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Page: 4 of 17

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ALAMEDA COUNTY

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CLERK OF
THE SUPERIOR COURT
By Milagros Cortez, Deputy

CASE NUMBER:

RG21111952

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2 Caroline N. Cohen (SBN 278154)
3 Jin K. Oh (SBN 328481)
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12 *Attorneys for Plaintiff, on behalf of the State of*
13 *California and Aggrieved Employees*

14 **SUPERIOR COURT OF CALIFORNIA**
15 **COUNTY OF ALAMEDA**

16 JOSELITO GUERRERO, on behalf of himself,
17 the State of California, and Aggrieved Employees,

18 Plaintiffs,

19 vs.

20 DOUGLAS FIR HOLDINGS, LLC dba
21 HUNTINGTON VALLEY HEALTHCARE
22 CENTER; PLUM HEALTHCARE GROUP, LLC;
23 DOES 1-50,

24 Defendants.

Case No. _____

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) AND
(f) OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

25 **COMPLAINT**

26 *Guerrero v. Douglas Fir Holdings, LLC dba Huntington Valley Healthcare Center, et al., Case No.:*

1 Plaintiff Joselito Guerrero (“Plaintiff”), on behalf of himself, the State of California, and
2 Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this Labor Code Private Attorneys General Act (“PAGA”) enforcement
5 action behalf of the State of California to collect statutory penalties as a result of Defendant
6 DOUGLAS FIR HOLDINGS, LLC dba HUNTINGTON VALLEY HEALTHCARE CENTER’s
7 (“Douglas Fir”), Defendant PLUM HEALTHCARE GROUP LLC’s (“Plum”) and DOES 1-50’s
8 (collectively, “Defendants”) systematic violations of California labor law with respect to
9 Defendants’ current and former non-exempt hourly workers in the State of California (“Aggrieved
10 Employees”). Defendants maintain a longstanding policy and practice of failing to pay for all hours
11 worked; failing to provide or make available meal periods, failing to authorize or permit rest breaks;
12 failing to properly compensate non-exempt hourly employees for missed rest periods and non-
13 compliant meal breaks; failing to properly reimburse employees for business expenses; failing to
14 provide timely and itemized wage statements; and failing to pay all wages owed upon separation.
15 These policies deny Plaintiff and Aggrieved Employees proper compensation that complies with
16 California law.

17 2. This PAGA action against Defendants challenges their policies and practices of (1)
18 failing to provide or make available to Plaintiff and Aggrieved Employees the compliant meal breaks
19 which they are entitled by law; (2) failing to authorize and permit Plaintiff and Aggrieved Employees
20 to take rest breaks which they are entitled by law, (3) failing to reimburse Plaintiff and Aggrieved
21 Employees for business expenses expended on behalf of Defendants’ benefit; (4) failing to provide
22 Plaintiff and Aggrieved Employees timely, accurate, and itemized wage statements, and (5) and
23 failing to timely pay Plaintiff and Aggrieved Employees full wages upon termination or resignation.

24 3. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
25 employees who have worked for Defendants in California. Upon information and belief, Defendant
26 Plum is part of the nursing homes and long-term care facilities industry. Plum is located in San
27

1 Marcos, California and operates nursing homes and long-term care facilities all across California,
2 including Douglas Fir. Defendant Plum operates extensive operations in California. Defendants
3 employ Plaintiff and over 200 other hourly, non-exempt employees to assess patient vital signs,
4 update medical histories, insert catheters, and aid patients in eating, dressing, and washing.

5 4. Upon information and belief, Defendant Douglas Fir Holdings LLC operates a short-
6 term rehabilitation and skilled nursing home located in Huntington Beach, California.

7 5. Plaintiff files this action to recover all penalties, and other damages on behalf of himself
8 and Aggrieved Employees. Plaintiff seeks to remedy the sweeping practices of Defendants that have
9 deprived Plaintiff and Aggrieved Employees of their lawfully earned wages and breaks.

10 **PARTIES**

11 6. Plaintiff Joselito Guerrero is an individual over the age of eighteen, and at all times
12 mentioned in this Complaint was a resident of the State of California. Plaintiff has worked for
13 Defendants as a Licensed Vocational Nurse in Huntington Beach, California since December 2012.

14 7. Defendant Douglas Fir Holdings LLC operates a short-term rehabilitation and skilled
15 nursing home located in Huntington Beach, California. Defendant Plum Healthcare Group LLC is
16 located in San Marcos, California and operates nursing homes and long-term care facilities. Defendant
17 Plum operates extensive operations in California. Defendants employ Mr. Guerrero and over 200
18 other hourly, non-exempt employees to assess patient vital signs, update medical histories, insert
19 catheters, and aid patients in eating, dressing, and washing.

20 8. Plaintiff is informed, believes, and thereon alleges that Defendant Plum employ non-
21 exempt workers such as Nurses, Nurse's Assistants, Dietary Aides, and other non-managerial
22 positions throughout California including Alameda County. Defendants employ Plaintiff and the
23 Aggrieved Employees.

24 9. Plaintiff is informed, believes, and thereon alleges that Defendant Plum directly controls
25 the operations of their agents, managers, and employees throughout all their facilities in California.

26 10. At all relevant times, Defendants have done business under the laws of California, and
27

1 have employed Aggrieved Employees in this judicial district. Defendants are each a “person” as
2 defined in Labor Code § 18 and Business and Professions Code § 17201. Defendants are also
3 respectively an “employer” as that term is used in the Labor Code, and IWC Wage Orders.

4 **JURISDICTION AND VENUE**

5 11. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a). Defendant
6 Plum conducts business, has jobsites, and employs Aggrieved Employees in this County, as a result,
7 the causes of action asserted arose in whole or in part in this County. Defendants employ Plaintiff and
8 Aggrieved Employees.

9 12. This Court has jurisdictions over Plaintiff’s claims for penalties pursuant to the PAGA.
10 The Court also has jurisdiction over Defendants because they are both limited liability companies
11 authorized to do business in the State of California, and because Defendants, in fact, do business and
12 employ workers in the State of California.

13 **FACTUAL ALLEGATIONS**

14 13. Defendant Plum operates skilled nursing facilities throughout the United States and
15 California, including Alameda County California. Specifically, Defendant Plum owns and operates
16 over 25 skilled nursing and rehabilitation center across the United States, including in California.
17 Plum provides coordinated continuum of care and clinical care for post-acute patients, and Plum
18 operates nursing facilities and home health and hospice agencies across United States with extensive
19 operations in California, including through Defendant Douglas Fir.

20 14. Plaintiff has worked for Defendants as a Licensed Vocational Nurse in Huntington
21 Beach, California since December 2012. At all relevant times he has been a resident of the State of
22 California. His duties include, but are not limited to, assessing vital signs, updating medical histories,
23 inserting catheters, and aiding patients in eating, dressing, and washing. Mr. Guerrero typically works
24 eight hours per shift and five to six shifts per week, for a total of 40 to 48 hours per week, not including
25 overtime and work performed off the clock during breaks. Mr. Guerrero earns an hourly rate of
26 \$29.00. As a result of such uncompensated time worked off the clock, Plaintiff and Aggrieved
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1 Employees worked over eight hours in a day and/or over 40 hours in a week without receiving pay at
2 the appropriate overtime rate for such work.

3 15. Defendants employ non-managerial employees in the State of California and uniformly
4 classify them as hourly, non-exempt employees under California law.

5 16. Non-exempt, hourly workers employed by Defendants have a variety of responsibilities.
6 Some employees clean patient rooms, communicate with doctors, administer medicine, record
7 medical history and symptoms, and perform diagnostic tests. Others interact directly with the patients
8 in checking vital signs, feeding and washing them, documenting information, and assisting with
9 medical procedures, among other tasks.

10 17. Plaintiff and Aggrieved Employees are routinely denied rest breaks because Defendants
11 do not authorize permit, and/or make available timely rest breaks periods. Specifically, pursuant to
12 uniform, companywide policies and practices, Defendants require Plaintiff and Aggrieved Employees
13 to remain on duty throughout their scheduled shifts, including during rest break periods. Additionally,
14 Plaintiff and Aggrieved Employees are either too busy with work during the day to have time to take
15 bona fide rest breaks or get called back to work mid-break to assist with a patient.

16 18. Despite these recurring violations, Defendants do not provide Plaintiff and Aggrieved
17 Employees premium pay for missed rest periods.

18 19. Plaintiff is informed, believes, and thereon alleges that the same rest break policies are
19 used across all Defendants' facilities throughout California.

20 20. Defendants also do not permit Plaintiff and Aggrieved Employees to take compliant
21 meal break periods. Specifically, Plaintiff and Aggrieved Employees are routinely denied timely
22 meal breaks because Defendants do not make available timely meal break periods. Plaintiff and
23 Aggrieved Employees are too busy with work during the day to have time to take bona fide meal
24 breaks before the fifth hour of work. Plaintiff Guerrero, for example, was unable to take a compliant
25 meal break an average of five times per week, primarily due to understaffing. Although Plaintiff
26 was unable to take his meal breaks, he was nonetheless instructed to clock out for these "breaks" by
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1 the Director of Nursing. Whenever Plaintiff and Aggrieved Employees do attempt to take a meal
2 break, it is often short, subject to interruption, and/or untimely.

3 21. Despite these recurring violations, Defendants do not provide Plaintiff and Aggrieved
4 Employees with premium pay for missed or untimely meal breaks.

5 22. Plaintiff is informed, believes, and thereon alleges that the same meal break policies are
6 used across all Defendants' facilities.

7 23. Defendants also deny Plaintiff and Aggrieved Employees proper reimbursement for
8 business expenditures. Plaintiff and Aggrieved Employees are required to provide their own tools
9 and equipment such as stethoscopes, scissors, scrubs, and general office supplies, among other items,
10 as well as personal protective equipment like filtered masks and other protective garb. However,
11 Defendants do not reimburse Plaintiff and Aggrieved Employees for such expenses, even though it
12 should be fully reimbursed under California law. Defendants' failure to properly reimburse Plaintiff
13 and Aggrieved Employees' necessarily incurred business expenses gives rise to violations of Labor
14 Code § 2802.

15 24. Upon information and belief, Defendants institute the same or substantially similar
16 policy throughout their locations in California that result in hundreds of Aggrieved Employees not
17 being reimbursed for business expenditures incurred for the benefit of Defendants.

18 25. Defendants' failure to compensate employees for missed rest and meal breaks also
19 results in a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage
20 statements. The wage statements are inaccurate because they do not include premium pay for missed
21 or untimely meal breaks.

22 26. Further, Defendants do not provide Aggrieved Employees, including Plaintiff, whose
23 employment has ended, with full payment of all wages owed at the end of their employment. As these
24 workers are owed premium pay and reimbursements for all business expenses when their employment
25 ends, and these amounts remain unpaid under Defendants' policies and practices, Defendants fail to
26 pay all wages due upon termination. As a consequence, Defendants are subject to waiting time
27

1 penalties.

2 27. Defendants have employed several hundreds of employees during the year and 65-day
3 period prior to the filing of this Complaint.

4 28. As employers in California who obligated to know and follow the California Labor Code
5 and state employment laws, Defendants' methods of paying Plaintiff and Aggrieved Employees were
6 willful and were not based on a good faith and reasonable belief that their conduct complied with
7 California law.

8 29. Defendants' conduct was willful, carried out in bad faith as shown by the repeated
9 knowing violations of California law, and caused significant damages to non-exempt hourly
10 employees in an amount to be determined at trial.

11 **FIRST CAUSE OF ACTION**
12 **Penalties Pursuant to Labor Code § 2699(a)**

13 30. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
14 herein.

15 31. Labor Code § 2699(a) provides:

16 Notwithstanding any other provision of law, any provision of this code that
17 provides for a civil penalty to be assessed and collected by the Labor and
18 Workforce Development Agency or any of its departments, divisions
19 commissions, boards, agencies or employees, for a violation of this code,
may, as an alternative, be recovered through a civil action brought by an
aggrieved employee on behalf of himself or himself and other current or
former employees.

20 32. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and
21 unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he
22 or she quits, at the latest.

23 33. Labor Code § 203 provides, in relevant part:

24 If an employer willfully fails to pay, without abatement or reduction, in
25 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
26 employee who is discharged or who quits, the wages of the employee shall
continue as a penalty from the due date thereof at the same rate until paid

1 or until an action therefore is commenced; but the wages shall not continue
2 for more than 30 days.

3 34. Labor Code § 256 provides: "The Labor Commissioner shall impose a civil penalty in
4 an amount not exceeding 30 days pay as waiting time under the terms of Section 203."

5 35. Labor Code § 225.5 provides that every person who unlawfully withholds wages due
6 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty
7 of \$100 for any initial violation for each failure to pay each employee and \$200 for each
8 subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

9 36. Labor Code § 226(a) provides:

10 Every employer shall, semimonthly or at the time of each payment of wages,
11 furnish each of his or her employees, either as a detachable part of the check,
12 draft, or voucher paying the employee's wages, or separately when wages
13 are paid by personal check or cash, an accurate itemized statement in writing
14 showing (1) gross wages earned, (2) total hours worked by the employee,
15 except for any employee whose compensation is solely based on a salary
16 and who is exempt from payment of overtime under subdivision (a) of
17 Section 515 or any applicable order of the Industrial Welfare Commission,
18 (3) the number of piece-rate units earned and any applicable piece rate if
19 the employee is paid on a piece-rate basis, (4) all deductions, provided that
20 all deductions made on written orders of the employee may be aggregated
21 and shown as one item, (5) net wages earned, (6) the inclusive dates of the
22 period for which the employee is paid, (7) the name of the employee and
23 his or her social security number, (8) the name and address of the legal
24 entity that is the employer, and (9) all applicable hourly rates in effect
25 during the pay period and the corresponding number of hours worked at
26 each hourly rate by the employee. The deductions made from payments of
27 wages shall be recorded in ink or other indelible form, properly dated,
28 showing the month, day, and year, and a copy of the statement or a record
of the deductions shall be kept on file by the employer for at least four years
at the place of employment or at a central location within the State of
California.

37. Defendant Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject
to a civil penalty in the amount of two hundred fifty dollars (\$250) per
employee per violation in an initial citation and one thousand dollars
(\$1,000) per employee for each violation in a subsequent citation, for which
the employer fails to provide the employee a wage deduction statement or
fails to keep the records required in subdivision (a) of Section 226. The civil

penalties provided for in this section are in addition to any other penalty provided by law.

38. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in compliance with Labor Code §§ 201-202, and to pay wages owed at the end of employment to Plaintiff and Aggrieved Employees in compliance with Labor Code § 203.

39. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a).

40. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each violation of Labor Code § 510, alleged above, as well as any provision regulating hours and days of work in any order of the IWC.

41. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of his intention to file this claim. More than sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

42. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

43. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees and costs as set forth below.

44. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)

45. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

46. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

47. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

48. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month....”

49. IWC Wage Order 5-2001 defines hours worked as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

50. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

51. Labor Code § 510 provides, in relevant part:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

52. Labor Code § 1197 provides:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

1 53. Labor Code § 1194 provides, in relevant part:

2 Notwithstanding any agreement to work for a lesser wage, any employee
3 receiving less than the legal minimum wage or the legal overtime
4 compensation applicable to the employee is entitled to recover in a civil
5 action the unpaid balance of the full amount of this minimum wage or
6 overtime compensation, including interest thereon, reasonable attorney's
7 fees, and costs of suit.

8 54. Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001 requires Defendants to
9 authorize, permit, and/or make available timely and compliant meal and rest periods to its employees.
10 Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001 prohibits employers from employing an
11 employee for more than five hours without a meal period of not less than thirty minutes, and from
12 employing an employee more than ten hours per day without providing the employee with a second
13 meal period of not less than thirty minutes. Section 226.7 and IWC Wage Orders 5-2001 also requires
14 employers to authorize and permit employees to take ten minutes of net rest time per four hours, or
15 major fraction thereof of work, and to pay employees their full wages during those rest periods.
16 Unless the employee is relieved of all duty during the thirty-minute meal period and two ten-minute
17 rest periods, the employee is considered "on duty" and the meal or rest period is counted as time
18 worked under the applicable wage orders.

19 55. Labor Code § 558 provides in relevant part as follows:

20 Any employer or other person acting on behalf of an employer who violates, or causes to be
21 violated, a section of this chapter or any provision regulating hours and days of work in any
22 order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

23 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
24 period for which the employee was underpaid in addition to an amount sufficient to recover
25 underpaid wages.

26 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
27 for each pay period for which the employee was underpaid in addition to an amount
28 sufficient to recover underpaid wages.

Plaintiff seeks those penalties under Labor Code § 558 to the extent permitted under the
PAGA and California law.

56. Labor Code § 2802 requires employers to indemnify employees for all necessary

1 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
2 duties.

3 57. To the extent than any violation alleged herein does not carry penalties under Labor
4 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
5 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
6 by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant's
7 violations of Labor Code §§ 1182.12, 1194, 1197, 204, and 2802.

8 58. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
9 notice of his intention to file this claim. More than sixty-five calendar days have passed without
10 notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil
11 action in compliance with § 2699.3(a).

12 59. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
13 Employees, and himself as set forth in Labor Code § 2699(g)(i).

14 60. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for
15 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
16 award of attorneys' fees and costs as set forth below.

17 61. Wherefore, Plaintiff requests relief as hereinafter provided.

18 **PRAYER FOR RELIEF**

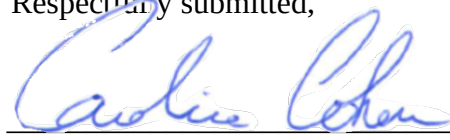
19 WHEREFORE, Plaintiff prays for relief as follows:

- 20 1. For the Court to declare, adjudge, and decree that Defendant has violated the
21 California Labor Code as alleged herein;
- 22 2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees
23 civil penalties provided under the PAGA;
- 24 3. For an award of reasonable attorneys' fees as provided by the California Labor
25 Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other
26 applicable law;

- 1 4. For interest on penalties awarded as provided by applicable law;
2 5. For all costs of suit; and
3 6. For such other and further relief as this Court deems just and proper.

4 Respectfully submitted,

5 Date: August 31, 2021



Carolyn H. Cottrell
Caroline N. Cohen
Jin K. Oh
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

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14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
16 a jury.

17 Respectfully submitted,

18 Date: August 31, 2021



Carolyn H. Cottrell
Caroline N. Cohen
Jin K. Oh
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*