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Attorneys for Plaintiff HEATHER TESDAHL

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE COUNTY**

Heather Tesdahl, individually, on behalf of all others similarly situated, and as an aggrieved former employee on behalf of herself and other aggrieved employees brought in the name of the People of the State of California and the Labor and Workforce Development Agency or any of its departments, divisions, commissions including the Labor Commissioner, boards, agencies, or employees

Plaintiff,

vs.

Lawyers For Employee and Consumer Rights, A Professional Corporation formerly known as Lawyers For Workplace Fairness, A Professional Corporation formerly known as California Lawyers For Workplace Fairness, Inc.; **Robert Ebert Byrnes**, in his individual capacity; **Sabrina Dawn Sanders**, in her individual capacity; **Daniel Derwood Sorenson**, in his individual capacity; **Megan Emslie Ross**, in her individual capacity; **Leena Emadi Fana**, in her individual capacity; **Preferred Legal Support, LLC**; **Superior Executive and Legal Recruiting**; **Jennifer Lynn Tell** also known as Jennifer Tell Davis, in her individual capacity; and **Does 1-10**.

Defendants.

Case No.: 30-2022-01271035-CU-OE-CXC

Assigned for all purposes to Hon. Judge

Judge Peter Wilson

COMPLAINT FOR

CX-102

CLASS ACTION CLAIMS:

1. Failure to provide accurate written itemized wage statements (Lab. Code § 226(a));
2. Failure to pay minimum and overtime wages (§§ 204, 223, 510, 511, 1194, 1194.2, 1197, 1198 & IWC Order 4-2001, §§ 3-5 and § 20);
3. Wages pursuant to Lab. Code § 558;
4. Failure to provide uninterrupted meal periods (Lab. Code § 226.7(b) & (c) and § 512);
5. Failure to provide uninterrupted rest breaks per Lab. Code § 226.7 & IWC Order 4-2001, § 12;
6. Willful failure to pay wages upon separation per Lab. Code § 201 (discharge) and/or § 202 (quit) and waiting time penalties per Lab. Code § 203;
7. Retaliation (Lab. Code 98.6, 1102.5 and 1102.6);
8. Negligent Infliction Of Emotional Distress;
9. Unfair Practices: B & P Code §§17000-17101;
10. Unfair Competition: B & P Code § 17200 et. seq.
11. Breach Of Contract Claims

REPRESENTATIVE PAGA CLAIMS:

12. Multiple Private Attorney General Act (PAGA) civil penalties (Lab. Code §§ 2698-2699.5);
- Seeking damages for the enumerated claims as follows:**
13. Punitive Damages;
 14. Civil and Statutory Penalties;
 15. Tax Neutralization;
 16. Injunctive Relief;
 17. Pre and Post Judgment Interest;
 18. Costs Of Suit; and

19. Attorney's Fees (CCP § 1021.5; Lab. Code §§ 218.5, 226(e)(1), 226(h), 1194, 1198.5(l), 2699(g), 2802(c), and any other applicable statute(s).

JURY TRIAL DEMANDED FOR LEGAL CLAIMS

Plaintiff Heather Tesdahl (TESDAHL or Plaintiff)—on behalf of (a) herself, (b) all others similarly situated, and (c) as an aggrieved former employee on behalf of herself and other aggrieved employees brought in the name of the People of the State of California and the Labor and Workforce Development Agency (LWDA) or any of its departments, divisions, commissions including the Labor Commissioner, boards, agencies, or employees—alleges and complains based on her own knowledge and acts, unless specifically stated based upon information and belief, the following against Defendants:

- (1) Lawyers For Employee And Consumer Rights, A Professional Corporation ("LFECD") formerly known as Lawyers For Workplace Fairness, A Professional Corporation ("LWF") formerly known as California Lawyers For Workplace Fairness, Inc. ("CLWF"), herein after collectively referred to as LFECD;
- (2) Robert Ebert Byrnes, Esq. ("BYRNES"), in his individual capacity;
- (3) Sabrina Dawn Sanders, Esq. ("SANDERS"), in her individual capacity;
- (4) Daniel Derwood Sorenson, Esq. ("SORENSEN"), in his individual capacity;
- (5) Megan Emslie Ross, Esq. ("ROSS"), in her individual capacity;
- (6) Leena Emadi Fana, Esq. ("FANA"), in her individual capacity;
- (7) Preferred Legal Support, LLC ("PLS")
- (8) Superior Executive and Legal Recruiting ("SELR");
- (9) Jennifer Lynn Tell, Esq., also known as Jennifer Tell Davis, also known as Jennifer Tell, and also known as Jennifer Davis ("TELL"), in her individual capacity; and
- (10) DOES.

All aforementioned defendants hereinafter are collectively referred to as DEFENDANTS. TESDAHL brings this action against DEFENDANTS for economic, non-economic, compensatory damages, as well as punitive damages pursuant to California Civil Code section 3294, pre-judgment interest pursuant to Code of Civil Procedure (C.C.P.) section 3291, costs, and reasonable attorneys' fees pursuant to various applicable code sections, including but not limited to the C.C.P. section 1021.5, and Labor Code sections 218.5, 226(e)(1), 226(h), 1194, 1198.5(l), 2699(g), 2802(c), and other relevant statute(s).

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I. INTRODUCTION

1. This action arises out of DEFENDANTS' numerous violations of California's Labor Code and Business and Professions Code, including but not limited to the following:

(1) LFECR failed to pay former and current LFECR employees all wages owed to them because DEFENDANTS (a) failed to pay applicants wages for a working interview; (b) intentionally misclassified employees with the job title Team Member, Intake Attorney, and/or Associate Attorney as exempt employees even though these employees (i) never met the duty test for any exemption during their entire duration working for LFECR and (ii) were paid by LFECR a salary of less than two times California's state minimum wage from January 1, 2021 to mid-June 2021;

(2) LFECR failed to accurately and completely account and pay for all of the time misclassified Team Members, Intake Attorneys, and Associate Attorneys worked;

(3) LFECR failed to pay premium pay to employees who did not have a legitimate opportunity to take Labor Code compliant meal and/or rest breaks because, due to LFECR's use of tracking software on the laptops LFECR issued to Team Members, Intake Attorneys, and/or Associate Attorneys, LFECR could and did monitor Team Members, Intake Attorneys, and Associate Attorneys, and pressured Team Members, Intake Attorneys, and Associate Attorneys to work through meal and/or rest breaks. Due to the workload, the meal and/or rest break(s) of LFECR Team Members, Intake Attorneys, and Associate Attorneys were interrupted, missed, or untimely;

(4) LFECR failed to provide current and former Team Members, Intake Attorneys, and Associate Attorneys with compliant Labor Code section 226 accurate itemized wage statements causing them injury, including but not limited to, on a corporation-wide basis, failing to list Lawyers for Employee and Consumer Rights, APC as the name of the legal entity that is the employer. Instead LFECR listed "Lawyers for Employee and Consumer R" as the name of the employer on LFECR's employees' paystubs. These inaccurate itemized wage statements did not accurately include all the following: gross wages earned, total hours worked by the employee, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity that is the employer, and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;

(5) LFECR, in willfully failing to timely pay all wages when due, also failed to pay separated employees waiting time penalties;

1 (6) LFECR failed to reimburse LFECR employees who worked remotely for all necessary business
2 expenses, including but not necessarily limited to (a) utilities such as internet and electricity for
3 essentially converting each remote employee's residence into a satellite LFECR office, as well as (b) the
4 pro rata basis for LFECR's employees' use of their respective personal cellphones for work-related
5 purposes, including downloading RingCentral App on to their personal phones, and using such for team
6 messaging, video meetings, and as a business phone because LFECR required Team Members, Intake
7 Attorneys, and Associate Attorneys to work remotely;

8 (7) Due to these and a multitude of other Labor Code violations, as well as forcing its Team
9 Members, Intake Attorneys, and Attorney Associates to overbill LFECR clients, LFECR engaged in
10 unfair practices and failed to fairly compete under California's Business and Professions Code and
11 should be enjoined from violating the applicable California laws as detailed within this operative
12 complaint, as well as pay restitution under California's Unfair Competition Law (UCL) and treble
13 damages pursuant to California's Unfair Practices Act (UPA).

14 2. Given the numerous violations of California's applicable statutes, regulations, and/or applicable
15 Industrial Wage Order alleged within this operative complaint, DEDENDANTS are liable for unpaid
16 minimum wages, regular wages, overtime wages, possibly double time wages, sick and/or vacation pay,
17 and premium wages; liquidated damages; earned but unpaid bonuses; unreimbursed necessary business
18 expenses; statutory penalties; restitution; tax neutralization; interest; costs of suit; and attorney(s)' fees.

19 3. DEFENDANTS are also liable for civil penalties under California's Private Attorney General
20 Act of 2004 (PAGA), Labor Code § 2698 to § 2699.6.

21 4. TESDAHL seeks, on both a class and representative action basis, to recover unpaid
22 minimum, regular, overtime, possibly double time, and premium wages; earned by unpaid bonuses;
23 liquidated damages; treble damages in the future if applicable; reimbursement; restitution; civil and
24 statutory penalties; costs of suit; attorney(s)'s fees; and pre and post judgment interest to which
25 TESDAHL, the Class as defined below, and Aggrieved PAGA Employees are entitled to recover under
26 California law.

27 **II. JURISDICTION & VENUE**

28 5. There is no federal question at issue as the claims herein are based solely on California law.

6. Also, there is no diversity of citizenship amongst the Parties because (a) the entity Defendants
(LFECR and PLS aka SELR) were incorporated or otherwise came into existence and operate in
California at all relevant times the causes of action alleged within this complaint arose, and on

1 information and belief, all individual defendants resided in California at all relevant times the causes of
2 action alleged within this complaint arose, and still reside in California.

3 7. DEFENDANTS systematically violated and continue to violate certain provisions of California's
4 Labor Code and Business and Professions Code through their remote-working employees located
5 throughout California, including in Orange County.

6 8. Pursuant to California Code of Civil Procedure (C.C.P.) section 393(a), "the county in which the
7 cause, or some part of the cause, arose, is the proper county for the trial of the following actions: (a) For
8 the recovery of a penalty or forfeiture imposed by statute...". In addition to other damages, Plaintiff
9 seeks to recovery civil and statutory penalties jointly and severally against the entity and individual
10 defendants.

11 9. Pursuant to C.C.P. section 395.5(a), "A corporation...may be sued in the county where the
12 contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or
13 in the county where the principal place of business of such corporation is situated, subject to the power
14 of the court to change the place of trial as in other cases."

15 10. According to its website blog ([https://www.lawyersforemployeeandconsumerrights.com/
16 california-2018-the-year-of-wage-theft-workers-rights-and-fired-employees-getting-financial-justice/](https://www.lawyersforemployeeandconsumerrights.com/california-2018-the-year-of-wage-theft-workers-rights-and-fired-employees-getting-financial-justice/)),
17 LFECR "is a leading California employment law firm. With more than forty remote attorneys, LFECR
18 is prepared to work on behalf of their clients *anywhere* [emphasis added] in California."

19 11. DEFENDANTS recruit, interview, hire, manage, and fire LFECR employees who work only
20 remotely and predominantly from their residences located throughout California, including Orange
21 County. A LFECR's employee's telework site becomes their official place of duty (POD). LFECR's
22 telework business model essentially converts an employee's residence into a LFECR satellite office for
23 the period of time the employee suffers or is permitted to work. Therefore, DEFENDANTS operate via
24 satellite offices throughout multiple California counties, in which the causes, or some part of the causes,
25 arose; where the contract of employment is to be performed; where the obligations or liabilities arose;
26 and/or where the breach occurred.

27 12. DEFENDANTS committed Labor Code violations against numerous LFECR employees,
28 including against Plaintiff who worked from her home located in Orange County. When an employee
serves as proxy or agent of the "Labor and Workforce Development Agency (LWDA) or any of its
departments, divisions, commissions, boards, agencies, or employees" (Lab. Code section 2699(a)), the
employee can assert *all* claims that the LWDA could assert and is not limited to prosecuting only those

claims for Labor Code violations that affected the employee as an individual. *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 753-761. Regarding the claims of the LWDA against the employer, those claims arise wherever the employer allegedly violated the Labor Code. *Id.*”

13. Claims under California’s Private Attorney General Act of 2004 (PAGA; Lab. Code sections 2698-2699.8) may properly be tried in a county where DEFENDANTS committed Labor Code violations against some of their employees, rather than only in the counties where real party in interest, TESDAHL, was employed or where DEFENDANT(S)’ principal place of business is located. *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal. App. 5th 1069. “[V]enue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred.” *Id.* at 1075.

14. Pursuant to *General Motors Corp. v. Superior Court* (1983) 141 Cal. App. 3d 966, 969, TESDAHL, the named plaintiff in this action filed as both a class and representative action, has a personal cause of action against the DEFENDANTS tying venue to Orange County. Thus, jurisdiction and venue for TESDAHL’s claims, class claims, and PAGA claims are proper in the Superior Court of California, County of Orange. “When, as here, venue is proper in more than one county, a plaintiff may choose among the available options.” *Id.* citing *Battaglia Enterprises, Inc. v. Superior Court* (2013) 215 Cal. App. 4th 309, 313. The plaintiff’s choice of venue is presumed correct. *Id.* at 313-314.

III. PARTIES

DEFENDANTS:

15. ***Defendant Lawyers For Employee And Consumer Rights, A Professional Corporation (“LFECR”)*** is formerly known as Lawyers For Workplace Fairness, A Professional Corporation (“LWF”) from September 15, 2015 to November 27, 2017 and California Lawyers For Workplace Fairness, Inc. (“CLWF”) from September 3, 2015 to September 14, 2015. LFECR, LWF and CLWF are hereinafter collectively referred to as LFECR. At the commencement of and at all relevant dates relating to this action, LFECR’s principal place of business was and still is located at 3500 W. Olive Ave., 3rd Floor, Burbank, CA 91505 according to LFECR’s current Statement of Information filed with California’s Secretary of State. LFECR is a law firm semi-reflective of its business name, an employee and consumer firm that “only represents employees.” However, LFECR is not “For”, meaning actually advocates for, its clients as this complaint later explains. Allegedly, “when [an employee] contacts [LFECR], you speak to a lawyer who only advocates for employees. [LFECR] take[s] on cases other lawyers deem “too small”. LFECR claims it “take[s] on clients who are unable to pay other lawyers’

1 hourly fees in the hundreds of dollars” and “are only paid if [LFECR is] successful in getting [a client] a
2 recovery.” According to its website blog¹, LFECR “is a leading California employment law firm. With
3 more than forty [40] remote attorneys, LFECR is prepared to work on behalf of their clients anywhere in
4 California.”

5 16. *Defendant Robert Ebert Byrnes, Esq. (“BYRNES”)* is the Chief Executive Officer/President,
6 Chief Financial Officer, Secretary, and Director of LFECR, i.e. LFECR’s sole officer and director,
7 according to LFECR’s most recent Statement Of Information filed with California’s Secretary Of State.
8 BYRNES is also LFECR’s head of litigation. LFECR advertises that, during the past decade, allegedly
9 BYRNES “has represented employees with legal claims in state and federal courts, as well as in the
10 arbitration settings that [ironically] employers increasingly force workers into. He has represented, and
11 secured substantial settlements on behalf of workers in the many industries most affected by workplace-
12 protection laws.” Allegedly, BYRNES negotiated a \$2-million dollar settlement on behalf of a national
13 department store’s sales associates who alleged they had been denied meal and rest breaks. He has also
14 represented a national children’s clothing store’s employees alleging unpaid overtime, and negotiated a
15 \$2.1-million settlement on their behalf. In addition to retail workers, BYRNES secured a \$1.65-million
16 settlement on behalf of nurses and other healthcare workers, as well as a settlement with a fast food
17 chain that resulted in a monitoring program being instituted to ensure compliance with meal and rest
18 break laws. BYRNES grew up in New Hampshire, hoping to become an attorney and to work toward
19 making society fairer for working-class families like his own. After graduating first in his high school
20 class, he went to Brown University, graduating in 1988. He received a master’s degree in public policy
21 from Harvard University in 1991, and then made a permanent home in California, putting himself
22 through law school with the help of scholarships. He received his law degree from Stanford Law School
23 in 1998. Since May 21, 1999, BYRNES has been licensed to practice law in the state of California.
24 BYRNES’s California state bar number is 200761. On information and belief, at the commencement of
25 and at all relevant dates relating to this action, BYRNES resided and still resides in Los Angeles County.
26 Consistent with BYRNES’s vision, [LFECR ironically] seeks to represent any worker treated unfairly by
27 an employer. Workers come to the firm after being treated unfairly on the job, and in many instances
28 after other lawyers have turned them away.” This 22-years experienced attorney has ratified and

¹ (<https://www.lawyersforemployeeandconsumerrights.com/california-2018-the-year-of-wage-theft-workers-rights-and-fired-employees-getting-financial-justice/>)

continues to ratify his law firm's (LFECR's) unlawful workplace violations and unconscionable billing practices.

17. *Defendant Jennifer Tell, Esq.* also known as Jennifer Lynn Tell, Jennifer Tell Davis and Jennifer Davis, hereinafter referred to as TELL, is the managing member of co-Defendant Preferred Legal Services according to its most recent Statement Of Information filed with California's Secretary Of State. On information and belief, Superior Executive and Legal Recruiting (SELR) is a nonregistered fictitious business name of PLS and the alter ego of TELL. According to TESDAHL and other LFECR's attorneys, TELL holds herself out as one of LFECR's managing attorneys. TELL earned her undergraduate degree from University of California Berkeley and attended Whittier College School of Law. TELL has been licensed to practice law in California since May 22, 2008. TELL's California state bar number is 257122. On information and belief, at the commencement of and at all relevant dates relating to this action, TELL resided and still resides in Los Angeles County.

18. *Defendant Preferred Legal Support, LLC (PLS):* At the commencement of and at all relevant dates relating to this action, PLS's principal place of business was and still is located at 303 North Glenoaks Blvd., Suite 200 Burbank, CA 91502 according to PLS's website and current Statement of Information filed with California's Secretary of State. According to its LinkedIn profile and website, PLS "is a recruiting, information technology, and consulting firm for law firms and other providers of legal services. PLS assists law firms in the areas of recruiting, staffing, website development, information technology management, HR services, data management and research." LFECR uses PLS/SELR/TELL to recruit and staff attorneys for LFECR through Indeed.com and LinkedIn job postings, and provides LFECR with Human Resource services, including wrongfully terminating LFECR's attorneys.

19. *Defendant Superior Executive and Legal Recruiting (SELR)* is an unregistered fictitious business name and the alter ego of TELL.

20. *Defendant Sabrina Dawn Sanders, Esq. ("SANDERS")* is one of LFECR's managing attorneys. SANDERS earned her undergraduate degree from University of California Los Angeles and attended Golden Gate University School Of Law in San Francisco, California. SANDERS has been licensed to practice law in California since December 6, 2004. SANDERS's California state bar number is 233833. On information and belief, at the commencement of and at all relevant dates relating to this action, SANDERS resided and still resides in the city of San Bruno located in San Mateo County, California. While on a phone call with SANDERS on or about October 8, 2021, TESDAHL complained

1 about issues with Actionstep, including but not limited to how the slow software was seriously affecting
2 her productivity which in turn negatively impacted her bonus compensation and working hours.
3 SANDERS failed to satisfactorily address TESDAHL's voiced concerns. On information and belief,
4 TESDAHL believes SANDERS's inactions were retaliatory against her for TESDAHL's engagement in
5 protected concerted activity regarding the misclassification and wages of LFECR's non-management
6 attorney employees and/or whistle-blower complaints regarding LFECR's unlawful client billing
7 practices.

8 21. *Defendant Daniel Derwood Sorenson, Esq. ("SORENSEN")* is one of LFECR's managing
9 attorneys. SORENSON earned his undergraduate degree from Brigham Young University (BYU) and
10 attended BYU J. Reuben Clark Law School in Utah. SORENSON has been licensed to practice law in
11 California since December 5, 1990. SORENSON's California state bar number is 149630. On
12 information and belief, at the commencement of and at all relevant dates relating to this action,
13 SORENSON resided and still resides in California. After engaging in protected concerted activity and
14 whistleblowing, as explained in this complaint, TESDAHL messaged LFECR's managing partner,
15 SORENSON, in either the third or fourth week of September 2021 during a Weekly Firm Meeting,
16 complaining about Actionstep's reduced speed and difficulties, as well as TESDAHL's inability to open
17 up and review her Tasks within Actionstep, the legal practice management software LFECR uses. Senior
18 Attorney, Kacey Lynn Gardner, spoke up as well as other attorneys engaged in protected concerted
19 activity, and stated that LFECR's weekly/monthly goals need to be adjusted to account for issues with
20 Actionstep's issues. SORENSON dismissively ignored the voiced concerns of TESDAHL, Ms. Gardner,
21 and the other attorneys engaged in protected concerted activity. On information and belief, TESDAHL
22 believes SORENSON's inactions were retaliatory against she, Ms. Gardner, and other attorneys engaged
23 in protected concerted activity.

24 22. *Defendant Megan Emslie Ross, Esq. ("ROSS")* was one of LFECR's managing attorneys from
25 October 2019 to September 2021. According to her LinkedIn profile, ROSS was a managing attorney
26 for Lawyers For Workplace Fairness (LWF), the former name of LFECR, from November 2014 to June
27 2016. ROSS currently works for Melmed Law Group PC, 1801 Century Park E, Suite 850, Los Angeles,
28 CA 90067. ROSS earned her undergraduate degree from California State University, Fullerton and
attended Whittier College School of Law. ROSS has been licensed to practice law in California since
December 2, 2003. ROSS's California state bar number is 227776. On information and belief, at the
commencement of and at all relevant dates relating to this action, ROSS resided and still resides in

1 California. ROSS "...as spent more than 20 years focusing on employment law, with more than 15 years
2 of experience in class and other representative actions. Beginning in law school, Megan found a passion
3 for defending employees' rights, and has kept that passion to this day. After clerking for an employment
4 law firm during law school, Megan joined a small employment law firm that represented individuals as
5 well as representative actions including class actions, federal collective actions, and PAGA
6 claims. After four years, she moved to a firm that specialized in defending insurance companies,
7 resolving multiple class action claims by employees of insurance companies in her two years at that
8 firm. *In 2014, she moved to managing a firm that represents individuals with smaller claims, helping as*
9 *many as 3000 individuals a year resolve their employment disputes.* From 2016 to 2019, she again
10 defended employers, this time trucking companies, against individual and class claims by employees
11 and allegedly misclassified independent contractors, before returning to her prior management role.
12 Megan's breadth of experience, representing both employees and employers, in cases ranging from
13 seven figure class actions down to the smallest individual claims, has given her the ability to understand
14 cases from all angles." See <https://www.melmedlaw.com/attorney/megan-ross/>.

15 23. Defendant **Leena Emadi Fana, Esq. ("FANA")** is one of LFECR's managing attorneys. FANA
16 earned her undergraduate degree from University of California Riverside and attended Trinity Law
17 School in Santa Ana, California. FANA has been licensed to practice law in California since June 2,
18 2015. FANA's California state bar number is 304459. On information and belief, at the commencement
19 of and at all relevant dates relating to this action, FANA resided and still resides in San Diego County,
20 California. FANA was TESDAHL's Senior Attorney, i.e. TESDAHL's supervisor who exerted control
21 over TESDAHL's working conditions at LFECR. On approximately August 19, 2021, FANA and
22 TESDAHL engaged in a Microsoft Teams messaging conversation. Specifically, TESDAHL expressed
23 to FANA her discontent with LFECR's firm-wide practices of giving clients less than 50% of their
24 settlement amounts after FANA approached TESDAHL about her client settlement with J.L. v.
25 Defendant². TESDAHL received multiple messages/communications from FANA prior to this date
26 pressuring TESDAHL to give LFECR client J.L. less than 35% of settlement value. FANA used
27 attorney fees cumulated after settlement process, which are purely administrative, to fraudulently claim
28 LFECR share of the settlement was 80%, with the client's share being the remainder. Tension had
developed between TESDAHL and FANA due to TESDAHL's whistle-blower complaint. FANA often
used TESDAHL as a pawn for LFECR's unlawful billing practices. Despite having earned her license to

² J.L. are the initials of the client at issue while the Defendant's name is unlisted due to a confidential settlement agreement.

1 practice law, TESDAHL did not have authority to use independent judgment regarding attorney's fees
2 allocated to the firm and client, even though TESDAHL was the attorney assigned to a client's case and
3 concluded whether the fees were or were not unconscionable/reasonable. FANA threatened TESDAHL
4 that she would have TESDAHL moved to a different team. FANA also told TESDAHL that TESDAHL
5 should quit and find a job with a different law firm with which TESDAHL does not have any issues
6 regarding that firm's client billing policies, procedures, and practices. On September 16, 2021, generally
7 throughout the third and fourth weeks of September, as well as on October 5, 2021, TESDAHL
8 complained to FANA during phone calls regarding deficiencies with Actionstep. Specifically,
9 TESDAHL was unable to efficiently work at 100% capacity. TESDAHL placed a special call to FANA
10 to solely address the negative effects of Actionstep which included a 30% reduction in TESDAHL's
11 performance. TESDAHL complained that Actionstep would constantly time out, or take an exorbitant
12 amount of time to complete a function, and the laptop screen would show a spinning cursor, which is
13 indicative of a user started task that is still being processed and thus is not yet completed. Thus, it was
14 unnecessarily difficult for TESDAHL to attain the goals/quotas LFECR placed upon TESDAHL during
15 LFECR's regular working hours of 8:30 am to 6:30 pm, which resulted in TESDAHL having to work
16 additional hours that infringed upon her personal time to meet LFECR's quotas so TESDAHL could
17 earn bonuses. FANA failed to address TESDAHL's voiced concerns. On information and belief,
18 TESDAHL believes FANA's inactions were retaliatory for the protected concerted activity regarding the
19 misclassification and wages of LFECR's non-management attorney employees and/or for the
20 whistleblowing complaints regarding LFECR's unlawful client billing practices TESDAHL made as
21 detailed within this complaint.

22 24. **DOE Defendant(s):** Pursuant to Labor Code §§ 558-558.1, DOE Defendants are any other
23 person acting on behalf of LFECR, who violates, or causes to be violated, any provision regulating
24 minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or
25 violates, or causes to be violated, Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802. The true names
26 and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of
27 Defendant DOES 1 through 10, inclusive, are presently unknown to TESDAHL, who therefore sues
28 these Defendants by such fictitious names pursuant to CCP § 474. TESDAHL will seek leave to amend
the operative complaint to allege the true names and capacities of DOE Defendants if/when they are
actually ascertained.

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1 ***PLAINTIFF, PUTATIVE CLASS, & AGGRIEVED EMPLOYEES:***

2 25. *Plaintiff*, TESDAHL, at all relevant times pertaining to this complaint, was and still is a resident
3 of California living within Orange County. TESDAHL is an aggrieved employee under PAGA, and a
4 member of the class of LFECR's employees who shares common legal rights with other LFECR's
5 employee class members and suffered common injuries caused by LFECR's unlawful uniform policies,
6 procedures, and/or practices created, implemented, and/or maintained by LFECR's managing attorneys
7 BYRNES, TELL, SANDERS, SORENSON, and ROSS. TESDAHL also has standing to pursue
8 damages for Unfair Business Practices and Unfair Competition violations against DEFENDANTS.
9 TESDAHL seeks to be the class representative for the Class including for the following subclasses
defined within this complaint:

- 10 (a) Recruitment Class;
11 (b) Non-Exempt Employees/Misclassified Salary-Exempt Wages Class;
12 (c) Premium Pay Class;
13 (d) Wage Statement Class;
14 (e) Former Employees Class;
15 (f) Reimbursement-Owed Class;
16 (g) Retaliation & Punitive Damages Class;
17 (h) Unfair Business Practices Employee Class; and
(i) Unfair Competition Restitution Employee Class, (collectively the "Class").

18 TESDAHL has the requisite standing to represent the class as a whole and each subclass of individual
19 employees, all of whom have causes of action similar to her own against DEFENDANTS.

20 26. The members of the Class of LFECR's employees are identifiable, similarly situated persons
21 who presently work or formerly worked as non-managing attorneys misclassified as professionally
22 exempt Attorney employees for LFECR, including but not necessarily limited to Attorneys with the
23 following job titles: Intake Attorneys, Team Members, Associate Attorneys, Senior Attorneys, Team
24 Lead and SDNR. Intake Attorneys, Team Members, Associate Attorneys, and, on information and
25 belief, SDNR Attorneys did/do not (a) customarily and regularly exercise discretion and independent
26 judgment; (b) were/are not primarily engaged in duties which meet the test of any exemption; and/or (c)
27 were not paid two times California's state minimum wage, specifically from January 1, 2021 up to and
28 including June 17, 2021. Senior Attorneys and/or Team Leads did/do not (a) customarily and regularly

exercise discretion and independent judgment; and (b) were/are not primarily engaged in the duties which meet the test of any exemption.

27. With respect to PAGA claims, TESDAHL—acting as proxy for the People of the State of California and the Labor and Workforce Development Agency (LWDA) or any of its departments, divisions, commissions including the Labor Commissioner, boards, agencies, or employees—seeks relief on behalf of herself and other current or former employees aggrieved by DEFENDANTS’ numerous violations of California’s Labor Code (“Aggrieved PAGA Employees”).

28. Per Labor Code § 2699(c), Aggrieved PAGA Employees are any person who was/is recruited by SELR for LFECR, employed by LFECR, and/or terminated by LFECR through PLS and/or TELL, and against whom one or more of the violations alleged in the PAGA Notice and/or Amended PAGA Notice was committed. As explained within this complaint, TESDAHL is an aggrieved employee under PAGA. Other Aggrieved PAGA Employees include current and/or former employees with the following *non-exhaustive* list of job title(s): Intake Attorneys, Associate Attorneys, Team Members, and Senior Attorneys, Team Lead, and SDNR.

IV. CLASS DEFINITION(S)

29. TESDAHL incorporates by reference all of the allegations set forth in paragraphs 1 through 29 above as though fully set forth herein. TESDAHL brings her class action claims on behalf of herself and on behalf of all other similarly situated persons pursuant to California’s Code of Civil Procedure (C.C.P) § 382. The members of the California-Only Putative Class belong to the subclasses of the (a) Recruitment Class; (b) Non-Exempt Employees/Misclassified Salary-Exempt Wages Class; (c) Premium Pay Class; (d) Wage Statement Class; (e) Former Employees Class; (f) Reimbursement-Owed Class; (g) Retaliation & Punitive Damages Class; (h) Unfair Business Practices Employee Class; and (i) Unfair Competition Restitution Employee Class (collectively the “Class”) defined as follows:

(a) **Recruitment Class:** All LFECR applicants, who lived in or applied from California, who performed work while in or from California for LFECR disguised as a skills test/performance exam at any time since the date three years before the filing of the initial complaint until the future disposition of this case (class period);

(b) **Non-Exempt Employees/Misclassified Salary-Exempt Wages Class:** All persons who, at any time since the date three years before the filing of the initial complaint until the future disposition of this case (class period), worked for LFECR from/in California whom

1 LFEER misclassified as salaried-exempt, including but not limited to Intake Attorneys,
2 Associate Attorneys, Team Members, Senior Attorneys, Tead Lead, and/or SDNR and
3 whom LFEER did not pay overtime wages too when s/he worked over eight (8) hours in
4 a workday and/or forty (40) hours in a workweek;

5 (c) **Premium Pay Class:** All LFCER employees working from/in California, at any time since
6 the date three years before the filing of the initial complaint until the future disposition of
7 this case (class period), who did not have a legitimate opportunity to take Labor Code
8 compliant meal and/or rest breaks because their meal and/or rest break(s) were interrupted,
missed, or untimely for any reason that was not their own fault;

9 (d) **Wage Statement Class:** All LFCER employees working from/in California, at any time
10 since the date three years before the filing of the initial complaint until the future
11 disposition of this case (class period), who worked for LFEER in California as a non-
12 exempt employee or whom LFEER misclassified as salaried-exempt, and whose
13 itemized wage statements are inaccurate and caused injury to such employee(s)
14 including but not limited to LFEER failing to accurately detail all of the gross wages
15 earned by all affected employees, LFEER failing to accurately detail the total hours worked
16 by all affected employees due to unaccounted work over eight (8) hours in a workday and/or
17 forty (40) hours in a workweek. This includes LFEER's failure to provide the actual name of
the legal entity that is the employer on any applicable itemized wage statement;

18 (e) **Former Employees Class:** All persons who worked for LFEER from/in California as a
19 non-exempt employee or whom LFEER misclassified as salaried-exempt, and whose
20 employment with LFEER ended at any time since the date three years before the filing
21 of the initial complaint until the future disposition of this case (class period), and
22 LFEER willfully failed to pay all wages earned upon employment separation;

23 (f) **Reimbursement-Owed Class:** All persons who worked for LFEER from/in California
24 as an employee, and whose employment with LFEER ended at any time since the date
25 three years before the filing of the initial complaint until the future disposition of this
26 case (class period), and LFEER failed to indemnify for all necessary expenditures or
27 losses incurred by these employees in direct consequence of the discharge of their
28 duties, or of their obedience to the directions of LFEER. This includes but is not
necessarily limited to reimbursement for the following: the pro rata use of employees'

cellphones including but not limited to downloading Ring Central’s application unto their personal cellphones and/or conducting work-related calls; the pro rata use of the internet plan of an employee working remotely from/in California, headsets, ergonomic chairs, etc.;

(g) **Retaliation & Punitive Damages Class:** All persons who worked for LFECR from/in California as an employee—at any time since the date two years before the filing of the initial complaint until the future disposition of this case (class period)—and who was harassed, constructively discharged, terminated, or otherwise suffered a retaliatory adverse employment action committed by LFECR in violation of California Labor Code section 98.6, 1102.5 and/or 1102.6 because the applicable member complained about LFECR’s Labor Code violations and/or unlawful client billing practices, and who seeks punitive damages against DEFENDANTS for their oppression, fraud, or malice;

(h) **Unfair Business Practices Employee Class:** All persons who, at any time since the date four years before the filing of the initial complaint until the future disposition of this case (class period), worked for LFECR from or in California whom LFECR misclassified as salaried-exempt, and is owed treble damages pursuant to California’s Business and Professions Code section 17082 due to LFECR’s violation of California’s Business and Professions Code section 17076.

(i) **Unfair Competition Restitution Employee Class:** All persons who, at any time since the date four years before the filing of the initial complaint until the future disposition of this case (class period), worked for LFECR from or in California whom LFECR whom LFECR owes restitution to for LFECR’s unfair competition due to any of LFECR’s numerous violations of California’s Labor Code and/or Business and Professions Code.

V. CLASS ALLEGATIONS

30. TESDAHL incorporates by reference all of the allegations set forth in paragraphs 1 through 29 above as though fully set forth herein.

31. The requirements for class certification are met in this case as follows: LFECR failed to pay the Recruitment Class because the Recruitment Class performed work while in or from California for LFECR disguised as a skills test/performance exam. LFECR failed to pay TESDAHL; the Recruitment Class; the Non-Exempt Employees/Misclassified Salary-Exempt Wages Class; and Restitution Class all minimum, regular, overtime, and possibly double time wages these employees earned for the time LFECR’s firmwide policies, procedure(s), and/or practice(s) required them to predominantly perform

1 non-exempt duties during TESDAHL'S entire duration of employment with LFECR until such time
2 LFECR ceases such unlawful uniform policy/ies, procedure(s), and/or practice(s). As a result of
3 LFECR's failure to pay putative class members all wages they earned, LFECR also uniformly failed to
4 provide TESDAHL and other Wage Statement Class members with accurate and complete wage
5 statements as required by Labor Code § 226(a), subsections (1) gross wages earned, (2) total hours
6 worked by the employee, (4) all deductions, (5) net wages earned, (8) the name and address of the legal
7 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the employee. LFECR's wage statements
9 for all its employees, both exempt and non-exempt uniformly failed to list Layers For Employees and
10 Consumer Rights, A Professional Corporation as the legal name of the employer. Also, LFECR owes
11 TESDAHL and other Premium Pay Class members premium pay because, due to their workload,
12 LFECR's uniformly imposed quotas, and misclassification of the Premium Pay Class members as
13 salary-exempt, with regard to meal and rest breaks, the Premium Pay Class members' respective meal
14 and/or rest breaks were interrupted by LFECR's clients or supervisor(s)/manager(s), were untimely due
15 to the workload, or missed due to being misclassified. Additionally, LFECR's uniformly failed to pay
16 former employees, including TESDAHL, all the wages owed to them upon separation of employment as
17 required by Labor Code § 201 and/or § 202. As a result, LFECR is liable to the Former Employees Class
18 members, including TESDAHL, for waiting time penalties pursuant to Labor Code § 203 for LFECR's
19 willful failure to pay former employees all the wages owed to them upon separation of employment.
20 LFECR failed to indemnify the Reimbursement-Owed Class, including TESDAHL, for all necessary
21 expenditures or losses incurred by these remote-working employees in the direct consequence of the
22 discharge of their duties, or of their obedience to the directions of LFECR under Labor Code §
23 2802, including but not limited to reimbursement for the following: the pro rata use of
24 employees' cellphones including but not limited to conduct work-related calls and/or text messages to
25 clients, opposing counsels, colleagues, and/or supervisors/managers; the pro rata use of these
26 employees' internet data/plans; and various other office equipment. DEFENDANTS retaliated against
27 and owes punitive damages to the Retaliation & Punitive Damages Class who engaged in protected
28 concerted activity and/or whistle-blew about LFECR's client billing practices that violate California's
State Bar Rules of Professional Conduct. LFECR also owes treble damages to the Unfair Business
Practices Employee Class pursuant to California's Business and Professions Code section
17082 due to LFECR's violation of California's Business and Professions Code section 17076.

1 Lastly, due to its Labor Code violations, LFECR unfairly competed by gaining an unfair advantage over
2 LFECR's competition by engaging in unlawful, unfair, or fraudulent business act(s) or practice(s), and
3 thus is liable to the Unfair Competition Restitution Employee Class for LFECR's unfair
4 competition.

5 32. **Numerosity:** The class members are so numerous that the individual joinder of all
6 them as named/described by TESDAHL is impracticable. While the exact number of all CLASS
7 members is unknown to TESDAHL at this time, TESDAHL is informed and believes and thereon
8 alleges that there is approximately 95 members in each of the following classes: Recruitment Class,
9 Non-Exempt Employees/Misclassified Salary-Exempt Wages Class; Premium Pay Class; Wage
10 Statement Class; Former Employees Class; Reimbursement-Owed Class; Unfair Business
11 Practices Employee Class; and Unfair Competition Restitution Employee Class, (collectively the
12 "Class"). TESDAHL is informed and believes and thereon alleges that there is approximately 23
13 members of the Retaliation & Punitive Damages Class.

14 33. **Community of Interests:** This action has been brought and may be maintained as a class action
15 pursuant to C.C.P. § 382 because there is a well-defined community of interests among many
16 persons who comprise a readily ascertainable class. Per *Vasquez v. Superior Court* (1971) 4 Cal.3d
17 800, 809, the right of each employee to recover is not based on a separate set of facts applicable only to
18 him/her. "The requirement of a community of interest does not depend upon an identical recovery, and
19 the fact that each member of the class must prove his separate claim to a portion of any recovery by the
20 class is only one factor to be considered in determining whether a class action is proper." *Id.* "The
21 "community of interest" requirement embodies three factors: (1) predominant common questions of law
22 or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
23 who can adequately represent the class." *Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th
24 319, 326. Courts may also consider whether the class action procedure is "superior" to litigating claims
25 individually.

26 34. **Commonality:** Common questions of law and fact exist as to the members of the Class and
27 predominate over any questions that affect only individual members of the Class. Though "[i]ndividual
28 issues do not render class certification inappropriate so long as such issues may effectively be
managed." *Id.* at p. 33. These common questions of law and fact include, but are not limited to the
following:

- i. Did LFEER use SELR to recruit applicants to work for LFEER and did these applicants perform work in or from California for LFEER disguised as a skills test/performance exam?
- ii. Did LFEER misclassify Associate Attorneys/Team Members and/or Senior Attorneys/Team Leads as salaried-exempt even though these class members failed to meet the Duties Test or Salary Test of any exemption under Industrial Wage Order 4-2001, and as a result LFEER thus failed to pay these Class members minimum and/or overtime wages?
- iii. Are Class members owed premium pay for interrupted, late, and/or missed meal and/or rest breaks because of LFEER's quotas/workload, including communications by clients, opposing counsels, colleagues, supervisors, and/or manages, and/or because LFEER misclassified the Class so Class members did not know they were entitled to take Labor Code compliant meal and/or rest breaks, and therefore did not?
- iv. Are the wage statements of Class members inaccurate and did such inaccuracy cause Class members injury in violation of Labor Code § 226?
- v. Did LFEER willfully fail to pay Class members who no longer work for LFEER all the wages they earned upon separation of employment, and if so are these Class members entitled to waiting time penalties pursuant to Labor Code § 203?
- vi. Did LFEER fail to indemnify Class members for all necessary business expenses, and thus owes reimbursement with interest and attorney(s)' fees to Class members?;
- vii. Did LFEER violate California's Business and Professions Code section 17076, and thus owes Class members treble damages pursuant to California's Business and Professions Code section 17082 due to LFEER's misclassification of Class members as salaried-exempt employees?
- viii. And are Class members owed restitution due to LFEER's unfair competition for LFEER's numerous violations of California's Labor Code and California State Bar Rules of Professional Conduct?

Even though all Class members may not have suffered a violation of the same laws, essentially the Class members have suffered the same injury. The Class members claims depend upon a common contention that is of such a nature that it is capable of class wide resolution, which means that determination of its truth or falsity will resolve the issues that are central to the validity of each one of the claims in one stroke.

35. Typicality: TESDAHL is a member of the (a) Recruitment Class; (b) Non-Exempt Employees/

Misclassified Salary-Exempt Wages Class; (c) Premium Pay Class; (d) Wage Statement Class; (e) Former Employees Class; (f) Reimbursement-Owed Class; (g) Retaliation & Punitive Damages Class; (h) Unfair Business Practices Employee Class; and (i) Unfair Competition Restitution Employee Class, (collectively the “Class”). The claims of TESDAHL are typical of the claims of the other class members who TESDAHL seeks to represent. TESDAHL is a former LFECD employee who worked as both an Associate Attorney/Team Member and Senior Attorney/Team Lead and was subjected to the same violations as other former and current LFECD employee class members. TESDAHL and other members of the Class suffered the same injuries and seek the same relief.

36. **Adequacy:** TESDAHL will adequately and fairly protect the interests of the Class. TESDAHL has no interest adverse to the interests of absent class members, and TESDAHL is represented by attorney(s) with adequate experience in civil litigation and employment law.

37. **Manageability:** A class action is superior to other available means (if any) for fair and efficient adjudication of the claims of the Class and would be beneficial for the Parties and the court. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. The monetary amounts due to many individual Class members are likely to be relatively small, and the burden and expense of litigation would make it difficult or impossible for Class members to seek and obtain relief through individual lawsuits. A class action will serve an important public interest by providing Class members an effective mechanism for redress of violation of their statutory rights. TESDAHL is presently unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action but reserves the right to modify her allegations and/or the class definitions based on further investigation, discovery and/or legal developments. The operative complaint is meant to establish by a preponderance of the evidence that common issues predominate, thus a class action is superior to alternate means for a fair and efficient adjudication of the litigation.

VI. VICARIOUS LIABILITY

38. TESDAHL incorporates by reference all of the allegations set forth in paragraphs 1 through 37 above as though fully set forth herein.

39. Pursuant to Labor Code § 558.1, “(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be

1 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such
2 violation. (b) For purposes of this section, the term “other person acting on behalf of an employer” is
3 limited to a natural person who is an owner, director, officer, or managing agent of the employer, and
4 the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.
5 (c) Nothing in this section shall be construed to limit the definition of employer under existing law.

6 40. DEFENDANTS are managing agents, co-conspirators, joint venturers, officers and/or
7 employees of LFECD, and at all relevant times acted within the course and scope of said agency,
8 conspiracy, joint venture, and/or employment, with the knowledge and/or consent of LFECD.
9 TESDAHL is informed and believes that each Defendant authorized and/or ratified the wrongful
10 activities of each of the remaining Defendants alleged within the operative Complaint. LFECD’s
11 conduct was undertaken by its director(s), officer(s), managing agent(s) and other persons responsible
12 for management or supervision of LFECD employees and for the drafting and implementation of
13 policies and other managerial decisions. The conduct of the officers, managing agents, and other
14 individuals was on behalf of LFECD. Further, LFECD had advance knowledge of such conduct of said
15 individuals whose actions and conduct were authorized, approved, ratified, and/or actually or
16 constructively known by LFECD’s director(s), officer(s), managing agent(s) and other persons
17 responsible for the management or supervision of employees and for the drafting and implementation
18 of policies and other managerial decisions.

19 **VII. PAGA ADMINISTRATIVE REMEDIES EXHAUSTED**

20 41. On December 29, 2021, TESDAHL timely filed her initial PAGA Notice with the Labor
21 Workforce and Development Agency (LWDA) through its online portal. The LWDA assigned Case No.
22 LWDA-CM-860244-21 to TESDAHL’s PAGA claims.

23 42. Also on December 29, 2021, TESDAHL sent the initial PAGA Notice by certified mail to the
24 following defendants: LFECD, BYRNES, SANDERS, SORENSON, FANA, TELL, and DOES 1-10.

25 43. On July 21, 2022, filing such through the LWDA’s online portal, TESDAHL amended her
26 original PAGA Notice, adding the following to Case No. LWDA-CM-860244-21: additional claims,
27 defendants, and theories of liability. Specifically, TESDAHL’s Amended PAGA Notice adds/ed
28 violations of anti-retaliation statutes, Labor Code sections 98.6 and 1102.5. Furthermore, ROSS in her
individual capacity and SELR are listed as additional respective individual and entity defendants.
Additional theories of liability include but are not limited to the following: SELR’s recruitment process
including attorney applicants performing work for LFECD disguised as a skills test/performance exam

1 which was actually an uncompensated working interview.

2 44. Also on July 21, 2022, TESDAHL sent the Amended PAGA Notice by certified mail to the
3 following defendants: LFECR, PLS, SELR, BYRNES, TELL, SANDERS, SORENSON, ROSS, FANA,
4 and DOES 1-10, as well as to LFECR's attorney Jon B BORDERUD.

5 45. Under Labor Code section 2699(b), PAGA empowers TESDAHL to legally pursue PAGA
6 penalties against any "person" as defined by Labor Code section 18 as follows: "Person" means any
7 person, association, organization, partnership, business trust, limited liability company, or corporation.

8 46. Through the initial and Amended PAGA Notice(s), TESDAHL complied with Labor Code
9 sections 2699.3(a)(1)(A), 2699.3(b)(1), and 2699.3(c)(1)(A). Thus, TESDAHL exhausted her
10 administrative remedies pursuant to Labor Code § 2699.3 and has the right to pursue PAGA penalties
11 on behalf of herself and other Aggrieved Employees.

12 47. Any future amendments to TESDAHL'S PAGA Notice are incorporated by reference into
13 the operative complaint for this action.

14 **VIII. LABOR CODE § 211 DEMAND**

15 48. According to Labor Code § 211, a demand is a prerequisite to the bringing of any action under
16 Labor Code § 210 or § 211.

17 49. TESDAHL's PAGA Notice also served as the demand required by Labor Code § 211 in which
18 TESDAHL demanded, on behalf of herself and other Aggrieved Employees, LFECR pay the highest
19 calculatable penalties under Labor Code § 210, as well as pay all wages due yet unpaid to Aggrieved
20 Employees, including TESDAHL, under Labor Code § 204 and/or § 1197.5.

21 **IX. GENERAL, INDIVIDUAL, CLASS, & REPRESENTATIVE ALLEGATIONS**

22 **Recruitment**

23 50. TESDAHL incorporates by reference all of the allegations set forth in paragraphs 1 through
24 49 above as though fully set forth herein.

25 51. TESDAHL and the other putative class members part of the Recruitment subclass were recruited
26 by SELR to work for LFECR.

27 52. On April 22, 2019 at 3:01 pm, TESDAHL received an email from TELL from the email address
28 of jennifer@superiorexecutiveandrecruiting.com. This email reads as follows: Dear Heather After
careful review, we would like to move you forward in our selection process. Congratulations! The next
stage is to have you draft a demand letter. The information attached contains the sample factual
hypothetical. You will have two hours to complete this timed assignment. Once you are ready to begin,

1 email me that you are starting, and then return your test to me within two hours of your start
2 time. Please draft a demand letter in the preferred, industry-accepted demand letter format. Good luck!
3 Warm Regards, Jennifer Davis [Tell]”.

4 53. Despite claiming “[t]he information attached contains the sample factual hypothetical”, on
5 information and belief, SELR gave TESDAHL and all other LFECR attorney applicants facts for current
6 LFECR clients and insisted attorney applicants draft a settlement demand letter. On information and
7 belief, thus part of SELR’s recruitment process for attorney applicants SELR recruited for LFECR
8 included/s attorney applicants performing work for LFECR disguised as a skills test/performance exam.
9 This “timed assignment” took approximately two (2) hours for each attorney applicant, including
10 TESDAHL, to complete.

11 54. Neither SELR, nor LFECR, paid attorney applicants, including TESDAHL, any wages for this
12 work. SELR and/or LFECR’s respective owner(s), director(s), officer(s), and/or managing agent(s), i.e.
13 BYRNES, SANDERS, SORENSON, ROSS, and/or TELL—also failed to compensate attorney
14 applicants, including TESDAHL, for this work disguised as a skills test/performance exam.

15 55. April 25, 2019 at 10:25 am, TESDAHL emailed jennifer@superiorexecutiveandrecruiting.com
16 (TELL), the “skills test”, actual work-product, she completed.

17 **Offer Of Employment**

18 56. After TESDAHL completed LFECR’s recruitment process conducted by SELR through
19 TELL, on April 26, 2019, LFECR, through BYRNES, emailed TESDAHL an “Offer of Employment”
20 letter. According to this letter, TESDAHL’s compensation would be \$4,800.00 per month as a base
21 salary and, in accordance with LFECR’s bonus plan, TESDAHL would receive bonus payments totaling
22 at least \$12,400.00 during her first year of employment, making her total compensation at least
23 \$70,000.00. On information and belief, all putative class members and PAGA Aggrieved Employees
24 were offered the same or a substantially similar “Offer of Employment” letter with the same terms
25 including compensation.

26 **Work Conditions Of Team Members/Associate Attorneys**

27 57. TESDAHL worked for LFECR as a remote Team Member/Associate Attorney from
28 approximately late April or early May 2019 until approximately December 29, 2020. TESDAHL
performed the following job duties as a Team Member/Associate Attorney from a minimum start time of
8:30 am to 6:30 pm, Monday through Friday, and often working weekends too:

- a. Conducted a minimum of 3-5 COCA calls per workday averaging 45 minutes per call.

- i. Duplicated previous Intake efforts regarding prospective clients per LFECR procedures/practices;
- ii. Explained to prospective clients the fee structure LFECR's charges its clients per LFECR policies/procedures/practices;
- b. Drafted and sent email(s) to prospective clients to get them to agree in writing to LFECR's attorney-client relationship terms, including pre-authorization of a mere \$500 for settlement;
- c. "Draft" demand letters using HotDocs, document automation software, i.e. click the box(es) to generate a demand letter instead of drafting such from scratch or a template. Correcting typographical or grammatical errors for LFECR's HotDocs templates took TESDAHL more time than clicking boxes to generate a demand letter.
- d. TESDAHL was bogged down with all of the administrative duties associated with handling 40-80 cases at all times (80-90 cases towards end of her employment), and LFECR required TESDAHL to do all of the document preparation, return all client calls, schedule appointments with clients and opposing counsels, perform settlement collections from law firms and orchestrate payment logistics for clients, assess all client calls/inquiries.
- e. Also, LFECR required its Associate Attorneys/Team Member and Senior Attorneys/Team Leads to perform a series of steps before a client's case could be considered for termination, which resulted in cumbersome and time-consuming administrative work for Associate Attorneys/Team Member and Senior Attorneys/Team Leads, even when Associate Attorneys/Team Member and Senior Attorneys/Team Leads knew there was no hope of successfully obtaining a settlement for a client.

58. These tasks were not predominantly intellectual and varied in character. Instead, these tasks are routine mental, manual, mechanical or physical work, and is of such character that the output produced or the result accomplished was standardized by DEFENDANTS in relation to a given period of time through DEFENDANTS' systemic policies, procedures, and practices. These tasks consumed a minimum of 55% to 75% of TESDAHL's working time. This resulted in TESDAHL not being primarily engaged in the practice of law despite being an attorney in good standing licensed to practice law in California. Due to DEFENDANTS' automated workflow, TESDAHL did not customarily and regularly exercise discretion and independent judgment in the performance of her duties. Thus, TESDAHL did not

1 meet the duties test under Industrial Wage Order No. 4 to be exempt under the Professional Exemption,
2 especially not for tasks industry standards reserve for a legal secretary.

3 59. On information and belief, all of LFECR's Team Members/Associate Attorneys performed
4 substantially similar work as that of TESDAHL when she was a LFECR Team Member/Associate
5 Attorney, and thus DEFENDANTS misclassified all Team Members/Associate Attorneys as salary-
6 exempt employees.

7 **Work Conditions Of Team Leads/Senior Attorneys**

8 60. Starting January 2021, TESDAHL worked as a Team Leader, making the same base
9 salary of \$4,800.00 per month. Even though TESDAHL was considered a Team Leader, she performed
10 essentially the same work of an Associate Attorney/Team Member, plus reviewed the work of an
11 Associate Attorney/Team Member, and thus was handling 80-90 cases towards the end of her
12 employment. Nevertheless, TESDAHL's duties and responsibilities did not involve the management of
13 LFECR or of a customarily recognized department or subdivision of LFECR. TESDAHL did not
14 customarily and regularly direct the work of two or more other employees. TESDAHL neither had
15 authority to hire or fire other employees, nor were her suggestions and recommendations as to the hiring
16 or firing and as to the advancement and promotion or any other change of status of other employees
17 given any weight let alone particular weight by LFECR. TESDAHL did not customarily and regularly
18 exercise discretion and independent judgment in the execution of her duties. TESDAHL also was not
19 primarily engaged in duties which meet the test of the Executive or Professional exemption. On
20 information and belief, all of LFECR's Team Leads/Senior Attorneys performed substantially similar
21 work as that of TESDAHL when she was a LFECR Team Lead/Senior Attorney, and thus
22 DEFENDANTS misclassified all Team Leads/Senior Attorneys as salary-exempt employees.

23 **LFECR Failed To Pay TESDAHL, Putative Class Members, & Aggrieved Employees Two Times**

24 **California's State Minimum Wage From January 1, 2021 To June 18, 2021**

25 61. From approximately January 1, 2021 until approximately June 18, 2021, DEFENDANTS
26 willfully compensated TESDAHL, Putative Class Members, and Aggrieved Employees "\$4,800 per
27 month as a base salary", which equals \$57,600 annually. This is less than double California's state
28 minimum wage, despite the salary test component of the two-pronged test for any exemption requires
employers pay any exempt employee at least twice the state minimum wage. Effective January 1, 2021,
California's state minimum wage for all industries was \$14.00 per hour for employers with 26
employees. As noted above, LFECR employs "...more than forty [40] remote attorneys...". Therefore,

1 in order for LFECR to meet the Salary Test of any exemption under IWO 4-2001 for in 2021, LFECR
2 had to pay its employees that were/are subject to California's Labor Code and whom LFECR classified
3 as salary-exempt at least \$28.00 per hour for full-time work, i.e. \$58,240 annually for 2021. Obviously,
4 LFECR failed to do so. As an employment law firm with its principal place of business in California,
5 practicing plaintiffs-side employment law, there is no, meaning absolutely zero, excuse for LFECR's
6 deliberate inaction to increase its employees' salary to an amount that meets the Salary Test of any
7 exemption. Thus, LFECR intentionally paid its employees an amount less than the Salary Test of any
8 exemption requires, and also intentionally failed to pay required overtime and possibly double time for
said employees.

9 62. This is evident by (a) LFECR's June 30, 2022 firmwide MEMO (*infra*); (b) the fact that LFECR
10 failed to rectify this issue for all impacted classified salary-exempt employees, including those who
11 worked any time between January 1, 2021 to June 18, 2021, in particular those who no longer worked
12 for LFECR by June 18, 2021; and (c) On information and belief, LFECR repeated this behavior partially
13 during 2022, i.e. also failed to pay the same type of misclassified employees double California's state
14 minimum wage for a portion of 2022 as explained in detail later in this complaint (*infra*).

15 63. Thus, LFECR misclassified TESDAHL, Putative Class Members, and Aggrieved Employees as
16 salaried employees allegedly exempt under Industrial Wage Order 4-2001, section 1(A)(3), i.e.
professional exemption.

17 **Protected Concerted Activity By TESDAHL, Putative Class Members, & Aggrieved Employees**

18 64. On June 3, 2021, BYRNES emailed a firm-wide staffing memorandum which TESDAHL
19 received, that notified TESDAHL and all other LFECR's attorney employees of new firmwide policies,
20 including but not limited to that LFECR could, in its discretion, reduce an employee's salary for bad
21 performance.

22 65. Between June 3, 2021 to June 24, 2021, numerous LFECR attorneys—employees who are also
23 Putative Class Members and Aggrieved Employees—engaged in the protected concerted activity of
24 voicing their concerns regarding various details of the memo that violated California's Labor Code and
25 California Rules of Professional Conduct standards. They also discussed their concerns amongst each
other, initially using LFECR's group messaging, and later through their personal email addresses.

26 66. By June 16, 2021, the following persons were on the group email: Tania Guadalupe Fonseca
27 Mendoza a.k.a. Tania Fonseca, Emilia Mehrabian, Corey Arthur Pingle, Caitlin Sarah Meiojas, Brigitte
28 Melissa Wilcox, Gabriela R. Carrillo, Alexander P. Jarvis, Suzy Charlotte Douglass, Stephanie Erin

1 Gardner, Allen Theweny, Mollie Elizabeth Chadwick, Jamie Rebecca Belin, Marisa Domenica Sarti,
2 Katherine Anne Hogue, Rachael My Nhan, TESDAHL, Evan Donald McKinney, Jennifer Ambacher,
3 Hallie Ryan Goins Spaulding, Edith Veronica Alvarez, Julia Elizabeth Haus, Kacey Lynn Gardner, and
4 Diana Madalow Shamon.

5 67. On Wednesday, June 16, 2021, at 1:41 AM, now former LFECR employee, Emilia Mehrabian,
6 emailed the group of LFECR's attorneys engaged in protected concerted activity, writing as follows:

7 "Hello Colleagues,

8 Apologies for the late email but I wanted to get this out to you all before Wednesday
9 morning. I am including a new attachment of contacts with this email as I've had a few
10 others who have contacted me and wished to be added to this group.

11 As you all know, we have a firm call today at 11 am. We also have not heard back from
12 management regarding any of the issues and concerns we have raised regarding the June 3rd
13 staffing memo.

14 I wanted to bring to light a few topics I have been discussing with some colleagues.

15 First, misclassification of team members is not only stemming from improper pay, but also
16 from lack of "customarily and regularly exercising discretion and independent judgment" in
17 the performance of our duties...I know in my team, as a team member, I have almost no
18 independent judgment regarding anything. I cannot even terminate a case where I do not see
19 a claim. Everything and anything must go through management. This primarily went into
20 effect when demand letters began to be drafted by other attorneys for my cases. This would
21 mean that the misclassification argument could actually be extended beyond just 2021,
22 further increasing our damages.

23 Second, it seems that management does not take notice unless and until we act unilaterally.
24 I know many are scared and worried about speaking up in fear of retaliation from
25 management, believe me I am too. However, we have to remember that we all outnumber
26 management and our voices, together, will most certainly be stronger than theirs. For this
27 reason, I purpose we overtake and control the discussion that will take place during the
28 firmwide call this morning should management decide to speak to us about anything else
other than the staffing memo.

I am not sure of management plans on having the call and similar to last week, talking about
a random topic that none of us will be interested to listen to about. We are all going to
calling in to the call in the hopes of hearing some response to the concerns we have raised.
As such, I suggest that if management tries to steer the call in the direction of discussing
topics that are not a priority, we all voice our opinions that we want to collectively speak
about the memo and not discuss any other topic. This is after all what the firm wide calls are
for, according to management.

1 If management decides to cancel the firm wide call, I suggest we all use the platform to
2 again talk about the issues with the staffing memo. If we receive a firm wide email, per
3 usual, stating there will be no firm call, I can reply back (including management) stating
4 something along the lines of I will still be calling in to discuss concerns regarding the
5 staffing memo with colleagues and invite everyone to join. Please let me know if you all
6 would be willing to join the call. If so, keep in mind that management may and likely will
7 be in on the call listening in, but at least we will be able to put all of our thoughts, questions,
8 and concerns, out in the open and talk amongst ourselves. I would suggest to be mindful,
9 thoughtful and cautious of what you say but a repetition of everything we have discussed
10 and brought up in the emails would be fair game.

11 The idea behind this is to show management we are presenting a united front. All of these
12 communications are concerted activities and protected. We are not doing anything wrong
13 and have the legal right to ask the questions and demand a response from management. For
14 my fellow team members, every day that passes by that we do not have a response is a day
15 that we are improperly paid and compensated.

16 I welcome all thoughts and ideas. Please reply all and let everyone know thoughts on
17 discussions during the firm call today. Will you be joining in the discussion or would you
18 prefer to be silent and continue to wait to hear from management? This would help guide
19 everyone as to whether or not this is even a good plan of action. So please speak up and
20 share ideas.

21 Thank You,

22 Emilia Mehrabian
23 <LFECR Contacts-3.xlsx>

24 68. Also on Wednesday, June 16, 2021, at 7:41 AM, now former LFECR employee, Tania Fonseca,
25 emailed the group of LFECR's attorneys engaged in protected concerted activity, writing as follows:

26 "Good morning all,

27 Agree with you one hundred percent Emilia. If management tries to have a call about
28 anything other than the memo I will politely request that we discuss the issues we've raised
or any others that attorneys may have and again ask for a time frame for when we can
expect a response.

If management cancels the call I'll still call in in case anyone wants to talk about the issues.
I know we can't provide the answers to the questions but amongst ourselves we can try to
decipher or interpret the memo. I know I didn't even consider some of the issues raised by
colleagues and I'm particularly troubled by the implication of our fee credits being further
reduced or split with SDNR. Nothing against my SDNR colleagues who do great work but
we don't have a say in when the case gets assigned and the memo was so vague on this
subject it hadn't crossed my mind the firm could elect to split the fee credits. Because it is
so vague I'm worried it allows for a lot of wiggle room in how to interpret the fee credits.

1 In addition to discussing this memo I think it also shows management we are talking and
2 there is great strength in numbers. They may not give us a response but that doesn't mean
3 our concerns are going away. I would say it's worsening the problem by not talking about it.

4 Respectfully, Tania".

5 69. At 7:18 am or 8:18 am, TESDAHL using her personal cellphone text messaged FANA on her
6 personal cellphone as follows: "Do you want to get the emails employees are sending outside of work?
7 If so, what your personal email address?", to which FANA responded at 7:20 am or 8:20 am, "What are
8 they saying?". TESDAHL then replied, "I will send to u". FANA then sent the follow-up text message
9 of "I didn't put my email on that list. Honestly I'm not sure what the big deal is. Nothing has changed.
10 All those people are still getting paid the same", and then sent a text message stating "Send me screen
11 shots". TESDAHL wrote, "It's about stuff you've been complaining about for awhile", to which at 7:30
12 am or 8:30 am FANA responded with "Yea but I didn't want to be involved with it really. I don't think
13 it's my battle beyond what I've said and done." At 7:35 am or 8:35 am, FANA texted "All those people
14 need to focus on settling cases and making more money the way they can control instead of taking time
15 to complain about things they have no control over. Quit and move on or work and dominate".
16 TESDAHL did not respond.

17 70. At 9:06 am on Wednesday, June 16, 2021, now former LFECR employee, Brigitte Wilcox,
18 emailed the group of LFECR's attorneys engaged in protected concerted activity, writing as follows:

19 "...I'm onboard with taking over the call if management refuses to answer our questions,
20 although I would prefer to give them the opportunity to address it themselves first. Just as a
21 personal preference, I would rather let them speak about whatever topic and only bring the
22 issues up again if or when they refuse yet another chance to address our concerns. That way,
23 we can see if they'll actually try to address us in good faith before we pile everything on
24 them, and I also don't want them to be able to accuse us of interrupting regular firm business
25 or something in any way and try to discredit us as being belligerent or unruly.

26 It's not terribly important though so if everyone else would prefer to jump in and
27 immediately take over if they try to speak on anything else, I'll support that too. In times of
28 conflict, I just like to be obnoxiously well behaved so they have absolutely nothing to attack
us with.

Thoughts? -Brigitte"

71. At 9:21 am, Ms. Mehrabian responded in agreement with Ms. Wilcox, writing as follows:

"I agree with Brigitte. I am not sure if I would let them speak for a full 30 minutes, but I would
most certainly interrupt in the most respectful and professional manner.

1 And I think that tone should certainly be carried through moving forward. Brigitte is right in
2 saying we never want to come across as unruly or belligerent. I don't think that is how we have
3 and/or will come across, but certainly something to always keep in mind.

4 Emilia”

5 72. At 9:31 or 10:31 AM, FANA text messaged TESDAHL, “Are you able to take pictures from
6 your phone and send it to my phone here?” TESDAHL did not respond.

7 73. At 11:14 am, now former LFECR employee, Mollie Chadwick, emailed the group of LFECR’s
8 attorneys engaged in protected concerted activity, informing the group she is on board, specifically
9 stating the following “Good morning! I am on board with steering the conversation to the memo should
10 the situation require it and they don’t bring it up themselves. Does anyone know if Robert is usually on
11 the calls, listening in the background? Can we request that he come to address us on the call instead of
hiding behind vague emails? Thanks, Mollie”.

12 74. Despite the above sentiment on June 16, 2021 between the group of LFECR’s attorneys engaged
13 in protected concerted activity, during the June 16, 2021 LFECR firm-wide conference call, LFECR
14 management intentionally ignored the group’s questions regarding the June 3, 2021 staffing
15 memorandum BYRNES emailed by not answering a single question any attorney voiced. LFECR’s
16 management ignored all questions and concerns.

17 75. On June 17, 2021 at 7:46 am, now former LFECR employee, Stephanie Erin Gardner, emailed
18 the group of LFECR’s attorneys engaged in protected concerted activity, asking “How’d the call go? I’,
out of town and wasn’t able to be on it... any information I missed out on?”

19 76. At 8:33 am, Ms. Mehrabian wrote the group of LFECR’s attorneys engaged in protected
20 concerted activity, responding to Ms. Gardner’s email, stating “Definitively not how I anticipated it
21 going. I only received 4 people’s reply here to my email from 2 nights ago and the call went per usual.
22 Management speaking in their nonchalant happy tone about some random law and not mentioning
23 anything about them breaking the law. We also surprisingly had a few colleagues who responded to
24 management’s questions regarding the laws being discussed. Emilia”.

25 77. At 9:29 am, Hallie Spaulding sent a group message expressing the following, “To be fair, I was
26 messaged by management and told to respond to the questions posed on the call b/c as a “senior” I
27 should be “setting a better example on the calls”, for training. But I have also emailed on the firmwide
28 email expressing my concerns regarding ethical conflicts — so I’m trying to do my best to achieve
results and also not get put on a PIP.”.

1 78. On June 17, 2021 at 9:33 am, Ms. Mehrabian emailed the group of LFECR's attorneys engaged
2 in protected concerted activity a response to Ms. Spaulding's email, exclaiming, "Wow Hallie. I had no
3 idea. Thanks for sharing that with us. I have no idea what management is planning but its [sic] extremely
4 worrying. It's been over 10 days and we don't have even a response saying when we will get our letters.
5 I hope we hear something soon because the stress and anxiety is really making it a challenge to work
6 everyday. Emilia".

7 79. At 11:12 am, TESDAHL emailed the group of LFECR's attorneys engaged in protected
8 concerted activity, expressing her solidarity, stating "I am following everything and in alliance with you.
9 Heather Tesdahl".

10 80. At 4:36 pm, FANA followed on her text messages she sent to TESDAHL the day before, texting
11 TESDAHL "Everyone trying to be added to the firm outside email tread lol", then "Too funny", then "I
12 need to know what they are discussing lol", ending with "Omg".

13 81. At 8:44 pm, TESDAHL finally responded to FANA, texting "It's good. The firm has some shady
14 and ambiguous ways that need to be cleared up and addressed."

15 82. On June 18, 2021 at 11:45 am, Ms. Mehrabian emailed the group of LFECR's attorneys engaged
16 in protected concerted activity an email intended for them from Ms. Fonseca. Ms. Fonseca's email states
17 in relevant part as follows:

18 "...I hope you're enjoying your day off today. Wanted to give y'all a head's up that I finally got
19 a response from Sabrina and Jennifer Tell via a phone call late afternoon yesterday. You all will
20 likely be receiving a call from them and I wanted you to be prepared for it. I will briefly
21 summarize the call.

22 Both called, we exchanged awkward pleasantries. Jennifer did most of the talking. She said she
23 wanted to address the email I sent with questions on the firm policy . She said she also wanted to
24 address the email I had sent yesterday about the time off and any lingering questions. I asked
25 about requesting the day off via bamboo since it was unclear from Robert's email, she and
26 Sabrina mentioned that it would be treated like the veteran's holiday 1, meaning the firm won't
27 close but people can request the day off. Being that I told them I was requesting the day off for
28 tomorrow they said it would be approved (side note I didn't request it on bamboo anyway since
nothing is ever timely responded to anyway on there but another story for another day).

On the question of titles Jenn clarified that internally we will continue to use team leader and member. Outside the firm we use senior and associate.

On the subject of the discretionary reduction in salary for bad performance she said the determination could be based over one quarter or two, it was really up to the firm and they did not have to issue a reduction at all they could always choose to terminate the attorney. I said I knew I was an at-will employee but I sought clarity on how they would calculate the reduction.

1 She gave me a hypothetical scenario in which I again asked about where she got those figures
2 and she said they were made up, and when I asked for what numbers I needed to reach to ensure
3 I got a bonus she condescendingly asked how I did not know that already. After back and forth
4 we both realized she erroneously assumed I had received my new role expectations and goals (as
5 I was promoted to a leader of a three-person team in December 2019) in writing at the time was
6 promoted. I explained I had not received anything in writing and she was surprised because it
7 was "firm policy" for promotions to be in writing. She said she would ensure I received it in the
8 new compensation emails we would all receive. She clarified that for a three-person team, the
9 fees to the firm have to be \$125,000 per month, and \$125,000 in tentative settlements per month,
10 which multiplied times 3 (for three months in a quarter) is what I have to exceed to qualify for a
11 bonus and avoid a reduction in salary.

12 Regarding the question on fee-splitting between teams and SDNR, she said there would
13 be no split. Each one gets their full bonus percentage.

14 Regarding the underpayment of some of my colleagues, she began with saying it was "funny"
15 that I had sent that email (referring to my first inquiry email) when Robert was already working
16 on a new salary increase for those attorneys to comply with the required amount. I said that I just
17 wanted to make sure my team was taken care of and paid all they were owed inclusive of
18 penalties and what-not, and I acknowledged that she did not have to get into specifics with me
19 because it's not my pay but I wanted assurance my colleagues affected would be taken care of.
20 She said she would not get into it but the firm would "take care of it".

21 The bulk of our call centered on the fee caps for litigation cases. I explained that my team
22 continued to work on cases after they were in the "litigation" step serving as translators, doing
23 client communication, or performing substantive work. I provided a case number where the fees
24 exceeded \$5,000 and we clearly continued to work on the case alongside the lit attorney
25 (Shelley). She then wanted to bring up 2 other cases where my team (without lit or mgmt
26 approval) had filed for arbitration and obtained a recovery for the clients. She clarified for those
27 cases where lit or mgmt does not approve of for litigation and we prelit attorneys decide to file
28 (i.e. arbitration, DLSE) we would receive full credit as lit was not involved. Where lit was
involved, the firm would still keep the cap on fees because it was "so rare" for the fees to exceed
\$5,000 on such lit cases anyway where we would continue to work on them. I pointed out it was
not so rare as I had another example, but even if it was not frequently enough for her, it was
fundamentally fair for us to be paid for the work we do on the cases. If we work on the litigation
cases it takes out time away from cases where we would get full credit. We went back and forth
on this and she ultimately said she would reconsider the policy. I said if you decide to continue
the policy as is please send us in writing that we are not expected to work on the cases once
accepted into litigation or limit what we're expected to do on those cases. She said she would.

Finally, she said individual emails would be sent "imminently" but could not say specifically
when and that everyone would get a call to receive the same information I received.

The overall tone of the call was cordial but also felt a bit adversarial when it came to the issue of
the fee caps. It took a little over an hour for the whole thing. I definitely felt I had to be a zealous
advocate for myself during that call.

1 Just wanted to share the above with y'all so you can be prepared for when they call you.

2 Best of luck, Tania”

3 83. On June 18, 2021, at 12:08 pm, Alexander P. Jarvis, responded to Ms. Fonseca’s email by
4 emailing the group of LFECR’s attorneys engaged in protected concerted activity, expressing he is
5 “...looking forward to the firm addressing our concerns, including those about working on cases in
6 litigation. I spend a lot of time assisting Shelley on these cases and a \$5,000 fee cap seems totally unfair.
7 The main reason I came to this firm in the first place was to escape the pressure and deadlines of
8 litigation.”

9 84. Sometime between June 18, 2021 and June 21, 2021, LFECR issued a check in the amount of
10 \$266.70 to some of the LFECR’s attorneys engaged in protected concerted activity. For example, on
11 June 18, 2021, BYRNES emailed Ms. Wilcox’s work email of bwilcox@lfecr.com a letter “Subject:
12 Increase in Base Pay” stating in relevant part, “...Your base pay has been raised from \$57,600 to
13 \$58,240. This increase in your guaranteed compensation is retroactive to January 1, 2021. Therefore,
14 enclosed is a check for \$266.70 to reflect this amount and you will receive \$4,853.33 per month going
15 forward...”. TESDAHL, Ms. Gardner, Ms. Mehrabian, Ms. Chadwick, Ms. Wilcox, and Mr. Jarvis also
16 received a practically identical letter and check.

17 85. On June 21, 2021, at 8:58 am, now former LFECR employee, Ms. Gardner, emailed the group of
18 LFECR’s attorneys engaged in protected concerted activity, asking, “Did anyone other misclassified
19 attorneys receive a check for \$266.70 to make up for the error in pay this year? Is that really all they
20 plan on doing to fix that problem?”.

21 86. On June 21, 2021, at 9:09 am, Ms. Fonseca replied to Ms. Gardner’s email by emailing the group
22 of LFECR’s attorneys engaged in protected concerted activity, explaining, “I’m not part of that group of
23 attorneys but if they paid you that amount they’re likely trying to cure the misclassification by making
24 the pay retroactive so they can claim you were not misclassified. When I’m negotiating against an
25 employer and they attempt to do that I still fight that it doesn’t magically make an employee exempt for
26 the period they were underpaid. They would still overtime, liquidated damages, wage statement
27 penalties, meal and rest break penalties. Any other attorneys on here wanna chime in? This is what we
28 do for a living after all. -Tania”.

87. At 9:20 am on June 21, 2021, Ms. Mehrabian emailed the group of LFECR’s attorneys engaged
in protected concerted activity, stating with conviction “I do not plan on cashing that check. They are
once again and yet again trying to take advantage of the situation and us. They owe us much much more

1 than that. Penalties alone per person are more than \$10k. I strongly urge all of you who have received
2 the email and check to not cash it as well. This firm is an EMPLOYEE PLAINTIFF'S firm. The fact
3 that they misclassified us is major...on management[']s end and they are all personally liable for the
4 mistake. I am not going to be taking \$266 and letting them get away with this. Emilia".

5 88. At 9:28 am, Ms. Gardner emailed the group of LFECR's attorneys engaged in protected
6 concerted activity, writing "Same... definitely not accepting that. How many of us misclassified
7 attorneys are there?"

8 89. At 9:34 am, Ms. Gardner again emailed the group of LFECR's attorneys engaged in protected
9 concerted activity, writing "It bothers me that they got a huge PPP loan (a.k.a. "grant" of almost a
10 million) last year right after telling us that they anticipate having additional (not less) business due to the
11 pandemic layoffs, and now they're acting so stingy about righting a wrong. I'm so done."

12 90. According to public data, on May 1, 2020, LFECR was approved through lender JPMorgan
13 Chase Bank for a Paycheck Protection Program (PPP) Loan of \$937,395, allegedly \$911,395 in payroll
14 for 53 jobs and \$26,000 in utilities). As of September 29, 2021, \$950,537 was forgiven. This amount
15 includes accrued interest. Likewise, on May 1, 2020, PLS was approved through lender JPMorgan
16 Chase Bank for a PPP Loan of \$176,582, allegedly \$158,353 in payroll for 90 jobs, \$2,395 in utilities,
17 and \$15,834 in rent. As of July 22, 2021, \$178,726 which includes accrued interest was forgiven. On
18 March 31, 2021, PLS was approved through lender JPMorgan Chase Bank for a PPP Loan of \$207,187,
19 allegedly in payroll for 16 jobs. This loan is ongoing as June 2022.

20 91. On June 21, 2021 at 9:51 am, Ms. Mehrabian emailed the group of LFECR's attorneys engaged
21 in protected concerted activity, expressing the following: "I am not surprised. This is also a positive for
22 us. For the loan to be forgiven they have to retain the number of employees and PAY workers. If those
23 who have been harmed choose to walk away if they don't pay up, they are going to be harmed and they
24 possibly won't get the loan forgiven. I am going to be calculating my individual damages to give
25 everyone an idea of what our damaged might be. A colleague also had the brilliant idea of writing a
26 demand letter (with the LFECR letterhead). I am going to be drafting a demand letter. If anyone else
27 wants to be included on the demand letter please let me know. Emilia".

28 92. At 9:55 am, Ms. Gardner stated, "Yes, I'd like to be included. Maybe we should get an outside
plaintiffs firm to be taken seriously."

93. At 10:21 am, Ms. Gardner sent an additional email to the group of LFECR's attorneys engaged

1 in protected concerted activity, writing, “This is how I responded (to Admin + cced Robert Byrnes) the
2 \$266 check email if anyone in the same boat would like to do the same: “Hi, Thank you for
3 acknowledging that I have been underpaid to be an exempt employee. Based on this, I have been
4 misclassified for the past six months and am entitled to meal and rest break premiums, overtime, and
5 waiting time penalties. Due to the heavy workload, I have not been taking meal and rest breaks and have
6 been working overtime. This check does not include the aforementioned. When will I receive what is
7 owed in full? Thank you, Stephanie Gardner”.

8 94. At 11:18 am, Ms. Chadwick added to the protected concerted activity, stating “Hi all, I would
9 like to be included in the demand letter if possible. I will likely respond with something similar to
10 Stephanie and will not be cashing the check. How many Team Members do we have? 15-20? Mollie”.

11 95. At 12:38 pm, Ms. Wilcox added her following thoughts to the discussion: “Hi all, Sorry for the
12 delayed response/ not being as active Thurs/ Fri, I had to get my 2nd covid vax on Wed last week
13 (nearly missed the window, whoops) and I was destroyed for a couple days there but I’m back.
14 Anyway, I can only imagine what would happen if management ever found out we only asked for a
15 couple hundred dollars of “retro pay” as an acceptable way to try to maintain the exemption status of
16 one of our misclassified clients as opposed to demanding the full wages and damages to which they’re
17 entitled. I will also not be accepting the check and would like to be included in the demand a well. If this
18 gentle nudge doesn’t work, PAGA, anyone? -Brigitte”.

19 96. On June 22, 2021, at 6:44 pm, Ms. Fonseca emailed the group of LFEER’s attorneys engaged in
20 protected concerted activity, sharing the following: “Hi all, Wanted to share with y’all this interesting
21 case that came out last year concerning the ability to pursue a PAGA even after signing a release.
22 [https://www.paulhastings.com/insights/client-alerts/once-aggrieved-always-aggrieved-the-california-
23 supreme-court-holds-an-employees-settlement-of-labor-code-claims-does-not-bar-a-paga-lawsuit](https://www.paulhastings.com/insights/client-alerts/once-aggrieved-always-aggrieved-the-california-supreme-court-holds-an-employees-settlement-of-labor-code-claims-does-not-bar-a-paga-lawsuit)
24 For those that may be asked to sign a release or colleagues who may have signed one as part of a
25 severance and who have left the firm this year without receiving redress of their wage and hour claims,
26 this might be helpful. -Tania”.

27 97. At 7:54 pm, Ms. Gardner asked the group, “For PAGA purposes, does anyone know exactly how
28 many “team members” there are?”.

98. At 10:58 pm, Ms. Wilcox emailed the group of LFEER’s attorneys engaged in protected
concerted activity, expressing “I’ve wondered that a lot too... either way, it’s one less. I just emailed
management earlier this evening like, “Sorry for your loss, it’s me, I’m the loss, quitting effective

1 immediately, xoxo”. Something like that, and I was able to squeeze in my wage and hour claims in there
2 too somewhere. Just wanted to share :) – Brigitte P.S. I feel amazingggg”. Ms. Wilcox had been
3 suffering from anxiety, including panic attacks from the ever-increasing quotas placed on her by
4 LFECR, so she felt amazing escaping the unlawful work environment at LFECR.

5 99. At 11:01 pm, Allen Theweny who is a former LFECR attorney employee, emailed the group of
6 LFECR’s attorneys engaged in protected concerted activity, informing the group he also quit that day.

7 100. At 11:12 pm, Ms. Mehrabian replied all, writing “Good for you guys! I sent a demand letter
8 and
9 went on PTO leave starting tomorrow. I’ve given management until next week to pay me, if not, I will
10 also be resigning.”

11 101. On June 23, 2021, at 12:19 am, Ms. Wilcox emailed the group of LFECR’s attorneys
12 engaged in
13 protected concerted activity, adding the following to the discussion: “Oooooo congrats! What time did
14 you quit? I sent my email at like 9:30 PM. Sabrina was online at the time and then logged off like
15 literally 30 seconds later lol. I was just gonna ask Megan [Ross, managing attorney] tomorrow where I
16 can send the laptop.”

17 102. At 7:41 am, Ms. Gardner wrote the group “Wow! I also drafted an email yesterday saying
18 that I
19 am quitting, but I have not sent it yet. I was going to wait a few more days to see what happens, but
20 maybe I’ll go ahead and pull the plug. So... yeah... where do we send those laptops?”.

21 103. At 7:59 am, Ms. Fonseca acknowledged the avoidable losses to LFECR, stating “...It really
22 is a
23 loss to the firm Brigitte, Allen, and Emilia (I know you’re out on Pto). I didn’t get a chance to work
24 with you guys but you sound like stand-up people and courageous attorneys as what you’ve done takes
25 real guts. I don’t have anymore information tha[n] what I’ve already shared but I can imagine with the
26 loss of three attorneys’ labor the firm is short on workers and management may be scrambling...I firmly
27 believe that employers only change their bad practices when they’re pocketbooks hurt so I truly hope
28 something good can come of this for everybody. Allen and Brigitte I’m not entirely familiar with the
unemployment insurance system but have you considered applying for unemployment and trying to
show you resigned for good cause? I mean the firm was not responsive to any inquiries about remedying
your misclassification and all they sent was a small check with no explanation of whether they’d pay

1 back overtime pay, premiums and other penalties. They also repeated that reducing one's salary for bad
2 performance or lacking "good standing" continued to be an option for them. Reducing your salary below
3 \$58,200 minimum would put you below twice the minimum wage again subjecting you to the same
4 issues of misclassification. My colleagues here have also raised the issue of exercise of independent
5 judgment and discretion which I think the firm still has to deal with when it comes to team members.
6 Their continued silence on these issues over 3 weeks would understandably cause someone to resign to
7 avoid being exploited. Bottom line is I would at least look into whether you qualify for unemployment
8 based on those grounds. That can help you out while you're looking for a new job. I really wish you all
9 the best of luck and know that I admire what you did. Hope we can still keep in touch. Sincerely, Tania".

10 104. At 9:34 am, Ms. Mehrabian emailed the group of LFEER's attorneys engaged in protected
11 concerted activity, informing the group she "...added a couple more people on here that have reached
12 out and wanted to be included. As always, all ideas, questions, concerns, thoughts, etc are all welcome.
13 Emilia".

14 105. On June 24, 2021, at 9:49 am, Mr. Theweny emailed the group of LFEER's attorneys
15 engaged in protected concerted activity, asking "Hey everyone, Have we gotten an answer to this yet? I
16 have [been] speaking with plaintiff's counsel regarding a potential class. Please let me know how many
17 "team members" we have. Thanks!".

18 106. At 10:57 am, Ms. Gardner responded with her estimate, writing "I couldn't find an exact
19 answer, but I believe it is somewhere around 20. Anyone else know exactly?".

20 107. At 11:04 am, Ms. Fonseca provided the group with her estimated, stating, "I think it's
21 anywhere from 25 to 30 team members. The rest of us fall into the lead or SDNR title."

22 108. At 11:47 am, Edith Alvarez emailed the group of LFEER's attorneys engaged in protected
23 concerted activity her guess "...Attorneys group mail has 53 contacts of which 27 or so are either intake,
24 leads or demand letter drafting team...I'm just not familiar with all the names, so that's my guess."

25 109. At 11:50 am, Cory Pingle wrote, "DLD may be part of it...".

26 110. At 10:36 pm, Alexander Jarvis inquired as follows: "Do you guys know if there is any kind
27 of legal impact of us depositing the \$200 checks they sent us? I know some of you are holding on to
28 them but I just want to deposit it and get rid of it. But I also don't want to cut off any other legal
remedies. (For those who didn't receive it, it was just a check, no release of claims or anything) Any
advice is appreciated. Thanks! Alex".

111. On June 25, 2021, at 10:36 am, Ms. Fonseca emailed the group of LFEER's attorneys

1 engaged in protected concerted activity and responded to Mr. Jarvis's inquiry as follows: "...Labor
2 Code section 206.5 prohibits an employer from requiring a release in exchange for wages due and any
3 agreement would be null and void. If you are owed wages then the firm can't make you sign a release
4 for what they already owe you and by extension then cashing a check would not be releasing them from
5 liability on the remaining money they'd owe you. Cashing the check would be viewed as merely
6 acknowledging they paid you a part of what they owe you (although they'd argue that's all they owe
7 you). I think this is supported by Civil Code 1526 which states that a check marked "payment in full"
8 would not constitute an accord and satisfaction if the creditor protests against accepting the tender in full
9 payment or striking out or deleting the notation. If the checks don't have the language payment in full,
10 and erring on the safe side by notifying the firm that you're cashing the check but you don't consider it
11 payment in full and you're not releasing any rights, with the Labor Code and public policy in your
12 corner, I think it would be safe to cash...Not sure on the specifics on the check but if they don't have the
13 language paid in full or some variation of that, then I think it would be safe to deposit without waiving
any rights. Anyone else wanna chime in? -Tania".

14 112. At 10:52 am, Mr. Pingle chimed in, writing "Hello Tania, I think you are safe in cashing
15 and not giving up your rights or waiving anything. There is no release signed by cashing it and the letter
16 to you about the check does not mention that cashing it is releasing the firm."

17 113. At 11:44 am, Ms. Mehrabian emailed the group of LFECR's attorneys engaged in protected
18 concerted activity, informing the group of the following: "...I just received my bonus calculations and
19 management has decided [to] deduct a salary that is equivalent to double the current minimum wage.
20 Most of us have not even cashed those checks and don't plan to. Please respond back and let them know
21 this is unacceptable as none of us received a salary that was at least double the min wage and it's unfair
that they are deducting that from our bonuses. Emilia".

22 114. On June 26, 2021, at 6:29 pm, Ms. Fonseca emailed the group of LFECR's attorneys
23 engaged in protected concerted activity, writing "Hi all, Recently had a case come up with this issue and
24 it's pretty relevant to us here as well so I wanted to share it with you. With minimum wage being higher
25 in certain counties and cities, does the employers base location matter for purposes of determining
26 minimum wage or is it the employee's location? For example, San Francisco's minimum wage effective
27 July 2020 was \$16.07. If the employer is located in Burbank where minimum wage is \$14, does the
28 minimum salary have to be twice \$14 or \$16.07? For reference, the San Francisco ordinance states "...
all employers must pay all employees who work in San Francisco (including temporary and part time

employees) at least \$16.07 per hour. Based on my reading, if the employee is located in San Francisco they're entitled to the this rate of pay. Just doing some Google searches on this issue and I'm finding a lot of stuff saying the location where the worker is physically located controls which laws apply. Thinking more broadly about this would an out of state location also be determinative? Sorry to bother y'all on your weekends with this question but I'm going down a rabbit hole trying to find out an answer and it would obviously have implications for some of my colleagues here who were being paid below twice the minimum wage and recently offered some back pay based on the \$28 (\$14 x2) hourly rate. Enjoy your weekend y'all.

-Tania"

115. On June 27, 2021, at 1:28 am, Ms. Mehrabian emailed the group of LFEER's attorneys engaged in protected concerted activity, opining as follows in regards to Ms. Fonseca's question: "Hi Tania, I think you're right, it does matter and it should be where the employee is located. I believe because the taxes you pay are where you live. I am in the LA area so I can't check since it will be the same as employer's location, but anyone else who is in a different city or state should definitely check. Emilia".

116. On June 28, 2021, at 8:11 am, Gabriela Carrillo added her thoughts, "Hi Tania, I was thinking the same thing re minimum wages. However, I'm located in Texas and I'm still paying California Taxes. I sent an email to admin in June 2020 regarding taxes, but never received a response. Is anyone else still paying CA taxes even though they are located in a different state? Thank you, Gabby Carrillo".

117. At 9:47 am, Mr. Theweny wrote the group of LFEER's attorneys engaged in protected concerted activity, informing them of the following: "...I have been speaking with a plaintiff's employment attorney regarding our cases and potentially what our options are...".

118. On June 29, 2021, at 5:40 pm, Ms. Gardner wrote, "In response to Allen's email, I'm on board w individual arbitration." and also asked the group "...does anyone know if the firm has ever been sued for malpractice by any clients?"

119. On June 30, 2021 at 5:50 pm, BYRNES sent Ms. Chadwick an email with the subject "Firm Staffing Memo and Individual Correspondence", on which SANDERS, SORENSON, and ROSS were copied. In the body of this email, BYRNES wrote, "Dear Mollie: Since sending out the firm staffing memo on June 3, 2021, some of you have asked questions regarding various details. In an attempt to address these questions, I have attached a revised memo. If you have any questions, please contact

1 Sabrina [SANDERS] and we can schedule a time to talk. Best, Robert”. Two PDF documents were
2 attached to this email, one titled “2pp TM letter 063021” and the other titled “FIRM STAFFING
3 MEMO”.

4 120. In the two-page document titled “2pp TM letter 063021”, BYRNES wrote the following:

5 “June 30, 2021

6 Dear Mollie:

7 I am pleased to advise you of the new bonus program that applies to you as a Team Member of a
8 two-member team in the General Litigation Department (also known as the Pre-litigation
9 Department), effective June 1, 2021. You are assigned to Yvette Nelson’s team.

10 Your *base compensation* will be \$4,853.33 per month. Subject to modification at the firm’s
11 discretion, your new total compensation will be based upon 6.25%% [sic] of quarterly fee credits
12 earned by your team, and your bonuses will be equal to that amount less base salary already
13 received for that quarter. Under the General Litigation Department’s Quarterly Bonus Plan,
14 bonuses are calculated using “fee credits.”

15 Fee credits will consist of (a) total tentative settlements (i.e., receive either all parties’ signatures
16 to the settlement agreement during the relevant quarter without fees paid, or fees paid during the
17 relevant quarter without receiving all parties’ signatures) and, (b) total actual cash fee
18 collections. Matters accepted by the Court & Arbitration Litigation Department (also known as
19 the Litigation Department) will have a proportional split of the fee credits awarded for that case
20 based on time spent.

21 Bonuses are vested and paid on the second regular payday of the second quarter following the
22 quarter in consideration. Only attorneys actively employed with the firm on such date are
23 eligible. There is no prior vesting, guarantee or entitlement. For example, Quarter 1 closes on
24 February 28; thus the bonus is vested and paid on the second regular payday of Quarter 3, June
25 22, and only to those attorneys actively employed with the firm on June 22.

26 The firm’s bonus quarters are:

- 27 • Quarter 1 – December-January-February.
- 28 • Quarter 2 – March-April-May.
- Quarter 3 – June-July-August.
- Quarter 4 – September-October-November.

1 In order to receive a Quarterly Bonus, you will need to exceed a 28 day fee credit threshold of
2 \$77,653 (your "Threshold")(\$77,653 x 3 months = \$232,960 Quarterly Fee Credits x 6.25% =
3 \$14,560; \$14,560 – \$14,560 Quarterly Base Compensation = \$0.) That being said, your fee credit
4 target every 28 days is approximately \$144,716, which we believe is reasonable and achievable
5 by you.

6 If your team achieves, for example, its fee credit target of \$434,148 per quarter, then your total
7 compensation would be approximately \$108,537 per year (\$144,716 Monthly Fee Credits x 3
8 months in a quarter = \$434,148 in Quarterly Fee Credits; \$434,148 Quarterly Fee Credits x
9 6.25%= \$27,134; \$27,134 - \$14,560 (Base Comp) = \$12,574 Quarterly Bonus; \$12,574 x 4
10 quarters =\$50,297 total Quarterly Bonuses; \$58,240 Annual Base Salary + \$50,297 Quarterly
Bonuses =\$108,537 Total Compensation).

11 Your team's target docket size will be approximately 200 matters. Please continue to work with
12 the Team Leader managing the cases you are assigned to. You are also encouraged to engage
13 with leadership and your colleagues on particularly complex or interesting questions.

14 We appreciate your continued efforts on behalf of our clients. Please remember that the
15 information provided here in this letter and the bonus plan is subject to modification at any time
16 and at the firm's sole discretion, the above only reflects the current situation and there is no
17 guarantee that any of the above (i.e., who you work with, the size of the team you're on, your
bonus percentage, the target docket size, etc.) will not be amended at a later date.

18 If you have any questions, concerns or want to discuss any of the foregoing, please contact
19 Sabrina [SANDERS] and we will get the call scheduled.

20 Sincerely,

21 Robert E. Byrnes"

22 121. In the other PDF document titled "FIRM STAFFING MEMO", LFECR attempted to
23 unilaterally modify, without the consent of its affected employees, LFECR's bonus schedule, and
24 unilaterally made such "changes to the firm's structure...take effect retroactive to June 1, 2021¹", even
25 though affected employees had already worked an entire month prior to this June 30, 2021 Staffing
26 Memo. Footnote 1 states, "This supersedes all prior bonus or other compensation plans. The firm may
27 further modify such plans at any time and for any reason." The June 30, 2021 Staffing Memo was signed
"Sincerely,

28 Robert Byrnes, Shareholder
Sabrina Sanders, Managing Attorney

1 Daniel Sorenson, Managing Attorney
2 Megan Ross, Managing Attorney”

3 122. However, LFECR bonus/compensation plan failed to grant a discretionary right to
4 LFECR to make retroactive changes to it. Generally, commission plans, compensation plans and all
5 other contracts cannot be “retroactively” changed.

6 123. Conclusory, “we [LFECR’s managing attorneys] believe these changes will significantly
7 improve the quality of service the firm provides its clients and your professional development...”,
8 though this document neither explains how the attempted unilateral “changes will significantly improve
9 the quality of service the firm provides its clients”, nor how the quality of the professional development
10 of LFECR’s Associate Attorneys/Team Members and Senior Attorneys/Team Leaders would
“significantly improve”.

11 124. On or about August 19, 2021, FANA engaged TESDAHL in communication through
12 Microsoft Teams messaging TESDAHL at 8:55 am, “hey, for [case] 122717, what is the reason why
13 client would not accept less than the amount given since its a r[e]duced fee case?” and sending a follow
14 up message of “?” to TESDAHL at 9:37 am. At 9:49 am, TESDAHL responded to FANA, writing “I am
15 actually deeply offended by your line of questioning in this case. A \$2,500 settlement for my 82 year old
16 client that worked for ER for 30 years, providing \$6500 in firm fees is more than fair [to the firm]”. Also
17 at 9:49 am, FANA rapidly typed and sent the following reply to TESDAHL: “its [sic] not personal to
18 you or the client, i have no knowledge of the lcinet [sic for client], but i get asked by management about
19 reduced fee cases. i need to keep notes for it. i need an explanation, not asking for you to justify it to me
in any other way. i am not saying its right or wrong, i need to keep notes of responses.

20 125. At 9:55 am, TESDAHL Microsoft Teams messaged FANA, “I don’t know of any other
21 reputable contingency firm that bills by the hour. This firm requires that I document all of my time, even
22 after the case is settled. I have friends who work at contingency firms, and after the case is settled, it is
23 their assistant that does all of the follow-up on the checks, not the attorney, as it is not considered legal
24 fees and as such is not calculated as “attorney fees”, i.e. billed at \$390/hr for that work.” At 9:57 am,
25 FANA responded to this, writing “i see your point, i don’t run the firm, you can talk to jen [TELL] about
26 your concerns or sabrina [SANDERS]. i cannot do anything about that. every firm is different, and our
27 retainer is pretty detailed, so you could review that to see. client’s agree to it, so i cannot speak for any
28 of it really, its not my choice or my battle in terms of how its run logistically. we also don’t put liens on

1 cases, other “reputable” firms may, its not one way to do it from what i have seen.” TESDAHL then
2 replied, “I can answer to management about it if needed. Thanks.”

3 126. At 10:00 am, FANA continued to engage TESDAHL, sternly writing “im the team leader
4 heather. if this is not going to be a respectful way of handling these matters, then we can talk about it.
5 otherwise, i don’t know why you get offended when i ask you why something is, but you can ask me
6 why and refuse to answer. how is this not offensive? if its me, let me know. if we cannot correct it, you
7 can transfer to another team maybe. if its the firm, then im the wrong person to take it up with and push
8 against, and to dispute with. Just making it clear.” At 10:08 am, TESDAHL responded, “I answered
9 your question the best I can...My decision at the time was consistent with our team's goals and past
10 settlement patterns. You had no issue with this particular settlement 2 weeks ago. I present you with all
of my settlements in real time.”

11 127. TESDAHL clearly expressed to FANA her discontent at LFECR’s firm-wide practices of
12 giving clients less than 50% of their settlement amounts after FANA approached TESDAHL about the
13 settlement for J.L. v. US Displays (J.L. was TESDAHL’s client). Prior to this date, TESDAHL had
14 already received multiple messages/communications from FANA pressuring TESDAHL to give her
15 clients less than 35% of the settlement funds. To “justify” LFECR taking 80% of settlement funds and
16 giving its clients the remaining amount, LFECR through FANA unlawfully used attorney fee rates after
17 the settlement process ended, which thereafter is/was purely administrative, which LFECR should have
18 charged its clients only at legal secretary rates. Thus LFECR violated California’s State Bar Rules of
19 Professional Conduct, Rule 1.5(a) which prohibits lawyers from making an agreement for, charging, or
collecting an unconscionable or illegal fee.

20 128. Under California’s State Bar Rules of Professional Conduct, Rule 1.5(b),
21 “Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing
22 at the time the agreement is entered into except where the parties contemplate that the fee will be
23 affected by later events. The factors to be considered in determining the unconscionability of a fee
include without limitation the following:

- 24 (1) whether the lawyer engaged in fraud or overreaching in negotiating or setting the fee;
25 (2) whether the lawyer has failed to disclose material facts;
26 (3) the amount of the fee in proportion to the value of the services performed;
27 (4) the relative sophistication of the lawyer and the client;
28 (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the

- 1 legal service properly;
- 2 (6) the likelihood, if apparent to the client, that the acceptance of the particular employment
- 3 will preclude other employment by the lawyer;
- 4 (7) the amount involved and the results obtained;
- 5 (8) the time limitations imposed by the client or by the circumstances;
- 6 (9) the nature and length of the professional relationship with the client;
- 7 (10) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- 8 (11) whether the fee is fixed or contingent;
- 9 (12) the time and labor required; and
- 10 (13) whether the client gave informed consent to the fee.

11 129. Tension had developed between TESDAHL and LFECR through LANA over LFECR's

12 unlawful client billing practices. Often, TESDAHL felt like a pawn for LFECR who was unable to

13 exercise independent judgment despite her law license. FANA threatened to transfer TESDAHL to

14 another LFECR team. FANA also opined to TESDAHL that TESDAHL should quit and work for

15 another law firm that TESDAHL does not have issues with regarding client billing practices.

16 130. LFECR's had a policy, procedure, and/or practice of managing attorneys constantly

17 micromanaging Senior Attorneys/Team Leads, so the Senior Attorney/Teams Leads in turn would

18 constantly micromanage the Associate Attorneys/Team Members during every step of the life cycle of

19 an LFECR's case. Especially if there was money on the table, but full settlement value was not yet ripe,

20 and substantive facts and claims were still being argued, LFECR would be hound the punitive class

21 members to settle in order to meet LFECR's weekly settlement quota. LFECR is all about quotas. There

22 were quotas on how many assessment calls (a.k.a. COCA calls) punitive class members had to complete

23 in a day and week, how many demand letters had to be sent out each week, and how much in fees for

24 LFECR punitive class members would have to produce for the firm on a weekly basis.

25 131. During September 2021, during phone calls and text messages, TESDAHL complained to

26 FANA about the deficiencies with Actionstep TESDAHL was experiencing. TESDAHL was unable to

27 efficiently work at 100% capacity. TESDAHL placed a special call to FANA to solely address the

28 negative effects of Actionstep which included a 30% reduction in TESDAHL's performance.

TESDAHL complained that Actionstep would constantly time out or take an exorbitant amount of time to complete a function, and the laptop screen would show a spinning cursor, which is indicative of a user started task that is still being processed and thus is not yet completed. Thus, it was unnecessarily

difficult for TESDAHL to attain the goals/quotas LFECR placed upon TESDAHL during LFECR's regular working hours of 8:30 am to 6:30 pm, which resulted in TESDAHL having to work additional hours that infringed upon her personal time to meet LFECR's quotas and so TESDAHL could earn bonuses. FANA failed to address TESDAHL's voiced concerns. On information and belief, TESDAHL believes FANA's inactions were retaliatory for the protected concerted activity regarding the misclassification and wages of LFECR's non-management attorney employees and/or for the whistleblowing complaints regarding LFECR's unlawful client billing practices TESDAHL made as detailed within this complaint.

132. After engaging in protected concerted activity and whistleblowing, as explained in this complaint, TESDAHL messaged LFECR's managing partner, SORENSON, in either the third or fourth week of September 2021 during a Weekly Firm Meeting, complaining about Actionstep's reduced speed and difficulties, as well as TESDAHL's inability to open up and review her Tasks within Actionstep, the legal practice management software LFECR uses. Senior Attorney, Kacey Lynn Gardner, spoke up as well as other attorneys engaged in protected concerted activity, and stated that LFECR's weekly/monthly goals need to be adjusted to account for issues with Actionstep's issues. SORENSON dismissively ignored the voiced concerns of TESDAHL, Ms. Gardner, and the other attorneys engaged in protected concerted activity. On information and belief, TESDAHL believes SORENSON's inactions were retaliatory against she, Ms. Gardner, and other attorneys engaged in protected concerted activity.

133. While on a phone call with SANDERS on or about October 8, 2021, TESDAHL complained about issues with Actionstep, including but not limited to how the slow software was seriously affecting her productivity which in turn negatively impacted her bonus compensation and working hours. SANDERS failed to satisfactorily address TESDAHL's voiced concerns. On information and belief, TESDAHL believes SANDERS's inactions were retaliatory against her for TESDAHL's engagement in protected concerted activity regarding the misclassification and wages of LFECR's non-management attorney employees and/or whistle-blower complaints regarding LFECR's unlawful client billing practices.

134. On October 28, 2021, LFECR—through PLS, TELL, BYRNES, and SANDERS—retaliated against Ms. Chadwick by wrongfully terminating her employment, during a conference call with Ms. Chadwick that day on information and belief between 1:00 pm and 1:30 pm, because Ms. Chadwick engaged in protected concerned activity, protesting (a) LFECR's work conditions violative of California's Labor Code; and (b) LFECR's unconscionable billing practices violative of California's

1 Business and Professions Code and State Bar Professional Code Of Conduct, violations LFECR's
2 managing attorneys engaged in, encouraged, sanctioned, and ratified.

3 135. Later that evening, at 6:05 pm on October 28, 2021, Ms. Chadwick received an email from
4 admin@lfecr.com with the subject "term packet". In the body of the email was written the following
5 words: "Hi Mollie, attached is your term packet along with a FedEx return label for returning the firm
6 equipment. Thank you, LFECR Admin". This email included two PDF documents, one titled "LFECR
7 term packet – Mollie Chadwick", and the other titled "Severance and Release_Mollie Chadwick".

8 136. The term packet email also included a three-page PDF document titled "Severance and
9 Release_Mollie Chadwick" in which LFECR offered Ms. Chadwick a gross sum of merely \$2,240.00,
10 an amount that does not even compensate Ms. Chadwick for the wages LFECR's owes her for
11 misclassifying her. Ms. Chadwick rejected LFECR's offered severance and release.

12 137. On October 29, 2021, LFECR—through PLS, TELL, BYRNES, and SANDERS—retaliated
13 against TESDAHL by wrongfully terminating her employment during a conference call that day. TELL
14 claimed to TESDAHL that LFECR was terminating TESDAHL's employment for economic reasons.
15 Keeping in mind that LFECR's PPP Loan of \$937,395 with interest for a total of \$950,537 was forgiven
16 as of September 29, 2021, TESDAHL asserts LFECR alleged reason for terminating her is pretext for
17 retaliation for TESDAHL's engagement in protected concerned activity, protesting (a) LFECR's work
18 conditions violative of California's Labor Code; and (b) LFECR's unconscionable billing practices
19 violative of California's Business and Professions Code and State Bar Professional Code Of Conduct,
20 violations LFECR's managing attorneys engaged in, encouraged, sanctioned, and ratified.

21 138. Also on October 29, 2021, TESDAHL received an email from admin@lfecr.com with the
22 subject "term packet". The term packet email included an attached three-page Severance and Release
23 PDF document in which LFECR offered TESDAHL a gross sum of merely \$2,240.00, an amount that
24 does not even compensate TESDAHL for the wages LFECR's owes her for misclassifying her.
25 TESDAHL rejected LFECR's offered severance and release.

26 139. At 4:51 pm on November 1, 2021, TESDAHL emailed LFECR, through admin@lfecr.com
27 and SANDERS, a counteroffer that LFECR rejected or failed to accept within a reasonable time.

28 140. On November 21, 2021 at 1:47 pm, TESDAHL sent an email to SANDERS, BYRNES and
TELL (jtell@preferredlegalsupport.com), stating the following: "Hello Sabrina, Robert, and Jennifer: I
am writing in response to your October 29 call in which it was communicated that my position along
with 8-10 other attorney positions at LFECR, were being terminated immediately due to retaining less

1 clients, along with some general financial difficulties associated with the economic impact of COVID.
2 On the call, Sabrina said that she was more than happy to write me a Letter of Recommendation to have
3 on hand moving forward. I appreciate this and may very well request this in the near future. I would also
4 appreciate it if you could please explain to me how the firm has been impacted by retaining less clients
5 so that I have a better understanding. Thank you in advance, Heather Tesdahl”. LFECR, SANDERS,
6 BYRNES, TELL, and PLS never responded to TESDAHL’s email.

7 141. Unsurprisingly, DEFENDANTS either constructively discharged or wrongfully terminated
8 the most vocal in-state whistleblowers engaged in protected concerted activity, i.e. those who worked
9 for LFECR from/in California, not from/in another state because California’s Labor Code does not apply
10 to out-of-state employees unless LFECR’s contractually agreed to bestow out-of-state employees with
11 California rights. These in-state employees whom LFECR constructively discharged or wrongfully
12 terminated include TESDAHL, Tania Fonseca, Emilia Mehrabian, Corey Arthur Pingle, Brigitte Melissa
13 Wilcox, Stephanie Erin Gardner, Allen Theweny, Mollie Elizabeth Chadwick, and Hallie Ryan Goins
14 Spaulding.

15 **X. CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

17 **Lab. Code § 98.6(a) Violation**

18 **Reinstatement And Reimbursement Pursuant To Lab. Code § 98.6(b)(1)**

19 **Civil Penalties Under PAGA Pursuant To Lab. Code § 98.6(b)(3)**

20 **(By TESDAHL, the Retaliation & Punitive Damages Class, and Aggrieved Employees)**

21 142. TESDAHL incorporates paragraphs 1 through 141 of this complaint as if fully alleged
22 herein and pleads this first cause of action on behalf of herself, the Retaliation & Punitive Damages
23 Class, and assuming the LWDA does not intervene within the 65-day tolling period under PAGA after
24 notice, also the Aggrieved Employees against DEFENDANTS.

25 143. Pursuant to Labor Code § 98.6(a), “A person shall not discharge an employee or in any
26 manner discriminate, retaliate, or take any adverse action³ against any employee...because the
27 employee...engaged in any conduct delineated in this chapter, including the conduct described in
28

³ According to California’s Supreme Court, “[t]he proper standard for defining an adverse employment action is the “materiality” test, a standard that requires an employer’s adverse action to materially affect the terms and conditions of employment (see *Akers v. County of San Diego* (2002) 95 Cal.App.4th 1441, 1454-1457, 116 Cal.Rptr.2d 602), rather than the arguably broader “deterrence” test... We further conclude that in determining whether an employee has been subjected to treatment that materially affects the terms and conditions of employment, it is appropriate to consider the totality of the

subdivision (k) of Section 96^[4], and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee...has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, **made a written or oral complaint that he or she is owed unpaid wages**, or because the employee has initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to that section, **or because of the exercise by the employee...on behalf of himself, herself, or others of any rights afforded him or her.**

144. Section **XI. GENERAL, INDIVIDUAL, CLASS, & REPRESENTATIVE ALLEGATIONS** of this complaint, details how TESDAHL, the Retaliation & Punitive Damages Class, and Aggrieved Employees made both written and oral complaints that DEFENDANTS owed them wages and/or exercised—on behalf of himself, herself, or others—any rights afforded him or her, including but not limited to engaging in protected concerted activity.

145. Nevertheless, DEFENDANTS constructively discharged and wrongfully terminated the most vocal in-state whistleblowers engaged in protected concerted activity—i.e. those who worked for LFECR from/in California—including TESDAHL, Tania Fonseca, Emilia Mehrabian, Corey Arthur Pingle, Brigitte Melissa Wilcox, Stephanie Erin Gardner, Allen Theweny, Mollie Elizabeth Chadwick, Hallie Ryan Goins Spaulding, and possibly others TESDAHL is not yet aware of.

146. On information and belief, the Retaliation & Punitive Damages Class and Aggrieved Employees also includes employees who made a written or verbal complaint about their wages who DEFENDANTS discriminated, retaliated, or took any adverse action against, but did not discharge.

147. Thus, DEFENDANTS violated Labor Code section 98.6(a), and are liable to TESDALH, Retaliation & Punitive Damages Class and Aggrieved Employees, all of whom “shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer” per Labor Code § 98.6(b)(1) and Labor Code § 98.6(b)(3).

148. According to Labor Code § 98.6(b)(1), “Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment **because the**

circumstances and to apply the “continuing violation” doctrine...adopted in *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 111 (*Richards*).” *Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 32 Cal.Rptr.3d 436 at 440 (*Yanowitz*).

⁴ Labor Code § 98.6(g) states, “Subdivisions (e) and (f) shall not apply to claims arising under subdivision (k) of Section 96 unless the lawful conduct occurring during nonwork hours away from the employer’s premises involves the exercise of employee rights otherwise covered under subdivision (a).”

1 **employee engaged in any conduct delineated in this chapter**, including the conduct described in
2 subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or
3 because the employee has made a bona fide complaint or claim to the division pursuant to this part, or
4 because the employee has initiated any action or notice pursuant to Section 2699 **shall be entitled to**
5 **reinstatement and reimbursement for lost wages and work benefits caused by those acts of the**
6 **employer.”**

7 149. Under § 98.6(b)(3), “In addition to other remedies available, an employer who violates
8 this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for
9 each violation of this section, to be awarded to the employee or employees who suffered the violation.”

10 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**

11 **Lab. Code § 201 Violation & Civil Penalties Under PAGA**

12 **(By TESDAHL, Former Employees Class and Aggrieved Employees)**

13 150. TESDAHL incorporates paragraphs 1 through 149 of this complaint as if fully alleged
14 herein and pleads this second cause of action on behalf of the Former Employees and Aggrieved
15 Employees against only LFEER.

16 151. Labor Code § 201(a) reads in relevant part “If an employer discharges an employee, the
17 wages earned and unpaid at the time of discharge are due and payable immediately.”

18 152. According to Labor Code §200(a) “Wages includes all amounts for labor performed by
19 employees of every description, whether the amount is fixed or ascertained by the standard of time, task,
20 piece, commission basis, or other method of calculation. Under§ 200(b) “Labor” includes labor, work,
21 or service whether rendered or performed under contract, subcontract, partnership, station plan, or other
22 agreement if the labor to be paid for is performed personally by the person demanding payment.

23 153. As noted above, LFEER constructively discharged or wrongfully terminated TESDAHL,
24 Tania Fonseca, Emilia Mehrabian, Corey Arthur Pingle, Brigitte Melissa Wilcox, Stephanie Erin
25 Gardner, Allen Theweny, Mollie Elizabeth Chadwick, and Hallie Ryan Goins Spaulding. Specifically,
26 on June 22, 2021, LFEER constructively discharged Ms. Wilcox who sent LFEER’s managing attorneys
27 that she was quitting effective immediately due to her unresolved wage and hour claims. Also on June
28 22, 2021, LFEER constructively discharged Mr. Theweny for the same reason(s). Ms. Mehrabian sent
LFEER a demand letter, giving LFEER’s management until next week to her me, and if not, she will
also be resigning. According to her LinkedIn profile, Ms. Mehrabian lists August 2021 as the month and
year she no longer worked for LFEER. On information and belief, TESDAHL believes LFEER

1 constructively discharged Ms. Mehrabian too. On October 28, 2021, LFECR wrongfully terminated Ms.
2 Chadwick. On October 29, 2021, LFECR wrongfully terminated TESDAHL.

3 154. According to Former Employees Class members' and Aggrieved Employees' respective
4 LFECR's Offers Of Employment letters, "LFECR has no particular billable hours or hours worked
5 requirement. However, attorneys generally start their days before 8:30[AM] and do not finish before
6 6:30PM. As professionals, attorneys are expected...to insure their work is completed with the best
7 possible representation for their clients. Attorneys should also be prepared to work on nights or
8 weekends as required by the circumstances."

9 155. Former Employees Class members and Aggrieved Employees not only worked a
10 minimum of 10 hours from 8:30 AM to 6:30 PM, but often worked beyond 6:30 PM Monday through
11 Friday, as well as weekends. However, LFECR misclassified Former Employees Class members and
12 Aggrieved Employees and paid them only 40 hours per week instead of for all hours they worked.

13 156. Thus, when LFECR constructively discharged or otherwise wrongfully terminated the
14 relevant Former Employees Class members and Aggrieved Employees, LFECR failed to pay all the
15 respective wages they earned but remained unpaid at the time of discharge which became due and
16 payable immediately, including but not necessarily limited to minimum, regular, overtime, double time
17 wages, reporting time pay and/or PTO/vacation pay that should have accrued, due to LFECR
18 misclassifying these relevant Former Employees Class members and Aggrieved Employees as salary-
19 exempt employees. "The relevant statutes and wage order, do not allow employers to require employees
20 to routinely work for minutes off the clock without compensation." *Troester v. Starbucks Corp.* (2018) 5
21 Cal.5th 829, 848.

22 157. It is possible LFECR also failed to pay reporting time pay to relevant members of the
23 Former Employees Class and Aggrieved Employees who were constructively discharged or wrongfully
24 terminated. Reporting time pay constitutes wages. See *Murphy v. Kenneth Cole Productions, Inc.* (2007)
25 40 Cal. 4th 1094. Thus, failure to pay all reporting time pay due at the time of employment termination
26 is a basis for waiting time penalties pursuant to Labor Code § 203, and also a basis for PAGA civil
27 penalties for LFECR's Labor Code § 201 violations.

28 158. Also, LFECR failed to immediately pay relevant discharged Former Employees Class
members and Aggrieved Employees all earned and unpaid premium pay owed by LFECR to these
employees pursuant to Labor Code § 226.7 because they did not have a legitimate opportunity to take
meal and/or rest breaks, took such untimely, and/or such meal and/or rest breaks were interrupted due to

1 LFECR's quota-heavy case workload. For example, Ms. Chadwick's two-person team's target docket
2 size was approximately 200 matters according to LFECR's June 30, 2021 letter that applied to all two
3 member teams, i.e. LFECR's policy, practice, and/or procedure for its two member teams that BYRNES
4 implemented, while the other managing attorneys carried out such. "...[T]he remedy provided in Labor
5 Code section 226.7 constitutes a wage or premium pay..." (*Murphy v. Kenneth Cole Productions, Inc.*
6 (2007) 40 Cal. 4th 1094), and is another basis for LFECR's violation of Labor Code section 201.

7 159. Thus, LFECR failed to immediately pay, upon separation of employment, all wages
8 earned by members of the Former Employees Class and Aggrieved Employees LFECR discharged.
9 Consequently, LFECR violated Labor Code § 201, is liable to the Former Employees Class for waiting
10 time penalties under Labor Code section 203 (*infra*), and is also liable to Aggrieved Employees for
11 PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2).

12 160. Labor Code § 2699.3(f) states, "For all provisions of this code except those for which a
13 civil penalty is specifically provided, there is established a civil penalty for a violation of these
14 provisions, as follows: (2) If, at the time of the alleged violation, the person employs one or more
15 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
16 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
17 each subsequent violation.

18 **THIRD CAUSE OF ACTION AGAINST ONLY LFECR**

19 **Lab. Code § 202 Violation & Civil Penalties Under PAGA**

20 **(By TESDAHL, Former Employees Class, and Aggrieved Employees)**

21 161. TESDAHL incorporates paragraphs 1 through 160 of this complaint as if fully alleged
22 herein, and pleads this second cause of action on behalf of herself, the Former Employees Class, and
23 Aggrieved Employees against only LFECR.

24 162. Under Labor Code § 202(a) "If an employee not having a written contract for a definite
25 period quits his or her employment, his or her wages shall become due and payable not later than 72
26 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit,
27 in which case the employee is entitled to his or her wages at the time of quitting..."

28 163. Though TESDAHL did not quit LFECR's employment, TESDAHL knows for herself
and, on information and belief, believes LFECR also did not timely pay to other Former Employees
Class members and Aggrieved Employees who quit all of their earned and unpaid wages in compliance

1 with Labor Code § 202(a). This includes but is not necessarily limited to minimum, regular, overtime,
2 double time wages, and/or vacation pay that should have accrued.

3 164. According to Former Employees Class members' and Aggrieved Employees'
4 respective LFECR's Offers Of Employment letters, "LFECR has no particular billable hours or hours
5 worked requirement. However, attorneys generally start their days before 8:30[AM] and do not finish
6 before 6:30PM. As professionals, attorneys are expected...to insure their work is completed with the
7 best possible representation for their clients. Attorneys should also be prepared to work on nights or
weekends as required by the circumstances."

8 165. Former Employees Class members and Aggrieved Employees not only worked a
9 minimum of 10 hours from 8:30 AM to 6:30 PM, but often worked beyond 6:30 PM Monday through
10 Friday, as well as weekends. However, LFECR misclassified Former Employees Class members and
11 Aggrieved Employees and paid them only 40 hours per week instead of for all hours they worked.

12 166. Thus, LFECR failed to pay all the respective wages the Former Employees Class
13 members and Aggrieved Employees earned but remained unpaid at the time the affected Former
14 Employees Class members and Aggrieved Employees resigned. These wages became due and payable
15 no less than 72 hours after the quit. Such wages include but are not necessarily limited to minimum,
16 regular, overtime, double time wages, reporting time pay and/or PTO/vacation pay that should have
17 accrued, due to LFECR misclassifying these relevant Former Employees Class members and Aggrieved
18 Employees as salary-exempt employees. "The relevant statutes and wage order, do not allow employers
19 to require employees to routinely work for minutes off the clock without compensation." *Troester v.*
Starbucks Corp. (2018) 5 Cal.5th 829, 848.

20 167. It is possible LFECR also failed to pay reporting time pay to relevant members of
21 the Former Employees Class and Aggrieved Employees who were constructively discharged or
22 wrongfully terminated. Reporting time pay constitutes wages. See *Murphy v. Kenneth Cole Productions,*
23 *Inc.* (2007) 40 Cal. 4th 1094. Thus, failure to pay all reporting time pay due at the time of employment
24 termination is a basis for waiting time penalties pursuant to Labor Code § 203, and also a basis for
PAGA civil penalties for LFECR's Labor Code § 202 violations.

25 168. Also, LFECR failed to timely pay Former Employees Class members and
26 Aggrieved Employees who quit all earned and unpaid premium pay owed by LFECR to these employees
27 pursuant to Labor Code § 226.7 because they did not have a legitimate opportunity to take meal and/or
28 rest breaks, took such untimely, and/or such meal and/or rest breaks were interrupted due to LFECR's

1 quota-heavy case workload, which consisted at approximately 200 matters for a two-person team.
2 “[T]he remedy provided in Labor Code section 226.7 constitutes a wage or premium pay...” (*Murphy*
3 *v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094), and is another basis for LFECR’s violation
4 of Labor Code section 202.

5 169. Thus, LFECR failed to immediately pay, upon separation of employment, all
6 wages earned by members of the Former Employees Class and Aggrieved Employees who resigned
7 from employment with LFECR. Consequently, LFECR violated Labor Code § 202, is liable to the
8 Former Employees Class for waiting time penalties under Labor Code section 203 (*infra*), and is also
9 liable to Aggrieved Employees for PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 in
accordance with § 2699.3(f)(2).

10 170. Labor Code § 2699.3(f) states, “For all provisions of this code except those for
11 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
12 provisions, as follows: (2) If, at the time of the alleged violation, the person employs one or more
13 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
14 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
each subsequent violation.

15 **FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

16 **Lab. Code § 203 Statutory Penalties & Civil Penalties Under PAGA**

17 **(By TESDAHL, the Former Employees Class, and Aggrieved PAGA Employees)**

18 171. TESDAHL incorporates paragraphs 1 through 170 of this complaint as if fully alleged
19 alleged herein and pleads this fourth cause of action on behalf of herself, the Former Employees Class,
20 and Aggrieved Employees against DEFENDANTS pursuant to Labor Code § 558.1(a) which holds
21 liable any employer or other person—who is an owner, director, officer, or managing agent of the
22 employer—acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 203.

23 172. California’s public policy favors the full and prompt payment of wages due an
24 employee. To ensure that employers comply with the laws governing the payment of wages when an
25 employment relationship ends, California’s Legislature enacted Labor Code § 203 to provide for the
26 assessment of a statutory penalty against the employer when there is a willful failure to pay wages due
the employee at conclusion of the employment relationship.

27 173. Labor Code § 203(a) states in pertinent part, “If an employer willfully fails to pay,
28

1 without abatement or reduction, in accordance with sections 201, 201.3, 201.5, 201.9, 202, and 205.5,
2 any wages of an employee who is discharged or who quits, the wages of the employee shall continue as
3 a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced;
4 but the wages shall not continue for more than 30 days.”

5 174. According to Labor Code § 203(b), “Suit may be filed for these penalties at any
6 time before the expiration of the statute of limitations on an action for the wages from which the
7 penalties arise, which is three (3) years. All compensation is considered in determining if all wages due
8 were paid as prescribed by law, including the following wages/pay LFECR failed to tender to
9 TESDAHL, the Former Employees Class members and Aggrieved Employees—(1) minimum, regular,
10 overtime, and/or possibly double time wages; (2) all accrued, but unused, vacation or vacation that
11 should have accrued and which LFECR should have paid out upon Former Employees Class members’
12 and Aggrieved Employees’ separation of employment from LFECR; (3) reporting time pay in violation
13 of the Industrial Wage Order applicable to LFECR, and (4) failing to pay premium pay per Labor Code
14 § 226.7—due to LFECR’s misclassification of the Former Employees Class members and Aggrieved
15 Employees as salaried-exempt and paying them for only 40 hours of work per week even though they
16 worked 8:30 am to 6:30 pm Monday through Friday, and often on nights and weekends too.

17 175. TESDAHL knows for herself, and believes in good faith for other Former
18 Employees Class Members and Aggrieved Employees, that DEFENDANTS willfully failed to timely
19 pay them all of their earned wages upon separation of employment.

20 176. “The settled meaning of “willful,” as used in section 203, is that an employer has
21 intentionally failed or refused to perform an act which was required to be done. (*Barnhill v. Robert*
22 *Saunders & Co.* (1981) 125 Cal.App.3d 1, 7-8; *Davis v. Morris* (1940) 37 Cal.App.2d 269, 274). “[T]o
23 be at fault within the meaning of [section 203], the employer’s refusal to pay need not be based on a
24 deliberate evil purpose to defraud workmen of wages which the employer knows to be due. *See Amaral*
25 *v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, 1201; *Barnhill, supra*, 125 Cal.App.3d at p. 7; and *Davis*
26 *v. Morris, supra*, 37 Cal.App.2d at p. 274. As used in section 203, ‘willful’ merely means that the
27 employer intentionally failed or refused to perform an act which was required to be done.” *Gonzalez v.*
28 *Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 54. “In civil cases the word ‘willful’ as ordinarily
used in courts of law, does not necessarily imply anything blamable, or any malice or wrong toward the
other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done,
was done or omitted intentionally. It amounts to nothing more than this: That the person knows what he

1 is doing, intends to do what he is doing, and is a free agent.” *Nishiki v. Danko Meredith, P.C.* (2018) 25
2 Cal.App.5th 883, 891.

3 177. In June 2021, LFECR clearly ignored the pleas of numerous, now Former
4 Employees Class Members and Aggrieved Employees, that they were misclassified under the salary test
5 and duties test of exemption, yet failed to pay Former Employees Class Members and Aggrieved
6 Employees all the wages they were due for having worked over 8 hours in a workday and/or over 40
7 hours in a workweek. Instead, LFECR deliberately did the following to conceal its willful failure to pay
8 its non-managing attorneys all wages, especially upon separation of employment: Sometime between
9 June 18, 2021 and June 21, 2021, LFECR issued a check in the amount of \$266.70 to some of the
10 LFECR’s attorneys engaged in protected concerted activity. For example, on June 18, 2021, BYRNES
11 emailed Ms. Wilcox’s work email of bwilcox@lfecr.com a letter “Subject: Increase in Base Pay” stating
12 in relevant part, “...Your base pay has been raised from \$57,600 to \$58,240. This increase in your
13 guaranteed compensation is retroactive to January 1, 2021. Therefore, enclosed is a check for \$266.70 to
14 reflect this amount and you will receive \$4,853.33 per month going forward...”. TESDAHL, Ms.
15 Gardner, Ms. Mehrabian, Ms. Chadwick, Ms. Wilcox, and Mr. Jarvis also received a practically
16 identical letter and check.

17 178. TESDAHL’s payroll record for her final check, as well as her other inaccurate
18 payroll records reconciled against her inaccurate time records reconciled against her LFECR client
19 billing entries, and her anticipated testimony of having worked over 8 hours in a workday and/or over 40
20 hours in a workweek for which LFECR failed to compensate her, plus having worked through meal and
21 rest breaks, is ample proof DEFENDANTS paid TESDAHL less than the hours she actually worked. On
22 information and belief, TESDAHL believes her experience is similar to that of other Former Employees
23 Class members and Aggrieved Employees.

24 179. Therefore TESDAHL’s wages continue as a penalty from the due date thereof at
25 the same regular rate of pay until paid or until an action therefor is commenced; but the wages do not
26 continue for more than 30 days. LFECR wrongfully terminated TESDAHL on October 29, 2021;
27 combined with the filing date of TESDAHL’s complaint, clearly 30 days have elapsed.

28 180. TESDAHL may file suit “for these [statutory] penalties at any time before the
expiration of the statute of limitations on an action for the wages from which the penalties arise”, i.e.
three (3) years. TESDAHL’s individual, representative, and class lawsuit is well within the 3-years

1 statute of limitations, especially taking into account revised Judicial Council Emergency Rule 9 which is
2 incorporated by reference into this operative complaint and PAGA's statutory tolling.

3 181. In calculating the rate of pay for purposes of computing the penalty, overtime and
4 double time wages are considered if they were regularly scheduled or worked each week—as is/was the
5 case for TESDAHL and other Former Employees Class members and Aggrieved Employees—during
6 her employment with LFECD. The waiting time penalty is measured at the employee's daily rate of pay
7 and is calculated by multiplying the daily wage by the number of days that the employee was not paid,
8 up to a maximum of 30 days. The 30-day period is calendar days and includes weekends and holidays
and any other days that the employee would not normally work.

9 182. Thus, DEFENDANTS owe TESDAHL and other Former Employees Class
10 members and Aggrieved Employee waiting time penalties that TESDAHL will have the ability to
11 accurately calculate only through the discovery phase of litigation.

12 183. Due to the actual time TESDAHL worked compared to her inaccurate payroll
13 records, on information and belief, TESDAHL believes other Former Employees Class members and
14 Aggrieved Employees experienced the same unlawful conduct perpetrated upon them by
DEFENDANTS.

15 184. Also, on information and belief, the estimated Labor Code § 203 penalty for the Former
16 Employees Class is, on average, likely similar to TESDAHL's monetary § 203 statutory penalty.

17 185. Summarily, DEFENDANTS continue to willfully fail to pay TESDAHL, the
18 Former Employees Class and other Aggrieved Employees all of their earned and unpaid wages without
19 abatement or reduction which were due upon separation of employment.

20 186. Thus, DEFENDANTS violated and, on information and belief, continue to violate
21 Labor Code § 203. As a result, DEFENDANTS are not only liable for statutory waiting time penalties to
22 TESDAHL and the Former Employees Class, but also are liable for the attendant PAGA penalties to
23 TESDAHL and Aggrieved Employees under Labor Code § 2699.3(a) and § 2699.5 in accordance with §
24 2699.3(f)(2), which states, "For all provisions of this code except those for which a civil penalty is
25 specifically provided, there is established a civil penalty for a violation of these provisions, as follows:
26 (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty
27 is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

28 ///

FIFTH CAUSE OF ACTION
AGAINST DEFENDANTS SEEKING PAGA PENALTIES AGAINST ONLY LFECD
Civil Penalties Under PAGA For Labor Code § 204, § 204(a) & § 204(b) Violations
(By Aggrieved PAGA Employees Which Includes TESDAHL)

187. TESDAHL incorporates paragraphs 1 through 186 of this complaint as if fully alleged herein, and pleads this fifth cause of action on behalf of herself and other Aggrieved Employees against only LFECD:

188. Labor Code § 204(a) reads in relevant part “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month...”

189. Per Labor Code § 204(b)(1), “Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

190. Under Labor Code § 204(b)(2), “An employer is in compliance with the requirements of subdivision (a) of § 226 relating to total hours worked by the employee, if hours worked in excess of normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours....”

191. Labor Code § 204(d) further explains “The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

192. Despite the mandates of § 204, LFECD did not abide by § 204(a) because LFECD did not pay twice during each calendar month “[a]ll wages, other than those mentioned in § 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...on days designated in advance by the employer as the regular paydays.” Though LFECD paid TESDAHL and other Aggrieved Employees wages twice during each calendar month, LFECD failed to timely pay **all** applicable wages earned by TESDAHL and other Aggrieved Employees.

193. LFECR also did not abide by § 204(b) because LFECR neither paid Aggrieved Employees, including TESDAHL, for the hours they worked in excess of the normal work period no later than the payday for the next regular payroll period, nor itemized as corrections these hours and pay on the paystub for the next regular pay period. So, the payment of these earned wages to Aggrieved Employees certainly was not made within seven calendar days following the close of the payroll period because these earned wages remain unpaid. These unpaid wages include but are not necessarily limited to minimum, regular, overtime, double time and/or premium wages as well as reporting time, requested sick leave, and/or vacation pay due to LFECR's policy, procedure, and/or practice of misclassifying Associate Attorneys/Team Members and Senior Attorneys/Teal Leads as salary-exempt.

194. Labor Code § 204, § 204(a), and § 204(b) are not just about the frequency by which an employer pays its employees, it is also about the accuracy of those wages periodically paid. Therefore, LFECR violated Labor Code § 204, § 204(a), and § 204(b) and is subject to PAGA penalties for LFECR's violation of § 204(a) under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2), i.e. the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. For applicable PAGA penalties for LFECR's violation of §204 and § 204(b), please refer immediately below.

SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

Statutory Penalties Pursuant To Labor Code § 210 Due To § 204, § 204(b) And § 1197.5 Violations (By TESDAHL, and Non-Exempt Employees Wage Class or Aggrieved Employees)

195. TESDAHL incorporates paragraphs 1 through 194 of this complaint as if fully alleged herein and pleads this sixth cause of action on behalf of herself and either the Non-Exempt Employees Wage Class or Aggrieved Employees against DEFENDANTS.

196. Labor Code § 210 states, "(a) 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 §§ 201.3, **204, 204b**, 204.1, 204.2, 204.11, 205, 205.5, and **1197.5**, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (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. (b) The penalty shall either be recovered by the employee as a statutory penalty...or by the Labor Commissioner as a civil penalty...(c) An employee is only entitled to either recover the statutory

1 penalty provided for in this section or to enforce a civil penalty as set forth in subdivision (a) of § 2699,
2 but not both, for the same violation.

3 197. Due to DEFENDANTS' violations of § 204 and § 204(b) (*supra*) and § 1197.5
4 (*infra*), DEFENDANTS are subject to penalties under § 210(a).

5 198. TESDAHL, on behalf of herself and the Non-Exempt Employees Wages Class,
6 seeks statutory penalties pursuant to Labor Code § 98, but only if such results in more penalties actually
7 recovered by and paid to the Class versus Aggrieved Employees.

8 199. According to Labor Code § 211, a demand is a prerequisite to the bringing of any
9 action under Labor Code § 210 or § 211. TESDAHL's original, as well as amended, PAGA Notice also
10 serve as the demand required by Labor Code § 211 in which TESDAHL demanded, on behalf of herself
11 and other Aggrieved Employees, that DEFENDANTS pay the highest calculatable penalties under §
12 210, as well as DEFENDANT pay all wages due to TESDAHL, Aggrieved Employees, and the Class
under § 204 and/or § 1197.5 that DEFENDANTS failed to pay.

13 **SEVENTH CAUSE OF ACTION AGAINST LFECR ONLY**

14 **PAGA Civil Penalties For Labor Code § 206 Violation(s)**

15 **(By Aggrieved PAGA Employees Which Includes TESDAHL)**

16 200. TESDAHL incorporates paragraphs 1 through 199 of this complaint as if fully alleged
17 herein and pleads this seventh cause of action on behalf of herself and Aggrieved Employees against
18 only LFECR per Labor Code § 2699.3, as well as § 2699.5 which specifically enumerates § 206 under
PAGA.

19 **§ 206(a)**

20 201. Labor Code § 206(a) states, "In case of a dispute over wages, the employer shall
21 pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by
22 him[/her/it] to be due, leaving to the employee all remedies he[/she] might otherwise be entitled to as to
23 any balance claimed. A 'good faith dispute' that any wages are due occurs when an employer presents a
24 defense, based in law or fact, which, if successful, would preclude any recovery on the part of the
25 employee... Defenses presented which, under all the circumstances, are unsupported by any evidence,
26 are unreasonable, or are presented in bad faith, will preclude a finding of a 'good faith dispute'". 8
C.C.R. § 13520(a).

27 202. In June 2021, LFECR clearly ignored the pleas of numerous, now Former Employees
28 Class Members and Aggrieved Employees, that they were misclassified under the salary test and duties

1 test of exemption, yet failed to pay Former Employees Class Members and Aggrieved Employees all the
2 wages they were due for having worked over 8 hours in a workday and/or over 40 hours in a workweek.
3 Instead, LFECR deliberately did the following to conceal its willful failure to pay its non-managing
4 attorneys all wages, especially upon separation of employment: Sometime between June 18, 2021 and
5 June 21, 2021, LFECR issued a check in the amount of \$266.70 to some of the LFECR's attorneys
6 engaged in protected concerted activity. For example, on June 18, 2021, BYRNES emailed Ms.
7 Wilcox's work email of bwilcox@lfecr.com a letter "Subject: Increase in Base Pay" stating in relevant
8 part, "...Your base pay has been raised from \$57,600 to \$58,240. This increase in your guaranteed
9 compensation is retroactive to January 1, 2021. Therefore, enclosed is a check for \$266.70 to reflect this
10 amount and you will receive \$4,853.33 per month going forward...". TESDAHL, Ms. Gardner, Ms.
11 Mehrabian, Ms. Chadwick, Ms. Wilcox, and Mr. Jarvis also received a practically identical letter and
check.

12 203. Under the above circumstances, there is no reasonable defense(s) LFECR can present to
13 justify that a good faith dispute exists regarding the wages LFECR owes to TESDAHL and Aggrieved
14 Employees; no evidence supports such defense(s).

15 204. In failing to pay TESDAHL, the class and Aggrieved Employees their respective wages,
16 LFECR violated Labor Code § 206. On information and belief, TESDAHL believes the preponderance
17 of the evidence will not support a good faith defense by LFECR/DEFENDANTS for its/their failures to
18 compensate TESDAHL and other Non-Exempt Misclassified Employees Wages Class members and
19 Aggrieved Employees for the wages owed to them already enumerated within this complaint that
LFECR failed to pay.

20 205. To this date, LFECR/DEFENDANTS either unreasonably or in bad faith, has/have yet to
21 pay TESDAHL and, on information and belief, has also yet to pay Aggrieved Employees all of their
22 undisputed wages, including but not necessarily limited to minimum, regular, overtime, and/or double
23 time wages; premium wages; reporting time pay; requested but denied sick leave pay; and/or unpaid
24 accrued or should have accrued vacation pay due to DEFENDANTS' failure to properly compensate
TESDAHL and other Aggrieved Employees for all the time they actually worked.

25 **§ 206(b) Penalty Notice**

26 206. Under § 206(b) "If, after an investigation and hearing, the Labor Commissioner has
27 determined the validity of any employee's claim for wages, the claim is due and payable within 10 days
28 after receipt of notice by the employer that such wages are due. Any employer having the ability to pay

1 who willfully fails to pay such wages within 10 days shall, **in addition to any other applicable**
2 **penalty**, pay treble the amount of any damages accruing to the employee as a direct and foreseeable
3 consequence of such failure to pay.”

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

10 208. TESDAHL, on behalf of herself and other Aggrieved Employees, through her
11 original PAGA Notice and Amended PAGA Notice step/stepped into the role of the Labor Commission
12 to pursue civil penalties on behalf of the LWDA, Labor Commission, and/or the State of California, and
13 through discovery will investigate the claims alleged in this operative complaint. Upon determining the
14 validity of any employee’s claim for wages, i.e. TESDAHL’S, that of other Non-Exempt Misclassified
15 Employees Wages Class members and/or other Aggrieved Employees, should LFECR fail to pay these
16 employees’ wages within 10 days after judgment, TESDAHL on behalf of Aggrieved Employees shall
17 motion upon the court to order DEFENDANTS, including LFECR, to pay the penalty of treble the
18 amount of any “damages accruing to” Aggrieved Employees including TESDAHL, as a direct and
19 foreseeable consequence of such failure to timely pay such wages.

20 209. On information and belief, LFECR employs at least 40 attorneys, several staff
21 members, and generates revenue of approximately \$5,000,000 annually. Thus, LFECR is able to pay
22 TESDAHL and Aggrieved Employees the wages owed to them.

23 210. Due to LFECR’s violation of Labor Code § 206(a) explained above, LFECR is
24 subject to PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 in accordance with §
25 2699.3(f)(2), i.e. the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
26 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
27 period for each subsequent violation.

28 **EIGHTH CAUSE OF ACTION AGAINST ONLY LFECR**

Labor Code § 208 Violation and § 2699(f)(2) Penalties

(By Aggrieved PAGA Employees Which Includes TESDAHL)

211. TESDAHL incorporates paragraphs 1 through 210 of this complaint as if fully alleged

herein and pleads this eighth cause of action on behalf Aggrieved Employees against only LFECR.

212. Labor Code § 208 mandates “Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. **All payments shall be made in the manner provided by law.**” Given the plain meaning of the mandatory language “[a]ll payments shall be made in the manner provided by law”, California’s Legislature did not intent Labor Code § 208 to narrowly pertain only to the place at which an employer pays final wages. Otherwise, California’s Legislature would have drafted Labor Code § 208 to state “All payments shall be made in the manner provided by this section” or “All payments shall be made at the location provided by this section.” Instead, Labor Code § 208 pertains generally to Chapter 1 of California’s Labor Code titled Payment of Wages, i.e. Labor Code §§ 200-273.

213. Therefore, the “manner” of payment encompasses time, place, and accuracy or inaccuracy such as underpayment of wages TESDAHL, the Non-Exempt Misclassified Employees Wages Class, and Aggrieved Employees suffered due to LFECR’s conduct because the law provides for how payment of wages is done or happens. Although TESDAHL does not know whether LFECR paid other employees at the appropriate place(s) enumerated in Labor Code § 208, due to the other wage payment(s) violations detailed in this complaint, for example §§ 201, 202, 203, 226, etc., LFECR nevertheless failed to make all payments “in the manner provided by law”, including timely, accurate and complete payments.

214. As a result of failing to provide “all payments” to Aggrieved Employees “in the manner provided by law”, LFECR violated Labor Code § 208 and is liable to TESDAHL and other Aggrieved Employees for attendant PAGA penalties under Labor Code § 2699.3(a) and § 2699.5, which lists Labor Code § 208. In accordance with § 2699.3(f)(2), the civil penalty is \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

NINTH CAUSE OF ACTION AGAINST ONLY LFECR

PAGA Civil Penalties For Labor Code § 213 Violation

(By Aggrieved PAGA Employees Which Includes TESDAHL)

215. TESDAHL incorporates paragraphs 1 through 214 of this complaint as if fully alleged herein and pleads this ninth cause of action on behalf of herself and other Aggrieved Employees against

only LFECR pursuant to Labor Code § 2699.3, as well as § 2699.5 which specifically enumerates § 213 under PAGA.

216. Under Labor Code § 213(d), an employer is not prohibited “from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee’s choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit. If an employer discharges an employee or the employee quits, the employer may pay the wages earned and unpaid at the time the employee is discharged or quits by making a deposit authorized pursuant to this subdivision, **provided that the employer complies with the provisions of this article relating to the payment of wages upon termination or quitting of employment.**”, i.e. for purposes of this action, Labor Code §201 and § 202 as follows:

Labor Code §§ 201: “(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately”;

Labor Code §§ 202: (a) If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

217. On information add belief, TESDAHL believes, due to LFECR’s direct deposit Authorization form she and other LFECR employees completed, that LFECR made direct deposits of final wages to Aggrieved Employees who quit or LFECR discharged, however such deposits did not comply with Labor Code §§ 201 and § 202 as explained above under the first and second causes of actions (*supra*) because LFECR failed to pay all of the wages earned and unpaid at the time LFECR discharged Aggrieved Employees or Aggrieved Employees quit.

218. As a result, LFECR violated Labor Code § 213 and is liable to Aggrieved Employees for attendant PAGA civil penalties under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3 subdivision (f)(2), i.e. the civil penalty is \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

TENTH CAUSE OF ACTION AGAINST ONLY DEFENDANTS

Labor Code § 216 Violation Against DEFENDANTS

(By Aggrieved PAGA Employees Which Includes TESDAHL)

1 219. TESDAHL incorporates paragraphs 1 through 218 of this complaint as if fully alleged
2 herein and pleads this tenth cause of action on behalf of herself and other Aggrieved Employees against
3 DEFENDANTS.

4 220. Under Labor Code § 216, “In addition to any other penalty imposed by this article, any
5 person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who:
6 (a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been
7 made. (b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for
8 him/herself, his/her employer or other person, any discount upon such indebtedness, or with intent to
annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

9 221. Though TESDAHL and other Aggrieved Employees cannot prosecute DEFENDANTS
10 for a misdemeanor under Labor Code § 216, Aggrieved Employees have standing to pursue penalties
11 pursuant to Labor Code § 225.5 (*infra*).

12 222. As a result, DEFENDANTS are liable to TESDAHL and other Aggrieved Employees for
13 attendant PAGA penalties pursuant to Lab Code § 2699(f) and § 2699.3(c). Under Lab Code §
14 2699(f)(2), “For all provisions of this code [PAGA] except those for which a civil penalty is specifically
15 provided, there is established a civil penalty for a violation of these provisions, as follows: If, at the time
16 of the alleged violation, the person employs one or more employees, the civil penalty is one hundred
17 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

18 **ELEVENTH CAUSE OF ACTION AGAINST ONLY DEFENDANTS**

19 **Labor Code § 221 Violation Against DEFENDANTS**

20 **(By Aggrieved PAGA Employees Which Includes TESDAHL)**

21 223. TESDAHL incorporates paragraphs 1 through 222 of this complaint as if fully alleged
22 herein and pleads this eleventh cause of action on behalf of herself and other Aggrieved Employees
23 against DEFENDANTS pursuant to Labor Code § 2699.3, as well as § 2699.5 which specifically
enumerates § 221 under PAGA.

24 224. Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive
25 from an employee any part of wages theretofore paid by said employer to said employee.” According to
26 TESDAHL’s Bank Of America September 21, 2021 to October 19, 2021 bank statement, LFECR
27 deposited TESDAHL’s net bonus of \$5,601.95 on September 22, 2021. LFECR again deposited a net
28 amount of \$5,601.95 on October 7, 2021. LFECR then illegally deducted net \$5,601.95 on October 12,

2021 without any communication whatsoever to TESDAHL and without her written consent to this deduction. On information and belief, other Aggrieved Employees experienced this same issue of LFECR unlawfully deducting wages paid by LFECR from an employee's bank account, which could have been sanctioned only by LFECR's managing attorneys.

225. DEFENDANTS's violation of Labor Code § 221 establishes standing for TESDAHL and other Aggrieved Employees to pursue penalties pursuant to Labor Code § 225.5 (*infra*).

226. As a result, DEFENDANTS are liable to TESDAHL and other Aggrieved Employees for attendant PAGA penalties pursuant to Lab Code § 2699(f) and § 2699.3(c).

227. Under Lab Code § 2699(f)(2), "For all provisions of this code [PAGA] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

TWELFTH CAUSE OF ACTION AGAINST DEFENDANTS

Labor Code § 223 Violation

(By Aggrieved PAGA Employees Which Includes TESDAHL)

228. TESDAHL incorporates paragraphs 1 through 222 of this complaint as if fully alleged herein and pleads this twelfth cause of action on behalf of herself and other Aggrieved Employees against DEFENDANTS pursuant to Labor Code § 2699.3, as well as § 2699.5 which specifically enumerates § 223 under PAGA.

229. Under Labor Code § 223 "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

230. Under California law, TESDAHL and other Aggrieved Employees are entitled to compensation for all hours worked due to LFECR and its managing attorneys having improperly misclassified them as salaried exempt employees. LFECR was both statutorily required to pay at least minimum wage pursuant to Labor Code § 1182.12, as well as obligated to pay TESDAHL and other Aggrieved Employees their contractually agreed upon wages which were more than minimum wage. LFECR was contractually obligated to pay TESDAHL and other Aggrieved Employees agreed rates in excess of California's minimum wage for all hours worked. However, in improperly misclassifying

1 TESDAHL and other Aggrieved Employees as salaried exempt employees, LFECR effectively
2 unlawfully secretly paid a lower hourly wage for all hours worked than to which TESDAHL and other
3 Aggrieved Employees were contractually entitled due to LFECR's failure to pay statutory minimum
4 and/or overtime rates.

5 231. Thus, LFECR and its managing attorneys secretly paid TESDAHL and Aggrieved
6 Employees a lower wage while purporting to pay the wage scale designated by statute, i.e. California's
7 minimum wage statute and overtime wage statute(s), or by contract. See *Armenta v. Osmose, Inc.* (2005)
8 135 Cal.App.4th 314.

9 232. The combined force of California Labor Code sections 221, 222, and 223 clearly
10 prohibits an employer from receiving from the employee, withholding from the employee, or secretly
11 paying to the employee, some amount less than the employee's contractual or statutory wages for work
12 performed by the employee. *Armenta v. Osmose, Inc.* (2005) 37 Cal.Rptr.3d 460, 465.

13 233. Because TESDAHL and other Aggrieved Employees were employed at agreed rates in
14 excess of California's minimum wage (Labor Code § 1182.12), DEFENDANTS effectively 'reduce[d]'
15 or 'withh[e]ld' a portion of these employees' contractual or statutory wages through the simple device of
16 requiring work in excess of the daily or weekly hours DEFENDANTS claimed to have compensated
17 them without additional compensation.

18 234. California Labor Code sections 221, 222, and 223 prevent DEFENDANTS from using
19 any part of the wage payments that are required under contract for activities that are compensated in an
20 amount that equals or exceeds the minimum wage, as a credit for satisfying minimum wage obligations
21 for those activities that are compensated at less than the minimum wage or under contractual rates. Thus,
22 DEFENDANTS violated Labor Code § 223 and are subject to PAGA penalties for so doing pursuant to
23 Labor Code § 225.5 (*infra*).

24 **REMEDY/DAMAGES FOR TENTH-TWELFTH CAUSES OF ACTION**

25 **Labor Code § 225.5 PAGA Civil Penalty For Violating Labor Code §§ 212, 216, 221, 222, or 223**

26 **(By Aggrieved PAGA Employees Which Includes TESDAHL)**

27 235. TESDAHL incorporates paragraphs 1 through 234 of this complaint as if fully alleged
28 herein and seeks the civil penalty/penalties under Labor Code § 225.5 for DEFENDANTS' tenth
through twelfth causes of action on behalf of Aggrieved Employees against DEFENDANTS.

236. Per Labor Code § 225.5, "In addition to, and entirely independent and apart from, any
other penalty provided in this article, every person who unlawfully withholds wages due any employee

1 in violation of § 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows: (a) For any
2 initial violation, one hundred dollars (\$100) for each failure to pay each employee. (b) For each
3 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
4 to pay each employee, plus 25 percent of the amount unlawfully withheld. The penalty shall be
5 recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties **or**
6 **in an independent civil action.** The action shall be brought in the name of the people of the State of
7 California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of
8 the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into
9 a fund within the Labor and Workforce Development Agency dedicated to educating employers about
10 state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General
Fund.”

11 237. TESDAHL and Aggrieved Employees, in the name of the people of the State of
12 California and the Labor Commissioner, seek the civil penalty under § 225.5 because, as explained
13 above, LFEER violated §§ 216, 221, and 223 (*supra*).

14 238. This action is also to recover these civil penalties in an independent civil action brought
15 in the name of the people of the State of California and the Labor Commissioner with 12.5% of the
16 penalty recovered paid into a fund within the LWDA dedicated to educating employers about state labor
17 laws, and the remainder, minus TESDAHL’s and other Aggrieved Employees’ 25% under the PAGA,
paid into the State Treasury to the credit of the General Fund.

18 **THIRTEENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

19 **Labor Code § 226(a) Violation and § 226(e) Remedy**

20 **(By TESDAHL, the Wage Statement Class, and Aggrieved Employees)**

21 239. TESDAHL incorporates paragraphs 1 through 238 of this complaint as if fully alleged
22 herein, and pleads this thirteenth cause of action on behalf of herself, the Wage Statement Class, and
23 other Aggrieved Employees against DEFENDANTS pursuant to Labor Code § 558.1(a) which holds
24 liable any employer or other person—who is an owner, director, officer, or managing agent of the
employer—acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 226.

25 240. Summarily, DEFENDANTS failed to provide current and former Team Members, Intake
26 Attorneys, and Associate Attorneys with compliant Labor Code section 226 accurate itemized wage
27 statements causing them injury, including but not limited to, on a corporation-wide basis, failing to list
28 Lawyers for Employee and Consumer Rights, APC as the name of the legal entity that is the employer.

1 Instead LFECR listed “Lawyers for Employee and Consumer R” as the name of the employer on
2 LFECR’s employees’ paystubs. These inaccurate itemized wage statements did not accurately include
3 all the following: gross wages earned, total hours worked by the employee, net wages earned, the
4 inclusive dates of the period for which the employee is paid, the name and address of the legal entity that
5 is the employer, and/or all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate by the employee.

7 241. Specifically, TESDAHL’s and, on information and belief, that of other Wage Statement
8 Class members, and other Aggrieved Employees’ pay records reconciled against the time they worked,
9 resulted in, over a period of time, DEFENDANTS’ failure to compensate TESDAHL and other
10 Aggrieved Employees properly for all the time they actually worked, and prove DEFENDANTS failed
11 to provide TESDAHL, the Wage Statement Class, and other Aggrieved Employees with accurately
12 written itemized statements showing “(1) gross wages earned, (2) total hours worked by the
13 employee...(5) net wages earned, ...(8) the name and address of the legal entity that is the
14 employer...[and] (9) all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee” because DEFENDANTS failed to
16 accurately pay TESDAHL, the Wage Statement Class, and other Aggrieved Employees all earned and
17 unpaid wages, including but not necessarily limited to minimum, regular, overtime, and/or double time
18 wages; premium wages; reporting time pay; requested but denied sick leave pay, and bonuses due to
19 LFECR’s refusal to pay Aggrieved Employees all of their earned bonuses and misclassifying Aggrieved
20 Employees as follows:

- 21 (1) A non-discretionary bonus for LFECR quotas TESDAHL, the Wage Statement Class, and
22 other Aggrieved Employees met during the bonus period of June 1, 2021 to August 31, 2021
23 (for TESDAHL, this amount is a minimum of \$13,781.10 which LFECR paid to Team
24 Members of TESDAHL’s team who had the same Associate Attorney position as TESDAHL
25 and whom LFECR did not wrongfully terminate);
- 26 (2) Additionally, LFECR owes TESDAHL, the Wage Statement Class, and other Aggrieved
27 Employees a non-discretionary bonus for quotas TESDAHL met for the bonus period of
28 September 1, 2021 to November 30, 2021;
- (3) Minimum, regular, overtime, and possibly double time wages from May 2019 to December
31, 2020 for misclassifying TESDAHL, the Wage Statement Class, and other Aggrieved
Employees whom during that time did not (a) primarily engage in the duties that meet the test

of any exemption and (b) customarily and regularly exercise discretion and independent judgment in performing those duties;

(4) Minimum, regular, overtime, and possibly double time wages from January 1, 2021 to July 15, 2021 for misclassifying TESDAHL, the Wage Statement Class, and other Aggrieved Employees whom during that time did not (a) primarily engage in the duties that meet the test of any exemption; (b) customarily and regularly exercise discretion and independent judgment in performing those duties; and (c) earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment;

(5) Minimum, regular, overtime, and possibly double time wages from July 16, 2021 to either separation of employment or the disposition of , the Wage Statement Class and Aggrieved Employee's PAGA claims due to LFECR misclassifying TESDAHL, the Wage Statement Class, and other Aggrieved Employees whom during this time did not (a) primarily engage in the duties that meet the test of any exemption and (b) customarily and regularly exercise discretion and independent judgment in performing those duties.

242. Additionally, TESDAHL and other Aggrieved Employees were injured due to DEFENDANTS listing "Lawyersfor Employeeand Consumer R" as the name of the legal entity that is the employer even though according to California's Secretary of State, the name of the legal entity that is the employer (LFECR) is "Lawyers For Employees And Consumer Rights, A Professional Corporation".

Labor Code § 226(e)(1) Remedy

243. As a result, DEFENDANTS are liable to TESDAHL and the Wage Statement Class under Labor Code § 226(e)(1) which states, "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

Labor Code § 226(e)(2)(B) Injury

244. According to Labor Code § 226(e)(2)(B) "An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot

1 promptly and easily determine from the wage statement alone one or more of the following: (i) The
2 amount of the gross wages or net wages paid to the employee during the pay period or any of the other
3 information required to be provided on the itemized wage statement pursuant to items (2) to (4),
4 inclusive, (6), and (9) of subdivision (a). (ii) Which deductions the employer made from gross wages to
5 determine the net wages paid to the employee during the pay period...(iii) The name and address of the
6 employer...(iv) The name of the employee and only the last four digits of his or her social security
7 number or an employee identification number other than a social security number.

8 245. Per Labor Code § 226(e)(2)(C) “For purposes of this paragraph, “promptly and
9 easily determine” means a reasonable person would be able to readily ascertain the information without
10 reference to other documents or information.”

11 246. TESDAHL, the Wage Statement Class, and other Aggrieved Employees, have
12 suffered injury pursuant to § 226(e)(2)(B) because, per § 226(e)(2)(B)(i), LFEER failed “to provide
13 accurate and complete information as required by any one or more of items (1) to (9), inclusive, of” §
14 226(a) (*supra*) and TESDAHL, other Aggrieved Employees, and the Wage Statement Class cannot
15 promptly and easily determine from the wage statement alone the amount of the gross wages and/or net
16 wages paid or what should have been paid to them during the pay period or other information required to
17 be provided on the itemized wage statement pursuant § 226(a), specifically “gross wages earned, total
18 hours worked by the employee, net wages earned, the inclusive dates of the period for which the
19 employee is paid, the name and address of the legal entity that is the employer, and/or all applicable
20 hourly rates in effect during the pay period and the corresponding number of hours worked at each
21 hourly rate by the employee”.

22 247. TESDAHL, the Wage Statement Class, and other Aggrieved Employees must
23 refer to other documents and information to reconstruct the time they worked to account for their unpaid
24 work, including but not necessarily limited to (1) their inaccurate time (clock-in and clock-out) records;
25 (2) the time TESDAHL, other Aggrieved Employees, and the Non-Exempt Misclassified Employees
26 Wages Class and Wage Statement Class members actually worked.

27 248. Furthermore, TESDAHL, other Aggrieved Employees, and the Wage Statement
28 Class have suffered injury pursuant to § 226(e)(2)(B) because, per Labor Code § 226(e)(2)(B)(iii),
DEFENDANTS failed to list the legal name of the employer. The name of the employer listed on
TESDAHL’s, and on information and belief, the other Aggrieved Employees’ and that of the Wage
Statement Class’s itemized wage statements is “Lawyers For Employee And Consumer R” or

1 “LFECRS” when the current legal name of the employer according to the most recently filed Statement
2 Of Information filed with California’s Secretary of State is “Lawyers For Employee and Consumer
3 Right, A Professional Corporation”.

4 249. TESDAHL, other Aggrieved Employers, and the Wage Statement Class cannot
5 “promptly and easily determine” the employer’s, i.e. LFECR’s, name because they had to, like other
6 reasonable persons would have to, reference other documents or information because the employer’s
7 name is not readily ascertainable without referring to public court records and/or to California Secretary
8 of State’s records. For this case, the wage statements of TESDAHL, other Aggrieved Employees, and
9 the Wage Statement Class do not list the true identity of the actual employer, i.e. it is not information a
10 reasonable person would be able to readily ascertain without reference to other documents or
11 information. TESDAHL’S attorney had to refer to the California’s Secretary of State’s Statement of
12 Information to determine the legal identity of LFECR. Thus, the true identity of the employer is not
13 promptly and easily determined, causing injury to TESDAHL, other Aggrieved Employees, and the
14 Wage Statement Class.

15 250. Therefore, TESDAHL and the Wage Statement Class are entitled to the appropriate
16 remedy from DEFENDANTS under Labor Code § 226(e)(1).

17 251. In addition to § 226(e) statutory penalties, LFECR is also liable to TESDAHL and
18 other Aggrieved Employees for attendant PAGA penalties under § 226.3 (*infra*) for violating § 226(a).

19 **FOURTEENTH CAUSE OF ACTION AGAINST ONLY LFECR**

20 **Civil Penalty Under Labor Code § 226.3 For § 226(a) Violation**

21 **(Aggrieved PAGA Employees Which Includes TESDAHL)**

22 252. TESDAHL incorporates paragraphs 1 through 251 of this complaint as if fully alleged
23 herein, and pleads this fourteenth cause of action on behalf of Aggrieved Employees.

24 253. Under Labor Code § 226.3 “Any employer who violates subdivision (a) of Section 226
25 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
26 violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a
27 subsequent citation, for which the employer fails to provide the employee a wage deduction statement or
28 fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in
this section are in addition to any other penalty provided by law. In enforcing this section, the Labor
Commissioner shall take into consideration whether the violation was inadvertent, and in his or her

discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.”

254. Though LFEER provided TESDAHL and other Aggrieved Employees with a wage deduction statement, such was inaccurate. Furthermore, LFEER “fail[ed] to keep the records required in subdivision (a) of Section 226” because LFEER’ Section 226 records are inaccurate as explained above.

255. Therefore Aggrieved Employees seeks § 226.3 penalties.

FIFTEENTH CAUSE OF ACTION AGAINST DEFENDANTS

Labor Code § 226.7(b) Violation and § 226.7(c) Premium Pay

(By TESDAHL, Aggrieved PAGA Employees, and the Premium Pay Class)

256. TESDAHL incorporates paragraphs 1 through 255 of this complaint as if fully alleged herein, and pleads this fifteenth cause of action on behalf of herself, Aggrieved Employees, and the Premium Pay Class.

257. According to Labor Code § 226.7(b), “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

258. Under Labor Code § 226.7(c) “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

259. Under Labor Code § 226.7(d), “A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

260. Under Labor Code § 226.7(e), “This section shall not apply to an employee who is exempt from meal or rest or recovery period requirements pursuant to other state laws, including, but not limited to, a statute or regulation, standard, or order of the Industrial Welfare Commission.

261. “...[E]mployers must relieve their employees of all duties and relinquish any control over

1 how employees spend their break time.” See *Brinker Restaurant Corp. v. Superior Court* (2012) 53
2 Cal.4th 1004, 1038-1039 and *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 259.
3 Employee meal and rest periods are to be duty free, timely, and uninterrupted.

4 262. DEFENDANTS failed to provide TESDAHL, the Premium Pay Class, and other
5 Aggrieved Employees with legitimate opportunities to take Labor Code compliant meal (§ 512) and/or
6 rest (IWO 4-2001 § 12) breaks each workday because meal and/or rest breaks were interrupted, late,
7 and/or missed, especially because DEFENDANTS put TESDAHL, other Aggrieved Employees, and the
8 Premium Pay Class under the wrong assumption that they were not entitled to meal and/or rest breaks
9 due to LFECR’s improper misclassification of these employees as salaried exempt.

10 263. As a result, DEFENDANTS violated Cal. Code Regs., tit. 8, § 11040, subdivision
11 7(A)(3), which states “Every employer shall keep accurate information with respect to each employee
12 including the following: (3) Time records showing when the employee begins and ends each work
13 period. *Meal periods, split shift intervals and total daily hours worked shall also be recorded* [emphasis
14 added]. Meal periods during which operations cease and authorized rest periods need not be recorded.”

15 264. As another result, Defendants are liable to TESDAHL, other Aggrieved Employees, and
16 the Premium Pay Class for “one additional hour of pay at the employee’s regular rate of compensation
17 for each workday that the meal or rest or recovery period [was/]is not provided.”

18 265. DEFENDANTS are also liable to TESDAHL and other Aggrieved Employees for
19 attendant PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 pursuant to § 2699.3(f)(2), i.e.
20 the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
21 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
22 subsequent violation.

23 PRAYER

24 WHEREFORE, TESDAHL, on behalf of himself, all persons similarly situated, and other
25 Aggrieved Employees, prays for the following:

26 1. Judgment in his, the Class’s and Aggrieved Employees’ favor against LFECR and/or other
27 DEFENDANTS for any and all causes of actions enumerated above for which each defendant is
28 personally, jointly, severally, and/or jointly and severally liable;

2. Compensatory damages—including but not limited to contractual wages and/or statutory

1 minimum wages, equal and fair pay, overtime wages, possible double time wages, premium pay,
2 reporting time pay, sick pay, PTO and/or vacation pay, and unreimbursed expenses—for a minimum of
3 \$5 million;

4 3. Civil penalties under California’s Private Attorney General Act of 2004 (PAGA);

5 4. Statutory penalties enumerated in any applicable section of California’s Labor Code,
6 including but not limited to liquidated damages, premium pay, and waiting time penalties;

7 5. Injunctive relief and restitution pursuant to California’s UCL, enjoining DEFENDANTS
8 from violating California’s Labor Code;

9 6. Attorneys’ fees incurred in investigation of, exhausting administrative remedies for,
10 filing and prosecution of this action pursuant to C.C.P. § 1021.5; Lab. Code §§ 218.5⁵, 226(e)(1),
11 226(h), 1194, 1198.5(l), 2699(g), 2802(c), and any other applicable provision of law awarding
12 attorney’s fees.

13 7. Costs of suit incurred per C.C.P. §§ 1032(b), 1033.5, and 1034, and any applicable
14 Labor Code sections;

15 8. Tax neutralization, i.e. offsetting tax burden(s) of any recovery/ies (see C.C.P.
16 § 1033.5(c)(4); Civil Code § 3333⁶, and *Economy v. Sutter East Bay Hospitals* (2019) 31 Cal.App.
17 5th 1147). This amount is to offset the increased tax burden on TESDAHL, other Aggrieved
18 Employees, and punitive class members resulting from any future lump sum award of damages as
19 compared to what they would have owed in taxes if the damages/wages had been received timely, i.e.
20 sequentially each applicable calendar year.

22 ⁵ Labor Code § 218.5 states in relevant part, “(a) In any action brought for the nonpayment of wages, fringe benefits, or
23 health and welfare or pension fund contributions, the court shall award reasonable attorney’s fees and costs to the prevailing
24 party if any party to the action requests attorney’s fees and costs upon the initiation of the action. ... (b) This section does not
25 apply to any cause of action for which attorney’s fees are recoverable under Section 1194.” Labor Code § 1194 states in
26 relevant part, “(a) 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
attorney’s fees, and costs of suit.”

27 ⁶ For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly
28 provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it
could have been anticipated or not.

1 9. Interest pursuant to Labor Code §§ 1194(a), 1194.2, and § 218.6⁷ and any other
2 applicable provision of law awarding interest; and

3 10. For such other and further relief as this Court may deem just and proper.

4 Dated: July 20, 2022

THE Legal Advocate

5 By: Michelle L. Reynolds
6 Michelle L. Reynolds, Esq.

7 Attorney for HEATHER TESDAHL, on behalf of all others
8 similarly situated and other Aggrieved Employees
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28 ⁷ Labor Code § 218.6 states that in any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in Civil Code § 3289 (10% per annum), which shall accrue from the date that the wages were due and payable.