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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10 PATRICK BIGNARDI, AARON
11 BARRETT and TIMOTHY
WHITEHEAD, on behalf of themselves
12 and all others similarly situated,

13 Plaintiffs,

14 v.

15 FLEXTRONICS AMERICA LLC; and
DOES 1-50, inclusive,

16 Defendants.
17

Case No. RG09449663

ASSIGNED FOR ALL PURPOSES TO
HON. BRENDA HARBIN-FORTE
DEPT. 516

**ANSWER TO COMPLAINT BY
DEFENDANT FLEXTRONICS AMERICA,
LLC**

Complaint Filed: April 29, 2009
Trial Date: None set

1 Defendant Flextronics America, LLC (“Defendant”) hereby answers the unverified
2 Complaint filed by plaintiffs Patrick Bignardi, Aaron Barrett and Timothy Whitehead (“Plaintiffs”)
3 as follows:

4 **I.**
5 **GENERAL DENIAL**

6 Pursuant to the provisions of California Code of Civil Procedure section 431.30(d),
7 Defendant denies generally and specifically each and every allegation contained in the Complaint.
8 In addition, Defendant denies that Plaintiffs have sustained, or will sustain, any loss or damage in the
9 manner or amount alleged, or otherwise, by reason of any act or omission, or any other conduct or
10 absence thereof on the part of Defendant.

11 **II.**
12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 As a separate and distinct affirmative defense, Defendant alleges that the Complaint,
15 and each and every alleged cause of action therein, fails to state facts sufficient to constitute a cause
16 of action upon which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and
19 the putative class members have failed, refused and/or neglected to mitigate or avoid the damages
20 complained of in the Complaint, if any.

21 **THIRD AFFIRMATIVE DEFENSE**

22 As a separate and distinct affirmative defense, Defendant alleges that the Complaint,
23 and each and every alleged cause of action therein are barred, in whole or in part, by the equitable
24 doctrine of laches.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and
27 the putative class members are estopped by their conduct from asserting each of the causes of action
28 upon which they seek relief.

1 FIFTH AFFIRMATIVE DEFENSE

2 As a separate and distinct affirmative defense, Defendant alleges that the Complaint,
3 and each and every alleged cause of action therein are barred by the doctrine of waiver.

4 SIXTH AFFIRMATIVE DEFENSE

5 As a separate and distinct affirmative defense, Defendant alleges that the Complaint,
6 and each and every alleged cause of action therein are barred, in whole or in part, because Plaintiffs
7 consented to the conduct about which they now complain.

8 SEVENTH AFFIRMATIVE DEFENSE

9 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and
10 the putative class members have not suffered any losses and Defendant has not been unjustly
11 enriched as a result of any action or inaction by Defendant or its agents. Plaintiffs are therefore not
12 entitled to any disgorgement or restitution.

13 EIGHTH AFFIRMATIVE DEFENSE

14 As a separate and distinct affirmative defense, Defendant alleges that the claims for
15 additional compensation of any type fail as Plaintiffs and the putative class members are exempt
16 from California's overtime laws.

17 NINTH AFFIRMATIVE DEFENSE

18 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and
19 the putative class members have been paid and/or received all wages due to them by virtue of their
20 employment.

21 TENTH AFFIRMATIVE DEFENSE

22 As a separate and distinct affirmative defense, Defendant alleges that all or portions
23 of the claims set forth in the Complaint are barred by the applicable statute of limitations, including,
24 but not limited to, California Code of Civil Procedure sections 337, 338, 339, 340, 343, and
25 California Business and Professions Code sections 16750.1 and 17208.

26 ELEVENTH AFFIRMATIVE DEFENSE

27 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and
28 the putative class members were treated fairly and in good faith, and that all actions taken with

1 regard to them were taken for lawful business reasons and in good faith.

2 TWELFTH AFFIRMATIVE DEFENSE

3 As a separate and distinct affirmative defense, Defendant alleges that each purported
4 cause of action in the Complaint, or some of the causes of action, are barred, or recovery should be
5 reduced, pursuant to the doctrine of avoidable consequences.

6 THIRTEENTH AFFIRMATIVE DEFENSE

7 As a separate and distinct affirmative defense, Defendant alleges that the Complaint
8 and each cause of action set forth therein cannot be maintained because, without admitting that any
9 violation took place, Defendant alleges that any violation of the California Labor Code or of a Wage
10 Order of the Industrial Welfare Commission was an act or omission made in good faith, and that in
11 any participation in such acts, Defendant had reasonable grounds for believing that the act or
12 omission was not a violation of the California Labor Code or any Wage Order of the Industrial
13 Welfare Commission.

14 FOURTEENTH AFFIRMATIVE DEFENSE

15 As a separate and distinct affirmative defense, Defendant alleges that assuming,
16 *arguendo*, that Plaintiffs and the putative class members are entitled to additional compensation,
17 Defendant has not willfully or intentionally failed to pay any such additional compensation to
18 Plaintiffs and the putative class members, to justify any awards of penalties or fees.

19 FIFTEENTH AFFIRMATIVE DEFENSE

20 As a separate and distinct affirmative defense, Defendant alleges that the Complaint
21 and each cause of action set forth therein are barred because Plaintiffs failed to timely and
22 completely exhaust the requisite administrative remedies, statutory, and/or contractual remedies
23 available to them prior to commencing this action.

24 SIXTEENTH AFFIRMATIVE DEFENSE

25 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs are
26 barred from obtaining relief pursuant to their cause of action for violation of California Business and
27 Professions Code section 17200, *et seq.* because California law does not permit representative
28 actions where liability can only be determined through fact-intensive individualized assessments of

1 alleged wage and hour violations.

2 SEVENTEENTH AFFIRMATIVE DEFENSE

3 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs lack
4 standing to bring their claims as to all or a portion of the claims alleged in the Complaint.

5 EIGHTEENTH AFFIRMATIVE DEFENSE

6 As a separate and distinct affirmative defense, Defendant alleges that this suit may
7 not be properly maintained as a class action because: (1) Plaintiffs have failed to plead, and cannot
8 establish the necessary procedural elements for class treatment; (2) a class action is not an
9 appropriate method for the fair and efficient adjudication of the claims described in the Complaint;
10 (3) common issues of fact or law do not predominate; to the contrary, individual issues predominate;
11 (4) Plaintiffs' claims are not representative or typical of the claims of the putative class; (5) Plaintiffs
12 are not proper class representatives; (6) the named plaintiffs and alleged putative class counsel are
13 not adequate representatives for the alleged putative class; (7) Plaintiffs cannot satisfy any of the
14 requirements for class action treatment, and class action treatment is neither appropriate nor
15 constitutional; (8) there is not a well-defined community of interest in the questions of law or fact
16 affecting Plaintiffs and the members of the alleged putative class; and (9) the alleged putative class is
17 not ascertainable, nor are its members identifiable.

18 NINETEENTH AFFIRMATIVE DEFENSE

19 As a separate and distinct affirmative defense, Defendant opposes class certification
20 and disputes the propriety of class treatment. If the Court certifies a class in this case over
21 Defendant's objections, then Defendant asserts the affirmative defenses set forth herein against each
22 and every member of the certified class.

23 TWENTIETH AFFIRMATIVE DEFENSE

24 As a separate and distinct affirmative defense, Defendant alleges that the adjudication
25 of the claims of the putative class through generalized classwide proof violates Defendant's right to
26 trial by jury guaranteed by the United States and California Constitutions.

27 TWENTY-FIRST AFFIRMATIVE DEFENSE

28 As a separate and distinct affirmative defense, Defendant alleges that, to the extent

1 that Plaintiffs claim penalties, such claims must comport with the due process requirements of *State*
2 *Farm v. Campbell*, 538 U.S. 408 (2003) and subsequent case law regarding the same issue.

3 TWENTY-SECOND AFFIRMATIVE DEFENSE

4 As a separate and distinct affirmative defense, Defendant alleges that the request for
5 restitution, declaratory relief, and/or injunctive relief is barred with respect to any and all alleged
6 violations of California Business and Professions Code section 17200, *et seq.* that have discontinued,
7 ceased, and are not likely to recur.

8 TWENTY-THIRD AFFIRMATIVE DEFENSE

9 As a separate and distinct affirmative defense, Defendant alleges that their business
10 actions or practices were not unfair, unlawful, fraudulent or deceptive within the meaning of
11 California Business and Professions Code section 17200, *et seq.*

12 TWENTY-FOURTH AFFIRMATIVE DEFENSE

13 As a separate and distinct affirmative defense, Defendant alleges that the Complaint
14 fails to properly state a claim for attorney's fees under California Code of Civil Procedure section
15 1021.5, California Labor Code sections 218.5, California Business and Professions Code section
16 17200, *et seq.*, or any other basis.

17 TWENTY-FIFTH AFFIRMATIVE DEFENSE

18 As a separate and distinct affirmative defense, Defendant alleges that the Complaint
19 fails to properly state a claim for injunctive relief.

20 TWENTY-SIXTH AFFIRMATIVE DEFENSE

21 As a separate and distinct affirmative defense, Defendant alleges that to the extent
22 Plaintiffs and the putative class members recover penalties in this action, they cannot recover
23 punitive damages.

24 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

25 As a separate and distinct affirmative defense, Defendant alleges that Plaintiffs and
26 the putative class members are not entitled to equitable relief insofar as they have adequate remedies
27 at law.

28

1 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

2 As a separate and distinct affirmative defense, Defendant alleges that, assuming the
3 San Diego Superior Court approves the class action settlement in Solomon Wahab and Cesar
4 Reynoso v. Flextronics America, LLC, Flextronics International USA, Inc. Flextronics SA, Inc. and
5 Solectron, Case No. 37-2008-00086335 CU-OE-CTL, filed prior to the instant action on June 24,
6 2008, all claims of Plaintiffs, to the extent they worked for Defendant as a "Team Lead" or "Team
7 Leader" will be barred by the judgment in the prior action by res judicata, claim preclusion, issue
8 preclusion and/or collateral estoppel through the time period of May 29, 2009.

9 TWENTY-NINTH AFFIRMATIVE DEFENSE


10 As a separate and distinct affirmative defense, Defendant states it does not presently
11 know all facts concerning the conduct of Plaintiffs and their claims sufficient to state all affirmative
12 defenses at this time. Defendant will seek leave of this Court to amend this Answer should it later
13 discover facts demonstrating the existence of additional affirmative defenses.

14 **III.**
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Defendant prays for judgment from this Court as follows:

- 17 1. Plaintiffs take nothing by this action;
- 18 2. That the Complaint be dismissed with prejudice and that judgment be entered
19 against Plaintiffs and in favor of Defendant on each cause of action;
- 20 3. That Defendant be awarded its attorneys' fees and costs of suit herein to the
21 extent permitted under applicable law; and
- 22 4. Such other and further relief as the Court deems appropriate and proper.
- 23

24 Dated: June 12, 2009

25 
26 _____
27 JODY A. LANDRY
28 HEATHER CLARK
LITTLER MENDELSON
Attorneys for Defendant
FLEXTRONICS AMERICA, LLC

Firmwide:90474273.1 014692.1130

1 PROOF OF SERVICE BY MAIL

2 I am employed in San Diego County, California. I am over the age of eighteen years
3 and not a party to the within-entitled action. My business address is 501 W. Broadway, Suite 900,
4 San Diego, California 92101.3577. I am readily familiar with this firm's practice for collection and
5 processing of correspondence for mailing with the United States Postal Service. On June 12, 2009, I
6 placed with this firm at the above address for deposit with the United States Postal Service a true and
7 correct copy of the within document(s):

8 ANSWER TO COMPLAINT BY DEFENDANT FLEXTRONICS
9 AMERICA, LLC

in a sealed envelope, postage fully paid, addressed as follows:

10 Philip Borowsky, Esq. Attorneys for Plaintiffs
11 Christopher Hayes, Esq.
12 BOROWSKY & HAYES, LLP
13 100 Spear Street, Suite 1640
14 San Francisco, CA 94105

15 Steven G. Zieff, Esq.
16 Kenneth J. Sugarman, Esq.
17 John T. Mullan, Esq.
18 RUDY, EXELROD, ZIEFF & LOWE, LLP
19 351 California Street, Suite 700
20 San Francisco, CA 94104

21 Following ordinary business practices, the envelope was sealed and placed for
22 collection and mailing on this date, and would, in the ordinary course of business, be deposited with
23 the United States Postal Service on this date.

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

26 Executed on June 12, 2009, at San Diego, California.

27 
28 KILSHA CASTRO