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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

THERESA BENDORF, individually, and on
behalf of other aggrieved employees pursuant to
the California Private Attorneys General Act;

Plaintiff,

vs.

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

Defendants.

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

**COMPLAINT FOR ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET
SEQ.**

COMES NOW, Plaintiff THERESA BENDORF (“Plaintiff”), individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, and alleges as follows:

JURISDICTION AND VENUE

1. This is an enforcement action under the California Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, et seq. (“PAGA”) to recover civil penalties on behalf of Plaintiff, the State of California, and all individuals who worked for Defendants in the State of California during the relevant statutory period (“Aggrieved Employees”).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because a majority of the acts, events, and violations occurred in this County. Upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of San Diego.

THE PARTIES

5. At all times herein mentioned, Plaintiff THERESA BENDORF was a resident of the County of San Diego, State of California.

6. At all times herein mentioned, Defendant SEA WORLD LLC, a Delaware limited liability company doing business as SEAWORLD SAN DIEGO or AQUATICA SAN DIEGO, was and is an employer whose employees are engaged in the State of California, including the County of San Diego.

7. At all times herein mentioned, Defendant SEAWORLD PARKS & ENTERTAINMENT, an unknown entity, was and is an employer whose employees are engaged in the State of California, including the County of San Diego.

1 8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under
2 the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and
3 serve such fictitiously named Defendants once their names and capacities become known.

4 9. Plaintiff is informed and believes, and based thereon alleges, that each and all of the
5 acts and omissions alleged herein were performed by, or are attributable to Defendant SEA WORLD
6 LLC, doing business as SEAWORLD SAN DIEGO or AQUATICA SAN DIEGO, and SEAWORLD
7 PARKS & ENTERTAINMENT, and/or DOES 1 through 25 (collectively “Defendants”), each acting
8 as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
9 other co-Defendants and within the course and scope of such agency, employment, joint venture, or
10 concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants
11 represent and were in accordance with Defendants’ official policy.

12 10. At all relevant times, Defendants were the employer of Plaintiff and the other
13 Aggrieved Employees within the meaning of all applicable state laws and statutes. Defendants
14 directly or indirectly controlled or affected the working conditions, wages, working hours, and
15 conditions of employment of Plaintiff and the other Aggrieved Employees so as to make each of said
16 Defendants’ employers and employers liable under the statutory provisions set forth herein.

17 11. Defendants had the authority to hire and terminate Plaintiff and the other Aggrieved
18 Employees, to set work rules and conditions governing Plaintiff and the other Aggrieved
19 Employees’ employment, and to supervise their daily employment activities.

20 12. Defendants exercised sufficient authority over the terms and conditions of Plaintiff’s
21 and the other Aggrieved Employees’ employment for them to be joint employers of Plaintiff and
22 the other Aggrieved Employees.

23 13. Defendants directly hired and paid wages and benefits to Plaintiff and the other
24 Aggrieved Employees.

25 14. Defendants continue to employ employees within the State of California.

26 15. At all relevant times, Defendants, and each of them, ratified each and every act or
27 omission complained of herein. At all relevant times, Defendants, and each of them, aided and
28 abetted the acts and omissions of each and all the other Defendants in proximately causing the

1 damages herein alleged.

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

5 **GENERAL ALLEGATIONS**

6 17. Defendants, jointly and severally, employed Plaintiff as a non-exempt, hourly-paid
7 employee in the County of San Diego. Plaintiff was hired by Defendants in or around March 2011.
8 Plaintiff's most recent job title was Entertainment Specialist. As an Entertainment Specialist,
9 Plaintiff's job duties included, but were not limited to, creating, writing, and producing events and
10 shows at Defendants' aquatic theme park in San Diego, California.

11 18. In or around April of 2020, Defendants indefinitely laid off thousands of employees
12 with little or no notice in response to the Coronavirus ("COVID-19") pandemic. Defendants did not
13 provide a return to work date and instructed employees that they were not to perform any work during
14 their layoff.

15 19. Although Defendants did not guarantee that these employees would ever be brought
16 back to work, Defendants informed Plaintiff and the other Aggrieved Employees that once operations
17 resumed, Defendants planned to return Plaintiff and other Aggrieved Employees to work. However,
18 Defendants failed to recall Plaintiff and other Aggrieved Employees back to work. Instead,
19 Defendants hired new individuals for positions previously held by Plaintiff and other Aggrieved
20 Employees.

21 20. In California, when an employer lays off its employees, it must immediately pay out
22 all earned wages, including all vested vacation wages. "The public policy in favor of full and prompt
23 payment of an employee's earned wages is fundamental and well established: Delay of payment or
24 loss of wages results in deprivation of the necessities of life, suffering inability to meet just
25 obligations to others, and, in many cases may make the wage-earner a charge upon the public." *Smith*
26 *v. Superior Court*, 39 Cal.4th 77, 83 (2006). "[B]ecause of the economic position of the average
27 worker and, in particular, his dependence on wages for the necessities of life for himself and his
28 family, it is essential to the public welfare that he receive his pay when it is due." *Id.*

1 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
2 should have known that, pursuant to Labor Code sections 201, 202, 203, and 227.3, Plaintiff and the
3 other Aggrieved Employees were entitled to receive all wages upon termination of employment,
4 including, without limitation, vacation wages, paid time off wages, overtime wages, meal period
5 premium wages, and rest period premium wages, and that Plaintiff and the other Aggrieved
6 Employees did not receive payment of all wages upon termination of employment. Although
7 Defendants belatedly paid out some of the wages owed to Plaintiff and the other Aggrieved
8 Employees with the regularly scheduled payroll periods subsequent to their indefinite layoff, to date,
9 Plaintiff and other Aggrieved Employees have not been paid all wages owed to them, including vested
10 vacation and/or paid time off wages.

11 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
12 or should have known that, pursuant to Labor Code section 226(a), Plaintiff and the other Aggrieved
13 Employees were entitled to receive complete and accurate wage statements in accordance with
14 California law, but, in fact, Plaintiff and the other Aggrieved Employees did not receive complete
15 and accurate wage statements from Defendants.

16 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
17 or should have known that, pursuant to Labor Code section 2810.8, they were required to offer their
18 laid-off employees in writing all job positions that became available for which the laid-off
19 employees are qualified, but failed to offer these positions to Plaintiff and the other Aggrieved
20 Employees.

21 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
22 or should have known that they were required to produce employee records for inspection upon
23 request pursuant to California Labor Code sections 226, 432, and 1198.5, but failed to do so in a
24 timely manner. Plaintiff requested her records pursuant to Labor Code sections 226, 432, and
25 1198.5 on June 22, 2021, but Defendants failed to produce records until August 6, 2021.

26 25. In response to the COVID-19 pandemic, the Judicial Council of California enacted
27 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any other
28 law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled

1 from April 6, 2020, until October 1, 2020.

2 26. At all times set forth herein, PAGA was applicable to Plaintiff's employment by
3 Defendants.

4 27. At all times set forth herein, PAGA provides that any provision of law under the
5 California Labor Code that provides for a civil penalty, including unpaid wages and premium wages,
6 to be assessed and collected by the California Labor & Workforce Development Agency ("LWDA")
7 for violations of the California Labor Code may, as an alternative, be recovered through a civil action
8 brought by an aggrieved employee on behalf of herself and other current or former employees
9 pursuant to procedures outlined in California Labor Code section 2699.3.

10 28. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who
11 is any person that was employed by the alleged violator and against whom one or more of the alleged
12 violations was committed.

13 29. Plaintiff was employed by Defendants and the alleged violations were committed
14 against her during her time of employment and she is, therefore, an aggrieved employee. Plaintiff
15 and the other employees are "aggrieved employees" as defined by California Labor Code section
16 2699(c) in that they are current or former employees of Defendants and one of more of the alleged
17 violations were committed against them.

18 30. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
19 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
20 requirements have been met:

21 (a) The aggrieved employee shall give written notice by certified mail (hereinafter
22 "Employee's Notice") to the LWDA and the employer of the specific provisions of the
23 Labor Code alleged to have been violated, including the facts and theories to support the
24 alleged violations.

25 (b) The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the
26 aggrieved employee by certified mail that it does not intend to investigate the alleged
27 violation within sixty (60) calendar days of the postmark date of the Employee's Notice.

28 Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty

1 five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved
2 employee may commence a civil action pursuant to California Labor Code section 2699
3 to recover civil penalties in addition to any other penalties to which the employee may
4 be entitled.

5 31. On July 26, 2021, Plaintiff provided notice by electronic submission to the LWDA
6 and by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to
7 have been violated, including the facts and theories to support the alleged violations, pursuant to
8 Labor Code section 2699.3.

9 32. Therefore, the administrative prerequisites under California Labor Code section
10 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations
11 of California Labor Code sections 201, 202, 203, 226, 227.3, 432, and 1198.5 will be satisfied upon
12 expiration of the 65-day notice period.

13 **FIRST CAUSE OF ACTION**

14 **Violation of California Labor Code §§ 2698, Et Seq.**

15 **(Against SEA WORLD LLC, doing business as SEAWORLD SAN DIEGO or AQUATICA**
16 **SAN DIEGO; SEAWORLD PARKS & ENTERTAINMENT; and DOES 1-25)**

17 33. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in all preceding paragraphs.

19 34. PAGA expressly establishes that any provision of the California labor Code which
20 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
21 divisions, commissions, boards, agencies or employees for a violation of the California Labor Code,
22 may be recovered through a civil action brought by an aggrieved employee on behalf of himself or
23 herself, and other current or former employees.

24 35. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
25 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized
26 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil
27 penalty.

28 36. Plaintiff and the other California employees are "aggrieved employees" as defined by

California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

37. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of California Labor Code sections 201, 202, 203, and 227.3 for failure to pay all wages at time of discharge or resignation from employment, as set forth more fully below;
- (b) Violation of California Labor Code section 226(a) for failure to furnish accurate itemized wage statements, as set forth more fully below;
- (c) Violation of California Labor Code section 2810.8 for failure to offer positions in writing to laid-off employees who are qualified for the position within five business days of establishing a position; and
- (d) Violation of California Labor Code sections 226, 432, and 1198.5 for failing to produce employee records for inspection.

38. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for Plaintiff, all other Aggrieved Employees, and the State of California against Defendants, in addition to other remedies, for violations of Labor Code sections set forth herein. Pursuant to California Labor Code section 2699(i), civil penalties recovered by Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five (25%) to the Aggrieved Employees. Further, and as authorized by the California Labor Code sections 218.5, and 2699, Plaintiff seeks recovery of her attorneys' fees and costs.

Failure to Timely Pay Wages Upon Termination

39. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code section 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202

1 mandates that if an employee quits, his or her wages shall become due and payable not later than
2 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of
3 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
4 quitting.

5 40. California Labor Code section 203 provides that if an employer willfully fails to pay,
6 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
7 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
8 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
9 continue for more than thirty (30) days.

10 41. Defendants knowingly and willfully failed to issue Plaintiff and the other Aggrieved
11 Employees their final pay within the time limits prescribed by Labor Code sections 201, 202, and
12 227.3. At the time that Plaintiff and the other Aggrieved Employees were indefinitely laid off,
13 Defendants knowingly and willfully failed to pay Plaintiff and the other Aggrieved Employees all
14 wages owed to them pursuant to California Labor Code sections 201 and 202, including, without
15 limitation, vested vacation and/or paid time off wages, minimum wages, overtime wages, meal period
16 premium wages, and rest period premium wages.

17 42. At all relevant times, California Labor Code section 227.3 has provided that where an
18 employer policy provides for paid vacations and an employee has not taken off vested vacation time,
19 all vested vacation shall be paid to the employee as wages at his or her final rate of pay upon
20 termination of the employment relationship.

21 43. During the relevant time period, Plaintiff and the other Aggrieved Employees earned
22 vested vacation wages and/or paid time off wages pursuant to Defendants' own employment policies.
23 However, Defendants failed to timely pay out all vested vacation and paid time off wages owed to
24 Plaintiff and the other Aggrieved Employees upon termination of their employment.

25 44. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
26 that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum
27 wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
28 However, Defendants failed to timely pay out all minimum wages to owed to Plaintiff and the other

1 Aggrieved Employees upon termination of their employment.

2 45. California Labor Code section 1198 and the applicable Industrial Welfare
3 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
4 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate
5 of pay, depending on the number of hours worked by the person on a daily or weekly basis.

6 46. Specifically, the applicable IWC Wage Order provides that Defendants are and were
7 required to pay Plaintiff and the non-exempt Aggrieved Employees employed by Defendants, and
8 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate
9 of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40)
10 hours in a workweek.

11 47. The applicable IWC Wage Order further provides that Defendants are and were
12 required to pay Plaintiff and the non-exempt Aggrieved Employees employed by Defendants, and
13 working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their
14 regular rate of pay.

15 48. California Labor Code section 510 codifies the right to overtime compensation at one-
16 and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
17 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to
18 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)
19 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

20 49. Defendants failed to timely pay out all overtime wages to owed to Plaintiff and the
21 other non-exempt Aggrieved Employees upon termination of their employment.

22 50. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California
23 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff’s and the other non-exempt
24 Aggrieved Employees’ employment by Defendants and each of them.

25 51. At all relevant times herein set forth, California Labor Code section 226.7 has
26 provided that no employer shall require an employee to work during any meal period mandated by
27 an applicable IWC Order.

28 52. At all relevant times herein set forth, California Labor Code section 512(a) has

provided that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

53. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) have further provided that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

54. During the relevant time period, Plaintiff and other non-exempt Aggrieved Employees scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without a meal period of not less than thirty (30) minutes.

55. During the relevant time period, Plaintiff and the other non-exempt Aggrieved Employees, who were scheduled to work for a period of time in excess of six (6) hours, were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

56. During the relevant time period, Plaintiff and the other non-exempt Aggrieved Employees, who were scheduled to work for a period of time in excess of ten (10) hours but no longer than twelve (12) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work in excess of ten (10) hours without receiving a second uninterrupted meal period of not less than thirty (30) minutes.

57. During the relevant time period, Plaintiff and the other non-exempt Aggrieved Employees, who were scheduled to work for a period of time in excess of twelve (12) hours, were required to work for periods longer than ten (10) hours without a second uninterrupted meal period of not less than thirty (30) minutes.

58. At all relevant times, the applicable IWC Wage Order and California Labor Code

1 section 226.7 have required an employer that fails to provide an employee with a meal period in
2 accordance with state law to pay the employee one additional hour of pay at the employee's regular
3 rate of compensation, which includes all non-discretionary payments for worked performed by the
4 employee, for each workday that the meal period is not provided.

5 59. Defendants failed to timely pay out the full meal period premium wages owed to
6 Plaintiff and the other non-exempt Aggrieved Employees upon termination of their employment.

7 60. At all relevant times, California Labor Code section 226.7 has provided that no
8 employer shall require an employee to work during any rest period mandated by an applicable order
9 of the California IWC.

10 61. At all relevant times, the applicable IWC Wage Order has provided that "[e]very
11 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
12 shall be in the middle of each work period" and that the "rest period time shall be based on the total
13 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
14 thereof" unless the total daily work time is less than three and one-half (3½) hours.

15 62. During the relevant time period, Defendants required Plaintiff and the non-exempt
16 Aggrieved Employees to work four (4) or more hours without authorizing or permitting a ten (10)
17 minute rest period per each four (4) hour period, or major fraction thereof worked. During the
18 relevant time period, Defendants willfully required Plaintiff and the other Aggrieved Employees to
19 work during rest periods.

20 63. At all relevant times, the applicable IWC Wage Order and California Labor Code
21 section 226.7 have required an employer that fails to provide an employee with a rest period in
22 accordance with state law to pay the employee one additional hour of pay at the employee's regular
23 rate of compensation, which includes all non-discretionary payments for worked performed by the
24 employee, for each workday that the rest period is not provided.

25 64. Defendants failed to timely pay out the full rest period premium wages owed to
26 Plaintiff and the other non-exempt Aggrieved Employees upon termination of their employment.

27 **Failure to Furnish Accurate Itemized Wage Statements**

28 65. At all relevant times set forth herein, California Labor Code section 226(a) has

provided that every employer shall furnish each of its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. Once a vacation benefit is required to be paid, it must be included in a wage statement pursuant to Labor Code section 226(a). *Soto v. Motel 6 Operating, L.P.*, 4 Cal. App. 5th 385, 393 (2016).

66. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements. Defendants failed to provide wage statements to Plaintiff and the other Aggrieved Employees on the date that they were indefinitely laid off stating the vested vacation and paid time off wages owed to them.

67. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the Aggrieved Employees have suffered injury and damage to their statutorily protected rights.

68. Specifically, Plaintiff and the Aggrieved Employees have been injured by Defendants' intentional violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code section 226(a). Plaintiff and the other Aggrieved Employees been prevented by Defendants from determining if all wages earned were paid and the extent of the underpayment. Plaintiff has had to file this lawsuit, and will further have to conduct discovery, reconstruct time records, and perform computations in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur expenses and

1 lost time.

2 **Failure to Produce Employee Records for Inspection**

3 69. At all relevant times set forth herein, California Labor Code sections 226(b)-(c) have
4 required an employer to afford current and former employees the right to inspect or receive a copy of
5 records pertaining to their employment, upon reasonable request to the employer, no later than twenty-
6 one (21) calendar days from the date of the request.

7 70. At all relevant times set forth herein, California Labor Code section 432 has required
8 an employer to give a copy of any instrument signed by an employee relating to the obtaining or
9 holding of employment to the employee.

10 71. At all relevant times set forth herein, California Labor Code section 1198.5 has required
11 employers to make the contents of an employee's personnel records available for inspection to current
12 or former employees, or his or her representative, no later than 30 days from the date the employer
13 receives a written request.

14 72. During the relevant period, Defendants violated Labor Code sections 226, 432, and
15 1198.5 by failing to timely produce records to Plaintiff and other Aggrieved Employees.

16 **Failure to Offer Available Job Positions to Laid Off Employees**

17 73. At all relevant times set forth herein, Labor Code section 2810.8(b)(1) has provided
18 that "[w]ithin five business days of establishing a position, an employer shall offer its laid-off
19 employees in writing, either by hand or to their last known physical address, and by email and text
20 message to the extent the employer possesses such information, all job positions that become available
21 after the effective date of this section for which the laid-off employees are qualified. A laid-off
22 employee is qualified for a position if the employee held the same or similar position at the enterprise
23 at the time of the employee's most recent layoff with the employer." Labor Code section 2810.8(a)(1)
24 defines a laid-off employee as any employee who was employed by the employer for 6 months or
25 more in the 12 months preceding January 1, 2020, and whose most recent separation from active
26 service was due to a reason related to the COVID-19 pandemic, including a public health directive,
27 government shutdown order, lack of business, a reduction in force, or other economic, nondisciplinary
28 reason due to the COVID-19 pandemic.

74. During the relevant period, Defendants violation Labor Code section 2810.8 by failing to offer available positions to Plaintiff and other Aggrieved Employees. Rather than offer open positions to Ms. Bendorf and the other aggrieved employees when they became available, Defendants publicly hosted job fairs and advertised positions to the general public.

PRAYER FOR RELIEF

Plaintiff and the other Aggrieved Employees pray for relief and judgment against Defendants,
jointly and severally, as follows:

1. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g), plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 226, 227.3, 432, and 1198.5; and

2. For such other and further relief as the Court may deem proper.

Respectfully Submitted,

Dated: August 16, 2021

BLACKSTONE LAW, APC

By:

Jonathan M. Genish
Attorneys for Plaintiff THERESA BENDORF