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6 Attorneys for Plaintiff Patricia Ann Steet
on behalf of herself and all others similarly situated,
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ENDORSED
FILED
ALAMEDA COUNTY

OCT 2 2 2009

CLERK OF THE SUPERIOR COURT
By Tasha Perry, Deputy

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 PATRICIA ANN STEET, on behalf of herself
12 and all others similarly situated,

13 Plaintiffs,

14 v.

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16
17 COST PLUS, INC., a California Corporation;
and DOES 1 through 100, Inclusive,

18 Defendants.
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) CASE NO. RG09456446

) SECOND AMENDED CLASS ACTION
) COMPLAINT FOR DAMAGES AND
) RESTITUTION

) 1) Failure to pay Overtime Wages (Lab.
) Code § 1194)

) 2) Failure to Pay Wages of Terminated or
) Resigned Employees (Lab. Code §§ 201-
) 203)

) 3) Violations of the Unfair Competition
) Law (Bus. & Prof. Code §§ 17200-17208)

) 4) Violation and Enforcement of the Private
) Attorneys General Act (PAGA, Labor Code
) §2698, *et.seq.*)

) DEMAND FOR JURY TRIAL

1 Plaintiff PATRICIA ANN STEET, on behalf of herself and all others similarly situated,
2 complains and alleges as follows:

3 I.

4 INTRODUCTION

5 1. This case arises out of the non-payment of overtime compensation to certain
6 California employees of defendant COST PLUS, INC. (hereinafter "COST PLUS" or
7 "Defendants"). The proposed Plaintiff Class consists of persons employed as General Managers
8 of Defendants who, during the Class Period, although performing non-exempt functions for the
9 Defendants, were misclassified as exempt employees and not paid overtime compensation.

10 2. The Labor Code section 203 Subclass includes Class members that ended their
11 employment for the Defendants during the Class Period, but who were not timely paid wages as
12 required by Labor Code, sections 201-203. Such Plaintiff Subclass members are additionally
13 entitled to penalties pursuant to California Labor Code, section 203.

14 3. As used herein, the term "Plaintiff" includes PATRICIA ANN STEET who is the
15 named Plaintiff Class representative; the term "Plaintiff Class" includes the Plaintiff and all
16 Plaintiff Class members; the term "non-exempt" refers to the lawful requirement to be paid
17 overtime compensation by the Defendants.

18 4. Plaintiff seeks compensation for work performed and moneys due herself and the
19 Plaintiff Class and Subclass during the "Class Period," which is defined as four years prior to the
20 filing of this action through the trial date, based upon information and belief that the Defendants
21 are continuing, and will continue, their unlawful practices as described herein.

22 II.

23 JURISDICTION AND VENUE

24 5. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
25 Civil Procedure, section 395. Defendants conduct business and commit Labor Code violations in
26 Alameda County, and each Defendant is within the jurisdiction of this Court for service of
27 process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those
28 similarly situated within the State of California and within Alameda County. Defendants'

1 principal place of business is in Alameda County. Defendants employ numerous Class Members
2 in Alameda County. The California Superior Court also has jurisdiction in this matter because
3 the individual members of the classes herein are under the seventy-five thousand dollar
4 (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate claim is under the five
5 million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005. Further, there
6 is no federal question at issue, as the issues herein are based solely on California statutes and law,
7 including the Labor Code, IWC Wage Orders, Code of Civil Procedure, Civil Code, and
8 Business and Professions Code.

9 **III.**

10 **THE PARTIES**

11 **A. The Plaintiff**

12 6. Plaintiff PATRICIA ANN STEET is a former employee of the Defendants and an
13 employee entitled to overtime compensation and waiting time penalties from the Defendants.
14 Plaintiff PATRICIA ANN STEET was employed by the Defendants as of the date four years
15 prior to the commencement of this action and through the present. She was employed by
16 Defendants during the Class Period in a salaried position.

17 7. Each of the Plaintiff Class members are identifiable, similarly situated persons
18 who were employed as "General Managers" in California for the Defendants during the Class
19 Period.

20 **B. The Defendants**

21 8. Plaintiff is informed and believes, and thereon alleges, that COST PLUS is a
22 California corporation with its principal place of business in Oakland, California, and is and was
23 the employer of the Plaintiff and the members of Plaintiff Class and Subclasses during the Class
24 Period.

25 9. Plaintiff is ignorant of the true names, capacities, relationships and extent of
26 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through
27 100, inclusive, but on information and belief allege that said Defendants are legally responsible
28 for the payment of overtime compensation and/or Labor Code, section 203 penalties to the

1 Plaintiff Class members by virtue of their unlawful practices, and therefore sue these Defendants
2 by such fictitious names. Plaintiff will amend this complaint to allege the true names and
3 capacities of the DOE Defendants when ascertained.

4 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
5 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
6 joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each
7 Defendant are legally attributable to the other Defendants.

8 **IV.**

9 **GENERAL ALLEGATIONS**

10 11. California Labor Code, section 1194, provides that notwithstanding any
11 agreement to work for a lesser wage, an employee receiving less than the legal overtime
12 compensation is entitled to recover in a civil action the unpaid balance of her or her overtime
13 compensation, including interest thereon, reasonable attorneys fees, and costs of suit.

14 12. Further, Business and Professions Code, section 17203 provides that any person
15 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
16 Business and Professions Code, section 17204 provides that any person who has suffered actual
17 injury and has lost money or property as a result of the unfair competition may bring an action in
18 a court of competent jurisdiction.

19 13. During all, or a portion, of the Class Period, Plaintiff and each member of the
20 Plaintiff Class were employed by Defendants and each of them, in the State of California.

21 14. Plaintiff and each Plaintiff Class member were non-exempt employees covered
22 under one or more Industrial Welfare Commission (IWC) Wage Orders, including Wage Order
23 7-2001 ("Wage Order"), and Labor Code, section 510, and/or other applicable wage orders,
24 regulations and statutes, and each Plaintiff Class member was not subject to an exemption for
25 executive, administrative and professional employees, which imposed an obligation on the part
26 of the Defendants to pay Plaintiff and Plaintiff Class members lawful overtime compensation.

27 15. During the Class Period, Defendants were obligated to pay Plaintiff and the
28 Plaintiff Class overtime compensation for all hours worked over eight (8) hours of work in one

1 (1) day or forty (40) hours in one week. Defendant regularly required Plaintiff and the Plaintiff
2 Class to work overtime hours and to be on call and engaged to wait without overtime
3 compensation.

4 16. Plaintiff and each Plaintiff Class member primarily performed non-exempt work
5 and therefore entitled the Plaintiff and Plaintiff Class members to overtime compensation at time
6 and a half rate, and when applicable, double time rates as set forth by the above Wage Orders,
7 regulations and/or statutes.

8 17. Class members who ended their employment during the Class Period, but were
9 not paid the above due overtime compensation timely upon the termination of their employment
10 as required by Labor Code, sections 201-203, are entitled to penalties as provided by California
11 Labor Code, sections 203.

12 18. During the Class Period, the Defendants, and each of them, required the Plaintiff
13 and Plaintiff Class members to work overtime without lawful compensation, in violation of the
14 various above applicable Wage Orders, regulations and statutes, and the Defendants: (1) willfully
15 failed and refused, and continue to fail and refuse to pay lawful overtime compensation to the
16 Plaintiff Class members; and (2) willfully failed and refused, and continue to fail and refuse to
17 pay wages promptly when due upon termination of employment to each of the Plaintiff Subclass
18 Members.

19 19. General Managers are primarily engaged in non-exempt functions. They are not
20 spending a majority of their time performing managerial duties for Defendant's enterprise. They
21 do not perform work primarily related to Defendants' general business operation but primarily
22 perform functions related to the product or service provided by Defendants and do not exercise
23 discretion and/or independent judgment to qualify for exemption in an administrative capacity.
24 Further, they are not employed on an hourly basis with pay not less than the statutory rate set by
25 the IWC Wage Orders and premium overtime pay. Hence, the work performed in the so-called
26 "General Managers" employee positions is not exempt work but rather is non-exempt customer
27 support work.

28

V.

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action on behalf of herself and all other similarly situated persons, as a class action pursuant to California Code of Civil Procedure, section 382. The class which Plaintiff seeks to represent is composed of and defined as follows:

Plaintiff Class: All of Defendants' California General Managers employed by Defendant on or after four years prior to the commencement of this action ("Relevant Time Period")

21. Further, Plaintiff brings this action on behalf of herself and all other similarly situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

Plaintiff Subclass: All of Defendants' California General Managers during the Relevant Time Period whose employment with Defendant has terminated.

22. Plaintiff reserves the right under Rule 3.764, California Rules of Court, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

23. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure, section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

a. The Plaintiff Class and Plaintiff Subclass members are so numerous that the individual joinder of all such plaintiffs is impractical. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff believes there are over 100 class members. Therefore, joinder of all Plaintiff Class and Plaintiff Subclass members is impractical.

b. Common questions of law and fact exist as to the Plaintiff, Plaintiff Class and Plaintiff Subclass members, and predominate over any questions which affect only individual members of the Plaintiff Class and Subclass. These common questions include, but are not limited to:

(1) Whether Plaintiff and Plaintiff Class members are entitled to overtime compensation from the Defendants under the applicable IWC Wage Orders, regulations

1 and statutes, or whether each member of the Plaintiff Class is “exempt” from the requirements of
2 overtime compensation as set forth in the applicable Wage Orders, regulations and statutes;

3 (2) Whether the Class members as a Class primarily performed non-
4 exempt related functions and spent less than 50% percent of their time performing exempt
5 functions;

6 (3) Whether the Defendants violated the Unfair Competition Law,
7 Business and Professions Code, section 17200, et seq., by their practices as alleged herein;

8 (4) Whether Defendants violated Section 1174 of the Labor Code by
9 failing to keep accurate records of the Plaintiff Class members' hours of work;

10 (5) The effect upon and the extent of any injuries sustained by the
11 Plaintiff Class and Plaintiff Subclass members and appropriate type and/or measure of damages;

12 (6) Whether the Plaintiff Class is entitled to waiting time penalties
13 under Labor Code, section 203;

14 (7) The amount of restitution owed by the Defendants attributable to
15 their violation of the Unfair Competition Law by failure to pay overtime compensation to the
16 class members, and other wage violations;

17 (8) The appropriateness and nature of relief to each Plaintiff Class and
18 Subclass member;

19 (9) The appropriate nature of class wide equitable relief; and

20 (10) The extent of liability of each Defendant, including DOE
21 Defendants, to each Plaintiff Class and Subclass member.

22 c. Plaintiff is a member of the Plaintiff Class and at least one Plaintiff
23 Subclass, and her claims are typical of the claims of the Plaintiff Class and Subclass members.
24 Plaintiff and all members of the Plaintiff Class and Plaintiff Subclass sustained similar injuries
25 and damages arising out of Defendants’ common course of conduct in violation of the law as
26 alleged herein.

27 d. Plaintiff will adequately and fairly protect the interests of the members of
28 the Plaintiff Class and Plaintiff Subclass. Plaintiff was employed by the Defendants in

1 misclassified exempt positions in which she was in fact primarily performing non-exempt duties
2 at all times during the class period and is therefore an adequate representative for the Plaintiff
3 Class and Plaintiff Subclass, as she has no interest adverse to the interests of the absent class
4 members. Plaintiff is represented by legal counsel who have substantial class action experience
5 in civil litigation and employment law.

6 e. A class action is superior to other available means of fair and efficient
7 adjudication of the claims of the Plaintiff Class and Plaintiff Subclass members, since joinder of
8 all members of the Plaintiff Class and Plaintiff Subclasses is impractical. Class action treatment
9 will allow a large number of similarly situated persons to prosecute their common claims in a
10 single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and
11 expense that numerous individual actions would cause to such plaintiffs or to the court system.
12 Further, the damages of many individual class members may be relatively small, and the burden
13 and expenses of individual litigation would make it difficult or impossible for individual
14 members of the class to seek and obtain relief, while a class action will serve an important public
15 interest. Further, individual litigation would present the potential for inconsistent or
16 contradictory judgments.

17 24. Plaintiff is unaware of any difficulties that are likely to be encountered in the
18 management of this action that would preclude its maintenance as a class action.

19 VI.

20 VIOLATIONS ALLEGED

21 FIRST CAUSE OF ACTION

22 **FAILURE TO PAY OVERTIME WAGES**

23 **(Plaintiff and each Plaintiff Class member against each Defendant)**

24 25. Plaintiff incorporates paragraphs 1 through 24 of this complaint as if fully alleged
25 herein.

26 26. Plaintiff and the Plaintiff Class members were regularly required to work overtime
27 hours and are entitled to overtime compensation for overtime work performed for the
28 Defendants, in an amount according to proof. Pursuant to Labor Code, section 1194, the Plaintiff

1 Class members seek the payment of all overtime compensation which they earned and accrued
2 after four (4) years prior to filing of this complaint, according to proof.

3 27. Additionally, Plaintiff and Plaintiff Class members are entitled to attorneys' fees
4 and costs, pursuant to California Labor Code, section 1194 and prejudgment interest.

5 Wherefore, Plaintiff and the Plaintiff Class members request relief as hereinafter prayed
6 for.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

9 **(Plaintiff and each Plaintiff Subclass member against each Defendant)**

10 28. Plaintiff incorporates paragraphs 1 through 29 of this complaint as if fully alleged
11 herein.

12 29. Plaintiff and/or the members of the Plaintiff Subclass who ended their
13 employment with the Defendants during the Class Period were entitled to be promptly paid
14 lawful overtime compensation and other premiums, as required by Labor Code, sections 201-
15 203. Pursuant to Labor Code, section 203, such Plaintiff Subclass members seek payment of
16 penalties, according to proof.

17 30. Additionally, Plaintiff and Plaintiff Subclass members are entitled to attorneys'
18 fees and costs, pursuant to Labor Code, section 203 and prejudgment interest.

19 Wherefore, Plaintiff and the Plaintiff Subclass members request relief as hereinafter
20 prayed for.

21 **THIRD CAUSE OF ACTION**

22 **VIOLATIONS OF UNFAIR COMPETITION LAW**

23 **(Plaintiff and each Plaintiff Class and Subclass member against each Defendant)**

24 31. Plaintiff incorporates paragraphs 1 through 30 of this complaint as if fully alleged
25 herein.

26 32. The failure to pay lawful overtime compensation to each Plaintiff Class member,
27 and timely pay all wages due upon termination of employment to each Plaintiff Subclass
28 member, is an unlawful and unfair business practice within the meaning of Business and

1 Professions Code, section 17200, et seq., including but not limited to a violation of the applicable
2 State of California Industrial Welfare Commission Wage Orders, regulations and statutes, or is
3 otherwise a practice which is otherwise unfair and unlawful, including that the Defendants did
4 not pay tax contributions on the accrued overtime compensation in the form of FICA, Social
5 Security, Medicare and Unemployment Insurance.

6 33. This cause of action is brought under Business and Professions Code, sections
7 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and
8 pursuant to Business and Professions Code, section 17208, Plaintiff and all Plaintiff Class
9 members seek restitution of overtime wages owed, where such wages were due each of the class
10 members during the Class Period, commencing four (4) years prior to filing of this complaint,
11 according to proof.

12 34. This cause of action is brought as a cumulative remedy as provided in Business
13 and Professions Code, section 17205, and is intended as an alternative remedy for restitution for
14 Plaintiff, each Plaintiff Class member and each Plaintiff Subclass member for the time period, or
15 any portion thereof, commencing within four (4) years prior to the filing of this complaint, and as
16 the primary remedy for Plaintiff, each Plaintiff Class member and each Plaintiff Subclass
17 member for the time period of the fourth year prior to the filing of this complaint, as such one
18 year time period exceeds the statute of limitations on statutory wage claims.

19 35. As a result of the Defendants' unlawful and unfair business practice of failing to
20 pay overtime, each Plaintiff Class member and Subclass member has suffered damages and is
21 entitled to restitution in an amount according to proof.

22 36. Further, Plaintiff requests equitable relief as this court deems proper including
23 requiring payment by the Defendant of tax contributions on the accrued overtime compensation
24 in the form of FICA, Social Security, Medicare, Unemployment Insurance or other appropriate
25 payments.

26 Wherefore, Plaintiff, Plaintiff Class and the Plaintiff Subclass members request relief as
27 hereinafter prayed for.

28 **FOURTH CAUSE OF ACTION**

1 **VIOLATION AND ENFORCEMENT OF PRIVATE ATTORNEYS GENERAL ACT**

2 **(On Behalf of Plaintiff and the Putative Class)**

3 37. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

4 38. Defendant's failure to pay overtime wages and all wages due at termination to
5 Plaintiff and members of the Class, subjects Defendant to a civil penalty pursuant to California
6 Labor Code sections 202-203 and 1194.

7 39. Plaintiff has complied with the procedural requirements specified in Labor Code
8 section 2699.3 as to Defendant's violations of Labor Code sections 202-203 and 1194. A true
9 and correct copy of the written notice sent via certified mail to the Labor and Workforce
10 Development Agency alleging the violations contained herein is attached hereto as Exhibit A,
11 and by this reference, the contents of Exhibit A are expressly incorporated herein as if set forth in
12 full. The Labor and Workforce Development Agency has now provided Plaintiff with notice
13 that it does not intend to investigate the alleged violations in a formal response. Attached hereto
14 as Exhibit B is a true and correct copy of the LWDA letter, and the contents of that letter are
15 incorporated herein by this reference. As a consequence, Plaintiff has exhausted administrative
16 remedies, and on behalf of herself and all other aggrieved current and former employees of
17 Defendant. Plaintiff, therefore, pursues this cause of action as permitted by Labor Code sections
18 2699, *et seq.*

19 40. As a result of the violations alleged herein, Plaintiff, as an aggrieved employee on
20 behalf of herself and other current and former General Managers employed by Defendant, seeks
21 all civil penalties available pursuant to Labor Code sections 2699, *et seq.* Therefore, pursuant to
22 Labor Code sections 2699, *et seq.*, Plaintiff, as an aggrieved employee on behalf of herself and
23 other General Managers is entitled to collect all civil penalties owed, attorneys' fees, expenses,
24 and costs of suit.

25 41. Enforcement of statutory provisions enacted to protect workers and to ensure
26 proper and prompt payment of wages due to employees is a fundamental public interest in
27 California. Consequently, Plaintiff's success in this action will result in the enforcement of
28 important rights as affecting the public interest and will confer a significant benefit upon the

1 general public. Private enforcement of the rights enumerated herein is necessary, as no public
2 agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing this action
3 and it would be against the interests of justice to require the payment of attorneys' fees and costs
4 from any recovery that might be obtained herein, pursuant to, inter alia, Labor Code sections
5 218.5, 1194 and 2699, and Code of Civil Procedure section 1021.5.

6 42. In addition, if Plaintiff succeeds in enforcing these rights affecting the public
7 interest, then attorneys' fees may be awarded to Plaintiff and against Defendant under Code of
8 Civil Procedure section 1021.5 and other applicable law in part because:

9 a. A successful outcome in this action will result in the enforcement of
10 important rights affecting the public interest by requiring Defendant to comply with the wage and
11 hour laws and California's unfair business practice law;

12 b. This action will result in a significant benefit to Plaintiff, the Class, and
13 the general public by bringing to a halt unlawful and/or unfair activity and by causing the return
14 of ill-gotten gains obtained by Defendant;

15 c. Unless this action is prosecuted, members of the Class and general public
16 will not recover those monies, and many of Defendant's employees would not be aware that the
17 acts and practices they were subjected to by Defendant were wrongful;

18 d. Unless this action is prosecuted, Defendant will continue to mislead its
19 employees about the true nature of their rights and remedies under the wage and hour laws; and

20 e. An award of attorneys' fees and costs is necessary for the prosecution of
21 this action and will result in a benefit to Plaintiff, the Class, and to consumers in general by
22 preventing Defendant from continuing to circumvent the wage and hour statutes and frustrate the
23 long-standing recognition by the California legislature and the courts that such statutes, as pled
24 herein, are not merely a matter of private concern between employer and employee to be
25 eviscerated by considerations of waiver, contributory negligence, good or bad faith, and private
26 agreements. Rather, the wage and hour statutes have been described as a matter of public
27 concern, were designed to provide minimum substantive guarantees to individual workers, and
28 are essential to public welfare.

VII.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on her own behalf and on behalf of the Plaintiff Class and Plaintiff Subclass, prays as follows:

1. That the Court determine this action may be maintained as a class action and certify the Plaintiff Class and each Plaintiff Subclass;

2. That the Court determine that the failure of the Defendants to pay overtime compensation to the Plaintiff and each Plaintiff Class member be adjudged and decreed to violate the applicable IWC Wage Orders, regulations and statutes;

3. That the Defendants be ordered to pay and judgment be entered for overtime wages for Plaintiff and each Plaintiff Class member on the First Cause of Action, according to proof;

4. That the Defendants be ordered to pay and judgment be entered for Labor Code, section 203 penalties to Plaintiff and each Plaintiff Subclass member on the Second Cause of Action, according to proof;

5. That the Defendants be found to have engaged in unfair competition in violation of Business and Professions Code, section 17200;

6. That the Defendants be ordered to pay restitution to Plaintiff, each Plaintiff Class member and each Plaintiff Subclass member due to the Defendants' unlawful and unfair competition, wrongfully withheld wages according to proof, and interest thereon pursuant to Business and Professions Code, sections 17203 and 17204, on the Third Cause of Action;

7. For collection of civil penalties pursuant to Labor Code section 2699(f), a portion thereof to be distributed to the appropriate governmental agency(s);

8. That Plaintiff, Plaintiff Class Plaintiff Subclass members be awarded Attorneys' fees and costs pursuant to statute, including but not limited to Labor Code, section 1194 and Code of Civil Procedure, section 1021.5;

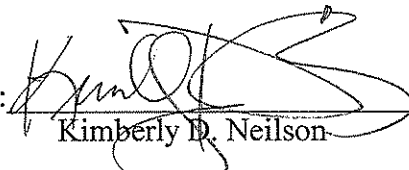
9. Otherwise determine the appropriate remedy to compensate Plaintiff, each Plaintiff Class and each Subclass member as required to promote fairness and justice, including

1 but not limited to establishing procedures for compensation, compensation amounts and fluid
2 recovery if appropriate;

- 3 10. Prejudgment Interest; and
- 4 11. Any other relief as this court deems proper.

5 COHELAN KHOURY & SINGER
6 Counsel for Plaintiff

7
8 Dated: October 20, 2009


9
10 By: 
11 Kimberly D. Neilson

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

14 COHELAN KHOURY & SINGER
15 Counsel for Plaintiff

16
17 Dated: October 20, 2009

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19 By: 
20 Kimberly D. Neilson

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1 **PROOF OF SERVICE**

2 *Steet v. Cost Plus, Inc.*
3 **Alameda Superior Court Case No. RG09456446**

4 I, Amber Worden, declare as follows:

5 I am over the age of 18 years and not a party to the within action. I am employed in the
6 County of San Diego, California, where the mailing occurs; and my business address is 605 "C"
7 Street, Suite 200, San Diego, California 92101-5305.

8 I further declare that I am readily familiar with the business' practice for collection and
9 processing of correspondence for mailing with United States Postal Service; and that the
10 correspondence shall be deposited with United States Postal Service this same day in the ordinary
11 course of business.

12 On October 20, 2009, I caused to be served a copy of the foregoing document(s):

13 **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND**
14 **RESTITUTION**

15 by placing a true copy of each document in a separate envelope addressed as follows:


16 **Counsel for Defendant**

17 Eric Meckley, Esq.
18 Steven K. Ganotis, Esq.
19 MORGAN LEWIS & BOCKIUS LLP
20 One Market, Spear Street Tower
21 San Francisco, CA 94105-1126
22 Telephone: (415) 442-1000
23 Facsimile: (415) 442-1001

24 I then caused service of each document in the manner described below:

- 25 **BY MAIL:** I placed each for deposit in the United States Postal Service this same day,
26 at my business address shown above, following ordinary business practices.
27 **BY FAX:** I transmitted the foregoing document(s) by facsimile to the party identified above
28 by using the facsimile number indicated. Said transmission(s) were verified as complete
and without error.
 BY UNITED PARCEL SERVICE: I placed each for deposit in the nearest
United Parcel Service drop box for pick up this same day and for "next/two day air"
delivery.
 STATE: I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed October 20, 2009, at San Diego, California.

27 
28 Amber Worden