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12 Attorneys for Plaintiff Stephen Song

13 **UNITED STATES DISTRICT COURT**  
 14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 STEPHEN SONG, as an individual and on  
 16 behalf of all others similarly situated,

Case No.: 3:10-CV-03583-SC

17 Plaintiffs,

JOINT STIPULATION TO FILE FIRST  
 AMENDED COMPLAINT

18 vs.

19 KLM GROUP, INC. dba KLM ONSITE  
 20 SOLUTIONS, a Pennsylvania corporation;  
 and DOES 1 through 20, inclusive,

21 Defendants.  
 22

23  
 24 The parties, by and through their counsel of record, hereby stipulate and agree as follows:

25 WHEREAS, on or about June 29, 2010, Plaintiff STEPHEN SONG (“Plaintiff”) filed a  
 26 class action complaint against Defendant KLM GROUP, INC., dba KLM ONSITE SOLUTIONS  
 27 (“Defendant”) in the Superior Court of California, County of Alameda;



1 I, Larry W. Lee, attest that I have obtained concurrence from Douglas Dexter in the filing  
2 of this Stipulation. See N.D. Cal. General Order 45 § 10(B).

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18 Attorneys for Plaintiff Stephen Song

19 **UNITED STATES DISTRICT COURT**  
20 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

21 STEPHEN SONG, as an individual and on  
22 behalf of all others similarly situated,

23 Plaintiffs,

24 vs.

25 KLM GROUP, INC. dba KLM ONSITE  
26 SOLUTIONS, a Pennsylvania corporation;  
27 and DOES 1 through 20, inclusive,

28 Defendants.

Case No.: 3:10-CV-03583-SC

**CLASS ACTION**

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:**

- (1) **FAILURE TO PAY MINIMUM  
WAGES IN VIOLATION OF LABOR  
CODE § 1197;**
- (2) **FAILURE TO PAY MINIMUM  
WAGES IN VIOLATION OF FAIR  
LABOR STANDARDS ACT, 29 U.S.C.  
§ 206;**
- (3) **FAILURE TO PAY OVERTIME  
WAGES IN VIOLATION OF LABOR  
CODE §§ 510 & 1194;**
- (4) **FAILURE TO PAY OVERTIME  
WAGES IN VIOLATION OF FAIR  
LABOR STANDARDS ACT, 29 U.S.C.**

1 § 207;

2 (5) VIOLATION OF LABOR CODE §  
3 226.7;

4 (6) VIOLATION OF LABOR CODE §  
5 226;

6 (7) VIOLATION OF LABOR CODE §  
7 2698 *ET SEQ*;

8 (8) UNFAIR BUSINESS PRACTICES  
9 (Violation of California Business &  
10 Professions Code §17200 et seq.).

11 DEMAND FOR JURY TRIAL

12 Plaintiff Stephen Song (hereinafter referred to as “Plaintiff”), hereby submits this First  
13 Amended Class Action Complaint against Defendant KLM Group, Inc. dba KLM Onsite  
14 Solutions and Does 1-20 (hereinafter collectively referred to as “DEFENDANTS”) on behalf of  
15 themselves and the class of all other similarly situated current and former employees and  
16 common law employees of DEFENDANTS, as follows:

17 **INTRODUCTION**

18 1. This class action is within the Court’s jurisdiction under California Labor Code §§  
19 201-204, 226, 226.7, 510, 1194, 1197, 2698, California Business and Professions Code § 17200,  
20 et seq., (Unfair Practices Act), and the Fair Labor Standards Act 29 U.S.C. §§ 206 & 207  
21 (“FLSA”).

22 2. This complaint challenges systemic illegal employment practices resulting in  
23 violations of the California Labor Code, Business and Professions Code and the FLSA against  
24 employees of DEFENDANTS.

25 3. Plaintiff is informed and believes and based thereon alleges DEFENDANTS, joint  
26 and severally have acted intentionally and with deliberate indifference and conscious disregard to  
27 the rights of all employees in paying all benefits owed to them, failure to pay final wages  
28 pursuant to the Labor Code, and failure to keep proper records in violation of the Labor Code.

4. Plaintiff is informed and believes and based thereon alleges DEFENDANTS have  
engaged in, among other things a system of willful violations of the California Labor Code,



1 business in California, DEFENDANTS are subject to California Labor Code §§ 201-204, 226,  
2 226.7, 510, 1194, 1197, 2698, and California Business and Professions Code §17200, et seq.,  
3 (Unfair Practices Act), and the FLSA.

4 **12.** Plaintiff does not know the true names or capacities, whether individual, partner  
5 or corporate, of the DEFENDANTS sued herein as DOES 1 through 20, inclusive, and for that  
6 reason, said DEFENDANTS are sued under such fictitious names, and Plaintiff prays leave to  
7 amend this complaint when the true names and capacities are known. Plaintiff is informed and  
8 believe and based thereon alleges that each of said fictitious DEFENDANTS were responsible in  
9 some way for the matters alleged herein and proximately caused Plaintiff and members of the  
10 general public and class to be subject to the illegal employment practices, wrongs and injuries  
11 complained of herein.

12 **13.** At all times herein mentioned, each of said DEFENDANTS participated in the  
13 doing of the acts hereinafter alleged to have been done by the named DEFENDANTS; and  
14 furthermore, the DEFENDANTS, and each of them, were the agents, servants and employees of  
15 each of the other DEFENDANTS, as well as the agents of all DEFENDANTS, and at all times  
16 herein mentioned, were acting within the course and scope of said agency and employment.

17 **14.** Plaintiff is informed and believe and based thereon alleges that at all times  
18 material hereto, each of the DEFENDANTS named herein was the agent, employee, alter ego  
19 and/or joint venturer of, or working in concert with each of the other co-DEFENDANTS and was  
20 acting within the course and scope of such agency, employment, joint venture, or concerted  
21 activity. To the extent said acts, conduct, and omissions were perpetrated by certain  
22 DEFENDANTS, each of the remaining DEFENDANTS confirmed and ratified said acts,  
23 conduct, and omissions of the acting DEFENDANTS.

24 **15.** At all times herein mentioned, DEFENDANTS, and each of them, were members  
25 of, and engaged in, a joint venture, partnership and common enterprise, and acting within the  
26 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

27 **16.** At all times herein mentioned, the acts and omissions of various DEFENDANTS,  
28 and each of them, concurred and contributed to the various acts and omissions of each and all of

1 the other DEFENDANTS in proximately causing the injuries and damages as herein alleged. At  
2 all times herein mentioned, DEFENDANTS, and each of them, ratified each and every act or  
3 omission complained of herein. At all times herein mentioned, the DEFENDANTS, and each of  
4 them, aided and abetted the acts and omissions of each and all of the other DEFENDANTS in  
5 proximately causing the damages as herein alleged.

6 **CLASS ACTION ALLEGATIONS**

7 **17. Definition:** The named individual Plaintiff brings this action on behalf of himself  
8 and the class pursuant to California Code of Civil Procedure § 382. The **Class** consists of the  
9 following: (1) All individuals who worked for DEFENDANTS in the State of California  
10 performing marketing and sales services from June 29, 2006 through the present (hereinafter  
11 referred to as the “California Class Members”); and (2) All individuals who worked for  
12 DEFENDANTS in the United States of America performing marketing and sales services from  
13 June 29, 2007 through the present (hereinafter referred to as the “FLSA Class Members”).

14 **18. Numerosity:** The members of the Class are so numerous that joinder of all  
15 members would be impractical, if not impossible. The identity of the members of the class is  
16 readily ascertainable by review of DEFENDANTS’ records, including payroll records. Plaintiff  
17 is informed and believes and based thereon alleges that DEFENDANTS (a) failed to pay to  
18 Plaintiff and the class all wages, including minimum and overtime wages, earned, (b) failed to  
19 provide proper meal breaks pursuant to California law, (c) failed to keep proper records in  
20 violation of Labor Code § 226, and (d) engaged in Unfair Business Practices.

21 **19. Adequacy of Representation:** The named Plaintiff is fully prepared to take all  
22 necessary steps to represent fairly and adequately the interests of the class defined above.  
23 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the class and  
24 individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class  
25 actions in the past and currently have a number of wage-and-hour class actions pending in  
26 California and Federal courts.

27 **20.** DEFENDANTS uniformly administered a corporate policy, practice of  
28 misclassifying Plaintiff and California and FLSA Class Members as “independent contractors”



1 and (a) not paying Plaintiff and the Class all wages, including minimum and overtime wages,  
2 earned, (b) failing to provide proper meal breaks pursuant to California law, (c) failing to keep  
3 proper records in violation of Labor Code § 226, and (d) engaging in Unfair Business Practices.

4 **21.** Plaintiff is informed and believes and based thereon alleges this corporate conduct  
5 is accomplished with the advance knowledge and designed intent to willfully and intentionally  
6 fail to accurately record proper rates of pay, hours worked, net wages, and deductions.

7 **22.** Plaintiff is informed and believes and based thereon alleges DEFENDANTS had  
8 a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor  
9 Code §§ 201-204, 226, 226.7, 510, 1194, 1197, 2698, and the FLSA. Plaintiff and other  
10 members of the Class did not secret or absent themselves from DEFENDANTS, nor refuse to  
11 accept the earned and unpaid wages from DEFENDANTS. Accordingly, DEFENDANTS are  
12 liable for waiting time compensation for the unpaid wages to separated California employees  
13 pursuant to California Labor Code § 203.

14 **23. Common Question of Law and Fact:** There are predominant common questions  
15 of law and fact and a community of interest amongst Plaintiff and the claims of the Class  
16 concerning DEFENDANTS' (a) not paying Plaintiff and the Class all wages, including minimum  
17 and overtime wages, earned, (b) failing to provide proper meal breaks pursuant to California law,  
18 (c) failing to keep proper records in violation of Labor Code § 226, and (d) engaging in Unfair  
19 Business Practices.

20 **24. Typicality:** The claims of Plaintiff are typical of the claims of all members of the  
21 class. Plaintiff is a members of the Class and has suffered the alleged violations of California  
22 Labor Code §§ 201-204, 226, 226.7, 510, 1194, 1197, 2698, and the FLSA.

23 **25.** The California Labor Code and the FLSA upon which Plaintiff bases her claims  
24 are broadly remedial in nature. These laws and labor standards serve an important public interest  
25 in establishing minimum working conditions and standards. These laws and labor standards  
26 protect the average working employee from exploitation by employers who may seek to take  
27 advantage of superior economic and bargaining power in setting onerous terms and conditions of  
28 employment.

1           **26.**     The nature of this action and the format of laws available to Plaintiff and  
2 members of the Class identified herein make the class action format a particularly efficient and  
3 appropriate procedure to redress the wrongs alleged herein. If each employee and common law  
4 employee were required to file an individual lawsuit, the corporate DEFENDANTS would  
5 necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm  
6 the limited resources of each individual plaintiff with their vastly superior financial and legal  
7 resources. Requiring each class member to pursue an individual remedy would also discourage  
8 the assertion of lawful claims by employees who would be disinclined to file an action against  
9 their former and/or current employer for real and justifiable fear of retaliation and permanent  
10 damage to their careers at subsequent employment.

11           **27.**     The prosecution of separate actions by the individual class members, even if  
12 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect  
13 to individual class members against the DEFENDANTS and which would establish potentially  
14 incompatible standards of conduct for the DEFENDANTS, and/or (b) adjudications with respect  
15 to individual class members which would, as a practical matter, be dispositive of the interest of  
16 the other class members not parties to the adjudications or which would substantially impair or  
17 impede the ability of the class members to protect their interests. Further, the claims of the  
18 individual members of the class are not sufficiently large to warrant vigorous individual  
19 prosecution considering all of the concomitant costs and expenses.

20           **28.**     Such a pattern, practice and uniform administration of corporate policy regarding  
21 illegal employee compensation described herein is unlawful and creates an entitlement to  
22 recovery by the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance  
23 of the full amount unpaid wages, including interest thereon, applicable penalties, reasonable  
24 attorney's fees, and costs of suit according to the mandate of California Labor Code §§ 218.5,  
25 226, 1194, 1197 and Code of Civil Procedure § 1021.5.

26           **29.**     Proof of a common business practice or factual pattern, which the named Plaintiff  
27 experienced and are representatives of, will establish the right of each of the members of the  
28 Plaintiff class to recovery on the causes of action alleged herein.



1 was oppressive, fraudulent and malicious, done in conscious disregard of Class Members' rights,  
2 and done by managerial employees of Defendants.

3 **38.** Plaintiff is informed and believes and based thereon alleges that Defendants  
4 willfully failed to pay Class Members minimum wages for all hours worked. Plaintiff is  
5 informed and believes and based thereon alleges that Defendants' willful failure to provide  
6 wages due and owing them upon separation from employment results in a continued payment of  
7 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other  
8 Class Members who have separated from employment are entitled to compensation pursuant to  
9 Labor Code § 203.

10 **39.** Such a pattern, practice and uniform administration of corporate policy regarding  
11 illegal employee compensation as described herein is unlawful and creates an entitlement to  
12 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of wages owing,  
13 including interest thereon, penalties, reasonable attorneys fees, and costs of suit.

14 **SECOND CAUSE OF ACTION**

15 **(AGAINST ALL DEFENDANTS BY PLAINTIFF FOR FAILURE TO**  
16 **TO PAY MINIMUM WAGES)**

17 **40.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 as  
18 though fully set for herein.

19 **41.** This cause of action is brought pursuant to 29 U.S.C. § 206, which provides that  
20 employees are entitled to minimum wages and compensation for work performed.

21 **42.** At all times relevant herein, Defendants were required to compensate Plaintiff and  
22 the Class for all hours worked by said individuals.

23 **43.** As a pattern and practice, Defendants regularly misclassified their employees as  
24 "independent contractors." Furthermore, Defendants regularly required members of the class to  
25 perform work without the payment of minimum wages. Defendants were aware of such non-  
26 payment of wages.

27 **44.** As a pattern and practice, Defendants regularly failed to pay Class Members  
28 minimum wage compensation for all hours worked.



1           **51.**     At all times relevant herein, Defendants were required to compensate Plaintiff and  
2 the Class for all overtime hours worked by said individuals.

3           **52.**     As a pattern and practice, Defendants regularly misclassified their employees as  
4 “independent contractors.” Furthermore, Defendants regularly required members of the class to  
5 perform work without the payment of overtime wages. Defendants were aware of such non-  
6 payment of wages.

7           **53.**     As a pattern and practice, Defendants regularly failed to pay Class Members  
8 overtime wage compensation for all overtime hours worked.

9           **54.**     Plaintiff is informed and believes and based thereon alleges that Defendants’  
10 regular business custom and practice of requiring Class Members to perform overtime work  
11 without the payment of overtime wages, according to the mandates of California law is, and at all  
12 times herein mentioned was, in violation of California Labor Code §§ 510 & 1194, and  
13 California Industrial Welfare Commission wage order(s). Defendants’ employment policies and  
14 practices wrongfully and illegally failed to compensate Class Members for overtime wages  
15 earned as required by California law.

16           **55.**     The conduct of Defendants and their agents and employees as described herein  
17 was oppressive, fraudulent and malicious, done in conscious disregard of Class Members’ rights,  
18 and done by managerial employees of Defendants.

19           **56.**     Plaintiff is informed and believes and based thereon alleges that Defendants  
20 willfully failed to pay Class Members overtime wages for all hours worked. Plaintiff is informed  
21 and believes and based thereon alleges that Defendants’ willful failure to provide wages due and  
22 owing them upon separation from employment results in a continued payment of wages up to  
23 thirty (30) days from the time the wages were due. Therefore, Plaintiff and other Class Members  
24 who have separated from employment are entitled to compensation pursuant to Labor Code §  
25 203.

26           **57.**     Such a pattern, practice and uniform administration of corporate policy regarding  
27 illegal employee compensation as described herein is unlawful and creates an entitlement to  
28 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of wages owing,

1 including interest thereon, penalties, reasonable attorneys fees, and costs of suit.

2 **FOURTH CAUSE OF ACTION**

3 **(AGAINST ALL DEFENDANTS BY PLAINTIFF FOR FAILURE TO**  
4 **TO PAY OVERTIME WAGES)**

5 **58.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 57 as  
6 though fully set for herein.

7 **59.** This cause of action is brought pursuant to 29 U.S.C. § 207, which provides that  
8 employees are entitled to overtime wages and compensation for overtime work performed.

9 **60.** At all times relevant herein, Defendants were required to compensate Plaintiff and  
10 the Class for all overtime hours worked by said individuals.

11 **61.** As a pattern and practice, Defendants regularly misclassified their employees as  
12 “independent contractors.” Furthermore, Defendants regularly required members of the class to  
13 perform overtime work without the payment of overtime wages. Defendants were aware of such  
14 non-payment of wages.

15 **62.** As a pattern and practice, Defendants regularly failed to pay Class Members  
16 overtime wage compensation for all hours worked.

17 **63.** Plaintiff is informed and believes and based thereon alleges that Defendants’  
18 regular business custom and practice of requiring Class Members to perform work without the  
19 payment of overtime wages, according to the mandates of Federal law is, and at all times herein  
20 mentioned was, in violation of 29 U.S.C. § 207. Defendants’ employment policies and practices  
21 wrongfully and illegally failed to compensate Class Members for overtime wages earned as  
22 required by Federal law.

23 **64.** The conduct of Defendants and their agents and employees as described herein  
24 was oppressive, fraudulent and malicious, done in conscious disregard of Plaintiff’s and class  
25 members’ rights, and done by managerial employees of Defendants.

26 **65.** Plaintiff is informed and believes and based thereon alleges that Defendants  
27 willfully failed to pay Class Members overtime wages for all hours worked. Plaintiff is informed  
28 and believes and based thereon alleges that Defendants’ willful failure to provide wages due and









1 provided written notice that the LWDA did not intend to investigate Plaintiff's said allegations  
2 and therefore allowed Plaintiff to proceed under PAGA against Defendant for said violations.

3 **82.** Pursuant to Labor Code § 2699(a), the members of all classes seek recovery of all  
4 applicable civil penalties for Defendants' violation of Labor Code §§ 201-204, 226, 226.7, 510,  
5 1194, 1197, and PAGA.

6 **EIGHTH CAUSE OF ACTION**

7 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.**

8 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

9 **83.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 82 as  
10 though fully set for herein.

11 **84.** Defendants, and each of them, have engaged and continue to engage in unfair and  
12 unlawful business practices in California by practicing, employing and utilizing the employment  
13 practices outlined above, inclusive, to wit, by (a) not paying Plaintiff and the Class all wages,  
14 including minimum and overtime wages, earned, (b) failing to provide proper meal breaks  
15 pursuant to California law, and (c) failing to keep proper records in violation of Labor Code §  
16 226.

17 **85.** Defendants' utilization of such unfair and unlawful business practices constitutes  
18 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

19 **86.** Plaintiff seeks, on his own behalf, on behalf of other members of the class  
20 similarly situated, and on behalf of the general public, full restitution of monies, as necessary and  
21 according to proof, to restore any and all monies withheld, acquired and/or converted by the  
22 Defendants by means of the unfair practices complained of herein.

23 **87.** Plaintiff seeks, on his own behalf, on behalf of other members of the class  
24 similarly situated, and on behalf of the general public, an injunction to prohibit Defendants from  
25 continuing to engage in the unfair business practices complained of herein.

26 **88.** The acts complained of herein occurred within the last four years preceding the  
27 filing of the complaint in this action.

28 **89.** Plaintiffs are informed and believe and based thereon allege that at all times

1 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,  
2 as proscribed by California Business and Professions Code § 17200 et seq., including those set  
3 forth herein above thereby depriving Plaintiff and other members of the general public the  
4 minimum working condition standards and conditions due to them under the California laws and  
5 Industrial Welfare Commission wage orders as specifically described therein.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff and the class pray for judgment for themselves and all others on  
8 whose behalf this suit is brought against Defendants, jointly and severally, as follows:

- 9 1. For an order certifying the proposed Classes;
- 10 2. For an order appointing Plaintiff as the representative of the Classes and/or any  
11 subclasses;
- 12 3. For an order appointing Counsel for Plaintiff as Class counsel;
- 13 4. Upon the First Cause of Action, for damages or penalties pursuant to statute as set forth  
14 in California Labor Code § 1197, and for costs and attorney's fees, and for waiting time  
15 wages according to proof pursuant to California Labor Code § 203;
- 16 5. Upon the Second Cause of Action, for damages or penalties pursuant to statute as set  
17 forth in 29 U.S.C. § 206, and for costs and attorney's fees, and for waiting time wages  
18 according to proof pursuant to California Labor Code § 203;
- 19 6. Upon the Third Cause of Action, for damages or penalties pursuant to statute as set forth  
20 in California Labor Code §§ 510 & 1194, and for costs and attorney's fees, and for  
21 waiting time wages according to proof pursuant to California Labor Code § 203;
- 22 7. Upon the Fourth Cause of Action, for damages or penalties pursuant to statute as set  
23 forth in 29 U.S.C. § 207, and for costs and attorney's fees, and for waiting time wages  
24 according to proof pursuant to California Labor Code § 203;
- 25 8. Upon the Fifth Cause of Action, for damages or penalties pursuant to statute as set forth  
26 in California Labor Code § 226.7, and for costs and attorney's fees, and for waiting time  
27 wages according to proof pursuant to California Labor Code § 203;
- 28 9. Upon the Sixth Cause of Action, for damages or penalties pursuant to statute as set forth

1 in California Labor Code § 226, and for costs and attorney's fees;

2 10. Upon the Seventh Cause of Action, for consequential damages and penalties according  
3 to proof pursuant to California Labor Code §§ 201-204, 226, 226.7, 510, 1194, 1197,  
4 and PAGA;

5 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and other similarly effected  
6 members of the general public of all funds unlawfully acquired by Defendants by means  
7 of any acts or practices declared by this Court to be in violation of Business and  
8 Professions Code § 17200 et seq., for an injunction to prohibit Defendants to engage in  
9 the unfair business practices complained of herein, for an injunction requiring  
10 Defendants to give notice to persons to whom restitution is owing of the means by  
11 which to file for restitution;

12 12. On all causes of action for attorneys fees and costs as provided by California Labor  
13 Code §§ 218.5, 226, 226.7, 510, 1194, 1197, 2699 and Code of Civil Procedure §  
14 1021.5 and the Fair Labor Standards Act and for such other and further relief the Court  
15 may deem just and proper.

16 **Dated: August 18, 2010**

**DIVERSITY LAW GROUP, P.C.**

17  
18 By: \_\_\_\_\_

**Larry W. Lee, Esq.**

**Attorney for Plaintiff and the Class**

19  
20  
21 **DEMAND FOR JURY TRIAL**

22 Plaintiffs, for themselves and the class, hereby demand a jury trial.

23  
24 **DATED: August 18, 2010**

**DIVERSITY LAW GROUP, P.C.**

25  
26 By: \_\_\_\_\_

**Larry W. Lee**

**Attorney for Plaintiff and the Class**