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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF ORANGE

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

APR 08 2009

ALAN CARLSON, Clerk of the Court

BY: R. VAVRA , DEPUTY

30-2009

18 SOHAM SHAH, on behalf of himself and all
19 others similarly situated,

20 Plaintiff

21 vs.

22 INFOSYS TECHNOLOGIES LIMITED, a
23 public limited company, located in India, and
24 licensed to conduct business in California;
25 INFOSYS CONSULTING INC., a Texas
26 Corporation, licensed to do business in
27 California, and DOES 1 through 100, inclusive,
28 Defendants.

Case No. **00259470**

ASSIGNED FOR ALL PURPOSES TO:
JUDGE NANCY WIEBEN STOCK
DEPT. CX105
CLASS ACTION COMPLAINT FOR

1. Failure to Pay Overtime Wages
2. Failure to Provide Meal periods
3. Failure to Provide Rest Periods
4. Labor Code § 203 Penalties
5. Failure to Provide Itemized Statements
6. Unfair Business Practices (B&P § 17200)

DEMAND FOR JURY TRIAL

**THIS CASE IS SUBJECT TO
MANDATORY ELECTRONIC FILING
PURSUANT TO RULE 308 OF THE LOCAL RULES
OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

1 Plaintiff SOHAM SHAH ("Plaintiff") alleges, on behalf of himself and classes of those
2 similarly situated, as follows:

3
4 **I.**

5 **INTRODUCTION**

6 1. This is an action by and on behalf of current and former employees of INFOSYS
7 TECHNOLOGIES LIMITED, a public limited company, located in India, and licensed to
8 conduct business in California, and INFOSYS CONSULTING INC., a Texas Corporation,
9 licensed to do business in California (hereinafter "Defendants" or "INFOSYS"), who are or were
10 employed in Defendants' locations in California in positions misclassified as Computer
11 Technical Workers or Information Technology Support workers and held positions under
12 inaccurate titles lacking the exercise of discretion and independent judgment in the performance
13 of their primary duties, and in performing such duties should have been classified as non-exempt
14 pursuant to Wage Order 4 and, therefore, paid overtime. Plaintiff and the class he seeks to
15 represent were given titles that were inconsistent and unrealistic with the "job requirements and
16 expectations" as defined by INFOSYS. The true nature and character of said positions were
17 intended to meet only the production needs of Defendants IT infrastructure and were not
18 implemented to meet the administrative policies of Defendants. As such, Plaintiff, and the class
19 he seeks to represent, was misclassified and is owed overtime and other remedies under
20 California law (hereinafter, "THE CLASS").

21 2. Such job categories, titles, and positions were not realistic and the expectations
22 were inconsistent with the duties actually performed. As such, INFOSYS did not satisfy the
23 legally required minimum to unilaterally designate this class of employees as exempt from
24 overtime. These job titles were, are, and continue to be a misnomer, because the majority of the
25 work performed by this class of employees is not, and was not, exempt in nature. Furthermore,
26 the titles themselves do not reflect the true nature of the duties performed by these employees.
27 These employees thus are and were entitled to overtime and other protections as non-exempt
28 employees. It is *Defendants' burden* of pleading, evidence and proof to show that these
employees are and were exempt under California wage and hour law. These employees have
spent an insignificant amount of work time doing anything that constitutes "exempt," and for that

1 reason and others, they are and always have been entitled to overtime pay and non-exempt
2 treatment under California wage and hour law.

3 3. Plaintiff's duties and those of **THE CLASS** she seeks to represent were routine in
4 nature and relied on the use of templates and other automated processes. Although, the job titles
5 suggest the performance of high level job duties for the positions described herein, the actual job
6 duties are limited to performing routing production work, not requiring special expertise, and
7 involving little or no exercise of discretion.

8 **II.**

9 **JURISDICTION AND VENUE**

10 **Plaintiff**

11 4. Plaintiff SOHAM SHAH is a resident of ORANGE COUNTY, California.

12 **Defendants**

13 5. The Superior Court of the State of California for the County of Orange has
14 jurisdiction over INFOSYS TECHNOLOGIES LIMITED and INFOSYS CONSULTING INC.,
15 because they both have qualified with the California Secretary of State to do business and are
16 doing business in, California, and in ORANGE COUNTY.

17 6. Venue as to each defendant is proper in this judicial district, pursuant to
18 California Code of Civil Procedure section 395.

19 7. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, of defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to
21 Plaintiff, who therefore sue Defendants by such fictitious names under California Code of Civil
22 Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
23 defendants designated herein as a DOE is legally responsible in some manner for the unlawful
24 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
25 true names and capacities of the defendants designated hereinafter as DOES when such identities
26 become known.

27 8. Plaintiff is informed and believes, and based thereon alleges, that each defendant
28 acted in all respects pertinent to this action as the agent of the other defendants, carried out a

1 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
2 defendant are legally attributable to the other defendants. Furthermore, Defendants in all respects
3 acted as the employer and/or joint employer of Plaintiff and **THE CLASS**. Plaintiff is informed
4 and believes and thereon alleges that at all times relevant to this action, the named defendant and
5 defendants DOES 1 through 100 were affiliated and were an integrated enterprise.

6 9. Plaintiff is informed and believes and thereon alleges that at all relevant times
7 each defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
8 the other Class Members, and exercised control over the wages, hours, and working conditions
9 of Plaintiff and the other Class Members. Plaintiff is informed and believes and thereon alleges
10 that, at all relevant times, each defendant was the principal, agent, partner, joint venturer, officer,
11 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest
12 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some
13 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to
14 some or all of the other Defendants so as to be liable for their conduct with respect to the matters
15 alleged below. Plaintiff is informed and believes and thereon alleges that each defendant acted
16 pursuant to and within the scope of the relationships alleged above, that each defendant knew or
17 should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted
18 the conduct of all other Defendants; and that each defendant acted pursuant to a conspiracy and
19 agreement to do the things alleged herein.

20 III.

21 SUMMARY OF CLAIMS

22 10. Plaintiff is a former INFOSYS employee whose primary duties were non-exempt
23 and who was misclassified by INFOSYS as exempt from the overtime provisions of the
24 applicable state wage and hour laws of California, as described in this complaint.

25 11. Plaintiff SOHAM SHAH brings this action on behalf of all persons who were,
26 are, or will be employed by INFOSYS in California as defined in the complaint at any time
27 within the four years prior to the date of the filing of this Complaint through the date of the final
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1 disposition of this action (the "California Class Period"), and who were, are, or continue to be
2 improperly misclassified as exempt from overtime pay under California law.

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4 **IV.**
CLASS ALLEGATIONS

5 12. Plaintiff brings this cause of action on behalf of himself and on behalf of **THE**
6 **CLASS** of all persons similarly situated, as more fully explained below. This action is brought
7 and may properly be maintained as a class action pursuant to the provisions of California Code
8 of Civil Procedure section 382 and other applicable law pertaining to class actions.

9 13. The proposed Class Plaintiff seeks to represent, sometimes referred to herein as
10 the "Class Members," is presently defined as follows: all employees of any of the Defendants
11 who are, have been, or will be employed in any California location owned or operated by any of
12 the Defendants in any job whose title is or was referred to by any of the Defendants as defined
13 above or any similar derivative title that is better defined by a "skill set" that describes realistic
14 descriptions and expectations of the duties performed by **THE CLASS** or sub-classes; and, that
15 were so employed during the period of time covered by the statute of limitations applicable to the
16 particular cause of action in which the terms "Class Members" or "Class" appear, including
17 periods of time during which the statute of limitations was or may have been tolled or suspended.
18 There is a well defined community of interest in the litigation and **THE CLASS** is ascertainable:

19 A. **Numerosity:** **THE CLASS** is so numerous that individual joinder of all
20 members is impractical under the circumstances of this case. While the exact number of Class
21 Members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon
22 alleges that it is several thousand employees or more.

23 B. **Common Questions Predominate:** Common questions of law and fact
24 exist as to all Class Members, and predominate over any questions that affect only individual
25 members of **THE CLASS**. The common questions of law and fact include, but are not limited
26 to:
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1 (A) What were and are the policies, programs, practices, procedures
2 and protocols of Defendants regarding Class Members' actual work and tasks, and
3 their job duties irrespective of job titles;

4 (B) Whether Defendants are and were subject to overtime requirements
5 contained in the California IWC Wage Orders and other California law with
6 respect to **THE CLASS** Members pursuant to Labor Code Section 510, and Wage
7 Order, No. 4-2001, for the period commencing four years prior to the date of the
8 filing of this complaint and continuing through the date of judgment;

9 (C) Whether Defendant's policy and practice of classifying Class
10 Members as exempt from overtime entitlement under California law and
11 Defendant's policy and practice of failing to pay overtime to the California Class
12 members violate applicable provisions of California law, including applicable
13 statutory and regulatory authority;

14 (D) Whether Defendant unlawfully failed to pay overtime
15 compensation in violation of the California Unfair Competition Law, Cal. Bus. t&
16 Prof. Code §17200 et seq., and the California Labor Code and related regulations,
17 Cal. Labor Code §§ 201, 202, 203, 226, 510, 1174, 1174.5, and 1194, the
18 applicable Cal. Wage Orders;

19 (E) Whether Defendants violated California law by their policies,
20 programs, practices, procedures and protocols regarding rest periods for Class
21 Members;

22 (F) What were and are the policies, programs, practices, procedures
23 and protocols of Defendants regarding furnishing to **THE CLASS** Members,
24 upon each payment of wages, itemized statements required by Labor Code section
25 226;

26 (G) Whether Defendants violated California law by their policies,
27 programs, practices, procedures and protocols regarding furnishing to **THE**
28 **CLASS** Members, upon each payment of wages, itemized statements required by
Labor Code section 226;

(H) Whether Defendants violated Business & Professions Code
sections 17200 *et seq.* by their policies, programs, practices, procedures and
conduct referred to in this cause of action;

(I) Whether Defendants obtained voluntarily waivers with consent
and full disclosure, and whether a written signed waiver is effective as to all
future meal and rest periods;

(J) The proper *measure of* damages sustained and the proper
measure of restitution recoverable by members of the California Class; and,

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2 (K) Additional common questions of law and fact may develop as the
litigation progresses.

3 C. **Typicality:** Plaintiff's claims are typical of the claims of **THE CLASS**
4 Members. Plaintiff and other Class Members sustained losses, injuries and damages arising out
5 of the Defendants' common policies, programs, practices, procedures, and course of conduct
6 referred to in each cause of action and throughout this Complaint, which were applied uniformly
7 to Class Members as well as Plaintiff. Plaintiff seeks recoveries for the same types of losses,
8 injuries, and damages as were suffered by the other Class Members as well as Plaintiff.

9 D. **Adequacy:** Plaintiff and her counsel will fairly and adequately protect the
10 interests of **THE CLASS** Members. Plaintiff has no interest that is adverse to the interests of the
11 other Class Members.

12 E. **Superiority:** A class action is superior to other available means for the
13 fair and efficient adjudication of this controversy. Individual joinder of all Class Members is
14 impractical. Class action treatment will permit a large number of similarly situated persons to
15 prosecute their common claims in a single forum simultaneously, efficiently, and without the
16 unnecessary duplication of effort and expense that numerous individual actions engender. Also,
17 because the losses, injuries and damages suffered by each of the individual Class Members are
18 small in the sense pertinent to class action analysis, the expenses and burden of individual
19 litigation would make it extremely difficult or impossible for the individual Class Members to
20 redress the wrongs done to them. On the other hand, important public interests will be served by
21 addressing the matter as a class action. The cost to the court system and the public of
22 adjudication of individual litigation and claims would be substantial, and substantially more than
23 if the claims are treated as class action. Individual litigation and claims would also present the
24 potential for inconsistent or contradictory results.

25 F. **Public Policy Considerations:** Defendants and other employers
26 throughout the state violate wage and hour laws. Their current employees are often afraid to
27 assert their rights out of fear of direct or indirect retaliation. Their former employees are fearful
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1 of bringing claims because doing so can harm their employment and future employment and
2 future efforts to secure employment. Class actions provide Class Members who are not named in
3 the complaint a degree of anonymity that allows for vindication of their rights while eliminating
4 these risks, or at least enormously reducing them.

5 **V.**

6 **CAUSES OF ACTION**

7 **First Cause of Action**

8 *Failure to Pay Wages at Overtime Rate*

9 (Lab. Code §§ 510, 1194 and 1199, IWC Wage Orders, and Related Violations)

10 14. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set
11 forth herein.

12 15. Throughout the period applicable to this cause of action, Plaintiff and **THE**
13 **CLASS** Members worked in excess of forty (40) hours per week and in excess of excess of eight
14 (8) hours per day.

15 16. Throughout the period applicable to this cause of action, Defendants did not pay
16 Plaintiff or Class Members at the required overtime rates for the work described in the preceding
17 paragraphs.

18 17. Pursuant to California Labor Code section 1194, Plaintiff and **THE CLASS**
19 Members are entitled to recover unpaid overtime compensation, and other unpaid wages, plus
20 interest, plus attorneys' fees and costs.

21 18. As a direct and proximate result of Defendant's unlawful conduct, as set forth
22 herein, the California Plaintiff and the California Class members have sustained damages,
23 including loss of earnings for hours of overtime worked on behalf of Defendant in an amount to
24 be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and
25 other applicable law.

26 19. WHEREFORE, Plaintiff and **THE CLASS** Members she seeks to represent
27 request relief as described herein and below.
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Second Cause of Action
Failure to Provide Meal Periods
(Lab. Code §§ 226.7 and 512)

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3 20. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set
4 forth herein.

5 21. Throughout the period applicable to this cause of action, California law, as set
6 forth in relevant part by the Industrial Welfare Commission Wage Orders at section (11),
7 provided as follows:

8 (A) No employer shall employ any person for a work
9 period of more than five (5) hours without a meal period of not less
10 than 30 minutes . . .

11 (B) If an employer fails to provide an employee a meal
12 period in accordance with the applicable provisions of this Order,
13 the employer shall pay the employee one (1) hour of pay at the
14 employee's regular rate of compensation for each work day that
15 the meal period is not provided.

16 22. Similarly, Labor Code section 226.7 requires payment of one (1) hour of pay in
17 lieu of meal periods not provided by the employer. Throughout the period applicable to this
18 cause of action, Defendants failed to consistently allow and provide the meal periods required by
19 California law. Therefore, Plaintiff and **THE CLASS** Members are entitled to compensation as
20 stated above, plus interest, attorneys' fees, costs and other applicable relief.

21 23. Throughout the period applicable to this cause of action, Defendants required
22 Plaintiff and **THE CLASS** Members to work during meal periods mandated by the applicable
23 orders of the Industrial Welfare Commission. Therefore Plaintiff and **THE CLASS** Members
24 are entitled to be paid as stated in Labor Code section 226.7, plus interest, attorneys' fees, costs
25 and other applicable relief.

26 24. On information and belief, Plaintiff alleges that **THE CLASS** Members did not
27 voluntarily or willfully waive rest and/or meal periods and were regularly required to work
28 through rest and meal periods. Defendants failed to meet the requirements for lawful on-duty
rest and/or meal periods and/or instituted a course of conduct that created a working environment
in which non-exempt employees were incapable of taking rest and/or meal periods. As such,
non-exempt employees were intimidated or coerced into waiving rest and/or meal periods, and

1 any written waivers were obtained without full disclosure and are thus involuntarily and without
2 consent.

3 25. WHEREFORE, Plaintiff and **THE CLASS** she seeks to represent request relief as
4 described herein and below.

5 **Third Cause of Action**
6 *Failure to Provide Rest Periods*
7 (Lab. Code § 226.7)

8 26. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set
9 forth herein.

10 27. By their failure to provide rest periods for every four (4) hours or major fraction
11 thereof worked per workday by non-exempt employees, and failing to provide one (1) hour's pay
12 in lieu thereof, as alleged above and herein, Defendants willfully violated the provisions of Labor
13 Code sections 226.7 and IWC Wage Orders at section (12).

14 28. By failing to keep adequate time records required by sections 226 and 1174(d) of
15 the Labor Code and IWC Wage Order at section (7), Defendants have injured Plaintiff and Class
16 Members and made it difficult to calculate the unpaid rest and meal period compensation due
17 Plaintiff and members of the Plaintiff Class. On information and belief, Plaintiff alleges that
18 Defendants' failure to maintain accurate records was willful.

19 29. As a result of the unlawful acts of Defendants, Plaintiff and **THE CLASS** she
20 seeks to represent have been deprived of premium wages in amounts to be determined at trial,
21 and are entitled to an accounting and recovery of such amounts, plus interest and penalties
22 thereon, attorneys' fees, and costs, under Labor Code sections 201, 202, 203, 218.5, 226, 226.7,
23 1194 and 1199, and the applicable IWC Wage Orders.

24 30. WHEREFORE, Plaintiff and **THE CLASS** she seeks to represent request relief as
25 described herein and below.

26 **Fourth Cause of Action**
27 *Failure to Pay All Wages Upon Ending of Employment*
28 (Lab. Code §§ 201, 202, and 203)

31. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set
forth herein.

32. Plaintiff and many of the other Class Members quit or were discharged from their
employment within the statute of limitations period applicable to this cause of action. As of the

1 filing of the Complaint, Defendants failed to timely pay wages due, and Plaintiff and Class
2 Members are owed penalties pursuant to Labor Code sections 201, 202, 203.

3 33. Defendants failed to pay said employees, without abatement, all wages (as
4 defined by applicable California law) within the time required by applicable California law.
5 Among other things, these employees were never paid any of the overtime compensation referred
6 to in this Complaint, nor were they paid the other unpaid wages referred to in this Complaint.
7 Defendants' failure to pay said wages within the required time was willful within the meaning of
8 Labor Code section 203.

9 34. Therefore, each of these employees is entitled to one day's wages for each day
10 she or she was not timely paid all said wages due, up to a maximum of thirty days' wages for
11 each employee. Because none of said employees were ever paid the overtime wages to which
12 they were entitled, and were never paid other unpaid wages referred to in this Complaint, each of
13 said employees is entitled to thirty days' wages.

14 35. WHEREFORE, Plaintiff and **THE CLASS** she seeks to represent request relief as
15 described herein and below.

16 **Fifth Cause of Action**

17 *Failure to Furnish Itemized Statements*
18 (Lab. Code §§ 226(b), 1174, 1175)

19 36. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set
20 forth herein.

21 37. Throughout the period applicable to this cause of action, Defendants intentionally
22 failed to furnish to Plaintiff and **THE CLASS** Members, upon each payment of wages, itemized
23 statements accurately showing, among other matters: total hours worked, the applicable hourly
24 rates in effect during the pay period, and the corresponding number of hours worked at each
25 hourly rate.

26 38. Plaintiff and **THE CLASS** Members were damaged by these failures because,
27 among other things, the failures led them to believe that they were not entitled to be paid
28 overtime, even though they were so entitled, and because the failures hindered them from
determining the amounts of overtime wages owed to them.

39. Plaintiff and **THE CLASS** Members are entitled to the amounts provided for in
Labor Code section 226(e), plus costs and attorneys' fees.

1 UCL. Defendant's conduct described herein violates the policy or spirit of such laws or otherwise
2 significantly threatens or harms competition. The harm to California Plaintiff and the California
3 Class in being wrongfully denied lawfully earned wages outweighs the utility, if any, of
4 Defendant's policies or practices and, therefore, Defendant's actions described herein constitute
5 an unfair business practice or act within the meaning of the UCL.

6 44. The unlawful and unfair business practices and acts of Defendant, described
7 above, have injured the California Class members in that they were wrongfully denied the
8 payment of earned overtime wages.

9 45. The California Plaintiff, on behalf of himself and **THE CLASS**, seeks restitution
10 in the amount of the respective unpaid wages earned and due at a rate not less than one and one-
11 halftimes the regular rate of pay for work performed in excess of forty hours in a work week, or
12 eight hours in a day, and double the regular rate of pay for work performed in excess of twelve
13 hours per day and such other legal and equitable relief from INFOSYS's unlawful and willful
14 conduct as the Court deems just and proper.

15 46. Pursuant to Business and Professions Code sections 17200 *et seq.*, for the statute
16 of limitations period covered by this cause of action Plaintiff and **THE CLASS** Members, are
17 entitled to restitution for at least the following: the unpaid overtime earnings and other unpaid
18 earnings withheld and retained by Defendants referred to above.

19 47. Plaintiff and **THE CLASS** Members and the general public are also entitled to
20 permanent injunctive and declaratory relief prohibiting Defendants from engaging in the
21 violations and other misconduct referred to above.

22 48. Defendants are also liable to pay attorneys' fees pursuant to California Code of
23 Civil Procedure section 1021.5 and other applicable law, and costs. The Plaintiff, on behalf of
24 himself and Class members, also seek recovery of attorneys' fees and costs of this action to be
25 paid by INFOSYS, as provided by the UCL and California Labor Code §§ 218, 218.5, and 1194.

26 49. WHEREFORE, Plaintiff and **THE CLASS** she seeks to represent request relief as
27 described herein and below.

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VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and all members of **THE CLASS**, pray for relief as follows:

1. That the Court determine that this action may be maintained as a class action;

2. That Plaintiff be appointed the representative of **THE CLASS**;

3. That the attorneys of record for Plaintiff whose names appear in this Complaint be appointed Class counsel;

4. For unpaid wages at overtime rates for all overtime work and unpaid wages for all work for which they were not paid;

5. For such general and special damages as may be appropriate;

6. For waiting time penalties and civil penalties for all Class Members no longer in Defendants' employ at the time of Judgment;

7. For pre-judgment interest;

8. For the amounts provided for in Labor Code §§ 226(b), 226.7,

9. For restitution as described in the cause of action under Business & Professions Code §§ 17200 *et seq.* above;

10. For permanent injunctive and declaratory relief described in the cause of action under Business & Professions Code §§ 17200 *et seq.* above.

11. A declaratory judgment that the practices complained of herein are unlawful under California state law;

12. Attorney's fees and costs of suit, including expert fees pursuant to Ca. Lab. Code §§218.5, 1194, and Calif. Code Civ. Proc. §1021.5;

1 13. Such other injunctive and equitable relief as the Court may deem proper.
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3 **DATED:** April 6, 2009
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JOSE GARAY, *APLC*

5 **&**

6 **HAMNER LAW OFFICES, LP**
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9 By: Christopher J. Hamner, Esq., Co-Counsel for
10 Plaintiff, SOHAM SHAH, on behalf of himself and
11 all others similarly situated
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