

1 Jose R. Garay, Esq., (SBN 200494)

2 **JOSE GARAY, APLC**
3 9900 Irvine Center Drive
4 Irvine, CA 92618
5 Bus. (949) 208 – 3400
6 Fax. (949) 713 – 0432

7 Christopher J. Hamner, Esq. (SBN 197117)

8 **HAMNER LAW OFFICES, LP**
9 15760 Ventura Blvd., Suite 860
10 Encino, California 91436
11 Telephone: (818) 386-0444
12 Facsimile.: (818) 386-0050
13 chamner@hamnerlaw.com

14 Attorneys for Plaintiffs, MARCOS ANTONIO REYES and KAREN ROBERTS, on behalf of
15 themselves and all others similarly situated

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF SANTA CLARA

18 MARCOS ANTONIO REYES and KAREN
19 ROBERTS, on behalf of themselves and all
20 others similarly situated

21 Plaintiffs

22 vs.

23 PALM, INC., a Delaware Corporation, YOH
24 Services LLC, a Delaware Corporation, and
25 DOES 1 through 100, inclusive,

26 Defendants.

27 Case No.

1100V161497

28 ASSIGNED FOR ALL PURPOSES TO:

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

29 Plaintiffs MARCOS ANTONIO REYES and KAREN ROBERTS (collectively
30 "Plaintiffs") allege, on behalf of themselves and classes of those similarly situated, as follows:

ENCLOSURE

200 JAN 14 P 2: 02

Date of Birth: _____
County of Birth: _____

S. GANCAYCO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.

INTRODUCTION

1. This is an action by and on behalf of current and former employees of PALM, INC., a Delaware Corporation, YOH Services LLC, a Delaware Corporation, (hereinafter "Defendant" or "PALM"), who are or were employed in Defendants' locations in California in job positions known as software engineers. However, these job titles are a misnomer, because most of the work performed by these employees are not and were not exempt in nature. These employees thus are and were entitled to overtime and other protections as non-exempt 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 reason and others, they are and always have been entitled to overtime pay and non-exempt treatment under California wage and hour law.

2. Plaintiffs' duties and those of the Class they seek to represent were routine in nature and relied on the use of templates and other automated processes. Although, the job titles suggest the performance of high level job duties for the positions described herein, the actual job duties are limited to performing routine production work, not requiring special expertise, and involving little or no exercise of discretion.

II.

JURISDICTION AND VENUE

A. **Plaintiffs**

3. Plaintiffs MARCOS ANTONIO REYES and KAREN ROBERTS are residents of ALAMEDA County, California. Many of the acts complained of occurred in ALAMEDA County and gave rise to claims alleged.

B. **Defendants**

4. The Superior Court of the State of California for the County of Alameda has personal jurisdiction over PALM Inc., a Delaware Corporation, because it has qualified with the California Secretary of State to do business and is doing business in, California, and in this

1 district, and because many of the acts complained of occurred in ALAMEDA County and gave
2 rise to claims alleged.

3 5. The Superior Court of the State of California for the County of Alameda has
4 personal jurisdiction over YOH Services LLC, a Delaware Corporation, because it has qualified
5 with the California Secretary of State to do business and is doing business in, California, and in
6 this district, and because many of the acts complained of occurred in ALAMEDA County and
7 gave rise to claims alleged.

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

10 7. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to
12 Plaintiff, who therefore sue Defendants by such fictitious names under California Code of Civil
13 Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the
14 defendants designated herein as a DOE is legally responsible in some manner for the unlawful
15 acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the
16 true names and capacities of the defendants designated hereinafter as DOES when such identities
17 become known.

18 8. Plaintiffs are informed and believe, and based thereon allege, that each defendant
19 acted in all respects pertinent to this action as the agent of the other defendants, carried out a
20 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
21 defendant are legally attributable to the other defendants. Furthermore, Defendants in all respects
22 acted as the employer and/or joint employer of Plaintiffs and the Class. Plaintiffs are informed
23 and believe and thereon allege that at all times relevant to this action, the named defendant and
24 defendants DOES 1 through 100 were affiliated and were an integrated enterprise.

25 9. Plaintiffs are informed and believe and thereon allege that at all relevant times
26 each defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs and
27 the other Class Members, and exercised control over the wages, hours, and working conditions
28 of Plaintiffs and the other Class Members. Plaintiffs are informed and believe and thereon allege

1 that, at all relevant times, each defendant was the principal, agent, partner, joint venturer, officer,
2 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest
3 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some
4 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to
5 some or all of the other Defendants so as to be liable for their conduct with respect to the matters
6 alleged below. Plaintiffs are informed and believe and thereon allege that each defendant acted
7 pursuant to and within the scope of the relationships alleged above, that each defendant knew or
8 should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted
9 the conduct of all other Defendants; and that each defendant acted pursuant to a conspiracy and
10 agreement to do the things alleged herein.

11 **III.**

12 **SUMMARY OF CLAIMS**

13 10. Plaintiff MARCOS ANTONIO REYES is a former PALM software engineer
14 whose primary duties are non-exempt and who was, and continues to be, misclassified by PALM
15 as exempt from the overtime provisions of the applicable state wage and hour laws of California,
16 as described below.

17 11. Plaintiff MARCOS ANTONIO REYES also brings this action on behalf of all
18 persons who were, are, or will be employed by PALM in California as software engineers or
19 related and/or similar titles, (hereinafter "the California Class"), at any time within the four years
20 prior to the date of the filing of this Complaint through the date of the final disposition of this
21 action (the "California Class Period"), and who were, are, or will be improperly misclassified as
22 exempt from overtime pay under California law.

23 12. Plaintiff KAREN ROBERTS is a current PALM software engineer whose
24 primary duties are non-exempt and who was unlawfully not paid, and continues not to be paid,
25 overtime hours according to the overtime provisions of the applicable state wage and hour laws
26 of California, as described below.

1 B. **Common Questions Predominate:** Common questions of law and fact exist as
2 to all Class Members, and predominate over any questions that affect only individual members
3 of the Class. The common questions of law and fact include, but are not limited to:

4 (A) What were and are the policies, programs, practices, procedures
5 and protocols of Defendants regarding Class Members' actual work and tasks, and
6 their job duties;

7 (B) Whether Defendants are and were subject to overtime requirements
8 contained in the California IWC Wage Orders and other California law with
9 respect to the Class Members;

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

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

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

23 (F) Whether Defendants violated California law by their policies,
24 programs, practices, procedures and protocols regarding rest periods for Class
25 Members;

26 (G) What were and are the policies, programs, practices, procedures
27 and protocols of Defendants regarding furnishing to the Class Members, upon
28 each payment of wages, itemized statements required by Labor Code section 226;

 (H) Whether Defendants violated California law by their policies,
 programs, practices, procedures and protocols regarding furnishing to the Class
 Members, upon each payment of wages, itemized statements required by Labor
 Code section 226;

 (I) 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;

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

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

5 (L) Additional common questions of law and fact may develop as the
6 litigation progresses.

7 C. **Typicality**: Plaintiffs' claims are typical of the claims of the Class Members.
8 Plaintiffs and other Class Members sustained losses, injuries and damages arising out of the
9 Defendants' common policies, programs, practices, procedures, and course of conduct referred to
10 in each cause of action and throughout this Complaint, which were applied uniformly to Class
11 Members as well as Plaintiffs. Plaintiffs seek recoveries for the same types of losses, injuries,
12 and damages as were suffered by the other Class Members as well as Plaintiffs.

13 D. **Adequacy**: Plaintiffs and their counsel will fairly and adequately protect the
14 interests of the Class Members. Plaintiffs have no interest that is adverse to the interests of the
15 other Class Members.

16 E. **Superiority**: A class action is superior to other available means for the fair and
17 efficient adjudication of this controversy. Individual joinder of all Class Members is impractical.
18 Class action treatment will permit a large number of similarly situated persons to prosecute their
19 common claims in a single forum simultaneously, efficiently, and without the unnecessary
20 duplication of effort and expense that numerous individual actions engender. Also, because the
21 losses, injuries and damages suffered by each of the individual Class Members are small in the
22 sense pertinent to class action analysis, the expenses and burden of individual litigation would
23 make it extremely difficult or impossible for the individual Class Members to redress the wrongs
24 done to them. On the other hand, important public interests will be served by addressing the
25 matter as a class action. The cost to the court system and the public of adjudication of individual
26 litigation and claims would be substantial, and substantially more than if the claims are treated as
27
28

1 class action. Individual litigation and claims would also present the potential for inconsistent or
2 contradictory results.

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

10 V.

11 **CAUSES OF ACTION**

12 **First Cause of Action**

13 *Failure to Pay Wages at Overtime Rate*

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

15 16. Plaintiffs incorporate all previous paragraphs of this Complaint as though fully set
16 forth herein.

17 17. Throughout the period applicable to this cause of action, Plaintiffs and the Class
18 Members worked in excess of forty (40) hours per week and in excess of excess of eight (8)
19 hours per day.

20 18. Throughout the period applicable to this cause of action, Defendants did not pay
21 Plaintiffs or Class Members at the required overtime rates for the work described in the
22 preceding paragraph. Also, Defendants failed to pay them for all hours worked.

23 19. Pursuant to California Labor Code section 1194, Plaintiffs and the Class Members
24 are entitled to recover unpaid overtime compensation, and other unpaid wages, plus interest, plus
25 attorneys' fees and costs.

26 20. As a direct and proximate result of Defendants' unlawful conduct, as set forth
27 herein, the California Plaintiffs and the California Class members have sustained damages,
28 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.

1 21. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
2 relief as described herein and below.

3 **Second Cause of Action**
4 *Failure to Provide Meal Periods*
5 (Lab. Code §§ 226.7 and 512)
6 (Against All Defendants)

7 22. Plaintiffs incorporate all previous paragraphs of this Complaint as though fully set
8 forth herein.

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

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

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

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

25 25. Throughout the period applicable to this cause of action, Defendants required
26 Plaintiffs and the Class Members to work during meal periods mandated by the applicable orders
27 of the Industrial Welfare Commission. Therefore Plaintiffs and the Class Members are entitled
28 to be paid as stated in Labor Code section 226.7, plus interest, attorneys' fees, costs and other
applicable relief.

 26. On information and belief, Plaintiffs allege that the Class Members did not
voluntarily or willfully waive rest and/or meal periods and were regularly required to work
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

1 in which non-exempt employees were incapable of taking rest and/or meal periods. As such,
2 non-exempt employees were intimidated or coerced into waiving rest and/or meal periods, and
3 any written waivers were obtained without full disclosure and are thus involuntarily and without
4 consent.

5 27. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as
6 described herein and below.

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

10 28. Plaintiffs incorporate all previous paragraphs of this Complaint as though fully set
11 forth herein.

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

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

21 31. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek
22 to represent have been deprived of premium wages in amounts to be determined at trial, and are
23 entitled to an accounting and recovery of such amounts, plus interest and penalties thereon,
24 attorneys' fees, and costs, under Labor Code sections 201, 202, 203, 218.5, 226, 226.7, 1194 and
25 1199, and the applicable IWC Wage Orders.

26 32. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as
27 described herein and below.

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

33. Plaintiffs incorporate all previous paragraphs of this Complaint as though fully set
forth herein.

1 *addition, any work in excess of eight hours on any*
2 *seventh day of a workweek shall be compensated at*
3 *the rate of no less than twice the regular rate of pay*
 of an employee.

4 45. Defendants' course of conduct, acts, and practices in violation of the California
5 laws mentioned in the above paragraph constitute a separate and independent violation of the
6 UCL. Defendants' conduct described herein violates the policy or spirit of such laws or
7 otherwise significantly threatens or harms competition. The harm to California Plaintiffs and the
8 California Class in being wrongfully denied lawfully earned wages outweighs the utility, if any,
9 of Defendants' policies or practices and, therefore, Defendants' actions described herein
10 constitute an unfair business practice or act within the meaning of the UCL.

11 46. The unlawful and unfair business practices and acts of Defendants, described
12 above, have injured the California Class members in that they were wrongfully denied the
13 payment of earned overtime wages.

14 47. The California Plaintiffs, on behalf of themselves and the Class, seek restitution in
15 the amount of the respective unpaid wages earned and due at a rate not less than one and one-
16 halftimes the regular rate of pay for work performed in excess of forty hours in a work week, or
17 eight hours in a day, and double the regular rate of pay for work performed in excess of twelve
18 hours per day and such other legal and equitable relief from PALM's unlawful and willful
19 conduct as the Court deems just and proper.

20 48. Pursuant to Business and Professions Code sections 17200 *et seq.*, for the statute
21 of limitations period covered by this cause of action, Plaintiffs and the Class Members are
22 entitled to restitution for at least the following: the unpaid overtime earnings and other unpaid
23 earnings withheld and retained by Defendants referred to above.

24 49. Plaintiffs and the Class Members and the general public are also entitled to
25 permanent injunctive and declaratory relief prohibiting Defendants from engaging in the
26 violations and other misconduct referred to above.

27 50. Defendants are also liable to pay attorneys' fees pursuant to California Code of
28 Civil Procedure section 1021.5 and other applicable law, and costs. The Plaintiffs, on behalf of
themselves and Class members, also seek recovery of attorneys' fees and costs of this action to
be paid by PALM, as provided by the UCL and California Labor Code §§ 218, 218.5, and 1194.

1 12. Attorney's fees and costs of suit, including expert fees pursuant to Ca. Lab. Code
2 §§218.5, 1194, and Calif. Code Civ. Proc. §1021.5;

3 13. Such other injunctive and equitable relief as the Court may deem proper.
4

5
6 **DATED:** January 12, 2010

JOSE GARAY, APLC

7
8 **&**

HAMNER LAW OFFICES, LP

9
10
11 

12 By: Christopher J. Hamner, Esq.,
13 Co-Counsel for Plaintiffs, MARCOS
14 ANTONIO REYES and KAREN ROBERTS,
15 on behalf of themselves and all others similarly
16 situated
17
18
19
20
21
22
23
24
25
26
27
28