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13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 Cody Bowlay-Williams, individually and on
behalf of others similarly situated,

17 Plaintiff,

18 v.

19 Google, LLC,

20 Defendant.

Case No. _____

**CLASS AND COLLECTIVE ACTION
COMPLAINT FOR DAMAGES,
RESTITUTION, AND INJUNCTIVE
RELIEF**

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

**(2) Failure to Pay Overtime Compensation
in Violation of California Law (Lab. Code
§§ 510, 1194, and 1198, and IWC Wage
Order(s))**

**(3) Failure to Provide Itemized Wage
Statements (Lab. Code § 226)**

**(4) Failure to Pay Earned Wages Upon
Discharge, Waiting Time Penalties in
Violation of Labor Code §§ 201-203**

(5) Violation of California Business and Professions Code § 17200 *et seq.*

(6) Breach of Contract

PRELIMINARY STATEMENT

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1. This is a putative class and collective action brought by individual and representative Plaintiff Cody Bowlay-Williams (“Plaintiff”), on behalf of himself and the proposed California Class and nationwide FLSA Collective. Plaintiff and the putative class members are or were employed by Defendant Google, LLC (“Defendant”) as non-exempt employees eligible for commission or other non-discretionary incentive pay and were denied proper compensation as required by federal and state wage and hour laws. These employees are similarly situated under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b) and Rule 23 of the Federal Rules of Civil Procedure.

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2. The FLSA Collective is made up of all employees Defendant classified as non-exempt/overtime eligible who Defendant paid commissions and/or other incentive pay, such as restricted stock units (also referred to by Defendant as “Google Stock Units” or “GSUs”), who worked for Defendant at any time within three years prior to this action’s filing date through the trial of this action (the “Collective Period”).

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3. The California Class is made up of employees Defendant classified as non-exempt/overtime eligible who Defendant paid commissions and/or other incentive pay, such as restricted stock units (also referred to by Defendant as “GSUs”), who worked for Defendant in the state of California at any time within four years prior to this action’s filing date through the trial of this action (the “California Class Period”).

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4. During the Collective Period, Defendant improperly calculated non-exempt employees’ regular rate of pay, and therefore failed to pay proper overtime compensation to Plaintiff and each member of the FLSA Collective as required by federal law. Plaintiff seeks relief for himself and for the FLSA Collective under the FLSA to remedy Defendant’s failure to pay appropriate overtime compensation.

1 will file consent forms and join as opt-in plaintiffs. This Court also has supplemental jurisdiction
2 over Plaintiff's California state law claims pursuant to 28 U.S.C. § 1367.

3 11. Venue is proper in the United States District Court, Northern District of California
4 pursuant to 28 U.S.C. § 1391, because Plaintiff worked and resides in San Francisco, California
5 (San Francisco County), and because a substantial part of the events giving rise to the claims
6 occurred in this district. This case is properly assigned to the San Francisco Division of the
7 Northern District.

8 **FACTUAL ALLEGATIONS**

9 12. During the applicable statutory period, Plaintiff, the FLSA Collective, and
10 California Class worked as hourly non-exempt employees for Defendant. Defendant employed
11 Plaintiff within the meaning of the FLSA and California law.

12 13. Plaintiff, the FLSA Collective, and California Class are or were hourly-paid, non-
13 exempt employees eligible for overtime pay. As a part of his compensation, in addition to regular
14 hourly pay, Defendant paid Plaintiff incentive earnings in the form of commissions, which it paid
15 him on a quarterly basis. Defendant also provided Plaintiff with restricted stock units (GSUs).
16 Defendant offered these stocks units as non-discretionary "equity compensation." Upon
17 information and belief, Defendant paid the FLSA Collective and California Class in the form of
18 restricted stock units as well.

19 14. The FLSA and California law require covered employers, such as Defendant, to
20 compensate all non-exempt employees such as Plaintiff, and others similarly situated, at a rate of
21 not less than 1.5 times their regular rate of pay, for work performed in excess of 40 hours per
22 workweek (state and federal law) and/or eight (8) hours per day (state law).

23 15. Under state and federal law, an employee's "regular rate" of pay is not limited to
24 an employee's hourly rate. The "regular rate" also includes an hourly rate derived from non-
25 discretionary incentive compensation.

26 16. For purposes of federal law, the regular rate on non-discretionary incentive
27 compensation is determined by dividing the payment by the total number of hours worked during
28 the period in which that compensation was earned. Overtime is due at one-half that rate for all

1 overtime hours worked that period. This overtime pay is in addition to the overtime pay based on
2 the employee's hourly rate.

3 17. For purposes of California state law, the regular rate on additional non-
4 discretionary incentive compensation is determined by dividing the payment by the total number
5 of non-overtime hours worked during the period in which that compensation was earned.
6 Overtime is due at one and one-half times that rate for overtime hours worked (and twice that rate
7 for double-time hours worked). This overtime pay is in addition to the overtime pay based on the
8 employee's hourly rate.

9 18. Upon information and belief, Defendant paid overtime pay to Plaintiff, the FLSA
10 Collective and the California Class based on employees' hourly rate, without calculating the
11 regular rate based on all non-discretionary incentive pay or GSUs. Because Defendant
12 miscalculated the regular rate, Defendant suffered and permitted Plaintiff, the FLSA Collective,
13 and California Class to work more than 40 hours per week and/or eight (8) hours per day without
14 receiving proper overtime pay.

15 19. For example, on the paystub with a pay date of February 19, 2021, Defendant paid
16 Plaintiff \$103,021.88 in commissions. This commission payment was for commissions earned in
17 the Fourth Quarter (q4) of 2020. During this same pay quarter, Plaintiff worked 35 hours of
18 overtime. Defendant also issued Plaintiff a payment of GSUs for the Fourth Quarter. Defendant
19 paid Plaintiff 1.5 times his hourly rate for these overtime hours but did not include any additional
20 overtime pay resulting from the commission and/or stock unit payments.

21 20. Defendant's policy and practice of failing to include non-discretionary incentive
22 earnings, and/or GSUs, when calculating the regular rate of pay deprived Plaintiff, and others
23 similarly situated, of the proper overtime wages guaranteed by law.

24 21. Plaintiff and those similarly situated worked in excess of forty (40) hours per week
25 and/or eight (8) hours per day for Defendant on one or more occasions without receiving proper
26 overtime pay.

27 22. Because Defendant did not pay Plaintiff and other non-exempt employees at the
28 appropriate overtime, Defendant's wage statements did not accurately reflect all rates of pay and

1 did not correctly itemize the hours worked at each rate of pay.

2 23. Plaintiff's employment with Defendant ended in August of 2021. However,
3 Defendant failed to pay all wages that were due at that time, including legally required overtime
4 premiums at the appropriate rate. More than 30 days have passed since the end of Plaintiff's
5 employment, and Defendant still has not paid all wages that are due and owing.

6 24. Defendant's conduct, as set forth in this Complaint, was willful, knowing and
7 intentional, and in bad faith. Defendant operated under a scheme that has caused significant
8 damages to Plaintiff and the similarly situated individuals.

9 **COLLECTIVE ACTION ALLEGATIONS**

10 25. Plaintiff brings this action on behalf of himself and other similarly situated
11 employees as authorized under the FLSA, 29 U.S.C. § 216(b). The employees similarly situated
12 are as follows:

13 26. **FLSA Collective:** All employees Defendant classified as non-
14 exempt/overtime eligible who Defendant paid commissions and/or other incentive pay, such
15 as GSUs, who worked for Defendant at any time within three years prior to this action's filing
16 date through trial.

17 27. Defendant operated under a scheme to deprive these employees of overtime
18 compensation by failing to properly compensate them for overtime hours worked.

19 28. Defendant is liable under the FLSA for failing to properly compensate Plaintiff
20 and the FLSA Collective, and as such, notice should be sent to the FLSA Collective. There are
21 numerous similarly situated current and former employees of Defendant who have been denied
22 overtime pay in violation of the FLSA who would benefit from the issuance of Court-supervised
23 notice of this lawsuit and the opportunity to join. Those similarly situated employees are known
24 to Defendant and are readily identifiable through Defendant's records.

25 **CLASS ACTION ALLEGATIONS**

26 29. Plaintiff brings this action on behalf of himself and as a class action on behalf of
27 all similarly situated employees. The California Class is defined as follows:

28 30. **California Class:** All employees Defendant classified as non-exempt/overtime

1 eligible who Defendant paid commissions and/or other incentive pay, such as GSUs, who worked
2 for Defendant in the state of California at any time within four years prior to this action's filing
3 date through the trial.

4 31. This action is properly brought as a class action pursuant to the class action
5 procedures of Rule 23 of the Federal Rules of Civil Procedure.

6 32. The class is so numerous that joinder of all members is impractical. While the
7 exact number and identities of class members are unknown at this time, and can only be
8 ascertained through appropriate discovery, Plaintiff believes that there are more than fifty (50)
9 class members.

10 33. This litigation is properly brought as a class action because of the existence of
11 questions of fact and law common to Plaintiff and other members of the class which predominate
12 over any questions affecting only individual members, including:

- 13 a. Whether Defendant is liable to members of the class described above for violations
14 of the applicable labor code provisions;
- 15 b. Whether Defendant improperly calculated the regular rate for purposes of overtime
16 payments to members of the class;
- 17 c. Whether Defendant knowingly and intentionally failed to provide accurate wage
18 statements;
- 19 d. Whether Defendant willfully failed to pay all wages due at termination; and
- 20 e. Whether Defendant engaged in unfair competition.

21 34. This litigation is properly brought as a class action because Plaintiff's claims are
22 typical of the claims of the class members, since all such claims arise from Defendant's standard
23 policies and practices.

24 35. Like all class members, Plaintiff was damaged by Defendant's system-wide
25 policies and practices of improperly calculating the regular rate, failing to provide compliant
26 wage statements, and failing to pay all wages due at separation from employment, thus giving rise
27 to legal remedies under the California Labor Code.

28 36. Plaintiff has no interests antagonistic to the interests of other class members.

1 43. Plaintiff and Defendant entered no agreement that Defendant could cap these
2 earned commissions. As a result, Defendant breached its agreement with Plaintiff and denied
3 Plaintiff the commissions to which he is entitled.

4 **FIRST CLAIM FOR RELIEF**

5 **FAILURE TO PAY OVERTIME UNDER THE FLSA**

6 29 U.S.C. §§ 201 et seq.

7 (On Behalf of Plaintiff and the FLSA Collective)

8 44. Plaintiff and the FLSA Collective allege and incorporate by reference the
9 allegations in the preceding paragraphs.

10 45. At all relevant times, Defendant was an “employer” engaged in interstate
11 commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29
12 U.S.C. § 203. At all relevant times, Defendant employed employees, including Plaintiff and each
13 member of the FLSA Collective.

14 46. Plaintiff consents in writing to be a part of this action, pursuant to 29 U.S.C. §
15 216(b). As this case proceeds, it is likely that other individuals will sign consent forms and join
16 as plaintiffs.

17 47. The FLSA requires all covered employers, such as Defendant, to compensate all
18 non-exempt employees at a rate of not less than one and one-half times their regular rate of pay
19 for work performed in excess of forty hours per work week.

20 48. The regular rate of pay is not limited to hourly pay, but also includes the rate
21 derived from non-discretionary incentive payments and other forms of compensation, including
22 GSUs.

23 49. Plaintiff and the FLSA Collective are entitled to be paid overtime compensation, at
24 the proper rate, for all hours worked. By miscalculating the regular rate and failing to
25 compensate Plaintiff and the FLSA Collective proper overtime compensation, Defendant violated
26 the FLSA, 29 U.S.C. §§ 201 et seq.

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

1 **FOURTH CLAIM FOR RELIEF**

2 **WAITING TIME PENALTIES**

3 **California Labor Code §§ 201-203**

4 (On Behalf of Plaintiff and the California Class)

5 67. Plaintiffs alleges and incorporate by reference the allegations in the preceding
6 paragraphs.

7 68. California Labor Code sections 201 and 202 require an employer to pay its
8 employees all wages due within the time specified by law. Labor Code section 203 provides that
9 if an employer willfully fails to pay such wages, the employer must continue to pay the subject
10 employee's wages until the back wages are paid in full or an action is commenced, up to a
11 maximum of thirty days of wages.

12 69. Plaintiff and other Class Members who ceased employment with Defendant are
13 entitled to unpaid compensation, but to date have not received such compensation, more than 72
14 hours after the cessation of their employment.

15 70. Defendant failed to pay the earned and unpaid wages of Plaintiff and Class
16 members within 30 days from the time such wages should have been paid under Labor Code
17 sections 201 and 202.

18 71. Defendant willfully failed to timely compensate Plaintiff and other Class Members
19 at the proper overtime rate for overtime hours worked. As a result, Defendant is liable to Plaintiff
20 and other Class members whose employment ended within the year prior to the initial filing of
21 this suit for waiting time penalties under California Labor Code section 203.

22 **FIFTH CLAIM FOR RELIEF**

23 **CALIFORNIA UNFAIR COMPETITION LAW**

24 **Cal. Bus. & Prof. Code §§ 17200 et seq.**

25 (On Behalf of Plaintiff and the California Class)

26 72. Plaintiff alleges and incorporates by reference the allegations in the preceding
27 paragraphs.

1 73. The foregoing conduct, as alleged, violates the California Unfair Competition Law
2 (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.* The UCL prohibits unfair competition by
3 prohibiting, *inter alia*, any unlawful or unfair business acts or practices.

4 74. Beginning at a date unknown to Plaintiff, at least as long ago as the year 2017,
5 Defendant committed acts of unfair competition, as defined by the UCL, by, among other things,
6 engaging in the acts and practices described herein. Defendant’s conduct as herein alleged has
7 injured Plaintiff and Class Members by wrongfully denying them earned wages, and therefore
8 was substantially injurious to Plaintiff and Class Members.

9 75. Defendant engaged in unfair competition in violation of the UCL by violating,
10 *inter alia*, each of the following laws. Each of these violations constitutes an independent and
11 separate violation of the UCL:

- 12 A. California Labor Code §§ 510, 1194, & 1198
- 13 B. California Labor Code § 226
- 14 C. California Labor Code §§ 201–03
- 15 D. IWC Wage Order 4

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

20 77. The harm to Plaintiff and Class Members in being wrongfully denied lawfully
21 earned wages outweighed the utility, if any, of Defendant’s policies or practices and therefore,
22 Defendant’s actions described herein constitute an unfair business practice or act within the
23 meaning of the UCL.

24 78. Pursuant to Business and Professions Code § 17200 *et seq.*, Plaintiff is entitled to
25 restitution of the overtime earnings other unpaid wages alleged herein that were withheld and
26 retained by Defendant during a period that commences four years prior to the filing of this action,
27 a permanent injunction requiring Defendant to pay required wages, an award of attorneys’ fees
28 pursuant to Code of Civil Procedure § 1021.5 and other applicable law, and costs.

1 **SIXTH CLAIM FOR REIEF**

2 **BREACH OF CONTRACT**

3 (On behalf of Plaintiff)

4 79. As referenced in the preceding paragraphs, Plaintiff entered into a contract with
5 Defendant to be paid commissions pursuant to the terms of Defendant's Sales Bonus Plan.

6 80. Defendant breached its contract with Plaintiff when it failed to follow the Sales
7 Bonus Plan's terms. Specifically, in the Fourth Quarter of 2020, Defendant capped Plaintiff's
8 earned commissions without any agreement to do so, thereby denying Plaintiff the full amount of
9 commissions he was due.

10 81. As a direct and proximate result of Defendant's bad faith and the aforesaid
11 material breach of contract by Defendant, Plaintiff has suffered and continues to suffer damages
12 to be proven at trial.

13 **WHEREFORE**, Plaintiff respectfully requests judgment against Defendant for damages,
14 actual and consequential, and such other and further relief as this Court deems just and proper.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff, on behalf of himself and all members of the FLSA Collective,
17 prays for relief as follows:

- 18 A. Designation of this action as a collective action on behalf of Plaintiff
19 and those similarly situated and prompt issuance of notice pursuant
20 to 29 U.S.C. § 216(b) to all those similarly situated apprising them
21 of the pendency of this action, and permitting them to assert timely
FLSA claims in this action by filing individual consent forms
pursuant to 29 U.S.C. § 216(b);
- 22 B. Judgment against Defendant for violation of the overtime provisions
23 of the FLSA;
- 24 C. Judgment that Defendant's violations as described above were
25 willful;
- 26 D. An award in an amount equal to Plaintiff's and the FLSA
Collective's unpaid back wages at the correct overtime rate;
- 27 E. An award to Plaintiff and the FLSA Collective for liquidated
28 damages;

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- F. An award of reasonable attorneys’ fees and costs;
- G. An award of prejudgment interest to the extent liquidated damages are not awarded;
- H. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; and
- I. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

WHEREFORE, Plaintiff, on behalf of himself and the California Class, prays for additional relief as follows:

- A. That the Court determine that this action may be maintained as a class action under Rule 23(b)(1) and (3) of the Federal Rules of Civil Procedure.
- B. That Plaintiff be designated as the representative of the Rule 23 California Class, and Plaintiff’s Counsel be designated as Class Counsel.
- C. An award of unpaid overtime wages, other due wages, and injunctive relief, pursuant to California law;
- D. Appropriate equitable relief to remedy Defendant’s violations of state law;
- E. Appropriate statutory penalties;
- F. An award of damages and restitution to be paid by Defendant according to proof;
- G. Attorneys’ fees and costs of suit, including expert fees pursuant to Cal. Labor Code §§ 1194 and 226, and Cal. Code of Civil Procedure § 1021.5;
- H. That Defendant be further enjoined to cease and desist from the unlawful activities in violation of the state laws cited above;
- I. Pre-judgment and post-judgment interest, as provided by law; and
- J. Such other equitable relief as the Court may deem just and proper.

Dated: December 22, 2021

NICHOLS KASTER, LLP

By: s/ Daniel Brome
Daniel Brome

Attorney for Plaintiff, the Putative FLSA Collective and the Putative California Class