

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CHRISTIE TARSA, and SARAH TRATTNER,
Individually, and on Behalf of All Others
Similarly Situated;

Plaintiff,

COLLECTIVE & CLASS ACTION

v.

CASE NO.: 1:19-cv-02684-WMR

MARKETSOURCE, INC.,
Defendant.

**AMENDED FLSA SECTION 216B COLLECTIVE ACTION AND CLASS
ACTION HYBRID COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs, **CHRISTIE TARSA**, individually (referred to herein as “Tarsa”),
SARAH TRATTNER (referred to herein as “Trattner” and collectively with Tarsa
as “Plaintiffs”) and on behalf of all others similarly situated (referred to herein as
the “Putative Class” or “Class”), and brings this Collective Action and Class
Action hybrid lawsuit against the above captioned Defendant,
MARKETSOURCE, INC. (referred to herein as “Marketsource” or “Defendant”)
pursuant to *29 U.S.C. § 216(b)*, the Fair Labor Standards Act (the “FLSA”), for
willfully failing to pay overtime wages in violation of Section 207, and Plaintiff
Trattner brings this Class Action pursuant to Rule 23 of the Federal Rules of Civil

Procedure for violations of California wage laws for failure to pay overtime wages to the class of similarly situated California Recall Specialists, and in support thereof, Plaintiffs state as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over claims under the FLSA pursuant to 29 U.S.C. §216 (b), which states, in relevant part, “[a]n action to recover... may be maintained ... in any Federal or State court of competent jurisdiction.”

2. The Court also has federal jurisdiction over the state law claims pursuant to the jurisdictional provisions of the Class Action Fairness Act, 28 U.S.C. §1332(d).

3. The Court also has supplemental jurisdiction over the California state law subclass pursuant to 28 U.S.C. §1367.

4. The Court has simultaneous jurisdiction over the Collective Action Allegations and the Class Action Allegations. See *Calderone, et. al. v. Scott*, No. 2:14-cv-00519-JES-CM (11th Cir. Sept. 28, 2016) (holding that “a § 216(b) collective action and a state-law Rule 23(b)(3) class action may be maintained in the same proceeding.”)

5. This Court has personal jurisdiction over this action because Defendant is engaged in business throughout the state of Georgia and operates substantial business in Fulton County, Georgia through its regional or primary office located at 11700 Great Oaks Way, Alpharetta, Georgia 30022.

6. Venue is proper to this Court pursuant to 29 U.S.C. § 216(b), because the acts complained of herein took place in Fulton County, Georgia at Defendant's place of business located at 11700 Great Oaks Way, Alpharetta, Georgia 30022.

THE PARTIES

7. Defendant, MARKETSOURCE, INC., is a Delaware for profit Corporation with its listed principal place of business at 7301 Parkway Drive, Hanover, MD 21076. However, upon information and belief, the primary office responsible for all employment policies and decisions, and where Plaintiffs are paid from, is or has been occurring at Defendant's Alpharetta, Georgia office.

8. Marketsource maintains a permanent office at: 11700 Great Oaks Way, Suite #500, Alpharetta, GA, 30022, and this is the primary office where Plaintiffs are paid from and where the unlawful pay practices have occurred. Defendant may be served through its registered agent: Registered Corp. Service Company at 40 Technology Parkway South, Suite #300, Norcross GA 30092.

9. Marketsource is the Plaintiffs' employer as defined in the FLSA and the California Wage laws, and is subject to the FLSA overtime wage requirements.

PLAINTIFF CHRISTIE TARSA

10. At all times relevant to this action, Representative Plaintiff Christie Tarsa resided in the state of New York.

11. At all times relevant to this action, Tarsa was employed by Marketsource working from her home; she spent the majority of her work hours away from her home, on the road and driving throughout the states of New York, Massachusetts, Vermont, New Hampshire, and Connecticut.

12. Plaintiff has been employed with Defendant from approximately May 19, 2017 until the present day performing work solely for the benefit of American Honda Motor Company Inc (hereinafter "Honda").

13. Plaintiff's position is titled by Honda as a "District Recall Coordinator," meanwhile, Defendant Marketsource has provided Plaintiff the job title of "Honda Zone Recall Specialist".

14. Plaintiff, and all other members of the putative class of similarly situated were, or are now, employees of Marketsource within the meaning of 29 U.S.C §203(e)(1).

15. Plaintiff's job duties and requirements involved visiting the homes of present owners of Honda automobiles known by Honda to contain a defective airbag, facilitating and coordinating the replacement of that defective airbag, and then documenting these activities.

16. Plaintiff, and all others similarly situated working in the same position or job have been treated and classified by Defendant as exempt from overtime wages and paid a base salary without any premium for overtime hours worked.

17. Plaintiff's work duties and responsibilities should have put Defendant on notice that she, and all other persons working in the same position, should have been classified as non-exempt employees under the FLSA and paid a premium for overtime hours worked.

18. Throughout the course of her employment by Marketsource, Plaintiff was always denied overtime compensation even though she routinely worked overtime hours with the knowledge, encouragement and at the behest of Marketsource management.

19. Plaintiff routinely began work activities before her shift officially was to start, she routinely worked through some or all of her permitted meal break time, and she routinely worked after her shift officially ended.

20. Plaintiff was not paid any premium or additional compensation for any of her hours worked which exceeded forty (40) in any given work week.

21. For purposes of the Collective Action, Plaintiff Tarsa consents in writing to be a party to this action pursuant to 29 U.S.C. §216(b), and is ready, willing, able, and by her experience well-suited to be a representative plaintiff of the putative class of similarly situated.

PLAINTIFF SARAH TRATTNER

22. At all times relevant to this action, Representative Plaintiff Trattner resided in the state of California.

23. At all times relevant to this action, Trattner was employed by Marketsource working from her home; she spent the majority of her work hours away from her home on the road and driving throughout the state of California.

24. Trattner was employed with Defendant from approximately October 2017 until May 2019, performing work solely for the benefit of Honda.

25. For the first year of her employment with Defendant, Trattner held the title and job duties of a Honda Recall Specialist. She later became a District Trainer, and then for the last month of her employment, went back to being a Honda Recall Specialist.

26. As a trainer, on behalf of management, Trattner had a role in making sure that all Recall Specialists were trained to perform their job duties and requirements in similar manners.

27. Trattner, and all other members of the proposed putative class of similarly situated were, or are now, employees of Marketsource within the meaning of 29 U.S.C §203(e)(1).

28. Trattner's job duties and requirements involved visiting the homes of present owners of Honda automobiles known by Honda to contain a defective airbag, facilitating and coordinating the replacement of that defective airbag, and then documenting these activities.

29. Trattner, and all others similarly situated working in the same position or job have been treated and classified by Defendant as exempt from overtime wages and paid a base salary without any premium for overtime hours worked.

30. Trattner's work duties and responsibilities should have put Defendant on notice that she, and all other persons working in the same position, should have been classified as non-exempt employees under the FLSA and paid a premium for overtime hours worked.

31. Throughout the course of her employment by Marketsource, Trattner was always denied overtime compensation even though she routinely worked

overtime hours with the knowledge, encouragement and at the behest of Marketsource management.

32. Trattner routinely began work activities before her shift officially was to start, she routinely worked through some or all of her permitted meal break time and she routinely worked after her shift officially ended.

33. Trattner was not paid any premium or additional compensation for any of her hours worked which exceeded forty (40) in any given work week or eight (8) in a workday.

34. For purposes of this Collective Action and the Class Action, Trattner consents in writing to be a party to this action pursuant to 29 U.S.C. §216(b), and is ready, willing, able, and by her experience well-suited to be a representative plaintiff of the putative class of similarly situated.

SUMMARY OF FLSA CLASS OF SIMILARLY SITUATED

35. This case is brought by Plaintiffs as a collective action to recover from Defendant, unpaid overtime wages, liquidated damages, and the costs of reasonable attorney's fees under 29 U.S.C. §216(b), for themselves and on behalf of all similarly situated persons composed of the following class:

All people currently employed with Marketsource, Inc. in the United States and its Territories, or employed within the 3 years preceding the filing of this lawsuit who worked under the job titles of Honda Recall Specialist, Zone Recall Specialist, Product Event

Specialist, Recall Coordinator, or any other title used to describe the same position.

36. In the course of their employment with Marketsource, Plaintiffs, and all other similarly situated employees in the Putative Class regularly worked in excess of forty (40) hours per work week and were not paid overtime compensation at the lawful overtime rate for all of the overtime hours worked, based on Defendant's custom and practice of misclassifying employees as exempt employees.

37. Plaintiffs allege on behalf of themselves and the putative class of similarly situated present and former employees that they are entitled to be paid a premium for all overtime hours worked, and paid at rates of one and one half (1.5) times their regular rates of pay as required by the FLSA.

38. Defendant has used the job titles of Honda Zone Recall Specialist, Recall Specialist, District Coordinator, Special Events Specialists and various other titles to describe the same position the Plaintiffs, and the classes of similarly situated worked in, throughout the relevant class periods.

SUMMARY OF CALIFORNIA CLASS

39. Plaintiff Tarsa seeks to recover overtime wages for the following defined class of similarly situated California class members:

All persons currently employed with MARKETSOURCE INC. in the State of California or who were employed within the 4 years preceding the filing of this lawsuit who worked under the job titles of Honda Zone Recall Specialist, Product Event Specialist, Recall Coordinator, or any other title used to describe the same position.

40. The number of individuals in the California class is so numerous that joinder of all members is impracticable. Upon information and belief, the class of California employees including turnover within the last four (4) is in the range of 100 to 300 persons, with fifty (50) to sixty (60) or more employed at any given time.

41. Plaintiff Trattner will fairly and adequately protect the interests of the class, is ready and willing to do so, and has retained counsel that is experienced and competent in class actions, collective actions and employment litigation.

42. Trattner's claims are typical of the members of the proposed class.

43. Trattner has no interests that are contrary to, or in conflict with, the members of the class.

44. A class action suit, such as the instant one, is superior to other available means for a fair and efficient adjudication of the lawsuit. The damages suffered by individual members of the class may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the class to individually seek redress for the wrongs done to them.

45. The claims of Trattner are identical to those of the California class, as the pay practices complained of were applicable to all Recall Specialists in California, and Defendant treated all as exempt employees.

46. Trattner had a role in training other Recall Specialists, and was taught and instructed by Defendant to train all Class members to perform their job requirements and duties in a similar, if not identical manner.

GENERAL COLLECTIVE AND CLASS ACTION ALLEGATIONS

47. Marketsource had a common pay practice and policy of denying its Honda Zone Recall Specialists and District Recall Coordinators (collectively hereinafter, "Recall Specialists") overtime pay for hours worked in excess of forty (40) hours per work week.

48. Defendant has served as the staffing company for the Honda Recall Specialist position on behalf of Honda Motor Corp for at least the four (4) years preceding the filing of this complaint. This position was created in response to the Takata airbag recall project.

49. During any given year during the relevant class periods, Defendant had a single job description, which included identical job duties and responsibilities for the Recall Specialist position and implemented on a national

level to staff the position according to requirements set forth by Honda Motor Corp.

50. From the time Plaintiff Tarsa was hired in May 2017 until the present, Marketsource treated her and all others in the putative class as exempt from overtime wages under the FLSA.

51. From the time Plaintiff Trattner was hired in October 2017 until she left the company in May 2019, Marketsource treated her and all others in the putative class as exempt from overtime wages under the FLSA.

52. At no time did Defendant offer to pay Plaintiffs or the class of similarly situated employees overtime wages for any of their overtime hours worked.

53. At all times material, Marketsource required its Recall Specialists to work in excess of forty (40) hours a week, and Defendant knew that the position routinely required working more than forty (40) hours to complete the job duties, daily quotas, and weekly requirements.

54. Defendant knew that in order for Plaintiffs and the class of similarly situated Recall Specialists to meet quotas, metrics and goals that they had to work overtime hours, including working through lunches, starting work before their official shift, working after their shift ended, and working on their days off.

55. Plaintiffs, and members of the putative class, routinely fielded calls on their personal cell phones from clients at all hours of the day, including hours outside of their scheduled shift, and answered questions from the clients and scheduled the necessary repairs for the clients. Again, scheduling and facilitating repairs of the defective airbags was and is the entire purpose of this job.

56. Plaintiffs, and members of the putative class, performed work for Defendant on their days off such as picking up parts for repairs for the following day or returning parts the next day after repairs were done.

57. Defendant further required Plaintiffs and the putative class members to work a mandatory overtime schedule by requiring, for a period of time, all Recall Specialists to work a schedule of six (6) consecutive days.

58. In other words, for a period of time, Defendant had a corporate work schedule, on a national basis, that included a mandatory overtime hour weekly schedule, such that even working eight (8) hours per day equated to eight (8) hours of uncompensated overtime hours.

59. Defendant willfully misclassified Plaintiffs and the Class of similarly situated as exempt employees on a national, uniform basis, without regard to any individualized analysis of the work performed by any individual employee.

60. Upon information and belief, for the three (3) year period of time before this filing, (the “FLSA Class Period”), the continued violations of §207 of the FLSA that are complained of herein have been practiced and imposed upon all Recall Specialists on a national scale, and all have regularly worked in excess of forty (40) hours per week.

61. Plaintiffs and the putative Class are not considered exempt because “[a] job title alone is insufficient to establish the exempt status of any particular employee ... [but rather] [t]he exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee’s salary and duties meet the requirements of the regulations in this part.” 29 C.F.R. § 541.2.

62. Additionally, the employer, here the Defendant, carries the burden of proving any exemption to the FLSA. *O’Neal v. Barrow Cty. Bd. of Comm’rs*, 980 F.2d 674, 677 (11th Cir. 1993).

63. The job duties and responsibilities of Plaintiffs and the members of the Putative Class does not involve selling or attempting to sell any product or service.

64. The Defendant will likely argue to no avail that the Plaintiffs and members of the Putative Class of Recall Specialists are exempt under the administrative exemption.

65. However, pursuant to the FLSA, an administrative employee is defined as an employee who has “discretion and independent judgment with respect to matters of significance.” 29 C.F.R. §541.200. In order to possess such discretion the employee must have the authority to make “independent choice[s], free from immediate direction or supervision...even if their decisions or recommendations are reviewed at a higher level.” 29 C.F.R. §541.202(c).

66. Plaintiffs and similarly situated Recall Specialists do not qualify for the administrative exemption because they were not allowed to hire, fire, mentor, or discipline any employees, their primary job duty did not involve the exercise and discretion of independent judgment in matters of significance, and because their primary duty was to follow the script and route provided by Honda and Marketsource.

67. The members of the Putative Class are so numerous that joinder of all members is impracticable. The exact number of the members of the Class is unknown to the Plaintiffs at this time and can only be ascertained through appropriate discovery.

68. Upon information and belief there are approximately 1,200 Recall Specialists currently employed throughout the United States, and given turnover in

the past three (3) years, the estimated putative class is approximately 2,200 or more persons.

69. Plaintiffs will fairly and adequately protect the interests of the Putative FLSA Class and have retained counsel that is experienced and competent in collective actions and employment litigation. Plaintiffs have no interest that is contrary to, or in conflict with, members of the Putative Class.

70. Plaintiff Trattner will fairly and adequately protect the interests of the Putative California Class and have retained counsel that is experienced and competent in class actions and employment litigation. Trattner has no interest that is contrary to, or in conflict with, members of the Putative California Class.

71. Notice of the pendency and any resolution of this action should be provided to Putative Class Members by email, U.S. Mail, text message and by web publication.

72. All Recall Specialists received the bulk of their training by shadowing or riding along and watching an existing Recall Specialist perform their job duties.

73. All Recall Specialists were given a nearly identical annual base salary (in each calendar year during the class period roughly, \$50,000 to \$52,000), plus entitlement to be paid a semi-annual retention bonus which was based upon the Recall Specialists staying with the company.

74. Members of the putative class had the same general corporate set work schedules of 10:00 a.m. to 7:00 p.m., with a one (1) hour lunch break.

75. All members of the putative class adhered to a single company employee manual, employee policies, and procedures, including a national unlawful pay practice of treating all Recall Specialists as exempt from overtime pay.

76. Throughout Plaintiffs' employment, Defendant did not have instituted a time tracking system, time clock or program for employees to log in or clock in and out to record their daily work hours.

77. Instead, Plaintiffs and all other persons in the same job titles and positions were only required to log into a website provided by Defendant to record the days they worked and any days missed from work.

78. Defendant offered a one (1) hour lunch break each day, however, most members of the class, including Plaintiffs, worked through this provided meal break in order to achieve their quotas but were not provided a means to report this additional work time.

79. Plaintiffs found it necessary to perform work on their days off, and the Defendant did not provide any means to report these additional work hours or log in the work hours.

80. Some of the work hours may be discernible by the Defendant's GPS tracking system used by Recall Specialists, but all such records are within the Defendant's possession.

81. Upon information and belief, Defendant studies and analyzes the GPS data and has knowledge of the work hours of Plaintiffs and other similarly situated employees working beyond the stated corporate schedules as well as working more than forty (40) hours in workweeks.

82. All the Recall Specialists at any given point in time had identical job duties and requirements and operated from a national level single job description created by Honda Motor Corp and adopted and instituted by Marketsource.

83. Honda Motor Corp monitored and oversaw the Plaintiffs job performance and Defendant required uniformity in performance of job duties and responsibilities of Recall Specialists on a national basis.

COUNT I
VIOLATION OF FLSA SECTION 29 U.S.C. § 207,
FAILURE TO PAY OVERTIME WAGES

84. The Plaintiffs readopt and re-allege the allegations of all preceding paragraphs as if fully set forth herein, and further allege:

85. Plaintiffs bring this FLSA claim on behalf of themselves and all others similarly situated which is comprised of all current and/or former employees of

Marketsource who work now or have worked as Honda Zone Recall Specialists or District Recall Coordinators, or under any titles used by Marketsource to describe the same position, at any time in the three (3) years preceding this filing to the present.

86. At all relevant times, Defendant has been, and continues to be, an employer engaged in commerce and/or the production of goods for commerce within the meaning of FLSA 29 U.S.C. §§ 206(a) and 207(a).

87. At all relevant times, Defendant employed Plaintiffs and members of the Putative Class within the meaning of the FLSA.

88. At all relevant times, Plaintiffs and the Putative Class regularly worked overtime, with the behest, encouragement, knowledge and expectation of Defendant.

89. As stated herein, Defendant has a common policy and practice of refusing to pay overtime compensation for employees in the Recall Specialist position for hours worked in excess of forty (40) hours per work week, regardless of the actual job duties performed or any individualized variances by each employee.

90. Defendant willfully failed to compensate Plaintiffs and the Putative Class for overtime hours they regularly worked, and continue to work, without explanation of the reasons or the exemption claimed.

91. Defendant classified Recall Specialists as exempt, paying a base salary and a semi-annual retention bonus, but did not pay Plaintiffs and all others similarly situated overtime wages.

92. Defendant's failure to pay Plaintiffs and the Putative Class overtime compensation or any premium for overtime hours worked, at a rate not less than one and one-half (1.5) times their regular rates of pay (or any other premium) for work performed beyond forty (40) hours in a work week, was, and remains a willful violation of the FLSA, specifically 29 U.S.C. § 207.

93. Defendant has not made a good faith effort to comply with the FLSA and overtime compensation requirements of same with respect to Plaintiffs and the Putative Class. Defendant's violations of the FLSA are willful, deliberate, and intended to save Defendant millions of dollars in labor costs at the expense of the Plaintiffs and the class of similarly situated.

94. Upon information and belief, Defendant never verified, investigated or obtained any legal opinion as to the application of any exemptions under the FLSA for the Recall Specialist position or alternatively, despite knowledge of

questions or challenges to the exemption classification, continued to classify the position as exempt.

95. Defendant never explained why Plaintiffs and the class were not entitled to be paid for all prior overtime hours worked, or the reason or legal basis they used to deem them exempt from the FLSA.

96. Defendant never complied fully with the FLSA as it did not put in place an actual and dedicated time tracking system or time clock for employees to daily and contemporaneously log in their arrival, break, and departure times as required by the FLSA.

97. Defendant willfully refused to pay overtime wages to Plaintiffs and the class of similarly situated in violation of the FLSA, or did so with reckless disregard for the requirements of the FLSA in order to save millions of dollars in labor costs and increase profits, figuring that if some day the pay practices were challenged, they would still come out ahead millions of dollars in saved labor costs by maintaining this unlawful pay scheme of willful misclassification.

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

99. The primary job duties and responsibilities for the Recall Specialist positions do not meet or satisfy the elements of any exemption under the FLSA.

100. Plaintiff and the class of similarly situated routinely worked hours outside of the stated 10:00 am to 7:00 pm schedule, as well as working through some or all of the lunch hour without being paid a premium for all overtime hours worked.

101. As a result of Defendant's reckless disregard of its FLSA obligations and legal requirements, and Defendant's willful violation of the overtime pay requirements of the FLSA, Plaintiffs and the Putative Class of similarly situated have suffered damages and are owed from Marketsource, overtime wages for all unpaid overtime hours worked within the preceding three (3) years and continuing.

102. Plaintiffs and the class of similarly situated never agreed to waive their right to be paid overtime wages nor did they negotiate the terms of the compensation plan and their wages, and instead were misled to believe by Defendant that they were not entitled to be paid a premium for overtime hours.

103. Plaintiffs relied to their detriment on Defendant's misrepresentation that they were not entitled to be paid overtime hours, suffering without complaint and without receiving a fair day's pay for all the work hours they put forth for the benefit of Defendant.

104. Plaintiffs are entitled to an award of reasonable attorney's fees, costs and expenses of this action, pursuant to 29 U.S.C. § 216(b).

105. Plaintiffs and the class of similarly situated should be paid time and one half (1.5) their regular rate of pay for all overtime hours worked in excess of forty (40) in each and every work week for the preceding three (3) years from the filing of this complaint and continuing for all currently employed persons, and Defendant should be ordered to change its pay practices for the class of similarly situated into the future.

COUNT III
VIOLATION OF CALIFORNIA LABOR CODE
SECTIONS 510 AND 1198 FOR UNPAID OVERTIME WAGES

106. Plaintiff Trattner realleges and incorporates all allegations contained in Paragraphs 1 through 83 as if fully realleged and restated herein.

107. The foregoing conduct, as alleged, constitutes a violation of California's wage and hour laws, *See* Labor Code, § 510. California law requires employers, such as Defendant, to pay overtime compensation to all non-exempt employees for all hours worked over forty (40) per week, or over eight (8) per day.

108. The Recall Specialists working for Marketsource in the State of California were, and are, treated and classified by Defendant as exempt employees and not paid for overtime hours worked.

109. Throughout the four (4) year California Class Period, the California Class members routinely worked in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek, and should have been paid a premium for all such hours.

110. Trattner and other members of the class at times worked in excess of ten (10) hours in a work day, and worked at times more than 5 days in a week.

111. During the California Class Period, Defendant underpaid California Class members by failing to pay overtime wages and classifying all California based Recall Specialists, including Trattner, as EXEMPT from overtime wages.

112. California wage laws follow the FLSA requiring the overtime rates be paid to non-exempt employees at one and one half (1.5) times the employees' regular rate of pay to include the value of the non-discretionary bonuses earned.

113. Trattner and the class of similarly situated California present and former employees of Marketsource routinely worked overtime hours during the four (4) year class period without being paid a premium for their hours worked in excess of forty (40) in a workweek or eight (8) in a workday.

114. Further, Defendant failed to properly track and record the work hours of Recall Specialists from four (4) years preceding this lawsuit and continuing through the present day.

115. Defendant also did, and does not, provide an accurate and reliable system for Recall Specialists to record and track all their work hours, such as the time worked at home.

116. Defendant knew, or should have known, that Trattner and the other Recall Specialists were routinely working overtime hours during the four (4) year class period.

117. Defendant maintained a scheme to avoid the overtime wage laws of California and the FLSA through the practice of willfully, and without good faith, misclassifying Recall Specialists as exempt from overtime wages.

118. As a direct and proximate result of Defendant's willful, reckless and unlawful conduct, including the failure to track time of the Recall Specialists, and failure to pay a premium for overtime hours worked as set forth herein, Plaintiff Trattner and the California Class members have sustained damages including: loss of wages for all overtime hours worked on behalf of Defendant in an amount to be established at trial, prejudgment interest, and costs and attorney's' fees, pursuant to statute and other applicable law.

119. All California class members are entitled to be paid overtime wages owed at one and one half (1.5) times their regular rates of pay, plus an equal sum in liquidated damages, prejudgment interest and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

- a. A ruling that Marketsource has violated the FLSA and that the Honda Zone Recall Specialist, and all variations of this name to describe the same position, should have been, and should now be classified as a non-exempt position;
- b. An order conditionally designating and approving this matter to proceed as a collective action and approving the issuance of supervised notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals and require Defendant to produce to Plaintiffs a list of all the names and contact information for the putative class;
- c. An order enjoining Marketsource from continued violations of the FLSA and requiring Defendant to pay overtime wages to all currently employed similarly situated employees;
- d. Award Prejudgment interest;
- e. An order awarding Plaintiffs their reasonable attorneys' fees, costs and expenses pursuant to 29 U.S.C. § 216(b) and California Wage law;
- f. For an Order designating the California state law subclass as a class action pursuant to Fed. R. Civ. P. Rule 23;

- g. For an Order appointing Plaintiff Trattner as Class representative to represent the interests of the California state law subclass;
- h. For an order Appointing Plaintiff Trattner's counsel as Class Counsel for the Rule 23 California Class;
- i. That the Court finds Marketsource has willfully, and with a lack of good faith, violated the overtime provisions of the FLSA, including the time tracking requirements for non-exempt employees;
- j. That the Court apply a three (3) year statute of limitations to the FLSA violations and four (4) year statute of limitations for the California Class;
- k. That the Court enjoin Defendant, pursuant to 29 U.S.C. § 217, from withholding future payment of overtime compensation owed to members of the Putative Class;
- l. That the Court award Plaintiffs and members of the Putative Class overtime compensation for all the previous hours worked over forty (40) hours in any work week, during the past three (3) years, plus an equal sum as liquidated damages pursuant to § 216 of the FLSA to the date of trial;
- m. That the Court award Plaintiffs Tarsa and Trattner a collective action representative service fee, and Plaintiff Tarsa a class action service award,

for their efforts and time dedicated to bringing justice through this action for the classes of similarly situated;

n. That the court award overtime wages to Trattner and the California Class for all hours worked in the past four (4) years to the present and to the date of trial, and continuing, plus liquidated damages;

o. That the Court award any other legal and equitable relief as this Court may deem fair, just or appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by this Complaint.

Dated this 5th day of July, 2019.

/s/Mitchell L. Feldman

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