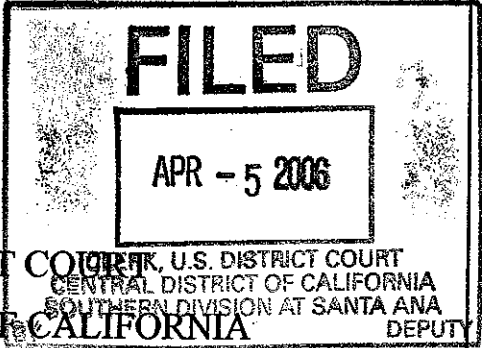


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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
ORANGE COUNTY DIVISION

SACV06-350 DOC(RNBx)

MIKE RUTTI

Plaintiffs,

vs.

LOJACK CORPORATION, INC.,

Defendant,

Case No.

COMPLAINT FOR VIOLATION
OF
1. FAIR LABOR STANDARDS ACT
2. CALIFORNIA LABOR CODE
3. CALIFORNIA BUSINESS &
PROFESSIONS CODE

CLASS ACTION

DEMAND FOR JURY TRIAL

Comes the representative Plaintiff, MIKE RUTTI and files this lawsuit against Defendant LOJACK CORPORATION for themselves and all other similarly situated, for legal relief to redress unlawful violations of Plaintiffs' rights under the Fair Labor Standards Act of 1938 ("FLSA" or "the Act"), 29 U.S.C. §§ 201, *et seq.*, and specifically the collective action provision of the Act found at § 216(b), to remedy violations of the wage provisions of the FLSA by LOJACK CORPORATION, ("LOJACK") which have deprived the named Plaintiff, as well as others similarly situated to the named Plaintiff, of their lawful wages. The suit

1 is brought on behalf of the named Plaintiff and all others similarly situated,
2 pursuant to § 216(b) of the FLSA.

3 JURISDICTION AND VENUE

4 1. Jurisdiction over Plaintiffs' federal claims is based upon: (a) Section
5 16(b) of the FLSA, 29 U.S.C. § 216(b), which authorizes employees to bring civil
6 actions in courts of appropriate jurisdiction to recover damages for an employer's
7 failure to pay overtime wages as required by the FLSA; and (b) 29 U.S.C. §§ 1331
8 and 1337.
9

10 2. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). At
11 all times material herein, Defendant LOJACK has been actively conducting
12 business in the State of California and within the geographic area encompassing
13 the Central District of the State of California.

14 3. Jurisdiction over Plaintiff's state law class action claims under the
15 California Labor Code and the claim under §17200 of the California Business and
16 Professions Code are based upon this Court's supplemental jurisdiction under 28
17 U.S.C. § 1367(a), because the state law claims are so related to Plaintiff's federal
18 claims that they form a part of the same case or controversy between Plaintiff and
19 Defendant.
20

21 INTRODUCTION

22 4. The Plaintiff is an employee for the Defendant, and brings this action
23 as a collective action in accordance with 29 U.S.C. §216(b) of the FLSA against
24 the Defendant on behalf of himself and all others similarly situated because of
25 Defendant's unlawful deprivation of Plaintiffs' rights to all wages owed.
26 Plaintiffs seeks a declaratory judgment under 28 U.S.C. § 2201 and compensation,
27 damages, equitable and other relief available under the FLSA, as amended, 29
28 U.S.C. § 201 *et seq.* Plaintiff also seeks relief on a collective and a class-wide
basis challenging the unlawful business practice engaged in by Defendant of

1 failing to compensate Plaintiff and all others similarly situated for all wages owed
2 and for denied meal and rest breaks as required under the California Labor Code.

3 5. Defendant is in the business of selling and installing wireless tracking
4 and recovery systems in their customer's automobiles so that if the customer's
5 vehicles are ever stolen, the system can be used to track and recover the
6 customer's stolen vehicle. Defendant operates its business in 22 states, including
7 the state of California.

8
9 6. The Senior Technicians and/or Technicians (hereinafter "Lojack
10 Employees") work at LOJACK and are paid on an hourly basis. The Lojack
11 Employees are expected to install wireless tracking and recovery systems in
12 customer's automobiles. Lojack Employees are not compensated by Defendant
13 for all hours worked.

14 7. The FLSA claim is brought under Section 16(b) of the FLSA, 29
15 U.S.C. § 216(b), as a nation-wide "opt-in" collective action (hereinafter "the
16 FLSA Action"). The FLSA Action is brought on behalf of all persons in the
17 United States who have been, are and/or will be employed by Defendant as Senior
18 Technician and/or Technician (hereinafter "the FLSA Employees"). The FLSA
19 Action seeks to (i) recover unpaid wages and overtime compensation owed to the
20 FLSA Employees, (ii) obtain an equal amount in liquidated damages, as provided
21 by Section 16(b) of the FLSA, and (iii) recover reasonable attorneys' fees and
22 costs of the action, as provided for by Section 16(b) of the FLSA.

23
24 8. Plaintiff also asserts various claims under California law as a
25 conventional "opt-out" class action under Rule 23 of the Federal Rules of Civil
26 Procedure ("the California Sub-Class Action"). The California Sub-Class Action
27 is brought on behalf of all persons who have been, are and/or will be employed by
28 Defendant in the position of Senior Technician and/or Technician in the State of
California (hereinafter "the California Sub-Class"). The California Sub-Class

1 Action has claims based upon the same unlawful business practices engaged in by
2 Defendant of not paying Lojack Employees compensation due and owing to
3 which they are entitled under California law. The California Sub-Class also has
4 claims based upon the same unlawful business practice of not paying Lojack
5 Employees wages and/or compensation for all hours worked and for denied meal
6 periods and rest breaks as required under the applicable California Wage Orders.
7 The California Sub-Class also has claims based upon the unlawful business
8 practice of failing to indemnify the Lojack Employees for expenditures or losses
9 in discharge of duties or obedience to directions to maintain the company
10 vehicles, without compensation, in violation of California Labor Code Section
11 2802.
12

13 9. The California Sub-Class seeks to (i) recover daily and weekly
14 unpaid compensation owed to the California Sub-Class, (ii) recover of one hour of
15 pay for each denied meal period and for each denied rest break for those Lojack
16 Employees who were not properly provided meal periods as required under
17 California law and/or authorized and permitted to take rest breaks as required
18 under California law; (iii) recover waiting time penalties under Section 203 of the
19 California Labor Code owed to those Lojack Employees whose employment with
20 Defendant has terminated and who have not been properly paid all wages due to
21 them upon termination of their employment, (iv) recover expenditures and losses
22 as permitted under California Labor Code Section 2802, and (v) recover
23 reasonable attorneys' fees and costs as provided for by Section 1194 of the
24 California Labor Code.
25

26 10. Finally, the claim under Section 17200 of the California Business and
27 Professions Code seeks injunctive relief enjoining Defendant from failing to
28 make, keep and preserve the records required by the FLSA and California law.
This claim also seeks to (i) obtain disgorgement and restitution of all ill-gotten

1 gains from the unlawful conduct engaged in by Defendant, and (ii) recover
2 reasonable attorneys' fees and costs as provided for by Section 1021.5 of the
3 California Code of Civil Procedure.

4 11. The FLSA Action is maintained as a collective action under 29
5 U.S.C. § 216(b) on behalf of all past, present and future employees of Defendant
6 who have been, are and/or will be employed as Senior Technician and/or
7 Technicians in the United States. Plaintiffs are citizens of the United States, and
8 reside in the State of California. At all times material herein, each of them has
9 been employed by the Defendant Lojack, in the position of Senior Technician
10 and/or Technician. Plaintiff is identified in the caption of the Complaint and has
11 given his written consent to be party Plaintiff in this action pursuant to 29 U.S.C.
12 §216(b).
13

14 12. The California Sub-Class is maintained on behalf of a class of past,
15 present and future employees of Defendant who have been, are and/or will be
16 employed as Senior Technicians and/or Technicians in the State of California.
17

18 THE PARTIES

19 13. The individually-named plaintiff Mike Rutti is a citizen of the State
20 of California and resides in La Habra, California. Plaintiff has standing to pursue
21 the Third Claim for Relief under California Business and Professions Code
22 Section 17200 on behalf of the public interest. Plaintiff is a current employee of
23 Defendant. During his employment with Defendant, LOJACK CORPORATION,
24 like other Lojack Employees, he regularly works in excess of eight (8) hours in a
25 workday and in excess of forty (40) hours in a workweek. Plaintiff has not been
26 paid all wages owed to them as required under the FLSA and California law.
27 Plaintiff has not been provided meal periods nor rest periods during which
28 Plaintiff was entirely relieved of his duties as required under California law.

1 Plaintiff is required to maintain the physical appearance and upkeep of the
2 vehicles owed by LOJACK CORPORATION and which LOJACK
3 CORPORATION requires him to use in performing his duties without
4 compensation for their time in maintaining the vehicles nor the cost associated
5 with said maintenance. Plaintiff has been injured by the illegal practices and
6 conduct alleged in this Complaint. Plaintiff's claims under the FLSA and
7 California law are similar to and typical of the claims of the FLSA Employees and
8 the members of the California Sub-Class.
9

10 14. On information and belief, Defendant LOJACK CORPORATION
11 (hereinafter "LOJACK") is a corporation incorporated in the State of
12 Massachusetts with its worldwide headquarters located at 200 Lowder Brook
13 Drive Suite 1000 Westwood, MA 02090. LOJACK is qualified to and does do
14 business in the State of California and nationwide.

15 15. LOJACK maintains either actual or constructive control, oversight,
16 or direction over the operations, sales, installation of its tracking systems and
17 employment practices.

18 16. LOJACK is subject to personal jurisdiction in the State of California
19 for purposes of this lawsuit.

20 17. At all times material to this action, Defendant LOJACK has been an
21 enterprise engaged in commerce or in the production of goods for commerce as
22 defined by § 203(s)(1) of the FLSA, and has had a gross volume of sales which
23 has exceeded \$500,000.

24 18. At all times material to this action, Defendant LOJACK has been an
25 "employer" of the named Plaintiff, as defined by § 203(d) of the FLSA.
26
27
28

CLASS ACTION ALLEGATIONS

1
2 19. The California Sub-Class may be appropriately maintained as a class
3 action under Rule 23 because all of the prerequisites set forth under Rule 23(a) are
4 met.

5
6 20. Members of the California Sub-Class are so numerous that joinder of
7 all such members is impracticable. Although the exact size of the California Sub-
8 Class is unknown, it is believed and alleged that the number of persons currently
9 employed as Lojack Employees by Defendant in the State of California number
10 more than 50, and over the past four years, it is believed and alleged that
11 Defendant have employed more than 200 persons as Senior Technicians and/or
12 Technicians in the State of California. The numbers of current and former
13 California based employees of LOJACK are so numerous that joinder is
14 impractical if not impossible.

15 21. There are questions of law and fact common to the California Sub-
16 Class with respect to the liability issues, relief issues and anticipated affirmative
17 defenses. For example, predominate common questions of fact and law include
18 Defendant's policy and practice of requiring its employees to work without
19 compensation; the propriety of Defendant's record keeping policies and practices;
20 and Defendant's policy and practice of requiring its employees to work without
21 being provided a meal periods and/or being authorized and/or permitted to take
22 rest breaks as required under California law. Calculation of the regular rate and
23 premium rate of pay under California law also involves common questions of law
24 and fact that predominate over questions effecting only individuals. (Fed.R.Civ.P.
25 23(b)(3).
26

27 22. The prosecution of separate actions by the California Sub-Class
28 would create a risk of inconsistent or varying adjudications with respect to

1 individual members of the California Sub-Class that would establish incompatible
2 standards of conduct for parties opposing the class. (Fed.R.Civ.P. 23(b)(1)(A).)

3 23. Plaintiff Rutti will fairly and adequately protect the interests of the
4 California Sub-Class because he and his counsel possess the requisite resources
5 and abilities to prosecute this case as a class action.

6 24. The prosecution of separate actions by the California Sub-Class
7 would create a risk of adjudications with respect to individual members of the
8 class that would, as a practical matter, be dispositive of the interests of the other
9 members not parties to the adjudications or substantially impair or impede their
10 ability to protect their interests. (Fed.R.Civ.P. 23(b)(1)(B).)

11 25. The questions of law and fact common to the California Sub-Class
12 predominate over any questions affecting only individual class members, and a
13 class action is superior to other available methods for the fair and efficient
14 adjudication of the controversy. (Fed.R.Civ.P. 23(b)(3).) More specifically,
15

16 a. Members of the California Sub-Class have little or no interest
17 in individually controlling the prosecution of separate actions.
18 (Fed.R.Civ.P. 23(b)(3)(A).)

19 b. Plaintiff is not aware of any other litigation concerning the
20 controversy already commenced by the California Sub-Class. (Fed.R.Civ.P.
21 23(b)(3)(B).)

22 c. It is desirable to concentrate the litigation of the claims in this
23 Court because Defendant does a substantial amount of business in this
24 district;

25 d. This action is manageable as a class action because, compared
26 to any other method such as individual interventions or the consolidation of
27 individual actions, a class action is more fair and efficient. (Fed.R.Civ.P.
28 23(b)(3)(D).)

1 26. Plaintiff contemplates providing a notice or notices to the California
2 Sub-Class, as approved by the Court, to be delivered through the United State
3 mail. The notice or notices shall, among other things, advise the California Sub-
4 Class that they shall be entitled to "opt out" of the class certified for the California
5 Action if they so request by a date specified within the notice, and that any
6 judgment on the California Action, whether favorable or not, entered in this case
7 will bind all class members except those who affirmatively exclude themselves by
8 timely opting out.
9

10 27. Plaintiff also contemplates providing a notice or notices to all of the
11 FLSA Employees, as approved by the Court, to be delivered through the United
12 State mail. The notice or notices shall, among other things, advise each of the
13 FLSA Employees that they shall be entitled to "opt into" the FLSA Action if they
14 so request by the date specified within the notice, and that any judgment on the
15 FLSA Action, whether favorable or not, entered in this case will bind all FLSA
16 call members who timely request inclusion in the class.

17 **FIRST CLAIM FOR RELIEF FOR VIOLATION**
18 **OF THE FAIR LABOR STANDARDS ACTION OF 1938**
19 **(On Behalf of the FLSA Employees As Against Defendant)**
20

21 28. Plaintiff reasserts and re-alleges the allegations set forth in
22 Paragraphs 1 through 27, above excepting those paragraphs that are inconsistent
23 with this cause of action brought pursuant to the FLSA.
24

25 29. The FLSA regulates, among other things, the payment of overtime
26 pay by employers whose employees are engaged in commerce, or engaged in the
27 production of goods for commerce, or employed in an enterprise engaged in
28 commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

1 30. Section 7(a)(1) of the FLSA, 29 U.S.C. § 207(a)(1), requires
2 employers to pay non-exempt employees who work longer than forty (40) hours in
3 a workweek one and one-half times the employee's regular rate of pay for the
4 hours worked in the workweek in excess of forty (40) hours. Defendant is, and
5 was, subject to this requirement to pay Lojack Employees one and one-half times
6 the employees' regular rate of pay for all hours worked in a workweek in excess of
7 forty (40) hours. Defendant violated the FLSA by paying Lojack Employees an
8 hourly rate, limited to only forty (40) hours per week without regard to the
9 number of hours worked in excess of forty (40) hours in a workweek.
10

11 31. Defendant has deprived Plaintiff and the other Lojack Employees of
12 overtime compensation by not paying the Lojack employees for all hours worked.

13 32. Defendant LOJACK'S violations of the FLSA as alleged herein have
14 been done in a willful and bad faith manner such that the FLSA Employees are
15 entitled to damages equal to the amount of overtime premium pay within the three
16 years preceding the filing of this complaint, plus periods of equitable tolling. As a
17 result of the aforesaid willful violations of the FLSA, overtime compensation has
18 been unlawfully withheld by Defendant LOJACK from Plaintiff and similarly
19 situated persons for which the Defendant is liable pursuant to 29 U.S.C. § 216(b),
20 together with an additional equal amount as liquidated damages, as well as
21 interest, reasonable attorneys' fees and costs.

22 33. The employment and work records for the Plaintiff is in the exclusive
23 possession, custody and control of Defendant LOJACK and Plaintiff is unable to
24 state at this time the exact amount owing to each of them. Defendant LOJACK is
25 under a duty imposed by 29 U.S.C. § 211(c) and the regulations of the U.S.
26 Department of Labor to maintain and preserve Plaintiff's payroll and other
27 employment records from which the amounts of the Defendant's liability can be
28 ascertained.

1 **SECOND CLAIM FOR RELIEF FOR VIOLATION**
2 **OF CALIFORNIA LAW FOR FAILURE TO PAY OVERTIME**
3 **(On Behalf of the California Sub-Class Only)**
4

5 34. Plaintiff reasserts and re-alleges the allegations set forth in
6 Paragraphs 1 through 33, above excepting those paragraphs that are inconsistent
7 with this cause of action brought pursuant to California law.
8

9 35. The Lojack Employees employed by Defendant are subject to the
10 terms and conditions of the California Wage Orders, found in the California Code
11 of Regulations, at Title 8, Section 11000, *et seq.*, as amended.

12 36. The persons employed by Defendant as Lojack Employees in the
13 State of California regularly, and as a matter of policy and practice, worked and
14 do work in excess of forty (40) hours in a workweek, and in excess of eight (8)
15 hours in a day. These persons are therefore entitled to payment of daily and
16 weekly overtime pay under California Wage Orders. Defendant has failed to pay
17 these persons the wages for hours worked and overtime pay to which they are
18 entitled, thereby violating California law.

19 37. The Lojack Employees employed by Defendant in the State of
20 California regularly, and as a matter of practice, did not receive statutory meal
21 periods and/or rest breaks as required by the California Wage Orders. The
22 California Sub-Class was not provided meal periods and/or relieved of all duties
23 during meal periods nor were they permitted nor authorized to take rest breaks as
24 required under California law.
25

26 38. The Lojack Employees employed by Defendant in the State of
27 California regularly, and as a matter of practice, did not receive indemnification
28 for expenditures and/or losses as required by the California Labor Code.
Defendant has failed to pay the Lojack Employees the reimbursement to which

1 they are entitled for maintenance of the vehicles, thereby violating the California
2 Labor Code.

3 39. The California Sub-Class is entitled to receive the unpaid overtime
4 pay due them under California law. In addition, the California Sub-Class is
5 entitled to recover interest on the amount of unpaid overtime pay due them and
6 reasonable attorneys' fees and costs of suit, pursuant to Section 1194(a) of the
7 California Labor Code. In addition, Section 203 of the California Labor Code
8 provides for the payment of "waiting time penalties" if an employer does not
9 properly pay all wages due an employee upon termination of the employee's
10 employment. Lojack Employees in the State of California whose employment
11 with Defendant has terminated have not been properly paid the wages that are due
12 them upon termination of their employment. Accordingly, these class members
13 are entitled to recover "waiting time penalties" under Section 203 of the California
14 Labor Code.
15

16 **THIRD CLAIM FOR RELIEF FOR VIOLATION OF**
17 **BUSINESS AND PROFESSIONS CODE SECTION 17200**

18 **(On Behalf of the California Class Only)**
19

20 40. Plaintiff reasserts and re-alleges the allegations set forth in
21 Paragraphs 1 through 39, above excepting those paragraphs which are
22 inconsistent with this cause of action for violations of the California Business and
23 Professions Code § 17200.
24

25 41. Section 17200 of the California Business and Professions Code
26 prohibits any unlawful, unfair or fraudulent business act or practice.

27 42. Defendant has engaged in, and continues to engage in the following
28 unlawful, unfair and fraudulent business practices in violation of Section 17200 of
the California Business and Professions Code:

1 a. The failure to pay Lojack Employees all wages for hours worked
2 including overtime pay, meal period and rest break compensation for denied meal
3 an rest breaks and vehicle maintenance compensation and reimbursement due
4 them under California law;

5 b. The failure to pay the Lojack Employees employed in the State of
6 California all wages for hours worked due them upon termination of their
7 employment;

8 c. The failure to maintain accurate and complete payroll records as
9 required by the FLSA, including as required by Section 1174(d) of the California
10 Labor Code.

11
12 48. These challenged policies and practices have harmed the named
13 Plaintiff, the members of the California Sub-Class and the general public.

14 49. As a result of these unlawful policies and practices, Plaintiff is
15 entitled to an injunction issue against Defendant, pursuant to Section 17203 of the
16 California Business and Professions Code, to prevent them from engaging in such
17 future unlawful, unfair and fraudulent business practices. Plaintiff also is entitled
18 to an order requiring Defendant to disgorge the ill-gotten gains obtained by
19 engaging in these unlawful business practices and to provide restitution to all
20 persons who have suffered damages or injury as a result of these unlawful
21 business practices, including but not limited to all Lojack Employees employed in
22 California during the applicable limitations period.

23 50. Plaintiff is entitled to an award of reasonable attorneys' fees pursuant
24 to California Code of Civil Procedure § 1021.5.

25 **ARBITRATION CLAUSE**

26 51. To the extent it is alleged that the Lojack Employees entered into
27 arbitration agreements, then such agreements would be void as procedurally and
28 substantively unconscionable. In the context of this case such agreements are

1 adhesive, involve relatively small claims and contain provisions that would curtail
2 the important public policies surrounding both class action and wage and hour
3 laws. The California's Supreme Court declared in *Pressler v. Donald L. Bren Co.*
4 (1982) 32 Cal.3d 831: "Public policy has long favored the full and prompt
5 payment of wages due an employee. . . . [W]ages are not ordinary debts . . .
6 [B]ecause of the economic position of the average worker and, in particular, his
7 dependence on wages for the necessities of life for himself and his family, it is
8 essential to the public welfare that he receive his pay promptly." (Id., p. 837,
9 internal quotation marks and citations omitted.) (Accord: *Gould v. Maryland*
10 *Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1147-48 ["[T]he prompt
11 payment of wages due an employee is a fundamental public policy of this state. . .
12 [W]age and hours laws 'concern not only the health and welfare of the workers
13 themselves, but also the public health and general welfare.'"]; *Phillips v. Gemini*
14 *Moving Specialists* (1998) 63 Cal.App.4th 563, 574 [same.]). Enforcement of one-
15 sided agreements containing onerous provisions would violate the mandates of
16 both *Armendariz v. Foundation Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114
17 and *Discovery Bank v. Superior Court* (2005) 36 Cal.4th 148, 160.

19 PRAYER FOR RELIEF

20 WHEREFORE, Plaintiffs pray for judgment as follows:

- 21 1. Enter a declaratory judgment declaring that the Defendant has willfully
22 and wrongfully violated its statutory and legal obligations and deprived
23 Plaintiff and all other who are similarly situated of their rights,
24 privileges, protections, compensation, benefits and entitlements under
25 the law, as alleged herein;
- 26 2. Order a complete and accurate accounting of all the compensation to
27 which the Plaintiff and all others who are similarly situated are entitled;
28

- 1 3. For compensatory damages against Defendant to be paid to the FLSA
2 Employees, including all wages and overtime pay owed to the FLSA
3 Employees under the FLSA;
- 4 4. For liquidated damages against Defendant to be paid to the FLSA
5 Employees under Section 16(b) of the FLSA;
- 6 5. For compensatory damages against Defendant to be paid to the
7 California Sub-Class, including all wages and overtime pay, meal
8 period and rest break pay and compensation for vehicle maintenance
9 owed to the California Sub-Class under California law;
- 10 6. For "waiting time penalties," pursuant to Section 203 of the California
11 Labor Code, against Defendant to be paid to members of the California
12 Sub-Class whose employment has terminated with Defendant and who
13 were not properly paid all wages due and owing to them at the time of
14 such termination;
- 15 7. For attorneys' fees and costs as allowed by Section 16(b) of the FLSA,
16 Section 1194 of the California Labor Code, and Section 1021.5 of the
17 California Code of Civil Procedure;
- 18 8. For an order requiring Defendant to disgorge all ill-gotten gains from its
19 unlawful conduct in the State of California; and
- 20 9. For injunctive relief including, but not limited to, an Order enjoining
21 Defendant from continuing to engage in the State of California in the
22 unlawful business practices of:
 - 23 a. The failure to pay Lojack Employees all wages for hours worked
24 including overtime pay, meal period and rest break compensation due them
25 under California law;
- 26
- 27
- 28

