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1 **LEBE LAW, APLC**
JONATHAN M. LEBE, State Bar No. 284605
2 ZACHARY GERSHMAN, State Bar No. 328004
777 S. Alameda Street, Second Floor
3 Los Angeles, CA 90021
Telephone: (213) 358-7046
4 Facsimile: (310) 820-1258

5 **AEGIS LAW FIRM, PC**
SAMUEL A. WONG, State Bar No. 217104
6 KASHIF HAQUE, State Bar No. 218672
JESSICA L. CAMPBELL, State Bar No. 280626
7 FAWN F. BEKAM, State Bar No. 307312
9811 Irvine Center Drive, Suite 100
8 Irvine, California 92618
Telephone: (949) 379-6250
9 Facsimile: (949) 379-6251
10

11 Attorneys for Plaintiff Chafen Suttle,
individually and on behalf of all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

14 CHAFEN SUTTLE, individually and on
15 behalf of all others similarly situated

16 Plaintiff,

17 vs.

18 CHILDREN'S HOSPITAL LOS
19 ANGELES, a California corporation; and
DOES 1 through 20, inclusive,

20 Defendants.
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Case No. 19STCV46960

**SECOND AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages
3. Failure to Pay Wages;
4. Failure to Provide Meal Periods;
5. Failure to Permit Rest Breaks;
6. Failure to Provide Accurate Itemized
Wage Statements;
7. Failure to Pay All Wages Due Upon
Separation of Employment;
8. Failure to Pay Wages Within the Required
Time;
9. Failure to Reimburse Necessary Business
Expenses;
10. Failure to Keep Accurate Payroll Records;
11. Violation of Business and Professions
Code §§ 17200, *et seq.*; and
12. Enforcement of Labor Code § 2698 *et.*

1 Plaintiff Chafen Suttle, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Chafen Suttle (“Plaintiff”) brings this putative class and representative
5 action against defendants Children’s Hospital Los Angeles and DOES 1 through 20, inclusive
6 (collectively, “Defendants”), on behalf of himself individually, other aggrieved employees, and
7 a putative class of non-exempt employees employed by Defendants throughout California.

8 2. Defendants operate a hospital as well as outpatient facilities in California, and in
9 doing so employ numerous nurses, care partners, and other support staff.

10 3. Through this action, Plaintiff alleges that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) Failing to pay all wages (including minimum wages and overtime wages);
17 (b) Failing to provide meal periods or compensation in lieu thereof;
18 (c) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
19 (d) Failing to provide accurate itemized wage statements;
20 (e) Failing to pay all wages due upon separation of employment.
21 (f) Failing to pay wages within the required time;
22 (g) Failing to reimburse necessary business expenses;
23 (h) Failure to keep accurate payroll records;

24 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on
25 behalf of himself and all others similarly situated in California to recover, among other things,
26 unpaid wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant
27 to Labor Code §§ 201-203, 204, 226, 226.3, 226.7, 510, 511, 512, 558, 1174, 1174.5, 1182.12,
28 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

1 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
2 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
3 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
4 the employer and/or joint employer of Plaintiff and the class members.

5 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
6 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
7 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
8 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
9 the official policy of Defendants.

10 15. At all relevant times, Defendants, and each of them, acted within the scope of
11 such agency or employment, or ratified each and every act or omission complained of herein.
12 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
13 each and all the other Defendants in proximately causing the damages herein alleged.

14 16. Plaintiff is informed and believes, and thereon alleges, that each of said
15 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
16 omissions, occurrences and transactions alleged herein.

17 **CLASS ACTION ALLEGATIONS**

18 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
19 himself and all others similarly situated who were affected by Defendants' Labor Code,
20 Business and Professions Code §§ 17200 and IWC Wage Order violations.

21 18. All claims alleged herein arise under California law for which Plaintiff seeks
22 relief authorized by California law.

23 19. Plaintiff's proposed Class consists of and is defined as follows:

24 Class

25 All California citizens currently or formerly employed as non-exempt employees
26 by Defendants in the State of California within four years prior to the filing of this
action to the date of class certification.

27 20. Plaintiff also seeks to certify the following Subclass of employees:

28 Waiting Time Subclass

1 All members of the Class who separated their employment from Defendants
2 within three years prior to the filing of this action to the date of class certification.

3 21. Members of the Class and Subclass described above will be collectively referred
4 to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or
5 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
6 specific theories of liability.

7 22. This action has been brought and may properly be maintained as a class action
8 under the California Code of Civil Procedure § 382 because there are common questions of law
9 and fact as to the Class that predominate over questions affecting only individual members
10 including, but not limited to:

11 (a) Whether Defendants paid Plaintiff and Class Members overtime
12 compensation at the proper rates;

13 (b) Whether Defendants failed to implement a valid alternative workweek
14 schedule and thus failed to pay Plaintiff and Class Members proper overtime compensation;

15 (c) Whether Defendants paid Plaintiff and Class Members all wages (including
16 minimum and overtime wages) for all hours worked by Plaintiff and Class Members;

17 (d) Whether Defendants required Plaintiff and Class Members to work over 8
18 hours per day, over twelve (12) hours per day, and/or over forty (40) hours per week and failed to
19 pay them overtime compensation at the proper rate;

20 (e) Whether Defendants deprived Plaintiff and Class Members of timely meal
21 periods or required Plaintiff and Class Members to work through meal periods without
22 compensation;

23 (f) Whether Defendants deprived Plaintiff and Class Members of rest breaks
24 or required Plaintiff and Class Members to work through rest breaks without compensation;

25 (g) Whether Defendants failed to provide Plaintiff and Class Members
26 accurate itemized wage statements;

27 (h) Whether Defendants failed to timely pay Plaintiff and the Subclass all
28 wages due upon termination or within seventy-two (72) hours of resignation;

1 (i) Whether Defendants failed to timely pay Plaintiff and Class Members all
2 wages during their employment;

3 (j) Whether Defendants required Plaintiff and Class Members to use their
4 personal funds for business expenses and then failed to adequately reimburse them;

5 (k) Whether Defendants failed to keep accurate time and payroll records;

6 (l) Whether Defendants' conduct was willful or reckless; and

7 (m) Whether Defendants engaged in unfair business practices in violation of
8 Business & Professions Code §§ 17200, *et seq.*

9 23. There is a well-defined community of interest in this litigation and the Class is
10 readily ascertainable:

11 (a) Numerosity: The members of the Class are so numerous that joinder of all
12 members is impractical. Although the members of the Class are unknown to Plaintiff at this time,
13 on information and belief, the Class is estimated to be greater than 100 individuals. The identity
14 of the class members are readily ascertainable by inspection of Defendants' employment and
15 payroll records.

16 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
17 claims (or defenses, if any) of the Class because Defendants' failure to comply with the
18 provisions of California wage and hour laws entitled each class member to similar pay, benefits
19 and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the
20 Class because they arise out of and are caused by Defendants' common course of conduct as
21 alleged herein.

22 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
23 and protect the interests of all members of the Class because it is in his best interest to prosecute
24 the claims alleged herein to obtain full compensation and penalties due to him and the Class.
25 Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large
26 employment class actions and are versed in the rules governing class action discovery,
27 certification and settlement. Plaintiff has incurred and, throughout the duration of this action, will
28 continue to incur attorneys' fees and costs that have been and will be necessarily expended for the

1 prosecution of this action for the substantial benefit of each class member.

2 (d) Superiority: The nature of this action makes the use of class action
3 adjudication superior to other methods. A class action will achieve economies of time, effort and
4 expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the
5 same issues can be adjudicated in the same manner and at the same time for each Class. If
6 appropriate this Court can, and is empowered to, fashion methods to efficiently manage this case
7 as a class action.

8 (e) Public Policy Considerations: Employers in the State of California and
9 other states violate employment and labor laws every day. Current employees are often afraid
10 to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of
11 bringing actions because they believe their former employers might damage their future
12 endeavors through negative references and/or other means. Class actions provide the class
13 members who are not named in the complaint with a type of anonymity that allows for the
14 vindication of their rights at the same time as affording them privacy protections.

15 **GENERAL ALLEGATIONS**

16 24. At all relevant times mentioned herein, Defendants employed Plaintiff and other
17 persons as non-exempt employees at Defendants' hospital in Los Angeles, California, as well
18 as at Defendants' outpatient centers located in California.

19 25. Defendants continue to employ non-exempt employees within California.

20 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
21 mentioned, Defendants were advised by skilled lawyers, employees and other professionals
22 who were knowledgeable about California's wage and hour laws, employment and personnel
23 practices and the requirements of California law.

24 27. Plaintiff is informed and believes, and thereon alleges, that Defendants
25 employed and exercised control over the wages, hours, and working conditions. Among other
26 elements of control, Defendants provided Plaintiff with specific work duties to complete daily
27 and how those duties were to be performed.

28 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and Class Members were entitled to receive wages for all time
2 worked (including minimum and overtime wages) and that they were not receiving all wages
3 earned for work that was required to be performed. Defendants failed to pay Plaintiff and Class
4 Members overtime wages based on their correct regular rate of pay, including shift differentials
5 and non-discretionary bonuses, and thus owe Plaintiff and Class Members unpaid overtime.
6 Defendants also failed to implement a proper alternative workweek and thus owe Plaintiff and
7 Class Members unpaid overtime. In violation of the Labor Code and IWC Wage Orders,
8 Plaintiff and Class Members were not paid all wages (including minimum and overtime wages)
9 for all hours worked at the proper rates of pay.

10 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and Class Members were entitled to receive wages for all time
12 worked (including minimum and overtime wages). In violation of the Labor Code and IWC
13 Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum and
14 overtime wages) for all hours worked.

15 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and Class Members were entitled to receive all required meal
17 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
18 rate of pay when they did not receive a timely, uninterrupted meal period. Plaintiff and Class
19 Members regularly were unable to take their meal breaks or would have to work off the clock
20 while on their meal breaks at the instructions of Defendants. Defendants also maintained an
21 illegal auto-deduct policy, in which meal breaks were automatically deducted from Plaintiff
22 and Class Member's shifts although such meal breaks were not actually taken. In violation of
23 the Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
24 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
25 rate of pay, including shift premiums and other non-discretionary bonuses, when they did not
26 receive a timely, uninterrupted meal period.

27 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or

1 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
2 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
3 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
4 at Plaintiff's and Class Members' regular rate of pay, including shift premiums and other non-
5 discretionary bonuses, when a rest break was missed.

6 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that the Class Members were entitled to receive itemized wage statements
8 that accurately showed the gross and net wages earned, total hours worked, all applicable
9 hourly rates in effect, and the number of hours worked at each hourly rate in accordance with
10 California law. In violation of the Labor Code, the Class Members were not provided with
11 accurate itemized wage statements.

12 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that the Waiting Time Subclass members were entitled to timely payment
14 of wages due upon separation of employment. In violation of the Labor Code, the Waiting
15 Time Subclass did not receive payment of all wages within permissible time periods.

16 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and Class Members were entitled to timely payment of wages
18 during their employment. In violation of the Labor Code, Plaintiff and Class Members did not
19 receive payment of all wages within permissible time periods.

20 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and Class Members were entitled for reimbursement for
22 necessary expenditures incurred in connection with the performance and execution of their job
23 duties. In violation of the Labor Code, Plaintiff and Class Members did not receive adequate
24 reimbursement for necessary business expenses.

25 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Defendants were required to keep accurate time and payroll records
27 showing when Plaintiff and Class Members began and ended each work period, when Plaintiff
28 and Class Members took meal breaks, the total hours that Plaintiff and Class Members worked

1 each day and in each pay period, the total wages Plaintiff and Class Members were paid in each
2 pay period, and Plaintiff and Class Members' applicable pay rate. In violation of the Labor
3 Code, Defendants failed to keep accurate time and payroll records.

4 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known they had a duty to compensate Plaintiff and class members, and Defendants
6 had the financial ability to pay such compensation but willfully, knowingly and intentionally
7 failed to do so all in order to increase Defendants' profits.

8 38. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
9 against Defendants on behalf of himself and all Class Members to recover, among other things,
10 unpaid wages (including minimum and overtime wages), unpaid meal period premium
11 payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs, and
12 expenses.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; IWC Wage Order § 4)**

16 39. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
17 though fully set forth herein.

18 40. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
19 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
20 wage than the minimum so fixed is unlawful.

21 41. During the relevant time period, Defendants paid Plaintiff and Class Members
22 less than the minimum wage when they failed to pay proper compensation for all hours worked.
23 To the extent these hours do not qualify for the payment of overtime, Plaintiff and Class
24 Members were not being paid at least the minimum wage for their work.

25 42. During the relevant time period, Defendants regularly failed to pay at least the
26 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code
27 §§ 1194 and 1197.

28 43. Defendants' failure to pay Plaintiff and Class Members the required minimum

1 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
2 Members are entitled to recover the unpaid balance of their minimum wage compensation as
3 well as interest, costs, and attorneys' fees.

4 44. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
5 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
6 interest thereon.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY OVERTIME WAGES**

9 **(Violation of Labor Code §§ 510, 511, 1194 and 1198; Violation of IWC Wage Order § 3)**

10 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 46. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
13 unlawful to employ persons without compensating them at a rate of pay either one and one-half
14 or two times the person's regular rate of pay, depending on the number of hours worked by the
15 person on a daily or weekly basis.

16 47. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
17 period, Defendants were required to compensate Plaintiff and class members for all overtime
18 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours
19 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first
20 eight (8) hours of the seventh consecutive work day, with double time after eight (8) hours on
21 the seventh day of any work week, or after twelve (12) hours in any work day.

22 48. Plaintiff and class members were non-exempt employees entitled to the
23 protections of California Labor Code §§ 510 and 1194.

24 49. During the relevant time period, Defendants failed to pay Plaintiff overtime
25 wages when they failed to pay compensation for all hours worked, such as for work duties
26 performed off the clock, as required by Defendants, in excess of eight (8) hours per day and/or
27 forty (40) hours per week and for the first eight (8) hours of the seventh consecutive work day,
28 with double time after eight (8) hours on the seventh day of any work week, or after twelve

1 (12) hours in any work day.

2 50. During the relevant time period, Defendants failed to pay Plaintiff and Class
3 Members all wages owed when Defendants failed to properly pay Plaintiff and Class Members
4 overtime wages based on their regular rate of pay, including shift differentials, and other non-
5 discretionary bonuses.

6 51. During the relevant time period, Defendants failed to pay Plaintiff and Class
7 Members all wages owed when Defendants failed to properly implement an alternative
8 workweek election.

9 52. In violation of state law, Defendants have knowingly and willfully refused to
10 perform their obligations and compensate Plaintiff and class members for all wages earned as
11 alleged above.

12 53. Defendants' failure to pay Plaintiff and class members the unpaid balance of
13 overtime compensation, as required by California law, violates the provisions of Labor Code
14 §§ 510 and 1198, and is therefore unlawful.

15 54. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to
16 recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES**

19 (Violation of Labor Code §§ 510, 1194, 1194.2, 1197, and 1198; IWC Wage Order §§ 3 and 5)

20 55. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
21 though fully set forth herein.

22 56. During the relevant time period, Defendants were required to compensate Plaintiff
23 and Class Members for all hours worked, pursuant to Labor Code §§ 200 *et seq.*, 510, 1194, 1197,
24 1198, and the applicable IWC Wage Order.

25 57. Labor Code § 510 codifies the right to overtime compensation at one and one-half
26 times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40)
27 hours in a week or for the first eight (8) hours worked on the seventh day of work.

1 58. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
2 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
3 wage than the minimum so fixed is unlawful.

4 59. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful
5 to employ persons without compensating them at a rate of pay either one and one-half or two
6 times the person's regular rate of pay, depending on the number of hours worked by the person on
7 a daily or weekly basis.

8 60. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
9 period, Defendants were required to compensate Plaintiff and class members for all overtime
10 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked
11 in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
12 hours of the seventh consecutive work day, with double time after eight (8) hours on the seventh
13 day of any work week, or after twelve (12) hours in any work day.

14 61. Plaintiffs and class members were non-exempt employees entitled to the
15 protections of California Labor Code §§ 510 and 1194.

16 62. During the relevant time period, Defendants failed to pay Plaintiff and Class
17 Members all wages owed when Defendants did not pay for all hours worked, among other
18 reasons.

19 63. In violation of state law, Defendants have knowingly and willfully refused to
20 perform their obligations and compensate Plaintiffs and class members for all wages earned and
21 all hours worked.

22 64. During the relevant time period, Defendants regularly failed to pay all wages to
23 Plaintiff and Class Members for all hours worked in violation of the Labor Code and the
24 applicable IWC Wage Order.

25 65. Defendants' failure to pay Plaintiffs and class members overtime and double time
26 compensation, as required by California law, violates the provisions of Labor Code §§ 510 and
27 1198, and is therefore unlawful.

1 66. As a direct and proximate result of Defendants' failure to pay Plaintiff and Class
2 Members the required wages, Plaintiff and Class Members are entitled to recover the unpaid
3 balance of their wages, including minimum wage and overtime compensation, as well as interest,
4 costs and attorneys' fees.

5 67. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
6 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
7 thereon.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS**

10 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)**

11 68. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

13 69. Labor Code § 226.7 provides that no employer shall require an employee to work
14 during any meal period mandated by the IWC Wage Orders.

15 70. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
16 any person for a work period of more than five (5) hours without a meal period of not less than
17 30 minutes, except that when a work period of not more than six (6) hours will complete the
18 day's work the meal period may be waived by mutual consent of the employer and the
19 employee."

20 71. Labor Code § 512(a) provides that an employer may not require, cause or permit
21 an employee to work for a period of more than five (5) hours per day without providing the
22 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
23 the total work period per day of the employee is not more than six (6) hours, the meal period
24 may be waived by mutual consent of both the employer and the employee.

25 72. Labor Code § 512(a) also provides that an employer may not employ an
26 employee for a work period of more than ten (10) hours per day without providing the employee
27 with a second meal period of not less than thirty (30) minutes, except that if the total hours
28 worked is no more than twelve (12) hours, the second meal period may be waived by mutual

1 consent of the employer and the employee only if the first meal period was not waived.

2 73. During the relevant time period, Plaintiff and Class Members did not receive
3 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
4 their meal periods were missed, late, short, and/or they were not permitted to take meal periods.

5 74. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
6 an employer to pay an employee one additional hour of pay at the employee's regular rate of
7 compensation for each work day that a meal period is not provided.

8 75. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
9 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
10 and section 11 of the applicable IWC Wage Order. When Defendants did pay Plaintiff and Class
11 Members meal period premiums, the premiums were not properly calculated as to Plaintiff and
12 Class Members regular rate of pay, including shift differentials and other non-discretionary
13 bonuses.

14 76. As a result of Defendants' failure to pay Plaintiff and Class Members an
15 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
16 Class Members suffered and continue to suffer a loss of wages and compensation.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PERMIT REST BREAKS**

19 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)**

20 77. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
21 though fully set forth herein.

22 78. Labor Code § 226.7(a) provides that no employer shall require an employee to
23 work during any rest period mandated by the IWC Wage Orders.

24 79. Section 12 of the applicable IWC Wage Order states "every employer shall
25 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
26 the middle of each work period" and the "authorized rest period time shall be based on the total
27 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
28 fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

80. During the relevant time period, Plaintiff and Class Members did not receive a ten (10) minute rest period for every four (4) hours or major fraction thereof worked because they were required to work through their daily rest periods and/or were not authorized to take their rest periods.

81. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

82. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order. When Defendants did pay Plaintiff and Class Members rest period premiums, the premiums were not properly calculated as to Plaintiff and Class Members regular rate of pay, including shift differentials and other non-discretionary bonuses.

83. As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226)

84. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

85. Labor Code § 226(a) requires Defendants to provide each employee with an accurate wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or

1 her social security number or an employee identification number other than a social security
2 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
3 hourly rates in effect during the pay period and the corresponding number of hours worked at
4 each hourly rate by the employee.

5 86. During the relevant time period, Defendants have knowingly and intentionally
6 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
7 and class members. The deficiencies include, among other things, the failure to correctly state
8 the inclusive pay period dates, gross and net wages earned, total hours worked and all
9 applicable hourly rates in effect and the number of hours worked at each hourly rate by Plaintiff
10 and class members.

11 87. As a result of Defendants' knowing and intentional failure to comply with Labor
12 Code § 226(a), the Class Members suffered injury and damage to their statutorily-protected
13 rights. Specifically, the Class Members are deemed to suffer an injury pursuant to Labor Code
14 § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a). The Class
15 Members were denied both their legal right to receive, and their protected interest in receiving,
16 accurate itemized wage statements under Labor Code § 226(a). Plaintiff has had to file this
17 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur
18 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
19 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
20 has also delayed Plaintiff's ability to demand and recover the underpayment of wages from
21 Defendants.

22 88. The Class Members are entitled to recover from Defendants the greater of all
23 actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
24 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
25 (\$100.00) per employee for each violation in subsequent pay periods in an amount not
26 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

27 89. Defendants' violations of California Labor Code § 226(a) prevented the Class
28 Members from knowing, understanding, and disputing the wages paid to them and resulted in

1 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
2 intentional failure to comply with California Labor Code § 226(a), the Class Members have
3 suffered an injury, in the exact amount of damages and/or penalties to be shown according to
4 proof at trial.

5 90. The Class Members are also entitled to injunctive relief under California Labor
6 Code § 226(h), compelling Defendants to comply with California Labor Code § 226.
7 Accordingly, the Class Members seek the recovery of attorneys' fees and costs incurred in
8 obtaining this injunctive relief.

9 **SEVENTH CAUSE OF ACTION**

10 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND**

11 **WITHIN THE REQUIRED TIME**

12 **(Violation of Labor Code §§ 201, 202 and 203)**

13 91. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
14 though fully set forth herein.

15 92. California Labor Code §§ 201 and 202 provide that if an employer discharges an
16 employee, the wages earned and unpaid at the time of discharge are due and payable
17 immediately, and that if an employee voluntarily leaves his employment, his wages shall
18 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
19 has given seventy-two (72) hours previous notice of his intention to quit, in which case the
20 employee is entitled to his wages at the time of quitting.

21 93. During the relevant time period, Defendants willfully failed to pay Plaintiff and
22 Waiting Time Subclass members all their earned wages upon termination including, but not
23 limited to, proper minimum wages and overtime compensation, either at the time of discharge
24 or within seventy-two (72) hours of their leaving Defendants' employ.

25 94. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all
26 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving
27 Defendants' employ is in violation of Labor Code §§ 201 and 202.

28 95. California Labor Code § 203 provides that if an employer willfully fails to pay

1 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
2 and 202, then the wages of the employee shall continue as a penalty from the due date at the
3 same rate until paid or until an action is commenced; but the wages shall not continue for more
4 than thirty (30) days.

5 96. Plaintiff and Waiting Time Subclass members are entitled to recover from
6 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass
7 members' regular daily wages for each day they were not paid, at their regular hourly rate of
8 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO TIMELY PAY WAGES**

11 **(Violation of Labor Code §§ 204, 210; Violation of IWC Wage Order)**

12 97. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

14 98. Labor Code § 204 provides, in pertinent part, that labor performed between the
15 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the
16 26th day of the month during which the labor was performed, and labor performed between the
17 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and
18 10th day of the following month.

19 99. Defendants failed to timely pay Plaintiff and class members all of their earned
20 wages as required by Labor Code Section 204.

21 100. Plaintiff and class members have been deprived of their rightfully earned wages
22 as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff and
23 class members are entitled to recover such amounts, plus interest thereon, attorneys' fees and
24 costs.

25 101. In addition, Plaintiff and class members are entitled to penalties pursuant to
26 Labor Code § 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay
27 each class member; and (2) for each of Defendants' subsequent violations, or any willful or
28 intentional violation, \$200 for each failure to pay each class member, plus 25 percent of the

1 amount unlawfully held.

2 **NINTH CAUSE OF ACTION**

3 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**

4 **(Violation of Labor Code §§ 2800, 2802; Violation of IWC Wage Order)**

5 102. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
6 though fully set forth herein.

7 103. Labor Code § 2800 states that an employer shall in all cases indemnify its
8 employee for losses.

9 104. Labor Code §2802 requires employers to indemnify their employees for all
10 necessary expenditures or losses incurred by employees in direct consequence of the discharge
11 of their duties.

12 105. Section 9 of the applicable IWC Wage Order states that when tools or
13 equipment are required by the employer or are necessary to the performance of a job, such tools
14 and equipment shall be provided and maintained by the employer.

15 106. During the relevant time period, Defendants required Plaintiff and class
16 members to buy supplies or pay for other business expenses, such as personal protective
17 equipment in order to perform their job duties, without properly compensating them.

18 107. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
19 Plaintiff and class members for these expenses.

20 108. In committing the violations as herein alleged, Defendants have intentionally
21 and willfully failed to fully reimburse Plaintiff and class members for necessary business-
22 related costs and expenses. As a direct result, Plaintiff and class members have suffered and
23 continue to suffer substantial losses related to the use and enjoyment of such compensation,
24 wages, expenses, and attorneys' fees.

25 **TENTH CAUSE OF ACTION**

26 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**

27 **(Violation of Labor Code §§ 1174, 1174.5; Violation of IWC Wage Order)**

28 109. Plaintiff hereby re-alleges and incorporates by references all paragraphs above

1 as though fully set forth herein.

2 110. In relevant part, Labor Code § 1174(d) requires every employer in California to
3 keep payroll records showing the daily hours worked by and wages paid to employees. These
4 records must be kept for a period no shorter than three years. Labor Code § 1174.5 provides
5 that any employer who willfully fails to maintain accurate and complete records is liable for a
6 civil penalty of five hundred dollars (\$500).

7 111. Section 7 of the applicable Wage Order requires employers to keep accurate
8 records for each employee in regards to total wages paid each payroll period, total hours
9 worked in the payroll period and applicable rates of pay, as well as time records showing when
10 employees begin and end each work period, including meal periods and total daily hours.

11 112. Defendants willfully failed to keep required payroll records for Plaintiff and
12 Class Members in regards to applicable rates of pay, total wages paid each payroll period and
13 accurate records of total hours worked each period is in violation of Labor Code § 1174 and
14 Section 7 of the applicable Wage Order.

15 113. As a result of Defendants' failure to maintain accurate payroll records, Plaintiff
16 and Class Members have suffered harm as they have been precluded from knowing their actual
17 rate of pay and accurately monitoring the number of hours worked and wages earned.

18 114. Plaintiff and Class Members are entitled to recover a civil penalty of \$500 for
19 Defendants' violation of Labor Code § 1174.

20 **ELEVENTH CAUSE OF ACTION**

21 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

22 115. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 116. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
25 unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice
26 . . ."

27 117. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
28 be predicated on a violation of any state or federal law. In the instant case, Defendants' policies

1 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to
2 suffer injuries-in-fact.

3 118. Defendants' policies and practices have violated state law in at least the
4 following respects:

5 (a) Failing to pay all wages earned (including minimum wage and overtime
6 wages) to Plaintiff and Class Members in violation of Labor Code §§
7 510, 511, 1182.12, 1194, 1194.2, 1197, and 1198;

8 (b) Failing to provide compliant meal periods without paying Plaintiff and
9 Class Members premium wages for every day said meal periods were not
10 provided in violation of Labor Code §§ 226.7 and 512;

11 (c) Failing to authorize or permit compliant rest breaks without paying
12 Plaintiff and Class Members premium wages for every day said rest
13 breaks were not authorized or permitted in violation of Labor Code §
14 226.7;

15 (d) Failing to provide the Class Members with accurate itemized wage
16 statements in violation of Labor Code § 226; and

17 (e) Failing to timely pay all earned wages to the members of the Waiting
18 Time Subclass upon separation of employment in violation of Labor
19 Code §§ 201, 202, and 203.

20 119. As alleged herein, Defendants systematically engaged in unlawful conduct in
21 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
22 (minimum and overtime wages), failing to provide meal periods and rest periods or
23 compensation in lieu thereof, failing to furnish accurate wage statements, and failing to pay all
24 wages due and owing upon separation of employment in a timely manner, all in order to
25 decrease their costs of doing business and increase their profits.

26 120. At all relevant times herein, Defendants held themselves out to Plaintiff and
27 Class Members as being knowledgeable concerning the labor and employment laws of
28 California.

1 121. At the time Plaintiff and Class Members were hired, Defendants knowingly,
2 intentionally, and wrongfully misrepresented to each of them their conformance with the
3 California Labor Code and IWC Wage Orders, including proper payments required by law.

4 122. At all times relevant herein, Plaintiff and Class Members relied on and believed
5 Defendants' representations concerning their conformance with California's wage and hour
6 laws all to their detriment.

7 123. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
8 and Class Members wages and monies, thereby creating for Defendants an artificially lower
9 cost of doing business in order to undercut their competitors and establish and/or gain a greater
10 foothold in the marketplace.

11 124. As a result of Defendants' intentional, willful, purposeful, and wrongful
12 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
13 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
14 according to proof at trial.

15 125. By violating the foregoing statutes and regulations as herein alleged,
16 Defendants' acts constitute unfair and unlawful business practices under California Business
17 and Professions Code §§ 17200, *et seq.*

18 126. As a result of the unfair and unlawful business practices of Defendants, as
19 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
20 restitution in an amount to be shown according to proof at trial.

21 127. Plaintiff seeks to enforce important rights affecting the public interest within the
22 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
23 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
24 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
25 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
26 Procedure § 1021.5.

27 ///

28 ///

1 **TWELFTH CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

3 128. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
4 though fully set forth herein.

5 129. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
6 for a civil penalty to be assessed and collected by the Labor and Workforce Development
7 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or
8 employees for violation of the code may, as an alternative, be recovered through a civil action
9 brought by an aggrieved employee on behalf of himself and other current or former employees
10 pursuant to the procedures specified in Labor Code § 2699.3.

11 130. For all provisions of the Labor Code except those for which a civil penalty is
12 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
14 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
15 period in which Defendants violated these provisions of the Labor Code.

16 131. Defendants' conduct violates numerous Labor Code sections including, but not
17 limited to, the following:

18 (a) Violation of Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197 and 1198 for
19 failure to timely pay all earned wages (including minimum wages and overtime wages) owed to
20 Plaintiffs and other aggrieved employees during employment and upon separation of
21 employment as herein alleged;

22 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
23 Plaintiffs and other aggrieved employees and failure to pay premium wages for missed meal
24 periods as herein alleged;

25 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs and
26 other aggrieved employees and failure to pay premium wages for missed rest periods as herein
27 alleged;

1 (d) Violation of Labor Code § 226 for failure to provide accurate itemized wage
2 statements to Plaintiffs and other aggrieved employees as herein alleged;

3 (e) Violation of Labor Code §§ 2800 and 2802 for failing to reimburse business
4 expenses incurred by plaintiff and other aggrieved employees;

5 (f) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
6 records.

7 132. As set forth above, Defendants have violated numerous provisions of the Labor
8 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly,
9 Plaintiffs seek the remedies set forth in Labor Code § 558 for themselves, the underpaid
10 employees, and the State of California.

11 133. Plaintiff is an “aggrieved employee” because he was employed by the alleged
12 violator and had one or more of the alleged violations committed against them, and therefore is
13 properly suited to represent the interests of all other aggrieved employees.

14 134. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
15 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
16 other aggrieved employees under PAGA.

17 135. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
18 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
19 cited above.

20 136. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
21 herein.

22 **PRAYER FOR RELIEF**

23 Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief
24 and judgment against Defendants, jointly and severally, as follows:

- 25 1. For certification under California Code of Civil Procedure § 382 of the proposed
26 Class, Waiting Time Subclass, and any other appropriate subclasses;
- 27 2. For appointment of Chafen Suttle as the class representative;
- 28 3. For appointment of Aegis Law Firm, PC, and Lebe Law, APLC as class counsel

1 for all purposes;

2 4. For compensatory damages in an amount according to proof at trial;

3 5. For an award of damages in the amount of unpaid compensation including, but
4 not limited to, unpaid wages, benefits, and penalties;

5 6. For economic and/or special damages in an amount according to proof at trial;

6 7. For liquidated damages pursuant to Labor Code § 1194.2;

7 8. For statutory penalties to the extent permitted by law, including those pursuant
8 to the Labor Code and IWC Wage Orders;

9 9. For injunctive relief as provided by the California Labor Code and California
10 Business and Professions Code §§ 17200, *et seq.*;

11 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

12 11. For an order requiring Defendants to restore and disgorge all funds to each
13 employee acquired by means of any act or practice declared by this Court to be unlawful,
14 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
15 Professions Code §§ 17200, *et seq.*;

16 12. For pre-judgment interest;

17 13. For penalties pursuant to PAGA;

18 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
19 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
20 226(e), 1194, and 2698, *et seq.*; and

21 15. For such other relief as the Court deems just and proper.

22
23
24 Dated: February 12, 2021

AEGIS LAW FIRM, PC

25
26 By: _____


Fawn F. Bekam

Attorneys for Plaintiff Chafen Suttle

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On March 5, 2021, I served the foregoing document entitled:

5 • **SECOND AMENDED CLASS ACTION AND REPRESENTATIVE ACTION**
6 **COMPLAINT**

7 on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a
true copy thereof enclosed in sealed envelope(s) addressed as follows:

Marta M. Fernandez Travis M. Gemoets Jeffer Mangels Butler & Mitchell LLP 1900 Avenue of the Stars, 7th Floor Los Angeles, CA 90067 mfernandez@jmbm.com tgemoets@jmbm.com <i>Attorneys for Defendant:</i> CHILDREN'S HOSPITAL LOS ANGELES	LEBE LAW, APLC Jonathan M. Lebe 777 S. Alameda Street, Second Floor Los Angeles, CA 90021 Telephone: (213) 358-7046 Facsimile: (310) 820-1258 Jon@lebelaw.com <i>Co-Counsel for Plaintiff</i>
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14 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
15 correspondence for mailing. Under that practice it would be deposited with the U.S.
16 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
17 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc. § 1013(a); Fed.*
R. Civ. Proc. 5(a); Fed. R. Civ. Proc. 5(c).)

18 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
19 practice of Aegis Law Firm PC for collection and processing correspondence for
20 overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); Fed. R. Civ. Proc. 5(c).)

21 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
22 electronic transmission to the email addresses listed above on the date below. (*Cal. Code*
Civ. Proc. § 1010.6(6); Fed. R. Civ. Proc. 5(b)(2)(E); Fed. R. Civ. Proc. 5(b)(3).)

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

25 Executed on March 5, 2021, at Irvine, California.

26 
27 Andrea Drocco
28