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ENDORSED
FILED
ALAMEDA COUNTY

JAN 13 2010
CLERK OF THE SUPERIOR COURT
By BARBARA LAMOTTE
Deputy

6 Attorneys for the Representative Plaintiff
7 and the Plaintiff Class

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF ALAMEDA**

11 DOMINICA M. DAILEY, individually,
12 and on behalf of all others similarly
13 situated,
14 Plaintiffs,
15 v.
16 PERFORMANT FINANCIAL
17 CORPORATION and DOES 1 through
18 50, inclusive,
19 Defendants.

Case No.: *RG 10493644*
CLASS ACTION
**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND
RESTITUTION**

18 Representative Plaintiff alleges as follows:

20 **PRELIMINARY STATEMENT**

21 1. This is a class action, brought on behalf of Dominica M. Dailey (hereinafter
22 "Representative Plaintiff") and all other persons similarly situated ("Class Members") who are or
23 were employed as non-exempt employees by defendant Performant Financial Corporation and Does
24 1 through 50, inclusive (collectively "Defendant" and/or "Performant Financial") in California at any
25 time from January 13, 2006 through the date of trial ("Class Period"). The Representative Plaintiff,
26 on behalf of herself and the other Class Members, seeks unpaid wages, including unpaid overtime
27 compensation, meal and rest break compensation, and interest thereon, liquidated damages and other
28 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs under, *inter*

1 *alia*, Title 8 of the California Code of Regulations, California Business and Professions Code §§
2 17200, *et seq.*, California Code of Civil Procedure § 1021.5, and various provisions of the California
3 Labor Code.

4 2. The Class Period is designated as the time from January 13, 2006 through the date
5 of trial, as the violations of California's wage and hour laws, as described more fully below, have
6 been ongoing throughout that time.

7 3. During the Class Period, Defendant has had a consistent policy of (1) permitting,
8 encouraging, and/or requiring its non-exempt employees, including the Representative Plaintiff and
9 Class Members, to work in excess of eight hours per day and in excess of forty hours per week
10 without paying them overtime compensation as required by California's wage and hour laws, (2)
11 unlawfully denying the Representative Plaintiff and Class Members statutorily-mandated meal and
12 rest periods, and (3) willfully failing to provide the Representative Plaintiff and the Class Members
13 with accurate semi-monthly itemized wage statements reflecting the total number of hours each
14 worked, the applicable deductions, and the applicable hourly rates in effect during the pay period.
15 In addition, Representative Plaintiff alleges, on information and belief, that Defendant has had a
16 consistent policy of willfully failing to pay compensation (including unpaid overtime) in a prompt
17 and timely manner to certain Class Members whose employment with Defendant had terminated.

18
19 **INTRODUCTION**

20 4. Despite actual knowledge of these facts and legal mandates, Performant Financial has
21 and continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
22 by electing not to pay premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to its non-
23 exempt employees in California.

24 5. Representative Plaintiff is informed and believes and, based thereon, alleges that
25 officers of Performant Financial knew of these facts and legal mandates yet, nonetheless, repeatedly
26 authorized and/or ratified the violation of the laws cited herein.

27 6. Despite Performant Financial's knowledge of Class Members' entitlement to
28 premium (overtime) pay and to meal and/or rest periods, Performant Financial failed to provide the

1 same to the Class Members during applicable work periods, in violation of California state statutes,
2 any applicable California Industrial Welfare Commission Wage Order, and Title 8 of the California
3 Code of Regulations. This action is brought to redress and end this long-time pattern of unlawful
4 conduct once and for all.

5
6 **JURISDICTION AND VENUE**

7 7. This Court has jurisdiction over the Representative Plaintiff's and Class Members'
8 claims for unpaid wages and/or penalties under, *inter alia*, any applicable Industrial Welfare
9 Commission Wage Order, Title 8 of the California Code of Regulations, Labor Code §§ 201-204,
10 226.7, 510, 512, 1194, 1198, and/or the California Code of Civil Procedure § 1021.5.

11 8. This Court also has jurisdiction over the Representative Plaintiff's and Class
12 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from Performant
13 Financial's unfair and/or fraudulent business practices under California Business & Professions Code
14 §§ 17200, *et seq.*

15 9. Venue as to Defendant is proper in this judicial district pursuant to Code of Civil
16 Procedure § 395(a). Performant Financial maintains locations within Alameda county, transacts
17 business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of
18 process. The unlawful acts alleged herein have a direct effect on the Representative Plaintiff and
19 those similarly situated within the State of California and county of Alameda.

20
21 **PLAINTIFFS**

22 10. Representative plaintiff Dominica M. Dailey is a natural person employed by
23 Performant Financial as a non-exempt employee during the Class Period.

24 11. As used throughout this Complaint, the term "Class Member" refers to the
25 Representative Plaintiff herein as well as each and every person eligible for membership in the class
26 of persons as further described and defined herein.

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

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1 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and
2 scope of such agency and/or employment.

3
4 **CLASS ACTION ALLEGATIONS**

5 19. Representative Plaintiff brings this action individually and as a class action on behalf
6 of all persons similarly situated and proximately damaged by Performant Financial's conduct
7 including, but not necessarily limited to, the following Plaintiff Class:

8 "All persons who were employed as non-exempt employees by
9 Defendant in California at any time on or after January 13, 2006."

10 20. Performant Financial, its officers, and directors are excluded from the Plaintiff Class.

11 21. This action has been brought and may properly be maintained as a class action under
12 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation
13 and the proposed Class is easily ascertainable.

14 a. Numerosity: A class action is the only available method for the fair and
15 efficient adjudication of this controversy. The members of the Plaintiff Class
16 are so numerous that joinder of all members is impractical, if not impossible,
17 insofar as Representative Plaintiff is informed and believes and, on that basis,
18 alleges that there are sufficient Class Members to meet the numerosity
19 requirement. Membership in the Class will be determined upon analysis of
20 employee and payroll, among other, records maintained by Performant
21 Financial.

22 b. Commonality: The Representative Plaintiff and the Class Members share a
23 community of interests in that there are numerous common questions and
24 issues of fact and law which predominate over any questions and issues solely
25 affecting individual members, including, but not necessarily limited to:

26 1) Whether defendant Performant Financial violated applicable IWC
27 Wage Order(s) and/or Labor Code § 510 by failing to pay overtime
28 compensation to its non-exempt employees who worked in excess of
forty hours per week and/or eight hours per day;

2) Whether defendant Performant Financial violated California Business
and Professions Code § 17200 by failing to pay overtime
compensation to its non-exempt employees who worked in excess of
forty hours per week and/or eight hours per day;

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- 3) Whether defendant Performant Financial violated California Labor Code §§ 226.7 and/or 512 by failing to consistently provide meal and rest periods to its non-exempt employees;
- 4) Whether defendant Performant Financial violated California Labor Code § 1174 by failing to keep accurate records of Class Members' hours of work;
- 5) Whether defendant Performant Financial violated California Labor Code §§ 201-204 by failing to pay wages when due including those owing at the time that certain Class Members' employment with Defendant terminated;
- 6) Whether defendant Performant Financial violated California Labor Code § 226 by failing to provide Class Members with semimonthly itemized statements including total hours worked and all applicable hourly rates in effect during the pay period;
- 7) Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code § 203.

c. Typicality: The Representative Plaintiff's claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendant's common course of conduct in violation of law, as alleged herein.

d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interest in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who is experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

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COMMON FACTUAL ALLEGATIONS

1
2 22. As described herein, for years Performant Financial has knowingly failed to
3 adequately compensate those employees within the class definition identified above for all wages
4 earned (including premium wages such as overtime wages and/or compensation for missed meal
5 and/or rest periods) under the California Labor Code and the applicable IWC Wage Order(s), thereby
6 enjoying a significant competitive edge over other financial service businesses of its type.

7 23. Performant Financial has declined to pay these wages, even upon a Class Member's
8 termination or resignation from employment, in blatant violation of California Labor Code §§ 201
9 and/or 202.

10 24. California Labor Code §§ 201 and 202 require Defendant to pay severed employees
11 all wages due and owed to the employee immediately upon discharge or within 72 hours of
12 resignation of their positions, in most circumstances. California Labor Code § 203 provides that an
13 employer who willfully fails to timely pay such wages must, as a penalty, continue to pay the subject
14 employees' wages until the back wages are paid in full or an action is commenced, and the payment
15 of such penalty shall continue for a period of time up to 30 days.

16 25. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
17 Members' entitlement to compensation for all hours worked, Defendant violated California Labor
18 Code § 1174(d) by failing to provide or require the use, maintenance, or submission of time records
19 by members of the class. Performant Financial also failed to provide the Representative Plaintiff and
20 Class Members with accurate semimonthly itemized statements of the total number of hours worked
21 by each, and all applicable hourly rates in effect, during the pay period, in violation of California
22 Labor Code § 226. In failing to provide the required documents, Defendant has not only failed to pay
23 its workers the full amount of compensation due but the company has also, until now, effectively
24 shielded itself from its employees' scrutiny by concealing the magnitude and financial impact of its
25 wrongdoing that such documents might otherwise have led workers to discover.

26 26. Representative Plaintiff and all persons similarly situated are entitled to unpaid
27 compensation yet to date have not received such compensation despite many of the same having
28 been terminated by and/or having resigned from Performant Financial. More than 30 days have

1 passed since certain Class Members have left Defendant's employ.

2 27. As a consequence of Defendant's willful conduct in not paying former employees
3 compensation for all hours worked in a prompt and timely manner, certain Class Members are
4 entitled to up to 30 days wages as a penalty under Labor Code § 203, together with attorneys' fees
5 and costs.

6 28. As a consequence of Defendant's willful conduct in not providing an uninterrupted
7 30 minute meal period within the first five hours of Class Members' shifts, as required under Labor
8 Code § 512 and Section 11 of the applicable IWC Wage Order, Class Members are entitled to one
9 hour of wages for each day that they were denied at least one meal period, as provided under Labor
10 Code § 226.7, together with interest thereon and attorneys' fees and costs.

11 29. As a consequence of Defendant's willful conduct in not providing a net 10 minute
12 rest period during each four hour segment of work, as required under Section 12 of the applicable
13 IWC Wage Order, Class Members are entitled to one hour of wages for each day that they were
14 denied at least one rest period, as provided under Labor Code § 226.7, together with interest thereon
15 and attorneys' fees and costs.

16 30. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
17 Representative Plaintiff and Class Members have sustained damages, as described above, including
18 compensation for missed meal and rest periods and loss of earnings for hours worked on behalf of
19 Defendant, in an amount to be established at trial. As a further direct and proximate result of
20 Defendant's unlawful conduct, as set forth herein, certain Class Members are entitled to recover
21 "waiting time" penalties (pursuant to California Labor Code § 203) and penalties for failure to
22 provide semimonthly itemized wage statements of hours worked and all applicable hourly rates
23 (pursuant to Labor Code § 226) in an amount to be established at trial. As a further direct and
24 proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and
25 Class Members are also entitled to recover costs and attorneys' fees pursuant to California Labor
26 Code §§ 1194 and/or California Civil Code § 1021.5, among other authorities.

27 31. Representative Plaintiff seeks injunctive relief prohibiting Defendant from engaging
28 in the complained-of illegal labor acts and practices in the future. Representative Plaintiff also seeks

1 restitution of costs incurred by Representative Plaintiff and Class Members under California's Unfair
2 Competition Law. Unless enjoined, Defendant's unlawful conduct will continue unchecked, while
3 Representative Plaintiff and Class Members bear the financial brunt of Defendant's unlawful
4 conduct. As a further direct and proximate result of Defendant's unlawful conduct, as set forth
5 herein, Representative Plaintiff and the Plaintiff Class are also entitled to recover costs and
6 attorneys' fees, pursuant to statute.

7
8 **FIRST CAUSE OF ACTION**
9 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
10 **(Violation of IWC Wage Order and Labor Code §§ 510, 1194, and 1198)**

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

13 33. During the Class Period, the Representative Plaintiff and the Class Members worked,
14 on many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek. The precise
15 number of overtime hours will be proven at trial.

16 34. During the Class Period, Defendant refused to compensate the Representative
17 Plaintiff and Class Members for all of the overtime wages earned, in violation of the applicable IWC
18 Wage Order and provisions of the California Labor Code.

19 35. Moreover, during said time period, many of the Class Members herein were employed
20 by and thereafter terminated or resigned from their positions with Performant Financial, yet were not
21 paid all wages due upon said termination or within 72 hours of said resignation of employment
22 therefrom. Said non-payment of all wages due was the direct and proximate result of a willful refusal
23 to do so by Performant Financial.

24 36. At all relevant times, Defendant was aware of, and was under a duty to comply with,
25 the overtime provisions of the California Labor Code including, but not limited to, California Labor
26 Code §§ 510, 1194, and 1198.

27 37. California Labor Code § 510, in pertinent part, provides:

28 Any work in excess of eight hours in one workday and any work in
excess of 40 hours in any one workweek and the first eight hours
worked on the seventh day of work in any one workweek shall be

1 compensated at the rate of no less than one and one-half times the
2 regular rate of pay for an employee

3 38. California Labor Code § 1194, in pertinent part, provides:

4 Notwithstanding any agreement to work for a lesser wage, any
5 employee receiving less than the legal minimum wage or the legal
6 overtime compensation applicable to the employee is entitled to
7 recover in a civil action the unpaid balance of the full amount of this
8 minimum wage or overtime compensation, including interest thereon,
9 reasonable attorney's fees, and costs of suit.

8 39. California Labor Code § 1198, in pertinent part, provides:

9 The maximum hours of work and the standard conditions of labor
10 fixed by the commission shall be the maximum hours of work and the
11 standard conditions of labor for employees. The employment of any
12 employee for longer hours than those fixed by the order or under
13 conditions of labor prohibited by the order is unlawful.

12 40. By refusing to compensate the Representative Plaintiff and Class Members for
13 overtime wages earned, Defendant violated those California Labor Code provisions cited herein as
14 well as the applicable IWC Wage Order(s).

15 41. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
16 the Representative Plaintiff and the Plaintiff Class have sustained damages, including loss of
17 earnings for hours of overtime worked on behalf of Performant Financial, in an amount to be
18 established at trial, and are entitled to recover attorneys' fees and costs of suit.

19
20 **SECOND CAUSE OF ACTION**
21 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
22 **(California Labor Code §§ 226.7 and 512)**

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

24 43. At all relevant times, Performant Financial was aware of and was under a duty to
25 comply with California Labor Code §§ 226.7 and 512.

26 44. California Labor Code § 226.7 provides:

27 (a) No employer shall require any employee to work during any meal
28 or rest period mandated by an applicable order of the Industrial
Welfare Commission.

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(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

45. Moreover, California Labor Code § 512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

46. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that employers provide all applicable meal and/or rest periods to non-exempt employees.

47. Section 11 of the applicable IWC Wage Order provides:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes

(C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

48. Moreover, Section 12 of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

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1 49. By failing to consistently provide uninterrupted thirty-minute meal periods within the
2 first five hours of work each day and/or uninterrupted net ten-minute rest periods to Representative
3 Plaintiff and the Class Members, Defendant violated the California Labor Code and applicable IWC
4 Wage Order provisions.

5 50. Representative Plaintiff is informed and believes and, on that basis, alleges that
6 Defendant has never paid the one hour of compensation to any Class Members due to its violations
7 of the California Labor Code and applicable IWC Wage Order provisions.

8 51. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
9 Representative Plaintiff and Class Members have sustained damages, including lost compensation
10 resulting from missed meal and/or rest periods, in an amount to be established at trial. As a further
11 direct and proximate result of Defendant's unlawful conduct, as set forth herein, certain Class
12 Members are entitled to recover "waiting time" and other penalties, in amounts to be established at
13 trial, as well as recovery of attorneys' fees and costs, pursuant to statute.

14
15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
17 **(California Labor Code §§ 226 and 1174)**

18 52. The Representative Plaintiff incorporates in this cause of action each and every
19 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
20 herein.

21 53. California Labor Code § 226(a) provides:

22 Each employer shall semi-monthly, or at the time of each payment of
23 wages, furnish each of his or her employees either as a detachable
24 part of the check, draft or voucher paying the employee's wages, or
25 separately when wages are paid by personal check or cash, an
26 itemized wage statement in writing showing: (1) gross wages earned;
27 (2) total number of hours worked by each employee whose
28 compensation is based on an hourly wage; (3) all deductions,
provided that all deductions made on written orders of the employee
may be aggregated and shown as one item; (4) net wages earned;
(5) the inclusive date of the period for which the employee is paid; (6)
the name of the employee and his or her social security number; and
(7) the name and address of the legal entity which is the employer.

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54. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

55. Finally, California Labor Code § 1174 provides:

Every person employing labor in this state shall: (d) Keep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to ... employees These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

56. Representative Plaintiff seeks to recover actual damages, costs, and attorneys' fees under these provisions on behalf of herself and on behalf of all Class Members.

57. Defendant has failed to provide timely, accurate itemized wage statements to the Representative Plaintiff and Class Members in accordance with Labor Code § 226. Representative Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendant accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions for any Class Member.

58. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and Class Members have sustained damages in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES WHEN DUE
(California Labor Code §§ 203 and 204)

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

60. California Labor Code § 203 provides that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the

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1 employee shall continue as a penalty from the due date thereof at the
2 same rate until paid or until an action therefor is commenced; but the
wages shall not continue for more than 30 days.

3 61. California Labor Code § 204 provides, in part:

4 Labor performed between the 1st and 15th days, inclusive, of any
5 calendar month shall be paid for between the 16th and the 26th day
6 of the month during which the labor was performed, and labor
performed between the 16th and the last day, inclusive, of any
7 calendar month, shall be paid for between the 1st and 10th day of the
following month.

8 62. Representative Plaintiff and the Class Members were employed by Defendant during
9 the Class Period and did not receive all wages owed in the time dictated by Labor Code § 204.
10 Moreover, certain Class Members were employed by Performant Financial during the class period
11 and were thereafter terminated or resigned from their positions, yet they were not paid all premium
12 (overtime) wages due upon said termination or within 72 hours of said resignation of employment
13 therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by
14 Performant Financial.

15 63. More than thirty days has elapsed since certain Class Members were involuntarily
16 terminated or voluntarily resigned from Defendant's employ.

17 64. As a direct and proximate result of Defendant's willful conduct in failing to pay the
18 Class Members for all hours worked, affected Class Members are entitled to recover "waiting time"
19 penalties of up to thirty days' wages pursuant to Labor Code § 203 in an amount to be established
20 at trial, together with interest thereon, and attorneys' fees and costs.

21
22 **FIFTH CAUSE OF ACTION**
23 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
(California Business & Professions Code §§ 17200-17208)

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

26 66. Representative Plaintiff further brings this cause of action seeking equitable and
27 injunctive relief to stop Defendant's misconduct, as complained of herein, and to seek restitution of
28 the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices

1 described herein.

2 67. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or
3 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208.
4 Specifically, Defendant conducted business activities while failing to comply with the legal mandates
5 cited herein.

6 68. Defendant's knowing failure to adopt policies in accordance with and/or to adhere
7 to these laws, all of which are binding upon and burdensome to its competitors, engenders an unfair
8 competitive advantage for Performant Financial, thereby constituting an unfair business practice
9 under California Business & Professions Code §§ 17200-17208.

10 69. Defendant has clearly established a policy of accepting a certain amount of collateral
11 damage, as represented by the damages to the Representative Plaintiff and to Class Members herein
12 alleged, as incidental to its business operations, rather than accept the alternative costs of full
13 compliance with fair, lawful, and honest business practices, ordinarily borne by its responsible
14 competitors and as set forth in legislation and the judicial record.

15
16 **RELIEF SOUGHT**

17 **WHEREFORE, the Representative Plaintiff, on behalf of herself and the proposed**
18 **Plaintiff Class, prays for judgment and the following specific relief against Defendants, and each**
19 **of them, jointly and separately, as follows:**

20 1. That the Court declare, adjudge, and decree that this action is a proper class action
21 and certify the proposed Class and/or any other appropriate subclasses under Code of Civil
22 Procedure § 382;

23 2. That the Court declare, adjudge, and decree that Defendants violated the overtime
24 provisions of the California Labor Code and the applicable California Industrial Welfare
25 Commission Wage Order as to the Representative Plaintiff and Class Members;

26 3. That the Court declare, adjudge, and decree that Defendant willfully violated its legal
27 duties to pay overtime under the California Labor Code and the applicable California Industrial
28 Welfare Commission Wage Orders;

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1 4. That the Court declare, adjudge, and decree that the Representative Plaintiff and Class
2 Members were, at all times relevant herein, and are still, entitled to be paid overtime for work
3 beyond 8 hours in a day and 40 in a week;

4 5. That the Court make an award to the Representative Plaintiff and Class Members of
5 damages and/or restitution for the amount of unpaid wages and overtime compensation, including
6 interest thereon, and penalties in an amount to be proven at trial;

7 6. That the Court make an award to the Representative Plaintiff and the Class Members
8 of one hour of pay at each employee's regular rate of compensation for each workday that a meal
9 period was not provided;

10 7. That the Court make an award to the Representative Plaintiff and the Class Members
11 of one hour of pay at each employee's regular rate of compensation for each workday that a rest
12 period was not provided;

13 8. That the Court order Defendant to pay restitution to the Representative Plaintiff and
14 the Class Members due to Defendant's unlawful activities, pursuant to California Business and
15 Professions Code §§ 17200-17208;

16 9. That the Court further enjoin Defendant, ordering it to cease and desist from unlawful
17 activities in violation of California Business and Professions Code §§ 17200, *et seq.*;

18 10. For all other Orders, findings and determinations identified and sought in this
19 Complaint;

20 11. For interest on the amount of any and all economic losses, at the prevailing legal rate;

21 12. For reasonable attorneys' fees, pursuant to California Labor Code §§1194 and/or
22 California Code of Civil Procedure § 1021.5; and

23 13. For costs of suit and any and all such other relief as the Court deems just and proper.

24 Dated: January 13, 2010

SCOTT COLE & ASSOCIATES, APC

25
26 By: 

Kevin R. Allen, Esq.
Attorneys for the Representative Plaintiff
and the Plaintiff Class

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