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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF SAN MATEO

18 ANDREW WILSON, individually and on
19 behalf of all others similarly situated and as a
20 private attorney general,

21 Plaintiff,

22 v.

23 SONY COMPUTER ENTERTAINMENT
24 AMERICA, INC. and DOES 1-100, inclusive,

25 Defendants.

ENDORSED FILED
SAN MATEO COUNTY

FEB 14 2005

Clerk of the Superior Court
By S. BUCHANAN
DEPUTY CLERK

CV 4 4 4 8 1 5

No.

CLASS ACTION

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR
(1) VIOLATION OF LABOR CODE
SECTIONS 201 and 202, 204. AND 510 ET
SEQ.; (2) VIOLATION OF LABOR CODE
SECTIONS 2698 ET SEQ.; (3) VIOLATION
OF BUSINESS & PROFESSIONS CODE
SECTIONS 17200 ET SEQ.; AND
(4) ACCOUNTING**

JURY TRIAL DEMANDED

1 Plaintiff Andrew Wilson ("Plaintiff") brings this action against Sony Computer
2 Entertainment America, Inc. ("Sony") and Does 1-100 (collectively, "Defendants"), on behalf of
3 himself, all others similarly situated and as a private attorney general, upon information and belief,
4 except as to his own actions, the investigation of his counsel, and the facts that are a matter of public
5 record, as follows:

6 **OVERVIEW**

7 1. As alleged more fully below, Defendants have failed to pay overtime compensation
8 required by California Labor Code § 1194 and applicable Industrial Welfare Commission Orders to
9 their employees whose primary duties are to produce, copy or install images designed by others into
10 video games, using commercial or in-house software computer programs. Such persons include
11 animators, modelers, texture artists, computer graphics artists, lighters, visual effects artists,
12 environmental artists, and employees performing similar functions. Such persons are referred to in
13 this Complaint as "Image Production Employees."

14 2. Plaintiff brings this action to obtain statutory penalties, damages, punitive damages,
15 restitution, and injunctive relief.

16 **THE PARTIES**

17 3. Plaintiff Andrew Wilson is a resident of California, who was employed by Sony as an
18 Image Production Employee from approximately August 10, 1998 through February 1, 2005.

19 4. Sony is a corporation organized under the laws of Delaware and has its principal place
20 of business in Foster City, California.

21 5. Sony develops, markets, publishes and distributes interactive entertainment software
22 games that are playable by consumers on the PS one™ console and the PlayStation®2 computer
23 entertainment system for the North American market.

24 6. Sony is, and at all times was, an employer under California law and applicable Industrial
25 Welfare Commission Orders.

26 7. The true names and capacities (whether individual, corporate, associate, or otherwise) of
27 defendants Does 1 through 100, inclusive, and each of them, are unknown to Plaintiff, who sues said
28 defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each

1 of the defendants fictitiously named herein is legally responsible in some actionable manner for the
2 events described herein, and thereby proximately caused the damage to Plaintiff and the members of
3 the Class. Plaintiff will seek leave of Court to amend this Complaint to state the true name(s) and
4 capacities of such fictitiously named defendants when the same have been ascertained.

5 8. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,
6 each defendant aided and abetted, and acted in concert with and/or conspired with each and every
7 other defendant to commit the acts complained of herein and to engage in a course of conduct and
8 the business practices complained of herein.

9 **JURISDICTION AND VENUE**

10 9. This Court has subject matter jurisdiction over this class and representative action
11 pursuant to Bus. & Prof Code §§ 17200 et seq.; Labor Code §§ 1194 and 2698; and Code of Civ.
12 Proc. § 382. There is no federal question at issue, as the status of Plaintiff and those similarly
13 situated as “exempt” employees is a question solely of California law and statutes, including the
14 California Civil Code, Labor Code, Code of Civil Procedure, and/or Business & Professions Code.

15 10. Venue is proper in this County, because Sony’s headquarters is located here and many
16 of the wrongful acts complained of occurred in this County.

17 **SUBSTANTIVE ALLEGATIONS**

18 11. Sony is a part of the motion picture, television and theatrical entertainment industry. It
19 competes with companies such as Disney, Time Warner, Vivendi Universal, Lucas Films and others
20 in the entertainment market.

21 12. Because the motion picture, television and video game industries use the same or similar
22 types of computer software to produce, copy and install imagery for effects in their products, much
23 of the labor pool that performs such work for each of those industries is common to all of them.

24 13. Sony regularly recruits employees creating, copying, reproducing and installing imagery
25 in the motion picture and television industries to perform similar such imaging for Sony.

26 14. The Image Production Employees are closely supervised in the performance of their
27 duties, receiving specific instructions and specifications with respect to minute details, such that the
28 images produced, copied or installed by Image Production Employees are consistent with the overall

1 design of each game and that the images will appear alongside each other appropriately. Any image
2 of significance produced, copied or installed by an Image Production Employee is carefully
3 reviewed. Image Production Employees are routinely requested to alter or refine images in order to
4 make those images fit more appropriately in the game.

5 15. Generally speaking, creative judgments with respect to images produced, copied or
6 installed by Image Production Employees are made by supervisory employees.

7 16. The first stage of production of an image is performed by modelers, who produce a
8 computerized three-dimensional (“3D”) model of the image desired; that image is later “painted” or
9 copied on the computer by texture artists. Animators then move the computerized 3D model around
10 within the computer environment to give the appearance of the image moving in some fashion, such
11 as walking, running, or swinging a sword. Lighters and/or background artists “paint” the
12 environment and/or background for the individual images appearing in the video game in the
13 manner requested. Similar tasks are performed by Image Production Employees in the motion
14 picture industry.

15 17. The work of Image Production Employees requires the use of computers, and such
16 employees are skilled in the use of the computer software used to produce, copy or install images for
17 video games.

18 18. Image Production Employees do not have management responsibilities. They do not
19 customarily and regularly direct the work of two or more other employees. They do not have the
20 authority to hire or fire other employees, and they are not responsible for making hiring and firing
21 recommendations. Were they to make such recommendations, the recommendations would not be
22 given any particular weight because of their status as Image Production Employees.

23 19. Image Production Employees do not have duties directly related to the creation or
24 implementation of management policies, or to the general business operations of Sony.

25 20. Image Production Employees do not require a license or certification from the State of
26 California or any other governmental entity in order to perform their jobs.

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1 21. Image Production Employees do not perform work requiring knowledge of an advanced
2 type in a field of science or learning customarily acquired by a prolonged course of specialized
3 intellectual instruction and study.

4 22. Image Production Employees do not perform work that is original and creative in
5 character in a recognized field of artistic endeavor. Image Production Employees do not
6 customarily and regularly exercise discretion and independent judgment. Rather, they follow strict
7 instructions and specifications to produce, copy and install images to be used in the video games,
8 and they rely on their general manual and intellectual ability and training with computers and certain
9 software programs provided to them by Sony in order to do so.

10 23. Image Production Employees' work is not predominantly intellectual and varied in
11 character. Image Production Employees neither choose what images to produce, copy or install, nor
12 determine how or where those images should appear in the video game. Instead, they simply
13 provide the images that are assigned to them in accordance with Defendants' instructions and
14 specifications. Defendants supervise Image Production Employees closely to ensure timely
15 production of each image assigned to them in conformity with Sony's specifications and
16 instructions.

17 24. Image Production Employees' job duties do not consist of the application of
18 computer systems analysis techniques and procedures.

19 25. Image Production Employees' job duties do not require them to be highly skilled or
20 proficient in the theoretical and practical application of highly specialized information to computer
21 systems analysis, programming, or software engineering.

22 26. Image Production Employees' duties do not involve computer systems analysis or
23 programming. Instead, their duties only require them to be skilled in the operation and use of
24 computers and computer software to produce, copy or install imagery for effects used in video
25 games or entertainment software.

26 27. Plaintiff and the other Image Production Employees are or were salaried employees.
27 They regularly work or worked more than eight hours a day and forty hours in a workweek. They
28

1 have worked on weekends and occasionally on national holidays without being paid any overtime
2 compensation for such work.

3 28. During the Class Period, Defendants were aware of the duties performed by Plaintiff and
4 the Class. Defendants also were aware that the duties of Plaintiff and the Class members were
5 inconsistent with exempt status, and that such persons were and are not exempt from the overtime
6 provisions of the California overtime laws.

7 29. In failing to properly compensate Plaintiff and the Class for overtime hours worked,
8 Defendants acted maliciously, oppressively, and/or fraudulently, and such despicable conduct
9 designed to maximize the Defendants' economic gain was carried out with the wrongful intention of
10 causing injury to Plaintiff and the Class, in willful and conscious disregard of the rights of Plaintiff
11 and the Class as established by California law and applicable regulations.

12 30. The harm caused by Defendants' wrongful actions grossly outweighs any benefit that
13 could be attributed to it.

14 **CLASS ACTION ALLEGATIONS**

15 31. Plaintiff brings this action as a class action pursuant to Code of Civil Procedure Section
16 382 and the procedural provisions of Rule 23 of the Federal Rules of Civil Procedure on behalf of
17 themselves and the following proposed Class:

18 All persons who, from February 11, 2001 up to the time of judgment, are or were
19 (1) employed and/or worked as salaried Image Production Employees for Defendants
20 in California and (2) are or were classified as exempt employees and were not paid
overtime.

21 32. The period between February 11, 2001 and the date of trial or final resolution of this
22 matter is referred to below as the "Class Period."

23 33. The Class members are similarly situated to Plaintiff and to each other, because they all
24 perform similar duties and assignments, and all have been subject to Defendants' common policy
25 and practice of classifying all Image Production Employees as exempt from the California overtime
26 laws – while at the same time being assigned to duties inconsistent with exempt status. Like
27 Plaintiff, each member of the Class was employed by Sony to use computers and computer software
28 programs to produce, copy and/or install images for use in Sony's video games pursuant to specific

1 instructions and specifications, and subject to close supervision, and, like Plaintiff, no member of
2 the Class has been paid overtime compensation in accordance with the California laws identified
3 herein.

4 34. Furthermore, the Class Members were all subject to the same unlawful policy or plan of
5 Defendants as Plaintiff, under which they were classified as exempt from the California overtime
6 laws. Any differences which exist in the job duties of the Image Production Employees are not
7 material to their right to overtime compensation pursuant to the California overtime laws.

8 35. Plaintiff is currently unaware of the identities of all the members of the Class. On
9 information and belief, several hundred persons have worked for Defendants as Image Production
10 Employees in California during the Class Period and would therefore be members of the Class. For
11 this reason, joinder of all members of the Class would be impracticable.

12 36. There are questions of law and fact common to the members of the Class that
13 predominate over any questions affecting only individual members, including:

14 a. whether the duties of Image Production Employees are inconsistent with exempt
15 status under California law;

16 b. whether Defendants' failure to pay Plaintiff and Class members overtime
17 compensation violates the California Labor Code and applicable Industrial Wage Commission Wage
18 orders;

19 c. whether Defendants failed to keep adequate records of hours worked by Plaintiff and
20 Class members (and the consequence for such statutory violations if they did not);

21 d. the correct method of calculating back overtime pay;

22 e. whether, by the misconduct alleged herein, Defendants have engaged in unfair and/or
23 unlawful business practices; and

24 f. whether, as a result of Defendants' misconduct, Plaintiff and the Class are entitled to
25 statutory and other penalties, damages, punitive damages, an accounting, restitution, equitable and
26 other relief.

27 37. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all
28 Class members were subjected to and harmed by Defendants' uniform policy of misclassifying

1 Image Production Employees as exempt from overtime compensation in order to avoid having to
2 pay overtime as required by California law. Any differences between individual Class members'
3 job duties are immaterial to the question of whether Image Production Employees were or were not
4 correctly classified as exempt under California law. Plaintiff is subject to no unique defenses, as
5 Defendants' policies were uniform throughout California.

6 38. Plaintiff will fairly and adequately protect the interests of the Class and has retained
7 attorneys experienced in class and employment litigation.

8 39. Questions of law or fact common to the members of the Class predominate over any
9 questions affecting only individual Class members. All of the facts material to resolving the
10 common legal question of whether exemption from the California overtime laws is appropriate are
11 common to all members of the Class. Facts not common to the Class are not material to resolving
12 the common legal question of whether Defendants' exempt classification of the Class is legally
13 correct. A class action is therefore superior to other available methods for the fair and efficient
14 adjudication of this controversy. A class action is also superior to other available methods for the
15 fair and efficient adjudication for the following reasons:

- 16 a. it is economically impractical for members of the Class to prosecute individual
17 actions;
- 18 b. the Class is readily definable;
- 19 c. prosecution as a class action will eliminate the possibility of repetitious litigation;
- 20 and
- 21 d. a class action will enable claims to be handled in an orderly and expeditious manner:
22 a class action will save time and expense and will ensure uniformity of decisions.

23 40. The prosecution of separate actions against Defendants under California law would
24 create a risk of inconsistent or varying adjudications with respect to individual members of the Class
25 which would establish incompatible standards of conduct for the Defendants. In addition,
26 adjudications with respect to individual members of the Class could as a practical matter be
27 dispositive of the interests of the other members of the Class not parties to such adjudications, or
28 could substantially impede or impair their ability to protect their interests.

1 41. Plaintiff does not anticipate any difficulty in the management of this litigation.

2 **PRIVATE ATTORNEY GENERAL ALLEGATIONS**

3 42. In addition to asserting class action claims in this action, Plaintiff asserts claims as a
4 private attorney general on behalf of all current and former Image Production Employees of
5 Defendants pursuant to Labor Code Sections 2698 et seq. Defendants have violated various
6 provisions of the Labor Code as alleged herein, and thereby caused harm to all current and former
7 Image Production Employees. For each such violation, Defendants owe statutory penalties to be
8 assessed by the Court.

9 **FIRST CAUSE OF ACTION**
10 **FAILURE TO PAY OVERTIME WAGES**
11 **(VIOLATION OF LABOR CODE SECTIONS 201 AND 202, 204 AND 510)**

12 43. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
13 herein.

14 44. By their conduct, as set forth herein, Defendants violated California Labor Code § 510
15 et seq. (and the relevant orders of the Industrial Welfare Commission) by failing to pay the Class:
16 (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a
17 workday or in excess of forty hours in any workweek or for the first eight hours worked on the
18 seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in
19 excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh
20 day of work in a workweek.

21 45. Defendants' failure to pay overtime compensation in a timely fashion also constitutes a
22 violation of California Labor Code § 204 which requires that all wages are paid in semimonthly
23 payments. In direct violation of this provision of the Labor Code, Defendants have to date failed to
24 pay any overtime compensation earned by Plaintiff and the Class during the Class Period. Each
25 such failure to make a timely payment of overtime compensation to Plaintiff and the members of the
26 Class constitutes a separate violation of Section 204 of the California Labor Code.

27 46. Defendants' failure to pay overtime compensation in a timely fashion also constitutes a
28 violation of California Labor Code Sections 201 and 202 which require that all wages be paid upon
29 termination, or, in the case of an employee who quits without providing at least 72 hours notice,

1 within 72 hours of the date of quitting. In direct violation of these provisions of the Labor Code,
2 Defendants have to date failed to pay any overtime compensation earned by Plaintiff and the Class
3 during the Class Period.

4 47. Defendants' violations of California Labor Code §§ 201 and 202, 204, and 510 (and the
5 relevant orders of the Industrial Welfare Commission) were repeated, willful and intentional.

6 48. Plaintiff and the Class members have been damaged by said violations of California
7 Labor Code §§ 201 and 202, 204, and 510 (and the relevant orders of the Industrial Welfare
8 Commission).

9 49. Pursuant to California Labor Code §§ 510 and 1194 (and the relevant orders of the
10 Industrial Welfare Commission), Defendants are liable to Plaintiff and members of the Class for the
11 full amount of all their unpaid overtime compensation with interest plus their reasonable attorneys'
12 fees and costs.

13 50. Defendants are also liable to Plaintiff and members of the Class for statutory penalties
14 due pursuant to Labor Code § 203 and § 210 for their violations of Labor Code §§ 201 and 202, and
15 § 204, respectively.

16 51. Because Defendants' unlawful classification of the Plaintiff and the Class as exempt
17 from the California overtime laws constituted despicable conduct that was carried out with malice,
18 oppression, or fraud, in willful and conscious disregard for their rights, Plaintiff and the Class are
19 entitled to exemplary damages to punish the Defendants pursuant to California Civil Code § 3294.

20 **SECOND CAUSE OF ACTION**
21 **VIOLATION OF LABOR CODE SECTIONS 2698, ET SEQ.**

22 52. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
23 herein.

24 53. Defendants' conduct as set forth herein has caused injury to Plaintiff and each member
25 of the Class and all current and former Image Production Employees and has violated the
26 following provisions of the Labor Code: Labor Code §§ 201 and 202, 204, 510 and 1174. For each
27 such violation, Plaintiff seeks civil penalties of one hundred dollars (\$100) for each aggrieved
28 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved

1 employee per pay period for each subsequent violation or such other civil penalties as are permitted
2 by law.

3 54. Plaintiff also seeks an award of reasonable attorneys' fees and costs.

4 **THIRD CAUSE OF ACTION**
5 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200, ET. SEQ.**

6 55. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
7 herein.

8 56. Defendants have engaged in unfair, unlawful, and fraudulent business practices as set
9 forth above.

10 57. By engaging in the above-described acts and practices, Defendants have committed one
11 or more acts of unfair competition within the meaning of Bus. & Prof. Code Section 17200, et seq.

12 58. Plaintiff, on behalf of himself and on behalf of the Class, seeks an order of this Court
13 awarding restitution, injunctive relief and all other relief allowed under Bus. & Prof. Code Sections
14 17200 et seq., plus interest, attorneys' fees and costs pursuant to, inter alia, Code of Civ. Proc.
15 Section 1021.5.

16 **FOURTH CAUSE OF ACTION**
17 **ACCOUNTING**

18 59. Plaintiff realleges and incorporates the above allegations by reference as if set forth fully
19 herein.

20 60. Plaintiff and members of the Class are owed wages which equal the sum of overtime
21 compensation not paid by Defendants to them, statutory interest on such compensation, and waiting
22 time penalties.

23 61. Plaintiff does not know the precise amount of compensation due to Plaintiff and each
24 member of the Class. Upon information and belief, Plaintiff alleges that Defendants possess records
25 from which the amount of compensation due and owing to Plaintiff and each member of the Class
26 can be determined.

27 62. The amount of statutory interest and penalties owed to Plaintiff and each member of the
28 Class is based upon the amount of compensation owed by Defendants. This amount can only be
determined by an accounting of books and records in the possession of Defendants.

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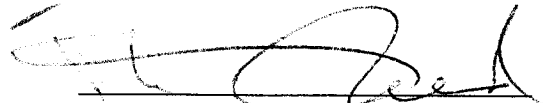
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JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

February 11, 2005

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VERIFICATION

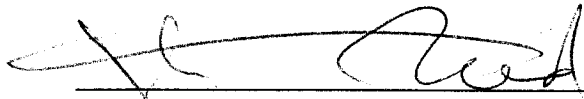
I, Juden Justice Reed, hereby declare:

1. I am counsel for plaintiff in the captioned matter. Plaintiff is absent from the county where this action is pending and from the county in which I maintain my office, and for that reason I am making this verification for and on his behalf.

2. I have read the foregoing CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT and know its contents. I am informed and believe and on that ground allege that the matters stated therein are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 11th of February, 2005, in San Francisco, California.



Juden Justice Reed