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FILED
Superior Court of California
County of Los Angeles

11/28/2023

David W. Slayton, Executive Officer / Clerk of Court

By: C. Vaughn Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LOLA MARCUM, on behalf of the State of
California, as a private attorney general,
and as an individual,

Plaintiff,

vs.

HUNTSMAN ADVANCED MATERIALS
AMERICAS LLC, a Limited Liability
Company; HUNTSMAN INTERNATIONAL
LLC, a Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 22STCV03908

FIRST AMENDED COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.*, for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B);
2. DISCRIMINATION AND RETALIATION VIOLATION OF FEHA; and,
3. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5, *et seq.*

1 Plaintiff Lola Marcum (“PLAINTIFF”), on behalf of the people of the State of California
2 and as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) and on behalf of herself as an
4 individual, alleges on information and belief, except for her own acts and knowledge which are
5 based on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants Huntsman Advanced Materials
8 Americas LLC and Huntsman International LLC (“DEFENDANT”) seeking only to recover
9 PAGA civil penalties for herself, and on behalf of all current and former aggrieved employees
10 that worked for DEFENDANT. PLAINTIFF does **not seek to recover anything other than**
11 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory
12 violations are mentioned for wage violations, PLAINTIFF does not seek underlying general
13 and/or special damages for those violations, but simply the civil penalties permitted by
14 California Labor Code § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 **THE PARTIES**

24 4. Defendant Huntsman Advanced Materials Americas LLC is a limited liability
25 company that at all relevant times mentioned herein conducted and continues to conduct
26 substantial business in the state of California.

27 5. Defendant Huntsman International LLC is a limited liability company that at all
28

1 relevant times mentioned herein conducted and continues to conduct substantial business in the
2 state of California.

3 6. Huntsman Advanced Materials Americas LLC and Huntsman International LLC
4 were the joint employers of PLAINTIFF as evidenced by paycheck and by the company
5 PLAINTIFF performed work respectively, and are therefore jointly responsible as employers
6 for the conduct alleged herein, and are therefore collectively referred to herein as
7 “DEFENDANT.”

8 7. DEFENDANT manufactures and markets chemical products for consumers and
9 industrial customers.

10 8. PLAINTIFF has been employed by DEFENDANT in California since 2015 and
11 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
12 basis, and entitled to the legally required meal and rest periods and payment of minimum and
13 overtime wages due for all time worked.

14 9. PLAINTIFF, and such persons that may be added from time to time who satisfy
15 the requirements and exhaust the administrative procedures under the Private Attorney General
16 Act, brings this Representative Action on behalf of the State of California with respect to herself
17 and all individuals who are or previously were employed by Huntsman Advanced Materials
18 Americas LLC and/or Huntsman International LLC in California and classified as non-exempt
19 employees (“AGGRIEVED EMPLOYEES”) during the time period of November 19, 2020 until
20 a date as determined by the Court (the “PAGA PERIOD”).

21 10. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
22 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
23 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT’s
24 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
25 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
26 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s) and thereby gives
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1 rise to civil penalties as a result of such conduct.¹ Based upon the foregoing, PLAINTIFF and
2 all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code
3 § 2699, *et seq.*

4 11. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
6 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
7 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
8 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
9 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
10 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
11 responsible in some manner for one or more of the events and happenings that proximately
12 caused the injuries and damages hereinafter alleged.

13 12. The agents, servants and/or employees of the Defendants and each of them acting
14 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
15 agent, servant and/or employee of the Defendants, and personally participated in the conduct
16 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
17 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
18 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
19 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
20 agents, servants and/or employees.

21 22 THE CONDUCT

23 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
27

28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 and other AGGRIEVED EMPLOYEES to work without paying them for all the time they are
2 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to
3 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
4 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
5 should be PLAINTIFF's off-duty meal break. PLAINTIFF and other AGGRIEVED
6 EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug
7 testing or any other testing and/or examination required as a condition of employment.
8 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
9 practice of rounding the actual time worked and recorded by PLAINTIFF and other
10 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course
11 of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES are paid less than
12 they would have been paid had they been paid for actual recorded time rather than "rounded"
13 time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and other
14 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
15 condition of employment, required these employees to submit to mandatory temperature checks
16 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
17 timekeeping system for the workday. As a result, PLAINTIFF and other AGGRIEVED
18 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
19 by working without their time being correctly recorded and without compensation at the
20 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
21 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
22 records.

23 14. State law provides that employees must be paid overtime and meal and rest break
24 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
25 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
26 to specific elements of an employee's performance.

27 15. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
28 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF

1 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
2 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
3 hourly basis with incentive compensation when the employees met the various performance
4 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
5 overtime and meal and rest break premiums to PLAINTIFF and other AGGRIEVED
6 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
7 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
8 break premium pay. Management and supervisors described the incentive program to potential
9 and new employees as part of the compensation package. As a matter of law, the incentive
10 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
11 included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
12 overtime compensation and meal and rest break premiums to PLAINTIFF and other
13 AGGRIEVED EMPLOYEES by DEFENDANT.

14 16. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
15 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
16 are not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
17 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
18 more than five (5) hours during some shifts without receiving a meal break. Further,
19 DEFENDANT from time to time fails to provide PLAINTIFF and other AGGRIEVED
20 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
21 are required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engages in
22 the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
23 other AGGRIEVED EMPLOYEES. PLAINTIFF and other AGGRIEVED EMPLOYEES
24 therefore forfeit meal breaks without additional compensation and in accordance with
25 DEFENDANT's corporate policy and practice.

26 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
27 are also required from time to time to work in excess of four (4) hours without being provided
28 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at

1 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
2 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
3 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
4 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
5 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
6 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
7 provide employees with off-duty rest periods, which the California Supreme Court defined as
8 time during which an employee is relieved from all work related duties and free from employer
9 control. In so doing, the Court held that the requirement under California law that employers
10 authorize and permit all employees to take rest period means that employers must relieve
11 employees of all duties and relinquish control over how employees spend their time which
12 includes control over the locations where employees may take their rest period. Employers
13 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
14 five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and other AGGRIEVED
15 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
16 states PLAINTIFF and other AGGRIEVED EMPLOYEES cannot leave the work premises
17 during their rest period.

18 18. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
19 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
20 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
21 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
22 meaning the time during which an employee was subject to the control of an employer,
23 including all the time the employee was permitted or suffered to permit this work.
24 DEFENDANT requires these employees to work off the clock without paying them for all the
25 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
26 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES are under compensated for
27 all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit time
28 worked by working without their time being accurately recorded and without compensation at

1 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
2 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
3 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
4 1197.1.

5 19. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
6 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
7 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
8 provides that every employer shall furnish each of his or her employees with an accurate
9 itemized wage statement in writing showing, among other things, gross wages earned and all
10 applicable hourly rates in effect during the pay period and the corresponding amount of time
11 worked at each hourly rate. Additionally, DEFENDANT violates Cal. Lab. Code 226(a)(8) by
12 failing to list the correct name of the legal entity that employs PLAINTIFF and other
13 AGGRIEVED EMPLOYEES. PLAINTIFF and other AGGRIEVED EMPLOYEES were paid
14 on an hourly basis. As such, the wage statements should reflect all applicable hourly rates
15 during the pay period and the total hours worked, and the applicable pay period in which the
16 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
17 DEFENDANT provided to PLAINTIFF and other AGGRIEVED EMPLOYEES failed to
18 identify such information. More specifically, the wage statements failed to identify the accurate
19 total hours worked each pay period when the hours shown on the wage statements were added
20 up, they did not equal the actual total hours worked during the pay period and from time to time
21 stated "0" hours worked. DEFENDANT also violated Cal. Lab. Code Section 226(a)(9) by
22 failing to list the rate and hours worked for the "Retro Pay" payments, which were wage
23 payments. Aside, from the violations listed above in this paragraph, DEFENDANT fails to
24 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
25 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provides PLAINTIFF and
26 the other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code
27 § 226.

28 20. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be

1 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
2 wages are paid not more than seven calendar days following the close of the payroll period.

3 Cal. Lab. Code § 210 provides:

4 [I]n addition to, and entirely independent and apart from, any other penalty provided in
5 this article, every person who fails to pay the wages of each employee as provided in
6 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
7 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
8 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
9 for each failure to pay each employee, plus 25 percent of the amount unlawfully
10 withheld.

11 21. DEFENDANT from time to time fails to pay PLAINTIFF and other
12 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
13 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro Pay Flat” wage
14 payment.

15 22. DEFENDANT underpays sick pay wages to PLAINTIFF and other AGGRIEVED
16 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
17 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
18 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
19 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
20 to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

21 23. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
22 the regular rate of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES routinely earned
23 non-discretionary incentive wages which increased their regular rate of pay. However, when
24 sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and other AGGRIEVED
25 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
26 Code Section 246.

27 24. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
28 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
PLAINTIFF and other AGGRIEVED EMPLOYEES whose employment has separated are

1 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

2 25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
3 to collect or receive from an employee any part of wages theretofore paid by said employer to
4 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and other
5 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
6 PLAINTIFF and other AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
7 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
8 and thereby fails to pay these employees all wages due at each applicable pay period and upon
9 termination.

10 26. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
11 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
12 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
13 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
14 2802, employers are required to indemnify employees for all expenses incurred in the course
15 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
16 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
17 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
18 directions of the employer, even though unlawful, unless the employee, at the time of obeying
19 the directions, believed them to be unlawful."

20 27. In the course of their employment PLAINTIFF and other AGGRIEVED
21 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
22 cellular phones as a result of and in furtherance of their job duties as employees for
23 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
24 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
25 PLAINTIFF and other AGGRIEVED EMPLOYEES are required by DEFENDANT to use their
26 personal cellular phones. As a result, in the course of their employment with DEFENDANT,
27 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
28 which included, but were not limited to, costs related to the use of their personal cellular phones

1 all on behalf of and for the benefit of DEFENDANT.

2 28. All of the conduct and violations alleged herein occurred during the
3 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
4 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
5 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
6 2018 AJDAR 12157 (Certified for Publication 12/19/18).

7
8 **JURISDICTION AND VENUE**

9 29. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10.

11 30. Venue is proper in this Court pursuant to California Code of Civil Procedure,
12 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
13 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
14 in this County and/or conducts substantial business in this County, and (ii) committed the
15 wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED
16 EMPLOYEES.

17 **FIRST CAUSE OF ACTION**

18 **For Violation of the Private Attorneys General Act**

19 **[Cal. Lab. Code §§ 2698, *et seq.*]**

20 **(By PLAINTIFF and Against All Defendants)**

21 31. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
22 paragraphs of this Complaint.

23 32. PAGA is a mechanism by which the State of California itself can enforce state
24 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
25 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
26 fundamentally a law enforcement action designed to protect the public and not to benefit private
27 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
28 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In

1 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
2 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
3 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
4 subject to arbitration.

5 33. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 herself and all individuals who are or previously were employed by Huntsman Advanced
9 Materials Americas LLC and/or Huntsman International LLC in California and classified as
10 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of November
11 19, 2020 until a date as determined by the Court (the "PAGA PERIOD").

12 34. On November 19, 2021, PLAINTIFF gave written notice by electronic mail to the
13 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
14 employer of the specific provisions of this code alleged to have been violated as required by
15 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
16 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
17 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
18 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

19 35. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
21 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
22 and provide legally required meal and rest periods, (c) failed to pay overtime wages and sick
23 pay wages, (d) failed to pay minimum wages, and (e) failed to reimburse for required expenses,
24 all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203,
25 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
26 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
27 applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such
28

1 conduct.² PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor
2 Code Private Attorney General Act of 2004 as the representative of the State of California for
3 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

4 **SECOND CAUSE OF ACTION**

5 **[Disability and/or FMLA Leave Discrimination and Retaliation For the Exercise of**
6 **Rights Guaranteed Under the FEHA, Participating in Protected Activities, and/or**
7 **Opposing DEFENDANT's Failure to Provide Such Rights]**

8 **Violation of FEHA Government Section 12900, *et. seq.***

9 **(By PLAINTIFF Against All Defendants)**

10 36. PLAINTIFF realleges and incorporates by reference, as though fully set forth
11 herein, the prior paragraphs of this Complaint.

12 37. In or around November of 2020, PLAINTIFF consulted with a Dr. regarding
13 health issues PLAINTIFF had been experiencing, and PLAINTIFF's Dr. diagnosed
14 PLAINTIFF as having a problem with her knee and advised PLAINTIFF to immediately go on
15 leave and have knee replacement surgery. PLAINTIFF adhered to the Dr.'s orders and went on
16 leave and PLAINTIFF received knee replacement surgery. Her disability leave was approved
17 by a 3rd party provider and PLAINTIFF stayed on leave until on or around January 28, 2021.
18 On or around January 28, 2021, PLAINTIFF returned to work part time. On or around February
19 23, 2021, PLAINTIFF started working full time on the second shift with Dr's restrictions. On
20 or around June 24, 2021 DEFENDANT threatened PLAINTIFF with a performance
21 improvement plan and/or to work on a different shift that was in reality a demotion and also
22 denied PLAINTIFF other job benefits in retaliation and in discrimination for her taking
23 protected leave while out on knee surgery rehabilitation in violation of various fundamental
24 public policies underlying both state and federal laws. PLAINTIFF was then forced to work
25 on the production shift. Prior to filing this action PLAINTIFF exhausted her administrative
26 remedies by filing a timely administrative complaint with the Department of Fair Employment
27

28 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 and Housing (“DFEH”) and received a DFEH Right to Sue letter on December 5, 2021.

2 38. DEFENDANT’s conduct, as alleged, violated FEHA, Government Code Section
3 12900, *et seq.*, and DEFENDANT committed unlawful employment practices, including the
4 following bases for liability:

5 a. Taking adverse employment actions against PLAINTIFF, including
6 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or otherwise
7 discriminating against PLAINTIFF, in whole or in part on the basis of PLAINTIFF’s disability,
8 and/or having taken FMLA leave in violation of Government Code Section 12940(a);

9 b. Harassing PLAINTIFF and/or creating a hostile work environment, in
10 whole or in part on the basis of PLAINTIFF’s disability, and/or having taken FMLA leave in
11 violation of Government Code Section 12940(j);

12 c. Failing to take all reasonable steps to prevent discrimination and
13 harassment based on disability, and/or having taken FMLA leave in violation of Government
14 Code section 12940(k);

15 d. Retaliating against PLAINTIFF for seeking to exercise rights guaranteed
16 under FEHA, participating in protected activities, and/or opposing DEFENDANT’s failure to
17 provide such rights, in violation of Government Code Section 12940(h).

18 39. As a proximate result of DEFENDANT’s willful, knowing, and intentional
19 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
20 substantial losses of earnings and other employment benefits.

21 40 As a proximate result of DEFENDANT’s willful, knowing, and intentional
22 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
23 humiliation, emotional distress, and physical and mental pain and anguish, all to PLAINTIFF’s
24 damage in a sum according to proof.

25 41. PLAINTIFF has incurred and continues to incur legal expenses and attorneys’
26 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
27 reasonable attorneys’ fees and costs (including expert costs) in an amount according to proof.

28 42. DEFENDANT’s misconduct was committed intentionally, in a malicious,

1 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against
2 DEFENDANT.

3 **THIRD CAUSE OF ACTION**

4 **Retaliation**

5 **[Violation of Cal. Lab. Code § 1102.5, *et seq.*]**

6 **(By PLAINTIFF Against All Defendants)**

7 43. PLAINTIFF realleges and incorporates by reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

9 44. At all relevant times, Labor Code section 1102.5 was in effect and was binding
10 on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any employee,
11 including PLAINTIFF, for raising complaints of illegality and/or belief that the employee may
12 disclose illegality.

13 45. In or around November of 2020, PLAINTIFF consulted with a Dr. regarding
14 health issues PLAINTIFF had been experiencing, and PLAINTIFF's Dr. diagnosed
15 PLAINTIFF as having a problem with her knee and advised PLAINTIFF to immediately go on
16 leave and have knee replacement surgery. PLAINTIFF adhered to the Dr.'s orders and went on
17 leave and PLAINTIFF received knee replacement surgery. Her disability leave was approved
18 by a 3rd party provider and PLAINTIFF stayed on leave until on or around January 28, 2021.
19 On or around January 28, 2021, PLAINTIFF returned to work part time. On or around February
20 23, 2021, PLAINTIFF started working full time on the second shift with Dr's restrictions. On
21 or around June 24, 2021 DEFENDANT threatened PLAINTIFF with a performance
22 improvement plan and/or to work on a different shift that was in reality a demotion and also
23 denied PLAINTIFF other job benefits in retaliation and in discrimination for her taking
24 protected leave while out on knee surgery rehabilitation in violation of various fundamental
25 public policies underlying both state and federal laws. PLAINTIFF was then forced to work
26 on the production shift. Prior to filing this action PLAINTIFF exhausted her administrative
27 remedies by filing a timely administrative complaint with the Department of Fair Employment
28 and Housing ("DFEH") and received a DFEH Right to Sue letter on November 17, 2021.

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2 46. As a proximate result of DEFENDANT'S willful, knowing, and intentional
3 violation(s) of Labor Code section 1102.5, PLAINTIFF has suffered and continues to suffer
4 humiliation, emotional distress, and mental and physical pain and anguish, all to PLAINTIFF's
5 damage in a sum according to proof.

6 47. As a result of DEFENDANT'S adverse employment actions against PLAINTIFF,
7 PLAINTIFF has suffered general and special damages in sums according to proof.

8 48. DEFENDANT'S misconduct was committed intentionally, in a malicious,
9 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against
10 defendants.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the State of California and with respect to all AGGRIEVED
15 EMPLOYEES:

16 A) Recovery of civil penalties as prescribed by the Labor Code Private
17 Attorneys General Act of 2004; and,

18 B) An award of attorneys' fees and cost of suit, as allowable under the
19 law, including, but not limited to, pursuant to Labor Code §2699.

20 2. On behalf of PLAINTIFF for the Second and Third Causes of Action:

21 A) For all special damages which were sustained as a result of DEFENDANT's
22 conduct, including, but not limited to, back pay, front pay, lost compensation and
23 job benefits that PLAINTIFF would have received but for the retaliatory practices
24 of DEFENDANT; and,

25 B) For all exemplary damages, according to proof, which were sustained as a result
26 of DEFENDANT's conduct.

27 3. On all claims:

28 A) An award of interest, including prejudgment interest at the legal rate;

- 1 B) Such other and further relief as the Court deems just and equitable; and,
2 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
3 law.
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5 Dated: November 28, 2023 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
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8 By: /s/ Nicholas De Blouw
9 Nicholas J. De Blouw

10 Attorneys for Plaintiff
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