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 7

8 UNITED STATES DISTRICT COURT FOR THE
 EASTERN DISTRICT OF WASHINGTON

9 JAIMEY GARRETT, individually and on
 10 behalf of all others similarly situated,

11 Plaintiff,

v.

12 THE CJS SOLUTIONS GROUP, LLC
 13 d/b/a THE HCI GROUP,

14 Defendant.

NO.

**COLLECTIVE AND CLASS
 ACTION COMPLAINT**

CLASS ACTION

JURY TRIAL DEMAND

15
 16 Plaintiff Jaimey Garrett (“Plaintiff”) through her undersigned counsel,
 17 individually and on behalf of all others similarly situated, files this Collective and
 18 Class Action Complaint against Defendant The CJS Solutions Group, LLC d/b/a
 19 The HCI Group (“Defendant” or “HCI”), seeking all available relief under the
 20 Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”) and state

1 law. Plaintiff alleges that she and other similarly situated information technology
2 consultants were improperly classified as independent contractors, and, as a
3 result, did not receive overtime pay for hours worked in excess of forty (40) in a
4 workweek. The following allegations are based on personal knowledge as to
5 Plaintiff's own conduct and are made on information and belief as to the acts of
6 others.

7 **I. JURISDICTION AND VENUE**

8 1. Jurisdiction over Plaintiff's FLSA claims is proper under 29 U.S.C.
9 § 216(b) and 28 U.S.C. § 1331. This Court also has supplemental jurisdiction
10 over the Washington state law claims pursuant 28 U.S.C. § 1367(a) because these
11 claims are so related to the federal claims that they form part of the same case and
12 controversy.

13 2. Venue in this Court is proper pursuant to 28 U.S.C. § 1391, since a
14 substantial part of the events giving rise to Plaintiff's claims occurred within this
15 District, and HCI conducts business in this judicial District.

16 **II. PARTIES**

17 3. Plaintiff Jaimey Garrett ("Plaintiff") is an individual residing in
18 Sacramento, California. Plaintiff worked for Defendant as a Consultant providing
19 information technology support to HCI's clients in Washington, New York,
20 Maryland and Rhode Island between approximately May 2014 and November

1 2015. Pursuant to 29 U.S.C. § 216(b), Plaintiff has consented in writing to
2 participate in this action. *See Exhibit A.*

3 4. Defendant The CJS Solutions Group, LLC d/b/a The HCI Group
4 (“Defendant” or “HCI”) is a corporation providing information technology and
5 educational services for the healthcare industry across the country. HCI
6 maintains its corporate headquarters in Jacksonville, Florida.

7 5. HCI is a leading healthcare information technology firm with a
8 network of hundreds of healthcare IT consultants. HCI describes itself as “The
9 Global Leader in Healthcare IT Consulting.” <https://www.thehcigroup.com/> (last
10 visited 01/31/17).

11 6. HCI employs individuals engaged in commerce or in the production
12 of goods for commerce and/or handling, selling or otherwise working on goods or
13 materials that have been moved in or produced in commerce by any person, as
14 required by 29 U.S.C. §§ 206-207.

15 7. HCI’s annual volume of sales made or business done exceeds
16 \$500,000.

17 **III. COLLECTIVE AND CLASS DEFINITIONS**

18 8. Plaintiff brings Count I of this lawsuit pursuant to 29 U.S.C.
19 § 216(b) as a collective action on behalf of herself and the following class of
20 potential FLSA opt-in litigants:

1 All individuals who were classified as independent contractors
2 while performing consulting work for The CJS Solutions Group,
3 LLC d/b/a The HCI Group (“Defendant” or “HCI”) in the United
4 States from March 28, 2014 to the present.

5 9. Plaintiff brings Counts II, III, IV, V and VI of this lawsuit as a class
6 action pursuant to Fed. R. Civ. P. 23, on behalf of herself and the following class:

7 All individuals who were classified as independent contractors
8 while performing consulting work for The CJS Solutions Group,
9 LLC d/b/a The HCI Group (“Defendant” or “HCI”) in the state of
10 Washington from March 28, 2011 to the present.

11 10. The FLSA Collective and the Washington Class are together referred
12 to as the “Classes.”

13 11. Plaintiff reserves the right to re-define the Classes prior to notice or
14 class certification, and thereafter, as necessary.

15 **IV. FACTS**

16 12. HCI is a healthcare information technology firm that provides
17 healthcare systems implementation support services, such as training and
18 information technology support. HCI employs Consultants, such as Plaintiff, who
19 perform such information technology support in the healthcare industry within
20 this judicial district and throughout the United States.

1 13. HCI's financial results are highly driven by the number of
2 consultants providing information technology support services for HCI's
3 customers and the fees that HCI charges the customers for these services.

4 14. From approximately May 2014 through November 2015, Plaintiff
5 was employed as a Consultant by HCI in Washington, New York, Maryland and
6 Rhode Island.

7 15. HCI improperly, wrongfully and illegally classified Plaintiff and
8 Class Members as independent contractors, when the economic reality of their
9 position is that of an employee, and HCI retains the right of control, and, in fact,
10 actually does control the work.

11 16. Plaintiff and Class Members routinely worked in excess of 40 hours
12 per workweek, but as a result of this misclassification, HCI did not pay them any
13 overtime compensation as required by the FLSA.

14 17. For instance, while working for HCI in Washington, between
15 approximately May 2014 and December 2014, Plaintiff worked, on average, 50
16 hours a week.

17 18. The Department of Labor's Wage and Hour Division ("WHD")
18 Administrator's Interpretation No. 2015-1 provides "guidance regarding the
19 application of the standards for determining who is an employee under the Fair
20 Labor Standards Act [FLSA] ... to the regulated community in classifying

1 workers and ultimately in curtailing misclassification..” U.S. Dep’t of Labor,
2 Wage & Hour Div., Admin.’s Interpretation No. 2015-1, 1 (July 15, 2015).

3 According to the WHD, “most workers are employees under the FLSA’s broad
4 definitions.” *Id.* Plaintiff and Class Members qualify as employees under the
5 FLSA’s test, as further described below.

6 19. Work performed by Plaintiff and Class Members is an integral part
7 of HCI’s business. HCI is in the business of providing computer systems
8 programs and information technology services to the healthcare industry.

9 Plaintiff and Class Members provide information technology support and training
10 to HCI’s clients.

11 20. Plaintiff’s and Class Members’ duties do not involve managerial
12 work. They follow the training provided to them by HCI in performing their
13 work, which is basic information technology support.

14 21. Plaintiff and Class Members do not make any significant relative
15 investments in relation to their work with HCI. HCI provides the training and
16 equipment required to perform the functions of their work.

17 22. Plaintiff and the Class Members have little or no opportunity to
18 experience a profit or loss related to their employment. HCI pays Plaintiff and
19 the Class Members a fixed hourly rate. Plaintiff and the Class Members do not
20

1 share in HCI's monetary success; their income from their work was limited to
2 their hourly rate.

3 23. Plaintiff's and Class Members' work does not require special skills,
4 judgment or initiative. HCI provides training to Plaintiff and Class Members,
5 which they use to provide support to HCI's clients.

6 24. Plaintiff and Class Members are economically dependent on HCI.
7 Plaintiff and Collective Action Members are entirely dependent upon HCI for
8 their business, as they are not permitted to perform services for any other
9 company during their time working for HCI.

10 25. Plaintiff and Class Members are not customarily engaged in an
11 independently established trade, occupation, profession or business.

12 26. Plaintiff and Class Members work for one HCI client continuously at
13 a time. For example, plaintiff spent several months working for one of HCI's
14 clients in Washington.

15 27. Plaintiff and Class Members typically enter into successive projects
16 for HCI. For example, plaintiff worked on four successive projects for HCI.

17 28. Plaintiff and Class Members have little or no authority to refuse or
18 negotiate HCI's rules and policies; they must comply or risk discipline and/or
19 termination.

1 29. HCI instructs Plaintiff and Collective Action Members concerning
2 how to do their work and HCI dictates the details of the performance of their jobs.

3 For example:

4 a. HCI, not Plaintiff or Class Members, conducts all of the
5 billing and invoicing to HCI's clients for the work. HCI bills the third-party
6 customers directly;

7 b. Plaintiff and Class Members have no control over what prices
8 to charge, or the scheduling of shifts. All negotiations over the cost of the work
9 are done directly between HCI and the third-party client;

10 c. HCI requires Plaintiff and Class Members to work the entire
11 project from inception to conclusion;

12 d. HCI provides all training needed for Plaintiff and Class
13 Members to perform their work; and

14 e. HCI requires Plaintiff and Class Members to perform in
15 accordance with HCI's policies, manuals, standard operating procedures and the
16 third-party client's requirements.

17 30. Plaintiff and Class Members often work approximately ten (10)
18 hours per day, five (5) days per week.

19 31. Although Plaintiff and Class Members frequently are required,
20 permitted or encouraged to work more than forty (40) hours per week, they do not

1 receive one and one-half (1 ½) times their regular rate for hours worked in excess
2 of forty (40) hours per week, as required by the FLSA and the Washington
3 Minimum Wage Act.

4 32. Instead, Plaintiff and Class Members are paid a straight hourly rate
5 for hours that they work, regardless of whether they work more than forty hours
6 in a week.

7 33. Plaintiff and Class Members have to request HCI's approval for time
8 off. HCI has the discretion to grant or deny such requests.

9 34. Although HCI was required under Washington law to allow Plaintiff
10 and the Washington Class Members certain paid rest and meal periods during
11 their shifts (or pay them for each rest and meal break missed), HCI regularly and
12 systematically failed to do so. Rather, Plaintiff and Class Members were not
13 provided with paid rest breaks; instead they were paid for only the hours they
14 work. Plaintiff and Class Members also did not receive regular meal breaks, and
15 instead had to work continuously throughout the day.

16 35. Plaintiff and Class Members are employed as information
17 technology support workers for software applications and programs provided by
18 HCI. Plaintiff and Class Members are not working as computer systems analysts,
19 computer programmers, or software engineers as defined in 29 C.F.R. §
20 541.400(a).

1 36. Plaintiff's and Class Members' duties consist of providing software
2 support to HCI's healthcare clients and aiding healthcare staff with the new
3 software. Plaintiff's and Class Members' duties did not include the "application
4 of systems analysis techniques and procedures" pursuant to 29 C.F.R. §
5 541.400(b)(1). Plaintiff and Class Members did not analyze, consult or determine
6 hardware, software programs or any system functional specifications for HCI's
7 clients. *See id.*

8 37. Plaintiff and Class Members did not design, develop, document,
9 analyze, create, test or modify a computer system or program as defined in 29
10 C.F.R. § 541.400(b)(2).

11 38. While Plaintiff's and Class Members' "work was highly dependent
12 upon, or facilitated by, the use of computers and computer software programs;"
13 they were not "primarily engaged in computer systems analysis and
14 programming." U.S. Dept. of Labor, Wage & Hour Div., Fact Sheet #17E:
15 Exemption for Employees in Computer-Related Occupations under the Fair Labor
16 Standards Act (FLSA). Plaintiff and Class Members provided software support
17 to HCI's clients.

18 39. Plaintiff and Class Members were not paid a minimum guaranteed
19 salary.
20

1 40. Plaintiff and Class Members were paid solely on an hourly basis and
2 were paid only for the time they actually worked.

3 41. HCI has shifted certain capital costs to Plaintiff and the Class
4 Members while retaining behavioral and financial control over them in the same
5 way it would over any of its employees.

6 42. HCI failed to keep records of all hours that Consultants worked,
7 including records of the hours they worked in excess of forty hours per week and
8 records of missed rest and meal breaks.

9 43. HCI has intentionally misclassified Plaintiff and the Class Members
10 to avoid HCI's obligations under the FLSA and Washington law. HCI saves
11 thousands of dollars in avoiding expenses associated with its core business by not
12 providing Plaintiff and the Class Members with overtime pay, health, pension,
13 rest breaks, meal breaks or other benefits ordinary employees are entitled to and
14 enjoy.

15 **V. COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA**

16 44. Plaintiff brings this lawsuit pursuant to 29 U.S.C. § 216(b) as a
17 collective action on behalf of the class defined above.

18 45. Plaintiff desires to pursue her FLSA claims on behalf of all
19 individuals who opt-in to this action pursuant to 29 U.S.C. § 216(b).
20

1 46. Plaintiff and the Collective Action Members are “similarly situated”
2 as that term is used in 29 U.S.C. § 216(b) because, *inter alia*, all such individuals
3 currently work or worked pursuant to HCI’s previously described common
4 business and compensation practices as described herein, and, as a result of such
5 practices, have been misclassified as independent contractors and have not been
6 paid the full and legally mandated overtime premium for hours worked over forty
7 (40) during the workweek. Resolution of this action requires inquiry into
8 common facts, including, *inter alia*, HCI’s common misclassification,
9 compensation and payroll practices.

10 47. Specifically, HCI misclassified Plaintiff and the Collective Action
11 Members as independent contractors and paid them a set hourly rate.

12 48. The similarly situated employees are known to HCI, are readily
13 identifiable, and can easily be located through HCI’s business and human
14 resources records.

15 49. HCI employs many Collective Action Members throughout the
16 United States. These similarly situated employees may be readily notified of this
17 action through U.S. Mail and/or other means, and allowed to opt in to this action
18 pursuant to 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their
19 claims for overtime compensation, liquidated damages (or, alternatively, interest)
20 and attorneys’ fees and costs under the FLSA.

VI. CLASS ACTION ALLEGATIONS

1
2 50. Plaintiff also brings this action as a class action pursuant to Fed. R.
3 Civ. P. 23 on behalf of herself and the Washington Class, as defined above.

4 51. The members of the Washington Class are so numerous that joinder
5 of all members is impracticable. Upon information and belief, there are more
6 than forty (40) members of the Washington Class.

7 52. Plaintiff will fairly and adequately represent and protect the interests
8 of the Washington Class because there is no conflict between the claims of
9 Plaintiff and those of the Washington Class, and Plaintiff's claims are typical of
10 the claims of the Washington Class. Plaintiff's counsel are competent and
11 experienced in litigating class actions and other complex litigation matters,
12 including wage and hour cases like this one.

13 53. There are questions of law and fact common to the proposed
14 Washington Class, which predominate over any questions affecting only
15 individual Class members, including, without limitation: whether Defendant has
16 violated and continues to violate Washington law through its policy or practice of
17 misclassifying Consultants as independent contractors, and thereby failing to pay
18 them overtime compensation; whether Defendant has violated and continues to
19 violate Washington law through its policy or practice of failing to provide rest
20

1 and meal breaks; and whether Defendant has failed to keep records of all hours
2 Consultants worked.

3 54. Plaintiff's claims are typical of the claims of the Washington Class
4 in the following ways: 1) Plaintiff is a member of the Washington Class; 2)
5 Plaintiff's claims arise out of the same policies, practices and course of conduct
6 that form the basis of the claims of the Washington Class; 3) Plaintiff's claims are
7 based on the same legal and remedial theories as those of the Washington Class
8 and involve similar factual circumstances; 4) there are no conflicts between the
9 interests of Plaintiff and the Washington Class members; and 5) the injuries
10 suffered by Plaintiff are similar to the injuries suffered by the Washington Class
11 members.

12 55. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3)
13 because questions of law and fact common to the Washington Class predominate
14 over any questions affecting only individual Class members.

15 56. Class action treatment is superior to the alternatives for the fair and
16 efficient adjudication of the controversy alleged herein. Such treatment will
17 permit a large number of similarly situated persons to prosecute their common
18 claims in a single forum simultaneously, efficiently, and without the duplication
19 of effort and expense that numerous individual actions would entail. No
20 difficulties are likely to be encountered in the management of this class action

1 that would preclude its maintenance as a class action, and no superior alternative
2 exists for the fair and efficient adjudication of this controversy. The Washington
3 Class is readily identifiable from Defendant's own records. Prosecution of
4 separate actions by individual members of the Washington Class would create the
5 risk of inconsistent or varying adjudications with respect to individual Class
6 members that would establish incompatible standards of conduct for Defendant.

7 57. A class action is superior to other available methods for adjudication
8 of this controversy because joinder of all members is impractical. Furthermore,
9 the amounts at stake for many of the Washington Class members, while
10 substantial, are not great enough to enable them to maintain separate suits against
11 Defendant. Without a class action, Defendant will retain the benefit of its
12 wrongdoing, which will result in further damages to Plaintiff and the Washington
13 Class. Plaintiff envisions no difficulty in the management of this action as a class
14 action. These similarly situated employees may be readily notified of this action
15 through direct U.S. mail and/or other appropriate means, and allowed to opt out
16 of it pursuant to Fed. R. Civ. P. 23(c)(2), for the purpose of adjudicating their
17 claims for overtime compensation, double damages, interest, and attorneys' fees
18 and costs under the Washington Minimum Wage Act.

1 **VII. COUNT I**

2 **Violation of the FLSA**
3 **(On Behalf of Plaintiff and the Collective Action Members)**

4 58. All previous paragraphs are incorporated as though fully set forth
5 herein.

6 59. The FLSA requires that covered employees be compensated for all
7 hours worked in excess of forty (40) hours per week at a rate not less than one
8 and one-half (1 ½) times the regular rate at which he or she is employed. *See* 29
9 U.S.C. § 207(a)(1).

10 60. The FLSA defines “employer” broadly to include “any person acting
11 directly or indirectly in the interest of an employer in relation to an employee....”
12 29 U.S.C. § 203(d).

13 61. HCI is subject to the wage requirements of the FLSA because HCI is
14 an employer under 29 U.S.C. § 203(d).

15 62. At all relevant times, HCI was an “employer” engaged in interstate
16 commerce and/or in the production of goods for commerce, within the meaning of
17 the FLSA, 29 U.S.C. § 203.

18 63. During all relevant times, Plaintiff and the FLSA Collective Action
19 Members were covered employees entitled to the above-described FLSA’s
20 protections. *See* 29 U.S.C. § 203(e).

1 64. Plaintiff and the FLSA Collective Action Members are not exempt
2 from the requirements of the FLSA.

3 65. Plaintiff and the FLSA Collective Action Members are entitled to be
4 paid overtime compensation for all hours worked over forty (40) in a workweek
5 pursuant to 29 U.S.C. § 207(a)(1).

6 66. HCI, pursuant to its policies and practices, failed and refused to pay
7 overtime premiums to Plaintiff and the FLSA Collective Action Members for all
8 their overtime hours worked by misclassifying Plaintiff and the FLSA Class as
9 independent contractors, thereby exempting them from the requirements of the
10 FLSA.

11 67. HCI knowingly failed to compensate Plaintiff and the FLSA
12 Collective Action Members at a rate of one and one-half (1 ½) times their regular
13 hourly wage for hours worked in excess of forty (40) hours per week, in violation
14 of 29 U.S.C. § 207(a)(1).

15 68. In violating the FLSA, HCI acted willfully and with reckless
16 disregard of clearly applicable FLSA provisions.

17 69. In violating the FLSA, on information and belief, HCI did not have
18 any good faith basis to rely on any legal opinion or advice to the contrary.

19 70. HCI also failed to provide Plaintiff and Collective Action Members
20 with specified meal and rest breaks during their scheduled shifts. Plaintiff often

1 worked straight through a day without breaks, or with only a short break for lunch
2 during a 12-hour shift.

3 **VIII. COUNT II**

4 **Minimum Wage Act—RCW 49.46.090 and RCW 49.46.130**
5 **(On Behalf of Plaintiff and the Washington Class)**

6 71. All previous paragraphs are incorporated as though fully set forth
7 herein.

8 72. Under RCW 49.46.090, employers must pay employees all wages to
9 which they are entitled under the Washington Minimum Wage Act (“WMWA”).
10 If the employer fails to do so, RCW 49.46.090 requires that the employer pay the
11 employees the full amount of the statutory minimum wage rate less any amount
12 actually paid to the employees.

13 73. The WMWA requires that employees be compensated for all hours
14 worked in excess of forty (40) hours per week at a rate not less than one and one-
15 half (1½) times the regular rate at which he is employed. *See* RCW 49.46.130.

16 74. The WMWA defines “employer” broadly to include “any person or
17 group of persons acting directly or indirectly in the interest of an employer in
18 relation to an employee.” RCW 49.46.010(4).

19 75. HCI is subject to the wage requirements of the WMWA because HCI
20 is an “employer” under RCW 49.46.010(4).

1 76. During all relevant times, Plaintiff and the Washington Class were
2 covered employees entitled to the above-described WMWA's protections. *See*
3 RCW 49.46.010(3).

4 77. Plaintiff and the Washington Class are not exempt from the
5 requirements of the WMWA.

6 78. HCI violated RCW 49.46.130 by failing to pay Plaintiff and the
7 Washington Class members the legally required overtime wages for all hours
8 worked in excess of forty (40) hours per week.

9 79. HCI violated RCW 49.46.130 by failing to provide Plaintiff and the
10 Washington Class the rest and meal breaks to which they were entitled under
11 RCW 49.12.005 and WAC 296-126-002.

12 80. As a result of HCI's violations of RCW 49.46.130, Plaintiff and the
13 Washington Class are entitled to recover from Defendant their unpaid overtime
14 wages together with prejudgment interest, attorneys' fees, and the costs of suit.

15 81. HCI violated RCW 49.46.090 by failing to provide Plaintiff and the
16 Washington Class the rest and meal breaks to which they were entitled under
17 RCW 49.12.020 and WAC 296-126-092.

18 82. As a result of HCI's violations of RCW 49.46.090, Plaintiff and the
19 Washington Class are entitled to recover from Defendant their unpaid overtime
20 wages together with prejudgment interest, attorneys' fees, and the costs of suit.

IX. COUNT III

**Failure to Pay for Rest Breaks: WAC 296-126-092 and RCW 49.12.020
(On Behalf of Plaintiff and the Washington Class)**

83. All previous paragraphs are incorporated as though fully set forth herein.

84. RCW 49.12.010 provides that “[t]he welfare of the state of Washington demands that all employees be protected from conditions of labor which have a pernicious effect on their health. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.”

85. RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in any industry or occupation within the state of Washington under conditions of labor detrimental to their health.”

86. Under RCW 49.12.005 and WAC 296-126-002, “conditions of labor” “means and includes the conditions of rest and meal periods” for employees.

87. WAC 296-126-092 provides that employees shall be allowed certain paid rest periods during their shifts.

88. Under Washington law, HCI has an obligation to provide employees with the rest breaks to which they are entitled.

1 89. Under Washington law, HCI has an obligation to ensure that
2 employees take the rest breaks to which they are entitled.

3 90. Under Washington law, HCI has an obligation to provide employees
4 with ten minutes of additional pay for each missed rest break.

5 91. By the actions alleged above, HCI has violated the provisions of
6 RCW 49.12.020 and WAC 296-126-092.

7 92. As a result of these unlawful acts, Plaintiff and the Washington Class
8 have been deprived of straight time and overtime compensation in amounts to be
9 determined at trial, and Plaintiff and the Washington Class are entitled to the
10 recovery of such damages, including interest thereon, attorneys' fees under RCW
11 49.48.030, and costs.

12 **X. COUNT IV**

13 **Failure to Provide Meal Periods: Violation of RCW 49.12.020 and**
14 **WAC 296-126-092**

15 **(On behalf of Plaintiff and the Washington Class)**

16 93. All previous paragraphs are incorporated as though fully set forth
17 herein.

18 94. RCW 49.12.010 provides that “[t]he welfare of the state of
19 Washington demands that all employees be protected from conditions of labor
20 which have a pernicious effect on their health. The state of Washington,
therefore, exercising herein its police and sovereign power declares that

1 inadequate wages and unsanitary conditions of labor exert such pernicious
2 effect.”

3 95. RCW 49.12.020 provides that “[i]t shall be unlawful to employ any
4 person in any industry or occupation within the state of Washington under
5 conditions of labor detrimental to their health.”

6 96. Under RCW 49.12.005 and WAC 296-126-002, “conditions of
7 labor” “means and includes the conditions of rest and meal periods” for
8 employees.

9 97. WAC 296-126-092 provides that employees shall be allowed certain
10 meal periods during their shifts, and the meal periods shall be on the employer’s
11 time when the employee is required by the employer to remain on duty on the
12 premises or at a prescribed work site in the interest of the employer.

13 98. Under Washington law, HCI has an obligation to provide employees
14 with the meal breaks to which they are entitled.

15 99. Under Washington law, HCI has an obligation to ensure that
16 employees take the meal breaks to which they are entitled.

17 100. Under Washington law, HCI has an obligation to provide employees
18 with thirty minutes of additional pay for each missed meal break.

19 101. By the actions alleged above, HCI has violated the provisions of
20 RCW 49.12.020 and WAC 296-126-092.

1 102. As a result of these unlawful acts, Plaintiff and the Washington Class
2 have been deprived of compensation in amounts to be determined at trial, and
3 Plaintiff and the Washington Class are entitled to the recovery of such damages,
4 including interest thereon, attorneys' fees under RCW 49.48.030, and costs.

5 **XI. COUNT V**

6 **Unpaid Wages on Termination**
7 **(On behalf Plaintiff and the Washington Class)**

8 103. All previous paragraphs are incorporated as though fully set forth
9 herein.

10 104. RCW 49.48.010 provides that "when any employee shall cease to
11 work for an employer, whether by discharge or by voluntary withdrawal, the
12 wages due him on account of his employment shall be paid to him at the end of
13 the established pay period." The statute further states that it shall be unlawful for
14 "any employer to withhold or divert any portion of an employee's wages."

15 105. By the actions alleged above, Defendant has violated the provisions
16 of RCW 49.48.010.

17 106. As a result of these unlawful acts, Plaintiff and the Washington Class
18 have been deprived of compensation in amounts to be determined at trial, and
19 Plaintiff and the Washington Class are entitled to the recovery of such damages,
20 including interest thereon, as well as attorneys' fees and costs under RCW
49.48.030.

XII. COUNT VI

**Willful Refusal to Pay Wages
(On Behalf of Plaintiff and the Washington Class)**

1
2
3 107. All previous paragraphs are incorporated as though fully set forth
4 herein.

5 108. RCW 49.52.050 provides that any employer or agent of any
6 employer who, “[w]ilfully and with intent to deprive the employee of any part of
7 his wages, shall pay any employee a lower wage than the wage such employer is
8 obligated to pay such employee by any statute, ordinance, or contract” shall be
9 guilty of a misdemeanor.

10 109. Defendant’s alleged unlawful actions against Plaintiff and the Class
11 discussed above, including violations of RCW 49.46.130, RCW 49.46.090, RCW
12 49.46.012, RCW 49.46.080, and WAC 296-126-092, were committed willfully
13 and with intent to deprive Plaintiff and the Washington Class of part of their
14 wages.

15 110. As such, based on the above allegations, Defendant violated the
16 provisions of RCW 49.52.050.

17 111. RCW 49.52.070 provides that any employer who violates the
18 provisions of RCW 49.52.050 shall be liable in a civil action for twice the amount
19 of wages withheld, as well as attorneys’ fees and costs.
20

1 112. As a result of the willful, unlawful acts of HCI, Plaintiff and the
2 Washington Class have been deprived of compensation in amounts to be
3 determined at trial, and pursuant to RCW 49.52.070, they are entitled to recovery
4 of twice the amount of such damages as well as attorneys' fees and costs.

5 **XIII. PRAYER FOR RELIEF**

6 WHEREFORE Plaintiff seeks the following relief on behalf of herself and
7 the Classes:

8 A. An order permitting this litigation to proceed as a collective action
9 pursuant to 29 U.S.C. §216(b);

10 B. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to all
11 potential collective action members;

12 C. An order permitting this litigation to proceed as a class action
13 pursuant to Fed. R. Civ. P. 23 on behalf of the Washington Class;

14 D. Back pay damages (including unpaid overtime compensation and
15 unpaid wages for missed rest and meal breaks) and prejudgment interest to the
16 fullest extent permitted under the law;

17 E. Liquidated and exemplary damages to the fullest extent permitted
18 under the law;

19 F. Litigation costs, expenses, and attorneys' fees to the fullest extent
20 permitted under the law; and

1 G. Such other and further relief as this Court deems just and proper.

2 RESPECTFULLY SUBMITTED AND DATED this 29th day of March,

3 2017.

4 TERRELL MARSHALL LAW GROUP PLLC

5 By: /s/ Beth E. Terrell, WSBA #26759
Beth E. Terrell, WSBA #26759

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— EXHIBIT A —

OPT-IN CONSENT FORM

Unpaid Wages and Overtime Litigation
The HCI Group

Complete And Mail (or Email) To:

THE HCI GROUP WAGE AND HOUR LITIGATION
ATTN: ERIC LECHTZIN
BERGER & MONTAGUE, P.C.
1622 LOCUST STREET
PHILADELPHIA, PA 19103
Email: elechtzin@bm.net
Phone: (215) 875-3038
Fax: (215) 875-4604

Name: <u>Jaimey</u> <u>Garrett</u>	Date of Birth: 10/30/1965
Address: 631 Beelard Drive Vacaville, CA 95687	Phone No.: (707) 514-6137 Email: jaimey_g@hotmail.com

CONSENT TO JOIN COLLECTIVE ACTION**Pursuant to Fair Labor Standards Act, 29 U.S.C. § 216(b)**

- I consent and agree to pursue my claims arising out of alleged violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* in connection with the above-referenced lawsuit.
- I have worked for The HCI Group ("HCI") from on or about **(dates(s))** May 2014 to on or about **(dates(s))** NOV 2015 and was paid on an hourly basis.
- I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* I hereby agree and opt-in to become a Plaintiff herein and be bound by any judgment of the Court or any settlement of this action.
- I specifically authorize the Named Plaintiffs and their attorneys, Berger & Montague, P.C., as my agents to prosecute this lawsuit on my behalf and to negotiate a settlement of any and all claims I have against the Defendants in this case.

<u>2/8/2017</u> _____ (Date Signed)	<u>Jaimey Garrett</u> _____ (Signature)
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****IMPORTANT NOTE****

Statute of Limitations concerns mandate that you return this form as soon as possible to preserve your rights.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JAIMEY GARRETT, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Sacramento County, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Beth E. Terrell, WSBA #26759, Jennifer Rust Murray, WSBA #36983 936 North 34th Street, Suite 300, Seattle, Washington, 98103-8869, Telephone (206) 816-6603

DEFENDANTS

THE CJS SOLUTIONS GROUP, LLC d/b/a THE HCI GROUP

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. § 201

Brief description of cause: Fair Standards Labor Act violations

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 03/29/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Beth E. Terrell, WSBA #26759

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: