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6 Attorneys for Plaintiff GARY D. DARSEY,
individually, and on behalf of others
7 similarly situated

8 UNITED STATES DISTRICT COURT

9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 GARY D. DARSEY, an
individual, on behalf of himself
11 and of all others similarly situated,

Case No. 2:17-CV-7014

CLASS ACTION COMPLAINT

12 Plaintiffs,

13 v.

14 WAG LABS, INC.; a Delaware
corporation; JOSHUA VINER, an
15 individual; BRYAN BENGSTON,
16 an individual; and DOES 1-10,
inclusive;

17 Defendants.
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19 Plaintiff GARY D. DARSEY (collectively, “Plaintiff” or “Darsey”)
20 individually and on behalf of all others similarly situated, as class representative,
21 alleges as follows against Defendants WAG LABS, INC., a Delaware Corporation;
22 JOSHUA VINER, an individual; BRYAN BENGSTON, an individual, and DOES
23 1-10 seeking damages and other relief as set forth herein:
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NATURE OF THE ACTION

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2 1. The Defendants (collectively “Wag”) operate under the name “Wag”
3 in the dog walking business by virtue of their “Wag” website and mobile app
4 through which dog owners reserve and purchase dog walking services for their
5 dog(s). Wag promotes itself as the Uber of dog walking services. The dog owners
6 make their reservations either online, or using Wag app through Wag and Wag
7 dispatches its dog walkers to render the dog walking services to the customers.
8 Customers pay directly Wag once the walk is completed. They do not pay the dog
9 walkers. Plaintiff Darsey started working as a dog walker for Wag beginning in
10 about January 2017.

11 2. Wag has maintained a policy and practice of misclassifying Plaintiff
12 Darsey and all other similarly situated dog walkers (collectively also referred to as
13 “Plaintiffs”) of Wag as independent contractors when instead under the law they are
14 employees of Wag and should have been classified and compensated as such, which
15 Wag failed to do in violation of law as set forth herein.

16 3. Wag has also maintained a policy and practice of forcing Plaintiffs to
17 work off the clock without wages by compensating Plaintiffs only from the time
18 that dogs are harnessed up and headed out of the customers’ home to completion of
19 bringing the dogs back into the customers’ house, without regards to the
20 preparation time before and after the dog walks. For example, Wag failed to pay
21 Plaintiff for the time spent working from when Plaintiffs arrive to customers’
22 homes until harnessing, and the time from de-harnessing until leaving a customers’
23 home, which is substantial and often also includes receipt of special food or other
24 instructions from customers and dog walkers also have to spend substantial time
25 waiting for instructions on how to get into dog owners’ homes.

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1 the name “Wag” in the dog walking business by virtue of the “Wag” website and
2 mobile app through which dog owners reserve and purchase dog walking services
3 for their dog(s). The dog owners make their reservations either online or through
4 Wag’s app, and once the dog owners have reserved the dog walks through Wag, the
5 dog owners pay Wag directly for the dog walking services, and available Wag dog
6 walkers render the dog walking services as requested by Wag’s customers.

7 19. Upon information and belief, Defendant JOSHUA VINER (“Viner”) is
8 the Chief Executive Officer of Wag and he is an officer, director and managing
9 agent of Wag, who is subject to the personal jurisdiction of this Court.

10 20. Upon information and belief, Defendant BRYAN BENGSTON
11 (“Bengston”) is the Chief Financial Officer of Wag and he is an officer, director
12 and managing agent of Wag, who is subject to the personal jurisdiction of this
13 Court.

14 21. Defendants Wag, DOES 1-10, Vines, and Bengston operate as part of
15 a single integrated enterprise that employed and/or jointly employed Plaintiff
16 Darsey and the other similarly situated dog walkers employed by the Defendants.
17 Upon information and belief, each Defendant has substantial control over Plaintiffs’
18 working conditions, and had unlawful policies and practices alleged herein that
19 apply to Plaintiffs equally. During all relevant times, these Defendants have been
20 Plaintiffs’ employers and/or joint employers of the Plaintiff and class members in
21 this action within the meaning of the FLSA and have power over personnel
22 decisions, classification of employees, payroll and compensation decisions. Upon
23 information and belief, the Defendants have the power to hire and fire employees,
24 establish and pay their wages, set their work schedules and maintain their
25 employment records.

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1 26. Through its website and mobile app, Wag offers dog walking services
2 throughout California as well as in about 40 other states of the United States of
3 America nationwide.

4 27. To provide the dog walking services that Wag sells to its customers,
5 Wag employs dog walkers nationwide, which Wag calls “Pet Care Providers”
6 including in California, which upon information and belief are hundreds, if not
7 thousands of such Pet Care Providers who have agreed to work for Wag. Plaintiff
8 Darsey has worked as a Pet Care Provider/dog walker for Wag since January 2017.
9 Once a customer has reserved the dog walking services through Wag, then Wag
10 informs the an available dog walker that Wag decides to send to perform the dog
11 walking services reserved of the address and time for the dog walking services.
12 Although each dog walker, including Plaintiff Darsey, is an employee under the
13 law, Wag illegally and unlawfully compensates and classifies each Pet Care
14 Provider/dog walker as an independent contractor. Each dog walker is
15 compensated at fixed amount for each dog walk depending on the length of the
16 walk and on the number of dogs, which amount is determined by Wag in advance
17 and the dog walkers have no power to determine how much they are paid for each
18 walk nor have they any power to determine how much Wag customers are charged
19 for dog walking services. Generally, the dog walkers don’t even know the name of
20 the customers for which they are providing dog walking services until they have
21 been reserved by customers through Wag. In addition, if during the dog walking
22 services a customer wishes to purchase additional dog walking services or lengthen
23 a dog walking session, customers have to do it through Wag and the individual dog
24 walkers have no power to do so. Furthermore, if customers want to cancel a dog
25 walking session or reschedule it, customers have to do so through Wag. The dog
26 walkers also do not set any policies regarding dog walking, rates, cancellations,
27 prices but instead they are all set by Wag⁷and Wag mandates that each dog walkers
28 abide to a litany of policies set by Wag which set forth in detail how each Pet Care

1 Provider/dog walker has to provide the services purchased by the customers.
2 Furthermore, once a customer has purchased dog walking services, Wag controls
3 which dog walkers get informed about it. In order to select and hire the Pet Care
4 Providers, Wag subjects them to an application and interview process. Pet Care
5 Providers cannot offer any services through Wag unless they have applied and they
6 have been interviewed and hired by Wag.

7 28. Wag has maintained a policy and practice of misclassifying Plaintiff
8 Darsey and all other similarly situated Per Care Providers/dog walkers (collectively
9 “Plaintiffs”) of Wag as independent contractors when instead under the law they are
10 employees of Wag and should have been classified and compensated as such, which
11 Wag did not do in violation of law as set forth herein.

12 29. Wag has also maintained a policy and practice of forcing Plaintiffs to
13 work off the clock without wages by compensating Plaintiffs only from the time
14 that dogs are harnessed up and headed out of the customers’ home door and failing
15 to pay Plaintiff for the time spent working from when Plaintiffs arrive to customers’
16 homes until harnessing, and the time from de-harnessing until leaving a customers’
17 home, which is substantial and often also includes receipt of special food or other
18 instructions from customers. Thus, while Plaintiff Darsey and all other similarly
19 situated dog walkers end up performing a lot of work time from the time they arrive
20 to a customer’s home until dogs are harnessed heading out of the customer’s home
21 door, Wag does not pay the Plaintiffs for such time spent working, not does Wag
22 pay them for other time such as time spent receiving special food instructions or
23 other instructions or for the time spent between de-harnessing and leaving a
24 customer’s home. And this time before harnessing and after de-harnessing can be
25 time consuming and in fact, when a customer reserves a 30 minute walk it is the
26 policy of Wag to inform the selected dog walker that 60 minutes actual time are

1 involved and Wag refuses to book a walker for an entire hour even when the
2 reserved dog walk is only 30 minutes even if two customers are in proximity of
3 each other. Furthermore, if a dog walker shows up at a customer's home for a dog
4 walking session and is unable to gain access to the owner's house or to located the
5 dog's equipment, it is the policy of Wag that the dog walker has to wait at least 30
6 minutes before leaving and that if the customer responds within those 30 minutes
7 then the dog walker has to perform the full dog walking session purchased. As a
8 result, Plaintiff and other similarly situated dog walkers end up working up to half
9 an hour more without compensation. In addition, Wag represents to the customers
10 that the Wag workers who will take the customers' dogs on walks are "Pet Care
11 Providers" which implies and represents to the customers that in fact the Wag
12 workers, including Plaintiff and the members of the class as set forth herein,
13 provide care services aside and in addition to just walking the dogs and in fact they
14 regularly do such as receiving instructions on food requirements and other
15 instructions regarding the dogs. Because of the low fixed rates pursuant to how
16 Wag compensates each dog walker for dog walking services as independent
17 contractors and because of time actually involved to perform such services, and
18 Wag's policy of refusing to pay before harnessing and after de-harnessing, Wag not
19 only fails to pay earned wages, but also Plaintiffs often end up being paid less than
20 required under minimum wage laws which is illegal. Wag controls how much dog
21 walkers are paid and controls how much customers pay for dog walking services.
22 In addition, on many occasions Wag has also decided to hold "flash sales" or other
23 sales for customers resulting in dog walkers to be paid even as low as \$6/hour
24 which sale prices Wag forces the dog walkers to absorb lowering the rate at which
25 they are paid because of the number and frequency of these flash sales.

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CLASS ACTION ALLEGATIONS

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2 30. Plaintiff Darsey brings the Causes of Action Numbers 1, 2, 3, 5, 6, 7,
3 and 9, California law claims, under Rule 23 of the Federal Rules of Civil
4 Procedure, on behalf of himself and a class consisting of:

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6 All individuals who have worked as Pet Care
7 Providers/dog walkers for the Defendants in California at
8 any time between November 1, 2013 and the date of final
9 judgment (the “California Class”), including those that
10 still work for the Defendants as Pet Care Providers/dog
11 walkers.

12 The California Class includes both current as well as former Pet
13 Care Providers/Dog Walkers.

14 31. Plaintiff Darsey brings the Fourth Cause of Action, California law
15 claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself
16 and a sub-class consisting of:

17 All individuals who are not working for the Defendants as
18 Pet Care Providers/dog walkers anymore because they
19 resigned or were terminated but who previously worked at
20 Per Care Providers/dog walkers for Defendants in
21 California at any time between November 1, 2013 and the
22 date of final judgment (the “Formerly Employed California
23 Sub-Class.”)

24 This sub-class only includes former Pet Care Providers/dog
25 walkers of the Defendants and as such is a sub-class of the California
26 Class.

27 32. Excluded from the California Class and from the Formerly Employed
28 California Sub-Class are Defendants, Defendants’ legal representatives, officers,
directors, assigns and successors, or any individual who has, or who at any time
during the class period has had, a controlling interest in Defendants; the Judge(s) to
whom this case is assigned and any member of the Judge’s immediate family; and

1 all persons who will submit timely and otherwise proper request for exclusion from
2 the California Class and from the Formerly Employed California Sub-Class.

3 33. The dog walkers and class member part of the California Class and of
4 the Formerly Employed California Sub-Class identified above are so numerous that
5 joinder of all members is impracticable.

6 34. Upon information and belief, the size of the California Class and of the
7 Formerly Employed California Sub-Class is more than 1,000 individuals. Although
8 the precise number of such employees is unknown, the facts on which the
9 calculation of that number depends are within the sole control of Defendants.

10 35. Defendants have acted or have refused to act on grounds generally
11 applicable to the California Class and to the Formerly Employed California Sub-
12 Class, thereby making appropriate final injunctive relief or corresponding
13 declaratory relief with respect to the California Class and to the Formerly
14 Employed California Sub-Class as a whole.

15 36. The claims of the representative parties are typical of the claims of the
16 California Class and of the Formerly Employed California Sub-Class. Plaintiffs
17 and the California Class members and the Formerly Employed California Sub-Class
18 have worked for Defendants. They enjoy the same statutory rights under the
19 California Labor Code to be paid for all hours worked and not to be misclassified as
20 independent contractors. Plaintiffs and California Class members, the Formerly
21 Employed California Sub-Class have all sustained similar types of damages as a
22 result of Defendants' failure to comply with the California Labor Code and
23 Business and Professions Code.

24 37. The representative party Plaintiff Darsey will fairly and adequately
25 represent and protect the interests of the California Class members and of the
26 Formerly Employed California Sub-Class. There is no conflict between the

1 Plaintiffs and the California Class members and the Formerly Employed California
2 Sub-Class.

3 38. A class action is superior to other available methods for the fair and
4 efficient adjudication of the controversy – particularly in the context of wage and
5 hour litigation where individual plaintiffs lack the financial resources to vigorously
6 prosecute a lawsuit against large Defendants. In addition, class litigation is superior
7 because it will obviate the need for unruly duplicative litigation that might result in
8 inconsistent judgments about Defendants’ practices.

9 39. There are questions of law and fact common to the California Class
10 and to the Formerly Employed California Sub-Class which predominate over any
11 questions solely affecting individual members of these classes, including, but not
12 limited to the following:

- 13 (a) Whether Defendants misclassified Plaintiff and the class members as
14 independent contractors;
- 15 (b) Whether Defendants unlawfully failed to pay earned wages to Plaintiff
16 and to the class members;
- 17 (c) Whether Defendants unlawfully failed to pay the Plaintiff and the class
18 members at least minimum wages;
- 19 (d) Whether Defendants’ policy of failing to pay workers was instituted
20 willfully or with reckless disregard of the law;
- 21 (e) The nature and extent of class-wide injury and the measure of damages
22 for those injuries.

23 **COLLECTIVE ACTION ALLEGATIONS**

24 40. Plaintiff Darsey brings the Eighth Cause of Action, FLSA claims, on
25 behalf of himself and all similarly situated individuals who work or worked as Pet
26 Care Providers/dog walkers for Defendants anywhere in the United States of

1 America for up to three years prior to the filing of this Complaint who elect to opt-
2 in to this action (the “FLSA Collective”)

3 41. Defendants are liable under the FLSA for, *inter alia*, misclassifying
4 Plaintiff and the other similarly situated dog walkers. Upon information and belief,
5 there are many similarly situated current and former Pet Care Providers/dog
6 walkers of Defendants anywhere in the United States of America who have been
7 misclassified as independent contractors and who have been underpaid as alleged
8 herein such that they would benefit from the issuance of a court-supervised notice
9 of the present lawsuit and the opportunity to join the present lawsuit. Those
10 similarly situated dog walkers employed by Defendants, are readily identifiable,
11 and can be located through Defendants’ records. Notice should be sent to the FLSA
12 Collective pursuant to 29 U.S.C. § 216(b).

13 **FIRST CAUSE OF ACTION**
14 **VIOLATION OF CALIFORNIA LABOR CODE –**
15 **MISCLASSIFICATION**
16 **(By Plaintiff and the California Class**
17 **Against All Defendants and DOES 1-10)**

18 42. Plaintiff re-alleges and incorporates by reference all of the prior
19 paragraphs of the Complaint as though fully set forth herein.

20 43. California Labor Code 226.8(a) provides that it is unlawful for “any
21 person or employer” to willfully misclassify an employee as an independent
22 contractor.

23 44. Defendants Wag Labs, Inc, Joshua Viner, Bryan Bengston and Does 1-
24 10 constitute a “person or employer” within the meaning of California Labor Code
25 226.8(a).
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1 45. Defendants Wag Labs, Inc; Joshua Viner; Bryan Bengston and Does 1-
2 10 voluntarily and knowingly misclassified Plaintiff and the other dog walkers
3 which are members of the California Class as independent contractors, which
4 constitutes “willful misclassification” within the meaning of California Labor Code
5 section 226.8 and 226.8(i)(4) and each of them is individually liable to Plaintiff and
6 to the California Class.

7 46. Pursuant to California law and Labor Code 226.8(b) and (j), Plaintiff
8 and the California Class are entitled to recover, and all Defendants are subject to,
9 civil penalties, including, but not limited to, a civil penalty of not less than five
10 thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
11 each violation, in addition to any other penalties or fines permitted by law.

12 47. Furthermore, pursuant to California Labor Code 2753 “ A person
13 who, for money or other valuable consideration, knowingly advises an employer to
14 treat an individual as an independent contractor to avoid employee status for that
15 individual shall be jointly and severally liable with the employer if the individual is
16 found not to be an independent contractor.”

17 **SECOND CAUSE OF ACTION**
18 **California Labor Code – Failure To Pay Wages and Minimum Wage**
19 **(Brought on behalf of Plaintiff and the California Class against**
20 **Defendants Wag Labs, Inc. and DOES 1-10)**

21 48. Plaintiff re-alleges and incorporates by reference all allegations in all
22 preceding paragraphs.

23 49. Defendants failed to pay Plaintiff and members of the California Class
24 the full amount of their earned wages under the law. Wag has maintained a policy
25 and practice of misclassifying Plaintiff Darsey and the members of the California
26 Class as independent contractors when instead under the law they are employees of
27 Wag and should have been classified and compensated as such, which Wag did not

1 do in violation of law as set forth herein. Wag has also maintained a policy and
2 practice of forcing Plaintiffs to work off the clock without wages by compensating
3 Plaintiffs only from the time that dogs are harnessed up and headed out of the
4 customers' home door and failing to pay Plaintiff for the time spent working from
5 when Plaintiffs arrive to customers' homes until harnessing, and the time from de-
6 harnessing until leaving a customers' home, which is substantial and often also
7 includes receipt of special food or other instructions from customers as well as time
8 spent preparing Wag's mandatory report card that each Pet Care Provider/Dog
9 Walker has to write after each walk. Thus, while Plaintiff Darsey and all other
10 similarly situated dog walkers end up performing a lot of work time from the time
11 they arrive to a customer's home until dogs are harnessed heading out of the
12 customer's home door, Wag does not pay the Plaintiffs for such time spent
13 working, nor does Wag pay them for other time such as time spent receiving special
14 food instructions or other instructions or for the time spent between de-harnessing
15 and leaving a customer's home. And this time before harnessing and after de-
16 harnessing can be time consuming and in fact, when a customer reserves a 30
17 minute walk it is the policy of Wag to inform the selected dog walker that 60
18 minutes actual time are involved and Wag refuses to book a walker for an entire
19 hour even when the reserved dog walk is only 30 minutes even if two customers are
20 in proximity of each other. Furthermore, if a dog walker shows up at a customer's
21 home for a dog walking session, it is the policy of Wag that the dog walker has to
22 wait at least 30 minutes before leaving and that if the customer shows up within
23 those 30 minutes then the dog walker has to perform the full dog walking session
24 purchased. As a result, Plaintiff and other similarly situated dog walkers end up
25 working up to half an hour more without compensation.

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1 due and payable immediately.” If the employee resigns, Labor Code section 202
2 states that “his or her wages shall become due and payable not later than 72 hours
3 thereafter, unless the employee has given 72 hours previous notice of his or her
4 intention to quit, in which case the employee is entitled to his or her wages at the
5 time of quitting.”

6 59. California Labor Code section 203 provides, in relevant part, that “(a)
7 If an employer willfully fails to pay, without abatement or reduction, in accordance
8 with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is
9 discharged or who quits, the wages of the employee shall continue as a penalty
10 from the due date thereof at the same rate until paid or until an action therefor is
11 commenced; but the wages shall not continue for more than 30 days.”

12 60. The Defendants owe waiting time penalties pursuant to the Labor
13 Code to those individuals who worked as dog walkers for Defendants in California
14 between November 1, 2013 and the date of final judgment who resigned or were
15 terminated by Defendants.

16 61. Upon information and belief, Defendants failed to pay waiting time
17 penalties due under the Labor Code and California law which damaged class
18 members who are entitled to recovery under the Labor Code of the full 30 days of
19 waiting time penalties from Defendants as provided for under the foregoing Labor
20 Code provisions and seek compensation for such amounts to which they are entitled
21 from Defendants.

22 **FIFTH CAUSE OF ACTION**
23 **LABOR CODE SECTION 1197.1**
24 **(By Plaintiff and the California Class Against All Defendants and**
25 **DOES 1-10)**

26 62. Plaintiffs re-alleges and incorporates by reference all allegations in all
27 preceding paragraphs.

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1 63. California Labor Code section 1197.1 provides that: “Any employer or
2 other person acting either individually or as an officer, agent, or employee of
3 another person, who pays or causes to be paid to any employee a wage less than the
4 minimum fixed by an applicable state or local law, or by an order of the
5 commission shall be subject to a civil penalty, restitution of wages, liquidated
6 damages payable to the employee, and any applicable penalties imposed pursuant to
7 Section 203 as follows: (1) For any initial violation that is intentionally committed,
8 one hundred dollars (\$100) for each underpaid employee for each pay period for
9 which the employee is underpaid. This amount shall be in addition to an amount
10 sufficient to recover underpaid wages, liquidated damages pursuant to Section
11 1194.2, and any applicable penalties imposed pursuant to Section 203; (2) For each
12 subsequent violation for the same specific offense, two hundred fifty dollars (\$250)
13 for each underpaid employee for each pay period for which the employee is
14 underpaid regardless of whether the initial violation is intentionally committed.
15 This amount shall be in addition to an amount sufficient to recover underpaid
16 wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
17 imposed pursuant to Section 203; (3) Wages, liquidated damages, and any
18 applicable penalties imposed pursuant to Section 203, recovered pursuant to this
19 section shall be paid to the affected employee.”

20 64. As set forth in this Complaint, the Defendants caused Plaintiff and the
21 California Class to be paid less than the legally required minimum wage in
22 California and are liable for all damages, penalties and amounts due to Plaintiff and
23 to the California Class.

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1 section 226. Plaintiff and each member of the California Class are entitled to the
2 full \$4,000 each for said violation, as well as attorney’s fees and costs for this cause
3 of action.

4 70. Plaintiff and the California Class also seek recovery of penalties,
5 attorney’s fees and all remedies as provided under by Labor Code Section 226 (e)
6 (1), which provides that: “An employee suffering injury as a result of a knowing
7 and intentional failure by an employer to comply with subdivision (a) is entitled to
8 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
9 period in which a violation occurs and one hundred dollars (\$100) per employee for
10 each violation in a subsequent pay period, not to exceed an aggregate penalty of
11 four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
12 attorney's fees.” Sub-section (B) provides: “An employee is deemed to suffer
13 injury for purposes of this subdivision if the employer fails to provide accurate and
14 complete information....”

15 **EIGHTTH CAUSE OF ACTION**
16 **Fair Labor Standards Act – Failure to Pay Wages and Minimum Wage**
(By Plaintiff and the FLSA Collective against All Defendants)

17 71. Plaintiff re-alleges and incorporate by reference all allegations in all
18 preceding paragraphs.

19 72. The Defendants caused Plaintiff and the FLSA Collective not to
20 receipt payment for all time worked on behalf of Defendants and caused Plaintiff
21 and the FLSA Collective to be paid less than minimum wage in violation of the
22 FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to
23 Defendants and protect Plaintiffs and the members of the FLSA Collective.

24 73. Plaintiff and the FLSA Collective are entitled to recover such unpaid
25 wages and wages less than federally mandated minimum wage for up to three years
26 prior to the filing of this suit, as well as attorney’s fees, penalties and costs to the
27 fullest extent provided by law.

1 74. Defendants’ unlawful conduct, as described in this Complaint, has
2 been willful and intentional. Defendants were aware or should have been aware
3 that the practices described in this Complaint were unlawful. Defendants have not
4 made a good faith effort to comply with the FLSA with respect to the compensation
5 of Plaintiffs and the FLSA Collective.

6 75. Because Defendants’ violations of the FLSA have been willful, a
7 three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

8 **NINTH CAUSE OF ACTION**
9 **Business and Professions Code Section 17200 *et seq.*, – Unfair**
10 **Competition**
11 **(By Plaintiff and the California Class against All Defendants)**

12 76. Plaintiff re-alleges and incorporates by reference all allegations in all
13 preceding paragraphs.

14 77. Business and Professions Code section 17200 *et seq.* makes it illegal to
15 engage in “unlawful, unfair, or fraudulent business act or practice and unfair,
16 deceptive, untrue or misleading advertising.”

17 78. Through the acts complained of in this Complaint, Defendants
18 engaged in unfair competition within the meaning of sections 17200 *et seq.*

19 79. Defendants have committed, and continue to commit, unlawful, unfair,
20 and/or fraudulent business acts or practices, as defined in Business & Professions
21 Code section 17200, by among other things, engaging in the unlawful, unfair,
22 and/or fraudulent acts complained of by Plaintiff in this Complaint.

23 80. Defendants engaged in and continue to engage in acts and practices in
24 violation of Business & Professions Code section 17200 by violating, among other
25 things, California common law for tortious conduct in violation of California law,
26 of the California Labor Code and FLSA as alleged herein.

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1 81. Defendants' conduct, acts, and practices in violation of the California
2 statutes and common law above each constitute a separate and independent
3 violation of Business & Professions Code section 17200 et seq.

4 82. Defendants' actions have damaged and continue to damage Plaintiffs
5 by, among other things, violating Plaintiffs' rights under the aforementioned
6 California statutes, common law, and as otherwise alleged in this Complaint.

7 83. Accordingly, Plaintiffs are entitled to restitution of all monies that
8 Defendants have improperly, unfairly, fraudulently, and/or unlawfully withheld
9 from Plaintiffs, to be determined according to proof at trial.

10 84. Pursuant to Business & Professions Code section 17200, Plaintiffs also
11 seeks and are entitled to an injunction prohibiting Defendants from engaging in any
12 further acts of unfair competition in violation of section 17200 et seq.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff DARSEY, on behalf of himself and of all those
15 similarly situated putative class members, prays for the following relief as against
16 Defendants WAG LABS, INC., a Delaware corporation; JOSHUA VINER, an
17 individual; BRYAN BENGSTON, an individual and DOES 1-10, jointly and
18 severally:

19 1. That, at the earliest possible time, Plaintiffs be allowed to give notice
20 of this collective action, or that the Court issue such notice. Such notice shall
21 inform them that this civil action has been filed, of the nature of the action, and of
22 their right to join this lawsuit if they believe they were denied proper wages;

23 2. That the Court determines that this action may be maintained as a
24 collective action pursuant to the FLSA, including under section 216;

25 3. That this action qualifies and may be maintained as a class action
26 under Rule 23 of the Federal Rules of Civil Procedure;

1 specifically requested in this Prayer for Relief; and

2 16. For such other and further relief as this Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff, individually and on behalf of the putative class, hereby demands a
5 jury trial on all issues and claims regarding this Complaint.

6 RESPECTFULLY SUBMITTED.

7 DATED: September 22, 2017

HUA GALLAI, LLP

8
9 By: /s/ Giacomo Gallai

10 Nicholas T. Hua
11 Giacomo Gallai

12 Attorneys for Plaintiff GARY D.
13 DARSEY and all others similarly
14 situated

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