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and others similarly situated, and on behalf of other aggrieved employees
pursuant to the California Private Attorneys General Act

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

THERESA BENDORF, JAVIER
MARIN, and KRISTY PRATHER, on
behalf of themselves and others similarly
situated, and on behalf of other aggrieved
employees pursuant to the California
Private Attorneys General Act;

Plaintiffs,

v.

SEA WORLD LLC, a Delaware limited
liability company doing business as
SEAWORLD SAN DIEGO or
AQUATICA SAN DIEGO; SEAWORLD
PARKS & ENTERTAINMENT, INC., a
Delaware corporation; and DOES 1
through 25, inclusive,

Defendants.

Case No. 37-2021-00034922-CU-OE-CTL

Honorable Joel R. Wohlfeil
Department C-73

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

- 1) **Violation of San Diego Municipal
Code §§ 311.0101, *et seq.*;**
- 2) **Wrongful Failure to Hire in Violation
of Public Policy (Failure to Recall);**
- 3) **Wrongful Failure to Hire in Violation
of Public Policy (Age
Discrimination);**
- 4) **Constructive Discharge in Violation
of Public Policy;**
- 5) **Wrongful Termination in Violation of
Public Policy;**
- 6) **Failure to Pay Vested Vacation
Wages (Labor Code § 227.3);**
- 7) **Breach of Contract;**

- 8) **Breach of Implied Covenant of Good Faith and Fair Dealing;**
- 9) **Failure to Pay Minimum Wages;**
- 10) **Failure to Pay Overtime Wages;**
- 11) **Failure to Provide Lawful Meal Periods;**
- 12) **Failure To Authorize and Permit Rest Periods;**
- 13) **Failure to Timely Pay Wages During Employment (Labor Code § 204);**
- 14) **Failure to Timely Pay Wages Upon Termination (Labor Code §§ 201, 202, 203);**
- 15) **Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a));**
- 16) **Violation of Unfair Competition Laws (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and**
- 17) **Civil Penalties Under the Private Attorneys' General Act, Labor Code §§ 2698, *et seq.***

DEMAND FOR JURY TRIAL

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25 himself and others similarly situated, and on behalf of other
26 aggrieved employees pursuant to the California Private
27 Attorneys General Act
28

1 Plaintiffs THERESA BENDORF, JAVIER MARIN, and KRISTY PRATHER
2 (collectively, “Plaintiffs”), on behalf of themselves and others similarly situated, and on behalf of
3 other aggrieved employees pursuant to the California Private Attorneys General Act, assert claims
4 against Defendants SEA WORLD LLC, doing business as SEA WORLD SAN DIEGO or
5 AQUATICA SAN DIEGO, SEAWORLD PARKS & ENTERTAINMENT, INC., and DOES 1
6 through 25, inclusive (collectively, “Defendants”):

7 **INTRODUCTION**

8 1. This is a class and representative action on behalf of Plaintiffs and any and all
9 persons who are or were employed by Defendants for damages and injunctive relief related to
10 Plaintiffs’ employment with Defendants at Defendants’ event centers (including SeaWorld San
11 Diego and Sesame Place San Diego (formerly Aquatica)). This case primarily arises out of
12 Defendants’ decision to lay off its’ workers following the COVID-19 pandemic, and not rehire,
13 recall, or fully reinstate employees that were entitled to preference when Defendants reopened their
14 operations, pursuant to San Diego Municipal Code (“SDMC”) sections 311.0101, et seq. and Labor
15 Code section 2810.8.

16 2. Defendants “temporarily” laid off or furloughed thousands of employees on, before,
17 or around April 1, 2020, purportedly due to the COVID-19 pandemic. Defendants did not provide
18 a return to work date and instructed employees that they were not to perform any work during their
19 layoff.

20 3. Subsequently, starting from the end of 2020, Defendants placed employment ads in
21 preparation for reopening, without providing any notice of those positions to Failure to Recall
22 Employees. A number of the Failure to Recall Employees (including Plaintiffs Bendorf and
23 Prather), who discovered Defendants’ employment ads on their own, applied to and were rejected
24 from positions they formerly held.

25 4. Over a year after laying off their employees, Defendants have since re-opened and
26 resumed business. However, instead of recalling former employees, as required by law, Defendants
27 chose to either hire new individuals into the same or similar positions formerly held by the Failure
28

1 to Recall Employees and/or promote new employees into those positions. Defendants have further
2 kept most Failure to Recall Employees in the dark about their employment status, while asking a
3 select few Failure to Recall Employees to return to work with heavily reduced hours and pay.

4 5. Pursuant to Defendants' Severance Pay policy, full time employees who suffered an
5 involuntary loss of employment as a result of a "substantial, permanent workforce reduction or
6 reorganization" or "elimination of [employee's] position]" were entitled to one (1) week of pay per
7 year of service for full time hourly employees, and two (2) weeks of pay per year of service for
8 salaried employees, up to a maximum of twenty-six (26) weeks. However, Defendants did not
9 make severance payments to the Failure to Recall Employees pursuant to the Severance Pay policy.

10 6. In addition to Defendants' wrongful failure to rehire, wrongful constructive
11 discharge, and violation of San Diego Municipal Code §§ 311.0101, et seq., Plaintiffs allege that
12 Defendants consistently maintained and enforced against non-exempt employees the following
13 unlawful practices and policies, in violation of California state wage and hour laws: a) failing to
14 pay all wages earned, including overtime, minimum, and vested vacation wages; b) breach of
15 severance agreement; c) breach of the implied covenant of good faith and fair dealing; d) failing to
16 provide lawful meal periods; e) failing to authorize and permit rest periods; f) failing to timely pay
17 wages upon termination, including but not limited to vested vacation wages; g) failing to timely
18 pay wages during employment; h) failing to pay meal and rest break premium wages at the regular
19 rate of pay; i) failing to provide accurate itemized wage statements; j) violation of unfair
20 competition law; and k) violation of the Private Attorneys General Act, Labor Code sections 2698,
21 et seq. ("PAGA"). Plaintiffs and the class members and aggrieved employees seek all penalties
22 and sums available, along with injunctive relief and attorney's fees and costs.

24 7. In California, when an employer lays off its employees, it must immediately pay out
25 all earned wages, including all vested vacation wages. "The public policy in favor of full and
26 prompt payment of an employee's earned wages is fundamental and well established: Delay of
27 payment or loss of wages results in deprivation of the necessities of life, suffering inability to meet
28 just obligations to others, and, in many cases may make the wage-earner a charge upon the public."

1 *Smith v. Superior Court*, 39 Cal.4th 77, 83 (2006). “[B]ecause of the economic position of the
2 average worker and, in particular, his dependence on wages for the necessities of life for himself
3 and his family, it is essential to the public welfare that he receive his pay when it is due.” *Id.*

4 8. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
5 or should have known that, pursuant to Labor Code sections 201, 202, 203, and 227.3, Plaintiffs
6 and the other Failure to Recall Class Members were entitled to receive all wages upon termination
7 of employment, including, without limitation, vacation wages, paid time off wages, overtime
8 wages, meal period premium wages, and rest period premium wages, and that Plaintiffs and the
9 other Failure to Recall Class Members did not receive payment of all wages upon termination of
10 employment. Although Defendants belatedly paid out some of the wages owed to Plaintiffs and
11 the other Failure to Recall Class Members with the regularly scheduled payroll periods subsequent
12 to their indefinite layoff, to date, Plaintiffs and the other Failure to Recall Class Members have not
13 been paid all wages owed to them, including vested vacation and/or paid time off wages.

14 9. Plaintiffs are informed and believe, and based thereon allege, that Defendants
15 knew or should have known that, pursuant to Labor Code section 226(a), Plaintiffs and the other
16 class members and aggrieved employees were entitled to receive complete and accurate wage
17 statements in accordance with California law, but, in fact, Plaintiffs and the other class members
18 and aggrieved employees did not receive complete and accurate wage statements from
19 Defendants.
20

21 10. Plaintiffs are informed and believe, and based thereon allege, that Defendants
22 knew or should have known that, pursuant to Labor Code section 2810.8, they were required to
23 offer their laid-off employees in writing all job positions that became available for which the laid-
24 off employees are qualified, but failed to offer these positions to Plaintiffs and the Failure to
25 Recall Class Members.

26 11. Plaintiffs are informed and believe, and based thereon allege, that Defendants
27 knew or should have known that they were required to produce employee records for inspection
28 upon request pursuant to Labor Code sections 226, 432, and 1198.5, but failed to do so in a timely

1 manner. Plaintiff Bendorf requested her records pursuant to Labor Code sections 226, 432, and
2 1198.5 on June 22, 2021, but Defendants failed to produce records until August 6, 2021.

3 **JURISDICTION AND VENUE**

4 12. This class and representative action is brought pursuant to California Code of Civil
5 Procedure section 382 and Labor Code sections 2698, et seq. The monetary damages and restitution
6 sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be
7 established according to proof at trial.

8 13. This Court has jurisdiction over this action pursuant to the California Constitution
9 Article VI section 10, which grants the California Superior Court original jurisdiction in all causes
10 except those given by statute to other courts.

11 14. This Court has jurisdiction over Defendants because, upon information and belief,
12 Defendants are either residents of California, have sufficient minimum contacts in California, or
13 otherwise intentionally avails themselves of the California market so as to render the exercise of
14 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
15 substantial justice. Further, Defendants have done and are doing business in California and in San
16 Diego County by maintaining and operating facilities in California. The unlawful acts alleged
17 herein have a direct effect on Plaintiffs who reside in San Diego County.

18 15. The California Superior Court also has jurisdiction in this matter because there is no
19 federal question at issue, as the issues herein are based on California statutes and law, including the
20 California Labor Code (“Labor Code”), Industrial Welfare Commission (“IWC”) Wage Orders, the
21 California Code of Civil Procedure, the California Civil Code, and the San Diego Municipal Code.

22 16. Venue is proper in this Court because upon information and belief, one or more of
23 the Defendants transact business, or have offices in this County and the acts or omissions alleged
24 herein took place in this County and because Plaintiffs presently reside in this County.
25 Additionally, most of the acts, events, and violations occurred in this County.

26 **PARTIES**

27 17. At all times herein mentioned, Plaintiff THERESA BENDORF (“BENDORF”) was
28 a resident of the County of San Diego, in the State of California.

1 18. At all times herein mentioned, Plaintiff KRISTY PRATHER (“PRATHER”) was a
2 resident of the County of San Diego, in the State of California.

3 19. At all times herein mentioned, Plaintiff JAVIER MARIN (“MARIN”) was a
4 resident of the County of San Diego, in the State of California.

5 20. Plaintiffs bring One through Sixteenth Causes of Action on behalf of two classes of
6 individuals:

7 i. **The Failure to Recall Class:** All current and former employees of Defendants in
8 California during the period from November 18, 2019 through December 15, 2022
9 who were temporarily or permanently furloughed in connection with the COVID-
10 19 pandemic and who Defendants subsequently failed to recall or reinstate to their
11 prior employment status, except those individuals who previously entered into
12 release agreements with Defendants (the “Failure to Recall Class Members”);

13 ii. **The Wage and Hour Class:** All current and former non-exempt employees of
14 Defendants in California during the period from May 25, 2021 through December
15 15, 2022 (the “Wage and Hour Class Members”).

16 21. MARIN and PRATHER are members of the Wage and Hour Class.

17 22. BENDORF and PRATHER are members of the Failure to Recall Class.

18 23. Plaintiffs bring the Seventeenth Cause of Action on behalf of all current and former
19 non-exempt employees of Defendants in California during the period May 25, 2021 through
20 December 15, 2022 (the “Aggrieved Employees”).

21 24. Plaintiffs are informed and believe, and thereon allege, that at all times material to
22 this Complaint, SEA WORLD LLC, is a Delaware limited liability company, doing business as
23 SEAWORLD SAN DIEGO or AQUATICA SAN DIEGO in the State of California, San Diego
24 County.

25 25. Plaintiffs are informed and believe, and thereon allege that, at all times material to
26 this Complaint, SEAWORLD PARKS & ENTERTAINMENT, INC., is a Delaware corporation
27 doing business in the State of California, San Diego County.

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1 26. Whenever this Complaint references any act, deed, or conduct of Defendants, the
2 allegation means that Defendants engaged in the act, deed, or conduct by or through one or more
3 of Defendants' officers, directors, agents, employees, or representatives, who were actively
4 engaged in the management, direction, control, or transaction of the ordinary business and affairs
5 of Defendants.

6 27. The true names and capacities of Defendants, whether individual, corporate,
7 associate, or otherwise, sued herein as DOES 1 through 25, inclusive, are currently unknown to
8 Plaintiffs, who therefore sue Defendants by such fictitious names under California Code of Civil
9 Procedure section 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the
10 true names and capacities of the Defendants designated hereinafter as DOES when such identities
11 become known.

12 28. Plaintiffs are informed and believe, and thereon allege, that the Doe Defendants are
13 the partners, agents, or principals and co-conspirators of SEA WORLD LLC and/or SEAWORLD
14 PARKS & ENTERTAINMENT, INC., and of each other; and the Doe Defendants performed the
15 acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly
16 acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of
17 the Doe Defendants is liable to the extent of the liability of the Defendants as alleged herein.

18 29. Plaintiffs are further informed and believe, and thereon allege, that at all times
19 material herein, each Defendant was dominated or controlled by its co-Defendants, and each was
20 the alter ego of the other. Whenever and wherever reference is made in this Complaint to any
21 conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean
22 the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and
23 wherever reference is made to individuals who are not named as Defendants in this Complaint, but
24 were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf
25 of Defendants named in this Complaint within the scope of their respective employments.

26 30. At all relevant times, Defendants were Plaintiffs' employers, and Defendants
27 directly or indirectly controlled and/or affected Plaintiffs' wages, hours, and working conditions.

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1 31. Defendants maintained or exercised authority to hire and terminate Plaintiffs, the
2 ability to establish work rules, policies, and procedures, and supervised Plaintiffs' day to day
3 activities during employment.

4 32. Upon information and belief, Defendants maintained and exercised sufficient
5 authority over the terms and conditions of Plaintiffs' employment to be considered joint employers.
6 By way of example, all employee job applications and hirings are reviewed by Defendant SeaWorld
7 Parks & Entertainment, Inc. for approval before being hired by Defendant Sea World LLC.

8 **FAILURE TO RECALL FACTUAL ALLEGATIONS**

9 33. During the relevant time periods, Defendants jointly employed BENDORF and
10 PRATHER as non-exempt employees.

11 34. Defendants operate SeaWorld San Diego, an aquatic theme park which, according
12 to Defendants' website, encompasses over 100 acres and employs over 2,500 employees.
13 Defendants also operate Sesame Place San Diego, an amusement park in Chula Vista, California
14 (formerly the Aquatica water park).

15 35. BENDORF and PRATHER were full-time employees at the time they were laid off.

16 36. On or around April 1, 2020, Defendants laid off thousands of employees, including
17 BENDORF and PRATHER, with little to no notice in connection with the COVID-19 pandemic.
18 No rehire date was provided, and BENDORF and PRATHER were instructed not to work during
19 the layoff period.

20 37. Beginning in or around October 2020, and throughout 2021, Defendants began
21 posting employment ads for various positions, including positions previously held by Failure to
22 Recall Class Members before they were laid off.

23 38. From October 2020 through 2021, Plaintiffs are informed and believe that
24 Defendants hired numerous employees but failed to restore Failure to Recall Class Members to
25 their former positions.

26 39. Upon information and belief, no notice was provided to Failure to Recall Class
27 Members, including BENDORF and PRATHER, regarding the open positions, and BENDORF,
28 PRATHER, and the Failure to Recall Class Members received no offers of re-employment in their

1 prior positions.

2 40. In some cases, BENDORF and PRATHER, and upon information and belief, other
3 Failure to Recall Class Members, applied to these open positions, and were subsequently rejected
4 for hire, or were not provided responses to their applications.

5 41. Based on information and belief, Defendants did not maintain a list of currently
6 furloughed or Failure to Recall Class Members.

7 42. In or around July 2021, Defendants re-opened for business, and hired hundreds of
8 additional new employees, without offering positions to the Failure to Recall Class Members as
9 required by law.

10 43. Based on information and belief, many of the employees hired instead of the Failure
11 to Recall Class Members were less qualified and had not previously worked in those positions
12 formerly held by the Failure to Recall Class Members.

13 44. Defendants failed to recall the Failure to Recall Class Members, including
14 BENDORF and PRATHER.

15 45. Instead, Defendants hired new individuals, or began promoting new employees into
16 positions previously held, and/or with similar duties to the positions held by the Failure to Recall
17 Class Members, including BENDORF and PRATHER.

18 46. By way of example, BENDORF and PRATHER's former positions were filled by
19 new employees who had not previously worked for Sea World or less experienced employees who
20 were promoted into those positions, and who performed duties almost identical to those held by
21 BENDORF and PRATHER before being laid off.

22 47. After being furloughed, Defendants subsequently hired some Failure to Recall Class
23 Members, including PRATHER, into different positions as part-time employees with substantially
24 reduced hours, reduced pay, and no benefits.

25 48. By reopening operations and failing to rehire, recall, or reinstate Failure to Recall
26 Class Members into their former positions, or provide notice of those open positions, Defendants
27 have actually or constructively terminated their employment.

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1 49. Plaintiffs are informed and believe, and thereon allege, that Defendants knew, or
2 should have known, that BENDORF, PRATHER, and Failure to Recall Class Members were
3 entitled to all wages due upon termination of employment, including, but not limited to, vacation
4 wages, wages for paid time off, minimum wages, overtime wages, and meal and/or rest period
5 premiums. Further, BENDORF, PRATHER, and Failure to Recall Class Members were not paid
6 all wages due upon termination of employment.

7 50. On September 8, 2020, San Diego enacted Emergency Ordinance No. O-21231,
8 which added San Diego Municipal Code §§ 311.0101, et seq., requiring employers to offer their
9 laid-off employees in writing, through physical mail, e-mail, **and** text messages, all job positions
10 which become available for which the laid-off employees are qualified.

11 51. On April 16, 2021, the State of California enacted SB-93, which added Labor Code
12 section 2810.8 and required employers who laid off employees to maintain records of the
13 employees' layoff notification and related communications, and required employers to offer laid-
14 off employees, in writing, any employment positions which become available, within five (5)
15 business days of establishing that position.

16 52. Based on information and belief, Defendants possess Failure to Recall Class
17 Members' addresses, e-mail addresses, and phone numbers.

18 53. Plaintiffs are informed and believe, and thereby allege, that Defendants knew or
19 should have known, of their obligations under San Diego Municipal Code sections 311.0101, et
20 seq. and/or Labor Code section 2810.8 and failed to comply with the requirements to provide notice
21 and/or offer qualifying open positions to the Failure to Recall Class Members, including
22 BENDORF and PRATHER, and/or to keep sufficient records as required by law.

23 54. Plaintiffs are informed and believe, and thereon allege, that at all times herein
24 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
25 thereof for resignations without prior notice, as the case may be) they had a duty to accurately
26 compensate BENDORF, PRATHER, and the Failure to Recall Class Members for all wages owed,
27 including minimum wages, overtime, meal and rest period premiums, and earned vacation wages,
28 and that Defendants had the financial ability to pay such compensation, but willfully, knowingly,

recklessly, and/or intentionally failed to do so in part because of the above-specified violations.

55. Effective March 2017, Defendants agreed to provide severance pay to all regular, salaried, and full-time employees who suffered an involuntary loss of employment due to a “Qualifying Event” defined as “a substantial, permanent workforce reduction or reorganization” or “elimination of the employee’s position” who signed a Separation Agreement and Release. Under the Severance Pay policy (HR.0400), full-time hourly employees were entitled to 1 week of base pay per year of continuous service with a minimum of two (2) weeks’ severance and a maximum of twenty-six (26) weeks’ severance, and salaried employees were entitled to 2 weeks of base pay per year of continuous service with a minimum of four (4) weeks of severance and a maximum of twenty-six (26) weeks’ of severance.

56. However, despite the Failure to Recall Class Members’ suffering an “involuntary loss of employment” due to the closing of the park and Defendants’ indefinite furlough of the Failure to Recall Class Members and/or elimination of the Failure to Recall Class Members’ positions, Defendants failed to make the required severance payments to any of the Failure to Recall Class Members.

WAGE AND HOUR FACTUAL ALLEGATIONS

57. During the relevant time periods, Defendants jointly employed PRATHER, MARIN, and other Wage and Hour Class Members as non-exempt employees.

58. PRATHER, MARIN, and other Wage and Hour Class Members were, and at all times pertinent hereto, have been non-exempt employees within the meaning of the Labor Code, and the implementing rules and regulations of the IWC Wage Orders. They are subject to the protections of the IWC Wage Order 10-2001 and the Labor Code.

59. Although Defendants kept track of the actual hours worked by Wage and Hour Class Members, Plaintiffs are informed and believe that Defendants rounded the start and stop times of all non-exempt employees against employee interests. For example, non-exempt employees scheduled for 9:00 a.m., who clocked in seven (7) minutes early at 8:53 a.m. would have their time rounded to 9:00 a.m.

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1 60. Based on information and belief, Defendants implemented policies and practices,
2 including rounding practices, which led to Defendants' systemic failure to pay at least minimum
3 wage or overtime wages for all hours worked by Plaintiffs and the Wage and Hour Class Members.

4 61. Upon information and belief, during the relevant time frame, Defendants maintained
5 a series of policies and demands that effectively coerced and pressured its non-exempt employees
6 to shorten, forego, or take untimely meal and rest periods, or to work hours, including overtime
7 hours, without payment of full compensation, including overtime, as applicable.

8 62. Indeed, as a consequence of Defendants' staffing and scheduling practices, lack of
9 coverage, work demands, and Defendants' policies and practices, Plaintiffs and Wage and Hour
10 Class Members were not provided with meal periods or authorized and permitted to take legally
11 required rest periods.

12 63. During the relevant time frame, Defendants maintained and enforced a schedule,
13 policies, and demands that often required Plaintiffs and Wage and Hour Class Members to forego
14 their lawful rest periods of ten minutes for every four hours worked or major fraction thereof.
15 Lawful net ten-minute rest periods were not authorized and permitted as required by law.

16 64. Based on information and belief, Defendants failed to compensate Plaintiffs and
17 Wage and Hour Class Members one additional hour of pay at their regular rate as required by
18 California law for each day on which rest periods were not authorized and permitted.

19 65. Defendants failed to properly pay Plaintiffs and Wage and Hour Class Members the
20 legal minimum wage they earned, failed to provide all lawful meal and rest periods owed to them,
21 and failed to pay one (1) hour wages in lieu of each non-provided meal and rest period.

22 66. Defendants failed to pay meal and rest break premium wages at the regular rate of
23 pay. Specifically, Plaintiffs and the Wage and Hour Class Members earned non-discretionary
24 remuneration, including, but not limited to, incentives, awards, and service gratuities. As these
25 items are non-discretionary forms of remuneration, they should have been included in the regular
26 rate of pay for purposes of paying Plaintiffs and the Wage and Hour Class Members their meal and
27 rest period premium pay. However, whenever Defendants paid meal and rest period premium pay
28 during periods in which Plaintiffs and the Wage and Hour Class Members earned this non-

1 discretionary remuneration, the meal and rest period premium was always paid at the base rate of
2 pay.

3 67. Defendants have also made it difficult to account with precision for the unlawfully
4 withheld wages owed to Plaintiffs and the Wage and Hour Class Members during the liability
5 period and failed to implement and preserve a lawful record-keeping method to record all non-
6 provided meal and rest periods owed to employees, as required for non-exempt employees by Labor
7 Code section 226 and applicable IWC Wage Orders.

8 68. Plaintiffs are informed and believe that Defendants' violation of the Labor Code and
9 the IWC Wage Orders as specified herein was willful and deliberate.

10 69. Defendants also failed to provide accurate, lawful, itemized wage statements to
11 Plaintiffs and the Wage and Hour Class Members in part because of the above specified violations,
12 pursuant to Labor Code section 226(a). In addition, upon information and belief, Defendants
13 omitted an accurate itemization of all applicable hourly rates in effect during the pay period and
14 the corresponding number of hours worked at each hourly rate by Plaintiffs and the Wage and Hour
15 Class Members. Further, whenever overtime wages were paid, the wage statements issued to the
16 Wage and Hour Class Members did not identify the overtime rate as 1.5 times the regular rate of
17 pay. Rather, the overtime rates appeared as the base hourly rate of pay and/or one-half of the hourly
18 rate of pay. Finally, Defendants failed to list the accurate total hours worked for wage statements
19 furnished to the Wage and Hour Class Members whenever overtime wages were paid. In particular,
20 when the hours shown on the wage statements are added up, they do not appear to add up to the
21 actual total hours worked.

22 70. Defendants also failed to keep accurate payroll information as a consequence of the
23 above specified violations, including the failure to pay premiums for missed meal and rest breaks
24 and the failure to properly calculate and pay minimum wages, as required by law.

25 71. Defendants failed to timely pay all wages in accordance with Labor Code section
26 204.

27 72. Defendants also failed to timely pay all wages, including vested vacation pay, upon
28 separation in accordance with Labor Code section 203.

73. The Wage and Hour Class Members are covered by applicable IWC Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title 8, sections 11000, et seq.

74. Emergency Rule 9 was enacted by the state of California in response to the COVID-19 pandemic, which tolled the statute of limitation for civil causes of action exceeding 180 days from April 6, 2020 until October 1, 2020.

CLASS ACTION ALLEGATIONS

75. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seek class certification under California Code of Civil Procedure section 382.

76. Plaintiffs seek to represent two separate classes:

The Failure to Recall Class: All current and former employees of Defendants in California during the period from November 18, 2019 through December 15, 2022 who were temporarily or permanently furloughed in connection with the COVID-19 pandemic and who Defendants subsequently failed to recall or reinstate to their prior employment status, except those individuals who previously entered into release agreements with Defendants.

The Wage and Hour Class: All current and former non-exempt employees of Defendants in California during the period from May 25, 2021 through December 15, 2022.

77. Plaintiffs reserve the right, under Rule 3.765, California Rules of Court, to amend or modify the descriptions of the Failure to Recall Class or the Wage and Hour Class to provide greater specificity if it should be deemed necessary by the Court or to further divide the Failure to Recall Class and/or Wage and Hour Class into additional subclasses or to limit the subclasses to particular issues.

78. As set forth in further detail below, this action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Failure to

1 Recall Class and Wage and Hour Class are easily ascertainable.

2 a) Numerosity: The members of the Failure to Recall Class and Wage and Hour Class
3 are so numerous that joinder of all members of the Failure to Recall Class and Wage and Hour
4 Class would be unfeasible and impractical. The membership of the entire Failure to Recall Class
5 and Wage and Hour Class is unknown to Plaintiffs at this time; however, the exact numbers of
6 Failure to Recall Class Members and Wage and Hour Class Members and their identities are readily
7 ascertainable by inspection of Defendants' employment records.

8 b) Commonality: There are common questions of law and fact as to the Failure to
9 Recall Class and Wage and Hour Class that predominate over questions affecting only individual
10 Failure to Recall Class Members and Wage and Hour Class Members. These common questions
11 of law and fact include, without limitation:

12 1) Whether Defendants failed to recall BENDORF, PRATHER, and Failure to
13 Recall Class Members that they terminated (including, but not limited to, temporarily laid off, laid
14 off, or furloughed employees) due to the COVID-19 pandemic;

15 2) Whether Defendants failed to keep accurate records and/or failed to provide
16 written notice to Failure to Recall Class Members pursuant to California law and San Diego "Right
17 to Recall" ordinances.

18 3) Whether Defendants unlawfully terminated the employment of Failure to
19 Recall Class Members;

20 4) Whether Defendants breached the Severance Pay policy by failing to make
21 severance payments to Failure to Recall Class Members;

22 5) Whether Defendants' rounding practices led their failure to compensate
23 Wage and Hour Class Members for all actual hours worked;

24 6) Whether Defendants failed to accurately calculate and pay overtime pursuant
25 to Labor Code section 510 and the applicable Industrial IWC Wage Order to Plaintiffs and Wage
26 and Hour Class Members for overtime hours worked;

27 7) Whether Defendants failed to provide meal periods in accordance with
28 Labor Code section 512 and the applicable IWC Wage Order;

1 8) Whether Defendants failed to authorize and permit lawful paid rest periods
2 in accordance with the California Labor Code and the applicable IWC Wage Order;

3 9) Whether Defendants failed to pay meal and rest break premium wages at the
4 regular rate of pay;

5 10) Whether Defendants failed to comply with wage reporting as required by the
6 Labor Code, including but not limited to, section 226;

7 11) Whether Defendants failed to timely pay all wages, including vested
8 vacation pay, upon separation in accordance with Labor Code sections 203 and 227.3;

9 12) Whether Defendants failed to timely pay all wages during employment in
10 accordance with Labor Code section 204;

11 13) Whether Defendants failure to pay wages, without abatement or reduction,
12 in accordance with the Labor Code was willful;

13 14) Whether Defendants engaged in unfair competition in violation of California
14 Business & Professions Code sections 17200, et seq.;

15 15) The appropriate amount of damages, restitution, and/or monetary penalties
16 resulting from Defendants' violations of California law and the San Diego Municipal Code;

17 16) Whether Plaintiffs, the Failure to Recall Class Members, and Wage and Hour
18 Class Members are entitled to punitive/statutory damages pursuant to California Civil Code and/or
19 the San Diego Municipal Code; and

20 17) Whether Plaintiffs, Failure to Recall Class Members, and Wage and Hour
21 Class Members are entitled to injunctive relief and other equitable remedies.

22 c) Typicality: Plaintiffs are qualified to and will fairly and adequately protect the
23 interests of each member of the Failure to Recall Class and Wage and Hour Class with whom they
24 have a well-defined community of interest. Plaintiffs' claims herein alleged are typical of those
25 claims which could be alleged by any member of the Failure to Recall Class and Wage and Hour
26 Class, and the relief sought is typical of the relief which would be sought by each member of the
27 Failure to Recall Class and Wage and Hour Class in separate actions. All members of the Failure
28 to Recall Class and Wage and Hour Class have been similarly harmed by Defendants' termination

1 or failure to recall the Failure to Recall Class Members, and/or, Defendants' failure to pay all
2 minimum wages, overtime wages, and vested vacation wages earned; failure to pay severance pay;
3 failure to provide meal periods and authorize and permit rest periods; failure to pay meal and rest
4 break premium wages at the regular rate of pay; failure to provide accurate itemized wage
5 statements; and failure to timely pay all wages and vested vacation hours owed at separation, all
6 due to Defendants' policies and practices that affected each member of the Failure to Recall Class
7 and Wage and Hour Class similarly. Further, Defendants benefited from the same type of unfair
8 and/or wrongful acts as to each member of the Failure to Recall Class and Wage and Hour Class.

9 d) Adequacy: Plaintiffs are qualified to and will fairly and adequately protect the
10 interests of each member of the Failure to Recall Class and Wage and Hour Class with whom they
11 have a well-defined community of interest and typicality of claims, as demonstrated herein.
12 Plaintiffs acknowledge that they have an obligation to make known to the Court any relationships,
13 conflicts, or differences with any member of the Failure to Recall Class and Wage and Hour Class.
14 Plaintiffs' attorneys and the proposed counsel for the Failure to Recall Class and Wage and Hour
15 Class are versed in the rules governing class action discovery, certification, litigation, and
16 settlement and experienced in handling such matters. Other former and current employees of
17 Defendants may also serve as representatives of the Failure to Recall Class and Wage and Hour
18 Class if needed.

19 e) Superiority: The nature of this action makes the use of class action adjudication
20 superior to other methods. A class action will achieve economies of time, effort, judicial resources,
21 and expense, which would not be achieved with separate lawsuits. The prosecution of separate
22 actions by individual members of the Failure to Recall Class and Wage and Hour Class would
23 create a risk of inconsistent and/or varying adjudications with respect to the individual members of
24 the Failure to Recall Class and Wage and Hour Class, establishing incompatible standards of
25 conduct for the Defendants, and resulting in the impairment of the rights of the members of the
26 Failure to Recall Class and Wage and Hour Class and the disposition of their interests through
27 actions to which they were not parties. Thus, a class action is superior to other available means for
28 the fair and efficient adjudication of this controversy because individual joinder of all Failure to

1 Recall Class Members and Wage and Hour Class Members is not practicable, and questions of law
2 and fact common to the Failure to Recall Class and Wage and Hour Class predominate over any
3 questions affecting only individual Failure to Recall Class Members and Wage and Hour Class
4 Members. Each member of the Failure to Recall Class and Wage and Hour Class has been damaged
5 and is entitled to recovery by reason of Defendants' unlawful policies and practices, including
6 Defendants' failure to pay all minimum wages and overtime wages earned, failure to provide meal
7 periods and authorize and permit rest periods, failure to reimburse expenses, and failure to timely
8 pay all wages owed at separation. Class action treatment will allow those similarly situated persons
9 to litigate their claims in the manner that is most efficient and economical for both parties and the
10 judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
11 management of this action that would preclude its maintenance as a class action.

12 f) Public Policy Considerations: Employers in the state of California violate
13 employment and labor laws every day. However, current employees are often afraid to assert their
14 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
15 because they believe their former employers may damage their future endeavors through negative
16 references and/or other means. The nature of this action allows for the protection of current and
17 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
18 California have a significant interest in ensuring employers comply with California's labor laws
19 and in ensuring those employers who do not are prevented from taking further advantage of their
20 employees.

21 PAGA ALLEGATIONS

22 79. At all times set forth herein, PAGA was applicable to Plaintiffs' employment by
23 Defendants.

24 80. At all times set forth herein, PAGA provides that any provision of law under the
25 Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be
26 assessed and collected by the California Labor & Workforce Development Agency ("LWDA") for
27 violations of the Labor Code may, as an alternative, be recovered through a civil action brought by
28

1 an aggrieved employee on behalf of himself or herself and other current or former employees
2 pursuant to procedures outlined in Labor Code section 2699.3.

3 81. Pursuant to PAGA, a civil action may be brought by an “aggrieved employee,” who
4 is any person that was employed by the alleged violator and against whom one or more of the
5 alleged violations was committed.

6 82. Plaintiffs were employed by Defendants and the alleged violations were committed
7 against them during their time of employment and they are, therefore, aggrieved employees.
8 Plaintiffs and the other employees are “aggrieved employees” as defined by Labor Code section
9 2699(c) in that they are current or former employees of Defendants and one of more of the alleged
10 violations were committed against them.

11 83. Pursuant to Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
12 including Plaintiffs, may pursue a civil action arising under PAGA after the following requirements
13 have been met:

14 (a) The aggrieved employee shall give written notice by certified mail (hereinafter
15 “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the
16 Labor Code alleged to have been violated, including the facts and theories to support
17 the alleged violations.

18 (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the
19 aggrieved employee by certified mail that it does not intend to investigate the alleged
20 violation within sixty (60) calendar days of the postmark date of the Employee’s
21 Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided
22 within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the
23 aggrieved employee may commence a civil action pursuant to Labor Code section 2699
24 to recover civil penalties in addition to any other penalties to which the employee may
25 be entitled.
26

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1 84. On July 26, 2021, BENDORF provided notice by electronic submission to the
2 LWDA and by certified mail to Defendants regarding the specific provisions of the Labor Code
3 alleged to have been violated, including the facts and theories to support the alleged violations,
4 pursuant to Labor Code section 2699.3. BENDORF did not receive an LWDA Notice within sixty-
5 five (65) calendar days of providing the Employee's Notice.

6 85. On November 8, 2021, MARIN provided notice by electronic submission to the
7 LWDA and by certified mail to Defendants regarding the specific provisions of the Labor Code
8 alleged to have been violated, including the facts and theories to support the alleged violations,
9 pursuant to Labor Code section 2699.3. MARIN did not receive an LWDA Notice within sixty-
10 five (65) calendar days of providing the Employee's Notice.

11 86. On November 19, 2021, PRATHER provided an amended notice by electronic
12 submission to the LWDA and by certified mail to Defendants regarding the specific provisions of
13 the Labor Code alleged to have been violated, including the facts and theories to support the alleged
14 violations, pursuant to Labor Code section 2699.3. PRATHER did not receive an LWDA Notice
15 within sixty-five (65) calendar days of providing the Employee's Notice.

16 87. Therefore, the administrative prerequisites under Labor Code section 2699.3(a) to
17 recover civil penalties against Defendants, in addition to other remedies for violations of numerous
18 Labor Code and IWC Wage Orders have been satisfied.

19
20 **FIRST CAUSE OF ACTION**

21 **Violation of San Diego Municipal Code §§ 311.0101, *et seq.***

22 (BENDORF, PRATHER, and the Failure to Recall Class against all Defendants)

23 88. Plaintiffs incorporate each and every allegation set forth in all of the foregoing
24 paragraphs as if fully set forth herein.

25 89. In response to the COVID-19 pandemic, businesses in San Diego's service and
26 hospitality industries conducted widespread lay-offs of workers. The City Council of the City of
27 San Diego added SDMC §§ 311.0101, *et seq.* to ensure that these workers enjoy a right to return to
28 their previous jobs when business activities resume following the COVID-19 pandemic. SDMC §

1 311.0101.

2 90. Further, SDMC §§ 311.0101, et seq. was enacted to ensure fair employment
3 practices during economic upheaval resulting from the COVID-19 pandemic.¹

4 91. SDMC § 311.0104 gives preference to laid-off workers in hiring, requiring San
5 Diego employers to extend written offers to their workers who had been laid off for non-
6 disciplinary reasons following the pandemic, when those positions for which they are qualified
7 become available.

8 92. An employee is qualified if: 1) the employee “held the same or similar position at
9 the at the site of employment at the time of the laid-off employee’s most recent separation from
10 active service with the employer”, or 2) “is or can be qualified for the position with the same
11 training that would be provided to a new employee hired into that position.” SDMC § 311.0104(a)-
12 (b).

13 93. Laid-off employees who previously held the same or similar position have
14 preference over employees newly hired into that position, and the employer must offer the position
15 to the laid-off employee with the “greatest length of service for the employer.” SDMC § 311.0104.

16 94. Employers must further retain the records required by SDMC § 311.0104 (a)-(e)
17 which includes written notices regarding the layoff provided to the employee and all records of
18 communications between the employer and employee concerning offers of employment made
19 pursuant to section (b)(4).

20 95. Violations of SDMC §§ 311.0101, et seq. may be enforced by any laid-off employee
21 as a private right of action against an employer for violations of this Division for: 1) hiring and
22 reinstatement rights, 2) all actual damages (including, but not limited to, lost pay, and benefits)
23 suffered by a laid-off employee, or for statutory damages in the sum of \$1,000, whichever is greater;
24 and 3) Punitive damages, pursuant to California Civil Code section 3294. SDMC § 311.0106(a).

25 96. Further, if a laid-off employee is the prevailing party in any legal action taken
26 pursuant to SDMC § 311.0102, the court *must* award reasonable attorney’s fees and costs. SDMC
27 § 311.0106(b) (emphasis added.)

28 ¹ San Diego Emergency Ordinance O-2020-20, p. 2

1 97. BENDORF and PRATHER and, upon information and belief, the Failure to Recall
2 Class were laid-off by Defendants due to the COVID-19 pandemic.

3 98. Since BENDORF and PRATHER and, upon information and belief, the Failure to
4 Recall Class were laid off, they have not received any written offer from Defendants regarding re-
5 employment or any open positions as required by SDMC §§ 311.0101, et seq.

6 99. Further, BENDORF and PRATHER and, upon information and belief, the Failure
7 to Recall Class have not received written notice of their rights under SDMC §§ 311.0101, et seq.,
8 as required by § 311.104(d).

9 100. At all times relevant, Defendants failed to offer available positions to BENDORF
10 and PRATHER and, upon information and belief, the Failure to Recall Class, and instead hired new
11 individuals and/or promoted new employees to fill positions previously held by BENDORF and
12 PRATHER and the Failure to Recall Class.

13 101. BENDOR, PRATHER, and the Failure to Recall Class have incurred and continue
14 to incur economic and noneconomic damages, statutory damages, legal expenses, and attorney fees.

15 102. BENDORF and PRATHER are informed and believe, and thereon allege, that the
16 aforementioned acts directed towards them were carried out with a conscious disregard of
17 BENDORF, PRATHER, and the Failure to Recall Class's right to be free from such illegal
18 behavior, such as to constitute oppression, fraud, or malice pursuant to California Civil Code
19 section 3294, entitling BENDORF, PRATHER, and the Failure to Recall Class to punitive
20 damages.

21 103. As a result of Defendants' conduct, BENDORF, PRATHER, and the Failure to
22 Recall Class have been harmed in an amount to be determined at trial.

23 **SECOND CAUSE OF ACTION**

24 **Wrongful Failure to Hire in Violation of Public Policy (Failure to Recall)**

25 (bENDORF, PRATHER, and the Failure to Recall Class against all Defendants)

26 104. Plaintiffs incorporate each and every allegation set forth in all of the foregoing
27 paragraphs as if fully set forth herein.

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105. SDMC §§ 311.0101, et seq. and Labor Code 2810.8 express a public policy in favor of granting laid off employees the right to rehire and ensuring fair employment practices following the COVID-19 pandemic.

106. Defendants' failure to grant preference to Failure to Recall Class Members and failure to recall/hire Failure to Recall Class Members violates public policy.

107. As a direct, foreseeable, and proximate result of Defendants' wrongful conduct in failing to grant preference and failing to hire/recall BENDORF, PRATHER, and the Failure to Recall Class Members for similar employment positions, which later became available after they were laid off, and for which they were qualified, BENDORF, PRATHER, and the Failure to Recall Employees were harmed in an amount to be determined at trial.

108. As a direct, foreseeable, and proximate result of Defendants' unlawful acts, BENDORF, PRATHER, and the Failure to Recall Class have suffered and continue to suffer substantial economic and noneconomic losses in earnings and job benefits, and emotional distress, all to BENDORF, PRATHER, and the Failure to Recall Class's damage in an amount to be proven at trial, but which are in excess of the minimum jurisdiction of this court.

109. BENDORF and PRATHER are informed and believe, and thereon allege, that the aforementioned acts directed towards them, and the Failure to Recall Class Members were carried out with a conscious disregard of the Failure to Recall Class Member's right to be free from such illegal behavior, such as to constitute oppression, fraud, or malice pursuant to California Civil Code section 3294, entitling BENDORF, PRATHER, and the Failure to Recall Class to punitive damages.

THIRD CAUSE OF ACTION

Wrongful Failure to Hire in Violation of Public Policy (Age Discrimination)

(BENDORF, PRATHER, and the Failure to Recall Class against all Defendants)

110. Plaintiffs incorporate each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein. Plaintiffs please this cause of action in the alternative.

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1 111. SDMC §§ 311.0101, et seq. and Labor Code 2810.8 express a public policy in favor
2 of granting laid off employees the right to rehire and ensuring fair employment practices following
3 the COVID-19 pandemic.

4 112. Defendant is an employer within the meaning of the California Fair Employment
5 and Housing Act, Govt. Code §§ 12940, et seq. (“FEHA”).

6 113. California has a fundamental, substantial, and well-established public policy against
7 discrimination in the workplace on the basis of age or conditions related to age, codified in Govt.
8 Code §§ 12940, et seq.

9 114. Plaintiffs are informed and believe thereon allege that Defendants refused to
10 hire/recall BENDORF and PRATHER and, upon information and belief, the Failure to Recall
11 Class, for employment on the basis of their age and/or other conditions related to their age.

12 115. As a direct, foreseeable, and proximate result of Defendants’ wrongful conduct in
13 failing to hire/recall BENDORF, PRATHER, and the Failure to Recall Class for similar
14 employment positions, which later became available after they were laid off, and for which they
15 were qualified, BENDORF, PRATHER, and the Failure to Recall Class were harmed in an amount
16 to be determined at trial.

17 116. As a direct, foreseeable, and proximate result of Defendants’ unlawful acts,
18 BENDORF, PRATHER, and the Failure to Recall Class have suffered and continue to suffer
19 substantial economic and noneconomic losses in earnings and job benefits, and emotional distress,
20 all to BENDORF, PRATHER, and the Failure to Recall Class’s damage in an amount to be proven
21 at trial, but which are in excess of the minimum jurisdiction of this court.

22 117. BENDORF and PRATHER are informed and believe, and thereon allege, that the
23 aforementioned acts directed towards them, and the Failure to Recall Class were carried out with a
24 conscious disregard of BENDORF, PRATHER, and the Failure to Recall Class’s right to be free
25 from such illegal behavior, such as to constitute oppression, fraud, or malice pursuant to California
26 Civil Code section 3294, entitling BENDORF, PRATHER, and the Failure to Recall Class to
27 punitive damages.

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1 **FOURTH CAUSE OF ACTION**

2 **Constructive Discharge in Violation of Public Policy**

3 (BENDORF, PRATHER, and the Failure to Recall Class against all Defendants)

4 118. Plaintiffs reallege and incorporate by reference each and every allegation contained
5 in the preceding paragraphs as though fully set forth herein.

6 119. SDMC §§ 311.0101, et seq. and Labor Code 2810.8 express a public policy in favor
7 of granting laid off employees the right to rehire and ensuring fair employment practices following
8 the COVID-19 pandemic.

9 120. By failing to reinstate the Failure to Recall Class Members to their prior positions,
10 and/or forcing them to accept a different job with substantially reduced pay and hours, Defendants
11 constructively terminated the Failure to Recall Class Members, including BENDORF and
12 PRATHER's employment.

13 121. California has a fundamental, substantial, and well-established public policy against
14 discrimination in the workplace on the basis of age or conditions related to age, codified in Govt.
15 Code §§ 12940, et seq.

16 122. BENDORF and PRATHER are informed and believe and thereon allege that
17 Defendants were additionally motivated to constructively terminate their employment on the basis
18 of their age and/or other conditions related to their age.

19 123. As a direct, foreseeable, and proximate result of Defendants' unlawful acts,
20 BENDORF, PRATHER, and the Failure to Recall Class have suffered and continue to suffer
21 substantial economic and noneconomic losses in earnings and job benefits, and emotional distress,
22 all to BENDORF, PRATHER, and the Failure to Recall Class's damage in an amount to be proven
23 at trial, but which are in excess of the minimum jurisdiction of this court.

24 124. Defendants committed the acts described in this Complaint oppressively,
25 fraudulently, and maliciously, with the wrongful intention of injuring BENDORF, PRATHER, and
26 the Failure to Recall Class Members and acted with an improper and evil motive amounting to
27 malice, in conscious disregard for BENDORF, PRATHER, and the Failure to Recall Class
28

Members' rights and thus an award of exemplary and punitive damages is justified. BENDORF, PRATHER, and the Failure to Recall Class Members are therefore entitled to recover and herein prays for punitive damages.

FIFTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(BENDORF, PRATHER, and the Failure to Recall Class against all Defendants)

125. Plaintiffs realleged and incorporate by reference each and every allegation contained in the proceedings paragraphs as though fully set forth herein.

126. Wrongful termination in violation of public policy is an exception to the general rule that, without an employment contract, an employer can terminate the employment relationship at any time, with or without cause. "[W]hile an at-will employee may be terminated for no reason, or for an arbitrary or irrational reason, there can be no right to terminate for an unlawful reason or a purpose that contravenes fundamental public policy." *Gantt v. Sentry Ins.* (1992) 1 Cal. 4th 1083, 1094.

127. SDMC §§ 311.0101, et seq. and Labor Code § 2810.8 express a public policy in favor of granting laid off employees the right to rehire and ensuring fair employment practices following the COVID-19 pandemic.

128. California has a fundamental, substantial, and well-established public policy against discrimination in the workplace on the basis of age or conditions related to age, codified in Govt. Code §§ 12940, et seq.

129. By failing to rehire the Failure to Recall Class and, upon information and belief, hiring less experienced and younger employees to replace them, Defendants wrongfully terminated their employment in violation of, inter alia, SDMC §§ 311.0101, et seq. and Labor Code § 2810.8.

130. BENDORF and PRATHER are informed and believe and thereon allege that Defendants were additionally motivated to wrongfully terminate their employment on the basis of their age and/or other conditions related to their age.

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131. As a direct, foreseeable, and proximate result of Defendants' unlawful acts, BENDORF, PRATHER, and the Failure to Recall Class have suffered and continue to suffer substantial economic and noneconomic losses in earnings and job benefits, and emotional distress, all to BENDORF, PRATHER, and the Failure to Recall Class's damage in an amount to be proven at trial, but which are in excess of the minimum jurisdiction of this court.

132. Defendants committed the acts described in this Complaint oppressively, fraudulently, and maliciously, with the wrongful intention of injuring BENDORF, PRATHER, and the Failure to Recall Class Members and acted with an improper and evil motive amounting to malice, in conscious disregard for BENDORF, PRATHER, and the Failure to Recall Class Members' rights and thus an award of exemplary and punitive damages is justified. BENDORF, PRATHER, and the Failure to Recall Class Members are therefore entitled to recover and herein prays for punitive damages.

SIXTH CAUSE OF ACTION

Failure to Pay Vested Vacations Wages (Labor Code § 227.3)

(BENDORF, PRATHER, and the Failure to Recall Class against all Defendants)

133. Plaintiffs incorporate each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

134. Labor Code § 227.3 establishes that employer policies which provide paid vacation time, or paid time off, which have accrued or vested and not used by an employee, shall be paid to the employee as wages at his or her final rate of pay upon termination of the employment relationship.

135. During the relevant times, BENDORF, PRATHER, and the Failure to Recall Class earned vested vacation wages and/or paid time off pursuant to Defendants' own employment policies. However, Defendants failed to timely pay out all vested vacation and paid time off wages owed to BENDORF, PRATHER, and the other Failure to Recall Class Members on termination or constructive discharge of their employment.

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1 136. BENDORF, PRATHER, and the Failure to Recall Class are owed all unpaid wages
2 earned during their employment in an amount to be determined upon proof at trial.

3 137. Pursuant to Labor Code section 218.5, BENDORF, PRATHER, and the Failure to
4 Recall Class are entitled to an award of reasonable attorneys' fees and costs.

5 **SEVENTH CAUSE OF ACTION**

6 **Breach of Contract**

7 (BENDORF, PRATHER, and the Failure to Recall Class against all Defendants)

8 138. Plaintiffs incorporate each and every allegation set forth in all of the foregoing
9 paragraphs as if fully set forth herein.

10 139. Pursuant to Defendants' Severance Pay policy (HR.0400), Defendants offered
11 severance pay to all regular, salaried, and full-time employees who suffered an involuntary loss of
12 employment due to a "Qualifying Event" defined as "a substantial, permanent workforce reduction
13 or reorganization" or "elimination of the employee's position" who signed a Separation Agreement
14 and Release. Under the Severance Pay policy, full-time hourly employees were entitled to one (1)
15 week of base pay per year of continuous service with a minimum of two (2) weeks' severance and
16 a maximum of twenty-six (26) weeks' severance and salaried employees were entitled to two (2)
17 weeks of base pay per year of continuous service with a minimum of four (4) weeks of severance
18 and a maximum of twenty-six (26) weeks' of severance.

19 140. The closure of the park and indefinite furlough and/or elimination of the Failure to
20 Recall Class Members' positions constituted a Qualifying Event under the Severance Pay policy.

21 141. However, despite the Failure to Recall Class Members suffering a "involuntary loss
22 of employment," Defendants failed to make the required severance payments to the Failure to
23 Recall Class Members in material breach of the agreement.

24 142. In addition, Defendants did not provide a Separation Agreement and Release for the
25 Failure to Recall Class Members to sign.

26 143. BENDORF, PRATHER, and the other Failure to Recall Class Members did all, or
27 substantially all, of the significant things that the agreement required them to do.

28 144. Defendants were not excused from their obligations under the Severance Pay policy.

145. As a result of Defendants' failure to make the severance payments as required under the Severance Pay policy, BENDORF, PRATHER, and the Failure to Recall Class Members have been damaged in that they have not received the amounts they are entitled to under the Severance Pay policy.

EIGHTH CAUSE OF ACTION

Breach of Implied Covenant of Good Faith and Fair Dealing

(BENDORF, PRATHER, and the Failure to Recall Class against all Defendants)

146. Plaintiffs incorporate each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

147. By failing to make the severance payments to BENDORF, PRATHER, and the Failure to Recall Class Members as required under the written agreement (HR.0400), Defendants did not act fairly and in good faith.

148. BENDORF, PRATHER, and the other Failure to Recall Class Members were harmed by Defendants' conduct in that they were prevented from receiving the benefits of the agreement (i.e. the severance payments).

NINTH CAUSE OF ACTION

Failure to Pay Minimum Wages

(BENDORF, PRATHER, MARIN, and the Wage and Hour Class against all Defendants)

149. Plaintiffs incorporate each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

150. Labor Code section 204 establishes the fundamental right of all employees in the State of California to be paid wages, including minimum wage, straight time, and overtime, in a timely fashion for their work.

151. Labor Code section 1194 (a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees and costs of suit.

152. Labor Code section 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.

153. The applicable wage orders and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law.

154. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

155. During all relevant periods, the Labor Code and IWC Wage Orders required that Defendants fully and timely pay its non-exempt employees all wages earned and due for all hours worked.

156. The IWC Wage Orders define “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.”

157. Based on information and belief, Defendants were aware that members of the Wage and Hour Class were working off the clock and that they should have been paid for this time.

158. Further, Defendants' rounding practices led to their failure to pay the Wage and Hour Class at least minimum wage for all hours worked.

159. Defendants' policy and practice of not paying all minimum wages violates Labor Code §§ 204, 210, 216, 558, 1182.12, 1194, 1197, and 1197.1, and the applicable IWC Wage Order 10-2001.

TENTH CAUSE OF ACTION

Failure to Pay Overtime Wages

(BENDORF, PRATHER, MARIN, and the Wage and Hour Class against all Defendants)

160. Plaintiffs incorporate each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

1 161. During the relevant periods, Defendant required Plaintiffs and the Wage and Hour
2 Class to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40)
3 hours per workweek.

4 162. During all relevant periods, both the Labor Code sections 1194, 1197, 510, and
5 1198, and the pertinent IWC Wage Order 10-2001 required that all work performed by an employee
6 in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in
7 excess of forty (40) hours in any workweek be compensated at one and one-half times the
8 employee's regular rate of pay. Any work in excess of twelve (12) hours in one day is required to
9 be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition,
10 any work in excess of eight (8) hours on any seventh day of a workweek is required to be
11 compensated at the rate of no less than twice the regular rate of pay of an employee.

12 163. During all relevant periods, Plaintiffs frequently worked in excess of eight (8) hours
13 in a workday and/or in excess of forty (40) hours in a workweek. Upon information and belief,
14 Defendants failed to properly compensate the Wage and Hour Class for hours worked in excess of
15 twelve (8) hours in one day, or eight (8) hours on the seventh day of a workweek.

16 164. At all times relevant, the Wage and Hour Class Members consistently worked hours
17 for which they were not paid due to Defendants' rounding practices—some of these hours were
18 over eight (8) hours in one workday or in excess of forty (40) hours in a workweek and should have
19 been paid at the overtime rate.

20 165. In addition, Plaintiffs are informed and believe that Defendants were aware that
21 members of the Wage and Hour Class were working off the clock and should have been paid for
22 this time.

23 166. As a result, Defendants failed to pay members of the Wage and Hour Class earned
24 overtime wages, who suffered damages as a result.

25 167. Defendants knew or should have known members of the Wage and Hour Class were
26 undercompensated as a result of these practices.

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1 **ELEVENTH CAUSE OF ACTION**

2 **Failure To Provide Lawful Meal Periods**

3 (BENDORF, PRATHER, MARIN, and the Wage and Hour Class against all Defendants)

4 168. Plaintiffs incorporate by reference and realleges each and every allegation contained
5 above, as though fully set forth herein.

6 169. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
7 period of more than five (5) hours without providing a meal break of not less than thirty (30)
8 minutes in which the employee is relieved of all of his or her duties, except that when a work period
9 of not more than six (6) hours will complete the day's work the meal period may be waived by
10 mutual consent of the employer and employee.

11 170. Upon information and belief, for the four (4) years preceding the filing of this
12 lawsuit, Defendants failed to lawfully provide Plaintiffs and the Wage and Hour Class Members
13 timely and uninterrupted first meal periods of not less than thirty (30) minutes on shifts over five
14 (5) hours.

15 171. Upon information and belief, during the relevant time, as a consequence of
16 Defendants' policies, staffing and scheduling practices, lack of coverage, work demands, and
17 Defendants' policies and practices, Plaintiffs and the Wage and Hour Class Members were often
18 required to forego legally required meal periods, take shortened meal periods, and/or commence
19 their meal periods into and beyond the sixth hour of their shifts.

20 172. Upon information and belief, Plaintiffs and the Wage and Hour Class Members did
21 not waive their rights to meal periods under the law and were not provided with valid lawful on-
22 duty meal periods.

23 173. In addition, Plaintiffs and Wage and Hour Class Members were not paid one (1)
24 hour of pay at their regular rate for each day that a meal period was not lawfully provided.

25 174. Further, Defendants failed in their affirmative obligation to pay meal break premium
26 wages at the regular rate of pay. Specifically, Plaintiffs and the Wage and Hour Class Members
27 earned non-discretionary remuneration, including, but not limited to incentives, awards, and service
28 gratuities. As these items are non-discretionary forms of remuneration, they should have been

1 included in the regular rate of pay for purposes of paying Plaintiffs and the Wage and Hour Class
2 Members their meal period premium pay. However, whenever the Defendants paid meal period
3 premium pay during periods in which Plaintiffs and the Wage and Hour Class Members earned this
4 non-discretionary remuneration, the meal period premium was always paid at the base rate of pay.
5 Thus, the meal break premium wages were not paid at the regular rate of pay.

6 175. As a proximate result of the aforementioned violations, Plaintiffs and the Wage and
7 Hour Class Members have been damaged in an amount according to proof at time of trial.

8 176. Pursuant to Labor Code § 226.7, Plaintiffs and the Wage and Hour Class Members
9 are entitled to recover one (1) hour of premium pay for each day in which a meal period violation
10 occurred. They are also entitled to recover reasonable attorneys' fees, cost, interest, and penalties
11 as applicable.

12 177. As a result of the unlawful acts of Defendants, Plaintiffs and the Wage and Hour
13 Class have been deprived of premium wages in amounts to be determined at trial, and are entitled
14 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs, under
15 Labor Code sections 218.6, 226.7, and 512, the applicable IWC Wage Orders, and Civil Code
16 section 3287.

17 **TWELFTH CAUSE OF ACTION**

18 **Failure To Authorize and Permit Rest Periods**

19 (BENDORF, PRATHER, MARIN, and the Wage and Hour Class against All Defendants)

20 178. Plaintiffs incorporate by reference and realleges each and every allegation contained
21 above, as though fully set forth herein.

22 179. Pursuant to the IWC wage orders applicable to Plaintiffs' and the Wage and Hour
23 Class Members' employment by Defendants, "Every employer shall authorize and permit all
24 employees to take rest periods, which insofar as practicable shall be in the middle of each work
25 period.... [The] authorized rest period time shall be based on the total hours worked daily at the
26 rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof....
27 Authorized rest period time shall be counted as hours worked, for which there shall be no deduction
28 from wages."

1 180. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
2 during any rest period mandated by an applicable order of the IWC.

3 181. Defendants were required to authorize and permit employees such as Plaintiffs and
4 the Wage and Hour Class Members to take rest periods during shifts in excess of 3.5 hours, based
5 upon the total hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major
6 fraction thereof, with no deduction from wages.

7 182. Despite said requirements of the IWC Wage Orders applicable to Plaintiffs' and
8 Wage and Hour Class Members' employment with Defendants, Defendants failed and refused to
9 authorize and permit Plaintiffs and Wage and Hour Class Members to take lawful, net ten (10)
10 minute rest periods for every four (4) hours worked, or major fraction thereof. Such rest breaks,
11 when provided, were frequently untimely or less than net ten (10) minutes because of the work
12 requirements and productivity demands that Defendants imposed.

13 183. In addition, Wage and Hour Class Members were subject to Defendants' control
14 during rest periods and were frequently required to carry walkie talkies or other communication
15 devises.

16 184. Defendants did not pay Plaintiffs one additional hour of pay at their regular rate of
17 pay for each day that a rest period violation occurred. On information and belief, the other Wage
18 and Hour Class Members endured similar violations as a result of Defendants' rest period policies
19 and practices and Defendants did not pay said Wage and Hour Class Members premium pay as
20 required by law.

21 185. By their failure to authorize and permit each Wage and Hour Class Member to take
22 a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction
23 thereof worked, including failure to provide two (2) total rest periods on six (6) to ten (10) hour
24 shifts and three (3) total ten (10) minute rest periods on days on which the Wage and Hour Class
25 Members work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure
26 to provide compensation for such unprovided rest periods as alleged herein, Defendants willfully
27 violated the provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

28 ///

186. Further, Defendants failed in their affirmative obligation to pay rest break premium wages at the regular rate of pay. Specifically, Plaintiffs and the Wage and Hour Class earned non-discretionary remuneration, including, but not limited to incentives, awards, and service gratuities. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying Plaintiffs and the Wage and Hour Class their rest period premium pay. However, whenever the Defendants paid rest period premium pay during periods in which Plaintiffs and the Wage and Hour Class earned this non-discretionary remuneration, the rest period premium was always paid at the base rate of pay. Thus, the rest break premium wages were not paid at the regular rate of pay.

187. As a result of the unlawful acts of Defendants, Plaintiffs and the Wage and Hour Class Members have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon and attorneys' fees and costs, under Labor Code sections 218.6 and 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

THIRTEENTH CAUSE OF ACTION

Failure to Timely Pay Wages During Employment (Labor Code § 204)

(BENDORF, PRATHER, MARIN, and the Wage and Hour Class against all Defendants)

188. Plaintiffs incorporate by reference and realleges each and every allegation contained above, as though fully set forth herein.

189. Labor Code section 204 requires that all wages are due and payable twice in each calendar month.

190. The wages required by Labor Code §§ 226.7, 510, 1194, and other sections became due and payable to each employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight, or overtime wages to which he or she was entitled.

191. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

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192. Labor Code section 210 (a) provides that “In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; and (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

193. Defendants failed to timely pay all wages due and owing to Plaintiffs and the Wage and Hour Class as set forth herein including but not limited to minimum wages, overtime wages, and meal and rest premiums.

FOURTEENTH CAUSE OF ACTION

Failure To Timely Pay Wages Upon Termination (Labor Code §§ 201, 202, 203)

(BENDORF, PRATHER, MARIN, and the Wage and Hour Class against all Defendants)

194. Plaintiffs incorporate each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein

195. Labor Code § 201 requires an employer, like Defendants, to pay all wages earned and unpaid at the time of termination.

196. Labor Code § 202 requires an employer to pay their employees all wages due within seventy-two (72) hours of separation of employment.

197. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed thirty (30) days of wages.

198. During the relevant time period, Plaintiffs and the Wage and Hour Class Members earned vested vacation wages and/or paid time off as a result of their long-time employment with Defendants, and minimum wages, overtime, and premium meal and rest period compensation. Defendants have failed to timely pay these wages owed upon termination of Plaintiffs' and Wage and Hour Class Members' employment.

199. More than 72 hours have passed since the Wage and Hour Class Members separated from employment with Defendants. Yet, Defendants knowingly and willfully failed to pay Plaintiffs and the Wage and Hour Class Members all wages owed to them pursuant to Labor Code sections 201 and 202.

200. As such, Plaintiffs and the Wage and Hour Class Members are entitled to compensation for all forms of wages earned, including but not limited to minimum wages, overtime, and premium meal and rest period compensation, vested vacation wages, and paid time off, but to date, Plaintiffs have not received such compensation, entitling them to Labor Code § 203 penalties.

201. More than thirty (30) days have passed since affected Plaintiffs have left Defendants' employ, and on information and belief, they have not received payment pursuant to Labor Code § 203.

202. Defendant violated Labor Code sections 201 and 202 by failing to pay all wages due at termination and violated Labor Code section 203 by failing to pay waiting time penalties.

FIFTEENTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a))

(BENDORF, PRATHER, MARIN, and the Wage and Hour Class against all Defendants)

203. Plaintiffs incorporate each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

204. This action is brought under Labor Code § 226, which sets forth reporting requirements for employers when paying wages:

“Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees . . . an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, . . . (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

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1 205. Defendants have failed to record many of the items delineated in applicable IWC
2 Wage Orders and Labor Code section 226, and required under Labor Code section 1174, including
3 by virtue of the fact that each wage statement which failed to accurately compensate for all hours
4 worked and for missed and non-provided meal and rest periods, or which failed to include
5 compensation for all minimum wages earned or overtime hours worked, was an inaccurate wage
6 statement.

7 206. Further, whenever overtime wages were paid, the wage statements issued to the
8 Plaintiffs and the Wage and Hour Class did not identify the overtime rate as 1.5 times the regular
9 rate of pay. Rather, the overtime rates appeared as the base hourly rate of pay and/or one-half of
10 the hourly rate of pay. In addition, Defendants failed to list the accurate total hours worked for
11 wage statements furnished to Plaintiffs and the Wage and Hour Class whenever overtime wages
12 were paid. In particular, when the hours shown on the wage statements are added up, they do not
13 appear to add up to the actual total hours worked.

14 207. On information and belief, Defendants failed to implement and preserve a lawful
15 record-keeping method to record all hours worked, meal periods, and non-provided meal and rest
16 periods owed to employees, as required under Labor Code section 226 and applicable IWC Wage
17 Orders. In order to determine if they had been paid the correct amount and rate for all hours
18 worked, Plaintiffs have been, would have been, and are compelled to try to discover the required
19 information missing from their wage statements and to perform complex calculations in light of the
20 inaccuracies and inaccurate statements provided to them.

21 208. In violation of Labor Code section 226(a) and the IWC Wage Orders, Defendants
22 did not and still do not furnish Plaintiffs with an accurate itemized statement in writing accurately
23 reflecting all of the required information. Specifically, due to Defendants' rounding practices,
24 Defendants have omitted accurate itemizations of total hours worked, applicable hourly rates, net
25 pay, and gross pay from members of the Wage and Hour Class's wage statements. Defendants
26 have failed to provide accurate itemized wage statements as a consequence of the above-specified
27 violations.

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209. Moreover, upon information and belief, as a pattern and practice, in violation of Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain accurate records pertaining to the total hours worked for Defendants by members of the Wage and Hour Class, including but not limited to, the beginning and ending of each work period, meal period, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

SIXTEENTH CAUSE OF ACTION

Violation of Unfair Competition Laws (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

(BENDORF, PRATHER, MARIN, Failure to Recall Class, and Wage and Hour Class against all Defendants)

210. Plaintiffs incorporate each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

211. Defendants' conduct, as alleged above, has been, and continues to be unfair, unlawful, and harmful to Plaintiffs, the general public, and to Defendants' competitors.

212. Labor Code section 2810.8 further grants employees a right to recall.

213. As set forth above, Defendants have violated Labor Code sections 201, 202, 203, 227.3, 226(a), and 2810.8, and San Diego Municipal Code §§ 311.0101, et seq.

214. Plaintiffs have been personally injured by Defendants' unlawful business acts and practices, including, but not limited to, the loss of money, benefits, property, and lost or diminished job opportunities, for which Plaintiffs and the Wage and Hour Class and the Failure to Recall Class have no adequate remedy at law. For example, the Failure to Recall Class Members would not be able to recover damages or obtain equitable relief in the form of hiring and reinstatement rights available under San Diego Municipal Code §§ 311.0101, et seq.

215. Defendants' activities as alleged herein constitute violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, et seq. As a result of the above-mentioned violations of California law, Defendants have unlawfully gained an unfair advantage over other businesses. Defendants have reaped and continue to reap unfair benefits and illegal profits at Plaintiffs', the Failure to Recall

1 Class Members', and the Wage and Hour Class Members' expense.

2 216. Plaintiffs, the Failure to Recall Class Members, and the Wage and Hour Class
3 Members are entitled to restitution of the wages withheld and retained by Defendants; injunctive
4 relief to ensure Defendants refrain from engaging in these illegal practices and/or fully reinstate
5 Failure to Recall Class Members into their former positions, and an award for attorneys' fees and
6 costs.

7 **SEVENTEENTH CAUSE OF ACTION**

8 **Civil Penalties Under the Private Attorneys' General Act, Labor Code §§ 2698, *et. seq.***

9 (BENDORF, PRATHER, MARIN, and the Aggrieved Employees against all Defendants)

10 217. Plaintiffs incorporate by reference and reallege each and every allegation contained
11 above, as though fully set forth herein.

12 218. PAGA expressly establishes that any provision of the Labor Code which provides
13 for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions,
14 commissions, boards, agencies, or employees for a violation of the Labor Code, may be recovered
15 through a civil action brought by an aggrieved employee on behalf of himself or herself, and other
16 current or former employees.

17 219. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
18 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized
19 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil
20 penalty.

21 220. Plaintiffs and the Aggrieved Employees are "aggrieved employees" as defined in
22 Labor Code Section 2699(a) in that they are all current or former employees of Defendants, and
23 one or more of the alleged violations were committed against them.

24 221. Specifically, Plaintiffs seek penalties under Labor Code section 2699, for, without
25 limitation, the following:

26 a. Defendants' failure to comply with the requirement of Labor Code §§ 1194, 1197,
27 and 1198, and IWC Wage Order 10-2001 to pay at least minimum wage for each hour worked;
28

1 b. Defendants' failure to comply with the requirement of Labor Code §§ 510, 1194,
2 1197, and 1198, and IWC Wage Order 10-2001 to pay all wages properly and accurately pay
3 overtime wages;

4 c. Defendants' failure to comply with the requirement of Labor Code §§ 204 and 210
5 to pay, without condition and within the time set by the applicable article, all wages, or parts
6 thereof;

7 d. Defendants' failure to comply with the requirement of Labor Code § 225.5 to pay
8 wages due;

9 e. Defendants' failure to comply with the requirement of Labor Code §§ 201 and 202
10 to pay wages due to former employees;

11 f. Defendants' failure to comply with the requirement of Labor Code § 203 to pay
12 waiting time penalties to former employees;

13 g. Defendants' failure to comply with the requirement of Labor Code § 512 and IWC
14 Wage Order 10-2001 to provide first and second thirty (30) minute uninterrupted meal breaks as
15 required by law;

16 h. Defendants' failure to comply with the requirement of Labor Code §§ 226.7 and
17 1198, and IWC Wage Order 10-2001 to authorize and permit ten (10) minute rest breaks;

18 i. Defendants' failure to comply with the requirement of Labor Code §§ 226.7 and
19 1198, and IWC Wage Order 10-2001 to pay one (1) hour of premium pay for each statutorily
20 required rest break that was not authorized and permitted;

21 j. Defendants' failure to comply with the requirement of Labor Code § 226.7 and IWC
22 Wage Order 10-2001 to pay one (1) hour of premium pay for each statutorily required meal period
23 that was not timely and properly provided;

24 k. Defendants' failure to comply with the requirement of Labor Code §§ 226.7 and 512
25 to pay the regular rate of pay for each meal and rest break premium pay;

26 l. Defendants' failure to maintain required records in violation of Labor Code §§ 226
27 and 1174, and Wage Order 10-2001;

28

1 m. Defendants' failure to provide accurate compliant wage statements under Labor
2 Code § 226;

3 n. Defendants' failure to pay vested vacation wages violation of Labor Code § 227.3;

4 o. Defendants' failure to offer positions in writing to laid-off employees who are
5 qualified for the position within five (5) business days of establishing a position under Labor Code
6 § 2810.8.

7 p. Defendants' failure to produce employee records for inspection in violation of Labor
8 Code §§ 226, 432, and 1198.5.

9 222. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code §§
10 2698 and 2699 because of Defendants' violation of numerous provisions of the Labor Code and
11 IWC Wage Orders.

12 223. Pursuant to PAGA, and in particular Labor Code §§ 2699(a), 2699.3, and 2699.5,
13 Plaintiffs, acting in the public interest as private attorney generals, seek assessment and collection
14 of civil penalties for Plaintiffs, all Aggrieved Employees, and the State of California against
15 Defendants, in addition to other remedies, for violations of Labor Code sections set forth herein.
16 Pursuant to Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be
17 distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws
18 and education of employers and employees about their rights and responsibilities and twenty-five
19 (25%) to the aggrieved employees. Further, and as authorized by the Labor Code §§ 210, 218.5,
20 and 2699, Plaintiffs seek recovery of their attorneys' fees and costs.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

23 1. For restitution of all monies due to Plaintiffs, the Failure to Recall Class Members,
24 and the Wage and Hour Class Members, including back pay, front pay, lost employment benefits,
25 and other compensation, and special damages according to proof;

26 2. For premium pay and penalties pursuant to Labor Code sections 203, 226, 226.7,
27 and 512;

3. For minimum wages, overtime wages, and vacation pay pursuant to Labor Code sections 1194, 510, and 227.3;

4. Statutory damages pursuant to SDMC § 311.0106(a)(2).

5. For all actual, consequential, and incidental losses and damages, according to proof;

6. For hiring and reinstatement rights pursuant to SDMC § 311.0106(a)(1).

7. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, and 2802, California Civil Code §§ 3287 and 3288, and/or any other applicable provision providing for pre-judgment interest;

8. For reasonable attorneys' fees, expenses, and costs under Labor Code §§ 1194, 226, and 2699, and/or Code of Civil Procedure § 1021.5, and/or SDMC § 311.0106(a)(4), and/or any other applicable provisions providing for attorneys' fees and costs;

9. For civil penalties pursuant to Labor Code §§ 2698, et. seq., and as allowed by law;

10. For punitive damages as allowed by law; and

11. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of the Failure to Recall Class, Wage and Hour Class, and Aggrieved Employees respectfully demand a jury trial in this matter.

Respectfully submitted,

Dated: October 20, 2023

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By: 
Christina M. Lucio
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Stephany Sinaguinan, certify and declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On October 26, 2023, I served a copy of the following document(s):

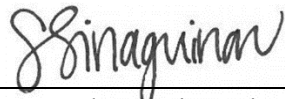
FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested parties as follows:

SEE ATTACHED SERVICE LIST

- ☒ **BY ELECTRONIC MAIL (E-MAIL):** I caused said document(s) to be delivered electronically to be delivered to the addressee(s) listed above via email from email address ssina@blackstonepc.com pursuant to California Code of Civil Procedure section 1010.6(e)(1). I did not receive any electronic message or other indication that the transmission was unsuccessful.
- ☒ **STATE** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 26, 2023 at Beverly Hills, California.



Stephany Sinaguinan

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