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David H. Yamasaki  
Chief Executive Officer/Clerk  
Superior Court of CA, County of Santa Clara  
Case #1-09-CV-142927 Filing #G-16264  
By A. Floresca, Deputy

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10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SANTA CLARA**

13 **YOLANDA LEWIS, on behalf of**  
14 **herself and others similarly situated,**

15 **Plaintiffs,**

16 **v.**

17 **COLLABRUS, INC.; M SQUARED**  
18 **CONSULTING, INC.;CONSULTANT**  
19 **BILLING, INC.; and DOES 1 to 50,**  
20 **Inclusive,**

21 **Defendants.**

**CASE NO.: 109CV-142927**

**FIRST AMENDED CLASS ACTION COMPLAINT FOR:**

1. California Wages and Overtime Violations Under Labor Code §§510 and 1194
2. Failure to Provide Meal Breaks Under Labor Code §226.7
3. California Record-Keeping Provision Violations, Cal. Wage Order No. 4
4. Penalties Pursuant to Labor Code §203
5. Violation of Business & Professions Code §17200
6. Penalties Pursuant to Labor Code §2699

22 Plaintiff YOLANDA LEWIS, on behalf of herself and all others similarly situated, complains  
23 of Defendant as follows:

24 **I**

25 **INTRODUCTION**

26 1. This is a Class Action, pursuant to Code of Civil Procedure §382, on behalf of Plaintiff  
27 and all individuals who hold or held the position of "Project Manager, Business Analyst, Consultant,  
28 and/or similar title" who are employed by, or formerly employed by COLLABRUS, INC., M  
SQUARED CONSULTING, INC.; CONSULTANT BILLING, INC., and any subsidiaries or  
affiliated companies (hereinafter referred to as "Defendant" or "Defendants") within the State of

1 California.

2 2. From April 23, 2005 to the present, Defendants have had a consistent policy failing  
3 to pay all wages due and/or overtime compensation to Project Manager, Business Analyst,  
4 Consultant, and/or similar title, including Plaintiff, for all work over eight (8) hours per day or forty  
5 (40) hours per week. Defendants have maintained a practice of failing to pay wages for all hours  
6 worked.

7 3. From April 23, 2005 to the present, Defendants have had a consistent policy of  
8 requiring employees within the State of California, including Plaintiff, to work at least five (5) hours  
9 without a meal period and failing to pay such employees one (1) hour of pay at the employees regular  
10 rate of compensation for each workday that the meal period is not provided or provided after five  
11 (5) hours, as required by California state wage and hour laws.

12 4. From April 23, 2005 to the present, Defendants have had a consistently policy and/or  
13 practice of failing to maintain time records showing when mechanics/technicians, including Plaintiff,  
14 begin and end each work period, meal periods, and total daily hours worked by itemizing in wage  
15 statements all deductions from payment of wages and accurately reporting total hours worked.

16 5. Plaintiff, on behalf of herself and the proposed class, brings this action pursuant to  
17 Labor Code §§201, 202, 203, 226(a), 510, 512, 1194, 1199, and California Code of Regulations,  
18 Title 8, Section 11040, seeking unpaid wages and/or overtime, meal breaks, penalties, injunctive and  
19 other equitable relief, and reasonable attorneys' fees and costs.

20 6. Plaintiff, on behalf of herself and all proposed class members, pursuant to Labor Code  
21 §2699, seeks penalties for defendants' Labor Code violations, including the failure to provide  
22 overtime compensation and meal and rest breaks in accordance with California law.

23 7. Plaintiff, on behalf of herself and the proposed class, pursuant to Business &  
24 Professions Code §§17200-17208, also seeks injunctive relief, restitution, and disgorgement of all  
25 benefits Defendants enjoyed from its failure to pay wages and/or overtime and for its failure to  
26 provide breaks.

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**II**  
**PARTIES**

**A. Plaintiffs**

8. Venue as to each defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395. Defendants operate several locations within Southern California. Defendants do business within Santa Clara County. The unlawful acts alleged herein have a direct effect on plaintiff and those similarly situated within the State of California and Santa Clara County.

9. Plaintiff YOLANDA LEWIS is a resident of California.

10. Plaintiff and the proposed class were regularly required to:

(a) Work over eight (8) hours per day or forty (40) hours per week without being provided premium overtime pay rates;

(b) Work without being provided all wages due for all hours worked;

(c) Work in excess of five (5) hours per day without being provided a meal period and not being compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided or provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders; and

(d) Work without being provided accurate itemized wage statements that reflect all deductions from payment of wages and accurately reporting total hours worked, including when the employee begins and ends each work period and total daily hours worked by Plaintiff and members of the proposed class.

11. Defendant willfully failed to compensate Plaintiff and members of the proposed class for wages at the termination of their employment with Defendant.

**B. Defendants**

12. Defendant COLLABRUS, INC. is a California corporation. They own and operate several locations within the State of California. Defendant's principal place of business address is 111 Sutter Street Suite 900, San Francisco, CA 94104. Defendant employed Plaintiff and similarly situated persons as Project Managers, Business Analyst, and/or Consultants within California. Defendant has done and does business throughout the State of California.

1 Defendant M SQUARED CONSULTING INC. is a Delaware corporation. They own and  
2 operate several locations within the State of California. Defendant's principal place of business  
3 address is 111 Sutter Street Suite 900, San Francisco, CA 94104. Defendant employed Plaintiff and  
4 similarly situated persons as Project Managers, Business Analyst, and/or Consultants within  
5 California. Defendant has done and does business throughout the State of California.

6 Defendant CONSULTANT BILLING, INC. is a corporation. They own and operate several  
7 locations within the State of California. Defendant's principal place of business address is 111 Sutter  
8 Street Suite 850, San Francisco, CA 94104. Defendant employed Plaintiff and similarly situated  
9 persons as Project Managers, Business Analyst, and/or Consultants within California. Defendant has  
10 done and does business throughout the State of California.

11 13. Upon information and belief, Defendants employ hundreds of Project Manager,  
12 Business Analyst, Consultant, and/or persons holding similar title in the state of California.

13 **III**

14 **FACTUAL BACKGROUND**

15 14. Plaintiff and the proposed class are, and at all times pertinent hereto, have been  
16 nonexempt employees within the meaning of the California Labor Code, and the implementing rules  
17 and regulations of the IWC California Wage Orders. Defendants hire employees who work as  
18 Project Manager, Business Analyst, Consultant, and/or similar title.

19 15. Plaintiff and the proposed class are covered by California Industrial Welfare  
20 Commission Occupational Wage Order No. 4-2001 (Title 8 Cal. Code of Regs. §§11040).

21 16. Defendants have failed to comply with IWC Wage Order 4-2001(3) by failing to  
22 compensate Plaintiff and the proposed class for work over eight (8) hours per day and/or forty (40)  
23 hours per week at premium overtime rates and for all hours worked.

24 17. Defendants have not been provided meal periods for work days in excess of five (5)  
25 hours and were not compensated one hours wages in lieu thereof.

26 18. Defendants have failed to comply with IWC Wage Order 4-2001(7) by failing to  
27 maintain time records showing when employees begin and end each work period, meal periods, and  
28 total daily hours worked by itemizing in wage statements all deductions from payment of wages and

1 accurately reporting total hours worked by Plaintiff and the proposed class.

2 19. Defendants willfully failed to pay overtime wages and/or meal break compensation  
3 when each employee, including Plaintiff and members of the proposed class, quit or was discharged.

4 20. Plaintiff has not conducted any discovery to date. Plaintiff is informed and believes  
5 that the amount in controversy in this matter is under \$5,000,000.00. Discovery may reveal  
6 otherwise.

7 IV

8 **CLASS ACTION ALLEGATIONS**

9 21. Plaintiff brings this action on behalf of herself and all others similarly situated as a  
10 Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent three (3)  
11 subclasses composed of and defined as follows:

12 (1) All persons who are employed or have been employed, and  
13 who worked as Project Manager, Business Analyst,  
14 Consultant, and/or similar positions for Defendants in the State  
of California from April 23, 2005 to the present.

15 (2) All persons who are employed or have been employed, and  
16 who worked as Project Manager, Business Analyst,  
17 Consultant, and/or similar positions who earned less than two  
times the minimum wage in salary for Defendants in the State  
of California from April 23, 2005 to the present.

18 22. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to  
19 amend or modify the class description with greater specificity, by further division into subclasses,  
20 or by limitation to particular issues.

21 23. This action has been brought and may properly be maintained as a class action under  
22 the provisions of §382 of the Code of Civil Procedure because there is a well-defined community  
23 of interest in the litigation and the proposed class is easily ascertainable.

24 A. **Numerosity**

25 24. The potential members of the proposed class as defined are so numerous that joinder  
26 of all the members of the proposed class is impracticable. While the precise number of proposed  
27 class members has not been determined at this time, Plaintiff is informed and believes that Defendant  
28

1 currently employs, and during the relevant time periods employed, over 100 Project Manager,  
2 Business Analyst, Consultant, and/or similar title.

3 25. Accounting for employee turnover during the relevant periods necessarily increases  
4 this number substantially. Plaintiff alleges Defendants' employment records would provide  
5 information as to the number and location of all proposed class members. Joinder of all members  
6 of the proposed class is not practicable.

7 **B. Commonality**

8 26. There are questions of law and fact common to the proposed class that predominate  
9 over any questions affecting only individual class members. These common questions of law and  
10 fact include, without limitation:

11 (1) Whether Defendants failed to pay proper overtime compensation as required  
12 by the California Labor Code and Wage Orders;

13 (2) Whether Defendants violated Labor Code §§226.7 and 512, IWC Wage Order  
14 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing  
15 to provide meal periods before the fifth hour of employment and failing to compensate said  
16 employees one (1) hours wages in lieu of meal periods;

17 (3) Whether Defendants violated §§201-203 of the Labor Code by failing to pay  
18 compensation due and owing at the time that any proposed class member's employment with  
19 Defendant terminated;

20 (4) Whether Defendants violated §17200 et seq. of the Business & Professions  
21 Code by engaging in the acts previously alleged;

22 (5) Whether Plaintiff and the members of the proposed class are entitled to  
23 equitable relief pursuant to Business & Professions Code §17200, et seq.; and

24 (6) Whether defendants violated §2699 et. seq. of the Labor Code by engaging  
25 in the acts previously alleged; and

26 **C. Typicality**

27 27. The claims of the named Plaintiff are typical of the claims of the proposed class.  
28 Plaintiff and all members of the proposed class sustained injuries and damages arising out of and

1 caused by Defendants' common course of conduct in violation of laws, regulations that have the  
2 force and effect of law, and statutes as alleged herein.

3 **D. Adequacy of Representation**

4 28. Plaintiff will fairly and adequately represent and protect the interests of the members  
5 of the proposed class. Counsel who represents Plaintiff is competent and experienced in litigating  
6 large employment class actions.

7 **E. Superiority of Class Action**

8 29. A class action is superior to other available means for the fair and efficient  
9 adjudication of this controversy. Individual joinder of all proposed class members is not practicable,  
10 and questions of law and fact common to the proposed class predominate over any questions  
11 affecting only individual members of the proposed class. Each member of the proposed class has  
12 been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of  
13 failing to compensate class members at the legal overtime rate and making deductions from class  
14 members' wages.

15 30. Class action treatment will allow those similarly situated persons to litigate their  
16 claims in the manner that is most efficient and economical for the parties and the judicial system.  
17 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this  
18 action that would preclude its maintenance as a class action.

19 **VI**

20 **FIRST CLAIM FOR RELIEF**

21 **California Wages and Overtime Violations Under Labor Code §§510 and 1194**

22 31. Plaintiff, on behalf of herself and the proposed class, realleges and incorporates by  
23 reference all previous paragraphs.

24 32. Plaintiff and the proposed class were forced to work on a regular and consistent basis  
25 without receiving compensation for all hours worked at their regular rate or if more than eight (8)  
26 hours a day and/or forty (40) hours per week, at the applicable overtime rate. Plaintiff and the  
27 proposed class have not been compensated for this time. Defendant had a consistent policy of failing  
28 to pay Plaintiff and members of the proposed class regular rate and/or premium pay for these hours

1 worked.

2 33. By their policy of requiring Plaintiff and the proposed class to work without receiving  
3 compensation for all hours worked at their regular rate, or if in excess of eight (8) hours in a workday  
4 and/or forty (40) hours in a workweek, without compensation at the rate of time and one-half (1 1/2),  
5 Defendants wilfully violated the provisions of Labor Code §1194.

6 34. As a result of the unlawful acts of Defendants, Plaintiff and the class have been  
7 deprived of wages and/or overtime in amounts to be determined at arbitration, and are entitled to  
8 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

9 **VIII**

10 **SECOND CLAIM FOR RELIEF**

11 **Failure to Allow Meal Breaks Pursuant to Labor Code §226.7**

12 35. Plaintiff, on behalf of herself and the proposed class, realleges and incorporates by  
13 reference all previous paragraphs.

14 36. Labor Code §226.7 requires an employer to pay an additional hour of compensation  
15 for each meal period the employer fails to provide. Employees are entitled to a meal period of at least  
16 thirty (30) minutes per five (5) hour work period. Plaintiff and the class consistently worked over  
17 five (5) hour shifts. Pursuant to the Code, Plaintiff and the class are entitled to a meal period of not  
18 less than thirty (30) minutes prior to exceeding five (5) hours of employment.

19 37. Defendants failed to provide Plaintiff and others with timely meal breaks of not less  
20 than thirty (30) minutes as required by the Labor Code during the relevant class period.

21 38. Pursuant to Labor Code §226.7, Plaintiff and the class are entitled to damages in an  
22 amount equal to one (1) hour of wages per missed meal break, in a sum to be proven at trial.

23 **IX**

24 **THIRD CLAIM FOR RELIEF**

25 **California Record-Keeping Provisions, Cal. Wage Order No. 4,**

26 **Cal. Labor Code §§226, 1174, & 1174.5**

27 39. Plaintiff, on behalf of herself and the proposed class, realleges and incorporates by  
28 reference all previous paragraphs.



1 **XI**

2 **FIFTH CLAIM FOR RELIEF**

3 **Unfair Business Competition Pursuant to Business and Professions Code §17200**

4 48. Plaintiff, on behalf of herself and the proposed class, realleges and incorporates by  
5 reference all previous paragraphs.

6 49. This is a Representative Private Attorney General Action and Class Action for Unfair  
7 Business Practices. Plaintiff, on behalf of herself, on behalf of the general public, and on behalf of  
8 others similarly situated, brings this claim pursuant to Business & Professions Code §17200, et seq.  
9 The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair,  
10 unlawful, and harmful to Plaintiff, the general public, and the proposed class. Plaintiff seeks to  
11 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure  
12 §1021.5.

13 50. Plaintiff is a "person" within the meaning of Business & Professions Code §17204,  
14 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other  
15 appropriate equitable relief.

16 51. Business & Profession Code §17200, et seq. prohibits unlawful and unfair business  
17 practices.

18 52. Wage and hour laws express fundamental public policies. Providing employees with  
19 proper wages and compensation are fundamental public policies of this State and of the United  
20 States. Labor Code §90.5(a) articulates the public policies of this State to enforce vigorously  
21 minimum labor standards, to ensure that employees are not required or permitted to work under  
22 substandard and unlawful conditions, and to protect law-abiding employers and their employees from  
23 competitors who lower their costs by failing to comply with minimum labor standards.

24 53. Defendant has violated statutes and public policies. Through the conduct alleged in  
25 this Complaint, Defendant has acted contrary to these public policies, has violated specific  
26 provisions of the Labor Code, and has engaged in other unlawful and unfair business practices in  
27 violation of Business & Profession Code §17200, et seq., depriving Plaintiff; and all persons  
28 similarly situated, and all interested persons of rights, benefits, and privileges guaranteed to all

1 employees under law.

2 54. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in  
3 violation of §17200 et seq. of the Business & Professions Code.

4 55. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise  
5 if reasonable care should have known that the conduct was unlawful. As such it is a violation of  
6 §17200 et seq. of the Business & Professions Code.

7 56. As a proximate result of the above mentioned acts of Defendant, Plaintiff and others  
8 similarly situated have been damaged in a sum as may be proven.

9 57. Unless restrained, Defendant will continue to engage in the unlawful conduct as  
10 alleged above. Pursuant to the Business & Professions Code, this arbitrator should make such orders  
11 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or  
12 employment by Defendant, its agents, or employees, of any unlawful or deceptive practice prohibited  
13 by the Business & Professions Code, and/or, including but not limited to, restitution and  
14 disgorgement of profits which may be necessary to restore Plaintiff and the proposed class members  
15 to the money Defendant has unlawfully failed to pay.

16 **SIXTH CLAIM FOR RELIEF**

17 **PENALTIES PURSUANT TO LABOR CODE SECTION 2699**

18 58. Plaintiff, on behalf of herself and the proposed class, realleges and incorporates by  
19 reference all previous paragraphs.

20 59. As a result of the acts alleged above, plaintiff seeks penalties under Labor Code  
21 §§2698 and 2699 because defendants' violation of Labor Code §203, 226(a), 226.7, 510, 512,  
22 1194, and 1199 which call for civil penalties.

23 60. For each such violation, plaintiffs and the proposed class are entitled to penalties in  
24 an amount to be shown at the time of trial subject to the following formula:

- 25 a. For \$100 for the initial violation per employee per pay period.  
26 b. For \$200 for each subsequent violation per employee per pay period.

27 61. These penalties will be allocated 75% to the Labor Workforce Development  
28 Agency, and 25% to the affected employees.




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- 12. An award of attorneys' fees; and
- 13. Such other and further relief as this Court may deem proper and just.

DATED: June 17, 2009

KINGSLEY & KINGSLEY, APC

By:   
ERIC B. KINGSLEY  
Attorneys for Plaintiff