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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF ORANGE**

12  
13 DONALD CABRAL, an individual, on  
behalf of himself, and on behalf of all  
14 persons similarly situated,

15 Plaintiff,

16 vs.

17 CREATIVE COMMUNICATION  
18 TECHNOLOGIES, INC.; and Does 1 to  
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20 Defendants.  
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**ELECTRONICALLY  
FILED**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER

**Nov 05 2008**

ALAN CARLSON, Clerk of the Court  
by J. HAINES

CASE No. 30-2008-00097717

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

1. UNFAIR COMPETITION IN  
VIOLATION OF CAL. BUS. & PROF.  
CODE § 17200, *et seq.*;  
2. FAILURE TO PAY OVERTIME  
COMPENSATION IN VIOLATION OF  
CAL. LAB. CODE § 510, *et seq.*;  
3. FAILURE TO PROVIDE  
ACCURATE ITEMIZED STATEMENTS  
IN VIOLATION OF CAL. LAB. CODE §  
226;  
4. FAILURE TO PROVIDE  
INDEMNIFICATION OF  
EXPENDITURES IN VIOLATION OF  
CAL. LAB. CODE § 2802; and,  
5. LABOR CODE PRIVATE ATTORNEY  
GENERAL ACT [Labor Code § 2698]  
DEMAND FOR A JURY TRIAL

Judge: Hon. David C. Velasquez  
Dept: CX-101  
Action Filed: September 5, 2008

1 Plaintiff Donald Cabral, an individual, alleges upon information and belief, except for  
2 his own acts and knowledge, the following:

3  
4 **PARTIES**

5 1. PLAINTIFF Donald Cabral (“PLAINTIFF”) was hired by Defendant Creative  
6 Communication Technologies, Inc. (“DEFENDANT”) in 2003 to work as a “Technician.”  
7 As a Technician, PLAINTIFF’s principal and primary job duties required the performance  
8 of manual labor in order to install telephone, cable and/or modem equipment and services  
9 and to drive to the installation locations specified by the DEFENDANT. In performing  
10 these duties, PLAINTIFF did not and does not now utilize any independent discretion,  
11 judgment, or management decisions with respect to matters of significance. To the contrary,  
12 the work of PLAINTIFF as a Technician is to provide, on a daily basis, installation and other  
13 services related to telephone, cable and/or modem to end-users in accordance with the  
14 management decisions and business policies established by DEFENDANT. In fact, no  
15 installation, configuration or replacement of the equipment may be made PLAINTIFF  
16 without first obtaining approval and instructions from DEFENDANT. As a result,  
17 PLAINTIFF is classified as non-exempt and is entitled to be paid overtime as required by  
18 California law. DEFENDANT, however, fails to pay PLAINTIFF the correct amount of  
19 overtime compensation because DEFENDANT incorrectly calculates the regular rate of pay  
20 for PLAINTIFF thereby uniformly resulting in reduced overtime compensation for the  
21 documented overtime hours worked. In addition, DEFENDANT has compelled  
22 PLAINTIFF to purchase expensive equipment directly from the DEFENDANT as a  
23 condition of employment and makes unlawful deductions from the PLAINTIFF’s paychecks  
24 for such equipment charges. Finally, DEFENDANT fails to provide PLAINTIFF with the  
25 required reimbursement of business expenses incurred by PLAINTIFF in the performance of  
26 PLAINTIFF’s job duties. PLAINTIFF continues to be employed by the DEFENDANT in  
27 this position and continues to be subjected to these illegal practices as herein alleged by the

1 DEFENDANT which continue unabated to the present and will continue until enjoined by  
2 this Court.

3 2. Defendant Creative Communication Technologies, Inc. is a California  
4 Corporation with offices throughout California, including offices in West Covina, La  
5 Puente, Riverside, Hesperia, Long Beach, Oxnard and Garden Grove. DEFENDANT  
6 conducted and continues to conduct substantial and regular business throughout California.  
7 DEFENDANT is an enterprise engaged in commerce by engaging in the enterprise of the  
8 transmission of cable, telephone and internet services and in an enterprise of the production  
9 of goods in connection with regularly and recurrently receiving or transmitting interstate  
10 communications.

11 3. DEFENDANT was incorporated in 2000 and provides installation and  
12 technical services in video, voice and data for telecommunications and cable systems  
13 throughout California. The DEFENDANT's current customer base consists of multiple  
14 system operators ("MSOs") including Cox Cable, Time Warner, Adelphia and Charter  
15 Communications. These MSOs contract with DEFENDANT to perform the manual  
16 installation of cable and equipment in specified locations for the clients of the MSOs. In  
17 turn, DEFENDANT employs a fleet of Technicians like the PLAINTIFF to perform the  
18 actual manual installation and other services at the client locations. DEFENDANT currently  
19 has 180 employees in California, the majority of which are employed in the Technician  
20 position performing these services for DEFENDANT. Due to the vast growth of the  
21 broadband/telecommunications industry, these large MSOs are contracting more and more  
22 of this manual installation and other work to DEFENDANT. In order to compete with larger  
23 companies, DEFENDANT requires a large pool of Technicians to perform the contracted  
24 services for the MSOs.

25 4. DEFENDANT's Technicians, like the PLAINTIFF, primarily perform manual  
26 labor associated with the installation of cable and telephone services at locations specified  
27 by the DEFENDANT. These services consist of (i) driving to the specified location, (ii)

1 performing billing procedures, (iii) installing cable wiring by drilling, stripping, cutting and  
2 laying the wiring, (iv) connecting the wiring to modems and customer premise equipment  
3 like televisions and VCRs, and (v) performing troubleshooting and repair of the customer  
4 wiring. These duties require Technicians to utilize safety equipment and other tools in the  
5 performance of their job. In order to meet the requirements of the MSOs, DEFENDANT's  
6 Technicians work every day of the week, performing services at multiple customer premises  
7 at the direction of the DEFENDANT. DEFENDANT then pays hourly compensation to the  
8 Technicians based, in whole or in part, on the number of each type of service performed by  
9 the Technicians at the customers' premises which is then used to compute the hourly rate of  
10 pay.

11 5. The Defendants named in this Complaint, and as Does 1 through 10, inclusive,  
12 are, and at all times mentioned herein were, the agents, servants, and/or employees of each  
13 of the other Defendant and each Defendant was acting within the course of scope of his, her  
14 or its authority as the agent, servant and/or employee of each of the other Defendant.  
15 Consequently, all the Defendants named herein are jointly and severally liable to the  
16 PLAINTIFF and the other members of the CALIFORNIA CLASS, for the losses sustained  
17 as a proximate result of DEFENDANT'S conduct as herein alleged.

### 18 CONDUCT

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20 6. Plaintiff Donald Cabral ("PLAINTIFF") has been employed by DEFENDANT  
21 in the capacity of a Technician since 2003 and continues to be employed as a Technician to  
22 the present. PLAINTIFF and the other Technicians worked as a working member on the  
23 production side of DEFENDANT's business. The primary job duties of PLAINTIFF and  
24 other Technicians are to perform manual labor in order to install, configure and replace  
25 telephone, cable and/or modem hardware at the direction of DEFENDANT. As a result of  
26 this work, PLAINTIFF was primarily involved in providing day to day routine installation of  
27 telephone, cable and/or modem equipment at residential locations specified by  
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1 DEFENDANT. This work was executed primarily by the performance of manual labor  
2 within a defined skill set, involving the routing of cables and modems, pursuant to known  
3 protocol followed by these employees. Physical demands of the position include standing,  
4 sitting, walking, bending, lifting, drilling, and moving equipment, which work  
5 DEFENDANT have admitted is non-exempt, entry-level work. As a result, the Technician  
6 position is a non-exempt position and was in fact classified as non-exempt by the  
7 DEFENDANT. PLAINTIFF performed these tasks by traveling to off-site locations as  
8 directed by DEFENDANT in his own vehicle. Since 2003, PLAINTIFF, as a Technician on  
9 the production side of his team, worked overtime but was not fully paid the overtime  
10 compensation to which he was entitled because of DEFENDANT's systematic  
11 miscalculation of overtime compensation owed. DEFENDANT failed to correctly calculate  
12 the applicable regular rate of pay for Technicians in accordance with California law, and  
13 thereby systematically underpaid overtime compensation to Technician employees for their  
14 documented overtime hours worked. As a result, PLAINTIFF worked more than eight (8)  
15 hours a day, forty (40) hours a week, and/or on the seventh (7<sup>th</sup>) day of a workweek but was  
16 not fully compensated for these hours of overtime work as required by law.

17 7. In addition, as a condition of employment, DEFENDANT required  
18 PLAINTIFF and the other Technicians to purchase expensive cable metering equipment  
19 which DEFENDANT requires Technicians to use in the performance of their job duties.  
20 The PLAINTIFF and the other Technicians are required to purchase this equipment directly  
21 from the DEFENDANT. The DEFENDANT then makes deductions from the paychecks of  
22 the PLAINTIFF and other Technicians for this equipment. As a direct consequence and  
23 requirement of performing their work duties for the DEFENDANT, PLAINTIFF and other  
24 Technicians incur business expenses for which DEFENDANT refuses to provide  
25 reimbursement as required by law. These business expenses incurred include mileage and  
26 charges for equipment required by DEFENDANT to perform the duties assigned by  
27 DEFENDANT. On average, Technicians are required to drive 250 miles each workweek to  
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1 customer locations designated by DEFENDANT for which no mileage reimbursement is  
2 provided by DEFENDANT. PLAINTIFF and other Technicians are required to incur these  
3 expenses to perform their job duties but DEFENDANT has established no procedure to  
4 provide reimbursement of these expenses to employees and has refused to provide  
5 reimbursement.

6 8. Individuals in these Technician positions are and were employees who are  
7 entitled to regular, and overtime compensation and prompt payment of amounts that the  
8 employer owes an employee when the employee quits or is terminated, and other  
9 compensation and working conditions that are prescribed by law. Although DEFENDANT  
10 requires their employees employed as Technicians, and other similarly situated positions, to  
11 work more than forty (40) hours a week, eight (8) hours in a workday, and /or on the seventh  
12 (7<sup>th</sup>) day of a workweek, as a matter of company policy and practice, DEFENDANT  
13 consistently and uniformly denies them the correct overtime compensation that the law  
14 requires. The PLAINTIFF and known members of the CLASS work or worked in  
15 California and DEFENDANT’S practices and procedures are and were common throughout  
16 California.

17 9. In fact, DEFENDANT was previously investigated and cited by the United  
18 States Department of Labor for similar illegal employment practices. With respect to hours  
19 worked during the 2002 through 2004 period, the Department of Labor determined that  
20 DEFENDANT paid workers who installed cable and modems on a piece rate basis, failed to  
21 keep records of the actual hours worked and recorded only the number of jobs the  
22 employees were assigned. The Department of Labor then found that these workers were not  
23 paid the required additional overtime compensation when they worked more than 40 hours a  
24 week and that DEFENDANT made illegal deductions from the paychecks of these  
25 employees. Despite this citation, DEFENDANT continues these practices in whole or in  
26 part to the present day.

27 10. Plaintiff Donald Cabral (“PLAINTIFF”) brings this class action on behalf of  
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1 himself and a California class consisting of all individuals who are or previously were  
2 employed by Defendant Creative Communication Technologies, Inc. (hereinafter referred to  
3 as “DEFENDANT”) in a staff position as a telephone, cable or modem technician, or in any  
4 other similarly situated position (“Technicians”) (the “CALIFORNIA CLASS”). The class  
5 period applicable to this CALIFORNIA CLASS is the period beginning four years prior to  
6 the filing of this Complaint and ending on the date of as determined by the Court (the  
7 “CLASS PERIOD”). At least one member of the CALIFORNIA CLASS is a citizen of a  
8 state other than California, there are more than 100 individuals in the CALIFORNIA  
9 CLASS and the amount in controversy in the complaint exceeds the sum or value of \$  
10 5,000,000. As a matter of company policy and practice, DEFENDANT has unlawfully,  
11 unfairly and deceptively miscalculated overtime, failed to pay the required overtime  
12 compensation and otherwise failed to comply with all labor laws with respect to these  
13 Technicians.

14       11. In this action, PLAINTIFF, on behalf of himself and the CALIFORNIA  
15 CLASS, seeks to recover all the compensation that DEFENDANT was required by law to  
16 provide, but failed to provide, to PLAINTIFF and all other CALIFORNIA CLASS  
17 members. PLAINTIFF also seeks penalties and all other relief available to him and other  
18 similarly situated employees under California law. Finally, PLAINTIFF seeks declaratory  
19 relief finding that the employment practices and policies of the DEFENDANT violate  
20 California law and injunctive relief to enjoin the DEFENDANT from continuing to engage  
21 in such employment practices.

22       12. In performing the conduct herein alleged, the DEFENDANT also uniformly  
23 misrepresented to the PLAINTIFF and the other members of the CALIFORNIA CLASS that  
24 they were required to purchase things of value from DEFENDANT and that they would be  
25 paid overtime in accordance with company policy and applicable state and federal labor  
26 laws, when in fact, they were not. The DEFENDANT’s wrongful conduct and violations of  
27 law as herein alleged demeaned and wrongfully deprived PLAINTIFF and the other  
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1 members of the CLASS of money and career opportunities to which they were lawfully  
2 entitled. DEFENDANT engaged in such wrongful conduct by failing to have adequate  
3 employment policies and maintaining adequate employment practices consistent with such  
4 policies and the applicable law. DEFENDANT's wrongful conduct as herein alleged caused  
5 the money belonging to the PLAINTIFF and the other members of the CLASS to be kept by  
6 DEFENDANT and thereby converted by DEFENDANT for DEFENDANT's own use.

7 13. Classified and treated by DEFENDANT as non-exempt at the time of hire and  
8 thereafter, PLAINTIFF, and all other members of the similarly- situated CALIFORNIA  
9 CLASS, are in fact not exempt under Industrial Welfare Commission Wage Order 4-2001  
10 and Cal. Lab. Code §§ 515 of 515.5, and therefore are entitled to overtime and the protection  
11 of all other labor laws. Despite the undeniable fact that PLAINTIFF, and all other members  
12 of the similarly- situated CALIFORNIA CLASS, are in fact not exempt, DEFENDANT  
13 failed to comply with the applicable requirements imposed by the California Labor Code and  
14 the Wage Order with respect to the calculation of overtime, accurate statements, expense  
15 reimbursement, wage deductions, and the required purchase of a thing in value by  
16 employees. DEFENDANT's practices violated and continue to violate the law, regardless of  
17 whether the employees' work is paid by commission, by salary, by piece rate, or by part  
18 commission, part piece rate, and/or part salary. As a result of this policy and practice,  
19 DEFENDANT fails to pay overtime in accordance with applicable law, and unlawfully  
20 deducts amounts from the total amount earned by the employee so as to artificially reduce  
21 the overtime rate of pay for the CALIFORNIA CLASS and unlawfully divide the total  
22 earnings by the incorrect number of hours to calculate the overtime rate of pay. To the  
23 extent that DEFENDANT contends the CALIFORNIA CLASS was paid using a piece rate,  
24 DEFENDANT's method for calculating overtime fails to comply with 29 C.F.R. § 778.111  
25 as well as the state regulations and opinion letters issued by the California Division of Labor  
26 Standards Enforcement in their calculation and payment of overtime compensation. To the  
27 extent that DEFENDANT contends the CALIFORNIA CLASS was paid on an hourly basis,  
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1 DEFENDANT's method for calculating overtime fails to comply with the California Labor  
2 Code ("Labor Code") as well as the state regulations and opinion letters issued by the  
3 California Division of Labor Standards Enforcement in their calculation and payment of  
4 overtime compensation for hourly employees.

5 14. Accordingly, DEFENDANT committed acts of unfair competition in violation  
6 of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, by engaging in  
7 company-wide policies and procedures which failed to correctly calculate and/or pay all  
8 required overtime compensation for work performed by employees, compelled and/or  
9 coerced employees to purchase expensive equipment in violation of Labor Code 450,  
10 imposed equipment deductions from employee wages, failed to indemnify employees for all  
11 expenses incurred in direct consequence of the performance of their duties, and violated the  
12 California Labor Code and regulations promulgated thereunder as herein alleged.

13 15. PLAINTIFF has no plain, speedy or adequate remedy at law and will suffer  
14 irreparable injury if DEFENDANT is permitted to continue to engage in the unlawful acts  
15 and practices herein alleged. The illegal conduct alleged herein is continuing and to prevent  
16 future injury and losses, and to avoid a multiplicity of lawsuits, PLAINTIFF is entitled to an  
17 injunction and other equitable relief, on behalf of himself and the CLASS, to prevent and  
18 enjoin such practices. PLAINTIFF therefore requests a preliminary and/or permanent  
19 injunction as the DEFENDANT provides no indication that DEFENDANT will not continue  
20 such activity in the future, along with restitution, penalties, interest, compensation and other  
21 equitable relief as provided by law.

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23 **THE CALIFORNIA CLASS**

24 16. PLAINTIFF brings this action on behalf of the CALIFORNIA CLASS which  
25 consists of all employees of DEFENDANT in California who were, are, or will be employed  
26 as Technicians during the period four years prior to the filing of this Complaint and ending  
27 on the date as determined by the Court ("CLASS PERIOD"). To the extent equitable tolling  
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1 operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS  
2 PERIOD should be adjusted accordingly. The CALIFORNIA CLASS includes all such  
3 persons, whether or not they were paid by commission, by salary, by piece rate, or by part  
4 commission, part piece rate, and/or part salary. At least one member of the CALIFORNIA  
5 CLASS is a citizen of a state other than California, there are more than 100 individuals in  
6 the CALIFORNIA CLASS and the amount in controversy in the complaint exceeds the sum  
7 or value of \$ 5,000,000.

8 17. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
9 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage  
10 Order Requirements, and the applicable provisions of California law, intentionally,  
11 knowingly, and wilfully, engaged in a practice whereby DEFENDANT uses an unlawful,  
12 unfair and deceptive method to calculate overtime, including the overtime owed to the  
13 PLAINTIFF and the other members of the CALIFORNIA CLASS, failed to provide  
14 accurate itemized statements to the CALIFORNIA CLASS, compelled the CALIFORNIA  
15 CLASS to purchase things of value as a condition of employment, deducted equipment  
16 charges from their wages, and failed to provide the CALIFORNIA CLASS with  
17 indemnification and/or reimbursement of business expenses incurred by employees as a  
18 direct consequence of the discharge of their duties.

19 18. DEFENDANT, as a matter of corporate policy, practice and procedure,  
20 classified all Technicians as non-exempt from overtime wages and other labor laws, and  
21 therefore are legally required to pay overtime as required by law and comply with all other  
22 labor laws and regulations with respect to these employees. All Technicians, including the  
23 PLAINTIFF, performed the same primary functions and were paid by DEFENDANT  
24 according to uniform and systematic company procedures, which, as alleged herein above,  
25 failed to correctly pay overtime compensation, failed to provide business expense  
26 reimbursement, compelled all Technician employees to purchase expensive equipment from  
27 the DEFENDANT, and imposed deductions on their employees paychecks for such  
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1 equipment purchases. This business practice was uniformly applied to each and every  
2 member of the CALIFORNIA CLASS, and therefore, the propriety of these business  
3 practices can be adjudicated on a classwide basis.

4 19. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS  
5 under California law by:

- 6 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof.  
7 Code § 17200, *et seq.*, by unlawfully, unfairly and deceptively having  
8 in place company policies, practices and procedures that uniformly  
9 denied Plaintiffs and the members of the CALIFORNIA CLASS the  
10 correct overtime pay and otherwise violated applicable law;
- 11 (b) Committing an act of unfair competition in violation of the California  
12 Unfair Competition Laws, Cal. Bus. & Prof. Code § 17200 *et seq.*, by  
13 miscalculating overtime compensation and thereby failing to pay  
14 PLAINTIFF and the members of the CALIFORNIA CLASS the correct  
15 overtime pay for a workweek longer than forty (40) hours, for hours  
16 worked in a day in excess of eight (8), and/or for hours worked on the  
17 seventh day of a workweek;
- 18 (c) Committing an act of unfair competition in violation of the California  
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by  
20 misrepresenting the applicable overtime compensation rate and amount  
21 to the CALIFORNIA CLASS;
- 22 (d) Committing an act of unfair competition in violation of the California  
23 Unfair Competition Laws, Cal. Bus. & Prof. Code § 17200 *et seq.*, by  
24 miscalculating overtime compensation and thereby failing to pay  
25 PLAINTIFF and the members of the CALIFORNIA CLASS the correct  
26 overtime pay in contravention of California law;
- 27 (e) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and  
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1 the members of the CALIFORNIA CLASS with an accurate itemized  
2 statement in writing showing the gross wages earned, the net wages  
3 earned, all applicable hourly rates in effect during the pay period and  
4 the corresponding number of hours worked at each hourly rate by the  
5 employee; and,

- 6 (f) Violating Cal. Lab. Code §§ 450, 221 and 2802, by compelling and/or  
7 coercing PLAINTIFF and the members of the CALIFORNIA CLASS  
8 to purchase expensive equipment as a condition of employment, by  
9 making deductions from their wages for this equipment, and by failing  
10 to indemnification to PLAINTIFF and the members of the  
11 CALIFORNIA CLASS for business expenses incurred as a  
12 consequence of performing their work for DEFENDANTS.

13 20. This Class Action meets the statutory prerequisites for the maintenance of a  
14 Class Action as set forth in California Code of Civil Procedure, § 382, in that:

- 15 (a) The persons who comprise the CALIFORNIA CLASS exceed 100  
16 persons and are therefore so numerous that the joinder of all such  
17 persons is impracticable and the disposition of their claims as a class  
18 will benefit the parties and the Court;
- 19 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief  
20 issues that are raised in this Complaint are common to the  
21 CALIFORNIA CLASS will apply uniformly to every member of the  
22 CALIFORNIA CLASS;
- 23 (c) The claims of the representative PLAINTIFF are typical of the claims  
24 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all  
25 other members of the CALIFORNIA CLASS, was compelled to  
26 purchase expensive equipment from DEFENDANT as a condition of  
27 employment, was denied reimbursement of business expenses incurred,  
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1 was subjected to DEFENDANT's illegal practice of miscalculating  
2 overtime compensation. PLAINTIFF sustained economic injury as a  
3 result of DEFENDANT's employment practices. PLAINTIFF and the  
4 members of the CALIFORNIA CLASS were and are similarly or  
5 identically harmed by the same unlawful, deceptive, unfair and  
6 pervasive pattern of misconduct engaged in by the DEFENDANT of  
7 compelling all Technicians to purchase expensive equipment as a  
8 condition of employment, failing to provide reimbursement of business  
9 expenses incurred by employees and incorrectly calculating the  
10 overtime rate for Technicians; and,

11 (d) The representative PLAINTIFF will fairly and adequately represent and  
12 protect the interest of the CALIFORNIA CLASS, and has retained  
13 counsel who are competent and experienced in Class Action litigation.  
14 There are no material conflicts between the claims of the representative  
15 PLAINTIFF and the members of the CALIFORNIA CLASS that would  
16 make class certification inappropriate. Counsel for the CALIFORNIA  
17 CLASS will vigorously assert the claims of all Class Members.

18 21. In addition to meeting the statutory prerequisites to a Class Action, this action  
19 is properly maintained as a Class Action pursuant to California Code of Civil Procedure §  
20 382, in that:

21 (a) Without class certification and determination of declaratory, injunctive,  
22 statutory and other legal questions within the class format, prosecution  
23 of separate actions by individual members of the CALIFORNIA  
24 CLASS will create the risk of:

25 1) Inconsistent or varying adjudications with respect to individual  
26 members of the CALIFORNIA CLASS which would establish  
27 incompatible standards of conduct for the parties opposing the  
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CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that the DEFENDANT compelled these employees to purchase expensive equipment from DEFENDANT as a condition of employment, denied these employees reimbursement of business expenses incurred, subjected these employees to DEFENDANT's systematic miscalculation practices with respect to overtime;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim Plaintiff seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual members, and a Class Action is superior to

1 other available methods for the fair and efficient adjudication of the  
2 controversy, including consideration of:

- 3 1) The interests of the members of the CALIFORNIA CLASS in  
4 individually controlling the prosecution or defense of separate  
5 actions;
- 6 2) The extent and nature of any litigation concerning the  
7 controversy already commenced by or against members of the  
8 CALIFORNIA CLASS;
- 9 3) The desirability or undesirability of concentrating the litigation  
10 of the claims in the particular forum;
- 11 4) The difficulties likely to be encountered in the management of a  
12 Class Action; and,
- 13 5) The basis of DEFENDANT's conduct towards PLAINTIFF and  
14 the CALIFORNIA CLASS.

15 22. This Court should permit this action to be maintained as a Class Action  
16 pursuant to California Code of Civil Procedure § 382 because:

- 17 (a) The questions of law and fact common to the CALIFORNIA CLASS  
18 predominate over any question affecting only individual members  
19 because the DEFENDANT's employment practices were uniform and  
20 systematically applied with respect to the CALIFORNIA CLASS;
- 21 (b) A Class Action is superior to any other available method for the fair  
22 and efficient adjudication of the claims of the members of the  
23 CALIFORNIA CLASS because in the context of employment litigation  
24 a substantial number of individual Class members will avoid asserting  
25 their rights individually out of fear of retaliation or adverse impact on  
26 their employment;
- 27 (c) The members of the CALIFORNIA CLASS exceed 100 people and are  
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therefore so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;

- (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT’s actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA CLASS consists of all DEFENDANT’s Technicians employed in California during the CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

23. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT’s employees who as have been systematically,

1 intentionally and uniformly subjected to DEFENDANT’s corporate policy, practices and  
2 procedures as herein alleged. The records of DEFENDANT will identify which employees  
3 were compelled to purchase equipment, which employees had deductions from their wages  
4 and incurred mileage and other business expenses but did not receive reimbursement.  
5 PLAINTIFF will seek leave to amend the complaint to include any additional job titles of  
6 similarly situated employees when they have been identified.

7  
8 **THE CALIFORNIA LABOR SUBCLASS**

9 24. PLAINTIFF also brings this action on behalf of a subclass which consists of  
10 all members of the CALIFORNIA CLASS with documented overtime hours that were  
11 subjected to the DEFENDANT’S miscalculation practices (the “CALIFORNIA LABOR  
12 SUBCLASS”). To the extent equitable tolling operates to toll claims by the CALIFORNIA  
13 LABOR SUBCLASS against DEFENDANT, the Class period should be adjusted  
14 accordingly. The CALIFORNIA LABOR SUBCLASS includes all such persons, whether  
15 or not they were paid by commission, by salary, by piece rate, or by part commission, part  
16 piece rate, and/or part salary.

17 25. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
18 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage  
19 Order Requirements, and the applicable provisions of federal law, intentionally, knowingly,  
20 and wilfully, engaged in a practice whereby DEFENDANT uses an unlawful, unfair and  
21 deceptive method to calculate overtime, including the overtime owed to the PLAINTIFF and  
22 the other members of the CALIFORNIA LABOR SUBCLASS, failed to provide accurate  
23 itemized statements to the CALIFORNIA LABOR SUBCLASS, compelled the  
24 CALIFORNIA LABOR SUBCLASS to purchase things of value as a condition of  
25 employment, deducted equipment charges from their wages, and failed to provide the  
26 CALIFORNIA LABOR SUBCLASS with indemnification and/or reimbursement of  
27 business expenses incurred by employees as a direct consequence of the discharge of their  
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1 duties.

2 26. DEFENDANT, as a matter of corporate policy, practice and procedure,  
3 classified all Technicians as non-exempt from overtime wages and other labor laws, and  
4 therefore are legally required to pay overtime as required by law and comply with all other  
5 labor laws and regulations with respect to these employees. All Technicians, including the  
6 PLAINTIFF, performed the same primary functions and were paid by DEFENDANT  
7 according to uniform and systematic company procedures, which, as alleged herein above,  
8 failed to correctly pay overtime compensation, failed to provide business expense  
9 reimbursement, compelled all Technician employees to purchase expensive equipment from  
10 the DEFENDANT, and imposed deductions on their employees paychecks for such  
11 equipment purchases. This business practice was uniformly applied to each and every  
12 member of the CALIFORNIA LABOR SUBCLASS, and therefore, the propriety of this  
13 conduct can be adjudicated on a classwide basis.

14 27. DEFENDANT violated the rights of the CALIFORNIA LABOR SUBCLASS  
15 under California law by:

- 16 (a) Violating Cal. Lab. Code § 510 by miscalculating overtime  
17 compensation and thereby failing to pay PLAINTIFF and the members  
18 of the SUBCLASS the correct overtime pay for a work day longer than  
19 eight (8) hours and/or a workweek longer than forty (40) hours, and  
20 also for all hours worked on the seventh (7<sup>th</sup>) day of a workweek for  
21 which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194; and  
22 (b) Violating Cal. Lab. Code § 203, which provides that when an employee  
23 is discharged or quits from employment, the employer must pay the  
24 employee all wages due without abatement, by failing to tender full  
25 payment and/or restitution of wages owed or in the manner required by  
26 California law to the members of the CALIFORNIA LABOR  
27 SUBCLASS who have terminated their employment.

28



1 (d) The representative PLAINTIFF will fairly and adequately represent and  
2 protect the interest of the CALIFORNIA LABOR SUBCLASS, and has  
3 retained counsel who are competent and experienced in Class Action  
4 litigation. There are no material conflicts between the claims of the  
5 representative PLAINTIFF and the members of the CALIFORNIA  
6 LABOR SUBCLASS that would make class certification inappropriate.  
7 Counsel for the CALIFORNIA LABOR SUBCLASS will vigorously  
8 assert the claims of all Class Members.

9 29. In addition to meeting the statutory prerequisites to a Class Action, this action  
10 is properly maintained as a Class Action pursuant to California Code of Civil Procedure §  
11 382, in that:

12 (a) Without class certification and determination of declaratory, injunctive,  
13 statutory and other legal questions within the class format, prosecution  
14 of separate actions by individual members of the CALIFORNIA  
15 LABOR SUBCLASS will create the risk of:

- 16 1) Inconsistent or varying adjudications with respect to individual  
17 members of the CALIFORNIA LABOR SUBCLASS which  
18 would establish incompatible standards of conduct for the  
19 parties opposing the CALIFORNIA LABOR SUBCLASS; or,  
20 2) Adjudication with respect to individual members of the  
21 CALIFORNIA LABOR SUBCLASS which would as a practical  
22 matter be dispositive of interests of the other members not party  
23 to the adjudication or substantially impair or impede their ability  
24 to protect their interests.

25 (b) The parties opposing the CALIFORNIA CLASS have acted or refused  
26 to act on grounds generally applicable to the CALIFORNIA CLASS,  
27 making appropriate class-wide relief with respect to the CALIFORNIA  
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1 CLASS as a whole in that the DEFENDANT compelled these  
2 employees to purchase expensive equipment from DEFENDANT as a  
3 condition of employment, denied these employees reimbursement of  
4 business expenses incurred, and incorrectly paid these employees  
5 overtime compensation as a result of DEFENDANT's systematic  
6 overtime calculation practices;

7 (c) Common questions of law and fact exist as to the members of the  
8 CALIFORNIA LABOR SUBCLASS, with respect to the practices and  
9 violations of California Law as listed above, and predominate over any  
10 question affecting only individual members, and a Class Action is  
11 superior to other available methods for the fair and efficient  
12 adjudication of the controversy, including consideration of:

- 13 1) The interests of the members of the CALIFORNIA LABOR  
14 SUBCLASS in individually controlling the prosecution or  
15 defense of separate actions;
- 16 2) The extent and nature of any litigation concerning the  
17 controversy already commenced by or against members of the  
18 CALIFORNIA LABOR SUBCLASS;
- 19 3) The desirability or undesirability of concentrating the litigation  
20 of the claims in the particular forum;
- 21 4) The difficulties likely to be encountered in the management of a  
22 Class Action; and,
- 23 5) The basis of DEFENDANT's conduct towards PLAINTIFF and  
24 the CALIFORNIA LABOR SUBCLASS.

25 30. This Court should permit this action to be maintained as a Class Action  
26 pursuant to California Code of Civil Procedure § 382 because:

27 (a) The questions of law and fact common to the CALIFORNIA LABOR  
28

1 SUBCLASS predominate over any question affecting only individual  
2 members;

3 (b) A Class Action is superior to any other available method for the fair  
4 and efficient adjudication of the claims of the members of the  
5 CALIFORNIA LABOR SUBCLASS because in the context of  
6 employment litigation a substantial number of individual Class  
7 members will avoid asserting their rights individually out of fear of  
8 retaliation or adverse impact on their employment;

9 (c) The members of the CALIFORNIA LABOR SUBCLASS exceed 100  
10 individuals and are therefore so numerous that it is impractical to bring  
11 all members of the CALIFORNIA LABOR SUBCLASS before the  
12 Court;

13 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUBCLASS  
14 members, will not be able to obtain effective and economic legal  
15 redress unless the action is maintained as a Class Action;

16 (e) There is a community of interest in obtaining appropriate legal and  
17 equitable relief for the acts of unfair competition, statutory violations  
18 and other improprieties, and in obtaining adequate compensation for the  
19 damages and injuries which DEFENDANT's actions have inflicted  
20 upon the CALIFORNIA LABOR SUBCLASS;

21 (f) There is a community of interest in ensuring that the combined assets of  
22 DEFENDANT are sufficient to adequately compensate the members of  
23 the CALIFORNIA LABOR SUBCLASS for the injuries sustained;

24 (g) DEFENDANT has acted or refused to act on grounds generally  
25 applicable to the CALIFORNIA LABOR SUBCLASS, thereby making  
26 final class-wide relief appropriate with respect to the CALIFORNIA  
27 LABOR SUBCLASS as a whole;

- 1 (h) The members of the CALIFORNIA LABOR SUBCLASS are readily  
2 ascertainable from the business records of DEFENDANT. The  
3 CALIFORNIA LABOR SUBCLASS consists of those Technicians  
4 with documented overtime who were subjected to the DEFENDANT's  
5 overtime miscalculation practices; and,
- 6 (i) Class treatment provides manageable judicial treatment calculated to  
7 bring a efficient and rapid conclusion to all litigation of all wage and  
8 hour related claims arising out of the conduct of DEFENDANT as to  
9 the members of the CALIFORNIA CLASS.

10 31. DEFENDANT maintains records from which the Court can ascertain and  
11 identify by job title each of DEFENDANT's employees who as have been systematically,  
12 intentionally and uniformly subjected to DEFENDANT's corporate policy, practices and  
13 procedures as herein alleged. The records of DEFENDANT will identify which employees  
14 worked overtime and the overtime compensation rate used by DEFENDANT for such  
15 overtime work. PLAINTIFF will seek leave to amend the complaint to include any  
16 additional job titles of similarly situated employees when they have been identified.

17  
18 **JURISDICTION AND VENUE**

19 32. This Court has jurisdiction over this action pursuant to California Business &  
20 Professions Code § 17203, California Labor Code §§ 226, 1194 and/or 2802. While the  
21 majority of the CALIFORNIA CLASS is comprised of residents of California, at least one  
22 member of the CALIFORNIA CLASS is a citizen of a state other than California, there are  
23 more than 100 individuals in the CALIFORNIA CLASS and the amount in controversy in  
24 this complaint exceeds the sum or value of \$ 5,000,000.

25 33. Venue is proper in this judicial district pursuant to California Code of Civil  
26 Procedure, § 393 and §395.5 because (i) the liability of Defendant Creative Communication  
27 Technologies, Inc. arose in part in Orange County, California; (ii) violations of the unfair  
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1 competition law by Defendant Creative Communication Technologies, Inc. occurred in  
2 Orange County, California; (iv) Defendant Creative Communication Technologies, Inc.  
3 maintains an office, transacts substantial business and/or is found in Orange County,  
4 California; (v) Defendant Creative Communication Technologies, Inc. was and is a  
5 California corporation at the time the alleged acts occurred, and (vi) the alleged claims for  
6 civil penalties on behalf of employees and the LWDA arose in this judicial district.

7  
8 **FIRST CAUSE OF ACTION**

9 **For Unlawful, Unfair and Deceptive Business Practices**

10 **[Cal. Bus. And Prof. Code § 17200 et seq.]**

11 **(By PLAINTIFF and the CALIFORNIA CLASS and against All Defendants)**

12 34. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege  
13 and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 33  
14 of this Complaint. This cause of action is brought on behalf of PLAINTIFF and the  
15 CALIFORNIA CLASS.

16 35. DEFENDANT is “persons” as that term is defined under California Business  
17 & Professions Code § 17021.

18 36. California Business & Professions Code § 17200 *et seq.* (the “UCL”) defines  
19 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section  
20 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
21 competition as follows:

22 Any person who engages, has engaged, or proposes to engage in unfair  
23 competition may be enjoined in any court of competent jurisdiction. The court  
24 may make such orders or judgments, including the appointment of a receiver,  
25 as may be necessary to prevent the use or employment by any person of any  
26 practice which constitutes unfair competition, as defined in this chapter, or as  
27 may be necessary to restore to any person in interest any money or property,  
28 real or personal, which may have been acquired by means of such unfair  
29 competition.

30 California Business & Professions Code § 17203.

31 37. Through the conduct alleged herein, DEFENDANT has engaged in a unlawful

1 business practice by violating California law, including but not limited to provisions of the  
2 Wage Orders, the Regulations implementing the Fair Labor Standards Act as enacted by the  
3 Secretary of Labor, the California Labor Code, the Code of Federal Regulations and the  
4 California Code of Regulations, the opinions of the Department of Labor Standards  
5 Enforcement, California Labor Code § 221, California Labor Code § 450, and California  
6 Labor Code § 2802, for which this Court should issue declaratory, injunctive and other  
7 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be necessary to prevent  
8 and remedy the conduct held to constitute unfair competition.

9 38. By and through the unfair and unlawful business practices described herein  
10 above, DEFENDANT has obtained valuable property, money, and services from the  
11 PLAINTIFF, and the other members of the CLASS, and has deprived them of valuable  
12 rights and benefits guaranteed by law, all to their detriment and to the benefit of  
13 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and  
14 injunctive relief is necessary to prevent and remedy this unfair competition, and pecuniary  
15 compensation alone would not afford adequate and complete relief.

16 39. All the acts described herein as violations of, among other things, the Cal.  
17 Lab. Code, California Code of Regulations, and the Industrial Welfare Commission Wage  
18 Orders, are unlawful, are in violation of public policy, are immoral, unethical, oppressive,  
19 and unscrupulous, and are likely to deceive employees, and thereby constitute deceptive,  
20 unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code § 17200 *et*  
21 *seq.*

22 40. PLAINTIFF, and the other members of the CALIFORNIA CLASS, are further  
23 entitled to, and do, seek a declaration that the above described business practices are  
24 deceptive unfair and/or unlawful and that an injunctive relief should be issued restraining  
25 DEFENDANT from engaging in any of these deceptive, unfair and unlawful business  
26 practices in the future.

27 41. PLAINTIFF, and the other members of the CALIFORNIA CLASS, have no  
28

1 plain, speedy, and/or adequate remedy at law that will end the unfair and unlawful business  
2 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur  
3 unabated. As a result of the unfair and unlawful business practices described above,  
4 PLAINTIFF, and the other members of the CALIFORNIA CLASS, have suffered and will  
5 continue to suffer irreparable harm unless DEFENDANT is restrained from continuing to  
6 engage in these unfair and unlawful business practices. In addition, DEFENDANT should  
7 be required to disgorge the unpaid moneys to PLAINTIFF, and the other members of the  
8 CALIFORNIA CLASS.

9  
10 **SECOND CAUSE OF ACTION**

11 **For Failure To Pay Overtime Compensation**

12 **[Cal. Lab. Code §§ 510, 515.5, 1194 and 1198]**

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUBCLASS**

14 **and Against all Defendants)**

15 42. PLAINTIFF, and the other members of the CALIFORNIA LABOR  
16 SUBCLASS, reallege and incorporate by this reference, as though fully set forth herein,  
17 paragraphs 1 through 41 of this Complaint. This cause of action is brought on behalf of  
18 PLAINTIFF and the CALIFORNIA LABOR SUBCLASS for the period which begins three  
19 years before the filing of this Complaint and continuing to the present.

20 43. Cal. Lab. Code § 510 states in relevant part:

21 Eight hours of labor constitutes a day's work. Any work in excess of eight  
22 hours in one workday and any work in excess of 40 hours in any one  
23 workweek and the first eight hours worked on the seventh day of work in any  
24 one workweek shall be compensated at the rate of no less than one and one-  
25 half times the regular rate of pay for an employee. Any work in excess of 12  
26 hours in one day shall be compensated at the rate of no less than twice the  
27 regular rate of pay for an employee. In addition, any work in excess of eight  
28 hours on any seventh day of a workweek shall be compensated at the rate of  
no less than twice the regular rate of pay of an employee.

44. Cal. Lab. Code § 1194 states:

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

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22 45. In addition, Labor Code Section 558 provides:

(a) Any employer or other person acting on behalf of an employer who  
violates, or  
causes to be violated, a section of this chapter or any provision regulating  
hours and  
days of work in any order of the Industrial Welfare Commission shall be  
subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid  
employee for each pay period for which the employee was underpaid in  
addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100)  
for each underpaid employee for each pay period for which the  
employee was underpaid in addition to an amount sufficient to  
recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the  
affected employee.

(b) If upon inspection or investigation the Labor Commissioner  
determines that a person had paid or caused to be paid a wage for  
overtime work in violation of any provision of this chapter, or any  
provision regulating hours and days of work in any order of the  
Industrial Welfare Commission, the Labor Commissioner may issue a  
citation. The procedures for issuing, contesting, and enforcing  
judgments for citations or civil penalties issued by the Labor  
Commissioner for a violation of this chapter shall be the same as those  
set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any  
other civil or criminal penalty provided by law.

23 46. DEFENDANT has intentionally and uniformly failed to pay PLAINTIFF  
24 and the other members of the CALIFORNIA LABOR SUBCLASS, who are classified as  
25 non-exempt employees, the correct amount of overtime required by law. In fact,  
26 DEFENDANT has previously been cited by governmental agencies for similar violations of  
27 applicable labor laws. DEFENDANT miscalculates the overtime rate applicable to the  
28 overtime hours worked by these employees which hours are documented on their wage

1 statements and thereby incorrectly pays the members of the CALIFORNIA LABOR  
2 SUBCLASS a reduced amount of overtime compensation. This was done in an illegal  
3 attempt to avoid payment of overtime wages and other benefits in violation of the Cal. Lab.  
4 Code and Industrial Welfare Commission requirements.

5 47. No member of the CALIFORNIA LABOR SUBCLASS was or is an  
6 executive, administrator, professional or computer professional because they all fail to meet  
7 the requirements established by Order No. 4-2001 for such an exemption. PLAINTIFF, and  
8 other members of the CALIFORNIA LABOR SUBCLASS, do not fit the definition of an  
9 exempt executive, administrative, or professional employee because:

10 (a) They primary duties necessitated the performance of manual labor, and  
11 therefore the Technicians did not work as executives or administrators; and,

12 (b) The professional exemption articulated in Wage Order No. 4, section  
13 (1)(A)(3)(h) and Labor Code § 515, and the professional exemption articulated in Cal. Lab.  
14 Code § 515.5, does not apply to PLAINTIFF, or to the other members of the CALIFORNIA  
15 LABOR SUBCLASS, because they are either computer software employees paid less than  
16 the requisite amount set forth in Cal. Lab. § 515.5(a)(4) and under subdivision  
17 (1)(A)(3)(h)(iv) of Order No. 4, and/or did not otherwise meet all the applicable  
18 requirements to work under the exemption of computer software employee for the reasons  
19 set forth above in this Complaint.

20 48. During the class period, the PLAINTIFF, and other members of the  
21 CALIFORNIA LABOR SUBCLASS, worked more that eight (8) hours in a workday,  
22 and/or more than forty (40) hours in a workweek and also worked on the seventh (7<sup>th</sup>) day of  
23 a workweek without compensation. This overtime work is documented on their wage  
24 statements but was paid incorrectly as herein alleged.

25 49. At all relevant times, DEFENDANT systematically and uniformly, as a matter  
26 of company policy and practice, failed to correctly calculate and pay PLAINTIFF, and other  
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1 members of the CALIFORNIA LABOR SUBCLASS, the required amount of overtime  
2 compensation for the hours they have worked in excess of the maximum hours permissible  
3 by law as required by Cal. Lab. Code §§ 510 and 1198, even though PLAINTIFF, and the  
4 other members of the CALIFORNIA LABOR SUBCLASS, were regularly required to  
5 work, and did in fact work, overtime hours.

6 50. By virtue of DEFENDANT's unlawful failure to fully pay the required  
7 compensation to the PLAINTIFF, and the other members of the CALIFORNIA LABOR  
8 SUBCLASS for the documented overtime hours worked, the PLAINTIFF, and the other  
9 members of the CALIFORNIA LABOR SUBCLASS, have suffered, and will continue to  
10 suffer, an economic injury in amounts which are presently unknown to them and which will  
11 be ascertained according to proof at trial.

12 51. DEFENDANT knew or should have known that PLAINTIFF, and the other  
13 members of the CALIFORNIA LABOR SUBCLASS, were not paid the correct amount of  
14 overtime compensation because DEFENDANT's uniform calculation failed to comply with  
15 the established legal requirements and regulations concerning the calculation of overtime  
16 compensation, and therefore, either through intentional malfeasance or gross nonfeasance,  
17 elected not to fully pay them for their overtime labor as a matter of uniform corporate  
18 policy, practice and procedure.

19 52. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR  
20 SUBCLASS, request recovery of overtime compensation according to proof, interest,  
21 attorney's fees and cost pursuant to Cal. Lab. Code §1194(a), as well as the assessment of  
22 any statutory penalties against DEFENDANT, in a sum as provided by the Cal. Lab. Code  
23 and/or other statutes. Further, as provided by Cal lab. Code § 203, on behalf of employees  
24 in the CALIFORNIA LABOR SUBCLASS who have terminated their employment, these  
25 employees are also entitled to thirty days of pay as penalty for not paying all wages due at  
26 time of termination and demand an accounting and payment of all wages due, plus interest.

27 53. In performing the acts and practices herein alleged in violation of labor laws  
28

1 and refusing to provide the requisite overtime compensation, the DEFENDANT acted and  
2 continues to act intentionally, oppressively, and maliciously toward the PLAINTIFF, and  
3 toward the other members of the CALIFORNIA LABOR SUBCLASS, with a conscious and  
4 utter disregard of their legal rights, or the consequences to them, and with the despicable  
5 intent of depriving them of their property and legal rights and otherwise causing them injury  
6 in order to increase corporate profits at the expense of PLAINTIFF and the members of the  
7 CALIFORNIA LABOR SUBCLASS.

8  
9 **THIRD CAUSE OF ACTION**

10 **For Failure to Provide Accurate Itemized Statements**

11 **[Cal. Lab. Code § 226]**

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUBCLASS**  
13 **and against All Defendants)**

14 54. PLAINTIFF, and the other members of the CALIFORNIA LABOR  
15 SUBCLASS, reallege and incorporate by this reference, as though fully set forth herein,  
16 paragraphs 1 through 53 of this Complaint. This cause of action is brought on behalf of  
17 PLAINTIFF and the CALIFORNIA LABOR SUBCLASS.

18 55. Cal. Labor Code § 226 provides that an employer must furnish employees  
19 with  
20 an “accurate itemized statement in writing showing:

21 (1) gross wages earned,

22 (2) total hours worked by the employee, except for any employee whose  
23 compensation is solely based on a salary and who is exempt from payment of  
24 overtime under subdivision (a) of Section 515 or any applicable order of the  
25 Industrial Welfare Commission,

26 (3) the number of piecerate units earned and any applicable piece rate if the employee  
27 is paid on a piece-rate basis,  
28

- 1 (4) all deductions, provided that all deductions made on written orders of the  
2 employee may be aggregated and shown as one item,  
3 (5) net wages earned,  
4 (6) the inclusive dates of the period for which the employee is paid,  
5 (7) the name of the employee and his or her social security number, except that by  
6 January 1, 2008, only the last four digits of his or her social security number or an  
7 employee identification number other than a social security number may be shown on  
8 the itemized statement,  
9 (8) the name and address of the legal entity that is the employer, and  
10 (9) all applicable hourly rates in effect during the pay period and the corresponding  
11 number of hours worked at each hourly rate by the employee.”

12 56. At all times relevant herein, DEFENDANT violated Labor Code § 226, in that  
13 DEFENDANT failed to properly and accurately itemize the gross wages earned, the net  
14 wages earned, and all applicable hourly rates in effect during the pay period and the  
15 corresponding number of hours worked at each hourly rate by the employee.

16 57. DEFENDANT knowingly and intentionally failed to comply with Labor Code  
17 § 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA  
18 LABOR SUBCLASS. These damages include, but are not limited to, costs expended  
19 calculating the true hours worked and the amount of employment taxes which were not  
20 properly paid to state and federal tax authorities. These damages are difficult to estimate.  
21 Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUBCLASS  
22 may recover liquidated damages of \$50.00 for the initial pay period in which the violation  
23 occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code §  
24 226, in an amount according to proof at the time of trial (but in no event more than  
25 \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR  
26 SUBCLASS herein) plus reasonable attorney’s fees and costs pursuant to Labor Code §  
27

1 226(g).

2  
3 **FOURTH CAUSE OF ACTION**

4 **For Failure to Provide Indemnification of Business Expenses**

5 **[Cal. Lab. Code § 2802]**

6 **(By PLAINTIFF and the CALIFORNIA CLASS and against All Defendants)**

7 58. PLAINTIFF, and the other members of the CALIFORNIA CLASS,  
8 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1  
9 through 57 of this Complaint. This cause of action is brought on behalf of PLAINTIFF and  
10 the CALIFORNIA CLASS.

11 59. Pursuant to Cal. Labor Code § 2802, DEFENDANTS are required to  
12 reimburse PLAINTIFFS and other members of the CALIFORNIA CLASS for the expenses  
13 incurred by them in the performance of their job duties, including but not limited to  
14 expenses incurred by the use of their vehicles, mileage, cell phone usage, equipment  
15 purchases, and telephone usage resulting from the performance of their job duties, at a  
16 reasonable rate.

17 60. At all times relevant herein, DEFENDANT violated Labor Code § 2802, in  
18 that during the last four years, PLAINTIFFS and the other members of the CALIFORNIA  
19 CLASS have been required to personally incur and pay for these expenses in the discharge  
20 of their employment duties all without reimbursement from the DEFENDANT.  
21 DEFENDANT's company policy and practice was not to pay employees such  
22 reimbursement for business expenses and instead to even deduct expenses from employee  
23 wage sums in violation of Cal. Labor Code §221 and the regulations of the Industrial  
24 Welfare Commission.

25 61. As a proximate result of the aforementioned violations, PLAINTIFF, and the  
26 other members of the CALIFORNIA CLASS, have been damaged in an amount according  
27 to proof at trial. Pursuant to Labor Code § 2802, PLAINTIFF and the other members of the  
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1 CALIFORNIA CLASS are entitled to recover the full amount of expenses they incurred in  
2 the course of the job duties, plus reasonable attorneys' fees, costs of suit and interest thereon  
3 from the date the expense was incurred.

4  
5 **FIFTH CAUSE OF ACTION**

6 **Labor Code Private Attorneys General Act**

7 **[Cal. Labor Code § 2698]**

8 **(By PLAINTIFF and the CALIFORNIA CLASS and against All Defendants)**

9 62. PLAINTIFF, and the other members of the CALIFORNIA CLASS,  
10 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1  
11 through 61 of this Complaint. This cause of action is brought on behalf of PLAINTIFF and  
12 the CALIFORNIA CLASS.

13 63. On September 16, 2008, PLAINTIFF gave written notice by certified mail to  
14 the Labor and Workforce Development Agency (the "LWDA") and the employer of the  
15 specific provisions of this code alleged to have been violated as required by Labor Code §  
16 2699.3. On or about October 24, 2008, PLAINTIFF received notice from the LWDA that  
17 the LWDA does not intend to investigate PLAINTIFF's allegations. A true and correct  
18 copy of this LWDA letter is attached hereto as Exhibit #1. As a result, pursuant to Section  
19 2699.3, PLAINTIFF may now commence a civil action pursuant to Section 2699.

20 64. The policies, acts and practices heretofore described were and are an unlawful  
21 business act or practice because DEFENDANTS' failure to pay wages, failure to provide  
22 rest and meal period breaks, failure to pay wages and compensation for work without rest  
23 and meal period breaks and failure to provide accurate wage statements and maintain  
24 accurate time records for PLAINTIFF and the other members of the CLASS violates  
25 applicable Labor Code sections and gives rise to statutory penalties as a result of such  
26 conduct, including but not limited to penalties as provided by Labor Code §§ 221, 226,  
27 226.7, 450, 558, 1174, 1194, 2802, applicable Industrial Welfare Commission Wage Orders.

1 PLAINTIFF, as an aggrieved employee, hereby seeks recovery of civil penalties as  
2 prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of themselves  
3 and other current and former employees of DEFENDANTS which comprise the CLASS,  
4 against whom one or more of the violations of the Labor Code was committed. In addition,  
5 PLAINTIFF, as an aggrieved employee, hereby seeks recovery of civil penalties as  
6 prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of the State of  
7 California and/or the LWDA, to the fullest extent available under the law.

8  
9 **PRAYER**

10 WHEREFOR, PLAINTIFF prays for judgment against each Defendant, jointly and  
11 severally, as follows:

- 12 A) Compensatory damages, according to proof at trial due PLAINTIFF and the  
13 other members of the CALIFORNIA LABOR SUBCLASS, during the  
14 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 15 B) Restitution, according to proof at trial, due PLAINTIFF and the other  
16 members of the CALIFORNIA LABOR SUBCLASS, during the applicable  
17 CLASS PERIOD plus interest thereon at the statutory rate;
- 18 C) On behalf of the CALIFORNIA CLASS, declaratory, injunctive and other  
19 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be  
20 necessary to prevent and remedy the conduct held to constitute unfair  
21 competition.
- 22 D) On behalf of the CALIFORNIA CLASS, an order temporarily, preliminarily  
23 and permanently enjoining and restraining DEFENDANT from engaging in  
24 practices which violate the UCL and similar unlawful conduct as set forth  
25 herein;
- 26 E) An order requiring DEFENDANT to provide an accounting of all hours  
27 worked, all wages, and all sums unlawfully withheld from compensation due  
28

1 to PLAINTIFF and the other members of the CALIFORNIA LABOR  
2 SUBCLASS;

- 3 F) Imposition of a constructive trust upon the assets of the DEFENDANTS to the  
4 extent of the sums due to PLAINTIFF and to the other members of the  
5 CALIFORNIA LABOR SUBCLASS;
- 6 G) An award of interest, including prejudgment interest at the legal rate;
- 7 H) An award of liquidated damages, statutory damages, including reasonable  
8 attorneys' fees and cost of suit, but only to the extent that such reasonable  
9 attorneys' fees and costs are recoverable pursuant to Cal. Lab. Code §1194 or  
10 §2802. Neither this prayer nor any other allegation or prayer in this  
11 Complaint is to be construed as a request, under any circumstance, that would  
12 result in a request for attorneys' fees or costs available under Cal. Lab. Code §  
13 218.5; and,
- 14 I) Such other and further relief as the Court deems just and proper.

15 Dated: November 5, 2008

BLUMENTHAL & NORDREHAUG

16  
17 By: 

Norman B. Blumenthal  
Attorneys for Plaintiff

18  
19 UNITED EMPLOYEES LAW GROUP  
20 Walter Haines, Esq.  
21 65 Pine Ave, #312  
22 Long Beach, CA 90802  
23 Telephone: (562) 256-1047  
24 Facsimile: (562) 256-1006  
25  
26  
27  
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands a jury trial on issues triable to a jury.

3  
4 Dated: November 5, 2008

BLUMENTHAL & NORDREHAUG

6 

7 By: \_\_\_\_\_  
8 Norman B. Blumenthal  
Attorneys for Plaintiff

9 UNITED EMPLOYEES LAW GROUP  
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# Labor & Workforce Development Agency

October 24, 2008

Governor  
Arnold  
Schwarzenegger

Secretary  
Victoria L. Bradshaw

Agricultural  
Labor  
Relations  
Board

California  
Unemployment  
Insurance  
Appeals  
Board

California  
Workforce  
Investment  
Board

Department of  
Industrial  
Relations

Economic  
Strategy  
Panel

Employment  
Development  
Department

Employment  
Training  
Panel

Blumenthal & Nordrehaug  
2255 Calle Clara  
La Jolla, CA 92037

Creative Communication Technologies, Inc  
c/o Barbara Jo Roberston  
2990 Inland Empire Blvd., #107  
Ontario, CA 91764

Re: LWDA No: 3963  
Employer: Creative Communication Technologies, Inc  
Employee: Donald Cabral

Dear Employer and Representative of the Employee:

This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked September 15, 2008 and after review, does not intend to investigate the allegations.

As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code". Labor Code Section 2699(l) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part".

Consequently you must advise us of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement.

Sincerely,

Doug Hoffner  
Undersecretary