

1 THE KNEAFSEY FIRM, INC.
2 SEAN M. KNEAFSEY (SBN 180863)
3 skneafsey@kneafseyfirm.com
4 800 Wilshire Blvd., Suite 710
5 Los Angeles, California 90017
6 Phone: (213) 892-1200
7 Fax: (213) 892-1208

8 Attorneys for Plaintiff
9 BRADLEY TWYNHAM

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 BRADLEY TWYNHAM an individual
14 Plaintiff,

15 vs.

16 COMPUTER SCIENCES
17 CORPORATION, a Nevada corporation,
18 DXC TECHNOLOGY COMPANY, a
19 Nevada corporation; SERVICEMESH,
20 INC., a Delaware corporation

21 Defendants.

Case No.: 2:17-cv-08107 SVW JEM

[Hon. Stephen V. Wilson]

**SECOND AMENDED
COMPLAINT FOR DAMAGES
FOR:**

- 1. BREACH OF CONTRACT
- 2. VIOLATION OF CALIFORNIA LABOR CODE § 2802.
- 3. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, ET SEQ.

[Demand for Jury Trial]

22 Plaintiff Bradley Twynham, for his complaint against Defendants Computer
23 Sciences Corporation, DXC Technology Company, and Servicemesh, Inc., states
24 and alleges as follows:

THE PARTIES

25
26 1. Plaintiff Bradley Twynham (hereinafter “Mr. Twynham”) is an
27 Australian national and permanent resident of Australia.
28

1 2. Defendant Computer Sciences Corporation (hereinafter ‘‘CSC’’) is a
2 Nevada corporation with principal place of business in Tysons Corner, Virginia.

3 3. Upon information and belief, Defendant DXC Technology Company
4 (hereinafter ‘‘DXC’’) is a Nevada corporation with its principal place of business in
5 Tysons Corner, Virginia. Upon information and belief, Defendant is a successor in
6 interest to Defendant CSC, and has assumed CSC’s liabilities to Plaintiff.

7 4. Upon information and belief, Servicemesh, Inc., is a Delaware
8 Corporation whose previous principal place of business was in Santa Monica
9 California, until it was acquired by CSC pursuant to an agreement dated October 29,
10 2013. Upon information and belief, Servicemesh was acquired in its entirety by
11 CSC and after the acquisition Servicemesh ceased to engage in any meaningful
12 business and exists only as a corporate shell. Upon information and belief,
13 Servicemesh keeps a nominal address at 3170 Falls Church, VA 22042. Upon
14 information and belief, upon CSC’s acquisition, there was no material change in
15 CSC’s operation of Servicemesh’s business. For example, among other things, CSC
16 operated from Servicemesh’s location in Santa Monica, employed the same people,
17 and performed under the same Servicemesh contracts. Likewise, as discussed in
18 more detail below, Mr. Twynham negotiated the same CBA Agreement both before,
19 during, and after the acquisition (and while in the same Servicemesh/CSC office in
20 Santa Monica). In this regard, Mr. Twynham continued to negotiate the same
21 contract terms, communicate with the same CBA representatives, and reported to
22 the same Servicemesh/CSC employees.

23 **JURISDICTION AND VENUE**

24 5. This is a civil action seeking damages for breach of contract, violation
25 of California Labor Code § 2802, and violation of California Business and
26 Professions Code § 17200, et seq.

27 6. Federal diversity jurisdiction exists pursuant to 28 U.S.C. § 1332(a)(2)
28 because the plaintiff is an alien subject of a foreign state and the defendants are

1 citizens of different states, and because the value of the matter in controversy
2 exceeds \$75,000.

3 7. This court has personal jurisdiction over the defendants in this matter
4 because Defendants have had sufficient minimum contacts, including, but not
5 limited to, because a substantial part of the events or omissions on which these
6 claims are based occurred in Los Angeles County, California, including but not
7 limited to, the fact that Plaintiff was employed by Servicemesh and CSC here.

8 8. Venue in this district is proper pursuant to 28 U.S.C. § 1391 because a
9 substantial part of the events or omissions on which these claims are based occurred
10 in Los Angeles County, California, including but not limited to, the fact that
11 Plaintiff was employed by CSC here.

12 **BACKGROUND**

13 **A. Mr. Twynham’s Employment with Servicemesh and Computer**
14 **Sciences Corporation (“CSC”).**

15 9. Mr. Twynham was employed by Servicemesh, Inc. from February 2009
16 to November 13, 2013 as a consultant and eventually Vice President of Emerging
17 Markets.

18 10. Mr. Twynham was the interim Vice President of Global Sales from
19 January 2012 through July 2012, while the position was not filled.

20 11. Between July 2012 and September 2013, Mr. Twynham directly
21 reported to Jeff Drake who was physically located in Santa Monica, California, and
22 was a key Executive in Eric Pulier’s Senior Leadership Team. Mr. Twynham also
23 reported to Eric Pulier directly on all things related to the Commonwealth Bank of
24 Australia. Eric Pulier was also physically located in the Santa Monica Office of
25 Servicemesh (which became the Santa Monica Office of CSC in November of
26 2013). In addition, Mr. Twynham spoke with Servicemesh personnel in the Santa
27 Monica office multiple times a day during that time period. In addition, he was
28 required to, and did, travel to Santa Monica, California every two to three weeks at

1 the direction of the company. While in Santa Monica approximately twice a month
2 during this time period, Mr. Twynham would physically work from the Santa
3 Monica Office where we would participate in meetings, initiate and receive phone
4 calls and emails. Mr. Twynham had a physical office with a desk in Servicemesh'
5 Santa Monica office due to the large amount of time he spent in that office where we
6 would perform his work. Servicemesh also provided Mr. Twynham with a United
7 States mobile phone with a United States phone number due to the large amount of
8 work he was doing in California. Twynham was also paid in United States dollars
9 due to the large amount of time he was in the United States.

10 12. From September 2013 to November 2013, Mr. Twynham was
11 employed full time at Servicemesh's office Santa Monica, California, from which he
12 would perform the work described above, and which is discussed in more detailed
13 below.

14 13. As the Vice President of Emerging Markets, Mr. Twynham's job duties
15 included attempting to introduce Servicemesh's cloud management software into
16 new vertical markets and territories which he succeeded in doing in new areas such
17 as Europe. Mr. Twynham was also the senior executive sponsor of the
18 Commonwealth Bank of Australia account due to his history with the client and
19 relationships that had been developed due to his work with Servicemesh.

20 14. Due to CSC's purchase of Servicemesh's outstanding stock on or about
21 October 29, 2013, discussed below, Mr. Twynham became the "Senior Principal:
22 Complex Deals" on or about November 13, 2013, and became a CSC employee at
23 that time. Again, Mr. Twynham was physically working in CSC's Santa Monica
24 Office at that time. Also at that time, CSC further requested that Mr. Twynham
25 work permanently in CSC's Santa Monica as soon as he could make arrangements
26 to do so. Mr. Twynham agreed. He subsequently temporarily returned to Australia
27 to make arrangements to move to Santa Monica with his family. Still, during that
28 period of time, Mr. Twynham continued to speak with the Santa Monica Office

1 multiple times a day and to report directly to Mr. Pulier in the Santa Monica Office.
2 For example, Mr. Twynham began looking for a home in Los Angeles in November
3 of 2013 and engaged the services of a Los Angeles based real estate broker to do so.
4 In February of 2014, Mr. Twynham returned to the United States for the distinct
5 purpose of looking at homes arranged by that broker for a permanent place of
6 residence in Los Angeles. In late February, 2014, Mr. Twynham placed a deposit on
7 a home in preparation for his permanent move to Los Angeles. Mr. Twynham was
8 also in constant contact with Mr. Drake and Mr. Pulier during that time for the
9 purposes of CBC's performance pursuant to the CBA Contract as well as working
10 on other United States based deals for the purposes of the earn-out and planning for
11 the integration of Servicemesh into CSC.

12 **B. Mr. Twynham's RSU Agreements with CSC**

13 15. Mr. Twynham is a party to an agreement with CSC, dated November
14 15, 2013, wherein he was awarded 19,575 Restricted Share Units ("RSUs"), a copy
15 of which is attached as Exhibit 1. These RSUs vested in thirds each year following
16 the anniversary date of the agreement.

17 16. As set forth above, Mr. Twynham was physically working in CSC's
18 Santa Monica Office on the date of this agreement.

19 17. Mr. Twynham received the first third of his RSUs under the November
20 15, 2013, agreement. However, he did not receive the remaining two thirds of these
21 shares which totals 13,050 RSUs.

22 **C. The Equity Purchase Agreement Between CSC and Servicemesh.**

23 18. On or about October 29, 2013, CSC, Servicemesh, The Equityholders
24 of Servicemesh Inc., and Shareholder Representative Services LLC as the
25 Equityholders' Representative entered into an "Equity Purchase Agreement"
26 wherein CSC purchased all "Equity Securities of the Company." As a result, in
27 acquiring Servicemesh, CSC assumed all of Servicemesh's liabilities, including
28 Servicemesh's obligations to Mr. Twynham.

1 19. Mr. Twynham was not involved in the negotiation of this Equity
2 Purchase Agreement.

3 20. In addition to a cash payment, employee bonuses, and company stock
4 options paid and transferred by CSC, the amended Equity Purchase Agreement
5 called for a variable incentive “Earnout Payment Amount” based on Servicemesh’s
6 revenues between January 1, 2013 and January 31, 2014. Therefore, the cutoff date
7 of the earnout period was approximately three months after the Equity Purchase
8 Agreement was first entered into. For this Earnout Payment Amount, shareholders
9 were to receive approximately \$10.15 for every \$1 in revenue generated in excess of
10 \$20 million during the earnout period, with a maximum of about \$137 million.
11 After the earnout period, in February 2014, CSC calculated \$29.7 million in revenue
12 creditable to the Earnout Payment Amount, which resulted in \$9.7 million in excess
13 of the \$20 million floor. Therefore, shareholders were to be paid \$98 million for the
14 Earnout Payment Amount.

15 21. Of the \$29.7 million earned during the earnout period, approximately
16 \$10.4 million of the revenue was attributable to deals with Commonwealth Bank of
17 Australia.

18 **C. The Servicemesh-McAfee Contract with Commonwealth Bank of**
19 **Australia.**

20 22. During the period of time that Mr. Twynham was physically working
21 from Servicemesh’s Santa Monica Office between September 2013 and November
22 2013, Mr. Twynham was negotiating a deal pursuant to which Commonwealth Bank
23 of Australia purchased security technology products manufactured by McAfee, Inc.
24 from Servicemesh (“CBA Contract”). Mr. Twynham negotiated the CBA contract
25 by, among other things, making phone calls while in the Santa Monica Office,
26 sending and receiving emails while in the Santa Monica Office, and having face to
27 face meetings in the Santa Monica Office with, among others, [1] his supervisor,
28 Eric Pulier, [2] Servicemesh’s product management team, and [3] Servicemesh’s

1 Senior Executive Team, all who were based in Santa Monica and all who had roles
2 in the negotiation of this deal during this period. Mr. Twynham was required to
3 provide daily reports to the Santa Monica office regarding the progress during this
4 period of time when, again, he was physically working in his designated office in
5 Santa Monica.

6 23. In addition, Mr. Twynham was also involved with the performance of
7 the CBA contract after it was executed, including after he moved permanently to
8 California in March of 2014. Mr. Twynham's involvement with the CBA Contract
9 included making phone calls, sending emails, and participating in meetings all of
10 which occurred in CSC's Santa Monica Office. For example, between April and
11 June 2015, Mr. Twynham worked to get a Technical Account Manager in place to
12 service the contract as part of the CBA Contract's service conditions. In addition,
13 Mr. Twynham ensured that the CSC team members who were responsible for
14 actively managing the CBA Account were doing so. Mr. Twynham also met with
15 CBA Executives in California on at least four occasions in 2014 under direction
16 from Eric Pulier.

17 24. Mr. Twynham's involvement with the CBA Contract in March of 2014
18 and forward required that he work closely with his supervisor, Eric Pulier. In this
19 regard, he regularly emailed, texted, and met with Mr. Pulier about matters
20 pertaining to CSC's performance under the CBA Contract. Mr. Twynham was
21 regularly requested to attend to issues relating to that performance. Mr. Twynham
22 did all of this while working in CSC's Santa Monica Office.

23 25. Unbeknownst to Mr. Twynham, on March 19, 2014, approximately
24 \$5.6 million was transferred from the exchange agent account, from which
25 payments were made for the Equity Purchase Agreement, to Techadvisors LLC.
26 Eric Pulier, founder and part owner of Servicemesh, was the sole signatory on the
27 Techadvisors account.

28

1 26. Between June 25, 2014 and September 19, 2014, also unbeknownst to
2 Mr. Twynham, over \$4.7 million was transferred from the Techadvisors account to
3 an account in the name of Ace, Inc. This account was controlled by an Andrew
4 Goldstein, who was a longtime friend of Pulier.

5 27. In addition, also unbeknownst to Mr. Twynham, Jon Waldron and
6 Keith Hunter (both IT executives at Commonwealth Bank of Australia) and Hans
7 Gyllstrom (IT consultant to Commonwealth Bank of Australia) subsequently
8 allegedly received a total of \$2,633,687 from the Ace account.

9 28. In October 2014, Commonwealth Bank of Australia discovered that
10 Waldron and Hunter received these funds from the Ace account and conducted an
11 investigation. They were both terminated. Commonwealth Bank claimed that the
12 value of the products and services provided by Servicemesh were inflated by
13 approximately 65 percent.

14 29. Notably, however, there is nothing alleged to be improper about the
15 CBA contract itself. In fact, Twynham is informed and believes that the CBA
16 Contract is still in effect and that CSC and CBA are still performing pursuant to it.
17 The alleged impropriety has to do with the wrongdoing of Pulier and others set forth
18 above and not the CBA Contract itself.

19 **D. Twynham is Falsely Accused of Being Involved with Pulier's**
20 **Wrongdoing Based On His Involvement With the CBA Contract,**
21 **Both Before and After It Was Executed**

22 30. Notwithstanding the fact that Mr. Twynham had no knowledge of Mr.
23 Pulier's improper conduct, CSC falsely assumed that he did based on Mr.
24 Twynham's involvement with the CBA Contract. This included not only his
25 negotiation of the CBA Contract between September and November 2013 when he
26 was physically working in CSC's Santa Monica office, but also, and perhaps more
27 importantly, because Mr. Twynham continued to work for Mr. Pulier during the
28 time that the improper payments were being made beginning in March of 2014

1 when Mr. Twynham was also working in the CSC Santa Monica Office and a
2 permanent resident of the State of California.

3 31. In this regard, during the time that Mr. Twynham was a permanent
4 resident of California beginning in March of 2014, he was discharging his duties as
5 a direct consequence of his obedience to CSC by working closely with and reporting
6 to Mr. Pulier regarding CSC's performance pursuant to the CBA contract. Mr.
7 Twynham's duties included working closely with Mr. Pulier, sending and receiving
8 texts and emails from Pulier, Waldron, and others, and meeting with CBA
9 Executives in Los Angeles that pertained to performance of the CBA Contract. It
10 was because Mr. Twynham was carrying out his duties pertaining to CSC's
11 performance pursuant to the CBA Contract, and as a result of his obedience to CSC
12 pertaining to those duties, that he was accused of being involved with Mr. Pulier's
13 improper conduct and which gave rise to the expenses he incurred for which he
14 seeks reimbursement pursuant to California Labor Code section 2802.

15 32. Based on Pulier's misconduct, several criminal investigations and civil
16 lawsuits resulted thereafter. Again, although Mr. Twynham engaged in no
17 wrongdoing, because of the fact that Mr. Twynham worked closely with Mr. Pulier,
18 and was involved with the negotiation of, and CSC's performance pursuant to, the
19 CBA Contract, he was wrongfully accused of being involved with Pulier's
20 misconduct by CSC and the United States government. This caused Mr. Twynham
21 to incur substantial attorneys' fees and expenses as a direct consequence of the
22 discharge of his duties with CSC and for which he seeks reimbursement pursuant to
23 California Labor Code section 2802.

24 **E. United States of America v. Twynham Civil Forfeiture Lawsuit.**

25 33. On September 2, 2015, the United States Attorney's Office in Los
26 Angeles brought a civil forfeiture action against Mr. Twynham in the United States
27 District Court, Central District of California titled *United States of America v. Real*
28 *Property Located in Brentwood, California (Twynham) and \$13,271.07 Seized From*

1 Premier America Credit Union Account Number XXXXXX5967, Case No. CV 15-
2 6794 RGK (AJWx) (“Forfeiture Action”).

3 34. The United States Attorney’s Office claimed that Mr. Twynham
4 purchased real property with a down payment, the majority of which was paid from
5 funds the government alleged was traceable to the Equity Purchase Agreement
6 payout. The government based this civil claim against Twynham in part on the fact
7 that Twynham worked closely with Pulier after March of 2014, when Twynham was
8 a permanent resident of California, such as by emailing and text messaging Pulier,
9 Waldron, and others while Twynham was a permanent resident of California.

10 35. The government also seized the remaining cash that was left in Mr.
11 Twynham’s account, claiming they were likewise tainted notwithstanding the fact
12 that Mr. Twynham had no knowledge or involvement with the Pulier and other
13 payments at issue.

14 36. Mr. Twynham’s attorneys filed a motion to dismiss and served
15 discovery responses, and the matter was stayed due to the pending criminal
16 investigation. Mr. Twynham was unable to sustain the cost and risk of litigation and
17 settled the matter for \$413,158.37. The Consent Judgment which resolved the case
18 made clear that it may not be interpreted as an admission of wrongdoing.

19 **FIRST CAUSE OF ACTION**
20 **BREACH OF CONTRACT**
21 **(Against Defendants CSC and DXC)**

22 37. Plaintiff incorporates by reference the preceding allegations of the
23 Complaint.

24 38. Mr. Twynham and Defendants are parties to the Restricted Share Unit
25 (“RSU”) agreement attached as Exhibit 1 which is dated November 15, 2013.
26 Pursuant to this agreement, Mr. Twynham was awarded 19,575 Restricted Share
27 Units (“RSUs”). These RSUs vested in thirds each year following the anniversary
28 date of the agreement.

1 39. Section 3(a) of the Agreement provides as follows:
2 If, prior to the settlement of the RSU in full:
3 (i) the Employee’s status as an employee of the Company or
4 any of its subsidiaries is terminated (the date of such
5 termination, the “Employment Termination Date”) . . . **by the**
6 **Company without Causethe then unvested portion of**
7 **the RSU and all related Dividend Equivalents shall vest as**
8 **of the Employment Termination Date**, and the Employment
9 Termination Date shall be considered the Vesting Date for
10 purposes of this Agreement. As soon as practicable thereafter,
11 the Company shall complete the settlement in full of the RSU.

12 (Ex. 1 at § 3(a)) (emphasis added).

13 40. Appendix A to the Agreement defines “Cause” as follows:
14 “Cause” shall mean: (A) the commission of any material act by
15 the Employee constituting fraud or financial dishonesty
16 (including, without limitation, misappropriation of assets,
17 embezzlement or similar acts) against the Company or any of
18 its subsidiaries; (B) the Employee’s conviction or plea of guilty
19 or nolo contendere of a felony involving any criminal act or a
20 crime of moral turpitude; (C) the Employees’ substantial and
21 willful failure to render services in accordance with the terms of
22 the Employee’s employment with the Company or any of its
23 subsidiaries; or (D) the Employee’s willful and knowing
24 material violation of any material rules or regulations of any
25 governmental or regulatory body that are material to the
26 business of the Company or any of its subsidiaries.

27 41. As set forth above, Twynham substantially performed all of his duties
28 as an employee of CSC’s and therefore substantially performed all of his obligations

1 under the agreement. For example, at all times relevant to this Complaint and in
2 each of his interactions with Servicemesh and CSC, Mr. Twynham was faithfully
3 discharging his duties as Vice President of Emerging Markets, Vice President of
4 Global Sales, Senior Principal: Complex Deals, or Senior Principal: Industry
5 Strategist and following Servicemesh and CSC procedures and guidelines.

6 42. Nonetheless, CSC terminated Twynham's status as an employee on
7 July 1, 2015. Although CSC contended otherwise, CSC's termination of Twynham
8 was "without Cause" as that term is defined in the Agreement. For example, in
9 addition to the fact that Twynham did not have knowledge of Pulier's improper
10 conduct, discussed above, Twynham certainly did not engage in any of the conduct
11 that falls within the definition of "Cause" as set forth in the Agreement. As a result,
12 pursuant to section 3(a) of the Agreement, given that CSC terminated Twynham
13 "without cause," "the then unvested portion of the RSU[s]" vested to Twynham on
14 July 1, 2015, the date of Twynham's termination.

15 43. However, in breach of the agreement, Defendants failed to provide
16 Plaintiff with 13,050 of the 19,575 RSUs to which he was entitled.

17 44. As a direct and proximate cause of Defendants breaches, Plaintiff will
18 be damaged in an amount to be proven at trial.

19 **SECOND CAUSE OF ACTION**
20 **VIOLATION OF CALIFORNIA LABOR CODE § 2802**
21 **(Against All Defendants)**

22 45. Mr. Twynham repeats and realleges each of the allegations set forth
23 above.

24 46. At all times relevant to this Complaint, Mr. Twynham was an employee
25 of Servicemesh, Inc. from February 2009 to November 13, 2013, at which time it
26 was acquired by CSC. CSC acquired Servicemesh and therefore assumed
27 Servicemesh's liabilities, including its obligations to Mr. Twynham. After the
28

1 acquisition, Mr. Twynham was an employee of CSC from November 13, 2013 to
2 July 1, 2015.

3 47. Pursuant to California Labor Code Section 2802(a), "An employer shall
4 indemnify his or her employee for all necessary expenditures or losses incurred by
5 the employee in direct consequence of the discharge of his or her duties, or of his or
6 her obedience to the directions of the employer, even though unlawful, unless the
7 employee, at the time of obeying the directions, believed them to be unlawful."

8 48. California employers' obligation to defend and indemnify their
9 employees is a serious one. The California Supreme Court has explained:

10 California has a strong public policy that favors the
11 indemnification (and defense) of employees by their
12 employers for claims and liabilities resulting from the
13 employees' acts within the course and scope of their
14 employment." (Chin et al., Cal. Practice Guide:
15 Employment Litigation (The Rutter Group 2007) ¶ 3:1, p.
16 3-1 (rev. #1, 2007).) Labor Code section 2802 codifies
17 this policy and gives an employee a right to
18 indemnification from his or her employer. (See *Grissom*
19 *v. Vons Companies, Inc.* (1991) 1 Cal.App.4th 52, 59-60
20 [1 Cal. Rptr. 2d 808] [the purpose of Lab. Code, § 2802
21 is "to protect employees from suffering expenses in direct
22 consequence of doing their jobs"]; *Janken v. GM Hughes*
23 *Electronics* (1996) 46 Cal.App.4th 55, 74, fn. 24 [53 Cal.
24 Rptr. 2d 741] [Lab. Code, § 2802 "shows a legislative
25 intent that duty-related losses ultimately fall on the
26 business enterprise, not on the individual employee"].)
27 *Edwards v. Arthur Anderson LLP*, 44 Cal. 4th 937, 957 (2008).

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1 49. In fact, it is illegal for any employer to attempt to obtain a waiver of
2 this obligation:

3 Labor Code section 2804 voids any agreement to waive
4 the protections of Labor Code section 2802 as against
5 public policy. Labor Code section 2804 provides, "Any
6 contract or agreement, express or implied, made by any
7 employee to waive the benefits of this article or any part
8 thereof, is null and void, and this article shall not deprive
9 any employee or his personal representative of any right
10 or remedy to which he is entitled under the laws of this
11 State." (Italics added.) (10) Courts have interpreted Labor
12 Code section 2804 to apply to Labor Code section 2802,
13 making all contracts that waive an employee's right to
14 indemnification null and void. (*See Liberio v. Vidal*
15 (1966) 240 Cal.App.2d 273, 276, fn. 1 [49 Cal. Rptr.
16 520].) Thus, indemnity rights are nonwaivable, and any
17 contract that does purport to waive an employee's
18 indemnity right would be contrary to the law and
19 therefore unlawful to that extent.

20 *Edwards v. Arthur Anderson LLP*, 44 Cal. 4th 937, 957 (2008).

21 50. Mr. Twynham has incurred over one million dollars legal fees and costs
22 in the defense and settlement of the civil forfeiture lawsuit, the related
23 investigations, and due to discovery requests and a deposition request in the
24 Delaware civil lawsuit filed by CSC. These were necessary expenditures incurred
25 as a direct consequence of the discharge of Mr. Twynham's duties for CSC and
26 Servicemesh, and, further as a result of Mr. Twynham's obedience to the directions
27 of CSC and Servicemesh. That is because, as set forth in more detail above in
28 paragraphs 10-13, 21-31, among other reasons, the expenses Mr. Twynham incurred

1 were the direct result of Servicemesh/CSC's direction to Mr. Twynham that he
2 negotiate the CBA Contract between September and November 2013 when he was
3 physically working in CSC's Santa Monica office, and also, and perhaps more
4 importantly, because CSC directed Mr. Twynham continued to work for Mr. Pulier
5 during the time that the improper payments were being made beginning in March of
6 2014 when Mr. Twynham was also physically working in CSC's Santa Monica
7 Office and likewise while he was a permanent resident of the State of California.

8 51. In this regard, as set forth in more detail above in paragraphs 10-13, 21-
9 31, during the time that Mr. Twynham was a permanent resident of California
10 beginning in March of 2014, and working in CSC's Santa Monica Office, he was
11 discharging his duties as a direct consequence of his obedience to CSC by, among
12 other things, working closely with and reporting to Mr. Pulier regarding CSC's
13 performance pursuant to the CBA contract. Mr. Twynham's duties included regular
14 meetings with Mr. Pulier, sending and receiving text messages and emails with
15 Pulier, Waldron, and others, meeting with CBA Executives in Los Angeles that
16 pertained to performance of the CBA Contract. Mr. Twynham carried out all of
17 these duties from CSC's Santa Monica Office. It was because Mr. Twynham was
18 carrying out his duties pertaining to the CBA Contract from the Santa Monica
19 Office, and as a result of his obedience to CSC in carrying out those duties, that he
20 was accused of being involved with Mr. Pulier's improper conduct and which
21 caused to the expenses that he incurred for which he requests indemnity in this
22 action.

23 52. Also, Mr. Twynham's acts were not unlawful and he certainly did not
24 believe them to be unlawful. For example, the Consent Judgment of Forfeiture in
25 the *USA v. Twynham* civil forfeiture matter indicates, "Nothing in this consent
26 judgment is intended or should be interpreted as an admission of wrongdoing by
27 Claimants Bradley Martin Lewis Twynham or Mariel Twynham, nor can this
28 consent judgment be admissible in any criminal proceeding against the Claimants to

1 prove any of the facts relied upon to establish reasonable cause for the seizure of the
2 defendant assets.”

3 53. At all times relevant to this Complaint and in each of his interactions
4 with Servicemesh and CSC, Mr. Twynham was faithfully discharging his duties as
5 Vice President of Emerging Markets, Vice President of Global Sales, Senior
6 Principal: Complex Deals, or Senior Principal: Industry Strategist and following
7 Servicemesh and CSC procedures and guidelines.

8 54. The inclusion of Mr. Twynham as a Defendant in *United States of*
9 *America v. Real Property Located in Brentwood, California (Twynham) and*
10 *\$13,271.07 Seized From Premier America Credit Union Account Number*
11 *XXXXXX5967*, Case No. CV 15-6794 RGK (AJWx), as well as the initiation of
12 criminal investigations against Mr. Twynham, were a direct consequence of his
13 employment with Servicemesh and CSC while he was working in California
14 between September and November of 2013, and also based on his involvement with
15 the CBA Contracting when he was a permanent resident of California and working
16 in CSC’s Santa Monica Office beginning in March of 2014.

17 55. Under California Labor Code § 2802, pursuant to the “strong public
18 policy” of the State of California, Servicemesh and CSC are responsible to defend
19 and indemnify Mr. Twynham for all necessary expenditures or losses incurred in
20 defending himself in the aforementioned matters. These necessary expenditures or
21 losses include attorney’s fees.

22 56. Wherefor, Mr. Twynham has been damaged in an amount to be proven
23 at trial.

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THIRD CAUSE OF ACTION
UNFAIR COMPETITION
IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS
CODE § 17200, ET SEQ.
(Against All Defendants)

57. The preceding paragraphs of this Complaint are re-alleged and incorporated by reference as though fully set forth herein.

58. By virtue of Defendants’ aforementioned violations of the law, Defendants violated the Unfair Competition Law (“UCL”), codified at section 17200, et seq., of the California Business and Professions Code.

59. Defendants’ retained funds that should have been tendered to Mr. Twynham that were necessary to the defense and settlement of the actions against Mr. Twynham and which he incurred in direct consequence of the discharge of his duties for Servicemesh/CSC.

60. Defendants’ act of retaining funds owed to Mr. Twynham for his defense is an unlawful violation of California Labor Code § 2802 and, in the alternative, unfair as Mr. Twynham endured financial loss in the discharge of his duties to CSC.

61. Under an equitable analysis of the facts of this case, Mr. Twynham’s right to indemnity for charges related to his service to CSC is analogous to his right to the payment of his wages and constitutes equitable conversion.

62. Plaintiff is therefore entitled to restitution in the amount of the value of these sums in an amount to be proven at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays to this Honorable Court for the following relief:

1. For general and special damages as permitted by law;
2. For restitution;
3. For unjust enrichment;
4. Prejudgment interest to the extent allowed by law;
5. Attorney’s fees and costs as otherwise allowed by law; and
6. For such other and further relief as the Court deems just and equitable.

DATED: August 14, 2018 THE KNEAFSEY FIRM, INC.

By _____
/s/ Sean M. Kneafsey
Sean M. Kneafsey
Attorneys for Plaintiff BRADLEY TWYNHAM

