

1 ANTICOUNI & ASSOCIATES  
A Professional Corporation  
2 Bruce N. Anticouni (#050022)  
Heather A. Quest (#186740)  
3 23 East De la Guerra Street  
Santa Barbara, CA 93101  
4 Telephone: (805) 962-0467  
Facsimile: (805) 962-7501

5 Attorneys for Plaintiffs

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

MAR 04 2008

John A. Clarke, Executive Officer/Clerk  
By Jalon Taylor, Deputy

8 SUPERIOR COURT IN THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

11 DON TRAN, an individual; CHAD  
ALDRICH, an individual; and RYAN  
12 MINEBURG, an individual; for  
themselves, and on behalf of all others  
13 similarly situated,

14 Plaintiffs,

15 vs.

16 PROTIVITI CORPORATION, a  
17 Delaware corporation; and DOES 1  
through 52, inclusive,

18 Defendants.

Case No. BC351862

[Assigned to the Hon. David L. Minning for all purposes]

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Unpaid Overtime Wages (Labor Code Section 1194 and Wage Order No. 4-2001);
2. Unpaid Meal and Rest Breaks (Labor Code Section 226.7);
3. Violation of Labor Code Section 203 (the Sub-Class);
4. Violation of Labor Code § 2802 (Failure to Reimburse for Business Expenses); and
5. Unfair Business Practices, Business & Professions Code, Sections 17200, et seq.

21 Plaintiffs DON TRAN ("Plaintiff TRAN" or "TRAN"), CHAD ALDRICH ("Plaintiff  
22 ALDRICH" OR "ALDRICH"), an individual, and RYAN MINEBURG ("Plaintiff MINEBURG"  
23  
24  
25  
26

1 or "MINEBURG") for themselves, and on behalf of all others similarly situated (collectively  
2 "Plaintiffs"), allege as follows:

3 JURISDICTION AND VENUE

4 1. This Court has jurisdiction over this action because it is a class action arising within  
5 the jurisdictional limits of this Court. Venue is proper because the claims arose within this judicial  
6 district.

7 GENERAL ALLEGATIONS

8 2. At all times herein mentioned, Defendant PROTIVITI CORPORATION  
9 ("Defendant" or "PROTIVITI") was, and is, a Delaware corporation duly authorized to do business  
10 in the State of California with employees performing services in the State of California, including  
11 the County of Los Angeles. PROTIVITI is engaged in the business of Sarbannes-Oxley compliance  
12 consultation. PROTIVITI has approximately four office locations in the State of California.  
13 Approximately 500 individuals presently or formerly employed at PROTIVITI work under the job  
14 title of "CONSULTANTS" and have not been paid proper compensation in accordance with  
15 California laws and regulations.

16 3. At all times herein mentioned Plaintiff TRAN was and is a resident of the State of  
17 California. TRAN was employed by PROTIVITI at its location in the City of Los Angeles, State  
18 of California, as a CONSULTANT from August 23, 2005 through January 2006.

19 4. At all times herein mentioned Plaintiff ALDRICH was a resident of the State of  
20 California. ALDRICH was employed by PROTIVITI at its location in the City of San Francisco,  
21 State of California, as a CONSULTANT from July 2005 through February 2007.

22 5. At all times herein mentioned Plaintiff MINEBURG was and is a resident of the State  
23 of California. MINEBURG was employed by PROTIVITI at its location in the City of Los Angeles,  
24 State of California, as a CONSULTANT from October 2005 until June 2006.

25 6. The true names and capacities, whether individual, corporate, associate, or otherwise,  
26 of Defendant sued herein as DOES 1 through 52, inclusive, are currently unknown to Plaintiffs, who  
27 therefore sue defendants by such fictitious names. Plaintiffs are informed and believe, and based  
28 thereon allege, that each of the defendants designated herein as a DOE is legally responsible in some

1 manner for the events and happenings referred to herein and caused injury and damage proximately  
2 thereby to Plaintiffs as hereinafter alleged. Plaintiffs will seek leave of Court to amend this  
3 Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES  
4 when the same have been fully ascertained.

5 7. Whenever in the Complaint reference is made to “defendants, and each of them” such  
6 allegations shall be deemed to mean the acts of defendants acting individually, jointly, and/or  
7 severally.

8 8. Plaintiffs are informed and believe, and based thereon allege, that at all times  
9 mentioned herein, each of the defendants was the agent, servant, employee, co-venturer, and co-  
10 conspirator of each of the remaining defendants, and was at all times herein mentioned, acting within  
11 the course, scope, purpose, consent, knowledge, ratification, and authorization for such agency,  
12 employment, joint venture and conspiracy.

13 9. This action is also brought pursuant to California Code of Civil Procedure,  
14 Section 382, on behalf of a class. The class is composed of all current and former PROTIVITI  
15 employees (collectively the “Class Members”) under California’s Industrial Welfare Commission  
16 Wage Order No. 4-2001 (“Wage Order”), who worked for PROTIVITI in California at any time  
17 from April 4, 2002 through the present time in the position of CONSULTANT. Plaintiffs also  
18 challenge the business practices of PROTIVITI and seek compensation on behalf of terminated and  
19 current CONSULTANTS (the “Class”) and the general public pursuant to California Business and  
20 Professions Code, Section 17200, *et seq.*

21 10. This action is also brought by Plaintiffs on behalf of a Sub-Class of the Class,  
22 consisting of CONSULTANTS whose employment with PROTIVITI ended at any time since  
23 April 4, 2002, for 30 days waiting time penalties pursuant to California Labor Code, Section 203 (the  
24 “203 Sub-Class”).

25 11. The members of the Class and Sub-Class are so numerous that the joinder of all  
26 members would be impractical and the disposition of their claims in a class action rather than in  
27 individual actions will benefit the parties and the Court. Individual actions or individual remedies  
28 are impracticable. There is a well-defined community of interest in the questions of law or fact

1 affecting the Plaintiffs' class in that the legal questions of violation of the contractual agreements  
2 with its employees, the California Labor Code, the California Business & Professions Code Sections  
3 17200, *et seq.*, ("Unfair Trade Practices Act"), are common to the Class and Sub-Class. The factual  
4 questions relating to the amount of unpaid wages of which PROTIVITI has deprived Class  
5 Members and applicable penalties for the Sub-Class are also common to the Class and Sub-Class.

6 12. The questions of law and fact common to all members of the Class and Sub-Class  
7 predominate over any questions affecting only individual members and a class action is superior to  
8 any other available method for the fair and efficient adjudication of this controversy.

9 13. A representative action pursuant to California Business and Professions Code,  
10 Section 17200, *et seq.* on behalf of the general public is appropriate and necessary because the trade  
11 practices of PROTIVITI as alleged herein violated California law. Plaintiffs also request pursuant  
12 to the Unfair Practices Act that this Court exercise its ancillary jurisdiction over the sums unlawfully  
13 retained by PROTIVITI as a result of the conduct alleged herein and order disgorgement of unpaid  
14 residuals to all affected class members.

15 **FIRST CAUSE OF ACTION**

16 **(Unpaid Overtime Wages - Labor Code Section 1194 and Wage Order No. 4-2001)**

17 14. Plaintiffs reallege and incorporate herein by reference each and every allegation  
18 contained in Paragraphs 1 through 13, inclusive, of this Complaint as though fully set forth herein.

19 15. Plaintiffs and Class Members were not paid overtime compensation by PROTIVITI  
20 because, as CONSULTANTS, they were classified as exempt.

21 16. This action is brought pursuant to California Labor Code Section 1194 and Wage  
22 Order No. 4-2001, Title 8, California Code of Regulations, Section 11070.

23 17. This action is brought pursuant to Section 3 of the Wage Orders. The Wage Orders  
24 require employers to pay non-exempt employees one-and-one half times their normal hourly rate for  
25 hours worked in excess of eight (8) hours per day and in excess of forty (40) per week, and at twice  
26 the normal hourly rate for hours worked in excess of twelve (12) per day and eight (8) on the seventh  
27 day worked in a work week.

28 ///

1           18.     Plaintiffs and Class Members are or were employees of Defendant PROTIVITI in the  
2 State of California and Defendant PROTIVITI was and is an employer employing persons in the  
3 State of California. As such, the Class Members were the type of persons contemplated to be  
4 protected by the Wage Orders and said regulations were intended to apply to Defendant PROTIVITI  
5 and to prevent the type of injury and damage set forth herein.

6           19.     Plaintiffs are informed and believe, and based thereon allege, that at some time prior  
7 to April 4, 2002, and continuing to the present time, Defendant PROTIVITI established the position  
8 of CONSULTANT as exempt from overtime compensation under an exemption provided for in the  
9 Wage Orders for executives, managers, and supervisors who spend more than 50% of their time  
10 engaged in executive, managerial, or supervisory activities.

11           20.     Although all of PROTIVITI's CONSULTANTS working for PROTIVITI during the  
12 period of April 4, 2002, through the present time spent a majority of their work weeks engaged in  
13 non-exempt activities, PROTIVITI continued to treat them as exempt employees, failed to pay them  
14 overtime compensation, and failed to maintain accurate time records. CONSULTANTS working  
15 for PROTIVITI during the period April 4, 2002, through the present time worked more than eight  
16 hours in a day or more than forty hours in a week without payment of overtime compensation.

17           21.     In order to be exempt from the payment of overtime classification to employees under  
18 Wage Orders, an employer has the burden of establishing that the employees in question spend a  
19 majority of their time engaged in exempt activities. Plaintiffs, on behalf of themselves, and all other  
20 CONSULTANTS working for PROTIVITI during the period of April 4, 2002, through the present  
21 time, assert that CONSULTANTS were not engaged in exempt activities for a majority of each work  
22 week but rather spent the vast majority of their time engaged in non-exempt activities.

23           22.     The failure of PROTIVITI to pay the CONSULTANTS for all hours worked violates  
24 Section 3 of the Wage Orders. Consequently, CONSULTANTS were not paid in compliance with  
25 California law. As a direct and proximate result of PROTIVITI's conduct as herein above alleged,  
26 Plaintiffs and the Class Members have sustained and will continue to sustain damages for unpaid  
27 overtime premiums, together with interest thereon, attorney fees, and costs of the suit.

28     ///

1 **SECOND CAUSE OF ACTION**

2 **(Violation of Labor Code Section 226.7)**

3 23. Plaintiffs reallege and incorporate herein by reference each and every allegation  
4 contained in Paragraphs 1 through 13, and 15 through 22, inclusive, of this Complaint as though  
5 fully set forth herein.

6 24. Plaintiffs and all members of the class identified herein were regularly scheduled as  
7 a matter of uniform company policy to work and in fact worked without meal and rest breaks in  
8 violation of California Labor Code, Section 226.7 and the Wage Orders.

9 25. Accordingly, Plaintiffs and all members of the class are entitled to one (1) hour of  
10 compensation at their regular hourly rate for each meal period not taken and one (1) hour of  
11 compensation at their regular hourly rate for each rest period not taken in penalty wages pursuant  
12 to Labor Code Section 226.7.

13 **THIRD CAUSE OF ACTION**

14 **(Violation of Labor Code Section 203)**

15 **The Section 203 Sub-Class**

16 26. Plaintiffs reallege and incorporate herein by reference each and every allegation  
17 contained in Paragraphs 1 through 13, 15 through 22, and 24 through 25, inclusive, of this Complaint  
18 as though fully set forth herein.

19 27. Plaintiffs and the Section 203 Sub-Class of employees whose employment with  
20 PROTIVITI was terminated at any time since April 4, 2002, were, at all times during their  
21 employment with PROTIVITI, entitled to wages for all hours worked but unpaid, including, but not  
22 limited to, all hours worked in excess of forty (40) hours in one work week at an overtime premium  
23 of one-and-one-half times the regular hourly rate.

24 28. More than thirty (30) days have passed since the Plaintiffs and the other members of  
25 the Section 203 Sub-Class quit or were discharged from their positions with PROTIVITI.

26 29. PROTIVITI willfully failed to pay all wages due to Plaintiffs and the Class Members  
27 who have terminated their employment with PROTIVITI, by the applicable deadlines set forth in  
28 the California Labor Code.

1 30. As a consequence of PROTIVITI's willful failure to pay the Section 203 Sub-Class  
2 members for all hours worked but unpaid, including, but not limited to overtime work after forty (40)  
3 hours in one work week, the Section 203 Sub-Class members are entitled to thirty days wages as  
4 penalty damages pursuant to Labor Code, Section 203.

5 **FOURTH CAUSE OF ACTION**

6 **(Violation of Labor Code Section 2802)**

7 31. Plaintiffs reallege and incorporate herein by this reference each and every allegation  
8 contained in Paragraphs 1 through 13, 15 through 22, 24 through 25, and 27 through 30, inclusive,  
9 of this Complaint as though fully set forth herein.

10 32. PROTIVITI has refused to reimburse Plaintiffs and Class Members for out-of-pocket  
11 expenses they incurred while working on PROTIVITI business.

12 33. Labor Code Section 2802 provides an employer shall indemnify his or her employee  
13 for all necessary expenditures or losses incurred by the employee in direct consequence of the  
14 discharge of his or her duties, or of his or her obedience to the directions of the employer.

15 34. PROTIVITI has violated Labor Code Section 2802 by failing to reimburse Plaintiffs  
16 and Class Members with the following business expenses, including but not limited to, business use  
17 of cellular telephones and parking expenses.

18 35. PROTIVITI's refusal to indemnify Plaintiffs and Class Members has resulted in  
19 damages to Plaintiffs and Class Members in an amount according to proof at trial, plus interest,  
20 reasonable costs and attorneys' fees.

21 **FIFTH CAUSE OF ACTION**

22 **(For Unfair Business Practices)**

23 36. Plaintiffs reallege and incorporate herein by reference each and every allegation  
24 contained in Paragraphs 1 through 13, 15 through 22, 24 through 25, 27 through 30, and 32 through  
25 35, inclusive, of this Complaint as though fully set forth herein, excepting those paragraphs which  
26 are inconsistent with this cause of action for relief regarding Defendant's violations of Business and  
27 Professions Code, Sections 17200, *et seq.* (Unfair Business Practices).

28 ///

1           37. Defendant has engaged in unfair business practices in California by practicing,  
2 employing and utilizing the employment practices outlined in the first three causes of action alleged  
3 above, to wit, by requiring its CONSULTANTS to perform the labor complained of herein without  
4 overtime compensation. Defendant's utilization of such unfair business practices constitutes unfair  
5 competition and provides an unfair advantage over Defendant's competitors.

6           38. Plaintiffs, and others similarly situated members of the general public, seek full  
7 restitution and disgorgement of monies, as necessary and according to proof, to restore any and all  
8 monies withheld, acquired and/or converted by the Defendant by means of the unfair practices  
9 complained of herein. Plaintiffs seek, on their own behalf and on behalf of the general public, the  
10 appointment of a receiver, as necessary. The acts complained of herein occurred, at least in part,  
11 within the last four (4) years preceding the filing of the original complaint in this action.

12           39. Plaintiffs are informed and believe and on that basis alleges that at all times herein  
13 mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as proscribed  
14 by California Business and Professions Code, Section 17200, including those set forth in the first  
15 four causes of action herein, thereby depriving Plaintiffs and other members of the general public  
16 the minimum working condition standards and conditions due to them under the California labor  
17 laws and the Wage Orders as specifically described herein.

18           40. Plaintiffs, and all persons similarly situated, are further entitled to and do seek both  
19 a declaration that the above-described business practices are unfair, unlawful and/or fraudulent and  
20 injunctive relief restraining Defendant from engaging in any of such business practices in the future.  
21 Such misconduct by Defendant, unless and until enjoined and restrained by order of this Court, will  
22 cause great and irreparable injury to all members of the class in that the Defendant will continue to  
23 violate these California laws, represented by labor statutes and the Wage Orders, unless specifically  
24 ordered to comply with same. This expectation of future violations will require current and future  
25 employees to repeatedly and continuously seek legal redress in order to gain compensation to which  
26 they are entitled under California law. Plaintiffs have no other adequate remedy at law to insure  
27 future compliance with the California labor laws and the Wage Orders alleged to have been violated  
28 herein.



PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class Members pray for judgment as follows:

1. Wages, as appropriate, to Plaintiffs and to each Class Member for unpaid overtime compensation;
2. Waiting time penalties under Labor Code Section 203 for all Section 203 Sub-Class members;
3. Reimbursement, as appropriate, to Plaintiffs and to each Class Member for unreimbursed business expenses;
4. Penalties under Labor Code Section 226 in the amount of Fifty Dollars (\$50.00) for the initial pay period in which a violation occurs and One Hundred Dollars (\$100.00) per employee for each violation in a subsequent pay period;
5. Upon the Fifth Cause of Action, for full restitution and disgorgement of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendant by means of the unfair practices complained of herein to Plaintiffs and others similarly effected members of the general public of all funds acquired by Defendant by means of any acts or practices declared by this Court to be violative of the mandate established by California Business and Professions Code, Sections 17200, *et seq.*;
6. Upon the Fifth Cause of Action, that Defendant be ordered to show cause why it should not be enjoined and ordered to comply with the Wage Orders and the California Labor Code related to payment of overtime compensation, meal and rest periods, and record keeping for Defendant's salaried store personnel who are primarily engaged in non-exempt non-discretionary work and work more than forty (40) hours per week or eight (8) hours per day; and for an order enjoining and restraining the Defendant and its agents, servants and employees related thereto;

///

///

///

- 1 7. Upon the Fifth Cause of Action, for the appointment of a receiver to receive, manage  
2 and distribute any and all funds disgorged from the Defendant determined to have  
3 been wrongfully acquired by the Defendant as a result of violations of California  
4 Business and Professions Code, Sections 17200, *et seq.*;
- 5 8. For an injunction prohibiting PROTIVITI from requiring its California employees  
6 to spend time performing tasks for which they are not paid;
- 7 9. Interest;
- 8 10. For attorney fees, expenses and costs pursuant to Labor Code, Section 1194; and
- 9 11. Such other and further relief as the Court deems just and proper.
- 10

11 ANTICOUNI & ASSOCIATES

12

13

14 DATED: March 4, 2008

15 By: Heather A. Quest  
16 Heather A. Quest, Esq.  
17 Attorneys for Plaintiffs

18

19

20

21

22 I:\CLIENTS\Protiviti\pleadings\1st-AmendedComplaint.wpd

23

24

25

26

27

28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

3 I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen (18) years  
4 and not a party to the within action; my business address is 23 East De la Guerra Street, Santa Barbara, California, 93101.

5 On March 4, 2008, I served the foregoing document described as

6 **FIRST AMENDED COMPLAINT**

7 on the interested parties in this action

8  by placing the true copies thereof in sealed envelopes addressed as stated on the attached mailing list.

9  by placing  the original  a true copy thereof enclosed in a sealed envelope addressed as follows:

10 Attorneys for Defendant:

11 Gilmore F. Diekmann, Esq.  
12 Seyfarth Shaw LLP  
13 560 Mission Street, 31<sup>st</sup> Floor  
14 San Francisco, CA 94105

Holger G. Besch, Esq.  
Todd C. Hunt, Esq.  
Seyfarth Shaw LLP  
2029 Century Park East, Suite 3300  
Los Angeles, CA 90067-3063

15  by sending a true copy thereof via facsimile transmission as follows:

16  BY MAIL

17  I deposited such envelope in the mail at Santa Barbara, State of California. The envelope was mailed  
18 with postage fully prepaid.

19  As follows: I am "readily familiar" with the firm's practice for collection and processing of  
20 correspondence for mailing. Under that practice it would be deposited with United States Postal  
21 Service on that same day with postage thereon fully prepaid at Santa Barbara, California, in the  
22 ordinary course of business. I am aware that service made pursuant to Code of Civil Procedure §  
23 1013a(3) upon motion of a party served shall be presumed invalid if the postal cancellation date or  
24 postage meter date on the envelope is more than one day after the date of deposit for mailing contained  
25 in the affidavit.

26 I certify and declare under penalty of perjury under the laws of the State of CALIFORNIA that the foregoing  
27 is true and correct.

28 Executed March 4, 2008, at Santa Barbara, California.

\_\_\_\_\_  
Nichole Ricotta  
[PRINT NAME]

  
\_\_\_\_\_  
[SIGNATURE]