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12
13 **IN THE SUPERIOR COURT OF CALIFORNIA**
14 **FOR THE COUNTY OF SANTA CLARA**
15 **CIVIL UNLIMITED JURISDICTION**

16 AJAY BATHLA, ANANDAKRISHNAN
17 GOVINDARAJAN, and PURNIMA KALIA,
18 on behalf of themselves and those similarly
situated,

19 Plaintiffs,

20 vs.

21 SILICON VALLEY SYSTECH, INC., a
22 California Corporation, and DOES 1 through 25,
23 inclusive,

24 Defendants.

CLASS ACTION

Case No. **109 CV 136380** **BY FAX**

COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Ajay Bathla, Anandakrishnan Govindarajan, and Purnima Kalia (collectively,
2 “Plaintiffs”) allege, on behalf of themselves and others similarly situated, as follows:

3 **GENERAL ALLEGATIONS**

4 1. Defendant Silicon Valley Systech, Inc. (“SVS”) purports to be a “global software
5 services provider” offering “services for design, development, integration, consulting and
6 outsourcing of business applications that enable enterprises to solve mission-critical business
7 problems.” In reality, SVS serves as nothing more than a staffing agency, hiring foreign
8 professionals to work in the United States and placing them as temporary and contract workers
9 with its clients, which include some of the country’s largest technology companies. Though SVS
10 promises—and certifies to the United States government—that it will pay its employees even
11 when they are not placed with SVS clients, it does not do so, refusing in some cases to pay its
12 employees for months on end while the employees scramble to find their own placements.

13 2. SVS entices foreign professionals to this country with contracts of employment
14 with SVS that promise high pay and generous benefits. In addition, SVS acts as the employer
15 “petitioner” for those professionals’ applications for American visas under the H-1B program.
16 The H-1B program allows a United States employer, like SVS, to hire foreign professionals on a
17 temporary basis.

18 3. In order to be eligible to hire workers on H-1B visas, an employer like SVS must
19 certify to the United States government that it meets certain conditions, and once it hires H-1B
20 workers, it is then subject to certain regulations governing their employment. For example, the
21 employer must certify to the government that it will pay its H-1B workers either the local
22 “prevailing wage” for the occupation in the geographic area of intended employment, or, the
23 “actual wage” the employer pays all other individuals with similar experience and qualifications,
24 whichever is higher. The employer is also forbidden by federal regulations from “benching” H-
25 1B workers, that is, temporarily laying them off or not paying them during unproductive times
26 when work is not available.

27 4. Based on SVS’s promises, and after receiving written contracts from SVS
28 guaranteeing their terms of employment, the foreign professionals themselves pay SVS for the

1 cost of applying for their H-1B visas, and incur other related expenses, including the cost of
2 traveling to the United States. SVS never discloses that requiring such payments violates federal
3 law.

4 5. Upon arrival, the new SVS employees discover circumstances far different from
5 those promised by SVS. While SVS places them in a communal “guest house” (a company-
6 leased apartment shared by the new arrivals) in Santa Clara, California, it pays them no wages, at
7 least not until they are placed with one of the technology companies with whom SVS contracts.
8 When there is no such contract or temporary work available, it falls to the newly arrived
9 employees themselves to secure such positions.

10 6. Oftentimes, those positions are in distant locations, including out of state. SVS
11 often requires the employees to pay their own travel costs, as well as to secure accommodations
12 (also at their own expense) near the client company’s place of business.

13 7. In addition, once SVS’s employees begin placements as contract or temporary
14 workers with SVS clients, SVS pays them much less than the salary they were promised in their
15 employment contracts. SVS receives substantial payments from its clients, usually on an hourly
16 basis, for the employee’s work, but passes on to the employees only a small portion of that pay,
17 keeping most of the income for itself.

18 8. SVS’s employment contracts with its H-1B employees include an express
19 provision stating that the contracts and their enforcement are to be governed by California
20 substantive law. As detailed below, SVS’s misconduct violates California law and its express
21 contracts with its employees.

22 **PARTIES**

23 9. Plaintiff Ajay Bathla (“Bathla”) is a citizen of India and currently resides in San
24 Diego, California. From approximately October 3, 2007 through approximately August 20,
25 2008, Bathla was employed by SVS in the United States pursuant to an H-1B visa.

26 10. Plaintiff Anandkrishnan Govindarajan (“Govindarajan”) is a citizen of India and
27 currently resides in Philadelphia, Pennsylvania. Beginning approximately February 25, 2008 and
28

1 continuing through the present, Govindarajan has been employed by SVS in the United States
2 pursuant to an H-1B visa.

3 11. Plaintiff Purnima Kalia (“Kalia”) is citizen of India and currently resides in
4 Memphis, Tennessee. From approximately January 22, 2008 through approximately September
5 2, 2008, Kalia was employed by SVS in the United States pursuant to an H-1B visa.

6 12. Plaintiffs bring this action on behalf of themselves and on behalf of the following
7 ascertainable class (the “Class”) of similarly situated persons: all persons employed by SVS
8 during the relevant statutory period pursuant to an H-1B visa.

9 13. Defendant SVS is a California corporation with its principal place of business in
10 Santa Clara, California.

11 14. The true names and capacities, whether individual, corporate, associate or
12 otherwise, of Defendants DOES 1 through 25, inclusive, are unknown to Plaintiffs, who therefore
13 sue said Defendants by such fictitious names pursuant to California Code of Civil Procedure
14 section 474. Plaintiffs further allege that each of said fictitious Defendants is in some manner
15 responsible for the acts and occurrences herein set forth. Plaintiffs will amend this complaint to
16 show these Defendants’ true names and capacities when the same are ascertained, as well as the
17 manner in which each fictitious Defendant is responsible.

18 15. Plaintiffs are informed and believe, and upon such basis allege, that at all times
19 herein mentioned, each of the Defendants herein was an agent, servant, employee, co-
20 conspirator, partner, joint venturer wholly owned and controlled subsidiary and/or alter ego of
21 each of the remaining Defendants, and was at all times acting within the course and scope of said
22 agency, service, employment, conspiracy, partnership and/or joint venture.

23 16. Defendants, and each of them, aided and abetted, encouraged and rendered
24 substantial assistance in accomplishing the wrongful conduct and their wrongful goals and other
25 wrongdoing complained of herein. In taking action, as particularized herein, to aid and abet and
26 substantially assist the commission of these wrongful acts and other wrongdoings complained of,
27 each of the defendants acted with an awareness of its primary wrongdoing and realized that its
28

1 conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals,
2 and wrongdoing.

3 **VENUE**

4 17. Venue is proper in the County of Santa Clara because Defendant SVS resides
5 there.

6 **FACTS ABOUT SPECIFIC PLAINTIFFS**

7 ***Plaintiff and Class Representative Ajay Bathla***

8 18. Plaintiff Bathla holds a Masters degree in Computer Applications from Thapar
9 Institute of Engineering and Technology. While he was living in India, Plaintiff Bathla was
10 recruited by SVS to work as a Programmer/Analyst for SVS in the United States.

11 19. SVS provided Bathla with an offer letter and employment contract detailing the
12 terms and conditions of his position at SVS. The contract promised Bathla an annual salary of
13 \$62,000 and specified that he would be paid on the seventh and twenty-second of each month.
14 The contract further stated that Bathla and his immediate family would be entitled to health
15 insurance, paid vacation days, and accrued sick time. SVS also agreed to provide Bathla with
16 two-weeks' notice in the event he was terminated for cause and required him to provide four-
17 weeks notice of his intent to resign.

18 20. Bathla's employment contract also stated he would be reimbursed for relocation
19 expenses incurred in traveling to and from SVS customer sites.

20 21. The contract also required that, for at least two years after termination of his
21 employment with SVS for whatever reason, Bathla would not solicit the business of or provide
22 any software engineering, consulting or programming services to any SVS customer or
23 employee.

24 22. On or about February 28, 2007, Bathla signed the employment contract drafted by
25 SVS. Kailash Bahl ("Bahl") signed the contract on behalf of SVS as its authorized signatory.

26 23. SVS petitioned the United States Department of Labor, the United States
27 Department of Homeland Security, and the U.S. Citizenship and Immigration Services
28 Department for approval of an H-1B visa for Bathla. As part of this process, SVS certified to the

1 United States government that Bathla would receive a salary of \$ 62,000 beginning when Bathla
2 entered the United States and arrived ready to begin work at SVS.

3 24. SVS required that Bathla pay SVS \$1,500 for the costs of applying for the visa.
4 Bathla complied with that requirement.

5 25. Bathla entered the United States and arrived ready to begin work at SVS on or
6 about October 3, 2007. Upon reporting for work at SVS, however, the company told Bathla that
7 there were no assignments for him and that he would have to wait to be paid until SVS assigned
8 him to a project.

9 26. From approximately November 2007 to April 2008, Bathla lived at the “guest
10 house” operated by SVS in Santa Clara, California. During that time, as many as ten other SVS
11 employees awaiting assignment to an SVS client lived in the three-bedroom, two-bathroom
12 “guest house.”

13 27. Shortly after his arrival in the United States, SVS promised Bathla that the
14 company would pay him a \$500 “allowance” during the months he was living in the “guest
15 house” and not assigned to an SVS client. He received a \$500 “allowance” once, but otherwise
16 was paid nothing from the time he arrived on approximately October 3, 2007 until April 2008.

17 28. SVS did little or nothing to secure an assignment for Bathla. Instead, the
18 company forced him to find a placement on his own. Bathla spent his days researching possible
19 assignments, contacting potential clients, and training himself on new technical skills he and SVS
20 believed would be in demand by SVS clients. After several months, Bathla finally managed to
21 arrange a temporary contract assignment (through a staffing agency, Aditi Staffing) with
22 Microsoft Corporation in Bellevue, Washington.

23 29. The assignment with Microsoft began on or about April 14, 2008. However, SVS
24 would not allow Bathla to accept this assignment unless he signed a new employment contract
25 guaranteeing an annual salary of only \$42,000. Bathla agreed to the \$20,000 reduction in salary
26 because he had not received any income since arriving in the United States and needed money.
27 In addition, his visa was secured through SVS, and was ineligible for transfer until Bathla had
28 worked a prescribed number of pay periods.

1 30. Bathla was paid approximately \$20 per hour for the work he performed on the
2 Microsoft assignment. On information and belief, Aditi Staffing paid SVS as much as \$43 per
3 hour for Bathla's work, and Microsoft Corporation paid Aditi Staffing even more for his work.

4 31. Bathla's assignment with Microsoft ended on or about July 22, 2008, and he
5 returned to Santa Clara, California on or about July 29, 2008. From approximately July 29, 2008
6 until August 20, 2008, Bathla lived in the SVS "guest house," but received no assignments and
7 did not receive any compensation from SVS. He did, however, continue to actively seek out
8 placements and train himself on new computer skills.

9 32. SVS tried to require Bathla to sign a letter stating that he was on leave during the
10 periods he was not assigned to a client and not being paid by SVS, even though Bathla was not
11 on leave, continued to indicate that he was ready and willing to be assigned at any time, and
12 continued his own efforts to secure an assignment with potential clients during those times.

13 33. SVS also instructed Bathla not to reveal to the Department of Labor that he had
14 paid \$1,500 to SVS for his visa.

15 34. Bathla resigned from SVS on or about August 20, 2008. At no point did he
16 receive the full salary promised to him by SVS, nor did he ever receive any of the benefits
17 promised to him.

18 ***Plaintiff and Class Representative Anandakirshnan Govindarajan***

19 35. Plaintiff Govindarajan holds a Bachelor of Engineering degree in Computer
20 Science from University of Madras. While he was living in India, Govindarajan was recruited by
21 SVS to work as a Programmer/Analyst for SVS in the United States.

22 36. SVS provided Govindarajan with an offer letter and employment contract
23 detailing the terms and conditions of his position at SVS. The contract promised Govindarajan
24 an annual salary of \$55,000 and specified that he would be paid on the seventh and twenty-
25 second of each month. The contract further stated that Govindarajan and his immediate family
26 would be entitled to health insurance, paid vacation days, and accrued sick time. SVS also
27 agreed to provide Govindarajan with two-weeks' notice in the event he was terminated for cause
28 and required him to provide four-weeks' notice of his intent to resign.

1 37. Govindarajan's employment contract also stated he would be reimbursed for
2 relocation expenses incurred in traveling to and from customer sites.

3 38. The contract also required that, for at least two years after termination of his
4 employment with SVS for whatever reason, Govindarajan would not solicit the business of or
5 provide any software engineering, consulting or programming services to any SVS customer or
6 employee.

7 39. Except for the differences in salary and indentifying information concerning
8 Govindarajan, all material terms of SVS's offer letter to and employment contract with
9 Govindarajan were identical to its offer letter to and employment contract with Bathla.

10 40. Kailash Bahl signed the contract on behalf of SVS as the authorized signatory.

11 41. SVS petitioned the United States Department of Labor, the United States
12 Department of Homeland Security, and the U.S. Citizenship and Immigration Services
13 Department for approval of an H-1B visa for Govindarajan. As part of this process, SVS
14 certified to the United States government that Govindarajan would receive a salary of \$ 55,000
15 beginning when Govindarajan entered the United States and arrived ready to begin work at SVS.

16 42. SVS required that Govindarajan pay SVS \$ 1,500 for the costs of applying for the
17 visa. Govindarajan complied with that requirement.

18 43. Govindarajan entered the United States and arrived ready to begin work at SVS
19 on or about February 25, 2008. Upon reporting for work at SVS, however, the company told
20 Govindarajan that there were no assignments for him and that he would have to wait to be paid
21 until SVS assigned him to a project.

22 44. From approximately February 25, 2008 through April 11, 2008, Govindarajan
23 lived in the SVS "guest house" in Santa Clara, California. During that time, Govindarajan
24 searched for his own assignments, researching and contacting potential clients, and trained
25 himself on new technical skills he and SVS believed would be in demand by SVS clients.

26 45. SVS directed Govindarajan to travel to Seattle, Washington to look for
27 assignments, and he did so on approximately April 11, 2008. SVS did not reimburse any of
28 Govindarajan's travel costs or accommodations in Seattle, which he paid himself. However,

1 once in Seattle, Govindarajan was not assigned to any projects and continued not to be paid by
2 SVS. In addition, his visa was secured through SVS, and was ineligible for transfer until he had
3 worked a prescribed number of pay periods.

4 46. Subsequently, SVS attempted to force Govindarajan to sign a letter stating that he
5 was on leave during the periods he was not assigned to a client and not being paid by SVS, even
6 though Govindarajan was not on leave, continued to indicate that he was ready and willing to be
7 assigned at any time, and continued his own efforts to secure an assignment with potential clients
8 during those times.

9 47. On or about December 5, 2008, Govindarajan relocated to Philadelphia,
10 Pennsylvania. He continues to await an assignment from SVS, and continues his own efforts to
11 secure an assignment with SVS clients. SVS did not reimburse any of Govindarajan's travel
12 costs or accommodations in Philadelphia, which he paid himself.

13 48. To date, Govindarajan has never been paid anything by SVS, nor has he received
14 any of the benefits promised to him.

15 *Plaintiff and Class Representative Purnima Kalia*

16 49. Plaintiff Kalia holds a Masters of Science degree in Computer Science from
17 Kurukshetra University. While she was living in India, Kalia was recruited by SVS to work as a
18 Programmer/Analyst for SVS in the United States.

19 50. SVS provided Kalia with an offer letter and employment contract detailing the
20 terms and conditions of her position at SVS. The contract promised Kalia an annual salary of
21 \$68,000 and specified that she would be paid on the seventh and twenty-second of each month.
22 The contract further stated that Kalia and her immediate family would be entitled to health
23 insurance, paid vacation days, and accrued sick time. SVS also agreed to provide Kalia with
24 two-weeks' notice in the event she was terminated for cause and required her to provide four-
25 weeks' notice of her intent to resign.

26 51. Kalia's employment contract also stated she would be reimbursed for relocation
27 expenses incurred in traveling to and from customer sites.

1 52. The contract also required that, for at least two years after termination of her
2 employment with SVS for whatever reason, Kalia would not solicit the business of or provide
3 any software engineering, consulting or programming services to any SVS customer or
4 employee.

5 53. Except for the differences in salary and indentifying information concerning
6 Kalia, all material terms of SVS's offer letters to and employment contracts with Kalia were
7 identical to its offer letter to and employment contract with Bathla and Govindarajan.

8 54. On or about March 16, 2007, Kalia signed the employment contract drafted by
9 SVS. Sachin Chauhan signed the contract on behalf of SVS as the authorized signatory.

10 55. SVS petitioned the United States Department of Labor, the United States
11 Department of Homeland Security, and the U.S. Citizenship and Immigration Services, for
12 approval of an H-1B visa for Kalia. As part of this process, SVS certified to the United States
13 government that Kalia would receive a salary of \$ 68,000 for a period of employment beginning
14 when Kalia entered the United States and arrived ready to begin work at SVS.

15 56. SVS required that Kalia pay it \$3,000 for the costs of applying for her visa and a
16 visa for her husband.

17 57. Kalia entered the United States with her husband and small child, and arrived
18 ready to begin work at SVS on or about January 22, 2008. Upon reporting for work at SVS,
19 however, the company told Kalia that there were no assignments for her and that she would have
20 to wait to be paid until SVS assigned her to a project.

21 58. From approximately January 22, 2008 through March 4, 2008, Kalia lived in the
22 SVS "guest house" in Santa Clara, California. During that time, Kalia searched for her own
23 assignments, researching and contacting potential clients, and trained herself on new technical
24 skills she and SVS believed would be in demand by SVS clients.

25 59. On February 26, 2008, Kalia was assigned her first project in Minneapolis,
26 Minnesota. Before leaving for Minneapolis, SVS required Kalia to sign a new employment
27 contract lowering her annual salary to \$ 62,000 a year. Kalia agreed to the reduction in salary
28 because she had not received any income since arriving in the United States and needed money.

1 In addition, her visa was secured through SVS, and was ineligible for transfer until Kalia had
2 worked a prescribed number of pay periods.

3 60. Kalia worked for SVS in Minneapolis from approximately March 4, 2008 through
4 March 7, 2008. Kalia was not paid any part of her promised salary during this time. Kalia
5 returned to Santa Jose, California on March 30, 2008.

6 61. Kalia and her family eventually moved back into the SVS "guest house." From
7 March 7, 2008 to July 1, 2008, Kalia was not assigned to a client and did not receive her
8 promised salary, though she continued her efforts to find an assignment with an SVS client.

9 62. As a result of her own efforts, Kalia found an assignment in Norfolk, Virginia,
10 beginning on or about July 1, 2008 and ending on or about August 30, 2008.

11 63. Shortly after arriving in Norfolk, SVS attempted to force Kalia to sign a new
12 employment contract stating that her salary was \$55,000 per year. Although Kalia refused to
13 sign a new contract, she was paid by SVS based wages equivalent to an annual salary of \$55,000
14 per year during the time she worked in Norfolk, except for the period of July 1 through July 6,
15 when she was not paid at all.

16 64. SVS subsequently tried to require Kalia to sign a letter stating that she was on
17 leave for the months she was not assigned to a client and not being paid by SVS, even though
18 Kalia was not on leave, continued to indicate that she was ready and willing to be assigned at any
19 time, and continued her own efforts to secure an assignment with potential clients during those
20 times.

21 65. SVS directed Kalia to continue renting her apartment in Norfolk until SVS placed
22 her on a new assignment. Kalia was told by SVS that she would be reimbursed for her rent and
23 bill payments while in Virginia.

24 66. On or about September 3, 2008, SVS told Kalia that it had no other projects for
25 her and that they were terminating her employment immediately. Kalia was not reimbursed for
26 her September 2008 rent payment and living expenses in Norfolk.

27 67. At no point did Kalia receive the full salary promised to her by SVS, nor did she
28 ever receive any of the benefits promised to her.

1 CLASS ACTION ALLEGATIONS

2 68. This action is brought pursuant to Civil Procedure Code section 382.

3 69. Upon information and belief, SVS has recruited in a manner similar to its
4 recruitment of Plaintiffs hundreds of other foreign professionals to come to the United States to
5 work for SVS pursuant to H-1B visas.

6 70. Upon information and belief, SVS signed employment contracts with each of
7 those foreign professionals promising a specific annual salary, health benefits, accrued vacation
8 time, expense reimbursements and other work-related benefits and compensation, and otherwise
9 made such promises orally and/or in writing.

10 71. SVS made other written and oral representations to Plaintiffs, and on information
11 and belief to members of the Class, during the course of recruiting Class members, promising
12 employment under the terms reflected in the written employment agreement with each Plaintiff
13 and Class member.

14 72. The representations made by SVS and its agents were not true, and SVS and its
15 agents knew when these representations were made that they were not true.

16 73. SVS and its agents intended that Plaintiffs and Class members rely on these
17 representations to their detriment.

18 74. Plaintiffs and those other foreign professionals justifiably relied on SVS's written
19 and oral promises, uprooted themselves (and sometimes, their families as well), traveled to this
20 country, paid SVS significant sums to obtain visas, and/or incurred travel and other significant
21 expenses in order to relocate to the United States for work.

22 75. SVS's employment contracts with Plaintiffs, and on information and belief with
23 other Class members, are expressly governed by California law pursuant to a choice-of-law
24 provision in the contracts. California law therefore governs all of the claims described herein.

25 76. Plaintiffs, as well as members of the Class, were not paid by SVS wages owed to
26 them during the time they were not assigned to one of SVS's clients. Pursuant to federal law,
27 SVS is required to pay its H-1B employees' wages even for times when there is no work or
28 insufficient work available for them. SVS violated that law, but also refused to pay Plaintiffs and

1 the Class members all of their wages even when they were assigned to and performing work for
2 SVS clients.

3 77. Plaintiffs, as well as members of the Class, still have not received proper
4 compensation, including wages due for accrued vacation time and reimbursements for health
5 insurance and work-related expenses, for all the hours they worked while employed by SVS.

6 78. On information and belief, SVS's conduct as alleged herein is ongoing with
7 respect to all Class members who are still employed by SVS.

8 79. Plaintiffs, on behalf of themselves and members of the Class, seek compensation
9 for all unpaid wages and compensation due and owing, liquated and/or other damages, penalties
10 as permitted by applicable law, interest, attorneys' fees and costs.

11 80. Plaintiffs are informed and believe, and on that basis allege, that members of the
12 Class are so numerous that joinder of all members is impracticable. While the exact number of
13 Class members is unknown to Plaintiffs at this time and can be only ascertained through
14 discovery, Plaintiffs believe that there are more than one hundred members of the Class.

15 81. Plaintiffs' claims are typical of the claims of the Class, because Plaintiffs and all
16 Class members sustained damages that arise out of SVS's same pattern and practice of failing to
17 provide its H-1B employees with promised wages and other compensation; making promises to
18 provide H-1B employees with the compensation promised in their employment contracts
19 knowing that such promises were false when made; inducing its H-1B employees to relocate
20 from out of the country and incur expenses (including payments to SVS) in reliance on those
21 false promises; failing to pay wages owed to its H-1B employees; failing to pay the minimum
22 wage required by California law for all hours worked; requiring employees to sign employment
23 contracts containing covenants not to compete and knowing such a term or condition of
24 employment is illegal; compelling and coercing H-1B workers to pay fees and costs associated
25 with obtaining their H-1B visas; and failure to comply with the federal law regulating the wage
26 requirements and conditions of employment for H-1B visa holders.

1 82. Plaintiffs will fully and adequately protect the interests of the Class, and have
2 retained class counsel who are experienced and competent in both class and employment
3 litigation. Plaintiffs have no interests that are contrary to or in conflict with those of the Class.

4 83. Plaintiffs know of no difficulty to be encountered in the management of this
5 action that would preclude its maintenance as a class action.

6 84. The likelihood of individual Class members prosecuting separate claims is
7 remote, and individual members of the Class do not have a significant interest in individually
8 controlling the prosecution of separate actions. Additionally, the prosecution of separate actions
9 by individual class members would create a risk of inconsistent and varying adjudications
10 concerning the subject of this action, which adjudications could establish incompatible standards
11 of conduct for defendants under the law herein alleged.

12 85. There is a well-defined community of interest between Plaintiffs and the members
13 of the Class. Questions of law and fact common to the members of the Class predominate over
14 any questions that may affect only individual members, in that SVS acted in a manner generally
15 applicable to the entire Class. Among the questions of law and fact common to the Class are:

- 16 a. Whether SVS breached its employment agreements with Class members
17 by failing to abide by the terms and conditions set forth therein;
- 18 b. Whether SVS fraudulently induced Class members to travel to the United
19 States and incur related expenses by promising terms and conditions of
20 employment that SVS knew to be false when made;
- 21 c. Whether SVS failed to pay wages owed to Class members during the time
22 Class members were not assigned to work for an SVS client;
- 23 d. Whether SVS failed to pay minimum wages to Class members when due
24 and owing;
- 25 e. Whether SVS required Class members to enter into contracts that illegally
26 restricted them from engaging in a lawful profession, trade, or business;
- 27 f. Whether SVS compelled or coerced the Class to pay fees to the employer
28 as a condition of employment;

- 1 g. Whether SVS has failed to reimburse the Class for work-related expenses
2 as required by California law;
- 3 h. Whether California law should be applied to the claims of the Class
4 against SVS;
- 5 i. Whether SVS's violations of federal and state law constitute unlawful,
6 unfair, or fraudulent business practices;
- 7 j. Whether members of the Class are entitled to relief for SVS's violations of
8 California and federal law and, if so, the proper relief.

9 86. Accordingly, this action should be maintained as a class action.

10 **FIRST CAUSE OF ACTION**

11 **Breach of Contract**

12 **(By Plaintiffs and the Class Against All Defendants)**

13 87. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
14 reference all preceding paragraphs as if they were fully set forth herein.

15 88. For good and valuable consideration, Plaintiffs and members of the Class entered
16 into employment contracts with SVS.

17 89. By those contracts, SVS agreed and was required to pay to its employees an
18 annual salary of a sum certain. SVS was further required to provide health benefits, paid
19 vacation and sick time, reimbursement of work-related expenses, two-weeks advance notice of
20 any not-for-cause termination, and other consideration.

21 90. Plaintiffs and other members of the Class have duly performed all conditions,
22 covenants, and agreements to be performed under the contract, save and except those excused by
23 the acts and omissions of SVS.

24 91. As a direct and proximate result of SVS's breach of its express, material
25 contractual obligations as alleged herein, including but not limited to, the failure to pay the
26 wages, health benefits, accrued vacation wages, expense reimbursements, and to terminate
27 employment pursuant to the terms and conditions set forth in said contracts, Plaintiffs and Class
28 members have been injured and suffered damages in an amount to be proven at trial.

1 92. Wherefore, Plaintiffs pray for judgment as set forth below.

2 **SECOND CAUSE OF ACTION**

3 **Failure to Pay Wages Owed - Labor Code §§ 218, 218.5 & 218.6**

4 **(By Plaintiffs and the Class Against All Defendants)**

5 93. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
6 reference all preceding paragraphs as if they were fully set forth herein.

7 94. During the time that Plaintiffs and other members of the Class were employed by
8 SVS, or are now employed by SVS, SVS failed and continues to fail to timely pay Plaintiffs and
9 other members of the Class wages due to them as set forth herein. Pursuant to Labor Code
10 section 204, those wages were due to Plaintiffs and other members of the Class on a semi-
11 monthly, or in the alternative, monthly basis, and came due on the day prescribed by that section.

12 95. Under federal law, SVS was obligated to pay Plaintiffs and other Class members
13 the wages promised to them and reported to the United States government in connection with
14 their H-1B applications for the entire duration of the reported period, including periods when
15 Plaintiffs and other Class members were not assigned to SVS clients. SVS failed to pay those
16 due and owing wages, along with other wages owed but not paid to Plaintiffs and other Class
17 members even during times they were assigned to SVS clients.

18 96. Pursuant to Labor Code section 218, Plaintiffs and other members of the Class are
19 entitled to recover all wages owed; pursuant to Labor Code section 218.6, interest thereon; and
20 pursuant to Labor Code section 218.5, attorneys' fees and costs, all in an amount to be proved at
21 trial.

22 97. Wherefore, Plaintiffs pray for judgment as set forth below.

23 **THIRD CAUSE OF ACTION**

24 **Failure to Pay Minimum Wage – Labor Code § 1194**

25 **(By Plaintiffs and the Class Against All Defendants)**

26 98. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
27 reference all preceding paragraphs as if they were fully set forth herein.

1 99. Labor Code section 1194 requires employers to pay minimum wages to
2 employees. Pursuant to that section, SVS was required to timely pay Plaintiff and every member
3 of the Class minimum wages for all hours worked, but failed to do so.

4 100. Plaintiffs and members of the Class are entitled to payment of minimum wages
5 for work performed for SVS, plus interest thereon, attorneys' fees and costs, in an amount to be
6 proved at trial.

7 101. Wherefore, Plaintiffs pray for judgment as set forth below.

8 **FOURTH CAUSE OF ACTION**

9 **Waiting Time Penalties - Labor Code § 203**

10 **(By Plaintiffs and the Class Against All Defendants)**

11 102. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
12 reference all preceding paragraphs as if they were fully set forth herein.

13 103. At the time that Plaintiff Bathla resigned and Plaintiff Kalia was terminated, and
14 those other members of the Class no longer employed by SVS resigned or were terminated, SVS
15 failed to pay Plaintiffs and Class members any of the amounts due as set forth herein. SVS's
16 failure to pay Plaintiffs and other members of the Class their contractually and/or statutorily
17 guaranteed wages, unused and accrued vacation time, and reimbursement for work-related
18 expenses violates Labor Code sections 201 and 202.

19 104. SVS's failure to pay the wages of Plaintiffs and other members of the Class was
20 willful, and they are entitled to penalties under Labor Code section 203 which provides that an
21 employee's wages shall continue as a penalty until paid or for a period up to thirty days,
22 whichever is shorter.

23 105. Wherefore, Plaintiffs pray for judgment as set forth below.

24 **FIFTH CAUSE OF ACTION**

25 **Promissory Fraud/ Fraudulent Inducement**

26 **(By Plaintiffs and the Class Against All Defendants)**

27 106. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
28 reference all preceding paragraphs as if they were fully set forth herein.

1 107. SVS and its agents, orally and in writing, willfully, falsely, and fraudulently
2 represented and promised to Plaintiffs and Class members that if Plaintiffs and Class members
3 accepted employment with SVS, SVS would employ and pay Plaintiffs and Class members the
4 wages and other compensation and benefits reflected in the written offer letters and employment
5 agreements provided by SVS to Plaintiffs and other Class members.

6 108. At the time those representations were made, SVS and its agents knew them to be
7 false.

8 109. By making those representations, SVS and its agents intended to and did induce
9 Plaintiffs and Class members to enter into employment contracts, incur expenses for travel, visa
10 and other costs, travel to the United States, and otherwise act to their detriment.

11 110. In reasonable reliance on these representations and promises of SVS and its
12 agents, Plaintiffs and Class members did in fact enter into employment contracts, incur expenses
13 for travel, visa and other costs, travel to the United States, and otherwise act to their detriment.

14 111. As a proximate result of the representations of SVS and its agents, as alleged
15 herein, Plaintiffs and Class members have sustained damages in an amount according to proof.

16 112. In engaging in the acts alleged herein, SVS and its agents acted fraudulently,
17 maliciously, oppressively and with callous and intentional disregard of the interests of Plaintiffs
18 and other Class members, and subjected them to unjust hardship and emotional trauma, with
19 knowledge that their conduct was substantially likely to vex, annoy, and injure Plaintiffs and the
20 other Class members. With respect to any such conduct by its employees or agents, SVS,
21 through its officer(s), director(s) and/or managing agent(s), had advance knowledge of and/or
22 ratified the wrongful conduct. As such, Plaintiffs and members of the Class are entitled to
23 punitive damages.

24 113. Wherefore, Plaintiffs pray for judgment as set forth below.
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1 **SIXTH CAUSE OF ACTION**

2 **Solicitation of Employees by Misrepresentation - Labor Code § 970**

3 **(By Plaintiffs and the Class Against All Defendants)**

4 114. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
5 reference all preceding paragraphs as if they were fully set forth herein.

6 115. SVS and its agents made representations to Plaintiffs, and on information and
7 belief to members of the Class, about the kind, character and existence of work, the length of
8 time said work would last, and compensation therefore.

9 116. The representations made by SVS and its agents were not true and SVS and its
10 agents knew at the time that the representations were made that they were not true.

11 117. SVS and its agents made the misrepresentations for the purpose of influencing,
12 persuading and/or engaging Plaintiffs and Class members to change from a place outside this
13 state to a place within the state of California, from a place within the state of California to
14 another place within the state of California, and/or from a place within the state of California to a
15 place outside the state of California for the purpose of working for SVS.

16 118. As a proximate result of the misrepresentations of SVS and its agents, as alleged
17 herein, Plaintiffs and Class members have sustained damages in an amount to be proved at trial.

18 119. Wherefore, Plaintiffs pray for judgment as set forth below.

19 **SEVENTH CAUSE OF ACTION**

20 **Illegal Covenant Not To Compete -**

21 **Business & Professions Code § 16600; Labor Code § 432.5**

22 **(By Plaintiffs and the Class Against All Defendants)**

23 120. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
24 reference all preceding paragraphs as if they were fully set forth herein.

25 121. California law prohibits employment contracts that restrict an employee from
26 working for a competitor after completion of his or her employment or imposing penalties if the
27 employee does so.

1 122. SVS required Plaintiffs and Class members to sign employment contracts that
2 contained illegal covenants not to compete or solicit which SVS knew to be illegal.

3 123. Section 16600 of the Business and Professions Code prohibits “every contract by
4 which anyone is restrained from engaging in a lawful profession, trade, or business of any kind
5 ...”

6 124. Labor Code section 432.5 prohibits employers from requiring any employee for
7 applicant for employment to agree in writing “to any term or condition which is known by such
8 employer ... to be prohibited by law.”

9 125. By requiring Plaintiffs and Class members to sign employment contracts that
10 included illegal covenants not to compete, and wherefore SVS knew that such covenants were
11 illegal, SVS violated California law.

12 126. Wherefore, Plaintiffs pray for judgment as set forth below.

13 **EIGHTH CAUSE OF ACTION**

14 **Labor Code § 450**

15 **(By Plaintiffs and the Class Against All Defendants)**

16 127. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
17 reference all preceding paragraphs as if they were fully set forth herein.

18 128. It is unlawful under California law to compel or coerce an employee or job
19 applicant to pay a fee or to purchase anything of value from the employer or anyone else.

20 129. Plaintiffs and members of the Class were required to pay SVS fees and costs
21 allegedly associated with obtaining H-1B visas in violation of California law. These fees were
22 imposed as a condition of employment and as such violated California law.

23 130. Wherefore, Plaintiffs pray for judgment as set forth below.

24 **NINTH CAUSE OF ACTION**

25 **Failure to Reimburse for Work-Related Expenses - Labor Code § 2802**

26 **(By Plaintiffs and the Class Against All Defendants)**

27 131. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
28 reference all preceding paragraphs as if they were fully set forth herein.

1 132. California Labor Code section 2802 requires employers to reimburse its
2 employees for “all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
4 the employer ...”

5 133. SVS required Plaintiffs and members of the Class to pay expenses incurred by the
6 employees in direct consequence of the discharge of their duties, including but not limited to, the
7 costs of traveling to and from remote job sites, lodging while working at remote job sites, and
8 immigration costs, including fees associated with obtaining H-1B visas.

9 134. SVS failed to reimburse Plaintiffs and members of the Class for all of these work-
10 related expenses. Plaintiffs and members of the class are entitled to recover those work-related
11 expenses in an amount to be proved at trial

12 135. “Necessary expenditures or losses” also include, but are not limited to, the
13 attorneys’ fees incurred by the employee in enforcing Labor Code section 2802. Accordingly,
14 Plaintiffs and the Class are also entitled to attorneys’ fees pursuant to Labor Code section 2802.

15 136. Wherefore, Plaintiffs pray for judgment as set forth below.

16 **TENTH CAUSE OF ACTION**

17 **For Unfair Business Practices – Business & Professions Code sections 17200 *et seq.***

18 **(By Plaintiffs and the Class Against All Defendants)**

19 137. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
20 reference all preceding paragraphs as if they were fully set forth herein.

21 138. This cause of action is brought pursuant to Business and Professions Code
22 sections 17200 *et seq.*

23 139. The pattern and practice of conduct of SVS as described above violates federal
24 regulations governing the H-1B visa program, including but not limited to, those provisions
25 which give rise to an employer’s obligation to: pay the H-1B worker either the local “prevailing
26 wage” for the occupation in the geographic area of intended employment or the “actual wage”
27 the employer pays all other individuals with similar experience and qualifications, whichever is
28 higher, and including health benefits and accrued vacation time, pursuant to 20 C.F.R. section

1 655.731; pay H-1B workers the actual cost of travel, meals, and incidental or miscellaneous
2 expenses, for both workdays and non-workdays, pursuant to 20 C.F.R. § 655.735; and to pay the
3 required wage to H-1B workers in circumstances where that worker “is not performing work and
4 is in a nonproductive status due to a decision by the employer (e.g., because of lack of assigned
5 work) ... the employer is required to pay the salaried employee the full pro-rata amount due, or
6 to pay the hourly-wage employee for a full-time week (40 hours or such other number of hours as
7 the employer can demonstrate to be full-time employment for hourly employees, or the full
8 amount of the weekly salary for salaried employees) at the required wage for the occupation
9 listed on the [Labor Condition Application],” pursuant to 20 C.F.R. section 655.731.

10 140. The pattern and practice of conduct of SVS as described above also violates
11 numerous laws and public policies of the State of California as set forth herein.

12 141. As a result, such conduct constitutes fraudulent, unfair, and unlawful business
13 practices in violation of Business & Professions Code sections 17200 *et seq.*

14 142. In committing the unfair and unlawful business practices described above, SVS
15 has been unjustly enriched and should be disgorged of its unjustly acquired gains, pursuant to
16 Business & Professions Code section 17203, in an amount to be determined at trial.

17 Additionally, Plaintiffs and Class members seek restitution of the amounts that Defendants have
18 improperly withheld from them by virtue of their conduct in violation of this section.

19 143. Plaintiffs further request that the Court issue an injunction prohibiting Defendants
20 and their officers, agents, successors, employees, representatives, and any and all persons acting
21 in concert with it from continuing to engage in the practices described above.

22 144. Wherefore, Plaintiffs pray for judgment as set forth below.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for relief as
25 follows:

- 26 1. Certification of this action as a class action on behalf of the Class;
- 27 2. Designation of Plaintiffs as representatives of the Class;

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- 3. Damages according to proof on the first, second, third, seventh, and eighth causes of action;
- 4. Damages for expenses and the disruption of relocating, the loss of security and past income associated with former employment;
- 5. Restitution of all wages and other amounts owing to Plaintiffs and the Class;
- 6. Disgorgement of all gains unjustly acquired by Defendants;
- 7. All penalties available under California law;
- 8. A declaratory judgment that the practices complained of in this complaint are unlawful under California law;
- 9. An injunction against Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with it from engaging in each of the practices complained of in this complaint;
- 10. Attorneys' fees and costs, including expert fees, and expenses as provided by California law, including but not limited to Labor Code sections 218.5 and 1194;
- 11. Punitive damages;
- 12. Prejudgment and post-judgment interest at the maximum legal rate; and
- 13. Such other relief as the Court deems just and proper.

Plaintiffs hereby demand a jury trial.

DATED: March 3, 2009

LAW OFFICES OF MOSS & HOUGH

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By 

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