Street, Suite 2101
 Sacramento, CA 95814

2. Article Number
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 Agent
 Addressee

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 State of California
 Labor & Workforce Development Agency

3. Service Type

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David Elsevier, Inc.
 c/o Stephen Politis, Esq.
 Employment Counsel
 100 Newton Place, Suite 350
 Newton, MA 02458

2. Article Number
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A. Signature

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S. LANKAT

 Agent
 Addressee

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C. Date of Delivery

S. LANKAT

2/7/11

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 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

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1. Article Addressed to:

Seyfarth Shaw LLP
 Brett C. Bartlett, Esq.
 Jeffrey A. Bernan, Esq.
 1075 Peachtree Street NE, Suite 2500
 Atlanta, GA 30309

2. Article Number
(Transfer from service label)

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PS Form 3811, February 2004

Domestic Return Receipt

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

D. Gudek

 Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Gudek

2/7/11

 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

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 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

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