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7 *Attorneys for Plaintiff Jeffrey H. Allen,*  
8 *on behalf of himself and all others similarly*  
*situated*

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11  
12 JEFFREY H. ALLEN, on behalf of himself and  
all others similarly situated,

13 Plaintiff,

14 vs.

15 UTILIQUEST, LLC, and DOES 1 through 100,  
16 INCLUSIVE,

17 Defendant(s).

No. CGC-12-525644

Unlimited Civil Case

The Amount Demanded Exceeds \$25,000

**AMENDED CLASS ACTION COMPLAINT**

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19  
20 Plaintiff Jeffrey H. Allen ("Allen" or "Plaintiff"), by his attorneys, brings this action on  
21 behalf of himself and all other similarly situated, as an aggrieved employee, and the general  
22 public, and on information and belief, except those allegations that pertain to the named Plaintiff  
23 and his attorneys (which are alleged on personal knowledge), hereby alleges as follows:

24 1. This action alleges that UtiliQuest, Inc. ("UtiliQuest" or "Defendant"): (1) failed  
25 to pay employees regular and overtime pay in violation of California Labor Code sections 510  
26 and 1194 and applicable Industrial Welfare Commission Orders; (2) failed to pay its employees  
27 earned wages in violation of California Labor Code sections 201-204; (3) failed to issue wage  
28

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

DEC 04 2012

CLERK OF THE COURT

BY: WESLEY RAMIREZ  
Deputy Clerk

1 instruments in conformity with California Labor Code section 212; and, (4) failed to provide  
2 accurate wage statements to employees as required by California Labor Code section 226.

3 2. This action seeks relief for unremedied violations of California law, including, inter  
4 alia; damages, back wages, restitution, penalties, interest, and attorneys' fees, as appropriate, to  
5 members of the class, aggrieved employees, and to victims of the practices at issue, and who have  
6 not been paid lawful wages due, who have not been paid regular and overtime wages due, and who  
7 have failed to receive accurate wage statements and compliant wage instruments.

8 3. Plaintiff is an adequate and proper class representative. Plaintiff brings this action  
9 in his individual capacity, on behalf of all others similarly situated, as an aggrieved employee, and  
10 pursuant to California Business & Professions Code section 17204, on behalf of the general  
11 public. UtiQuest employed Plaintiff as a system specialist in California, within the four years of  
12 the filing of this complaint. While employed by Defendant, Plaintiff was required to work regular  
13 and overtime hours. Defendant failed to properly calculate and pay Plaintiff wages for regular and  
14 overtime hours worked. As a result of these practices, Defendant paid Plaintiff regular and  
15 overtime wages less than that required by law. In addition to the foregoing, Defendant failed to  
16 provide Plaintiff and all others similarly situated with wage instruments that conformed to  
17 California law and with accurate statements of wages.

18 4. Defendant is, and at all relevant times was, doing business in the State of  
19 California and an employer under applicable Industrial Welfare Commission Orders.

20 5. The names and capacities of Defendants sued herein under California Code of Civil  
21 Procedure section 474 as Does 1 through 100, inclusive, are presently not known to Plaintiff, who  
22 therefore sues these Defendants by such fictitious names. Plaintiff will seek to amend this  
23 Complaint and include these Doe Defendants' names and capacities when they are ascertained.  
24 Each of the fictitiously named Defendants is responsible in some manner for the conduct alleged  
25 herein and for the injuries suffered by Plaintiff, the members of the Class, and the general public.

26 6. At all times mentioned in the causes of action alleged herein, each and every  
27 Defendant was an agent and/or employee of each and every other Defendant. In doing the things  
28 alleged in the causes of action stated herein, each and every Defendant was acting within the

1 course and scope of this agency or employment and was acting with the consent, permission and  
2 authorization of each of the remaining Defendants. All actions of each Defendant as alleged in the  
3 causes of action stated herein were ratified and approved by every other Defendant or their  
4 officers or managing agents.

5 7. This action seeks relief on behalf of a class of persons in the employ of Defendant  
6 in California as system specialists in the four years preceding the filing date of this lawsuit and the  
7 present ("the Class").

8 8. The Class is sufficiently numerous, more than 50 individuals but less than 100,  
9 such that the joinder of all Class Members in one action is impracticable, and the disposition of  
10 whose claims in a class action will provide substantial benefits to both the parties and the Court.

11 9. The proposed Class is ascertainable. The litigation of the questions of fact and law  
12 involved in this action will resolve the rights of all members of the Class and hence, will have  
13 binding effect on all Class Members. These Class Members can be readily identified from records  
14 of Defendant and other means readily available to Defendant, and thus to Plaintiff, through  
15 minimally intrusive discovery.

16 10. There is a well-defined community of interest in the questions of law and fact  
17 involved affecting the parties to be represented. The questions of law and fact common to the  
18 Class predominate over questions that may affect individual Class Members, including but not  
19 limited to the following:

- 20 a. Whether Defendant implemented and engaged in a practice whereby  
21 Defendant unlawfully failed to properly calculate and pay regular and  
22 overtime pay to employees for time worked;
- 23 b. Whether Defendant implemented and engaged in a practice whereby  
24 Defendant failed to issue wage instruments in conformity with California  
25 law;
- 26 c. Whether Defendant implemented and engaged in a practice whereby  
27 Defendant failed to provide accurate wage statements to employees; and,  
28

1 d. Whether the acts and practices of Defendant as alleged herein violated, inter  
2 alia, applicable provisions of the California Labor Code, including but not  
3 limited to sections 201-204, 212, 226, 510, 558, 1194, 1198, and 2698,  
4 applicable Industrial Welfare Commission Orders, and California Business  
5 & Professions Code section 17200, et seq.

6 11. Because Plaintiff worked overtime, was not properly paid regular and overtime  
7 wages earned based upon hours worked, and failed to receive timely and accurate wage statements  
8 and compliant wage instruments, Plaintiff asserts claims that are sufficiently similar to claims of  
9 the Class to merit class certification.

10 12. Allen is an adequate and proper class representative. Allen brings this action in his  
11 individual capacity, on behalf of all others similarly situated, and pursuant to California Business  
12 & Professions Code section 17204, on behalf of the general public. Defendant employed Allen as  
13 an hourly employee in California, within the four years of the filing of this complaint. While  
14 employed as an hourly employee by Defendant, Plaintiff was required to work unpaid regular and  
15 overtime hours. As a result of these practices, Defendant paid Plaintiff regular and overtime  
16 wages less than that required by law. In addition to the foregoing, Defendant failed to provide  
17 Allen and all others similarly situated with wage instruments in conformity with California law  
18 and with accurate statements of wages. Plaintiff will fairly and adequately represent and protect  
19 the interests of the Class in that he has no disabling conflict of interest that would be antagonistic  
20 to those of the other members of the Class. Plaintiff retained counsel who are competent and  
21 experienced in the prosecution of class action wage and hour violations.

22 13. The common questions of law and fact are predominant with respect to the liability  
23 issues, relief issues and anticipated affirmative defenses. There is a well-defined community of  
24 interest in the questions of law and fact involved affecting the Class in that the claims of all such  
25 Class Members relate to and arise out of a common scheme and practices utilized by Defendant.  
26 Because the hours worked by Defendant's employees and the Class follow common patterns, all  
27 of which are reflected in the records possessed by Defendant, this action will provide substantial  
28 benefits to both. Absent this action, Defendant's unlawful conduct will continue unremedied and

1 uncorrected. Plaintiff and the members of the Class have a well defined community of interest in  
2 the questions of fact and law to be litigated, have all suffered irreparable harm and damages as a  
3 result of Defendant's unlawful and wrongful conduct, including but not limited to Defendant's  
4 failure to properly calculate and pay regular and overtime wages based on hours worked and  
5 failure to issue wage instruments in conformity with California law, makes class treatment  
6 especially appropriate. Plaintiff is informed and believes that the damages, back wages,  
7 restitution, penalties, interest and attorneys' fees incurred and sought do not exceed an aggregate  
8 value of \$4,999,999.99 and that Plaintiff's individual claims do not exceed \$74,999.00.

9 14. The certification of a class in this action is superior to the litigation of a multitude  
10 of cases by members of the putative class. Class adjudication will conserve judicial resources and  
11 will avoid the possibility of inconsistent rulings. Equity dictates that all persons who stand to  
12 benefit from the relief sought herein should be subject to the lawsuit and hence subject to an order  
13 spreading the costs of the litigation among the Class Members in relationship to the benefits  
14 received. The damages and other potential recovery for each individual member of the class are  
15 modest, relative to the substantial burden and expense of individual prosecution of these claims.  
16 Given the amount of the individual Class Members' claims, few, if any, Class Members could  
17 afford to seek legal redress individually for the wrongs complained of herein. Even if the  
18 members of the Class themselves could afford individual litigation, the court system could not.  
19 Individualized litigation presents a potential for inconsistent or contradictory judgments.  
20 Individualized litigation increases the delay and expense to all parties and the court system  
21 presented by the complex legal and factual issues of the case. By contrast, the class action device  
22 presents far fewer management difficulties, and provides the benefits of single adjudication,  
23 economy of scale, and comprehensive supervision by a single court.

24 **FIRST CAUSE OF ACTION**

25 **(Failure To Pay Overtime Wages Pursuant To Labor Code Section 1194)**

26 15. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing  
27 paragraphs as if fully set forth herein.

28 16. During all relevant periods, Defendant periodically required Plaintiff and Class

1 Members to work in excess of 8 hours per day and 40 hours per week.

2 17. During all relevant periods, both the California Labor Code and the pertinent  
3 Industrial Welfare Commission Wage Orders required that all work performed by an employee in  
4 excess of 8 hours per day and 40 hours per week be compensated at one and one half times the  
5 employee's regular rate of pay. Defendant failed to properly calculate and pay overtime wages for  
6 overtime hours worked. As a result, Defendant failed to pay Plaintiff and Class Members earned  
7 overtime wages. Plaintiff and Class Members are entitled to recover their unpaid overtime  
8 compensation and penalties arising therefrom.

9 18. Plaintiff and Class Members are therefore entitled to the relief requested below.

10 **SECOND CAUSE OF ACTION**

11 **(Unlawful, Unfair And Fraudulent Business Practices Pursuant**  
12 **To Business & Professions Code Section 17200, et seq.)**

13 19. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing  
14 paragraphs as if fully set forth herein.

15 20. California Business & Professions Code section 17200, et seq. prohibits acts of  
16 unfair competition, which shall mean and include any "unlawful business act or practice."

17 21. The policies, acts and practices heretofore described were and are unlawful  
18 business acts or practices because Defendant's failure to correctly calculate and pay wages for  
19 regular and overtime hours worked, failure to issue wage statements in conformity with California  
20 law, and failure to provide accurate and timely wage statements violate applicable Labor Code  
21 sections, including but not limited to California Labor Code sections 201-204, 212, 226, 510, 558,  
22 1194, and 1198, applicable Industrial Welfare Commission Wage Orders, the Labor Code Private  
23 Attorneys General Act of 2004, California Labor Code section 2698, et seq., and other provisions  
24 of California common and/or statutory law. Plaintiff reserves the right to allege additional  
25 statutory and common law violations by Defendant. Such conduct is ongoing to this date.

26 22. California Business & Professions Code section 17200, et seq. also prohibits acts of  
27 unfair competition, which shall mean and include any "unfair business act or practice."

28 23. The policies, acts or practices described herein were and are an unfair business act

1 or practice because any justifications for Defendant's illegal and wrongful conduct is and was  
2 vastly outweighed by the harm such conduct caused Plaintiff, the Class Members, and the  
3 members of the general public. Such conduct is ongoing to this date.

4 24. Plaintiff and Class Members are therefore entitled to the relief requested below.

5 **FOURTH CAUSE OF ACTION**  
6 **(Labor Code Private Attorneys General Act of 2004: Labor Code Sec. 2698)**

7 25. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing  
8 paragraphs as if fully set forth herein.

9 26. As set forth in Labor Code section 558, Defendant UtiliQuest as Plaintiff's  
10 employer violated, or caused to be violated, Labor Code sections 510 and 512, and provisions  
11 regulating the hours and days of work in the applicable Industrial Welfare Commission Wage  
12 Orders. As such, Defendant is liable for civil penalties as provided by Labor Code section 558.

13 27. The policies, acts and practices heretofore described were and are an unlawful  
14 business act or practice because Defendant's failure to provide meal period breaks, failure to (1)  
15 pay regular and overtime wages; (2) timely pay employees for all hours worked; and (3) maintain  
16 and provide accurate wage statements to employees violates applicable Labor Code sections and  
17 gives rise to statutory penalties as a result of such conduct, including but not limited to penalties as  
18 provided by Labor Code §§ 201, 203, 204, 226(a), 510, 1174, and 2699.5, and applicable  
19 Industrial Welfare Commission Wage Orders. Plaintiff, as an aggrieved employee, hereby seeks  
20 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004  
21 on behalf of himself and other current and former employees of Defendant against whom one or  
22 more of the violations of the Labor Code was committed.

23 28. On November 2, 2012, Plaintiff gave written notice by certified mail to the  
24 California Labor and Workforce Development Agency and Defendant of Labor Code violations as  
25 prescribed by California Labor Code section 2699.3. Plaintiff has not received written notification  
26 by the LWDA of an intention to investigate the allegations set forth in Plaintiff's November 2,  
27 2012, letter or written notice of cure by December 4, 2012, as prescribed by California Labor  
28 Code section 2699.3.

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**PRAYER FOR RELIEF**

WHEREFORE Plaintiff prays for judgment and relief as follows:

1. An order certifying that the action may be maintained as a class action;
2. Compensatory and statutory damages, penalties and restitution, as appropriate and available under each cause of action;
3. For recovery of penalties as provided by the Labor Code Private Attorneys General Act of 2004;
4. Reasonable attorneys' fees pursuant to California Labor Code sections 1194(a) and 2699(g);
5. Costs of this suit;
6. Pre- and post-judgment interest; and,
7. Such other and further relief as the Court deems just and proper; and,
8. Plaintiff is informed and believes that the damages, back wages, restitution, penalties, interest and attorneys' fees do not exceed an aggregate of \$4,999,999.99 and that Plaintiff's individual claims do not exceed \$74,999.99 and the members of the proposed class do not exceed 99 individuals.

Plaintiff hereby demands a trial by jury.

Date: December 4, 2012

QUALLS & WORKMAN, LLP



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Daniel H. Qualls  
Attorneys for Plaintiff Jeffrey H. Allen  
on behalf of himself and all others similarly  
situated