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[Additional counsel listed on next page]

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11 OSSIE SANTIAGO, an individual
 12 California resident, on behalf of himself
 13 and all others similarly situated,

Case No. **CV 12 - 012 62**

Plaintiff

CLASS ACTION COMPLAINT FOR

HRL

vs.

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 17 INTUIT, INC. , a Delaware corporation;
 18 GOOGLE, INC., a Delaware
 19 corporation; and DOES 1 through 100,
 20 inclusive,

1. **FAILURE TO PAY OVERTIME WAGES**
2. **FAILURE TO PAY WAGES ON TERMINATION OF EMPLOYMENT (CAL. LABOR CODE § 203)**
3. **VIOLATIONS OF THE SHERMAN ACT**
4. **VIOLATIONS OF THE CARTWRIGHT ACT**
5. **VIOLATIONS OF CAL. BUS. & PROF. CODE § 16600**
6. **CIVIL CONSPIRACY**
7. **UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § § 17200, et seq.**

Defendants.

DEMAND FOR JURY TRIAL

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16 Attorneys for Plaintiff, OSSIE SANTIAGO, on behalf of himself and all other
17 similarly situated

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1 Plaintiff, OSSIE SANTIAGO (hereinafter, "Plaintiff") is informed and
2 believes and thereupon alleges, on behalf of himself and classes of those similarly
3 situated, as follows:
4

5 **I.**

6 **INTRODUCTION**

7
8 1. Starting in 2003, and continuing until at least 2009 or 2010, Plaintiff
9 is informed and believes that INTUIT had an agreement with GOOGLE,
10 negotiated and ratified by the most senior executives of those companies that
11 GOOGLE would not recruit INTUIT employees and would not hire any INTUIT
12 employees without INTUIT's consent. Plaintiff believes that there were likely
13 agreements by INTUIT with APPLE and PIXAR. The U.S. Department of Justice
14 filed a complaint and, that same day, entered into a settlement with INTUIT,
15 GOOGLE, APPLE, and PIXAR, in which each company agreed (without
16 admitting to the actual agreements) to be enjoined from entering any such
17 agreements in the future. The employees of those companies did not obtain any
18 compensation in the DOJ settlement. This class action lawsuit is brought in an
19 effort to obtain compensation for the INTUIT employees who were harmed by
20 INTUIT's anti-poaching agreement with GOOGLE, and likely APPLE and
21 PIXAR, as well as to compensate INTUIT employees for unpaid overtime
22 compensation.
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1 2. In November 2003, senior officers and directors of GOOGLE, INTUIT,
2 and APPLE participated in an email discussing ways to “never get into bidding
3 wars” for talent by imposing restrictions on recruiting. The individuals in the
4 email exchange included GOOGLE CEO and Chairman of the Board (and, from
5 August 2006-August 2009 APPLE Board member) Eric Schmidt; INTUIT CEO
6 and Chairman of the Board, APPLE board member (as well as former APPLE
7 executive) Bill Campbell; and two Senior GOOGLE vice presidents.
8
9

10 3. In February 2005, GOOGLE CEO and APPLE Board member Eric
11 Schmidt told INTUIT CEO and APPLE board member Bill Campbell that he
12 (Schmidt) had gotten “directly involved and firmly stopped all efforts to recruit
13 anyone from APPLE.” Campbell relayed this conversation to APPLE
14 CEO/PIXAR CEO Steve Jobs.
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16

17 4. On December 23, 2005, an APPLE employee contacted a PIXAR
18 recruiter for a low level programming job. The PIXAR recruiter responded: “Only
19 problem - we can't poach from Apple.”
20

21 5. On April 30, 2007, PIXAR CEO McAdams wrote that she “got off the
22 phone with (APPLE Vice President of Human Resources) Danielle Lambert, and
23 we confirmed that APPLE and PIXAR had ‘a Gentleman's agreement’” not to
24 recruit each other’s employees.
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1 6. On March 7, 2007, APPLE CEO and PIXAR CEO Steve Jobs emailed
2 Schmidt (GOOGLE CEO and APPLE board member) stating "I would be very
3 pleased if your recruiting department would stop doing this [a GOOGLE employee
4 had recruited an Apple employee]." GOOGLE/APPLE's Schmidt forwarded the
5 email to undisclosed recipients, along with a message stating that there existed a no
6 recruiting policy between APPLE and GOOGLE and that this stuff needed to stop.
7
8 The GOOGLE employee who contacted the employee was promptly terminated,
9 and APPLE/PIXAR's Steve Jobs was told it would not happen again.
10

11 7. On June 6, 2007, GOOGLE's director of staffing, Arnon Geshuri,
12 sent an email to GOOGLE CEO and APPLE board member Schmidt stating that
13 INTUIT's Chairman of the Board as well as Apple Board member had "requested
14 that INTUIT be added fully to the Do Not Call list.... Please confirm that you are
15 okay with the modification of the policy." It is not yet known what policy was
16 being modified, because INTUIT, APPLE, GOOGLE, and PIXAR did their best to
17 keep their illegal agreements quiet and, it is believed most of the agreements were
18 oral.
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22 8. From June 6, 2007 (or possibly earlier), GOOGLE would not recruit
23 employees from INTUIT. Plaintiff is also informed and believes that if an INTUIT
24 employee sought a job from GOOGLE, that private information was relayed back
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1 to INTUIT pursuant to the illegal agreement, which would then damage the
2 INTUIT employee's reputation.

3 9. With approximately 10,000 employees, GOOGLE is the major
4 employer in Mountain View, a city whose population is approximately 74,000.
5 Although in some instances (as the largest employer in the city) GOOGLE would
6 actually hire INTUIT employees, it would only do so if INTUIT consented to
7 having the employee leave. Hence, the illegal agreement between INTUIT and
8 GOOGLE seriously reduced the ability of INTUIT employees to change jobs both
9 in the software industry, and in the City of Mountain View, and in many instances,
10 the mere act of innocently applying for a job at GOOGLE could have deeply
11 damaged an INTUIT employee's career, due to the transfer of private information
12 between GOOGLE and INTUIT which occurred pursuant to the illegal horizontal
13 agreement between the two companies.

14 10. As a result of INTUIT's anti-competitive agreement with GOOGLE
15 and likely with APPLE and PIXAR and possible others, INTUIT decreased the
16 wages of their employees in the marketplace, were able to avoid paying overtime
17 to employees who were entitled to overtime, were able to gain private information
18 when employees attempted to leave, and prevented employees from transferring to
19 other employment. These practices injured the employees by reducing the amount
20 of their wages, preventing the employees from going to other companies where
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1 they could have greater opportunities to be promoted, and preventing them from
2 being paid for all overtime hours worked.

3 11. On September 24, 2010, the United States Department of Justice
4 (“DOJ”) filed a complaint against INTUIT, GOOGLE, APPLE, PIXAR, and two
5 other companies, alleging that each company had, amongst themselves, entered
6 into five agreements restricting the recruitment of employees of one another,
7 including the agreement that GOOGLE would not “cold call” employees of
8 INTUIT. The DOJ alleged that all of the agreements were per se violations of
9 Section 1 of the Sherman Act, and it alleged that the agreement covered “all”
10 INTUIT employees, and was not limited by job function, product group, or time
11 period. In the Competitive Impact Statement filed by the DOJ on that day, the
12 DOJ alleged that the agreements were “facially anticompetitive” and “substantially
13 diminished competition to the detriment of the affected employees. . .”

14 12. That same day, on September 24, 2010, all six companies in the
15 complaint signed a stipulated final judgment against themselves, in which they
16 agreed to be enjoined (with limited, enumerated exceptions for lawful agreements
17 in connection with mergers, severances, etc.) from entering into or enforcing any
18 anti-solicitation or anti-recruiting agreements. The final judgment did not enter
19 any fines against the six companies, and none of the companies were required to
20 compensate the employees in any way. The final judgment against INTUIT,
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1 GOOGLE, and the other companies was entered by the District Court on March
2 18, 2011.

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4 **II.**

5 **JURISDICTION AND VENUE**

6 **Plaintiff**

7
8 13. Plaintiff is a former INTUIT employee whose primary duties were
9 non-exempt and who was misclassified by INTUIT as exempt from the overtime
10 provisions of the applicable state wage and hour laws of California, as described in
11 this complaint.
12

13 14. Plaintiff performed work in the areas of product control, systems
14 specialist, and documentation control. The majority of the work Plaintiff
15 performed was non-exempt work which did not require discretion or independent
16 judgment.
17

18 15. Plaintiff is a resident of California who worked for INTUIT in the
19 County of Santa Clara, California.
20

21 **Defendants**

22
23 16. INTUIT, INC. is a citizen of the State of California. Although it is
24 organized as a Delaware corporation, its headquarters and primary place of
25 business is in Mountain View, California, in the County of Santa Clara. The
26 nerve center of INTUIT, where strategic decisions and major operations occur, is
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1 in Mountain View, California. The primary officers and directors of INTUIT
2 reside in and primarily work in California. In addition, virtually all important
3 operations and strategies are directed from California, and all members of the
4 CLASS worked in California. INTUIT, INC. and DOES 1-19 are collectively
5 referred to herein as "INTUIT".
6

7
8 17. GOOGLE, INC. is a citizen of the State of California. Although it is
9 organized as a Delaware corporation, its headquarters and primary place of
10 business is in Mountain View, California, in the County of Santa Clara. The
11 nerve center of GOOGLE, where strategic decisions and major operations occur,
12 is in Mountain View, California. The primary officers and directors of GOOGLE
13 reside in and primarily work in California. In addition, virtually all important
14 operations and strategies are directed from California, and all members of the
15 CLASS worked in California. GOOGLE, INC. and DOES 20-30 are collectively
16 referred to herein as "GOOGLE".
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20 18. The U.S. District Court Northern District has jurisdiction over
21 INTUIT and GOOGLE based on federal question jurisdiction. Pursuant to 28
22 U.S.C. 1391, venue is proper as to each defendant because Plaintiff worked for
23 INTUIT in Santa Clara, California, and both INTUIT and GOOGLE are
24 headquartered in Mountain View in the County of Santa Clara, and do business in
25 Santa Clara, California.
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1 All natural persons who are, have been, or will be
2 employed by INTUIT and DOES 1-20 in California since
3 November 3, 2003.

4 (b) "OVERTIME CLASS." For claims against INTUIT and DOES
5 1-10, Plaintiff seeks to certify a class of:

6 All natural persons employed by INTUIT and DOES 1-
7 10 in California since March 9, 2008, in any job whose
8 title is or was referred to by any of the Defendants as
9 "test engineer," "software engineer," "computer
10 programmer," "architect," "developer," and/or "quality
11 assurance [QA] engineer," "product control," "systems
12 specialist," "documentation control," or any similar
13 derivative title that is better defined by a "skill set" that
14 describes realistic descriptions and expectations of the
15 duties performed by the CLASS or sub-classes.

16 Excluded from both Classes above are corporate officers and members of the
17 boards of directors of INTUIT and GOOGLE who entered into the illicit
18 agreements described herein.

19 23. There is a well-defined community of interest in the litigation and
20 the classes are ascertainable.

21 a. Numerosity: The classes are both so numerous that individual joinder
22 of all members is impractical under the circumstances of this case. While the exact
23 number of class members is unknown to Plaintiff at this time, Plaintiff is informed
24 and believes and thereon alleges that it is several hundred employees or more.
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1 b. Common Questions Predominate: Common questions of law and fact
2 exist as to the, and predominate over any questions that affect only individual
3 members of the class.

4 (1) The common questions of law and fact that predominate
5 regarding the ANTI-POACHING CLASS include, but are not limited to whether
6 the class members were subject to an illegal anti-competitive agreements by and
7 between the Defendants which prevented them from moving employment from
8 Intuit to another employer; whether their wages were depressed for that reason or
9 the employees otherwise suffered and can prove damages from those illegal
10 agreements;
11

12 (2) The common questions of law and fact that predominate
13 regarding the OVERTIME CLASS include, but are not limited to whether the class
14 members were entitled to be paid and were paid for all overtime and double
15 overtime compensation pursuant to California law.
16

17 c. Typicality:

18 (1) Plaintiff's claims are typical of the claims of the ANTI-
19 POACHING CLASS. Said class members sustained losses, injuries and damages
20 arising out of the Defendants' illegal anti-competitive agreements were applied to
21 all members of the class. Plaintiff seeks recoveries for the same types of losses,
22 injuries, and damages as were suffered by the other class members.
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1 (2) Plaintiff's claims are typical of the claims of the OVERTIME
2 CLASS. Plaintiff and other class members sustained losses, injuries and damages
3 arising out of the Defendants' common policies and practices in failing to pay all
4 overtime and double overtime wages due. Plaintiff seeks recoveries for the same
5 types of losses, injuries, and damages as were suffered by the other class members.
6

7 d. Adequacy: Plaintiff and his counsel will fairly and adequately protect
8 the interests of the class members. Plaintiff has no interest that is adverse to the
9 interests of the other class members.
10

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

4
5 f. Public Policy Considerations:

6 24. Employers in the software industry, such as INTUIT routinely violate
7 wage and hour laws. Their employees are often afraid to assert their rights out of
8 fear of direct or indirect retaliation. In addition, the illegal agreements that all
9 Defendants entered into are felonies under federal law, and not only harm the class
10 members in the ANTI-POACHING CLASS, but cause damage to the market place
11 for all employees in the software industry by depressing wages and preventing free
12 movement of employees. In addition, INTUIT disrupted the marketplace for
13 employees and decreased the ability of employees to find employment elsewhere,
14 which supported and aided their efforts to reduce employee pay and avoid payment
15 overtime compensation.
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20 **IV.**

21 **First Cause of Action**

22 *Failure to Pay Wages at Overtime Wages*
23 *Against Intuit (Including Does 1-19)*
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25 25. Plaintiff, on behalf of himself and all others similarly situated, re-
26 alleges and incorporated herein by reference each of the allegations contained in
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1 the preceding paragraphs of this Complaint, and further alleges against Defendants
2 as follows:

3 26. Throughout the period applicable to this cause of action, Plaintiff and
4 the proposed OVERTIME CLASS members were properly classified as non-
5 exempt under California and federal law. The majority of work that Plaintiff and
6 the proposed OVERTIME CLASS members performed was non-exempt duties
7 lacking the requisite discretion and independent judgment in matters of
8 significance, as required by California law. No exemptions properly apply that
9 would make Plaintiff and the OVERTIME CLASS members exempt for state and
10 federal overtime compensation laws.
11

12 27. Throughout the period applicable to this cause of action, Plaintiff and
13 the proposed OVERTIME CLASS members regularly and typically and worked in
14 excess of forty (40) hours per week and/or in excess of excess of eight (8) hours
15 per day.
16

17 28. INTUIT was actually aware, or reasonably should have been aware,
18 that Plaintiff and the OVERTIME CLASS members were working overtime
19 virtually every week during the entire liability period.
20

21 29. INTUIT failed to compensate Plaintiff and OVERTIME CLASS
22 members for all hours it allowed and suffered them to work, in particular for
23 overtime hours in excess of eight (8) hours per day or forty (40) hours per week.
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1 day's wages for each day he or she was not timely paid all said wages due, up to a
2 maximum of thirty days' wages for each employee. Because said employees were
3 ever paid the overtime wages to which they were entitled, and each of said
4 employees is entitled to thirty days' wages.
5

6 **Third Cause of Action**

7 *Violations of Section 1 of the Sherman Act, 15 U.S.C. § 1*
8 *Against Intuit, Google and Does 1 - 100*
9

10 35. Plaintiff, on behalf of himself and all others similarly situated, re-
11 alleges and incorporated herein by reference each of the allegations contained in
12 the preceding paragraphs of this Complaint, and further alleges against Defendants
13 as follows:
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15 36. Defendants entered into and engaged in unlawful agreements in
16 restraint of trade and commerce described above in violation of Section 1 of the
17 Sherman Act, 15 U.S.C. § 1, including per se violations of Section 1.
18

19 37. From June 6, 2007 (or possibly earlier), GOOGLE would not recruit
20 employees from INTUIT. Plaintiff is also informed and believes that if an INTUIT
21 employee sought a job from GOOGLE, that private information was relayed back
22 to INTUIT pursuant to the illegal agreement, which would then damage the
23 INTUIT employee's reputation. This is a per se violation of Section 1 of the
24 Sherman Act.
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1 38. Defendants' illegal agreements have included concerted action
2 among each other with the purpose and effect of: (a) fixing the compensation of
3 Plaintiff and the Class at artificially low levels; (b) eliminating, to a substantial
4 degree, competition among Defendants for skilled labor; (c) preventing the
5 employees from moving to other employment, where they could obtain higher
6 wages, obtain greater opportunities for promotion; and obtain overtime
7 compensation for all hours worked. As a direct and proximate result of
8 Defendants' combinations and contracts to restrain trade and eliminate competition
9 for skilled labor, members of the Class have suffered injury to their property. The
10 acts done by each Defendant as part of, and in furtherance of, their contracts,
11 combinations or conspiracies were authorized, ordered, or done by their respective
12 officers, directors, agents, employees, or representatives while actively engaged in
13 the management of each Defendant's affairs.
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18 39. Accordingly, Plaintiff and members of the Class seek three times their
19 damages caused by Defendants' violations of Section 1 of the Sherman Act, the
20 costs of bringing suit, reasonable attorneys' fees, and a permanent injunction
21 enjoining Defendants from ever again entering into similar agreements in violation
22 of Section 1 of the Sherman Act.
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1 **Fourth Cause of Action**

2 *Violations of the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, et seq.*
3 *Against Intuit, Google, and Does 1 - 100*

4 40. Plaintiff, on behalf of himself and all others similarly situated, re-
5 alleges and incorporated herein by reference each of the allegations contained in
6 the preceding paragraphs of this Complaint, and further alleges against Defendants
7 as follows:

8
9 41. Defendants entered into and engaged in an unlawful trust in restraint
10 of the trade and commerce described above in violation of California Business and
11 Professions Code section 16720. Beginning no later than January 2005 and
12 continuing at least through 2009, Defendants engaged in continuing trusts in
13 restraint of trade and commerce in violation of the Cartwright Act.
14

15
16 42. Defendants' illegal trusts and agreements have included concerted
17 action with each other with the purpose and effect of: (a) fixing the compensation
18 of Plaintiff and the Class at artificially low levels; (b) eliminating, to a substantial
19 degree, competition among Defendants for skilled labor; (c) preventing the
20 employees from moving to other employment, where they could obtain higher
21 wages, obtain greater opportunities for promotion; and obtain overtime
22 compensation for all hours worked. As a direct and proximate result of
23 Defendants' combinations and contracts to restrain trade and eliminate competition
24 for skilled labor, members of the Class have suffered injury to their property.
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1 48. Defendants entered into, implemented, and enforced express
2 agreements that are unlawful and void under Section 16600. Defendants'
3 agreements and conspiracy have included concerted action among the Defendants'
4 illegal agreements have included concerted action with the purpose and effect of:
5 (a) fixing the compensation of Plaintiff and the Class at artificially low levels; (b)
6 eliminating, to a substantial degree, competition among Defendants for skilled
7 labor; (c) preventing the employees from moving to other employment, where they
8 could obtain higher wages, obtain greater opportunities for promotion; and obtain
9 overtime compensation for all hours worked. As a direct and proximate result of
10 Defendants' combinations and contracts to restrain trade and eliminate competition
11 for skilled labor, members of the Class have suffered injury to their property.
12 Defendants' agreements and conspiracy were not intended to protect and
13 were not limited to protect any legitimate proprietary interest of Defendants.
14

15 49. Defendants' agreements and conspiracy do not fall within any
16 statutory exception to Section 16600.
17

18 50. The acts done by each Defendant as part of, and in furtherance of,
19 their contracts, combinations or conspiracies were authorized, ordered, or done by
20 their respective officers, directors, agents, employees, or representatives while
21 actively engaged in the management of each Defendant's affairs.
22

23 51. Accordingly, Plaintiff and members of the Class seek a judicial
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1 declaration that Defendants' agreements and conspiracy are void as a matter of law
2 under Section 16600, and a permanent injunction enjoining Defendants' from ever
3 again entering into similar agreements in violation of Section 16600.
4

5 **Sixth Cause of Action**

6 *Common Law Conspiracy*
7 Against Intuit, Google, and Does 1 – 100

8 52. Plaintiff, on behalf of himself and all others similarly situated,
9 incorporates herein by reference each of the allegations contained in the preceding
10 paragraphs of this Complaint, and further alleges against Defendants as follows:
11

12 53. Defendants formed and entered into a conspiracy to depress the wages
13 of their employees and to prevent their employees from leaving their employment
14 to go to their competitors by committing the wrongful and illegal act described
15 herein.
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18 54. Pursuant to the conspiracy, Defendants agreed not to recruit or hire
19 each other's employees, and exchanged private information about the employee of
20 one defendant when an employee independently sought employment with another
21 defendant. All Defendants were aware of the conspiracy, actively participated in
22 it, and were aware of the objectives of the conspiracy.
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25 55. Defendants' conspiracy caused resultant damage to their employees in
26 the form of depressed wages, limited mobility in employment, reduced
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1 opportunities for promoted and advancement, and inability to obtain payment of all
2 wages due, particularly overtime compensation.

3
4 **Seventh Cause of Action**

5 *Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, et seq.*
6 *Against Intuit, Google, and Does 1 – 100*

7 56. Plaintiff, on behalf of himself and all others similarly situated, re-
8 allege and incorporates herein by reference each of the allegations contained in the
9 preceding paragraphs of this Complaint, and further alleges against Defendants as
10 follows:
11

12 57. INTUIT's actions to restrain trade and fix the total compensation of
13 their employees, to fail and refuse to pay overtime compensation to non-exempt
14 employees, and their failure to pay employees all wages at the end of employment
15 constitute unfair competition and unlawful, unfair, and fraudulent business acts and
16 practices in violation of California Business and Professional Code sections 17200,
17 et seq. The conduct of all Defendants includes violation of the UCL by violating,
18 inter alia, each of the following laws: each of these violations constitutes an
19 independent and separate violation of the UCL: California applicable Wage
20 Orders; Labor Code sections 201, 202, 203, 204, 226, 510, 1174, and 1194;
21 Section 1 of the Sherman Act; the Cartwright Act; and California Business &
22 Professions Code section 16600.
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1 1. That the Court determine that this action may be maintained as a class
2 action;

3 2. That Plaintiff be appointed the representative of the class members; That
4 the attorneys of record for Plaintiff whose names appear in this Complaint be
5 appointed Class counsel;

6 3. For unpaid wages at overtime rates for all overtime work and unpaid
7 wages for all work for which they were not paid;

8 4. For such general and special damages as may be appropriate;

9 5. For waiting time penalties and civil penalties for all class members no
10 longer in Defendants' employ at the time of Judgment;

11 6. For pre-judgment interest;

12 7. For restitution;

13 8. For permanent injunctive and declaratory relief;

14 9. A declaratory judgment that the practices complained of herein are
15 unlawful under federal and California state law;

16 10. Attorney's fees and costs of suit, including expert fees;

17 11. For treble damages;

18 12. Such other injunctive and equitable relief as the Court may deem
19 proper.
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1 DATED: March 13, 2012


JOSE GARAY, APLC

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4 **HAMNER LAW OFFICES, APC**

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7 **THE NUNES LAW GROUP**

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11 By: **CHRISTOPHER J. HAMNER, ESQ.**,
12 Co-Counsel for Plaintiff, **OSSIE**
13 **SANTIAGO**, on behalf of himself and all
14 others similarly situated.
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