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12 Attorneys for Defendants
13 **VERTICAL COMPUTER SYSTEMS, INC.**
14 **NOW SOLUTIONS, INC., INC.**
15 **PRIORITY TIME SYSTEMS, INC.**
16 **LEONARD CHERMACK**

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES**

19 JAMES SALZ, an individual,
20
21 Plaintiff,

22 v.

23 VERTICAL COMPUTER SYSTEMS,
24 INC., a Delaware corporation; NOW
25 SOLUTIONS, INC., a Delaware
26 corporation; PRIORITY TIME SYSTEMS,
27 INC., a Nevada corporation; LEONARD
28 CHERMACK, an individual and DOES 1
through 100, Inclusive,
Defendants.

CASE NO.: 24STCV05304

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT**

Dept.: 68
Judge: Hon. Stephen P. Pfahler
Filed: March 1, 2024
Trial: Not Set

29 COMES NOW, Defendants VERTICAL COMPUTER SYSTEMS, INC. ("VCSY"),
30 NOW SOLUTIONS, INC., Inc. ("NOW Solutions"), PRIORITY TIME SYSTEMS, INC.
31 ("Priority Time"), and LEONARD CHERMACK ("Mr. Chermack"), (collectively "Defendants"),
32 and through its attorneys, Pettit Kohn Ingrassia Lutz & Dolin PC answers Plaintiff JAMES
33 SALZ's ("Plaintiff") Complaint ("the Complaint") by generally denying each and every
34 allegation contained therein.

1 **GENERAL DENIAL**

2 Pursuant to the provisions of California Code of Civil Procedure section 431.30(d),
3 Defendants deny, generally and specifically, each, every and all of the allegations of the
4 Complaint as a whole, and further generally and specifically denies that Plaintiff has sustained
5 any loss, injury, or damage as a proximate result of any act, breach, or omission on the part of
6 Defendants.

7 **AFFIRMATIVE DEFENSES**

8 Defendants asserts the following affirmative defenses. In doing so, Defendants do not
9 concede that it has the burden of production or proof as to any affirmative defense asserted below.
10 Further, Defendants do not presently know all the facts concerning the conduct of Plaintiff or
11 Plaintiff's allegations to state all affirmative defenses at this time. Accordingly, Defendants
12 reserve all other affirmative defenses and will seek leave of this Court to amend this Answer
13 should it later discover facts demonstrating the existence of additional affirmative defenses.

14 **FIRST AFFIRMATIVE DEFENSE**

15 **(Failure to State Cause of Action)**

16 As a separate affirmative defense, Defendants allege that the Complaint, and each and
17 every cause of action or purported cause of action contained therein, fails to state facts sufficient
18 to constitute a cause of action against Defendants.

19 **SECOND AFFIRMATIVE DEFENSE**

20 **(Estoppel)**

21 As a separate affirmative defense, Defendants allege that Plaintiff, by its own acts and/or
22 omissions, is estopped from recovering at all against Defendants.

23 **THIRD AFFIRMATIVE DEFENSE**

24 **(Failure to Exercise Ordinary Care)**

25 As a separate affirmative defense, Defendants allege that at all times and places alleged in
26 the Complaint, Plaintiff failed to exercise ordinary and reasonable care on its own behalf and such
27 negligence and carelessness was a proximate cause of some portion, up to and including the
28 whole of, its own alleged injuries and damages, if any, and Plaintiff's recovery therefore should

1 be barred or reduced according to law, up to and including the whole thereof.

2 **FOURTH AFFIRMATIVE DEFENSE**

3 **(Waiver)**

4 As a separate affirmative defense, Defendants allege that Plaintiff, by its own acts and/or
5 omissions, has waived its rights, if any, to recover against Defendants.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 **(Laches)**

8 As a separate affirmative defense, Defendants allege that the causes of action contained in
9 the Complaint, and each of them are barred by the doctrine of laches, in that Plaintiff has
10 unreasonably delayed in bringing these claims, and said delays have prejudiced Defendants.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(Unclean Hands)**

13 As a separate affirmative defense, Defendants allege that by reason of its conduct,
14 Plaintiff is barred by the doctrine of unclean hands from taking any relief sought in the
15 Complaint.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 **(Attorneys' Fee Inappropriate)**

18 As a separate affirmative defense, Defendants allege that the Complaint, and each and
19 every cause of action listed therein, fails to state facts sufficient to support an award of damages
20 for attorneys' fees, expert witness fees, and other litigation fees, costs, and expenses as against
21 Defendants.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 **(Prior Material Breach)**

24 As a separate affirmative defense, Defendants allege that each and every cause of action
25 set forth in the Complaint is barred as Plaintiff committed a prior material breach of the attorney-
26 client contract.

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NINTH AFFIRMATIVE DEFENSE

(No Employment Relationship)

As a separate affirmative defense, as to the first, second, third, fourth, fifth, sixth, eighth, ninth, and/or tenth causes of action, Defendants NOW Solutions and/or Priority Time are inappropriately named defendants because Plaintiff is not and was never an employee of these Defendants.

TENTH AFFIRMATIVE DEFENSE

(Breach or Failure to Comply with Contract Terms)

As a separate and alternative affirmative defense, without admitting the allegations of the Complaint, Defendants allege that the Complaint and each purported claim for relief therein are barred to the extent that Plaintiff has breached or not fully complied with all the terms and conditions of the alleged contracts.

ELEVENTH AFFIRMATIVE DEFENSE

(Violation of Employer’s Policies and Procedure)

As a separate affirmative defense, the Complaint, as well as each alleged claim for relief, is barred or limited, in whole or in part, because Plaintiff did not comply with Defendant VCSY’s policies and procedures.

TWELFTH AFFIRMATIVE DEFENSE

(Comparative or Contributory Fault of Plaintiff)

As a separate and alternative affirmative defense, without admitting the allegations of the Complaint, Defendants allege that Plaintiff was the proximate cause, and contributed to, by Plaintiff’s own intentional acts or omissions, of the damages alleged in the Complaint. Therefore, Plaintiff’s recovery, if any, must be reduced in proportion to Plaintiff’s own fault in causing the damages for which Plaintiff seeks recovery.

THIRTEENTH AFFIRMATIVE DEFENSE

(Comparative or Contributory Fault of Other Persons, Conditions, or Events)

As a separate and alternative affirmative defense, without admitting the allegations of the Complaint, Defendants allege that even if Plaintiff sustained injuries or damages in connection

1 with the events alleged in the Complaint, any such injuries and damages were wholly or partially
2 caused by the acts, wrongs, omissions, and/or negligence of other persons, entities, conditions,
3 forces, and/or things over which Defendants had no control and/or for which Defendants are not
4 responsible. Therefore, any award made in favor of Plaintiff must be reduced by an amount equal
5 to the percentage of the fault of third parties, conditions, or events in causing or contributing to
6 the damages Plaintiff seeks in the Complaint.

7 **FOURTEENTH AFFIRMATIVE DEFENSE**

8 **(Acts of Other Parties)**

9 As a separate affirmative defense, Defendants allege that, if Defendants are subjected to
10 any liability by Plaintiff herein, it will be due in whole or in part to the acts and/or omissions of
11 other parties or parties unknown at this time, and any recovery obtained by Plaintiff should be
12 barred or reduced according to law, up to an including the whole thereof.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 **(Statutes of Limitation)**

15 As a separate affirmative defense, Defendants allege that the Complaint, and each and
16 every cause of action or purported cause of action contained therein, is barred by all applicable
17 statutes of limitation, including but not limited to, Code of Civil Procedure sections 337, 337.1,
18 337.15, 338, and 343 and California Government Code sections 12960 et seq.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 **(Terms and Conditions of Contract Not Met)**

21 As a separate affirmative defense, without admitting the allegations of the Complaint,
22 Defendants allege that the terms and conditions of the subject contracts have not been met by
23 Plaintiff.

24 **SEVENTEENTH AFFIRMATIVE DEFENSE**

25 **(No Contract)**

26 As a separate and alternative affirmative defense, without admitting the allegations of the
27 Complaint, Defendants allege that Plaintiff's cause of action for breach of contract is barred, in
28 whole or in part, because no contract was formed between Plaintiff and Defendants VCSY, NOW

1 Solutions, or Priority Time regarding the subject matter alleged in the Complaint.

2 **EIGHTEENTH AFFIRMATIVE DEFENSE**

3 **(Lack of Consideration)**

4 As a separate and alternative affirmative defense, without admitting the allegations of the
5 Complaint, Defendants allege that Plaintiff's cause of action for breach of contract is barred, in
6 whole or in part, because there was a lack of or insufficient consideration to form the contracts
7 alleged in the Complaint.

8 **NINETEETH AFFIRMATIVE DEFENSE**

9 **(Duress)**

10 As a separate and alternative affirmative defense, without admitting the allegations of the
11 Complaint, Defendants allege that Plaintiff's cause of action for breach of contract is barred, in or
12 in part, because consent to form the contracts alleged in the Complaint was given under duress.

13 **TWENTIETH AFFIRMATIVE DEFENSE**

14 **(Economic Duress)**

15 As a separate and alternative affirmative defense, without admitting the allegations of the
16 Complaint, Defendants allege that Plaintiff's cause of action for breach of contract is barred, in or
17 in part, because consent to form the contracts alleged in the Complaint was given under economic
18 duress.

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 **(Undue Influence)**

21 As a separate and alternative affirmative defense, without admitting the allegations of the
22 Complaint, Defendants allege that the contracts alleged in the Complaint were not created
23 because Richard Wade was unfairly pressured by Plaintiff into consenting to the contact.

24 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

25 **(Fraud)**

26 As a separate and alternative affirmative defense, without admitting the allegations of the
27 Complaint, Defendants allege that the contracts alleged in the Complaint were not created
28 because Richard Wade's consent thereto was obtained by fraud.

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 **(Unilateral Mistake of Fact)**

3 As a separate and alternative affirmative defense, without admitting the allegations of the
4 Complaint, Defendants allege that the contracts alleged in the Complaint were not created due to
5 unilateral mistakes of fact by Richard Wade.

6 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

7 **(Bilateral Mistake of Fact)**

8 As a separate and alternative affirmative defense, without admitting the allegations of the
9 Complaint, Defendants allege that the contracts alleged in the Complaint were not created due to
10 bilateral mistakes of fact by Richard Wade and Plaintiff.

11 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

12 **(Ultra Vires Acts)**

13 As a separate and alternative affirmative defense, without admitting the allegations of the
14 Complaint, Defendants allege that all contracts alleged in the Complaint between Plaintiff and
15 Defendants VCSY, NOW Solutions, and/or Priority Time are void and unenforceable because
16 entering into these contracts were ultra vires acts by Richard Wade and/or Defendants VCSY,
17 NOW Solutions, and Priority Time.

18 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

19 **(Contract Void due to Violation of California Rules of Professional Conduct)**

20 As a separate and alternative affirmative defense, without admitting the allegations of the
21 Complaint, Defendants allege that all contracts alleged in the Complaint between Plaintiff and
22 Defendants VCSY, NOW Solutions, and/or Priority Time are void and unenforceable because, by
23 entering into agreements with Defendants VCSY, NOW Solutions, and/or Priority Time, Plaintiff
24 violated Rule 1.8.1 of the California Rules of Professional Conduct.

25 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

26 **(Commercial Impossibility/Impracticability)**

27 As a separate and alternative affirmative defense, without admitting the allegations of the
28 Complaint, Defendants allege that any and all obligations by Defendants VCSY, NOW Solutions,

1 and/or Priority Time under all contracts alleged in the Complaint were suspended due to
2 impossibility and impracticability of performance thereunder.

3 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

4 **(Unconscionability)**

5 As a separate and alternative affirmative defense, without admitting the allegations of the
6 Complaint, Defendants allege that all contracts alleged in the Complaint between Plaintiff and
7 Defendants VCSY, NOW Solutions, and/or Priority Time are void and unenforceable because
8 they were procedurally and/or substantively unconscionable.

9 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

10 **(Violation of Public Policy)**

11 As a separate and alternative affirmative defense, without admitting the allegations of the
12 Complaint, Defendants allege that all contracts alleged in the Complaint between Plaintiff and
13 Defendants VCSY, NOW Solutions, and/or Priority Time are void and unenforceable because
14 they violated public policy.

15 **THIRTIETH AFFIRMATIVE DEFENSE**

16 **(Condition Precedent)**

17 As a separate and alternative affirmative defense, without admitting the allegations of the
18 Complaint, Defendants allege that the Complaint and each purported claim for relief therein are
19 barred to the extent that Plaintiff failed to perform certain conditions precedent to any obligations
20 or indebtedness which Defendants might otherwise have had toward him.

21 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

22 **(Illusory Contract)**

23 As a separate affirmative defense, Defendants allege that the alleged contracts between
24 Plaintiff and Defendants VCSY, NOW Solutions, and/or Priority Time were illusory, and are thus
25 unenforceable.

26 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

27 **(Usurious Contract)**

28 As a separate affirmative defense, Defendants allege that the alleged contracts between

1 Plaintiff and Defendants VCSY, NOW Solutions, and/or Priority Time were usurious, and are
2 thus unenforceable.

3 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

4 **(Anticipatory Breach)**

5 As a separate affirmative defense, without admitting the allegations of the Complaint,
6 Defendants allege that any alleged breach of contract occurred in anticipation of Plaintiff's
7 inability to meet his requirements and/or fulfill his obligations thereunder.

8 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

9 **(Lack of Definiteness)**

10 As a separate and alternative affirmative defense, without admitting the allegations of the
11 Complaint, Defendants allege that Plaintiff's cause of action for breach of contract is barred, in
12 whole or in part, because the alleged terms of the contracts alleged in the Complaint are illusory,
13 indefinite, and not sufficiently defined to allow for enforcement of the alleged contract.

14 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

15 **(Consent)**

16 As a separate affirmative defense, without admitting the allegations of the Complaint,
17 Defendants allege that the Complaint, and each purported cause of action alleged therein, is
18 barred, in whole or in part, because Plaintiff consented to the conduct about which he now
19 complains.

20 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

21 **(No Ratification)**

22 As a separate affirmative defense, Defendants allege that any alleged contract was entered
23 into without their knowledge or consent, and that Defendants VCSY, Now, and/or Priority Time
24 did not have the intention to ratify or be bound by the terms of the contracts.

25 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

26 **(No Willful Misconduct)**

27 As a separate affirmative defense, without admitting that Defendants failed to take any
28 required action, such omission was not willful.

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THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(No Unlawful Differential/Disparate Treatment)

As a separate affirmative defense, Defendants have not discriminated against the Plaintiff on any unlawful basis, and any treatment of the Plaintiffs or difference in the treatment of the Plaintiff as opposed to other employees of Defendant were based upon reasonable factors and not on any unlawful basis.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(Interactive Process)

As a separate affirmative defense, Defendants VCSY, NOW Solutions, and Priority Time engaged in a timely, good faith interactive process with Plaintiff.

FORTIETH AFFIRMATIVE DEFENSE

(Plaintiff Failed to Engage in Interactive Process)

As a separate affirmative defense, Defendants VCSY, NOW Solutions, and Priority Time allege Plaintiff is not entitled to damages because Plaintiff failed to reasonably engage in the interactive process despite good faith efforts by Defendants VCSY, NOW Solutions, and/or Priority Time to engage in the interactive process with Plaintiff.

FORTY-FIRST AFFIRMATIVE DEFENSE

(No Equitable or Injunctive Relief Warranted)

As a separate affirmative defense, Plaintiff is not entitled to any equitable or injunctive relief because he has suffered no irreparable injury based on any alleged conduct of Defendants VCSY, NOW Solutions, and/or Priority Time, and there is an adequate remedy at law for any such conduct.

FORTY-SECOND AFFIRMATIVE DEFENSE

(Failure to Fulfill Obligations)

As a separate affirmative defense, Defendants allege that the Complaint, and each purported cause of action therein, is barred by virtue of Labor Code sections 2854 and 2856, respectively, in that Plaintiff failed to use ordinary care and diligence in the performance of his duties and failed to comply substantially with the reasonable directions of his employer.

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FORTY-THIRD AFFIRMATIVE DEFENSE

(Plaintiff’s Exempt Status)

As a separate affirmative defense, without admitting the allegations of the Complaint, all relevant claims for damages pursuant to Plaintiff’s third, fourth, and/or seventh causes of action are barred due to Plaintiff’s status as an exempt employee.

FORTY-FOURTH AFFIRMATIVE DEFENSE

(No Wrongful Enrichment Warranting Restitution)

As a separate affirmative defense, Defendants VCSY, NOW Solutions, and/or Priority Time have not wrongfully been enriched by any business practices, and therefore no restitution or disgorgement is warranted.

FORTY-FIFTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

As a separate affirmative defense, any recovery by Plaintiff based on the circumstances presented would constitute unjust enrichment.

FORTY-SIXTH AFFIRMATIVE DEFENSE

(Insufficient Allegations of Punitive Damages Against Corporation)

As a separate affirmative defense, regarding Plaintiff’s second cause of action, Plaintiff’s allegations are insufficient to sustain the imposition of punitive damages against these corporate Defendants VCSY, NOW Solutions, and/or Priority Time.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

(Failure to State a Claim for Punitive Damages)

As to the second cause of action, Plaintiff fails to state facts sufficient to support an award of punitive damages against Defendants VCSY, NOW Solutions, and/or Priority Time.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional)

As a separate affirmative defense, regarding Plaintiff’s second cause of action, imposition of punitive damages would violate the due process and equal protection rights of VCSY, NOW Solutions, and/or Priority Time under the United States Constitution.

1 **FORTY-NINTH AFFIRMATIVE DEFENSE**

2 **(Justification and Privilege)**

3 As a separate affirmative defense, regarding all of Plaintiff’s causes of action, Defendants’
4 alleged conduct was justified and privileged.

5 **FIFTIETH AFFIRMATIVE DEFENSE**

6 **(Practice was not Unfair)**

7 The business practices of Defendants VCSY, NOW Solutions, and/or Priority Time
8 alleged in the Complaint are not unfair within the meaning of Business and Professions Code
9 section 17200 in that the practices, if any, were justified because they were made in a good faith
10 effort to protect the legitimate business interests of VCSY, NOW Solutions, and/or Priority Time.

11 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

12 **(Good Faith)**

13 As a separate affirmative defense, regarding all of Plaintiff’s causes of action, Defendants
14 and their agents acted reasonably and in good faith at all times material herein, based on all
15 relevant facts and circumstances known by them at the time they acted. Defendants, therefore,
16 did not commit any unlawful act against Plaintiff. Plaintiff’s complaint is barred and all alleged
17 causes of action therein are barred by the reasonable and good faith conduct of Defendants. Also,
18 to the extent that “good cause” was required for any action taken by Defendants, such existed.
19 Accordingly, Plaintiff is barred from any recovery.

20 **FIFTY-SECOND AFFIRMATIVE DEFENSE**

21 **(Business Necessity)**

22 As a separate affirmative defense, regarding all of Plaintiff’s causes of action, without
23 admitting that Defendants committed any wrongful conduct, any and all wrongful conduct alleged
24 by Plaintiff was a business necessity.

25 **FIFTY-THIRD AFFIRMATIVE DEFENSE**

26 **(Legitimate Business Reasons / Same Decision)**

27 As a separate affirmative defense, on information and belief, any alleged actions or
28 decisions by Defendants VCSY, NOW Solutions, and/or Priority Time taken with respect to

1 Plaintiff's employment were undertaken for legitimate, non-discriminatory, and non-retaliatory
2 reasons. In other words, any actions or decisions by Defendants VCSY, Now Solutions, and/or
3 Priority Time taken with respect to Plaintiff were undertaken or made regardless of Plaintiff's
4 protected status under FEHA, or any other statute. Any alleged actions taken against Plaintiff
5 would have been taken notwithstanding Plaintiff's alleged protected status or alleged protected
6 action. As a result, Plaintiff is precluded from recovering any damages under Federal law, and is
7 precluded from recovering damages for back pay, front pay, and/or emotional distress under
8 California law.

9 **FIFTY-FOURTH AFFIRMATIVE DEFENSE**

10 **(Management Discretion)**

11 As a separate affirmative defense, without admitting the allegations of the Complaint, any
12 and all conduct of which Plaintiff complains or which is attributable to Defendants was a just and
13 proper exercise of management discretion undertaken for fair and honest business reasons and
14 cannot form the basis of a valid damages claim.

15 **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

16 **(Justification and Privilege)**

17 As a separate affirmative defense, regarding all of Plaintiff's causes of action, Defendants'
18 alleged conduct was justified and privileged.

19 **FIFTY-SIXTH AFFIRMATIVE DEFENSE**

20 **(Failure to Mitigate Damages)**

21 As a separate affirmative defense, Defendants allege that Plaintiff has failed to mitigate its
22 damages, if any, in connection with the matters referred to in the Complaint, and that such failure
23 to mitigate bars and/or diminishes Plaintiff's recovery, if any, against Defendants.

24 **FIFTY-SEVENTH AFFIRMATIVE DEFENSE**

25 **(Reservation)**

26 Defendants presently have insufficient knowledge or information upon which to form a
27 belief whether they may have additional, yet unstated, affirmative defenses. Defendants reserve
28 the right to assert additional affirmative defenses in the event discovery indicates that additional

1 affirmative defenses are appropriate.

2 **FIFTY-EIGHTH AFFIRMATIVE DEFENSE**

3 **(Uncertainty)**

4 As a separate affirmative defense, Defendants allege that the causes of action in the
5 Complaint, and each of them, are uncertain and ambiguous as to identity, nature, and terms of the
6 contract and/or contractual relationship upon which Plaintiff bases its claim for damages against
7 Defendants.

8 **FIFTY-NINTH AFFIRMATIVE DEFENSE**

9 **(Full and Timely Payment of Wages)**

10 As a separate and alternative affirmative defense, without admitting the allegations of the
11 Complaint, Defendants are informed and believes, and upon that basis allege, that Plaintiff was
12 fully and timely paid all wages earned and owed at all times throughout his employment.

13 **SIXTIETH AFFIRMATIVE DEFENSE**

14 **(After-Acquired Evidence)**

15 Plaintiff's Complaint and each cause of action pled therein are barred to the extent that
16 Defendants have discovered facts, or may later discover facts, which, if known to Defendants
17 prior to Plaintiff's termination, would have created additional grounds or bases for a decision to
18 discharge Plaintiff. As a matter of law, the after-acquired evidence doctrine bars Plaintiff's
19 recovery for such claims and/or cuts off damages for such claims.

20 **SIXTY-FIRST AFFIRMATIVE DEFENSE**

21 **(Additional Defenses)**

22 As a separate affirmative defense, Defendants allege that it may have additional defenses
23 that cannot be articulated due to Plaintiff's failure to particularize its claims, due to the fact that
24 Defendant does not have copies of certain documents bearing on Plaintiff's alleged contractual
25 claims and due to Plaintiff's failure to provide more specific information concerning the nature of
26 the damage claims and claims for certain costs which Plaintiff alleges that Defendants may share
27 some responsibility. Defendants therefore reserve the right to assert additional defenses upon
28 further particularization of Plaintiff's claims, upon examination of the documents provided, upon

1 discovery of further information concerning the alleged damage claims and claims for costs and
2 upon the development of other pertinent information.

3 **SIXTY-SECOND AFFIRMATIVE DEFENSE**

4 **(Reserves Right to Amend Answer)**

5 As a separate affirmative defense, Defendant reserves the right to amend its answer
6 herein, including the addition of affirmative defenses after pleading and discovery in preparation
7 for trial.

8 **PRAYER**

9 WHEREFORE, Defendants pray for judgment against the Plaintiff as follows:

- 10 1. That Plaintiff takes nothing by way of his action;
11 2. That Defendants be awarded costs of suit incurred herein; and
12 3. For such other and further relief as the court deems just and proper.

13
14 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**

15
16 Dated: May 31, 2024

17 By: 

18 Ryan H. Nell, Esq.
19 Caitlin M. Jones, Esq.
20 Brian B. Greenberg, Esq.
21 Attorneys for Defendants
22 **VERTICAL COMPUTER SYSTEMS,
23 INC., NOW SOLUTIONS, INC., INC.
24 PRIORITY TIME SYSTEMS, INC.
25 LEONARD CHERMACK**

PROOF OF SERVICE
James Salz v. Vertical Computer Systems Inc.
Los Angeles Superior Court Case No. 24STCV05304

I, the undersigned, declare that:

I am and was at the time of service of the papers herein, over the age of eighteen (18) years and am not a party to the action. I am employed in the County of Los Angeles, California, and my business address is 5901 W. Century Blvd., Suite 1100, Los Angeles, California 90045.

On **May 31, 2024**, I caused to be served the following documents:

DEFENDANTS VERTICAL COMPUTER SYSTEMS, INC., NOW SOLUTIONS, INC., INC., PRIORITY TIME SYSTEMS, INC., AND LEONARD CHERMACK'S ANSWER TO PLAINTIFF'S COMPLAINT

BY MAIL: By placing a copy thereof for delivery in a separate envelope addressed to each addressee, respectively, as follows:


- BY FIRST-CLASS MAIL (Code Civ. Proc. §§ 1013(a)-(b))**
- BY OVERNIGHT DELIVERY (Code Civ. Proc. §§ 1013(c)-(d))**
- BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED (Code Civ. Proc. §§ 1013(a)-(b))**

BY ELECTRONIC SERVICE (Code Civ. Proc. § 1010.6 and Cal. Rules of Court, rule 2.251): I caused such document(s) to be electronically served on those parties listed below, at their respective electronic service address(es) listed below, from e-mail address mhampton@pettitkohn.com.

D. Jay Ritt, Esq. Warren O. Hodges, Jr., Esq. RITT HODGES LLP 65 North Raymond Avenue, Suite 320 Pasadena, California 91103 Tel: (626) 685-2550 Fax: (626) 685-2562 Email: ritt@rtthlaw.com hocfges@rtthlaw.com	Valerie Garcia Hong, SBN 239755 Mark A. Simpliciano, SBN 331516 GARCIA HONG LAW APC 10680 Treena Street, Suite 160 San Diego, CA 92131 Tel: (858) 255-0163 Fax: (858) 724-1438 Email: valerie@garciahonglaw.com mark@garciahonglaw.com
Attorneys for Plaintiff JAMES SALZ	Co-Counsel for Defendant VERTICAL COMPUTER SYSTEMS, INC.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 31, 2024** at Los Angeles, California.



Monica Hampton