

1 Kelly M. Dermody (State Bar No. 171716)
 kdermody@lchb.com
 2 Daniel M. Hutchinson (State Bar No. 239458)
 dhutchinson@lchb.com
 3 Anne B. Shaver (State Bar No. 255928)
 ashaver@lchb.com
 4 Katherine M. Lehe (State Bar No. 273472)
 klehe@lchb.com
 5 LIEFF, CABRASER, HEIMANN &
 BERNSTEIN, LLP
 6 275 Battery Street, 29th Floor
 San Francisco, CA 94111
 7 Telephone: (415) 956-1000
 Facsimile: (415) 956-1008
 8

9 Steven M. Tindall (State Bar No. 187862)
 steventindall@rhdtdlaw.com
 Angela Perone (State Bar No. 245793)
 10 angelaperone@rhdtdlaw.com
 RUKIN HYLAND DORIA & TINDALL LLP
 11 100 Pine Street, Suite 2150
 San Francisco, CA 94111
 12 Telephone: (415) 421-1800
 Facsimile: (415) 421-1700
 13

14 *Counsel for Plaintiffs and the Proposed Class*

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17

18 GOPI VEDACHALAM and KANGANA
 19 BERI, on behalf of themselves and all
 others similarly situated,

20 Plaintiffs,

21 v.

22 TATA CONSULTANCY SERVICES,
 LTD, an Indian Corporation; and TATA
 23 SONS, LTD, an Indian Corporation.

24 Defendants.

CASE NO. C 06-0963 (CW)

**SECOND AMENDED CLASS ACTION
 COMPLAINT FOR BREACH OF
 CONTRACT; UNFAIR BUSINESS
 PRACTICES; AND VIOLATIONS OF
CALIFORNIA WAGE AND HOUR LAWS**

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Individual and representative Plaintiffs Gopi Vedachalam and Kangana Beri (“Plaintiffs”)
2 allege, on behalf of themselves and all others similarly situated, as follows:

3 **JURISDICTION AND VENUE**

4 1. Plaintiffs bring this class action on behalf of three Classes of employees of Tata
5 Consultancy Services, Ltd., and Tata Sons, Ltd., Indian corporations headquartered in Mumbai,
6 India (collectively referred to as “TCS” or “Defendants”).

7 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
8 § 1332, as amended by the Class Action Fairness Act, because the aggregate amount claimed by
9 the individual members of the proposed Classes exceeds \$5,000,000, exclusive of interest and
10 costs. The Nationwide Class exceeds 100 persons, and its members are citizens of India and
11 other countries, and Defendants have offices and conduct business in various states throughout
12 the United States. The California Classes exceed 100 persons, and the California Classes’
13 members are citizens of India and other countries, and Defendants have offices and conduct
14 business in various states throughout the United States.

15 3. Personal jurisdiction over TCS is proper because it has purposefully availed itself
16 of the privilege of conducting business activities within the State of California by employing
17 workers within California, and selling its services within the State. TCS generally has maintained
18 systematic and continuous business contacts with California.

19 4. Venue is proper in this district pursuant to 42 U.S.C. § 2000e5(f) and 28 U.S.C.
20 § 1391 (b) & (c). Many of the acts complained of herein occurred in this District and gave rise to
21 the claims alleged. TCS conducts business in this District and employs thousands of workers
22 within the State of California.

23 **SUMMARY OF CLAIMS**

24 5. Plaintiffs are current and former employees of TCS, who were “deputed” to the
25 United States by TCS in order to work in-house for TCS’s customers. Plaintiffs were not paid the
26 wages they were promised by TCS, were forced to pay back to TCS wages previously earned, and
27 were injured by TCS’s systematic violations of California’s wage and hour laws.

28 6. Plaintiffs are members of, and seek to represent, a Rule 23(b)(3) Nationwide Class

1 of all non-U.S. citizens whom Defendants employed in the United States at any time from
2 February 14, 2002 through June 30, 2005, alleging breach of contract (“Nationwide Class”).
3 Plaintiffs allege, on behalf of themselves and the Nationwide Class, that TCS did not pay them
4 the gross wages that TCS promised it would pay them in exchange for working for TCS in the
5 United States. Plaintiffs, on behalf of themselves and Nationwide Class members, seek damages
6 and injunctive relief.

7 7. Plaintiffs are members of, and seek to represent, a Rule 23(b)(3) California Class
8 of all non-U.S. citizens whom Defendants employed in California at any time from February 14,
9 2002 through June 30, 2005 (“California Class A”). Plaintiffs allege, on behalf of themselves and
10 the California Class A members, that TCS forced them to pay back to TCS wages that the
11 employees had previously earned in the form of tax refund checks. In addition, TCS wrongfully
12 deducted Class members’ Indian salaries from their U.S. pay, in violation of their uniform
13 employment contracts. Plaintiffs, on behalf of themselves and California Class A member, seek
14 damages.

15 8. Plaintiffs are members of, and seek to represent, a Rule 23(b)(3) California Class
16 of all non-U.S. citizens whom Defendants employed in California at any time from February 14,
17 2002 through the final disposition of this action (“California Class B”). Plaintiffs allege, on
18 behalf of themselves and the California Class B members, that TCS violated California Labor law
19 by failing to provide accurate wage statements, and by failing to pay discharged employees all
20 wages earned and unpaid within 72 hours of termination. Plaintiffs, on behalf of themselves and
21 California Class B members, seek damages.

22 9. Plaintiff Beri, on behalf of herself, further alleges that TCS violated California law
23 by improperly misclassifying her as exempt from overtime pay. Plaintiff Beri seeks damages.

24 **THE PARTIES**

25 10. Plaintiff Gopi Vedachalam is a citizen of India and currently resides in Chennai,
26 India. In 1997, Mr. Vedachalam began working for Tata Consultancy Services in Bangalore,
27 India. In April 2000, Tata Consultancy Services “deputed” Mr. Vedachalam, sending him to
28 work for TCS in the United States. From April 2000 to 2007, Mr. Vedachalam worked in the

1 United States for TCS. From 2000 to 2003, Vedachalam worked in Hayward, California, as a
2 TCS project manager for Target. From 2003 to 2007, he worked as a TCS project manager for
3 21st Century Insurance in Woodland Hills, California.

4 11. Plaintiff Kangana Beri is a citizen of India, legally living in Washington under an
5 H-4 visa. (The H-4 visa is a dependant visa for someone whose spouse lives and works legally in
6 the United States on an H-1B visa.) In 2001, Ms. Beri began working for TCS in New Delhi,
7 India. In April 2003, TCS deputed Ms. Beri to the United States. From April 2003 to September
8 2004, Ms. Beri worked as an Assistant Systems Engineer for TCS clients in California.

9 12. Defendant Tata Consultancy Services, Ltd. is an Indian corporation with its
10 principal place of business in Mumbai, India, operating in the San Francisco Bay Area as well as
11 throughout the State of California and the United States. Tata Consultancy Services, Ltd. was
12 wholly owned by Defendant Tata Sons, Ltd., an Indian corporation, until August 2004.

13 13. Defendant Tata Sons, Ltd., is an Indian corporation with its principal place of
14 business in Mumbai, India, operating in the San Francisco Bay Area as well as throughout the
15 State of California and the United States. Tata Sons, Ltd. was the parent company of Tata
16 Consultancy Services, Ltd., until August 2004.

17 **STATEMENT OF FACTS APPLICABLE TO ALL CLAIMS**

18 **A. TCS's Deputation of Its Employees to the United States**

19 14. Most TCS employees in the United States are non-U.S. citizens. Most of these
20 individuals have worked for TCS in India and are "deputed" to work in the United States,
21 meaning that the employees continue to work for TCS, but are stationed in the United States.

22 15. Each employee signs a Deputation Agreement and a Deputation Terms Agreement
23 that outline the terms and conditions of his or her employment in the United States.

24 16. These employees are granted visas, which allow the employees to work and live in
25 the United States. TCS, under the penalty of perjury, makes certain representations to the U.S.
26 government and to its employees on the visa petitions about the amount of wages each employee
27 will earn during his or her stay in the United States.

28 17. The Deputation Agreements state that the employee's gross amount of

1 compensation shall be includable as earnings in the United States and reported to the U.S. Internal
2 Revenue Service.

3 18. The Deputation Agreements state that “[i]n addition to the compensation and
4 benefits you currently receive and will continue to receive in India while on Deputation, you shall
5 receive additional compensation in the United States in the gross amount of” a certain number of
6 dollars.

7 19. While in the United States, these employees are paid by TCS.

8 **B. TCS’s Operations**

9 20. TCS is the information technologies outsourcing/consulting arm of the Indian
10 conglomerate Tata Group. TCS has branch offices throughout the United States and deposes
11 employees throughout the United States to provide information technology support to TCS
12 clients.

13 21. On information and belief, Plaintiffs believe that most TCS deputed employees
14 work on-site at TCS clients’ offices.

15 **CLASS ALLEGATIONS**

16 22. Plaintiff Vedachalam and/or Plaintiff Beri bring this class action pursuant to Fed.
17 R. Civ. P. 23(a) and (b)(3), on behalf of a Nationwide Class and two California classes, as
18 described below.

19 **II. NATIONWIDE CLASSES**

20 **A. Nationwide Class A**

21 23. Plaintiffs are members of, and seek to represent, the following nationwide class:

22 All non-U.S. citizens who were employed by TCS at anytime from
23 February 14, 2002 through June 30, 2005 who were promised a
24 higher amount of wages than they actually received (“Nationwide
Class A”).

25 24. When Defendants depute their Indian employees to the United States, they
26 promise those employees a certain gross salary in addition to the salary they will continue to earn
27 in India. This promise is contained in the Deputation Terms Agreement, which reads: “In addition
28 to the compensation and benefits you currently receive and will continue to receive in India while

1 on Deputation, you shall receive additional compensation in the United States in the gross amount
2 of” a certain number of dollars.

3 25. For example, TCS promised Plaintiff Beri a gross amount of \$50,000 in addition
4 to the compensation and benefits she received in India. Ms. Beri did not receive this gross
5 amount in addition to the compensation and benefits she received in India when she worked for
6 TCS in the United States.

7 26. TCS also makes certain salary representations to the employees and to the U.S.
8 government in the employees’ visa petitions. For example, under penalty of perjury, in Plaintiff
9 Vedachalam’s May 2003 visa petition to the United States, TCS represented to Plaintiff
10 Vedachalam (and to the U.S. government) that from May 30, 2003 through May 29, 2005,
11 Plaintiff Vedachalam would receive \$74,000 per year. Mr. Vedachalam did not receive this
12 amount of annual salary in 2004 or 2005.

13 27. In addition to not paying their employees the amount promised, TCS decreased
14 their employees’ wages further by requiring their employees to sign over their tax refund checks
15 or by requiring them to pay to receive the tax forms required to file an income tax return.

16 28. In no signed agreement were Plaintiffs promised a lower net salary rather than the
17 gross salary set forth in their Deputation Terms Agreements and/or represented to them in their
18 visa petitions.

19 29. Deputed employees were paid a gross amount monthly, and federal and state
20 income taxes were withheld from these gross monthly wages.

21 30. Until July 2005, Defendants required that their non-U.S. citizen employees sign
22 power of attorney agreements that delegated an outside agency to calculate and submit each
23 employee’s tax returns to the applicable state and federal tax authorities.

24 31. On information and belief, Plaintiffs allege that during each year of the class
25 period, TCS received a state and federal tax refund check made out to each Nationwide Class
26 member, representing the amount of taxes the Class member had overpaid the state and federal
27 tax agencies. TCS then forced the employees to endorse these refund checks to TCS.

28 32. For example, each year that Plaintiff Vedachalam worked for Defendants in the

1 United States, the Internal Revenue Service and California Franchise Tax Board sent to
2 Defendants checks made out to Plaintiff Vedachalam in the amount of tax he overpaid throughout
3 the preceding year. Each year that Plaintiff Vedachalam has worked for Defendants in the United
4 States, Defendants have required him to endorse his tax refund checks and send those checks
5 back to the company. In 2004, for example, TCS sent Plaintiff Vedachalam an “Urgent Memo”
6 that stated: “Thank you very much for your excellent support in assisting us to file the tax return
7 on your behalf for the year [current year]. We are now forwarding you the tax refund check
8 received from the Tax Authority. Please sign on the reverse of the cheque and return it to the
9 below mentioned address. Your assistance in the [sic] regard will be highly appreciated.”

10 33. On information and belief, Plaintiffs allege that when Defendants receive the tax
11 refund checks from the respective tax agencies, made out to each of their non-U.S.-citizen
12 employees, they send their non-U.S.-citizen employees an “Urgent Memo,” demanding that the
13 employees endorse the checks and send them back to Defendants.

14 34. Employees did not provide TCS with their tax over-payment, *i.e.*, their refund
15 checks, voluntarily. Instead, they had no choice in the matter, because—prior to sending their
16 refund checks to the employees—TCS stamped the back of the checks with a stamp that read:
17 “Pay to the Order of . . . Tata Consultancy Services, Ltd.”

18 35. On information and belief, Plaintiffs allege that Defendants have retained the
19 proceeds from the Nationwide Class members’ tax refund checks by requiring that employees
20 endorse their refund checks for TCS’s benefit. Defendants have not repaid these funds to their
21 employees.

22 36. On information and belief, Plaintiff Vedachalam alleges that Defendants have
23 taken the proceeds from his state and federal tax refunds for each year that he has worked in the
24 United States. Defendants have never repaid Vedachalam the tax refund money that they
25 required him to sign over to TCS.

26 37. On information and belief, Plaintiff Vedachalam alleges that Defendants may have
27 received as much as \$5,000 per year, per employee as a result of Defendants’ requirement that
28 each Nationwide Class B member sign over his or her tax refund checks to Defendants.

1 38. Plaintiff Vedachalam estimates that Defendants have retained nearly \$25,000 in
2 federal and state tax refunds that rightfully belong to him.

3 39. In no signed agreement (or any other document) were Plaintiffs told that they
4 would receive a set net pay amount that TCS would then “gross-up” to include their taxes.
5 Instead, Plaintiffs Vedachalam and Beri believed that they were receiving a gross amount from
6 TCS, out of which taxes were being withheld.

7 40. Also during the class period, TCS did not allow deputed employees to file their
8 own tax returns unless they first paid TCS the amount of their anticipated tax refund. For
9 example, in 2004 Plaintiff Beri informed TCS that she would like to file her own tax returns for
10 the year 2003 jointly with her husband. TCS unlawfully refused to provide her with her W-2 tax
11 forms. See 26 C.F.R. § 31.6051-1 (setting forth the requirement that employers must provide their
12 employees with two copies of their W-2 forms on or before January 31 of the year following the
13 tax year). Ultimately, TCS informed her that they would only provide her with her W-2 form if
14 she first paid TCS \$2,440. This was the amount that TCS calculated that she would receive as a
15 refund had she been unmarried and filed as an unmarried individual. Plaintiff Beri wrote a
16 personal check to TCS in that amount and only then, months after January 31, 2004, did TCS
17 provide her with her W-2 forms.

18 41. TCS has not repaid Plaintiff Beri for the amount they required her to pay to receive
19 her 2003 W-2 forms.

20 42. On information and belief, Plaintiffs were never provided with an “Overseas
21 Deputation Policy.”

22 **B. Suitability Of The Nationwide Class for Class Certification**

23 43. The members of the Nationwide Class identified herein are so numerous that
24 joinder of all members is impracticable. Upon information and belief, Defendants have employed
25 13,121 employees on deputation in the United States between February 14, 2002 and June 30,
26 2005. This number is far greater than can be addressed feasibly through joinder.

27 44. There are many questions of law and fact common to the Nationwide Class, and
28 these questions predominate over any questions affecting only individual members. Common

1 questions of fact or law include, among others: (1) whether Defendants had a systematic plan to
 2 breach the contracts of their non-U.S.-citizen employees; (2) whether Defendants unlawfully held
 3 hostage the W-2 tax forms of those employees who wished to file their own tax returns, requiring
 4 that such employees pay TCS a set amount of money before TCS relinquished the tax forms,
 5 thereby lowering the amount of salary promised in their agreements; (3) whether Plaintiffs and
 6 the proposed class have a right to their individual tax refund checks; (4) whether Defendants
 7 unlawfully compelled the Plaintiffs and the proposed class to turn over those refund checks to
 8 TCS; (5) whether Defendants breached their uniform employment agreements with Class
 9 members by deducting their Indian salaries from their U.S. pay; and (6) whether injunctive relief
 10 and other equitable remedies (including restitution) and compensatory and punitive damages are
 11 warranted for the Nationwide Class.

12 45. The claims of Plaintiffs are typical of the claims of the Nationwide Class they seek
 13 to represent.

14 46. Plaintiffs will fairly and adequately represent and protect the interests of the
 15 members of the Nationwide Class. Plaintiffs' counsel is competent and highly experienced in
 16 complex class actions in general and employment-related class actions in particular.

17 47. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(3) because
 18 common questions of fact and law predominate over any individual questions affecting members
 19 of the Nationwide Class, and because a class action is superior to other available methods for the
 20 fair and efficient adjudication of this litigation. The members of Nationwide Class have been
 21 damaged and are entitled to recovery as a result of Defendants' common, uniform, and illegal
 22 policies and practices. Defendants have computerized payroll and personnel data that will make
 23 calculation of damages for specific members of the Nationwide Class relatively straightforward.

24 **III. CALIFORNIA CLASSES**

25 **A. California Class A**

26 48. Plaintiffs are members of, and seek to represent, the following Class:

27 All non-U.S. citizens who were employed by TCS in California at
 28 any time from February 14, 2002 through June 30, 2005 who were
 forced to pay back to TCS previously-earned wages ("California

1 Class A”).

2 49. By deducting their Indian salary from their U.S. wages and requiring that their
3 non-U.S.-citizen employees either (1) sign over their tax refund checks to the company or (2) pay
4 TCS in order to receive their W-2 tax forms, Defendants required their California employees to
5 repay to Defendants wages those employees had previously earned.

6 50. When Defendants depute their Indian employees to the United States, they
7 promise those employees both an Indian salary and a gross U.S. salary. This promise is
8 contained, among other places, in the Deputation Terms Agreement, which reads: “As stated in
9 the Deputation Agreement, you will continue to receive your salary and benefits in India during
10 the period of the Deputation[,]” and “In addition to the compensation and benefits you currently
11 receive and will continue to receive in India while on Deputation, you shall receive additional
12 compensation in the United States in the gross amount of”

13 51. Despite this promise, Defendants recouped the amounts of non-U.S.-citizen
14 employees’ Indian salaries from them by making Indian salary deductions from their U.S. wages.

15 52. Plaintiff Vedachalam estimates that Defendants required him to return to
16 Defendants between \$8,000 and \$17,000 in earned wages per year from Indian salary deductions.
17 Plaintiff Beri estimates that Defendants required her to return between \$3,000 and \$6,000 per
18 year in earned wages. On information and belief, Plaintiffs allege that Defendants have required
19 each member of California Class A to return similar Indian salary amounts to Defendants.

20 53. The tax overpayment, or refund check, that TCS required each class member to
21 submit to the Defendants represents the amount of the class members’ gross wages that they
22 overpaid to the California Franchise Tax Board and the Internal Revenue Service from their
23 monthly paychecks.

24 54. The class members are entitled to this amount because, among other reasons, (1) it
25 represents the amount that they have overpaid the tax authorities from their gross wages and
26 (2) taking the tax refund checks widens the gap between the amount that TCS promised these
27 employees and the amount TCS actually paid them.

28 55. Plaintiff Vedachalam estimates that Defendants required him to return to TCS

1 between \$5,000 and \$10,000 in earned wages per year. Plaintiff Beri estimates that Defendants
 2 required her to return to TCS \$2,440 in earned wages. On information and belief, Plaintiffs allege
 3 that Defendants have required each member of California Class A to return similar tax refund
 4 amounts to Defendants.

5 **B. California Class B**

6 56. Plaintiffs are members of, and seek to represent, the following Class:

7 All non-U.S. citizens who were, are, or will be employed by TCS in
 8 California at any time from February 14, 2002 through the date of
 the final disposition of this action. (“California Class B”).

9 57. While working in California for Defendants, Plaintiffs and members of California
 10 Class B have not been provided with accurate, itemized wage statements. The statements TCS
 11 provided misstated the employees’ gross income and net income in several ways. First, the
 12 statements did not account for the wages Defendants required the Plaintiffs and Class members to
 13 return to them in the form of tax refunds. Second, the statements did not account for the Indian
 14 salary amounts that were wrongfully deducted from Plaintiffs’ and Class members’ U.S. salaries.
 15 Third, Defendants regularly changed the number of exemptions listed on Plaintiffs’ and Class
 16 members’ wage statements and W2 forms without authorization and without informing them of
 17 the change, the reasons for the change, or its consequences.

18 58. By not accounting for the tax refunds and the Indian salary deductions, and by
 19 unilaterally changing the number of exemptions, TCS has willfully refused to provide its
 20 employees with accurate, itemized wage statements.

21 59. On information and belief, Plaintiffs further allege that TCS violated California
 22 labor law by failing to pay California Class B members all wages earned and unpaid within 72
 23 hours of discharge.

24 **C. Suitability of California Classes for Class Certification**

25 60. The members of the California Classes are so numerous that joinder of all
 26 members is impracticable. Defendants have employed thousands of non-U.S.- citizen employees
 27 throughout California. Although the precise number of California employees affected by the
 28 illegal practices alleged herein is currently unknown, between February 14, 2002 and June 30,

1 2005 alone, 2,347 TCS employees were on deputation in California. The total number is
2 therefore far greater than can be feasibly addressed through joinder. The precise number is easily
3 ascertainable from Defendants' records.

4 61. There are many questions of law and fact common to the proposed California
5 Classes, and these common questions predominate over any questions affecting only individual
6 members. Common questions of fact or law include, among others: (1) whether Defendants
7 compelled their California employees to repay wages already earned (California Class A); (2)
8 whether Defendants failed to adequately pay their dismissed California employees within 72
9 hours of those class members' terminations from the company (California Class B); (3) whether
10 Defendants willfully failed to provide their California employees with accurate, itemized
11 statements of their wages (California Class B); (4) whether injunctive relief and other equitable
12 remedies (including restitution) and compensatory and punitive damages are warranted
13 (California Classes A and B).

14 62. The claims of Plaintiffs Vedachalam and Beri are typical of the claims of the
15 California Classes.

16 63. Plaintiffs will fairly and adequately represent and protect the interests of the
17 members of the California Classes. Plaintiffs' counsel is competent and highly experienced in
18 complex class actions in general and employment class actions in particular.

19 64. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(3) because
20 common questions of fact and law predominate over any questions affecting only individual
21 members of the proposed California Classes, and because a class action is superior to other
22 available methods for the fair and efficient adjudication of this litigation. Defendants' practices
23 have damaged the members of the proposed California Classes, and the law entitles the proposed
24 Classes to recovery as a result of Defendants' common, uniform, and illegal practices.
25 Defendants have computerized payroll and personnel data that will make calculation of damages
26 for specific members of the proposed Classes relatively straightforward.

27 **IV. PLAINTIFF BERI'S INDIVIDUAL CLAIM FOR MISCLASSIFICATION.**

28 65. Plaintiff Beri worked for TCS under the title Assistant Systems Engineer, and her

1 primary duties were maintaining and supporting computer software for TCS's clients. Her
2 primary tasks place her in a "non-exempt" category that legally requires TCS to pay her premium
3 overtime wages for all hours worked over forty (40) hours per week and all hours worked over
4 eight (8) hours per day.

5 66. TCS willfully misclassified Plaintiff Beri as exempt from the requirement that
6 TCS pay her premium overtime wages under California law.

7 67. TCS further required Plaintiff Beri to record 8 hours for every day that she worked
8 despite the fact that she routinely worked more than 8 hours a day.

9 **FIRST CLAIM FOR RELIEF**
10 **BREACH OF CONTRACT—NATIONWIDE CLASS**
(by Plaintiffs on behalf of themselves and the proposed Nationwide Class)

11 68. Plaintiffs hereby incorporate by reference the allegations contained in all
12 preceding paragraphs of this complaint.

13 69. Plaintiffs bring this claim on behalf of themselves and the proposed Nationwide
14 Class.

15 70. The class period for the proposed Nationwide Class is from February 14, 2002
16 through June 30, 2005.

17 71. By failing to pay Nationwide Class members the amount of compensation
18 promised in their Deputation Terms Agreements, Defendants breached those contracts. By
19 failing to pay Nationwide Class members the amount promised as reflected in their visa petitions,
20 which TCS signed under the penalty of perjury, Defendants breached their agreements with the
21 Nationwide Class members. By forcing the Nationwide Class members to sign over their tax
22 refund checks to TCS, Defendants reduced their wages and thereby breached their agreements
23 with the Nationwide Class members. By deducting the Nationwide Class members' Indian
24 salaries from their U.S. salaries, Defendants breached their agreements with the Nationwide Class
25 members.

26 72. Defendants' breach of the terms of their contracts with the members of the
27 Nationwide Class entitles those members to recovery of all damages caused by Defendants'
28 nonperformance.

1 73. Defendants' conduct as alleged above establishes a claim for breach of contract, as
2 articulated by the Restatement (Second) of Contracts, and the laws of California.

3 74. Plaintiffs request relief as provided in the Prayer for Relief below.

4 **CAUSES OF ACTION UNDER OTHER STATES' LAWS**

5 75. Plaintiffs are informed and believe that the contract law of California shall govern
6 here. To the extent that another State's law governs the conduct of Defendants in this
7 controversy, Plaintiffs allege a cause of action for breach of contract under any such State's law
8 based on the allegations that Defendants' conduct constituted breach of contract as articulated
9 by the Restatement (Second) of Contracts. To the extent that another State's (or States') law of
10 contract governs, Plaintiffs will seek leave to amend to allege causes of action under such State's
11 (or States') law.

12 **SECOND CLAIM FOR RELIEF**
13 **VIOLATION OF CAL. LABOR CODE § 221**

14 **(by Plaintiffs on behalf of themselves and proposed California Class A)**

15 76. Plaintiffs hereby incorporate by reference the allegations contained in all
16 preceding paragraphs of this complaint.

17 77. Plaintiffs bring this claim on behalf of themselves and proposed California
18 Class A.

19 78. The class period for California Class A is from February 14, 2002 through June
20 30, 2005.

21 79. Pursuant to California Labor Code § 221, "It shall be unlawful for any employer to
22 collect or receive from an employee any part of wages theretofore paid by said employer to said
23 employee."

24 80. Pursuant to California Labor Code § 1171.5(a),

25 All protections, rights, and remedies available under state law,
26 except any reinstatement remedy prohibited by federal law, are
27 available to all individuals regardless of immigration status who
28 have applied for employment, or who are or who have been
employed, in this state.

81. Defendants' conduct as alleged above constitutes a violation of California Labor
Code § 221, because by requiring Plaintiffs and proposed California Class A members to sign

1 over their tax refunds and/or pay TCS to receive their W-2 forms, Defendants required Plaintiffs
 2 and the proposed California Class A to return to Defendants a substantial part of the wages paid
 3 by Defendants to them. Defendants have also violated California Labor Code § 221 by
 4 subtracting Plaintiffs' and Class members' Indian salaries from their U.S. salaries. The Indian
 5 salary was included in Plaintiffs' and Class members' wages, and then deducted, thereby
 6 unlawfully recouping that money and decreasing their compensation.

7 82. Plaintiffs request relief as provided in the Prayer for Relief below.

8 **THIRD CLAIM FOR RELIEF**

9 **VIOLATION OF CAL. LABOR CODE §§ 201-203**

10 **(by Plaintiffs on behalf of themselves and proposed California Class B)**

11 83. Plaintiffs hereby incorporate by reference the allegations contained in all
 12 preceding paragraphs of this complaint.

13 84. Plaintiffs Vedachalam and Beri bring this claim on behalf of themselves and
 14 proposed California Class B.

15 85. The class period for California Class B is from February 14, 2002 through the final
 16 disposition of this action.

17 86. Pursuant to California Labor Code § 201(a), "If an employer discharges an
 18 employee, the wages earned and unpaid at the time of discharge are due and payable
 19 immediately."

20 87. Pursuant to California Labor Code § 202 (a),

21 If an employee not having a written contract for a definite period
 22 quits his or her employment, his or her wages shall become due and
 23 payable not later than 72 hours thereafter, unless the employee has
 24 given 72 hours previous notice of his or her intention to quit, in
 25 which case the employee is entitled to his or her wages at the time
 26 of quitting.

27 88. Pursuant to California Labor Code § 203,

28 If an employer willfully fails to pay, without abatement or
 reduction, in accordance with Sections 201, 201.5, 202, and 205.5,
 any wages of an employee who is discharged or who quits, the
 wages of the employee shall continue as a penalty from the due date
 thereof at the same rate until paid or until an action therefore is
 commenced; but the wages shall not continue for more than 30

1 days.

2 89. Pursuant to California Labor Code § 1171.5(a),

3 All protections, rights, and remedies available under state law,
4 except any reinstatement remedy prohibited by federal law, are
5 available to all individuals regardless of immigration status who
6 have applied for employment, or who are or who have been
7 employed, in this state.

8 90. Defendants’ conduct as alleged above constitutes a violation of California Labor
9 Code sections 201 through 203, because TCS failed to pay the entirety of dismissed Class
10 members’ wages owed to them within 72 hours of dismissal.

11 91. Plaintiffs request relief as provided in the Prayer for Relief below.

12 **FOURTH CLAIM FOR RELIEF**
13 **VIOLATION OF CAL. LABOR CODE §§ 226, 1174**
14 **(by Plaintiffs on behalf of themselves and proposed California Class B)**

15 92. Plaintiffs hereby incorporate by reference the allegations contained in all
16 preceding paragraphs of this complaint.

17 93. Plaintiffs bring this claim on behalf of themselves and proposed California Class
18 B..

19 94. Pursuant to California Labor Code § 226(a),

20 Every employer shall, semimonthly or at the time of each payment
21 of wages, furnish each of his or her employees, either as a
22 detachable part of the check, draft, or voucher paying the
23 employee’s wages, or separately when wages are paid by personal
24 check or cash, an accurate itemized statement in writing showing
25 (1) gross wages earned, . . . (4) all deductions, provided that all
26 deductions made on written orders of the employee may be
27 aggregated and shown as one item, (5) net wages earned, The
28 deductions made from payments of wages shall be recorded in ink
or other indelible form, properly dated, showing the month, day,
and year, and a copy of the statement or a record of the deductions
shall be kept on file by the employer for at least three years at the
place of employment or at a central location within the State of
California.

95. California Labor Code § 226(e) provides that an employee suffering injury as a
result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is
entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay

1 period in which a violation occurs and \$100 per employee for each violation in subsequent pay
2 period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

3 96. Pursuant to California Labor Code § 1174(d), employers shall keep
4 at a central location in the state or at the plants or establishments at
5 which employees are employed, payroll records showing the hours
6 worked daily by and the wages paid to, and the number of piece-
7 rate units earned by and any applicable piece rate paid to,
8 employees employed at the respective plants or establishments.

9 97. Pursuant to California Labor Code § 1171.5(a),

10 All protections, rights, and remedies available under state law,
11 except any reinstatement remedy prohibited by federal law, are
12 available to all individuals regardless of immigration status who
13 have applied for employment, or who are or who have been
14 employed, in this state.

15 98. The conduct alleged in this complaint constitutes a violation of California Labor
16 Code §§ 226 and 1174, as Defendants knowingly and intentionally failed to provide timely,
17 accurate, itemized wage statements to Plaintiffs and the proposed California Class B members.
18 Defendants routinely changed the number of tax exemptions without first obtaining the consent
19 and approval of the Plaintiffs and the California Class B members. The wage statements
20 Defendants provided to the class members did not accurately reflect the employees' gross or net
21 wages, as they failed to discount the employees' tax refund checks that Defendants required the
22 employees to return to the company. In addition, the wage statements Defendants provided to
23 Class B members improperly subtracted Plaintiffs' and Class members' Indian salaries from their
24 U.S. salaries. The Indian salary was included in Plaintiffs' and Class members' wages, and then
25 deducted, thereby unlawfully decreasing their compensation and rendering the itemized wage
26 statements inaccurate.

27 99. Plaintiffs request relief as provided in the Prayer for Relief below.

28 **FIFTH CLAIM FOR RELIEF**
VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200
(by Plaintiffs on behalf of themselves and the proposed California Classes A and B)

100. Plaintiffs hereby incorporate by reference the allegations contained in all
preceding paragraphs of this complaint.

101. Plaintiffs bring this claim on behalf of themselves and the proposed California

1 Employee Classes that they represent.

2 102. Defendants' violations of California Labor Code §§ 201-203, 221, 226, 227.3, 510,
3 1174, and 1194, as alleged above, constitute unlawful business acts or practices.

4 103. Defendants' failure to pay wages as alleged herein to Plaintiffs and members of the
5 proposed Classes under California Labor Code, and Defendants' failure to keep proper records, as
6 alleged herein, constitute unlawful activities prohibited by Business and Professions Code
7 §§ 17200, *et seq.*

8 104. The actions of Defendants in failing to pay Plaintiffs and members of the proposed
9 Classes in a lawful manner and in collecting part of their wages previously paid to them, as
10 alleged herein, constitute false, unfair, fraudulent and deceptive business practice, within the
11 meaning of Business and Professions Code §§ 17200, *et seq.*

12 105. Defendants' conduct as alleged herein has damaged Plaintiffs and proposed Class
13 members by wrongfully failing to pay them all wages due upon termination of employment, and
14 by failing to provide itemized wage statements. Such conduct was substantially injurious to
15 Plaintiffs and the proposed Classes.

16 106. Under the circumstances alleged herein, it would be inequitable and result in a
17 miscarriage of justice for Defendants to continue to retain the property of Plaintiffs and proposed
18 Class members, entitling Plaintiffs and proposed Class members to restitution of the unfair
19 benefits obtained and disgorgement of Defendants' ill-gotten gains.

20 107. As a result of Defendants' unlawful business acts or practices, Defendants have
21 reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiffs and the
22 proposed California Classes.

23 108. Defendants' improper, unfair and unlawful business practices and acts alleged
24 herein constitute a continuing threat to Plaintiffs, Class members, and members of the public in
25 that, unless restrained, Defendants may continue to violate California Labor law. Pursuant to
26 Business and Professions Code § 17203, Plaintiffs, on behalf of themselves, the California
27 Classes, and the general public, seek a permanent injunction requiring Defendants to cease its
28 unlawful and unfair business practices and acts.

1 109. As a direct and proximate result of the aforementioned practices and acts,
2 Defendants have been unjustly enriched, and Plaintiffs, the proposed California Classes, and the
3 general public are entitled to restitution in an amount to be determined at trial.

4 110. Plaintiffs request relief as provided in the Prayer for Relief below.

5 **SIXTH CLAIM FOR RELIEF**
6 **VIOLATION OF CAL. WAGE ORDER NO. 4; CAL. LABOR CODE §§ 510, 1194**
7 **(by Plaintiff Beri on behalf of herself)**

8 111. Plaintiff Beri hereby incorporates by reference the allegations contained in all
9 preceding paragraphs of this complaint.

10 112. California law requires an employer, such as Defendant, to pay overtime
11 compensation to all non-exempt employees.

12 113. Plaintiff Beri did not at any time during her employment qualify for any exemption
13 from the requirement that their employer pay overtime compensation under California law
14 because she spent more than one-half of her time performing non-exempt duties. Defendants
15 misclassified Beri as exempt from overtime pay entitlement and failed and refused to pay her
16 overtime premium pay for her overtime hours worked.

17 114. Throughout her employment with TCS, Plaintiff Beri worked in excess of eight (8)
18 hours in a workday and/or forty (40) hours in a workweek.

19 115. Therefore, Plaintiff Beri is entitled to be paid overtime compensation for all
20 overtime hours worked.

21 116. Plaintiff Beri requests relief as provided in the Prayer for Relief below.

22 **RELIEF ALLEGATIONS**

23 117. Plaintiffs and the classes they seek to represent have no plain, adequate, or
24 complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in
25 this action is the only means of securing complete and adequate relief. Plaintiffs and the classes
26 they seek to represent are now suffering and will continue to suffer irreparable injury from TCS's
27 illegal acts.

28 118. The actions on the part of Defendant have caused and continue to cause Plaintiffs
and the proposed classes substantial losses in earnings, other compensation, and other

1 employment benefits, in an amount to be determined according to proof.

2 119. Defendants acted or failed to act as herein alleged with malice or reckless
3 indifference to the protected rights of Plaintiffs and members of the proposed classes. Plaintiffs
4 and members of the proposed classes are thus entitled to recover punitive damages in an amount
5 to be determined according to proof.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiffs, on behalf of themselves and the proposed classes, pray for
8 relief as follows:

9 120. Certification of the case as a class action on behalf of the proposed Plaintiff
10 classes, designation of Plaintiffs as representatives of the applicable classes as articulated above,
11 and designation of their counsel of record as Class Counsel;

12 121. Damages and equitable relief for all harm Plaintiffs and the classes have sustained
13 as a result of Defendants' conduct, according to proof;

14 122. Exemplary and punitive damages in an amount commensurate with Defendants'
15 ability to pay and to deter future unlawful conduct;

16 123. A preliminary and permanent injunction against Defendants and their directors,
17 officers, owners, agents, successors, employees, and representatives—and any and all persons
18 acting in concert with them—from engaging in each of the unlawful practices, policies, customs,
19 and usages set forth herein;

20 124. A declaratory judgment that the practices complained of in this complaint are
21 unlawful and violate applicable federal and state law;

22 125. Fees and costs incurred, including reasonable attorneys' fees, to the extent
23 allowable by law;

24 126. Pre-judgment and post-judgment interest, as provided by law; and

25 127. Such other and further legal and equitable relief as this Court deems necessary,
26 just, and proper.

1 Dated: September 20, 2011

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP

2
3 By: /s/ Anne B. Shaver

4 Kelly M. Dermody (State Bar No. 171716)

kdermody@lchb.com

5 Daniel M. Hutchinson (State Bar No. 239458)

dhutchinson@lchb.com

6 Anne B. Shaver (State Bar No. 255928)

ashaver@lchb.com

7 Katherine M. Lehe (State Bar No. 273472)

klehe@lchb.com

8 LIEFF, CABRASER, HEIMANN &

BERNSTEIN, LLP

275 Battery Street, 29th Floor

9 San Francisco, CA 94111

Telephone: (415) 956-1000

10 Facsimile: (415) 956-1008

11 Steven M. Tindall (State Bar No. 187862)

steventindall@rhdtdlaw.com

12 Angela Perone (State Bar No. 245793)

angelaperone@rhdtdlaw.com

13 RUKIN HYLAND DORIA & TINDALL LLP

100 Pine Street, Suite 2150

14 San Francisco, CA 94111

Telephone: (415) 421-1800

15 Facsimile: (415) 421-1700

16 *Counsel for Plaintiffs and the Proposed Class*

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

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: September 20, 2011

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP

By: /s/ Anne B. Shaver

Kelly M. Dermody (State Bar No. 171716)
kdermody@lchb.com
Daniel M. Hutchinson (State Bar No. 239458)
dhutchinson@lchb.com
Anne B. Shaver (State Bar No. 255928)
ashaver@lchb.com
Katherine M. Lehe (State Bar No. 273472)
klehe@lchb.com
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

Steven M. Tindall (State Bar No. 187862)
steventindall@rhdtdlaw.com
Angela Perone (State Bar No. 245793)
angelaperone@rhdtdlaw.com
RUKIN HYLAND DORIA & TINDALL LLP
100 Pine Street, Suite 2150
San Francisco, CA 94111
Telephone: (415) 421-1800
Facsimile: (415) 421-1700

Counsel for Plaintiffs and the Proposed Class