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and all others similarly situated, and Ernesto
Madrigal, on behalf of himself and all others
similarly situated

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., et al.,

Debtor and Debtor in Possession.

Lead Case No. 2:18-bk-20151-ER

Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases

- ☒ Affects All Debtors
☐ Affects Verity Health System of
California, Inc.
☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☐ Affects St. Francis Medical Center
☐ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
☐ Affects O'Connor Hospital Foundation
☐ Affects Saint Louise Regional Hospital
Foundation
☐ Affects St. Francis Medical Center of
Lynwood Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ Affects Verity Medical Foundation
☐ Affects Verity Holdings, LLC



- ☐ Affects De Paul Ventures, LLC
☐ Affects De Paul Ventures - San Jose
Dialysis, LLC

**NOTICE OF MOTION AND MOTION OF
(1) WAHEED WAHIDI FOR
AUTHORIZATION TO FILE A CLASS
PROOF OF CLAIM ON BEHALF OF
CLAIMANTS SIMILARLY SITUATED,
AND (2) ERNESTO MADRIGAL FOR
AUTHORIZATION TO FILE A CLASS
REQUEST FOR PAYMENT OF
ADMINISTRATIVE EXPENSE ON
BEHALF OF CLAIMANTS SIMILARLY
SITUATED; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATIONS
OF KEVIN T. BARNES, EMIL DAVTYAN,
AND DAVID B. SHEMANO**

Hearing:

Date: April 24, 2019
Time: 10:00 a.m.
Place: Courtroom 1568
255 E. Temple Street
Los Angeles, CA 90012

1 **PLEASE TAKE NOTICE** that on April 24, 2019, at 10:00 a.m., or as soon thereafter as
2 the matter can be heard, before the Honorable Ernest M. Robles, United States Bankruptcy Judge,
3 in Courtroom 1658, located at 255 E. Temple Street, Los Angeles, CA 90012, Waheed Wahidi
4 (“Wahidi”) will move for an order authorizing Wahidi to file a class prepetition unsecured proof
5 of claim on behalf of all creditors similarly situated as Wahidi, and Ernesto Madrigal
6 (“Madrigal”) will move for an order authorizing Madrigal to file a request for payment of
7 administrative expense on behalf of all creditors similarly situated as Madrigal.

8 **PLEASE TAKE FURTHER NOTICE** that the Motion is made pursuant to Federal
9 Rules of Bankruptcy Procedure 7023 and 9014, and is based on the attached Memorandum of
10 Points and Authorities and Declarations of Kevin T. Barnes, Emil Davtyan, and David B.
11 Shemano, and such other argument as may be offered prior to or at the time of the hearing on the
12 Motion.

13 **PLEASE TAKE FURTHER NOTICE** that a formal response to the Motion must be
14 filed with the Bankruptcy Court and served on counsel for Wahidi and Madrigal no later than
15 fourteen (14) days before the scheduled hearing. Pursuant to Bankruptcy Rule 9013-1(h), failure
16 to file and serve timely a response in accordance with the Local Bankruptcy Rules may be
17 deemed by the Bankruptcy Court to be consent to the granting of the relief requested in the
18 Motion.

19
20 DATED: March 26, 2019

SHEMANOLAW

21
22 By: /s/ David B. Shemano
 David B. Shemano

23
24 Attorney for Waheed Wahidi, on behalf of himself
25 and all others similarly situated, and Ernesto
26 Madrigal, on behalf of himself and all others
27 similarly situated
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

JURISDICTION AND VENUE

On August 31, 2018 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code to commence the above-captioned case

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the estate and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b)(1), (2)(A) and 2(B). Venue of this proceeding is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein are Federal Rules of Bankruptcy Procedure 7023 and 9014.

II.

BACKGROUND

On the Petition Date, the Debtors operated a nonprofit health care system. The Debtors have represented that in 2017 they provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. The Debtors have represented that on the Petition Date they had over 7,300 employees. During the chapter 11 cases, the Debtors have sold or are in the process of selling substantially all of their assets.

A. The Prepetition Employee Litigation

Wahidi was an employee of one of the Debtors from approximately May 2017 through October 2017. On June 21, 2018, Wahidi, on behalf of himself and all other employees similarly situated, filed a complaint against certain of the Debtors in the Superior Court of the State of California for the County of San Mateo (the “Superior Court”), Case No. 18CIV03214, alleging violations of the California Labor Code, the California Business and Professions Code, applicable Wage Orders issued by the California Industrial Welfare Commission, and related common law principles. A first amended complaint was filed on June 26, 2018. A copy of the first amended complaint is attached as Exhibit A to the Declaration of Kevin T. Barnes (the “Barnes

1 Declaration”).

2 In summary, the complaint alleges that the Debtors (1) consistently administered a
3 uniform company policy and procedure to round down the recorded time of hourly employees in
4 violation of applicable California law and regulations, (2) as a matter of established company
5 policy, failed to comply with the meal period requirements of applicable California law and
6 regulations, (3) as a matter of established company policy, failed to comply with the rest period
7 requirements of applicable California law and regulations, (4) as a matter of established company
8 policy, failed to comply with the itemized wage statement requirements of applicable California
9 law and regulations, (5) as a matter of established company policy, did not pay all wages due to
10 former hourly employees due to the unlawful rounding, meal and rest policies as required by
11 applicable California law and regulations, (6) subjected hourly employees to unlawful, unfair
12 and/or fraudulent business acts/practices in the form of the above stated violations in violation of
13 section 17200 *et seq.* of the California Business & Professions Code, and (7) are subject to
14 penalties pursuant to section 2699 *et seq.* of the California Labor Code (the “Private Attorneys
15 General Act” or the “PAGA”). The complaint includes a request that the Superior Court certify
16 the action as a class action and appoint Wahidi as the representative of all others similarly
17 situated.

18 The litigation was stayed two months after it was commenced when the Debtors filed their
19 bankruptcy petitions.

20 **B. The Debtors’ Illegal Conduct Continued Postpetition**

21 The Debtors’ illegal conduct described in the amended complaint continued postpetition.
22 Madrigal was an employee of one of the Debtors both prepetition and from the Petition Date
23 through September 18, 2018. Madrigal intends to file a request for payment of administrative
24 expense on behalf of himself and all other postpetition employees similarly situated based on the
25 Debtors’ illegal conduct described in the amended complaint that occurred postpetition.

26 **C. Efforts To Consensually Resolve The Class Claim Issue**

27 When the Debtors filed their petitions, they listed Wahidi as their largest unsecured
28

1 creditor, asserting a disputed claim of \$150 million. A copy of the Debtors' list of 50 largest
2 unsecured creditors is attached as Exhibit B to the Declaration of David B. Shemano (the
3 "Shemano Declaration").

4 Because the Debtors filed their petitions before the Superior Court could address whether
5 the litigation should proceed as a class action, the authority of Wahidi to act on behalf of all
6 others similarly situated has not been adjudicated. Therefore, to avoid unnecessary expense and
7 litigation, on February 6, 2019, counsel for Wahidi and Madrigal contacted counsel for the
8 Debtors to see if an agreement could be reached that would permit Wahidi to file a class proof of
9 claim and Madrigal to file a class request for payment of administrative expense, while leaving
10 any substantive disputes for later resolution.

11 On March 8, 2019, counsel for the Debtors finally responded to the request by stating that
12 the Debtors are not willing to consent to a class claim. A copy of the Debtors' response is
13 attached as Exhibit C to the Shemano Declaration.

14 **III.**

15 **WAHIDI SHOULD BE AUTHORIZED**
16 **TO FILE A CLASS PROOF OF CLAIM**

17 Concurrently with this Motion, Wahidi filed proofs of claim on behalf of himself and all
18 others similarly situated against each of the Debtors named in the amended complaint.¹ A copy of
19 the proof of claim filed against Verity Health System of California, Inc., is attached as Exhibit D
20 to the Shemano Declaration.

21 Pursuant to Federal Rules of Bankruptcy Procedure 7023 and 9014, this Court has the
22 power to authorize Wahidi to file a class proof of claim on behalf of himself and all others
23 similarly situated. *Birting Fisheries v. Lane (In re Birting Fisheries)*, 92 F.3d 939 (9th Cir.

24 ¹ On behalf of those class members who provided services to the Debtors within 180 days of the
25 Petition Date, the claim is asserted as a priority claim pursuant to section 507(a)(4) of the
26 Bankruptcy Code. Based on information provided by counsel for the Debtors, counsel for Wahidi
27 is informed that the Debtors named in the amended complaint are inclusive of all the Debtors that
28 had employees that could assert the claims identified in the amended complaint. Wahidi reserves
the right to file additional proofs of claim if it is determined that other Debtors have employees
that should be included in the class.

1996).

As a general rule, class proofs of claims are favored and “particularly appropriate” in bankruptcy cases. *First Alliance Mortg. Co. v. First Alliance Mortg. Co.*, 269 B.R. 428, 444 (C.D. Cal. 2001). Accordingly, the party opposing the use of a class claim has the burden to demonstrate why the class claim should not be permitted. *Id.* at 445.

In determining whether to authorize a class claim, this Court first decides whether it would be beneficial to apply Rule 7023 to the claim process, and then decides whether the requirements of Rule 7023 are satisfied in the case. 10 COLLIER ON BANKRUPTCY ¶ 7023.01 (16th 2018). Among the facts the Court may consider are (1) whether the class was certified prepetition, (2) whether the members of the putative class received notice of the bar date, and (3) whether class certification will adversely affect the administration of the estate. *Id.*

A. Wahidi Has The Absolute Right To File A Class Proof Of Claim For All Claims Asserted Pursuant To The Private Attorneys General Act

The complaint filed by Wahidi includes claims filed pursuant to the Private Attorneys General Act set forth in section 2699 *et seq.* of the California Labor Code. After certain conditions are satisfied, section 2699(g) of the PAGA authorizes an aggrieved employee to file a lawsuit “on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed.”

In filing a claim pursuant to the PAGA, the employee is acting as the agent of the State of California. *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 394 (2014). The aggrieved employee is not required to satisfy class action requirements. *Arias v. Superior Court*, 46 Cal. 4th 969, 975 (2009).

Because the PAGA authorizes Wahidi to prosecute his PAGA claims on behalf of all other similarly situated employees, and is acting as the authorized agent of the State of California, he has the absolute right to file a class claim with respect to all claim brought pursuant to the PAGA. *In re Pac. Sunwear of Cal., Inc.*, 2016 Bankr. LEXIS 2579 *7-12 (Bankr. D. Del. June 22, 2016).

B. A Class Proof of Claim Will Benefit The Claims Administration Process

The class at issue consists of all of the Debtors' current and former employees. Wahidi believes that the class may exceed over 7,300 claimants. Class claims filed on behalf of current and former employees are routinely authorized by bankruptcy courts. *See, e.g., In re Pac. Sunwear of Cal., Inc.*, 2016 Bankr. LEXIS 2579 (Bankr. D. Del. June 22, 2016) (permitting a California wage and hour class proof of claim); *In re MF Global, Inc.*, 512 B.R. 757 (Bankr. S.D.N.Y. 2014); *Bent v. ABMD Ltd. (In re ABMD Ltd.)*, 439 B.R. 475 (Bankr. S.D. Ohio 2010); *Burgio v. Protected Vehicles, Inc. (In re Protected Vehicles, Inc.)*, 392 B.R. 633 (Bankr. D. S.C. 2008); *Turner v. Talbert (In re Talbert)*, 347 B.R. 804 (Bankr. E.D. La. 2005).

In fact, recognizing the benefits of the collective resolution of employee claims, certain debtors have either voluntarily consented to a class claim or even preemptively filed a motion requesting that the bankruptcy court authorize a class employee claim. *See, e.g., In re SIW Holding Company*, Case No. 18-11579 (Bankr. D. Del. 2018) (Docket No. 61, pages 10-14) (motion by debtor preemptively requesting authorization for class counsel to file a class claim);

The amount of individual claims will vary depending on how long a claimant was employed. While some of the individual claims may be significant, many will be relatively small and it would not be economically feasible for many claimants to hire an attorney and prosecute their individual claims. This factor weighs heavily in favor of permitting a class claim. *First Alliance Mortg. Co. v. First Alliance Mortg. Co.*, 269 B.R. at 446.

Because of the commencement of the Debtors' cases and the imposition of the automatic stay, the class has not yet been certified by the Superior Court. However, the fact that the Superior Court has not yet certified the class is a minor factor that does not prevent this Court from permitting the class claim. *Id.* at 445.

While it appears that the Debtors served notice on employees that were employed as of the Petition Date, it does not appear that the Debtors served notice on former employees. The fact that many of the class claimants were not served with notice of the commencement of the case and bar date is a strong factor supporting a class claim. *Id.*

1 Permitting the class claim at this time will not unduly burden the estate. Counsel for
2 Wahidi raised the issue with the Debtors' counsel over two months ago and filed this Motion
3 prior to the bar date. The Debtors have not confirmed a reorganization plan and are not ready to
4 make a distribution to creditors. Accordingly, the Motion is timely. *Id* at 438-39. *Compare, In*
5 *re Ephedra Prods. Liab. Litig.*, 329 B.R. 1 (S.D.N.Y. 2005) (permission to file class claim denied
6 where the class claimant did not request permission until after the debtor had confirmed the plan
7 and adjudication of the class claim would unduly delay a distribution to creditors).

8 Finally, as set forth above, Wahidi has the absolute right to file a class claim for certain of
9 the claims asserted in the complaint. It will be judicially efficient for all of the claims to be
10 administered as part of one class claim as opposed to bifurcating the claims into certain claims
11 asserted as part of the class claim and other claims asserted by individual claimants.

12 **C. The Elements Of FRBP 7023(a) Are Satisfied**

13 In order to satisfy Rule 7023, Wahidi must demonstrate that the requirements of
14 numerosity, commonality, typicality and adequacy have been met.

15 **1. Numerosity is satisfied**

16 A class must be "so numerous that joinder of all members is impracticable." FRCP
17 23(a)(1). A class size of 27 members has been held to satisfy the requirement. *Tietz v. Bowen*,
18 695 F. Supp. 441, 445 (N.D. Cal. 1987). Here, Wahidi estimates that the class includes over
19 7,300 current and former employees.

20 **2. Commonality is satisfied**

21 The commonality requirement is satisfied when "there are questions of law or fact
22 common to the class." FRCP 23(a)(2).

23 The United States Supreme Court held that a case meets the commonality requirement
24 whenever the plaintiffs raise a common contention and the "determination of its truth or falsity
25 will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-*
26 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The Supreme Court went on to hold that,
27 "[w]e quite agree that for purposes of Rule 23(a)(2), even a single common question will do . . ."
28

1 *Id.* at 359 (internal quotations omitted). While there needs to be common claims, they “need not
2 be identical.” *Stoffels v. SBC Commc’n Inc.*, 238 F.R.D. 446, 452 (W.D. Tex. 2006).

3 This case easily meets the commonality requirement because the claims are based on
4 established company policies applicable to all employees. Courts have recognized that employee
5 wage and break claims are amenable to class treatment where the claims are based on a uniform
6 company policy. *Nguyen v. Baxter Healthcare Corp.*, 275 F.R.D. 596, 600-01 (C.D. Cal. 2011);
7 *Driver v. AppleIllinois, LLC*, 265 F.R.D. 293, 303 (N.D. Ill. 2010).

8 Once liability is established, damages (by whatever formula is established) for individual
9 class members can be calculated mechanically by reviewing the Debtors’ payroll records.
10 Commonality is not defeated by the need for an individualized damages determination. *Comcast*
11 *Corp. v. Behrend*, 133 S. Ct. 1426, 1433 (2013). Accordingly, commonality is easily satisfied
12 here.

13 3. Typicality is satisfied

14 Typicality is established where the “claims or defenses of the representative parties are
15 typical of the claims or defenses of the class . . .” FRCP 23(a)(3).

16 The test of typicality “is whether other members have the same or similar injury, whether
17 the action is based on conduct which is not unique to the named plaintiffs, and whether other
18 class members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*,
19 976 F.2d 497, 508 (9th Cir. 1992). Generally, “the commonality and typicality requirements”
20 tend to merge. *Dukes*, 564 U.S. at 349. Indeed, “like commonality, the typicality requirement
21 does not mandate that all class members share identical claims.” *In re United Cos. Fin. Corp.*,
22 276 B.R. 368, 373 (Bankr. D. Del. 2002); *see also Driver*, 265 F.R.D. at 304 (“typicality is a ‘low
23 hurdle’ that requires neither complete coextensiveness nor even substantial identity of claims”).

24 Typicality “refers to the nature of the claims of the representative, not the individual
25 characteristics of the plaintiff.” *In re United Cos.*, 276 B.R. 368, 373 (internal citation omitted).
26 Factual differences do not defeat typicality. *In re Pac. Sunwear of Cal., Inc.*, 2016 Bankr. LEXIS
27 2579 *8 (Bankr. D. Del. June 22, 2016).

28 In *Driver*, the court held that typicality was satisfied because the class representatives’

claims were typical of the class. *Driver*, 265 F.R.D. at 304. In particular, there was no suggestion that the proposed class representatives were treated differently from other employees under the company's standard policy and procedures. *Id.*

Here, like *Driver*, because the challenge is to the Debtors' wage, break and wage statement policies and whether they violated the law, the typicality requirement of Rule 23 is met. Wahidi was an hourly employee employed by the Debtors, Wahidi and the class members have been injured in the same manner, and Wahidi seeks the same relief as the class members. Therefore, the typicality requirements of Rule 23 are met.

4. Adequacy is satisfied

The final requirement of Rule 23(a) – whether the representative party will fairly and adequately protect the interests of the class – is also satisfied here.

Legal adequacy requires (1) the absence of conflicts of interest between the class representatives and their counsel with other class members, and (2) a finding that the class representatives and their counsel will vigorously prosecute the action on behalf of the class. *Resnick v. Frank (In re Online DVD-Rental Antitrust Litig.)*, 779 F.3d 934, 943 (9th Cir. 2015).

Here, Wahidi has no interests that diverge from those of the class, and his claims are typical of the claims of the class. As noted above, he has been injured in the same manner and seeks the same relief as each class member. Further, the same strategies that will vindicate his claims will vindicate those of the class. Thus, Wahidi is an adequate representative for the class proof of claim. *See, e.g., Driver*, 265 F.R.D. at 301 (“The named plaintiffs here have a sufficient interest in the outcome of the case to ensure their vigorous advocacy, and there are no indications that their claims conflict with those of other members of the proposed classes. Accordingly, this element is also satisfied.”).

The Law Office of Kevin T. Barnes and Davtyan PLC are law firms that concentrate their practice in employment law, with an emphasis on wage and hour class actions. The lawyers at the firms are seasoned litigators who are experienced in employment issues with considerable experience in prosecuting wage and hour class actions, and are therefore competent and capable of conducting this litigation. Mr. Barnes' qualifications are set forth in paragraphs 10-14 of his

1 attached Barnes Declaration and Mr. Davtyans' qualifications are set forth in paragraphs 3-5 of
2 his attached Davtyan Declaration. Mr. Barnes and Mr. Davtyan will be assisted by experienced
3 bankruptcy counsel. Accordingly, counsel is qualified and able to litigate the claims, thereby
4 satisfying the adequacy requirement. *See, e.g., Driver*, 265 F.R.D. at 300 (adequacy requirement
5 satisfied where "Plaintiffs' counsel is competent and experienced in FLSA and Illinois wage law
6 class action suits and have acted as representative counsel in numerous actions in federal and state
7 court.").

8 Thus, Wahidi and his counsel will adequately represent the proposed employee class in
9 accordance with Rule 23(a)(4).

10 **D. The Elements Of FRBP 23(b) Are Satisfied**

11 Once the requirements of Rule 23(a) are met, plaintiffs must also satisfy the requirements
12 of at least one of the subdivisions of Rule 23(b).

13 **1. Rule 23(b)(1)(B) Is Satisfied**

14 Rule 23(b)(1)(B) provides that a class action may be maintained if prosecuting separate
15 actions by individual class members would create a risk of "adjudications with respect to
16 individual class members that, as a practical matter, would be dispositive of the interests of the
17 other members not parties to the individual adjudications or would substantially impair or impede
18 their ability to protect their interests."

19 Class actions are commonly approved pursuant to Rule 23(b)(1)(B) in "limited fund"
20 cases, which "is an action in which any recovery will come from a fixed pool of assets that is or
21 may be insufficient to satisfy all of the claims against the fund." 5 MOORE'S FEDERAL
22 PRACTICE - CIVIL § 23.42[2][a] (2019). As set forth above, the Debtors have sold or are in the
23 process of selling all of their assets, and this case is now a liquidation case. The assertion of
24 claims in a liquidating bankruptcy case satisfies the test. *In First Alliance Mortg. Co. v. First*
25 *Alliance Mortg. Co.*, 269 B.R. at 448.

26 **2. Rule 23(b)(3) Is Satisfied**

27 Rule 23(b)(3) provides that class action may be maintained if (1) the class members'
28

1 claims not only have common questions of law or fact but they also predominate over any
2 individual questions; and (2) the class action is the superior method to adjudicate the action fairly
3 and efficiently.

4 Rule 23(b)(3) includes a list of factors for courts to consider: (1) interest of members of
5 the class in individually controlling the prosecution of separate actions; (2) the extent and nature
6 of litigation already commenced by class members; (3) the desirability of concentrating litigation
7 of claims in a particular forum; and (4) the difficulties likely to be encountered in managing a
8 class action.

9 **1. Common Questions of Law and Fact Predominate**

10 The complaint asserts claims based on the Debtors' company policies that violate
11 applicable California law governing wages, breaks and wage statements. While there might be
12 some need to make some factual determinations, including the calculation of individual damages,
13 the predominate issue will be the legality of the Debtors' practices and procedures. Accordingly,
14 the requirement is satisfied. *See, e.g., Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996 (9th Cir.
15 2018) (reversing denial of class certification of rounding and wage statement claims); *Ayala v.*
16 *U.S. Xpress Enters.*, 2017 U.S. Dist. LEXIS 125247 (C.D. Cal.).

17 **2. The Class Action is the Superior Method**

18 As set forth above, in this case a class proof of claim is a superior method of adjudicating
19 this matter than requiring individual claims. It is highly likely that few if any individual proofs of
20 claim will have been filed by the bar date, which will make it clear that most class members do
21 not have an interest in individually prosecuting their claims. Moreover, many of the class
22 members would be discouraged from vindicating their rights if they were required to pursue their
23 claims on an individual basis. And if this Court were to require individual claims, this Court
24 would likely be burdened by individuals trying to navigate through the court system without legal
25 representation.

26 Therefore, Wahidi has demonstrated that the conditions of Rule 23(b)(3) have been
27 satisfied.
28

IV.

**THE COURT SHOULD AUTHORIZE A CLASS REQUEST
FOR PAYMENT OF ADMINISTRATIVE EXPENSE**

The illegal conduct alleged in the amended complaint continued postpetition and the resulting monetary claims are administrative expenses under section 503(b) of the Bankruptcy Code. *Gonzalez v. Gottlieb (In re Metro Fulfillment, Inc.)*, 294 B.R. 306 (BAP 9th Cir. 2003).

The cause for authority to file a class prepetition proof of claim is also cause for authority to file a class postpetition request for payment of administrative expense. Because Wahidi was not a postpetition employee, he cannot serve as the class representative.² Madrigal was a postpetition employee and can serve. Accordingly, Madrigal should be authorized to file a class request for payment of administrative expense.

V.

**ALTERNATIVELY, THE COURT SHOULD ESTABLISH A PROCESS
FOR COLLECTIVE ADJUDICATION OF THE CLASS CLAIMS**

Should the Court reject Wahidi's request for authority to file and prosecute a class proof of claims, the Court should (1) extend the bar date for members of the class to file individual claims, and (2) establish a practical process of for ascertaining and collectively adjudicating the claims. *See, Schuman v. Connaught Group, Ltd. (In re Connaught Group, Ltd.)*, 491 B.R. 88 (Bankr. S.D.N.Y. 2013) ("If the representative files a timely adversary proceeding or class proof of claim, and the Court denies a motion to certify the class, it should set a reasonable bar date to allow the members of the putative class to file individual claims.").

An alternative process was recently utilized in *In re Buffets LLC's*, No. 16-50557-RBK (Bankr. W.D. Tex.). In *Buffets*, also a wage and hour matter, the court established a process

² On behalf of those class members who provided services to the Debtors within 180 days of the Petition Date, the Wahidi claim is asserted as a priority claim pursuant to section 507(a)(4) of the Bankruptcy Code. Wahidi himself is not eligible to assert a priority claim. If this Court concludes that a class claim is appropriate but Wahidi cannot serve as the class representative of the class members asserting a priority claim, the Law Offices of Kevin T. Barnes has been retained by additional class members who can serve as the class representative for priority claimants, including Madrigal.

1 whereby the debtor produced a notice list, and a notice and consent form was mailed to all
2 putative class members to participate in the bankruptcy proceedings. All consent forms had to be
3 filed within 30 days. A copy of the order establishing the process is attached to the Shemano
4 Declaration as Exhibit E. All of the above was administered substantially after the general bar
5 date in the cases by way of forms specially agreed by counsel to all parties. As a testimony to
6 what these procedures can accomplish, they elicited over 1,600 workers' unpaid wage claims.
7 The parties then scheduled "bellwether" trials to expedite the collective adjudication of the
8 claims.

9 **VI.**

10 **CONCLUSION**

11 For the reasons set forth above, Wahidi requests that the Bankruptcy Court enter an order
12 authorizing Wahidi to file a proof of claim on behalf of himself and all others similarly situated,
13 and Madrigal requests that the Bankruptcy Court enter an order authorizing Madrigal to file a
14 request for payment of administrative expense on behalf of himself and all others similarly
15 situated.

16
17 DATED: March 26, 2019

SHEMANOLAW

18 By: /s/ David B. Shemano
19 David B. Shemano

20 Attorney for Waheed Wahidi, on behalf of himself
21 and all others similarly situated, and Ernesto
22 Madrigal, on behalf of himself and all others
23 similarly situated
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DECLARATION OF KEVIN T. BARNES

I, Kevin T. Barnes, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Waheed Wahidi ("Mr. Wahidi") in the action commenced by Mr. Wahidi in the Superior Court of the State of California for the County of San Mateo, Case No. 18CIV03214. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would competently testify thereto.

2. Mr. Wahidi was employed by Debtor Seton Medical Center from May 2017 through October 2017.

3. On June 21, 2018, Mr. Wahidi filed a class action lawsuit against Verity Health System Of California, Inc., Verity Business Services, Seton Medical Center, O'Connor Hospital, Saint Louise Regional Hospital, Seton Coastside, St. Francis Medical Center, St. Vincent Medical Center, and Does 1 To 100, in the Superior Court of the State of California for the County of San Mateo (the "Superior Court"), Case No. 18CIV03214, alleging violations of the California Labor Code, the California Business and Professions Code, applicable Wage Orders issued by the California Industrial Welfare Commission, and related common law principles. A first amended complaint was filed on June 26, 2018, adding Verity Medical Foundation as a defendant. A copy of the amended complaint is attached as Exhibit A.

4. I have also been retained by Ernesto Madrigal ("Madrigal"). Mr. Madrigal was employed by Debtor St. Francis Medical Center from November 2016 through September 18, 2018.

5. In summary, the complaint alleges that the Debtors (1) consistently administered a uniform company policy and procedure to round down the recorded time of hourly employees in violation of applicable California law and regulations, (2) as a matter of established company policy, failed to comply with the meal period requirements of applicable California law and regulations, (3) as a matter of established company policy, failed to comply with the rest period requirements of applicable California law and regulations, (4) as a matter of established company policy, failed to comply with the itemized wage statement requirements of applicable California

1 law and regulations, (5) as a matter of established company policy, did not pay all wages due to
2 former hourly employees due to the unlawful rounding, meal and rest policies as required by
3 applicable California law and regulations, (6) subjected hourly employees to unlawful, unfair
4 and/or fraudulent business acts/practices in the form of the above stated violations in violation of
5 section 17200 *et seq.* of the California Business & Professions Code, and (7) are subject to
6 penalties pursuant to section 2699 *et seq.* of the California Labor Code (the “Private Attorneys
7 General Act” or the “PAGA”).

8 6. The Debtors’ illegal conduct described in the amended complaint continued after
9 the Debtors file their bankruptcy cases.

10 7. The claims for recompense for violation of wage and hour laws predominates over
11 individual issues. The central issue on this claim is simple: whether Debtors violated California
12 state wage and hour laws by rounding down time, failing to provide full and complete meal
13 breaks, failing to provide full and complete rest breaks, failing to provide itemized wage
14 statements and failing to timely pay former employee all wages due. Resolution of these issues
15 will require common proof and predominate over any individualized issues.

16 8. Two months after the complaint was filed, the Debtors commenced their
17 bankruptcy cases. No determination of the propriety of class action treatment was made prior to
18 the commencement of the bankruptcy cases.

19 9. To the best of my knowledge, neither Mr. Wahidi, Mr. Madrigal, nor I, nor any
20 person associated with my law firm, have a conflict of interest with the class.

21 10. I am a well-experienced class action attorney and have considerable experience in
22 class action litigation. My law firm concentrates its practice in employment law, with an
23 emphasis on wage and hour class actions. I graduated from the University of Colorado at Boulder
24 in 1985 with a degree in Business Administration and Real Estate. I graduated from Loyola Law
25 School of Los Angeles in 1988. I am currently the managing partner in The Law Offices of Kevin
26 T. Barnes in Los Angeles. I am admitted to practice before the following Courts: United States
27 Court of Appeal, Ninth Circuit; United States District Court- Northern, Central, and Eastern
28 Districts of California; United States District Court- District of Colorado, United States District

1 Court- Fourth Circuit; all of California State Courts; and the United States Supreme Court. I have
2 an AV rating with Martindale Hubbell.

3 11. In 1997, I was one of the first attorneys in the State of California to represent a
4 plaintiff in a class action wage and hour case, specifically the case of *Amezcuca, et. al. v. Trak*
5 *Auto Corporation*, Los Angeles County Superior Court Case No. BC183900, coordinated with
6 *Tett v. Trak Auto Corporation*, Los Angeles County Superior Court Case No. BC186931. Since
7 that time, my firm has been hired by many plaintiff and law firms to serve as class counsel in
8 such cases. Few, if any, attorneys in California are more experienced in wage and hour class
9 action cases than my firm. A sampling of the class action and wage and hour litigation on which
10 The Law Offices of Kevin T. Barnes has served as lead and/or class counsel include: *Cruz v.*
11 *Suntory Water Group, Inc.*, Case No. BC243596; *Joel v. Athlete's Foot Group, Inc.*, Case No. BC
12 234231; *Cardilino v. Perrier*, Case No. BC 210181 and *Holt v. Great Springs Water, OC*
13 *Superior Court Case No. 810642; Hines v. CSK Auto; Tett v. CSK Auto and Noel v. CSK Auto,*
14 *Case No. San Diego Superior Court, Case No. 720346; Soto et. al. v. Park Uniform Rental*
15 *Service, et. al.*, Case No. BC215318; *Amezcuca, et. al. v. Trak Auto Corporation*, Case No. BC
16 183900 coordinated with *Tett v. Trak Auto Corporation*, Case No. BC 186931; *Maldonado v.*
17 *Footstar Center, Inc.*, Case No. 00CC06359; *Calvo, et. al. v. McKesson HBOC, Inc., et. al.*, Case
18 No. BC 228366 coordinated with *Ware, et. al. v. McKesson Water Products Company*, Case No.
19 BC 231420; *Franco v. Vans Inc.*, Case No. 01CC03995; *Cruz v. Suntory Water Group, Inc.*, Case
20 No. BC243596; *Toney v. McDonald's Restaurant, et al.*, Case No. BC234243; *Tong v. 21st*
21 *Century Insurance Company*, Case No. 01CC10913 coordinated with *Echegaray v. 21st Century*
22 *Insurance Co.*, Case No. BC255189 and *Requirme v. 21st Century Insurance Co.*, Case No.
23 BC253952; *Wood v. Hollywood Entertainment*, Case No. CV779511 coordinated with *Dannelley*
24 *v. Hollywood Entertainment, Inc.*, Case No. OC 816155 and *Peterson v. Hollywood*
25 *Entertainment Corp.*, Case No. CV788126; and *Lynn Lazdowski, et al. v. Bowne of Los Angeles,*
26 *Inc.*, Case No. 02CC16722.

27 12. In 2008 I tried with Joseph Antonelli the case of *Mutuc v. Huntington Memorial*
28 *Hospital*, Case No. BC288727. This is one of the few wage and hour class action cases tried in

1 the state of California. Judge William A. MacLaughlin issued a Statement of Decision awarding
2 Plaintiffs \$32.8 million which led to a \$60 million lump sum settlement. Also in 2008, I tried
3 another wage and hour class action entitled *Solis v. Worldwide Network, Inc., et al.*, Orange
4 County Superior Court Case No. 03CC00069, before Hon. Ronald L. Bauer, which resulted in
5 judgment in favor of Defendant Worldwide Network, Inc. I recently tried a third wage and hour
6 case in San Diego that is currently on appeal.

7 13. My firm has also been involved in numerous favorable appellate court decisions
8 which have been very important in wage and hour class action law. These appellate decisions
9 include the following cases:

- 10 a. *Huntington Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893 (a
11 landmark decision regarding the manner in which the regular rate must be
12 calculated and what is considered a “subterfuge” to avoid the correct payment of
13 the regular rate and overtime rate);
- 14 b. *Tien v. Sup. Ct. (Tenet Healthcare)* (2006) 139 Cal.App.4th 528 (protecting the
15 interest of putative class members in a wage and hour case who want their identity
16 protected);
- 17 c. *Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286 (the criteria required to
18 certify pay stub claims, waiting time penalty claims, and meal and break claims
19 among other matters);
- 20 d. *Williams v Superior Court (Allstate)* (2013) 221 Cal.App.4th 1353 (confirms
21 several important legal theories which support certification regarding common
22 questions);
- 23 e. *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (one of the
24 first California cases to consider the California Supreme Court decision in *Duran*
25 *v. U.S. National Bank Association* (2014) 59 Cal.4th 1, holding that plaintiffs can
26 use statistical sampling evidence to establish either liability or damages in a wage
27 and hour class action case. The *Schwan’s* opinion is also a seminal case regarding
28 an employers’ obligation to reimburse employees’ business expenses under

California Labor Code § 2802);

f. *Laffitte v. Robert Half International Inc.* (2014) 231 Cal.App.4th 860 (Review granted and Opinion superseded by *Laffitte v. Robert Half Intern.* (2015) 342 P.3d 1232) (use of a common fund recovery for attorneys' fees in class action cases).

On May 27, 2016, I argued this case to the California Supreme Court;

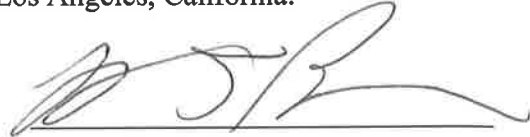
g. *Vaquero v. Ashley Furniture Industries Inc.* 824 F.3d 1150, 2016 WL 3190862 (9th Cir. June 8, 2016) (limits the impact of *Wal-Mart v. Dukes* (2011) 564 U.S. 338 with respect to the issue of commonality, limits the impact of *Comcast v. Behrend* (2013) 133 S.Ct. 1426 with respect to predominance and underscores the 9th Circuit rule that the need for individualized finding with respect to damages does not defeat class certification); and

h. *Vaquero v. Ashley Furniture Industries Inc.* (2017) 9 Cal.App.5th 98 (expands the impact of *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864 to commissioned employees for the first time; they must be separately compensated for rest breaks).

14. I have been invited on numerous occasions to speak on class action and wage-and-hour employment issues. I have spoken at seminars by the Labor and Employment Section of the Los Angeles County Bar Association, various labor lawyer associations, mediator seminars and Nuts & Bolts seminars for new lawyers. I was selected as one of the Top 10 Plaintiff Labor and Employment Attorneys in 2008 by the Daily Journal and the Top 75 Labor and Employment Attorneys in 2017 by the Daily Journal. I have been selected as a Southern California Super Lawyer from 2007-2018 in Employment and Labor. This recognition is a selection by my peers based upon ethics, experience and reputation and represents the top 5% of our profession. I am also AV rated by Martindale-Hubbell, the highest possible rating for a lawyer.

1 I declare under penalty of perjury that the foregoing is true and correct to the best of my
2 knowledge, information and belief.

3 Executed this 26th day of March 2019, at Los Angeles, California.

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5 Kevin T. Barnes
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SHEMANOLAW
LOS ANGELES

DECLARATION OF EMIL DAVTYAN

I, Emil Davtyan, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Waheed Wahidi (“Mr. Wahidi”) in the action commenced by Mr. Wahidi in the Superior Court of the State of California for the County of San Mateo, Case No. 18CIV03214. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would competently testify thereto.

2. I graduated from the Woodbury University in 2008 with a bachelor’s degree in Business Finance with highest honors, as the top student in my class. I graduated from Southwestern Law School in 2014 in the top 10% of my class. I am currently the principal attorney in Davtyan Professional Law Corporation in Woodland Hills, California. I am an attorney duly licensed to practice law in the State of California and am a member in good standing with the State Bar of California.

3. My legal experience since becoming a member of the California State Bar has been exclusively devoted to the practice of California and federal employment law. My office exclusively represents plaintiffs in wage and hour actions with the same or similar causes of actions brought forth in the matter pending before this Court.

4. I have been actively participating in the prosecution and successful settlement of multiple wage and hour class action lawsuits, helping to recover wages and penalties on behalf of tens of thousands of class members. My office has been appointed as Class Counsel in several class actions, including *De La Rosa v. The Coca Cola Company et al.* (Superior Court of California in Napa, 17CV000787), *Gates v. Gate Gourmet, Inc. et al.* (Southern District of California, 16-cv-01084-L-AGS), *Ramirez v. Milton Roy et al.* (Superior Court of California in Los Angeles, BC 632 276), *Hawkins v. AvalonBay Communities* (Superior Court of California in Santa Clara, 17CV316492), *Jones Tharpe et al. v. Sprint Corporation et al.* (Superior Court of California in Los Angeles, BC644645), *Ortega et al. v. Nestle Waters North America, Inc. et al.* (Superior Court of California in Los Angeles, BC623610), *Schultz v. Jimbo’s Natural Family, Inc.* (Superior Court of California in San Diego, 37-2017-00022348-CUE-OE-CTL), *Ambrose v.*

1 *Victor Valley Global et al.* (Superior Court of California in San Bernardino, CIVDS1709289),
2 *Puerta-Gildardo v. Real Time Staffing Services LLC et. al.* (Superior Court of California in Los
3 Angeles, BC565445), *Vargo v. Pregis Innovative Packaging LLC* (Superior Court of California in
4 Tulare, 270836), *Conlin v. Aegis Senior Communities LLC* (Northern District of California, 17-
5 cv-05534-LHK), *Galarza v. Kloeckner Metals Corporation* (Central District of California, 2:17-
6 cv-04910-FMO), *Estes v. L3 Technologies, Inc. et al.* (Southern District of California, 3:17-cv-
7 02356-H-JMA), *Rowser v. Trunk Club, Inc.* (Central District of California, 2:17-cv-05064-DSF-
8 RAO).

9 5. My office has been counsel of record in a number of pending wage and hour class
10 action lawsuits, including *Arellano v. Lopez & Arteaga, Inc. et al.* (Superior Court of California
11 in Santa Clara, 17CV313029), *Ramirez v. Harris Ranch Beef Company* (Superior Court of
12 California in Fresno, 16CECG04103), *Hargrave v. Antelope Valley Hospital* (Superior Court of
13 California in Los Angeles, BC663252), *Barrera et al. v. Exclusive Wireless, Inc.* (Superior Court
14 of California in Stanislaus, 9000687), *Sanchez v. AM Retail Group, Inc.* (Northern District of
15 California, 3:18-cv-00287-JCS), *Juarez v. ISL Employees, Inc.* (Superior Court of California in
16 Madera, MCV074787), *Martinez v. Gallo Cattle Company, LP* (Superior Court of California in
17 Merced, 18CV-00673), *Leach v. The Claremont Colleges, Inc.* (Superior Court of California in
18 Los Angeles, BC686451), *Fajardo v. AHMC Healthcare, Inc. et al.* (Superior Court of California
19 in Los Angeles, BC629297), among others.

20 6. To the best of my knowledge, neither I nor any person associated with my law
21 firm have a conflict of interest with the class.

22 I declare under penalty of perjury that the foregoing is true and correct to the best of my
23 knowledge, information and belief.

24 Executed this 26th day of March 2019, at Woodland Hills, California.

25 
26 Emil Davtyan
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DECLARATION OF DAVID B. SHEMANO

I, David B. Shemano, declare as follows:

1. I am bankruptcy counsel to Waheed Wahidi and Ernesto Madrigal in the bankruptcy cases filed by Verity Health System of California, Inc, and its affiliates (the “Debtors”). Each of the facts contained in this declaration is based upon my personal knowledge and, if called as a witness to do so, I could competently testify thereto.

2. When the Debtors filed their petitions, they listed Mr. Wahidi as their largest unsecured creditor, asserting a disputed claim of \$150 million. A copy of the Debtors’ list of 50 largest unsecured creditors is attached as Exhibit B.

3. On February 6, 2019, I contacted counsel for the Debtors to see if an agreement could be reached that would permit Mr. Wahidi to file a class proof of claim, while leaving any substantive disputes for later resolution. On March 8, 2019, counsel for the Debtor finally responded to my request by stating that the Debtors are not willing to consent to a class claim. A copy of the Debtors’ response is attached as Exhibit C.

4. Attached as Exhibit D is the proof of claim concurrently filed by Mr. Wahidi on behalf of himself and others similarly situated in the Verity Health System of California, Inc., case.

5. Attached as Exhibit E is Docket No. 2126 in *In re Buffets LLC’s*, No. 16-50557-RBK (Bankr. W.D. Tex.).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of March 2019, at Los Angeles, California.

/s/ David B. Shemano
David B. Shemano

EXHIBIT A

FILED
SAN MATEO COUNTY

JUN 26 2018

Clerk of the Superior Court
By DEPUTY CLERK

Kevin T. Barnes, Esq. (#138477)
Gregg Lander, Esq. (#194018)
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Email: Emil@davtyanlaw.com

Attorneys for Plaintiff WAHEED WAHIDI,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

WAHEED WAHIDI, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., a California
corporation; VERITY BUSINESS
SERVICES, a California corporation;
VERITY MEDICAL FOUNDATION, a
California corporation; SETON MEDICAL
CENTER, a California corporation;
O'CONNOR HOSPITAL, a California
corporation; SAINT LOUISE REGIONAL
HOSPITAL (whether or not d/b/a "DePaul
Urgent Care"), a California corporation;
SETON COASTSIDE, a California
corporation; ST. FRANCIS MEDICAL
CENTER, a California corporation; ST.
VINCENT MEDICAL CENTER, a
California corporation; and DOES 1 to 100,
inclusive,

Defendants.

CLASS ACTION

Case No.: 18CIV03214

COMPLAINT FOR:

1. FAILURE TO PAY ALL WAGES
DUE TO ILLEGAL ROUNDING;
2. FAILURE TO PROVIDE ALL
MEAL PERIODS;
3. FAILURE TO AUTHORIZE AND
PERMIT ALL PAID REST
PERIODS;
4. INDEPENDENT FAILURE TO
TIMELY FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS;
5. DERIVATIVE FAILURE TO
TIMELY FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS;
6. VIOLATIONS OF LABOR CODE
§203;
7. PENALTIES PURSUANT TO
LABOR CODE §2699; AND
8. UNFAIR BUSINESS PRACTICES

DEMAND FOR JURY TRIAL

Plaintiff WAHEED WAHIDI, an individual on behalf of himself and all others similarly
situated (hereinafter collectively referred to as "Plaintiffs"), hereby files this Complaint against
Defendants VERITY HEALTH SYSTEM OF CALIFORNIA, INC., VERITY BUSINESS

18 - CIV - 03214
ACM1
First Amended Complaint
1229198



FILE BY FAX

SERVICES, VERITY MEDICAL FOUNDATION, SETON MEDICAL CENTER, O'CONNOR HOSPITAL, SAINT LOUISE REGIONAL HOSPITAL (whether or not d/b/a "DePaul Urgent Care"), SETON COASTSIDE, ST. FRANCIS MEDICAL CENTER, ST. VINCENT MEDICAL CENTER, and DOES 1 to 100 (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and believe, and on the basis of that information and belief, allege as follows:

I.

INTRODUCTION

1. This is a civil action seeking recovery for Defendants' violations of the California Labor Code ("Labor Code"), California Business and Professions Code ("B&PC"), the applicable Wage Orders issued by the California Industrial Welfare Commission (hereinafter, the "IWC Wage Orders") and related common law principles.

2. Plaintiffs' action seeks monetary damages, including full restitution from Defendants as a result of Defendants' unlawful, fraudulent and/or unfair business practices.

3. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from four (4) years preceding the filing of the original Complaint herein, up to and through the time of trial for this matter although this should not automatically be considered the statute of limitations for any cause of action herein.

4. For introductory and general information only (and not to be considered a proposed class definition), the relevant job titles held by the California citizens in this action are Defendants' hourly-paid employees who were subjected to Defendants' policies and practices as described herein. Any differences in job activities between the different individuals in these positions were and are legally insignificant to the issues presented by this action.

SUMMARY OF CLAIMS

5. With regard to Defendants' hourly-paid employees, Defendants have:

- a. Failed to pay all wages due to illegal time rounding;
- b. Failed to provide all legally-requisite meal periods;
- c. Failed to authorize and permit all paid legally-requisite rest periods;
- d. Independently failed to timely furnish accurate itemized wage statements;

- e. Derivatively failed to timely furnish accurate itemized wage statements;
- f. Violated Labor Code §203;
- g. Incurred penalties pursuant to Labor Code §§2698, et seq.; and
- h. Conducted unfair business practices.

II.

PARTIES

PLAINTIFF WAHEED WAHIDI

6. Plaintiff WAHEED WAHIDI is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a citizen of the State of California.

7. Plaintiff WAHEED WAHIDI worked for Defendants as an hourly-paid Emergency Room Registered Nurse from approximately May 2017 to October 2017 in Daly, California, which is in San Mateo County, California.

8. Plaintiff WAHEED WAHIDI seeks recovery herein from Defendants because with regard to Plaintiff WAHEED WAHIDI, while acting for Defendants in his capacity as an hourly-paid employee, Defendants have:

- a. Failed to pay all wages due to illegal time rounding;
- b. Failed to provide all legally-requisite meal periods;
- c. Failed to authorize and permit all paid legally-requisite rest periods;
- d. Independently failed to timely furnish accurate itemized wage statements;
- e. Derivatively failed to timely furnish accurate itemized wage statements;
- f. Violated Labor Code §203;
- g. Incurred penalties pursuant to Labor Code §§2698, et seq.; and
- h. Conducted unfair business practices.

DEFENDANTS

9. Defendants VERITY HEALTH SYSTEM OF CALIFORNIA, INC., VERITY BUSINESS SERVICES, VERITY MEDICAL FOUNDATION, SETON MEDICAL CENTER, O'CONNOR HOSPITAL, SAINT LOUISE REGIONAL HOSPITAL (whether or not d/b/a "DePaul Urgent Care"), SETON COASTSIDE, ST. FRANCIS MEDICAL CENTER and ST.

VINCENT MEDICAL CENTER are now and/or at all times mentioned in this Complaint were California corporations and the owners and operators of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

DOES 1 TO 100, INCLUSIVE

10. DOES 1 to 100, inclusive are now, and/or at all times mentioned in this Complaint were licensed to do business and/or actually doing business in California.

11. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1 to 100 are sued under such fictitious names pursuant to California Code of Civil Procedure ("CCP") §474.

12. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

ALL DEFENDANTS AND DOES

13. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

14. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

15. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

16. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint venture, partnership and common enterprise.

17. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each and every one of the other Defendants

1 in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

2 18. Defendants, and each of them, at all times mentioned in this Complaint approved
3 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
4 this Complaint.

5 19. Defendants, and each of them, at all times mentioned in this Complaint aided and
6 abetted the acts and omissions of each and every one of the other Defendants thereby
7 proximately causing the damages alleged in this Complaint.

8 **III.**

9 **JURISDICTION AND VENUE**

10 20. The California Superior Court has jurisdiction in this matter due to Defendants'
11 aforementioned violations of California statutory law and/or related common law principles.

12 21. The California Superior Court also has jurisdiction in this matter because both the
13 individual and aggregate monetary damages and restitution sought herein exceed the minimal
14 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

15 22. The California Superior Court also has jurisdiction in this matter because during
16 their employment with Defendants, Plaintiff WAHEED WAHIDI and the members of the putative
17 Classes herein were all California citizens and Defendants VERITY HEALTH SYSTEM, SETON
18 MEDICAL CENTER, O'CONNOR HOSPITAL, ST. LOUISE REGIONAL HOSPITAL, SETON
19 COASTSIDE, ST. FRANCIS MEDICAL CENTER, ST. VINCENT MEDICAL CENTER are all
20 California corporations. Further, there is no federal question at issue, as the issues herein are based
21 solely on California statutes and law.

22 23. Venue is proper in San Mateo County pursuant to CCP §395(a) and CCP §395.5 in
23 that liability arose there because at least some of the transactions that are the subject matter of this
24 Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts
25 business, and/or has an agent therein.

26 **IV.**

27 **CLASS ACTION ALLEGATIONS**

28 24. CCP §382 provides in pertinent part: "...[W]hen the question is one of a common

1 or general interest, of many persons, or when the parties are numerous, and it is impracticable to
2 bring them all before the court, one or more may sue or defend for the benefit of all.” Plaintiffs
3 bring this suit as a class action pursuant to CCP §382.

4 25. The putative classes Plaintiffs will seek to certify are currently composed of and
5 defined as follows:

- 6 a. All California citizens employed by Defendants as hourly-paid employees (as
7 defined, supra) during the appropriate time period to whom Defendants
8 applied a time rounding policy and practice as specifically described herein
9 (hereinafter, the “Rounding Class”);
- 10 b. All California citizens employed by Defendants as hourly-paid employees (as
11 defined, supra) during the appropriate time period who were subjected to
12 Defendants’ policies and practices regarding meal periods as specifically
13 described herein (hereinafter, the “Meal Period Class”);
- 14 c. All California citizens employed by Defendants as hourly-paid employees (as
15 defined, supra) during the appropriate time period who were subjected to
16 Defendants’ policies and practices regarding paid rest periods as specifically
17 described herein (hereinafter, the “Rest Period Class”);
- 18 d. All California citizens employed by Defendants as hourly-paid employees (as
19 defined, supra) during the appropriate time period who were independently
20 subjected to Defendants’ policies and practices regarding itemized wage
21 statements (hereinafter, the “Independent Wage Statement Class”);
- 22 e. All California citizens employed by Defendants as hourly-paid employees (as
23 defined, supra) during the appropriate time period who were derivatively
24 subjected to Defendants’ policies and practices regarding itemized wage
25 statements (hereinafter, the “Derivative Wage Statement Class”);
- 26 f. All formerly-employed California citizens employed by Defendants as hourly-
27 paid employees (as defined, supra) during the appropriate time period who
28 were subjected to Defendants’ policies and practices regarding Labor Code

§203 and the payment of final wages as specifically described herein

(hereinafter, the "LC 203 Class"); and

g. All California citizens employed by Defendants as hourly-paid employees (as defined, supra) during the appropriate time period regarding whom Defendants have engaged in unlawful, unfair and/or fraudulent business acts or practices prohibited by B&PC §17200, et seq. as specifically described herein (hereinafter, the "17200 Class").

26. The Rounding Class, Meal Period Class, Rest Period Class, Independent Wage Statement Class, Derivative Wage Statement Class, LC 203 Class and 17200 Class are herein collectively referred to as the "Classes."

27. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary to amend the definition of the Classes. Plaintiffs will formally define and designate a class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

28. Numerosity (CCP §382):

- a. The potential quantity of members of the Classes as defined is so numerous that joinder of all members is unfeasible and impractical;
- b. The disposition of the claims of the members of the Classes through this class action will benefit both the parties and this Court;
- c. The quantity of members of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the membership of the Classes numbers greater than 100 individuals; and
- d. The quantity and identity of such membership is readily ascertainable via inspection of Defendants' records.

29. Superiority (CCP §382): The nature of this action and the nature of the laws available to Plaintiffs make the use of the class action format particularly efficient and the appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein, as follows:

- a. California has a public policy which encourages the use of the class action device;

- 1 b. By establishing a technique whereby the claims of many individuals can be
2 resolved at the same time, the class suit both eliminates the possibility of
3 repetitious litigation and provides small claimants with a method of obtaining
4 redress for claims which would otherwise be too small to warrant individual
5 litigation;
- 6 c. This case involves large corporate Defendants and a large number of
7 individual Class members with many relatively small claims and common
8 issues of law and fact;
- 9 d. If each individual member of the Classes was required to file an individual
10 lawsuit, the large corporate Defendants would necessarily gain an
11 unconscionable advantage because Defendants would be able to exploit and
12 overwhelm the limited resources of each individual member of the Classes
13 with Defendants' vastly superior financial and legal resources;
- 14 e. Requiring each individual member of the Classes to pursue an individual
15 remedy would also discourage the assertion of lawful claims by the members
16 of the Classes who would be disinclined to pursue an action against
17 Defendants because of an appreciable and justifiable fear of retaliation and
18 permanent damage to their lives, careers and well-being;
- 19 f. Proof of a common business practice or factual pattern, of which the members
20 of the Classes experienced, is representative of the Classes herein and will
21 establish the right of each of the members of the Classes to recover on the
22 causes of action alleged herein;
- 23 g. Absent class treatment, the prosecution of separate actions by the individual
24 members of the Classes, even if possible, would likely create:
- 25 i) a substantial risk of each individual plaintiff presenting in separate,
26 duplicative proceedings the same or essentially similar arguments and
27 evidence, including expert testimony;

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- ii) a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants;
- iii) inconsistent or varying verdicts or adjudications with respect to the individual members of the Classes against Defendants;
- iv) potentially incompatible standards of conduct for Defendants; and
- v) potentially incompatible legal determinations with respect to individual members of the Classes which would, as a practical matter, be dispositive of the interest of the other members of the Classes who are not parties to the adjudications or which would substantially impair or impede the ability of the members of the Classes to protect their interests.

- h. The claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attendant thereto;
- i. Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions; and
- j. The Supreme Court of California urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

30. Well-defined Community of Interest: Plaintiffs also meet the established standards for class certification (see, e.g. Lockheed Martin Corp. v. Superior Court (2003) 29 Cal.4th 1096), as follows:

- a. Typicality: The claims of Plaintiff WAHEED WAHIDI are typical of the claims of all members of the Classes he seeks to represent because all members of the Classes sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Classes were caused by Defendants' wrongful conduct in violation of law, as alleged herein.

1 b. Adequacy: Plaintiff WAHEED WAHIDID:

- 2 i) is an adequate representative of the Classes he seeks to represent;
3 ii) will fairly protect the interests of the members of the Classes;
4 iii) has no interests antagonistic to the members of the Classes; and
5 iv) will vigorously pursue this suit via attorneys who are competent,
6 skilled and experienced in litigating matters of this type.

7 c. Predominant Common Questions of Law or Fact: There are common
8 questions of law and/or fact as to the members of the Classes which
9 predominate over questions affecting only individual members of the Classes,
10 including, without limitation:

- 11 i) Whether Defendants' time rounding policies and practices are illegal
12 with regard to the members of the Rounding Class;
13 ii) Whether Defendants failed and continue to fail to provide legally-
14 requisite meal periods to the members of the Meal Period Class in
15 violation of the Labor Code and Section 11 of the IWC Wage Orders;
16 iii) Whether Defendants failed and continue to fail to authorize and permit
17 paid legally-requisite rest periods to the members of the Rest Period
18 Class in violation of the Labor Code and Section 12 of the IWC Wage
19 Orders;
20 iv) Whether Defendants independently failed to timely furnish accurate,
21 itemized and legal wage statements to the members of the Independent
22 Wage Statement Class;
23 v) Whether Defendants derivatively failed to timely furnish accurate,
24 itemized and legal wage statements to the members of the Derivative
25 Wage Statement Class;
26 vi) Whether Defendants are liable pursuant to Labor Code §203 to the
27 members of the LC 203 Class;

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- vii) Whether the members of the Classes are entitled to penalties pursuant to Labor Code §§2698, et seq.;
- viii) Whether Defendants' conduct constitutes unfair competition within the meaning of B&PC §17200, et seq.;
- ix) Whether Defendants' conduct constitutes unfair business practices within the meaning of B&PC §17200, et seq.;
- x) Whether the members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;
- xi) Whether the members of the Classes are entitled to injunctive relief;
- xii) Whether the members of the Classes are entitled to restitution; and
- xiii) Whether Defendants are liable for attorneys' fees and costs.

31. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action (see, e.g. Collins v. Rocha (1972) 7 Cal.3d 232, 238).

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE TO ILLEGAL ROUNDING

(On Behalf of the Rounding Class)

(Against All Defendants)

32. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

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

34. Labor Code §510(a) states in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated

1 at the rate of no less than one and one-half times the regular rate of pay for any employee.”

2 35. Labor Code §1182.12, effective July 1, 2014, states: “Notwithstanding any other
3 provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not
4 less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all
5 industries shall be not less than ten dollars (\$10) per hour.” Further, pursuant to Labor Code
6 §1182.12(b)(1)(A), for any employer who employs 26 or more employees, the minimum wage
7 shall be as follows: “From January 1, 2017, to December 31, 2017, inclusive, - ten dollars and
8 fifty cents (\$10.50) per hour.” Finally, pursuant to Labor Code §1182.12(b)(1)(B), for any
9 employer who employs 26 or more employees, the minimum wage shall be as follows: “From
10 January 1, 2018, to December 31, 2018, inclusive, - eleven dollars (\$11) per hour.”

11 36. Labor Code §§1194(a) states: “Notwithstanding any agreement to work for a
12 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
13 compensation applicable to the employee is entitled to recover in a civil action the unpaid
14 balance of the full amount of this minimum wage or overtime compensation, including interest
15 thereon, reasonable attorney’s fees, and costs of suit.”

16 37. Further, pursuant to Labor Code §1197, payment of less than the minimum wage
17 fixed by the Labor Commission is unlawful.

18 38. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than
19 the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
20 Wage Order(s).

21 39. Pursuant to the IWC Wage Order(s), Defendants are required to pay the members
22 of the Rounding Class for all hours worked, meaning the time during which an employee is
23 subject to the control of an employer, including all the time the employee is suffered or permitted
24 to work, whether or not required to do so.

25 40. Defendants, as a matter of established company policy and procedure, at each and
26 every one of the individual facilities owned and/or operated by Defendants, consistently:

- 27 a. Administered a uniform company policy and practice as to the rounding
28 policies regarding the members of the Rounding Class; and

1 b. Rounded the actual time worked and recorded by the members of the
2 Rounding Class, usually down, so that during the course of the their
3 employment, the members of the Rounding Class were paid far less than
4 they would have been paid had they been paid for actual recorded time
5 rather than “rounded” time.

6 41. Because Defendants required the members of the Rounding Class to remain under
7 Defendants’ control without paying therefore, this resulted in the members of the Rounding
8 Class earning less than the legal minimum wage in the State of California.

9 42. Defendants’ pattern, practice and uniform administration of corporate policy
10 regarding illegal employee compensation as described herein is unlawful and creates an
11 entitlement, pursuant to Labor Code §218, to recovery by Plaintiffs and the members of the
12 Rounding Class, in a civil action, of the unpaid balance of the full amount of wages owing,
13 calculated at the appropriate rate.

14 43. Further, Defendants’ pattern and practice in uniform administration of corporate
15 policy regarding Defendants’ failure to pay the legal minimum wage to the members of the
16 Rounding Class as described herein is unlawful and creates entitlement, pursuant to Labor Code
17 §1194(a), to recovery by the members of the Rounding Class, in a civil action, for the unpaid
18 balance of the full amount of the unpaid minimum wages owed, calculated as the difference
19 between the straight time compensation paid and the applicable minimum wage (and/or the full
20 amount of unpaid overtime compensation, which includes any unpaid straight time and unpaid
21 overtime premium for overtime hours worked), including interest thereon.

22 44. Pursuant to Labor Code §1194.2(a) (which provides that in any action under
23 Labor Code §1194, an employee shall be entitled to recover liquidated damages), the members of
24 the Rounding Class seek recovery of liquidated damages on the straight-time portion of
25 uncompensated hours of work (not including the overtime portion thereof) in an amount equal to
26 the wages unlawfully unpaid and interest thereon.

27 45. That calculation of individual damages for the members of the Rounding Class
28 may at some point be required does not foreclose the possibility of taking common evidence on

1 questions regarding their entitlement to overtime compensation (see, e.g. Collins v. Rocha (1972)
2 7 Cal.3d 232; Hypolite v. Carleson (1975) 52 Cal.App.3d 566; Employment Development Dept.
3 v. Superior Court (1981) 30 Cal.3d 256).

4 46. Pursuant to Labor Code §218.6, Labor Code §1194(a) and CC §3287, the
5 members of the Rounding Class seek recovery of pre-judgment interest on all amounts recovered
6 herein.

7 47. Pursuant to Labor Code §218.5 and/or Labor Code §1194, the members of the
8 Rounding Class request that the Court award reasonable attorneys' fees and costs incurred by
9 them in this action.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ALL MEAL PERIODS**

12 **(On Behalf of the Meal Period Class)**

13 **(Against All Defendants)**

14 48. Plaintiffs incorporate by reference and reallege each and every one of the
15 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
16 forth herein.

17 49. Labor Code §226.7(b) provides that "An employer shall not require an employee
18 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
19 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
20 Safety and Health Standards Board, or the Division of Occupational Safety and Health."

21 50. Labor Code §512 provides that "An employer may not employ an employee for a
22 work period of more than five hours per day without providing the employee with a meal period
23 of not less than 30 minutes, except that if the total work period per day of the employee is no
24 more than six hours, the meal period may be waived by mutual consent of both the employer and
25 employee. An employer may not employ an employee for a work period of more than 10 hours
26 per day without providing the employee with a second meal period of not less than 30 minutes,
27 except that if the total hours worked is no more than 12 hours, the second meal period may be
28 waived by mutual consent of the employer and the employee only if the first meal period was not

1 waived.”

2 51. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or
3 amend working condition orders with respect to break periods, meal periods, and days of rest for
4 any workers in California consistent with the health and welfare of those workers.”

5 52. Section 11(A) of the IWC Wage Orders provides that “Unless the employee is
6 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on
7 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted
8 only when the nature of the work prevents an employee from being relieved of all duty and when
9 by written agreement between the parties an on-the-job paid meal period is agreed to. The
10 written agreement shall state that the employee may, in writing, revoke the agreement at any
11 time.”

12 53. Section 11(B) of the IWC Wage Order(s) provides that “If an employer fails to
13 provide an employee a meal period in accordance with the applicable provisions of this order, the
14 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
15 compensation for each workday that the meal period is not provided.”

16 54. On one or more occasions, the members of the Meal Period Class worked over
17 five (5) hours per shift and therefore were entitled to a meal period of not less than thirty (30)
18 minutes prior to exceeding five (5) hours of employment.

19 55. Further, on one or more occasions, some members of the Meal Period Class
20 worked over ten (10) hours per shift and therefore were entitled to a second meal period of not
21 less than 30 minutes.

22 56. The members of the Meal Period Class did not validly or legally waive their meal
23 periods, by mutual consent with Defendants or otherwise.

24 57. The members of the Meal Period Class did not enter into any written agreement
25 with Defendants agreeing to an on-the-job paid meal period.

26 58. As a matter of Defendants’ established company policy, Defendants failed to
27 always comply with the meal period requirements established by Labor Code §226.7, Labor
28 Code §512, Labor Code §516 and Section 11 of the IWC Wage Order(s) by failing to always

1 provide the members of the Meal Period Class with a first and in some cases a second legally
2 compliant meal period.

3 59. Pursuant to Section 11(B) of the IWC Wage Order(s) and Labor Code §226.7(c)
4 which states “If an employer fails to provide an employee a meal or rest or recovery period in
5 accordance with a state law, including, but not limited to, an applicable statute or applicable
6 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
7 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
8 pay the employee one additional hour of pay at the employee's regular rate of compensation for
9 each workday that the meal or rest or recovery period is not provided.” the members of the Meal
10 Period Class are entitled to damages in an amount equal to one (1) additional hour of pay at each
11 employee’s regular rate of compensation for each work day that the meal period was not
12 provided, in a sum to be proven at trial.

13 60. Pursuant to Labor Code §218.6 and CC §3287, the members of the Meal Period
14 Class seek recovery of pre-judgment interest on all amounts recovered herein.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS**

17 **(On Behalf of the Rest Period Class)**

18 **(Against All Defendants)**

19 61. Plaintiffs incorporate by reference and reallege each and every one of the
20 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
21 forth herein.

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

26 63. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or
27 amend working condition orders with respect to break periods, meal periods, and days of rest for
28 any workers in California consistent with the health and welfare of those workers.”

1 64. Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize
2 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
3 of each work period. The authorized rest period time shall be based on the total hours worked
4 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
5 However, a rest period need not be authorized for employees whose total daily work time is less
6 than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
7 worked for which there shall be no deduction from wages."

8 65. Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide
9 an employee a rest period in accordance with the applicable provisions of this order, the
10 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
11 compensation for each workday that the rest period is not provided."

12 66. The members of the Rest Period Class sometimes worked over four (4) hours per
13 shift. Further, the members of the Rest Period Class sometimes worked over six (6) hours per
14 shift, and in some cases over ten (10) hours per shift.

15 67. The members of the Rest Period Class were entitled to a rest period of not less
16 than ten (10) minutes prior to exceeding four (4) hours of employment.

17 68. As a matter of Defendants' established company policy, Defendants failed to
18 always authorize and permit all required rest periods established by Labor Code §226.7 and
19 Labor Code §516 and Section 12 of the IWC Wage Order(s).

20 69. Pursuant to Section 12 of the IWC Wage Order(s) and Labor Code §226.7(b)
21 which states "If an employer fails to provide an employee a meal or rest or recovery period in
22 accordance with a state law, including, but not limited to, an applicable statute or applicable
23 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
24 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
25 pay the employee one additional hour of pay at the employee's regular rate of compensation for
26 each workday that the meal or rest or recovery period is not provided," the members of the Rest
27 Period Class are entitled to damages in an amount equal to one (1) additional hour of pay at each
28 employee's regular rate of compensation for each work day that the rest period was not so

1 provided.

2 70. Pursuant to Labor Code §218.6 and CC §3287, the members of the Rest Period
3 Class seek recovery of pre-judgment interest on all amounts recovered herein.

4 **FOURTH CAUSE OF ACTION**

5 **INDEPENDENT FAILURE TO TIMELY**

6 **FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

7 **(On Behalf of the Independent Wage Statement Class)**

8 **(Against All Defendants)**

9 71. Plaintiffs incorporate by reference and reallege each and every one of the
10 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
11 forth herein.

12 72. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly
13 or at the time of each payment of wages, furnish each of his or her employees, either as a
14 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
15 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
16 gross wages earned, (2) total hours worked by the employee, except for any employee whose
17 compensation is solely based on a salary and who is exempt from payment of overtime under
18 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3)
19 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
20 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
21 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
22 dates of the period for which the employee is paid, (7) the name of the employee and only the
23 last four digits of his or her social security number or an employee identification number other
24 than a social security number, (8) the name and address of the legal entity that is the employer
25 and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the
26 name and address of the legal entity that secured the services of the employer, and (9) all
27 applicable hourly rates in effect during the pay period..."

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1 73. As a pattern and practice, in violation of Labor Code §226(a), Defendants did not
2 and still do not furnish each of the members of the Independent Wage Statement Class with an
3 accurate itemized statement in writing showing all applicable hourly rates in effect during the
4 pay period.

5 74. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an
6 employee suffers injury if the employer fails to provide accurate and complete information as
7 required by any one or more items listed in Labor Code §226(a)(1)-(9) and the employee cannot
8 promptly and easily ascertain requisite information without reference to other documents or
9 information.

10 75. Here, the members of Independent Wage Statement Class suffered injury because
11 Defendants failed to provide accurate and complete information as required by one or more items
12 listed in Labor Code §226(a)(1)-(9) and the Independent Wage Statement Class members could
13 not and cannot promptly and easily ascertain requisite information without reference to other
14 documents or information.

15 76. In addition, the members of the Independent Wage Statement Class have suffered
16 injury as a result of Defendants' failure to maintain accurate records for the members of the
17 Independent Wage Statement Class in that the members of the Independent Wage Statement
18 Class were not timely provided written accurate itemized statements showing all requisite
19 information, including but not limited to all applicable hourly rates in effect during the pay
20 period, in violation of Labor Code §226, such that the members of the Independent Wage
21 Statement Class were misled by Defendants as to the correct information regarding various
22 items, including but not limited to all applicable hourly rates in effect during the pay period.

23 77. The actual injuries suffered by the members of the Independent Wage Statement
24 Class as a result of Defendants' knowing and intentional failure to maintain accurate records for
25 the members of the Independent Wage Statement Class include but are not limited to:

- 26 a. That such practice prevents the members of the Independent Wage Statement
27 Class from being able to effectively challenge information on their wage
28 statements; and/or

b. The difficulty and expense of filing and maintaining this lawsuit, and the discovery required to collect and analyze the very information that California law requires.

78. Pursuant to Labor Code §226(e), the members of the Independent Wage Statement Class are entitled to fifty dollars (\$50.00) per employee for the initial pay period in which a violation hereunder occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00).

79. Pursuant to Labor Code §226(g), the currently-employed members of the Independent Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with Labor Code §226.

80. Pursuant to Labor Code §226(e) and/or §226(g), the members of the Independent Wage Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

DERIVATIVE FAILURE TO TIMELY

FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(On Behalf of the Derivative Wage Statement Class)

81. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

82. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period and the corresponding number of hours worked at each hourly rate by the

1 employee....”.

2 83. Further, the IWC Wage Orders §7(A) states in pertinent part: “(A) Every
3 employer shall keep accurate information with respect to each employee including the following:
4 (3) Time records showing when the employee begins and ends each work period. Meal periods,
5 split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked
6 in the payroll period and applicable rates of pay....”

7 84. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §7(A),
8 California employers are required to maintain accurate records pertaining to the total hours
9 worked for Defendants by the members of the Derivative Wage Statement Class, including but
10 not limited to, beginning and ending of each work period, meal period and split shift interval, the
11 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

12 85. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage
13 Orders §7(A), Defendants did not and still do not furnish each of the members of the Derivative
14 Wage Statement Class with an accurate itemized statement in writing showing (1) gross wages
15 earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or
16 (5) all applicable hourly rates in effect during each respective pay period and the corresponding
17 number of hours worked at each hourly rate by each respective individual.

18 86. As set forth herein in prior causes of action, Defendants allegedly failed to pay the
19 members of the Derivative Wage Statement Class all wages due and owing.

20 87. As a derivative result of this failure to pay wages and as a pattern and practice in
21 violation of Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and do
22 not maintain accurate records pertaining to the total hours worked for Defendants by the
23 members of the Derivative Wage Statement Class, including but not limited to, beginning and
24 ending of each work period, meal period interval, total daily hours worked, total hours worked
25 per pay period, and the applicable rates of pay.

26 88. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an
27 employee suffers injury if the employer fails to provide accurate and complete information as
28 required by any one or more items listed in Labor Code §226(a)(1)-(9) and the employee cannot

1 promptly and easily ascertain requisite information without reference to other documents or
2 information.

3 89. Here, the members of Derivative Wage Statement Class suffered injury because,
4 due to Defendants' failure to pay all wages due and owing, Defendants derivatively failed to
5 provide accurate and complete information as required by one or more items listed in Labor
6 Code §226(a)(1)-(9).

7 90. In addition, the members of the Derivative Wage Statement Class have suffered
8 injury as a result of Defendants' failure to maintain accurate records for the members of the
9 Derivative Wage Statement Class in that the members of the Derivative Wage Statement Class
10 were not timely provided written accurate itemized statements showing all requisite information,
11 including but not limited to total hours worked by the employee, net wages earned and all
12 applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate, in violation of Labor Code §226 and the IWC Wage Orders §7(A),
14 such that the members of the Derivative Wage Statement Class were misled by Defendants as to
15 the correct information regarding various items, including but not limited to total hours worked
16 by the employee, net wages earned and all applicable hourly rates in effect during the pay period
17 and the corresponding number of hours worked at each hourly rate.

18 91. The actual injuries suffered by the members of the Derivative Wage Statement
19 Class as a result of Defendants' knowing and intentional failure to maintain accurate records for
20 the members of the Derivative Wage Statement Class include but are not limited to:

- 21 a. Confusion over whether they received all wages owed them by Defendants;
- 22 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 23 c. Being forced to engage in mathematical computations to analyze whether
- 24 Defendants' wages in fact compensated for all hours worked;
- 25 d. The inability to accurately calculate wage rates complicated by the fact that
- 26 wage statement information required by Labor Code §226 is missing;
- 27 e. That such practice prevents the members of the Derivative Wage Statement
- 28 Class from being able to effectively challenge information on their wage

statements; and/or

f. The difficulty and expense of filing and maintaining this lawsuit, and the discovery required to collect and analyze the very information that California law requires.

92. Pursuant to Labor Code §226(e), the members of the Derivative Wage Statement Class are entitled to fifty dollars (\$50.00) per employee for the initial pay period in which a violation hereunder occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00).

93. Pursuant to Labor Code §226(g), the currently-employed members of the Derivative Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with Labor Code §226.

94. Pursuant to Labor Code §226(e) and/or §226(g), the members of the Derivative Wage Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

VIOLATIONS OF LABOR CODE §203

(On Behalf of the LC 203 Class)

(Against All Defendants)

95. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

96. Labor Code §203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

97. The members of the LC 203 Class are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

1 98. Defendants had a consistent and uniform policy, practice and procedure of
2 willfully failing to pay the earned wages of Defendants' former employees, according to
3 amendment or proof.

4 99. Defendants willfully failed to pay the members of the LC 203 Class their entire
5 wages due and owing at the time of their termination or within seventy-two (72) hours of their
6 resignation, and failed to pay those sums for up to thirty (30) days thereafter.

7 100. Defendants' willful failure to pay wages to the members of the LC 203 Class
8 violates Labor Code §203 because Defendants knew or should have known wages were due to
9 the members of the LC 203 Class, but Defendants failed to pay them.

10 101. Thus, the members of the LC 203 Class are entitled to recovery pursuant to Labor
11 Code §203.

12 **SEVENTH CAUSE OF ACTION**

13 **PENALTIES PURSUANT TO LABOR CODE §2699**

14 **(On Behalf of the Aggrieved Employees)**

15 **(Against Defendant Seton Medical Center and Does 1 to 100)**

16 102. Plaintiffs incorporate by reference and reallege each and every one of the
17 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
18 forth herein.

19 103. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor
20 Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
21 Development Agency ("LWDA") (or any of its departments, divisions, commissions, board
22 agencies or employees), such civil penalties may, as an alternative, be recovered through a civil
23 action brought by an aggrieved employee on behalf of himself or herself and other current or
24 former employees) and Labor Code §2699(f) (which establishes a civil penalty for violations of
25 all Labor Code provisions except those for which a civil penalty is specifically provided), the
26 aggrieved employees seek recovery of all applicable civil penalties, as follows:

- 27 a. As applicable, civil penalties under Labor Code §2699(f), for all violations of
28 the Labor Code except for those for which a civil penalty is specifically

1 provided, in the amount of one hundred dollars (\$100.00) for each aggrieved
2 employee per pay period for the initial violation; and two hundred dollars
3 (\$200.00) for each aggrieved employee per pay period for each subsequent
4 violation; and

5 b. As applicable, civil penalties under Labor Code §558 (in addition to and
6 entirely independent and apart from any other penalty provided in the Labor
7 Code), for violations of Labor Code §§1-556, in the amount of \$50 for each
8 underpaid aggrieved employee for each pay period the aggrieved employee
9 was underpaid in addition to an amount sufficient to recover underpaid wages,
10 and \$100 for each subsequent violation for each underpaid employee for each
11 pay period for which the employee was underpaid in addition to an amount
12 sufficient to recover underpaid wages, with all wages recovered pursuant to
13 Labor Code §558 provided to the aggrieved employees;

14 c. As applicable, civil penalties under Labor Code §1197.1 (in addition to and
15 entirely independent and apart from any other penalty provided in the Labor
16 Code), for violations of Labor Code §§1194 and 1197, in the amount of \$100
17 for each underpaid aggrieved employee for each pay period the aggrieved
18 employee was intentionally underpaid in addition to an amount sufficient to
19 recover underpaid wages, and \$250 for each subsequent violation for each
20 underpaid aggrieved employees regardless of whether the initial violation was
21 intentionally committed in addition to an amount sufficient to recover
22 underpaid wages, with all wages recovered pursuant to Labor Code §1197.1;

23 d. As applicable, civil penalties under Labor Code §210 (in addition to and
24 entirely independent and apart from any other penalty provided in the Labor
25 Code), (for each employee who is/was not paid wages in accordance with
26 Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5) in the
27 amount of a civil penalty of \$100 for each aggrieved employee per pay period
28 for each initial violation, and \$200 for each aggrieved employee per pay

period for each subsequent violation;

- e. As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;
- f. As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days; and
- g. As applicable, any and all additional applicable civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

104. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to the aggrieved employees.

105. Pursuant to Labor Code §218.6 and CC §3287, these aggrieved employees seek recovery of pre-judgment interest on all amounts recovered herein.

106. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to Labor Code §2699(g)(1) and any other applicable statute.

107. Labor Code §2699.3(a) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met: (1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the

1 specific provisions of this code alleged to have been violated, including the facts and theories to
2 support the alleged violation.”

3 108. Labor Code §2699.3(c)(1) states in pertinent part: “A civil action by an aggrieved
4 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
5 other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall
6 commence only after the following requirements have been met: (1) (A) The aggrieved
7 employee or representative shall give written notice by online filing with the Labor and
8 Workforce Development Agency and by certified mail to the employer of the specific provisions
9 of this code alleged to have been violated, including the facts and theories to support the alleged
10 violation.”

11 109. Here, Plaintiffs’ civil action alleges violations of provisions listed in Labor Code
12 §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such,
13 Labor Code §2699.3(a) and §2699.3(c) apply to this action.

14 110. On March 13, 2018, Plaintiffs complied with Labor Code §2699.3(a) and Labor
15 Code §2699.3(c) in that Plaintiffs gave written notice by online filing with the LWDA and by
16 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
17 violated, including the facts and theories to support the alleged violations. Attached hereto as
18 Exhibit “1” is Plaintiffs’ LWDA letter.

19 111. Labor Code §2699.3(a) further states in pertinent part: “(2)(A) The agency shall
20 notify the employer and the aggrieved employee or representative by certified mail that it does
21 not intend to investigate the alleged violation within 60 calendar days of the postmark date of the
22 notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided
23 within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the
24 aggrieved employee may commence a civil action pursuant to Section 2699.”

25 112. As of May 17, 2018 (65 calendar days after Plaintiffs’ March 13, 2018 LWDA
26 letter was filed online), Plaintiffs had not received any notification that the LWDA intended to
27 investigate the alleged violations. As such, Plaintiffs have complied with Labor Code §2699.3(a)
28 and have been given authorization therefrom to commence a civil action which includes a cause

1 of action pursuant to Labor Code §2699.

2 113. Further, as of March 15, 2018 (33 calendar days after Plaintiffs' March 13, 2018
3 LWDA letter was mailed to Defendants via certified mail), Plaintiffs have not received from
4 Defendants written notice by certified mail that the alleged violations have been cured, including
5 a description of actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c)
6 and have been given authorization therefrom to commence a civil action which includes a cause
7 of action pursuant to Labor Code §2699.

8 **EIGHTH CAUSE OF ACTION**
9 **UNFAIR BUSINESS PRACTICES**
10 **(On Behalf of the 17200 Class)**
11 **(Against All Defendants)**

12 114. Plaintiffs incorporate by reference and reallege each and every one of the
13 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
14 forth herein.

15 115. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and
16 include any unlawful, unfair or fraudulent business act...".

17 116. B&PC §17205 provides that unless otherwise expressly provided, the remedies or
18 penalties provided for unfair competition "are cumulative to each other and to the remedies or
19 penalties available under all other laws of this state."

20 117. B&PC §17204 provides that an action for any relief from unfair competition may
21 be prosecuted by any person who has suffered injury in fact and has lost money or property as a
22 result of such unfair competition.

23 118. Defendants have engaged in unlawful, unfair and fraudulent business acts or
24 practices prohibited by B&PC §17200, including those set forth in the preceding and foregoing
25 paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum
26 working standards and conditions due to them under the Labor Code and/or the IWC Wage
27 Orders, as specifically described herein.

28 ///

1 119. Defendants have engaged in unfair business practices in California by practicing,
2 employing and utilizing the employment practices outlined in the preceding paragraphs,
3 specifically, by requiring employees to perform the labor services complained of herein without
4 the requisite compensation.

5 120. Defendants' use of such practices constitutes an unfair business practice, unfair
6 competition and provides an unfair advantage over Defendants' competitors.

7 121. Plaintiffs have suffered injury in fact and have lost money or property as a result
8 of such unfair competition.

9 122. Plaintiffs seek full restitution from Defendants, as necessary and according to
10 proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means
11 of the unfair practices complained of herein.

12 123. Further, if Defendants are not enjoined from the conduct set forth above,
13 Defendants will continue to practice, employ and utilize the employment practices outlined in the
14 preceding paragraphs.

15 124. Therefore, Plaintiffs request that the Court issue a preliminary and permanent
16 injunction prohibiting Defendants from engaging in the foregoing conduct.

17 125. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total
18 monetary relief sought from Defendants.

19 **VI.**

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray:

22 a. That the Court issue an Order certifying the Classes herein, appointing all named
23 Plaintiffs as representative of all others similarly situated, and appointing all law firms
24 representing all named Plaintiffs as counsel for the members of the Classes;

25 As to the First Cause of Action for Failure to Pay All Wages Due To Illegal Rounding:

26 b. For recovery of the unpaid balance of the full amount of the straight time
27 compensation due and owing, according to proof;

28 ///

1 c. For liquidated damages on the straight-time portion of uncompensated hours of
2 work (not including the overtime portion thereof), as authorized by Labor Code §1194.2(a);

3 d. For recovery of the unpaid balance of the full amount of overtime compensation
4 due and owing, calculated at the appropriate rate and according to proof;

5 e. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code
6 §1194(a) and CC §3287;

7 f. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
8 §218.5 and/or Labor Code §1194(a);

9 As to the Second Cause of Action for Failure to Provide Meal Periods:

10 g. For one (1) hour of pay at the regular rate of compensation for each member of
11 the Meal Period Class for each workday that a meal or rest period was not provided;

12 h. For pre-judgment interest as authorized by Labor Code §218.6 and CC §3287;

13 As to the Third Cause of Action for Failure to Authorize and Permit Paid Rest Periods:

14 i. For one (1) hour of pay at the regular rate of compensation for each member of
15 the Rest Period Class for each workday that a meal or rest period was not provided;

16 j. For pre-judgment interest as authorized by Labor Code §218.6 and CC §3287;

17 As to the Fourth Cause of Action for Independent Failure to Timely Furnish Accurate Itemized

18 Wage Statements:

19 k. For recovery as authorized by Labor Code §226(e);

20 l. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
21 §226(e) and/or §226(g);

22 As to the Fifth Cause of Action for Derivative Failure to Timely Furnish Accurate Itemized

23 Wage Statements:

24 m. For recovery as authorized by Labor Code §226(e);

25 n. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
26 §226(e) and/or §226(g);

27 As to the Sixth Cause of Action for Violations of Labor Code §203:

28 o. For recovery as authorized by Labor Code §203;

1 As to the Seventh Cause of Action for Penalties Pursuant to Labor Code §2699:

2 p. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
3 independent and apart from other penalties in the Labor Code and for Labor Code violations
4 without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay
5 period for each violation, and \$200 for each aggrieved employee per pay period for each
6 subsequent violation;

7 q. For civil penalties pursuant to Labor Code §558, in addition to and entirely
8 independent and apart from other penalties in the Labor Code, as follows:

9 i. For any initial violation, fifty dollars (\$50) for each aggrieved underpaid
10 employee for each pay period for which the employee was underpaid in
11 addition to an amount which is sufficient to recover unpaid wages;

12 ii. For each subsequent violation, one hundred dollars (\$100) for each aggrieved
13 underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount which is sufficient to recover unpaid
15 wages; and

16 iii. For all unpaid wages, to be paid to the aggrieved employees;

17 r. For civil penalties under Labor Code §1197.1 (in addition to and entirely
18 independent and apart from any other penalty provided in the Labor Code), for each violation of
19 Labor Code §1197, in the amount of \$100 for each aggrieved employee per pay period for each
20 violation and \$250 for each aggrieved employee per pay period for each subsequent violation;

21 s. For civil penalties under Labor Code §210, in addition to and entirely independent
22 and apart from other penalties in the Labor Code, in the amount of \$100 for each aggrieved
23 employee per pay period for each violation, and \$200 for each aggrieved employee per pay
24 period for each subsequent violation;

25 t. For civil penalties per Labor Code §226.3, in addition to and entirely independent
26 and apart from other penalties in the Labor Code, in the amount of \$250 for each aggrieved
27 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay
28 period for each subsequent violation;

1 u. For civil penalties per Labor Code §§203 and/or 256, in addition to and entirely
2 independent and apart from other penalties in the Labor Code, in the amount of one day of pay,
3 at the same rate, for each day that an aggrieved employee was paid late, at the time of
4 termination, until payment was/is made, up to a maximum of thirty (30) days;

5 v. For pre-judgment interest on all amounts recovered herein pursuant to Labor
6 Code §218.6, Labor Code §1194(a) and/or CC §3287;

7 w. For reasonable attorneys' fees and costs incurred pursuant to Labor Code
8 §§2699(g)(1) and any other applicable statute; and

9 x. For such relief as this Court may deem just and proper, including reasonable
10 attorneys' fees and costs incurred;

11 As to the Eighth Cause of Action for Unfair Business Practices:

12 y. For an accounting, under administration of Plaintiffs and/or the receiver and
13 subject to Court review, to determine the amount to be returned by Defendants, and the amounts
14 to be refunded to members of the Classes who are owed monies by Defendants;

15 z. For an Order requiring Defendants to identify each of the members of the Classes
16 by name, home address, home telephone number and, if available, email address;

17 aa. For an Order requiring Defendants to make full restitution and payment pursuant
18 to California law;

19 bb. For an Order for a preliminary and/or permanent injunction prohibiting
20 Defendants from engaging in the acts complained of herein;

21 cc. For the creation of an administrative process wherein each injured member of the
22 Classes may submit a claim in order to receive his/her money;

23 dd. For all other appropriate injunctive, declaratory and equitable relief;

24 ee. For interest to the extent permitted by law;

25 ff. For an award of attorneys' fees and costs incurred in the investigation, filing and
26 prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code §1194
27 and/or any other applicable provision of law;

28 ///

1 As to All Causes of Action:

2 gg. For such relief as this Court may deem just and proper, including reasonable
3 attorneys' fees and costs incurred.

4 **VII.**

5 **DEMAND FOR JURY TRIAL**

6 Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

7 Dated: June 25, 2018

LAW OFFICES OF KEVIN T. BARNES

8
9 By:


Kevin T. Barnes, Esq.

Gregg Lander, Esq.

Attorneys for Plaintiffs

EXHIBIT 1

LAW OFFICES OF
KEVIN T. BARNES

KEVIN T. BARNES
GREGG LANDER

OF COUNSEL:
JOSEPH ANTONELLI

5670 WILSHIRE BOULEVARD, SUITE 1460
LOS ANGELES, CALIFORNIA 90036-5664

TELEPHONE: (323) 549-9100
Toll-Free: (877) 309-3577 / FAX: (323) 549-0101

A Professional Law Corporation

www.kbarnes.com

Barnes@kbarnes.com

March 13, 2018

VIA ELECTRONIC MAIL (\$75 filing fee to follow by mail)

PAGA Administrator
California Labor and Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: Seton Medical Center and Verity Health System of California, Inc. (hereafter collectively, the "Employer")

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency and the Employer

From: Waheed Wahidi (the "Employee"), who was subjected to the wage and hour practices set forth below

The Employee, by way of the above-named counsel, submits this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a)(c), and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period, the Employer employed the Employee and all other similarly situated aggrieved employees as hourly-paid employees. During this time period, the Employer utilized consistent policies and procedures regarding the Employee and all other similarly situated aggrieved employees, as follows:

First, the Employer utilized a time rounding policy that ignored employees' actual time punches and instead rounded their time. The Employee and all other similarly situated aggrieved employees would typically clock in before their scheduled shift and then participate in a "huddle" meeting to discuss the shift assignments. Further, employees often worked some period of time past their scheduled shift end. However, because of the Employer's rounding policies, aggrieved employees were required to work without pay. As such, this policy (combined with the fact that employees often arrived early and/or worked late) resulted in a disproportionate impact which does not average out over a period of time and as such, is not fair and neutral on its face and used in such a manner that it will not result over a period of time in failure to compensate for all time actually worked. As such, the Employer violated Labor Code §§510, 1194, 1194.2, 1197, 1198 and the applicable Industrial Wage Order, and owes penalties pursuant to Labor Code §§2699(f) and/or 558.

Second, the Employer failed to timely provide all legally compliant meal breaks (including second meal breaks) to the Employee and all other similarly situated aggrieved employees, as the Employee and all other similarly situated aggrieved employees did not always get full thirty minute uninterrupted meal breaks within the first five hours of their shift. As such, the Employee and all other similarly situated aggrieved employees sometimes worked over five hours but were not provided all legally compliant meal breaks. Further, the Employee and all other similarly situated aggrieved employees sometimes worked over ten hours but were not provided all legally compliant second meal breaks. The Employer did not pay always pay a meal period penalty for these violations. As such, the Employer violated Labor Code §§226.7, 512 and 516 and the applicable Industrial Wage Order, ¶11, and owes penalties pursuant to Labor Code §§2699(f) and/or 558.

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Third, the Employer failed to provide the Employee and all other similarly situated aggrieved employees with paid rest breaks, as the Employee and all other similarly situated aggrieved employees did not always get full ten minute uninterrupted rest breaks within the first four hours of their shift or major fraction thereof, and each subsequent four hours worked thereafter or major fraction thereof. As such, the Employee and all other similarly situated aggrieved employees were not always provided legally compliant rest breaks. The Employer did not pay a rest period penalty for any of these violations. As such, the Employer violated Labor Code §226.7 and the applicable Industrial Wage Order, ¶12(A)/(B), and owes rest period wages and penalties pursuant to Labor Code §§2699(f) and/or 558.

Fourth, regarding wage statements, pursuant to Labor Code §226(a) and the applicable Industrial Wage Order, the Employer is required to include certain information on an employee's wage statement. Here, the Employer issued improper wage statements to the Employee and all other similarly situated aggrieved employees because the Employer's wage statements did not always contain the correct information regarding hours worked. As such, the Employer independently violated Labor Code §226, and owes penalties pursuant to Labor Code §§2699(f) and/or 226.3.

Fifth, also regarding wage statements, and in addition to the alleged independent violations of Labor Code §226 above, pursuant to Labor Code §226 and the applicable Industrial Wage Order, the Employer is required to include on a paystub such information as all hours worked, the hourly rate of pay, and the rate of pay for overtime and double time work. Here, because of the Employer's illegal wage and hour policies as set forth above, all wages earned were not reflected on the wage statements provided by the Employer to the Employee and all other similarly situated aggrieved employees, and the Employer issued improper wage statements. As such, the Employer derivatively violated Labor Code §226, and owes penalties pursuant to Labor Code §§2699(f) and/or 226.3.

Sixth, regarding waiting time penalties, pursuant to Labor Code §203, the Employee and all other similarly situated aggrieved employees are entitled to thirty day of wages at their regular rate of pay for the Employer's failure to pay all wages due upon separation of employment. Here, because of the Employer's illegal wage and hour policies as set forth above, the Employer derivatively violated Labor Code §§201-203, and owes penalties pursuant to Labor Code §§2699(f), 203 and/or 256.

Pursuant to Labor Code §2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations. Further, pursuant to Labor Code §2699.3(c)(2)(A), the Employer may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We understand that if we do not receive a response within sixty-five (65) calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer pursuant to Labor Code §2699.

Thank you for your consideration.

Very Truly Yours,



Kevin T. Barnes
Gregg Lander

cc: (via Certified Mail)
SETON MEDICAL CENTER
1900 Sullivan Avenue
Daly, CA 94015

cc: (via Certified Mail)
VERITY HEALTH SYSTEM OF CALIFORNIA, INC.
203 Redwood Shores Parkway, Suite 800
Redwood City, CA 94065

PAGA Administrator
Re: Seton Medical Center, et al.
March 13, 2018
Page 3

cc: (via U.S. Mail)
Emil Davtyan, Esq.
DAVTYAN PROFESSIONAL LAW CORPORATION
21900 Burbank Boulevard, Suite 300
Woodland Hills, CA 91367

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am over the age of 18 years and not a party to this action. My business address is 1635 Pontius Avenue, Second Floor, Los Angeles, CA 90025-3361, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I caused to be served the following attached document/s:

FIRST AMENDED COMPLAINT

on the interested parties in this action, addressed as follows:

Attorneys for Defendant:

An Nguyen Ruda, Esq.
JEFFER MANGELS BUTLER & MITCHELL
LLP
2 Embarcadero Center, 5th Floor
San Francisco, CA 94111
Tel.: (415) 398-8080 / Fax: (415) 398-5584
Email: Ahn@JMBM.com

Attorneys for Plaintiffs:

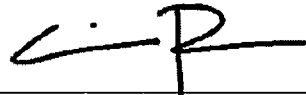
Emil Davtyan, Esq.
DAVTYAN PROFESSIONAL LAW
CORPORATION
21900 Burbank Boulevard, Suite 300
Woodland Hills, CA 91367
Tel.: (818) 992-2935 / Fax: (818) 975-5525
Email: Emil@davtyanlaw.com

using the following service method(s):

X VIA MAIL: I caused the document(s) to be served to be deposited at: **1635 Pontius Avenue, Second Floor, Los Angeles, CA**, which is a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on **June 26, 2018**, at Los Angeles, California.



Cindy Rivas

EXHIBIT B

Fill in this information to identify the case:

Debtor name Verity Health System of California, Inc.
United States Bankruptcy Court for the: Central District of California
(State)
Case number (If known): _____

☐ Check if this is an amended filing

Official Form 204

Chapter 11 or Chapter 9 Cases: List of Consolidated Creditors Who Have the 50 Largest Unsecured Claims and Are Not Insiders

12/15

A list of creditors holding the 50 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 50 largest unsecured claims.

Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
				Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1. Waheed Wahidi, et al	Law office of Kevin T Barnes 1635 Pontius Avenue 2nd Floor Los Angeles, CA 90025 Attn: Kevin T Barnes Tel: (323) 549-9100 Email: barnes@kbarnes.com	Litigation	Contingent & Disputed			\$150,000,000
2. Verity Health System Retirement Plan A	John Hancock Retirement Plan Services 690 Canton Street Westwood, MA 02090 Attn: Dawn Florio Tel: (781) 619-2249 Email: dflorio@jhancock.com	Pension	Contingent & Disputed			\$102,100,000
3. Retirement Plan For Hospital Employees	Board of Trustees Retirement Plan For Hospital Employees Retirement Plan Office P.O. Box 2949 San Francisco, CA 94126-2949 Attn: Larry Reid Tel: (415) 352-1080 Email: larry@rpo-sf.com	Pension	Contingent & Disputed			\$43,300,000
4. Department of Health Care Services (DHCS)	Department of Health Care Services Mail Stop 1101 1501 Capital Avenue Suite 71.2048 Sacramento, CA 95814-5005 Attn: Brian Clausse Tel: (916) 323-0039 Email: Brian.Clausse@dhcs.ca.gov	Due to Government				\$30,066,431

EXHIBIT C

David Shemano

From: Moyron, Tania M. <vania.moyron@dentons.com>
Sent: Friday, March 8, 2019 9:14 AM
To: David Shemano
Cc: Maizel, Samuel R.; Montgomery, Claude D.
Subject: RE: Verity

Yes, the Debtors are not willing to consent. Please feel free to call us if you want to discuss.
Best, Tania

 **Tania M. Moyron**
Partner

D +1 213 243 6101 | M +1 310 402 4284 | O 1 310 402 4284 | US Internal 36101
tania.moyron@dentons.com
[Bio](#) | [Website](#)

Dentons US LLP

[Hamilton Harrison & Mathews](#) > [Mardemootoo Balgobin](#) > [HPRP](#) > [Zain & Co.](#) > [Delany Law](#) > [Dinner Martin](#) > [Maclay Murray & Spens](#) > [Gallo Barrios Pickmann](#) > [Muñoz](#) > [Cardenas & Cardenas](#) > [Lopez Velarde](#) > [Rodyk](#) > [Boekel](#) > [OPF Partners](#) > 大成

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From: David Shemano <dshemano@shemanolaw.com>
Sent: Tuesday, March 05, 2019 3:16 PM
To: Moyron, Tania M. <vania.moyron@dentons.com>
Cc: Maizel, Samuel R. <samuel.maizel@dentons.com>
Subject: RE: Verity

Do you have an answer?

David B. Shemano
ShemanoLaw
1801 Century Park East, Suite 1600
Los Angeles, CA 90067
Tel: (310) 492-5033
Email: dshemano@shemanolaw.com

EXHIBIT D

Fill in this information to identify the case:

Debtor 1 Verity Health System of California, Inc.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Central District of California

Case number 18-20151

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Official Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Waheed Wahidi, on behalf of himself and all others similarly situated</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? Kevin T. Barnes Name <u>1635 Pontius Avenue, Second Floor</u> Number Street <u>Los Angeles</u> <u>CA</u> <u>90025</u> City State ZIP Code Contact phone <u>(323) 549-9100</u> Contact email <u>Barnes@kbarnes.com</u> Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	Where should payments to the creditor be sent? (if different) Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ Currently unliquidated. Does this amount include interest or other charges?
☐ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Employee claims based on violations of California Labor Code

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☐ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? ☐ No ☒ Yes. Check all that apply:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$12,475* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	Currently unliquidated \$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

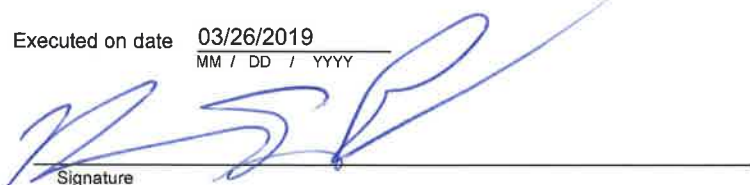
- ☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 03/26/2019
MM / DD / YYYY


Signature

Print the name of the person who is completing and signing this claim:

Name Kevin T. Barnes
First name Middle name Last name

Title Attorney for claimant and proposed attorney for class

Company Law Offices of Kevin T. Barnes
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 1635 Pontius Avenue, Second Floor
Number Street

Los Angeles CA 90025
City State ZIP Code

Contact phone (323) 549-9100 Email Barnes@kbarnes.com

ATTACHMENT TO PROOF OF CLAIM

Claimant was an employee of Seton Medical Center from approximately May 2017 through October 2017. Verity Health System of California, Inc., the parent of Seton Medical Center, was Claimant's joint employer.

On June 21, 2018, Claimant, on behalf of himself and all other employees similarly situated, filed a complaint against certain of the Debtors in the Superior Court of the State of California for the County of San Mateo (the "Superior Court"), Case No. 18CIV03214, alleging violations of the California Labor Code, the California Business and Professions Code, applicable Wage Orders issued by the California Industrial Welfare Commission, and related common law principles. A first amended complaint was filed on June 26, 2018. A copy of the first amended complaint is attached as Exhibit A.

In summary, the complaint alleges that the Debtors (1) consistently administered a uniform company policy and procedure to round down the recorded time of hourly employees in violation of applicable California law and regulations, (2) as a matter of established company policy, failed to comply with the meal period requirements of applicable California law and regulations, (3) as a matter of established company policy, failed to comply with the rest period requirements of applicable California law and regulations, (4) as a matter of established company policy, failed to comply with the itemized wage statement requirements of applicable California law and regulations, (5) as a matter of established company policy, did not pay all wages due to former hourly employees due to the unlawful rounding, meal and rest policies as required by applicable California law and regulations, (6) subjected hourly employees to unlawful, unfair and/or fraudulent business acts/practices in the form of the above stated violations in violation of section 17200 *et seq.* of the California Business & Professions Code, and (7) are subject to penalties pursuant to section 2699 *et seq.* of the California Labor Code.

Claimant asserts an unliquidated unsecured claim based on the allegations set forth in the complaint. Claimant also assert a claim on behalf of all other employees similarly situated, as set forth in the complaint. The amount of the class claim is currently unliquidated.

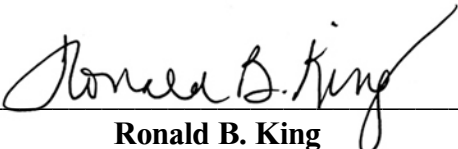
Claimant reserves the right to amend or supplement this proof of claim at any time for any reason.

EXHIBIT E



The relief described hereinbelow is **SO ORDERED**.

Signed January 31, 2017.



Ronald B. King
Chief United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re:	§ Chapter 11
	§
BUFFETS, LLC, et al.	§ Case No. 16-50557-RBK
	§
Debtors.	§ Jointly Administered

AMENDED

ORDER PURSUANT TO 11 U.S.C. § 362(d)
MODIFYING THE AUTOMATIC STAY IMPOSED BY 11 U.S.C. § 362(a)

Upon the motion of Movants Lynn Walter, Lynn Brown, and Kathlene Abston, individually and on behalf of all others similarly situated (“Movants”) for an order, pursuant to 11 U.S.C. § 362(d), modifying the automatic stay in effect in this case under 11 U.S.C. § 362(a) to permit Movants to enforce the notice order in a pending civil action in the United States District Court of South Carolina Civil Action No. 6:13-cv-02995-JMC, against the Debtor

Buffets, Inc. d/b/a Ovation Brands (“Debtor”), and there being due and sufficient notice of the Motion; the Court having heard from the Parties and interested Third Parties; and, after due deliberation, good and sufficient cause appearing, it is hereby

ORDERED, that Notice shall issue to a class of all persons who have worked for Buffets, Inc., also known as Ovation Brands, and its successors as servers between July 18, 2012, and the date of final judgment in this matter who worked as tipped employees earning a sub-minimum, tip credit wage; and it is further

ORDERED, that within 10 days following this Court order authorizing notice, Debtors will produce a list of all putative class members including their last known address and the dates of employment since July 18, 2012, in a manipulable format that allows for effective and efficient Notice such as Microsoft Excel or .csv (the “Class List”) to Plaintiffs’ counsel for delivery to Donlin Recano; The list will include the name and last known mailing address of all putative class members; and it is further

ORDERED, that Notice will be sent via first class mail and include only the Court-approved notice and consent form. No additional enclosures will be included; and it is further

ORDERED, that the Notice shall be sent by Donlin Recano & Company, Inc. within 15 days of receiving the Class List and the costs of notice shall be borne by the Debtors; and it is further

ORDERED, that the form of Notice to issue will be that previously agreed to by Plaintiffs and Buffets, Inc., ordered by the U.S. District Court for the District of South Carolina, and on file at Dkt. No. 1512-4. Any reference on the Notice, including the Consent to Sue, to Walter et al., v. Buffets, Inc., Civil Action Number 6:13-cv-02995-JMC, United States District Court, District of South Carolina shall be changed to In re: Buffets, LLC, et al, Case No. 16-

50557-RBK, U.S. Bankruptcy Court for the Western District of Texas, San Antonio Division;
and it is further

ORDERED, that all persons receiving the notice will have thirty (30) days from the time Notice issues to return an executed Consent to Sue form to Plaintiffs' counsel. All consents to sue must be received or postmarked within 30 days of the date notice issues (the "Opt-In Period"); and it is further

ORDERED, Plaintiffs' counsel will use best efforts to file claims in this action on behalf of any class member who returns an executed Consent to Sue within thirty (30) days of receiving the Consent to Sue. In any case, all claims will be filed within thirty (30) days of the end of the opt-in period. No Consents to Sue will be filed in the U.S. District Court for the District of South Carolina.

#

Prepared and submitted, with the consent of Debtors, by:

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New York State Bar No. 2954923
Getman, Sweeney & Dunn, PLLC
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New Paltz, NY 12561
Tel. 845-255-9370
Fax 845-255-8649

COUNSEL FOR MOVANTS

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is

SHEMANOLAW
1801 Century Park East, Suite 1600
Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled **NOTICE OF MOTION AND MOTION OF (1) WAHEED WAHIDI FOR AUTHORIZATION TO FILE A CLASS PROOF OF CLAIM ON BEHALF OF CLAIMANTS SIMILARLY SITUATED, AND (2) ERNESTO MADRIGAL FOR AUTHORIZATION TO FILE A CLASS REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE ON BEHALF OF CLAIMANTS SIMILARLY SITUATED** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On March 26, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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- Rose Zimmerman rzimmerman@dalycity.org

2. SERVED BY UNITED STATES MAIL:

On March 26, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Ernest M. Robles
United States Bankruptcy Court
Edward R. Roybal Federal Building
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 26, 2019

Date

David B. Shemano

Printed Name

/s David B. Shemano

Signature