

Molly J. Frandsen
OUTTEN & GOLDEN LLP
One California Street, 12th Floor
San Francisco, CA 94111
Telephone: (415) 638-8800
Facsimile: (415) 638-8810
E-mail: mfrandsen@outtengolden.com

Melissa L. Stewart
OUTTEN & GOLDEN LLP
685 Third Avenue, 25th Floor
New York, NY 10017
Telephone: (212) 245-1000
Facsimile: (646) 509-2060
E-mail: mstewart@outtengolden.com

*Attorneys for Claimants and the Proposed Class and
Collective and Aggrieved Employees*

EDRIAN BIALA, AMBER GLEASON, and
DEBBIE TRINH, individually and on behalf
of all others similarly situated,

Claimants,

v.

JFROG, INC.,

Respondent.

**CLASS, COLLECTIVE ACTION, AND
PAGA DEMAND FOR ARBITRATION**

HUNTER HUGHES, ARBITRATOR

Claimants Edrian Biala, Amber Gleason, and Debbie Trinh (“Claimants”), individually and on behalf of all others similarly situated, by and through their attorneys, Outten & Golden LLP, complaining of the conduct of JFrog, Inc. (“JFrog” or “Respondent”) upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

PRELIMINARY STATEMENT

1. This action seeks to recover unpaid overtime compensation and other damages for Claimants and similarly situated co-workers who have worked for JFrog as Sales Representatives.¹

2. JFrog is a software company with U.S. offices located in California, Georgia, and Washington.

3. JFrog sells a software platform to business clients. JFrog employs Sales Representatives, such as Claimants, to make sales to current and prospective customers.

4. While employed by JFrog, Claimants and other Sales Representatives consistently worked more than 8 hours per day and more than 40 hours per workweek without receiving overtime compensation. During the relevant period, it was JFrog’s policy to deprive Claimants of their earned overtime wages in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, the California Labor Code (“Cal. Lab. Code”) and applicable Wage Orders and regulations, and the California Unfair Business Practices Law, Cal. Bus. & Prof. Code §§ 17200,

¹ “Sales Representatives” means: individuals employed by JFrog in the exempt-classified job titles of Account Manager; Account Manager - Major Accounts; Account Manager New Business – Sales; Account Manager, Enterprise; Business Development Representative; Cloud Account Executive; Cloud Account Manager; Cloud Account Manager, New Business (NB); Cloud Account Manager, SMB; Account Manager, Portfolio; Cloud Account Manager – CS; Cloud Inside Sales Representative; Cloud Sales Development Representative; Community Advocate; Community Relations Specialist; Customer Success Specialist; Enterprise Account Executive, Enterp. Accts.; Enterprise Account Manager; Enterprise Customer Success Specialist; Sales Account Representative; Sales Development Representative; Sales Development Representative, NA; Sales Representative; Senior Account Executive; Senior Community Relationship Specialist; Senior Sales Representative; SMB Customer Success Specialist; SMB New Business Account Manager; SMB, Customer Success Specialist; Sr. Account Manager - New Business; and Strategic Account Executive.

et seq. (collectively, the “California Wage Laws”).

5. JFrog has uniformly classified its Sales Representatives as exempt from federal and state overtime provisions and did not pay Sales Representatives any overtime wages during the relevant period and through the present.

6. The primary duties of Sales Representatives are and have been non-exempt. These primary duties do not vary significantly from one Sales Representative to another.

7. The primary duties of Sales Representatives do not fall under any of the exemptions under federal or state overtime laws.

8. Sales Representatives have worked overtime hours, as defined by applicable federal and state laws, and are entitled to premium compensation at the appropriate rate for all overtime hours worked.

9. Claimants bring this action on behalf of themselves and similarly situated current and former Sales Representatives employed by JFrog who elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq.*, and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the FLSA by JFrog that have deprived Claimants and others similarly situated of their lawfully earned wages.

10. Claimants Biala and Trinh (“California Claimants”) also bring this action on behalf of themselves and all similarly situated current and former Sales Representatives who have worked for JFrog in California as a Fed. R. Civ. P. 23 class action under the California Wage Laws.

11. Claimant Biala has provided written notice to the California Labor and Workforce Development Agency (“LWDA”) of the legal claims and theories of this case pursuant to Cal. Lab. Code § 2699.3. In accordance with Cal. Lab. Code § 2699.3(a)(2)(A), Claimant will amend this Class and Collective Action Demand for Arbitration to assert claims pursuant to California’s Private Attorneys General Act, Cal. Lab. Code §§ 2698 *et seq.* on behalf of himself and other current and former employees as well as the general public to recover for violations of the California Labor Code. Claimant Biala also bring this action on behalf of himself and all

similarly situated current and former Sales Representatives who worked for Defendant in California from May 3, 2020 (“Aggrieved Employees”) to recover penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code. §§ 2698, *et seq.*, for violations of the California Labor Code as set forth herein.

JURISDICTION & VENUE

12. The Arbitrator has jurisdiction over the claims in this matter pursuant to the parties’ Agreement to Arbitrate for Purposes of the Settlement Approval.

13. The parties have selected Hunter Hughes, Esq. to serve as Arbitrator in this matter.

14. Claimant Biala provided written notice to the California Labor and Workforce Development Agency (“LWDA”) of the legal claims and theories of this case pursuant to Cal. Lab. Code § 2699.3 and to Defendant. The LWDA has not taken any action with regard to the claims, including providing notice of an intent to pursue the claims.

THE PARTIES

Claimants

Edrian Biala

15. Claimant Edrian Biala is an adult individual who is a resident of Santa Clara County, California.

16. Claimant Biala was employed by JFrog as a Sales Representative from approximately September 2019 to approximately November 2020 in Sunnyvale, California.

17. Claimant Biala was an “employee” within the meaning of all applicable statutes.

18. Claimant Biala regularly worked more than 40 hours in a workweek and 8 in a day and was not paid for the hours she worked over 40 in a week or 8 in a day.

19. Claimant Biala’s written consent to join form is attached hereto as **Exhibit A**.

Amber Gleason

20. Claimant Amber Gleason is an adult individual who is a resident of Forsyth County, Georgia.

21. Claimant Gleason was employed by JFrog as a Sales Representative from approximately December 2020 to approximately May 2021 in Atlanta, Georgia.

22. Claimant Gleason was an “employee” within the meaning of all applicable statutes.

23. Claimant Gleason regularly worked more than 40 hours in a workweek and was not paid for the hours he worked over 40 in a week.

24. Claimant Gleason’s written consent to join form is attached hereto as **Exhibit B.**

Debbie Trinh

25. Claimant Debbie Trinh is an adult individual who is a resident of Contra Costa County, California.

26. Claimant Trinh was employed by JFrog as a Sales Representative from approximately January 2021 to approximately April 2021 in Sunnyvale, California.

27. Claimant Trinh was an “employee” within the meaning of all applicable statutes.

28. Claimant Trinh regularly worked more than 40 hours in a workweek and 8 hours in a day and was not paid for the hours he worked over 40 in a week or 8 in a day.

29. Claimant Trinh’s written consent to join form is attached hereto as **Exhibit C.**

Respondent JFrog, Inc.

30. Upon information and belief, JFrog is a corporation formed under the laws of the State of Israel with a principal place of business in Sunnyvale, California.

31. Upon information and belief, JFrog maintained control, oversight, and direction over its operations and employment practices.

32. At all times hereinafter mentioned, JFrog was Claimants’ “employer” within the meaning of all applicable statutes.

33. At all relevant times, JFrog maintained control, oversight, and direction over Claimants and other Sales Representatives, including timekeeping, payroll, and other employment practices that applied to them.

34. JFrog has applied the same employment policies, practices, and procedures to

Sales Representatives, including policies, practices, and procedures with respect to payment of overtime compensation.

35. JFrog's annual gross volume of business is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

FLSA COLLECTIVE ACTION CLAIMS

36. Claimants bring the First Cause of Action pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of themselves and all similarly situated persons who work or worked for JFrog in the United States as Sales Representatives and who elect to opt-in to this action (the "FLSA Collective").

37. Upon information and belief, there are dozens of current and former Sales Representatives who are similarly situated to Claimants and were denied overtime compensation.

38. Claimants are acting on behalf of current and former Sales Representatives' interests as well as their own interests in bringing this action.

39. All of the work that Claimants and the FLSA Collective have performed was assigned by JFrog, and/or JFrog has been aware of all of the work that Claimants and the FLSA Collective performed.

40. As part of its regular business practice, JFrog has intentionally, willfully, and repeatedly engaged in a pattern, practice and/or policy of violating the FLSA with respect to Claimants and the FLSA Collective. This policy and pattern or practice has included, but is not limited to:

- A. willfully failing to pay Claimants and the members of the FLSA Collective overtime wages for hours that they worked in excess of 40 hours per workweek;
- B. willfully misclassifying Claimants and the members of the FLSA Collective as exempt from the protections of the FLSA; and
- C. willfully failing to record the time that Claimants and the members of the FLSA Collective worked for the benefit of JFrog.

41. JFrog was aware or should have been aware that federal law required it to pay employees performing non-exempt duties, including Claimants and members of the FLSA Collective, an overtime premium for hours worked in excess of 40 per workweek.

42. The FLSA Collective members are readily identifiable and can be located through the use of JFrog's records. The FLSA Collective should be notified of and allowed to opt-in to this action pursuant to 29 U.S.C. § 216(b). Unless the Arbitrator promptly issues such a notice, the FLSA Collective members, who have been unlawfully deprived of overtime pay in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by JFrog.

CALIFORNIA CLASS ALLEGATIONS

43. California Claimants bring the Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action on their own behalf and as a class action, pursuant to Fed R. Civ. P. 23, on behalf of the following class of persons:

All Sales Representatives who worked for JFrog in California at any time between May 3, 2017 and March 1, 2022 (hereinafter referred to as the "California Class" and the "California Class Period," respectively).

44. Excluded from the California Class are JFrog's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in JFrog; the Judge(s) to whom this case is assigned and any member of the Judge(s)' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the California Class.

45. The persons in the California Class are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, the facts on which the calculation of that number can be based are presently within the sole control of JFrog.

46. Upon information and belief, the size of the California Class is at least 40 individuals.

47. The Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action are

properly maintainable as a class action under Fed. R. Civ. P. 23(b)(3). There are questions of law and fact common to the California Class that predominate over any questions solely affecting individual members of the California Class, including but not limited to:

- A. Whether JFrog unlawfully failed to pay California Class members overtime compensation owed, in violation of the California Labor Code and related regulations, Cal. Lab. Code §§ 226, 510, and 1194; Cal. Wage Order Nos. 4-2001 and 7-2001; and the California Unfair Competition Law, Cal. Bus & Prof. Code §§ 17200, *et seq.*;
 - B. Whether California Class members were non-exempt employees entitled to overtime compensation for overtime hours worked under California law;
 - C. Whether JFrog's policy and pattern or practice of classifying California Class Members as exempt from overtime entitlement under California law and JFrog's policy and pattern or practice of failing to pay overtime to California Class members violated applicable provisions of California law;
 - D. Whether JFrog has unlawfully failed to keep and furnish the California Class members with timely, accurate, and itemized records of hours worked in violation of Cal. Lab. Code §§ 226 and 1174;
 - E. Whether JFrog has unlawfully failed to timely pay wages during employment and/or upon separation in violation of Cal. Lab. Code §§ 201, 202, 203, and 204;
 - F. Whether JFrog has unlawfully failed to furnish the California Class members with proper meal and/or rest breaks, in violation of the California Labor Code and related regulations, Cal. Lab. Code §§ 226.7, 512 and applicable wage orders; and
 - G. The nature and extent of the California Class members' injuries and the appropriate measure of their damages.
48. California Claimants will fairly and adequately represent and protect the interests

of the members of the California Class. California Claimants understand that as class representatives they assume a fiduciary responsibility to the class to represent its interests fairly and adequately. California Claimants recognize that as class representatives they must represent and consider the interests of the class just as they would represent and consider their own interests. California Claimants understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over the interests of the class. California Claimants recognize that any resolution of a class action must be in the best interest of the class. California Claimants understand that in order to provide adequate representation, they must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. California Claimants have retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between California Claimants and the California Class members.

49. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the California Class were damaged and are entitled to recovery as a result of JFrog's violation of the California Wage Laws as well as its common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the California Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual California Claimants lack the financial resources to conduct a thorough examination of JFrog's timekeeping and compensation practices and to prosecute vigorously a lawsuit against JFrog to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about JFrog's practices.

50. Further, California Claimants and the California Class have been equally affected by JFrog's failure to pay proper wages and other violations. Moreover, members of the California Class still employed by JFrog may be reluctant to raise individual claims for fear of retaliation.

51. JFrog has acted or refused to act on grounds generally applicable to the California Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

52. California Claimants' claims are typical of the claims of the California Class members they seek to represent. California Claimants and all members of the California Class worked for JFrog as Sales Representatives in the State of California. California Claimants and members of the California Class enjoy the same statutory rights under the California Wage Laws to be paid overtime wages. California Claimants and members of the California Class all sustained similar types of damages as a result of JFrog's failure to comply with the California Wage Laws. California Claimants and the members of the California Class all were injured in that they were uncompensated or under-compensated due to JFrog's common policies, practices and patterns of conduct.

COMMON FACTUAL ALLEGATIONS

53. Claimants and the members of the FLSA Collective and the California Class (collectively, "Class Members") have been victims of JFrog's common policy and plan of improperly classifying Sales Representatives as overtime exempt, requiring them to work in excess of 40 hours per week and in excess of 8 hours per day, and denying them overtime compensation. At all times relevant, JFrog's unlawful policy and pattern or practice has been willful.

54. Sales Representatives' primary duties were non-exempt duties, specifically, identifying business opportunities, engaging with potential and existing customers by phone, email, social media, and web meetings, and making sales of JFrog's products.

55. Although Sales Representatives were eligible to earn commissions based on various performance indicators, these commissions did not constitute the majority of their earnings.

56. Throughout their employment, Claimants and Class Members consistently worked more than 40 hours per week and 8 hours per day.

57. JFrog was aware that Claimants and the Class Members worked more than 40 hours per workweek and 8 hours per day yet failed to pay them any overtime compensation.

58. JFrog did not keep accurate records of hours worked by Claimants. That is, Claimants' hours were not accurately recorded on pay stubs, and JFrog did not require Claimants to clock in or out, or otherwise record their time.

59. JFrog failed to pay Claimants and Class Members time and one-half for all hours worked over 40 in a workweek in violation of the FLSA.

60. JFrog failed to pay Claimants and California Class members overtime compensation for all of their overtime hours worked, including for any of the overtime hours they worked over 8 in a workday and over 40 in a workweek.

61. JFrog failed to furnish Claimants and the California Class members with an accurate itemized statement showing, *inter alia*, wages, hours worked, and rates paid as required by the California Wage Laws.

62. JFrog failed to timely pay Claimants and the California Class Members all wages earned and unpaid during employment and/or at the time of separation from employment.

63. Claimants and all California Class members who ceased employment with JFrog are entitled to unpaid compensation, but to date have not received such compensation.

64. JFrog failed to provide Claimants and California Class members with at least a half-hour meal break in which they were relieved of all duty, and, for shifts of more than ten-hours, a second half-hour meal break in which they were relieved of all duty, as required by the California Wage Laws.

65. As part of its regular business practice, JFrog intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy that violates the FLSA and California Wage Laws.

66. JFrog's policy and pattern or practice includes but is not limited to:

- A. willfully misclassifying Claimants and Class Members as exempt from the protections of federal and state overtime laws;

- B. willfully failing to record the time that its employees, including Claimants and Class Members, worked for the benefit of JFrog;
- C. willfully failing to keep payroll records as required by the FLSA and California Wage Laws; and
- D. willfully failing to pay its employees, including Claimants and Class Members, overtime wages for all of the overtime hours that they worked.

67. JFrog was or should have been aware that the FLSA required it to pay its Sales Representatives overtime compensation for all hours worked in excess of 40 per week.

68. JFrog's failure to pay Claimants and Class Members overtime wages for their work in excess of 40 hours per week was willful, intentional, and in bad faith.

69. JFrog's unlawful conduct has been widespread, repeated, and consistent.

FIRST CAUSE OF ACTION

FLSA – Overtime Wages

29 U.S.C. §§ 201, *et seq.*

(Brought by Claimants Individually and on Behalf of the FLSA Collective)

70. Claimants reallege and incorporate by reference all allegations in all preceding paragraphs.

71. JFrog has engaged in a widespread pattern and practice of violating the FLSA, as described in this Class and Collective Action Demand for Arbitration.

72. Claimants have expressed their consent to make these claims against JFrog by filing a written consent form, pursuant to 29 U.S.C. § 216(b).

73. Claimants and members of the FLSA Collective are and were non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

74. At all relevant times, Claimants and other similarly situated current and former employees were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. § 207(a).

75. The overtime wage provisions set forth in §§ 201, *et seq.* of the FLSA apply to JFrog.

76. JFrog is an employer engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

77. At all times relevant, Claimants were employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

78. JFrog has failed to pay Claimants and other similarly situated current and former employees the overtime wages to which they were entitled under the FLSA.

79. JFrog's violations of the FLSA, as described in this Demand, have been willful and intentional.

80. JFrog failed to make a good faith effort to comply with the FLSA with respect to its compensation of Claimants and other similarly situated current and former employees.

81. Because JFrog's violations of the FLSA are willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

82. As a result of JFrog's willful violations of the FLSA, Claimants and all other similarly situated employees have suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201, *et seq.*

83. As a result of the unlawful acts of JFrog, Claimants and other similarly situated current and former employees have been deprived of overtime compensation and other wages in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION

California Wage Laws – Overtime Wages

California Wage Order Nos. 4-2001 & 7-2001; Cal. Lab. Code §§ 510, 1194

(Brought by California Claimants Individually and on Behalf of the California Class)

84. California Claimants reallege and incorporate by reference all allegations in all preceding paragraphs.

85. California law requires employers, such as JFrog, to pay overtime compensation to all non-exempt employees for all hours worked over 40 per workweek and over 8 per day.

86. California Claimants and the California Class members are and were non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

87. At all relevant times, California Claimants and the California Class members worked in excess of 40 hours in a workweek and 8 hours in a workday.

88. At all relevant times, JFrog failed and refused to pay California Claimants and the California Class members overtime compensation.

89. As a direct and proximate result of JFrog's unlawful conduct, as set forth herein, California Claimants and the California Class members have sustained damages, including loss of earnings for hours of overtime worked for the benefit of JFrog in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

THIRD CAUSE OF ACTION

California Wage Laws – Record-Keeping Violations

California Wage Order Nos. 4-2001 & 7-2001; Cal. Lab. Code §§ 226

(Brought by California Claimants Individually and on Behalf of the California Class)

90. California Claimants reallege and incorporate by reference all allegations in all preceding paragraphs.

91. JFrog knowingly and intentionally failed to provide timely, accurate, itemized wage statements including, *inter alia*, all hours worked, to California Claimants and the California Class members in accordance with California Wage Order Nos. 4-2001 and 7-2001 and California Labor Code § 226(a). Such failure has caused injury to Claimants and the California Class members, by, among other things, impeding them from knowing the amount of wages to which they are and were entitled.

92. California Claimants and the California Class members are entitled to and seek injunctive relief requiring JFrog to comply with California Labor Code §§ 226(a) and further seek the amount provided under California Labor Code §§ 226(e), including 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.

FOURTH CAUSE OF ACTION

California Wage Laws – Wage Payment Provisions

Cal. Lab. Code §§ 201, 202, & 203

(Brought by California Claimants Individually and on Behalf of the California Class)

93. California Claimants reallege and incorporate by reference all allegations in all preceding paragraphs.

94. California Labor Code §§ 201 and 202 require JFrog to pay its employees all wages due upon termination within the time specified by law. California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty (30) days of wages.

95. California Claimants and all California Class members who ceased employment with JFrog are entitled to unpaid compensation, but to date have not received such compensation.

96. More than thirty (30) days have passed since California Claimants and certain California Class members left JFrog's employ.

97. California Claimants, on behalf of themselves and the California Class members, seek waiting time penalties pursuant to California Labor Code § 203, attorneys' fees and costs, and such other legal and equitable relief as the Arbitrator deems just and proper.

FIFTH CAUSE OF ACTION

California Wage Laws – Wage Payment Provisions

Cal. Labor Code §§ 204 & 210

(Brought by California Claimants Individually and on Behalf of the California Class)

98. California Claimants reallege and incorporate by reference all allegations in all preceding paragraphs.

99. Under California Labor Code § 204, labor performed between the 1st and 15th days of a calendar month must be paid for between the 16th and the 26th of that month, and labor performed between the 16th and the last day of a calendar month must be paid for between the 1st and the 10th day of the following month. Other payroll periods such as weekly, biweekly (every two weeks) or semimonthly (twice per month), when the earning period is something

other than between the 1st and 15th, and 16th and last day of the month, must be paid within seven calendar days of the end of the payroll period within which the wages were earned.

100. California Labor Code § 210(a) provides that persons who fail to pay wages as provided in § 204 are subject to statutory penalties of: (1) one hundred dollars (\$100) for each failure to pay each employee for any initial violation; and (2) two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld, for each subsequent violation, or any willful or intentional violation.

101. JFrog failed to pay California Claimants and California Class members all of their wages earned in a timely manner, in violation of California Labor Code § 204.

102. California Claimants, on behalf of themselves and the California Class members, seeks waiting time penalties pursuant to California Labor Code § 210, attorneys' fees and costs, and such other legal and equitable relief as the Arbitrator deems just and proper.

SIXTH CAUSE OF ACTION

California Wage Laws – Meal and Rest Period Provisions Cal. Wage Order Nos. 4-2001 & 7-2001; Cal. Labor Code §§ 218.5, 226.7, & 512 (Brought by California Claimants Individually and on Behalf of the California Class)

103. California Claimants reallege and incorporate by reference all allegations in all preceding paragraphs.

104. California Claimants and the California Class members regularly work and have worked in excess of five-hour shifts without being afforded at least a half-hour meal break in which they were relieved of all duty, and more than ten-hour shifts without being afforded a second half-hour meal break in which they were relieved of all duty, as required by California Labor Code §§ 226.7 and 512 and Wage Order Nos. 4-2001 and 7-2001, § 11.

105. In addition, the California Claimants and the California Class members regularly work and have worked without being afforded at least one ten-minute rest break, in which they were relieved of all duty, per every four hours of work or major fraction thereof that they performed, as required by California Labor Code § 226.7 and Wage Order Nos. 4-2001 and 7-2001, § 12.

106. As a result of JFrog's failure to afford proper meal periods, JFrog is liable to California Claimants and the California Class members for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to Labor Code § 226.7 and Wage Order Nos. 4-2001 and 7-2001, § 11.

107. As a result of JFrog's failure to afford proper rest periods, JFrog is liable to the California Class Representative and the California Class members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to California Labor Code § 226.7 and Wage Order Nos. 4-2001 and 7-2001, § 12.

SEVENTH CAUSE OF ACTION

California Wage Laws – Unfair Competition

California Business & Professions Code §§ 17200, *et seq.*

(Brought by Claimants Individually and on Behalf of the California Class)

108. California Claimants reallege and incorporate by reference all allegations in all preceding paragraphs.

109. The foregoing conduct, as alleged, violates the California Unfair Competition Law ("UCL"). The UCL prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair business acts or practices.

110. Beginning at a date unknown to California Claimants, but at least as long ago as four years prior to the filing of this action, JFrog committed, and continued to commit, acts of unfair competition, as defined by the UCL, by, among other things, engaging in the acts and practices described herein. JFrog's conduct as alleged herein has injured California Claimants and the California Class members by wrongfully denying them earned wages, and therefore was substantially injurious to them.

111. JFrog engaged in unfair competition in violation of the UCL by violating, *inter alia*, each of the following laws. Each of these violations constitutes an independent and separate violation of the UCL:

- a. FLSA, 29 U.S.C. §§ 201, *et seq.*;

- b. Cal. Lab. Code §§ 201-204;
- c. Cal. Lab. Code § 1194;
- d. Cal. Lab. Code § 226;
- e. Cal. Lab. Code § 1174; and
- f. Cal. Lab. Code § 510.

112. JFrog's course of conduct, acts, and practices in violation of the California laws mentioned in the above paragraph constitute a separate and independent violation of the UCL. JFrog's conduct described herein violates the policy or spirit of such laws or otherwise significantly threatens or harms competition.

113. The unlawful and unfair business practices and acts of JFrog, described above, have injured California Claimants and the California Class members in that they were wrongfully denied the payment of earned overtime wages.

114. California Claimants, individually and on behalf of the California Class, seek recovery of attorneys' fees and costs of this action to be paid by JFrog, as provided by the UCL and California Labor Code §§ 218, 218.5, and 1194.

115. California Claimants, individually and on behalf of the California Class, seek restitution in the amount of the respective unpaid wages earned and due, including for unpaid overtime at a rate not less than one and one-half times the regular rate of pay for work performed in excess of 40 hours in a workweek, or 8 hours in a day, and double the regular rate of pay for work performed in excess of 12 hours per day.

EIGHTH CAUSE OF ACTION

**Private Attorneys General Act
Cal. Lab. Code §§ 2698, *et seq.***

(Brought by Claimant Biala Individually and on Behalf of the Aggrieved Employees)

116. Claimant Biala, on behalf of himself and all Aggrieved Employees, realleges and incorporates by reference all other paragraphs as if they were set forth again herein.

117. Claimant Biala is an Aggrieved Employee under PAGA, as he was employed by JFrog during the applicable period and suffered one or more of the California Labor Code

violations set forth herein. Accordingly, he seeks to recover on behalf of himself and all other current and former Aggrieved Employees of JFrog, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

118. Claimant seeks civil penalties pursuant to PAGA for violations of the following California Labor Code provisions:

- a. Failure to pay overtime wages in violation of California Labor Code §§ 510, 558, 1994 and 1998 and Wage Order Nos. 4-2001 & 7-2001;
- b. Failure to provide meal and rest breaks in violation of California Labor Code §§ 218.5, 226.7, 512, and Wage Order Nos. 4-2001 & 7-2001;
- c. Failure to provide itemized wage statements in violation of California Labor Code §§ 226 and 226.3; and
- d. Failure to provide prompt payment of wages during employment and upon termination and resignation in violation of California Labor Code §§ 201, 202, 203, and 204.

PRAYER FOR RELIEF

WHEREFORE, Claimants, individually and on behalf of the FLSA Collective, request the following relief:

- A. Designation of this action as a collective action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Collective, apprising them of the pendency of this action, and permitting them to file individual Consent to Join forms pursuant to 29 U.S.C. § 216(b);
- B. An award of damages, according to proof, including liquidated damages, to be paid by JFrog;
- C. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining JFrog from continuing its unlawful practices under the FLSA and/or a declaration that JFrog's acts violate the FLSA;
- D. A reasonable service award for each Claimant to compensate them for the time they

spent attempting to recover wages for the FLSA Collective and for the risks they took in doing so;

- E. Costs of the action incurred herein;
- F. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216;
- G. Post-judgment interest, as provided by law;
- H. Such other relief as the Arbitrator deems necessary, just, and proper.

WHEREFORE, California Claimants on behalf of themselves and all California Class members he seeks to represent, requests the following relief:

- I. Certification of this action as a class action on behalf of the California Class;
- J. Designation of Claimants as Representatives of the California Class they seek to represent;
- K. Designation of Claimants' counsel of record as Class Counsel for the California Class;
- L. An award of damages, liquidated damages, and restitution, to be paid by JFrog according to proof;
- M. Appropriate statutory penalties;
- N. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining JFrog from continuing its unlawful practices under California Wage Laws and/or a declaration that JFrog's acts violate the California Wage Laws;
- O. Reasonable service awards for California Claimants to compensate them for the time they spent attempting to recover wages for the California Class members and for the risks they took in doing so;
- P. Attorneys' fees and costs of suit;
- Q. Pre- and post-judgment interest, as provided by law; and
- R. Such other relief as the Arbitrator deems necessary, just, and proper.

WHEREFORE, Claimant Biala, on behalf of himself and on behalf of the Aggrieved Employees, requests the following relief:

- A. Civil penalties provided, per violation, under the California Private Attorneys General Act, California Labor Code §§ 2698, *et seq.*
- B. Pre-judgment and post-judgment interest, as provided by law;
- C. Attorneys' fees pursuant to Labor Code § 2698(g)(1);
- D. Costs of suit, including expert fees and costs;
- E. An appropriate service payment to Claimant Biala for his service as a PAGA representative; and

Such other and further relief as the Arbitrator deems just and proper.

Dated: New York, New York
May 16, 2022

Respectfully submitted,

By: /s/ Melissa L. Stewart
Melissa Stewart

Melissa L. Stewart
OUTTEN & GOLDEN LLP
685 Third Avenue, 25th Floor
New York, NY 10017
Telephone: (212) 245-1000
Facsimile: (646) 509-2060
E-mail: mstewart@outtengolden.com

Molly J. Frandsen (Cal. Bar No. 320094)
OUTTEN & GOLDEN LLP
One California Street, 12th Floor
San Francisco, CA 94111
Telephone: (415) 638-8800
Facsimile: (415) 638-8810
E-mail: mfrandsen@outtengolden.com

*Attorneys for Claimants and the Proposed
Class and Collective and Aggrieved
Employees*

Exhibit A

CONSENT TO BE A PARTY PLAINTIFF

1. I consent to be a party plaintiff in a lawsuit against JFrog, Inc. ("Defendant") and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I hereby designate Outten & Golden LLP to represent me in such lawsuit and to make decisions on my behalf concerning the litigation and any settlement. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

3. I also consent to join any separate or subsequent action to assert my claims against Defendant and/or any related entities or persons potentially liable.



Signature

Edrian Biala

Print

Exhibit B

CONSENT TO BE A PARTY PLAINTIFF

1. I consent to be a party plaintiff in a lawsuit against JFrog, Inc. ("Defendant") and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I hereby designate Outten & Golden LLP to represent me in such lawsuit and to make decisions on my behalf concerning the litigation and any settlement. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

3. I also consent to join any separate or subsequent action to assert my claims against Defendant and/or any related entities or persons potentially liable.

Amber Gleason

Signature

Amber Gleason

Print

Exhibit C

CONSENT TO BE A PARTY PLAINTIFF

1. I consent to be a party plaintiff in a lawsuit against JFrog, Inc. ("Defendant") and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I hereby designate Outten & Golden LLP to represent me in such lawsuit and to make decisions on my behalf concerning the litigation and any settlement. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

3. I also consent to join any separate or subsequent action to assert my claims against Defendant and/or any related entities or persons potentially liable.

Debbie Trinh

Signature

Debbie Trinh

Print