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10 Attorneys for Plaintiffs
PETER SILVA GUSTAVO GUZMAN, PAUL E.
11 LASS, JR., JEFF S. MCGILL, THOMAS R. MUNDY
and STANLEY G. SETTLE, on behalf of themselves
12 and all others situated

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES

15
16 PETER SILVA, GUSTAVO GUZMAN,
PAUL E. LASS, JR., JEFF S. MCGILL,
17 THOMAS R. MUNDY and STANLEY G.
SETTLE, on behalf of themselves and all
18 others situated,

19 Plaintiffs,

20 v.

21 GETRONICS USA, INC., GETRONICS
FLEXIBLE SOLUTIONS, LLC, and DOES 2
22 through 50, inclusive,

23 Defendants.

) NO. BC 368049

) Dept: 36

) Judge: The Hon. Gregory W. Alarcon
) Date Action Filed: 3/19/2007

) [PROPOSED] FIRST AMENDED
) COMPLAINT FOR COMPENSATORY
) AND EXEMPLARY DAMAGES

) (1) NONPAYMENT OF WAGES -
) VIOLATION OF LABOR CODE
) SECTIONS 204, 210, 226.7 and 512

) (2) UNFAIR BUSINESS PRACTICES

) CLASS ACTION [CODE OF CIV.
) PROC. SECTION 382]

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1 Plaintiffs Peter Silva, Gustavo Guzman, Paul E. Lass, Jr., Jeff S. McGill, Thomas R.
2 Mundy and Stanley G. Settle on behalf of themselves and all others situated (collectively
3 "Plaintiff Class") allege as follows:

4 PARTIES

5 1. Plaintiff Peter Silva is a citizen of the State of California and resides in the
6 County of Los Angeles.

7 2. Plaintiff Gustavo Guzman is a citizen of the State of California and resides in
8 the County of Los Angeles.

9 3. Plaintiff Paul E. Lass, Jr. was a citizen of the State of California and resided
10 in the County of Los Angeles while employed by Defendants during the class period.

11 4. Plaintiff Jeff S. McGill is a citizen of the State of California and resides in the
12 County of Los Angeles.

13 5. Plaintiff Thomas Mundy is a citizen of the State of California and resides in
14 the County of San Diego.

15 6. Plaintiff Stanley G. Settle is a citizen of the State of California and resides in
16 the County of Los Angeles.

17 7. Defendant Getronics USA, Inc. was a subsidiary of Getronics, NV, a
18 Netherlands corporation doing business in the State of California, County of Los Angeles,
19 during the class period. Getronics NV is an international corporation with 24,000
20 employees in 25 countries and is a subsidiary of the Dutch telecommunications firm KPN.
21 Getronics USA, Inc. was acquired on August 20, 2008 and is now a subsidiary of
22 CompuCom Systems, Inc., a Delaware corporation. Getronics USA, Inc. maintains offices
23 in the State of California. Getronics Flexible Solutions, LLC (formerly Doe 1) is a
24 Delaware limited liability company (LLC) that maintains offices in the State of California.
25 Getronics USA, Inc. and Getronics Flexible Solutions, LLC (henceforth, "defendants") are
26 defendants. Getronics NV is not a defendant.

27 8. Plaintiffs are unaware of the names and capacities of the defendants sued
28 herein as DOES 2 through 50, inclusive. Plaintiffs are informed and believe, and upon that

1 basis allege, that each of the defendants sued herein as DOES 2 through 50, inclusive, is
2 responsible in some manner for the wrongs alleged herein and is legally liable to the
3 plaintiffs. Plaintiffs will amend this complaint to allege their true names and capacities
4 when such information is ascertained.

5 9. Plaintiffs are informed and believe and on that basis allege that at all times
6 relevant herein, each of the defendants was acting as the agent, employee and/or joint
7 venturer of the remaining defendants and in so doing the things herein described, was
8 acting within the scope of such agency, employment and/or joint venture except where
9 designated otherwise.

10 CLASS ALLEGATIONS

11 10. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated, as a class action under section 382, Code of Civil Procedure. The class which
13 plaintiffs seek to represent is composed of and defined as follows: All California
14 employees of defendants paid on an hourly basis as nonexempt employees for the period of
15 four years before the filing of this complaint to the present.

16 11. This action has been brought and may properly be maintained as a class
17 action, under the provisions of Code of Civil Procedure section 382, because there is a well-
18 defined community of interest in the litigation and the proposed class is easily
19 ascertainable.

20 12. **Numerosity:** The Plaintiff Class is so numerous that the individual joinder of
21 all members is impracticable under the circumstances of this case. While the exact number
22 of class members is presently unknown to plaintiffs, plaintiffs are informed and believe that
23 during the time period concerned herein, defendants, as a matter of corporate practice,
24 engaged in violations of law concerning its practices in the payment of employees and that
25 said wage and hour violations occurred universally throughout the offices of defendants in
26 California over at least the last four years. Plaintiffs are informed and believe and
27 thereupon allege that the number of nonexempt employees in the State of California
28 numbers in the hundreds of individuals.

1 13. **Common Questions Predominate:** Common questions of law and fact exist
2 as to all members of the Plaintiff Class and predominate over any questions which affect
3 only individual members of the class. These common questions of law and fact include,
4 without limitation:

5 (a) Whether defendants violated wage and hour laws in establishing a
6 policy of failing to pay overtime wages for the services of hourly employees.

7 (b) Whether defendants violated wage and hour laws, in adopting a policy
8 and practice to fail to ensure that nonexempt employees are provided required meal breaks.

9 (c) Whether defendants violated wage and hour laws in adopting a policy
10 and practice of failing to make available required rest breaks.

11 (d) The amount of wages and/or penalties owed by defendants for willful
12 failure to pay wages;

13 (e) The amount of penalties and/or wages owed by defendants for failing
14 to provide required breaks.

15 (f) The appropriate nature of class-wide equitable relief in the form of an
16 injunction to prevent such wage and hour violations in the future.

17 14. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the
18 Plaintiff Class. Plaintiffs have worked within the class period as hourly nonexempt
19 employees of defendants and suffered the wage and hour violations complained of here.
20 Plaintiffs and all members of the Plaintiff Class sustained damages arising out of
21 defendants' adoption of policies in a common course of conduct in violation of law as
22 complained of herein. The damages of each member of the Plaintiff Class were caused by
23 the defendants' wrongful conduct in violation of the wage and hour laws herein alleged.

24 15. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the
25 members of the Plaintiff Class. Plaintiffs reside, or resided, in California, and are, or have
26 been, nonexempt employees of defendants as to whom defendants failed to pay wages
27 earned.

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1 practice of failing to make available required rest breaks.

2 21. The conduct of defendants, which has been abetted and encouraged
3 throughout defendants' offices in the State of California for many years, has resulted in
4 unwarranted profits to defendants at the expense of defendants' employees.

5 22. Damages are warranted to repay employees for this egregious and illegal
6 conduct.

7 23. Injunctive relief is necessary to prevent such conduct in the future.

8 24. Defendants are herewith notified that all employment records concerning
9 hourly nonexempt employees should be maintained. The time records of employees should
10 not be destroyed pursuant to any preordained destruction calendar.

11 FIRST CAUSE OF ACTION

12 (For Nonpayment of Wages Against All Defendants)

13 25. Plaintiffs allege and incorporate herein by reference the allegations of
14 Paragraphs 1 through 24, inclusive.

15 26. At all times relevant herein Labor Code section 204 required the payment of
16 all wages earned by the members of the Plaintiff Class.

17 27. At all times relevant herein, Industrial Welfare Commission Wage Order No.
18 4-2001 (8 Cal. Code Reg. § 11040) provides for payment of overtime compensation at not
19 less than one and half times the employee's regular rate of pay for all hours worked in
20 excess of eight hours in any workday and for the first eight hours worked on the seventh
21 consecutive day of work in a work week and double the employee's regular rate of pay for
22 all hours worked in excess of 12 hours in any workday and for all hours worked in excess
23 of eight hours on the seventh consecutive day of work in a workweek.

24 28. Members of the Plaintiff Class worked regular time and overtime hours for
25 defendants which they were not paid.

26 29. Defendants have failed to pay wages earned to members of the Plaintiff Class
27 pursuant to the policies as herein alleged.

28 30. Defendants' failure to pay the regular and overtime wages of Plaintiff Class

1 members, violates the provisions of Labor Code sections 201 and 1198, and is therefore
2 unlawful.

3 31. Defendants have failed to ensure that employees take a required meal break
4 and has not provided required rest breaks, as required by Labor Code section 512.

5 32. Plaintiffs and each member of the Plaintiff Class are entitled to compensation
6 for one hour of wages for each meal or rest break missed, pursuant to Labor Code section
7 226.7.

8 33. Civil penalties should be awarded pursuant to Labor Code section 558.

9 34. Pursuant to Labor Code section 1194(a) plaintiffs request that the court award
10 reasonable attorneys' fees and costs incurred in this action.

11 35. Pursuant to Labor Code sections 218.6 and 1194(a), plaintiffs request that the
12 court award interest on all due and unpaid wages, at the legal rates specified by Civil Code
13 section 3289(b) accruing from the date the wages were due and payable.

14 36. In doing the acts herein described, defendants acted consciously to deprive
15 employees of compensation which had been earned. These acts were committed with
16 malice, oppression and fraud, and punitive damages are warranted pursuant to Civil Code
17 section 3294.

18 SECOND CAUSE OF ACTION

19 (Unfair Business Practices Against All Defendants)

20 37. Plaintiffs allege and incorporate herein by reference the allegations of
21 paragraphs 1 through 37, inclusive.

22 38. Plaintiffs bring this action both in their individual capacity and on behalf of
23 all nonexempt employees of defendants as to whom defendants failed to pay wages over the
24 last four years.

25 39. Defendants' establishment of policy and encouragement of managers to fail to
26 pay wages is immoral, unethical, oppressive, unscrupulous, substantially injurious to
27 plaintiffs and the Plaintiff Class and has been implemented through the use of economic
28 force. It is an unfair business practice under Business & Professions Code section 17200 et.

1 seq, for defendants to consciously, deliberately and in bad faith underpay employees by
2 adopting these practices.

3 40. Specifically, defendants, by a continuing course of conduct of failing and
4 refusing to pay wages earned by employees, have engaged, and continue to engage in,
5 conduct which was, and is, "unlawful, unfair and fraudulent," within the meaning of
6 Business & Professions Code section 17200 et seq.

7 41. Defendants, accordingly, should be ordered to restore to plaintiffs and the
8 Plaintiff Class those amounts which defendants have wrongfully retained, in violation of
9 wage and hour law and in violation of their duty to refrain from "unlawful, unfair and
10 fraudulent" conduct, as proscribed by Business & Professions Code 17200 et seq.

11 42. As a direct and proximate result of these violations, defendants have obtained
12 the services of the plaintiffs and the Plaintiff Class and have not paid for those services, all
13 to the profit of defendants and the detriment of plaintiffs and the Plaintiff Class. The profit
14 so obtained should be disgorged from defendants as ill-gotten gains.

15 43. The acts as herein alleged are continuing. Unless enjoined, defendants will
16 continue to reap the benefits of the services of nonexempt employees while failing to pay
17 for those services. Injunctive relief is warranted.

18 44. The wrongful conduct of defendants unless restrained and enjoined by an
19 order of this court, will cause great and irreparable harm to plaintiffs and the Plaintiff Class
20 in that defendants will continue to violate the wage and hour law with impunity and
21 continue to engage in conduct prohibited by Business & Professions Code section 17200 et
22 seq. Plaintiffs and the Plaintiff Class have no adequate remedy of law for the injuries they
23 have suffered and that they will continue to suffer in the future, unless defendants'
24 wrongful conduct is restrained and enjoined and unless defendants are compelled to refrain
25 from "unfair, unlawful and fraudulent" acts and practices. Plaintiffs and the Plaintiff Class
26 therefore pray for a temporary restraining order, preliminary injunction and permanent
27 injunction enjoining such conduct.

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1 WHEREFORE, plaintiffs pray for relief as follows:

2 1. For a temporary restraining order, preliminary injunction and permanent
3 injunction restraining defendants and their agents and employees from continuing to violate
4 the wage and hour laws as alleged herein.

5 2. For a temporary restraining order, preliminary injunction and permanent
6 injunction prohibiting defendants and their agents and employees from continuing to
7 withhold from plaintiffs and the members of the Plaintiff Class compensation for overtime
8 hours worked.

9 3. For a temporary restraining order, preliminary injunction and permanent
10 injunction mandating that defendants and their agents and employees provide to each
11 nonexempt hourly employee the meal breaks and rest breaks required by law.

12 4. For a temporary restraining order, preliminary injunction and permanent
13 injunction restraining defendants and their agents and employees from continuing to
14 commit unlawful, unfair and fraudulent practices in violation of Business & Professions
15 Code 17200 et seq., including from continuing to commit violations of the wage and hour
16 laws by use of economic force against plaintiffs and the members of the Plaintiff Class.

17 5. For restitution to plaintiffs and members of the Plaintiff Class of those
18 overtime wages which defendants have wrongfully refused to pay, in violation of the wage
19 and hour law.

20 6. For compensatory damages in an amount according to proof to plaintiffs and
21 the members of the Plaintiff Class.

22 7. For an award of wages pursuant to Labor Code section 226.7 for each missed
23 meal or rest break.

24 8. For an award of exemplary damages for the purpose of punishing defendants
25 and deterring unlawful conduct in the future.

26 9. For interest on all sums awarded.

27 10. For reasonable attorneys' fees incurred.

28 11. For costs of suit.

1 12. For such other and further relief as the court finds proper.
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3 Dated: October 29, 2008

KNAPP, PETERSEN & CLARKE and THE LAW
OFFICES OF THOMAS W. FALVEY

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5
6 By: 

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