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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 GEORGE SCHULTZ, an individual; on
14 behalf of himself, and on behalf of all
persons similarly situated,

15 Plaintiffs,

16 vs.

17 QUALXSERV, LLC, a Delaware
18 Company,

19 Defendants.
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CASE No. **09 cv 0017 LAB AJB**

**FIRST AMENDED CLASS AND
COLLECTIVE ACTION COMPLAINT
FOR:**

- 1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *et seq.*;
- 2. FAILURE TO PAY OVERTIME WAGES 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. FAILURE TO PAY COMPENSATION IN VIOLATION OF 29 U.S.C. § 201, *et seq.*;

25 DEMAND FOR A JURY TRIAL
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1 Plaintiff George Schultz (“PLAINTIFF”), who is an individual residing in California,
2 allege upon information and belief, except for his own acts and knowledge which are alleged
3 based upon personal knowledge, the following:

4 **THE PARTIES**

5 1. Defendant Qualxserv, LLC, is a Delaware company engaged in technology
6 deployment and field maintenance service for leading technology partners. In this
7 complaint, Qualxserv, LLC is referred herein to as “QUALXSERV” or “DEFENDANT”.

8 2. QUALXSERV has its principal place of business in Tweksbury,
9 Massachusetts at 836 North Street, and operates nearly 150 service locations throughout the
10 United States. QUALXSERV conducts business in California and in San Diego County.
11 QUALXSERV operates as a privately held entity and employs approximately 2000 people
12 throughout the United States in most major metropolitan areas. QUALXSERV targets
13 leading OEMs and other providers of computing and communication products to provide
14 these companies with outsource services in the form of field maintenance, product
15 installation, customer care, cabling, moves, adds and changes. As part of these services,
16 QUALXSERV employs a fleet of technicians and other service employees to provide clients
17 with customer service functions twenty-four (24) hours a day and seven (7) days a week.
18 QUALXSERV’s clients include Dell, EMC, Hughes Network Systems and Sony.

19 3. QUALXSERV conducted and continues to conduct substantial and regular
20 business throughout California and also is an enterprise that affects commerce by engaging
21 in the enterprise of providing the above services through interstate commerce and by
22 regularly and recurrently receiving or transmitting interstate communications.
23 QUALXSERV’s headquarters and corporate residence is in Massachusetts, but has service
24 locations throughout the United States, including California.

25 4. The product QUALXSERV provides to QUALXSERV’s clients is warranty
26 service for computer technology providers, along with on-site services and deskside support,
27 and also provides installation and service for televisions and other consumer electronics.
28 This QUALXSERV product is delivered by Technicians and other similarly situated

1 employees of QUALXSERV. QualxServ is an authorized service training partner for: Apple
2 iMac, eMAC, Power Mac and Xserve products, Canon Printers and Multi-Function Copiers,
3 Dell Client and Enterprise products, EMC storage subsystems (CLARiiON), Hughes
4 Network Systems satellite communication equipment, IBM Sony Client & Consumer
5 Electronics, and Vanguard communication equipment.

6 5. The employees employed in positions at QUALXSERV with the titles of
7 Tech,
8 Technician, Field Service Representative and Service Partner perform the same primary
9 duty, which is to deliver the product offered by QUALXSERV to its clients on a 24/7 basis.
10 The QUALXSERV employees employed in positions with the titles of Tech, Technician,
11 Field Service Representative and Service Partner are collectively referred to herein as
12 “Technicians Employees.” The duties that are performed by the employees of
13 QUALXSERV with the titles of Tech, Technician, Field Service Representative and Service
14 Partner primarily consist of the routine installation, maintenance and service of computers
15 and other technology products, according to pre-established guidelines and procedures. The
16 employees with the titles of Tech, Technician, Field Service Representative and Service
17 Partner must be able to lift items and have a license to drive vehicles. These employees with
18 the titles of Tech, Technician, Field Service Representative and Service Partner are not
19 required to have a college degree or graduate degree to qualify them for employment in
20 these positions. Employees with the titles of Tech, Technician, Field Service Representative
21 and Service Partner perform these functions, and all duties, according to established
22 company policies, protocols, and procedures as directed by QUALXSERV.

23 6. Plaintiff George Schultz was first employed by QUALXSERV in December
24 2006 in the position titled “Technician.” Plaintiff Schultz worked in this position for
25 QUALXSERV providing repair services for computers sold by the technology provider
26 clients of QUALXSERV, including but not limited to Dell. PLAINTIFF performed the
27 typical duties of all Technician Employees which primarily involve the driving to sites
28 designated by QUALXSERV’s clients and while on-site, repairing computer hardware

1 and/or installing computer hardware provided to PLAINTIFF QUALXSERV's clients.
2 PLAINTIFF was supplied with a list of the sites, problems and hardware to be installed.
3 Each such site was a "ticket," which was "closed" when the specified task was performed.
4 PLAINTIFF, like all other Technician Employees, was paid compensation on a piece rate
5 basis according to the number of closed tickets performed in a day. PLAINTIFF received
6 \$32 per closed ticket. The primary duties of the PLAINTIFFS and other Technician
7 Employees involve the performance of routine tasks that have been determined by the
8 Department of Labor to be non-exempt duties.

9 7. The work schedule for PLAINTIFF and other Technician Employees is
10 dictated by QUALXSERV. PLAINTIFF performed work that was typical of the work
11 performed by Technician Employees. As a matter of company policy and practice,
12 QUALXSERV requires PLAINTIFF to work a minimum of four jobs in a day at different
13 sites that are geographically dispersed, and thus required PLAINTIFF to drive extensively in
14 his personal vehicle, usually about 120 business miles each week. PLAINTIFF'S workdays
15 began at 7:30 a.m. in order to prepare his schedule as QUALXSERV requires PLAINTIFF
16 to log in his route before 9:00 a.m. Between 10:00 a.m. to 11:00 a.m., PLAINTIFF was
17 required to be at a designated location to pick up the parts for his tickets that were sent by
18 QUALXSERV to perform the services set forth on the tickets for that day. These parts were
19 usually delivered each day to a DHL location. After picking up the parts, PLAINTIFF
20 would then drive to his first site and perform the specified computer repair and/or part
21 installation. This first site ticket was usually completed by 1:00 p.m. PLAINTIFF would
22 then drive to the next specified site, complete the repair and/or drive to the next site. This
23 procedure continued until PLAINTIFF completed all of the specified tickets at the site
24 locations provided to him. This work required him to work until at least 5:00 p.m., and often
25 PLAINTIFF was required to work until 8:00 p.m. to complete the scheduled work, and
26 sometimes until as late as 10:00 p.m. to close all of his tickets for the day. After completing
27 the work at the specified sites each day, PLAINTIFF was then required to prepare the
28 paperwork to set up his route and work for the next day, which required an additional 1-2

1 hours of paperwork at the end of the day. PLAINTIFF worked this schedule each week, five
2 (5) days a week. This means that PLAINTIFF and other Technician Employees work at
3 least 10 hours of overtime each workweek, and up to 25-30 hours of overtime in some
4 workweeks, but were not paid overtime for the hours worked in excess of eight (8) in one
5 day or forty (40) in a workweek. QUALXSERV has an accounting system which is
6 supposed to record all hours worked by these employees but QUALXSERV failed and
7 continues to fail to do so.

8 8. For this workwork of more than forty (40) hours, PLAINTIFF and all other
9 Technician Employees are not paid a salary, but instead, are paid on a piece rate basis for
10 each closed ticket, and are not paid any overtime compensation for the hours worked in
11 excess of eight (8) per day or forty (40) per week. PLAINTIFF and other Technician
12 Employees are not paid salaries equivalent to two times the minimum wage and therefore do
13 not qualify for any exemption from overtime compensation. Although PLAINTIFFS and
14 other Technician Employees are required by virtue of the tickets and routes assigned to them
15 to work more than eight (8) hours in one day, and more than forty (40) in one week, and
16 although QUALXSERV knows this fact and permits PLAINTIFF and other Technician
17 Employees to work more than eight (8) hours in one day, and more than forty (40) in one
18 week, QUALXSERV does not provide the legally required premium pay for these overtime
19 hours worked because QUALXSERV has improperly and uniformly classified all
20 Technician Employees as exempt from receiving overtime compensation.

21 9. PLAINTIFFS' and other Technician Employees' performance of their duties
22 as Technician Employees was and is on a daily and weekly basis comprised primarily of
23 driving to sites and performing routine computer hardware installation, troubleshooting
24 and/or repair, which involves following established company protocol and procedures
25 according to QUALXSERV's pre-established guidelines. In order for QUALXSERV to
26 deliver a consistent product across the country, the duties are repetitive and routine for
27 which QUALXSERV has preset guidelines and training which PLAINTIFF and other
28 Technician Employees must follow. PLAINTIFF and other Technician Employees perform

1 essentially the same functions on a daily basis at different locations and the preset duties are
2 repetitive and routine.

3 10. There are more than 100 individuals in the CALIFORNIA CLASS and the
4 amount in controversy in this complaint exceeds the sum or value of \$ 5,000,000, with one
5 or more members of the CALIFORNIA CLASS residing outside of Massachusetts.

6 11. There may be one or more additional defendants not named in this Complaint
7 that were the agents, servants, and/or employees of the DEFENDANT and were acting on
8 behalf of the DEFENDANT within the course of scope of his, her or its authority as the
9 agent, servant and/or employee of the DEFENDANT and were in some manner responsible
10 for the conduct and injuries alleged herein and directly participated in the illegal practices
11 alleged herein. Consequently, the DEFENDANT named herein and such other persons or
12 entities, whose identity is unknown at this time, are jointly and severally liable to the
13 PLAINTIFF and the other members of the CALIFORNIA CLASS, for the losses sustained
14 as a proximate result of DEFENDANT's conduct as herein alleged.

15
16 **THE CONDUCT**

17 12. PLAINTIFF and the other Technician Employees were and are employed
18 as working members on the production side of QUALXSERV's business. The primary job
19 duties of PLAINTIFF and other Technician Employees primarily consist of the routine
20 driving of their personal vehicle to various site locations, the preparation of their work
21 schedule, route and necessary paperwork, the pick up of parts, the performance of computer
22 hardware related troubleshooting, repair and installation as specified by QUALXSERV,
23 according to pre-established guidelines and procedures, and the completion of their
24 paperwork after work. PLAINTIFF and the other Technician Employees were not provided
25 with an office to perform any of these tasks. As a result, PLAINTIFF and the other
26 Technician Employees were not and currently are not primarily involved in providing office
27 or non-manual work directly related to the management policies or general business
28 operations using independent discretion with respect to matters of significance. The work of

1 PLAINTIFF and the other Technician Employees also does not involve specialized or
2 technical work that requires special training, experience or knowledge. Instead,
3 PLAINTIFF and the other Technician Employees were and currently are primarily involved
4 in providing day to day, routine, and general work related to the delivery of the
5 QUALXSERV product as directed by QUALXSERV.

6 13. QUALXSERV's unlawful, unfair, and deceptive employment classification
7 and wage practices cheat PLAINTIFF and the other members of the CALIFORNIA CLASS
8 out of their lawful wages and is unfair to honest competition.

9 14. QUALXSERV creates a job description for PLAINTIFF and the Technician
10 Employees which does not accurately describe the primary job duties actually performed on
11 a daily basis which and deceptively results in a uniform classification of PLAINTIFF and
12 the members of the CALIFORNIA CLASS by QUALXSERV as exempt based on job title
13 alone. This classification was made based on job title alone, rather than on the actual
14 services performed by PLAINTIFF and the other members of the CALIFORNIA CLASS,
15 because QUALXSERV had in place and still has in place a policy, practice and procedure
16 that fails to determine the actual hours worked by these employees and the duties actually
17 performed by the members of the CALIFORNIA CLASS during these hours. Further,
18 QUALXSERV fails to account for the payment structure for these employees when applying
19 the "exempt" classification and does not pay these employees a fixed salary that is
20 equivalent to two times the applicable minimum wage. As a result, the classification of
21 PLAINTIFF and each and every member of the CALIFORNIA CLASS as exempt is based
22 on job title alone and not on the actual services that were provided by and the actual
23 compensation paid to the PLAINTIFF and the members of the CALIFORNIA CLASS after
24 being hired and placed into a particular position. Thereafter, no reevaluation or
25 reclassification analysis regarding the propriety of the exempt status was performed by
26 QUALXSERV for PLAINTIFF or for any other member of the CALIFORNIA CLASS
27 because the company's business model was and still is to classify all members of the
28 CALIFORNIA CLASS as exempt without regard to the actual work performed or the

1 compensation paid, which if properly considered would defeat any claimed exemption. As a
2 result of this misclassification practice, PLAINTIFF and the members of the CALIFORNIA
3 CLASS were not fully compensated for hours of overtime work as required by law in excess
4 of eight (8) hours a day, forty (40) hours a week, or for hours worked on the seventh (7th)
5 consecutive day of a workweek as required by California law.

6 15. Plaintiff George Schultz (“PLAINTIFF”) bring this class action on behalf of
7 himself and a Class consisting of all individuals who, while in California, are or previously
8 were employed by Defendant QUALXSERV (hereinafter referred to as “DEFENDANT”) in
9 a position entitled “Tech,” “Technician” or “Service Partner” or “Service Representative,”
10 or in any other similarly situated position (the “CALIFORNIA CLASS” or “CLASS”) in
11 during the Class Period. The class period applicable to this CALIFORNIA CLASS is
12 defined as the period beginning four years prior to the filing of this Complaint and ending on
13 the date of as determined by the Court (the “CLASS PERIOD”). As a matter of company
14 policy and practice, DEFENDANT has unlawfully, unfairly and deceptively classified
15 every member of the CALIFORNIA CLASS as exempt, failed to pay the required overtime
16 compensation and otherwise failed to comply with all labor laws with respect to these
17 employees.

18 16. Technician Employees are and were employees who are entitled to regular,
19 and overtime compensation and prompt payment of amounts that the employer owes an
20 employee when the employee quits or is terminated, and other compensation and working
21 conditions that are prescribed by law. Although QUALXSERV required their Technician
22 Employees, and other similarly situated employees, to work more than forty (40) hours a
23 week, eight (8) hours in a workday, and /or on the seventh (7th) day of a workweek, as a
24 matter of company policy and practice, DEFENDANT consistently and uniformly failed and
25 still fail to implement a practice and procedure that properly classifies these employees as
26 exempt or non-exempt based upon the primary duties actually performed by these
27 employees and the compensation actually paid to these employees, and thereby fails to pay
28 them the overtime compensation to which they are entitled. The PLAINTIFF and members

1 of the CALIFORNIA CLASS currently work or previously worked in California at times
2 during the CLASS PERIOD for DEFENDANTS and DEFENDANT's practices and
3 procedures are and were common throughout California and the United States at all times
4 during the CLASS PERIOD.

5 17. In this action, PLAINTIFF, on behalf of himself and the CALIFORNIA
6 CLASS, seeks to recover all the money that DEFENDANT was required by law to pay for
7 overtime work, but failed to pay, to PLAINTIFF and all other CALIFORNIA CLASS
8 members. PLAINTIFF also seeks penalties and all other relief available to them and other
9 similarly situated employees under California law. PLAINTIFF also seeks declaratory relief
10 finding that the employment practices and policies of the DEFENDANT violate California
11 law and injunctive relief to enjoin the DEFENDANT from continuing to engage in such
12 employment practices and to remedy the unfair and unlawful employment practices.

13 18. PLAINTIFF and all members of the CALIFORNIA CLASS are and were
14 uniformly classified and treated by DEFENDANT as exempt at the time of hire and
15 thereafter, DEFENDANT failed to take the proper steps to determine whether PLAINTIFF,
16 and the other members of the similarly-situated CALIFORNIA CLASS, were properly
17 classified under Industrial Welfare Commission Wage Order 4-2001 and Cal. Lab. Code
18 §510 *et seq.* and Section 13(a)(5) of the Fair Labor Standards Act (the "FLSA") as exempt
19 from applicable federal and state labor laws. Under both the FLSA and California Labor
20 Law, these employees may only be classified as exempt if the employee primarily engages
21 in duties and responsibilities involving (i) the "performance of office or non-manual work
22 directly related to management policies or general business operations" of CUBIC, (ii) the
23 customary and regular exercising of discretion and independent judgment, (iii) performed
24 only under general supervision work along specialized or technical lines requiring special
25 training, experience, or knowledge, and (iv) is paid a monthly "salary" equivalent to a
26 specified minimum amount. PLAINTIFF and the other members of the CLASS meet none
27 of these requirements. Since DEFENDANT affirmatively and willfully had in place a
28 business policy, practice and procedure which failed to allow for an accurate determination

1 of whether exempting PLAINTIFF and the members of the CALIFORNIA CLASS
2 complied with either the FLSA or the California Labor Laws, DEFENDANT's employment
3 practices violated and continue to violate the law. As a result of this policy and practice,
4 DEFENDANT failed and still fail to pay overtime in accordance with applicable law.

5 19. By reason of this uniform conduct applicable to PLAINTIFF and all
6 CALIFORNIA CLASS members, DEFENDANT committed acts of unfair competition in
7 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (the
8 "UCL"), by engaging in a company-wide policy and procedure which failed to correctly
9 determine whether the PLAINTIFF and the CALIFORNIA CLASS of similarly situated
10 employees were properly classified as exempt. The proper classification of these employees
11 is the DEFENDANT's burden under both the FLSA and the California Labor Code. As a
12 result of DEFENDANT's willful conduct and intentional disregard of the obligation to meet
13 this burden, which cannot be justified, DEFENDANT failed to properly calculate and/or pay
14 all required overtime compensation for work performed by the members of the
15 CALIFORNIA CLASS and violated the FLSA and the California Labor Code and
16 regulations promulgated thereunder as herein alleged.

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

27
28 **THE CALIFORNIA CLASS**

1 21. Plaintiff George Schultz (“PLAINTIFF”) brings this class action on behalf of
2 himself and a Class consisting of all individuals who, while in California, work or
3 previously worked for QUALXSERV in a position entitled “Tech,” “Technician,” “Service
4 Representative” or “Service Partner”, or in any other similarly situated position during the
5 period four years prior to the filing of this Complaint and ending on the date as determined
6 by the Court (“CALIFORNIA CLASS PERIOD” or “CLASS PERIOD”). This Class shall
7 be referred to herein as the “CALIFORNIA CLASS.” To the extent equitable tolling
8 operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS
9 PERIOD should be adjusted accordingly.

10 22. DEFENDANT, as a matter of corporate policy, practice and procedure, and
11 in violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage
12 Order Requirements, and the applicable provisions of California law, intentionally,
13 knowingly, and wilfully, engaged in a practice whereby DEFENDANT unfairly, unlawfully,
14 and deceptively failed to institute a practice to ensure that the Technician Employees were
15 properly classified as exempt or non-exempt from the requirements of California Labor
16 Code §§ 510, *et seq.*

17 23. DEFENDANT has the burden of proof that each and every employee is
18 properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*,
19 otherwise the employee is presumed to be non-exempt. DEFENDANT, however, as a
20 matter of uniform and systematic policy and procedure failed to have in place during the
21 CALIFORNIA CLASS PERIOD and still fail to have in place a policy or practice to make
22 any individual determination of exemption for any California Class Members so as to satisfy
23 their burden. Rather, the DEFENDANT’s uniform policy and practice in place at all times
24 during the CALIFORNIA CLASS PERIOD and currently in place is to systematically
25 classify PLAINTIFFS and each and every employee in the CALIFORNIA CLASS as
26 exempt from the requirements of the California Labor Code §§ 510, *et seq.*, based on job
27 title alone and without regard to the employees’ actual duties performed and compensation
28 received. This common business practice applicable to each and every CALIFORNIA

1 CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or
2 deceptive under Cal. Business & Professions Code §17200, *et seq.* (the “UCL”) as
3 causation, damages, and reliance are not elements of this claim.

4 24. At no time before, during or after the PLAINTIFF’s employment with
5 QULAXSERV was any of the Technician Employees properly reclassified as non-exempt
6 from the applicable requirements of California Labor Code §§ 510, *et seq.* after each
7 CALIFORNIA CLASS Member was initially, uniformly, and systematically classified as
8 exempt upon being hired.

9 25. Any individual declarations of any California Class Members offered at this
10 time purporting to indicate that one or more of the employees in the CLASS may have been
11 properly classified is of no force or affect absent evidence that DEFENDANT had a uniform
12 system in place to satisfy DEFENDANT’s burden that DEFENDANT, at all times had in
13 effect a policy and practice to determine whether the California Class Members were being
14 properly classified as exempt pursuant to Cal. Lab. Code §§ 510, *et seq.* Absent proof of
15 such a contemporaneous system, DEFENDANT’s business practice is uniformly unlawful,
16 unfair and/or deceptive under the UCL and may be so adjudicated on a classwide basis. As
17 a result of the UCL violations, PLAINTIFF and the CALIFORNIA CLASS Members are
18 entitled to have this unfair business practice enjoined and to cause DEFENDANT to
19 disgorge its ill-gotten gains into a fluid fund and to restitute these funds to PLAINTIFF and
20 the CALIFORNIA CLASS Members according to proof.

21 26. The CALIFORNIA CLASS, numbering more than 100 members, is so
22 numerous that joinder of all members of the CALIFORNIA CLASS is impracticable.

23 27. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS
24 under California law by:

- 25 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof.
26 Code § 17200, *et seq.*, by unlawfully, unfairly and/or deceptively
27 having in place company policies, practices and procedures that
28 uniformly classified PLAINTIFF and the members of the

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- CALIFORNIA CLASS as exempt;
- (b) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code § 17200 *et seq.*, by unlawfully, unfairly, and/or deceptively having in place a company policy, practice and procedure that failed to accurately catalogue, inventory, list or otherwise determine whether the actual and primary duties performed by PLAINTIFF and the members of the CALIFORNIA CLASS were exempt work activities;
- (c) Committing an act of unfair competition in violation of the California Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by having in place a company policy, practice and procedure that failed to reclassify as non-exempt members of the CALIFORNIA CLASS whose actual and primary duties performed were not exempt activities or whose compensation was not in the form of a salary;
- (d) Violating Cal. Lab. Code §§510, *et seq.* by failing to pay the correct overtime pay to PLAINTIFFS and the members of the CALIFORNIA CLASS who were improperly classified as exempt;
- (e) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the members of the CALIFORNIA CLASS who were improperly classified as exempt with an accurate itemized statement in writing showing the gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;
- (f) Violating Cal. Lab. Code § 203 by failing to provide restitution of wages owed to PLAINTIFF and the other members of the CALIFORNIA CLASS who were improperly classified as exempt and who have terminated their employment; and,
- (g) Violating Cal. Lab. Code §2802, by failing to provide indemnification

1 to PLAINTIFF and the members of the CALIFORNIA CLASS for
2 business expenses incurred as a consequence of performing their work
3 for DEFENDANT.

4 28. This Class Action meets the statutory prerequisites for the maintenance of a
5 Class Action as set forth in Fed. R. Civ. Proc, Rule 23, in that:

- 6 (a) The persons who comprise the CALIFORNIA CLASS exceed 100
7 persons and are therefore so numerous that the joinder of all such
8 persons is impracticable and the disposition of their claims as a class
9 will benefit the parties and the Court;
- 10 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
11 issues that are raised in this Complaint are common to the
12 CALIFORNIA CLASS will apply uniformly to every member of the
13 CALIFORNIA CLASS;
- 14 (c) The claims of the representative PLAINTIFF are typical of the claims
15 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
16 other members of the CALIFORNIA CLASS, was initially classified as
17 exempt upon hiring based on job title alone and labored under
18 DEFENDANT's systematic procedure that failed to correctly analyze
19 the job functions actually performed and compensation paid in order to
20 determine whether the classification was properly made. PLAINTIFF
21 sustained economic injury as a result of DEFENDANT's employment
22 practices. PLAINTIFF and the members of the CALIFORNIA CLASS
23 were and are similarly or identically harmed by the same unlawful,
24 deceptive, unfair and pervasive pattern of misconduct engaged in by the
25 DEFENDANT by (1) classifying all Technician Employees as exempt
26 based upon job title alone and without regard to the actual and primary
27 duties performed by these employees and the compensation paid to
28

1 these employees, (2) deceptively advising all members of the
2 CALIFORNIA CLASS that they were exempt from overtime wages,
3 and, (3) unfairly failing to pay overtime to employees who were
4 improperly classified as exempt.

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

12 29. In addition to meeting the statutory prerequisites to a Class Action, this action
13 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc, Rule 23, in that:

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

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

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

27 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
28 to act on grounds generally applicable to the CALIFORNIA CLASS,

1 making appropriate class-wide relief with respect to the CALIFORNIA
2 CLASS as a whole in that the DEFENDANT uniformly classified and
3 treated the Technician Employees as exempt and, thereafter, uniformly
4 failed to take proper steps to determine whether these employees were
5 properly classified as exempt, and thereby denied these employees
6 overtime wages as required by law;

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

15 (c) Common questions of law and fact exist as to the members of the
16 CALIFORNIA CLASS, with respect to the practices and violations of
17 California Law as listed above, and predominate over any question
18 affecting only individual members, and a Class Action is superior to
19 other available methods for the fair and efficient adjudication of the
20 controversy, including consideration of:

21 1) The interests of the members of the CALIFORNIA CLASS in
22 individually controlling the prosecution or defense of separate
23 actions in that the substantial expense of individual actions will
24 be avoided to recover the relatively small amount of economic
25 losses sustained by the individual CALIFORNIA CLASS
26 members when compared to the substantial expense and burden
27 of individual prosecution of this litigation;

28 2) Class certification will obviate the need for unduly duplicative

1 litigation that would create the risk of:

2 A. Inconsistent or varying adjudications with respect to
3 individual members of the CALIFORNIA CLASS, which
4 would establish incompatible standards of conduct for the
5 DEFENDANTS; and/or,

6 B. Adjudications with respect to individual members of the
7 CALIFORNIA CLASS would as a practical matter be
8 dispositive of the interests of the other members not
9 parties to the adjudication or substantially impair or
10 impede their ability to protect their interests;

11 3) In the context of wage litigation because a substantial number of
12 individual class members will avoid asserting their legal rights
13 out of fear of retaliation by DEFENDANT, which may adversely
14 affect an individual's job with DEFENDANT or with a
15 subsequent employer, the Class Action is the superior and only
16 means to assert their claims through a representative; and,

17 4) A class action is superior to other available methods for the fair
18 and efficient adjudication of this litigation because class
19 treatment will obviate the need for unduly and unnecessary
20 duplicative litigation that is likely to result in the absence of
21 certification of this action pursuant to Fed. R. Civ. Proc, Rule 23.

22 30. This Court should permit this action to be maintained as a Class Action
23 pursuant to Fed. R. Civ. Proc, Rule 23, because:

24 (a) The questions of law and fact common to the CALIFORNIA CLASS
25 predominate over any question affecting only individual members
26 because the DEFENDANT's employment practices were uniform and
27 systematically applied with respect to the CALIFORNIA CLASS;

28 (b) A Class Action is superior to any other available method for the fair

1 and efficient adjudication of the claims of the members of the
2 CALIFORNIA CLASS because in the context of employment litigation
3 a substantial number of individual Class members will avoid asserting
4 their rights individually out of fear of retaliation or adverse impact on
5 their employment;

6 (c) The members of the CALIFORNIA CLASS exceed 100 people and are
7 therefore so numerous that it is impractical to bring all members of the
8 CALIFORNIA CLASS before the Court;

9 (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not
10 be able to obtain effective and economic legal redress unless the action
11 is maintained as a Class Action;

12 (e) There is a community of interest in obtaining appropriate legal and
13 equitable relief for the acts of unfair competition, statutory violations
14 and other improprieties, and in obtaining adequate compensation for the
15 damages and injuries which DEFENDANT's actions have inflicted
16 upon the CALIFORNIA CLASS;

17 (f) There is a community of interest in ensuring that the combined assets of
18 DEFENDANT are sufficient to adequately compensate the members of
19 the CALIFORNIA CLASS for the injuries sustained;

20 (g) DEFENDANT has acted or refused to act on grounds generally
21 applicable to the CALIFORNIA CLASS, thereby making final class-
22 wide relief appropriate with respect to the CALIFORNIA CLASS as a
23 whole;

24 (h) The members of the CALIFORNIA CLASS are readily ascertainable
25 from the business records of DEFENDANT. The CALIFORNIA
26 CLASS consists of all Technician Employees working for
27 QUALXSERV in California during the CALIFORNIA CLASS
28 PERIOD; and,

1 (i) Class treatment provides manageable judicial treatment calculated to
2 bring a efficient and rapid conclusion to all litigation of all wage and
3 hour related claims arising out of the conduct of DEFENDANTS as to
4 the members of the CALIFORNIA CLASS.

5 31. DEFENDANT maintains records from which the Court can ascertain and
6 identify by job title each of DEFENDANT's employees who as have been systematically,
7 intentionally and uniformly subjected to DEFENDANT's corporate policy, practices and
8 procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to
9 include any additional job titles of similarly situated employees when they have been
10 identified.

11
12 **THE CALIFORNIA LABOR SUB-CLASS**

13 32. PLAINTIFFS further brings the Second, Third and Fourth causes of action
14 pursuant to Fed. R. Civ. Proc, Rule 23 on behalf of a subclass which consists of all members
15 of the CALIFORNIA CLASS who, while in California, were employed by QUALXSERV
16 during the period three (3) years prior to the filing of the complaint and ending on the date as
17 determined by the Court (CALIFORNIA LABOR SUB-CLASS PERIOD). This subclass
18 shall be referred to herein as the "CALIFORNIA LABOR SUBCLASS."

19 33. QUALXSERV, as a matter of company policy, practice and procedure, and in
20 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare
21 Commission ("IWC") Wage Order Requirements intentionally, knowingly, and wilfully, on
22 the basis of job title alone and without regard to the actual overall requirements of the job
23 and compensation paid, systematically classified PLAINTIFF and other members of the
24 CALIFORNIA CLASS and CALIFORNIA LABOR SUBCLASS as exempt from overtime
25 wages and other labor laws in order to avoid the payment of overtime wages by
26 misclassifying their positions as exempt from overtime wages and other labor laws. To the
27 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUBCLASS
28 against QUALXSERV, the CALIFORNIA LABOR SUB-CLASS should be adjusted

1 accordingly.

2 34. To the extent that QUALXSERV has created a number of job levels and/or job
3 titles for these Technician Employees to create the superficial appearance of a number of
4 unique jobs, when in fact, these jobs are substantially similar, these job titles can be easily
5 grouped together for the purpose of determining whether they are exempt from overtime
6 wages and whether all overtime compensation has been paid in accordance with applicable
7 law. QUALXSERV has uniformly misclassified these CALIFORNIA CLASS and
8 CALIFORNIA LABOR SUBCLASS members as exempt and denied them overtime wages
9 and other benefits to which non-exempt employees are entitled in order to unfairly cheat the
10 competition and unlawfully profit.

11 35. QUALXSERV maintains records, from which the Court can ascertain and
12 identify by job title and compensation, each of QUALXSERV's employees who as
13 CALIFORNIA CLASS and CALIFORNIA LABOR SUBCLASS members have been
14 systematically, intentionally and uniformly misclassified as exempt as a matter of
15 DEFENDANTS' corporate policy, practices and procedures and who failed to receive all
16 overtime compensation required by law. PLAINTIFF will seek leave to amend the
17 complaint to include these additional job titles when they have been identified.

18 36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
19 members, which number over 100 Technician Employees, is impracticable.

20 37. Common questions of law and fact exist as to members of the CALIFORNIA
21 LABOR SUB-CLASS, including, but not limited, to the following:

22 (a) Whether DEFENDANT unlawfully failed to pay overtime
23 compensation to members of the CALIFORNIA LABOR SUB-CLASS
24 in violation of the California Labor Code and applicable regulations,
25 Cal. Lab. Code §§ 201, 202, 203, 226, 510 and California Wage Order
26 4-2001;

27 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
28 non-exempt employees entitled to overtime compensation for overtime

- 1 hours worked under the overtime pay requirements of California Law;
- 2 (c) Whether DEFENDANT's policy and practice of classifying the
- 3 SUBCLASS members as exempt from overtime compensation and
- 4 failing to pay the CALIFORNIA LABOR SUB-CLASS members
- 5 overtime violate applicable provisions of California law;
- 6 (d) Whether DEFENDANT unlawfully failed to keep and furnish
- 7 California members with accurate records of hours worked;
- 8 (e) Whether DEFENDANT's policy and practice of failing to pay members
- 9 of the CALIFORNIA LABOR SUB-CLASS all wages when due within
- 10 the time required by law after their employment ended violates
- 11 California law;
- 12 (f) Whether DEFENDANT failed to provide reimbursement of business
- 13 expenses incurred by members of the CALIFORNIA LABOR SUB-
- 14 CLASS in the performance of their duties, including but not limited to
- 15 vehicle expenses incurred in the use of the employees' personal vehicle
- 16 in driving to the site locations specified by DEFENDANT;
- 17 (g) Whether DEFENDANT unlawfully failed to tender full payment and/or
- 18 restitution of wages owed or in the manner required by California law
- 19 to the members of the CALIFORNIA LABOR SUBCLASS who have
- 20 terminated their employment; and,
- 21 (h) The proper measure of damages and penalties owed to the members of
- 22 the CALIFORNIA LABOR SUB-CLASS.

23 38. DEFENDANT, as a matter of corporate policy, practice and procedure,

24 classified all Technician Employees as exempt from overtime wages and other labor laws.

25 All Technician Employees, including the PLAINTIFFS, performed the same primary

26 functions and were paid by DEFENDANT according to uniform and systematic company

27 procedures. DEFENDANT systematically failed to correctly pay overtime compensation

28 due these employees. This business practice was uniformly applied to each and every

1 member of the CALIFORNIA LABOR SUBCLASS, and therefore, the propriety of this
2 conduct can be adjudicated on a class-wide basis.

3 39. DEFENDANT violated the rights of the CALIFORNIA LABOR SUBCLASS
4 under California law by:

- 5 (a) Violating Cal. Lab. Code §§ 510, *et seq.* by misclassifying and thereby
6 failing to pay PLAINTIFFS and the members of the CALIFORNIA
7 LABOR SUBCLASS the correct overtime pay for a work day longer
8 than eight (8) hours and/or a workweek longer than forty (40) hours,
9 and also for all hours worked on the seventh (7th) day of a workweek
10 for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 11 (b) Violating Cal. Lab. Code § 203, which provides that when an employee
12 is discharged or quits from employment, the employer must pay the
13 employee all wages due without abatement, by failing to tender full
14 payment and/or restitution of wages owed or in the manner required by
15 California law to the members of the CALIFORNIA LABOR
16 SUBCLASS who have terminated their employment;
- 17 (c) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFFS and
18 the members of the CALIFORNIA LABOR CLASS who were
19 improperly classified as exempt with an accurate itemized statement in
20 writing showing the gross wages earned, the net wages earned, all
21 applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate by the
23 employee;
- 24 (d) Violating Cal. Lab. Code §2802, by failing to provide indemnification
25 to PLAINTIFF and the members of the CALIFORNIA LABOR
26 SUBCLASS for business expenses incurred as a consequence of
27 performing their work for DEFENDANT, including but not limited to
28 mileage; and,

1 (e) Violating Cal. Lab. Code § 203 by failing to provide restitution of
2 wages owed to members of the CALIFORNIA LABOR SUBCLASS
3 who were improperly classified as exempt and who have terminated
4 their employment.

5 40. This Class Action meets the statutory prerequisites for the maintenance of a
6 Class Action as set forth in Fed. R. Civ. Proc, Rule 23, in that:

7 (a) The persons who comprise the CALIFORNIA LABOR SUBCLASS
8 exceed 100 individuals and are therefore so numerous that the joinder
9 of all such persons is impracticable and the disposition of their claims
10 as a class will benefit the parties and the Court;

11 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
12 issues that are raised in this Complaint are common to the
13 CALIFORNIA LABOR SUBCLASS and will apply uniformly to every
14 member of the CALIFORNIA LABOR SUBCLASS;

15 (c) The claims of the representative PLAINTIFF are typical of the claims
16 of each member of the CALIFORNIA LABOR SUBCLASS.
17 PLAINTIFF, like all other members of the CALIFORNIA LABOR
18 SUBCLASS, primarily performed non-exempt duties and work on a
19 daily basis and was not paid a monthly salary that was equivalent to
20 two times the minimum wage, and was thereby improperly classified as
21 exempt and denied overtime pay as a result of DEFENDANT's
22 systematic classification practices. PLAINTIFF and all other members
23 of the CALIFORNIA LABOR SUBCLASS sustained economic
24 injuries arising from DEFENDANT's violations of the laws of
25 California; and,

26 (d) The representative PLAINTIFF will fairly and adequately represent and
27 protect the interest of the CALIFORNIA LABOR SUBCLASS, and has
28 retained counsel who are competent and experienced in Class Action

1 litigation. There are no material conflicts between the claims of the
2 representative PLAINTIFF and the members of the CALIFORNIA
3 LABOR SUBCLASS that would make class certification inappropriate.
4 Counsel for the CALIFORNIA LABOR SUBCLASS will vigorously
5 assert the claims of all Class Members.

6 41. In addition to meeting the statutory prerequisites to a Class Action, this action
7 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc, Rule 23, in that:

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

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

21 (b) The parties opposing the CALIFORNIA LABOR SUBCLASS have
22 acted or refused to act on grounds generally applicable to the
23 CALIFORNIA SUBCLASS, making appropriate class-wide relief with
24 respect to the SUBCLASS as a whole in that the DEFENDANT
25 uniformly classified and treated all Technician Employees as exempt
26 and, thereafter, uniformly failed to take proper steps to determine
27 whether the Technician Employees were properly classified as exempt
28 on a continuing basis, which is DEFENDANT's burden, and thereby

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denied these employees overtime wages as required by law; and,

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUBCLASS, 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 other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA LABOR SUBCLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUBCLASS members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards of conduct for the DEFENDANTS; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUBCLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual class members will avoid asserting their legal rights

1 out of fear of retaliation by DEFENDANT, which may adversely
2 affect an individual's job with DEFENDANT or with a
3 subsequent employer, the Class Action is the only means to
4 assert their claims through a representative; and,

- 5 4) A class action is superior to other available methods for the fair
6 and efficient adjudication of this litigation because class
7 treatment will obviate the need for unduly and unnecessary
8 duplicative litigation that is likely to result in the absence of
9 certification of this action pursuant to Fed. R. Civ. Proc, Rule 23.

10 42. This Court should permit this action to be maintained as a Class Action
11 pursuant to Fed. R. Civ. Proc, Rule 23, because:

- 12 (a) The questions of law and fact common to the CALIFORNIA LABOR
13 SUBCLASS predominate over any question affecting only individual
14 members;
- 15 (b) A Class Action is superior to any other available method for the fair
16 and efficient adjudication of the claims of the members of the
17 CALIFORNIA LABOR SUBCLASS because in the context of
18 employment litigation a substantial number of individual Class
19 members will avoid asserting their rights individually out of fear of
20 retaliation or adverse impact on their employment;
- 21 (c) The members of the CALIFORNIA LABOR SUBCLASS exceed 100
22 individuals and are therefore so numerous that it is impractical to bring
23 all members of the CALIFORNIA LABOR SUBCLASS before the
24 Court;
- 25 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUBCLASS
26 members, will not be able to obtain effective and economic legal
27 redress unless the action is maintained as a Class Action;
- 28 (e) There is a community of interest in obtaining appropriate legal and

1 equitable relief for the acts of unfair competition, statutory violations
2 and other improprieties, and in obtaining adequate compensation for the
3 damages and injuries which DEFENDANT's actions have inflicted
4 upon the CALIFORNIA LABOR SUBCLASS;

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

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

12 (h) The members of the CALIFORNIA LABOR SUBCLASS are readily
13 ascertainable from the business records of DEFENDANT. The
14 CALIFORNIA LABOR SUBCLASS consists of all Technician
15 Employees who were subjected to the DEFENDANT's employment
16 practices and who worked overtime hours for DEFENDANT but did
17 not receive the overtime compensation required by law; and,

18 (i) Class treatment provides manageable judicial treatment calculated to
19 bring a efficient and rapid conclusion to all litigation of all wage and
20 hour related claims arising out of the conduct of DEFENDANT as to
21 the members of the CALIFORNIA LABOR SUBCLASS.

22 23 **JURISDICTION AND VENUE**

24 43. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 216(b)
25 (Fair Labor Standards Act), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §
26 1367 (supplemental jurisdiction), and 28 U.S.C. § 1332 (CAFA Jurisdiction). The action is
27 brought as a class action pursuant to Fed. R. Civ. Proc, Rule 23 on behalf of a class that
28 exceeds 100 people, that involves more than \$5,000,000 in controversy, and where the

1 citizenship of at least one member of the class is diverse from that of DEFENDANT.
2 PLAINTIFF bring this action on his own behalf, and on behalf of all persons within the
3 Class as herein defined.

4 44. Venue is proper in this Court and judicial district pursuant to 28 U.S.C. §1391
5 because (i) DEFENDANT conducts and conducted substantial business within this judicial
6 district and maintains offices in this judicial district, (ii) the causes of action alleged herein
7 arose in whole or in part in this judicial district, and (iii) DEFENDANT committed wrongful
8 conduct against members of the class in this district.

9
10 **FIRST CAUSE OF ACTION**

11 **For Unlawful Business Practices**

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

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

14 45. PLAINTIFF, and the other members of the CALIFORNIA CLASS,
15 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1
16 through 44 of this Complaint. This cause of action is brought on behalf of PLAINTIFF and
17 the CALIFORNIA CLASS.

18 46. DEFENDANT is a “person” as that term is defined under Cal. Bus. and
19 Prof. Code § 17021.

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

24 Any person who engages, has engaged, or proposes to engage in unfair
25 competition may be enjoined in any court of competent jurisdiction. The court
26 may make such orders or judgments, including the appointment of a receiver,
27 as may be necessary to prevent the use or employment by any person of any
28 practice which constitutes unfair competition, as defined in this chapter, or as

1 may be necessary to restore to any person in interest any money or property,
2 real or personal, which may have been acquired by means of such unfair
3 competition.

4 California Business & Professions Code § 17203.

5 48. Through the conduct alleged herein, DEFENDANT has engaged in an
6 unlawful, unfair, and/or deceptive business practice by violating California law, including
7 but not limited to provisions of the Wage Orders, the Regulations implementing the Fair
8 Labor Standards Act as enacted by the Secretary of Labor, the California Labor Code, the
9 Code of Federal Regulations and the California Code of Regulations, the opinions of the
10 Department of Labor Standards Enforcement, the opinions of the Department of Labor,
11 California Labor Code § 510, California Labor Code § 226, California Labor Code § 2802,
12 and California Labor Code § 203, by unfairly violating the public policy of the state of
13 California to take all reasonable steps to properly classify employees as exempt or non-
14 exempt and by deceptively telling PLAINTIFF and the members of the CALIFORNIA
15 CLASS that they were all exempt from overtime compensation when DEFENDANTS knew
16 this statement to be untrue, for which this Court should issue declaratory, injunctive and
17 other equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be necessary to
18 prevent and remedy the conduct held to constitute unfair competition.

19 49. By and through the unlawful, unfair, and/or deceptive business practices
20 described herein, DEFENDANT has obtained valuable property, money, and services from
21 PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived them
22 of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
23 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and
24 injunctive relief is necessary to prevent and remedy this unfair competition, and pecuniary
25 compensation alone would not afford adequate and complete relief.

26 50. All the acts described herein as violations of, among other things, the Cal. Lab.
27 Code, California Code of Regulations, and the Industrial Welfare Commission Wage Orders,
28 are unlawful, are in violation of public policy, are immoral, unethical, oppressive, and

1 unscrupulous, and are likely to deceive employees, and thereby constitute deceptive, unfair
2 and unlawful business practices in violation of Cal. Bus. and Prof. Code § 17200 *et seq.*

3 51. PLAINTIFF, and the other members of the CALIFORNIA CLASS, are
4 further entitled to, and do, seek a declaration that the above described business practices are
5 deceptive unfair and/or unlawful and that an injunctive relief should be issued restraining
6 DEFENDANT from engaging in any practice adjudicated by the Court to be a deceptive,
7 unfair and/or unlawful business practices.

8 52. PLAINTIFF, and the other members of the CALIFORNIA CLASS, have no
9 plain, speedy, and/or adequate remedy at law that will end the unfair and unlawful business
10 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
11 unabated. As a result of the unfair and unlawful business practices described above,
12 PLAINTIFF, and the other members of the CALIFORNIA CLASS, have suffered and will
13 continue to suffer irreparable harm unless DEFENDANT is restrained from continuing to
14 engage in these unfair and unlawful business practices. In addition, DEFENDANT should
15 be required to disgorge their ill gotten gains into a fluid fund and to make restitution to
16 PLAINTIFF, and the other members of the CALIFORNIA CLASS.

17
18 **SECOND CAUSE OF ACTION**

19 **For Failure To Pay Overtime Compensation**

20 **[Cal. Lab. Code §§ 203, 204, 210, 510, 1194, 1197 and 1198]**

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against all**
22 **Defendants)**

23 53. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
24 CLASS, reallege and incorporate by this reference, as though fully set forth herein,
25 paragraphs 1 through 52 of this Complaint.

26 54. Cal. Lab. Code § 204 requires employers to pay employees for all hours
27 worked as follows: “all wages... ..earned by any person in any employment are due and
28 payable twice during each calendar month, on days designated in advance by the employer

1 as the regular paydays.” Cal. Lab. Code § 510 further provides that employees in California
2 shall not be employed more than eight (8) hours in any workday or forty (40) hours in a
3 workweek or on a seventh (7th) consecutive workday of a workweek unless they receive
4 additional compensation beyond their regular wages in amounts specified by law.

5 55. Cal. Lab. Code § 551 states that, “Every person employed in any occupation of
6 labor is entitled to one day’s rest therefrom in seven.”

7 56. Cal. Lab. Code § 552 states that, “No employer of labor shall cause his
8 employees to work more than six days in seven.”

9 57. Cal. Lab. Code § 1194 states:

10 Notwithstanding any agreement to work for a lesser wage, any employee
11 receiving less than the legal minimum wage or the legal overtime
12 compensation applicable to the employee is entitled to recover in a civil action
13 the unpaid balance of the full amount of this minimum wage or overtime
14 compensation, including interest thereon, reasonable attorney's fees, and costs
15 of suit.

16 58. Cal. Lab. Code § 1198 provides:

17 The maximum hours of work and the standard conditions of labor fixed by the
18 commission shall be the maximum hours of work and the standard conditions
19 of labor for employees. The employment of any employee for longer hours
20 than those fixed by the order or under conditions of labor prohibited by the
21 order is unlawful.

22 59. QUALXSERV has intentionally and uniformly designated certain employees
23 as “exempt” from receiving wages for all hours worked and from receiving certain other
24 rights, by their job title and without regard to QUALXSERV’s realistic expectations, the
25 requirements of the job, and the method of compensation payment made by QUALXSERV,
26 including PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS
27 who worked on the production side of the QUALXSERV’s business enterprise. This was
28 done in an illegal attempt to avoid payment of regular and overtime wages and other benefits

1 in violation of the Cal. Lab. Code and Industrial Welfare Commission requirements.

2 60. Pursuant to the Wage Order applicable QUALXSERV, only employees whose
3 primary job duties meet the test of exemption as a(n) “executive,” “administrator,” or
4 “professional,” may be exempt from the provisions of the Wage Order that require the
5 payment of minimum wage and overtime. The primary job duties of the PLAINTIFF and
6 the members of the CALIFORNIA LABOR SUB-CLASS would not qualify these
7 employees to meet any of these exemptions. In addition, the lack of independent discretion
8 with respect to matters of significance, the method of compensation and the amount of
9 compensation also would not qualify these employees to meet any of these exemptions.
10 Finally, the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS do
11 not receive a monthly salary that is equivalent to two times the minimum wage as is required
12 for an exemption as an exempt “executive,” “administrator,” or “professional,”

13 61. For an employee to be exempt as a bona fide “executive,” all the following
14 criteria must be met and DEFENDANT have the burden of proving that:

- 15 (a) The employee’s primary duty must be management of the enterprise, or of a
16 customarily recognized department or subdivision; and,
- 17 (b) The employee must customarily and regularly direct the work of at least two
18 (2) or more other employees; and,
- 19 (c) The employee must have the authority to hire and fire, or to command
20 particularly serious attention to his or his recommendations on such actions
21 affecting other employees; and,
- 22 (d) The employee must customarily and regularly exercise discretion and
23 independent judgment; and,
- 24 (e) The employee must be primarily engaged in duties which meet the test of
25 exemption; and,
- 26 (f) The employee must also earn a monthly salary equivalent to no less than (2)
27 times the state minimum wage for full-time employment.

28 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because

1 they all fail to meet the requirements of being an “executive” within the meaning of Order
2 No. 4-2001.

3 62. For an employee to be exempt as a bona fide “administrator,” all of the
4 following criteria must be met and DEFENDANTS have the burden of proving that:

- 5 (a) The employee must perform office or non-manual work directly related to
6 management policies or general business operation of the employer; and,
- 7 (b) The employee must customarily and regularly exercise discretion and
8 independent judgment; and,
- 9 (c) The employee must regularly and directly assist a proprietor or an exempt
10 administrator; or,
- 11 (d) The employee must perform, under only general supervision, work requiring
12 special training, experience, or knowledge, or,
- 13 (e) The employee must execute special assignments and tasks under only general
14 supervision; and,
- 15 (f) The employee must be primarily engaged in duties which meet the test of
16 exemption; and,
- 17 (g) The employee must also earn a monthly salary equivalent to no less than (2)
18 times the state minimum wage for full-time employment.

19 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because
20 they all fail to meet the requirements for being an “administrator” under Order No. 4-2001.

21 63. The Industrial Welfare Commission, ICW Wage Order 4-2001 also sets forth
22 the requirements which must be complied with to place an employee in the “professional”
23 exempt category. For an employee to be exempt as a bona fide professional, all the
24 following criteria must be met:

- 25 (a) The employee must primarily perform work that is intellectual or creative and
26 that requires the exercise of discretion and independent judgment.
- 27 (b) The employee must be licensed or certified by the state of California and is
28 primarily engaged in the practice of one of the following recognized

1 professions: law, medicine, dentistry, optometry, architecture, engineering,
2 teaching or accounting.

3 (c) The employee must also earn a monthly salary equivalent to no less than (2)
4 times the state minimum wage for full-time employment

5 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because
6 they all fail to meet the requirements for being an “professional” under Order No. 4-2001.

7 64. PLAINTIFFS, and other members of the CALIFORNIA LABOR SUB-
8 CLASS, do not fit the definition of an exempt executive, administrative, or professional
9 employee because:

10 (a) These employees do not primarily perform managerial or
11 administrative (exempt) duties;

12 (b) Their work hours are primarily spent performing non-exempt duties,
13 including but not limited to performing manual labor;

14 (c) They do not have the discretion or independent judgment, in that they must
15 follow exacting and comprehensive company-wide policies and procedures
16 which dictate every aspect of their work day;

17 (d) They do not have the authority to hire and/or fire other personnel; and,

18 (e) PLAINTIFF and the other members of the CALIFORNIA CLASS did not
19 earn a monthly salary equivalent to two (2) times the state minimum wage for
20 full-time employment.

21 65. During the class period, PLAINTIFF, and other members of the
22 CALIFORNIA LABOR SUBCLASS, worked more than eight (8) hours in a workday and/or
23 forty (40) hours in a work week and/or on the seventh (7th) consecutive day of a workweek.

24 66. At all relevant times, DEFENDANT failed to pay PLAINTIFF, and other
25 members of the CALIFORNIA LABOR SUBCLASS, overtime compensation for the hours
26 they worked in excess of the maximum hours permissible by law as required by Cal. Lab.
27 Code §§ 510 and 1198, *et seq.* and the Wage Order, even though PLAINTIFF, and the other
28 members of the CALIFORNIA LABOR SUB-CLASS, did in fact regularly work overtime

1 hours for QUALXSERV.

2 67. By virtue of DEFENDANT's unlawful failure to pay additional compensation
3 to the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for
4 their overtime hours, PLAINTIFF, and the other members of the CALIFORNIA LABOR
5 SUB-CLASS, have suffered, and will continue to suffer, an economic injury in amounts
6 which are presently unknown to them and which will be ascertained according to proof at
7 trial.

8 68. DEFENDANT knew or should have known that PLAINTIFF, and the other
9 members of the CALIFORNIA LABOR SUB-CLASS, were misclassified as exempt from
10 overtime wages and DEFENDANT systematically elected, either through intentional
11 malfeasance or gross nonfeasance, not to properly pay them for their overtime labor as a
12 matter of uniform corporate policy, practice and procedure.

13 69. Therefore, PLAINTIFF, and the other members of the CALIFORNIA
14 LABOR SUB-CLASS, request recovery of regular and overtime compensation according to
15 proof, interest, attorney's fees and costs pursuant to Cal. Lab. Code § 1194(a), as well as the
16 assessment of any statutory penalties against DEFENDANT for this conduct, in a sum as
17 provided by the Cal. Lab. Code and/or other statutes.

18 70. The members of the CALIFORNIA LABOR SUB-CLASS are owed overtime
19 wages as herein alleged. PLAINTIFF and many of the CALIFORNIA LABOR SUB-
20 CLASS members have terminated their employment and DEFENDANTS have not tendered
21 payment of all overtime wages owed. Therefore, as provided by Cal Lab. Code § 203, on
22 behalf of PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
23 whose employment has terminated, PLAINTIFF demands thirty days of pay as penalty for
24 not paying all wages due at time of termination for all employees who terminated
25 employment during the CALIFORNIA LABOR SUB-CLASS PERIOD, plus interest. The
26 waiting time penalties are owed as a matter of law to those members of the CALIFORNIA
27 LABOR SUB-CLASS whose employment has terminated as a result of DEFENDANT's
28 non-payment of overtime wages.

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

10 74. At all times relevant herein, DEFENDANT violated Labor Code § 226, in that
11 DEFENDANT failed to properly and accurately itemize the gross wages earned, the net
12 wages earned, and all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee. In fact, the
14 wage statements inaccurately, falsely and uniformly represent that the PLAINTIFF, and the
15 other members of the CALIFORNIA LABOR SUBCLASS worked forty (40) hours each
16 week, when in fact the actual numbers of hours worked by these employees exceeded forty
17 hours.

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

1 **FOURTH CAUSE OF ACTION**

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

3 **[Cal. Lab. Code § 2802]**

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

5 76. PLAINTIFF, and the other members of the CALIFORNIA CLASS,
6 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1
7 through 75 of this Complaint. This cause of action is brought on behalf of PLAINTIFF and
8 the CALIFORNIA LABOR SUBCLASS.

9 77. Pursuant to Cal. Labor Code § 2802, DEFENDANT is required to reimburse
10 PLAINTIFF and other members of the CALIFORNIA CLASS for the expenses incurred by
11 them in the performance of their job duties, including but not limited to expenses incurred
12 by the use of their vehicles resulting from the performance of their job duties at the sites
13 specified by DEFENDANT, at a reasonable rate.

14 78. At all times relevant herein, DEFENDANT violated Labor Code § 2802, in
15 that during the last three years, PLAINTIFF and the other members of the CALIFORNIA
16 CLASS have been required to personally incur and pay for these expenses in the discharge
17 of their employment duties all without reimbursement from the DEFENDANT.
18 DEFENDANT's company policy and practice was not to pay employees such
19 reimbursement for business expenses in violation of Cal. Labor Code §2802 and California
20 regulations.

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

1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Pay Overtime Compensation**

3 **[FLSA, 29 U.S.C. § 201, et seq.]**

4 **(By PLAINTIFF and the COLLECTIVE CLASS)**

5 80. PLAINTIFF, and the other members of the COLLECTIVE CLASS, reallege
6 and incorporate by reference, as though fully set forth herein, paragraphs 1 through 79 of
7 this Complaint.

8 81. PLAINTIFF also brings this lawsuit on behalf of himself individually and as
9 collective action under the Fair Labor and Standards Act, 29 U.S.C. § 201, et seq. (the
10 “FLSA”), on behalf of all persons nationwide who were, are, or will be employed by
11 QUALXSERV in a position entitled “Tech”, “Technician,” “Service Partner” or “Service
12 Representative”, or in any other substantially similar positions (collectively “Technician
13 Employees”) during the period commencing three years prior to the filing of this Complaint
14 and ending on the date as the Court shall determine (the “COLLECTIVE CLASS
15 PERIOD”), who were classified as exempt from overtime compensation based on job title
16 alone (the “COLLECTIVE CLASS”). To the extent equitable tolling operates to toll claims
17 by the COLLECTIVE CLASS against the DEFENDANTS, the COLLECTIVE CLASS
18 PERIOD should be adjusted accordingly. The COLLECTIVE CLASS includes all such
19 persons, whether or not they were paid by piece rate, by commission, by salary, or by part
20 piece rate and part salary.

21 82. PLAINTIFF, and the other members of the COLLECTIVE CLASS, are
22 not paid a salary but instead are paid on a piece rate basis based upon the number of tickets
23 closed by that employee.

24 83. Questions of law and fact common to the COLLECTIVE CLASS as a whole,
25 but not limited to the following, include:

- 26 a. Whether DEFENDANT misclassified PLAINTIFF and members of the
27 COLLECTIVE CLASS as exempt from receiving compensation for all
28 hours worked, including federal overtime compensation;

- 1 b. Whether DEFENDANTS failed to adequately compensate the members
2 of the COLLECTIVE CLASS for all hours worked in excess of forty
3 (40) in a workweek as required by the FLSA, including the time
4 worked through their meal periods;
- 5 c. Whether DEFENDANTS should be enjoined from continuing the
6 practices which violate the FLSA; and,
- 7 d. Whether DEFENDANTS are liable to the COLLECTIVE CLASS.

8 84. The Fifth cause of action for the violations of the FLSA may be brought and
9 maintained as an “opt-in” collective action pursuant to Section 16(b) of FLSA, 29 U.S.C.
10 216(b), for all claims asserted by the representative PLAINTIFF of the COLLECTIVE
11 CLASS because the claims of the PLAINTIFF are similar to the claims of the members of
12 the prospective COLLECTIVE CLASS.

13 85. PLAINTIFF and the other members of the COLLECTIVE CLASS are
14 similarly situated, have substantially similar job requirements and pay provisions, and are
15 subject to DEFENDANT’s common and uniform policy and practice of misclassifying their
16 employees, failing to pay for all overtime hours worked and overtime wages earned, and
17 failing to accurately record all hours worked by these employees in violation of the FLSA
18 and the Regulations implementing the Act as enacted by the Secretary of Labor (the
19 “REGULATIONS”).

20 86. DEFENDANT is engaged in communication, business, and transmission
21 throughout the United States and is, therefore, engaged in commerce within the meaning of
22 29 U.S.C. § 203(b).

23 87. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to
24 willful violations of the FLSA. The violations of the FLSA alleged herein were willful.

25 88. The Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, states that an employee
26 must be compensated for all hours worked, including all straight time compensation and
27 overtime compensation. 29 C.F.R. §778.223 and 29 C.F.R. §778.315. This Court has
28 concurrent jurisdiction over claims involving the Fair Labor Standards Act pursuant to 29

1 U.S.C. § 216.

2 89. Section 207(a) of the FLSA provides that:

3 Except as otherwise provided in this section, no employer shall employ any of
4 his employees who in any workweek is engaged in commerce or in the
5 production of goods for commerce, or is employed in an enterprise engaged in
6 commerce or in the production of goods for commerce, for a workweek longer
7 than forty hours unless such employee receives compensation for his
8 employment in excess of the hours above specified at a rate not less than one
9 and one-half times the regular rate at which he is employed.

10 90. Section 213(a)(1) of the FLSA provides that the overtime pay requirement
11 does not apply to:

12 any employee employed in a bona fide executive, administrative, or
13 professional capacity (including any employee employed in the capacity of
14 academic administrative personnel or teacher in elementary or secondary
15 schools), or in the capacity of outside salesman (as such terms are defined and
16 delimited from time to time by regulations of the Secretary, subject to the
17 provisions of the Administrative Procedure Act [5 USCS §§ 551 et seq.]
18 except [that] an employee of a retail or service establishment shall not be
19 excluded from the definition of employee employed in a bona fide executive
20 or administrative capacity because of the number of hours in his workweek
21 which he devotes to activities not directly or closely related to the performance
22 of executive or administrative activities, if less than 40 per centum of his hours
23 worked in the workweek are devoted to such activities).

24 91. QUALXSERV has willfully engaged in a widespread pattern and practice of
25 violating the provisions of the FLSA, as detailed above, by uniformly designating certain
26 employees as “exempt” employees, by their job title and without regard to DEFENDANT’s
27 realistic expectations and actual overall requirements of the job, including PLAINTIFF and
28 the other members of the COLLECTIVE CLASS who worked on the production side of the

1 DEFENDANT's business enterprise. This was done in an illegal attempt to avoid payment
2 of overtime wages and other benefits in violation of the FLSA and Code of Federal
3 Regulations requirements.

4 92. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.,
5 PLAINTIFF and the members of the COLLECTIVE CLASS are entitled to overtime
6 compensation for all overtime hours actually worked, including time spent driving to and
7 from sites and working at locations to perform the services as instructed by DEFENDANT.
8 PLAINTIFF and the members of the COLLECTIVE CLASS are entitled to wages at a rate
9 not less than one and one-half times their regular rate of pay for all hours worked in excess
10 of forty (40) hours in any workweek.

11 93. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the
12 exempt status of an employee. The exempt or nonexempt status of any particular employee
13 must be determined on the basis of whether the employee's salary and duties meet the
14 requirements of the regulations in this part.

15 94. The exemptions of the FLSA as listed in section 13(a)(15) do not apply to
16 PLAINTIFF and the other members of the COLLECTIVE CLASS, because their work
17 consists of non-management, manual, and production line labor and because they are not
18 paid a salary in the required amount.

19 95. For an employee to be exempt as a bona fide "executive," all the following
20 criteria must be met and DEFENDANTS have the burden of proving that:

- 21 (a) The employee is compensated on a salary basis at a rate of not less than \$ 455
22 per week.
- 23 (b) The employee's primary duty must be management of the enterprise, or of a
24 customarily recognized department or subdivision;
- 25 (c) The employee must customarily and regularly direct the work of at least two
26 (2) or more other employees;
- 27 (d) The employee must have the authority to hire and fire, or to command
28 particularly serious attention to his or his recommendations on such actions

1 affecting other employees; and,

2 (e) The employee must be primarily engaged in duties which meet the test of
3 exemption.

4 No member of the COLLECTIVE CLASS was or is an executive because they all fail to
5 meet the requirements of being an “executive” under section 13 of the FLSA and 29 C.F.R.
6 541.100.

7 96. For an employee to be exempt as a bona fide “administrator,” all of the
8 following criteria must be met and DEFENDANTS have the burden of proving that:

9 (a) The employee is compensated on a salary basis at a rate of not less than \$ 455
10 per week.

11 (b) The employee must perform office or non-manual work directly related to
12 management or general business operation of the employer or the employer’s
13 customers;

14 (c) The employee must customarily and regularly exercise discretion and
15 independent judgment with respect to matters of significance; and,

16 (d) The employee must regularly and directly assist a proprietor or an exempt
17 administrator; or,

18 (e) The employee must perform under only general supervision, work requiring
19 special training, experience, or knowledge; and,

20 (f) The employee must be primarily engaged in duties which meet the test of
21 exemption.

22 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to
23 meet the requirements for being an “administrator” under section 13(a) of the FLSA and 29
24 C.F.R. 541.200. PLAINTIFF and the other members of the COLLECTIVE CLASS
25 perform their primary, day to day duties on the production side of the QUALXSERV
26 enterprise without the requisite amount of discretion and independent judgment required to
27 qualify for the administrative exemption. PLAINTIFF and the other members of the
28 COLLECTIVE CLASS are also not compensated on a salary basis in the requisite amount as

1 is required by law to qualify for the administrative exemption.

2 97. During the COLLECTIVE CLASS PERIOD, PLAINTIFF, and other
3 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work week.

4 98. At all relevant times, DEFENDANT failed to pay PLAINTIFF, and other
5 members of the COLLECTIVE CLASS overtime compensation for the hours they have
6 worked in excess of the maximum hours permissible by law as required by section 7 of the
7 FLSA, even though PLAINTIFF and the other members of the COLLECTIVE CLASS,
8 were regularly required and scheduled to work, and did in fact work, overtime hours.

9 99. For purposes of the Fair Labor Standards Act, the employment practices of
10 DEFENDANT concerning the classification of and payment of overtime wages to
11 Technician Employees were and are uniform throughout the United States in all respects
12 material to the claims asserted in this Complaint.

13 100. As a result of DEFENDANT's failure to pay overtime compensation for hours
14 worked, as required by the FLSA, PLAINTIFF and the members of the COLLECTIVE
15 CLASS were damaged in an amount to be proved at trial.

16 101. PLAINTIFF, therefore, demand that he and the other members of the
17 COLLECTIVE CLASS be paid overtime compensation as required by the FLSA for every
18 hour of overtime worked in any work week for which they were not compensated, liquidated
19 damages, plus interest and attorneys' fees as provided by law.

20
21 **PRAYER**

22 WHEREFOR, PLAINTIFF prays for judgment against each Defendant, jointly and
23 severally, as follows:

24 1. On behalf of the CALIFORNIA CLASS:

- 25 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
26 CLASS as a class action pursuant to Fed. R. Civ. Proc., rule 23;
27 B) An order temporarily, preliminarily and permanently enjoining and restraining
28 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFF and the other members of the
3 CALIFORNIA CLASSES; and,
4 D) Disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
5 restitution of the sums incidental to DEFENDANT's violations due to
6 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

7 2. On behalf of the CALIFORNIA LABOR SUBCLASS:

- 8 A) That the Court certify the Second, Third, and Fourth, Causes of Action
9 asserted by the CALIFORNIA LABOR SUBCLASS as a class action pursuant
10 to Fed. R. Civ. Proc., rule 23;
11 B) Compensatory damages, according to proof at trial, including compensatory
12 damages for overtime compensation due PLAINTIFF and the other members
13 of the CALIFORNIA LABOR SUBCLASS, during the applicable
14 CALIFORNIA CLASS PERIODS plus interest thereon at the statutory rate;
15 C) The wages of all terminated employees in the CALIFORNIA LABOR
16 SUBCLASS, including PLAINTIFF, as a penalty from the due date thereof at
17 the same rate until paid or until an action therefor is commenced, for violation
18 of Cal. Lab. Code § 203 in accordance with applicable law;
19 E) The greater of all actual damages or fifty dollars (\$50) for the initial pay
20 period in which a violation occurs and one hundred dollars (\$100) per each
21 member of the CALIFORNIA LABOR SUBCLASS for each violation in a
22 subsequent pay period, not exceeding an aggregate penalty of four thousand
23 dollars (\$4,000), and an award of costs and reasonable attorney's fees for
24 violation of Cal. Lab. Code § 226.

25 3. On behalf of the COLLECTIVE CLASS:

- 26 A) That the Court certify the Fifth Cause of Action asserted by the
27 COLLECTIVE CLASS as an opt-in class action under 29 U.S.C. § 216(b);
28 B) That the Court declare the rights and duties of the parties consistent with the

- 1 relief sought by PLAINTIFF;
- 2 C) Issue a declaratory judgment that DEFENDANT's acts, policies, practices and
- 3 procedures complained of herein violated provisions of the Fair Labor
- 4 Standards Act;
- 5 D) That DEFENDANTS be enjoined from further violations of the Fair Labor
- 6 Standards Act;
- 7 E) That the PLAINTIFF and the members of the COLLECTIVE CLASS recover
- 8 compensatory, damages and an equal amount of liquidated damages as
- 9 provided under the law and in 29 U.S.C. § 216(b).
- 10 4. On all claims:
- 11 A) An award of interest, including prejudgment interest at the legal rate.
- 12 B) An award of liquidated damages, statutory damages, including reasonable
- 13 attorneys' fees and cost of suit, but only to the extent that such reasonable
- 14 attorneys' fees and costs are recoverable pursuant to Cal. Lab. Code §1194 and
- 15 29 U.S.C. § 216(b). Neither this prayer nor any other allegation or prayer in
- 16 this Complaint is to be construed as a request, under any circumstance, that
- 17 would result in a request for attorneys' fees or costs available under Cal. Lab.
- 18 Code § 218.5;
- 19 C) Such other and further relief as the Court deems just and equitable.

20

21 Dated: January 22, 2009

BLUMENTHAL, NORDREHAUG & BHOWMIK

22

23 By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiffs

24

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DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: January 22, 2009

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ Norman B. Blumenthal
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