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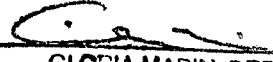
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 30 2021

BY


GLORIA MARIN, DEPUTY

Attorneys for Plaintiff,

GABRIELA ESCRIBA, and all others similarly situated

(Additional Counsel on following Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

(UNLIMITED JURISDICTION)

GABRIELA ESCRIBA, on behalf of herself,
and all others similarly situated, and as an
"aggrieved employee" on behalf of other
"aggrieved employees" under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff(s).

vs.

COMMUNICATIONS TEST DESIGN, INC.,
a Pennsylvania corporation; PROTECH
STAFFING SERVICES, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendant(s).

Case No.: CIVSB2115512

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1191, 1197, and 1198);
2. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201-203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED

BY FAX

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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiff GABRIELA ESCRIBA (hereafter "Plaintiff"), on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action based on alleged violations of the California
5 Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage Order")
6 and the Business and Professions Code against defendants COMMUNICATIONS TEST
7 DESIGN, INC., PROTECH STAFFING SERVICES, INC., and Does 1-50, inclusive
(collectively "Defendants").

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 her and other similarly situated current and former employees in California for unpaid wages
10 and other related relief. These claims are based on Defendants' alleged failures to (1) pay all
11 wages for all hours worked at the correct rates of pay, (2) provide all rest and meal periods, (3)
12 fairly compete, (4) provide accurate written wage statements, and (5) timely pay final wages
13 upon termination of employment. Accordingly, Plaintiff now seeks to recover unpaid wages and
14 related relief through this class action.

15 **PARTIES**

16 3. On or about February 12, 2020, Defendants first employed Plaintiff to work at
17 their warehouse located in Rialto, California as a material handler. She continuously worked for
18 Defendants as a material handler until approximately May 25, 2020 when Defendants
19 terminated her employment. At all relevant times, Plaintiff was an "employee" within the
20 meaning of Title 8 California Code of Regulations Section 11050 and an "aggrieved employee"
within the meaning of Labor Code Section 2699(c).

21 4. Plaintiff currently resides Highland, California.

22 5. Defendant COMMUNICATOINS TEST DESIGN, INC. is a corporation
23 organized under the laws of Pennsylvania and also a citizen of California based on Plaintiff's
information and belief.

24 6. Defendant PROTECH STAFFING SERVICES, INC. is a corporation organized
25 under the laws of California and a citizen of California based on Plaintiff's information and
26 belief.

27 7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
28 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but

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1 is informed and believes and thereon alleges that said defendants are legally responsible for the
2 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
3 Plaintiff will amend the complaint to allege the true names and capacities of the DOE defendants
4 when ascertained.

5 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
7 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
8 and scope of such agency or employment, and with the approval and ratification of each of the
9 other Defendants.

10 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
11 defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
12 of a practice which resulted in Defendants not paying Plaintiff and other members of the below-
13 described classes in accordance with applicable California labor laws as alleged herein.

14 10. Plaintiff is informed and believes and thereon alleges that each and every one of
15 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
16 each acting as agents and/or employees, and/or under the direction and control of each of the
17 other defendants, and that said acts and failures to act were within the course and scope of said
18 agency, employment and/or direction and control.

19 CLASS ACTION ALLEGATIONS

20 11. This action has been brought and may be maintained as a class action pursuant
21 to California Code of Civil Procedure § 382 because there is a well-defined community of
22 interest among the persons who comprise the readily ascertainable classes defined below and
23 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case
24 as a class action.

25 12. **Class Definition:** The class is defined as follows: All persons employed by
26 Defendants in California as non-exempt, hourly employees, including, but not limited to,
27 material handlers, warehouse workers, and in other comparable positions, at any time during the
28 period beginning four years prior to the filing of this action and ending on the date that final
judgment is entered in this action.

13. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
right to amend or modify the class definition with greater specificity, by further division into

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subclasses and/or by limitation to particular issues.

14. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California law.

15. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay?

B. Whether Defendants failed to provide the class with all rest periods as required by section 12 of the Wage Order?

C. Whether Defendants failed to provide the class with all meal periods as required by section 11 of the Wage Order?

D. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*, with respect to the class?

E. Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements?

F. Whether Defendants willfully failed to provide the class with timely final wages?

16. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or a lack of a policy which resulted in Defendants failing to comply with the California Labor Code and the Business and Professions Code as alleged herein.

17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

18. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are

1 experienced in wage and hour class action litigation and are dedicated to vigorously prosecuting
2 this action on behalf of Plaintiff and absent Class Members.

3 19. **Superiority:** A class action is vastly superior to other available means for fair
4 and efficient adjudication of Class Members' claims and would be beneficial to the parties and
5 the Court. Class action treatment will allow a number of similarly situated persons to
6 simultaneously and efficiently prosecute their common claims in a single forum without the
7 unnecessary duplication of effort and expense that numerous individual actions would entail. In
8 addition, the monetary amounts due to many individual Class Members are likely to be relatively
9 small and would thus make it difficult, if not impossible, for individual Class Members to both
10 seek and obtain relief. Moreover, a class action will serve an important public interest by
11 permitting Class Members to effectively pursue the recovery of monies owed to them. Further,
12 a class action will prevent the potential for inconsistent or contradictory judgments inherent in
13 individual litigation.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED**

16 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

17 **(By Plaintiff and the Class against all Defendants)**

18 20. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

19 21. At all relevant times, Plaintiff and the class have been employees of Defendants
20 and entitled to the benefits and protections of the California Labor Code sections 510, 1194,
21 1197, and 1198 and the Wage Order.

22 22. Section 2 of the applicable Wage Order defines "hours worked" as "the time
23 during which an employee is subject to the control of an employer, and includes all the time the
24 employee is suffered or permitted to work, whether or not required to do so."

25 23. Section 3 of the applicable Wage Order states:

26 **(A) Daily Overtime - General Provisions**

27 (1) The following overtime provisions are applicable to employees 18
28 years of age or over and to employees 16 or 17 years of age who are not
required by law to attend school and are not otherwise prohibited by law
from engaging in the subject work. Such employees shall not be employed
more than eight (8) hours in any workday or more than 40 hours in any
workweek unless the employee receives one and one-half (1 1/2) times
such employee's regular rate of pay for all hours worked over 40 hours in

1 the workweek. Eight (8) hours of labor constitutes a day's work.
2 Employment beyond eight (8) hours in any workday or more than six (6)
3 days in any workweek is permissible provided the employee is
4 compensated for such overtime at not less than:

5 (a) One and one-half (1 1/2) times the employee's regular rate of pay
6 for all hours worked in excess of eight (8) hours up to and including 12
7 hours in any workday, and for the first eight (8) hours worked on the
8 seventh (7th) consecutive day of work in a workweek; and

9 (b) Double the employee's regular rate of pay for all hours worked in
10 excess of 12 hours in any workday and for all hours worked in excess of
11 eight (8) hours on the seventh (7th) consecutive day of work in a
12 workweek.

13 24. Labor Code section 510 states:

14 Eight hours of labor constitutes a day's work. Any work in excess of eight
15 hours in one workday and any work in excess of 40 hours in any one
16 workweek and the first eight hours worked on the seventh day of work in
17 any one workweek shall be compensated at the rate of no less than one and
18 one-half times the regular rate of pay for an employee. Any work in excess
19 of 12 hours in one day shall be compensated at the rate of no less than
20 twice the regular rate of pay for an employee. In addition, any work in
21 excess of eight hours on any seventh day of a workweek shall be
22 compensated at the rate of no less than twice the regular rate of pay of an
23 employee. Nothing in this section requires an employer to combine more
24 than one rate of overtime compensation in order to calculate the amount
25 to be paid to an employee for any hour of overtime work.

26 25. Labor Code section 1197 makes it unlawful for an employer to pay an employee
27 less than the minimum wage required under the applicable Wage Order for all hours worked
28 during a payroll period.

26 26. California Labor Code § 1194 invalidates any agreement between an employer
27 and an employee to work for less than the minimum or overtime wage required under the
28 applicable Wage Order.

26 27. Labor Code section 1198 makes it unlawful for an employer to employ an
27 employee under conditions that violate the Wage Order.

26 28. Employers must compensate non-exempt employees for "off-the-clock" work
27 (before punching in or after punching out on a time clock) if the employers knew or should have
28

known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

29. Plaintiff is informed and believes that, at all relevant times, Defendants have applied centrally devised policies and practices to her and the Class Members with respect to working conditions and compensation arrangements.

30. Defendants compensated Plaintiff and the Class Members with an hourly rate of pay on a weekly basis.

31. Defendants compensated Plaintiff and the Class Members with an hourly rate of pay and they issued their wages on a weekly basis. Plaintiff started her work shift at 4:00 a.m. or 1:00 p.m. The length of the work shifts varied from eight to twelve hours in a day for Plaintiff and the Class Members. Defendants would not notify Plaintiff and the Class Members when their workdays would end until late in the workday. Defendants assigned Plaintiff and the Class Members work they expected them to complete that day and would not permit an end to such work that day until Plaintiff and the Class Members completed it.

32. At all relevant times, Defendants failed to compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay, including but not limited to, overtime hours at the legally required rates for overtime work in California. Defendants required Plaintiff and the Class Members to record the times they started and stopped working with the clock machines located at their worksites. Defendants provided only four clock machines at its warehouse and, because of the number of the employees who had to clock in at the beginning of each shift, Defendants compelled Plaintiff and the Class Members to wait approximately two (2) to five (5) minutes in line without pay before they could clock in for payroll purposes. Plaintiff and the Class Members had similar unpaid wait times when they returned from meal periods. During the COVID-19 pandemic's restrictions, Defendants required Plaintiff and the Class Members to wait in a temperature check line before clocking in. Once they reached the front of the line, their supervisors checked their temperature and provided them with personal protective equipment such as gloves. This process took an additional one (1) to two (2) minutes to complete. Defendants did not compensate Plaintiff and the Class Members for the time they spent going through the temperature check process. Plaintiff and the Class Members often worked in excess of eight (8) hours in one workday and forty (40) hours in a workweek. Therefore, the unpaid off-the-clock work should have been compensated at their overtime rate of pay (1 ½ times their

regular hourly rates of pay).

33. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants' failure to compensate the class for all hours worked as required by California law, including, but not limited to overtime wages for all overtime hours they worked.

34. As a result of Defendants' unlawful conduct, Plaintiff and the other Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period.

35. Pursuant to Labor Code section 1194, Plaintiff, on behalf of herself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Lab. Code §§ 226.7 and 1198)

(By Plaintiff and the Class against all Defendants)

36. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

37. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 1198, and the Wage Order.

38. Labor Code § 1198 states,

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

39. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees

1 whose total daily work time is less than three and one-half (3 1/2)
2 hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.

3 (B) If an employer fails to provide an employee a rest period
4 in accordance with the applicable provisions of this Order, the
5 employer shall pay the employee one (1) hour of pay at the
6 employee's regular rate of compensation for each work day that
the rest period is not provided.

7 40. "[I]n the context of an eight-hour shift, '[a]s a general matter,' one rest break
8 should fall on either side of the meal break. (*Ibid.*)" *Brinker Rest. Corp. v. Superior Court* (2012)
9 53 Cal. 4th 1004, 1032, 273 P.3d 513, 531.

10 41. In addition, Labor Code Section 226.7 states

11 (b) An employer shall not require an employee to work during a meal
12 or rest or recovery period mandated pursuant to an applicable statute, or
13 applicable regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health Standards Board, or the
Division of Occupational Safety and Health.

14 (c) If an employer fails to provide an employee a meal or rest or
15 recovery period in accordance with a state law, including, but not limited
16 to, an applicable statute or applicable regulation, standard, or order of the
17 Industrial Welfare Commission, the Occupational Safety and Health
18 Standards Board, or the Division of Occupational Safety and Health, the
employer shall pay the employee one additional hour of pay at the
employee's regular rate of compensation for each workday that the meal
or rest or recovery period is not provided.

19 42. Pursuant to the Wage Order, Plaintiff and the class were entitled to be provided
20 with net rest breaks of at least ten minutes for each four hour period of work, or major fraction
21 thereof.

22 43. Defendants failed to provide Plaintiff with all required rest breaks in accordance
23 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant
24 times within the applicable limitations period, Defendants had a policy, practice, or a lack of a
25 policy which resulted in Defendants not providing the class with all rest breaks required by
26 California law.

27 44. Plaintiff and Class Members often worked more than 10 hours in a workday.
28 Defendants, however, failed to provide them with a third rest break on such workdays.

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1 45. Defendants failed to pay Plaintiff the additional wages required by California
2 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
3 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
4 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing
5 the class with additional wages for all rest breaks not provided to them as required by California
6 Labor Code § 226.7.

7 46. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered
8 damages in amounts subject to proof to the extent they were not paid additional wages owed for
9 all rest breaks not provided to them.

10 47. By reason of the above, Plaintiff and the members of the class are entitled to
11 premium wages for workdays in which one or more rest breaks were not provided to them
12 pursuant to California Labor Code § 226.7.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

15 **(Lab. Code §§ 226.7, 512, and 1198)**

16 **(By Plaintiff and the Class against all Defendants)**

17 48. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 49. At all relevant times during the applicable limitations period, Plaintiff and the
19 class have been employees of Defendants and entitled to the benefits and protections of
20 California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

21 50. Labor Code § 1198 states,

22 "The maximum hours of work and the standard conditions of labor fixed
23 by the commission shall be the maximum hours of work and the standard
24 conditions of labor for employees. The employment of any employee for
25 longer hours than those fixed by the order or under conditions of labor
26 prohibited by the order is unlawful."

27 51. In relevant part, Labor Code Section 512 states

28 "An employer may not employ an employee for a work period of more
than five hours per day without providing the employee with a meal
period of not less than 30 minutes, except that if the total work period per
day of the employee is no more than six hours, the meal period may be
waived by mutual consent of both the employer and employee. An
employer may not employ an employee for a work period of more than
10 hours per day without providing the employee with a second meal

period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

52. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

.....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

53. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the class were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours.

54. During the relevant time period, Defendants failed to provide Plaintiff with all

1 required meal periods in accordance with California Labor Code § 512 and the Wage Order.
2 Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable
3 limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted
4 in Defendants not providing the class with all meal periods required by California Labor Code
5 § 512 and the Wage Order.

6 55. Further, Defendants did not permit Plaintiff and the Class Members to take a meal
7 period of more than 30-minutes. Because of the wait time to clock in at the end of the meal period
8 described above, Defendants compelled Plaintiff and the Class Members to take a less than a 30-
9 minute meal period. Defendants failed to pay premium wages to Plaintiff and the Class Members
10 for such short meal periods. Further, Plaintiff and the Class Members often worked more than 10
11 hours in a workday. Defendants, however, failed to provide Plaintiff and the Class Members with
12 a second, 30-minute meal period when they worked in excess of 10 hours in a workday.

13 56. Defendants failed to pay Plaintiff the additional wages required by California
14 Labor Code § 226.7 for all meal periods not provided to her. Plaintiff is informed and believes
15 and thereon alleges that, at relevant times within the applicable limitations period, Defendants
16 have maintained a policy, practice, or a lack of a policy which resulted in Defendants not
17 providing the class with additional wages for all meal periods not provided to them as required
18 by California Labor Code § 226.7.

19 57. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered
20 damages in amounts subject to proof to the extent they were not paid additional wages owed for
21 all meal periods not provided to them.

22 58. By reason of the above, Plaintiff and the members of the class are entitled to
23 premium wages for workdays in which one or more meal periods were not provided to them
24 pursuant to California Labor Code § 226.7.

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

27 **(Lab. Code § 226)**

28 **(By Plaintiff and the Class against all Defendants)**

59. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

60. At all relevant times during the applicable limitations period, Plaintiff and the
class have been employees of Defendants and entitled to the benefits and protections of

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1 California Labor Code § 226.

2 61. Pursuant to California Labor Code § 226(a), Plaintiff and the class were entitled
3 to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement
4 showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect
5 during the pay period; and d) the corresponding number of hours worked at each hourly rate by
6 the employee.

7 62. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
8 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
9 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
10 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in
11 a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000),
12 and is entitled to an award of costs and reasonable attorney's fees.

13 63. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
14 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
15 injury if the employer fails to provide accurate and complete information as required by
16 California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from
17 the wage statement alone one or more of the following:

18 A. The amount of the gross wages or net wages paid to the employee during
19 the pay period or any of the other information required to be provided on the itemized wage
20 statement pursuant to California Labor Code § 226(a);

21 B. Which deductions the employer made from gross wages to determine the
22 net wages paid to the employee during the pay period;

23 C. The name and address of the employer and, if the employer is a farm
24 labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the
25 name and address of the legal entity that secured the services of the employer during the pay
26 period; and

27 D. The name of the employee and only the last four digits of his or her social
28 security number or an employee identification number other than a social security number.

64. "Promptly and easily determine," as stated in California Labor Code § 226(e),
means a reasonable person would be able to readily ascertain the information without reference
to other documents or information.

65. As alleged herein, Defendants failed to provide Plaintiff and the class all wages owed, including but not limited to, minimum and overtime wages and all premium wages for unprovided rest and/or meal periods. As a result, Defendants have failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked by employees and other requirements of California Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

66. Defendants' failure to provide Plaintiff and the class with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the class with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

67. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the class have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the class were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code § 226(a).

68. Pursuant to California Labor Code § 226(e), Plaintiff and the class are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per class member, and are also entitled to an award of costs and reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

1 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
2 gained a competitive advantage over other comparable companies doing business in California
3 that comply with their legal obligations to compensate employees for all earned wages.

4 79. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
5 class have suffered injuries in fact and lost money or property. Plaintiff and the class were
6 deprived of wages for all hours worked and for all rest and meal periods not provided to them
7 and for unpaid wages resulting from not being provided with accurate wage statements.

8 80. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
9 class are entitled to restitution of all monies rightfully belonging to them that Defendants did
10 not pay them or otherwise retained by means of their unlawful and unfair business practices.

11 81. Plaintiff and the class are entitled to reasonable attorneys' fees in connection with
12 their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the
13 substantial benefit doctrine and/or the common fund doctrine.

14 **SEVENTH CAUSE OF ACTION**

15 **CIVIL PENALTIES**

16 **(By Plaintiff and the Class against all Defendants)**

17 82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 83. Labor Code § 204 states

19 (a) All wages, other than those mentioned in Section 201, 201.3, 202,
20 204.1, or 204.2, earned by any person in any employment are due
21 and payable twice during each calendar month, on days
22 designated in advance by the employer as the regular paydays.
23 Labor performed between the 1st and 15th days, inclusive, of any
24 calendar month shall be paid for between the 16th and the 26th
25 day of the month during which the labor was performed, and labor
26 performed between the 16th and the last day, inclusive, of any
27 calendar month, shall be paid for between the 1st and 10th day of
28 the following month. ...

(b) (1) Notwithstanding any other provision of this section, all
wages earned for labor in excess of the normal work period shall
be paid no later than the payday for the next regular payroll
period.

(2) An employer is in compliance with the requirements of
subdivision (a) of Section 226 relating to total hours worked by

1 the employee, if hours worked in excess of the normal work
2 period during the current pay period are itemized as corrections
3 on the paystub for the next regular pay period. Any corrections
4 set out in a subsequently issued paystub shall state the inclusive
5 dates of the pay period for which the employer is correcting its
6 initial report of hours worked.

7 (c) However, when employees are covered by a collective bargaining
8 agreement that provides different pay arrangements, those
9 arrangements shall apply to the covered employees.

10 (d) The requirements of this section shall be deemed satisfied by the
11 payment of wages for weekly, biweekly, or semimonthly payroll
12 if the wages are paid not more than seven calendar days following
13 the close of the payroll period.

14 84. Defendants paid wages to employees on regular intervals. Defendants failed to
15 pay Plaintiff on such intervals for all wages earned and all hours worked. On information and
16 belief, Plaintiff alleges that Defendants also failed to pay the aggrieved employees on such
17 intervals for all wages earned and all hours worked.

18 85. During the applicable time period, Defendants violated California Labor Code
19 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, and 1198.

20 86. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
21 behalf of themselves and other current or former employees, to bring a civil action to recover
22 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

23 87. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
24 entitled to recover civil penalties for each of the Defendants' violations of California Labor
25 Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the
26 applicable limitations period in the following amounts:

27 A. For violations of California Labor Code § 204, one hundred dollars
28 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
(\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
(penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty
dollars (\$250.00) for each aggrieved employee for initial violation and one thousand dollars
(\$1,000.00) for each aggrieved employee for each subsequent violation (penalty amounts

1 established by California Labor Code § 226.3).

2 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
3 (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for
4 each aggrieved employee for each subsequent violation, per pay period in addition to an amount
5 sufficient to recover underpaid wages (penalty amounts established by California Labor Code §
6 558).

7 D. For violations of California Labor Code § 1174, five hundred dollars
8 (\$500.00) for each aggrieved employee for each violation (penalty amounts established by
9 California Labor Code § 1174.5).

10 E. For violations of California Labor Code § 1197 one hundred dollars
11 (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred
12 fifty dollars (\$250.00) for each aggrieved employee per pay period for each subsequent violation
13 (penalty amounts established by California Labor Code § 1197.1).

14 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194
15 and 1198 one hundred dollars (\$100.00) for each aggrieved employee per pay period for each
16 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
17 for each subsequent violation (penalty amounts established by California Labor Code §
18 2699(f)(2)).

19 88. Plaintiff has complied with the procedures for bringing suit specified in
20 California Labor Code § 2699.3. By letter dated May 25, 2021, Plaintiff filed written notice
21 online with the Labor and Workforce Development Agency ("LWDA") and gave written notice
22 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
23 to have been violated, including the facts and theories to support the alleged violations. That
24 notice is attached and incorporated by reference as Exhibit A to this complaint. Plaintiff
25 accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
26 take action in response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff
27 anticipates that the LWDA will provide written notice to Plaintiff informing her that it does not
28 intend to investigate these allegations.

89. Pursuant to California Labor Code § 2699(g), Plaintiff and the aggrieved
employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
connection with their claims for civil penalties.

PRAYER FOR RELIEF

90. WHEREFORE, Plaintiff, on behalf of herself and the class, prays for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages;
- E. Statutory penalties;
- F. Civil penalties;
- G. Declaratory relief;
- H. Actual damages;
- I. Restitution;
- J. Pre-judgment interest;
- K. Costs of suit;
- L. Reasonable attorneys' fees; and
- M. Such other relief as the Court deems just and proper.

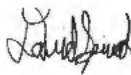
DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: July 30, 2021

By 
DAVID SPIVAK, Attorney for Plaintiff,
GABRIELA ESCRIBA, and all others similarly
situated

SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

May 25, 2021

Attn: PAGA Administrator
PAGAfilings@dir.ca.gov

RE: *Gabriela Escriba/ Communications Test Design, Inc. and Protech Staffing Services, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Gabriela Escriba (hereafter “Escriba”) provides notice on behalf of herself and all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to material handlers, warehouse workers, and persons in similar positions (hereafter referred to as the “Aggrieved Employees”), by Communications Test Design, Inc., a Pennsylvania corporation, and Protech Staffing Services, Inc., a California corporation (hereafter collectively referred to as “CTDI”) of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

At all relevant times, CTDI has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Escriba and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”), paragraph 2.E, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

///

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436
TEL (213) 725-9094
FAX (213) 634-2485
SPIVAKLAW.COM

Statement of Facts

CTDI provides restored internet products such as modems and routers throughout the United States. In or about February 12, 2020, CTDI first employed Escriba to work in California as a warehouse employee in its shipping and receiving department at its Rialto, California location. CTDI continuously employed Escriba as a warehouse employee from her hire until approximately May 25, 2021, when CTDI terminated her employment. At all relevant times, CTDI classified its warehouse employees as hourly and nonexempt.

CTDI compensated Escriba and the Aggrieved Employees with an hourly rate of pay and it issued their wages on a weekly basis. Escriba started her work shift at 4:00 a.m. or 1:00 p.m. The length of the work shifts varied from eight to twelve hours in a day for Escriba and the Aggrieved Employees. CTDI would not notify Escriba and the other Aggrieved Employees when their workdays would end until late in the workday. CTDI assigned Escriba and the Aggrieved Employees work it expected them to complete that day and would not permit an end to such work that day until Escriba and the Aggrieved Employees completed it.

CTDI required Escriba and the Aggrieved Employees to record the times they started and stopped working with the clock machines located at their worksites. CTDI provided only four clock machines at its warehouse and, because of the number of the employees who had to clock in at the beginning of each shift, CTDI compelled Escriba and the Aggrieved Employees to wait approximately two (2) to five (5) minutes in line without pay before they could clock in for payroll purposes. Escriba and the Aggrieved Employees had similar unpaid wait times when they returned from meal periods. During the COVID-19 pandemic's restrictions, CTDI required Escriba and the Aggrieved Employees to wait in a temperature check line before clocking in. Once they reached the front of the line, their supervisors checked their temperature and provided them with personal protective equipment such as gloves. This process took an additional one (1) to two (2) minutes to complete. CTDI did not compensate Escriba and the Aggrieved Employees for the time they spent going through the temperature check process. Escriba and the Aggrieved Employees often worked in excess of eight (8) hours in one workday and forty (40) hours in a workweek. Therefore,

the unpaid off-the-clock work should have been compensated at their overtime rate of pay (1 ½ times their regular hourly rates of pay).

Further, CTDI did not permit Escriba and the Aggrieved Employees to take a meal period of more than 30-minutes. Because of the wait time to clock in at the end of the meal period described above, CTDI compelled Escriba and the Aggrieved Employees to take a less than a 30-minute meal period. CTDI failed to pay premium wages to Escriba and the Aggrieved Employees for such short meal periods. Further, Escriba and the Aggrieved Employees often worked more than 10 hours in a workday. CTDI, however, failed to provide Escriba and the Aggrieved Employees with a second, 30-minute meal period or a third rest break when they worked in excess of 10 hours in a workday.

At all relevant times, upon termination, CTDI failed to pay final wages in a timely manner as a result of its failure to pay employees for the wait time. CTDI also failed to pay final wages in a timely manner as a result of its failure to pay employees premium wages for meal periods that were less than 30 minutes, and a second meal period and third rest period on days exceeding ten hours. CTDI willfully failed and refused to pay timely compensation and wages, including, but not limited to, regular time and overtime wages for off-the-clock work performed before the beginning of their shifts, during meal periods, and after clocking out at the end of their shifts.

For the reasons stated herein, Escriba alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the Aggrieved Employees:

- a) CTDI failed to provide Escriba and the Aggrieved Employees with all off-duty rest breaks and meal periods;
- b) CTDI failed to pay Escriba and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more rest breaks;

- c) CTDI failed to pay Escriba and the Aggrieved Employees one hour's pay for each workday in which it failed to provide them with one or more meal periods;
- d) CTDI failed to compensate Escriba and the Aggrieved Employees for all hours worked at the correct rates of pay;
- e) CTDI failed to provide Escriba and the Aggrieved Employees with accurate and complete wage statements;
- f) CTDI failed to timely pay Escriba and the Aggrieved Employees all earned and unpaid wages during their employment with CTDI; and
- g) CTDI failed to timely pay Escriba and those Aggrieved Employees who are former employees all earned and unpaid wages at the termination of their employment with CTDI.

Accordingly, Escriba now seeks civil penalties on behalf of herself and the Aggrieved Employees based on CTDI's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The term "Mercantile Industry" means "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." § 2(H). At all relevant times during the applicable limitations period, CTDI produced and provided other businesses with routers and modems. Accordingly, Escriba and the other aggrieved employees are entitled to the protections provided under the Wage Order.

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of Wage Order 7 states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the

meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the- job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

...

- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day’s written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

In relevant part, Section 12 of Wage Order 7 states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (b) (a) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As alleged herein, CTDI intentionally failed to provide all off-duty rest breaks and/or meal periods to Escriba and the Aggrieved Employees as required by law. As a result, CTDI violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Escriba seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay (penalties set by Labor Code §558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Failure to Pay All Wages Earned for All Hours Worked at the Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all

hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2(G) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6)

days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1 \frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight 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.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Because CTDI failed to pay Escriba and the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, Escriba seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of Labor Code §510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code §558);
2. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)); and
3. \$100 for each Aggrieved Employee for each initial violation of Labor Code §1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699, subdivision (f)(2)); and
4. \$100 for each underpaid employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by Labor Code § 1197.1).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

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

At all relevant times during the applicable limitations period, CTDI violated California Labor Code § 226 by failing to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226. CTDI failed to state in the wage statements it issued to Escriba and other Aggrieved Employees all the hours worked and wages earned, including, but not limited to, regular, overtime, and double time wages for work they performed off-the-clock.

Accordingly, Escriba seeks civil penalties on behalf of herself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due

and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of CTDI's failures to pay Escriba and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided rest and meal periods within the time periods set by California Labor Code § 204, CTDI failed to timely pay all wages due during employment. Accordingly, Escriba seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for

purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, CTDI failed to provide Escriba and the Aggrieved Employees all wages owed, including but not limited to all regular, overtime, and double time wages for all off-the-clock work they performed. As a result, CTDI willfully failed to pay Escriba and the Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, CTDI has violated California Labor Code §§ 201, 202 and 203.

Accordingly, on behalf of herself and other Aggrieved Employees, Escriba seeks civil penalties from CTDI as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in

which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f) (2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 5 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

CTDI has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for

missed meal and rest periods, and records pertaining to all unpaid hours worked. Accordingly, Escriba seeks civil penalties from CTDI on behalf of herself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Gabriela Escriba

Louis Benowitz, Esq.

Communications Test Design, Inc.
c/o Agent for Service of Process
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Protech Staffing Services, Inc.
c/o Agent for Service of Process
Marla Merhab Robinson
1551 N Tustin Ave, Suite 1020
Santa Ana, CA 92705

Littler Mendelson, P.C.
c/o James E. Hart, Esq.
18565 Jamboree Rd Ste 800
Irvine, CA 92612-2535

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 16530 Ventura Blvd., Suite
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 States Postal Service. It is the practice that correspondence is deposited
with the United States Postal Service the same day it is submitted for
mailing.

10 On Friday, July 30, 2021, I served the foregoing document described as
11 **PLAINTIFF'S FIRST AMENDED COMPLAINT** on interested parties by placing a true
and correct copy thereof enclosed in a sealed envelope, with postage fully
prepaid, addressed as follows:

12 **COMMUNICATIONS TEST DESIGN, INC.**
13 **c/o CSC - Trudy Desbiens**
14 **Agent for Service of Process**
15 **2710 Gateway Oaks Drive, Suite 150N**
Sacramento, CA 95833

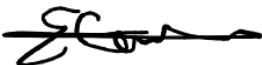
16 **PROTECH STAFFING SERVICES, INC.**
17 **c/o Marla Merhab Robinson**
18 **Agent for Service of Process**
1551 N Tustin Ave, 1020
Santa Ana, CA 92705

19 XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for
20 collection and mailing, in the course of ordinary business practice, with
other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 203,
Encino, California 91436.

21 EXECUTED on Friday, July 30, 2021, at Los Angeles, California.

22 XXXX (State) I declare under penalty of perjury under the laws of the State
23 of California that the above is true and correct.

24 _____ (Federal) I declare that I am employed in the office of a member of the
25 bar of this court at whose direction the service was made.

26 
27 Elizabeth Contreras
28