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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Helaine Heid; Ingrid Leeman; and) Case No. 3:22-cv-01445-MMA-AGS
Miriam Saraiva, individually, and)
on behalf of themselves and all) **CLASS ACTION**
others similarly situated,)

Plaintiffs,

vs.

CyraCom International, Inc., a)
Delaware corporation, and DOES 1)
through 10, inclusive,)

Defendants.)

**FIRST AMENDED
COLLECTIVE AND CLASS
ACTION COMPLAINT AND
REPRESENTATIVE ACTION
UNDER THE PRIVATE
ATTORNEYS GENERAL ACT**

Initial Complaint: September 26,
2022

DEMAND FOR JURY TRIAL

1
2 Plaintiffs Helaine Heid (“Plaintiff Heid”) Ingrid Leeman (“Plaintiff
3 Leeman,” collectively “California Plaintiffs”), and Miriam Saraiva
4 (“Plaintiff Saraiva”) (collectively, “Plaintiffs”), individually, and on behalf
5 of themselves and all other persons similarly situated, file this First
6 Amended Collective and Class Action Complaint and Representative
7 Action Under the Private Attorneys General Act (the “PAGA”) (this
8 complaint is hereinafter referred to as the “FAC”) against Defendant
9 CyraCom International, Inc. (hereafter “CyraCom” or “Defendant”) and
10 DOES 1 through 10 (collectively, “Defendants”) and allege as follows:

11 **PRELIMINARY STATEMENT**

12 1. This FAC is brought as a collective action and class action
13 under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA”)
14 and Fed. R. Civ. P. 23 (“Rule 23”), respectively. The claims in the FAC are
15 brought under the following federal and state statutes: (1) the FLSA; (2)
16 California Labor Code §§ 201-203, 226, 226.7, 227.3, 510, 512, 1194,
17 1194.2, 2802, and applicable Industrial Welfare Commission Order (“Wage
18 Order”); and (3) California Business & Profession § 17200, *et seq.* (the
19 “UCL”). The claims are premised on CyraCom’s failure to pay Plaintiffs
20 and other similarly-situated employees (referred to herein as the
21 “Collective Members” and “Class Members”) all earned minimum and
22 overtime wages, failure to provide compliant meal-and-rest periods, failure
23 to pay all vested vacation, failure to furnish accurate wage statements,
24 failure to reimburse reasonable and necessary business expenses, failure
25 to pay all earned wages due upon separation, and violations of the UCL.

26 2. In addition, California Labor Code § 2698, *et seq.* (also known
27 as the “PAGA”) creates specified remedies that are triggered when an
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1 employer violates any provision of the California Labor Code specified in §
2 2699.5. On September 26, 2022, California Plaintiffs gave notice of these
3 alleged violations to the California Labor and Workforce Development
4 Agency (“LWDA”) and to the agent for service of process for CyraCom (the
5 “PAGA Notice,” a true and correct copy of which is attached hereto as
6 **Exhibit A**). California Plaintiffs did not receive a response from the
7 LWDA and CyraCom failed to cure or remedy the alleged violations of the
8 California Labor Codes identified in the initial Complaint, this FAC and
9 the PAGA Notice within the requisite statutory period. As a result,
10 Plaintiffs hereby amend the initial Complaint to add a claim under the
11 PAGA as mandated by § 2699.3(a)(2)(C).

12 3. Plaintiffs, the Collective Members and the Class Members are
13 current and former employees of CyraCom. Plaintiffs bring this FAC on
14 behalf of themselves and all similarly-situated current and former
15 Interpreters (also referred to as the “Covered Positions”) of CyraCom.¹

16 4. The FLSA Collective consists of all current and former
17 Interpreters, or other similarly titled employees, who were employed by
18 CyraCom starting from September 26, 2019 (three years prior to the date
19 the initial Complaint was filed), up to the present (the “Collective
20 Members”).

21 5. The Rule 23 California Class consists of all current and former
22 Interpreters, or other similarly titled employees, who were employed by

23 ¹ For purposes of the FAC, the term “Interpreters” is exclusively a job title
24 used for the purpose of classifying the putative class of similarly situated
25 individuals, is not necessarily the job title of Plaintiffs and the putative
26 class members, and has no bearing or relation to any specialization, skill,
27 education, training, or other qualification that might otherwise be
28 associated with such a job title.

1 CyraCom within the state of California starting from September 26, 2018
2 (four years prior to the date the initial Complaint was filed), up to the
3 present (the “California Class Members”).

4 6. Under the FLSA, employers must pay all non-exempt
5 employees an overtime wage premium of pay one and one-half times their
6 regular rate of pay for all time they spend working over 40 hours in a
7 workweek, and must include all remuneration when calculating the
8 overtime rate of pay. CyraCom failed to pay Plaintiffs and the Collective
9 Members one and one-half times their regular rate of pay for all time they
10 spent working over 40 hours in a workweek and CyraCom did not include
11 all nondiscretionary bonuses in calculating their regular rate of pay.
12 Plaintiffs therefore bring this FAC as a collective action under 29 U.S.C. §
13 216(b) for CyraCom’s violation of federal law as detailed further below.

14 7. Under the FLSA “[r]est periods of short duration, running from
15 5 minutes to about 20 minutes. . . must be counted as hours worked.” *See*
16 29 C.F.R. 785.18; *see also Maui v. Petrochem Insulation, Inc.*, 5 F.4th
17 1068, 1074 (9th Cir. 2021). CyraCom violated the FLSA by routinely failing
18 to pay Plaintiffs and the Collective Members for rest breaks shorter than
19 20 minutes.

20 8. The wage requirements of the FLSA “will not be met where the
21 employee ‘kicks-back’ directly or indirectly to the employer or to another
22 person for the employer’s benefit the whole or part of the wage delivered
23 to the employee.” *See* 29 C.F.R. 531.35. “For example, if it is a requirement
24 of the employer that the employee must provide tools of the trade which
25 will be used in or are specifically required for the performance of the
26 employer’s particular work, there would be a violation of the Act in any
27 workweek when the cost of such tools purchased by the employee cuts into
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1 the minimum or overtime wages required to be paid him under the Act.”
2 *Id.* CyraCom violated the FLSA by requiring Plaintiffs and the Collective
3 Members to provide the internet service, internet equipment and
4 replacement computer equipment necessary to complete their Interpreter
5 job duties for CyraCom while failing to reimburse Plaintiffs and the
6 Collective Members for the costs of the same.

7 9. Under California law and the applicable Wage Order,
8 Defendants were required to pay California Plaintiffs and California Class
9 Members an hourly wage for each and every hour worked. *See* Cal. Lab.
10 Code §§ 200, 204, 1194, and 1198. During the California Class Period (as
11 defined below), California Plaintiffs and California Class Members
12 regularly and consistently worked before and after their shifts, including
13 meal periods, for which they were not paid an hourly wage in violation of
14 California Law.

15 10. Under California law and the applicable Wage Order, “[a]ny
16 work in excess of [8] hours in one workday and any work in excess of 40
17 hours in any one workweek and the first [8] hours worked on the seventh
18 day of work in any one workweek shall be compensated at the rate of no
19 less than one and one-half times the regular rate of pay for an employee.”
20 *See* Cal. Lab. Code § 510(a). Further, “[a]ny work in excess of 12 hours in
21 one day shall be compensated at the rate of no less than twice the regular
22 rate of pay for an employee. In addition, any work in excess of eight hours
23 on any seventh day of a workweek shall be compensated at the rate of no
24 less than twice the regular rate of pay of an employee.” *Id.* During the
25 California Class Period, California Plaintiffs and California Class
26 Members regularly and consistently worked more than 8 hours in a day
27 and more than 40 hours in a week for which they were not paid one and
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1 one-half times or double their regular rate of pay and CyraCom did not
2 include all nondiscretionary bonuses in calculating their regular rate of
3 pay.

4 11. Under California law and the applicable Wage Order,
5 Defendants were required to provide California Plaintiffs and California
6 Class Members compliant meal periods. *See* Cal. Lab. Code §§ 226.7, 512;
7 *see also* Wage Order 4 § 11. California law also requires Defendants to pay
8 California Plaintiffs and California Class Members premium wages (at
9 their regular rate of pay) when Defendants failed to provide California
10 Plaintiffs and California Class Members compliant meal periods.
11 Defendants violated California law by failing to provide California
12 Plaintiffs and California Class Members off-duty, uninterrupted 30-
13 minute meal breaks, free from employer control, for every 5 hours worked.
14 California Plaintiffs and California Class Members regularly and
15 consistently worked over 5 and 10 hours a day and were unable to take a
16 first meal period or second meal period when they worked more than 10
17 hours in a day. On other occasions, California Plaintiffs and California
18 Class Members' meal periods were cut short of 30 minutes, interrupted, or
19 taken late. On other occasions, California Plaintiffs and California Class
20 Members worked through their meal periods, but were neither paid an
21 hourly wage for the time worked (as alleged above), nor were they paid a
22 premium wage at their regular rate of pay.

23 12. Under California law and the applicable Wage Order,
24 Defendants were required to provide California Plaintiffs and California
25 Class Members compliant rest periods of at least 10 minutes, free from
26 employer control, for every 4 hours worked or major fraction thereof. *See*
27 Cal. Lab. Code § 226.7; *see also* Wage Order 4 § 12. Defendants violated
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1 California law by not providing California Plaintiffs and California Class
2 Members with 10 minute rest periods for every four hours worked or major
3 fraction thereof. California Plaintiffs and California Class Members' rest
4 breaks were regularly and consistently interrupted, less than 10 minutes,
5 and/or not duty free. California Plaintiffs and California Class Members
6 were not paid a premium wage (at their regular rate of pay) for these rest-
7 period violations.

8 13. Under California law, Defendants must allow all accrued and
9 unused Paid Time Off ("PTO") to carryover into the following calendar year
10 and must pay their employees all accrued and unused PTO at the time of
11 termination at the employees' final rate of pay. *See* Cal. Lab. Code § 227.3.
12 Under California law, PTO is a wage that vests once accrued. Defendants
13 had a PTO policy whereby California Plaintiffs and California Class
14 Members would accrue PTO each payroll period based on their completed
15 years of service. However, Defendants violated California law by capping
16 the amount of PTO that can be carried over to the following calendar year
17 at 40 hours. As such, California Plaintiffs and California Class Members
18 who accrued more than 40 hours of PTO and which were not carried over
19 to the following calendar year were deprived of earned wages. Moreover,
20 Defendants terminated California Plaintiffs and other California Class
21 Members without paying them the PTO wages they did accrue, in violation
22 of California law, and employed policies and procedures which ensured
23 California Plaintiffs and California Class Members would not receive their
24 accrued and vested PTO wages upon termination.

25 14. Under California law, Defendants were required to provide
26 Plaintiff Heid and California Class Members, "semimonthly or at the time
27 of each payment of wages," with accurate wage statements showing,
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1 among other things: “(1) gross wages earned, (2) total hours worked by the
2 employee..., [3] net wages earned, ... [4] the name and address of the legal
3 entity that is the employer ..., and [5] all applicable hourly rates in effect
4 during the pay period and the corresponding number of hours worked at
5 each hourly rate by the employee...” Cal. Lab. Code § 226(a). By failing to,
6 among other things, include all hours worked in the wage statements,
7 failing to accurately reflect all wages earned, failing to include premium
8 wages for meal-and-rest period violations, and failing to include the correct
9 name of the employer, Defendants knowingly and intentionally failed to
10 provide Plaintiff Heid and California Class Members with accurate wage
11 statements. *See Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5th 93
12 (2022).

13 15. Under California law, Defendants are required to adequately
14 indemnify California Plaintiffs and California Class Members for
15 employment-related business expenses. *See* Cal. Lab. Code § 2802. As
16 alleged above, California Plaintiffs and California Class Members were
17 required to provide internet services, internet equipment and replacement
18 computer equipment necessary to complete their Interpreter job duties for
19 CyraCom. Defendants failed to reimburse California Plaintiffs and the
20 California Class Members for these business expenses.

21 16. Under California law, Defendants are required to pay
22 California Plaintiffs and California Class Members their final wages
23 immediately upon termination, or within 72 hours of voluntarily leaving
24 employment. *See* Cal. Lab. Code §§ 201-203. As alleged above, California
25 Plaintiffs and California Class Members worked hours for which they were
26 not properly paid and were deprived of vested PTO wages and therefore
27 not paid all wages due upon separation. Accordingly, California Plaintiffs
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1 and California Class Members, who are former employees, are entitled to
2 waiting-time penalties. *Id.*

3 17. Under California law, Defendants' violations of the FLSA and
4 aforementioned California Labor Codes constitutes a violation of the UCL.

5 **JURISDICTION AND VENUE**

6 18. This Court has subject matter jurisdiction under 28 U.S.C. §
7 1331 and 29 U.S.C. § 201, *et seq.*, because this civil action arises under the
8 laws of the United States.

9 19. Venue is proper in this district under 28 U.S.C. § 1391(b)(ii)
10 because acts giving rise to the claims of Plaintiffs, Collective Members and
11 Class Members occurred within this district.

12 20. From approximately July 15, 2009 through the present,
13 Plaintiff Heid was a resident of San Diego County, California and
14 performed work for CyraCom within the state of California.

15 21. From approximately December 27, 2012 through August 12,
16 2022, Plaintiff Leeman was a resident of Santa Barbara County, California
17 and performed work for CyraCom within the state of California.

18 22. From approximately September 23, 2019 through July 2020,
19 Plaintiff Saraiva was a resident of Hillsborough County, Florida and
20 performed work for CyraCom within the state of Florida.

21 23. CyraCom regularly conducts business in and has engaged in
22 the wrongful conduct alleged herein—and thus is subject to personal
23 jurisdiction—in this judicial district.

24 24. Plaintiffs, the Collective Members, and the California Class
25 Members in their work for CyraCom were employed by an enterprise
26 engaged in commerce with annual gross sales of at least \$500,000.

1 **PARTIES**

2 25. At all times material to the matters alleged in this FAC,
3 Plaintiff Heid is a current employee of CyraCom, and Plaintiffs Leeman
4 and Saraiva are former employees.

5 26. Plaintiff Heid is a full-time employee of CyraCom, who works
6 as an Interpreter within the state of California from approximately July
7 15, 2009 through the present.

8 27. Plaintiff Leeman was both a part-time and full-time employee
9 of CyraCom, who worked as an Interpreter within the state of California
10 from approximately January 1, 2013 through approximately March 12,
11 2020.

12 28. Plaintiff Saraiva was a full-time employee of CyraCom, who
13 worked as an Interpreter within the state of Florida from approximately
14 September 23, 2019 through approximately July 2020.

15 29. The Collective Members are all current and former Interpreters
16 who worked for CyraCom in the United States at any point in the three
17 years preceding the filing of the initial Complaint to the present (the
18 “FLSA Collective Period”).

19 30. The California Class Members are all current and former
20 Interpreters who worked for CyraCom in the state of California at any
21 point in the four years preceding the filing of the initial Complaint to the
22 present (the “California Class Period”).

23 31. The Collective and California Class Members are non-exempt
24 employees under the FLSA and California law and therefore entitled to
25 minimum wage, overtime, compliant meal-and-rest periods, and
26 reimbursement of reasonable and necessary business expenses.

27 32. At all material times, CyraCom International, Inc. does
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1 business as CyraCom.

2 33. At all material times, CyraCom International, Inc. is a
3 Delaware corporation duly licensed to transact business in the state of
4 California.

5 34. Under the FLSA and California law, CyraCom is an employer.
6 At all relevant times, CyraCom had the authority to hire and fire
7 employees, supervised and controlled the work schedules or the conditions
8 of employment, determined the rate and method of payment, and
9 maintained employment records in connection with Plaintiffs' employment
10 with CyraCom. As a person who acted in the interest of CyraCom in
11 relation to the company's employees, it is subject to liability under the
12 FLSA and California law.

13 35. At all material times, Plaintiffs, the Collective Members and
14 California Class Members were employees of CyraCom as defined by the
15 FLSA, 29 U.S.C. § 203(e)(1) and California law.

16 36. At all material times, Plaintiffs, the Collective Members and
17 California Class Members were non-exempt employees under 29 U.S.C. §
18 213(a)(1) and California law.

19 37. California Plaintiffs have given their written consent to be
20 named parties in this action under 29 U.S.C. § 216(b), true and accurate
21 copies of which are attached to this FAC as **Exhibits B and C**. Plaintiff
22 Saraiva has given her written consent to be a named party in this action
23 under 29 U.S.C. § 216(b), a true and accurate copy of which is attached to
24 this FAC as **Exhibit D**.

25 38. The true names and capacities, whether individual, corporate,
26 associate, representative, alter ego or otherwise, of defendants named in
27 this action as DOES 1 through 10 inclusive are presently unknown to
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1 Plaintiffs, who therefore sue such defendants by such fictitious names.
2 Plaintiffs will seek to amend this FAC to allege the true names and
3 capacities of DOES 1 through 10 when the same have been ascertained.
4 Plaintiffs are informed and believe, and based thereon alleges, that DOES
5 1 through 10 were and/or are, in some manner or way, responsible for and
6 liable to Plaintiffs and the Collective and Class Members for the events,
7 happenings, and damages set forth below.

8 39. Plaintiffs are informed and believe, and based thereon alleges,
9 that at all relevant times mentioned herein, Defendants acted as agents,
10 employees, supervisors, partners, conspirators, servants and/or joint
11 venturers of each other, and in doing the acts hereafter alleged, were
12 acting within the course, scope, and authority of such agency, employment,
13 partnership, conspiracy, enterprise and/or joint venture, and with the
14 express and/or implied permission, knowledge, consent, authorization and
15 ratification of their co-defendants.

16 **FACTUAL ALLEGATIONS**

17 40. CyraCom provides remote translation and interpretation
18 services to its clients worldwide.²

19 41. The Collective Members are all current and former Interpreters
20 who worked for CyraCom nationwide during the FLSA Collective Period.
21 The Collective Members are non-exempt from the FLSA's overtime
22 requirements.

23 42. The California Class Members are all current and former
24 Interpreters who worked for CyraCom in California during the California
25 Class Period. The California Class Members are non-exempt employees

26 ² See <https://www.cyacominternational.com/video-interpretation/> (last
27 visited Nov. 17, 2022).

1 and therefore entitled to an hourly wage for each and every hour worked,
2 overtime, compliant meal-and-rest periods, vested PTO wages, and
3 reimbursement for all reasonable and necessary business expenses
4 incurred.

5 43. Plaintiffs continue to work or worked for CyraCom as
6 Interpreters, providing two-way language interpretation for its clients. At
7 all relevant times, Plaintiff Heid worked remotely from her residence in
8 San Diego County, California. At all relevant times, Plaintiff Leeman
9 worked remotely from her residence in Santa Barbara County, California.
10 At all relevant times, Plaintiff Saraiva worked in person and remotely in
11 Hillsborough County, Florida. The Collective and California Class
12 Members similarly work remotely using CyraCom's propriety technology,
13 hardware, and software.

14 44. At all relevant times, Plaintiffs are or were compensated on an
15 hourly basis at a rate of approximately \$20.00.

16 45. At all relevant times, Plaintiffs worked more than 8 hours a day
17 and/or more than 40 hours per week.

18 46. During every workweek, Plaintiffs, the Collective Members and
19 California Class Members were paid on an hourly basis.

20 47. Plaintiffs, the Collective Members, and the California Class
21 Members performed their duties, work and provided their interpretation
22 services for CyraCom in person and/or remotely. As part of its remote
23 design, CyraCom issues Plaintiffs, the Collective Members and the
24 California Class Members computer, audio and video equipment for use in
25 Plaintiffs', the Collective Members' and the California Class Members'
26 homes. This CyraCom equipment contains CyraCom's proprietary
27 software programs which Plaintiffs, the Collective Members and the
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1 California Class Members must log on to perform their job functions for
2 CyraCom.

3 48. At all relevant times, Plaintiffs, the Collective Members, and
4 the California Class Members have been subject to CyraCom's policy of
5 requiring Plaintiffs, the Collective Members and the California Class
6 Members to spend time working before clocking in at the beginning of their
7 shifts and after clocking out at the end of their shifts.

8 49. Specifically, Plaintiffs, the Collective Members, and the
9 California Class Members must set up the required equipment and
10 perform quality checks before "clocking in." In addition, Plaintiffs, the
11 Collective Members and the California Class Members are required to
12 spend time booting up and logging into their computers before clocking in
13 for their shifts. As a result, Plaintiffs, the Collective Members and the
14 California Class Members were being required to perform pre-shift work
15 for which they were not being compensated. Moreover, Plaintiffs, the
16 Collective Members and the California Class Members are required to
17 clock out at the end of their shift before logging off, shutting down their
18 computers and cleaning equipment issued by CyraCom. As a result,
19 Plaintiffs, the Collective Members and the California Class Members were
20 being required to perform post-shift work for which they were not being
21 compensated.

22 50. As a result of the pre- and post-shift work, Plaintiffs, the
23 Collective Members and the California Class Members typically spend at
24 least 15 minutes or more each shift that goes completely uncompensated,
25 whether at a regular rate of pay or an overtime rate of pay. In all instances,
26 CyraCom's failure to compensate Plaintiffs, the Collective Members and
27 the California Class Members for such time violates the minimum wage
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1 provisions of the FLSA and California law. In all instances wherein
2 Plaintiffs, the Collective Members and the California Class Members work
3 over 40 hours in a workweek, CyraCom's failure to compensate Plaintiffs,
4 the Collective Members and the California Class Members for such time –
5 at one and one-half times their regular rate of pay – violates the overtime
6 provisions of the FLSA and California law. In all instances wherein
7 California Plaintiffs and California Class Members worked more than 8
8 hours in, but not over 40 hours in a workweek, CyraCom's failure to
9 compensate California Plaintiffs and the California Class Members for
10 such time – at one and one-half times their regular rate of pay – violates
11 the overtime provisions of California law.

12 51. Plaintiffs, the Collective Members and the California Class
13 Members are only “clocked-in” and compensated when they are logged into
14 CyraCom's proprietary software system. Anytime that Plaintiffs, the
15 Collective Members and the California Class Members need to take a rest
16 or meal break, they must log out of CyraCom's proprietary software
17 system. As a result, Plaintiffs, the Collective members and the California
18 Class Members are not paid for rest breaks of 20 minutes or less.

19 52. CyraCom's failure to pay Plaintiffs, the Collective Members
20 and the California Class Members for rest breaks of 20 minutes or less
21 violates the minimum wage provisions of the FLSA and California law in
22 all instances. In all instances wherein Plaintiffs, the Collective Members
23 and the California Class Members worked over 40 hours in a workweek,
24 CyraCom's failure to compensate Plaintiffs, the Collective Members and
25 the California Class Members for any break of 20 minutes or less violates
26 the overtime provisions of the FLSA and California law. In all instances
27 wherein California Plaintiffs and California Class Members worked more
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1 than 8 hours in, but not over 40 hours in a workweek, CyraCom's failure
2 to compensate California Plaintiffs and the California Class Members for
3 any break of 20 minutes or less violates the overtime provisions of
4 California law.

5 53. CyraCom employed California Plaintiffs and California Class
6 Members for work periods of more than 5 and 10 hours a day, entitling
7 them to first and second meal periods of at least 30 minutes each.
8 CyraCom, however, failed to provide California Plaintiffs and California
9 Class Members duty-free meal periods of at least 30 minutes for every five
10 hours worked. As a result, California Plaintiffs and California Class
11 Members missed their meal periods, worked through the meal periods, the
12 meal periods were interrupted, or were taken late. By failing to provide
13 California Plaintiffs and California Class Members with 30-minute, off
14 duty, compliant meal breaks for every five hours worked, CyraCom owes
15 California Plaintiffs and California Class Members premium wages (at
16 their regular rate of pay) for these meal period violations.

17 54. CyraCom employed California Plaintiffs and California Class
18 Members for work periods of four hours or more without rest periods of at
19 least 10 minutes of rest time for every four hours worked, or major fraction
20 thereof. In addition, the rest breaks were regularly interrupted, less than
21 10 minutes, and/or on duty. By failing to provide California Plaintiffs and
22 California Class Members with 10-minute, off duty, compliant rest breaks
23 for every four hours worked or major fraction thereof, CyraCom owes
24 California Plaintiffs and California Class Members premium wages (at
25 their regular rate of pay) for these rest period violations.

26 55. CyraCom has a policy whereby California Plaintiffs and
27 California Class Members can accrue PTO each pay period based on their
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1 completed years of service. But the maximum amount of PTO that can be
2 carried over to the next year is 40 hours. As such, CyraCom was depriving
3 California Plaintiffs and California Class Members of earned wages.

4 56. By failing to provide Plaintiff Heid and California Class
5 Members wage statements showing all hours worked, all wages earned,
6 including meal-and-rest premiums for meal and rest period violations, and
7 the correct hourly rates for each hour worked, CyraCom knowingly and
8 intentionally violated California Labor Code §§ 226, 1174(d), 1198 and
9 Wage Order No. 4. *See also Naranjo, supra*, 13 Cal.5th 93.

10 57. CyraCom requires Plaintiffs, the Collective Members and the
11 California Class Members to supply their own telephone, telephone
12 service, highspeed internet, routers, modems and replacement computer
13 equipment which are necessary for the Plaintiffs, the Collective Members
14 and the California Class Members to perform their job duties for CyraCom.
15 However, CyraCom fails to reimburse Plaintiffs, the Collective Members
16 and the California Class Members for these business expenses required by
17 CyraCom. As a result, CyraCom has violated the FLSA and California law.

18 58. CyraCom failed to pay Plaintiff Leeman and California Class
19 Members all wages due to them immediately upon termination, or within
20 72 hours of voluntarily leaving employment.

21 59. As alleged herein, CyraCom's violations of the FLSA and
22 California's labor laws constitute an unfair, fraudulent or unlawful
23 business practice under the UCL.

24 **COLLECTIVE ACTION ALLEGATIONS**

25 60. Plaintiffs and the Collective Members reallege and incorporate
26 by reference all allegations in all preceding paragraphs.

27 61. Plaintiffs bring this action under 29 U.S.C. § 216(b) on their
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own behalf, and as representatives of individuals similarly situated, who are current or former Interpreters employed by CyraCom.

62. CyraCom subjected all its Interpreters, including Plaintiffs and the Collective Members, to its policy and practice of not paying them minimum wage or overtime for all time spent setting up equipment; booting up computers and launching CyraCom software; logging out of CyraCom software; shutting down computers; taking down audio and video equipment; and cleaning and maintaining equipment in violation of 29 U.S.C. §§ 206 and 207.

63. CyraCom subjected all its Interpreters, including Plaintiffs and the Collective Members, to its policy of failing to pay Plaintiffs and the Collective Members for all breaks of 20 minutes or less in violation of 29 U.S.C §§ 206 and 207.

64. CyraCom subjected all its Interpreters, including Plaintiffs and the Collective Members, to its policy of requiring Plaintiffs and the Collective Members to provide highspeed internet service, equipment and replacement computer equipment without reimbursing Plaintiffs and the Collective Members for same.

65. Plaintiffs' claims stated in this FAC are essentially the same as those of the Collective Members. This action is properly maintained as a collective action because in all pertinent aspects the employment relationship of individuals similarly situated to Plaintiffs is identical or substantially similar.

66. The Collective Members perform or have performed the same or similar work as Plaintiffs.

67. CyraCom's failure to pay minimum wage and overtime compensation required by the FLSA results from generally applicable

1 policies or practices, and does not depend on the personal circumstances of
2 Plaintiff or the Collective Members.

3 68. Although the exact amount of damages may vary among the
4 Collective Members, the damages for the Collective Members can be easily
5 calculated by a simple formula. The claims of all Collective Members arise
6 from a common nucleus of facts. Liability is based on a systematic course
7 of wrongful conduct by CyraCom that caused harm to the Collective
8 Members.

9 69. As such, Plaintiffs brings their FLSA minimum wage and
10 overtime claims as a collective action on behalf of the following FLSA class:

11 **All of CyraCom's current and former**
12 **Interpreters and those with similar job**
13 **duties, but different titles, who worked for**
14 **CyraCom in the United States during the**
FLSA Collective Period.

15 70. CyraCom's unlawful conduct, as described herein, is pursuant
16 to CyraCom's corporate policy or practice of minimizing labor costs by
17 refusing and/or failing to properly compensate its employees according to
18 the FLSA.

19 71. CyraCom is aware or should have known federal law prohibited
20 it from not paying Plaintiffs and the Collective Members all minimum
21 wage and overtime as detailed herein.

22 72. CyraCom's unlawful conduct has been widespread, repeated,
23 and consistent.

24 73. This action is properly brought and maintained as an opt-in
25 collective action under 29 U.S.C. § 216(b).

26 74. Upon information and belief, the individuals similarly situated
27
28

1 to Plaintiffs include hundreds, and likely thousands, of Interpreters
2 currently and/or formerly employed by CyraCom. Plaintiffs cannot state
3 the precise number of similarly-situated employees because that
4 information is solely in CyraCom's possession, custody, or control, but it
5 can be readily ascertained from its employment records.

6 75. Notice can be provided to the Collective Members by First Class
7 Mail to the last address known to CyraCom, via email at the last known
8 email address known to CyraCom, and by text message to the last known
9 telephone number known to CyraCom.

10 **RULE 23 CALIFORNIA CLASS DEFINITION AND ALLEGATIONS**

11 76. California Plaintiffs reallege and incorporate by reference all
12 allegations in all preceding paragraphs.

13 77. California Plaintiffs bring Claims for Relief in violation of
14 California wage-and-hour laws as a class action under Rule 23(a), (b)(2)
15 and (b)(3). California Plaintiffs bring these claims on behalf of themselves
16 and all members of the following Rule 23 California Class:

17 **All of CyraCom's current and former Interpreters**
18 **and those with similar job duties, but different**
19 **titles, who worked for CyraCom within California**
20 **during the California Class Period.**

21 78. In the alternative, and for the convenience of this Court and the
22 parties, California Plaintiffs may seek to certify subclasses at the time the
23 motion for class certification is filed.

24 79. **Numerosity (Rule 23(a)(1)).** The California Class Members
25 are so numerous that joinder of all members is impracticable. California
26 Plaintiffs are informed and believe that CyraCom employed greater than
27 100 people who satisfy the definition of the California Class Members.

1 80. **Existence of Common Questions of Law and Fact (Rule**
2 **23(a)(2)).** Common questions of law and fact exist as to California
3 Plaintiffs and the California Class Members including, but not limited to,
4 the following:

- 5 a. Whether CyraCom violated California law by failing to pay
6 California Class Members at the least the minimum wage
7 for all hours worked;
- 8 b. Whether CyraCom violated California law by failing to pay
9 California Class Members overtime compensation for all
10 overtime hours worked at one and one-half times their
11 regular rate of pay;
- 12 c. Whether CyraCom violated California law by failing to
13 provide California Class Members first and second meal
14 periods of at least 30-minutes when the shifts exceeded 5
15 and 10 hours of work, and not compensating employees with
16 one hour of pay at the employees' regular rate of
17 compensation for each workday that meal periods were not
18 provided;
- 19 d. Whether CyraCom violated California law by failing to
20 provide California Class Members daily rest periods of 10
21 minutes per 4 hours or major fraction thereof worked when
22 the shift exceeded three-and-a half hours and by failing to
23 compensate employees one hour's wages in lieu of rest
24 periods;
- 25 e. Whether CyraCom violated California law by capping the
26 amount of PTO hours that can be carried over into the
27 following calendar year;

- 1 f. Whether CyraCom violated California law by failing to
2 provide California Class Members accurate wage
3 statements;
- 4 g. Whether CyraCom violate California law by failing to
5 reimburse California Class Members for all reasonable and
6 necessary business expenses incurred;
- 7 h. Whether CyraCom violated California law by failing to
8 timely pay California Class Members all earned wages and
9 final paychecks due at the time of separation of employment;
- 10 i. Whether CyraCom's practices constitute an unfair,
11 fraudulent, or unlawful business practice under the UCL;
- 12 j. Whether CyraCom unlawfully failed to keep and maintain
13 accurate and true records of the hours worked by the
14 California Class Members as required by applicable law; and
- 15 k. The damages sustained and the proper measure of
16 restitution recoverable by the California Class Members.

17 81. **Typicality (Rule 23(a)(3)).** California Plaintiff's' claims are
18 typical of the California Class Members' claims. California Plaintiffs, like
19 the California Class Members, were subjected to CyraCom's illegal scheme
20 to maximize profits by depriving its employees of minimum wage and
21 overtime compensation, compliant meal-and-rest periods, vested PTO,
22 accurate wage statements, and shifting the cost of business expenses from
23 itself to the Class Members.

24 82. **Adequacy (Rule 23(a)(4)).** California Plaintiffs will fairly and
25 adequately represent and protect the interests of the California Class
26 Members. California Plaintiffs have retained counsel competent and
27 experienced in complex class actions, the FLSA, and state labor and
28

1 employment litigation.

2 **83. Injunctive and Declaratory Relief (Rule 23(b)(2)).** Class
3 certification of the Rule 23 claims is appropriate under Rule 23(b)(2)
4 because CyraCom acted or refused to act on grounds generally applicable
5 to the California Class Members, making appropriate declaratory relief
6 with respect to the Class Members as a whole.

7 **84. Predominance and Superiority of Class Action (Rule**
8 **23(b)(3)).** Class certification of the Rule 23 claims is also appropriate
9 under Rule 23(b)(3) because questions of law and fact common to the
10 California Class Members predominate over questions affecting only
11 individual members of the classes, and because a class action is superior
12 to other available methods for the fair and efficient adjudication of this
13 litigation. CyraCom's common and uniform policies and practices illegally
14 deprived California Plaintiffs and all similarly situated employees of
15 wages; thus, making the question of liability and damages much more
16 manageable and efficient to resolve in a class action, compared to hundreds
17 of individual trials. The damages suffered by individual California Class
18 Members are small compared to the expense and burden of individual
19 prosecution. In addition, class certification is superior because it will
20 obviate the need for unduly duplicative litigation that might result in
21 inconsistent judgments about CyraCom's practices.

22 **85.** California Plaintiffs intend to send notice to all California Class
23 Members to the extent required by Rule 23.

24 **COUNT ONE: FAIR LABOR STANDARDS ACT**

25 **OFF-THE-CLOCK WORK**

26 **86.** Plaintiffs and the Collective Members reallege and incorporate
27 by reference all allegations in all preceding paragraphs.

1 87. CyraCom has a consistent, enterprise-wide policy of requiring
2 Plaintiffs and the Collective Members to perform work while off the clock
3 and failing and/or refusing to compensate Plaintiffs and the Collective
4 Members their regular rate of pay for all non-overtime hours worked, and
5 one and one-half times their regular hourly rate for all the time they
6 worked over 40 hours in a workweek.

7 88. Plaintiffs and the Collective Members perform their duties and
8 provide their interpretation services for CyraCom remotely. As part of this
9 design, CyraCom issues Plaintiffs and the Collective Members computer,
10 audio and video equipment for use in Plaintiffs' and the Collective
11 Members' homes. This CyraCom equipment contains its proprietary
12 software programs which Plaintiffs and the Collective Members must log
13 on to perform their job duties.

14 89. At all relevant times, Plaintiffs and the Collective Members
15 have been subject to CyraCom's policy of requiring Plaintiffs and the
16 Collective Members to spend time working before clocking in at the
17 beginning of their shifts and after clocking out at the end of their shifts.

18 90. Specifically, Plaintiffs and the Collective Members must set up
19 the required equipment and perform quality checks before being "clocked
20 in" and therefore perform uncompensated work. Moreover, Plaintiffs and
21 the Collective Members are required to spend time booting up and logging
22 into their computers before clocking in for their shift and required to clock
23 out at the end of their shift before logging off, shutting down their
24 computers and cleaning and maintaining the equipment issued by
25 CyraCom.

26 91. As a result, Plaintiffs and the Collective Members typically
27 spend at least 15 minutes or more each shift that goes completely
28

1 uncompensated. In all instances, CyraCom's failure to compensate
2 Plaintiffs and the Collective Members for such time violates the minimum
3 wage provisions of the FLSA, 29 U.S.C. § 206. In all instances wherein
4 Plaintiffs and the Collective Members work over 40 hours in a workweek,
5 CyraCom's failure to compensate Plaintiffs and the Collective Members for
6 such time violates the overtime provisions of the FLSA, 29 U.S.C. § 207.

7 92. Although at this stage, Plaintiffs and the Collective Members
8 cannot state the exact amount owed for all time worked during their
9 employment, Plaintiffs and the Collective Members believe that such
10 information will become available during discovery. Furthermore, when
11 an employer fails to keep complete and accurate time records, employees
12 may establish the hours worked by their testimony, and the burden of
13 overcoming such testimony shifts to the employer.

14 93. CyraCom knew, or acted with reckless disregard, that its
15 refusal or failure to properly compensate Plaintiffs and the Collective
16 Members during their employment would violate the FLSA, and CyraCom
17 knew the FLSA's minimum wage and overtime requirements. As such,
18 CyraCom's conduct constitutes a willful violation of the FLSA.

19 94. As a result of CyraCom's failure or refusal to pay Plaintiffs and
20 the Collective Members for all hours worked, and CyraCom's failure or
21 refusal to pay Plaintiffs and the Collective Members one and one-half
22 times their regular rate of pay for all hours worked over 40 hours in any
23 workweek, CyraCom violated 29 U.S.C. §§ 206 and 207(a). Plaintiffs and
24 the Collective Members are therefore entitled to compensation of all
25 unpaid minimum wages and one and one-half times their regular rate of
26 pay, to be proven at trial, plus an additional equal amount as liquidated
27 damages, together with interest, reasonable attorney's fees, and costs.

COUNT TWO: FAIR LABOR STANDARDS ACTS
UNLAWFUL UNPAID BREAKS

95. Plaintiffs and the Collective Members reallege and incorporate by reference all allegations in all preceding paragraphs.

96. Under the FLSA, “[r]est periods of short duration, running from 5 minutes to about 20 minutes. . . must be counted as hours worked.” *See* 29 C.F.R. 785.18; *see also* *Mauia v. Petrochem Insulation, Inc.*, 5 F.4th 1068, 1074 (9th Cir. 2021). CyraCom violated the FLSA by routinely failing to pay Plaintiffs and the Collective Members for rest breaks shorter than 20 minutes.

97. Plaintiffs, the Collective Members, and the Class Members are only “clocked-in” and compensated when they are logged into CyraCom’s proprietary software system. Anytime that Plaintiffs, the Collective Members and the Class Members need to take a rest or meal break, they must log out of CyraCom’s proprietary software system. As a result, Plaintiffs, the Collective members and the Class Members are not paid for rest breaks of 20 minutes or less.

98. CyraCom’s failure to pay Plaintiffs and the Collective Members for breaks of 20 minutes or less violates the minimum wage provisions of the FLSA in all instances. In all instances wherein Plaintiffs and the Collective Members worked over 40 hours in a workweek, CyraCom’s failure to compensate Plaintiffs and the Collective Members for any break of 20 minutes or less violates the overtime provisions of the FLSA.

99. CyraCom is in possession of all of the time punch records and documents reflecting hours worked which Plaintiffs do not have access to at this time. Upon information and belief, these records will evidence all of the breaks for which Plaintiffs and the Collective Members were paid,

1 and all of the breaks for which Plaintiffs and the Collective Members were
2 not paid. Upon information and belief, these time punch records should be
3 readily available in discovery.

4 100. Although at this stage, Plaintiffs and the Collective Members
5 cannot state the exact amount owed for all time worked during their
6 employment, Plaintiffs and the Collective Members believe that such
7 information will become available during discovery. Furthermore, when
8 an employer fails to keep complete and accurate time records, employees
9 may establish the hours worked by their testimony, and the burden of
10 overcoming such testimony shifts to the employer.

11 101. CyraCom knew, or acted with reckless disregard, that its
12 refusal or failure to properly compensate Plaintiffs and the Collective
13 Members during their employment would violate the FLSA, and CyraCom
14 knew the FLSA's minimum wage and overtime requirements. As such,
15 CyraCom's conduct constitutes a willful violation of the FLSA.

16 102. As a result of CyraCom's failure or refusal to pay Plaintiffs and
17 the Collective Members their regular rate of pay for all hours worked and
18 one and one-half times their regular rate of pay for all hours worked over
19 40 hours in any workweek, CyraCom violated 29 U.S.C. §§ 206 and 207.
20 Plaintiffs and the Collective Members are therefore entitled to
21 compensation for unpaid wages at their regular rate of pay for non-
22 overtime hours worked and one and one-half times their regular rate of
23 pay for unpaid overtime hours, to be proven at trial, plus an equal amount
24 as liquidated damages, together with interest, reasonable attorney's fees,
25 and costs.

26 //

27 //

COUNT THREE: FAIR LABOR STANDARDS ACT
IMPROPER KICKBACKS

103. Plaintiffs and the Collective Members reallege and incorporate by reference all allegations in all preceding paragraphs.

104. The wage requirements of the FLSA “will not be met where the employee ‘kicks-back’ directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee.” *See* 29 C.F.R. 785.18. “For example, if it is a requirement of the employer that the employee must provide tools of the trade which will be used in or are specifically required for the performance of the employer’s particular work, there would be a violation of the Act in any workweek when the cost of such tools purchased by the employee cuts into the minimum or overtime wages required to be paid him under the Act.” *Id.*

105. CyraCom requires Plaintiffs and the Collective Members to supply their own highspeed internet service, internet equipment and replacement computer equipment. However, CyraCom fails to reimburse Plaintiffs and the Collective Members for such required service and equipment. As such, CyraCom has violated the overtime provisions of the FLSA.

106. Although at this stage, Plaintiffs and the Collective Members cannot state the exact amount owed for all time worked during their employment, Plaintiffs and the Collective Members believe that such information will become available during discovery. Furthermore, when an employer fails to keep complete and accurate time records, employees may establish the hours worked by their testimony, and the burden of overcoming such testimony shifts to the employer.

107. CyraCom knew, or acted with reckless disregard, that its refusal or failure to properly compensate Plaintiffs and the Collective Members during their employment would violate the FLSA, and CyraCom knew the FLSA's overtime requirements. As such, CyraCom's conduct constitutes a willful violation of the FLSA.

108. As a result of CyraCom's failure to reimburse Plaintiffs and the Collective Members for their internet service, internet equipment and replacement computer equipment, CyraCom violated the minimum wage and overtime provisions of the FLSA. Plaintiffs and the Collective Members are therefore entitled to minimum wage and overtime compensation, to be proven at trial, plus an equal amount as liquidated damages, together with interest, reasonable attorney's fees, and costs.

COUNT FOUR: VIOLATION OF CALIFORNIA'S MINIMUM WAGE REQUIREMENTS

(Cal. Lab. Code §§ 200, 218 and 1194)

**(Brought by California Plaintiffs on Behalf of Themselves and
Members of the California Rule 23 Class Against all Defendants)**

109. California Plaintiffs reallege and incorporate by this reference each of the preceding and foregoing paragraphs as if fully set forth herein.

110. In addition to the FLSA, California Plaintiffs seek to represent the proposed California Rule 23 Class as a basis to enforce equal or greater protections for wages owed that are offered by various California labor laws and local regulations as set forth herein. Because the practices alleged herein are uniform, systematic and continuous and affect each member of the California Rule 23 Class in a legally identical way, California Plaintiffs, at the appropriate time, will move to certify the California Class to the extent permitted by Rule 23.

111. Under Labor Code § 1194, employees must be separately paid an hourly wage for each and every hour worked. *Balasanyan v. Nordstrom, Inc.*, 913 F.Supp.2d 1001, 1007 (S.D. Cal. Dec. 20, 2012). A California employer cannot average an employee's compensation over the total number of hours worked to determine compliance with minimum wage obligations. *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 323-324 (2005) (employees must be compensated the minimum wage for "non-productive time"); *Cardenas v. McLane FoodServices, Inc.*, 796 F.Supp.2d 1246, 1252-1253 (C.D. Cal. Jul. 8, 2011) (employees must be paid a separate hourly rate for pre-and-post shift duties not covered by the piece-rate formula); *Balasanyan, supra*, 913 F.Supp.2d at p. 1007; *Gonzalez v. Downtown LA Motors, LP*, 215 Cal.App.4th 36, 48-49 (2013) (employees paid on a piece-rate basis must be paid a separate hourly rate for "non-repair tasks"). "The *Armenta* line of cases is quite clear: employees must be directly compensated at least minimum wage for all time spent on activities that do not allow them to *directly* earn wages." *Balasanyan, supra*, 913 F.Supp.2d at 1007 (emphasis added). The California Supreme Court has held that commissions earned in one pay period cannot be reassigned to other pay periods to meet California's strict wage and hour requirements. *Peabody v. Time Warner Cable, Inc.*, 174 Cal.Rptr.3d 287 (2014), 328 P.3d 1028 (2014).

112. California Plaintiffs and the proposed Rule 23 California Class were at all times subject to California's laws and regulations protecting the employees' entitlement to be paid and presumption to be paid an hourly wage for each and every hour worked.

113. As set forth above, California law requires employers, such as Defendants, to pay a separately hourly wage to all nonexempt employees

1 for each and every hour worked. Labor Code § 1194 provides that
2 employees are entitled to wages and compensation for work performed, at
3 the legal rate, including straight time, overtime, and double time.

4 114. Labor Codes §§ 218, 1194(a) and 1194.2(a) provide that an
5 employee who has not been paid the legal wage may recover the unpaid
6 balance and together with attorney's fees and costs of suit, as well as
7 liquidated damages in an amount equal to the wages unpaid and interest
8 thereon.

9 115. At all relevant times herein, Defendants were required to
10 compensate California Plaintiffs and the members of the California Rule
11 23 Class for all hours worked pursuant to Labor Code § 1194.

12 116. By uniformly and consistently failing to pay members of the
13 California Rule 23 Class for pre- and post-shift work, rest periods, and time
14 during which employees were not provided duty-free, uninterrupted meal
15 periods, Defendants violated the minimum wage requirements as set forth
16 in Labor Code §§ 218 and 1194.

17 117. California Plaintiffs are informed and believe and based
18 thereupon allege that the result of the unlawful and illegal policy and
19 practice caused damage in the nonpayment of minimum wages to
20 California Plaintiffs and the proposed California Rule 23 Class, in an
21 amount according to proof at trial.

22 118. California Plaintiffs are informed and believe that the
23 nonpayment of wages is fixed and ascertainable on a classwide basis such
24 that prejudgment interest on those wages is recoverable.

25 119. California Plaintiffs are informed and believe that the
26 nonpayment of minimum wages for all hours worked also entitles
27 California Plaintiffs and the proposed California Rule 23 Class to
28

1 attorneys' fees and costs, and liquidated damages in an amount equal to
2 the amount unlawfully unpaid according to Labor Code § 1194.2

3 **COUNT FIVE: VIOLATION OF CALIFORNIA'S OVERTIME LAWS**

4 **(Cal. Lab. Code §§ 510 and 1194)**

5 **(Brought by California Plaintiffs on Behalf of Themselves and**
6 **Members of the California Rule 23 Class Against all Defendants)**

7 120. California Plaintiffs reallege and incorporate by this reference
8 each of the preceding and foregoing paragraphs as if fully set forth herein.

9 121. In addition to the FLSA, California Plaintiffs seeks to represent
10 the proposed California Rule 23 Class as a basis to enforce equal or greater
11 protections for wages owed that are offered by California labor laws and
12 local regulations as set forth herein. Because the practices alleged herein
13 are uniform, systematic and continuous and affect each proposed member
14 of the California Rule 23 Class in a legally identical way, California
15 Plaintiffs, at the appropriate time will move to certify the California Class
16 to the extent permitted by Rule 23.

17 122. California Plaintiffs and the proposed California Rule 23 Class
18 were at all times subject to state laws and regulations protecting the
19 employees' entitlement to be paid and presumption to be paid overtime
20 wages for requisite hours worked beyond a normal work day or a normal
21 work week, as specified, without limitation, by Cal. Labor Code §§ 510,
22 1194 and applicable Wage Order.

23 123. During the California Class Period, California Plaintiffs and
24 members of the California Rule 23 Class were primarily engaged in non-
25 exempt duties. California Plaintiffs and members of the California Rule 23
26 Class were neither managers, administrative, nor professional employees.
27 No known exemptions to overtime apply to California Plaintiffs or
28

1 members of the California Rule 23 Class. Accordingly, California Plaintiffs
2 and members of the California Rule 23 Class were entitled to overtime
3 during the California Class Period.

4 124. California law requires employers, such as Defendants, to pay
5 overtime compensation to all nonexempt employees for all hours worked
6 over 40 hours per week, or over 8 hours per day. Labor Code § 204
7 establishes the fundamental right of all employees in California to be paid
8 wages, including straight time and overtime, in a timely fashion for their
9 work. This precludes any waiver for unpaid due and owing wages that
10 remain unpaid at the time of separation.

11 125. Labor Code § 510(a) states: “Any work in excess of [8] hours in
12 one workday and any work in excess of 40 hours in any one workweek and
13 the first [8] hours worked on the seventh day of work in any one workweek
14 shall be compensated at the rate of no less than one and one-half times the
15 regular rate of pay for an employee. Any work in excess of 12 hours in one
16 day shall be compensated at the rate of no less than twice the regular rate
17 of pay for an employee. In addition, any work in excess of eight hours on
18 any seventh day of a workweek shall be compensated at the rate of no less
19 than twice the regular rate of pay of an employee.”

20 126. Throughout the California Class Period, as alleged above,
21 California Plaintiffs and members of the California Class worked in excess
22 of 8 hours in a workday and/or 40 hours in a workweek. During the
23 California Class Period, Defendants did not pay California Plaintiffs and
24 members of the California Class overtime pay for all overtime hours
25 worked at one and one-half times their regular rate of pay.

26 127. As a direct and proximate result of Defendants’ unlawful
27 conduct, as set forth herein, California Plaintiffs and members of the
28

1 California Rule 23 Class have sustained damages, including loss of
2 earnings for hours of overtime worked on behalf of Defendants in an
3 amount to be established at trial, prejudgment interest, and costs and
4 attorneys' fees, pursuant to statute and other applicable law.

5 **COUNT SIX: VIOLATION OF CALIFORNIA'S MEAL-AND-REST**
6 **PERIOD REQUIREMENTS**

7 **(Cal. Lab. Code §§ 226.7, 512 and Applicable Wage Order)**

8 **(Brought by California Plaintiffs on Behalf of Themselves and**
9 **Members of the California Rule 23 Class)**

10 128. California Plaintiffs reallege and incorporates by this reference
11 each of the preceding and foregoing paragraphs as if fully set forth herein.

12 129. Labor Code § 226.7(b) provides, in pertinent part, that "[a]n
13 employer shall not require an employee to work during a meal or rest or
14 recovery period mandated pursuant to an applicable statute, or applicable
15 regulation, standard, or order of the Industrial Welfare Commission ..."

16 130. Labor Code § 512(a) provides that "[a]n employer may not
17 employ an employee for a work period of more than five hours per day
18 without providing the employee with a meal period of not less than 30
19 minutes, except that if the total work period per day of the employee is no
20 more than six hours, the meal period may be waived by mutual consent of
21 both the employer and employee."

22 131. Labor Code § 512(a) further provides that "[a]n employer may
23 not employ an employee for a work period of more than 10 hours per day
24 without providing the employee with a second meal period of not less than
25 30 minutes, except that if the total hours worked is no more than 12 hours,
26 the second meal period may be waived by mutual consent of the employer
27 and the employee only if the first meal period was not waived."

1 132. Section 11(A) of the applicable Wage Order provides that
2 “[u]nless the employee is relieved of all duty during a 30 minute meal
3 period, the meal period shall be considered an ‘on duty’ meal period and
4 counted as time worked.” An “on duty” meal period shall be permitted only
5 when the nature of the work prevents an employee from being relieved of
6 all duty and when by written agreement between the parties an on-the-job
7 paid meal period is agreed to. “The written agreement shall state that the
8 employee may, in writing, revoke the agreement at any time.”

9 133. Section 11(B) of the Wage Order provides that “[i]f an employer
10 fails to provide an employee a meal period in accordance with the
11 applicable provisions of this order, the employer shall pay the employee
12 one (1) hour of pay at the employee’s regular rate of compensation for each
13 workday that the meal period is not provided.”

14 134. California Plaintiffs and the members of the California Rule 23
15 Class consistently worked over five hours, and ten hours, per shift and
16 therefore were entitled to a first and second meal period of not less than
17 30 minutes prior to exceeding fifth and tenth hour of work.

18 135. California Plaintiffs and members of the California Rule 23
19 Class did not waive their meal periods by mutual consent with Defendants
20 or otherwise.

21 136. California Plaintiffs and members of the California Rule 23
22 Class did not enter into any written agreement with Defendants agreeing
23 to an on-the-job paid meal period.

24 137. Similarly, California Plaintiffs and members of the proposed
25 California Rule 23 Class were entitled to be authorized and permitted
26 paid, duty-free, uninterrupted 10 minute rest periods for every 4 hours
27 worked (or every major fraction thereof) or be paid for one hour of
28

1 “premium wage” at the employee’s regular rate of pay for each day that a
2 rest period was not authorized, permitted or otherwise compliant with
3 applicable law.

4 138. As alleged above, Defendants failed to comply with the required
5 meal periods and rest periods established by Labor Code §§ 226.7, 512, 516
6 and Sections 11 and 12 of the applicable Wage Order. Defendants did not
7 provide compliant meal periods and, as a result, California Plaintiffs and
8 members of the California Rule 23 Class missed their meal periods, took
9 short meal periods, and/or took late meal periods. In addition, the meal
10 periods that Plaintiffs and members of the California Rule 23 Class did
11 take were not duty free and free from employer control. Defendants further
12 did not authorize or permit compliant rest periods for every four hours
13 worked, or major fraction thereof, nor did it pay a “premium wage” for
14 missed, short, late or interrupted rest periods.

15 139. Pursuant to Section 11(B) and Section 12 of the applicable
16 Wage Order and Labor Code §226.7(c)—which states “[i]f an employer fails
17 to provide an employee a meal or rest ... period in accordance with a state
18 law ..., the employer shall pay the employee one additional hour of pay at
19 the employee’s regular rate of compensation for each workday that the
20 meal or rest ... period is not provided”— California Plaintiffs and the
21 members of the California Rule 23 Class are entitled to damages in an
22 amount equal to one additional hour of pay at each employee’s regular rate
23 of compensation for each work day that the meal or rest period was not
24 provided, in a sum to be proven at trial.

25 140. Pursuant to Labor Code § 218.6 and Civil Code § 3287,
26 California Plaintiffs and the members of the California Rule 23 Class seek
27 recovery of prejudgment interest on all amounts recovered herein.

141. California Plaintiffs limit the recovery of “premium wages” to one hour of pay per day for any missed, short, late, or uninterrupted meal period and to one hour of pay per day for any missed, short, late, or uninterrupted rest period, as demonstrated by the Division of Labor Standards Enforcement Policy Manual guidelines, for a maximum recovery of two premium wages payment per employee per day.

COUNT SEVEN: FAILURE TO PAY ALL ACCRUED AND VESTED
PTO WAGES

(Cal. Lab. Code § 227.3)

**(Brought by California Plaintiffs on Behalf of Themselves and
Members of the California Rule 23 Class)**

142. California Plaintiffs hereby incorporate by reference each and every other paragraph in this FAC as if fully pled herein.

143. At times relevant to this FAC, California Plaintiffs and California Rule 23 Class Members were non-exempt hourly employees of Defendants, covered by California Labor Code § 227.3.

144. California Labor Code § 227.3 states in relevant part: “Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served....”

145. Defendants had a policy whereby California Plaintiffs and California Rule 23 Class Members would accrue PTO based on how long they worked for Defendants.

146. However, as California Plaintiffs and similarly situated

1 employees continued to work for Defendants, Defendants failed to accrue
2 to them the PTO wages they were due and owed because Defendants
3 unlawfully capped the number of PTO hours that can be carried over to
4 the following calendar year to 40 hours.

5 147. PTO wages are deferred wages that vest once accrued. An
6 employer must pay its employees all unused vested PTO at the time of
7 termination at the employees' final rate of pay. *See* Cal. Lab. Code § 227.3.

8 148. Moreover, Defendants terminated California Plaintiffs and
9 other similarly situated employees without paying them the PTO wages
10 they did accrue, in violation of California law, and employed policies and
11 procedures which ensured California Plaintiffs and those similarly
12 situated would not receive their accrued and vested PTO wages upon
13 termination.

14 149. Defendants employed policies, practices, and procedures which
15 ensured California Plaintiffs and the members of the California Rule 23
16 Class would not receive their accrued and vested PTO wages upon the
17 separation of their employment from Defendants.

18 150. Pursuant to California Labor Code § 227.3, California Plaintiffs
19 and members of the Rule 23 California Class seek their earned and vested
20 PTO wages, plus interest thereon, for the entire California Class Period.

21 151. California Plaintiffs are informed and believe and based
22 thereon alleges that Defendants' willful failure to provide Plaintiffs and
23 California Rule 23 Class Members the wages due and owing them upon
24 separation from employment results in a continued payment of wages up
25 to 30 days from the time the wages were due. Therefore, Plaintiff Leeman
26 and California Rule 23 Class Members who have separated from
27 employment are entitled to compensation pursuant to Labor Code § 203.

1 **COUNT EIGHT: VIOLATION OF CALIFORNIA’S WAGE**
2 **STATEMENT REQUIREMENTS**

3 **(Cal. Lab. Code §§ 226, 1174(d), and 1198; Wage Order No. 4)**
4 **(Brought by Plaintiff Heid on behalf of herself and members of**
5 **the California Rule 23 Class)**

6 152. Plaintiff Heid realleges and incorporates by this reference each
7 of the preceding and foregoing paragraphs as if fully set forth herein.

8 153. Labor Code § 226(a) requires Defendants, “semimonthly or at
9 the time of each payment of wages,” to furnish their workers with “an
10 accurate itemized statement in writing” showing gross and net wages
11 earned, total hours worked by the employee, rates of pay, and the correct
12 entity that employs them. Defendants knowingly and intentionally failed
13 to provide its workers with such timely and accurate wage-and-hour
14 statements.

15 154. California Rule 23 Class Members suffered injury as a result of
16 Defendants’ knowing and intentional failure to provide their workers with
17 the wage-and-hour statements required by law.

18 155. Under Labor Code § 226(e) and (t), and based on Defendants’
19 conduct as alleged herein, California Rule 23 Class Members are entitled
20 to (a) \$50 for the initial pay period in which a wage and hour statement
21 violation occurred, and \$100 per employee for each violation in a
22 subsequent pay period, not exceeding an aggregate penalty of four
23 thousand dollars \$4,000; (b) injunctive relief to ensure Defendants’
24 compliance with Labor Code § 226; and (c) an award of costs and
25 reasonable attorney's fees.

26 156. Moreover, as a result of Defendants’ conduct, California Rule
27 23 Class Members have suffered actual damages in that, among other
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1 things, the lack of accurate wage statements hindered them from
2 determining the correct amount of wages owed to them and what legal
3 entity employed them. The absence of accurate wage statements has
4 caused California Rule 23 Class Members time, money, and energy in
5 attempting to reconstruct time and pay records and resulted in the
6 submission by Defendants of inaccurate information about hours worked
7 and wages earned. As a result of Defendants' failure to provide California
8 Rule 23 Class Members with timely and accurate wage statements, they
9 are entitled to recover the aggregate sum according to proof, of all actual
10 damages they suffered.

11 157. Defendants' conduct also entitles California Rule 23 Class
12 Members to seek preliminary and permanent injunctive relief including,
13 but not limited to, an order that it issue wage-and-hour statements to their
14 workers that comply with Labor Code § 226.

15 **COUNT NINE: FAILURE TO ADEQUATELY INDEMNIFY**
16 **EMPLOYEES FOR EMPLOYMENT-RELATED EXPENDITURES**

17 **(Cal. Lab. Code § 2802)**

18 **(Brought by California Plaintiffs on Behalf of Themselves and**
19 **Members of the California Rule 23 Class)**

20 158. California Plaintiffs hereby incorporate by reference each and
21 every other paragraph in this FAC as if fully pled herein.

22 159. California Plaintiffs and members of the California Rule 23
23 Class have been employed by Defendants in the State of California.
24 California law requires that Defendants indemnify their employees for all
25 necessary expenditures or losses incurred by the employee in discharge of
26 his or her duties or at the obedience of the directions of the employer.
27 Moreover, an employer is prohibited from passing the ordinary business
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1 expenses and losses of the employer onto the employee. *See* Cal. Lab. Code
2 § 2802.

3 160. Defendants have violated Labor Code § 2802 by failing to
4 indemnify California Plaintiffs and members of the California Rule 23
5 Class for necessary expenditures they incurred in the discharge of their
6 duties. Specifically, Defendants employed a policy, practice, and procedure
7 whereby California Plaintiffs and similarly situated employees were
8 required to supply their own telephone and highspeed internet services,
9 internet equipment and replacement computer equipment without proper
10 reimbursement.

11 161. Moreover, Defendants employed policies and procedures which
12 ensured California Plaintiffs and the members of the California Rule 23
13 Class would not receive indemnification for their employment-related
14 expenses. This practice resulted in California Plaintiffs and members of
15 the California Rule 23 Class not receiving such indemnification in
16 compliance with California law.

17 162. Because Defendants failed to properly indemnify employees for
18 the necessary expenditures incurred in the discharge of their duties, they
19 are liable to California Plaintiffs and the members of the California Rule
20 23 Class for monies to compensate them for the use of the employment-
21 related expenses they incurred under Labor Code § 2802.

22 163. As a direct and proximate result of Defendants' violation of
23 Labor Code § 2802, California Plaintiffs and members of the California
24 Rule 23 Class have suffered irreparable harm and monetary damages
25 entitling them to both injunctive relief and restitution. California
26 Plaintiffs, on behalf of themselves and on behalf of the California Rule 23
27 Class, seek damages and all other relief allowable including
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1 indemnification for all employment-related expenses and ordinary
2 business expenses incurred by Defendants and passed onto California
3 Plaintiffs and the members of the California Rule 23 Class pursuant to
4 Labor Code § 2802.

5 164. Pursuant to Labor Code § 2802, California Plaintiffs and
6 members of the California Rule 23 Class are entitled to recover full
7 indemnification of unreimbursed business expenses, reasonable attorney's
8 fees and costs of suit.

9 **COUNT TEN: FAILURE TO PAY ALL WAGES TIMELY UPON**
10 **SEPARATION OF EMPLOYMENT**

11 **(Cal. Lab. Code §§ 201-203)**

12 **(Brought by Plaintiff Leeman on Behalf of Herself and Members**
13 **of the California Rule 23 Class)**

14 165. Plaintiff Leeman hereby incorporates by reference each and
15 every other paragraph in this FAC as if fully pled herein.

16 166. At all times relevant to this FAC, Plaintiff Leeman and
17 members of the California Rule 23 Class were employees of Defendants,
18 covered by California Labor Code §§ 201-203.

19 167. Pursuant to California Labor Code §§ 201-203, Plaintiff
20 Leeman and members of the California Rule 23 Class were entitled upon
21 separation of employment to timely payment of all wages earned and
22 unpaid prior to separation. Discharged employees were entitled to
23 payment of all wages earned and unpaid prior to discharge immediately
24 upon termination. Employees who resigned were entitled to payment of all
25 wages earned and unpaid prior to resignation within 72 hours after giving
26 notice of resignation or, if they gave 72 hours previous notice, they were
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1 entitled to payment of all wages earned and unpaid prior to resignation at
2 the time of resignation.

3 168. Defendants failed to pay Plaintiff Leeman and members of the
4 California Rule 23 Class all wages earned and unpaid prior to separation
5 of employment, in accordance with either California Labor Code §§ 201-
6 203. Specifically, in direct violation of Labor Code §§ 201-203, despite that
7 Plaintiff Leeman's employment relationship with Defendants terminated,
8 Defendants failed to timely pay Plaintiff Leeman all her earned wages in
9 her final paycheck. Plaintiff Leeman is informed and believes and thereon
10 alleges that at all relevant times within the limitations period applicable
11 to this cause of action, Defendants maintained a policy or practice of not
12 paying hourly employees all earned wages timely upon separation of
13 employment.

14 169. Defendants' failure to pay Plaintiff Leeman and members of the
15 California Rule 23 all wages earned prior to separation of employment
16 timely in accordance with California Labor Code §§ 201 and 202 was
17 willful. Defendants had the ability to pay all wages earned by hourly
18 workers prior to separation of employment in accordance with California
19 Labor Code §§ 201 and 202, but intentionally adopted policies or practices
20 incompatible with the requirements of California Labor Code §§ 201 and
21 202. Defendants' practices include failing to pay at least minimum wage
22 for all time worked, overtime wages for overtime hours worked, failing to
23 pay premium wages for workdays Defendants did not provide, or timely
24 provide, employees all meal periods and rest periods in compliance with
25 California law, and failing to reimburse employment-related expenditures.
26 When Defendants failed to pay its hourly non-exempt workers all earned
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1 wages timely upon separation of employment, they knew what they were
2 doing and intended to do what they did.

3 170. Pursuant to either California Labor Code §§ 201 or 202,
4 Plaintiff Leeman and members of the California Rule 23 Class are entitled
5 to all wages earned prior to separation of employment that Defendants did
6 not pay them.

7 171. Pursuant to California Labor Code § 203, Plaintiff Leeman and
8 members of the California Rule 23 are entitled to continuation of their
9 wages, from the day their earned and unpaid wages were due upon
10 separation until paid, up to a maximum of 30 days.

11 172. As a result of Defendants' conduct, Plaintiff Leeman and
12 members of the California Rule 23 Class have suffered damages in an
13 amount, subject to proof, to the extent they were not paid for all wages
14 earned prior to separation.

15 173. As a result of Defendants' conduct, Plaintiff Leeman and
16 members of the California Rule 23 Class have suffered damages in an
17 amount, subject to proof, to the extent they were not paid all continuation
18 wages owed under California Labor Code § 203.

19 174. Plaintiff Leeman and members of the California Rule 23 Class
20 are entitled to recover the full amount of their unpaid wages, continuation
21 wages under § 203, and interest thereon.

22 **COUNT ELEVEN: VIOLATIONS OF THE UCL**

23 **(Cal. Bus. & Prof. Code § 17200, *et seq.*)**

24 **(Brought by California Plaintiffs on Behalf of Themselves and**
25 **Members of the California Rule 23 Class)**

26 175. California Plaintiffs hereby incorporate by reference each and
27 every other paragraph in this FAC as if fully pled herein.

1 176. Defendants, and each of them, have engaged and continue to
2 engage in unfair and unlawful business practices in California by
3 practicing, employing and utilizing the employment practices outlined
4 above, including, to wit, by: (a) failing to provide off-duty meal periods in
5 violation of Labor Code §§ 226.7 and 512; (b) failing to provide off-duty rest
6 periods in violation of Labor Code § 226.7; (c) failing to pay all applicable
7 overtime and double-time wages for all hours worked in violation of §§ 510,
8 1194, and 1198; (d) failing to pay all minimum wages for all hours worked
9 in violation of §§ 1194 and 1197; (e) failing to reimburse all business
10 expenses in violation of § 2802; and (f) failing to remunerate all employees
11 for all wages due upon separation of employment in violation of §§ 201-
12 203.

13 177. Defendants' utilization of such unfair and unlawful business
14 practices constitutes unfair, unlawful competition and provides an unfair
15 advantage over Defendants' competitors.

16 178. California Plaintiffs seek individually and on behalf of other
17 members of the California Rule 23 Class similarly situated, full restitution
18 of monies, as necessary and according to proof, to restore any and all
19 monies withheld, acquired and/or converted by the Defendants by means
20 of the unfair practices complained of herein.

21 179. California Plaintiffs are informed and believe, and based
22 thereon alleges, that at all times herein mentioned Defendants have
23 engaged in unlawful, deceptive and unfair business practices, as
24 proscribed by California Business and Professions Code § 17200, *et seq.*,
25 including those set forth herein above thereby depriving California
26 Plaintiffs and other members of the California Rule 23 Class the minimum
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1 working condition standards and conditions due to them under the
2 California laws as specifically described therein.

3 **COUNT TWELVE: VIOLATIONS OF THE PAGA**

4 **(Cal. Lab. Code § 2698, *et seq.*)**

5 **(Brought by California Plaintiffs on Behalf of Themselves and**
6 **Aggrieved Employees in the California Rule 23 Class)**

7 180. California Plaintiffs hereby incorporate by reference each and
8 every other paragraph in this FAC as if fully pled herein.

9 181. Labor Code § 2698, *et seq.* (the PAGA) creates specified
10 remedies that are triggered when an employer violates any provision of
11 the Labor Code specified in Labor Code § 2699.5.

12 182. The policies, acts and practices heretofore described were and
13 are an unlawful business act or practice because Defendants failed to
14 comply with their statutory obligations to pay California Plaintiffs and
15 aggrieved employees all wages they were due according to the applicable
16 California Labor Code sections set forth herein and Wage Order No. 4.
17 Defendants' illegal actions give rise to statutory penalties including, but
18 not limited to, penalties provided by, and pursuant to, Labor Code §§ 201-
19 204, 210, 218, 226, 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1194,
20 1198, 2802, 2699.5 and other Labor Code sections identified in the PAGA
21 Notice.

22 183. Pursuant to Labor Code § 2699(f), for all provisions of the Labor
23 Code that do not have a civil penalty specifically specified, there is an
24 established civil penalty for a violation of the provisions as follows: \$100
25 for each aggrieved employee per pay period for the initial violation and
26 \$200 for each aggrieved employee per pay period for each subsequent
27 violation.

1 184. Labor Code § 558 mandates a penalty be assessed against any
2 employer or other person acting on behalf of an employer who violates, or
3 causes to be violated, a section of the chapter starting with Labor Code §
4 500, *et seq.* or any provision regulating hours and days of work in any order
5 of the Industrial Welfare Commission as follows: \$50 for the first pay
6 period in which the employee is underpaid; and, for each subsequent
7 violation, \$100 for each pay period in which the employee is underpaid.
8 The civil penalties so provided in this section are in addition to any other
9 civil penalties provided by law.

10 185. Labor Code § 2699(a) specifically provides for a private right of
11 action to recover penalties for violations of the California Labor Code.

12 186. On September 26, 2022, California Plaintiffs gave notice of
13 these claims to the LWDA and to the agent for service of process for
14 Defendants. California Plaintiffs did not receive any response from the
15 LWDA indicating that it intends to investigate these claims. Accordingly,
16 California Plaintiffs have exhausted all notice requirements under the
17 PAGA. Attached to this FAC as **Exhibit A** is a true and correct copy of
18 California Plaintiffs' PAGA Notice, which they hereby incorporate by
19 reference.

20 187. California Plaintiffs will seek recovery of civil penalties per pay
21 period during the relevant PAGA time period for California Plaintiffs and
22 each "aggrieved employee" in an amount according to proof, subject to
23 Court approval as set forth in Labor Code § 2699.

24 188. California Plaintiffs will seek recovery of attorneys' fees and
25 costs pursuant to Labor Code § 2699(g) and/or Code of Civil Procedure §
26 1021.5 to the extent enforcement of California's labor laws and applicable
27 regulations is determined to be in the public interest and consistent with
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1 the Legislative intent stated in Labor Code § 90.5, in an amount according
2 to proof and subject to Court approval.

3 189. As provided above, California Plaintiffs have completed all
4 administrative prerequisites to seeking the penalties for Labor Code
5 violations provided by the PAGA (including Labor Code § 558).

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs, individually, and on behalf of all other
8 similarly situated persons, requests this Court grant the following relief in
9 Plaintiffs', the Collective Members' and the California Class Members'
10 favor, and against CyraCom:

- 11 A. For an order conditionally certifying the proposed FLSA Class
12 and certifying the proposed California Rule 23 Class;
- 13 B. For an order appointing Plaintiffs as the representatives of the
14 FLSA Class as described herein;
- 15 C. For an order appointing California Plaintiffs as the
16 representatives of the California Rule 23 Class as described
17 herein;
- 18 D. For the Court to declare and find CyraCom committed one or
19 more of the following acts:
- 20 i. Violated the minimum wage and overtime provisions of the
21 FLSA;
- 22 ii. Willfully violated the minimum wage and overtime
23 provisions of the FLSA; and
- 24 iii. Violated the minimum wage, overtime, meal-and-rest
25 period, vested vacation wage, wage statement, expense
26 reimbursement, and timely wage payment requirements of
27 California law.
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- 1 E. For the Court to award damages and/or restitution in the
2 amounts of all unpaid minimum and overtime wages, premium
3 wages, vested vacation wages, unreimbursed expenses,
4 statutory and civil penalties, and waiting-time penalties due
5 and owing to Plaintiffs, the FLSA Collective Members, and the
6 California Rule 23 Class Members;
- 7 F. For the Court to award compensatory damages, including
8 liquidated damages pursuant to 29 U.S.C. § 216(b) and Cal.
9 Lab. Code § 1194.2, in amounts to be determined at trial;
- 10 G. For the Court to award civil penalties to California Plaintiffs
11 and aggrieved employees pursuant to Cal. Lab. Code §§ 558 and
12 2699(f) and for other penalties under the PAGA as allowed and
13 as the Court deems appropriate;
- 14 H. For the Court to award prejudgment and post-judgment
15 interest on any damages awarded;
- 16 I. For the Court to award all treble damages, interest, attorneys'
17 fees and costs owed to California Plaintiffs and the California
18 Rule 23 Class Members under California law including, but not
19 limited to, California Labor Code §§ 218.5, 226, 1194, 2802, and
20 Code of Civil Procedure § 1021.5;
- 21 J. For the Court to award Plaintiffs' and the Collective Members'
22 reasonable attorneys' fees and costs of the action under 29
23 U.S.C. § 216(b) and all other causes of action set forth in this
24 FAC;
- 25 K. For the Court to provide a reasonable service award for
26 Plaintiffs to compensate them for the time they spent
27 attempting to recover wages for the FLSA Collective Members
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1 and California Rule 23 Class Members and for the risks they
2 took in doing so; and

3 L. Such other relief as this Court deems just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiffs, the Collective Members, and California Class Members
6 hereby demand a jury trial on all causes of action and claims with respect
7 to which they each have a state and/or federal constitutional right to a jury
8 trial.

9 DATED: December 1, 2022

Respectfully submitted,

10 **KABATECK LLP**

11
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5 *Attorneys for Plaintiffs and the Putative*
6 *Classes*

Exhibit A



September 26, 2022

Via Online Filing

Labor & Workforce Development Agency
800 Capital Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

Via Certified Mail (Return Receipt Requested)

CyraCom International, Inc.
5780 N. Swan Rd.
Tucson, AZ 85718

Via Certified Mail (Return Receipt Requested)

CyraCom International, Inc.
2650 E. Elvira Rd., Suite 132
Tucson, AZ 85756

Re: Notice Pursuant to the Private Attorneys General Act, Cal. Lab. Code § 2699.3 (the “PAGA”) (related to *Helaine Heid and Ingrid Leeman v. CyraCom International, Inc.*, currently pending in the United States District Court—Southern District of California, Case No. 3:22-cv-01445-MMA-AGS)

Dear Sir or Madam:

Claimants Helaine Heid (“Claimant Heid”) and Ingrid Leeman (“Claimant Leeman,” collectively “Claimants”) have retained our firms to represent them and other similarly situated current and former employees of Defendant CyraCom International, Inc. (“CyraCom” or “Defendant”) for alleged violations of California’s Labor Codes. Claimants are named plaintiffs and proposed class representatives in a collective and class action currently pending in the United States District Court—Southern District of California styled, *Helaine Heid and Ingrid Leeman v. CyraCom International, Inc.*, Case No. 3:22-cv-01445-MMA-AGS (the “Action”). A true and correct copy of the Collective and Class Action Complaint (the “Complaint”) is attached hereto as **Exhibit A** and incorporated herein by reference. Claimants, respectively, are former and current employees of CyraCom and it employed and continues to employ other similarly situated employees as Interpreters holding comparable positions but different titles throughout California (collectively with Claimants, the “Aggrieved Employees”). As will be explained in detail below, Claimants allege that CyraCom violated and continues to violate numerous California Labor Codes; thus, entitling the Aggrieved Employees to penalties under the PAGA.

This letter serves to inform CyraCom of Claimants’ intent to amend the Complaint and bring a cause of action for violations of the PAGA for CyraCom’s failure to comply with California’s mandatory minimum wage, overtime, meal-and-rest period, vested vacation, wage statement, expense reimbursement requirements, and failure to pay all wages due upon separation. During the relevant time period, and as alleged in the Complaint, CyraCom failed to pay regular and overtime wages, provide compliant meal-and-rest periods, pay all vested vacation wages, provide accurate wage statements, reimburse Aggrieved Employees for reasonably and necessary business



expenses, pay all earned wages due upon separation, and failed to pay Claimants and the Aggrieved Employees additional wages and penalties for said violations. As a result, CyraCom violated, among other statutes and regulations, Labor Code §§ 201-204, 210, 218, 226, 226.7, 227.3, 510, 512, 558, 558.1, 1174(d), 1194, 1198, 2802, and provisions of Industrial Welfare Commission Wage Order 4-2001 (“Wage Order No. 4”).

Claimants are informed and believe that said violations are ongoing, systematic and uniform. If CyraCom fails to cure these alleged violations on a representative basis, as stated above, Claimants will amend the Complaint and bring an action against CyraCom under the PAGA to recover penalties as provided by California law.¹

Facts and Theories to Support the Alleged Labor Code Violations

The Aggrieved Employees are neither managerial, administrative, nor professional employees and are therefore entitled to an hourly wage for each hour worked, overtime pay, mandatory meal-and-rest breaks, and accurate itemized wage statements. Despite being non-exempt employees, CyraCom uniformly, and as a matter of corporate policy, did not pay the Aggrieved Employees for all non-overtime and overtime hours worked. Specifically, and as alleged in the Complaint, Aggrieved Employees were required to perform pre- and post-shift work, and on occasion had to miss or work through their meal periods, without compensation. Put another way, these hours were not included in total hours worked by the Aggrieved Employees and, as a result, they were not being paid a separate hourly wage for all regular hours worked, and if they worked more than 8 hours in a day or more than 40 hours in a week, they were not being properly compensated for all overtime hours worked. In addition, CyraCom failed to pay the Aggrieved Employees at the correct overtime rate of pay. When Aggrieved Employees worked overtime, CyraCom paid the Aggrieved Employees at one and one-half times their regular straight time rate, instead of their regular rate of pay.

¹ Without limitation, Claimants, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (c) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.



Pursuant to uniform corporate policy and practice, CyraCom did not provide Aggrieved Employees with timely, duty-free, uninterrupted meal periods of at least 30-minutes for every five hours worked, and did not provide Aggrieved Employees with second timely, duty-free, uninterrupted meal periods of at least 30-minutes for every ten hours worked. CyraCom also failed to authorize and permit Aggrieved Employees to take duty-free, uninterrupted rest periods of at least 10 minutes for every four hours worked or major fraction thereof. In addition, CyraCom did not provide the Aggrieved Employees with accurate wage statements showing, among other things, total hours worked, gross and net wages earned, the correct entity that employs them and its correct address, premium wages for meal-and-rest period violations, and the correct applicable rate of pay for each regular and overtime hour worked. Furthermore, CyraCom required Aggrieved Employees to incur necessary business expenses, such as telephone services and a higher bandwidth and internet speed, but failed to reimburse them for said necessary business expenses. Moreover, CyraCom failed to pay Aggrieved Employees for all vested vacation wages accrued, and did not pay Aggrieved Employees, who separated from CyraCom's employment, all wages due to them within the timeline required by law. As a result of its uniform treatment of the Aggrieved Employees, CyraCom has committed numerous violations of California's Labor Codes including, but not limited to: (1) failing to pay the Aggrieved Employees an hourly wage for each and every hour worked; (2) failing to pay the Aggrieved Employees for all overtime hours worked; (3) failing to provide the Aggrieved Employees compliant meal-and-rest periods; (4) failing to pay the Aggrieved Employees all vested vacation wages; (5) failing to provide the Aggrieved Employees accurate wage statements; (6) failing to reimburse Aggrieved Employees for necessary business expenses; and (7) failing to timely pay the Aggrieved Employees wages upon termination of employment.

A. CyraCom failed and continues to fail to pay the Aggrieved Employees an hourly wage for each and every hour worked and failed and continues to not pay them overtime wages for all overtime hours worked at the correct overtime rate.

At all times relevant, pursuant to Labor Code §§ 1197 and 1198, it is unlawful for an employer to pay less than the wage established by law or to employ persons in excess of the hours fixed by the IWC or under conditions prohibited by Wage Order No. 4.

At all times relevant, Labor Code § 1194(a) provides that "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

At all times relevant, Labor Code § 510 provides for payment of a minimum wage regardless of the number of hours worked, and one and one-half times each employee's regular rate of pay for all work over eight hours in a day, 40 hours in any workweek, or the first eight hours of the seventh consecutive day of work. In addition, Labor Code § 510 provides for payment of double the employee's regular rate of pay for work in excess of 12 hours per day or in excess of eight hours on the seventh consecutive day of any work week.

At all times relevant, Labor Code § 558 provides, in pertinent part, "[a]ny employer or other



person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the [IWC] shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

Labor Code § 204 provides, in pertinent part, that “[a]ll wages ... 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.” It further provides that “[l]abor performed between the 1st and 15th days ... 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 ... of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Labor Code § 210, which became effective on January 1, 2020, provides, in pertinent part, that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Section[] ... 204 ... shall be subject to a penalty ...” That statute further states that “[a]n employee is ... entitled to either recover the statutory penalty provided for in this section or to enforce a civil penalty as set forth in subdivision (a) of Section 2699, but not both, for the same violation.” At all times relevant, Labor Code § 210 provides, in pertinent part, that “every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

At all times relevant, Labor Code § 218 provides in pertinent part, “...Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

Here, CyraCom violated Labor Code §§ 204, 210, 218, 510, 558, 1182.12, 1194, 1197 and 1198. As a result of its failure to pay the Aggrieved Employees for all pre- and post-shift work, including occasions they had to miss or work through their meal periods, CyraCom failed to properly compensate the Aggrieved Employees. Specifically, CyraCom did not pay the Aggrieved Employees an hourly wage for each and every hour worked, nor did it pay the Aggrieved Employees overtime for all work performed in excess of 8 hours per workday or 40 hours in a given workweek. CyraCom had a policy and practice to violate said Labor Code provisions by, *inter alia*, failing to include all pre- and post-shift work, including missed meal periods, into the Aggrieved Employees total hours worked. CyraCom also failed to pay the Aggrieved Employees at the correct overtime rate of pay. When Aggrieved Employees worked overtime, and were paid, CyraCom paid the Aggrieved Employees at their regular straight time rate, instead of regular rate of pay as required by California law.



CyraCom also failed to tender to the Aggrieved Employees all of their earned regular and overtime wages in accordance with California law, including, but not limited to, Labor Code § 204, such that labor performed between the 1st and 15th days, inclusive, of any calendar month was not 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, was not paid for between the 1st and 10th day of the following month. Because the Aggrieved Employees were not paid for all labor performed during the correct pay periods, CyraCom also violated Labor Code §§ 204 and 210.

B. CyraCom failed and continues to fail to provide the Aggrieved Employees with uninterrupted, off-duty first and second meal periods.

At all times relevant, Labor Code § 512 requires that each employee working at least 5 hours must be given a paid or unpaid meal period of not less than 30-minutes, uninterrupted, where the employee is relieved of all job duties and is free to leave the work premises; and that a second meal period of not less than 30-minutes, uninterrupted, be given to each employee working at least 10 hours in any given workday.

At all times relevant, Labor Code § 226.7 provides that each nonexempt employee who is not permitted to take a valid meal period must be paid one hour of additional pay at the employee's regular rate of pay for each such workday in which a valid meal period is not provided.

Here, Defendants did not provide the Aggrieved Employees with compliant meal periods. Specifically, the Aggrieved Employees' meal periods were routinely late (after the end of the fifth or tenth hour of work), interrupted, and/or controlled by CyraCom because of its policy or practice of precluding Aggrieved Employees from terminating sessions, even if it would interfere with their meal periods. Also, CyraCom exercised improper control over the Aggrieved Employees' meal periods by requiring employees working in the Centers to consume their lunches in designated areas; thus, precluding them from leaving the premises. The Aggrieved Employees' meal periods were also cut short or less than 30-minutes or completely missed. CyraCom also lacked a compliant meal period policy applicable to the Aggrieved Employees and therefore the Aggrieved Employees were not given an opportunity to take compliant meal periods. For example, Aggrieved Employees, who worked more than 10 hours in a shift, were not provided a second 30-minute meal period under CyraCom's policy. Moreover, CyraCom did not pay the Aggrieved Employees one hour of pay—at their regular rate—for instances where CyraCom failed to provide the Aggrieved Employees the opportunity to take a 30-minute meal break, relieved of all duties, for shifts of 5 hours or greater, or a second meal period for shifts in excess of 10 hours. As a result, CyraCom violated Labor Code §§ 226.7, 512, 558, 1197, and 1198.

C. CyraCom failed and continues to fail to provide the Aggrieved Employees with uninterrupted, off-duty rest periods for every four hours worked or major fraction thereof.

At all times relevant, Wage Order No. 4, which applies to the Aggrieved Employees' employment with CyraCom, specifically requires each nonexempt employee working at least three



and a-half hours to be given a paid rest period of not less than ten consecutive minutes, uninterrupted, where the employee is relieved of all duties. In addition, a second rest period of not less than ten consecutive minutes must be given to each nonexempt employee working at least six hours in any given workday, and a third rest period for shifts in excess of ten hours.

At all times relevant, Labor Code § 226.7 provides that each nonexempt employee who was not permitted to take a valid rest period must be paid one hour of additional pay at the employee's regular rate of pay for each such workday in which a valid rest period was not provided.

Here, Defendants lacked a compliant rest break policy applicable to the Aggrieved Employees and therefore failed to authorize and permit Aggrieved Employees to take the proper number of 10-minute rest breaks based on the number of hours they worked in a shift. Nor does CyraCom notify Aggrieved Employees that rest breaks must be free from employer control, and at least 10-minutes of duty-free time. CyraCom required Aggrieved Employees to be available at all times—ready to take a call—and to take as many calls as possible. Accordingly, this policy prohibited Aggrieved Employees from terminating sessions to take any rest breaks, let alone at least 10-minutes. CyraCom also failed to pay one hour of pay—at the employees' regular rate—for the numerous instances where it failed to authorize and permit the Aggrieved Employees the opportunity to take a paid ten-minute rest break, relieved of all duties, for shifts of at least three and a-half hours. CyraCom also failed to pay the Aggrieved Employees one hour of pay for the numerous instances where it failed to authorize and permit the Aggrieved Employees the opportunity to take a second rest period for shifts of more than six hours, or a third rest period for shifts in excess of 10 hours. In a nutshell, CyraCom failed to make available to the Aggrieved Employees proper rest periods in compliance with California law. As a result, CyraCom violated Labor Code §§ 226.7, 558, 1197, and 1198.

D. CyraCom failed to pay all accrued and vested PTO wages to the Aggrieved Employees.

At all times relevant, Labor Code § 227.3 requires that all vested vacation time be paid to employees as wages when “an employee is terminated without having taken off his vested vacation time.” The Labor Code also provides that an employer must pay its employees all unused vested Paid Time Off (“PTO”) at the time of termination at the employee's final rate of pay. *See* Cal. Lab. Code § 227.3.

Here, CyraCom had a policy in which employees would accrue PTO based on how long they worked for CyraCom. However, CyraCom failed to grant Claimants and other similarly situated employees the PTO wages they accrued by unlawfully capping the number of PTO hours that could be carried over to the following calendar year at 40 hours. CyraCom also violated § 227.3 by terminating Claimant Leeman and other similarly situated employees without paying them the PTO wages they accrued as well as employing policies and procedures which ensured Claimant Leeman and those similarly situated would not receive their accrued and vested PTO wages upon termination in violation of Labor Code § 203 (more on this below). As a result, CyraCom violated Labor Code § 227.3.



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E. CyraCom failed and continues to fail to furnish accurate wage statements to the Aggrieved Employees.

At all times relevant, Labor Code § 226 requires CyraCom to “furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,...(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.”

Here, CyraCom violated Labor Code § 226. CyraCom had a uniform policy and practice to violate said Labor Code by failing to account for all of the hours worked by the Aggrieved Employees, inaccurately setting forth the net and gross wages earned, by failing to show premium wages for meal-and-rest break violations as detailed herein, by failing to set forth the correct overtime rate for each overtime hour worked, and by failing to identify the correct name and address of the employer. As a result, CyraCom violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Aggrieved Employees’ respective (1) gross wages earned, (2) total hours worked, (3) net wages earned, (4) all applicable hourly rates and the corresponding number of hours worked at each hourly rate, and (5) the correct name and address of the legal entity that employs the Aggrieved Employees.

F. CyraCom failed and continues to fail to reimburse the Aggrieved Employees for reasonable and necessary business expenses incurred as a result of performing their duties.

California law requires that CyraCom indemnify their employees for all necessary expenditures or losses incurred by the employee in discharge of his or her duties or at the obedience of the directions of the employer. Moreover, an employer is prohibited from passing the ordinary business expenses and losses of the employer onto the employee. *See* Cal. Lab. Code § 2802.

CyraCom has violated Labor Code § 2802 by failing to indemnify the Aggrieved Employees for the necessary expenditures they incurred in the discharge of their duties. Specifically, CyraCom employed a policy, practice, and procedure whereby the Aggrieved Employees were required to supply their own telephone services, highspeed internet service, internet equipment and replacement computer equipment. This practice resulted in the Aggrieved Employees not receiving indemnification for these necessary business expenses in violation of Labor Code § 2802.

G. CyraCom failed to pay all wages due to the former Aggrieved Employees upon termination.

At all times relevant, Labor Code § 200 defines “wages” as including all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.



At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with sections 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 therefore is commenced, but the wages shall not continue for more than 30 days.

Here, CyraCom violated Labor Code §§ 200-203. When former Aggrieved Employees' employment with CyraCom ended, CyraCom failed to pay them all of their earned wages as detailed above, immediately upon their discharge or within 72 hours thereafter. In addition, CyraCom failed to pay the waiting time penalties to which the Aggrieved Employees are entitled.

To date, as set forth in detail above, CyraCom has failed to pay former Aggrieved Employees all of their earned regular and overtime wages, premium wages for meal-and-rest break violations, vested vacation wages, accrued interest thereon, and failed to remit the Labor Code §§ 210 and 558 penalties to be imposed as a consequence of said violations of the California Labor Code.

H. CyraCom failed and continues to fail to maintain records of all hours worked by Aggrieved Employees.

Labor Code § 1174(d) provides that every person employing labor in this state shall "... [k]eep, at a central location in the state or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to ... employees employed at the respective plants or establishments." It further states that "[t]hese 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."

As alleged above, the Aggrieved Employees routinely worked hours for which they were not paid the appropriate hourly wage. Further, as alleged *supra*, the Aggrieved Employees routinely missed meal periods, or they were cut short or late, but CyraCom failed to accurately record the meal periods of the Aggrieved Employees in direct violation of California law. Because of its unlawful policies and practices, CyraCom violated Labor Code § 1174(d).

Conclusion

CyraCom violated and continues to violate several California Labor Code provisions. Claimants provide notice of these alleged violations under PAGA's provisions and request the



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LWDA to investigate these alleged Labor Code violations. Alternatively, Claimants request the LWDA to inform them if it does not intend to investigate these violations, so they may amend the Complaint to include the violations discussed in this letter.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact my office.

Sincerely,

KABATECK LLP

Jerusalem F. Beligan

cc: James L. Simon

james@bswages.com

Michael L. Fradin

mike@fradinlaw.com

1 Plaintiffs Helaine Heid (“Plaintiff Heid”) and Ingrid Leeman (“Plaintiff
 2 Leeman,” collectively “Plaintiffs”), individually and on behalf of themselves and all
 3 other persons similarly situated, file this collective and class action complaint
 4 (“Complaint”) against defendant CyraCom International, Inc. (hereafter “CyraCom” or
 5 “Defendant”) and DOES 1 through 10 (collectively, “Defendants”) and allege as follows:

6 **PRELIMINARY STATEMENT**

7 1. The Complaint is brought as a collective action and class action under the
 8 Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA”) and Fed. R. Civ. P. 23
 9 (“Rule 23”), respectively. The claims in the Complaint are brought under the following
 10 federal and state statutes: (1) the FLSA; (2) California Labor Code §§ 201-203, 226,
 11 226.7, 227.3, 510, 512, 1194, 1194.2, 2802, and applicable Industrial Welfare
 12 Commission Order (“Wage Order”); and (3) California Business & Profession § 17200,
 13 *et seq.* (the “UCL”). The claims are premised on CyraCom’s failure to pay Plaintiffs and
 14 other similarly-situated employees (referred to herein as the “Collective Members” and
 15 “Class Members”) all earned minimum and overtime wages, failure to provide
 16 compliant meal-and-rest periods, failure to pay all vested vacation, failure to furnish
 17 accurate wage statements, failure to reimburse reasonable and necessary business
 18 expenses, and failure to pay all earned wages due upon separation.

19 2. Plaintiffs, the Collective Members and the Class Members are current and
 20 former employees of CyraCom. Plaintiffs bring this Complaint on behalf of themselves
 21 and all similarly-situated current and former Interpreters (also referred to as the
 22 “Covered Positions”) of CyraCom.¹

23 3. The Collective Members are all current and former Interpreters, or other
 24

25 ¹ For purposes of the Complaint, the term “Interpreters” is exclusively a job title used
 26 for the purpose of classifying the putative class of similarly situated individuals, is not
 27 necessarily the job title of Plaintiffs and the putative class, and has no bearing or
 28 relation to any specialization, skill, education, training, or other qualification that
 might otherwise be associated with such a job title.

1 similarly titled employees, who were employed by CyraCom starting three years before
2 this Complaint was filed, up to the present.

3 4. The California Class Members are all current and former Interpreters, or
4 other similarly titled employees, who were employed by CyraCom within the state of
5 California starting four years before this Complaint was filed, up to the present.

6 5. Under the FLSA, employers must pay all non-exempt employees an
7 overtime wage premium of pay one and one-half times their regular rate of pay for all
8 time they spend working over 40 hours in a workweek, and must include all
9 remuneration when calculating the overtime rate of pay. CyraCom failed to pay
10 Plaintiffs and the Collective Members one and one-half times their regular rate of pay
11 for all time they spent working over 40 hours in a workweek and CyraCom did not
12 include all nondiscretionary bonuses in calculating their regular rate of pay. Plaintiffs
13 therefore bring this Complaint as a collective action under 29 U.S.C. § 216(b) for
14 CyraCom's violation of federal law as detailed further below.

15 6. Under the FLSA "[r]est periods of short duration, running from 5 minutes
16 to about 20 minutes. . . must be counted as hours worked." *See* 29 C.F.R. 785.18; *see*
17 *also Mauia v. Petrochem Insulation, Inc.*, 5 F.4th 1068, 1074 (9th Cir. 2021). CyraCom
18 violated the FLSA by routinely failing to pay Plaintiffs and the Collective Members for
19 rest breaks shorter than 20 minutes.

20 7. The wage requirements of the FLSA "will not be met where the employee
21 'kicks-back' directly or indirectly to the employer or to another person for the
22 employer's benefit the whole or part of the wage delivered to the employee." *See* 29
23 C.F.R. 531.35. "For example, if it is a requirement of the employer that the employee
24 must provide tools of the trade which will be used in or are specifically required for the
25 performance of the employer's particular work, there would be a violation of the Act in
26 any workweek when the cost of such tools purchased by the employee cuts into the
27 minimum or overtime wages required to be paid him under the Act." *Id.* CyraCom
28

1 violated the FLSA by requiring Plaintiffs and the Collective Members to provide the
 2 internet service, internet equipment and replacement computer equipment necessary
 3 to complete their Interpreter job duties for CyraCom while failing to reimburse
 4 Plaintiffs and the Collective Members for the costs of the same.

5 8. Under California law and the applicable Wage Order, Defendants were
 6 required to pay Plaintiffs and California Class Members an hourly wage for each and
 7 every hour worked. *See* Cal. Lab. Code §§ 200, 204, 1194, and 1198. During the
 8 California Class Period (as defined below), Plaintiffs and California Class Members
 9 regularly and consistently worked before and after their shifts, including meal periods,
 10 for which they were not paid an hourly wage in violation of California Law.

11 9. Under California law and the applicable Wage Order, “[a]ny work in
 12 excess of [8] hours in one workday and any work in excess of 40 hours in any one
 13 workweek and the first [8] hours worked on the seventh day of work in any one
 14 workweek shall be compensated at the rate of no less than one and one-half times the
 15 regular rate of pay for an employee.” *See* Cal. Lab. Code § 510(a). Further, “[a]ny work
 16 in excess of 12 hours in one day shall be compensated at the rate of no less than twice
 17 the regular rate of pay for an employee. In addition, any work in excess of eight hours
 18 on any seventh day of a workweek shall be compensated at the rate of no less than
 19 twice the regular rate of pay of an employee.” *Id.* During the California Class Period,
 20 Plaintiffs and California Class Members regularly and consistently worked more than
 21 8 hours in a day and more than 40 hours in a week for which they were not paid one
 22 and one-half times or double their regular rate of pay and CyraCom did not include all
 23 nondiscretionary bonuses in calculating their regular rate of pay.

24 10. Under California law and the applicable Wage Order, Defendants were
 25 required to provide Plaintiffs and California Class Members compliant meal periods.
 26 *See* Cal. Lab. Code §§ 226.7, 512; *see also* Wage Order 4 § 11. California law also
 27 requires Defendants to pay Plaintiffs and California Class Members premium wages
 28

1 (at their regular rate of pay) when Defendants failed to provide Plaintiffs and
2 California Class Members compliant meal periods. Defendants violated California law
3 by failing to provide Plaintiffs and California Class Members off-duty, uninterrupted
4 30-minute meal breaks, free from employer control, for every 5 hours worked. Plaintiffs
5 and California Class Members regularly and consistently worked over 5 and 10 hours
6 a day and were unable to take a first meal period or second meal period when they
7 worked more than 10 hours in a day. On other occasions, Plaintiffs and California Class
8 Members' meal periods were cut short of 30 minutes, interrupted, or taken late. On
9 other occasions, Plaintiffs and California Class Members worked through their meal
10 periods, but were neither paid an hourly wage for the time worked (as alleged above),
11 nor were they paid a premium wage at their regular rate of pay.

12 11. Under California law and the applicable Wage Order, Defendants were
13 required to provide Plaintiffs and California Class Members compliant rest periods of
14 at least 10 minutes, free from employer control, for every 4 hours worked or major
15 fraction thereof. *See* Cal. Lab. Code § 226.7; *see also* Wage Order 4 § 12. Defendants
16 violated California law by not providing Plaintiffs and California Class Members with
17 10 minute rest periods for every four hours worked or major fraction thereof. Plaintiffs
18 and California Class Members' rest breaks were regularly and consistently
19 interrupted, less than 10 minutes, and/or not duty free. Plaintiffs and California Class
20 Members were not paid a premium wage (at their regular rate of pay) for these rest-
21 period violations.

22 12. Under California law, Defendants must allow all accrued and unused Paid
23 Time Off ("PTO") to carryover into the following calendar year and must pay their
24 employees all accrued and unused PTO at the time of termination at the employees'
25 final rate of pay. *See* Cal. Lab. Code § 227.3. Under California law, PTO is a wage that
26 vests once accrued. Defendants had a PTO policy whereby Plaintiffs and California
27 Class Members would accrue PTO each payroll period based on their completed years
28

1 of service. However, Defendants violated California law by capping the amount of PTO
 2 that can be carried over to the following calendar year at 40 hours. As such, Plaintiffs
 3 and California Class Members who accrued more than 40 hours of PTO and which were
 4 not carried over to the following calendar year were deprived of earned wages.
 5 Moreover, Defendants terminated Plaintiffs and other California Class Members
 6 without paying them the PTO wages they did accrue, in violation of California law, and
 7 employed policies and procedures which ensured Plaintiffs and California Class
 8 Members would not receive their accrued and vested PTO wages upon termination.

9 13. Under California law, Defendants were required to provide Plaintiff Heid
 10 and California Class Members, “semimonthly or at the time of each payment of wages,”
 11 with accurate wage statements showing, among other things: “(1) gross wages earned,
 12 (2) total hours worked by the employee..., [3] net wages earned, ... [4] the name and
 13 address of the legal entity that is the employer ..., and [5] all applicable hourly rates
 14 in effect during the pay period and the corresponding number of hours worked at each
 15 hourly rate by the employee...” Cal. Lab. Code § 226(a). By failing to, among other
 16 things, include all hours worked in the wage statements, failing to accurately reflect
 17 all wages earned, failing to include premium wages for meal-and-rest period violations,
 18 and failing to include the correct name of the employer, Defendants knowingly and
 19 intentionally failed to provide Plaintiff Heid and California Class Members with
 20 accurate wage statements. *See Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5th
 21 93 (2022).

22 14. Under California law, Defendants are required to adequately indemnify
 23 Plaintiffs and California Class Members for employment-related business expenses.
 24 *See* Cal. Lab. Code § 2802. As alleged above, Plaintiffs and California Class Members
 25 were required to provide internet services, internet equipment and replacement
 26 computer equipment necessary to complete their Interpreter job duties for CyraCom.
 27 Defendants failed to reimburse Plaintiffs and the California Class Members for these
 28

1 business expenses.

2 15. Under California law, Defendants are required to pay Plaintiffs and
3 California Class Members their final wages immediately upon termination, or within
4 72 hours of voluntarily leaving employment. *See* Cal. Lab. Code §§ 201-203. As alleged
5 above, Plaintiffs and California Class Members worked hours for which they were not
6 properly paid and were deprived of vested PTO wages and therefore not paid all wages
7 due upon separation. Accordingly, Plaintiffs and California Class Members, who are
8 former employees, are entitled to waiting-time penalties. *Id.*

9 16. Under California law, Defendants' violations of the FLSA and
10 aforementioned California Labor Codes constitutes a violation of the UCL.

11 **JURISDICTION AND VENUE**

12 17. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 29
13 U.S.C. § 201, *et seq.*, because this civil action arises under the laws of the United States.

14 18. Venue is proper in this district under 28 U.S.C. § 1391(b)(ii) because acts
15 giving rise to the claims of Plaintiffs, Collective Members and Class Members occurred
16 within this district.

17 19. From approximately July 15, 2009 through the present, Plaintiff Heid was
18 a resident of San Diego County and performed work for CyraCom within the state of
19 California.

20 20. From approximately December 27, 2012 through August 12, 2022,
21 Plaintiff Leeman was a resident of Santa Barbara County, California and performed
22 work for CyraCom within the state of California.

23 21. CyraCom regularly conducts business in and has engaged in the wrongful
24 conduct alleged herein—and thus is subject to personal jurisdiction—in this judicial
25 district.

26 22. Plaintiffs, the Collective Members, and the Class Members in their work
27 for CyraCom were employed by an enterprise engaged in commerce with annual gross
28

1 sales of at least \$500,000.

2 **PARTIES**

3 23. At all times material to the matters alleged in this Complaint, Plaintiff
4 Heid is a current employee of CyraCom and Plaintiff Leeman is a former employee.

5 24. Plaintiff Heid is a full-time employee of CyraCom, who works as an
6 Interpreter within the state of California from approximately July 15, 2009 through
7 the present.

8 25. Plaintiff Leeman was a both a part-time and full-time employee of
9 CyraCom, who worked as an Interpreter within the state of California from
10 approximately January 1, 2013 through approximately March 12, 2020.

11 26. The Collective Members are all current and former Interpreters who
12 worked for CyraCom in the United States at any point in the three years preceding the
13 filing of this Complaint to the present (the “FLSA Collective Period”).

14 27. The California Class Members are all current and former Interpreters
15 who worked for CyraCom in the state of California at any point in the four years
16 preceding the filing of this Complaint to the present (the “California Class Period”).

17 28. The Collective and Class Members are non-exempt employees under the
18 FLSA and California law and therefore entitled to minimum wage, overtime, compliant
19 meal-and-rest periods, and reimbursement of reasonable and necessary business
20 expenses.

21 29. At all material times, CyraCom International, Inc. does business as
22 CyraCom.

23 30. At all material times CyraCom International, Inc. is a Delaware
24 corporation duly licensed to transact business in the state of California.

25 31. Under the FLSA and California law, CyraCom is an employer. At all
26 relevant times, CyraCom had the authority to hire and fire employees, supervised and
27 controlled the work schedules or the conditions of employment, determined the rate
28

1 and method of payment, and maintained employment records in connection with
2 Plaintiffs' employment with CyraCom. As a person who acted in the interest of
3 CyraCom in relation to the company's employees, it is subject to liability under the
4 FLSA and California law.

5 32. At all material times, Plaintiffs, the Collective Members and Class
6 Members were employees of CyraCom as defined by the FLSA, 29 U.S.C. § 203(e)(1)
7 and California law.

8 33. At all material times, Plaintiffs, the Collective Members and Class
9 Members were non-exempt employees under 29 U.S.C. § 213(a)(1) and California law.

10 34. Plaintiffs have given their written consent to be named parties in this
11 action under 29 U.S.C. § 216(b), a true and accurate copy of which is attached to this
12 Complaint as **Exhibits A and B**.

13 35. The true names and capacities, whether individual, corporate, associate,
14 representative, alter ego or otherwise, of defendants named in this action as DOES 1
15 through 10 inclusive are presently unknown to Plaintiffs, who therefore sue such
16 defendants by such fictitious names. Plaintiffs will seek to amend this Complaint to
17 allege the true names and capacities of DOES 1 through 10 when the same have been
18 ascertained. Plaintiffs are informed and believe, and based thereon alleges, that DOES
19 1 through 10 were and/or are, in some manner or way, responsible for and liable to
20 Plaintiffs and the Collective and Class Members for the events, happenings, and
21 damages set forth below.

22 36. Plaintiffs are informed and believe, and based thereon alleges, that at all
23 relevant times mentioned herein, Defendants acted as agents, employees, supervisors,
24 partners, conspirators, servants and/or joint venturers of each other, and in doing the
25 acts hereafter alleged, were acting within the course, scope, and authority of such
26 agency, employment, partnership, conspiracy, enterprise and/or joint venture, and with
27 the express and/or implied permission, knowledge, consent, authorization and
28

1 ratification of their co-defendants.

2 **FACTUAL ALLEGATIONS**

3 37. CyraCom provides remote translation and interpretation services to its
4 clients worldwide.²

5 38. The Collective Members are all current and former Interpreters who
6 worked for CyraCom nationwide during the FLSA Collective Period. The Collective
7 Members are non-exempt from the FLSA's overtime requirements.

8 39. The California Class Members are all current and former Interpreters
9 who worked for CyraCom in California during the California Class Period. The
10 California Class members are non-exempt employees and therefore entitled to an
11 hourly wage for each and every hour worked, overtime, compliant meal-and-rest
12 periods, vested PTO wages, and reimbursement for all reasonable and necessary
13 business expenses incurred.

14 40. Plaintiffs continue to work or worked for CyraCom as Interpreters,
15 providing two-way language interpretation for its clients. At all relevant times,
16 Plaintiff Heid worked remotely from her residence in San Diego County, California. At
17 all relevant times, Plaintiff Leeman worked remotely from her residence in Santa
18 Barbara County, California. The Collective and Class Members similarly work
19 remotely using CyraCom's propriety technology, hardware, and software.

20 41. At all relevant times, Plaintiffs are or were compensated on an hourly
21 basis at a rate of approximately \$20.00.

22 42. At all relevant times, Plaintiffs worked more than 8 hours a day and/or
23 more than 40 hours per week.

24 43. During every workweek, Plaintiffs, the Collective Members and Class
25 Members were paid on an hourly basis.

26 _____
27 ² See <https://www.cyacominternational.com/video-interpretation/> (last visited Sept.
28 26, 2022).

1 44. Plaintiffs, the Collective Members, and the Class Members performed
2 their duties, work and provided their interpretation services for CyraCom remotely. As
3 part of this design, CyraCom issues Plaintiffs, the Collective Members and the Class
4 Members computer, audio and video equipment for use in Plaintiffs', the Collective
5 Members' and the Class Members' homes. This CyraCom equipment contains
6 CyraCom's proprietary software programs which Plaintiffs, the Collective Members
7 and the Class Members must log on to perform their job functions for CyraCom.

8 45. At all relevant times, Plaintiffs, the Collective Members, and the Class
9 Members have been subject to CyraCom's policy of requiring Plaintiffs, the Collective
10 Members and the Class Members to spend time working before clocking in at the
11 beginning of their shifts and after clocking out at the end of their shifts.

12 46. Specifically, Plaintiffs, the Collective Members, and the Class Members
13 must set up the required equipment and perform quality checks before "clocking in."
14 In addition, Plaintiffs, the Collective Members and the Class Members are required to
15 spend time booting up and logging into their computers before clocking in for their
16 shifts. As a result, Plaintiffs, the Collective Members and the Class Members were
17 being required to perform pre-shift work for which they were not being compensated.
18 Moreover, Plaintiffs, the Collective Members and the Class Members are required to
19 clock out at the end of their shift before logging off, shutting down their computers and
20 cleaning equipment issued by CyraCom. As a result, Plaintiffs, the Collective Members
21 and the Class Members were being required to perform post-shift work for which they
22 were not being compensated.

23 47. As a result of the pre- and post-shift work, Plaintiffs, the Collective
24 Members and the Class Members typically spend at least 15 minutes or more each shift
25 that goes completely uncompensated, whether at a regular rate of pay or an overtime
26 rate of pay. In all instances, CyraCom's failure to compensate Plaintiffs, the Collective
27 Members and the Class Members for such time violates the minimum wage provisions
28

1 of the FLSA and California law. In all instances wherein Plaintiffs, the Collective
2 Members and the Class Members work over 40 hours in a workweek, CyraCom's failure
3 to compensate Plaintiffs, the Collective Members and the Class Members for such time
4 – at one and one-half times their regular rate of pay – violates the overtime provisions
5 of the FLSA and California law. In all instances wherein Plaintiffs and California Class
6 Members worked more than 8 hours in, but not over 40 hours in a workweek,
7 CyraCom's failure to compensate Plaintiffs and the California Class Members for such
8 time – at one and one-half times their regular rate of pay – violates the overtime
9 provisions of California law.

10 48. Plaintiffs, the Collective Members and the Class Members are only
11 "clocked-in" and compensated when they are logged into CyraCom's proprietary
12 software system. Anytime that Plaintiffs, the Collective Members and the Class
13 Members need to take a rest or meal break, they must log out of CyraCom's proprietary
14 software system. As a result, Plaintiffs, the Collective members and the Class Members
15 are not paid for rest breaks of 20 minutes or less.

16 49. CyraCom's failure to pay Plaintiffs, the Collective Members and the Class
17 Members for rest breaks of 20 minutes or less violates the minimum wage provisions
18 of the FLSA and California law in all instances. In all instances wherein Plaintiffs, the
19 Collective Members and the Class Members worked over 40 hours in a workweek,
20 CyraCom's failure to compensate Plaintiffs, the Collective Members and the Class
21 Members for any break of 20 minutes or less violates the overtime provisions of the
22 FLSA and California law. In all instances wherein Plaintiffs and California Class
23 Members worked more than 8 hours in, but not over 40 hours in a workweek,
24 CyraCom's failure to compensate Plaintiffs and the California Class Members for any
25 break of 20 minutes or less violates the overtime provisions of California law.

26 50. CyraCom employed Plaintiffs and California Class Members for work
27 periods of more than 5 and 10 hours a day, entitling them to first and second meal
28

1 periods of at least 30 minutes each. CyraCom, however, failed to provide Plaintiffs and
2 California Class Members duty-free meal periods of at least 30 minutes for every five
3 hours worked. As a result, Plaintiffs and California Class Members missed their meal
4 periods, worked through the meal periods, the meal periods were interrupted, or were
5 taken late. By failing to provide Plaintiffs and California Class Members with 30-
6 minute, off duty, compliant meal breaks for every five hours worked, CyraCom owes
7 Plaintiffs and California Class Members premium wages (at their regular rate of pay)
8 for these meal period violations.

9 51. CyraCom employed Plaintiffs and California Class Members for work
10 periods of four hours or more without rest periods of at least 10 minutes of rest time
11 for every four hours worked, or major fraction thereof. In addition, the rest breaks were
12 regularly interrupted, less than 10 minutes, and/or on duty. By failing to provide
13 Plaintiffs and California Class Members with 10-minute, off duty, compliant rest
14 breaks for every four hours worked or major fraction thereof, CyraCom owes Plaintiffs
15 and California Class Members premium wages (at their regular rate of pay) for these
16 rest period violations.

17 52. CyraCom has a policy whereby Plaintiffs and California Class Members
18 can accrue PTO each pay period based on their completed years of service. But the
19 maximum amount of PTO that can be carried over to the next year is 40 hours. As such,
20 CyraCom was depriving Plaintiffs and California Class Members of earned wages.

21 53. By failing to provide Plaintiff Heid and California Class Members wage
22 statements showing all hours worked, all wages earned, including meal-and-rest
23 premiums for meal and rest period violations, and the correct hourly rates for each
24 hour worked, CyraCom knowingly and intentionally violated California Labor Code §§
25 226, 1174(d), 1198 and Wage Order No. 4. *See also Naranjo, supra*, 13 Cal.5th 93.

26 54. CyraCom requires Plaintiffs, the Collective Members and the Class
27 Members to supply their own telephone, telephone service, highspeed internet, routers,
28

1 modems and replacement computer equipment which are necessary for the Plaintiffs,
 2 the Collective Members and the Class Members to perform their job duties for
 3 CyraCom. However, CyraCom fails to reimburse Plaintiffs, the Collective Members and
 4 the Class Members for these business expenses required by CyraCom. As a result,
 5 CyraCom has violated the FLSA and California law.

6 55. CyraCom failed to pay Plaintiff Leeman and California Class Members all
 7 wages due to them immediately upon termination, or within 72 hours of voluntarily
 8 leaving employment.

9 56. As alleged herein, CyraCom's violations of the FLSA and California's
 10 labor laws constitute an unfair, fraudulent or unlawful business practice under the
 11 UCL.

12 **COLLECTIVE ACTION ALLEGATIONS**

13 57. Plaintiffs and the Collective Members reallege and incorporate by
 14 reference all allegations in all preceding paragraphs.

15 58. Plaintiffs bring this action under 29 U.S.C. § 216(b) on their own behalf,
 16 and as representatives of individuals similarly situated, who are current or former
 17 Interpreters employed by CyraCom.

18 59. CyraCom subjected all its Interpreters, including Plaintiffs and the
 19 Collective Members, to its policy and practice of not paying them minimum wage or
 20 overtime for all time spent setting up equipment; booting up computers and launching
 21 CyraCom software; logging out of CyraCom software; shutting down computers; taking
 22 down audio and video equipment; and cleaning and maintaining equipment in violation
 23 of 29 U.S.C. §§ 206 and 207.

24 60. CyraCom subjected all its Interpreters, including Plaintiffs and the
 25 Collective Members, to its policy of failing to pay Plaintiffs and the Collective Members
 26 for all breaks of 20 minutes or less in violation of 29 U.S.C §§ 206 and 207.

27 61. CyraCom subjected all its Interpreters, including Plaintiffs and the
 28

1 Collective Members, to its policy of requiring Plaintiffs and the Collective Members to
2 provide highspeed internet service, equipment and replacement computer equipment
3 without reimbursing Plaintiffs and the Collective Members for same.

4 62. Plaintiffs' claims stated in this Complaint are essentially the same as
5 those of the Collective Members. This action is properly maintained as a collective
6 action because in all pertinent aspects the employment relationship of individuals
7 similarly situated to Plaintiffs is identical or substantially similar.

8 63. The Collective Members perform or have performed the same or similar
9 work as Plaintiffs.

10 64. CyraCom's failure to pay minimum wage and overtime compensation
11 required by the FLSA results from generally applicable policies or practices, and does
12 not depend on the personal circumstances of Plaintiff or the Collective Members.

13 65. Although the exact amount of damages may vary among the Collective
14 Members, the damages for the Collective Members can be easily calculated by a simple
15 formula. The claims of all Collective Members arise from a common nucleus of facts.
16 Liability is based on a systematic course of wrongful conduct by CyraCom that caused
17 harm to the Collective Members.

18 66. As such, Plaintiffs brings their FLSA minimum wage and overtime claims
19 as a collective action on behalf of the following FLSA class:

20 **All of CyraCom's current and former Interpreters**
21 **and those with similar job duties, but different titles,**
22 **who worked for CyraCom in the United States during**
the FLSA Collective Period.

23 67. CyraCom's unlawful conduct, as described herein, is pursuant to
24 CyraCom's corporate policy or practice of minimizing labor costs by refusing and/or
25 failing to properly compensate its employees according to the FLSA.

26 68. CyraCom is aware or should have known federal law prohibited it from
27 not paying Plaintiffs and the Collective Members all minimum wage and overtime as
28

1 detailed herein.

2 69. CyraCom's unlawful conduct has been widespread, repeated, and
3 consistent.

4 70. This action is properly brought and maintained as an opt-in collective
5 action under 29 U.S.C. § 216(b).

6 71. Upon information and belief, the individuals similarly situated to
7 Plaintiffs include hundreds, and likely thousands, of Interpreters currently and/or
8 formerly employed by CyraCom. Plaintiffs cannot state the precise number of similarly-
9 situated employees because that information is solely in CyraCom's possession,
10 custody, or control, but it can be readily ascertained from its employment records.

11 72. Notice can be provided to the Collective Members by First Class Mail to
12 the last address known to CyraCom, via email at the last known email address known
13 to CyraCom, and by text message to the last known telephone number known to
14 CyraCom.

15 **RULE 23 CALIFORNIA CLASS DEFINITION AND ALLEGATIONS**

16 73. Plaintiffs reallege and incorporate by reference all allegations in all
17 preceding paragraphs.

18 74. Plaintiffs bring Claims for Relief in violation of California wage-and-hour
19 laws as a class action under Rule 23(a), (b)(2) and (b)(3). Plaintiffs bring these claims
20 on behalf of themselves and all members of the following Rule 23 California Class:

21 **All of CyraCom's current and former Interpreters and**
22 **those with similar job duties, but different titles, who**
23 **worked for CyraCom within California during the**
California Class Period.

24 75. In the alternative, and for the convenience of this Court and the parties,
25 Plaintiffs may seek to certify subclasses at the time the motion for class certification is
26 filed.

27 76. **Numerosity (Rule 23(a)(1)).** The Class Members are so numerous that
28

joinder of all members is impracticable. Plaintiffs are informed and believe that CyraCom employed greater than 100 people who satisfy the definition of the Class Members.

77. Existence of Common Questions of Law and Fact (Rule 23(a)(2)).

Common questions of law and fact exist as to Plaintiffs and the Class Members including, but not limited to, the following:

- a. Whether CyraCom violated California law by failing to pay California Class Members at the least the minimum wage for all hours worked;
- b. Whether CyraCom violated California law by failing to pay California Class Members overtime compensation for all overtime hours worked at one and one-half times their regular rate of pay;
- c. Whether CyraCom violated California law by failing to provide California Class Members first and second meal periods of at least 30-minutes when the shifts exceeded 5 and 10 hours of work, and not compensating employees with one hour of pay at the employees' regular rate of compensation for each workday that meal periods were not provided;
- d. Whether CyraCom violated California law by failing to provide California Class Members daily rest periods of 10 minutes per 4 hours or major fraction thereof worked when the shift exceeded three-and-a-half hours and by failing to compensate employees one hour's wages in lieu of rest periods;
- e. Whether CyraCom violated California law by capping the amount of PTO hours that can be carried over into the following calendar year;
- f. Whether CyraCom violated California law by failing to provide California Class Members accurate wage statements;
- g. Whether CyraCom violate California law by failing to reimburse

1 California Class Members for all reasonable and necessary business
 2 expenses incurred;

3 h. Whether CyraCom violated California law by failing to timely pay
 4 California Class Members all earned wages and final paychecks due at
 5 the time of separation of employment;

6 i. Whether CyraCom's practices constitute an unfair, fraudulent, or
 7 unlawful business practice under the UCL;

8 j. Whether CyraCom unlawfully failed to keep and maintain accurate
 9 and true records of the hours worked by the Class Members as required
 10 by applicable law; and

11 k. The damages sustained and the proper measure of restitution
 12 recoverable by the California Class Members.

13 **78. Typicality (Rule 23(a)(3)).** Plaintiff's claims are typical of the Class
 14 Members' claims. Plaintiffs, like the Class Members, was subjected to CyraCom's
 15 illegal scheme to maximize profits by depriving its employees of minimum wage and
 16 overtime compensation, compliant meal-and-rest periods, vested PTO, accurate wage
 17 statements, and shifting the cost of business expenses from itself to the Class
 18 Members.

19 **79. Adequacy (Rule 23(a)(4)).** Plaintiffs will fairly and adequately
 20 represent and protect the interests of the Class Members. Plaintiffs have retained
 21 counsel competent and experienced in complex class actions, the FLSA, and state labor
 22 and employment litigation.

23 **80. Injunctive and Declaratory Relief (Rule 23(b)(2)).** Class certification
 24 of the Rule 23 claims is appropriate under Rule 23(b)(2) because CyraCom acted or
 25 refused to act on grounds generally applicable to the Class Members, making
 26 appropriate declaratory relief with respect to the Class Members as a whole.

27 **81. Predominance and Superiority of Class Action (Rule 23(b)(3)).**
 28

Class certification of the Rule 23 claims is also appropriate under Rule 23(b)(3) because questions of law and fact common to the Class Members predominate over questions affecting only individual members of the classes, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. CyraCom's common and uniform policies and practices illegally deprived Plaintiffs and all similarly situated employees of wages; thus, making the question of liability and damages much more manageable and efficient to resolve in a class action, compared to hundreds of individual trials. The damages suffered by individual Class Members are small compared to the expense and burden of individual prosecution. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about CyraCom's practices.

82. Plaintiffs intend to send notice to all Class Members to the extent required by Rule 23.

COUNT ONE: FAIR LABOR STANDARDS ACT

OFF-THE-CLOCK WORK

83. Plaintiffs and the Collective Members reallege and incorporate by reference all allegations in all preceding paragraphs.

84. CyraCom has a consistent, enterprise-wide policy of requiring Plaintiffs and the Collective Members to perform work while off the clock and failing and/or refusing to compensate Plaintiffs and the Collective Members their regular rate of pay for all non-overtime hours worked, and one and one-half times their regular hourly rate for all the time they worked over 40 hours in a workweek.

85. Plaintiffs and the Collective Members perform their duties and provide their interpretation services for CyraCom remotely. As part of this design, CyraCom issues Plaintiffs and the Collective Members computer, audio and video equipment for use in Plaintiffs' and the Collective Members' homes. This CyraCom equipment

1 contains its proprietary software programs which Plaintiffs and the Collective
2 Members must log on to perform their job duties.

3 86. At all relevant times, Plaintiffs and the Collective Members have been
4 subject to CyraCom's policy of requiring Plaintiffs and the Collective Members to spend
5 time working before clocking in at the beginning of their shifts and after clocking out
6 at the end of their shifts.

7 87. Specifically, Plaintiffs and the Collective Members must set up the
8 required equipment and perform quality checks before being "clocked in" and therefore
9 perform uncompensated work. Moreover, Plaintiffs and the Collective Members are
10 required to spend time booting up and logging into their computers before clocking in
11 for their shift and required to clock out at the end of their shift before logging off,
12 shutting down their computers and cleaning and maintaining the equipment issued by
13 CyraCom.

14 88. As a result, Plaintiffs and the Collective Members typically spend at least
15 15 minutes or more each shift that goes completely uncompensated. In all instances,
16 CyraCom's failure to compensate Plaintiffs and the Collective Members for such time
17 violates the minimum wage provisions of the FLSA, 29 U.S.C. § 206. In all instances
18 wherein Plaintiffs and the Collective Members work over 40 hours in a workweek,
19 CyraCom's failure to compensate Plaintiffs and the Collective Members for such time
20 violates the overtime provisions of the FLSA, 29 U.S.C. § 207.

21 89. Although at this stage, Plaintiffs and the Collective Members cannot
22 state the exact amount owed for all time worked during their employment, Plaintiffs
23 and the Collective Members believe that such information will become available during
24 discovery. Furthermore, when an employer fails to keep complete and accurate time
25 records, employees may establish the hours worked by their testimony, and the burden
26 of overcoming such testimony shifts to the employer.

1 90. CyraCom knew, or acted with reckless disregard, that its refusal or
2 failure to properly compensate Plaintiffs and the Collective Members during their
3 employment would violate the FLSA, and CyraCom knew the FLSA's minimum wage
4 and overtime requirements. As such, CyraCom's conduct constitutes a willful violation
5 of the FLSA.

6 91. As a result of CyraCom's failure or refusal to pay Plaintiffs and the
7 Collective Members for all hours worked, and CyraCom's failure or refusal to pay
8 Plaintiffs and the Collective Members one and one-half times their regular rate of pay
9 for all hours worked over 40 hours in any workweek, CyraCom violated 29 U.S.C. §§
10 206 and 207(a). Plaintiffs and the Collective Members are therefore entitled to
11 compensation of all unpaid minimum wages and one and one-half times their regular
12 rate of pay, to be proven at trial, plus an additional equal amount as liquidated
13 damages, together with interest, reasonable attorney's fees, and costs.

14 **COUNT TWO: FAIR LABOR STANDARDS ACTS**

15 **UNLAWFUL UNPAID BREAKS**

16 92. Plaintiffs and the Collective Members reallege and incorporate by
17 reference all allegations in all preceding paragraphs.

18 93. Under the FLSA, "[r]est periods of short duration, running from 5 minutes
19 to about 20 minutes. . . must be counted as hours worked." *See* 29 C.F.R. 785.18; *see*
20 *also Mauia v. Petrochem Insulation, Inc.*, 5 F.4th 1068, 1074 (9th Cir. 2021). CyraCom
21 violated the FLSA by routinely failing to pay Plaintiffs and the Collective Members for
22 rest breaks shorter than 20 minutes.

23 94. Plaintiffs, the Collective Members, and the Class Members are only
24 "clocked-in" and compensated when they are logged into CyraCom's proprietary
25 software system. Anytime that Plaintiffs, the Collective Members and the Class
26 Members need to take a rest or meal break, they must log out of CyraCom's proprietary
27

1 software system. As a result, Plaintiffs, the Collective members and the Class Members
2 are not paid for rest breaks of 20 minutes or less.

3 95. CyraCom's failure to pay Plaintiffs and the Collective Members for breaks
4 of 20 minutes or less violates the minimum wage provisions of the FLSA in all
5 instances. In all instances wherein Plaintiffs and the Collective Members worked over
6 40 hours in a workweek, CyraCom's failure to compensate Plaintiffs and the Collective
7 Members for any break of 20 minutes or less violates the overtime provisions of the
8 FLSA.

9 96. CyraCom is in possession of all of the time punch records and documents
10 reflecting hours worked which Plaintiffs do not have access to at this time. Upon
11 information and belief, these records will evidence all of the breaks for which Plaintiffs
12 and the Collective Members were paid, and all of the breaks for which Plaintiffs and
13 the Collective Members were not paid. Upon information and belief, these time punch
14 records should be readily available in discovery.

15 97. Although at this stage, Plaintiffs and the Collective Members cannot state
16 the exact amount owed for all time worked during their employment, Plaintiffs and the
17 Collective Members believe that such information will become available during
18 discovery. Furthermore, when an employer fails to keep complete and accurate time
19 records, employees may establish the hours worked by their testimony, and the burden
20 of overcoming such testimony shifts to the employer.

21 98. CyraCom knew, or acted with reckless disregard, that its refusal or failure
22 to properly compensate Plaintiffs and the Collective Members during their employment
23 would violate the FLSA, and CyraCom knew the FLSA's minimum wage and overtime
24 requirements. As such, CyraCom's conduct constitutes a willful violation of the FLSA.

25 99. As a result of CyraCom's failure or refusal to pay Plaintiffs and the
26 Collective Members their regular rate of pay for all hours worked and one and one-half
27 times their regular rate of pay for all hours worked over 40 hours in any workweek,
28

1 CyraCom violated 29 U.S.C. §§ 206 and 207. Plaintiffs and the Collective Members are
2 therefore entitled to compensation for unpaid wages at their regular rate of pay for
3 non-overtime hours worked and one and one-half times their regular rate of pay for
4 unpaid overtime hours, to be proven at trial, plus an equal amount as liquidated
5 damages, together with interest, reasonable attorney's fees, and costs.

6 **COUNT THREE: FAIR LABOR STANDARDS ACT**

7 **IMPROPER KICKBACKS**

8 100. Plaintiffs and the Collective Members reallege and incorporate by
9 reference all allegations in all preceding paragraphs.

10 101. The wage requirements of the FLSA "will not be met where the employee
11 'kicks-back' directly or indirectly to the employer or to another person for the
12 employer's benefit the whole or part of the wage delivered to the employee." See 29
13 C.F.R. 785.18. "For example, if it is a requirement of the employer that the employee
14 must provide tools of the trade which will be used in or are specifically required for the
15 performance of the employer's particular work, there would be a violation of the Act in
16 any workweek when the cost of such tools purchased by the employee cuts into the
17 minimum or overtime wages required to be paid him under the Act." *Id.*

18 102. CyraCom requires Plaintiffs and the Collective Members to supply their
19 own highspeed internet service, internet equipment and replacement computer
20 equipment. However, CyraCom fails to reimburse Plaintiffs and the Collective
21 Members for such required service and equipment. As such, CyraCom has violated the
22 overtime provisions of the FLSA.

23 103. Although at this stage, Plaintiffs and the Collective Members cannot state
24 the exact amount owed for all time worked during their employment, Plaintiffs and the
25 Collective Members believe that such information will become available during
26 discovery. Furthermore, when an employer fails to keep complete and accurate time
27

1 records, employees may establish the hours worked by their testimony, and the burden
2 of overcoming such testimony shifts to the employer.

3 104. CyraCom knew, or acted with reckless disregard, that its refusal or failure
4 to properly compensate Plaintiffs and the Collective Members during their employment
5 would violate the FLSA, and CyraCom knew the FLSA's overtime requirements. As
6 such, CyraCom's conduct constitutes a willful violation of the FLSA.

7 105. As a result of CyraCom's failure to reimburse Plaintiffs and the Collective
8 Members for their internet service, internet equipment and replacement computer
9 equipment, CyraCom violated the minimum wage and overtime provisions of the
10 FLSA. Plaintiffs and the Collective Members are therefore entitled to minimum wage
11 and overtime compensation, to be proven at trial, plus an equal amount as liquidated
12 damages, together with interest, reasonable attorney's fees, and costs.

13 **COUNT FOUR: VIOLATION OF CALIFORNIA'S MINIMUM WAGE**

14 **REQUIREMENTS**

15 **(Cal. Lab. Code §§ 200, 218 and 1194)**

16 **(Brought by Plaintiffs on Behalf of Themselves and Members of the**
17 **California Rule 23 Class Against all Defendants)**

18 106. Plaintiffs reallege and incorporate by this reference each of the preceding
19 and foregoing paragraphs as if fully set forth herein.

20 107. In addition to the FLSA, Plaintiffs seek to represent the proposed
21 California Rule 23 Class as a basis to enforce equal or greater protections for wages
22 owed that are offered by various California labor laws and local regulations as set forth
23 herein. Because the practices alleged herein are uniform, systematic and continuous
24 and affect each member of the California Rule 23 Class in a legally identical way,
25 Plaintiffs, at the appropriate time, will move to certify the California Class to the extent
26 permitted by Rule 23.

1 108. Under Labor Code § 1194, employees must be separately paid an hourly
 2 wage for each and every hour worked. *Balasanyan v. Nordstrom, Inc.*, 913 F.Supp.2d
 3 1001, 1007 (S.D. Cal. Dec. 20, 2012). A California employer cannot average an
 4 employee's compensation over the total number of hours worked to determine
 5 compliance with minimum wage obligations. *Armenta v. Osmose, Inc.*, 135 Cal.App.4th
 6 314, 323-324 (2005) (employees must be compensated the minimum wage for "non-
 7 productive time"); *Cardenas v. McLane FoodServices, Inc.*, 796 F.Supp.2d 1246, 1252-
 8 1253 (C.D. Cal. Jul. 8, 2011) (employees must be paid a separate hourly rate for pre-
 9 and-post shift duties not covered by the piece-rate formula); *Balasanyan, supra*, 913
 10 F.Supp.2d at p. 1007; *Gonzalez v. Downtown LA Motors, LP*, 215 Cal.App.4th 36, 48-
 11 49 (2013) (employees paid on a piece-rate basis must be paid a separate hourly rate for
 12 "non-repair tasks"). "The *Armenta* line of cases is quite clear: employees must be
 13 directly compensated at least minimum wage for all time spent on activities that do
 14 not allow them to *directly* earn wages." *Balasanyan, supra*, 913 F.Supp.2d at 1007
 15 (emphasis added). The California Supreme Court has held that commissions earned in
 16 one pay period cannot be reassigned to other pay periods to meet California's strict
 17 wage and hour requirements. *Peabody v. Time Warner Cable, Inc.*, 174 Cal.Rptr.3d 287
 18 (2014), 328 P.3d 1028 (2014).

19 109. Plaintiffs and the proposed Rule 23 California Class were at all times
 20 subject to California's laws and regulations protecting the employees' entitlement to be
 21 paid and presumption to be paid an hourly wage for each and every hour worked.

22 110. As set forth above, California law requires employers, such as Defendants,
 23 to pay a separately hourly wage to all nonexempt employees for each and every hour
 24 worked. Labor Code § 1194 provides that employees are entitled to wages and
 25 compensation for work performed, at the legal rate, including straight time, overtime,
 26 and double time.

111. Labor Codes §§ 218, 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal wage may recover the unpaid balance and together with attorney's fees and costs of suit, as well as liquidated damages in an amount equal to the wages unpaid and interest thereon.

112. At all relevant times herein, Defendants were required to compensate Plaintiff and the members of the California Rule 23 Class for all hours worked pursuant to Labor Code § 1194.

113. By uniformly and consistently failing to pay members of the California Rule 23 Class for pre- and post-shift work, rest periods, and time during which employees were not provided duty-free, uninterrupted meal periods, Defendants violated the minimum wage requirements as set forth in Labor Code §§ 218 and 1194.

114. Plaintiffs are informed and believe and based thereupon allege that the result of the unlawful and illegal policy and practice caused damage in the nonpayment of minimum wages to Plaintiffs and the proposed California Rule 23 Class, in an amount according to proof at trial.

115. Plaintiffs are informed and believe that the nonpayment of wages is fixed and ascertainable on a classwide basis such that prejudgment interest on those wages is recoverable.

116. Plaintiffs are informed and believe that the nonpayment of minimum wages for all hours worked also entitles Plaintiffs and the proposed California Rule 23 Class to attorneys' fees and costs, and liquidated damages in an amount equal to the amount unlawfully unpaid according to Labor Code § 1194.2

COUNT FIVE: VIOLATION OF CALIFORNIA'S OVERTIME LAWS

(Cal. Lab. Code §§ 510 and 1194)

**(Brought by Plaintiffs on Behalf of Themselves and Members of the
California Rule 23 Class Against all Defendants)**

1 117. Plaintiffs reallege and incorporate by this reference each of the preceding
2 and foregoing paragraphs as if fully set forth herein.

3 118. In addition to the FLSA, Plaintiffs seeks to represent the proposed
4 California Rule 23 Class as a basis to enforce equal or greater protections for wages
5 owed that are offered by California labor laws and local regulations as set forth herein.
6 Because the practices alleged herein are uniform, systematic and continuous and affect
7 each proposed member of the California Rule 23 Class in a legally identical way,
8 Plaintiffs, at the appropriate time will move to certify the California Class to the extent
9 permitted by Rule 23.

10 119. Plaintiffs and the proposed California Rule 23 Class were at all times
11 subject to state laws and regulations protecting the employees' entitlement to be paid
12 and presumption to be paid overtime wages for requisite hours worked beyond a normal
13 work day or a normal work week, as specified, without limitation, by Cal. Labor Code
14 §§ 510, 1194 and applicable Wage Order.

15 120. During the California Class Period, Plaintiffs and members of the
16 California Rule 23 Class were primarily engaged in non-exempt duties. Plaintiffs and
17 members of the California Rule 23 Class were neither managers, administrative, nor
18 professional employees. No known exemptions to overtime apply to Plaintiffs or
19 members of the California Rule 23 Class. Accordingly, Plaintiffs and members of the
20 California Rule 23 Class were entitled to overtime during the California Class Period.

21 121. California law requires employers, such as Defendants, to pay overtime
22 compensation to all nonexempt employees for all hours worked over 40 hours per week,
23 or over 8 hours per day. Labor Code § 204 establishes the fundamental right of all
24 employees in California to be paid wages, including straight time and overtime, in a
25 timely fashion for their work. This precludes any waiver for unpaid due and owing
26 wages that remain unpaid at the time of separation.

122. Labor Code § 510(a) states: “Any work in excess of [8] hours in one workday and any work in excess of 40 hours in any one workweek and the first [8] 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.”

123. Throughout the California Class Period, as alleged above, Plaintiffs and members of the California Class worked in excess of 8 hours in a workday and/or 40 hours in a workweek. During the California Class Period, Defendants did not pay Plaintiffs and members of the California Class overtime pay for all overtime hours worked at one and one-half times their regular rate of pay.

124. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein, Plaintiffs and members of the California Rule 23 Class have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendants in an amount to be established at trial, prejudgment interest, and costs and attorneys’ fees, pursuant to statute and other applicable law.

COUNT SIX: VIOLATION OF CALIFORNIA’S MEAL-AND-REST PERIOD

REQUIREMENTS

(Cal. Lab. Code §§ 226.7, 512 and Applicable Wage Order)

(Brought by Plaintiffs on Behalf of Themselves and Members of the California Rule 23 Class)

125. Plaintiffs reallege and incorporates by this reference each of the preceding and foregoing paragraphs as if fully set forth herein.

126. Labor Code § 226.7(b) provides, in pertinent part, that “[a]n employer shall not require an employee to work during a meal or rest or recovery period

1 mandated pursuant to an applicable statute, or applicable regulation, standard, or
2 order of the Industrial Welfare Commission ...”

3 127. Labor Code § 512(a) provides that “[a]n employer may not employ an
4 employee for a work period of more than five hours per day without providing the
5 employee with a meal period of not less than 30 minutes, except that if the total work
6 period per day of the employee is no more than six hours, the meal period may be
7 waived by mutual consent of both the employer and employee.”

8 128. Labor Code § 512(a) further provides that “[a]n employer may not employ
9 an employee for a work period of more than 10 hours per day without providing the
10 employee with a second meal period of not less than 30 minutes, except that if the total
11 hours worked is no more than 12 hours, the second meal period may be waived by
12 mutual consent of the employer and the employee only if the first meal period was not
13 waived.”

14 129. Section 11(A) of the applicable Wage Order provides that “[u]nless the
15 employee is relieved of all duty during a 30 minute meal period, the meal period shall
16 be considered an ‘on duty’ meal period and counted as time worked.” An “on duty” meal
17 period shall be permitted only when the nature of the work prevents an employee from
18 being relieved of all duty and when by written agreement between the parties an on-
19 the-job paid meal period is agreed to. “The written agreement shall state that the
20 employee may, in writing, revoke the agreement at any time.”

21 130. Section 11(B) of the Wage Order provides that “[i]f an employer fails to
22 provide an employee a meal period in accordance with the applicable provisions of this
23 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular
24 rate of compensation for each workday that the meal period is not provided.”

25 131. Plaintiffs and the members of the California Rule 23 Class consistently
26 worked over five hours, and ten hours, per shift and therefore were entitled to a first
27

1 and second meal period of not less than 30 minutes prior to exceeding fifth and tenth
2 hour of work.

3 132. Plaintiffs and members of the California Rule 23 Class did not waive their
4 meal periods by mutual consent with Defendants or otherwise.

5 133. Plaintiffs and members of the California Rule 23 Class did not enter into
6 any written agreement with Defendants agreeing to an on-the-job paid meal period.

7 134. Similarly, Plaintiffs and members of the proposed California Rule 23
8 Class were entitled to be authorized and permitted paid, duty-free, uninterrupted 10
9 minute rest periods for every 4 hours worked (or every major fraction thereof) or be
10 paid for one hour of “premium wage” at the employee’s regular rate of pay for each day
11 that a rest period was not authorized, permitted or otherwise compliant with applicable
12 law.

13 135. As alleged above, Defendants failed to comply with the required meal
14 periods and rest periods established by Labor Code §§ 226.7, 512, 516 and Sections 11
15 and 12 of the applicable Wage Order. Defendants did not provide compliant meal
16 periods and, as a result, Plaintiffs and members of the California Rule 23 Class missed
17 their meal periods, took short meal periods, and/or took late meal periods. In addition,
18 the meal periods that Plaintiffs and members of the California Rule 23 Class did take
19 were not duty free and free from employer control. Defendants further did not
20 authorize or permit compliant rest periods for every four hours worked, or major
21 fraction thereof, nor did it pay a “premium wage” for missed, short, late or interrupted
22 rest periods.

23 136. Pursuant to Section 11(B) and Section 12 of the applicable Wage Order
24 and Labor Code §226.7(c)—which states “[i]f an employer fails to provide an employee
25 a meal or rest ... period in accordance with a state law ..., the employer shall pay the
26 employee one additional hour of pay at the employee’s regular rate of compensation for
27 each workday that the meal or rest ... period is not provided”— Plaintiffs and the
28

1 members of the California Rule 23 Class are entitled to damages in an amount equal
 2 to one additional hour of pay at each employee's regular rate of compensation for each
 3 work day that the meal or rest period was not provided, in a sum to be proven at trial.

4 137. Pursuant to Labor Code § 218.6 and Civil Code § 3287, Plaintiff and the
 5 members of the California Rule 23 Class seek recovery of prejudgment interest on all
 6 amounts recovered herein.

7 138. Plaintiffs limit the recovery of "premium wages" to one hour of pay per
 8 day for any missed, short, late, or uninterrupted meal period and to one hour of pay
 9 per day for any missed, short, late, or uninterrupted rest period, as demonstrated by
 10 the Division of Labor Standards Enforcement Policy Manual guidelines, for a
 11 maximum recovery of two premium wages payment per employee per day.

12 **COUNT SEVEN: FAILURE TO PAY ALL ACCRUED AND VESTED PTO**

13 **WAGES**

14 **(Cal. Lab. Code § 227.3)**

15 **(Brought by Plaintiffs on Behalf of Themselves and Members of the**
 16 **California Rule 23 Class)**

17 139. Plaintiffs hereby incorporate by reference each and every other paragraph
 18 in this Complaint as if fully pled herein.

19 140. At times relevant to this Complaint, Plaintiffs and California Rule 23
 20 Class Members were non-exempt hourly employees of Defendants, covered by
 21 California Labor Code § 227.3.

22 141. California Labor Code § 227.3 states in relevant part: "Unless otherwise
 23 provided by a collective-bargaining agreement, whenever a contract of employment or
 24 employer policy provides for paid vacations, and an employee is terminated without
 25 having taken off his vested vacation time, all vested vacation shall be paid to him as
 26 wages at his final rate in accordance with such contract of employment or employer
 27 policy respecting eligibility or time served...."

1 142. Defendants had a policy whereby Plaintiffs and California Rule 23 Class
2 Members would accrue PTO based on how long they worked for Defendants.

3 143. However, as Plaintiffs and similarly situated employees continued to
4 work for Defendants, Defendants failed to accrue to them the PTO wages they were
5 due and owed because Defendants unlawfully capped the number of PTO hours that
6 can be carried over to the following calendar year to 40 hours.

7 144. PTO wages are deferred wages that vest once accrued. An employer must
8 pay its employees all unused vested PTO at the time of termination at the employees'
9 final rate of pay. *See* Cal. Lab. Code § 227.3.

10 145. Moreover, Defendants terminated Plaintiffs and other similarly situated
11 employees without paying them the PTO wages they did accrue, in violation of
12 California law, and employed policies and procedures which ensured Plaintiff and those
13 similarly situated would not receive their accrued and vested PTO wages upon
14 termination.

15 146. Defendants employed policies, practices, and procedures which ensured
16 Plaintiffs and the members of the California Rule 23 Class would not receive their
17 accrued and vested PTO wages upon the separation of their employment from
18 Defendants.

19 147. Pursuant to California Labor Code § 227.3, Plaintiffs and members of the
20 Rule 23 California Class seek their earned and vested PTO wages, plus interest
21 thereon, for the entire California Class Period.

22 148. Plaintiffs are informed and believe and based thereon alleges that
23 Defendants' willful failure to provide Plaintiffs and California Rule 23 Class Members
24 the wages due and owing them upon separation from employment results in a
25 continued payment of wages up to 30 days from the time the wages were due.
26 Therefore, Plaintiff Leeman and California Rule 23 Class Members who have
27 separated from employment are entitled to compensation pursuant to Labor Code §
28

203.

COUNT EIGHT: VIOLATION OF CALIFORNIA'S WAGE STATEMENT
REQUIREMENTS

(Cal. Lab. Code §§ 226, 1174(d), and 1198; Wage Order No. 4)
(Brought by Plaintiff Heid on behalf of herself and members of the
California Rule 23 Class)

149. Plaintiff Heid realleges and incorporates by this reference each of the preceding and foregoing paragraphs as if fully set forth herein.

150. Labor Code § 226(a) requires Defendants, “semimonthly or at the time of each payment of wages,” to furnish their workers with “an accurate itemized statement in writing” showing gross and net wages earned, total hours worked by the employee, rates of pay, and the correct entity that employs them. Defendants knowingly and intentionally failed to provide its workers with such timely and accurate wage-and-hour statements.

151. California Rule 23 Class Members suffered injury as a result of Defendants’ knowing and intentional failure to provide their workers with the wage-and-hour statements required by law.

152. Under Labor Code § 226(e) and (t), and based on Defendants’ conduct as alleged herein, California Rule 23 Class Members are entitled to (a) \$50 for the initial pay period in which a wage and hour statement violation occurred, and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars \$4,000; (b) injunctive relief to ensure Defendants’ compliance with Labor Code § 226; and (c) an award of costs and reasonable attorney's fees.

153. Moreover, as a result of Defendants’ conduct, California Rule 23 Class Members have suffered actual damages in that, among other things, the lack of accurate wage statements hindered them from determining the correct amount of

1 wages owed to them and what legal entity employed them. The absence of accurate
 2 wage statements has caused California Rule 23 Class Members time, money, and
 3 energy in attempting to reconstruct time and pay records and resulted in the
 4 submission by Defendants of inaccurate information about hours worked and wages
 5 earned. As a result of Defendants' failure to provide California Rule 23 Class Members
 6 with timely and accurate wage statements, they are entitled to recover the aggregate
 7 sum according to proof, of all actual damages they suffered.

8 154. Defendants' conduct also entitles California Rule 23 Class Members to
 9 seek preliminary and permanent injunctive relief including, but not limited to, an order
 10 that it issue wage-and-hour statements to their workers that comply with Labor Code
 11 § 226.

12 **COUNT NINE: FAILURE TO ADEQUATELY INDEMNIFY EMPLOYEES FOR**
 13 **EMPLOYMENT-RELATED EXPENDITURES**

14 **(Cal. Lab. Code § 2802)**

15 **(Brought by Plaintiffs on Behalf of Themselves and Members of the**
 16 **California Rule 23 Class)**

17 155. Plaintiffs hereby incorporate by reference each and every other paragraph
 18 in this Complaint as if fully pled herein.

19 156. Plaintiffs and members of the California Rule 23 Class have been
 20 employed by Defendants in the State of California. California law requires that
 21 Defendants indemnify their employees for all necessary expenditures or losses incurred
 22 by the employee in discharge of his or her duties or at the obedience of the directions
 23 of the employer. Moreover, an employer is prohibited from passing the ordinary
 24 business expenses and losses of the employer onto the employee. *See* Cal. Lab. Code §
 25 2802.

26 157. Defendants have violated Labor Code § 2802 by failing to indemnify
 27 Plaintiffs and members of the California Rule 23 Class for necessary expenditures they
 28

1 incurred in the discharge of their duties. Specifically, Defendants employed a policy,
2 practice, and procedure whereby Plaintiffs and similarly situated employees were
3 required to supply their own telephone and highspeed internet services, internet
4 equipment and replacement computer equipment without proper reimbursement.

5 158. Moreover, Defendants employed policies and procedures which ensured
6 Plaintiffs and the members of the California Rule 23 Class would not receive
7 indemnification for their employment-related expenses. This practice resulted in
8 Plaintiffs and members of the California Rule 23 Class not receiving such
9 indemnification in compliance with California law.

10 159. Because Defendants failed to properly indemnify employees for the
11 necessary expenditures incurred in the discharge of their duties, they are liable to
12 Plaintiffs and the members of the California Rule 23 Class for monies to compensate
13 them for the use of the employment-related expenses they incurred under Labor Code
14 § 2802.

15 160. As a direct and proximate result of Defendants' violation of Labor Code §
16 2802, Plaintiffs and members of the California Rule 23 Class have suffered irreparable
17 harm and monetary damages entitling them to both injunctive relief and restitution.
18 Plaintiffs, on behalf of herself and on behalf of the California Rule 23 Class, seek
19 damages and all other relief allowable including indemnification for all employment-
20 related expenses and ordinary business expenses incurred by Defendants and passed
21 onto Plaintiffs and the members of the California Rule 23 Class pursuant to Labor Code
22 § 2802.

23 161. Pursuant to Labor Code § 2802, Plaintiffs and members of the California
24 Rule 23 Class are entitled to recover full indemnification of unreimbursed business
25 expenses, reasonable attorney's fees and costs of suit.

**COUNT TEN: FAILURE TO PAY ALL WAGES TIMELY UPON SEPARATION
OF EMPLOYMENT**

(Cal. Lab. Code §§ 201-203)

**(Brought by Plaintiff Leeman on Behalf of Herself and Members of the
California Rule 23 Class)**

162. Plaintiff Leeman hereby incorporates by reference each and every other paragraph in this Complaint as if fully pled herein.

163. At all times relevant to this Complaint, Plaintiff Leeman and members of the California Rule 23 Class were employees of Defendants, covered by California Labor Code §§ 201-203.

164. Pursuant to California Labor Code §§ 201-203, Plaintiff Leeman and members of the California Rule 23 Class were entitled upon separation of employment to timely payment of all wages earned and unpaid prior to separation. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

165. Defendants failed to pay Plaintiff Leeman and members of the California Rule 23 Class all wages earned and unpaid prior to separation of employment, in accordance with either California Labor Code §§ 201-203. Specifically, in direct violation of Labor Code §§ 201-203, despite that Plaintiff Leeman's employment relationship with Defendants terminated, Defendants failed to timely pay Plaintiff Leeman all her earned wages in her final paycheck. Plaintiff Leeman is informed and believes and thereon alleges that at all relevant times within the limitations period applicable to this cause of action, Defendants maintained a policy or practice of not paying hourly employees all earned wages timely upon separation of employment.

1 166. Defendants' failure to pay Plaintiff Leeman and members of the
2 California Rule 23 all wages earned prior to separation of employment timely in
3 accordance with California Labor Code §§ 201 and 202 was willful. Defendants had the
4 ability to pay all wages earned by hourly workers prior to separation of employment in
5 accordance with California Labor Code §§ 201 and 202, but intentionally adopted
6 policies or practices incompatible with the requirements of California Labor Code §§
7 201 and 202. Defendants' practices include failing to pay at least minimum wage for
8 all time worked, overtime wages for overtime hours worked, failing to pay premium
9 wages for workdays Defendants did not provide, or timely provide, employees all meal
10 periods and rest periods in compliance with California law, and failing to reimburse
11 employment-related expenditures. When Defendants failed to pay its hourly non-
12 exempt workers all earned wages timely upon separation of employment, they knew
13 what they were doing and intended to do what they did.

14 167. Pursuant to either California Labor Code §§ 201 or 202, Plaintiff Leeman
15 and members of the California Rule 23 Class are entitled to all wages earned prior to
16 separation of employment that Defendants did not pay them.

17 168. Pursuant to California Labor Code § 203, Plaintiff Leeman and members
18 of the California Rule 23 are entitled to continuation of their wages, from the day their
19 earned and unpaid wages were due upon separation until paid, up to a maximum of 30
20 days.

21 169. As a result of Defendants' conduct, Plaintiff Leeman and members of the
22 California Rule 23 Class have suffered damages in an amount, subject to proof, to the
23 extent they were not paid for all wages earned prior to separation.

24 170. As a result of Defendants' conduct, Plaintiff Leeman and members of the
25 California Rule 23 Class have suffered damages in an amount, subject to proof, to the
26 extent they were not paid all continuation wages owed under California Labor Code §
27 203.

171. Plaintiff Leeman and members of the California Rule 23 Class are entitled to recover the full amount of their unpaid wages, continuation wages under § 203, and interest thereon.

COUNT ELEVEN: VIOLATIONS OF THE UCL

(Cal. Bus. & Prof. Code § 17200, *et seq.*)

(Brought by Plaintiffs on Behalf of Themselves and Members of the California Rule 23 Class)

172. Plaintiffs hereby incorporate by reference each and every other paragraph in this Complaint as if fully pled herein.

173. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, including, to wit, by: (a) failing to provide off-duty meal periods in violation of Labor Code §§ 226.7 and 512; (b) failing to provide off-duty rest periods in violation of Labor Code § 226.7; (c) failing to pay all applicable overtime and double-time wages for all hours worked in violation of §§ 510, 1194, and 1198; (d) failing to pay all minimum wages for all hours worked in violation of §§ 1194 and 1197; (e) failing to reimburse all business expenses in violation of § 2802; and (f) failing to remunerate all employees for all wages due upon separation of employment in violation of §§ 201-203.

174. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

175. Plaintiffs seek individually and on behalf of other members of the California Rule 23 Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein.

176. Plaintiffs are informed and believe, and based thereon alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiffs and other members of the California Rule 23 Class the minimum working condition standards and conditions due to them under the California laws as specifically described therein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of all other similarly situated persons, requests this Court grant the following relief in Plaintiffs', the Collective Members' and the California Rule 23 Class Members' favor, and against CyraCom:

- A. For an order conditionally certifying the proposed FLSA Class and certifying the proposed California Rule 23 Class;
- B. For an order appointing Plaintiffs as the representatives of the FLSA Class and California Rule 23 Class as described herein;
- C. For the Court to declare and find CyraCom committed one or more of the following acts:
 - i. Violated the minimum wage and overtime provisions of the FLSA;
 - ii. Willfully violated the minimum wage and overtime provisions of the FLSA; and
 - iii. Violated the minimum wage, overtime, meal-and-rest period, vested vacation wage, wage statement, expense reimbursement, and timely wage payment requirements of California law.
- D. For the Court to award damages and/or restitution in the amounts of all unpaid minimum and overtime wages, premium wages, vested vacation wages, unreimbursed expenses, statutory and civil penalties, and waiting-time penalties due and owing to Plaintiffs, the FLSA Collective Members,

1 and the California Rule 23 Class Members;

2 E. For the Court to award compensatory damages, including liquidated
3 damages pursuant to 29 U.S.C. § 216(b) and Cal. Lab. Code § 1194.2, in
4 amounts to be determined at trial;

5 F. For the Court to award prejudgment and post-judgment interest on any
6 damages awarded;

7 G. For the Court to award all treble damages, interest, attorneys' fees and
8 costs owed to Plaintiffs and the California Rule 23 Class Members under
9 California law including, but not limited to, California Labor Code §§
10 218.5, 226, 1194, 2802, and Code of Civil Procedure § 1021.5;

11 H. For the Court to award Plaintiffs' and the Collective Members' reasonable
12 attorneys' fees and costs of the action under 29 U.S.C. § 216(b) and all
13 other causes of action set forth in this Complaint;

14 I. For the Court to provide a reasonable service award for Plaintiffs to
15 compensate them for the time they spent attempting to recover wages for
16 the FLSA Collective Members and California Rule 23 Class Members and
17 for the risks they took in doing so; and

18 J. Such other relief as this Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs, the FLSA Collective Members, and the California Rule 23 Class
21 Members hereby demand a jury trial on all causes of action and claims with respect to
22 which they each have a state and/or federal constitutional right to a jury trial.

23 DATED: September 26, 2022

Respectfully submitted,

KABATECK LLP

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Attorneys for Plaintiffs and the Putative Classes

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Ingrid Leeman and Helaine Heid,
individually, and on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

CyraCom International, Inc., a Delaware
Corporation and Does 1-10

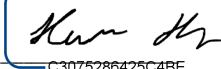
Defendants.

No.

**CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

I, Helaine Heid, do hereby consent to be a party plaintiff to the above-entitled action. I authorize my attorneys, the Law Offices of Simon & Simon, Michael Fradin, Attorney at Law, Kabatek LLP and their associated attorneys (“the Attorneys”), to file the Complaint on my behalf and for other employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and all other matters related to the Lawsuit.

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Helaine Heid

9/20/2022

Date

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Ingrid Leeman and Helaine Heid,
individually, and on behalf of themselves and
all others similarly situated,

Plaintiff,

v.

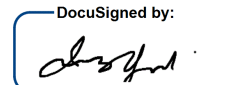
CyraCom International, Inc., a Delaware
Corporation and Does 1-10

Defendants.

No.

**CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

I, Ingrid Leeman, do hereby consent to be a party plaintiff to the above-entitled action. I authorize my attorneys, the Law Offices of Simon & Simon, Michael Fradin, Attorney at Law, Kabatek LLP and their associated attorneys (“the Attorneys”), to file the Complaint on my behalf and for other employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and all other matters related to the Lawsuit.

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Ingrid Leeman

9/19/2022

Date

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Ingrid Leeman and Helaine Heid,
individually, and on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

CyraCom International, Inc., a Delaware
Corporation and Does 1-10

Defendants.

No.

**CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

I, Helaine Heid, do hereby consent to be a party plaintiff to the above-entitled action. I authorize my attorneys, the Law Offices of Simon & Simon, Michael Fradin, Attorney at Law, Kabatek LLP and their associated attorneys (“the Attorneys”), to file the Complaint on my behalf and for other employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and all other matters related to the Lawsuit.

DocuSigned by:



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Helaine Heid

9/20/2022

Date

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Ingrid Leeman and Helaine Heid,
individually, and on behalf of themselves and
all others similarly situated,

Plaintiff,

v.

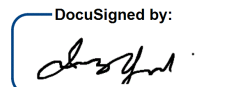
CyraCom International, Inc., a Delaware
Corporation and Does 1-10

Defendants.

No.

**CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

I, Ingrid Leeman, do hereby consent to be a party plaintiff to the above-entitled action. I authorize my attorneys, the Law Offices of Simon & Simon, Michael Fradin, Attorney at Law, Kabatek LLP and their associated attorneys (“the Attorneys”), to file the Complaint on my behalf and for other employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and all other matters related to the Lawsuit.

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Ingrid Leeman

9/19/2022

Date

Exhibit D

CONSENT FORM

1. I consent and agree to pursue my claims for unpaid overtime and/or minimum wages through a lawsuit filed against CyraCom.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act and/or state wage and hour laws. I hereby consent, agree and opt-in to become a plaintiff herein and be bound by any judgment by the Court or any settlement of this action.
3. I intend to pursue my claim individually, unless and until the court or parties certify this case as a collective or class action. If someone else serves as the class representative(s), then I designate the class representative(s) as my agent(s) to make decisions on my behalf concerning the litigation, the method and manner of conducting the litigation, the entering of an agreement with Plaintiff's counsel concerning fees and costs, the entering into a settlement agreement with my employer, and all other matters pertaining to this action.
4. In the event the case is certified and then decertified, I authorize Plaintiff's counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

DocuSigned by:

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Miriam Carneiro Saraiva

Date: 11/9/2022