

1 MORGAN, LEWIS & BOCKIUS LLP  
Daryl S. Landy, Bar No. 136288  
2 daryl.landy@morganlewis.com  
Carrie A. Gonell, Bar No. 257163  
3 carrie.gonell@morganlewis.com  
600 Anton Boulevard, Suite 1800  
4 Costa Mesa, CA 92626-7653  
Tel: +1.714.830.0600  
5 Fax: +1.714.830.0700

6 MORGAN, LEWIS & BOCKIUS LLP  
Jennifer Svanfeldt, Bar No. 233248  
7 jennifer.svanfeldt@morganlewis.com  
Aleksandr Markelov, Bar No. 319235  
8 aleksandr.markelov@morganlewis.com  
One Market, Spear Street Tower  
9 San Francisco, CA 94105  
Tel: +1.415.442.1000  
10 Fax: +1.415.442.1001

11 Attorneys for Defendant  
MICROSOFT CORPORATION

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

17 JENNIFER SULLIVAN, individually,  
18 Plaintiff,  
19 vs.  
20 MICROSOFT CORPORATION, a Washington  
corporation, and Does 1 through 100, inclusive  
21 Defendant.

Case No. 3:18-cv-1040

**DEFENDANT MICROSOFT  
CORPORATION'S NOTICE OF  
REMOVAL OF ACTION TO  
FEDERAL COURT**

[28 U.S.C. §§ 1332(a), 1441, 1446]

1 **TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF**  
2 **CALIFORNIA, AND TO PLAINTIFF JENNIFER SULLIVAN AND HER ATTORNEY**  
3 **OF RECORD:**

4 **PLEASE TAKE NOTICE THAT** pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446,  
5 Defendant Microsoft Corporation (“Microsoft”) removes the above-entitled action from the  
6 Marin County Superior Court to the United States District Court for the Northern District of  
7 California. This Court has original subject matter jurisdiction over Plaintiff Jennifer Sullivan’s  
8 lawsuit under 28 U.S.C. § 1332(a) because complete diversity of citizenship exists and the  
9 amount in controversy exceeds \$75,000. Accordingly, removal is based on the following  
10 grounds:

11 **I. SUMMARY OF THE COMPLAINT**

12 1. On January 17, 2018, Plaintiff Jennifer Sullivan (“Plaintiff”) filed her Complaint  
13 against Microsoft in Marin County Superior Court, entitled *Jennifer Sullivan, individually, v.*  
14 *Microsoft Corporation, a Washington Corporation, and Does 1 through 100, inclusive*, Case  
15 Number CIV 1800155 (“Complaint”). Plaintiff served the Complaint on Microsoft on January 18,  
16 2018. A true and correct copy of the Complaint is attached as **Exhibit A** (the “Complaint”).  
17 True and correct copies of the Summons, Civil Cover Sheet, and Notices that Plaintiff served on  
18 Microsoft are attached as **Exhibit B**.

19 2. On February 15, 2018, Microsoft filed and served its Answer to the Complaint in  
20 Marin County Superior Court. A true and correct copy of the Answer is attached as **Exhibit C**.

21 3. Plaintiff’s Complaint alleges causes of action for: (1) failure to pay overtime in  
22 violation of California Labor Code §§ 510 and 1194; (2) failure to provide meal breaks in  
23 violation of California Labor Code §§ 226.7(a) and 512 and IWC Wage Order No. 7; (3) failure  
24 to authorize and permit rest breaks in violation of California Labor Code §§ 226.7, 558, and 1194  
25 and IWC Wage Order No. 7; (4) failure to pay wages due at separation of employment in  
26 violation of California Labor Code §§ 201-203; (5) failure to issue accurate itemized wage  
27 statements in violation of California Labor Code §§ 226 and 226.3; and (6) unfair business  
28 practices in violation of California Business & Professions Code §§ 17200, *et seq.*

1 **II. THE REMOVAL IS TIMELY**

2 4. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it is  
3 filed within 30 days of Plaintiff’s service of the Summons and Complaint on Microsoft.

4 5. No previous Notice of Removal has been filed or made with this Court for the  
5 relief sought herein.

6 **III. THE COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION**

7 **A. This Court Has Diversity Jurisdiction Under 28 U.S.C. 1332(a).**

8 6. This action is one over which this Court has original jurisdiction under 28 U.S.C. §  
9 1332(a) (diversity jurisdiction) and is one that Microsoft may remove pursuant to 28 U.S.C. §  
10 1441. Specifically, as discussed in detail below, this is a civil action between citizens of different  
11 states where the amount of controversy exceeds the sum or value of \$75,000, exclusive of interest  
12 and costs.

13 **B. Complete Diversity of Citizenship Exists.**

14 7. A case may be heard in federal court under diversity jurisdiction if complete  
15 diversity of citizenship exists between the parties (i.e., all plaintiffs are diverse from all  
16 defendants). 28 U.S.C. § 1332(a). A defendant may remove an action to federal court under 28  
17 U.S.C. § 1332 provided no defendant is a citizen of the state in which the action was brought or  
18 of the same state in which the plaintiff is a citizen. 28 U.S.C. § 1441(a), (b).

19 8. Here, all requirements are met because (1) Plaintiff is a citizen of California, (2)  
20 Microsoft is a citizen of Washington, and (3) the citizenship of the “Doe Defendants” named in  
21 Plaintiff’s Complaint must be disregarded for purposes of determining diversity jurisdiction in  
22 this matter.

23 **1. Plaintiff is a Citizen of California.**

24 9. “An individual is a citizen of the state in which he is domiciled.” *Boon v. Allstate*  
25 *Ins. Co.*, 229 F. Supp. 2d 1016, 1019 (C.D. Cal. 2002) (citing *Kanter v. Warner-Lambert Co.*, 265  
26 F.3d 853, 857 (9th Cir. 2001)). For purposes of diversity jurisdiction, citizenship is determined  
27 by the individual’s domicile at the time that the lawsuit is filed. *Armstrong v. Church of*  
28 *Scientology Int’l*, 243 F.3d 546, 546 (9th Cir. 2000) (citing *Lew v. Moss*, 797 F.2d 747, 750 (9th

1 Cir. 1986)). Evidence of continuing residence creates a presumption of domicile. *Washington v.*  
2 *Havensa LLC*, 652 F.3d 340, 345 (3rd Cir. 2011).

3 10. Microsoft is informed and believes that Plaintiff is now, and since this action  
4 commenced on January 17, 2018, has been a citizen of California. *See* Declaration of Julia  
5 Siebert (“Siebert Decl.”) ¶ 6., attached hereto as **Exhibit D**. Plaintiff alleges that she “was a  
6 California resident at all times while employed by Defendants.” Ex. A, Compl. ¶ 5. Plaintiff  
7 does not allege any alternative state of citizenship in the Complaint. Accordingly, Plaintiff was  
8 and is domiciled in the State of California and, therefore, is a citizen of California for purposes of  
9 removal.

## 10 2. Microsoft Is Not A Citizen of California.

11 11. For diversity purposes, a corporation is a citizen of “the State by which it has been  
12 incorporated and of the State where it has its principal place of business.” 28 U.S.C. §1332(c)(1).  
13 The U.S. Supreme Court has held that a corporation’s principal place of business is “the place  
14 where a corporation’s officers direct, control, and coordinate the corporation’s activities,” *i.e.*, the  
15 “nerve center” of the business. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010). The Court  
16 further described the principal place of business as the “place where the corporation maintains its  
17 headquarters.” *Id.*

18 12. Microsoft is, and at all pertinent times was, a corporation formed under the laws of  
19 the State of Washington with its corporate headquarters and principal place of business in  
20 Redmond, Washington. Siebert Decl. ¶ 2.

21 13. Thus, for the purposes of diversity jurisdiction in this matter, Microsoft is a citizen  
22 of Washington, and not of California.

## 23 3. Doe Defendants Are Irrelevant for Purposes of Removal

24 14. The Complaint also names as defendants “Does 1 through 100.” The citizenship  
25 of fictitious “Doe” defendants, however, is disregarded for removal purposes. 28 U.S.C. §  
26 1441(a); *see also Soliman v. Philip Morris, Inc.*, 311 F.3d 966, 971 (9th Cir. 2002).

## 27 C. The Amount in Controversy Exceeds \$75,000.

28 15. Removal based on diversity of citizenship is proper if the amount in controversy

1 exceeds \$75,000. 28 U.S.C. § 1332(a). A “defendant’s notice of removal need include only a  
2 plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*  
3 *Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014); *see also Sasso v.*  
4 *Noble Utah Long Beach, LLC*, No. CV 14-09154-AB (AJWx), 2015 WL 898468, at \*4 (C.D. Cal.  
5 Mar. 3, 2015) (applying *Dart* outside of the context of the Class Action Fairness Act).

6 16. In measuring the amount in controversy, the Court must assume that the  
7 Complaint’s allegations are true and that a jury will return a verdict for the plaintiff on all claims  
8 made in the Complaint. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp.  
9 2d 993, 1001 (C.D. Cal. 2002). The ultimate inquiry is what amount is put “in controversy” by  
10 the plaintiff’s Complaint, not what a defendant will actually owe. *Korn v. Polo Ralph Lauren*  
11 *Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal 2008) (denying plaintiff’s motion for remand). This  
12 burden “is not ‘daunting,’ as courts recognize that under this standard, a removing defendant is  
13 not obligated to ‘research, state, and prove the plaintiff’s claims for damages.’” *Korn*, 536 F.  
14 Supp. at 1204-05. Similarly, a removal notice “need not contain evidentiary submissions.” *Dart*,  
15 135 S. Ct. at 551.

16 17. Further, in determining whether the jurisdictional minimum is met, courts consider  
17 all alleged recoverable damages, including punitive damages, statutory penalties, and attorneys’  
18 fees, but excluding interest and costs. *Hunt v. Washington State Apple Advertising Comm’n*, 432  
19 U.S. 333, 347-48 (1977) (superseded by statute on other grounds); *Gibson v. Chrysler Corp.*, 261  
20 F.3d 927, 945 (9th Cir. 2001); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir.  
21 1998).

22 18. Here, while Microsoft denies Plaintiff’s factual allegations and denies that Plaintiff  
23 is entitled to the relief she seeks in her Complaint, it is clear that the amount in controversy  
24 exceeds \$75,000.<sup>1</sup>

25 \_\_\_\_\_  
26 <sup>1</sup> This Notice of Removal discusses the nature and amount of damages and penalties Plaintiff’s Complaint  
27 places at issue. Microsoft’s references to specific damage or penalty amounts are provided solely for the  
28 purpose of establishing that the amount in controversy is more likely than not in excess of the  
jurisdictional minimum. Microsoft maintains that each of Plaintiff’s claims is without merit and that  
Microsoft is not liable to Plaintiff. Microsoft specifically denies that Plaintiff has suffered any damage as  
a result of any act or omission by Microsoft or that Microsoft engaged in any conduct that would justify  
imposing the statutory penalties Plaintiff seeks. No statement or reference contained herein shall

1                   **1. Plaintiff's Claim for Unpaid Overtime Places at Minimum \$164,948.43**  
 2                   **In Controversy.**

3                   19. In her First Cause of Action, Plaintiff alleges that Microsoft owes her overtime pay  
 4 for the time period she allegedly was misclassified as exempt from the overtime provisions of the  
 5 California Labor Code. Ex. A. ¶¶9, 23. Plaintiff alleges that “[i]n July 2015, [Microsoft]  
 6 promoted Plaintiff to Store Manager and paid her a salary until her separation from the  
 7 company.” Ex. A ¶ 9. Microsoft employed Plaintiff as an exempt Specialty Store Manager in  
 8 California from July 12, 2015 to May 10, 2017, her effective termination date. Siebert Decl. ¶ 3;  
 9 *see also* Ex. A, Compl. ¶ 5. Plaintiff alleges that she “typically worked five days per week  
 10 during which she worked at least 50 hours per week to as much as 75 hours per week.” However,  
 11 Plaintiff alleges that “[f]or the first eight months in which Plaintiff worked as a Store Manager . . .  
 12 Plaintiff typically worked 70-75 hours per week.” Ex. A, Compl. ¶ 11, n. 1.

13                   20. During the eight-month period between July 12, 2015 and March 12, 2016 when  
 14 Plaintiff first worked as a Specialty Store Manager, Plaintiff's total gross earnings were  
 15 approximately \$89,065.52. Siebert Decl., ¶ 4. There were 34.86 workweeks between July 12,  
 16 2015 and March 12, 2016. Based on working 40 regular hours per week, Plaintiff's hourly rate of  
 17 pay during this eight-month time period was \$63.87 ( $\$89,065.52 \div 34.86 \div 40$ ). Using Plaintiff's  
 18 allegation that she also worked 30 hours of unpaid overtime and double time and “typically five  
 19 days per week” between July 12, 2015 and March 12, 2016 (Ex. A, Compl. ¶ 11), and assuming  
 20 during this time period that she worked 14 hours per workday ( $70 \div 5 = 14$ ), then during this time  
 21 period she would have worked four hours per day of overtime at an overtime rate of \$95.81  
 22 ( $\$63.87 \times 1.5$ ) and two hours per day of overtime at a double time rate of \$127.74 ( $\$63.87 \times 2$ ).  
 23 As a result, the amount in controversy for Plaintiff's overtime claim for the first eight months of  
 24 her employment as Store Manager is approximately **\$111,328.89** (20 hours x 34.86 weeks x  
 25 \$95.81 (overtime rate)) + (10 hours x 34.86 weeks x \$127.74 (double time rate)).  
 26  
 27

28 constitute an admission of liability or a suggestion that Plaintiff will or could actually recover any  
 damages or penalties based upon the allegations contained in the Complaint or otherwise.

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1           21.     Between March 13, 2016 and May 10, 2017 (Plaintiff's termination date),  
 2 Plaintiff's total gross earnings were approximately \$142,977.03. Siebert Decl. ¶ 5. There were  
 3 60.43 workweeks during this time period. As a result, Plaintiff's hourly rate of pay during this  
 4 time period was \$59.15 ( $\$142,977.03 \div 60.43 \div 40$ ). Using Plaintiff's allegation that she worked  
 5 at least 10 hours of unpaid overtime per week between March 13, 2016 and May 10, 2017 (Ex. A,  
 6 Compl. ¶ 11), at an overtime rate of \$88.73 ( $\$59.15 \times 1.5$ ), the amount in controversy for  
 7 Plaintiff's overtime claim between March 13, 2016 and May 10, 2017 is approximately  
 8 **\$53,619.54** (10 hours x 60.43 workweeks x \$88.73 (overtime rate)).

9           22.     The total amount in controversy for Plaintiff's alleged overtime between July 12,  
 10 2015 and May 10, 2017 is **\$164,948.43** ( $\$111,328.89 + \$53,619.54$ ).

11                           **2.     Plaintiff's Claim for Unpaid Meal and Rest Break Premiums Places At**  
 12                           **Least \$22,545.61 in Controversy.**

13           23.     In her Second and Third Causes of Action, Plaintiff alleges that Microsoft owes  
 14 her one hour of pay for each workday Microsoft did not provide her a meal period and one hour  
 15 of pay for each workday Microsoft did not provide her a rest break. Ex. A., Compl. ¶¶ 37, 47.

16           24.     Plaintiff's alleges that she "was never fully relieved of all her work duties to take a  
 17 30-minute off-duty meal break" and that she "was never provided with, nor able to take, timely,  
 18 off-duty meal periods." Ex. A, Compl. ¶ 16. Plaintiff further alleges that Microsoft "did not  
 19 authorize or permit Plaintiff to take off-duty rest breaks." *Id.* at ¶ 18. Thus, it is reasonable to  
 20 assume for the purposes of determining the amount in controversy and for no other purposes that  
 21 Microsoft did not provide Plaintiff with the legally required meal periods and rest periods on an  
 22 average of ten occasions each workweek. *See UPS v. Superior Court*, 196 Cal. App. 4th 57, 69-  
 23 70 (2011) (Labor Code Section 226.7 permits up to two premium payments per workday).  
 24 Nevertheless, with an estimate of just two unprovided meal periods per week and conservatively  
 25 using the lower hourly rate of pay for Plaintiff's employment, the amount in controversy for  
 26 Plaintiff's meal period claim is \$11,272.81 (2 x 95.29 workweeks x \$59.15 (hourly rate)).  
 27 Similarly, the amount in controversy for Plaintiff's rest period claim, conservatively assuming  
 28 just two unprovided rest periods per week, also is \$11,272.81 (2 x 95.29 workweeks x \$59.15).



1 Thus, Plaintiff's claims for unprovided meal and rest period premiums places at least **\$22,545.61**  
 2 in controversy (\$11,272.81 x 2).

3 **3. Plaintiff's Claim for Waiting Time Penalties Places At Least \$14,196**  
 4 **In Controversy.**

5 25. Plaintiff's Fourth Cause of Action alleges that Plaintiff is entitled to penalties for  
 6 violations of California Labor Code section 203. (Ex. A, Compl. ¶ 51.) Labor Code Section 203  
 7 provides that an employee who is not timely paid all wages due upon termination is entitled to a  
 8 day's pay as a penalty for each day that the wages remain unpaid, up to a maximum of 30 days'  
 9 pay. Cal. Lab. Code § 203. Accordingly, the amount in controversy for this claim is **\$14,196**  
 10 (\$59.15 (hourly rate) x 8 hours per day x 30 days).

11 **4. Plaintiff's Claim for Penalties for Inaccurate Wage Statements Places**  
 12 **At Least \$1,250 In Controversy.**

13 26. Plaintiff's Fifth Cause of Action alleges that Plaintiff is entitled to penalties for  
 14 failure to provide accurate wage statements under California Labor Code section 226. (Ex. A,  
 15 Compl. ¶¶ 52-56.) Under Labor Code section 226(e), an injured employee can recover penalties  
 16 of \$50 for the initial pay period in which a violation occurs and \$100 for each violation in a  
 17 subsequent pay period, up to an aggregate penalty of \$4,000, for a knowing and intentional  
 18 violation. There is a one-year statute of limitations on claims for wage statement penalties. Cal.  
 19 Code Civ. Proc. § 340(a). Plaintiff does not allege actual damage. Plaintiff received 13 wage  
 20 statements from January 17, 2017 (one year before filing her Complaint) through her termination  
 21 on May 10, 2017. As a result, her Fifth Cause of Action places **\$1,250** in controversy (\$50 initial  
 22 pay period + \$1,200 for subsequent pay periods).

23 **5. Plaintiff's Requested Attorneys' Fees.**

24 27. This is an alleged wage and hour action brought pursuant to California Labor Code  
 25 sections 226(a), 226.7, 201-203, 512, 510, and 1194, each of which provide for the award of  
 26 attorneys' fees. Plaintiff seeks to an award of attorneys' fees with respect to each of the five  
 27 wage and hour claims. Exh. A, Compl. ¶¶ 68(b), 69(c), 70(d), 71(c), 72(b); Prayer for Relief.  
 28



1           28. Courts have held that an award of attorneys’ fees, if such fees are authorized under  
2 applicable law, may be considered for purposes of calculating the amount in controversy. *See*  
3 *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002) (“Where the  
4 law entitles the prevailing plaintiff to recover reasonable attorney fees, *a reasonable estimate of*  
5 *fees likely to be incurred to resolution* is part of the benefit permissibly sought by the plaintiff and  
6 thus contributes to the amount in controversy.”) (emphasis added); *Galt G/S v. JSS Scandinavia*,  
7 142 F.3d 1150, 1155-56 (9th Cir. 1998) (“We hold that where an underlying statute authorizes an  
8 award of attorneys’ fees, either with mandatory or discretionary language, such fees may be  
9 included in the amount in controversy.”); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 698  
10 (9th Cir. 2007) (finding that attorneys’ fees are included in the calculation of the amount in  
11 controversy under 28 U.S.C. § 1332(a)); *Hurd v. Am. Income Life Ins.*, No. CV-13-05205 RSWL-  
12 MRW, 2013 WL 5575073, at \*7 (C.D. Cal. Oct. 10, 2013) (allowing attorney’s fees as part of  
13 amount in controversy where authorized by statute or contract); *Melendez v. HMS Host Family*  
14 *Restaurants, Inc.*, No. CV 11-3842 ODW CWX, 2011 WL 3760058, at \*4 (C.D. Cal. Aug. 25,  
15 2011) (same).

16           29. When estimating attorneys’ fees for purposes of removal, the estimated amount is  
17 not limited to the fees incurred as of the time of removal. *Brady*, 243 F. Supp. 2d at 1010-11.  
18 For example, in *Simmons v. PCR Technology*, the court held that “[attorneys’ fees] necessarily  
19 accrue until the action is resolved” and, thus, the Ninth Circuit [in *Galt, supra*] must have  
20 anticipated that district courts would project fees beyond removal.” 209 F. Supp. 2d 1029, 1034-  
21 35 (N.D. Cal. 2002). As such, the court in *Simmons* held that the “measure of [attorneys’] fees  
22 should be the amount that can reasonably be anticipated at the time of removal, not merely those  
23 already incurred.” *See also Pulera v. F&B, Inc.*, 2008 U.S. Dist. LEXIS 7265, \*14-15 (E.D. Cal.  
24 2008), citing *Brady*, 243 F. Supp. 2d at 1010-11 (“[w]hile the Ninth Circuit has not yet ruled on  
25 this issue, the preponderance of courts in this Circuit have agreed with the *Brady* approach” of  
26 “includ[ing] a reasonable estimate of the attorney’s fees likely to be incurred”). In fact, the Ninth  
27 Circuit has implied that ultimately it will adopt the same rule. *See Guglielmino*, 506 F.3d at 700  
28 (implying the propriety of including future attorneys’ fees in determining amount in controversy,

1 particularly where a plaintiff seeks such fees as allowed by an underlying statute).

2           30.     The reasonable estimate of attorneys' fees likely to be incurred through resolution  
3 of a case may be based upon fee awards in similar cases, plaintiffs' counsel's hourly rate, and the  
4 number of hours counsel expects to spend on this case. *See Brady*, 243 F. Supp. 2d at 1011; *see*  
5 *also Lyon v. W. W. Grainger Inc.*, No. C 10-00884 WHA, 2010 WL 1753194, at \*5 (N.D. Cal.  
6 Apr. 29, 2010) ("Defendant's use of similar cases to estimate the cost of attorney's fees is  
7 sufficient to establish that its estimate is more likely than not correct."). With respect to fee  
8 awards in similar cases, courts have recognized that "attorneys handling wage-and-hour cases  
9 typically spend *far more than 100 hours* on the case." *Lippold v. Godiva Chocolatier, Inc.*, No. C  
10 10-00421 SI, 2010 WL 1526441, at \*4 (N.D. Cal. Apr. 15, 2010). Individual wage and hour  
11 cases (as opposed to putative class or representative action) often involve several hundred hours  
12 of work. *See, e.g., Cappuccio v. Pepperdine University*, Case No. 13-cv-3125-DSF-AJWx (C.D.  
13 Cal. Sept. 29, 2014), Dkt. No. 81-1 at ¶¶ 7, 9 (plaintiffs' counsel stated that they spent 506.9  
14 hours litigating a single plaintiff case for violations of the Fair Labor Standards Act); *Puerto v.*  
15 *Wild Oats Markets, Inc.*, Case No. BC359723 (L.A. Sup. Ct. Mar. 24, 2011) (in plaintiffs' Motion  
16 for Attorney's Fees and Costs, at 10:18-20, counsel for plaintiffs stated that they spent 1,250.74  
17 hours litigating a two-plaintiff overtime case).

18           31.     Here, a reasonable estimate of the number of hours Plaintiff's counsel likely will  
19 spend litigating Plaintiff's individual wage and hour claims, based on Plaintiff's allegations and a  
20 comparison of similar individual wage and hour cases, is approximately 200 hours. The parties  
21 will need to participate in a Rule 16 and 26(f) conference, prepare and file a joint case  
22 management conference statement, and appear at a case management conference. Microsoft  
23 anticipates taking Plaintiff's deposition and filing a motion for summary judgment. Microsoft  
24 further anticipates that Plaintiff's counsel will depose one or more Rule 30(b)(6) witnesses. The  
25 Parties may have disputes regarding discovery that will involve the briefing and arguing one or  
26 more discovery motions. Given the anticipated law and motion practice and the need for at least  
27 one case management conference appearance, Microsoft anticipates there will be at least three  
28 court appearances, separate and apart from any pretrial and trial practice before the Court.

1 Plaintiff also has requested a jury trial, which would extend the time necessary for any trial of  
 2 Plaintiff’s claims. Therefore, approximately 200 hours of attorney time is a conservative, and  
 3 certainly reasonable, estimate of the number of attorney hours that can reasonably be anticipated  
 4 through the resolution of this case. At a relatively conservative attorney billing rate of \$450 an  
 5 hour, 200 hours of attorney time equates to \$90,000 in attorneys’ fees that Plaintiff may recover.

6 **6. Summary of Amount in Controversy.**

7 32. While Microsoft denies any and all liability to Plaintiff, based on a conservative  
 8 and good faith estimate of the alleged damages and penalties in this action, the amount in  
 9 controversy in this case far exceeds \$75,000, exclusive of interest and costs which also can be  
 10 included in the calculation of amount in controversy. Based on the conservative estimates  
 11 detailed above, the Complaint places in controversy at least the following:

<u>Item</u>	<u>Value</u>
Alleged Unpaid Overtime	\$164,948.43
Alleged Unpaid Meal and Rest Break Penalties	\$22,545.61
Alleged Waiting Time Premiums	\$14,196
Alleged Inaccurate Wage Statement Penalties	\$1,250
Attorneys’ Fees	\$90,000
<b>Total</b>	<b>\$292,940.04</b>

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20 **D. The Other Prerequisites for Removal are Satisfied.**

21 33. Venue lies currently in the Northern District of California pursuant to 28 U.S.C.  
 22 sections 1441 and 1446(a) because this action was filed originally in Marin County Superior  
 23 Court, which is in a county this District embraces.

24 34. As required under 28 U.S.C. section 1446(d), Microsoft promptly will serve  
 25 Plaintiff with this Notice of Removal and promptly will file a copy of this Notice of Removal  
 26 with the Clerk of the Marin County Superior Court.

27 35. If any questions arise as to the propriety of this action’s removal, then Microsoft  
 28 respectfully requests the opportunity to present a brief and oral argument in support of its position

1 that this case is removable.

2 **IV. CONCLUSION**

3 Based on the foregoing, Microsoft respectfully requests that this action be removed from  
4 Marin County Superior Court to the United States District Court for the Northern District of  
5 California, and that all future proceedings in this matter occur in the United States District Court  
6 for the Northern District of California.

7

8 Dated: February 16, 2018

MORGAN, LEWIS & BOCKIUS LLP

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By /s/ Daryl S. Landy  
Daryl S. Landy  
Attorneys for Defendant  
MICROSOFT CORPORATION

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