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24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
25 **COUNTY OF LOS ANGELES — CENTRAL DISTRICT**

26 ENDANICHA BRAGG, TRACY
27 PLUMMER, and MARISOL ROMERO,

28 Plaintiffs,

v.

PACIFIC MARITIME ASSOCIATION,
INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, and
INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION LOCAL 13,

Defendants.

Case No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiffs Endanicha Bragg, Tracy Plummer, and Marisol Romero allege as follows:
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3 **SUMMARY OF CLAIMS**

4 1. Plaintiffs are three current and former female “casuals”—non-union longshore
5 workers at the very bottom rung of the Los Angeles and Long Beach Port (“LA/LB Port”) 14,000-
6 worker hierarchy. During the course of their work at the docks, Plaintiffs all became pregnant at least
7 once, needed but could not obtain accommodations to enable them to continue working or to pump
8 breast milk on the job, and needed to take time off due to pregnancy, childbirth, and related medical
9 conditions. As a result, they lost pay and the seniority needed to earn higher wages and, eventually,
10 gain union membership, a status that comes not just with the guarantee of full-time work but also
11 generous pension, health, and other benefits, and wages well into six figures.¹

12 2. Each Plaintiff’s history on the docks illustrates the multiple barriers faced by female
13 casual workers striving to advance in a high-paying industry that has been hostile to their presence.²
14 Defendants’ policies and procedures ignore the demographics of their workforce today and the laws
15 governing it. As a consequence, those policies and procedures assure that workers affected by
16 pregnancy, childbirth, and related medical conditions consistently will lag behind their peers in pay
17 and promotion opportunities.

18 3. California leads the nation in its recognition that pregnancy is a normal condition of
19 the modern workplace. The state’s statutory and regulatory scheme directs that pregnancy ordinarily
20 should not prevent employees from continuing to work, and that if it does, those absences should not
21 result in unequal penalties that harm workers’ future opportunities or economic well-being.
22

23 ¹ Pac. Mar. Ass’n, *Our Industry: The ILWU Workforce*, <http://www.pmanet.org/the-ilwu-workforce>
24 (last visited Oct. 4, 2019) (“ILWU workers receive a compensation package that is among the most
25 lucrative among all blue-collar workers in the United States. Full-time workers earn an average of
26 \$175,000 annually in wages, along with a non-wage benefits package costing more than \$110,000
per active worker per year.”).

27 ² See Sheryl Stolberg, *Heavy Duty Abuse Part of Dock Life for Women*, L.A. TIMES, Mar. 24, 1990,
28 available at <https://www.latimes.com/archives/la-xpm-1990-03-24-me-542-story.html>.

1 4. The California Fair Employment and Housing Act (“FEHA”) includes numerous
2 protections to enable pregnant people in California to remain on the job and to continue to support
3 their families. Among its provisions, the FEHA requires employers to engage in a good-faith
4 interactive process with their employees who are pregnant or who have pregnancy-related conditions,
5 including lactation, to determine whether it would be possible to reasonably accommodate them and
6 to provide such accommodations if reasonably possible. Cal. Gov’t Code § 12945(a)(3)(A). The
7 FEHA and its implementing regulations further require employers to provide employees with
8 advance notice of their right to reasonable accommodations. Cal. Code Regs. tit. 2 § 11049(a). The
9 FEHA also prohibits employers from discriminating against employees because of pregnancy,
10 including by providing benefits to certain employees but not to similarly situated pregnant employees.
11 Cal. Gov’t Code § 12940(a).

12 5. Moreover, the California Pregnancy Disability Leave Law (“PDLL”) and the
13 California Family Rights Act (“CFRA”) mandate that employees who take pregnancy-related and
14 family and medical-related leave are entitled to accrue seniority, if other workers who are on leave
15 receive such a benefit. Cal. Gov’t Code §§ 12945, 12945.2.

16 6. In addition to the FEHA requirement that California employers accommodate
17 lactation, California’s Labor Code directs that employers provide reasonable break time and a private
18 space close to their work location for lactating workers to pump breast milk. Cal. Labor Code
19 §§ 1030, 1031.

20 7. Finally, recognizing the severe economic disadvantage that biased and discriminatory
21 practices pose, California deems discrimination in violation of the FEHA also to violate the Unfair
22 Competition Law (“UCL”). Cal. Bus. & Prof. Code §§ 17200, *et seq.*

23 8. Plaintiffs bring this action for violations of the FEHA, Cal. Gov’t Code §§ 12900-
24 12996; the PDLL, Cal. Gov’t Code § 12945; the CFRA, Cal. Gov’t Code § 12945.2; and the UCL,
25 Cal. Bus. & Prof. Code §§ 17200, *et seq.*

1 **THE PARTIES**

2 **Plaintiffs**

3 9. Plaintiff Endanicha Bragg (“Bragg”) is an adult woman who resides in Los Angeles
4 County, California.

5 10. Plaintiff Tracy Plummer (“Plummer”) is an adult woman who resides in Los Angeles
6 County, California.

7 11. Plaintiff Marisol Romero (“Romero”) is an adult woman who resides in Los Angeles
8 County, California.

9 **Defendants**

10 12. Pacific Maritime Association (“PMA”) is the bargaining representative on behalf of
11 close to 80 shipping and terminal companies that use and operate the 29 ports along the West Coast,
12 from San Diego, California to Bellingham, Washington, including the LA/LB Port. PMA’s
13 headquarters are in San Francisco, California and it has offices in Oakland, Long Beach, and San
14 Diego, California, as well as a training facility in Wilmington, California.

15 13. PMA has more than five employees and is an agent of Plaintiffs’ employers within the
16 meaning of the FEHA, Cal. Gov’t Code § 12926(d). Plaintiffs’ employers, the operating entities for
17 the LA/LB Port, employ thousands of dockworkers there.

18 14. On information and belief, PMA employs 50 or more employees within 75 miles of
19 Plaintiffs’ workplace.

20 15. International Longshore and Warehouse Union (“ILWU”) is a labor union and the
21 bargaining representative for longshore workers in the ports operated by PMA members, including
22 the LA/LB Port.

23 16. Local 13 is one of ILWU’s local unions and is the representative for longshore workers
24 at the LA/LB Port.

25 17. ILWU and Local 13 are labor organizations within the meaning of FEHA, Cal. Gov’t
26 Code § 12926(h).

1 **JURISDICTION AND VENUE**

2 18. This Court has jurisdiction over this action under FEHA, the PDL, the CFRA, and
3 the UCL.

4 19. Venue is proper in this county under Code of Civ. Proc. § 395.5, because a substantial
5 part of the events and omissions giving rise to the claims occurred in this county.

6
7 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 20. Plaintiffs have exhausted all administrative remedies.

9 21. On July 9, 2019, Plaintiffs received their right-to-sue letters from the U.S. Equal
10 Employment Opportunity Commission (“EEOC”). Pursuant to Cal. Gov’t Code § 12965(d)(2),
11 Plaintiffs’ time to commence a civil action under the FEHA expires “when the federal right-to-sue
12 period to commence a civil action expires, or one year from the date of the right-to-sue notice by the
13 Department of Fair Employment and Housing, whichever is later.”

14
15 **FACTUAL ALLEGATIONS**

16 **I. The LA/LB Port and Dangers of Longshore Work**

17 22. The LA/LB Port is a “sprawling hub for thousands of freight-moving trucks, trains,
18 and ships” that “handle[s] roughly 40% of the U.S. imports.”³

19 23. Longshore work involves the loading and unloading of large shipping containers from
20 vessels, and the transporting of that cargo around the docks. It can be extremely dangerous.

21 24. Dock workers frequently engage in heavy labor, including lifting, bending, climbing,
22 crawling, and “lashing” (the process of attaching shipping containers to vessels). Work may occur
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26 ³ Tony Barboza, *Plan Calls for L.A., Long Beach Ports to go to Zero-Emissions Technology; Cost*
27 *Could Hit \$14 Billion*, L.A. TIMES, July 19, 2017, available at
28 <http://www.latimes.com/local/lanow/la-me-ports-clean-air-20170719-story.html>.

1 at great heights, in confined spaces, and in proximity to heavy equipment and moving vehicles. This
2 work is performed in all weather conditions.

3 25. Dock workers routinely drive utility tractors, or UTRs. UTRs in use on the LA/LB
4 docks contain a warning: “ENGINE EXHAUST, SOME OF ITS CONSTITUENTS, AND
5 CERTAIN VEHICLE COMPONENTS CONTAIN OR EMIT CHEMICALS KNOWN TO THE
6 STATE OF CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS AND OTHER
7 REPRODUCTIVE HARM. IN ADDITION, CERTAIN FLUIDS CONTAINED IN VEHICLES
8 AND CERTAIN PRODUCTS OF COMPONENT WEAR CONTAIN OR EMIT CHEMICALS
9 KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS
10 AND OTHER REPRODUCTIVE HARM.” (Emphasis in original.)

11 26. Due in large part to reliance on diesel fuel for trucks and other cargo equipment on the
12 docks, the LA/LB Port has historically been the largest source of air pollution in Southern California.⁴

13 27. Shipping containers weigh several tons and can be accidentally dropped by cranes, or
14 can leak, spilling hazardous materials.

15 28. Some longshore job duties, however, are very safe. Examples include the data entry
16 and related functions performed by clerks, and “signal work,” which involves directing various
17 equipment operators around the docks.

18
19 **II. Defendants’ Joint Control of the LA/LB Port Workforce**

20 29. PMA and ILWU exercise joint control over the workforce operations of the LA/LB
21 Port.

22 30. The collective bargaining agreement between PMA and ILWU, the Pacific Coast
23 Longshore Contract Document (the “Contract”), dictates policies and procedures for employment of
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26 ⁴ Tony Barboza, *L.A., Long Beach Ports Adopt Plans to Slash Emissions and go Zero-Emissions*,
27 L.A. TIMES, Nov. 2, 2017, available at <https://www.latimes.com/local/lanow/la-me-ports-air-quality-20171102-story.html>.
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1 longshore workers on the West Coast, including those at the LA/LB Port.

2 31. A body comprised of representatives of PMA and ILWU, the Joint Port Labor
3 Relations Committee (“JPLRC”), jointly determines the composition of the Class A, Class B, and
4 casual workforces.

5 32. The JPLRC has the power to admit as many or as few new individuals to each worker
6 class as it deems fit.

7 33. PMA and ILWU jointly maintain and operate dispatch halls in accordance with the
8 terms of the Contract.

9 34. The JPLRC determines and appoints the personnel for the halls, except for the
10 individual dispatchers, who are selected by ILWU.

11 35. The JPLRC also determines the methods for dispatching workers.

12 36. The shipping companies serving the LA/LB Port submit work requests to the dispatch
13 halls, where individual dispatchers assign the requests to the workers waiting at the halls for a job on
14 that day.

15 37. PMA maintains all dockworker personnel records, including dispatch summaries
16 reflecting the work hours logged by each individual and for which shipping company.

17 38. Under the Contract, PMA also is the disbursing agent responsible for issuing
18 dockworkers their paychecks and, at year’s end, their W-2 forms for tax purposes.

19
20 **III. The Casual Worker**

21 39. The nearly 4,000 casual longshore workers at the LA/LB Port – of whom roughly 40
22 percent are women – occupy the very bottom rung of the docks’ hierarchy. At the top are unionized
23 longshore workers known as Class A workers, followed by registered workers, deemed Class B, at
24 the next level. Women make up approximately 20 percent of Class A and Class B workers.

25 40. Class A longshore workers are members of the ILWU and at the LA/LB Port are
26 represented by Local 13. Class A workers are guaranteed a minimum income and are eligible to obtain
27 additional certifications entitling them to greater income and promotion into supervisory roles.
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1 41. Class B workers, in contrast, are not yet members of ILWU, but are permitted to
2 become members after five years in Class B status. Class B workers also are guaranteed a minimum
3 weekly income and enjoy some of the benefits of union membership.

4 42. The only route for a casual worker to become registered as Class B is to earn seniority
5 in the form of total hours worked in their career. Additionally, a casual worker's hourly earnings are
6 determined by the total hours accrued because wage rates are organized by various "Work Experience
7 Group" tiers: 0-1,000 hours; 1,001-2,000 hours; 2,001-4,000 hours; and 4,001 or more hours.
8 Finally, the hours accrued during one's career as a casual worker can increase the retirement and
9 vacation benefits one receives upon becoming registered.

10 43. For these reasons, gaining a shift as a casual is significant not just for the sake of
11 earning wages, but also for the sake of growing one's bank of accrued hours so as to advance through
12 the wage tiers and toward union membership, and to enjoy the maximum benefits of that status.

13 44. At the start of each shift, Class A and Class B workers receive their assignments from
14 various dispatchers, according to their skill sets. Casual workers get the jobs that remain available
15 after the Class A and Class B workers have received their assignments. The leftover jobs are
16 distributed to casual workers in rank order, based on an alpha-numeric code the casual worker was
17 assigned by PMA and ILWU at the start of their career.

18 45. When traffic on the docks is slow, there may not be any assignments for casual
19 workers after the Class A and Class B workers have claimed their jobs. Under those circumstances,
20 a casual worker does not work at all.

21 46. On information and belief, the JPLRC determines when and how many casual workers
22 may be promoted to Class B status based on projected labor needs. The accrued hours of those
23 workers are not reflective of the minimum level of skill necessary for the job.

24 47. A casual worker cannot predict whether and when they will make it to the next wage
25 tier or to Class B status. For instance, the elevation of 102 casual workers to Class B status on April
26 9, 2016 was the first such promotion in more than a decade, since 2005. There have been three
27 elevations since, but casuals do not know if the next Class B spots will open in a year, a decade, or
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1 some other timeframe.

2 48. To remain in good standing, a casual worker must report for work at least once in
3 every 6-month period (the “availability for work requirement”).

4 49. Requests to be excused from the availability for work requirement are reviewed by the
5 JPLRC.

6
7 **IV. Defendants’ Policies Regarding Pregnancy, Childbirth, and Related Medical
8 Conditions**

9 50. Pregnancy is a fact of life for employers and employees alike. Close to 85 percent of
10 women in the United States will have at least one pregnancy during their working lives.⁵ A typical
11 pregnancy typically lasts 40 weeks.⁶ After childbirth, six weeks (for a vaginal birth) and eight weeks
12 (for a Cesarean section) are recommended for recuperation.⁷ Complications during pregnancy or
13 delivery, or following delivery, can necessitate restrictions, including bedrest, and longer recovery
14 periods.

15 51. The American Academy of Pediatrics recommends exclusive breastfeeding for six
16 months, and continuation of breastfeeding supplemented by complementary foods for at least first
17 year of a baby’s life.⁸ Women who are breastfeeding and are away from their babies need to express
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20 ⁵ U.S. Census Bureau, *Fertility of Women in the United States: 2016*, Table 6, “Completed Fertility
21 for Women 40 to 50 Years Old by Selected Characteristics: June 2016,”
https://www.census.gov/data/tables/2016/demo/fertility/women-fertility.html#par_list_57.

22 ⁶ A.M. Jukic, D.D. Baird, C.R. Weinberg, D.R. McConnaughey, and A.J. Wilcox, “Length of
23 Human Pregnancy and Contributors to its Natural Variation,” *Human Reproduction* (Oct. 2013),
available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3777570/>.

24 ⁷ State of California Employment Development Dep’t, “Paid Family Leave – Mothers,”
25 https://www.edd.ca.gov/Disability/PFL_Mothers.htm, last visited October 5, 2019.

26 ⁸ See Am. Acad. of Pediatrics, *Policy Statement: Breastfeeding and the Use of Human Milk*, 129
27 Pediatrics e827 (2016),
28 <http://pediatrics.aappublications.org/content/pediatrics/early/2012/02/22/peds.2011-3552.full.pdf>

1 milk from their breasts (typically by using a breast pump) on roughly the same schedule as their
2 baby’s feeding schedule, typically every two to three hours for babies under six months old.⁹

3 52. Defendants do not offer any work accommodations, such as “light duty” job
4 assignments, for pregnant casual workers who may not be able to safely perform all aspects of
5 longshore work. They do not offer any accommodations, even though such accommodations could
6 be reasonably provided.

7 53. Moreover, under Defendants’ policies, Class A and Class B workers may seek and
8 obtain approval for “light duty” job assignments, which are made available to them each shift through
9 a designated dispatcher.

10 54. Under Defendants’ policies, a pregnant casual worker who has been directed by a
11 doctor to avoid certain risks or tasks – like exposure to toxins, heavy lifting, climbing, or bending –
12 will not be able to work unless they disregard those directives.

13 55. The casual worker who cannot safely accept the job assigned on a given shift has only
14 one option: go home. The worker cannot seek work again until their alpha-numeric code comes up
15 again in the casual rotation.

16 56. PMA and ILWU only provide one “accommodation” to pregnant casual workers: the
17 ability to seek an exemption from the six-month availability for work requirement – that is, insulation
18 from punishment for not reporting to work at all.

19 57. Defendants provide casual workers no notice about their statutory right to
20 accommodation during pregnancy, nor do they engage in a good faith, interactive process for
21 identifying a suitable job assignment.

22 58. Pregnant casual workers know through word of mouth and their own observations of
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24 ⁹ See Office of Legal Counsel, U.S. Equal Emp’t Opportunity Comm’n, *Enforcement Guidance on*
25 *Pregnancy Discrimination and Related Issues* I.A.4.b., 2015 WL 4162723 (2015) (“To continue
26 producing an adequate milk supply and to avoid painful complications associated with delays in
27 expressing milk, a nursing mother will typically need to breastfeed or express breast milk using a
28 pump two or three times over the duration of an eight-hour workday.”)

1 other pregnant casual workers' experiences that pregnancy accommodations are not available for
2 casual workers, and that it would be futile to request them.

3 59. To the extent some Plaintiffs nevertheless asked Defendants about their options
4 during pregnancy, the responses confirmed this perception.

5 60. For example, when Bragg asked a PMA representative what policies applied to
6 pregnant casual workers, she was told that her only option was to apply for State Disability Insurance
7 administered by the State of California.

8 61. Defendants do not offer any facilities where casual worker can privately and
9 hygienically pump breast milk. Defendants also do not afford lactating employees reasonable break
10 time to pump. As a result, workers must forgo breastfeeding or stay home.

11 62. Defendants do not award seniority credit for absences caused by Defendants' failure
12 to accommodate pregnancy and lactation, as well as during the absences necessitated by more serious
13 pregnancy-related conditions and by recovery from childbirth.

14 63. Under the Contract, a casual worker who stays home due to a temporary physical
15 limitation, including pregnancy or pregnancy-related conditions, receives no work hours credit.

16 64. In contrast, Defendants do award such credit to a casual worker who is absent due to
17 military service (as required by the Uniformed Services Employment and Reemployment Rights Act,
18 or USERRA). The policy provides for seniority credit to be awarded for up to a total cumulative leave
19 of five years.

20 65. As a result, casual workers who are absent for extended periods due to military service
21 may receive seniority credit totaling in the thousands of hours.

22 66. The Contract also provides that, if at the time a new group of casual workers is
23 registered as Class B, a casual worker is absent due to military service but their USERRA-credited
24 hours would have rendered them eligible for such registration, Defendants, through the jointly-
25 operated JPLRC, will credit that person their missing hours accordingly to enable their registration.

26 67. Casual workers who are absent due to pregnancy, childbirth, or related medical
27 conditions at the time of a Class B registration are not so credited, even if but for such absence they
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1 would have been eligible for registration.

2 68. On information and belief, if at the time a new group of casual workers is registered
3 as Class B, a casual worker falls short of the work hours cut-off for that registration due to absences
4 related to an occupational injury, Defendants, through the jointly-operated JPLRC, will consider
5 crediting that person their missing hours to enable their registration. Casual workers who fall short of
6 the work hours cut-off due to pregnancy, childbirth, or related medical conditions are not eligible for
7 such consideration.

8 69. These policies and practices deny seniority accrual to pregnant casual workers for
9 pregnancy disability leave and family leave-related absences while granting seniority accrual to non-
10 pregnant casual workers.

11 70. These policies and practices treat pregnant casual workers less favorably than non-
12 pregnant casual workers who are similar in their ability or inability to work.

13 71. Defendants' policies and practices of crediting work hours only to those casual
14 workers who are absent due to military leave have a disparate impact based on pregnancy.

15 72. Defendants' policies and practices of refusing to credit work hours to casual workers
16 absent due to temporary physical impairments have a disparate impact based on pregnancy.

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18 **V. Defendants' Policies or Practices Harmed Plaintiffs**

19 73. Defendants' policies and practices have delayed Plaintiffs' advancement through the
20 Work Experience Group wage tiers, their advancement to Class B registration, and their enjoyment
21 of full benefits of registered status, if and when they ever reach it.

22 74. On information and belief, when a group of casual workers attained registration at the
23 LA/LB Port in April 2016, the lowest number of hours among those promoted was approximately
24 5,280.

25 75. On information and belief, since April 2016, three additional Class B registrations
26 have occurred: December 2017 (approximately 7,120 hours cut-off); April 2018 (approximately
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1 6,070 hours cut-off); and, on a rolling basis, between December 2018 and May 2019 (approximately
2 6,400 hours cut-off).

3 **Endanicha Bragg**

4 76. Bragg began working at the LA/LB Port as a casual worker in May 2007. She has had
5 three pregnancies during her longshore career.

6 77. In or around June 2008, when Bragg was roughly seven months pregnant, she stopped
7 reporting for work after asking a PMA representative about their policies for pregnant casual workers
8 and being told her that her only option was to apply for state disability leave.

9 78. At the time Bragg stopped reporting for work, she was willing and able to perform the
10 essential functions of some dockworker jobs, such as clerk or signal operator.

11 79. Bragg had her baby in August 2008 and returned to work shortly thereafter, in or
12 around September 2008.

13 80. In September 2013, when she was approximately five months pregnant, Bragg's
14 doctor diagnosed her with a high-risk pregnancy.

15 81. As directed by her doctor, Bragg needed to stop performing strenuous physical labor.
16 Knowing there was no accommodations for her pregnancy, she stopped reporting to work.

17 82. At the time Bragg stopped reporting for work, she was willing and able to perform the
18 essential functions of some dockworker jobs, such as clerk or signal operator.

19 83. Bragg had her baby in February 2014 and returned to work one month later, in March
20 2014.

21 84. During her third pregnancy in 2017, Bragg worked until she was 8-months pregnant.
22 Despite her doctor's advice, Bragg continued working because of her understanding that PMA would
23 not offer her light duty accommodations and would not provide any seniority or work hours credit if
24 she stopped reporting for work due to her pregnancy. Had Defendants offered modified duty
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1 accommodations to pregnant people, Bragg would have applied for such accommodations.

2 85. Bragg gave birth in November 2017 and returned to work in early January 2018.

3 86. Bragg breastfed each of the three children born during her employment on the LA/LB
4 Port, and she wanted to continue doing so until each was at least one year old. Because there was no
5 private, sanitary place for new parents to pump at the LA/LB docks, however, Bragg stopped
6 breastfeeding each time she returned to work.

7 87. At all relevant time periods, Bragg maintained her eligibility to work.

8 88. Bragg is still capable of having children and may become pregnant again. In such a
9 situation, she would continue to work with pregnancy and lactation accommodations so long as able.

10 89. Based on the hours accrued by her casual, non-pregnancy affected peers during the
11 same time periods, Bragg estimates that she lost at least 600 work hours due to Defendants' failure
12 to provide reasonable accommodations for her pregnancy, childbirth, and related medical conditions.

13 90. As of September 2019, Bragg had accumulated roughly 6,600 work hours.

14 91. The seniority Bragg lost due to Defendants' failure to accommodate her pregnancy,
15 childbirth, and related medical conditions delayed her advancement to higher-paying tiers among the
16 Work Experience Groups, a delay that caused current and continuing harm to her wages. Bragg did
17 not reach the second Work Experience tier of 1,001 hours until September 2012; the third Work
18 Experience tier of 2,001 hours until October 2014; and the top tier of 4,001 hours until November
19 2014.

20 92. On information and belief, the seniority Bragg lost due to Defendants' failure to
21 accommodate her pregnancy, childbirth, and related medical conditions also has prevented her from
22 being registered as a Class B worker during past registrations.

23 93. The seniority Bragg lost due to Defendants' failure to accommodate her pregnancy,
24 childbirth, and related medical conditions further has placed her at a current and continuing
25 disadvantage with respect to future rounds of Class B registrations.

26 **Tracy Plummer**

27 94. Plummer began working at the LA/LB Port as a casual dockworker in or around
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1 January 2007. She has had one past pregnancy during her longshore career and is currently pregnant.

2 95. In November 2014, Plummer became pregnant. Knowing that Defendants do not offer
3 any modified duty to pregnant casual workers, Plummer stopped regularly reporting for work and
4 instead worked only the minimum number of hours required to maintain good standing as a casual
5 worker until late summer 2015.

6 96. At the time Plummer stopped reporting for work, she was willing and able to perform
7 the essential functions of some dockworker jobs, such as clerk or signal operator.

8 97. Plummer had her baby in late summer 2015 and returned to work in November 2015.
9 Upon returning to work, Plummer attempted to pump breastmilk by taking breaks in her car, but
10 found her breaks too unpredictable, and the location of her job assignments too far from the parking
11 lot. Accordingly, Plummer stopped working regular hours until late summer 2016 in order to continue
12 breastfeeding at home.

13 98. If Plummer had had a place to pump milk and reasonable break time in which to pump,
14 she was able and would have continued to work.

15 99. At all relevant time periods, Plummer maintained her eligibility to work.

16 100. Plummer estimates, based on the hours accrued by her casual, non-pregnancy affected
17 peers during the same time period, that she lost more than 1,500 work hours due to Defendants'
18 failure to accommodate her pregnancy, childbirth, and related medical conditions.

19 101. As of July 18, 2019, Plummer had accumulated roughly 3,325 hours.

20 102. The seniority Plummer lost due to Defendants' failure to accommodate her pregnancy,
21 childbirth, and related medical conditions delayed her advancement to higher-paying tiers among the
22 Work Experience Groups, a delay causing current and continuing harm to her wages. Plummer did
23 not reach the second Work Experience tier of 1,001 hours until January 2014; and the third Work
24 Experience tier of 2,001 hours until Spring 2017. Plummer has not yet reached the top tier of 4,001
25 hours.

1 103. On information and belief, the seniority Plummer lost due to Defendants' failure to
2 accommodate her pregnancy, childbirth, and related medical conditions has further placed her at a
3 current and continuing disadvantage with respect to future rounds of Class B registrations.

4 104. Plummer is currently pregnant and anticipates that she will be seeking reasonable
5 accommodations at work in connection with lactation and/or other pregnancy-related conditions.

6 105. Currently, Plummer is willing and able to perform the essential functions of some
7 dockworker jobs, such as clerk or signal operator.

8 **Marisol Romero**

9 106. Romero began working at the LA/LB Port as a casual dockworker in November 2014.
10 She has had one pregnancy during her longshore career.

11 107. In early 2015, Romero became pregnant with her first child. Romero has several
12 family members who also work at the LA/LB docks, including two cousins who have been pregnant
13 as casual workers, and she understood the policy and practice of Defendants is not to grant
14 accommodations for pregnancy. Knowing that Defendants do not provide modified duty work for
15 pregnant casual workers, Romero had no option but to stop reporting for work in July 2015.

16 108. At the time Romero stopped reporting for work, she was willing and able to perform
17 the essential functions of some dockworker jobs, such as clerk or signal operator.

18 109. Romero had her baby in early 2016, and she was cleared to return to work in or around
19 April 2016.

20 110. Romero wanted to breastfeed her baby. If she had been able to pump while at work,
21 she was willing and able to work as of spring 2016. Because of a lack of a sanitary, private space for
22 pumping breast milk at the docks, however, she stayed home until September 2016.

23 111. During her absence, Romero maintained her eligibility to work.

24 112. Romero is still capable of having children and may become pregnant again. In such a
25 situation, she would continue to work with pregnancy and lactation accommodations so long as able.

26 113. As of September 2019, Romero had accumulated roughly 70 hours.

27 114. The seniority Romero lost due to Defendants' failure to accommodate her pregnancy,
28

1 childbirth, and related medical conditions has delayed her advancement to higher-paying tiers among
2 the Work Experience Groups, a delay causing current and continuing harm to her wages. Romero has
3 not yet reached the second Work Experience tier of 1,001 hours.

4 115. On information and belief, the seniority Romero lost due to Defendants' failure to
5 accommodate her pregnancy, childbirth, and related medical conditions further has placed her at a
6 current and continuing disadvantage with respect to future rounds of Class B registrations.

7
8 **FIRST CAUSE OF ACTION**
9 **Failure to Reasonably Accommodate Pregnancy,**
10 **Failure to Provide Reasonable Advance Notice**
11 **(Cal. Gov't Code § 12945(a)(3), Cal. Code Regs. tit. 2 § 11049(a))**
12 **On Behalf of All Plaintiffs Against Defendant PMA**

13 116. Plaintiffs reallege and incorporate by reference all preceding paragraphs as alleged
14 above as if fully set forth herein.

15 117. Cal. Gov't Code § 12945(a)(3)(A) prohibits an employer from "refus[ing] to provide
16 reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a
17 related medical condition, if she so requests, with the advice of her health care provider."

18 118. The California Code of Regulations, title 2, § 11035(s), defines a "reasonable
19 accommodation of an employee affected by pregnancy" as "any change in the work environment or
20 in the way a job is customarily done that is effective in enabling an employee to perform the essential
21 functions of a job."

22 119. Cal. Gov't Code § 12945(a)(3)(C) specifically prohibits an employer from "refus[ing]
23 to temporarily transfer a pregnant female employee to a less strenuous or hazardous position for the
24 duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can
25 be reasonably accommodated."

26 120. Cal. Gov't Code § 12945(a)(3)(B) also makes it unlawful "[f]or an employer who has
27 a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of
28 temporarily disabled employees to less strenuous or hazardous positions for the duration of the
disability to refuse to transfer a pregnant employee who so requests."

1 121. In addition, Cal. Code Regs. tit. 2 § 11049(a) requires “[a]n employer shall give its
2 employees reasonable advance notice of employees’ FEHA rights and obligations regarding
3 pregnancy, childbirth, or related medical conditions” as set forth in that regulation.

4 122. Cal. Code Regs. tit. 2 § 11049(c)(2) further provides that an employer’s failure to
5 provide this reasonable notice “shall preclude the employer from taking any adverse action against
6 the employee, including denying reasonable accommodation, transfer or pregnancy disability leave”
7 for any alleged failure of the employee to provide adequate notice of a need for a pregnancy related
8 accommodation, transfer, or leave.

9 123. Defendant PMA failed and continues to fail to provide casuals notice of their FEHA
10 rights and obligations regarding pregnancy, childbirth, or related medical conditions” Cal. Code
11 Regs. tit. 2 § 11049(a).

12 124. Pursuant to its across-the-board policy or practice of refusing work duty modifications
13 or temporary transfers to casual workers affected by pregnancy, Defendant PMA violated and
14 continues to violate FEHA’s requirement that requires employers to provide reasonable
15 accommodations for pregnant employees who are willing and able to perform the essential function
16 of some jobs.

17 125. By providing reasonable accommodations for Class A and Class B workers with
18 temporary disabilities in its collective bargaining agreement with ILWU, but simultaneously denying
19 such reasonable accommodations to pregnant casual workers, Defendant PMA’s policies and
20 practices violated and continue to violate the FEHA with respect to Plaintiffs.

21 126. As a direct and proximate result of Defendant PMA’s policies or practices, Plaintiffs
22 have suffered and continue to suffer injury, including but not limited to lost wages, lower wages, lost
23 seniority, and other compensation and benefits in amounts to be proven at trial.

24 127. As a direct and proximate result of Defendant PMA’s policies or practices, Plaintiffs
25 have suffered and continue to suffer injury, including but not limited to emotional distress, entitling
26 them to compensatory damages in an amount to be proven at trial.

27 128. Defendant PMA committed the unlawful actions herein despicably, maliciously,
28

1 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs, from an improper
2 and evil motive amounting to malice, and in conscious disregard of the rights of Plaintiffs. Plaintiffs
3 are therefore entitled to recover punitive damages from Defendant PMA in an amount to be proven
4 at trial.

5 129. Plaintiffs are entitled to reasonable attorneys' fees and costs pursuant to Cal. Gov't
6 Code § 12965(b).

7 130. Plaintiffs are also entitled to declaratory relief declaring that Defendants' policies and
8 practices of failure to reasonably accommodate pregnant casual workers are unlawful and to
9 appropriate injunctive relief.

10
11 **SECOND CAUSE OF ACTION**

12 **Failure to Reasonably Accommodate Lactation,**
13 **Failure to Provide Reasonable Advance Notice**
(Cal. Gov't Code § 12945(a)(3)(A); 2 Cal. Code Regs. § 11035(d), § 11049(a))
14 **On Behalf of All Plaintiffs Against Defendant PMA**

15 131. Plaintiffs reallege and incorporate by reference all preceding paragraphs as alleged
16 above as if fully set forth herein.

17 132. The FEHA makes it unlawful for employers to fail to reasonably accommodate
18 employees with lactation needs by prohibiting an employer from "refus[ing] to provide reasonable
19 accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical
20 condition, if she so requests, with the advice of her health care provider." Cal. Gov't Code
21 § 12945(a)(3)(A).

22 133. The FEHA directly prohibits the failure to reasonably accommodate lactation needs
23 to the extent that the phrase "condition related to pregnancy" in the foregoing provision includes "a
24 physical or mental condition intrinsic to pregnancy or childbirth that includes, but is not limited to,
25 lactation." Cal. Code Regs. tit. 2, § 11035(d).

26 134. In addition, Cal. Code Regs. tit. 2, § 11035(s) states that a "reasonable
27 accommodation," as used in the failure to accommodate pregnancy statute, "may include, ...
28 providing a reasonable amount of break time and use of a room or other location in close proximity

1 to the employee's work area to express breast milk in private as set forth in the Labor Code."

2 135. California Labor Code § 1030 provides that an employer "shall provide a reasonable
3 amount of break time to accommodate an employee desiring to express breast milk for the employee's
4 infant child."

5 136. California Labor Code § 1031 provides that an employer "shall make reasonable
6 efforts to provide" an employee a place, other than a bathroom, that is shielded from view and free
7 from intrusion by coworkers to express breast milk.

8 137. At all times mentioned in this Complaint, California Labor Code §§ 1030 and 1031
9 were in full force and effect and binding on Defendant PMA.

10 138. As alleged above, Defendant PMA failed to provide Plaintiffs – and continues to fail
11 to provide casual workers who are lactating – reasonable break time or a place shielded from view
12 and free from intrusion by coworkers to express breast milk. Accordingly, Defendant PMA violated
13 and continues to violate Plaintiffs' rights under the FEHA's failure to accommodate pregnancy-
14 related conditions provision.

15 139. Defendant PMA failed and continues to fail provide casuals notice of their FEHA
16 rights and obligations regarding pregnancy, childbirth, or related medical conditions" Cal. Code
17 Regs. tit. 2 § 11049(a).

18 140. As a direct and proximate result of Defendant PMA's policies or practices, Plaintiffs
19 have suffered and continue to suffer injury, including but not limited to lost wages, lower wages, lost
20 seniority, and other compensation and benefits in amounts to be proven at trial.

21 141. As a direct and proximate result of Defendant PMA's policies and practices, Plaintiffs
22 have suffered and continue to suffer injury, including but not limited to emotional distress, entitling
23 them to compensatory damages in an amount to be proven at trial.

24 142. Defendant PMA committed the unlawful actions herein despicably, maliciously,
25 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs, from an improper
26 and evil motive amounting to malice, and in conscious disregard of the rights of Plaintiffs. Plaintiffs
27 are therefore entitled to recover punitive damages from Defendant PMA in an amount to be proven
28

1 at trial.

2 143. Plaintiffs are entitled to reasonable attorneys' fees and costs pursuant to Cal. Gov't
3 Code § 12965(b).

4 144. Plaintiffs are also entitled to declaratory relief declaring that Defendant's policies and
5 practices that fail to reasonably accommodate lactating casual workers are unlawful and to
6 appropriate injunctive relief.

7
8 **THIRD CAUSE OF ACTION**

9 **Failure to Engage in Good-Faith Interactive Process**
10 **to Reasonably Accommodate Pregnancy**
11 **(Cal. Gov't Code § 12945(a)(3); Cal. Code Regs. tit. 2 § 11040(a)(2)(B))**
12 **On Behalf of All Plaintiffs Against Defendant PMA**

13 145. Plaintiffs reallege and incorporate by reference all preceding paragraphs as alleged
14 above as if fully set forth herein.

15 146. Cal. Code Regs. tit. 2 § 11040(a)(2)(B) requires an employer to "engage in a good
16 faith interactive process to identify and implement [a] request for reasonable accommodation" made
17 by an "employee affected by pregnancy."

18 147. Pursuant to its across-the-board policies and practices of refusing work duty
19 modifications or temporary transfers to casual workers affected by pregnancy, Defendant PMA
20 violated and continues to violate FEHA's requirement that employers engage in a good faith
21 interactive process to identify reasonable accommodations for pregnant employees.

22 148. As a direct and proximate result of Defendant PMA's policies and practices, Plaintiffs
23 have suffered and continue to suffer injury, including but not limited to lost wages, lower wages, lost
24 seniority, and other compensation and benefits in amounts to be proven at trial.

25 149. As a direct and proximate result of Defendant PMA's policies and practices, Plaintiffs
26 have suffered and continue to suffer injury, including but not limited to emotional distress, entitling
27 them to compensatory damages in an amount to be proven at trial.

28 150. Defendant PMA committed the unlawful actions herein despicably, maliciously,
fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs, from an improper

1 and evil motive amounting to malice, and in conscious disregard of the rights of Plaintiffs. Plaintiffs
2 are therefore entitled to recover punitive damages from Defendant PMA in an amount to be proven
3 at trial.

4 151. Plaintiffs are entitled to declaratory relief declaring that Defendant PMA’s policies
5 and practices of refusing to engage in a good faith interactive process with pregnant casual workers
6 to identify possible reasonable accommodations is unlawful and to appropriate injunctive relief.

7 152. Plaintiffs are entitled to reasonable attorneys’ fees and costs pursuant to Cal. Gov’t
8 Code § 12965(b).

9
10 **FOURTH CAUSE OF ACTION**
11 **Failure to Engage in Good-Faith Interactive Process**
12 **to Reasonably Accommodate Lactation**
13 **(Cal. Gov’t Code § 12945(a)(3); Cal. Code Regs. tit. 2 § 11040(a)(2)(B), § 11035)**
14 **On Behalf of All Plaintiffs Against Defendant PMA**

15 153. Plaintiffs reallege and incorporate by reference all preceding paragraphs as alleged
16 above as if fully set forth herein.

17 154. Cal. Code Regs. tit. 2 § 11040(a)(2)(B) requires an employer to “engage in a good
18 faith interactive process to identify and implement [a] request for reasonable accommodation” made
19 by an “employee affected by pregnancy.”

20 155. Cal. Code Regs. tit. 2, § 11035 defines “affected by pregnancy” to include not only
21 pregnancy and childbirth, but also “a physical or mental condition intrinsic to pregnancy or childbirth
22 that includes, but is not limited to, lactation.” *Id.* (cross-referencing Cal. Gov’t Code § 12945 and
23 “condition related to pregnancy” as used therein).

24 156. Pursuant to its across-the-board policies and practices of failing to provide lactation
25 accommodations, Defendant PMA violated and continues to violate FEHA’s requirement that
26 employers engage in a good faith interactive process to identify reasonable accommodations for
27 pregnancy-affected employees.
28

1 164. Cal. Gov't Code § 12940(b) provides that it is unlawful “[f]or a labor organization,
2 because of . . . sex, . . . to exclude, expel, or restrict [a worker] from its membership . . . or to provide
3 only second-class or segregated membership . . . or to discriminate in any way against any of its
4 members.”

5 165. The FEHA defines “sex” to include “[p]regnancy or medical conditions related to
6 pregnancy.” Cal. Gov't Code § 12926(r)(1).

7 166. Plaintiffs are or were members of a protected class because they are women and they
8 are or were pregnant.

9 167. Defendants’ policies and practices in its collective bargaining agreement of
10 authorizing reasonable accommodations for Class A and Class B workers with temporary disabilities
11 and who are pregnant, but simultaneously denying such accommodations to pregnant casual workers,
12 discriminates against casual workers based on sex, in violation of Plaintiffs’ rights pursuant to Cal.
13 Gov't Code § 12940(a) and Cal. Code Regs. tit. 2 § 11044(d)(1).

14 168. Defendants’ policies and practices of providing seniority credit to casual workers
15 whose work absences are due to military leave but not to casual workers – such as Plaintiffs – whose
16 work absences are due to pregnancy, childbirth, or related medical conditions, even though the two
17 groups are similar in their ability or inability to work, also discriminates against casual workers based
18 on sex, in violation of Plaintiffs’ rights pursuant to Cal. Gov't Code § 12940(a) and Cal. Code Regs.
19 tit. 2 § 11044(d)(1).

20 169. As a direct and proximate result of Defendants’ policies and practices, Plaintiffs have
21 suffered and continue to suffer injury, including but not limited to lost wages, lower wages, lost
22 seniority, and other compensation and benefits in amounts to be proven at trial.

23 170. As a direct and proximate result of Defendants’ policies and practices, Plaintiffs have
24 suffered and continue to suffer injury, including but not limited to emotional distress, entitling them
25 to compensatory damages in an amount to be proven at trial.

26 171. Defendants committed the unlawful actions herein despicably, maliciously,
27 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs, from an improper
28

1 and evil motive amounting to malice, and in conscious disregard of the rights of Plaintiffs. Plaintiffs
2 are therefore entitled to recover punitive damages from Defendants in an amount to be proven at trial.

3 172. Plaintiffs are entitled to reasonable attorneys' fees and costs pursuant to Cal. Gov't
4 Code § 12965(b).

5 173. Plaintiffs are also entitled to declaratory relief declaring that Defendants' policies and
6 practices of disparate treatment of pregnant casual workers are unlawful and to appropriate injunctive
7 relief.

8 **SIXTH CAUSE OF ACTION**
9 **Disparate Impact Discrimination Based on Sex/Pregnancy**
10 **(Cal. Gov't. Code § 12940(a)-(b))**
11 **On Behalf of All Plaintiffs Against All Defendants**

12 174. Plaintiffs reallege and incorporate by reference all preceding paragraphs as alleged
13 above as if fully set forth herein.

14 175. Because women disproportionately become pregnant, and also may experience
15 temporary disabilities due to pregnancy, childbirth, or related medical conditions, Defendants'
16 policies and practices of failing to provide any light duty or other work duty modifications to casual
17 workers, and instead offering only the options of working without modification or stopping work
18 altogether and receiving neither wages nor seniority credit, has an unlawful disparate impact based
19 on sex, in violation of Plaintiffs' rights pursuant to Cal. Gov't Code § 12940(a) and Cal. Code Regs.
20 tit. 2 § 11044(d)(1).

21 176. Because women disproportionately become pregnant, and also may experience
22 temporary disabilities due to pregnancy, childbirth, or related medical conditions, Defendants'
23 policies and practices of failing to award seniority credit to casual workers absent due to temporary
24 disabilities or pregnancy, childbirth, or related medical conditions has an unlawful disparate impact
25 on the basis of sex, in violation of Plaintiffs' rights pursuant to Cal. Gov't Code § 12940(a) and Cal.
26 Code Regs. tit. 2 § 11044(d)(1).

27 177. Because women disproportionately become pregnant, and also may experience
28 temporary disabilities due to pregnancy, childbirth, or related medical conditions, Defendants'

1 policies and practices of limiting seniority credit to casual workers absent due to military service has
2 an unlawful disparate impact on the basis of sex, in violation of Plaintiffs' rights pursuant to Cal.
3 Gov't Code § 12940(a) and Cal. Code Regs. tit. 2 § 11044(d)(1).

4 178. Defendants' policies and practices of failing to provide any light duty or other work
5 duty modifications for casual workers, and offering only the options of working without modification
6 or stopping work altogether and receiving neither wages nor seniority credit, is not, and cannot be,
7 justified by business necessity.

8 179. Defendants' policy or practice of failing to provide seniority credit to casual workers
9 absent due to temporary disabilities or pregnancy, childbirth, or related medical conditions is not, and
10 cannot be, justified by business necessity.

11 180. Even if any of these policies or practices could be justified by business necessity, less
12 discriminatory alternatives exist and would equally serve any alleged necessity.

13 181. As a direct and proximate result of these policies or practices, Plaintiffs have suffered
14 and continue to suffer injury, including but not limited to lost wages, lower wages, lost seniority, and
15 other compensation and benefits in amounts to be proven at trial.

16 182. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered and
17 continue to suffer injury, including but not limited to emotional distress, entitling them to
18 compensatory damages in an amount to be proven at trial.

19 183. Plaintiffs are entitled to reasonable attorneys' fees and costs pursuant to Cal. Gov't
20 Code § 12965(b).

21 184. Plaintiffs are also entitled to declaratory relief declaring that Defendants' policies and
22 practices resulting in discriminatory disparate impacts on pregnant casual workers are unlawful, and
23 to appropriate injunctive relief.

1 **SEVENTH CAUSE OF ACTION**

2 **Interference with California Family Rights Act and Pregnancy Disability Leave Law**
3 **(Cal. Gov't Code §§ 12945(a)(4), 12945.2(t); Cal. Code Regs. tit. 2 §§ 11044(d), 11092(d))**
4 **On Behalf of All Plaintiffs Against Defendant PMA**

5 185. Plaintiffs reallege and incorporate by reference all preceding paragraphs as alleged
6 above as if fully set forth herein.

7 186. Among other things, Government Code § 12945 makes it unlawful for an employer:

8 a. "to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical
9 condition to take a leave for a reasonable period of time not to exceed four months and
10 thereafter return to work," *id.* at § 12945(a)(1);

11 b. "to refuse to provide reasonable accommodation for an employee for a condition
12 related to pregnancy, childbirth, or a related medical condition, if the employee so
13 requests, with the advice of the employee's health care provider," *id.* at
14 § 12945(a)(3)(A);

15 c. to have a "collective bargaining agreement requiring or authorizing the transfer of
16 temporarily disabled employees to less strenuous or hazardous positions for the
17 duration of the disability [but] to refuse to transfer a pregnant employee who so
18 requests," *id.* at § 12945(a)(3)(B); and

19 d. "to refuse to temporarily transfer a pregnant employee to a less strenuous or hazardous
20 position for the duration of the pregnancy if the employee so requests, with the advice
21 of the employee's physician, where that transfer can be reasonably accommodated,"
22 *id.* at § 12945(a)(3)(C).

23 187. In addition, Cal. Gov't Code § 12945(a)(4) makes it unlawful for an employer to
24 "interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under
25 this section," i.e., the aforementioned clauses.

26 188. Based on the factual allegations stated above, Plaintiffs were entitled to leave based
27 on pregnancy and/or pregnancy-related conditions pursuant to Cal. Gov't Code § 12945(a)(1).

28 189. Further, under Cal. Code Regs. tit. 2, § 11044(d), while an employee is on leave related

1 to her pregnancy, childbirth, or a related medical condition, the employee “shall accrue seniority . . .
2 to the same extent and under the same conditions as would apply to any other unpaid disability leave
3 granted by the employer for any reason other than a pregnancy disability,” and further, “[i]f the
4 employer’s policy allows seniority to accrue when employees are on paid leave, such as paid sick or
5 vacation leave, and/or unpaid leave, then seniority will accrue during any part of a paid and/or unpaid
6 pregnancy disability leave.” *Id.* § 11044(d)(1).

7 190. Moreover, Cal. Gov’t Code § 12945.2 makes it unlawful for an employer “to refuse
8 to grant a request by any employee with more than 12 months of service with the employer, and who
9 has at least 1,250 hours of service with the employer during the previous 12-month period, to take up
10 to a total of 12 workweeks in any 12-month period for family care and medical leave.” *Id.* §
11 12945.2(a).

12 191. In addition, Cal. Gov’t Code § 12945.2(t) makes it unlawful “to interfere with, restrain,
13 or deny the exercise of . . . any right provided under this section,” i.e., the aforementioned clause.

14 192. Finally, under Cal. Code Regs. tit. 2, § 11092(d), while an employee is on family care
15 and medical leave, the employee “is entitled to accrual of seniority . . . to the same extent and under
16 the same conditions as would apply to any other leave granted by the employer for any reason other
17 than CFRA leave,” and further, “[i]f the employer’s policy allows seniority to accrue when employees
18 are out on paid leave, such as paid sick or vacation leave, then seniority will accrue during any part
19 of a paid CFRA leave.” *Id.* § 11092(d)(2).

20 193. Defendant PMA interfered with Plaintiffs’ ability to assert their rights to pregnancy-
21 related workplace accommodations by, among other things, effectively making unpaid leave the sole
22 option for pregnant or pregnancy-affected casual workers in need of accommodation; failing to
23 inform Plaintiffs about their rights to reasonable accommodations, the procedures for requesting a
24 reasonable accommodation, and way to appeal a denial; failing to post and provide the notice required
25 by Cal. Code of Regs. § 11049; and failing to adequately train employees with supervisory
26 responsibilities regarding pregnant employees’ rights under Cal. Gov’t Code § 12945(a)(3).

1 workers based on sex and/or pregnancy, including Plaintiffs, in violation of Gov't Code § 12940(k).

2 202. Among other failures, Defendants' policies or practices have not and do not require
3 that pregnant casual workers, casual workers with pregnancy-related conditions, and breastfeeding
4 casual workers be afforded a good-faith interactive process when they are in need of accommodation;
5 do not afford these workers with the same accommodations as non-pregnant workers with similar
6 ability or inability to work; failed to inform and/or misinformed Plaintiffs of their right to a reasonable
7 accommodation during pregnancy or as a result of pregnancy or breastfeeding; failed to inform
8 Plaintiffs about how to request a reasonable accommodation; failed to inform Plaintiffs about their
9 right to suitable lactation facilities; failed to post and provide the notice required by Cal. Code of
10 Regs. § 11049; and failed to adequately train employees with supervisory responsibilities regarding
11 the right to a reasonable accommodation during or related to pregnancy.

12 203. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered and
13 continue to suffer injury, including but not limited to lost wages, lower wages, lost seniority, and
14 other compensation and benefits in amounts to be proven at trial.

15 204. Defendants committed the unlawful actions herein despicably, maliciously,
16 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs, from an improper
17 and evil motive amounting to malice, and in conscious disregard of the rights of Plaintiffs. Plaintiffs
18 are therefore entitled to recover punitive damages from Defendants in an amount to be proven at trial.

19 205. Plaintiffs are entitled to reasonable attorneys' fees and costs pursuant to Cal. Gov't
20 Code § 12965(b).

21 206. Plaintiffs are also entitled to declaratory relief declaring that Defendants' policies and
22 practices failing to prevent discrimination against pregnant casual workers are unlawful and to
23 appropriate injunctive relief.

1
2 **NINTH CAUSE OF ACTION**
3 **Unfair Competition in Violation of Unfair Competition Law**
4 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**
5 **On Behalf of All Plaintiffs Against All Defendants**

6 207. Plaintiffs reallege and incorporate by reference all preceding paragraphs as alleged
7 above as if fully set forth herein.

8 208. Unfair practices prohibited by the UCL include “any unlawful, unfair or fraudulent
9 business act or practice.” Cal. Bus. & Prof. Code § 17200.

10 209. Defendants committed unlawful business practices by violating the FEHA, including,
11 but not limited to: failing to engage in an interactive process with Plaintiffs; failing to reasonably
12 accommodate Plaintiffs’ pregnancies, pregnancy-related disabilities, lactation needs, and other
13 related medical conditions; discriminating against Plaintiffs by treating them less favorably in
14 comparison to casual workers who are not affected by pregnancy or pregnancy-related disabilities;
15 and adopting policies that have a disparate impact on Plaintiffs in comparison to other, non-pregnant
16 workers similar in their ability or inability to work.

17 210. Defendants’ acts and omissions, as alleged herein, also constitute unfair business
18 practices prohibited by Business & Professions Code §§ 17200 *et seq.* Defendants’ policies and
19 practices are immoral, unethical, oppressive, unscrupulous, and offensive to the established public
20 policies of ensuring pregnant people, breastfeeding people, and people with pregnancy-related
21 conditions or disabilities are accommodated in the workplace. As a result of their unfair business
22 practices, Defendants have reaped and continue to reap unfair and illegal profits at the expense of
23 Plaintiffs.

24 211. Business & Professions Code § 17203 provides that the Court may restore to any
25 person in interest any money or property that may have been acquired by means of unfair competition
26 and order restitutionary damages by operation of the practices alleged herein. Plaintiffs are therefore
27 entitled to disgorgement by Defendants of those profits.

28 212. Pursuant to Code of Civ. Proc. § 1021.5, Plaintiffs are entitled to payment of their
attorneys’ fees, costs, and expenses incurred in bringing this action.

1 F. An award of pre-judgment and post-judgment interest on all monetary amounts
2 awarded in this action, as provided by law;

3 G. An award of reasonable attorneys' fees, costs, and expenses;

4 H. Such other and further relief that the Court finds equitable, just, and proper.
5

6 **DEMAND FOR JURY TRIAL**

7 Plaintiffs demand trial by jury on all claims and causes of action so triable.
8

9 Dated: October 7, 2019

Respectfully submitted,

11 By: /s/ Gillian Thomas

12 GILLIAN THOMAS
13 (*pro hac vice* forthcoming)
14 ANJANA SAMANT
15 (*pro hac vice* forthcoming)
16 The American Civil Liberties Union
17 Foundation Women's Rights Project

18 /s/ Aditi Fruitwala
19 ADITI FRUITWALA
20 MINOUCHE KANDEL
21 AMANDA GOAD
22 ACLU Foundation of Southern California

23 /s/ Brenda Feigen
24 BRENDA FEIGEN
25 Feigen Law Group

26 *Attorneys for Plaintiffs*
27
28