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LOS ANGELES SUPERIOR COURT

SEP 27 2013

JOHN A. CLARKE, CLERK
(Signature)
BY AMBER HAYES, DEPUTY

7 Attorneys for Plaintiff
8 DAVID SIMPSON

DOE William Higginson

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11 DAVID SIMPSON, an individual on behalf of
12 himself and others similarly situated,

CASE NO. **BC522638**

13 Plaintiff,

CLASS ACTION COMPLAINT FOR:

14 vs.

15 PROMETHEUS GLOBAL MEDIA, LLC, a
16 Delaware limited liability company, and DOES 1
to 10, inclusive,

17 Defendants.

1. Failure to Pay Overtime Wages (Cal. Labor Code §§ 510, 1194)
2. Failure to Authorize and Permit Rest Periods (Cal. Labor Code § 226.7, Wage Order 4)
3. Failure to Provide Meal Periods (Cal. Labor Code § 512, 226.7, Wage Order 4)
4. Failure to Reimburse for Business Expenses (Cal. Labor Code § 2802)
5. Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code § 226)
6. Failure to Timely Pay All Wages Owed During Employment (Cal. Labor Code § 204)
7. Unlawful Business Practices (Cal. Bus. & Prof. Code § 17200, et seq.)

18 AND DEMAND FOR JURY TRIAL

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RECEIPT #: CCH503057028
DATE PAID: 09/27/13 01:00 PM
PAYMENT: \$435.00
RECEIVED: 310
CITY/CHSE: BC522638
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1 Plaintiff DAVID SIMPSON (hereafter "Plaintiff") alleges as follows:

2 **I. NATURE OF THE ACTION**

3 1. This is a class action lawsuit against PROMETHEUS GLOBAL MEDIA, LLC
4 ("Prometheus") for willfully misclassifying their "freelancers" as independent contractors and denying
5 them the wage and hour rights and protections of employees under the California Labor Code and
6 applicable Wage Order.

7 **II. PARTIES**

8 2. Plaintiff is a resident of Los Angeles County, California who, for more than the last four
9 years, has worked for The Hollywood Reporter ("THR"), a division of Prometheus, as a "freelancer" in
10 Los Angeles, California.

11 3. Prometheus is an entertainment publishing company with an office located in Los
12 Angeles, California. In addition to THR, Prometheus owns and publishes Billboard, Back Stage, and
13 Adweek. Upon information and belief, Prometheus employs "freelancers" at each of these divisions and
14 misclassifies all of them as independent contractors rather than employees.

15 4. Plaintiff is currently unaware of the true names and capacities of the defendants sued by
16 the fictitious names DOES 1 through 10, inclusive, and, therefore, sues those defendants by fictitious
17 names. Plaintiff alleges on information and belief that each of the DOE defendants is responsible or
18 liable in some manner for the conduct alleged in this complaint and that Plaintiff's damages as herein
19 alleged were proximately caused by those DOE defendants. Plaintiff will amend this complaint to
20 allege the true names and capacities of such fictitiously named defendants when they are ascertained.

21 5. Plaintiff alleges that, at all times herein mentioned, each of the defendants was the agent,
22 servant and/or employee of each of the other defendants, and in connection with the conduct hereinafter
23 alleged, was acting within the scope of such agency and employment, and each defendant ratified each
24 and every act, omission and thing done by each and every other defendant named herein.

25 6. Defendants Prometheus and DOES 1 through 10; will be referred to hereafter,
26 collectively, as "Defendants."

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1 **III. ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION**

2 7. Plaintiff is one of numerous “freelancers” at THR. Defendants hold Plaintiff out to the
3 general public as THR’s Assistant Editor Social Media and Video Coordinator. His primary duties
4 consist of posting video content onto THR’s website.

5 8. With the exception of their status as independent contractors, “freelancers” are
6 indistinguishable from employees in all material respects.

7 9. Like employees, “freelancers” are expected to work out of the office from 9 to 5 Monday
8 through Friday, are provided their own work space, computer, email address, and direct-dial telephone
9 line for their use while working at the office, are required to attend mandatory work meetings alongside
10 other employees, are supervised by and report to the same managers that supervise employees, and are
11 subject to the same discipline and discharge policies applicable to employees.

12 10. “Freelancers” work alongside and perform the same work as employees. For example,
13 other individuals at THR besides Plaintiff post video content onto THR’s website. Inexplicably, some
14 of those individuals are deemed to be employees while Plaintiff and others like him labeled
15 “freelancers” are deemed to be independent contractors.

16 11. Defendants retain and exercise the right to control the manner and means of the details of
17 Plaintiff’s work and the work of other “freelancers” just the same as they retain and exercise the right to
18 control the manner and means of the details of an employee’s work.

19 12. In willful disregard of the factual and economic realities of the working relationship with
20 “freelancers,” Defendants maintain, and have maintained over the last four years, a common corporate-
21 wide policy and practice of misclassifying “freelancers” as independent contractors.

22 13. The sole purpose of misclassifying “freelancers” as independent contractors is to deny
23 them the benefits and protections otherwise afforded to employees, including payment of overtime
24 wages, provision of rest and meal breaks, reimbursement for business expenses, provision of accurate
25 wage statements, and timely payment of all wages earned.

26 14. Plaintiff and other “freelancers” regularly work more than 8 hours per day and
27 occasionally more than 10 hours per day. As a result of being misclassified as independent contractors,
28 Plaintiff and other “freelancers” were not paid premium overtime wages for working more than 8 hours

1 per day and/or 40 hours per week.

2 15. As a result of being misclassified as independent contractors, Plaintiff and other
3 "freelancers" were not authorized and permitted to take timely rest breaks for every four hours worked
4 or major fraction thereof.

5 16. As a result of being misclassified as independent contractors, Plaintiff and other
6 "freelancers" worked more than five hours without being provided an off-duty meal period of not less
7 than thirty minutes and/or worked more than ten hours without being provided a second off-duty meal
8 period of not less than thirty minutes.

9 17. As a result of being misclassified as independent contractors, Plaintiff and other
10 "freelancers" were not reimbursed for business expenses, including but not limited to, the costs of
11 purchasing and operating smart phones required by Prometheus.

12 18. As a result of being misclassified as independent contractors, Plaintiff and other
13 "freelancers" were not provided accurate itemized wage statements, including accurate wages earned.

14 19. As a result of being misclassified as independent contractors, Plaintiff and other
15 "freelancers" were not timely paid all wages earned bimonthly.

16 20. Upon information and belief, Defendants willfully misclassified as independent
17 contractors other "freelancers" at other divisions of Prometheus, who suffered the same injuries as
18 Plaintiff and other "freelancers" at THR suffered.

19 **CLASS ACTION ALLEGATIONS**

20 21. Plaintiff brings claims on behalf of himself and all others similarly situated pursuant to
21 California Code of Civil Procedure section 382. Plaintiff seeks to represent classes composed of the
22 following:

23 (a) **Overtime Class**

24 All individuals who performed work for Prometheus as "freelancers" in California within the
25 four years prior to the filing of this Complaint until the date of certification who were not paid premium
26 overtime wages for working more than 8 hours per day and/or 40 hours per week;

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1 (b) Rest Break Class

2 All individuals who performed work for Prometheus as “freelancers” in California within the
3 four years prior to the filing of this Complaint until the date of certification who were not authorized and
4 permitted to take timely rest breaks for every four hours worked or major fraction thereof;

5 (c) Meal Break Class

6 All individuals who performed work for Prometheus as “freelancers” in California within the
7 four years prior to the filing of this Complaint until the date of certification who worked more than five
8 hours without being provided an off-duty meal period of not less than thirty minutes and/or worked
9 more than ten hours without being provided a second off-duty meal period of not less than thirty
10 minutes.

11 (d) Reimbursement Class

12 All individuals who performed work for Prometheus as “freelancers” in California within the
13 four years prior to the filing of this Complaint until the date of certification who were not indemnified
14 for business expenses, including but not limited to, the costs of purchasing and operating smart phones
15 required by Prometheus.

16 (e) Wage Statement Class

17 All individuals who performed work for Prometheus as “freelancers” in California within one
18 year prior to the filing of this Complaint until the date of certification who were not provided accurate
19 itemized wage statements; and

20 (f) Wage Payment Class

21 All individuals who performed work for Prometheus as “freelancers” in California within the
22 three years prior to the filing of this Complaint until the date of certification who were not timely paid
23 all wages earned bimonthly.

24 22. Plaintiff reserves the right to amend or modify the class descriptions or establish
25 additional subclasses as appropriate.

26 23. This action has been brought and may properly be maintained as a class action under
27 California Code of Civil Procedure section 382 because there is a well-defined community of interest in
28 the litigation and the proposed classes are easily ascertainable from Total Safety’s own records.

1 **A. Numerosity**

2 24. The potential members of the classes as defined are so numerous that joinder of all the
3 members of the class is impracticable. While the precise number of members of the classes has not been
4 determined at this time, Plaintiff is informed and believes that the classes each contain in excess of 40
5 individuals.

6 **B. Commonality**

7 25. There are questions of law and fact common to the classes that predominate over any
8 questions affecting only individual class members. These common questions include, without
9 limitation, the following:

10 (a) Whether Overtime Class members were paid premium overtime wages for each
11 hour worked over 8 hours per day or 40 hours per week;

12 (b) Whether Rest Break Class members were authorized and permitted to take timely
13 rest breaks for every four hours worked or major fraction thereof;

14 (c) Whether Meal Break Class members worked more than five hours without being
15 provided an off-duty meal period of not less than thirty minutes and/or worked more than ten hours
16 without being provided a second off-duty meal period of not less than thirty minutes;

17 (d) Whether Reimbursement Class members were indemnified for business expenses,
18 including but not limited to, the costs of purchasing and operating smart phones required by
19 Prometheus;

20 (e) Whether Wage Statement Class members were furnished with itemized wage
21 statements accurately reflecting all wages earned; and

22 (f) Whether Wage Payment Class members were timely paid all wages earned
23 bimonthly.

24 **C. Typicality**

25 26. The class claims of the proposed class representative are typical of the claims of each
26 class member.

27 27. As with other members of the proposed classes, Plaintiff (a) was not paid overtime for
28 working more than 8 hours per day or 40 hours per week; (b) was not authorized and permitted to take

1 timely rest breaks for every four hours worked or major fraction thereof; (c) worked more than five hours
2 without being provided an off-duty meal period of not less than thirty minutes and worked more than ten
3 hours without being provided a second off-duty meal period of not less than thirty minutes; (d) was not
4 reimbursed for business expenses, including but not limited to, the costs of purchasing and operating
5 smart phones required by Prometheus; (e) was not provided accurate itemized wage statements; and (f)
6 was not timely paid all wages earned bimonthly.

7 **D. Adequacy of Representation**

8 28. Plaintiff will fairly and adequately represent and protect the interests of the members of
9 the classes. Counsel who represent Plaintiff is competent and experienced in litigating employment
10 class actions.

11 **E. Superiority of Class Action**

12 29. A class action is superior to other available means for the fair and efficient adjudication
13 of the class claims. Individual joinder of all class members is not practicable, and questions of law and
14 fact common to the classes predominate over any questions affecting only individual members of the
15 classes. Each member of the classes has been damaged and is entitled to recover by reason of
16 Defendants' illegal common policies and practices of misclassifying "freelancers" as independent
17 contractors.

18 30. Class action treatment will allow those similarly situated persons to litigate their claims
19 in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
20 unaware of any difficulties that are likely to be encountered in the management of this action that would
21 preclude its maintenance as a class action.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME**

24 **(LABOR CODE §§ 510 AND 1194)**

25 31. Plaintiff incorporates all previously alleged paragraphs as fully set forth herein.

26 32. Labor Code section 510 requires an employer to provide premium overtime
27 compensation for all work in excess of 8 hours per day and 40 hour per week.

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1 33. Labor Code section 1194 entitles an employee receiving less than the legal overtime
2 compensation to recover, in a civil action, the unpaid balance of overtime wages owing, plus interest
3 thereon, reasonable attorneys' fees, and costs of suit.

4 34. As a result of Defendants' willful misclassification of Plaintiff and other "freelancers" as
5 independent contractors, Plaintiff and other "freelancers" were not paid premium overtime rates for all
6 hours worked in excess of 8 hours per day and/or 40 hours per week.

7 35. Plaintiff seeks to recover, on behalf of himself and other Overtime Class members,
8 payment of the overtime owing to them, plus penalties and interest, attorneys' fees and costs, in an
9 amount to be proven at trial.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

12 **(LABOR CODE § 226.7 AND WAGE ORDER 4)**

13 36. Plaintiff incorporates all previously alleged paragraphs as though fully set forth herein.

14 37. Labor Code section 226.7(a) provides that no employer shall require any employee to
15 work during any rest period mandated by an applicable order of the Industrial Welfare Commission.

16 38. Wage Order 4 requires employers to authorize and permit rest periods at the rate of 10
17 minutes net rest time per four hours or major fraction thereof and to schedule rest periods in the middle
18 of the work period so far as practicable.

19 39. Labor Code Section 226.7(b) provides that if an employer fails to provide an employee a
20 rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer
21 shall pay the employee one additional hour of pay at the employee's regular rate of compensation for
22 each work day that the rest period was not provided.

23 40. As a result of Defendants' misclassification of Plaintiff and other "freelancers" as
24 independent contractors, Plaintiff and other "freelancers" were not authorized and permitted to take
25 timely rest breaks.

26 41. Plaintiff seeks to recover, on behalf of himself and other Rest Break Class members,
27 additional wages, pursuant to Labor Code section 226.7, in an amount equal to one (1) hour of wages
28 per missed rest period, in a total sum to be proven at trial.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(LABOR CODE §§ 512, 226.7, WAGE ORDER 4)**

4 42. Plaintiff incorporates all previously alleged paragraphs as though fully set forth herein.

5 43. Labor Code section 226.7 provides that if an employer fails to provide an employee a
6 meal period in accordance with the applicable Order of the Industrial Welfare Commission, the
7 employer shall pay the employee one additional hour of pay at the employee's regular rate of
8 compensation for each work day that the meal period is not provided.

9 44. Labor Code section 512 and Wage Order 4 provide that no employer shall employ any
10 person for a work period of more than five hours without providing an off-duty meal period of not less
11 than thirty minutes and that no employer shall employ any person for a work period of more than ten
12 hours without providing a second off-duty meal period of not less than thirty minutes.

13 45. Throughout the class period for the Meal Break Class, Plaintiff and other Meal Break
14 Class members regularly worked more than five hours without being provided an off-duty meal period
15 of not less than thirty minutes and/or worked more than ten hours without being provided a second off-
16 duty meal period of not less than thirty minutes.

17 46. Pursuant to Labor Code section 226.7, Plaintiff seeks to recover, on behalf of himself and
18 other Meal Break Class members, one additional hour of pay at the employee's regular rate of
19 compensation for each work day that a required meal period was not provided in accordance with law.

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

22 **(LABOR CODE § 2802)**

23 47. Plaintiff incorporates all previously alleged paragraphs as though fully set forth herein.

24 48. Pursuant to California Labor Code section 2802, Defendants are required to indemnify
25 Plaintiff and other Reimbursement Class members for the expenses and losses incurred during the
26 performance of their job duties.

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1 49. In violation of Labor Code section 2802, Defendants required Plaintiff and other
2 Reimbursement Class members to cover the expenses of employment, including, without limitation, the
3 costs of purchasing and operating smart phones.

4 50. Plaintiff seeks to recover, on behalf of himself and other Reimbursement Class members,
5 their business expenses that were not reimbursed, interest thereon, and reasonable attorneys' fees and
6 costs, in an amount to be proven at trial.

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

9 **(LABOR CODE § 226)**

10 51. Plaintiff incorporates all previously alleged paragraphs as though fully set forth herein.

11 52. Labor Code section 226 requires an employer to furnish an employee at the time of
12 payment a wage statement that accurately reflects, among other things, accurate wages earned by the
13 employee during the relevant pay period.

14 53. Defendants violated this requirement by failing to furnish Plaintiff and other Wage
15 Statement Class members with wage statements that accurately reflected wages earned.

16 54. Defendants knew that the itemized wage statements it furnished Plaintiff and other Wage
17 Statement Class members did not accurately reflect wages earned.

18 55. As a result of Defendants' refusal to comply with Labor Code section 226, Plaintiff and
19 other Wage Statement Class members have been injured.

20 56. Plaintiff seeks to recover, on behalf of himself and other Wage Statement Class
21 members, the penalty provided by Labor Code section 226(e) for Defendants' knowing and intentional
22 failure to furnish accurate itemized wage statements.

23 **SIXTH CAUSE OF ACTION**

24 **FAILURE TO TIMELY PAY ALL WAGES OWED DURING EMPLOYMENT**

25 **(LABOR CODE § 204)**

26 57. Plaintiff incorporates all previously alleged paragraphs as though fully set forth herein.

27 58. Labor Code section 204 provides that labor performed between the 1st and 15th days,
28 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month

1 during which the labor was performed, and labor performed between the 16th and the last day, inclusive,
2 of any calendar month, shall be paid for between the 1st and 10th day of the following month.

3 59. As a result of Defendants' misclassification of Plaintiff and other Wage Payment Class
4 members as independent contractors, Defendants willfully failed to pay them all wages due within the
5 time periods prescribed by Labor Code section 204.

6 60. Plaintiff seeks to recover, on behalf of himself and other members of the Wage
7 Statement Class, payment of the wages owing plus penalties and interest, attorneys' fees and costs, in an
8 amount to be proven at trial.

9 **SEVENTH CAUSE OF ACTION**

10 **UNLAWFUL BUSINESS PRACTICES**

11 **(BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.)**

12 61. Plaintiff incorporates all previously alleged paragraphs as though fully set forth herein.

13 62. Defendants' activities, as alleged herein, are violations of California law, and constitute
14 unlawful business acts and practices in violation of California Business & Professions Code section
15 17200, et seq.

16 63. A violation of California Business & Professions Code section 17200, et seq. may be
17 predicated on the violation of any state or federal law.

18 64. Defendants' misclassification of Plaintiff and other "freelancers" as independent
19 contractors violated and/or caused to be violated Labor Code sections 204, 226, 226.7, 510, 512, and
20 2802.

21 65. Pursuant to California Business & Professions Code section 17200, et seq., Plaintiff
22 seeks, on behalf of himself and other "freelancers" misclassified as independent contractors, restitution
23 of the wages, overtime, and expense reimbursements unlawfully withheld and retained by Defendants.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for the following relief:

26 **Class Certification**

27 1. That this case be certified as a class action with respect to the Overtime Class, Rest Break
28 Class, Meal Break Class, Reimbursement Class, Wage Statement Class, and Wage Payment Class;

1 2. That Plaintiff be appointed as the representative of the classes; and

2 3. That counsel for Plaintiff be appointed as class counsel.

3 **First Cause of Action**

4 4. That the Court declare, adjudge and decree that Defendants violated Labor Code section
5 510 by failing to provide Plaintiff and other Overtime Class members with premium overtime
6 compensation for all hours worked in excess of 8 hours per day and 40 hours per week;

7 5. For unpaid overtime wages and such general and special damages as may be appropriate;

8 6. For pre-judgment interest on any unpaid overtime wages commencing from the date such
9 amounts were due;

10 7. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to Labor
11 Code section 1194(a); and

12 8. For such other and further relief as the Court may deem equitable and appropriate.

13 **Second Cause of Action**

14 9. That the Court declare, adjudge and decree that Defendants violated Labor Code section
15 226.7 and Wage Order 4 by failing to authorize and permit Plaintiff and other Rest Break Class
16 members to take timely rest breaks for every four hours worked or major fraction;

17 10. That the Court make an award to Plaintiff and other Rest Break Class members, pursuant
18 to Labor Code section 226.7, of one hour of pay at their regular rate of compensation for each day that a
19 required rest period that was not authorized and permitted in accordance with law;

20 11. For pre-judgment interest on any unpaid wages from the date such amounts were due;

21 12. For reasonable attorneys' fees and costs of suit; and

22 13. For such other and further relief as the Court may deem equitable and appropriate.

23 **Third Cause of Action**

24 14. That the Court declare, adjudge and decree that Defendants violated Labor Code section
25 512 and Wage Order 4 by employing Plaintiff and other Meal Break Class members for work periods of
26 more than five hours without providing an off-duty meal period of not less than thirty minutes and/or by
27 employing Plaintiff and other Meal Break Class members for work periods of more than ten hours
28 without providing a second off-duty meal period of not less than thirty minutes;

1 15. For one additional hour of pay the employee's regular rate of compensation for each
2 workday that a meal period was not provided in accordance with law pursuant to Labor Code section
3 226.7;

4 16. For pre-judgment interest on any wages owing commencing from the date such amounts
5 were due;

6 17. For reasonable attorneys' fees and costs of suit; and

7 18. For such other and further relief as the Court may deem equitable and appropriate.

8 **Fourth Cause of Action**

9 19. That the Court declare, adjudge and decree that Defendants violated Labor Code section
10 2802 by failing to indemnify Plaintiff and other Reimbursement Class members for expenses incurred in
11 performing their job duties;

12 20. For reimbursement of all necessary expenditures incurred by Plaintiff and other
13 Reimbursement Class members along with such general and special damages as may be appropriate;

14 21. For pre-judgment interest on any unreimbursed expenses commencing from the date such
15 amounts were due;

16 22. For reasonable attorneys' fees and for costs of suit; and

17 23. For such other and further relief as the Court may deem equitable and appropriate.

18 **Fifth Cause of Action**

19 24. That the Court declare, adjudge and decree that Defendants violated Labor Code section
20 226 by failing to provide Plaintiff and other Wage Statement Class members with accurate itemized
21 wage statements;

22 25. For penalties, reasonable attorney's fees, and costs of suit pursuant to Labor Code section
23 226(e); and

24 26. For such other and further relief as the Court may deem equitable and appropriate.

25 **Sixth Cause of Action**

26 27. That the Court declare, adjudge and decree that Defendants violated Labor Code section
27 204 by willfully failing to timely pay Plaintiff and other Wage Payment Class members all wages owing
28 during employment;

1 28. For restitution of the wages unlawfully withheld and retained by Defendants, plus
2 penalties and interest, attorneys' fees and costs; and

3 29. For such other and further relief as the Court may deem equitable and appropriate.

4 **Seventh Cause of Action**

5 30. That the Court declare, adjudge, and decree that Defendants violated Business and
6 Professions Code section 17200, et seq. by violating Labor Code sections 204, 226, 226.7, 510, 512, and
7 2802;

8 31. For an order requiring accounting and restitution of the monies unlawfully withheld and
9 retained by Defendants as a result of the above unlawful and unfair business practices;

10 32. For an injunction ordering Defendants to classify their "freelancers" as employees and to
11 provide said employees with coverage under California workers compensation laws and unemployment
12 benefits;

13 33. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
14 Code of Civil Procedure section 1021.5; and

15 34. For such other and further relief as the Court may deem equitable and appropriate.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

18
19 DATED: September 27, 2013

HAYES PAWLENKO LLP

20
21
22 By: _____


Kyle D. Pawlenko

Attorneys for Plaintiff David Simpson