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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 11/5/2021
By /s/ Anthony Berini
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO**

Case No.: 21-CIV-06029

JOHN R. SCHOLZ, III, an individual, and
KEVIN E. BYBEE, an individual, on behalf
of themselves and others similarly situated,

Plaintiff,

vs.

UNITED AIRLINES, INC., a Delaware corp.,
and DOES 1 through 10, inclusive

Defendant.

CLASS ACTION

**VERIFIED COMPLAINT FOR DAMAGES
FOR:**

1. Violation of Labor Code §§ 233 and 234;
2. Violation of Business and Professions Code §§ 17200 et seq (Unfair Business Practices);
3. Declaratory Relief

DEMAND FOR JURY TRIAL

Unlimited Civil Case

Plaintiffs John R. Scholz, III ("Plaintiff Scholz") and Kevin E. Bybee ("Plaintiff Bybee"),
on behalf of themselves, and all others similarly situated, complain and allege as follows:

INTRODUCTION

1. Plaintiffs Scholz and Bybee bring this class action for claims arising out of the sick leave
and attendance policies of United Airlines, Inc. ("Defendant United"), on behalf of themselves
and all California citizens currently or formerly employed as Technicians and Other Related
employees ("Technicians") by Defendant United within the applicable statutory periods.

1 2. The California Labor Code ("Labor Code") requires employers who provide sick leave
2 for employees to permit those employees to use the amount of sick leave those employees would
3 accrue over a 6-month period to care for specifically designated sick relatives. This is commonly
4 referred to as "kin care" sick leave. The Labor Code provides sole discretion to the employee to
5 designate whether the use of accrued sick leave is for kin care sick leave or for personnel sick
6 leave. And, the Labor Code prohibits employers from counting sick leave as an absence or
7 "occurrence" which could potentially lead to discipline for the employee.
8

9 3. The present action arises out of Defendant United's sick leave and attendance policies.
10 Defendant United's sick leave policy auto-designates *every* use of sick leave as kin care sick
11 leave, even when it is not kin care sick leave, until kin care sick leave is exhausted. Defendant
12 United's attendance policies punish a Technician employee for using sick leave, in contravention
13 of California law. These illicit and unlawful policies of Defendant United discriminate against
14 Plaintiffs, and the Class, when applied in this manner. Moreover, Defendant United applies these
15 policies only to its Technician employees and not all of its employees in California.
16

17 4. During the relevant period, and continuing to the present, Defendant United illegally
18 ignored, and continues to ignore, Plaintiffs', and other similarly situated Class members', right to
19 determine and designate the use of paid sick leave. And, despite multiple express requests by
20 Plaintiffs to Defendant United to cease this practice, and to correct wrongly designated kin care
21 sick leave to accurately reflect personal sick leave, Defendant United adamantly refused, and
22 continues to refuse, to do so. Moreover, Defendant United has disciplined Plaintiffs, and other
23 similarly situated Class members, for using paid sick leave.
24

25 5. As a result, Plaintiffs Scholz and Bybee bring this action seeking, among other relief, a
26 declaration Defendant United's sick leave and attendance policies are unlawful under California
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1 law; an injunction prohibiting use of, and enforcement of, the unlawful sick leave and attendance
2 policies; restitution; accountings; damages; and available penalties pursuant to California law.
3 These issues are apparent based on Defendant United's maintained records, as well as statements
4 made by Defendant United to Plaintiffs, and are amenable for adjudication on a collective basis.
5

6 6. On November 5, 2021, Plaintiffs gave written notice of the claims in Plaintiffs' complaint
7 to the California Labor and Workforce Development Agency ("LWDA") seeking intervention
8 or, in the alternative, permission to proceed as representative "aggrieved employees" for and on
9 behalf of all other aggrieved employees and the State of California in a representative capacity
10 under the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code §
11 2698 et seq. The statutory time for LWDA to respond has not yet expired.
12

13 JURISDICTION AND VENUE

14 7. Jurisdiction of this action is proper in the Superior Court of California under Article VI,
15 §10 of the California Constitution because this action is a cause not given by statute to other trial
16 courts. Additionally, the monetary damages, penalties and other amounts sought in this action
17 exceed the minimal jurisdictional limits of this Court.
18

19 8. This Court has jurisdiction over Defendant United because Defendant United has
20 sufficient minimum contacts with California and San Mateo County and because the claims in
21 this action arise out of Defendant United's contacts with California and California law. Moreover,
22 Defendant United's operation of its business activities out of multiple airports in California,
23 including San Francisco International Airport where Defendant United employs thousands of
24 Technician employees who reside in California, and Defendant United intentionally availing
25 itself of the California market, render Defendant United subject to the jurisdiction of this Court
26 in accordance with traditional notions of fair play and substantial justice.
27
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1 9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§
2 395(a) and 395.5 because the acts complained of in this Complaint giving rise to Defendant
3 United's liability, the violations of law, and the resultant injuries to Plaintiffs Scholz and Bybee,
4 and other similarly situated Class members, occurred, at least in part, in San Mateo County,
5 where Defendant United also maintains offices, transacts business, and/or has an agent(s).
6

7 **PARTIES**

8 10. Plaintiff Scholz is a California citizen and a resident of Alameda County. Plaintiff Scholz
9 has been employed by Defendant United at the San Francisco International Airport, located in
10 unincorporated San Mateo County, as a Technician since 1998. Plaintiff Scholz is 57-years old
11 and a father of two. Plaintiff Scholz monitors and rationes all paid sick leave days in order to have
12 paid sick leave days to provide the necessary and essential care for his family, particularly his
13 elderly and ailing in-laws, as permitted under California law, and himself.
14

15 11. Plaintiff Bybee is a California citizen and a resident of San Mateo County. Plaintiff
16 Bybee has been employed by Defendant United, at the San Francisco International Airport,
17 located in unincorporated San Mateo County, as a Technician since 1989. Plaintiff Bybee, a 59-
18 years old father of two, is responsible for, and the primary caretaker for, his 88-years old mother
19 who is handicapped and suffers from multiple chronic, debilitating medical conditions requiring
20 medical attention. Plaintiff Bybee monitors and rationes all paid sick leave in order to have paid
21 sick leave days to provide the necessary and essential care for his ailing mother, as permitted
22 under California law. Plaintiff Bybee himself has medical conditions for which Plaintiff Bybee
23 takes sick leave.
24

25
26 12. On information and belief, Defendant United, is, and at all relevant times, was a Delaware
27 corporation, with its principal place of business in Illinois, authorized to do business under the
28

1 laws of the state of California and doing business within the state of California as an air carrier,
2 engaging in substantial business in at least nineteen airports in the state of California, including
3 in the counties of San Mateo, Sacramento, San Francisco, and Los Angeles.

4
5 13. On information and belief, one of Defendant United's major hubs of business activity is
6 located at the San Francisco International Airport, located in unincorporated San Mateo County,
7 in the state of California, where Defendant United employs approximately 1,500 Technicians.
8 On information and belief, Defendant United employs approximately 3,000 Technicians in total
9 at the many other airport facilities from which Defendant United operates out of in California.

10
11 14. Defendant United is, and at all material and relevant times, was an employer, and Plaintiff
12 Scholz' and Bybee's employer, within the meaning of Labor Code §§ 233 and 234, subject to the
13 Labor Code.

14 15. Defendants named as Does 1 through 10, inclusive, are persons or entities whose true
15 names and capacities, whether individual, corporate, or otherwise, are presently unknown to
16 Plaintiffs Scholz and Bybee, who therefore sue said Doe defendants by fictitious name pursuant
17 to California Code of Civil Procedure § 474. Plaintiffs Scholz and Bybee are informed and
18 believe, and allege on that basis, each of the fictitiously named Doe Defendants perpetrated some
19 or all of the unlawful and wrongful acts alleged herein; is responsible in some manner for the
20 matters alleged herein; held executive positions with Defendant United and/or have acted on
21 behalf of Defendant United by exercising decision making responsibility for and by establishing
22 unlawful and unfair sick leave and attendance policies for Defendant United; and is jointly and
23 severally liable to Plaintiffs Scholz and Bybee. Plaintiffs Scholz and Bybee will amend the
24 Complaint to set forth the true names and capacities of Doe Defendants when such names are
25 ascertained.
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27
28

1 **FACTUAL ALLEGATIONS**

2 **Allegations Common to All Claims and Relief Sought**

3 16. Defendant United employs numerous Technician employees throughout California. At
4 all times relevant and material, Defendant United conducted business and employed Plaintiffs,
5 and other similarly situated Technicians, in San Mateo County, and throughout California.

7 17. At all times relevant and material, Plaintiffs, and other similarly situated Technicians,
8 were non-exempt employees, covered by the California Labor Code; by Defendant United's
9 policies and practices; and by other orders, regulations and statutes.

10 18. Defendant United's Technician employees, pursuant to collective bargaining agreement,
11 accrue limited paid sick leave. Specifically, Technicians accrue 8-hours of paid sick leave for
12 each month the employee is in a paid status or 96-hours annually, and can accumulate sick leave
13 in a "sick bank" up to a maximum of 1,600-hours.

15 19. Absent application of California law, Defendant United's paid sick leave may only be
16 used for the Technician employee's own sickness or non-occupational injury and/or for illness of
17 limited family members - a spouse or a dependent child. Defendant United's paid sick leave may
18 not be used for a parent or sibling. Defendant United's stated Technician sick leave policy also
19 imposes an "occurrence" for disciplinary purposes on an employee for the third time an employee
20 uses any paid sick leave to care for a spouse or dependent child in a 12-month period. There is
21 no way to mitigate an "occurrence" or assignment of reductive attendance point(s).

23 20. And, contrary to California law, Defendant United erroneously auto-designates all paid
24 sick leave as kin care sick leave regardless of whether the Technician is taking paid sick leave
25 for personal sick leave or kin care sick leave. Defendant United does not auto-designate all sick
26 leave as kin care sick leave for its other California employees, for example, its pilots.
27
28

1 21. Defendant United maintains an attendance policy applicable to its Technician employees.
2 Defendant United unilaterally adopted the attendance policy after ratification of the collective
3 bargaining agreement. The attendance policy is not, and was not, subsequently incorporated into
4 the collective bargaining agreement by agreement or ratification nor does the attendance policy
5 refer to, reject, or waive California state labor laws.
6

7 22. Under the original attendance policy, a Technician could be assigned a "point" for using
8 sick leave. A Technician who received a certain amount of points was subject to discipline up to
9 and including termination. In 2017, Defendant United allegedly modified the sick leave policy
10 by removing the assignment of a point for using accrued sick leave; however, Defendant United
11 continues to assign points to its Technician employees for using accrued sick leave.
12

13 23. Plaintiffs are informed and believe, and allege on that basis, Defendant United utilizes
14 the same sick leave and attendance policies in each airport facility in the state of California for
15 its Technician employees and that Defendant United has acted knowingly, intentionally, and with
16 deliberate indifference and conscious disregard to the rights of Plaintiffs, and other similarly
17 situated members of the Class, in committing the abuses set forth above.
18

19 24. Moreover, Plaintiffs are informed and believe, and allege on that basis, Defendant United
20 has engaged in systemic violations of the Labor Code and California Business and Professions
21 Code by creating and maintaining policies, practices and customs that knowingly deny Plaintiffs,
22 and other similarly situated members of the Class, certain employment rights and that all such
23 violations are ongoing.
24

25 25. On November 5, 2021, Plaintiffs Scholz and Bybee filed notice with the California Labor
26 and Workforce Development Agency ("LWDA"), sending a copy by certified mail to Defendant
27 United, of the labor law violations set forth in this Complaint that Plaintiffs have suffered and,
28

1 on information and belief, other Technicians at United have suffered. In the event the LWDA
2 declines to investigate or otherwise does not respond within the statutory period, Plaintiffs intend
3 to investigate and amend this Complaint to seek penalties on behalf of all aggrieved employees
4 who have been similarly harmed by the violations.
5

6 **Individual Allegations of Plaintiff Scholz to All Claims and Relief Sought**

7 26. At the start of the calendar year 2021, Plaintiff Scholz had approximately 90 hours of sick
8 leave in his sick leave bank, which had accrued from his many years employed with Defendant
9 United. According to Defendant United's sick leave policy, Plaintiff Scholz could expect to
10 accrue an additional 96-hours of sick leave in 2021 or one sick day per month.
11

12 27. In 2021, Plaintiff Scholz took personal sick leave due to a personal illness; however,
13 Defendant United auto-designated the sick leave as kin care sick leave to cover these absences
14 without Plaintiff Scholz' authorization or permission. By February 23, 2021, Defendant United
15 had illicitly exhausted all of Plaintiff Scholz' kin care sick leave for 2021 through the erroneous
16 designations of personal sick leave as kin care sick leave.
17

18 28. On September 8, 2021, following the use of available paid sick leave on September 3,
19 2021, Defendant United assigned a discipline "point" to Plaintiff Scholz for using paid sick leave.
20

21 29. Based on past experiences, Plaintiff Scholz expects to have to take time off to care for his
22 family, particularly his failing 85-years old father-in-law, in addition to time off Plaintiff Scholz
23 may need to take off for his own personal illnesses.

24 **Individual Allegations of Plaintiff Bybee to All Claims and Relief Sought**

25 30. At the start of the calendar year 2021, Plaintiff Bybee had approximately 1,011 hours of
26 sick leave in his sick leave bank, accrued from his many years with Defendant United. Plaintiff
27 Bybee could expect to accrue a further 96-hours of sick leave in 2021 or one sick day per month.
28

1 31. On April 14, 2021, Plaintiff Bybee took authorized personal sick leave due to a personal
2 medical condition. This personal sick leave was for 60-days from April 14, 2021 through June
3 13, 2021. Defendant United auto-designated this personal sick leave as kin care sick leave to
4 cover Plaintiff Bybee's absences without Plaintiff Bybee's authorization or permission. By April
5 19, 2021, Defendant United had illicitly exhausted all of Plaintiff Bybee's kin care sick leave for
6 2021 through erroneously designating personal sick leave as kin care sick leave.
7

8 32. Upon his return from sick leave, Plaintiff Bybee submitted multiple requests to Defendant
9 United to correctly designate those absences and use of his paid sick leave as personal sick leave
10 rather than kin care sick leave; however, Defendant United refused to do so, stating the kin care
11 rules do not apply to Defendant United and it is only because of Defendant United's generosity
12 Plaintiff Bybee gets to use, and have absences designated, as kin care at all.
13

14 33. In addition to Defendant United's failure to correctly designate Plaintiff Bybee's sick
15 leave, on June 13, 2021, Defendant United assigned a discipline "point" to Plaintiff Bybee for
16 using his available paid sick leave for his medical condition.
17

18 34. Based on past experiences, Plaintiff Bybee expects to have to take time off to care for his
19 mother in addition to the time off Plaintiff Bybee must take off for his own medical conditions.
20

21 CLASS ALLEGATIONS

22 35. Plaintiffs bring this action individually, and on behalf of all other similarly situated
23 Technician employees of Defendant United, who are currently employed or were formerly
24 employed by Defendant United in California at any time during the Class Period. Plaintiffs'
25 claims are brought and may properly be maintained as a class action under California Code of
26 Civil Procedure § 382 because there is a well-defined community of interest among the Class
27 with respect to the claims asserted herein and the proposed Class is easily ascertainable.
28

1 36. Ascertainability and Numerosity. The members of the Class are ascertainable and
2 sufficiently numerous that joinder of all members is impracticable. On information and belief,
3 the Class includes approximately 3,000 individuals employed by or formerly employed by
4 Defendant United in California, including in San Mateo County, as Technicians at any time since
5 November 5, 2017 ("Class Period"). The Class Period also includes unknown future employees
6 who will become employed as Technicians by Defendant United during the Class Period prior to
7 Class certification. The names and addresses of Class members are available from Defendant
8 United and notice can be provided to the Class using common techniques and customary notice
9 used in class action lawsuits of this nature. Joinder of all such current and former Technicians
10 individually would be impractical.

13 37. Commonality. There are questions of law and fact common to the Class, including but
14 not limited to whether Defendant United's sick leave and attendance policies violate the Labor
15 Code; whether Defendant United's conduct constitutes an unlawful, unfair, or deceptive business
16 act or practice; and what the appropriate remedies for Defendant United's conduct should be.
17 These questions predominate over individual questions.

19 38. Typicality. The claims of Plaintiffs Scholz and Bybee are typical of the claims of the
20 Class Plaintiffs seek to represent. As set forth herein, Defendant United's common course of
21 conduct caused Plaintiffs, and other similarly situated Class members, the same or similar injuries
22 and damages. Plaintiffs Scholz' and Bybee's claims are thereby representative of and coextensive
23 with the claims of the Class.

25 39. Adequacy. Plaintiffs Scholz and Bybee will fairly and adequately represent and protect
26 the interests of the Class because Plaintiffs are a member of the class Plaintiffs seek to represent
27 and because it is in Plaintiffs' best interests to prosecute the claims alleged herein to obtain
28

1 declaratory relief, injunctive relief, restitution, damages, and other relief for violations the Class
2 has already suffered. Plaintiffs Scholz and Bybee will prosecute the case vigorously on behalf
3 of the Class as demonstrated by having already devoted time and resources to initially
4 investigating these claims. Neither Plaintiff Scholz or Plaintiff Bybee have known conflicts of
5 interest with the Class. And, Counsel for Plaintiffs has the requisite resources, experience, and
6 ability to prosecute this action as a class action.
7

8 40. Superiority of Class Action. A class action is superior to other available methods for the
9 fair and efficient adjudication of this controversy. Specifically, because the damages suffered by
10 certain individual members of the Class may be relatively small, the expense and burden of
11 individual litigation make it impracticable for Class members to pursue claims separately. Class
12 action treatment will permit all those similarly situated, as well as all parties and the judicial
13 system, to litigate these claims efficiently and economically. Class action treatment will also
14 avoid inconsistent outcomes because the same issues can be adjudicated in the same manner for
15 all Class members. Moreover, because Defendant United has implemented an unlawful policy
16 generally applicable to the Class, issuing injunctive relief and declaratory relief with respect to
17 the Class as a whole makes class action treatment appropriate. For all these and other reasons, a
18 class action is superior to other available methods for the fair and efficient adjudication of the
19 controversy set forth in this complaint.
20
21
22

23 **FIRST CAUSE OF ACTION**
24 **(Kin Care Violations Brought by Plaintiffs Against Defendant United and Does 1-10)**
(Cal. Lab. Code §§ 233 and 234)

25 41. Plaintiffs incorporate all paragraphs above as if fully set forth herein.

26 42. Labor Code § 233(a) requires "[a]ny employer who provides sick leave for employees
27 shall permit an employee to use in any calendar year the employee's accrued and available sick
28

1 leave entitlement, in an amount not less than the sick leave that would be accrued during six
2 months at the employee's then current rate of entitlement for the reasons specified in subdivision
3 (a) of § 246.5." Thus, Labor Code § 233 requires the employee be the party to designate the type
4 of use – kin care or personal care – for which accrued, paid sick leave is being taken.
5

6 43. Defendant United's practice and policy of auto-designating all paid sick leave as kin care
7 sick leave without permission or authorization violates Labor Code § 233.

8 44. Defendant United, by its erroneous designation, illicitly depletes available kin care, an
9 action the legislature specifically sought to prevent in drafting the kin care law, and actively
10 prevents the Technician employee, including Plaintiffs and the Class, from using accrued and
11 available paid sick leave as provided for by California law.
12

13 45. Moreover, Defendant United's practice and policy of requiring Technician employees,
14 including Plaintiffs and the Class, to use accrued and available paid sick leave as kin care sick
15 leave when the paid sick leave is being taken for personal sick leave or when a Technician
16 employee would not elect to use accrued and available paid sick leave as kin care sick leave even
17 if given the choice, denies the Technician, including Plaintiffs and the Class, the right to use
18 accrued and available paid sick leave for kin care sick leave for absences later in time to care for
19 covered family members, additionally violating Labor Code § 233.
20

21 46. The anti-retaliation provisions of Labor Code § 233 protect the employee from retaliation
22 for the employee's use of sick time for the employee's own needs. Labor Code § 233(c) forbids
23 any employer to "deny an employee the right to use sick leave or discharge, threaten to discharge,
24 demote, suspend, or in any manner discriminate against an employee for using, or attempting to
25 exercise the right to use, sick leave to attend to an illness or the preventive care of a family
26 member, or for any other reasons specified in subdivision (a) of § 246.5."
27
28

1 47. And, pursuant to Labor Code § 234, an employer absence control policy counting the use
2 of sick leave as an absence that may lead to or result in discipline, discharge, demotion, or
3 suspension is a per se violation of Labor Code § 233.

4 48. Together Labor Code §§ 233 and 234 provide if an employee has accrued and available
5 sick leave, and is using available accrued paid sick leave for a purpose as specified in the law, it
6 is not permissible for an employer to give the employee an "occurrence" for the absence under
7 such an attendance policy because such action would constitute a form of discipline against the
8 employee for using paid sick leave as allowed under the paid sick leave law.
9

10 49. Defendant United's practices and policies effectuate such a prohibited result because
11 Defendant United's attendance policy counts the use of paid sick leave as an absence that may
12 lead to discipline, which violates the Labor Code.
13

14 50. Defendant United's continuing violation of the laws pleaded herein will cause great and
15 irreparable damage to Plaintiffs and the Class unless Defendant United is immediately restrained
16 from committing further illegal acts.
17

18 51. Plaintiffs Scholz and Bybee have no plain, speedy, or adequate remedy at law.

19 **SECOND CAUSE OF ACTION**
20 **(Unfair Business Practices Brought by Plaintiffs Against Defendant United and Does 1-10)**
21 **(Cal. Bus. & Prof. Code §§ 17200 et seq.)**

22 52. Plaintiffs incorporate all paragraphs above as if fully set forth herein.

23 53. Plaintiffs Scholz and Bybee assert this cause of action for unfair, unlawful, and/or
24 deceptive business practices and the following against Defendant United and Does 1-10, who are
25 all "persons" within the meaning of § 17201 of the California Business and Professions Code.

26 54. California Business and Professions Code §§ 17200 et seq., ("Unfair Competition Law"),
27 prohibits any unlawful, unfair, fraudulent, or deceptive business act or practice.
28

1 55. The acts, policies, and practices alleged in this action by Plaintiffs Scholz and Bybee
2 against Defendant United, and Does 1-10, are willful violations of California law, including but
3 not limited to violation of Labor Code §§ 233 and 234, constituting unfair business practices as
4 defined by §§ 17200 et seq. of the California Business and Professions Code.
5

6 56. At all relevant times, Defendant United engaged in unlawful and unfair business practices
7 in violation of the Unfair Competition Law through common and systemic employment policies
8 and practices including unilaterally auto-designating sick leave as kin care sick leave, interfering
9 with sick leave, and disciplining employees for using paid sick leave as alleged in this Complaint,
10 in violation of the Labor Code.
11

12 57. By engaging in the above-described unfair business practices, Defendant United has
13 sought to avoid, and successfully avoided, obligations to meet minimum employee-protection
14 standards established by the California legislature, thereby shifting the burden properly imposed
15 on Defendant United onto Plaintiffs and the Class, as well as other law-abiding businesses.
16

17 58. Defendant United's business practices deprived Plaintiffs Scholz and Bybee, and other
18 similarly situated Class members, of employee protections and rights to which they are legally
19 entitled, which constitutes unlawful and unfair fraudulent business practices and provides an
20 unfair advantage to Defendant United over its competitors who have been or are currently in
21 honest compliance with applicable employment laws.
22

23 59. Furthermore, on information and belief, Plaintiffs Scholz and Bybee allege Defendant
24 United, by engaging in the aforementioned unfair, unlawful, and fraudulent business acts and
25 practices complained of above, obtains competitive advantage over law-abiding employers with
26 which Defendant United competes and is unjustly enriched as a result of such unlawful and unfair
27 business practices.
28

1 60. As a direct and proximate result of the unfair, unlawful, and fraudulent business practices
2 committed by Defendant United, by engaging in the aforementioned unfair and unlawful business
3 practices, Defendant United has caused Plaintiffs and the Class to suffer injury and to lose money
4 or property as a result of such unfair and unlawful business practices.
5

6 61. Defendant United, and all persons acting in concert with Defendant United, have engaged
7 in, are currently engaging in, and will continue to engage in the aforementioned unfair and
8 unlawful acts and practices unless restrained or enjoined by this Court. The aforementioned
9 unlawful acts and practices violate public policy and will cause great and irreparable harm to
10 Plaintiff Bybee and the Class, to Defendant United's competition, and to the general public unless
11 Defendant United is restrained from committing such further unfair and unlawful business acts
12 or practices.
13

14 62. Pursuant to California Business and Professions Code § 17203, Plaintiffs and the Class
15 are entitled to seek injunctive relief prohibiting Defendant United's continuing unfair, unlawful,
16 and deceptive business acts and practices alleged herein. Injunctive relief is necessary to prevent
17 Defendant United from continuing the unfair, unlawful, and deceptive business acts and practices
18 alleged herein. Moreover, Plaintiffs and the Class are entitled, pursuant to California Business
19 and Professions Code §§ 17203 and 17208, to restitution for, among other things, any denied pay
20 and/or benefits beginning four (4) years prior to filing this complaint to the present. Plaintiffs
21 have no other adequate remedy at law.
22

23
24 63. Plaintiffs were compelled to retain the services of counsel to file this court action to
25 protect their interests and those of the Class and to enforce important employment rights affecting
26 the public interest. Plaintiffs have thereby incurred attorney fees and costs, which Plaintiffs are
27 entitled to recover on all causes of action under California Code of Civil Procedure § 1021.5.
28

THIRD CAUSE OF ACTION
(Declaratory Relief Brought by Plaintiffs Against Defendant United and Does 1-10)
(Cal. Code of Civ. Proc. §§ 1060 et seq.)

64. Plaintiffs incorporate all paragraphs above as if fully set forth herein.

65. Plaintiffs Scholz and Bybee assert this cause of action for declaratory relief and the following against Defendant United and Does 1-10 in their official capacity as purported agents of Defendant United.

66. An actual controversy has arisen and now exists between Plaintiffs Scholz and Bybee and Defendant United concerning their respective rights, obligations, and duties. Plaintiffs Scholz and Bybee therefore seeks declaratory relief as set forth below.

67. Defendant United auto-designates all sick leave as kin care sick leave contrary to the dictates of Labor Code §§ 233 and 234.

68. Defendant United unequivocally and emphatically state Labor Code §§ 233 and 234 do not apply to Defendant United and, more importantly, Defendant United will not adhere to the dictates of Labor Code §§ 233 and 234.

69. Defendant United counts sick leave as an "occurrence" potentially leading to discipline, up to and including termination, for the Technician employee, including Plaintiffs and the Class.

70. Plaintiffs Scholz and Bybee contend Defendant United's designation of all sick leave absences as kin care sick leave absences, regardless of circumstances, violates Labor Code §§ 233 and 234.

71. Plaintiffs Scholz and Bybee contend Labor Code §§ 233 and 234 apply to Defendant United and Defendant United is required to adhere to the dictates of those Labor Code sections.

72. Plaintiffs Scholz and Bybee contend Defendant United's counting sick leave as an absence or "occurrence" which could potentially lead to discipline for a Technician employee,

1 up to and including termination, including Plaintiffs and the Class, unfairly discriminates against
2 Plaintiffs, and the Class, and therefore violates Labor Code §§ 233 and 234.

3 73. Declaratory relief pursuant to California Code of Civil Procedure § 1060 is necessary to
4 resolve the controversies between Plaintiffs and Defendant United because the controversies are
5 incapable of resolution without judicial intervention and adjudication.
6

7 **PRAYER**

8 WHEREFORE, Plaintiffs pray for judgment against Defendant United as follows:

9 A. Certification of this action as a class action on behalf of the proposed class;

10 B. Designation of Plaintiffs as Representatives of the Class and designation of Plaintiffs'
11 counsel as Class counsel;

12 C. Declare Defendant United's paid sick leave practices and policies violate Labor Code §§
13 233 and 234;
14

15 D. Declare Defendant United's attendance practices and policies violate Labor Code §§ 233
16 and 234;
17

18 E. Permanently enjoin Defendant United from applying its paid sick leave practices and
19 policies in a manner that violates Labor Code §§ 233 and 234;

20 F. Permanently enjoin Defendant United from applying its attendance practices and policies
21 in a manner that violates Labor Code §§ 233 and 234;
22

23 G. Order an accounting of all paid sick leave designations, of all attendance policy point
24 designations, and of all resultant amounts unlawfully retained by Defendant and Does 1-10;

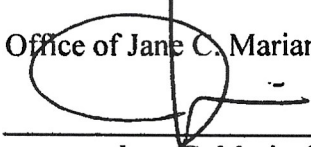
25 H. Award restitution for unfairly and unlawfully auto-designating sick leave;

26 I. Award of all damages, monetary relief, wages, premiums, reimbursements, and other
27 sums due to Plaintiffs and the Class by virtue of their claims;
28

- 1 J. Award attorney's fees, expenses, and costs, as permitted by law;
2 K. Order a jury trial on all issues triable to a jury as a matter of right; and
3 L. For such other and further relief as this Court deems just and proper.

4 Dated: 11/1/2021

5 Law Office of Jane C. Mariani

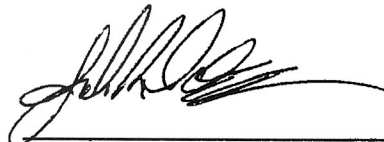
6 By: 
7 Jane C. Mariani,
8 Attorney for Plaintiffs

9 **VERIFICATION**

10 I, John R. Scholz, III, declare I am an individual plaintiff in this action. I declare I have
11 read the foregoing complaint and know its contents. I declare the complaint is true of my own
12 knowledge, except as to those matters which are therein stated on information and belief, and, as
13 to those matters, I believe them to be true.

14 I declare under penalty of perjury under the laws of the state of California the foregoing
15 is true and correct.

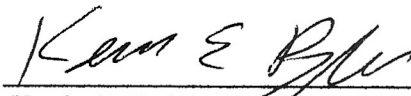
16 Date: 11/1/2021

17 
18 John R. Scholz, III, Declarant Plaintiff

19 I, Kevin E. Bybee, declare I am an individual plaintiff in this action. I declare I have read
20 the foregoing complaint and know its contents. I declare the complaint is true of my own
21 knowledge, except as to those matters which are therein stated on information and belief, and, as
22 to those matters, I believe them to be true.

23 I declare under penalty of perjury under the laws of the state of California the foregoing
24 is true and correct.

25 Date: 11/1/2021

26 
27 Kevin E. Bybee, Declarant Plaintiff
28