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8 Attorneys for Plaintiff
9 MYRNA ARIAS

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MAY 05 2015

SUPERIOR COURT
METROPOLITAN DIVISION
COUNTY OF KERN

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF BAKERSFIELD**

13 MYRNA ARIAS, an individual,) Case No.
14 Plaintiff,) COMPLAINT FOR DAMAGES:
15 vs.) 1) INVASION OF PRIVACY - INTRUSION
16 INTERMEX WIRE TRANSFER, LLC, a) INTO PRIVATE AFFAIRS;
17 corporation, and DOES 1 through 30,) 2) RETALIATION IN VIOLATION OF
18 inclusive,) LABOR CODE §1102.5;
19 Defendants.) 3) PAGA - VIOLATION OF LABOR CODE
20) § 1102.5 (Cal. Lab. Code §2698, et seq.);
21) 4) INTENTIONAL INTERFERENCE WITH
22) CONTRACT;
23) 5) NEGLIGENT INTERFERENCE WITH
24) PROSPECTIVE ECONOMIC
25) RELATIONS;
26) 6) WRONGFUL TERMINATION IN
27) VIOLATION OF PUBLIC POLICY; and
28) 7) UNFAIR BUSINESS PRACTICES IN
VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200
JURY TRIAL DEMANDED

Plaintiff MYRNA ARIAS, an individual, alleges:

PARTIES AND JURISDICTION

1. Plaintiff MYRNA ARIAS ("Plaintiff" or "Arias") is, and at all relevant times mentioned was, an individual residing in the State of California, County of Kern.

1 She was employed by the Defendants (collectively, "Intermex") from approximately
2 February 10, 2014 May 5, 2014, as a Sales Executive, Account Manager in Bakersfield.

3 2. Plaintiff is informed and believes and based thereon alleges that
4 Defendant INTERMEX WIRE TRANSFER, LLC ("Defendant" or "Intermex") is, and at all
5 times mentioned was, a Florida corporation, doing business in the State of California,
6 Counties of Kern, Los Angeles, San Bernardino, and Riverside.

7 3. Plaintiff does not know the true names or capacities of the
8 Defendants sued as DOES 1 through 15, inclusive, and by reason thereof sues these
9 Defendants under such fictitious names. When their true names and capacities have
10 been ascertained, Plaintiff will amend this Complaint to reflect the same. Plaintiff is
11 informed and believes and based thereon alleges that such fictitiously named Defendants
12 were the agents, servants, and employees of each of the named Defendants and, in
13 doing the acts and things hereinafter alleged, were at all times acting within the course
14 and scope of said agency, servitude, and employment and with the permission, consent,
15 and approval, or subsequent ratification, of each of the named Defendants. Plaintiff
16 further alleges that Defendants constituted an "integrated enterprise" and "integrated
17 employers" with interrelated operations, common management, centralized control of
18 labor relations, and common ownership and/or financial control. Plaintiff also alleges that
19 the Defendants were, at all times relevant hereto, the alter egos of each other, and/or the
20 agents of each other. Whenever reference is made to Defendants, it is intended to
21 include all of the named Defendants as well as the DOE Defendants. Each of the
22 fictitiously named DOE Defendants is responsible in some manner for the occurrences
23 alleged and proximately caused Plaintiff's damages.

24 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

25 4. Intermex hired Plaintiff Myrna Arias as a Sales Executive, Account
26 Manager on February 10, 2014 in Bakersfield. John Stubits, Regional Vice President of
27 Sales, recruited Plaintiff to join Intermex while she was working for NetSpend Corporation
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1 ("NetSpend"), where she had been employed for over five years. Stubits was aware of
2 the high quality of Plaintiff's work from their time working together at NetSpend.

3 5. As a condition of accepting employment with Intermex, Plaintiff
4 asked to be allowed to continue working at NetSpend for at least three months during the
5 waiting period to become eligible for Intermex's medical insurance benefit. Mr. Stubits,
6 Plaintiff's supervisor at Intermex, granted permission for Plaintiff to continue working for
7 NetSpend so that she could continue to receive medical benefits from Netspend. Plaintiff
8 told Stubits that she was having health issues -- she was suffering from a disabling
9 Vitamin B12 deficiency, for which she was in the process of undergoing significant
10 medical treatment under a physicians' supervision.

11 6. Plaintiff did an excellent job at Intermex. She met her quotas and
12 received no discipline during her employment. Plaintiff earned approximately \$7,250 per
13 month, including commission, at Intermex.

14 7. In April 2014, Intermex asked Plaintiff and other employees to
15 download an application ("app") called Xora to their smart phones. Xora contained a
16 global positioning system ("GPS") function which tracked the exact location of the person
17 possessing the smart phones on which it was installed. After researching the app and
18 speaking with a trainer from Xora, Plaintiff and her co-workers asked whether Intermex
19 would be monitoring their movements while off duty. Stubits admitted that employees
20 would be monitored while off duty and bragged that he knew how fast she was driving at
21 specific moments ever since she had installed the app on her phone. Plaintiff expressed
22 that she had no problem with the app's GPS function during work hours, but she objected
23 to the monitoring of her location during non-work hours and complained to Stubits that
24 this was an invasion of her privacy. She likened the app to a prisoner's ankle bracelet
25 and informed Stubits that his actions were illegal. Stubits replied that she should tolerate
26 the illegal intrusion because Intermex was paying Plaintiff more than NetSpend. He
27 confirmed that she was required to keep her phone's power on "24/7" to answer phone

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1 calls from clients. Stubits scolded Plaintiff when she de-installed the app in late April
2 2014 in order to protect her privacy.

3 8. On May 5, 2014, within just a few weeks of Plaintiff's objection to the
4 use of the Xora app on privacy grounds, Intermex fired Plaintiff.

5 9. To add insult to injury, Plaintiff is informed and believes that after
6 Intermex terminated Plaintiff, Robert Lisy, Intermex's President and CEO, telephoned
7 John Nelson, Vice President of NetSpend, and informed Nelson that Plaintiff had been
8 disloyal to NetSpend and was employed by Intermex. As a result of Lisy's intentional and
9 malicious interference with Plaintiff's contract with NetSpend, NetSpend fired Plaintiff
10 promptly. NetSpend specifically cited Lisy's phone call as the reason for the decision to
11 terminate Plaintiff.

12 **FIRST CAUSE OF ACTION**

13 (Invasion of Privacy - Intrusion Into Private Affairs –
14 Against All Defendants and Does 1-10)

15 10. Plaintiff hereby incorporates by reference each and every allegation
16 contained in the paragraphs above, inclusive as though fully set forth here.

17 11. Plaintiff's whereabouts and conduct while off duty, was private and
18 highly confidential. A reasonable person would have an interest in maintaining the
19 confidentiality of such information.

20 12. Plaintiff had a reasonable expectation of privacy in her own conduct
21 and whereabouts while off duty.

22 13. Defendant's Regional Vice President of Sales, John Stubits,
23 intentionally intruded on Plaintiff's privacy when he monitored Plaintiff's driving behavior
24 and whereabouts on weekends. Plaintiff is unsure to what extent other managers and
25 co-workers intentionally intruded on her privacy.

26 14. This intrusion would be highly offensive to a reasonable person.
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1 15. Plaintiff was harmed as a result of the conduct of Defendants, and
2 the Defendants' conduct was a substantial factor in causing Plaintiff's harm.

3 16. **Economic damages.** As a direct and legal result of the conduct of
4 Defendants, and each of them, as set forth above, Plaintiff suffered and will suffer special
5 damages for lost earnings and wages in an amount not yet fully known, but in excess of
6 \$500,000.00.

7 17. **Non-economic damages.** As a direct and legal result of the
8 conduct of Defendants, and each of them, as set forth above, Plaintiff suffered general
9 damages including, but not limited to, damage to her reputation, pain and suffering,
10 humiliation, embarrassment, and emotional distress, all in an amount to be proved at trial.

11 18. **Exemplary and punitive damages.** Defendants, by their conduct
12 as set forth above, have engaged in despicable conduct, exposing Plaintiff to cruel and
13 unjust hardship, with the intention to cause injury to Plaintiff, and with conscious
14 disregard of his rights. Defendants occupied a position of trust which gave them power to
15 damage Plaintiff's ability to earn a livelihood. Defendants abused that position of trust by
16 maliciously, fraudulently, and oppressively discharging Plaintiff and intentionally
17 interfering with her contract with NetSpend. Defendants' conduct was carried out by and
18 ratified by one or more of Defendants' managing agents, and it was willful and oppressive
19 and done in conscious disregard of her rights. Plaintiff is therefore entitled to punitive
20 damages in an amount to be proven at trial.

21 19. **Ratification.** Plaintiff is informed and believes and on that basis
22 alleges that Defendants, and each of them, were at all relevant times aware of the
23 conduct of each of the other Defendants and approved and ratified that conduct.

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SECOND CAUSE OF ACTION

(Retaliation in Violation of Labor Code section 1102.5 –
Against All Defendants and Does 1-20)

20. Plaintiff hereby incorporates by reference each and every allegation contained in the paragraphs above, inclusive as though fully set forth here.

21. Plaintiff complained to Defendants that Defendants were violating her co-workers' and her rights of privacy by requiring them to download the GPS tracking device -- Xora application -- to their smart phones and intruding into their private affairs in violation of Article I, Section 1 of the California Constitution (right of privacy), Section 637.7 of the Penal Code (prohibiting the use of GPS to track another person), Section 17200 of the California Business and Professions Code (prohibiting employers from engaging in unfair business practices), and California common law.

22. Plaintiff opposed Defendants' insistence that she keep her telephone with the tracking application with the power on at all times because it improperly invaded her co-workers' and her rights of privacy. Plaintiff voiced to Defendants that she believed this was akin to monitoring her like a criminal. Plaintiff spoke with her co-workers about her opposition to the requirement that the workers use the application after work hours.

23. By their conduct as set forth above, Defendants retaliated against and terminated Plaintiff for complaining about, protesting with her co-workers, and refusing to participate in activity that would have resulted in a violation of her rights and state or federal constitutions and statutes, including the California Constitution, Article I, Section 1, in violation of California Labor Code § 1102.5(b) and (c).

24. Plaintiff was harmed by Defendants' conduct, and Defendants' conduct was a substantial factor in causing Plaintiff's harm.

25. **Economic damages.** As a direct and legal result of the conduct of Defendants, and each of them, as set forth above, Plaintiff suffered and will suffer special damages for lost earnings and wages in an amount not yet fully known, but in excess of

1 \$500,000.00.

2 26. **Non-economic damages.** As a direct and legal result of the
3 conduct of Defendants, and each of them, as set forth above, Plaintiff suffered general
4 damages including, but not limited to, damage to her reputation, pain and suffering,
5 humiliation, embarrassment, and emotional distress, all in an amount to be proved at trial.

6 27. **Exemplary and punitive damages.** Defendants, by their conduct
7 as set forth above, have engaged in despicable conduct, exposing Plaintiff to cruel and
8 unjust hardship, with the intention to cause injury to Plaintiff, and with conscious
9 disregard of his rights. Defendants occupied a position of trust which gave them power to
10 damage Plaintiff's ability to earn a livelihood. Defendants abused that position of trust by
11 maliciously, fraudulently, and oppressively discharging Plaintiff and intentionally
12 interfering with her contract with NetSpend. Defendants' conduct was carried out by and
13 ratified by one or more of Defendants' managing agents, and it was willful and oppressive
14 and done in conscious disregard of her rights. Plaintiff is therefore entitled to punitive
15 damages in an amount to be proven at trial.

16 28. **Ratification.** Plaintiff is informed and believes and on that basis
17 alleges that Defendants, and each of them, were at all relevant times aware of the
18 conduct of each of the other Defendants and approved and ratified that conduct.

19 **THIRD CAUSE OF ACTION**

20 Private Attorney General Act

21 (Violation of California Labor Code § 1102.5 –

22 Against All Defendants and Does 1-30)

23 29. Plaintiff hereby incorporates by reference each and every allegation
24 contained in the paragraphs above, inclusive as though fully set forth here.

25 30. Plaintiff, individually and on behalf of the general public, alleges that
26 on or about May 5, 2015, she provided written notice to the Labor and Workforce
27 Development Agency ("LWDA") and Defendants of the specific violations of the California
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1 Labor Code Defendants have violated and continue to violate.

2 31. Pursuant to Labor Code section 2699.3(a)(2)(A), if no response is
3 received from the LWDA within 33 days of the postmarked date of the May 5, 2015 letter,
4 or if the LWDA declines to investigate the matter, Plaintiff has exhausted all
5 administrative procedures required of him under Labor Code §§ 2698, 2699 and 2699.3,
6 and, as a result, is justified as a matter of right in bringing forward this cause of action.
7 Plaintiff will amend her complaint in the event the LWDA informs her that it will investigate
8 her claims under the Labor Code.

9 32. As a result of the acts alleged above, Plaintiff seeks penalties under
10 Labor Code §§ 2698 and 2699 because of Defendants' violations of the provisions of the
11 California Labor Code set forth in this Complaint.

12 33. Pursuant to California Labor Code § 2699, Plaintiff should be
13 awarded twenty-five percent (25%) of all penalties due under California law, as well as
14 attorneys' fees and costs.

15 **FOURTH CAUSE OF ACTION**

16 (Intentional Interference with Contract –
17 Against All Defendants and Does 1-25)

18 34. Plaintiff hereby incorporates by reference each and every allegation
19 contained in the paragraphs above, inclusive as though fully set forth here.

20 35. There was a contract of employment between Plaintiff and
21 NetSpend.

22 36. Defendant Intermex knew that Plaintiff was employed with
23 NetSpend.

24 37. Defendant's conduct interfered with Plaintiff's contract with NetSpend
25 by informing NetSpend that Plaintiff was disloyal and that she was employed with
26 Defendant Intermex. Defendant's conduct prevented performance of the contract that
27 Plaintiff had with NetSpend.

1 38. Defendant intended to disrupt the performance of this contract or
2 knew that disruption of performance was certain or substantially certain to occur.

3 39. Plaintiff was harmed, and Defendants' conduct was a substantial
4 factor in causing Plaintiff's harm.

5 40. **Economic damages.** As a direct and legal result of the conduct of
6 Defendants, and each of them, as set forth above, Plaintiff suffered and will suffer special
7 damages for lost earnings and wages in an amount not yet fully known, but in excess of
8 \$500,000.00.

9 41. **Non-economic damages.** As a direct and legal result of the
10 conduct of Defendants, and each of them, as set forth above, Plaintiff suffered general
11 damages including, but not limited to, damage to her reputation, pain and suffering,
12 humiliation, embarrassment, and emotional distress, all in an amount to be proved at trial.

13 42. **Exemplary and punitive damages.** Defendants, by their conduct
14 as set forth above, have engaged in despicable conduct, exposing Plaintiff to cruel and
15 unjust hardship, with the intention to cause injury to Plaintiff, and with conscious
16 disregard of his rights. Defendants occupied a position of trust which gave them power to
17 damage Plaintiff's ability to earn a livelihood. Defendants abused that position of trust by
18 maliciously, fraudulently, and oppressively discharging Plaintiff and intentionally
19 interfering with her contract with NetSpend. Defendants' conduct was carried out by and
20 ratified by one or more of Defendants' managing agents, and it was willful and oppressive
21 and done in conscious disregard of her rights. Plaintiff is therefore entitled to punitive
22 damages in an amount to be proven at trial.

23 43. **Ratification.** Plaintiff is informed and believes and on that basis
24 alleges that Defendants, and each of them, were at all relevant times aware of the
25 conduct of each of the other Defendants and approved and ratified that conduct.

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1 **FIFTH CAUSE OF ACTION**

2 (Negligent Interference with Prospective Economic Relations –
3 Against All Defendants and Does 1-30)

4 44. Plaintiff hereby incorporates by reference each and every allegation
5 contained in the paragraphs above, inclusive as though fully set forth here.

6 45. Plaintiff and NetSpend were in an economic relationship that
7 probably would have resulted in a future economic benefit to Plaintiff.

8 46. Defendant Intermex knew or should have known of this relationship.

9 47. Defendant knew or should have known that this relationship would
10 be disrupted if it failed to act with reasonable care.

11 48. Defendant failed to act with reasonable care.

12 49. Defendant engaged in wrongful, fraudulent and defamatory conduct
13 towards Plaintiff by telling her that she was allowed to work for Intermex and NetSpend at
14 the same time and asserting to NetSpend that she was disloyal to NetSpend and that she
15 was employed by Intermex.

16 50. Plaintiff's relationship with NetSpend was disrupted as a direct result
17 of Defendant's conduct - NetSpend terminated Plaintiff's employment relationship with
18 NetSpend.

19 51. Plaintiff was harmed, and Defendant's wrongful conduct was a
20 substantial factor in causing Plaintiff's harm.

21 52. **Economic damages.** As a direct and legal result of the conduct of
22 Defendants, and each of them, as set forth above, Plaintiff suffered and will suffer special
23 damages for lost earnings and wages in excess of \$500,000.00.

24 53. **Non-economic damages.** As a direct and legal result of the
25 conduct of Defendants, and each of them, as set forth above, Plaintiff suffered general
26 damages including, but not limited to, damage to her reputation, pain and suffering,
27 humiliation, embarrassment, and emotional distress, all in an amount to be proved at trial.

1 54. **Exemplary and punitive damages.** Defendants, by their conduct
2 as set forth above, have engaged in despicable conduct, exposing Plaintiff to cruel and
3 unjust hardship, with the intention to cause injury to Plaintiff, and with conscious
4 disregard of his rights. Defendants occupied a position of trust which gave them power to
5 damage Plaintiff's ability to earn a livelihood. Defendants abused that position of trust by
6 maliciously, fraudulently, and oppressively discharging Plaintiff and intentionally
7 interfering with her contract with NetSpend. Defendants' conduct was carried out by and
8 ratified by one or more of Defendants' managing agents, and it was willful and oppressive
9 and done in conscious disregard of her rights. Plaintiff is therefore entitled to punitive
10 damages in an amount to be proven at trial.

11 55. **Ratification.** Plaintiff is informed and believes and on that basis
12 alleges that Defendants, and each of them, were at all relevant times aware of the
13 conduct of each of the other Defendants and approved and ratified that conduct.

14 **SIXTH CAUSE OF ACTION**

15 (Wrongful Termination in Violation of Public Policy –
16 Against All Defendants and Does 1-30)

17 56. Plaintiff hereby incorporates by reference each and every allegation
18 contained in the paragraphs above, inclusive as though fully set forth here.

19 57. Plaintiff's termination was in violation of fundamental, basic, and
20 substantial public policies of the State of California, including, but not limited to, section
21 1102.5 of the California Labor Code, section 17200 of the Business and Professions
22 Code, Article I, Section 1 of the California Constitution, and Section 637.7 of the
23 California Penal Code.

24 58. Defendant fired Plaintiff for refusing to abide its requirement that she
25 and her co-workers allow Defendant to monitor their off duty conduct and whereabouts in
26 violation of their rights of privacy.

1 59. Plaintiff was harmed as a result of Defendants' conduct, and
2 Defendant's conduct was a substantial factor in causing Plaintiff's harm.

3 60. **Economic damages.** As a direct and legal result of the conduct of
4 Defendants, and each of them, as set forth above, Plaintiff suffered and will suffer special
5 damages for lost earnings and wages in an amount not yet fully known, but in excess of
6 \$500,000.00.

7 61. **Non-economic damages.** As a direct and legal result of the
8 conduct of Defendants, and each of them, as set forth above, Plaintiff suffered general
9 damages including, but not limited to, damage to her reputation, pain and suffering,
10 humiliation, embarrassment, and emotional distress, all in an amount to be proved at trial.

11 62. **Exemplary and punitive damages.** Defendants, by their conduct
12 as set forth above, have engaged in despicable conduct, exposing Plaintiff to cruel and
13 unjust hardship, with the intention to cause injury to Plaintiff, and with conscious
14 disregard of his rights. Defendants occupied a position of trust which gave them power to
15 damage Plaintiff's ability to earn a livelihood. Defendants abused that position of trust by
16 maliciously, fraudulently, and oppressively discharging Plaintiff and intentionally
17 interfering with her contract with NetSpend. Defendants' conduct was carried out by and
18 ratified by one or more of Defendants' managing agents, and it was willful and oppressive
19 and done in conscious disregard of her rights. Plaintiff is therefore entitled to punitive
20 damages in an amount to be proven at trial.

21 63. **Ratification.** Plaintiff is informed and believes and on that basis
22 alleges that Defendants, and each of them, were at all relevant times aware of the
23 conduct of each of the other Defendants and approved and ratified that conduct.

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1 **SEVENTH CAUSE OF ACTION**

2 (Unfair Business Practices Under Cal. Bus. & Prof. Code § 17200 -

3 Against All Defendants and Does 1-30)

4 64. Plaintiff hereby incorporates by reference each and every allegation
5 contained in the paragraphs above, inclusive as though fully set forth here.

6 65. Defendants engaged in illegal, unfair business practices in violation
7 of Plaintiff's and her co-workers' rights, as alleged above.

8 66. As a result of Defendants' unfair business practices, Defendants
9 have reaped unfair benefits and illegal profits at the expense of Plaintiff and her former
10 co-workers. Defendants should be required to restore these monies to Plaintiff and her
11 former co-workers. In the absence of injunctive equitable relief, Plaintiff will suffer
12 irreparable injury, which cannot readily be remedied by damage remedies. Plaintiff seeks
13 preliminary and permanent injunctive relief against Defendants, including, but not limited
14 to, an order that prohibits Defendants from monitoring their employees' off duty
15 whereabouts and conduct in violation of their rights of privacy.

16
17 WHEREFORE, Plaintiff prays for judgment as follows:

18 AS TO THE SECOND AND THIRD CAUSES OF ACTION:

19 1. For reasonable attorney's fees and costs pursuant to the Labor Code
20 and PAGA, Section 2699(g) of the California Labor Code;

21 AS TO THE SEVENTH CAUSE OF ACTION:

22 2. For injunctive relief;

23 AS TO ALL CAUSES OF ACTION:

24 3. For general and special damages, according to proof, with interest
25 thereon at the maximum legal rate from and after May 5, 2014;

26 4. For punitive damages;

27 5. For costs of suit incurred by Plaintiff; and

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6. For such other and further relief as the Court may deem just and proper.

DATED: May 5, 2015

ALEXANDER KRAKOW + GLICK LLP



Gail A. Glick
Brett C. Beeler
Attorneys for Plaintiff
MYRNA ARIAS

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

DATED: May 5, 2015

ALEXANDER KRAKOW + GLICK LLP



Gail A. Glick
Brett C. Beeler
Attorneys for Plaintiff
MYRNA ARIAS

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