

1 Edward J. Wynne (SBN #165819)
ewynne@wynnelawfirm.com
2 J.E.B. Pickett (SBN #154294)
jebpickett@wynnelawfirm.com
3 WYNNE LAW FIRM
100 Drakes Landing Road, Suite 275
4 Greenbrae, CA 94904
Telephone (415) 461-6400
5 Facsimile (415) 461-3900

6 Brett S. Markson (SBN #157424)
bmarkson@marksonpico.com
7 Timothy A. Pico (SBN #180354)
tpico@marksonpico.com
8 MARKSON PICO LLP
9 444 S. Flower Street, Suite 2160
Los Angeles, CA 90071
10 Telephone (213) 895-4000
Facsimile (213) 895-4376

11 Plaintiff's Counsel
12

13 **SUPERIOR COURT OF CALIFORNIA**
14 **LOS ANGELES COUNTY**

15 JOHN LEE, individually and on behalf of
16 other members of the general public similarly
situated,

17 Plaintiff,

18 vs.

19 ACTIVISION BLIZZARD, INC., BLIZZARD
20 ENTERTAINMENT, INC. and DOES 1
21 through 50, inclusive,

22 Defendant.
23
24
25
26
27
28

Case No.: BC 575665

[Assigned for all purposes to Dept. 307,
Honorable Amy D. Hogue]

[CLASS ACTION]

FIRST AMENDED COMPLAINT

1. Labor Code § 1194
2. B&P § 17200 – Overtime
3. B&P § 17200 – Meal and Rest Breaks
4. B&P § 17200 – Injunction/Dec. Relief
5. Labor Code § 203
6. Labor Code § 226, 1174, 1174.5
7. Violations of Private Attorneys General Act
of 2004, Labor Code 2699 et seq.

Complaint Filed: March 16, 2015

Trial Date: None

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 28 2015

Shem F. Carter, Executive Officer/Clerk
By: Araceli Martinez, Deputy

1 **GENERAL ALLEGATIONS**

2 1. Plaintiff John Lee was a Senior Artist for defendant Blizzard Entertainment, Inc.
3 (“Blizzard”) in the state of California within the last three years of the filing of the original
4 complaint in this action.

5 2. Defendant Blizzard is Delaware registered corporation, licensed to do business in
6 California and registered with the Secretary of the State of California. Defendant Blizzard
7 maintains its principal place of business in Santa Monica, California. Defendant Blizzard is a
8 wholly owned subsidiary of Activision Blizzard, Inc. Defendant is a company engaged in the
9 manufacturing of video games in this judicial district and in the state of California. Defendant
10 has employees with the title “Senior Artist.”

11 3. Defendant Activision Blizzard, Inc. (Activision/Blizzard”) is a Delaware
12 registered corporation, licensed to do business in California and registered with the Secretary of
13 the State of California. Defendant Activision/Blizzard maintains its principal place of business
14 in Santa Monica, California.

15 4. Venue is proper in Los Angeles County as at least some of the acts complained
16 of herein occurred in Los Angeles County. Venue is also proper in Los Angeles County as
17 Defendants’ principal place of business and its “nerve centers” are located in Santa Monica,
18 California, in the County of Los Angeles.

19 5. At all times herein mentioned, Plaintiff and the class identified herein worked as
20 employees for Defendant in salaried positions at Defendant’s California based locations. At all
21 times herein mentioned, Plaintiff and the class have been, and continue to be, citizens of the
22 state of California. Plaintiff is informed and believes and thereon alleges that more than two
23 thirds of members in the proposed class are and continue to be citizens and residents of the state
24 of California.

25 6. At all times herein mentioned Defendant and Does 1 through 50 are and were
26 corporations, business entities, individuals and partnerships, licensed to do business and actually
27 doing business in the State of California, Los Angeles County. Defendant owns and operates an
28 industry, business and establishment in a number of separate geographic locations within the

1 State of California, including within Los Angeles County, for the purpose of manufacturing
2 video games. As such, and based upon all the facts and circumstances incident to Defendant's
3 business in California, Defendant is subject to California Labor Code §§ 1194 *et seq.*, California
4 Business and Professions Code § 17200 *et seq.*, (Unfair Practices Act) and the applicable
5 Industrial Welfare Commission Wage Orders.

6 7. Plaintiff does not know the true names or capacities, whether individual, partner
7 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that
8 reason, said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend
9 this complaint when the true names and capacities are known. Each of said fictitious
10 Defendants was responsible in some way for the matters alleged herein and proximately caused
11 Plaintiff and members of the class to be subject to the illegal employment practices, wrongs and
12 injuries complained of herein.

13 8. At all times herein mentioned, each of said Defendants participated in the doing
14 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
15 Defendants, and each of them, were the agents, servants and employees of each of the other
16 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
17 acting within the course and scope of said agency and employment.

18 9. At all times herein mentioned, Defendants, and each of them, were members of,
19 and engaged in, a joint venture, partnership and common enterprise, and acting within the
20 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

21 10. At all times herein mentioned, the acts and omissions of various Defendants, and
22 each of them, concurred and contributed to the various acts and omissions of each and all of the
23 other Defendants in proximately causing the injuries and damages as herein alleged.

24 11. At all times herein mentioned, Defendants, and each of them, ratified each and
25 every act or omission complained of herein. At all times herein mentioned, the Defendants, and
26 each of them, aided and abetted the acts and omissions of each and all of the other Defendants
27 in proximately causing the damages as herein alleged.

28

1 **FACTUAL ALLEGATIONS**

2 12. Pursuant to California Labor Code §§ 218, 218.6, and 1194, Plaintiff may bring a
3 civil action for overtime wages directly against the employer without first filing a claim with the
4 California Division of Labor Standards Enforcement and may recover such wages, together
5 with interest thereon, penalties, attorney fees and costs.

6 13. Plaintiff and all members of the class identified herein were regularly scheduled
7 as a matter of uniform company policy to work and in fact worked as salaried employees in
8 excess of eight hours per workday and/or in excess of forty hours per workweek without
9 receiving straight time or overtime compensation for such overtime hours worked in violation
10 of California Labor Code § 1194 and California Industrial Welfare Commission Wage Order 4-
11 2001. Defendant has failed to meet the requirements for establishing the exemption because all
12 class members (a) regularly spent more than 50% of their time performing nonexempt work, (b)
13 did not customarily and regularly exercise discretion and independent judgment on matters of
14 significance, (c) did not have the authority to hire or fire or make meaningful recommendations
15 regarding same, (d) did not customarily and regularly supervise at least two employees or the
16 equivalent, (e) did not perform work directly related to the management policies or the general
17 business operations of Defendant or Defendant's customers, (f) did perform nonexempt
18 production and/or sales work a majority of their time (i.e., in excess of 50%) consistent with
19 Defendant's realistic expectations, (g) did not customarily and regularly spend more than 50%
20 of their time away from the Defendant's places of business selling or obtaining orders or
21 contracts, (h) did not earn more than 50% of their compensation in a bona fide commission
22 plan, (i) were not licensed or certified by the State of California and primarily engaged in the
23 practice of law, medicine, dentistry, optometry, architecture, engineering, teaching, or
24 accounting, (j) were not primarily engaged in work requiring knowledge of an advance type in a
25 field or science or learning customarily acquired by a prolonged course of specialized
26 intellectual instruction and study, (k) were not primarily engaged in work that was original and
27 creative in character in a recognized field of artistic endeavor and the result of which depends
28 primarily on the invention, imagination, or talent of the employee or work that is an essential

1 part of or necessarily incident to any of that work, (l) were not primarily engaged in work that
2 was predominantly intellectual and varied in character and is of such character that the output
3 produced or the result accomplished cannot be standardized in relation to a given period of time,
4 and (m) do not customarily and regularly exercise discretion and independent judgment.

5 14. Instead, Senior Artists follow strict instructions and specifications to produce,
6 copy and install images to be used in the video games and they rely on their general manual and
7 intellectual ability and training with computers and certain software programs provided to them
8 by Defendants in order to do so.

9 15. Senior Artists do not choose what images to produce, copy or install, nor
10 determine how or where those images should appear in the video game. Instead, they simply
11 provide the images that are assigned to them in accordance with Defendants' instructions and
12 specifications. Creative Directors supervise Senior Artists closely to ensure timely production
13 of each image assigned to them in conformity with Defendant's specifications and instructions.
14 The Creative Directors receive their instructions from Executive Directors.

15 16. Senior Artists job duties do not consist of the application of computer systems
16 analysis techniques and procedures.

17 17. Senior Artists job duties do not require them to be highly skilled or proficient in the
18 theoretical and practical application of highly specialized information to computer systems
19 analysis, programming, or software engineering.

20 18. Senior Artists job duties do not involve computer systems analysis or
21 programming. Instead, their duties only require them to be skilled in the operation and use of
22 computers and computer software to produce, copy or install imagery used in video games or
23 entertainment software produced by Defendants. Thus, Plaintiff and the class members were
24 not exempt from the overtime requirements of California law for these reasons.

25 **CLASS ALLEGATIONS**

26 19. This complaint is brought by Plaintiff pursuant to California Code of Civil
27 Procedure § 382 on behalf of a class. All claims alleged herein arise under California law for
28 which Plaintiff seeks relief authorized under California law. The class is comprised of, and

1 defined as:

2 All current and former California based employees of Defendants
3 Blizzard and/or Activision/Blizzard, with the title "Senior Artist"
4 who worked at any time from four years prior to the time this case
is filed up to the time of trial.

5 20. The members of the classes are so numerous that joinder of all members is
6 impracticable. The exact number of the members of the classes can be determined by reviewing
7 Defendant's records.

8 21. Plaintiff will fairly and adequately protect the interests of the class and has
9 retained counsel that is experienced and competent in class action and employment litigation.
10 Plaintiff has no interests that are contrary to, or in conflict with, members of the class.

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

16 23. A class action is, therefore, superior to other available methods for the fair and
17 efficient adjudication of the controversy. Absent these actions, the members of the class likely
18 will not obtain redress of their injuries and Defendant will retain the proceeds of its violations of
19 California law.

20 24. Even if any member of the class could afford individual litigation against
21 Defendant, it would be unduly burdensome to the judicial system. Concentrating this litigation
22 in one forum will promote judicial economy and parity among the claims of individual members
23 of the class and provide for judicial consistency.

24 25. There is a well-defined community of interest in the questions of law and fact
25 affecting the Class as a whole. Questions of law and fact common to each of the class
26 predominate over any questions affecting solely individual members of the action. Among the
27 common questions of law and fact are:

28 a. Whether the class has been properly classified as exempt by Defendant

1 from overtime compensation;

2 b. Whether Defendants have or had a uniform and consistent policy and
3 practice concerning duties and responsibilities of the class members which required that the
4 class members both work overtime without pay and regularly spend a majority of their time
5 performing non-exempt tasks;

6 c. Whether the class is expected to regularly work hours in excess of forty
7 per week and/or in excess of eight hours per day;

8 d. How the class is compensated;

9 e. Whether Defendants have or had a uniform and consistent policy and
10 practice regarding vacation time applicable to their salaried employees;

11 f. Whether Defendants have or had a uniform and consistent policy and
12 practice regarding meal and rest breaks applicable to their salaried employees;

13 g. Whether Defendants have or had a uniform and consistent policy and
14 practice for the payment of wages at time of termination;

15 h. Whether the duties, responsibilities, activities and compensation structure
16 of the Senior Artists have changed in a material way during the statutory coverage of this
17 action;

18 i. Whether the class has sustained damages and, if so, what is the proper
19 measure of damages.

20 **FIRST CAUSE OF ACTION**

21 **(Labor Code § 1194)**

22 26. Plaintiff incorporates the allegations contained in the previous paragraphs of this
23 Complaint as if fully set forth herein.

24 27. California Wage Order 4-2001, 8 C.C.R. § 11040, and Labor Code § 510 state
25 that an employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay,
26 for all hours worked in excess of 40 per week and/or 8 per day.

27 28. Class members regularly work more than 40 hours per week and/or 8 hours per
28 day but are not paid overtime.

1 29. Class members do not meet any of the tests for exempt status under the
2 California Wage Orders and/or the California Labor Code.

3 **SECOND CAUSE OF ACTION**

4 **(Bus. & Prof. Code § 17203 – Overtime)**

5 30. Plaintiff incorporates the allegations contained in the previous paragraphs of this
6 Complaint as if fully set forth herein.

7 31. Defendant has committed an act of unfair competition under California Business
8 & Professions Code § 17200 *et seq.* by not paying the required state law overtime pay to the
9 members of the class.

10 32. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests an order requiring
11 Defendant to make restitution of all overtime wages due to the class.

12 **THIRD CAUSE OF ACTION**

13 **(Bus. & Prof. Code § 17203 – Meal and Rest Breaks)**

14 33. Plaintiff incorporates the allegations contained in the previous paragraphs of this
15 Complaint as if fully set forth herein.

16 34. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendant failed
17 to provide and document meal and rest period breaks for the class in the number, length and
18 manner as required. At no time has the Plaintiff or the class entered into any written agreement
19 with Defendant expressly or impliedly waiving their right to their meal and rest breaks.
20 Plaintiff and the class have been injured by Defendant's failure to comply with Labor Code §
21 512 and IWC Wage Order 4-2001 and are thus entitled to the wages set forth in Labor Code §
22 226.7.

23 35. Pursuant to Bus. & Prof. Code § 17203, Plaintiff requests Defendant make
24 restitution of all wages due to the class under this Third Cause of Action.

25 **FOURTH CAUSE OF ACTION**

26 **(Bus. & Prof. Code § 17203 – Injunction and Declaratory Relief)**

27 36. Plaintiff incorporates the allegations contained in the previous paragraphs of this
28 Complaint as if fully set forth herein.

1 Complaint as if fully set forth herein.

2 41. Defendant, as a matter of corporate policy did not maintain or provide accurate
3 itemized statements in violation of Labor Code §§ 226 and 1174.

4 42. For instance, Defendant did not state or did not accurately state, *inter alia*, the
5 total hours worked, hours worked daily, or the actual hourly rate of Plaintiff and other Senior
6 Artists in their pay statements. Defendant's failure to maintain accurate itemized statements
7 was willful, knowing, intentional, and the result of Defendant's custom, habit, pattern and
8 practice. Defendant's failure to maintain accurate itemized statements was not the result of
9 isolated, sporadic or unintentional behavior. Due to Defendant's failure to comply with the
10 requirements of Labor Code §§ 226 and 1174, Plaintiff and other Senior Artists were injured
11 thereby.

12 43. Such a pattern and practice as alleged herein is unlawful and creates an
13 entitlement to recovery by Plaintiff and the class identified herein for all damages and penalties
14 pursuant to Labor Code §§ 226 and 1174.5, including interest thereon, penalties, attorneys' fees
15 and costs.

16 **SEVENTH CAUSE OF ACTION**
17 **(Violations of the Private Attorneys General Act of 2004, Ca Labor Code §§ 2699, et. seq.)**

18 54. Pursuant to Labor Code § 2699, the Labor Code Private Attorneys General Act
19 of 2004, Plaintiff brings this action on behalf of herself and other former employees against
20 Overton Security Services, Inc. only and seek recovery of applicable civil penalties as follows:

- 21 a. where civil penalties are specifically provided in the Labor Code for
22 each of the violations alleged herein, Plaintiffs seek recovery of such
23 penalties;
24 b. where civil penalties are not established in the Labor Code for each of
25 the violations alleged herein, Plaintiffs seek recovery of the penalties
26 established in § 2699(e) of the Labor Code Private Attorneys General
27 Act of 2004, and in accordance with § 200.5 of the Labor Code.

28 55. Plaintiff has exhausted all administrative procedures required under California
Labor Code §§ 2698, 2699, and 2699.3, by filing a "notice of PAGA claims" with the Labor &
Workforce Development Agency ("LWDA") on March 18, 2015.

1 56. In anticipation of the LWDA's response that it "does not intend to investigate"
2 the alleged violations, Plaintiff includes this cause of action herein. However, as Labor Code §
3 2699.3(a)(2)(C) provides Plaintiff a right to amend a complaint any time within 60 days of the
4 time periods specified in this provision, should the LWDA notify Plaintiff that it "does intend to
5 investigate," Plaintiff will amend his Complaint accordingly.

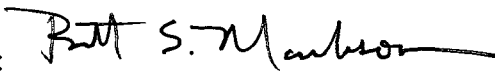
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on his own behalf and on behalf of the members of the class,
9 prays for judgment as follows:

- 10 1. For an order certifying the proposed class;
11 2. For compensatory damages, restitution, attorneys' fees pursuant to Labor Code §
12 1194 and Code of Civil Procedure § 1021.5, penalties, injunction and declaratory relief;
13 3. For prejudgment interest;
14 4. For costs;
15 5. For penalties as alleged herein;
16 6. For equitable restitution of all wages improperly withheld; and,
17 7. For all other relief as the Court deems just.

18
19 Dated: April 28 2015

**WYNNE LAW FIRM
MARKSON PICO LLP**

21 By: 

22 J.E.B. Pickett
23 Brett S. Markson
24 *Counsel for Plaintiff*