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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

12
 13 **A. FROST and JOSE RA,**
 14 Plaintiffs, and on behalf of all
 15 others similarly-situated,
 16 v.
 17 **LG ELECTRONICS INC.; LG ELECTRONICS**
U.S.A., INC.; SAMSUNG ELECTRONICS
 18 **CO., LTD.; SAMSUNG ELECTRONICS**
AMERICA, INC.
 19 Defendants.

Case No. 5:16-cv-05206-BLF

**SECOND AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiffs A. Frost (“Frost”) and Jose Ra (“Ra,” and collectively, “Plaintiffs”), each bring this
2 action individually, and on behalf of a class of all persons similarly situated (the “Class”), for damages
3 under the antitrust laws of the United States and the States of California and New Jersey, against
4 Defendants LG Electronics Inc.; LG Electronics U.S.A., Inc.; Samsung Electronics Co., Ltd.; and
5 Samsung Electronics America, Inc.; (collectively, “Defendants”), and allege as follows on information
6 and belief, except where based on personal knowledge:

7 **I. SUMMARY OF THE ACTION**

8 1. Defendants LG and Samsung have engaged in an unlawful conspiracy to fix and
9 suppress compensation for their employees, including their workforce in the United States. This
10 conspiracy centers on an agreement, entered into and enforced by Defendants’ senior executives, that
11 LG and Samsung will not (1) recruit each other’s employees, or (2) directly hire each other’s
12 employees (the “agreement”). The agreement is anticompetitive because it harms Defendants’
13 employees by imposing restrictions on employee mobility, thereby depriving them of better job
14 opportunities at the other company. The agreement lowers the salaries and benefits Defendants’
15 employees would otherwise have commanded, regardless of whether an employee seeks a job at a
16 Defendant or would be willing to switch jobs, because it reduces salary competition between LG and
17 Samsung. This action seeks damages on behalf of a class of current and former LG and Samsung
18 employees.

19 2. Defendants LG and Samsung are major players in Silicon Valley’s high technology
20 scene. Both have established massive office “campuses” in or around San Jose, California. Defendants’
21 Northern California offices’ facilitate their well-known businesses in electronic devices such as
22 smartphones and televisions—by, for example, supporting their United States sales networks,
23 researching and developing new products, and launching key products in this district—LG and
24 Samsung’s Northern California offices are the base of the companies’ initiatives in emerging
25 technology. In addition to the thousands of employees who work in California in LG and Samsung’s
26 core electronics businesses, Defendants have recruited hundreds of employees to work in emerging
27 technologies such as cloud computing, artificial intelligence and augmented reality.

1 3. LG and Samsung are operated by two of the most powerful and important *chaebol*¹ in the
 2 Republic of Korea (commonly known as South Korea). Measured by revenue, they are the largest
 3 *chaebol* in South Korea, each earning more than 115 trillion Korean won (approximately \$105 billion)
 4 annually. In the United States, LG and Samsung more closely resemble one another than any other
 5 employer. Therefore, the agreement cuts Defendants' employees off not only from the closest
 6 competitor for salary and benefits, but also from the most obvious step for career advancement outside
 7 of the employee's current position. LG and Samsung's agreement impacts hundreds of thousands of
 8 workers globally, including tens of thousands in the United States. The agreement suppresses
 9 competition for the entire United States salaried workforce for LG and Samsung, regardless of whether
 10 any particular employee actually sought to change employment.

11 4. Defendants' agreement reflects a long-standing conspiracy.²

12 5. Defendants' agreement to suppress competition is a naked restraint of trade that is *per se*
 13 unlawful under federal, California, and New Jersey law. Plaintiffs seek damages for violations of:
 14 Section 1 of the Sherman Act, 15 U.S.C. § 1; the Cartwright Act, California Business and Professions
 15 Code §§ 16720, *et seq.*; and the New Jersey Antitrust Act, N.J. Stat. § 9-1, *et seq.*

16 **II. JURISDICTION AND VENUE**

17 6. Plaintiffs bring this action to recover damages including treble damages, costs of suit,
 18 and reasonable attorneys' fees.

19 7. The Court has subject matter jurisdiction pursuant to Sections 4 and 16 of the Clayton
 20 Act (15 U.S.C. §§ 15 and 26) and 28 U.S.C. §§ 1331 and 1337.

21
 22 ¹ "A *chaebol* generally refers to a collective of formally independent firms under the single common
 23 administrative and financial control of one family. It literally means a group or party of wealth: *chae* (財)
 24 means wealth or fortune, and *bol* (閥) means a group or party. While there is no consensus, most
 25 scholars agree that a *chaebol* is defined by three business structural traits: it consists of many affiliated
 26 firms operating in a diverse number of industries, ownership and control of the group lie in a dominant
 27 family, and the business group accounts for a great percentage of the national economy." David Murillo
 28 & Yun-dal Sung, *Understanding Korean Capitalism: Chaebols and their Corporate Governance* (2013).

² For purposes of this complaint, Plaintiffs allege Defendants entered into this unlawful agreement no
 later than January 1, 2005, but the specific date upon which the agreement and the ensuing conspiracy
 commenced (assuming it is even capable of determination given the nature of secret conspiracies) is
 information known only to Defendants. Plaintiffs will amend this complaint upon discovering sufficient
 evidence pointing to a specific start date for Defendants' conspiracy.

1 8. Venue is proper in this judicial district pursuant to Section 12 of the Clayton Act (15
2 U.S.C. § 22) and 28 U.S.C. § 1391(b), (c), and (d) because a substantial part of the events giving rise to
3 Plaintiffs' claims arose in this district, a substantial portion of the affected interstate trade and
4 commerce was carried out in this district, and both LG and Samsung maintain offices or reside in this
5 district.

6 9. Defendants are subject to the jurisdiction of this Court by virtue of their nationwide
7 contacts and other activities, as well as their contacts with the State of California.

8 10. Defendants employ thousands of employees in the State of California, and in particular,
9 in Silicon Valley.

10 11. California is a major hub of operations for both LG and Samsung. LG and Samsung each
11 have many offices located in this district, including several in Silicon Valley and in San Francisco. LG
12 and Samsung further the conspiracy through the operations of their subsidiaries or affiliates located in
13 this district.

14 12. Samsung's recruitment efforts target Silicon Valley high technology workers. Defendant
15 Samsung recently unveiled a 10-story building and campus with approximately 1.1 million square feet
16 of space in San Jose, California. The "campus" covers 9.4 acres and is wholly-owned by Defendant
17 Samsung.

18 13. Defendant LG also targets bay area technology workers. For example, through LG
19 Silicon Valley Lab, a "premier innovation center" of LG Electronics with Bay Area offices in Santa
20 Clara and San Francisco. The Bay Area is a critical market to LG, and a focus of national marketing
21 efforts. For example, LG recently unveiled its new V20 Nougat Android smartphone in San Francisco,
22 to coincide with the launch of Apple's iPhone 7.

23 14. Pursuant to Civil Local Rule 3.2(c) and (e), assignment of this case to the San Jose
24 Division of the United States District Court for the Northern District of California is proper because a
25 substantial part of the acts giving rise to the antitrust claims occurred within the San Jose Division.
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1 **IV. CHOICE OF LAW**

2 **A. California Class**

3 15. California law applies to the claims of Plaintiff Frost and the members of the California
4 Class. Application of California law is constitutional, and California has a strong interest in protecting
5 its citizens, deterring unlawful business practices of resident corporations and compensating those
6 harmed by activities occurring in and emanating from California.

7 16. California is the State in which Plaintiff Frost and the California Class members'
8 relationship with the Defendants is centered.

9 17. Plaintiff Frost and the other California Class members were injured by conduct
10 occurring, in part, and emanating from, California. Specifically, Defendants' unlawful agreement was
11 enforced and applied in California, among other states.

12 18. For these reasons, among others, California has significant contacts, and a significant
13 aggregation of contacts, creating state interests, with all parties and the acts alleged herein.

14 19. California's substantial interests far exceed those of any other state concerning these
15 claims.

16 **B. New Jersey Class**

17 20. New Jersey law applies to the claims of Plaintiff Ra and members of the New Jersey
18 Class. Application of New Jersey law is constitutional, and New Jersey has a strong interest in
19 protecting its citizens, deterring unlawful business practices of resident corporations and compensating
20 those harmed by activities occurring in and emanating from New Jersey.

21 21. New Jersey is the State in which Plaintiff Ra and New Jersey Class members'
22 relationship with the Defendants is centered.

23 22. Plaintiff Ra and other New Jersey Class members were injured by conduct occurring, in
24 part, and emanating from, New Jersey. Specifically, Defendants' unlawful agreement was enforced and
25 applied in New Jersey, among other states.

26 23. For these reasons, among others, New Jersey has significant contacts, and a significant
27 aggregation of contacts, creating state interests, with all parties and the acts alleged herein.
28

1 24. New Jersey’s substantial interests far exceed those of any other state concerning these
2 claims.

3 **V. THE PARTIES**

4 **A. Plaintiffs**

5 25. Plaintiff A. Frost is a citizen of the State of California and resides in Santa Clara County.
6 From approximately September 2012 until February 2014, Frost worked in Northern California, in this
7 district, as a channel sales manager for LG Electronics USA, Inc. Frost was injured in his business or
8 property by reason of the violations alleged herein.

9 26. Plaintiff Jose Ra is a citizen of the State of New York. From approximately March 2006
10 until March 2014, Ra worked in Englewood Cliffs, New Jersey as an analyst and later a manager in the
11 American Treasury Department for LG Electronics USA, Inc. Ra was injured in his business or
12 property by reason of the violations alleged herein.

13 **B. LG Defendants**

14 27. Defendant LG Electronics Inc. (“LG Electronics”) is a South Korean entity
15 headquartered at LG Twin Towers 20, Yeouido-dong, Yeongdeungpo-gu, Seoul, South Korea, 150-721.
16 LG Electronics has annual global revenues exceeding \$50 billion, and is a global force in consumer
17 electronics, home appliances and mobile communications. LG Electronics established its first overseas
18 branch office in New York in 1968. LG Electronics employs close to 90,000 employees world-wide,
19 most of whom are located outside of South Korea. LG Electronics has an ownership or management
20 interest—or both—in many of the other LG Defendants. The agreement not to hire or recruit from
21 Samsung could not be made without LG Electronics’ knowledge or participation, due to the
22 centralized decision making inherent and customary in the *chaebol* structure, as discussed further
23 below.

24 28. LG Electronics controls and operates several subsidiaries based in the United States,
25 including at least one that is located in this district.

26 29. Defendant LG Electronics U.S.A., Inc. is a wholly owned subsidiary of LG Electronics,
27 with a principal place of business at 1000 Sylvan Avenue, Englewood Cliffs, New Jersey, 07632.
28

1 30. In the relevant time period, Defendants LG Electronics and LG Electronics U.S.A., Inc
2 (collectively, “LG Defendants”) employed thousands of employees in the United States, including
3 thousands in California and New Jersey.

4 31. LG Defendants have important ties to this district. In addition to maintaining offices in
5 Northern California to support its cloud computing, high technology, and television businesses, LG is a
6 major supplier of displays to Apple for its devices (such as the iPhone, iPad, and watch), and it
7 maintains offices and employees in this district to service the relationship with Apple.

8 **C. Samsung Defendants**

9 32. Defendant Samsung Electronics Co., Ltd. (“Samsung Electronics”) is a South Korean
10 multinational electronics company, with a principal place of business and home office at 129, Samsung-
11 ro, Yeongtong-gu, Suwon-si, Gyeonggi-do, Korea. Samsung Electronics operates and controls several
12 United States subsidiaries, including at least one with its principal place of business in California.
13 Samsung Electronics has an ownership or management interest—or both—in many of the other
14 Samsung Defendants. The agreement not to hire or recruit from LG could not be made without
15 Samsung Electronic’s knowledge or participation, due to the centralized decision making inherent and
16 customary in the *chaebol* structure, as discussed further below.

17 33. Defendant Samsung Electronics America, Inc. is a wholly owned subsidiary of
18 Defendant Samsung Electronics Co., Ltd., with a principal place of business at 85 Challenger Road,
19 Ridgefield Park, New Jersey, 07660.

20 34. In the relevant time period, Defendants Samsung Electronics Co., Ltd., and Samsung
21 Electronics America, Inc., (collectively, “Samsung Defendants”) employed thousands of employees in
22 the United States, including thousands in California and New Jersey.

23 35. Samsung has extensive ties to this district. Samsung has waged epic patent litigation
24 concerning Apple’s iPhone in this district. This litigation relates to Samsung’s well-known and
25 profitable smartphone business. A substantial part of Samsung’s smartphone business is located in this
26 district, as well as a significant part of its research and development for many product lines.

1 **VII. CLASS ACTION ALLEGATIONS**

2 36. Plaintiffs bring this lawsuit as a class action pursuant to Federal Rules of Civil Procedure
3 23(a), 23(b)(2), and 23(b)(3), on behalf of themselves and all others similarly situated as members of the
4 following Nationwide Class and State Classes:

5 **A. The Nationwide Class**

6 37. The Nationwide Class is defined as follows:

7 All natural persons employed at any time by Defendants in the United
8 States on a salaried basis during the period from January 1, 2005 through
9 the present (the “Class Period”). Excluded from the Class are: retail
10 employees, corporate officers, and members of the boards of directors of
11 Defendants who entered into the illicit agreements alleged herein; and
12 any and all judges and justices, and chambers’ staff, assigned to hear or
13 adjudicate any aspect of this litigation.

11 **B. The California Class**

12 38. Plaintiff Frost brings this action on behalf of himself and on behalf of a class based on
13 California law, for all LG and Samsung employees employed at any time in California (the “California
14 Class”) pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). The California
15 Class is defined as follows:

16 All natural persons employed at any time by Defendants in California on a
17 salaried basis during the period from January 1, 2005 through the present
18 (the “Class Period”). Excluded from the Class are: retail employees,
19 corporate officers, and members of the boards of directors of Defendants
20 who entered into the illicit agreements alleged herein; and any and all
21 judges and justices, and chambers’ staff, assigned to hear or adjudicate any
22 aspect of this litigation.

20 **C. The New Jersey Class**

21 39. Plaintiff Ra brings this action on behalf of himself and on behalf of a class based on New
22 Jersey law, for all LG and Samsung employees employed at any time in New Jersey (the “New Jersey
23 Class”) pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). The New Jersey
24 Class is defined as follows:

25 All natural persons employed at any time by Defendants in New Jersey on
26 a salaried basis during the period from January 1, 2005 through the
27 present (the “Class Period”). Excluded from the Class are: retail
28 employees, corporate officers, and members of the boards of directors of
Defendants who entered into the illicit agreements alleged herein; and any
and all judges and justices, and chambers’ staff, assigned to hear or
adjudicate any aspect of this litigation.

1 40. Plaintiffs do not, as yet, know the exact size of the Nationwide, California or New Jersey
2 Class because such information is in the exclusive control of Defendants. Based upon the nature of the
3 trade and commerce involved, Plaintiffs believe that there are at least tens of thousands of
4 Classmembers, and that the Nationwide Class members are geographically dispersed throughout the
5 United States. Joinder of all Class members, therefore, is not practicable.

6 41. The questions of law or fact common to the Class include but are not limited to:

7 i. whether the conduct of Defendants violated the Sherman Act, the Cartwright
8 Act, or the New Jersey Antitrust Act;

9 ii. whether Defendants' conspiracy and associated agreements, or any one of them,
10 constitute a *per se* violation of the Sherman Act, the Cartwright Act, or the New Jersey Antitrust Act;

11 iii. whether Defendants fraudulently concealed their conduct;

12 iv. whether Defendants' agreement unlawfully restrained trade, commerce, or
13 competition for skilled labor among Defendants;

14 v. whether Plaintiffs and the Class suffered antitrust injury or were threatened with
15 injury;

16 vi. the difference between the total compensation Plaintiffs and Class members
17 received from Defendants, and the total compensation Plaintiffs and Class members would have
18 received from Defendants in the absence of the illegal acts, contracts, combinations, and conspiracy
19 alleged herein;

20 vii. the type and measure of damages suffered by Plaintiffs and the Class members.

21 42. These and other questions of law and fact are common to the Class, and predominate
22 over any questions affecting only individuals.

23 43. Plaintiffs' claims are typical of the claims of the Class.

24 44. Plaintiffs will fairly and adequately represent the interests of the Class and have no
25 conflict with the interests of the Class.

26 45. Plaintiffs have retained competent counsel experienced in antitrust litigation and class
27 action litigation to represent themselves and the Class.
28

1 46. This class action is superior to the alternatives, if any, for the fair and efficient
2 adjudication of this controversy. Prosecution as a class action will eliminate the possibility of repetitive
3 litigation. There will be no material difficulty in the management of this action as a class action. By
4 contrast, prosecution of separate actions by individual Class members would create the risk of
5 inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

6 **VIII. FACTUAL ALLEGATIONS**

7 **A. Trade and Commerce**

8 47. During the Class Period, Defendants employed Class members in California, New
9 Jersey, and throughout the United States, including within this judicial district.

10 48. Defendants' conduct substantially affected interstate commerce throughout the United
11 States and caused antitrust injury throughout the United States.

12 **B. The LG and Samsung Workforce**

13 49. LG and Samsung are two of the largest and most dominant *chaebol* in South Korea. Both
14 focus primarily on technology design and manufacturing, and their businesses overlap across product
15 lines in electronics, computing, communications, and consumer goods. The companies are strikingly
16 similar: both LG and Samsung have giant headquarters in Seoul and Seoul Capital Area, and each has
17 established a base of operations in Silicon Valley and Eastern New Jersey. In Korea, LG and Samsung
18 control entire parts of Seoul, and local neighborhoods catering to one or the other's employees are
19 known as "Samsung Town" and "LG Town." Their offices are within minutes of each other in San
20 Jose and New Jersey.

21 50. Because of these companies' focus on electronics and technology, both employ a
22 significant number of workers in California's Silicon Valley and New Jersey.

23 51. The two companies also share a history of collusive activity: in 2006, the United States
24 Department of Justice's Antitrust Division announced that it had revealed a price fixing scheme in the
25 market for liquid crystal display ("LCD") products that included Defendants Samsung Electronics,
26 Co., Ltd., Samsung Semiconductor, Inc., Samsung Electronics America, Inc., LG Display Co., Ltd.,
27 and LG Display America, Inc.

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1 52. LG and Samsung have a long-standing agreement—reached at the highest levels of the
2 company’s corporate hierarchy—not to solicit or hire one another’s workers. This policy extends to all
3 LG and Samsung affiliates, and to all of the companies’ United States workers.

4 53. By eliminating competition between themselves, LG and Samsung have foreclosed the
5 most likely alternative workplace for their employees. Because the LG and Samsung corporate cultures
6 are so similar, and the companies have comparable product lines, each company is where the other’s
7 employees are most marketable.

8 54. In a competitive labor market, each Defendant would compete for the other’s
9 employees and there would be significant mobility between the two companies. This competition and
10 mobility would allow the workforces each to demand—and collectively receive—higher wages, benefits
11 and other compensation, either in exchange for switching employers or for staying with the current
12 employer. Such compensation benefits would extend to employees whether or not such employees
13 would have been subject to recruiting, or hired, by the other company absent the agreement given the
14 standard ways in which corporate salary structures are set, maintained, and enforced.

15 55. Such employee mobility also provides a necessary and competitive exchange of
16 information: when an employee receives a better offer from a competing company, he or she informs
17 his or her coworkers of the new, higher competitive offer. These workers can then seek employment
18 with a competitor, or demand equal or higher pay to stay. Moreover, because companies employ salary
19 structures, when a group of employees are able to leverage higher compensation, the benefits tend to be
20 spread across the workforce. Therefore, an agreement not to recruit or hire affects not only the
21 individual who is denied new employment opportunities or compensation information, but also his or
22 her coworkers.

23 56. Absent the unlawful agreement, Defendants LG and Samsung would regularly solicit
24 and hire each other’s current employees.

25 57. As with other companies in the high technology labor market, hiring is often
26 accomplished through the use of a recruiter or headhunter. Recruiters in this industry will often reach
27 out directly to potential candidates. Although this practice most frequently takes place over on-line
28 professional or social media platforms, recruiters and refer to this method as “cold calling.” Cold

1 calling includes communicating directly in any manner (including orally, in writing, telephonically, or
2 electronically) with another firm's employee who has not otherwise applied for a job opening.

3 58. Hiring firms value this recruiting method, because when a recruiter is the first to contact
4 a potential employee, the hiring firm knows that employee is loyal, and in-demand.

5 59. In a competitive labor market, such as Silicon Valley, firms must court qualified
6 candidates, and with ever-expanding needs, the fastest way to fill openings is through recruitment
7 efforts centered on cold calling.

8 60. Recruiting and hiring employees from a rival firm—poaching—is one of the only
9 methods to hire experienced workers. And by hiring from the competition, a firm not only saves on
10 training the new hire, but also takes a valuable asset from a rival.

11 61. For these reasons and others, cold calling is a key competitive tool companies use to
12 recruit employees, particularly high technology employees with advanced skills and abilities who work
13 for close rivals.

14 62. Therefore, like an agreement foreclosing rival recruiting and hiring, the compensation
15 effects of eliminating cold calling are not limited to the particular individuals who receive cold calls, or
16 to the particular individuals who would have received cold calls. Instead, the impact of the
17 anticompetitive practices alleged herein applies commonly to all employees of Samsung and LG.

18 63. Defendants carefully monitor and manage their internal compensation levels to achieve
19 certain goals, including:

- 20 i. maintaining approximate compensation parity among employees within the same
21 employment categories (for example, among sales associates and engineers);
22 ii. maintaining certain compensation relationships among employees across different
23 employment categories (for example, among junior sales associates and engineers relative to senior sales
24 associates and engineers);
25 iii. maintaining high employee morale and productivity;
26 iv. retaining employees; and
27 v. attracting new and talented employees.
28

1 64. Under competitive and lawful conditions, the foregoing objectives would be subject to
2 pressure from the possibility that LG and Samsung could freely hire one another's employees, resulting
3 in greater compensation and employment benefits for LG and Samsung employees experienced
4 generally across the entire workforces of the two companies.

5 65. Similarly, under competitive and lawful conditions, Defendants would use cold calling
6 as one of their most important tools for recruiting and retaining skilled labor, and the use of cold calling
7 among Defendants commonly impacts and increases mobility and thus total compensation of all
8 Defendants' employees.

9 **C. Defendants' Conspiracy to Fix the Compensation of Their Employees at Artificially**
10 **Low Levels**

11 66. The LG *chaebol* and Samsung *chaebol* formed a bilateral agreement to not hire or recruit
12 each other's employees. The LG *chaebol* and Samsung *chaebol* reached this agreement at and through
13 the most senior levels of their *chaebol* corporate control structure, in Seoul, South Korea, and in
14 Suwon, South Korea, respectively.³ The agreement not to recruit or hire each other's employees
15 applies to and is enforced by and through all member firms, subsidiaries, and affiliates within the LG
16 *chaebol* and the Samsung *chaebol*, including but not limited to the Korean *chaebol* flagship companies,
17 Defendants LG Electronics Inc., and Samsung Electronics Co., Ltd., and their U.S. subsidiaries,
18 Defendants LG Electronics U.S.A., Inc., and Samsung Electronics America, Inc. As alleged in more
19 detail below, the bilateral agreement not to hire or recruit each other's employees, like other human
20 resources policies and practices, originated from the *chaebol* headquarters in Korea, and is enforced
21 down to the international subsidiary level using the *chaebol* corporate control structure that permeates
22 recruiting, hiring, and human resources functions of *chaebol* companies.

23 **a. Chaebol and Corporate Control**

24 67. *Chaebol* are a widely-studied form of corporate organization in South Korea that are
25 fundamentally different in structure than the widely held multidivisional American firms and must be
26 understood on their own terms.

27
28 ³ The Samsung *chaebol* is based and headquartered in Suwon, which is approximately 20 miles south of
Seoul, where the LG *chaebol* is based and headquartered.

1 68. *Chaebol* constitute horizontally and vertically integrated business groups under the
2 control of a single family or extended family with key “flagship” firms constituting the effective
3 instruments of control of other firms within the group.

4 69. *Chaebol* use various mechanisms to control intra-group corporate entities, including
5 direct equity holdings among group firms, complex and often opaque pyramidal, cross- and circular
6 shareholding arrangements, the use of flagship firms within the group both as holding companies and
7 to direct particular production networks within the group, interlocking directorates and movement of
8 top management between group headquarters, and unusually high levels of intra-group transactions.

9 70. *Chaebol* control structure is further perpetuated and enforced by cultural factors such as
10 employee loyalty, rigidly hierarchical forms of corporate organization, and strong deference to
11 superiors.

12 71. It is undisputed that the Samsung Defendants are part of the Samsung *chaebol*, that
13 Defendant Samsung Electronics Co. is the flagship company of the Samsung *chaebol*, and that
14 Defendant Samsung Electronics America, Inc., is the wholly-owned U.S. subsidiary of Defendant
15 Samsung Electronics Co.

16 72. LG Defendants are part of the LG *chaebol*. Defendant LG Electronics Inc. is the flagship
17 company of the LG *chaebol*, and Defendant LG Electronics U.S.A., Inc., is the wholly-owned U.S.
18 subsidiary of Defendant LG Electronics Inc.

19 73. The Samsung *chaebol* and the LG *chaebol* are two of the four largest, most dominant and
20 most influential *chaebol* in South Korea. The Samsung *chaebol* is the largest *chaebol* in South Korea.

21 74. The four largest *chaebol*, including the Samsung *chaebol*, the LG *chaebol*, the Hyundai
22 Motors *chaebol*, and the SK *chaebol*, account for around half of the value of the South Korean stock
23 market. The Samsung *chaebol* alone accounts for approximately 30% of the market value of South
24 Korea’s KOSPI stock index.

25 75. Large *chaebol* share significant economic, social, and political interests and pursued
26 those shared interests through the *chaebol* lobby group Federation of Korean Industries (FKI), which
27 was the most powerful business organization in South Korea.
28

1 76. Dominant *chaebol* have exploited and abused their positions of power, including by
2 engaging in criminal conduct. For example, in August 2017, the head of the Samsung *chaebol*, Lee Jae-
3 yong, was convicted of bribing deposed South Korean president Park Geun-hye, as well as of hiding
4 assets, embezzlement, and perjury, and was sentenced to a five-year term of imprisonment.

5 **b. *Chaebol* Control Structure in Recruiting and Human Resources Operations**

6 77. The recruiting, hiring, and human resources functions of *chaebol* companies, including
7 international subsidiaries, operate under the centralized and hierarchical *chaebol* control structure.

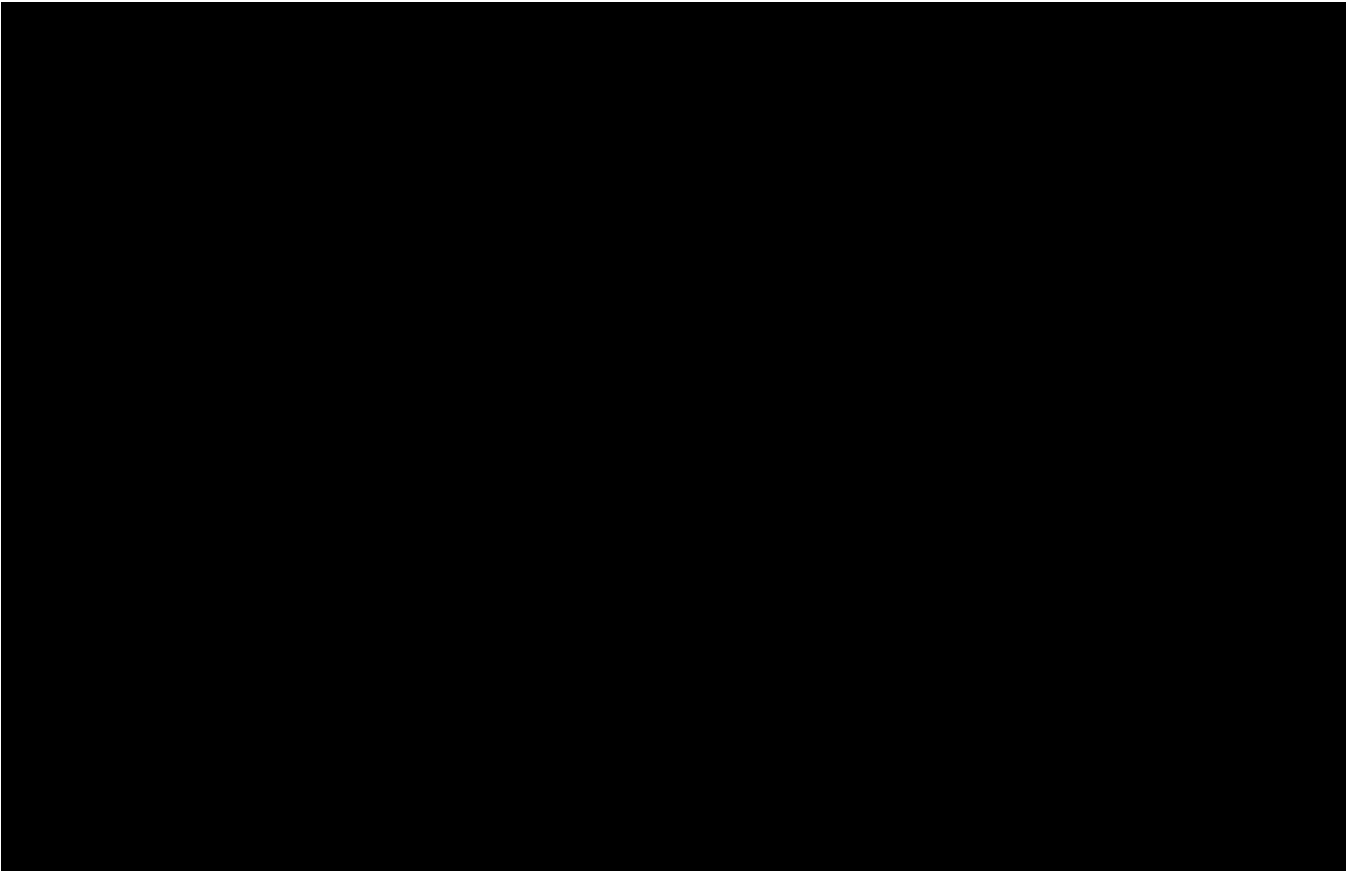
8 78. Because of the centralized structure of *chaebol* and the strong and enforced culture of
9 corporate loyalty, South Korean *chaebol*, including the Samsung *chaebol* and the LG *chaebol*, each
10 maintain a central database of extensive records and information as to their employees and candidates
11 for employment.

12 79. Recruiting, hiring, and human resources decisions as to Defendants LG Electronics
13 U.S.A., Inc., and Samsung Electronics America, Inc., are controlled by their respective Korean parent
14 companies, or 본사 (“bon-sa”), which in turn are the flagship companies for their respective *chaebol*.

15 80. Specifically, the Korean flagship parent companies, Defendants LG Electronics Inc. and
16 Samsung Electronics Co., Ltd., oversee, manage, control, direct, and/or approve human resources
17 operations as to their subsidiaries, or 인사 (“in-sa”), including Defendants LG Electronics U.S.A.,
18 Inc., and Samsung Electronics America, Inc., with regard to recruiting, qualifications, hiring,
19 headcount, offers of employment, compensation, bonuses, employee self-evaluations, manager
20 evaluations of employees, promotions, addressing performance issues, and termination.

21 81. The *chaebol* foreign subsidiaries also must adopt procedures, practices, and/or
22 guidelines created and disseminated by the Korean parent companies and must obtain the Korean
23 parent companies’ approval, or 승인 (“seung-in”), with respect to the recruiting and hiring of
24 employees at the foreign subsidiaries’ U.S. locations. The Korean *chaebol* parent company, Defendant
25 LG Electronics Inc., creates human resources guidelines, procedures, and approval processes and
26 disseminates them to and enforces them at and through their U.S. *chaebol* subsidiary, Defendant LG
27 Electronics U.S.A. For example, the following excerpt is from a document created by the Korean
28 *chaebol* parent company, Defendants LG Electronics Inc., and disseminated to their U.S. *chaebol*

1 subsidiary, Defendant LG Electronics U.S.A.⁴ Through these and other means, the Korean *chaebol*
2 parent company, Defendants LG Electronics Inc., instruct, enforce, and perpetuate the centralized
3 *chaebol* control structure in the human resources operations at their global chaebol subsidiaries,
4 including at their U.S. *chaebol* subsidiary, Defendant LG Electronics U.S.A.



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19 82. The Korean parent companies, Defendants LG Electronics Inc. and Samsung
20 Electronics Co., Ltd., direct their foreign subsidiaries to submit, and the subsidiaries do submit, human
21 resources determinations and documentation to the Korean parent companies, usually through an
22 internal portal, for review, approval, and/or instruction. These include but are not limited to
23 determinations and documentation related to recruiting, qualifications, hiring, and retention of
24 employees at the Silicon Valley and eastern New Jersey locations of Defendants LG Electronics U.S.A.,

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26 _____
27 ⁴ [Redacted]
28 [Redacted]

1 Inc., and Samsung Electronics America, Inc. Examples of such communications include but are not
2 limited to:⁵

3 i. PowerPoint presentations created by the *chaebol* Korean parent company, Defendant
4 LG Electronics Inc., and disseminated to its *chaebol* U.S. subsidiary, Defendant LG Electronics U.S.A.,
5 Inc., on guidelines all global subsidiary offices must follow in order to obtain Korean parent approval
6 regarding human resources matters.

7 ii. Emails from the *chaebol* Korean parent company Defendant LG Electronics Inc., to
8 the *chaebol* U.S. subsidiary Defendant LG Electronics U.S.A., Inc., instructing the subsidiary that
9 Korean parent approval is needed for employee hiring.

10 iii. Email communications between the *chaebol* Korean parent company Defendant LG
11 Electronics Inc., and the *chaebol* U.S. subsidiary Defendant LG Electronics U.S.A., Inc., regarding the
12 subsidiary's hiring process and the role the Korean parent company plays in implementing decisions.

13 iv. Emails from the *chaebol* Korean parent company Defendant LG Electronics Inc., to
14 the *chaebol* U.S. subsidiary Defendant LG Electronics U.S.A., Inc., instructing the subsidiary to enter
15 into the central database records and information for employee candidates at the U.S. subsidiary.

16 v. Emails from the *chaebol* U.S. subsidiary Defendant LG Electronics U.S.A., Inc., to
17 the *chaebol* Korean parent company Defendant LG Electronics Inc., submitting for review and
18 requesting approval for the hiring of employees at the U.S. subsidiary.

19 vi. Emails from the *chaebol* Korean parent company Defendant LG Electronics Inc., to
20 the *chaebol* U.S. subsidiary Defendant LG Electronics U.S.A., Inc., requesting information regarding
21 candidate interviews and resumes for employee candidates at the U.S. subsidiary.

22 vii. Email communications between the *chaebol* Korean parent company Defendant LG
23 Electronics Inc., and the *chaebol* U.S. subsidiary Defendant LG Electronics U.S.A., Inc., regarding
24 interviewing and setting up video conference interviews for new hires for the U.S. subsidiary's local
25 office.

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⁵ Because the Samsung Defendants do not dispute this Court's proper exercise of personal jurisdiction,
28 this Court only authorized and Plaintiffs only received jurisdictional discovery from LG Defendants.
The following examples are taken from LG's jurisdictional discovery.

1 viii. Emails from the *chaebol* U.S. subsidiary Defendant LG Electronics U.S.A., Inc., to
2 the *chaebol* Korean parent company Defendant LG Electronics Inc., submitting for review and
3 requesting approval for changing the status of employees at the U.S. subsidiary from temporary to
4 permanent.

5 83. Accordingly, it is highly implausible that the U.S. subsidiaries of the Samsung *chaebol*
6 and the LG *chaebol* formed an agreement *without* the knowledge or consent of their Korean flagship
7 parent companies not to recruit or hire one another's employees.⁶

8 **c. Manifestations and Confirmations of Defendants' Conspiracy**

9 84. Plaintiff A. Frost was an employee of Defendant LG Electronics U.S.A., Inc., from in or
10 around September 2012 through in or around February 2014. During the duration of Frost's
11 employment at LG, Frost's positions was channel sales manager.

12 85. While employed at Defendant LG Electronics U.S.A., Inc., Frost applied to open
13 positions at companies within the Samsung *chaebol*, including at Defendant Samsung Electronics
14 America, Inc.

15 86. Specifically, while employed at Defendant LG Electronics U.S.A., Inc., Frost applied to
16 at least ten (10) open positions at companies within the Samsung *chaebol*, including openings as Key
17 Account Manager, Sales Manager – Regional Accounts, Channel Sales Manager, and District Sales
18 Manager.

19 87. Frost never received any response or interview from any company within the Samsung
20 *chaebol* while employed at Defendant LG Electronics U.S.A., Inc.

21 88. 180 Recruiting + Consulting is an established award-winning recruiting and consulting
22 organization founded in 2008 and based in Lisle, Illinois. 180 Recruiting + Consulting specializes in
23 recruiting in the technology industry, including for project management and engineering. 180
24 Recruiting + Consulting conducts surveys of hiring managers and talent acquisition personnel in the
25 technology industry and regularly creates and publishes original content regarding recruiting, hiring,
26 and human resources in the technology industry. In 2017, 180 Recruiting + Consulting earned a 87.5%

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⁶ See also Murillo & Sung, *supra*, at pp. 4-5.

1 Net Promoter Score from client companies and a 85.7% Net Promoter Score from candidates, and was
2 recognized among both the Best Client Service and Best Talent Service staffing agencies within the \$0-
3 99 million revenue range.

4 89. In or around 2013, while employed at Defendant LG Electronics U.S.A., Inc., Frost
5 received a message on LinkedIn from a recruiter at 180 Recruiting + Consulting stating that she had “a
6 couple of Channel Marketing Mrg positions open at Samsung” and that Frost “would have to be
7 willing to relocate to Ridgefield Park, NJ” if he was interested in those positions. Defendant Samsung
8 Electronics America, Inc., has a principal place of business at Ridgefield Park, New Jersey.

9 90. Shortly thereafter, on the same day, the same recruiter at 180 Recruiting + Consulting
10 sent another LinkedIn message to Frost stating: “I made a mistake! I’m not supposed to poach LG for
11 Samsung!!! Sorry! The two companies have an agreement that they won’t steal each other’s
12 employees. Sorry ’bout that!!!”. Prior to this interaction with the recruiter from 180 Recruiting +
13 Consulting, Frost was not aware that LG and Samsung had an agreement not to recruit or hire one
14 another’s employees.

15 91. After more than one year lapsed following Frost’s departure from Defendant LG
16 Electronics U.S.A., Inc., Frost again applied for positions at Defendant Samsung Electronics America,
17 Inc., including again for sales manager positions. This time, Frost was contacted for and had multiple
18 interviews at Defendant Samsung Electronics America, Inc. This is consistent with the statements
19 made by LG Director of Human Resources that LG *chaebol* companies and Samsung *chaebol* companies
20 have an “understanding” not to hire each other’s employees across levels, and that “[h]iring from each
21 other will not take place without a gap of a year,” as discussed further below.

22 92. Plaintiff Jose Ra was employed at Defendant LG Electronics U.S.A., Inc., from in or
23 around March 2006 through in or around March 2014. At LG, Ra first held the position of Financial
24 Analyst in the American Treasury Department, was promoted to Assistant Manager in the American
25 Treasury Department, and was promoted again to Manager in the American Treasury Department.

26 93. While employed at Defendant LG Electronics U.S.A., Inc., Ra applied to open positions
27 at companies within the Samsung *chaebol*, including at Defendant Samsung Electronics America, Inc.
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1 94. Ra never received any response or interview from any company within the Samsung
2 *chaebol* while employed at Defendant LG Electronics U.S.A., Inc.

3 95. Specifically, while Ra was employed in the American Treasury Department at
4 Defendant LG Electronics U.S.A., Inc., Ra learned of and became interested in a position as Finance
5 Manager at Defendant Samsung Electronics America, Inc. Ra inquired about the position with Ra's
6 personal connection, S., who was a Finance Manager at Defendant Samsung Electronics America, Inc.
7 Ra learned from S. that Samsung and LG do not hire each other's employees. As a result, Ra did not
8 further pursue the Finance Manager open position at Defendant Samsung Electronics America, Inc.

9 96. After Ra learned of Samsung and LG's agreement and practice to not hire each other's
10 employees, Ra asked his co-workers at Defendant LG Electronics U.S.A., Inc. about the agreement.
11 Ra's co-workers at Defendant LG Electronics U.S.A., Inc., including co-workers in the American
12 Treasury Department, confirmed that Samsung and LG had an unofficial or "gentlemen's agreement"
13 in Korea not to hire each other's employees and that the agreement "trickles down" to the respective
14 U.S. subsidiaries.

15 97. *The Economic Times* is an English-language Indian daily newspaper, first published in
16 1961. It is the world's second-most widely read English-language business newspaper, after the *Wall*
17 *Street Journal*, and is published simultaneously from twelve cities, including Mumbai.

18 98. From January 2010 through the present, Umesh Dhal is and has been the Director of
19 Human Resources of the LG *chaebol* firm LG Electronics India Pvt. Ltd., the Indian subsidiary of
20 Defendant LG Electronics Inc., the Korean parent and flagship company of the LG *chaebol*. [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 99. On or around December 3, 2010, *The Economic Times Mumbai* published an article titled
26 "Anti-poaching pacts are back."⁷ The article states that "Headhunters say anti-poaching agreements
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28 ⁷ http://articles.economictimes.indiatimes.com/2010-12-03/news/27603228_1_anti-poaching-talent-pool-hr-experts.

1 have recently been revived or inked between consumer durables majors Samsung and LG [...] But
2 mum's the word, officially." The article further states the following:

3 HR head at LG, Umesh Dhal, confirmed that his company and Samsung have an
4 "understanding" not to hire from each other across levels. He says since the two
5 companies have the biggest product portfolio in the market, it makes sense to have
6 an agreement in place. "Hiring from each other will not take place without a gap of
7 a year," says Dhal.

8 100. Plaintiffs' experiences as well as the experiences of and representations made by current
9 and former employees in LG and Samsung *chaebol* companies' human resources departments reflect an
10 actual agreement between LG and Samsung not to recruit, hire, or "poach" each other's employees. It
11 is also consistent with and reinforced by the strong cultural values of loyalty and corporate values of
12 employee loyalty in South Korea. The agreement between the LG and Samsung *chaebol* was made at a
13 senior level in their Korean headquarters and enforced throughout their global *chaebol* subsidiaries
14 through the *chaebol* centralized top-down control structure, including in the recruiting, hiring, and
15 human resources functions.

16 **D. Effects of Defendants' Conspiracy on Plaintiffs and the Class**

17 101. By restricting not only hiring but solicitation of each other's employees, Defendants
18 eliminated the most likely source of competition for skilled labor.

19 102. Defendants entered into, implemented, and policed the agreement with the knowledge
20 of the overall conspiracy, and did so with the intent and effect of suppressing mobility and information
21 sharing between and among employees of the companies, and thereby fixing the compensation of the
22 employees of participating companies at artificially low levels. These anticompetitive effects were the
23 purpose of the agreement, and Defendants succeeded in lowering the compensation and mobility of
24 their employees below what would have prevailed in a lawful and properly functioning labor market.

25 103. Defendants' conspiracy was an ideal tool to suppress their employees' compensation.
26 Whereas agreements to fix specific and individual compensation packages would be hopelessly complex
27 and impossible to monitor, implement, and police, eliminating competition with one another for skilled
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1 labor was simple to implement and easy to enforce. Such agreement affects compensation and mobility
2 of all employees in a common and predictable way.

3 104. Plaintiffs and Class members were harmed by the agreement herein alleged. The
4 elimination of competition and suppression of compensation and mobility had an impact on all Class
5 members. For example, an individual who was an employee of LG received lower compensation and
6 faced unlawful obstacles to mobility as a result of the agreement with Samsung, and vice versa.

7 105. The impact of this bilateral agreement is exacerbated because of the similarity between
8 LG and Samsung's businesses, and the scope of the business lines in which LG and Samsung compete
9 in the United States. Absent the agreements, LG's workers would be the most desirable targets of
10 recruiting efforts by Samsung, and vice versa.

11 **E. Fraudulent concealment**

12 106. During the relevant statute of limitations period, members of the class had neither
13 actual nor constructive knowledge of the pertinent facts constituting his claims for relief asserted
14 herein. Class members did not discover, and could not have discovered through the exercise of
15 reasonable diligence, the existence of the conspiracy.

16 107. Publicly, Defendants repeatedly and expressly stated during the Relevant Period,
17 including on their public Internet websites, that they enforce lawful and ethical employment policies,
18 which prohibit the type of agreement seen in this litigation. *See supra* ¶¶ 60-61. In fact, Defendants to
19 this day continue to deny that there ever was or is such an agreement in place.⁸

20 108. The affirmative acts of Defendants alleged herein were wrongfully concealed and
21 carried out in a manner that was intended to preclude detection. Defendants kept the agreement secret
22 from their employees, and only the most senior executives at LG and Samsung and their subsidiaries
23 knew about the agreement. Class members were offered reasons that they were not hired at LG or
24 Samsung that were pretext, and did not disclose the existence of a mutual agreement to not hire from
25 one another.

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27 ⁸ *LG-Samsung Hiring Practices: Lawsuit Accuses Companies of Agreeing Not To Recruit Each Other's*
28 *Employees*, International Business Times, (Oct. 4, 2016, 2:30 PM), <http://www.ibtimes.com/lg-samsung-hiring-practices-lawsuit-accuses-companies-agreeing-not-recruit-each-2414990>.

FIRST CLAIM FOR RELIEF

(On Behalf of the Nationwide Class)
Violations of Section 1 of the Sherman Act, 15 U.S.C. § 1

109. Plaintiffs, on behalf of themselves and all others similarly situated, reallege and incorporate herein by reference each of the allegations contained in the preceding paragraphs of this Complaint, and further allege against Defendants and each of them as follows:

110. Defendants entered into and engaged in unlawful agreements in restraint of the trade and commerce described above in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Beginning no later than January 2005 and continuing to the present, Defendants engaged in continuing agreements in restraint of trade and commerce in violation of Section 1 of the Sherman Act.

111. Defendants' agreement has included concerted action and undertakings among the Defendants with the purpose and effect of: (a) fixing the compensation of Plaintiff and the Nationwide Class at artificially low levels; and (b) eliminating, to a substantial degree, competition among Defendants for skilled labor.

112. As a direct and proximate result of Defendants' combinations and contracts to restrain trade and eliminate competition for skilled labor, members of the Nationwide Class have suffered injury to their property and have been deprived of the benefits of free and fair competition on the merits.

113. The unlawful agreement among Defendants has had the following effects, among others:

i. competition among Defendants for skilled labor has been suppressed, restrained, and eliminated; and

ii. Plaintiffs and class members have received lower compensation from Defendants than they otherwise would have received in the absence of Defendants' unlawful agreement, and, as a result, have been injured in their property and have suffered damages in an amount according to proof at trial.

114. The acts done by each Defendant as part of, and in furtherance of, their contracts, combinations or conspiracies were authorized, ordered, or done by their respective officers, directors,

1 agents, employees, or representatives while actively engaged in the management of each Defendant's
2 affairs.

3 115. Defendants' contracts, combinations and/or conspiracies are *per se* violations of Section
4 1 of the Sherman Act.

5 116. Accordingly, Plaintiffs and members of the Nationwide Class seek three times their
6 damages caused by Defendants' violations of Section 1 of the Sherman Act, the costs of bringing suit,
7 and reasonable attorneys' fees.

8 SECOND CLAIM FOR RELIEF

9 (On Behalf of the California Class) 10 *Violations of the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, et seq.*

11 117. Plaintiff Frost, on behalf of himself and all others similarly situated, reallege and
12 incorporate herein by reference each of the allegations contained in the preceding paragraphs of this
13 Complaint, and further allege against Defendants and each of them as follows:

14 118. Defendants entered into and engaged in an unlawful agreement in restraint of the trade
15 and commerce described above in violation of California Business and Professions Code section 16720.
16 Beginning no later than January 2005 and continuing through the present, Defendants engaged in
17 continuing agreements in restraint of trade and commerce in violation of the Cartwright Act.

18 119. Defendants' agreements have included concerted action and undertakings among the
19 Defendants with the purpose and effect of: (a) fixing the compensation of Plaintiff Frost and the
20 California Class at artificially low levels; and (b) eliminating, to a substantial degree, competition
21 among Defendants for skilled labor.

22 120. As a direct and proximate result of Defendants' combinations and contracts to restrain
23 trade and eliminate competition for skilled labor, members of the California Class have suffered injury
24 to their property and have been deprived of the benefits of free and fair competition on the merits.

25 121. The unlawful trust among Defendants has had the following effects, among others:

26 i. competition among Defendants for skilled labor has been suppressed, restrained, and
27 eliminated; and
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1 competition among them for skilled labor; and fixing the compensation of their employees at artificially
2 low levels, constitute and was intended to constitute unfair competition and unlawful, unfair, and
3 fraudulent business acts and practices within the meaning of New Jersey Antitrust Act, N.J. Stat. Ann.
4 section 56:9-3.

5 130. The anticompetitive effects of Defendants' concerted actions were felt throughout the
6 State of New Jersey. Competition among Defendants for skilled labor has been suppressed, restrained,
7 and eliminated, and Plaintiff Ra and the New Jersey Class members have received lower compensation
8 from Defendants than they otherwise would have received in the absence of Defendants' unlawful
9 conduct, and, as a result, have been injured in their property and have suffered damages in an amount
10 to be proven at trial.

11 131. Defendants, by way of the unlawful conduct conspiracy and agreement, are directly and
12 proximately affecting the commerce of the State of New Jersey and are substantially lessening
13 competition within the state.

14 132. Defendants have caused, and increasingly will cause, injury to Plaintiff Ra, the members
15 of the New Jersey Class, and the employment market within the State of New Jersey.

16 133. Accordingly, Plaintiff Ra and members of the New Jersey Class seek three times their
17 damages caused by Defendants' violations of the New Jersey Antitrust Act, the costs of bringing suit,
18 and reasonable attorneys' fees.

19 **REQUEST FOR RELIEF**

20 WHEREFORE, Plaintiffs pray that this Court enter judgment on their behalf and that of the
21 Class by adjudging and decreeing that:

22 1. This action may proceed as a class action, with Plaintiffs as the designated Class
23 representatives and their counsel as Class Counsel;

24 2. Defendants have combined and conspired in violation of Section 1 of the Sherman Act,
25 15 U.S.C. § 1, California's Cartwright Act, California Business and Professions Code section 16750(a),
26 and the New Jersey Antitrust Act, N.J. Stat. section 9-1, *et seq.*, and that Plaintiffs and the members of
27 the Class have been damaged and injured in their business and property as a result of this violation;
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