

Larry W. Lee (State Bar No. 228175)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com

Attorneys for Plaintiff and the Class
(Additional Counsel on Next Page)

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 1/5/2023 2:03 PM
Reviewed By: R. Walker
Case #22CV397316
Envelope: 10856322**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

KAMLESH KRISHNA, as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

v.

CEPHEID, a Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO. 22CV397316

[Assigned for all purposes to the Hon. Sunil R.
Kulkarni, Dept. 1]

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF CAL. LABOR CODE §
201-203;**

**(2) VIOLATION OF CAL. LABOR CODE §
226(a); AND**

**(3) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.***

DEMAND EXCEEDS \$25,000.00

ADDITIONAL COUNSEL FOR PLAINTIFFS

Edward W. Choi, Esq. SBN 211334
LAW OFFICES OF CHOI & ASSOCIATES
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 381-1515
Facsimile: (213) 465-4885
Email: edward.choi@choiandassociates.com

William L. Marder, Cal Bar No. 170131
POLARIS LAW GROUP, LLP
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: 831.531.4214
Facsimile: 831.634.0333

Dennis S. Hyun (State Bar No. 224240)
HYUN LEGAL, APC
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

1 Plaintiffs Kamlesh Krishna (“Krishna”) and Rex Servania (“Servania”) (collectively,
2 “Plaintiffs”) hereby submit this Second Amended Class Action Complaint (“Complaint”) against
3 Defendant CEPHEID, a Corporation (“CEPHEID”), and DOES 1-50 (hereinafter collectively
4 referred to as “Defendants”), individually and on behalf of a Class of all other similarly situated
5 current and former employees of Defendants for penalties and/or damages for violations of the
6 California Labor Code, including without limitation, failure to pay employees their sick pay at
7 their regular rate of pay and provide employees with accurate itemized wage statements, as
8 follows:

9 **INTRODUCTION**

10 1. This class action is within the Court’s jurisdiction under California Labor Code §§
11 201-203, and 226 and the California Industrial Welfare Commission’s (“IWC”) Wage Orders. As
12 alleged herein, Plaintiffs have exhausted their administrative remedies to proceed under the Private
13 Attorneys General Act (the “PAGA”).

14 2. This Complaint challenges systemic illegal employment practices resulting in
15 violations of the California Labor Code against employees of Defendants.

16 3. Plaintiffs are informed and believe, and based thereon allege, that Defendant acted
17 knowingly and intentionally by failing to pay employees their sick pay at their regular rate of pay
18 and provide employees with accurate itemized wage statements.

19 **JURISDICTION AND VENUE**

20 4. The Court has jurisdiction over the violations of the California Labor Code §§ 201-
21 203, 226, and the PAGA.

22 5. Venue is proper in Santa Clara County because Defendant maintains its principal
23 place of business in this County.

24 **PARTIES**

25 6. In or about November 2021, Krishna began working for Defendant as an order picker
26 in the logistics department at Defendant’s Lodi, California location. Krishna’s employment with
27 Defendant was terminated on April 12, 2022. During her employment, Krishna was paid various
28 non-discretionary incentive wages, including, but not limited to, shift differential wages. Krishna

1 was also paid wages for sick time. Servania was hired by Defendant to work as a non-exempt
2 employee in or around April 2019. Servania's employment ended on or about May 9, 2022.
3 Servania worked as a maintenance engineer for Defendant in Sunnyvale, California. Servania also
4 was paid various non-discretionary incentive

5 7. Defendant manufactures medical equipment in California.

6 8. Plaintiffs were and are victims of the policies, practices, and customs of Defendant
7 complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by
8 California Labor Code §§ 201-203 and 226.

9 9. Plaintiffs are informed and believe, and based thereon allege, that at all times herein
10 mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and
11 partnerships, licensed to do business and actually doing business in the State of California.

12 10. As such, and based upon all the facts and circumstances incident to Defendants'
13 business in California, Defendants are subject to California Labor Code §§ 201-203, and 226.

14 11. Plaintiffs do not know the true names or capacities, whether individual, partner or
15 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said
16 Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
17 complaint when the true names and capacities are known. Plaintiffs are informed and believe, and
18 based thereon allege, that each of said fictitious Defendants was responsible in some way for the
19 matters alleged herein and proximately caused Plaintiffs and members of the general public and
20 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

21 12. At all times herein mentioned, each of said Defendants participated in the doing of
22 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants and employees of each of the other
24 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
25 within the course and scope of said agency and employment.

26 13. Plaintiffs are informed and believe, and based thereon allege, that at all times
27 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
28 joint venturer of, or working in concert with each of the other co- Defendants and was acting
within the course and scope of such agency, employment, joint venture, or concerted activity. To

1 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
2 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
3 Defendants.

4 14. At all times herein mentioned, Defendants, and each of them, were members of, and
5 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
6 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

7 15. At all times herein mentioned, the acts and omissions of various Defendants, and
8 each of them, concurred and contributed to the various acts and omissions of each and all of the
9 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
10 herein mentioned, Defendants, and each of them, ratified each and every act or omission
11 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
12 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
13 damages as herein alleged.

14 **CLASS ACTION ALLEGATIONS**

15 16. **Definition:** The named individual Plaintiffs seek class certification, pursuant to
16 California Code of Civil Procedure § 382, of the following class:

- 17 a. All non-exempt California employees who were paid non-discretionary
18 incentive wages including, but not limited to, shift differential wages
19 covering any period in which sick pay wages were paid to the employee by
20 Defendant and whose employment ended, either voluntarily or involuntarily,
21 at any time during the period of time from April 25, 2019, through the
22 present.

23 17. **Numerosity and Ascertainability:** The members of the Class are so numerous
24 that joinder of all members would be impractical, if not impossible. The identity of the members
25 of the Class is readily ascertainable by review of the Defendants records, including payroll records.
26 Plaintiffs are informed and believe, and based thereon allege, that the Defendants failed to pay
27 employees their sick pay at their regular rate of pay in violation of Labor Code §§201-203 and
28 provide employees with accurate itemized wage statements to provide accurate itemized wage
statements to employees in violation of Labor Code § 226.

1 18. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all
2 necessary steps to represent fairly and adequately the interests of the class defined above.
3 Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the class and the
4 named Plaintiffs. Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions in
5 the past and currently have a number of wage-and-hour class actions pending in California courts.

6 19. Defendants uniformly administered a corporate policy, practice of failing to pay
7 employees their sick pay at their regular rate of pay in violation of Labor Code §§201-203 and
8 provide employees with accurate itemized wage statements to provide accurate itemized wage
9 statements to employees in violation of Labor Code § 226.

10 20. **Common Question of Law and Fact:** There are predominant common questions
11 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
12 concerning the Defendants' failure to pay employees their sick pay at their regular rate of pay in
13 violation of Labor Code §§201-203 and provide employees with accurate itemized wage
14 statements to provide accurate itemized wage statements to employees in violation of Labor Code
15 § 226.

16 21. **Typicality:** The claims of the named Plaintiffs are typical of the claims of all
17 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
18 and typical manner as the Class members. Defendants violated Labor Code §§ 201-203 by failing
19 to pay sick pay at the regular rate of pay. Specifically, Plaintiffs and all members of the class
20 routinely earned non-discretionary incentive wages such as shift differential wages and thus
21 increased their rates of pay. However, when sick pay was paid, it was paid at the Plaintiffs and
22 Class Members' base rate of pay rather than the regular rate of pay. Further, as a result of
23 Defendant's failure to pay sick pay wages at the regular rate of pay, the wage statements provided
24 to Plaintiffs and the Class failed to accurately identify the accurate rates of pay and gross/net
25 wages earned in violation of Labor Code § 226. Thus, Plaintiffs are members of the Class and has
26 suffered the alleged violations of California Labor Code §§ 201-203, and 226.

27 22. The California Labor Code and upon which Plaintiffs base these claims is broadly
28 remedial in nature. These laws and labor standards serve an important public interest in
establishing minimum working conditions and standards in California. These laws and labor

standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

23. The nature of this action and the format of laws available to Plaintiffs and members of the Class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of the individual Plaintiffs with Defendants' vastly superior financial and legal resources. Requiring each Class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

24. The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class members against the Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to individual Class members which would, as a practical matter, be dispositive of the interest of the other Class members not parties to the adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

25. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class identified herein, in a civil action any and all applicable penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 218.5, 226, 2699, and Code of Civil Procedure § 1021.5.

26. Proof of a common business practice or factual pattern, which the named Plaintiffs experienced and are representative of, will establish the right of each of the members of the Class to recovery on the causes of action alleged herein.

27. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by the Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by the Defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201-203

(AGAINST THE DEFENDANTS AND DOES 1-50 BY PLAINTIFFS AND THE CLASS)

28. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set for herein.

29. Labor Code §246(l)(1) requires that nonexempt employees be paid sick time in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

30. Labor Code §246(l)(2) requires that paid sick time for nonexempt employees be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

31. Defendants violated Labor Code §246 by failing to pay sick pay at the regular rate of pay. Plaintiffs and Class Members routinely earned non-discretionary incentive wages such as shift differential wages and thus increasing their regular rate of pay. However, when sick pay was paid, it was paid at their base rate of pay rather than the regular rate of pay, as required under Labor Code § 246.

32. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and other members of the Class their correct wages and accordingly owe waiting time penalties pursuant to Labor Code § 203. Further, Plaintiffs are informed and believe and based thereon allege that such failure to pay sick pay at regular rate was willful, such that Plaintiffs and Class Members whose employment has separated are entitled to waiting time penalties pursuant to Labor Code §§ 201-203.

///

///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3

4
5

6
7
8
9

10
11
12
13

15
16
17
18

19

20

21
2223
24

25
26
27
28

1 pay sick pay at the regular rate of pay, including without limitation, including shift and weekend
2 differentials in the sick pay rate, to separated employees in violation of Labor Code §§ 201-203 and
3 246.

4 39. On or about April 25, 2022, Krishna sent written notice to the California Labor &
5 Workforce Development Agency (the “LWDA”) and Defendants via certified mail of Defendants’
6 violations of Labor Code §§ 201-204, 226, and 246, pursuant to the PAGA. On or about May 23,
7 2022, Servania submitted written notice of the violations of Labor Code §§ 201-203, 226, and 246 to
8 the LWDA and via certified mail to Defendant.

9 40. As of the date of this filing, the LWDA has not provided written notice regarding
10 whether it intends to investigate the Labor Code violations set forth in Plaintiffs’ written notices.
11 Therefore, Plaintiffs may proceed under the PAGA against Defendants for said violations.
12 Therefore, Plaintiffs may seek any and all applicable penalties under PAGA.

13 41. As such, pursuant to Labor Code § 2699(a), Plaintiffs seek recovery of any and all
14 applicable civil penalties for Defendants’ violation of Labor Code § 201-203, 226, and 246 for the
15 time periods described above, as proxies for the State of California and on behalf of other Aggrieved
16 Employees.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for judgment individually and all others on whose behalf
19 this suit is brought against Defendants, jointly and severally, as follows:

- 20 1. For an order certifying the proposed Class;
- 21 2. For an order appointing Plaintiffs as the representative of the Class as described
22 herein;
- 23 3. For an order appointing counsel for Plaintiffs as Class counsel;
- 24 4. Upon the First Cause of Action, for damages and/or penalties pursuant to California
25 Labor Code §§ 201-203, and for costs and attorneys’ fees pursuant to Labor Code §§ 218.5 and
26 1194 and for costs and attorneys’ fees;
- 27 5. Upon the Second Cause of Action, for unpaid wages and/or penalties pursuant to
28 California Labor Code §§ 226, and for costs and attorneys’ fees;
6. Upon the Third Cause of Action, for civil penalties, costs and attorneys’ fees

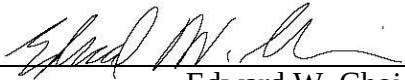
1 pursuant to Labor Code §§ 226.3 and 2699;

2 7. On all causes of action, for attorneys' fees and costs as provided by California
3 Labor Code §§ 218.5, 226, and 2699 and Code of Civil Procedure § 1021.5; and

4 8. For such other and further relief as the Court may deem just and proper.

5 DATED: January 5, 2023

LAW OFFICES OF CHOI & ASSOCIATES, APLC

7 By: 
8 Edward W. Choi
Attorneys for PLAINTIFF and the CLASS

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 515 S. Figueroa St. Suite 1250, Los Angeles, California 90071.

On January 5, 2023, I served the foregoing document(s) described as: **SECOND AMENDED CLASS ACTION COMPLAINT**, on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

SEYFARTH SHAW LLP
Timothy M. Rusche
trusche@seyfarth.com
Gina Gi
ggi@seyfarth.com
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017-5793

William L. Marder
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
bill@polarislawgroup.com

Larry W. Lee
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
lwlee@diversitylaw.com
olympia@diversitylaw.com
erika@diversitylaw.com
linda@diversitylaw.com
calendar@diversitylaw.com

Dennis S. Hyun
HYUN LEGAL, APC
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
dhyun@hyunlegal.com

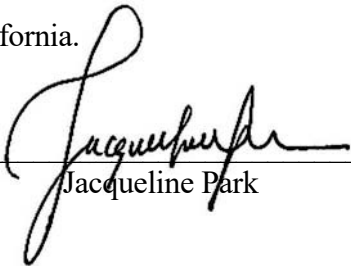
 X **BY ELECTRONIC SERVICE**

I caused such document to be uploaded to **Odyssey** to be served on the offices of the addressees.

 X **(State)** I declare under penalty of perjury that the foregoing is true and correct.

 (Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on January 5, 2023, at Los Angeles, California.



Jacqueline Park