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11 and the Plaintiff Class(es)

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 DAN J. KLUGER, individually, and on
15 behalf of all others similarly situated,

16 Plaintiffs,

17 vs.

18 ODWALLA, INC.,

19 Defendants.

) **Case No.:**

) **CLASS/COLLECTIVE ACTION**

) **COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

) **DEMAND FOR JURY TRIAL**

20 Representative Plaintiff alleges as follows:

21 **PRELIMINARY STATEMENT**

22 1. This is a class/collective action, seeking unpaid wages, including overtime
23 compensation, and interest thereon, liquidated damages and other penalties, injunctive and other
24 equitable relief, reasonable attorneys' fees and costs, under, *inter alia*, the Fair Labor Standards Act,
25 §§6 and 7, 29 U.S.C. §§206, 207.

26 2. The Representative Plaintiff brings this action, on behalf of himself and all other
27 persons similarly situated (hereinafter referred to as the "Class Members," the "Plaintiff Class"
28 and/or, more specifically, the "FLSA Class") who are or have been employed by defendant Odwalla,

1 Inc. (hereinafter “ODWALLA” and/or “Defendant[s]”), within the United States as Route Sales
2 Representatives (“RSRs”) and who have been denied compensation for all hours worked in violation
3 of the Fair Labor Standards Act (the “FLSA Class”).

4 3. The “FLSA Class Period” is designated as the time from March 4, 2001 through the
5 trial date, based upon the allegation that the Defendant’s violations of the FLSA have been ongoing
6 for, at least, the past three years and were willful. During the Class Period, ODWALLA has had a
7 consistent policy toward its RSRs of permitting, encouraging, and/or requiring the Representative
8 Plaintiff and Class Members to work, oftentimes in excess of forty (40) hours per week.

9
10 **INTRODUCTION**

11 4. The Fair Labor Standards Act of 1938, as amended (hereinafter referred to as “the
12 Act” or the “FLSA”) provides for minimum standards for both wages and overtime entitlement, and
13 details administrative procedures by which covered work time must be compensated. The enactment
14 of the provisions of the FLSA provide the Federal Courts with substantial authority to stamp out
15 abuses of child labor, equal pay, portal-to-portal activities as well as the overtime pay provisions at
16 issue in this Complaint.

17 5. According to Congressional findings, the existence of labor conditions detrimental
18 to the maintenance of the minimum standard of living engenders unfair commercial competition,
19 labor disputes, burdens in commerce and the free flow of goods in commerce and interferes with
20 the orderly and fair marketing of goods.

21 6. Federal studies have linked long work hours to increased rates of accident and injury
22 and a loss of family cohesion when either or both parents are kept away from home for extended
23 periods of time, on either a daily or weekly basis.

24 7. The Representative Plaintiff is informed and believes and, based thereon, alleges that,
25 within the Class Period, defendant ODWALLA has operated numerous Sales, Operations and/or
26 other business facilities in the State of California and throughout the United States. In so doing,
27 ODWALLA has employed thousands of individuals in Route Sales Representative (“RSR”)
28 positions (employment positions which have not and currently do not meet the test for exemption

1 from the payment of overtime wages) in recent years alone at these facilities/locations across the
2 nation.

3 8. Despite actual knowledge of these facts and legal mandates, ODWALLA enjoyed
4 an advantage over its competition and a resultant disadvantage to its workers by electing not to pay
5 RSRs the full amount of wages due, including overtime wages, as required by the FLSA.

6 9. The Representative Plaintiff is informed and believes and, based thereon, alleges that
7 officers of ODWALLA knew of these facts and legal mandates, yet, nonetheless, repeatedly
8 directed, authorized and/or ratified the violation of the laws cited herein.

9 10. Despite ODWALLA's knowledge of the Plaintiff Class' entitlement to overtime pay,
10 for all applicable work periods, ODWALLA failed to provide same to members of the Plaintiff
11 Class, in violation of the FLSA. This action is brought to redress and end this long-time pattern of
12 unlawful conduct.

13
14 **JURISDICTION AND VENUE**

15 11. This Court has jurisdiction of this action pursuant to the provisions of the Fair Labor
16 Standards Act of 1938 ("FLSA"), 29 U.S.C. §§201 et seq., including under 29 U.S.C. §§207, 216,
17 and 217. This Court also has jurisdiction in light of the existence of a controversy arising under the
18 laws of the United States (28 U.S.C. §1331).

19 12. Venue as to Defendant(s) is proper in this judicial district, pursuant to 28 U.S.C.
20 1391. Defendant ODWALLA maintains facilities and offices in the Northern District of California,
21 and transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of
22 service of process. The unlawful acts alleged herein have a direct effect on Representative Plaintiff
23 and those similarly situated within the State of California and within this judicial district. Defendant
24 ODWALLA operates said facilities, maintains its principal place of business, and has employed
25 numerous Class Members in this judicial district as well as throughout the State of California.

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PLAINTIFFS

13. Plaintiff Dan J. Kluger (the “Representative Plaintiff”) was and is a natural person, and was, during the relevant time period identified herein, employed by defendant ODWALLA as a Route Sales Representative (“RSR”), an employment position which was entitled and continues to enjoy an entitlement to various conditions of employment such as overtime pay for overtime hours worked.

14. In said position, the Representative Plaintiff was repeatedly paid a substandard wage insofar as he was denied full pay for all hours worked, including overtime pay. The Representative Plaintiff is informed and believes and, based thereon, alleges that this conduct of ODWALLA is/was commonplace at every facility owned and/or operated thereby.

15. As used throughout this Complaint, the term “Class Members” and/or the “Plaintiff Class” refer to each and every named plaintiff herein as well as each and every person eligible for membership in the Plaintiff Class, as further described and defined below.

16. At all times herein relevant, the Representative Plaintiff was and now is a person within the class of persons further described and defined below.

DEFENDANTS

17. At all times herein relevant, defendant ODWALLA was a business entity, duly licensed and located and doing business in, but not limited to, this judicial district.

18. The Representative Plaintiff is informed and believes and, based thereon, alleges that defendant ODWALLA directly or indirectly employs and has, since at least March 4, 2001, employed and/or exercised control over the wages, hours and/or working conditions of the Representative Plaintiff and Class Members at ODWALLA’s Sales, Operations and/or other business facilities in various states, including, but not necessarily limited to, the State of California.

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CLASS ACTION ALLEGATIONS

19. The Representative Plaintiff brings this action under FRCP, Rule 23, and 29 U.S.C. §216 on behalf of himself and as a class/collective action on behalf of all persons similarly situated, including, but not necessarily limited to, the following Plaintiff Class:

FLSA Class:

All persons who are/were employed as Route Sales Representatives by Odwalla, Inc. and who worked in excess of forty (40) hours per workweek and who did not receive overtime pay for all excess hours worked.

20. Defendants, their officers and directors are excluded from the Plaintiff Class.

21. This action has been brought and may properly be maintained as a class action under FRCP, Rule 23 and/or 29 U.S.C. §216 because there is a well-defined community of interest in the litigation and the proposed Class are easily ascertainable.

A. Commonality: The Representative Plaintiff and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, thereby making a class action superior to other available methods for the fair and efficient adjudication of the controversy. Consequently, class certification is proper under FRCP, Rule 23(b)(3) and 29 U.S.C. § 216(b). These common questions include, but are not limited to whether defendant ODWALLA violated the FLSA by failing to pay overtime compensation to RSRs who worked in excess of 40 hours per week.

B. Typicality: Representative Plaintiff's claims are typical of the claims of the Plaintiff Class. The Representative Plaintiff and all members of the Plaintiff Class sustained damages arising out of and caused by defendant ODWALLA's common course of conduct in violation of law, as alleged herein.

C. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Class are so numerous that joinder of all members is impractical, if not impossible, insofar as the Representative Plaintiff is informed and believes and, on that basis, alleges that the total number of class members is, at least, several hundred individuals. Membership in the Class will be determined upon analysis of employee and payroll, among other, records maintained by ODWALLA.

- 1 D. Superiority of Class Action: Since the damages suffered by individual Class
2 Members, while not inconsequential, may be relatively small, the expense
3 and burden of individual litigation by each member makes or may make it
4 impractical for members of the Plaintiff Class to seek redress individually for
5 the wrongful conduct alleged herein. Should separate actions be brought or
6 be required to be brought by each individual member of the Plaintiff Class,
7 the resulting multiplicity of lawsuits would cause undue hardship and
8 expense for the Court and the litigants. The prosecution of separate actions
9 would also create a risk of inconsistent rulings, which might be dispositive
10 of the interests of other Class Members who are not parties to the
11 adjudications and/or may substantially impede their ability to adequately
12 protect their interests. Consequently, class certification is proper under
13 FRCP, Rule 23(b)(1)(A). Moreover, the Representative Plaintiff is informed
14 and believes, and based thereon alleges, that Defendant, in refusing to pay
15 overtime to the FLSA Class, has acted and refused to act on grounds
16 generally applicable to all claims, thereby making appropriate injunctive and
17 monetary relief for all members of each class. Consequently, class
18 certification is proper under FRCP, Rule 23(b)(2) and 29 U.S.C. § 216(b).
- 19 E. Adequacy of Representation: The Representative Plaintiff in this class action
20 is an adequate representative of the Plaintiff Class, in that the Representative
21 Plaintiff's claims are typical of those of the Plaintiff Class and the
22 Representative Plaintiff has the same interests in the litigation of this case as
23 the Class Members. The Representative Plaintiff is committed to vigorous
24 prosecution of this case and has retained competent counsel, experienced in
25 and devoted exclusively to conducting litigation of this nature. The
26 Representative Plaintiff is not subject to any individual defenses unique from
27 those conceivably applicable to the Plaintiff Class as a whole. The
28 Representative Plaintiff anticipates no management difficulties in this
litigation.

COMMON FACTUAL ALLEGATIONS

22. As described herein, ODWALLA has, for years, knowingly failed to adequately
compensate RSRs within the class definition identified above for all wages due, thereby enjoying
a significant competitive edge over other businesses within its industry. Among other means,
ODWALLA exercised unlawful business practices that require RSRs to work numerous hours of
overtime on a weekly basis.

23. In so doing, ODWALLA has not only failed to pay its workers the full amount of
compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its
unlawful conduct by concealing the magnitude and financial impact of its wrongdoing.

24. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
the Representative Plaintiff and members of the Plaintiff Class have sustained damages, as described
above, including a loss of compensation, in amounts to be established at trial. As a further direct

1 and proximate result of Defendant’s unlawful conduct, as set forth herein, the Representative
2 Plaintiff and Class Members are also entitled to recover costs and attorneys’ fees, pursuant to 29
3 U.S.C. §216(b).

4
5 **FIRST CAUSE OF ACTION**
6 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES TO FLSA CLASS**
7 **(VIOLATION OF FAIR LABOR STANDARDS ACT)**

8 25. Representative Plaintiff incorporates in this cause of action each and every allegation
9 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

10 26. At all relevant times hereto, ODWALLA has been, and is, an employer engaged in
11 commerce, as those terms are defined in 29 U.S.C. §203(b), (d). As such, ODWALLA employed,
12 as RSRs, members of the FLSA Class, employment which engaged the employees in commerce, as
13 those terms are defined in 29 U.S.C. §§203(b), (e), (g) and 29 U.S.C. §207(a)(1). At all times
14 relevant hereto, ODWALLA has been an “enterprise engaged in commerce or in the production of
15 goods for commerce,” as defined under 29 U.S.C. §203(s)(1).

16 27. Representative Plaintiff is informed and believes, and thereon alleges, that
17 ODWALLA has required the FLSA Class members, as part of their employment, to work without
18 additional compensation, such as overtime, in excess of the forty hour per week maximum under
19 29 U.S.C. §207(a)(1).

20 28. Indeed, in performance of their duties for Defendant, members of the FLSA Class
21 often did work over forty hours per week, yet did not receive overtime compensation required by
22 the FLSA, 29 U.S.C. §§ 206 and 207 for the work, labor and services they provided to the defendant.
23 The precise number of hours will be proven at trial.

24 29. The Representative Plaintiff proposes to take appropriate proceedings to have such
25 persons aggrieved by Defendant’s unlawful conduct notified of the pendency of this action and join
26 this action as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents to joinder with
27 the Court.

28 30. Defendant’s violations of the FLSA were willful.

31. As a result of the foregoing, Representative Plaintiff seeks judgment against

1 Defendant on its own behalf and on behalf of those FLSA Class Members similarly situated who
2 file written consents to joinder in this action for all unpaid wages, including overtime wages owed
3 by Defendant to the Representative Plaintiff and the FLSA Class, pursuant to 29 U.S.C. §§ 206, 207,
4 together with an award of an additional equal amount as liquidated damages, and costs, interest, and
5 reasonable attorneys' fees, as provided for under 29 U.S.C. § 216(b).

6
7 **RELIEF SOUGHT**

8 **WHEREFORE, the Representative Plaintiff**, on behalf of himself and the proposed
9 **Plaintiff Class**, prays for judgment and the following specific relief against **Defendant**, as follows:

10 1. The Court declare, adjudge and decree that this action is a proper class action and
11 certify the proposed FLSA Class and/or any other appropriate subclass(es) under FRCP Rule 23,
12 and/or 29 U.S.C. §216;

13 2. That the Court declare, adjudge and decree that Defendant violated the overtime
14 provisions of the FLSA as to the Representative Plaintiff and the Plaintiff Class;

15 3. An award to the Representative Plaintiff and Class Members of damages for the
16 amount of unpaid compensation, in an amount to be proven at trial;

17 4. That the Court declare, adjudge and decree that Defendant willfully violated its legal
18 duties under the FLSA to pay overtime;

19 5. That the Court declare, adjudge and decree that a) the Representative Plaintiff and
20 the FLSA Class members were at all times relevant hereto, and are, entitled to be paid overtime for
21 work beyond 40 hours in a week; and b) the amounts to which Representative Plaintiff and the
22 FLSA Class members are entitled is to be doubled as liquidated damages and issue an award thereto;

23 6. For all other Orders, findings and determinations identified and sought in this
24 Complaint;

25 7. For Interest on the amount of any and all economic losses, at the prevailing legal rate;

26 8. For reasonable Attorneys' Fees, pursuant to 29 U.S.C. §216(b); and

27 9. For Costs of suit and any and all such other relief as the Court deems just and proper.

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JURY DEMAND

Representative Plaintiff and the Plaintiff Class hereby demands trial by jury on all issues triable of right by jury.

Dated: March 4, 2004

SCOTT COLE & ASSOCIATES, APC

By:

Scott Edward Cole, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Class