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FILED - Joshua Tree District
 SUPERIOR COURT
 SAN BERNARDINO COUNTY

NOV 06 2008

By *[Signature]* Dep. Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF SAN BERNARDINO

10 JOHN JOSEPH SAINT JOHN,
 11 JULIO CESAR FLORES, ANTONIO
 AGUILAR,
 12 individually and on behalf of all
 others similarly situated,

13 Plaintiffs,

14 v.

15 TATITLEK SUPPORT SERVICES,
 16 INC., a corporation,
 TATITLEK/FORCE
 17 PREPAREDNESS TRAINING
 SERVICES, INC., a corporation, and
 18 DOES 1 through 75, inclusive,

18 Defendants.

Case No. **CVMS 800936**

**CLASS ACTION COMPLAINT FOR
 DECLARATORY AND INJUNCTIVE
 RELIEF AND DAMAGES FOR:**

1. VIOLATION OF LABOR CODE §§ 510 and 1198;
2. VIOLATION OF LABOR CODE §§ 226(a);
3. VIOLATION OF LABOR CODE §§ 201 AND 202;
4. VIOLATION OF LABOR CODE §§ 226.7(a) AND 512(a);
5. BREACH OF ORAL CONTRACT
6. CONVERSION AND THEFT OF LABOR;
7. VIOLATION OF LABOR CODE § 2802;
8. COMMON COUNTS FOR WORK, LABOR AND SERVICES PROVIDED
9. VIOLATION OF BUSINESS AND PROFESSION CODE §§ 17200, ET SEQ.

DEMAND FOR TRIAL BY JURY

28 **CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
 AND DAMAGES**

1 Plaintiffs JOHN JOSEPH SAINT JOHN, JULIO CESAR FLORES, AND ANTONIO
2 AGUILAR (hereinafter collectively referred to as "PLAINTIFFS"), individually and on
3 behalf of all others similarly situated, complain and allege as follows:

4
5 **INTRODUCTION**

6
7 1. Defendants TATITLEK SUPPORT SERVICES, INC. and
8 TATITLEK/FORCE PREPAREDNESS TRAINING SERVICES, INC. (collectively referred
9 to hereinafter as "TATITLEK" or "Tatitlek") provide the United States Marine Corps in
10 Twentynine Palms, California, with personnel (referred to as "Role Players" by defendant
11 TATITLEK) to interact with Marine Corps troops in realistic pre-deployment training
12 exercises during which defendant TATITLEK's personnel re-created what it will be like for
13 the U.S. troops to patrol in an Iraqi Village.

14
15 2. Defendant TATITLEK engaged in the unlawful wage and hour practice
16 of misclassifying the personnel that it provided to the Marine Corps at Twentynine Palms as
17 independent contractors (rather than as its employees) so that it could avoid having to pay
18 employer taxes or overtime wages. As a result of defendant TATITLEK's mis-classification,
19 defendant TATITLEK avoided payment of state and federal taxes that should have been
20 borne by it. Similarly, as a result of defendant TATITLEK's mis-classification, defendant
21 TATITLEK failed to provide its employees (including those individuals who should have
22 been classified as employees) with itemized wage statements as required by Labor Code §
23 226. As a result of defendant TATITLEK's knowingly and intentionally failure to provide its
24 employees (including those individuals who should have been classified as employees) with their
25 itemized wage statements, each Plaintiff suffered injury.

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27 3. Defendant TATITLEK also engaged in the unlawful wage and hour

1 practice of failing to pay its employees (including those individuals who should have been
2 classified as employees but were unlawfully classified as independent contractors) prevailing
3 wages and benefits.

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5 4. Defendant TATITLEK also engaged in the unlawful wage and hour
6 practice of failing to pay its non-exempt employees (including those individuals who should
7 have been classified as employees but were unlawfully classified as independent contractors)
8 overtime.

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10 5. Defendant TATITLEK also engaged in the unlawful wage and hour practice of
11 causing its employees (including those individuals who should have been classified as
12 employees but were unlawfully classified as independent contractors) to work more than six
13 days in seven in violation of Labor Code §§ 551 and 552.

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15 6. Defendant TATITLEK engaged in the unlawful wage and hour
16 practice of either failing to ensure that its employees took or not allowing its non-exempt
17 employees (including those individuals who should have been classified as employees but
18 were unlawfully classified as independent contractors) to take: (1) an uninterrupted 30
19 minute meal period when employed for a work period of more than 5 hours per day as
20 required by Labor Code §§ 512 and 226.7; (2) a second uninterrupted 30 minute meal period
21 when employed for a work period of more than 10 hours per day as required by Labor Code
22 §§ 512 and 226.7; and (3) a ten (10) minute rest period for every four (4) hours worked. In
23 this regard, Defendant TATITLEK knew or should have known that its employees, including
24 PLAINTIFFS, were not being provided with and not being allowed to take their meal and rest
25 periods and defendant TATITLEK either did not take steps to address the situation or affirmatively
26 allowed these violations to occur.

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1 **JURISDICTION AND VENUE**

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3 7. The Court has personal jurisdiction over the defendants because they are
4 residents of and/or doing business in the State of California.

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6 8. Venue is proper in this County in accordance with § 395(a) of the California
7 Code of Civil Procedure because Defendants entered into contracts with its employees in this
8 County. Venue is also proper in this County pursuant to California C.C.P. § 395.5 because
9 Defendants are corporations and a substantial portion of the underlying transactions and
10 events complained of herein occurred in this County and Defendants have received
11 substantial compensation from such transactions and business activity in this County.

12
13 **PARTIES**

14
15 9. Plaintiff JOHN JOSEPH SAINT JOHN is an individual who, at relevant times
16 during the events alleged herein, resided in Los Angeles County, California. Plaintiff JOHN
17 JOSEPH SAINT JOHN was, at all relevant times mentioned herein, an "employee" (within
18 the meaning of the California Labor Code) of Defendant TATITLEK.

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20 10. Plaintiff JULIO CESAR FLORES is an individual who, at relevant times
21 during the events alleged herein, resided in Los Angeles County, California. Plaintiff JULIO
22 CESAR FLORES was, at all relevant times mentioned herein, an "employee" (within the
23 meaning of the California Labor Code) of Defendant TATITLEK.

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25 11. Plaintiff ANTONIO AGUILAR is an individual who, at relevant times during
26 the events alleged herein, lived in Los Angeles County, California. Plaintiff ANTONIO
27 AGUILAR was, at all relevant times mentioned herein, an "employee" (within the meaning

1 of the California Labor Code) of Defendant TATITLEK.

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3 12. PLAINTIFFS are informed and believe, and thereon allege, that
4 defendant TATITLEK SUPPORT SERVICE, INC. is and, at all times mentioned herein, was
5 a corporation or other business entity qualified to and doing business in the State of
6 California. PLAINTIFFS are further informed and believe, and thereon allege, that
7 defendant TATITLEK is and was, at all relevant times mentioned herein, an "employer"
8 within the meaning of the California Labor Code.

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10 13. PLAINTIFFS are informed and believe, and thereon allege, that defendant
11 TATITLEK/FORCE PREPAREDNESS TRAINING SERVICES, INC. is and, at all times
12 mentioned herein, was a corporation or other business entity qualified to and doing business
13 in the State of California. PLAINTIFFS are further informed and believes and thereon
14 allege, that defendant TATITLEK/FORCE PREPAREDNESS TRAINING SERVICES,
15 INC. is and was, at all relevant times mentioned herein, an "employer" within the meaning of
16 the California Labor Code.

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18 14. PLAINTIFFS are informed and believe, and thereon allege, that defendant
19 TATITLEK/FORCE PREPAREDNESS TRAINING SERVICES, INC. is either a wholly
20 owned subsidiary or division of defendant TATITLEK SUPPORT SERVICE, INC. and that
21 defendants TATITLEK/FORCE PREPAREDNESS TRAINING SERVICES, INC. and
22 TATITLEK SUPPORT SERVICE, INC. have common management, centralized control of
23 labor relations, common ownership and financial control, overlapping employees and
24 interrelated operations such that these entities operated as a single, integrated enterprise with
25 regard to the employment of PLAINTIFFS. Alternatively, PLAINTIFFS are informed and
26 believe and thereon alleges defendants TATITLEK/FORCE PREPAREDNESS TRAINING
27 SERVICES, INC. and TATITLEK SUPPORT SERVICE, INC. were their joint employers.

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1 18. Defendant TATITLEK, seeking to circumvent and avoid its legal obligation to
2 (a) pay overtime and provide meal and rest breaks to its employees and (b) remit employer
3 taxes to the taxing authorities of the United States and California, misclassified these
4 employees, including PLAINTIFFS, as independent contractors, rather than as employees.
5 As such, defendant TATITLEK unlawfully not only failed to deduct payroll taxes from the
6 wages of Plaintiffs but also failed to pay the employer payroll taxes. As a result of defendant
7 TATITLEK's unlawful decision to misclassify these employees, including PLAINTIFFS, as
8 independent contractors rather than employees, these employees, including PLAINTIFFS,
9 were forced to incur more liability for social security taxes than they would have if they been
10 properly classified as employees.

11
12 19. Similarly, as a result of defendant TATITLEK's mis-classification, defendant
13 TATITLEK failed to provide its employees, including PLAINTIFFS, with itemized wage
14 statements as required by Labor Code § 226.

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16 20. Defendant TATITLEK failed to pay its employees, including PLAINTIFFS,
17 prevailing wages and benefits.

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19 21. Defendant TATITLEK failed to pay its employees, including PLAINTIFFS,
20 overtime.

21
22 22. Defendant TATITLEK engaged in the unlawful wage and hour
23 practice of causing its employees, including PLAINTIFFS, to work more than six days in
24 seven in violation of Labor Code §§ 551 and 552.

25
26 23. Defendant TATITLEK engaged in the unlawful wage and hour
27 practice of either failing to provide or not allowing its non-exempt employees (including
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1 PLAINTIFFS and the class members) to take: (1) an uninterrupted 30 minute meal period
2 when employed for a work period of more than 5 hours per day as required by Labor Code §§
3 512 and 226.7; (2) a second uninterrupted 30 minute meal period when employed for a work
4 period of more than 10 hours per day as required by Labor Code §§ 512 and 226.7; and (3) a
5 ten (10) minute rest period for every four (4) hours worked. In this regard, Defendant
6 TATITLEK knew or should have known that its employees were not being provided with and not
7 being allowed to take their meal and rest periods and defendant TATITLEK did not take steps to
8 address the situation.

9
10 24. PLAINTIFFS are informed and believes and thereon allege that at all times
11 herein mentioned, defendant TATITLEK was advised by skilled and knowledgeable lawyers,
12 human resources personnel and other professionals, employees and advisors who were aware
13 of California's employment wage and hour laws, about the requirements of California law.

14
15 25. Defendant TATITLEK knew or should have known that PLAINTIFFS and
16 other members of the class were improperly classified as independent contractors, were not
17 receiving prevailing wages, were not being paid overtime, were not receiving itemized wage
18 statements, were not receiving legally mandated meal and rest periods, were not receiving
19 one hour of pay on the occasions when they did not receive or were not allowed to take their
20 legally mandated meal and rest periods, did not receive their total wages owed following the
21 termination of their employment, because, among other things, defendant TATITLEK's
22 officers, managers, supervisors, agents and employees were responsible for and/or witnessed
23 such events.

24
25 **PLAINTIFF SAINT JOHN'S FACTUAL ALLEGATIONS**

26
27 26. In or about April 2006, MR. SAINT JOHN began employment with Defendant

1 TATITLEK. MR. SAINT JOHN's employment lasted through about March 2008. At no
2 time before, during, or after these periods of employment did MR. SAINT JOHN enter into a
3 written agreement with defendant TATITLEK with respect to the taking of an on-the-job
4 paid meal period.

5
6 27. During his employment, MR. SAINT JOHN was a "role player."

7
8 28. During his employment, MR. SAINT JOHN was unlawfully treated by
9 Defendant TATITLEK as an independent contractor and not as an employee. As a result of
10 defendant TATITLEK's mis-classification, defendant TATITLEK did not pay all of the
11 employment-related taxes (including social security taxes) that should have been borne by it.
12 Similarly, as a result of defendant TATITLEK's mis-classification, defendant TATITLEK
13 failed to provide MR. SAINT JOHN with itemized wage statements as required by Labor
14 Code § 226.

15
16 29. During his employment, defendant TATITLEK failed to pay MR. SAINT
17 JOHN prevailing wages and benefits.

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19 30. During each period of employment, MR. SAINT JOHN worked more than 8
20 hours in a day and more than 40 hours in a week and defendant TATITLEK failed to pay
21 MR. SAINT JOHN overtime pay.

22
23 31. Defendant TATITLEK engaged in the unlawful wage and hour practice of
24 causing MR. SAINT JOHN to work more than six days in seven in violation of Labor Code
25 §§ 551 and 552.

26
27 32. Defendant TATITLEK either failed to provide or regularly failed to allow MR.

1 SAINT JOHN to take: (1) an uninterrupted 30 minute meal period when employed for a work
2 period of more than 5 hours per day as required by Labor Code §§ 512 and 226.7; and (2) a
3 second uninterrupted 30 minute meal period when employed for a work period of more than
4 10 hours per day as required by Labor Code §§ 512 and 226.7; and (3) a ten (10) minute rest
5 period for every four (4) hours worked. In this regard, Defendant TATITLEK knew or should
6 have known that its employees, including PLAINTIFFS, were not being provided with or were not
7 being allowed to take their meal and rest periods and defendant TATITLEK did not take steps to
8 address the situation.

9
10 33. In violation of Labor Code §. 203, defendant TATITLEK did not pay
11 MR. SAINT JOHN his total wages owed following the termination of his employment.
12 Hence, a waiting time penalty, in addition to the wages owed, in the amount equal to 30 days'
13 of his total wages is due to MR. SAINT JOHN.

14
15 **PLAINTIFF FLORES' FACTUAL ALLEGATIONS**

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17 34. In or about June 2006, MR. FLORES began employment with Defendant
18 TATITLEK. MR. FLORES' employment has continued through about the present. At no
19 time before, during, or after these periods of employment did MR. FLORES enter into a
20 written agreement defendant TATITLEK with respect to the taking of an on-the-job paid
21 meal period.

22
23 35. During his employment, MR. FLORES was a "role player."

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25 36. During his employment, MR. FLORES was improperly treated by
26 TATITLEK as an independent contractor and not as an employee. As a result of
27 TATITLEK's mis-classification, TATITLEK did not pay all of the employment-related taxes

1 (including social security taxes) that should have been borne by it – thereby causing Mr.
2 Flores to incur liability for both the employee and employer portion of social security taxes
3 owed on his wages. Similarly, as a result of defendant TATITLEK's mis-classification,
4 TATITLEK failed to provide MR. FLORES with itemized wage statements as required by
5 Labor Code § 226.

6
7 37. During his employment, defendant TATITLEK failed to pay MR. FLORES
8 prevailing wages and benefits.

9
10 38. During each period of employment, MR. FLORES worked more than 8
11 hours in a day and more than 40 hours in a week and defendant TATITLEK failed to pay
12 MR. FLORES overtime pay.

13
14 39. Defendant TATITLEK engaged in the unlawful wage and hour practice of
15 causing MR. FLORES to work more than six days in seven in violation of Labor Code §§
16 551 and 552.

17
18 40. Defendant TATITLEK either failed to provide or did not allow MR. FLORES
19 to take: (1) an uninterrupted 30 minute meal period when employed for a work period of
20 more than 5 hours per day as required by Labor Code §§ 512 and 226.7; and (2) a second
21 uninterrupted 30 minute meal period when employed for a work period of more than 10
22 hours per day as required by Labor Code §§ 512 and 226.7; and (3) a ten (10) minute rest
23 period for every four (4) hours worked. In this regard, Defendant TATITLEK knew or should
24 have known that its employees, including PLAINTIFFS, either were not being provided with or were
25 not being allowed to take their meal and rest periods and defendant TATITLEK did not take steps to
26 address the situation.

1 45. During the first period of employment, MR. AGUILAR was improperly treated
2 by Defendant TATITLEK as an independent contractor and not as an employee. As a result
3 of defendant TATITLEK's mis-classification, defendant TATITLEK did not pay all of the
4 employment-related taxes (including social security taxes) that should have been borne by it.
5 Similarly, as a result of defendant TATITLEK's mis-classification, defendant TATITLEK
6 failed to provide MR. AGUILAR with itemized wage statements as required by Labor Code
7 § 226.

8
9 46. During each period of employment, defendant TATITLEK failed to pay
10 MR. AGUILAR prevailing wages and benefits.

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12 47. During each period of employment, MR. AGUILAR worked more than 8 hours
13 in a day and more than 40 hours in a week and defendant TATITLEK failed to pay MR.
14 AGUILAR overtime pay.

15
16 48. Defendant TATITLEK engaged in the unlawful wage and hour practice of
17 causing MR. AGUILAR to work more than six days in seven in violation of Labor Code §§
18 551 and 552.

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20 49. Defendant TATITLEK either failed to provide or did not allow MR.
21 AGUILAR to take: (1) an uninterrupted 30-minute meal period when employed for a work
22 period of more than 5 hours per day as required by Labor Code §§ 512 and 226.7; (2) a
23 second uninterrupted 30 minute meal period when employed for a work period of more than
24 10 hours per day as required by Labor Code §§ 512 and 226.7; and (3) a ten (10) minute rest
25 period for every four (4) hours worked. In this regard, Defendant TATITLEK knew or should
26 have known that its employees, including PLAINTIFFS, either were not receiving or were not being
27 allowed to take their meal and rest periods and defendant TATITLEK did not take steps to address

1 the situation.

2
3 50. In violation of Labor Code § 203, defendant TATITLEK did not pay
4 MR. AGUILAR his total wages owed following the termination of his employment. Hence,
5 a waiting time penalty, in addition to the wages owed, in the amount equal to 30 days' of his
6 total wages is due to MR. AGUILAR.

7
8 51. On or about September 2007, Defendants offered to pay Mr. Aguilar and other
9 members of the class approximately \$2,698 to participate in a ten day role playing exercise.
10 Mr. Aguilar accepted Defendants' offer (as did about 100 other employees). After Mr.
11 Aguilar and other members of the class performed as specified by the contract, Defendants
12 breached the contract by paying Mr. Aguilar (and other members of the class) only about
13 \$2,400 instead of the promised \$2,698.

14
15 **CLASS ACTION ALLEGATIONS**

16
17 52. PLAINTIFFS bring this action on behalf of themselves and all others similarly
18 situated as a class action pursuant to California Code of Civil Procedure § 382.

19
20 53. All claims alleged herein under arise under California law for which
21 PLAINTIFFS seek relief authorized under California law.

22
23 54. The class that PLAINTIFFS seek to represent is composed of and defined as
24 follows:

25
26 **Subclass One** – All individuals hired by defendant TATITLEK to work at the Marine
27 Corps base at Twentynine Palms, California within four (4) years of the

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filing of this complaint who were misclassified as independent contractors rather than as employees.

Subclass Two – All of defendant TATITLEK non-exempt employees working at the Marine Corps base at Twentynine Palms, California within four (4) years of the filing of this complaint who were not paid overtime.

Subclass Three – All of defendant TATITLEK's non-exempt employees working at the Marine Corps base at Twentynine Palms, California within four (4) years of the filing of this complaint who were not given itemized wage statements as required by Labor Code § 226.

Subclass Four – All of defendant TATITLEK non-exempt employees working at the Marine Corps base at Twentynine Palms, California within four (4) years of the filing of this complaint who were not paid prevailing wages and benefits.

Subclass Five – All of defendant TATITLEK non-exempt employees working at the Marine Corps base at Twentynine Palms, California within four (4) years of the filing of this complaint who were neither provided with their meal and/or rest period nor given one hour additional pay for each work day that the meal or rest period was not provided.

Subclass Six – All of defendant TATITLEK non-exempt employees working at the Marine Corps base at Twentynine Palms, California whose employment was terminated within four (4) years of the filing of this complaint who were not paid his or her full wages: (a) at the time of the termination his

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or her employment if the termination was involuntary or (b) within 72 hour if the termination was voluntary.

Subclass Seven – All of defendant TATITLEK non-exempt employees working at the Marine Corps base at Twentynine Palms, California who on or about September 2007 were offered \$1,450 in pay to work certain particular role playing assignments but later were told they would receive only approximately \$1,000 per assignment. This “bait and switch” happened again (approximately) two to six times.

Subclass Eight – All of defendant TATITLEK non-exempt employees working at the Marine Corps base at Twentynine Palms, California who on or about September 2007 were offered \$2,698 in pay to work certain particular role playing assignments but later were told they would receive only approximately \$2,400 per assignment. This “bait and switch” happened again (approximately) two to four times.

55. The members of the class are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the entire class is unknown to PLAINTIFFS at this time, however, it is estimated that the entire class is greater than 100 individuals, but the identity of such membership is readily ascertainable via inspection of the personnel records and other documents maintained by defendant TATITLEK.

56. There are common questions of law and fact as to the class which predominate over questions affecting only individual members including, without, limitation:

A. Whether defendant TATITLEK’s misclassified the individuals it had working at the

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Marine Corps base at Twentynine Palms, California as independent contractors rather than as employees;

- B. Whether defendant TATITLEK's policy and practice of failing to provide wage statements as required by Labor Code § 226 to its employees working at the Marine Corps base at Twentynine Palms, California is unlawful;
- C. Whether defendant TATITLEK's policy and practice of failing to reimburse employees working at the Marine Corps base at Twentynine Palms, California for the expenses they incurred as a direct consequence of discharging their duties and/or obeying the directions of defendant TATITLEK is unlawful (e.g., the employer taxes that defendant TATITLEK should have paid but instead were paid by the employees);
- D. Whether defendant TATITLEK unlawfully failed to pay its employees working at the Marine Corps base at Twentynine Palms, California prevailing wages and benefits;
- E. Whether defendant TATITLEK unlawfully failed to pay its employees working at the Marine Corps base at Twentynine Palms, California overtime;
- F. Whether defendant TATITLEK unlawfully failed to provide its employees working at the Marine Corps base at Twentynine Palms, California with meal and/or rest periods;
- G. Whether defendant TATITLEK unlawfully failed to pay one hour of pay to each of those employees working at the Marine Corps base at Twentynine Palms, California who were not provided with uninterrupted meal and/or rest

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periods;

H. Whether defendant TATITLEK unlawfully caused employees working at the Marine Corps base at Twentynine Palms, California to work more than six days in seven;

I. Whether defendant TATITLEK unlawfully and wilfully failed to pay employees working at the Marine Corps base at Twentynine Palms, California their total wages owed following the termination of their employment.

J. Whether defendant TATITLEK unlawfully failed to pay orally agreed upon wages to employees after they had agreed to serve on certain multi-day role-playing missions and had lived up to their end of the bargain by in fact completing those missions;

K. Whether defendant TATITLEK's conduct was unlawful and/or unfair in violation of California Business and Professions Code § 17200 *et. seq.*;

L. The appropriate measure injunctive relief;

M. The appropriate measure of damages or restitution or disgorgement of profits;

N. The appropriate amount of monetary penalties arising from defendant TATITLEK's violations of the California Labor Code.

57. The claims of PLAINTIFFS pled as class action claims are typical of the claims of all members of the class. PLAINTIFFS, as representative parties, will fairly and

1 adequately protect the interests of the class by vigorously pursuing this suit through their
2 attorneys, who are skilled and experienced in handling matters of this type.

3
4 58. A class action is superior to other available means for the fair and efficient
5 adjudication of this dispute. The damages suffered by each individual class member likely
6 will be relatively small, especially given the burden and expense of individual prosecution of
7 the complex litigation necessitated by defendant TATITLEK's conduct. Thus, it would be
8 virtually impossible for the class members individually to effectively redress the wrongs done
9 to them. Moreover, even if the class members could afford individual actions, it would still
10 not be preferable to class wide litigation. Individualized actions present the potential for
11 inconsistent or contradictory judgments. By contrast, a class action presents far fewer
12 management difficulties and provides the benefits of single adjudication, economies of scale,
13 and comprehensive supervision by a single court.

14
15 59. PLAINTIFFS reserve the right to modify or amend the class definition as
16 appropriate, including for the purpose of conforming with discovery, and/or to seek
17 certification of subclasses and or limited issues pursuant to California Rule of Court
18 3.765(b).

19
20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY WAGES IN VIOLATION OF LABOR CODE §§ 510 and 1198 ET.**

22 **SEQ.**

23 (Against All Defendants)

24
25 60. PLAINTIFFS re-allege and incorporate by reference paragraphs 1 through 59,
26 as though set forth in full.

1 61. At all times herein set forth, California Labor Code § 510 provided that
2 eight hours of labor constitutes a day's work and that:

3
4 (A) Any work in excess of eight hours in one workday and any work in excess of
5 40 hours in any one workweek and the first eight hours worked on the seventh
6 day of work in any one workweek shall be compensated at the rate of no less
7 than one and one-half times the regular rate of pay for an employee;

8
9 (B) Any work in excess of 12 hours in one day shall be compensated at the rate of
10 no less than twice the regular rate of pay for an employee; and

11
12 (C) Any work in excess of eight hours on any seventh day of a workweek shall be
13 compensated at the rate of no less than twice the regular rate of pay of an
14 employee.

15
16 62. At all times herein set forth, California Labor Code § 1198 provided that
17 it is unlawful to employ persons for longer than the hours set by the Industrial Welfare
18 Commission ("IWC"). At all times herein set forth, the IWC Wage Order applicable to
19 defendant TATITLEK and its employees (including MR. AGÜILAR and the class members)
20 provides that:

21
22 (A) Employee working in excess of eight hours in one workday and any work in
23 excess of 40 hours in any one workweek and the first eight hours worked on
24 the seventh day of work in any one workweek shall be compensated at the rate
25 of no less than one and one-half times the regular rate of pay for an employee;

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27 (B) Employee working in excess of 12 hours in one day shall be compensated at the

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rate of no less than twice the regular rate of pay for an employee; and

© Employee working in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

63. During the relevant time period, defendant TATITLEK failed to pay overtime wages to PLAINTIFFS and the other members of Subclass Two.

64. Defendant TATITLEK's failure to pay PLAINTIFFS and other members of Subclass Two the unpaid balance of overtime compensation as required by California state law, violates the provisions of California Labor Code §§ 510 and 1198 and is therefore unlawful.

65. Pursuant to Labor Code § 1194, PLAINTIFFS and other members of Subclass Two are entitled to recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

66. As a result of defendants' failure to pay PLAINTIFFS and other members of Subclass Two their unpaid overtime compensation as alleged herein, PLAINTIFFS and other member of Subclass Two are entitled to interest on their unpaid wages from the date they were due as provided in § 218.6 of the California Labor Code

67. As a result of DEFENDANTS' conduct as alleged herein, PLAINTIFFS are entitled to reasonable attorneys' fees and costs of suit as provided in § 218.5 of the California Labor Code and California Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE WAGE STATEMENTS IN VIOLATION OF LABOR

CODE §§ 226(a) ET. SEQ.

(Against All Defendants)

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68. PLAINTIFFS re-allege and incorporate by reference paragraphs 1 through 59, as though set forth in full.

69. At all times herein set forth, California Labor Code § 218 authorizes employees to sue directly for any wages or penalty due to them under the California Labor Code.

70. Defendant TATITLEK have either reckless or intentionally failed to either make, keep and preserve true, accurate, and complete records and/or furnish such records to its employees pursuant to the requirements of California Labor Code § 226(a).

71. PLAINTIFFS and the other members of Subclass Three are entitled to recover from defendant TATITLEK the greater of their actual damages caused by Defendant TATITLEK's failure to comply with California Labor Code § 226(a) or an aggravate penalty not exceeding four thousand dollars (\$4,000.00), and an award of costs and reasonable attorneys' fees pursuant to California Labor Code § 226(e) and California Code of Civil Procedure §1021.5.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201 and 202

(Against All Defendants)

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72. PLAINTIFFS re-allege and incorporates by reference paragraphs 1 through 59 as though set forth in full.

73. At all times herein set forth, California Labor Code § 218 authorizes employees to sue directly for any wages or penalty due to them under the Labor Code.

74. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

75. During the relevant time period, defendant TATITLEK failed to pay PLAINTIFFS and the other members of Subclass Three, who are no longer employed by defendants, their wages earned and unpaid at the time of discharge or within seventy-two (72) hours of their leaving defendants' employ.

76. California Labor Code § 203 provides that if an employer willfully fails to pay earned but unpaid wages, in accordance with California Labor Code §§ 201 and 202, any wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is therefore commenced; but the wages shall not continue for

1 more than thirty (30) days. Suit may be filed for these penalties at any time before the
2 expiration of the statute of limitations on an action for the wages from which the penalties
3 arise.

4
5 77. PLAINTIFFS and the other members of Subclass Three are entitled to
6 recover from defendants the statutory penalty for each day that they were not paid at their
7 regular rate of pay up to a thirty (30) day maximum pursuant to California Labor Code § 203.

8
9 78. PLAINTIFFS and the other members of Subclass Three are entitled to
10 recover from defendant TATITLEK an award of interest, costs and reasonable attorneys' fees
11 pursuant to California Labor Code §§ 218.5 and 218.6 and California Code of Civil
12 Procedure § 1021.5.

13
14 **FOURTH CAUSE OF ACTION**
15 **VIOLATION OF LABOR CODE §§ 226.7(a) AND 512(a)**
16 **(Against All Defendants)**

17 79. PLAINTIFFS re-allege and incorporates by reference paragraphs 1
18 through 59 as though set forth in full.

19
20 80. At all times herein set forth, California Labor Code § 218 authorizes
21 employees to sue directly for any wages or penalty due to them under the Labor Code.
22

23 81. At all times herein set forth, the Industrial Welfare Commission ("IWC") Wage
24 Orders and California Labor Code §§ 226.7(a) and 512(a) were applicable to defendant
25 TATITLEK and its employees including PLAINTIFFS and the other members of Subclass
26 Five.
27

1 a 30 minute meal period, the meal period shall be considered an "on duty" meal period and
2 counted as time worked. An "on duty" meal period shall be permitted only when the nature of
3 the work prevents an employee from being relieved of all duty and when by written
4 agreement between the parties an on-the-job paid meal period is agreed to. The written
5 agreement shall state that the employee may, in writing, revoke the agreement at any time.

6
7 86. At all times herein set forth, the relevant IWC Wage Order further provides that
8 every employer shall authorize and permit all employees to take rest periods, which insofar as
9 practicable shall be in the middle of each work period. The authorized rest period time shall
10 be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four
11 (4) hours or major fraction thereof. Authorized rest period time shall be counted as hours
12 worked for which there shall be no deduction from wages. If an employer fails to provide an
13 employee a rest period in accordance with the applicable provisions of this order, the
14 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
15 compensation for each workday that the rest period is not provided.

16
17 87. During the relevant time, defendant TATITLEK either allowed or required
18 PLAINTIFFS and the other members of Subclass Five to work more than four hours without
19 providing a ten (10) minute rest period.

20
21 88. During the relevant time, defendant TATITLEK either allowed or required
22 PLAINTIFFS and the other members of Subclass Five to work an additional four hours (e.g.,
23 a total of 8 hours) without providing a ten (10) minute rest period. Instances of these
24 violations included role-playing exercises when PLAINTIFFS did not receive or were not
25 allowed to take breaks so as to increase the verisimilitude of the exercises for the U.S.
26 military.

1 89. During the relevant time, defendant TATITLEK either allowed or required
2 PLAINTIFFS and the other members of Subclass Five to work an additional four hours (*e.g.*
3 a total of 12 hours) without providing a ten (10) minute rest period.

4 90. During the relevant time, defendant TATITLEK either allowed or required
5 PLAINTIFFS and the other members of Subclass Five to work an additional four hours (*e.g.*
6 a total of 16 hours) without providing a ten (10) minute rest period.
7

8 91. During the relevant time, defendant TATITLEK scheduled PLAINTIFFS
9 and the other members of Subclass Five, who did not legally waive their meal periods, to
10 work for a period of time longer than six (6) hours without a meal period and, as such
11 PLAINTIFFS and the other members of Subclass Five did not get their meal periods.
12

13 92. During the relevant time, defendant TATITLEK scheduled PLAINTIFFS
14 and the other members of Subclass Five, who did not legally waive their meal periods, to
15 work for a period of time longer than twelve (12) hours without a meal period and, as such,
16 PLAINTIFFS and the other members of Subclass Five did not get their meal periods.
17

18 93. During the relevant time, Defendant TATITLEK knew or should have known
19 that its employees, including PLAINTIFFS and the class members, were not being provided
20 with and not being allowed to take their meal and rest periods.
21

22 94. During the relevant time, defendant TATITLEK failed to pay PLAINTIFFS
23 and the other members of Subclass Five one (1) hour of pay at the employees' regular rate of
24 compensation for each workday that a meal and/or rest period was not provided.
25

26 95. Pursuant to the relevant IWC Wage Order and California Labor Code §
27

1 226.7(b), PLAINTIFFS and the other members of Subclass Five are entitled to recover from
2 defendant TATITLEK one (1) hour of pay at the employees' regular rate of compensation for
3 each workday that a meal period was not provided and an additional one (1) hour of pay at
4 the employees' regular rate of compensation for each work day that a rest period was not
5 provided.

6
7 96. PLAINTIFFS and the other members of Subclass Five are entitled to
8 recover from defendant TATITLEK an award of interest, costs and reasonable attorneys' fees
9 pursuant to California Labor Code §§ 218.5 and 218.6 and California Code of Civil
10 Procedure §1021.5.

11
12 **FIFTH CAUSE OF ACTION**
13 **BREACH OF ORAL CONTRACT**
14 (Against All Defendants)

15
16 97. PLAINTIFFS incorporates by reference the allegations in paragraphs 1 through
17 59 herein as if set forth in full.

18
19 98. On or about September 2007, Tatitlek – who was competing with
20 another military base for role players – told Mr. Flores and other employees that it would pay
21 them approximately \$1,450 to participate in a four-day role playing exercise. Mr. Flores
22 accepted this offer (as did approximately 200 to 280 other employees) but after he completed
23 the assignment, Tatitlek stated that it would pay only approximately \$1,000 and in fact paid
24 less than the promised \$1,450.

25
26 99. Similarly, on or about September 2007 Tatitlek told Mr. Aguilar and other
27 employees that it would pay them \$2,698 to work certain four-day role playing assignments.

1 but then paid only approximately \$2,400 per assignment.

2
3 100. DEFENDANTS' failure to pay these agreed upon wages constitutes a material
4 breach of their oral agreements with Messrs. Flores and Aguilar (and the hundreds of other
5 similarly affected employees of DEFENDANTS). As a result, damages have been incurred
6 in an amount to be proved at trial but on a class-wide basis are believed to exceed \$90,000.
7 Plaintiffs also are entitled to prejudgment interest in an amount to be proved at trial.

8
9 **SIXTH CAUSE OF ACTION**
10 **CONVERSION AND THEFT OF LABOR**
11 (Against All Defendants)

12
13 101. PLAINTIFFS re-alleges and incorporates by reference paragraphs 1
14 through 59, 69 - 71, 73 - 78, 80 - 95 and 98 - 100, as though set forth in full.

15
16 102. Pursuant to statute, including but not limited to California Labor Code §§
17 216 and 225, it is a violation of law to fail to pay wages on the next payday after they are
18 earned.

19
20 103. During the relevant time period, defendant TATITLEK failed to pay wages due
21 to PLAINTIFFS and the other members of Subclasses two (2), four (4), five (5), and six (6);
22 as alleged herein. PLAINTIFFS and the other members of these Subclasses owned and had
23 the right to possess the withheld wages. Defendant TATITLEK willfully and without legal
24 justification interfered with their right to own and possess earned wages. The exact amount
25 of those wages is capable of being made certain from review of either the information of
26 PLAINTIFFS and the other members of these Subclasses and/or from the records of
27 defendant TATITLEK.

1 104. In refusing to pay wages to PLAINTIFFS and the other members of these
2 Subclasses, Defendant TATITLEK unlawfully and intentionally took and converted the
3 property of PLAINTIFFS and the other members of these Subclasses to its own use. At the
4 time the conversion took place, PLAINTIFFS and the other members of these
5 Subclasses were entitled to immediate possession of the amounts of wages payable. This
6 conversion was oppressive, malicious and fraudulent. This conversion was concealed by
7 defendant TATITLEK from PLAINTIFFS and the other members of these Subclasses. The
8 exact amount of those wages is capable of being made certain from of review of either the
9 information of PLAINTIFFS and the other members of these Subclasses and/or from the
10 records of defendant TATITLEK.

11
12 105. PLAINTIFFS and the other members of these Subclasses have been injured
13 by this conversion and are entitled to all monies converted by defendant TATITLEK with
14 interest thereon pursuant to California Civil Code §3336, any and all profits whether direct or
15 indirect, that the defendant acquired by their and punitive or exemplary damages pursuant to
16 California Code of Civil Procedure §3294.

17
18 **SEVENTH CAUSE OF ACTION**
19 **VIOLATION OF LABOR CODE § 2802**
20 **(Against All Defendants)**

21
22 106. PLAINTIFFS re-allege and incorporates by reference paragraphs 1
23 through 59 as though set forth in full.

24
25 107. California Labor Code §2802(a) provides that an employer shall
26 indemnify his or her employee for all necessary expenditures or losses incurred by the
27 employee in direct consequence of the discharge of his or her duties, or of his or her

1 obedience to the directions of the employer, even though unlawful, unless the employee, at
2 the time of obeying the directions, believed them to be unlawful.

3
4 108. As alleged herein and in violation of California Labor Code §
5 2802, defendant TATITLEK unlawfully misclassified PLAINTIFFS and the other members
6 of Subclass One (1) as independent contractors rather than employees. As a consequence,
7 PLAINTIFFS and the other members of Subclass One (1) were forced to incur certain
8 necessary expenditures or losses including the payment of certain taxes and related
9 obligations that they would not have incurred had defendant TATITLEK properly classified
10 them as employees.

11
12 109. By the aforesaid acts and omissions of defendants, and each of them,
13 PLAINTIFFS and the other members of Subclass One (1) has been directly and legally
14 caused to suffer actual damages including, but not limited to, unreimbursed expenditures,
15 attorneys fees, and costs of suit.

16
17 110. PLAINTIFFS are informed and believes and thereon alleges that the
18 defendant TATILEK, and each them, by engaging in the aforementioned acts and/or in
19 authorizing and/or ratifying such acts, engaged in wilful, malicious, intentional, oppressive
20 and despicable conduct, and acted with wilful and conscious disregard of the rights of
21 PLAINTIFFS and the other members of Subclass One (1), thereby justifying the award of
22 punitive and exemplary damages in an amount to be determined at trial.

23
24 111. Pursuant to Labor Code §2802, PLAINTIFFS are entitled to
25 reasonable attorneys fees and costs of suit.

EIGHTH CAUSE OF ACTION

COMMON COUNTS FOR WORK, LABOR AND SERVICES PROVIDED

(Against all Defendants)

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115. PLAINTIFFS re-alleges and incorporates by reference paragraphs 1 through 59; 61 - 67, 69 - 71, 73 - 78, 80 - 95, 98 - 100, 102 - 105, and 107 - 111, as though set forth in full.

116. On or about September 2007, defendant TATITLEK became indebted to Messrs. Flores and Aguilar and the other members of Subclasses 7 and 8 for the agreed sum of (respectively) \$1,450.00 and \$2,698 for work, labor and services performed by them in September 2007 at the request of Tatitlek and in conjunction with the foregoing respective four day and ten day role playing missions. Defendant has paid only about \$1,000.00 of the promised sum to Mr. Flores and the other members of Subclass 7, leaving a balance due of about \$450.00 with pre-judgment interest at the rate of ten percent per year to Mr. Flores and each of the other members of Subclass 7; and Defendant has paid only \$2,400 of the promised sum to Mr. Aguilar and the other members of Subclass 8, leaving a balance due of about \$298 with pre-judgment interest at the rate of 10 percent per year to Mr. Aguilar and each of the other members of Subclass 8.

117. On additional occasions after September 2007, defendant TATITLEK became indebted to Messrs. Flores and Aguilar and the other members of Subclasses 7 and 8 for the agreed sums of (respectively) \$1,450 and \$2,698 for work, labor and services performed by Messrs. Flores and Aguilar and the other members of Subclasses 7 and 8 in conjunction with multi-day role playing missions. On each such occasion, defendant TATITLEK paid less than the promised sum to Messrs. Flores and Aguilar and the other members of Subclasses 7 and 8, leaving a balance due to each of the subject Plaintiffs and the other members of

1 Subclasses 7 and 8 in an amount to be proved at trial (along with pre-judgment interest on
2 that date at the rate of ten percent per year).

3
4 **NINTH CAUSE OF ACTION**

5 **UNFAIR BUSINESS ACTS AND PRACTICES IN VIOLATION OF BUSINESS AND**
6 **PROFESSION CODE §§ 17200 ET. SEQ.**

7 (Against All Defendants)

8
9 118. PLAINTIFFS re-allege and incorporate by reference paragraphs 1
10 through 59, 69 - 71, 73 - 78, 81 - 96, 98 - 100, 102 - 105, 107 - 111, and 116 - 117, as though
11 set forth in full.

12
13 119. DEFENDANTS' unlawful and unfair practices as alleged herein violate
14 California law and constitute ongoing and continuous unfair business practices within the
15 meaning of Business and Professions Code § 17200. Such practices include, but are not
16 limited to, DEFENDANTS' unlawful and/or unfair policy and practice of: (1) mis-classifying
17 its employees as independent contractors; (2) failing to pay its employees prevailing wages
18 and benefits; failing to pay its overtime; and (3) failing to reimburse its employees for costs
19 and expenses incurred as a direct consequence of discharging their duties and/or obeying the
20 directions of DEFENDANTS in violation of Labor Code § 2802.

21
22 120. By engaging in the aforementioned unfair business acts and
23 practices, DEFENDANTS enriched themselves at the expense of PLAINTIFFS and the
24 PLAINTIFF CLASS and gained an unfair advantage over their competitors.

25
26 121. California Business and Professions Code § 17200 prohibits unfair
27 competition and unfair business practices, including, "any unlawful, unfair or fraudulent

1 business act or practice” DEFENDANTS’ conduct as specified herein, constitutes a
2 violation of California Business and Professions Code § 17200, et seq.

3
4 122. As a result of DEFENDANTS’ unfair business practices, DEFENDANTS’
5 have reaped unfair benefits and illegal profits at the expense of PLAINTIFFS, the
6 PLAINTIFF CLASS and members of the public. DEFENDANTS should be made to
7 disgorge their ill-gotten gains and restore such monies to PLAINTIFFS and the PLAINTIFF
8 CLASS.

9
10 123. DEFENDANTS’ unfair business practices entitle PLAINTIFFS and
11 the PLAINTIFF CLASS to seek preliminary and permanent injunctive relief, including but
12 not limited to, orders that the DEFENDANTS account for, disgorge and restore to
13 PLAINTIFFS and the PLAINTIFF CLASS the compensation unlawfully withheld from
14 them. Accordingly, PLAINTIFFS seek disgorgement of all profits resulting from these
15 unlawful, unfair, and fraudulent business practices, restitution, and other appropriate relief
16 as provided for by Business & Professions Code § 17203. unfair business practices entitle
17 PLAINTIFFS and the PLAINTIFF CLASS to seek preliminary and permanent injunctive
18 relief, including but not limited to, orders that the DEFENDANTS account for, disgorge and
19 restore to PLAINTIFFS and the PLAINTIFF CLASS the compensation unlawfully withheld
20 from them. Accordingly, PLAINTIFFS seek disgorgement of all profits resulting from these
21 unlawful, unfair, and fraudulent business practices, restitution, and other appropriate relief
22 as provided for by Business & Professions Code § 17203.

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14. Reasonable attorneys fees pursuant to Labor Code §218.5, Labor Code § 2802(b), Labor Code § 1194(a), and California Code of Civil Procedure § 1021.5 and other applicable provisions of law;

15. Costs of suit;

16. Interest; and

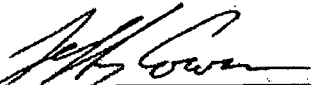
17. For such other further relief as the Court deems proper.

DATED: November 6, 2008

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Jeffrey W. Cowan

By:



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Attorneys for Plaintiffs
John Joseph Saint John, Julio Cesar Flores and
Antonio Aguilar

PLAINTIFFS' DEMAND FOR JURY TRIAL

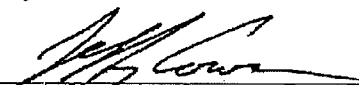
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Plaintiffs JOHN JOSEPH SAINT JOHN, JULIO CESAR FLORES, and ANTONIO AGUILAR, hereby demands a trial by jury.

DATED: November 6, 2008

HELMER • FRIEDMAN, LLP
Gregory D. Helmer
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THE COWAN LAW FIRM
Jeffrey W. Cowan


By: Jeffrey W. Cowan
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