

1 **THE AMERICAN CIVIL LIBERTIES**  
2 **UNION FOUNDATION WOMEN’S**  
3 **RIGHTS PROJECT**

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26 (Continued on next page)

27 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
28 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

29 ENDANICHA BRAGG, an individual,  
30 TRACY PLUMMER, an individual,  
31 MARISOL ROMERO, an individual,  
32 NOLA HALL, an individual, and  
33 JACQUELINE SIERRA, an individual,  
34 on behalf of themselves and all others  
35 similarly situated,

36 Plaintiffs,

37 v.

**Case No. 19STCV35714**

Assigned for all purposes to the Hon. Dennis Landin, Dept. 51

FIRST AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF

**1. Failure to Reasonably Accommodate  
Pregnancy, Failure to Provide**

1  
2 PACIFIC MARITIME ASSOCIATION,  
3 INTERNATIONAL LONGSHORE  
4 AND WAREHOUSE UNION,  
5 INTERNATIONAL LONGSHORE  
6 AND WAREHOUSE UNION LOCAL  
7 13, and DOES 1-100,

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Defendants.

- Reasonable Advance Notice (Cal. Gov't Code § 12945(a)(3), Cal. Code Regs. tit. 2 § 11049(a))
2. Failure to Reasonably Accommodate Lactation, Failure to Provide Reasonable Advance Notice (Cal. Gov't Code § 12945(a)(3)(A); 2 Cal. Code Regs. § 11035(d), § 11049(a); Cal. Lab. Code §§ 1030, 1033)
  3. Failure to Engage in Good-Faith Interactive Process to Reasonably Accommodate Pregnancy (Cal. Gov't Code § 12945(a)(3); Cal. Code Regs. tit. 2 § 11040(a)(2)(B))
  4. Failure to Engage in Good-Faith Interactive Process to Reasonably Accommodate Lactation (Cal. Gov't Code § 12945(a)(3); Cal. Code Regs. tit. 2 § 11040(a)(2)(B), § 11035)
  5. Disparate Treatment Discrimination Based on Sex/Pregnancy (Cal. Gov't Code § 12940(a)-(b); Cal. Code Regs. tit. 2 § 11044(d)(1))
  6. Disparate Impact Discrimination Based on Sex/Pregnancy (Cal. Gov't Code § 12940(a)-(b))
  7. Interference with California Family Rights Act and Pregnancy Disability Leave Law (Cal. Gov't Code §§ 12945(a)(4), 12945.2(t); Cal. Code Regs. tit. 2 §§ 11044(d), 11092(d))
  8. Failure to Prevent Discrimination (Cal. Gov't Code § 12940(k))
  9. Unfair Competition in Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

**DEMAND FOR JURY TRIAL**

1 **ACLU FOUNDATION OF SOUTHERN**  
2 **CALIFORNIA**

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1 Plaintiffs Endanicha Bragg, Tracy Plummer, Marisol Romero, Nola Hall, and  
2 Jacqueline Sierra, as individuals and on behalf of themselves and all others similarly  
3 situated, allege as follows:

#### 4 SUMMARY OF CLAIMS

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

16 2. Each Plaintiff’s history on the docks illustrates the multiple barriers faced by  
17 female casual workers striving to advance in a high-paying industry that historically has  
18 been hostile to their presence.<sup>2</sup>

19 3. Women long have fought for equal access to job opportunities on the LA/LB  
20 Port. Forty years ago, in 1980, a class action sex discrimination lawsuit was filed against  
21 Defendants and other entities, alleging “sex discrimination in the hiring and promotion of  
22 women as longshore workers . . . in the Los Angeles/Long Beach port.” *Golden v. Pacific*  
23 *Maritime Assoc., et al.*, No. CV 80-4770-RMT, slip op. at 1 (C.D. Cal. Nov. 21, 2002). At the  
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26 <sup>1</sup> Pac. Mar. Ass’n, *2018 Annual Report*, at 62, available at [http://www.pmanet.org/wp-](http://www.pmanet.org/wp-content/uploads/2019/04/2018-PMA-Annual-Report.pdf)  
27 [content/uploads/2019/04/2018-PMA-Annual-Report.pdf](http://www.pmanet.org/wp-content/uploads/2019/04/2018-PMA-Annual-Report.pdf) (last visited Mar. 4, 2020) (“[F]ull-time registered  
28 workers . . . earn, on average, more than \$183,000 per year. For longshore registrants, the average is \$171,110. For clerks, it is \$193,511. And for foremen, it is \$281,555.”).

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

1 time, Defendant Local 13 had fewer than seven female members.<sup>3</sup> Three years later, the  
2 parties entered into a consent decree, under which Defendants agreed to short- and long-  
3 term goals for registering women as Class B longshore workers – the next rung above  
4 casual workers – and for subsequently promoting them to full membership in Defendant  
5 Local 13, with an ultimate goal of achieving 20 percent female union membership.<sup>4</sup> The so-  
6 called “Golden Decree” remained in effect for 16 years, until the court allowed the  
7 agreement to lapse before the 20 percent goal was met.<sup>5</sup> During the life of the Decree,  
8 women reported intense resistance from male dockworkers, which resulted in abuse  
9 ranging from sexist graffiti (e.g., “Women go home”) to physical harassment to death  
10 threats, and more.<sup>6</sup>

11 4. Although on information and belief neither Defendant PMA nor Defendant  
12 Local 13 publishes figures showing women’s representation among the ranks of casual  
13 workers, Class B longshore workers, and full-fledged members of Defendant Local 13, on  
14 information and belief, women comprise nearly half of all casuals but still remain below 20  
15 percent of Defendant Local 13’s membership.<sup>7</sup>

16 5. Moreover, women are all but absent from Defendants’ leadership. Defendant  
17 PMA’s President and CEO is a man, its eleven-member Board of Directors and eleven-  
18 member Coast Steering Committee are all-men, and all twelve members of its Southern  
19 California Area Steering Committee are men.<sup>8</sup> The top four officers of Defendant ILWU,<sup>9</sup>  
20 and all but five of its twenty-member Executive Committee, are men.<sup>10</sup> The President, Vice  
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22 <sup>3</sup> Bill Sharpsteen, “The Last Stand,” *The Los Angeles Times* (Jan. 24, 1999), available at  
23 <https://www.latimes.com/archives/la-xpm-1999-jan-24-tm-1003-story.html> (reporting that Defendant  
Local 13 and the local representing marine clerks, Local 63, had seven female members total).

24 <sup>4</sup> Id.

25 <sup>5</sup> *Golden v. Pacific Maritime Assoc., et al.*, No. CV 80-4770-RMT, slip op. at 7 (C.D. Cal. June 21, 1999).

26 <sup>6</sup> Stolberg, “Heavy-Duty Abuse,” *supra* note 2.

27 <sup>7</sup> Megan Bagdonas, “Crane Operator Represents Growing Influence of Women at Local Ports,” *The Los*  
28 *Angeles Daily News* (Aug. 22, 2007), available at [https://www.dailynews.com/2007/08/22/crane-operator-](https://www.dailynews.com/2007/08/22/crane-operator-represents-growing-influence-of-women-at-local-ports/)  
[represents-growing-influence-of-women-at-local-ports/](https://www.dailynews.com/2007/08/22/crane-operator-represents-growing-influence-of-women-at-local-ports/).

<sup>8</sup> Pac. Mar. Ass’n, *2018 Annual Report*, at 7-8.

<sup>9</sup> See Int’l Longshore and Warehouse Union, “International Officers,”  
<https://www.ilwu.org/about/officers/> (last visited Mar. 10, 2020).

<sup>10</sup> See Int’l Longshore and Warehouse Union, “ILWU Executive Board,”  
<https://www.ilwu.org/about/international-executive-board/> (last visited Mar. 10, 2020).

1 President, and Secretary Treasurer of Defendant Local 13 are men; the lone female officer  
2 serves in a Human Resources function.<sup>11</sup> All Local 13 dispatchers are men, as well.<sup>12</sup>

3 6. Defendants' policies and procedures applicable to all members of the Plaintiff  
4 Classes ignore the demographics of their workforce today and the laws governing it. As a  
5 consequence, Defendants' policies and procedures assure that workers affected by  
6 pregnancy, childbirth, or related medical conditions will consistently lag behind their peers  
7 in pay and promotion opportunities.

8 7. California leads the nation in its recognition that pregnancy is a normal  
9 condition of the modern workplace. The state's statutory and regulatory scheme directs that  
10 pregnancy ordinarily should not prevent employees from continuing to work, and that, if it  
11 does, those absences should not result in unequal penalties that harm workers' future  
12 opportunities or economic well-being.

13 8. The California Fair Employment and Housing Act ("FEHA") includes  
14 numerous protections to enable pregnant workers in California to remain on the job and to  
15 continue to support their families. Among its provisions, the FEHA requires employers to  
16 engage in a good-faith interactive process with their employees who are pregnant or who  
17 have pregnancy-related conditions, including lactation, to determine whether it would be  
18 possible to reasonably accommodate them and to provide such accommodations if  
19 reasonably possible. Cal. Gov't Code § 12945(a)(3)(A). The FEHA and its implementing  
20 regulations further require employers to provide employees with advance notice of their  
21 right to reasonable accommodations. Cal. Code Regs. tit. 2 § 11049(a). The FEHA also  
22 prohibits employers from discriminating against employees because of pregnancy,  
23 including by providing benefits to certain employees but not to similarly situated pregnant  
24 employees. Cal. Gov't Code § 12940(a).

25 9. Separately, the California Pregnancy Disability Leave Law ("PDLL") and the  
26 California Family Rights Act ("CFRA") mandate that employees who take pregnancy-

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28 <sup>11</sup> See "ILWU Local 13 Officers," <https://www.ilwu13.com/index.php/faq/officers> (last visited Mar. 10, 2020).

<sup>12</sup> Id.

1 related and family- and medical-related leave are entitled to accrue seniority, if other  
2 workers who are on leave receive such a benefit. Cal. Gov't Code §§ 12945, 12945.2.

3 10. In addition to the FEHA requirement that California employers accommodate  
4 lactation, California's Labor Code directs that employers provide lactating workers  
5 reasonable break time, a private space close to their work location that is shielded from view  
6 with a place to sit and an electrical source, a refrigerator to store breast milk, and a sink with  
7 running water. Cal. Labor Code §§ 1030, 1031.

8 11. Finally, recognizing the severe economic disadvantage that biased and  
9 discriminatory practices pose, California deems discrimination in violation of the FEHA  
10 also to violate the Unfair Competition Law ("UCL"). Cal. Bus. & Prof. Code §§ 17200, *et seq.*

11 12. Based on the claims described in this action, Plaintiffs bring this action on  
12 behalf of themselves and others similarly situated as a class action for violations of the  
13 FEHA, Cal. Gov't Code §§ 12900-12996; the PDDL, Cal. Gov't Code § 12945; the CFRA, Cal.  
14 Gov't Code § 12945.2; and the UCL, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

15 13. Plaintiffs, on behalf of the Plaintiff Classes (defined below), seek to certify their  
16 claims under California Code of Civil Procedure § 382.

17 14. In addition to other relief sought, Plaintiffs seek preliminary and permanent  
18 injunctive relief to halt Defendants' unlawful actions.

19 **THE PARTIES**

20 **Plaintiffs**

21 15. Plaintiff Endanicha Bragg ("Bragg") is an adult woman who resides in Los  
22 Angeles County, California and is a casual dockworker at the LA/LB Port.

23 16. Plaintiff Tracy Plummer ("Plummer") is an adult woman who resides in Los  
24 Angeles County, California and is a casual dockworker at the LA/LB Port.

25 17. Plaintiff Marisol Romero ("Romero") is an adult woman who resides in Los  
26 Angeles County, California and is a casual dockworker at the LA/LB Port.

27 18. Plaintiff Nola Hall ("Hall") is an adult woman who resides in Los Angeles  
28 County, California and is a casual dockworker at the LA/LB Port.

1           19. Plaintiff Jacqueline Sierra (“Sierra”) is an adult woman who resides in Los  
2 Angeles County, California and is a casual dockworker at the LA/LB Port.

3 **Defendants**

4 **Pacific Maritime Association**

5           20. Defendant Pacific Maritime Association (“Defendant PMA”) is the bargaining  
6 representative on behalf of 70 shipping and terminal companies (“LA/LB Port Operating  
7 Entities”) that use and operate the 29 ports along the West Coast, from San Diego, California  
8 to Bellingham, Washington, including the LA/LB Port. Defendant PMA’s headquarters are  
9 in San Francisco, California, and it has offices in Oakland, Long Beach, and San Diego,  
10 California, as well as a training facility in Wilmington, California. Some of Defendant PMA’s  
11 members are citizens of the state of California. Defendant PMA is a citizen of the state of  
12 California.

13           21. Defendant PMA has more than five employees, and on information and belief,  
14 Defendant PMA employs 50 or more employees within 75 miles of Plaintiffs’ workplace.

15           22. On information and belief, Defendant PMA is: (1) Plaintiffs’ employer within  
16 the meaning of the FEHA, Cal. Gov’t Code § 12926(d), that jointly employs Plaintiffs; or (2)  
17 an agent of Plaintiffs’ employers, the LA/LB Port Operating Entities, within the meaning of  
18 the FEHA, Cal. Gov’t Code § 12926(d). Alternatively, if not found to be either an employer  
19 within the meaning of the FEHA or an employer-agent for the LA/LB Port Operating  
20 Entities within the meaning of the FEHA, it should be deemed to have aided and abetted  
21 the LA/LB Port Operating Entities’ violations of the FEHA. If not found to be an employer  
22 within the meaning of the FEHA, Defendant PMA should be deemed to have aided and  
23 abetted the discriminatory actions taken by Defendant ILWU and Defendant Local 13.

24           23. At all relevant times, Defendant PMA was an employer for purposes of the  
25 FEHA. California courts consider the following factors when determining whether an  
26 employment relationship exists: (1) the payment of salary or other benefits; (2) the  
27 ownership of the equipment used by the employee; (3) the location where the relevant work  
28 is performed; (4) the responsibility of the employer to train the employee; (5) the authority

1 to promote or discharge the employee; and (6) the power to determine the schedule,  
2 assignment, and amount of compensation earned by the employee. Defendant PMA meets  
3 many of these factors.

4 24. As alleged in greater detail below, Defendant PMA participates in  
5 determining the schedule, assignment and amount of compensation for the Plaintiff Classes;  
6 and Defendant PMA manages the docks by, among other things, interviewing and  
7 screening prospective employees, making and issuing work assignments, reassignments,  
8 and transfers of dockworkers to member employers, participating in the negotiations and  
9 enforcement of future and existing labor contracts, providing performance evaluations,  
10 maintaining payrolls records, negotiating reasonable accommodation protocols, and  
11 serving as a liaison between the union and member employers in some grievance matters.

12 25. In the alternative, Plaintiffs are informed and believe, and on that basis allege,  
13 that if not found to be an employer within the meaning of the FEHA, Defendant PMA is an  
14 employer-agent of Plaintiffs' the LA/LB Port Operating Entities, within the meaning of the  
15 FEHA. As the employer-agent of Plaintiffs' employers, Defendant PMA was acting in the  
16 scope of Plaintiffs' employers' authority as the agent, servant, representative, and/or  
17 affiliate and with the permission and consent of said employers.

18 26. In the alternative, by engaging in the foregoing conduct, Plaintiffs are  
19 informed and believe, and on that basis allege, that if Defendant PMA is not found to be  
20 either an employer within the meaning of the FEHA or an employer-agent for the LA/LB  
21 Port Operating Entities within the meaning of the FEHA, it should be deemed to have aided  
22 and abetted the LA/LB Port Operating Entities' violations of the FEHA. Under the FEHA,  
23 it is an unlawful employment practice "to aid, abet, incite, compel, or coerce the doing of  
24 any acts forbidden under [the FEHA], or to attempt to do so." Cal. Gov't Code § 12940(i).  
25 Aiding and abetting occurs when one knows that the other's conduct constitutes a breach  
26 of duty and gives substantial assistance or encouragement to the other to so act.

27 27. Defendant PMA is aware of the LA/LB Port Operating Entities' duty to  
28 accommodate pregnancy and pregnancy-related conditions for casual workers; and, by

1 engaging in the conduct described above, it provided substantial assistance and  
2 encouragement to the LA/LB Port Operating Entities' abdication of this duty. Defendant  
3 PMA provided substantial assistance and encouragement to LA/LB Port Operating  
4 Entities' failure to provide light duty assignments, maintenance of a discriminatory leave  
5 policy for casual workers who are pregnant or experiencing pregnancy-related conditions,  
6 and failure to adopt or enforce the lack of policies or procedures to accommodate breast  
7 pumping and lactation. Defendant PMA could have prevented these violations of the law  
8 (and, in fact, has represented to government agencies that it would rectify such problems,  
9 such as in a recent settlement with the U.S. Equal Employment Opportunity Commission)  
10 but has not. This, combined with the acts above, establishes Defendant PMA aided and  
11 abetted the LA/LB Port Operating Entities in violations of the FEHA.

12         28. Plaintiffs are informed and believe, and on that basis allege, that if Defendant  
13 PMA is not found to be an employer within the meaning of the FEHA, it should be deemed  
14 to have aided and abetted Defendant ILWU and Defendant Local 13. Under the FEHA, it is  
15 an unlawful employment practice "to aid, abet, incite, compel, or coerce the doing of any  
16 acts forbidden under [the FEHA], or to attempt to do so." Cal. Gov't Code § 12940(i). Aiding  
17 and abetting occurs when one knows that the other's conduct constitutes a breach of duty  
18 and gives substantial assistance or encouragement to the other to so act. Defendant PMA  
19 was aware of Defendant ILWU's and Defendant Local 13's duty to accommodate pregnancy  
20 and pregnancy-related conditions for casual workers and provided substantial assistance  
21 and encouragement in Defendant ILWU's and Defendant Local 13's breach of this duty.  
22 Defendant PMA provided substantial assistance and encouragement to Defendant ILWU's  
23 and Defendant Local 13's failure to provide light duty assignments, maintenance of a  
24 discriminatory leave policy for casual workers who are pregnant or experiencing  
25 pregnancy-related conditions, and the lack of procedures to accommodate breast pumping  
26 and lactation. PMA could have prevented these violations of the law (and, in fact, has  
27 represented to government agencies that it would rectify such problems, such as in a recent  
28 settlement with the U.S. Equal Employment Opportunity Commission) but has not. This,

1 combined with the acts above, establishes Defendant PMA aided and abetted Defendant  
2 ILWU and Defendant Local 13 in violations of the FEHA.

3 **International Longshore and Warehouse Union (ILWU) and International Longshore and**  
4 **Warehouse Union Local 13 (Local 13)**

5 29. Defendant International Longshore and Warehouse Union (“Defendant  
6 ILWU”) is a labor union and the bargaining representative for longshore workers in the  
7 ports operated by Defendant PMA and its members, including the LA/LB Port. Some of  
8 Defendant ILWU’s members are citizens of the state of California. Because some of  
9 Defendant ILWU’s members are California citizens, ILWU is a citizen of the state of  
10 California.

11 30. Defendant International Longshore and Warehouse Union Local 13  
12 (“Defendant Local 13”) is one of Defendant ILWU’s local unions and is the representative  
13 for longshore workers at the LA/LB Port. At least some of Defendant Local 13’s members  
14 are citizens of the state of California. As such, it is also a California citizen.

15 31. Defendants ILWU and Local 13 (collectively, “Union Defendants”) are labor  
16 organizations within the meaning of FEHA, Cal. Gov’t Code § 12926(h).

17 32. Plaintiffs are informed and believe, and on that basis allege, that the Union  
18 Defendants aided and abetted the LA/LB Port Operating Entities. Under the FEHA, it is an  
19 unlawful employment practice “to aid, abet, incite, compel, or coerce the doing of any acts  
20 forbidden under [the FEHA], or to attempt to do so.” Cal. Gov’t Code § 12940(i). Aiding  
21 and abetting occurs when one knows that the other’s conduct constitutes a breach of duty  
22 and gives substantial assistance or encouragement to the other to so act. The Union  
23 Defendants were aware of the LA/LB Port Operating Entities’ duty to accommodate  
24 pregnancy and pregnancy-related conditions for casual workers and provided substantial  
25 assistance and encouragement in the LA/LB Port Operating Entities’ abdication of this  
26 duty. The Union Defendants provided substantial assistance and encouragement to the  
27 LA/LB Port Operating Entities’ failure to provide light duty assignments, maintenance of a  
28 discriminatory leave policy for casual workers who are pregnant or experiencing  
pregnancy-related conditions, and the lack of procedures to accommodate breast pumping

1 and lactation. The Union Defendants could have prevented these violations of the law but  
2 have not. This, combined with the acts above, establishes that the Union Defendants aided  
3 and abetted the LA/LB Port Operating Entities in violations of the FEHA.

4 33. Plaintiffs are informed and believe, and on that basis allege, that if Defendant  
5 PMA is found to be an employer or an employer-agent of the LA/LB Port Operating Entities  
6 within the meaning of the FEHA, the Union Defendants should be deemed to have aided  
7 and abetted Defendant PMA. Under the FEHA, it is an unlawful employment practice  
8 “to aid, abet, incite, compel, or coerce the doing of any acts forbidden under [the FEHA], or  
9 to attempt to do so.” Cal. Gov’t Code § 12940(i). Aiding and abetting occurs when one  
10 knows that the other’s conduct constitutes a breach of duty and gives substantial assistance  
11 or encouragement to the other to so act.

12 34. To the extent Defendant PMA is determined to be an employer or employer-  
13 agent of the LA/LB Port Operating Entities, the Union Defendants were aware of Defendant  
14 PMA’s duty to accommodate pregnancy and pregnancy-related conditions for casual  
15 workers and provided substantial assistance and encouragement in Defendant PMA’s  
16 breach of this duty.

17 35. The Union Defendants provided substantial assistance and encouragement to  
18 Defendant PMA’s failure to provide light duty assignments, maintenance of a  
19 discriminatory leave policy for casual workers who are pregnant or experiencing  
20 pregnancy-related conditions, and the lack of procedures to accommodate breast pumping  
21 and lactation. The Union Defendants could have prevented these violations of the law but  
22 have not. This, combined with the acts above, establishes that the Union Defendants aided  
23 and abetted Defendant PMA in violations of the FEHA.

24 **Doe Defendants**

25 36. The true names and capacities of defendants named as Does 1-100, inclusive,  
26 whether individual, corporate, associate, or otherwise, are unknown to Plaintiffs, who  
27 therefore sue such defendants by such fictitious names. Plaintiffs will amend this First  
28 Amended Complaint to show true names and capacities when they have been determined.

1 The Does may be employers or agents of the employers of the Plaintiff Classes.

2 37. Unless otherwise noted, wherever reference is made to Defendants herein, it  
3 is intended to include all of the named Defendants as well as the Doe Defendants. Each of  
4 the fictitiously-named Doe Defendants is responsible in some manner for the occurrences  
5 alleged and proximately caused Plaintiffs' damages as well as the damages of similarly  
6 situated employees.

### 7 JURISDICTION AND VENUE

8 38. This Court has jurisdiction over this action under FEHA, the PDL, the CFRA,  
9 and the UCL.

10 39. Venue is proper in this county under Code of Civ. Proc. § 395.5 because a  
11 substantial part of the events and omissions giving rise to the claims occurred in this county.

### 12 EXHAUSTION OF ADMINISTRATIVE REMEDIES

13 40. Plaintiffs have exhausted all administrative remedies.

14 41. On July 9, 2019, Plaintiffs Bragg, Plummer, and Romero received their right-  
15 to-sue letters from the U.S. Equal Employment Opportunity Commission ("EEOC"). On  
16 October 29, 2019, Plaintiff Hall received her right-to-sue letter from the EEOC. On October  
17 31, 2019, Plaintiff Sierra received her right-to-sue letter from the California Department of  
18 Fair Employment and Housing. Pursuant to Cal. Gov't Code § 12965(d)(2), Plaintiffs' time  
19 to commence a civil action under the FEHA expires "when the federal right-to-sue period  
20 to commence a civil action expires, or one year from the date of the right-to-sue notice by  
21 the Department of Fair Employment and Housing, whichever is later."

### 22 FACTUAL ALLEGATIONS

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

24 42. The LA/LB Port is a "sprawling hub for thousands of freight-moving trucks,  
25 trains and ships" that "handle[s] roughly 40% of the U.S. imports."<sup>13</sup>

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27  
28 <sup>13</sup> Tony Barboza, *Plan Calls for L.A., Long Beach Ports to go to Zero-Emissions Technology; Cost Could Hit \$14 Billion*, L.A. TIMES, July 19, 2017, available at <http://www.latimes.com/local/lanow/la-me-ports-clean-air-20170719-story.html>.

1 43. Longshore work involves the loading and unloading of large shipping  
2 containers from vessels and the transporting of that cargo around the docks. It can be  
3 extremely dangerous.

4 44. Dockworkers frequently engage in heavy labor, including lifting, bending,  
5 climbing, crawling, and “lashing” (the process of attaching shipping containers to vessels).  
6 Work may occur at great heights, in confined spaces and in proximity to heavy equipment  
7 and moving vehicles. This work is performed in all weather conditions.

8 45. Dockworkers routinely drive utility tractor rigs, or UTRs. UTRs in use on the  
9 LA/LB docks contain a warning: “ENGINE EXHAUST, SOME OF ITS CONSTITUENTS,  
10 AND CERTAIN VEHICLE COMPONENTS CONTAIN OR EMIT CHEMICALS KNOWN  
11 TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS AND  
12 OTHER REPRODUCTIVE HARM. IN ADDITION, CERTAIN FLUIDS CONTAINED IN  
13 VEHICLES AND CERTAIN PRODUCTS OF COMPONENT WEAR CONTAIN OR EMIT  
14 CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND  
15 BIRTH DEFECTS AND OTHER REPRODUCTIVE HARM.” (Emphasis in original.)

16 46. Due in large part to reliance on diesel fuel for trucks and other cargo  
17 equipment on the docks, the LA/LB Port has historically been the largest point source of air  
18 pollution in Southern California.<sup>14</sup>

19 47. Shipping containers weigh several tons and can be accidentally dropped by  
20 cranes or can leak, spilling hazardous materials.

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

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

25 49. The collective bargaining agreement between Defendants PMA and ILWU,  
26 the Pacific Coast Longshore Contract Document (the “Contract”), dictates policies and  
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28 <sup>14</sup> Tony Barboza, *L.A., Long Beach Ports Adopt Plans to Slash Emissions and go Zero-Emissions*, L.A. TIMES, Nov. 2, 2017, available at <https://www.latimes.com/local/lanow/la-me-ports-air-quality-20171102-story.html>.

1 procedures for employment of longshore workers on the West Coast, including those at the  
2 LA/LB Port.

3 50. In addition to serving as the bargaining agent for the LA/LB Port Operating  
4 Entities in connection with the Contract, Defendant PMA controls the port areas where  
5 longshore workers are employed.

6 51. Defendant PMA has the authority to have “bargaining relationships” with,  
7 grant recognition to, or assign work that will be performed in the port areas to “bona fide  
8 labor unions.” (Contract ¶ 1.5(b).)

9 52. A body comprised of representatives of Defendants PMA and ILWU, the Joint  
10 Port Labor Relations Committee (“JPLRC”), jointly determines the composition of the Class  
11 A, Class B, and casual workforces.

12 53. The JPLRC has the power to admit as many or as few new individuals to each  
13 worker class as it deems fit.

14 54. Defendants PMA and ILWU jointly maintain and operate dispatch halls in  
15 accordance with the terms of the Contract.

16 55. The JPLRC determines and appoints the personnel for the halls, except for the  
17 individual dispatchers, who, on information and belief, are elected by the members of  
18 Defendant Local 13.

19 56. The JPLRC also determines the methods for dispatching workers. The  
20 shipping companies serving the LA/LB Port submit work requests to the dispatch halls,  
21 where individual dispatchers assign the requests to the workers waiting at the halls for a  
22 job on that day.

23 57. On information and belief, these dispatchers can assign – in their discretion –  
24 light duty jobs and other forms of accommodation to casual workers who are pregnant or  
25 experiencing pregnancy-related conditions, but do not.

26 58. On information and belief, the JPLRC also hears worker grievances, including  
27 those related to discrimination on the basis of pregnancy or pregnancy-related conditions,  
28 including the failure to provide accommodations to longshore workers.

1           59. Defendants PMA and ILWU exercise joint control over the workforce  
2 operations of the LA/LB Port through the JPLRC and otherwise.

3           60. Defendant PMA participates in determining the schedule, assignment, and  
4 amount of compensation for the Plaintiff Classes, and in managing the docks by, among  
5 other things, interviewing and screening prospective employees, issuing work assignments,  
6 reassignments, and transfers of dockworkers to member employers, participating in the  
7 negotiations and enforcement of future and existing labor contracts, providing performance  
8 evaluations, maintaining payroll records, negotiating reasonable accommodation protocols,  
9 and serving as a liaison between the union and member employers in some grievance  
10 matters.

11           61. Defendant PMA also shares responsibility with the other Defendants for  
12 developing policies to accommodate casual workers who are pregnant or experiencing  
13 pregnancy-related medical conditions.

14           62. Defendant PMA performs human resources functions for workers at the  
15 docks.

16           63. Defendant PMA maintains all dockworker personnel records, including  
17 dispatch summaries reflecting the work hours logged by each individual and for which  
18 LA/LB Port Operating Entity.

19           64. Additionally, Defendant PMA assists in developing safety policies and is  
20 responsible for creating and conducting trainings to assure safety at the docks.

21           65. Under the Contract, Defendant PMA also is the disbursing agent responsible  
22 for issuing dockworkers their paychecks and, at year's end, their W-2 forms for tax  
23 purposes.

24 **III. The Casual Worker**

25           66. The nearly 4,000 casual longshore workers at the LA/LB Port – of whom  
26 roughly 40 percent are women – occupy the very bottom rung of the docks' hierarchy. At  
27 the top are unionized longshore workers known as Class A workers, followed by registered  
28 workers, deemed Class B, at the next level. Women make up approximately 20 percent of

1 Class A and Class B workers.

2 67. Class A longshore workers are members of the ILWU and at the LA/LB Port  
3 are represented by Local 13. Class A workers are guaranteed a minimum income and are  
4 eligible to obtain additional certifications entitling them to greater income and promotion  
5 into supervisory roles.

6 68. Class B workers, in contrast, are not yet members of ILWU, but are permitted  
7 to become members after five years in Class B status. Class B workers also are guaranteed a  
8 minimum weekly income and enjoy some of the benefits of union membership.

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

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

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

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

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

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

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

11 76. Requests to be excused from the availability for work requirement are  
12 reviewed by the JPLRC.

13 **IV. Defendants’ Policies Regarding Pregnancy, Childbirth, and Related Medical**  
14 **Conditions**

15 77. Pregnancy is a fact of life for employers and employees alike. Close to 85  
16 percent of women in the United States will have at least one pregnancy during their working  
17 lives.<sup>15</sup> A pregnancy typically lasts 40 weeks.<sup>16</sup> After childbirth, six weeks for a vaginal birth  
18 and eight weeks for a Cesarean section are recommended for recuperation.<sup>17</sup> Complications  
19 during pregnancy, childbirth, or following delivery can necessitate restrictions, including  
20 bedrest and longer recovery periods.

21 78. The American Academy of Pediatrics recommends exclusive breastfeeding for  
22 six months and continuation of breastfeeding supplemented by complementary foods for  
23

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24 <sup>15</sup> U.S. Census Bureau, *Fertility of Women in the United States: 2016*, Table 6, “Completed Fertility for Women  
25 40 to 50 Years Old by Selected Characteristics: June 2016,” available at  
[https://www.census.gov/data/tables/2016/demo/fertility/women-fertility.html#par\\_list\\_57](https://www.census.gov/data/tables/2016/demo/fertility/women-fertility.html#par_list_57).

26 <sup>16</sup> A.M. Jukic, D.D. Baird, C.R. Weinberg, D.R. McConnaughey, and A.J. Wilcox, “Length of Human  
27 Pregnancy and Contributors to its Natural Variation,” *Human Reproduction* (Oct. 2013), available at  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3777570/>.

28 <sup>17</sup> State of California Employment Development Dep’t, “Paid Family Leave – Mothers,” available at  
[https://www.edd.ca.gov/Disability/PFL\\_Mothers.htm](https://www.edd.ca.gov/Disability/PFL_Mothers.htm), last visited March 4, 2020.

1 at least first year of a baby's life.<sup>18</sup> Workers who are breastfeeding and are away from their  
2 babies need to express milk from their breasts (typically by using a breast pump) on roughly  
3 the same schedule as their baby's feeding schedule, typically every two to three hours for  
4 babies under six months old.<sup>19</sup>

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

9 80. On information and belief, in contrast, under Defendants' policies, Class A  
10 and Class B workers may seek and obtain approval for "light duty" job assignments, which  
11 are made available to them each shift through a designated dispatcher.

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

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

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

21 84. Defendants provide casual workers no notice about their statutory right to  
22 accommodation during pregnancy, nor do they engage in a good faith, interactive process  
23

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24 <sup>18</sup> See Am. Acad. of Pediatrics, Policy Statement: Breastfeeding and the Use of Human Milk, 129 Pediatrics  
25 e827 (2016), available at  
<http://pediatrics.aappublications.org/content/pediatrics/early/2012/02/22/peds.2011-3552.full.pdf>.

26 <sup>19</sup> See Office of Legal Counsel, U.S. Equal Emp't Opportunity Comm'n, *Enforcement Guidance: Pregnancy*  
27 *Discrimination and Related Issues* I.A.4.b., 2015 WL 4162723 (June 25, 2015) ("To continue producing an  
28 adequate milk supply and to avoid painful complications associated with delays in expressing milk, a  
nursing mother will typically need to breastfeed or express breast milk using a pump two or three times  
over the duration of an eight-hour workday.").

1 for identifying a suitable job assignment.

2 85. Pregnant casual workers know through word of mouth and their own  
3 observations of other pregnant casual workers' experiences that pregnancy  
4 accommodations are not available for casual workers, and that it would be futile to request  
5 them.

6 86. To the extent some Plaintiffs nevertheless asked Defendants about their  
7 options during pregnancy, the responses confirmed this perception of futility.

8 87. For example, when Bragg asked a PMA representative what policies applied  
9 to pregnant casual workers, she was told that her only option was to go on leave and apply  
10 for State Disability Insurance administered by the State of California.

11 88. Defendants do not offer any facilities where casual workers can privately and  
12 hygienically pump breast milk. Defendants also do not afford lactating employees  
13 reasonable break time to pump. As a result, workers must forgo breastfeeding or stay home.

14 89. Defendants do not award seniority credit for absences caused by Defendants'  
15 failure to accommodate pregnancy and lactation, nor for absences necessitated by more  
16 serious pregnancy-related conditions and by recovery from childbirth.

17 90. Under the Contract, a casual worker who stays home due to a temporary  
18 physical limitation, including pregnancy, childbirth or pregnancy-related conditions,  
19 receives no work hours credit.

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

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

26 93. The Contract also provides that, if at the time a new group of casual workers  
27 is registered as Class B, a casual worker is absent due to military service but their USERRA-  
28 credited hours would have rendered them eligible for such registration, Defendants,

1 through the jointly-operated JPLRC, will credit that person their missing hours accordingly  
2 to enable their registration.

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

6 95. On information and belief, if, at the time a new group of casual workers is  
7 registered as Class B, a casual worker falls short of the work hours cut-off for that  
8 registration due to absences related to an occupational injury, Defendants, through the  
9 jointly-operated JPLRC, will consider crediting that person their missing hours to enable  
10 their registration.

11 96. Casual workers who fall short of the work hours cut-off for registration due  
12 to absences related to pregnancy, childbirth or related medical conditions are not eligible  
13 for such consideration.

14 97. These policies and practices deny seniority accrual to pregnant casual workers  
15 for pregnancy disability leave and family leave-related absences while granting seniority  
16 accrual to non-pregnant casual workers.

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

19 99. Defendants' policies and practices of failing to provide any light duty or other  
20 work duty modifications to casual workers, and instead offering only the options of  
21 working without modification or stopping work altogether and receiving neither wages nor  
22 seniority credit, have an unlawful disparate impact based on sex, including pregnancy.

23 100. Defendants' policies and practices of refusing to credit work hours to casual  
24 workers absent due to temporary physical impairments have a disparate impact based on  
25 pregnancy.

26 101. Defendants' policies and practices of crediting work hours only to those casual  
27 workers who are absent due to military leave have a disparate impact based on sex,  
28 including pregnancy.

1 **V. Defendants' Policies and Practices Harmed Plaintiffs**

2 102. Defendants' policies and practices have delayed Plaintiffs' and members of  
3 the Plaintiff Classes' advancement through the Work Experience Group wage tiers, their  
4 advancement to Class B registration, and their enjoyment of the full benefits of registered  
5 status, if and when they ever reach it.

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

9 104. On information and belief, since April 2016, at least three additional Class B  
10 registrations have occurred: December 2017 (approximately 7,120 hours cut-off); April 2018  
11 (approximately 6,070 hours cut-off); and, on a rolling basis, between December 2018 and  
12 May 2019 (approximately 6,400 hours cut-off).

13 **Endanicha Bragg**

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

16 106. In or around June 2008, when Bragg was roughly seven months pregnant, she  
17 stopped reporting for work after asking a PMA representative about policies for pregnant  
18 casual workers and being told her that her only option was to go on leave and apply for  
19 State Disability Insurance.

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

22 108. Bragg had her baby in August 2008 and returned to work shortly thereafter,  
23 in or around September 2008.

24 109. In 2013, Bragg became pregnant again. In September 2013, when she was  
25 approximately five months pregnant, Bragg's doctor diagnosed her with a high-risk  
26 pregnancy.

27 110. As directed by her doctor, Bragg needed to stop performing strenuous  
28 physical labor. Knowing that Defendants do not provide modified duty work for pregnant

1 casual workers, Bragg had no option but to stop reporting for work.

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

4 112. Bragg had her baby in February 2014 and returned to work one month later,  
5 in March 2014.

6 113. During a third pregnancy in 2017, Bragg worked until she was 8 months  
7 pregnant. Despite her doctor's advice, Bragg continued working because of her  
8 understanding that modified duty assignments were not available and that she would not  
9 earn any seniority or work hours credit if she stopped reporting for work due to her  
10 pregnancy. Had Defendants offered modified duty accommodations to pregnant workers,  
11 Bragg would have applied for such accommodations.

12 114. Bragg gave birth in November 2017 and returned to work in early January  
13 2018.

14 115. Bragg breastfed each of the three children born during her employment on the  
15 LA/LB Port, and she wanted to continue doing so until each was at least one year old.  
16 Because Defendants do not provide any lactation-related accommodations, Bragg stopped  
17 breastfeeding each time she returned to work.

18 116. At all relevant time periods, Bragg maintained her eligibility to work.

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

22 118. Based on the hours accrued by her casual, non-pregnancy-affected peers  
23 during the same time periods of her pregnancies, Bragg estimates that she lost at least 600  
24 work hours and associated wages due to Defendants' failure to provide reasonable  
25 accommodations for her pregnancy, childbirth or related medical conditions and their  
26 denial of seniority accrual during her pregnancy disability leave and family leave-related  
27 absences.

28 119. As of January 8, 2020, Bragg had accumulated roughly 6,714 work

1 hours.

2 120. The seniority Bragg lost due to Defendants' failure to accommodate her  
3 pregnancy, childbirth or related medical conditions and their denial of seniority accrual  
4 during her pregnancy disability leave and family leave-related absences delayed her  
5 advancement to higher-paying tiers among the Work Experience Groups, a delay that  
6 caused current and continuing harm to her wages. Bragg did not reach the second Work  
7 Experience tier of 1,001 hours until September 2012; the third Work Experience tier of 2,001  
8 hours until October 2014; and the top tier of 4,001 hours until November 2014.

9 121. On information and belief, the seniority Bragg lost due to Defendants' failure  
10 to accommodate her pregnancy, childbirth or related medical conditions and their denial of  
11 seniority accrual during her pregnancy disability leave and family leave-related absences  
12 also has prevented her from being registered as a Class B worker during past registrations.

13 122. The seniority Bragg lost due to Defendants' failure to accommodate her  
14 pregnancy, childbirth or related medical conditions and their denial of seniority accrual  
15 during her pregnancy disability leave and family leave-related absences has further placed  
16 her at a current and continuing disadvantage with respect to future rounds of Class B  
17 registrations.

18 **Tracy Plummer**

19 123. Plummer began working at the LA/LB Port as a casual dockworker in or  
20 around January 2007. She has had two pregnancies during her longshore career.

21 124. In December 2014, Plummer learned she was pregnant. Knowing that  
22 Defendants do not provide modified duty work for pregnant casual workers, Plummer  
23 stopped regularly reporting for work and instead worked only the minimum number of  
24 hours required to maintain good standing as a casual worker until late summer 2015.

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

27 126. Plummer had her baby in late summer 2015 and returned to work in  
28 November 2015. Upon returning to work, Plummer attempted to pump breast milk in her

1 car, but found her breaks too unpredictable, and the location of her job assignments too far  
2 from the parking lot. Accordingly, Plummer stopped working regular hours until late  
3 summer 2016 in order to continue breastfeeding at home.

4 127. Plummer was able to work, and if Defendants provided lactation-related  
5 accommodations, she would have continued to work.

6 128. In or about June 2019, Plummer learned that she was pregnant again.

7 129. Based on her understanding that Defendants did not provide  
8 accommodations for casual workers based on pregnancy or pregnancy-related medical  
9 conditions, Plummer stopped working in late July 2019.

10 130. Due to pregnancy complications, Plummer was briefly hospitalized in early  
11 October 2019 and again in late November 2019.

12 131. Plummer gave birth prematurely on November 28, 2019. Her daughter died  
13 on December 6, 2019.

14 132. At all relevant time periods, Plummer maintained her eligibility to work.

15 133. Plummer is still capable of having children and may become pregnant again.  
16 In such a situation, she would continue to work with pregnancy and lactation  
17 accommodations so long as able.

18 134. Plummer will return to work at the docks in March 2020.

19 135. Based on the hours accrued by her casual, non-pregnancy-affected peers  
20 during the same time periods of her pregnancies, Plummer estimates that she lost more than  
21 1,700 work hours and associated wages due to Defendants' failure to accommodate her  
22 pregnancy, childbirth or related medical conditions and their denial of seniority accrual  
23 during her pregnancy disability leave and family leave-related absences.

24 136. As of July 18, 2019, Plummer had accumulated roughly 3,325 hours.

25 137. The seniority Plummer lost due to Defendants' failure to accommodate her  
26 pregnancy, childbirth or related medical conditions and their denial of seniority accrual  
27 during her pregnancy disability leave and family leave-related absences delayed her  
28 advancement to higher-paying tiers among the Work Experience Groups, a delay causing

1 current and continuing harm to her wages. Plummer did not reach the second Work  
2 Experience tier of 1,001 hours until January 2014; and the third Work Experience tier of 2,001  
3 hours until Spring 2017. Plummer has not yet reached the top tier of 4,001 hours.

4 138. On information and belief, the seniority Plummer lost due to Defendants'  
5 failure to accommodate her pregnancy, childbirth or related medical conditions their denial  
6 of seniority accrual during her pregnancy disability leave and family leave-related absences  
7 has further placed her at a current and continuing disadvantage with respect to future  
8 rounds of Class B registrations.

9 **Marisol Romero**

10 139. Romero began working at the LA/LB Port as a casual dockworker in  
11 November 2014. She has had one pregnancy during her longshore career. During this  
12 period and continuing through the present, Romero also has worked full time as a  
13 pharmacy technician for Harbor UCLA Medical Center ("UCLA"), taking shifts at the Port  
14 when they did not conflict with her UCLA job.

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

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

23 142. Romero had her baby in early 2016, and she was cleared by her doctor to  
24 return to work in or around April 2016.

25 143. Romero wanted to breastfeed her baby. If she had been able to receive a  
26 lactation-related accommodation, she was willing and able to work at the LA/LB docks as  
27 of spring 2016. Romero went back to work at Harbor UCLA Medical Center around May  
28 2016 because she was able to pump there, but because there was no private, sanitary place

1 to pump breast milk at the LA/LB docks, Romero could not pick up shifts there until  
2 September 2016.

3 144. At all relevant time periods, Romero maintained her eligibility to work.

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

7 146. Based on the hours accrued by her casual, non-pregnancy-affected peers  
8 during the same time periods of her pregnancies, Romero lost work hours and associated  
9 wages due to Defendants' failure to accommodate her pregnancy, childbirth or related  
10 medical conditions and their denial of seniority accrual during her pregnancy disability  
11 leave and family leave-related absences.

12 147. As of March 2020, Romero had accumulated roughly 70 hours.

13 148. The seniority Romero lost due to Defendants' failure to accommodate her  
14 pregnancy, childbirth or related medical conditions and their denial of seniority accrual  
15 during her pregnancy disability leave and family leave has delayed her advancement to  
16 higher-paying tiers among the Work Experience Groups, a delay causing current and  
17 continuing harm to her wages. Romero has not yet reached the second Work Experience tier  
18 of 1,001 hours.

19 149. On information and belief, the seniority Romero lost due to Defendants'  
20 failure to accommodate her pregnancy, childbirth or related medical conditions and their  
21 denial of seniority accrual during her pregnancy disability leave and family leave has  
22 further placed her at a current and continuing disadvantage with respect to future rounds  
23 of Class B registrations.

24 **Nola Hall**

25 150. Hall began working at the LA/LB Port as a casual worker in May 2007. She  
26 has had two pregnancies during her longshore career.

1           151. In or around September 2011, when Hall was roughly four months pregnant,  
2 her doctor diagnosed her with a high-risk pregnancy and directed her to stop engaging in  
3 strenuous physical labor.

4           152. Knowing Defendants do not provide modified duty work for pregnant casual  
5 workers, Hall stopped reporting for work around this time.

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

8           154. Hall gave birth in January 2012 and intended to breastfeed her newborn.  
9 Because there was no private, sanitary place to pump at the LA/LB docks, Hall had no  
10 choice but to stay home to breastfeed and therefore did not report for work.

11           155. In October 2012, Hall returned to work. Because there were no lactation  
12 accommodations at the docks, until approximately January 2014, Hall worked the minimum  
13 hours required to maintain her status as a casual worker so that she could continue  
14 breastfeeding.

15           156. In May 2018, Hall became pregnant for a second time and, to avoid falling  
16 behind her non-pregnant casual worker peers in progress toward Class B registration, she  
17 continued working until around December 2018.

18           157. In December 2018, Hall's doctor directed her to stop engaging in physically  
19 demanding labor to protect her health and pregnancy.

20           158. Hall, nevertheless, continued to report for work because she did not want to  
21 fall behind her non-pregnant casual worker peers in seniority and work hour accrual, and  
22 she knew that Defendants would not provide pregnant casual workers work hours credit  
23 for absences due to pregnancy or related medical conditions.

24           159. During this time, when Hall received physically demanding job assignments,  
25 some of her casual worker colleagues offered to swap with her for their less  
26 strenuous assignments. However, Defendant ILWU's dispatchers would not allow such  
27 switches.  
28

1           160. Accordingly, from December 2018 through January 2019, Hall worked the  
2 minimum hours necessary to maintain casual status.

3           161. Hall gave birth prematurely in late January 2019.

4           162. While recovering from childbirth, Hall developed post-partum depression  
5 that prevented her from working until March 2020.

6           163. At all relevant time periods, Hall maintained her eligibility to work.

7           164. As of March 2020, Hall had accumulated roughly 6,550 hours.

8           165. Based on the hours accrued by her casual, non-pregnancy-affected peers  
9 during the same time periods of her pregnancies, Hall estimates that she lost more than  
10 1,700 work hours and associated wages due to Defendants' failure to accommodate her  
11 pregnancy, childbirth or related medical conditions and their denial of seniority accrual  
12 during her pregnancy disability leave and family leave-related absences. The seniority Hall  
13 lost due to Defendants' failure to accommodate her pregnancy, childbirth, or related  
14 medical conditions and their denial of seniority accrual during her pregnancy disability  
15 leave and family leave-related absences delayed her advancement to higher-paying tiers  
16 among the Work Experience Groups, a delay that caused current and continuing harm to  
17 her wages. Hall did not reach the second Work Experience tier of 1,001 hours until January  
18 2014; the third Work Experience tier of 2,001 hours until December 2014; and the top tier of  
19 4,001 hours until April 2017.

20 **Jacqueline Sierra**

21           166. Sierra began working at the LA/LB Port as a casual dockworker in May 2005.  
22 She has had five pregnancies during her longshore career.

23           167. After becoming pregnant in August 2005, Sierra continued to report for work  
24 even though she knew that Defendants do not provide modified duty work for pregnant  
25 casual workers because she also knew that Defendants did not provide work hours credit  
26 to casual workers who were absent due to pregnancy or pregnancy-related conditions.

27           168. Sierra stopped working in January 2006 after she fell off a ladder while  
28 working at the docks and was sent to the hospital.

1 169. Sierra gave birth in April 2006 and returned to work in or around June 2006.

2 170. After Sierra became pregnant in November 2008, she stopped reporting to  
3 work because of her previous workplace accident while she was pregnant and because she  
4 knew Defendants still did not provide modified duty work to pregnant casual workers.

5 171. Sierra gave birth in August 2009 and intended to breastfeed her newborn.  
6 Because there was no private, sanitary place to pump breast milk at the LA/LB docks, Sierra  
7 had no choice but to stay home to breastfeed and therefore did not report for work until  
8 June 2010.

9 172. When Sierra became pregnant in August 2013, she continued to work as much  
10 as possible because of rumors about an upcoming Class B registration; she did not want to  
11 fall behind her non-pregnant peers in terms of banked work hours.

12 173. Accordingly, Sierra continued to work until April 2014, gave birth in May  
13 2014, and returned to work when her infant was one week old.

14 174. In November 2016, Sierra became pregnant and again continued to work until  
15 late July 2017 in order to continue to accrue work hours.

16 175. She stopped working on July 18, 2017, gave birth on July 31, 2017, and  
17 returned to work one week later, on August 9, 2017.

18 176. Although Sierra had hoped to breastfeed her baby, because there was no  
19 private, sanitary place to pump at the LA/LB docks, she was unable to do so once she  
20 returned to work.

21 177. After Sierra became pregnant in March 2018, she again continued working  
22 because Defendants still did not provide modified duty work or work hours credit for  
23 pregnant casual workers; she did not want to lose seniority.

24 178. Sierra stopped working on November 14, 2018, delivered her baby on  
25 November 17, 2018, and returned to the docks for work within just a few days, on November  
26 21, 2018.

27 179. Sierra had hoped to breastfeed but, again, because there was no private,  
28 sanitary place to pump at the LA/LB docks, she was unable to do so once she returned to

1 work.

2 180. At all relevant time periods, Sierra maintained her eligibility to work

3 181. Sierra is still capable of having children and may become pregnant again. In  
4 such a situation, she would continue to work with pregnancy and lactation accommodations  
5 so long as able.

6 182. As of March 10, 2020, Sierra had accumulated roughly 6,558 hours.

7 183. Based on the hours accrued by her casual, non-pregnancy-affected peers  
8 during the same time periods of her pregnancies, Sierra estimates that she lost more than  
9 1,072 work hours and associated wages due to Defendants' failure to accommodate her  
10 pregnancy, childbirth or related medical conditions and their denial of seniority accrual  
11 during her pregnancy disability leave and family leave-related absences.

12 184. The seniority Sierra lost due to Defendants' failure to accommodate her  
13 pregnancy, childbirth or related medical conditions delayed her advancement to higher-  
14 paying tiers among the Work Experience Groups, a delay causing current and continuing  
15 harm to her wages. Sierra did not reach the second Work Experience tier of 1,001 hours until  
16 January 2010; the third Work Experience tier of 2,001 hours until October 2013; or the  
17 top tier of 4,001 hours until October 2015.

18 185. On information and belief, the seniority Sierra lost due to Defendants' failure  
19 to accommodate her pregnancy, childbirth or related medical conditions prevented Sierra  
20 from being elevated to Class B status in December 2018 and has further placed her at a  
21 current and continuing disadvantage with respect to future rounds of Class B registrations.

22 **CLASS ACTION ALLEGATIONS**

23 186. Plaintiffs bring this action on behalf of themselves and all others similarly  
24 situated pursuant to California Code of Civil Procedure § 382. The classes that Plaintiffs seek  
25 to represent (the "Plaintiff Classes") are composed of and defined as follows:

26 (1) Other Accommodations Class: All employees, who are citizens of the state of  
27 California, who have or will be employed as casual workers (i.e., non-union, non-  
28 registered longshore workers who work at the LA/LB port) who have been, are, or

1 will become pregnant and were, are being, or will be denied other accommodations  
2 due to pregnancy or related medical conditions, including but not limited to light  
3 duty, job reassignment/transfer, and avoidance of toxins and hazards, from October  
4 7, 2015 until the final judgment (hereinafter “the Other Accommodations Class  
5 Period”).

6 (2) Leave Class: All employees, who are citizens of the state of California, who have  
7 been, are, or will be employed as casual workers (i.e., non-union, non-registered  
8 longshore workers who work at the LA/LB port) who have been, are, or will become  
9 pregnant and have taken, are taking, or will take time off from work due to  
10 pregnancy, childbirth, baby-bonding, or related medical condition(s), from October  
11 7, 2015 until the final judgment (hereinafter “the Leave Class Period”).

12 (3) Lactation Class: All employees, who are citizens of California, who have, are, or  
13 will be employed as casual workers (i.e., non-union, non-registered longshore  
14 workers who work at the LA/LB port) who required, require, or will require  
15 lactation-related accommodations at work, including but not limited to breast  
16 pumping during work hours, from October 7, 2015 until the final judgment  
17 (hereinafter “the Lactation Class Period”).

18 187. The members of the Plaintiff Classes are so numerous that joinder of all  
19 members would be unfeasible and not practicable. The membership of the Plaintiff Classes  
20 is unknown to Plaintiffs at this time; however, it is estimated that each of the Plaintiff Classes  
21 comprises more than 100 individuals, and the identity of such membership is readily  
22 ascertainable via inspection of the personnel records and other documents maintained by  
23 Defendants and by the JPLRC, a body comprised of representatives of Defendants PMA and  
24 ILWU.

25 188. There are common questions of law and fact as to the Plaintiff Classes which  
26 predominate over questions affecting only individual members, including, without  
27 limitation:

- 28 • Whether Defendant PMA is an employer, is an employer-agent of the LA/LB

1 Port Operating Entities, or aided and abetted LA/LB Port Operating Entities'  
2 unlawful conduct;

- 3 • Whether Defendant PMA aided and abetted the Union Defendants' unlawful  
4 conduct;
- 5 • Whether the Union Defendants aided and abetted the LA/LB Port Operating  
6 Entities' unlawful conduct;
- 7 • Whether the Union Defendants aided and abetted Defendant PMA's unlawful  
8 conduct;
- 9 • Whether Defendants failed to reasonably accommodate pregnancy for  
10 Plaintiffs and the Other Accommodations Classes as required by the FEHA,  
11 and all other applicable employment laws and regulations;
- 12 • Whether Defendants failed to provide Plaintiffs and members of each of the  
13 Plaintiff Classes reasonable advance notice of their FEHA rights and  
14 obligations regarding pregnancy, childbirth or related medical conditions;
- 15 • Whether Defendants failed to reasonably accommodate lactation for Plaintiffs  
16 and the Lactation Class as required by the FEHA and the California Labor  
17 Code, and all other applicable employment laws and regulations;
- 18 • Whether Defendants failed to engage in a good-faith interactive process with  
19 Plaintiffs and members of each of the Plaintiff Classes to reasonably  
20 accommodate pregnancy;
- 21 • Whether Defendants failed to engage in a good-faith interactive process with  
22 Plaintiffs and members of the Lactation Class to reasonably accommodate  
23 lactation;
- 24 • Whether Defendants subjected Plaintiffs and members of the Other  
25 Accommodations Class to disparate treatment based on their sex by denying  
26 them reasonable accommodations;
- 27 • Whether Defendants subjected Plaintiffs and members of the Leave Class to  
28 disparate treatment based on their sex by denying seniority credit to casual

1 workers whose work absences are due to pregnancy, childbirth or related  
2 medical conditions while granting such credit to casual workers whose  
3 absences are caused by military service;

- 4 • Whether Defendants' policies and practices had a disparate impact on  
5 Plaintiffs and members of the Other Accommodations Class due to their sex  
6 because the policies and practices denied Plaintiffs and members of the  
7 Plaintiff Classes light duty or other work duty modifications to accommodate  
8 pregnancy, childbirth or related medical conditions;
- 9 • Whether Defendants' policies and practices had a disparate impact on  
10 Plaintiffs and members of the Leave Class due to their sex because the policies  
11 and practices denied seniority credit to casual workers whose work absences  
12 are due to pregnancy, childbirth or related medical conditions;
- 13 • Whether Defendants' policies and practices interfered with Plaintiffs' and  
14 members of the Leave Class's rights to take leave under the California Family  
15 Rights Act;
- 16 • Whether Defendants' policies and practices interfered with Plaintiffs' and  
17 members of the Leave Class's rights to take leave under the Pregnancy  
18 Disability Leave Law;
- 19 • Whether Defendants failed to prevent discrimination against Plaintiffs and  
20 members of each of the Plaintiff Classes based on their sex, including  
21 pregnancy;
- 22 • Whether Defendants engaged in unfair business practices under § 17200 of the  
23 California Business and Professions Code;
- 24 • The effect upon and the extent of damages suffered by Plaintiffs and the  
25 Plaintiff Classes and the appropriate amount of compensation; and
- 26 • Whether Plaintiffs and members of the Plaintiff Classes are entitled to  
27 injunctive relief to stop Defendants' unlawful policies and procedures  
28 described above.

1           189. The claims Plaintiffs plead as class action claims and the relief they seek are  
2 typical of the claims and relief necessary to remedy the claims of all members of the Plaintiff  
3 Classes as they arise out of the same course of conduct (i.e., centralized policies and  
4 procedures) and are predicated on the same violation(s) of the law. Plaintiffs, as  
5 representative parties, will fairly and adequately protect the interests of the Classes by  
6 vigorously pursuing this suit through their attorneys, who are skilled and experienced in  
7 handling matters of this type.

8           190. Plaintiffs, on behalf of themselves and as Class Representatives for the  
9 Plaintiff Classes, seek the following relief for their individual claims and for those of the  
10 members of the proposed Classes: (a) a declaratory judgment that Defendants have violated  
11 the FEHA, the PDLL, the CFRA, and the UCL; (b) a permanent injunction against such  
12 continuing discriminatory practices, policies, and procedures; (c) injunctive relief that  
13 effectuates a restructuring of Defendants' pregnancy- and lactation-related policies,  
14 practices, and procedures; (d) lost wages, lost seniority, and other compensation and  
15 benefits; (e) emotional distress damages; (f) compensatory damages; (g) attorneys' fees,  
16 costs, and expenses; (h) statutory and civil penalties; and (i) other equitable remedies  
17 necessary to make the Plaintiffs and members of the Plaintiff Classes whole from  
18 Defendants' discrimination.

19           191. The nature of this action and the nature of the laws available to the Plaintiff  
20 Classes make use of the class action format a particularly efficient and appropriate  
21 procedure to afford relief to members of the Plaintiff Classes. Further, this case involves a  
22 large business entity which represents numerous employers and multiple labor  
23 organizations, as well as a large number of individual employees possessing claims with  
24 common issues of law and fact. If each employee were required to file an individual lawsuit,  
25 Defendants would necessarily gain an unconscionable advantage since they would be able  
26 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly  
27 superior financial and legal resources. Requiring each member to pursue an individual  
28 remedy would also discourage the assertion of lawful claims by employees who would be

1 disinclined to pursue an action against their present and/or former employer for an  
2 appreciable and justifiable fear of retaliation and permanent damage to their careers at  
3 present and/or subsequent employment. Proof of a common business practice or factual  
4 pattern, which the named Plaintiffs experienced, is representative of the Plaintiff Classes  
5 and will establish the right of each of the members of the Plaintiff Classes to recovery on  
6 these alleged claims.

7 192. The prosecution of separate actions by the individual members of the Plaintiff  
8 Classes, even if possible, would create: (a) a substantial risk of inconvenient or varying  
9 verdicts or adjudications with respect to the individual members of the Plaintiff Classes  
10 against the Defendants; and/or (b) legal determinations with respect to the individual  
11 members of the Plaintiff Classes which would, as a practical matter, be dispositive of the  
12 other class members' claims who are not parties to the adjudications and/or would  
13 substantially impair or impede the ability of class members to protect their interests.  
14 Further, the claims of the individual members of the Plaintiff Classes are not sufficiently  
15 large to warrant vigorous individual prosecution considering all of the associated  
16 concomitant costs and expenses. Plaintiffs are unaware of any difficulties that are likely to  
17 be encountered in the management of this action that would preclude its maintenance as a  
18 class action.

19 **FIRST CAUSE OF ACTION**

20 **Failure to Reasonably Accommodate Pregnancy,**

21 **Failure to Provide Reasonable Advance Notice**

22 **(Cal. Gov't Code § 12945(a)(3), Cal. Code Regs. tit. 2 § 11049(a))**

23 **On Behalf of All Plaintiffs, in their individual and representative capacities,**  
24 **and the Plaintiff Classes Against All Defendants**

25 193. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
26 alleged above as if fully set forth herein.

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

1           195. The California Code of Regulations, title 2, § 11035(s), defines a “reasonable  
2 accommodation of an employee affected by pregnancy” as “any change in the work  
3 environment or in the way a job is customarily done that is effective in enabling an employee  
4 to perform the essential functions of a job.”

5           196. Cal. Gov’t Code § 12945(a)(3)(C) specifically prohibits an employer from  
6 “refus[ing] to temporarily transfer a pregnant female employee to a less strenuous or  
7 hazardous position for the duration of her pregnancy if she so requests, with the advice of  
8 her physician, where that transfer can be reasonably accommodated.”

9           197. Cal. Gov’t Code § 12945(a)(3)(B) also makes it unlawful “[f]or an employer  
10 who has a policy, practice or collective bargaining agreement requiring or authorizing the  
11 transfer of temporarily disabled employees to less strenuous or hazardous positions for the  
12 duration of the disability to refuse to transfer a pregnant employee who so requests.”

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

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

22           200. Defendants failed and continue to fail to provide Plaintiffs and the Plaintiff  
23 Classes “notice of their FEHA rights and obligations regarding pregnancy, childbirth, or  
24 related medical conditions.” Cal. Code Regs. tit. 2 § 11049(a).

25           201. Pursuant to its across-the-board policy or practice of refusing work duty  
26 modifications or temporary transfers to casual workers (including Plaintiffs and the Plaintiff  
27 Classes) affected by pregnancy, Defendants violated and continue to violate FEHA’s  
28 requirement that employers must provide reasonable accommodations for pregnant

1 employees who are willing and able to perform the essential function of some jobs.

2 202. By providing reasonable accommodations for Class A and Class B workers  
3 with temporary disabilities in the PMA collective bargaining agreement with ILWU, but  
4 simultaneously denying such reasonable accommodations to pregnant casual workers,  
5 Defendants' policies and practices violated and continue to violate the FEHA with respect  
6 to Plaintiffs and the Plaintiff Classes.

7 203. The above unlawful actions were also committed by the LA/LB Port  
8 Operating Entities. If not deemed to be an employer-agent of the LA/LB Port Operating  
9 Entities or a joint employer under the FEHA, Defendant PMA is still liable for its actions.  
10 Through its action above, Defendant PMA aided and abetted the LA/LB Port Operating  
11 Entities' discriminatory acts in violation of the FEHA. Cal. Gov't Code § 12940(i). Through  
12 the actions alleged above, the Union Defendants also aided and abetted the LA/LB Port  
13 Operating Entities' discriminatory actions in violation of the FEHA. Cal. Gov't Code  
14 § 12940(i). In addition, if Defendant PMA is found to be an employer-agent of the LA/LB  
15 Port Operating Entities or a joint employer under the FEHA, the Union Defendants aided  
16 and abetted Defendant PMA's unlawful actions alleged above in violation of the FEHA. Cal.  
17 Gov't Code § 12940(i). In the alternative, if Defendant PMA is not found to be an employer  
18 within the meaning of the FEHA, it aided and abetted Defendant ILWU's and Defendant  
19 Local 13's unlawful conduct in violation of the FEHA. Cal. Gov't Code § 12940(i).

20 204. As a direct and proximate result of Defendants' policies or practices, Plaintiffs  
21 and members of the Plaintiff Classes have suffered and continue to suffer injury, including  
22 but not limited to lost wages, lower wages, lost seniority, and other compensation and  
23 benefits in amounts to be proven at trial.

24 205. As a direct and proximate result of Defendants' policies or practices, Plaintiffs  
25 and members of the Plaintiff Classes have suffered and continue to suffer injury, including  
26 but not limited to emotional distress, entitling them to compensatory damages in an amount  
27 to be proven at trial.

28 206. Defendants committed the unlawful actions herein despicably, maliciously,

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

6 207. Plaintiffs and members of the Plaintiff Classes are entitled to reasonable  
7 attorneys' fees and costs pursuant to Cal. Gov't Code § 12965(b).

8 208. Plaintiffs and members of the Plaintiff Classes are also entitled to declaratory  
9 relief declaring that Defendants' policies and practices of failure to reasonably  
10 accommodate pregnant casual workers are unlawful and to appropriate preliminary and  
11 permanent injunctive relief to stop Defendants' unlawful conduct.

12  
13 **SECOND CAUSE OF ACTION**

14 **Failure to Reasonably Accommodate Lactation,  
15 Failure to Provide Reasonable Advance Notice  
16 (Cal. Gov't Code § 12945(a)(3)(A); 2 Cal. Code Regs. § 11035(d), § 11049(a))  
17 On Behalf of All Plaintiffs, in their individual and representative capacities, and  
18 the Lactation Class, Against All Defendants**

19 209. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
20 alleged above as if fully set forth herein.

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

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

29 212. In addition, Cal. Code Regs. tit. 2, § 11035(s) states that a "reasonable

1 accommodation,” as used in the failure to accommodate pregnancy statute, “may include,  
2 ... providing a reasonable amount of break time and use of a room or other location in close  
3 proximity to the employee’s work area to express breast milk in private as set forth in the  
4 Labor Code.”

5 213. Cal. Labor Code § 1030 provides that an employer “shall provide a reasonable  
6 amount of break time to accommodate an employee desiring to express breast milk for the  
7 employee’s infant child.”

8 214. Cal. Labor Code § 1031 provides that an employer “shall make reasonable  
9 efforts to provide” an employee a place, other than a bathroom, that is shielded from view  
10 and free from intrusion by coworkers to express breast milk.

11 215. At all times mentioned in this Complaint, Cal. Labor Code §§ 1030-1034 were  
12 in full force and effect and binding on Defendants. As alleged above, Defendants failed to  
13 provide Plaintiffs and members of the Lactation Class – and continues to fail to provide  
14 casual workers who are lactating – reasonable break time or a place shielded from view and  
15 free from intrusion by coworkers to express breast milk. Accordingly, Defendants violated  
16 and continues to violate Plaintiffs’ rights under the FEHA’s failure to accommodate  
17 pregnancy-related conditions provision.

18 216. Defendants failed and continue to fail to provide casual workers notice of their  
19 FEHA rights and obligations regarding pregnancy, childbirth, or related medical conditions  
20 under Cal. Code Regs. tit. 2 § 11049(a).

21 217. The above unlawful actions were also committed by the LA/LB Port  
22 Operating Entities. If not deemed to be an employer-agent of the LA/LB Port Operating  
23 Entities or a joint employer under the FEHA, Defendant PMA is still liable for its actions.  
24 Through its action above, Defendant PMA aided and abetted the LA/LB Port Operating  
25 Entities’ discriminatory acts in violation of the FEHA. Cal. Gov’t Code § 12940(i). Through  
26 the actions alleged above, the Union Defendants also aided and abetted the LA/LB Port  
27 Operating Entities’ discriminatory actions in violation of the FEHA. Cal. Gov’t Code  
28 § 12940(i). In addition, if Defendant PMA is found to be an employer-agent of the LA/LB

1 Port Operating Entities or a joint employer under the FEHA, the Union Defendants aided  
2 and abetted Defendant PMA's unlawful actions alleged above in violation of the FEHA. Cal.  
3 Gov't Code § 12940(i). In the alternative, if Defendant PMA is not found to be an employer  
4 within the meaning of the FEHA, it aided and abetted Defendant ILWU's and Defendant  
5 Local 13's unlawful conduct in violation of the FEHA. Cal. Gov't Code § 12940(i).

6 218. As a direct and proximate result of Defendants' policies or practices, Plaintiffs  
7 and members of the Lactation Class have suffered and continue to suffer injury, including  
8 but not limited to lost wages, lower wages, lost seniority, and other compensation and  
9 benefits in amounts to be proven at trial.

10 219. As a direct and proximate result of Defendants' policies and practices,  
11 Plaintiffs and members of the Lactation Class have suffered and continue to suffer injury,  
12 including but not limited to emotional distress, entitling them to compensatory damages in  
13 an amount to be proven at trial.

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

20 221. Plaintiffs and members of the Lactation Class are entitled to reasonable  
21 attorneys' fees and costs pursuant to Cal. Gov't Code § 12965(b).

22 222. Plaintiffs and members of the Lactation Class are also entitled to declaratory  
23 relief declaring that Defendants' policies and practices that fail to reasonably accommodate  
24 lactating casual workers are unlawful and to appropriate preliminary and permanent  
25 injunctive relief to stop Defendants' unlawful conduct.  
26  
27  
28



1 within the meaning of the FEHA, it aided and abetted Defendant ILWU's and Defendant  
2 Local 13's unlawful conduct in violation of the FEHA. Cal. Gov't Code § 12940(i).

3 228. As a direct and proximate result of Defendants' policies and practices,  
4 Plaintiffs and members of the Plaintiff Classes have suffered and continue to suffer injury,  
5 including but not limited to emotional distress, entitling them to compensatory damages in  
6 an amount to be proven at trial.

7 229. Defendants committed the unlawful actions herein despicably, maliciously,  
8 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs and  
9 members of the Plaintiff Classes, from an improper and evil motive amounting to malice,  
10 and in conscious disregard of the rights of Plaintiffs and members of the Plaintiff Classes.  
11 Plaintiffs and members of the Plaintiff Classes are therefore entitled to recover punitive  
12 damages from Defendants in an amount to be proven at trial.

13 230. Plaintiffs and members of the Plaintiff Classes are entitled to reasonable  
14 attorneys' fees and costs pursuant to Cal. Gov't Code § 12965(b).

15 231. Plaintiffs and members of the Plaintiff Classes are entitled to declaratory relief  
16 declaring that Defendants' policies and practices of refusing to engage in a good faith  
17 interactive process with pregnant casual workers to identify possible reasonable  
18 accommodations is unlawful, and to appropriate preliminary and permanent injunctive  
19 relief to stop Defendants' unlawful conduct.

20  
21 **FOURTH CAUSE OF ACTION**  
22 **Failure to Engage in Good-Faith Interactive Process**  
23 **to Reasonably Accommodate Lactation**  
24 **(Cal. Gov't Code § 12945(a)(3); Cal. Code Regs. tit. 2 § 11040(a)(2)(B), § 11035)**  
25 **On Behalf of All Plaintiffs, in their individual and representative capacities,**  
26 **and the Lactation Class, Against All Defendants**

27 232. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
28 alleged above as if fully set forth herein.

29 233. Cal. Code Regs. tit. 2 § 11040(a)(2)(B) requires an employer to "engage in a  
30 good faith interactive process to identify and implement [a] request for reasonable

1 accommodation” made by an “employee affected by pregnancy.”

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

6 235. Pursuant to their across-the-board policies and practices of failing to provide  
7 lactation accommodations, Defendants violated and continue to violate FEHA’s  
8 requirement that employers engage in a good faith interactive process to identify reasonable  
9 accommodations for pregnancy-affected employees.

10 236. The above unlawful actions were also committed by the LA/LB Port  
11 Operating Entities. If not deemed to be an employer-agent of the LA/LB Port Operating  
12 Entities or a joint employer under the FEHA, Defendant PMA is still liable for its actions.  
13 Through its action above, Defendant PMA aided and abetted the LA/LB Port Operating  
14 Entities’ discriminatory acts in violation of the FEHA. Cal. Gov’t Code § 12940(i). Through  
15 the actions alleged above, the Union Defendants also aided and abetted the LA/LB Port  
16 Operating Entities’ discriminatory actions in violation of the FEHA. Cal. Gov’t Code  
17 § 12940(i). In addition, if Defendant PMA is found to be an employer-agent of the LA/LB  
18 Port Operating Entities or a joint employer under the FEHA, the Union Defendants aided  
19 and abetted Defendant PMA’s unlawful actions alleged above in violation of the FEHA. Cal.  
20 Gov’t Code § 12940(i). In the alternative, if Defendant PMA is not found to be an employer  
21 within the meaning of the FEHA, it aided and abetted Defendant ILWU’s and Defendant  
22 Local 13’s unlawful conduct in violation of the FEHA. Cal. Gov’t Code § 12940(i).

23 237. As a direct and proximate result of Defendants’ policies and practices,  
24 Plaintiffs and members of the Lactation Class have suffered and continue to suffer injury,  
25 including but not limited to lost wages, lower wages, lost seniority, and other compensation  
26 and benefits in amounts to be proven at trial.

27 238. As a direct and proximate result of Defendants’ policies and practices,  
28 Plaintiffs and members of the Lactation Class have suffered and continue to suffer injury,

1 including but not limited to emotional distress, entitling them to compensatory damages in  
2 an amount to be proven at trial.

3 239. Defendants committed the unlawful actions herein despicably, maliciously,  
4 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs and  
5 members of the Lactation Class, from an improper and evil motive amounting to malice,  
6 and in conscious disregard of the rights of Plaintiffs and members of the Lactation Class.  
7 Plaintiffs and members of the Lactation Class are therefore entitled to recover punitive  
8 damages from Defendants in an amount to be proven at trial.

9 240. Plaintiffs and members of the Lactation Class are entitled to declaratory relief  
10 declaring that Defendants' policies and practices of refusing to engage in a good faith  
11 interactive process with pregnancy-affected casual workers to identify possible reasonable  
12 accommodations is unlawful and to appropriate preliminary and permanent injunctive  
13 relief to stop Defendants' unlawful conduct.

14 241. Plaintiffs and members of the Lactation Class are entitled to reasonable  
15 attorneys' fees and costs pursuant to Cal. Gov't Code § 12965(b).

16 **FIFTH CAUSE OF ACTION**

17 **Disparate Treatment Discrimination Based on Sex/Pregnancy**  
18 **(Cal. Gov't. Code § 12940(a)-(b); Cal. Code Regs. tit. 2 § 11044(d)(1))**  
19 **On Behalf of All Plaintiffs, in their individual and representative capacities,**  
20 **and the Other Accommodations Class Against All Defendants**

21 242. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
22 alleged above as if fully set forth herein.

23 243. Cal. Gov't Code § 12940(a) provides that it is unlawful "[f]or an employer,  
24 because of . . . sex, . . . to discriminate against [any] person in compensation or in terms,  
25 conditions, or privileges of employment."

26 244. Cal. Gov't Code § 12940(b) provides that it is unlawful "[f]or a labor  
27 organization, because of . . . sex, . . . to exclude, expel, or restrict [a worker] from its  
28 membership ... or to provide only second-class or segregated membership . . . or to  
discriminate in any way against any of its members."

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

3           246. Plaintiffs and members of the Other Accommodations Class are or were  
4 members of a protected class because they are or were pregnant.

5           247. Defendants’ policies and practices, in their collective bargaining agreement  
6 with each other, of authorizing reasonable accommodations for Class A and Class B workers  
7 with temporary disabilities and who are pregnant, but simultaneously denying such  
8 accommodations to pregnant casual workers, discriminate against casual workers based on  
9 sex, in violation of Plaintiffs’ rights pursuant to Cal. Gov’t Code § 12940(a) and Cal. Code  
10 Regs. tit. 2 § 11044(d)(1).

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

18           249. As a direct and proximate result of Defendants’ policies and practices,  
19 Plaintiffs and members of the Other Accommodations Class have suffered and continue to  
20 suffer injury, including but not limited to lost wages, lower wages, lost seniority, and other  
21 compensation and benefits in amounts to be proven at trial.

22           250. The above unlawful actions were also committed by the LA/LB Port  
23 Operating Entities. If not deemed to be an employer-agent of the LA/LB Port Operating  
24 Entities or a joint employer under the FEHA, Defendant PMA is still liable for its actions.  
25 Through its action above, Defendant PMA aided and abetted the LA/LB Port Operating  
26 Entities’ discriminatory acts in violation of the FEHA. Cal. Gov’t Code § 12940(i). Through  
27 the actions alleged above, the Union Defendants also aided and abetted the LA/LB Port  
28 Operating Entities’ discriminatory actions in violation of the FEHA. Cal. Gov’t Code

1 § 12940(i). In addition, if Defendant PMA is found to be an employer-agent of the LA/LB  
2 Port Operating Entities or a joint employer under the FEHA, the Union Defendants aided  
3 and abetted Defendant PMA's unlawful actions alleged above in violation of the FEHA. Cal.  
4 Gov't Code § 12940(i). In the alternative, if Defendant PMA is not found to be an employer  
5 within the meaning of the FEHA, it aided and abetted Defendant ILWU's and Defendant  
6 Local 13's unlawful conduct in violation of the FEHA. Cal. Gov't Code § 12940(i).

7 251. As a direct and proximate result of Defendants' policies and practices,  
8 Plaintiffs and members of the Other Accommodations Class have suffered and continue to  
9 suffer injury, including but not limited to emotional distress, entitling them to  
10 compensatory damages in an amount to be proven at trial.

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

18 253. Plaintiffs and members of the Other Accommodations Class are entitled to  
19 reasonable attorneys' fees and costs pursuant to Cal. Gov't Code § 12965(b).

20 254. Plaintiffs and members of the Other Accommodations Class are also entitled  
21 to declaratory relief declaring that Defendants' policies and practices of disparate treatment  
22 of pregnant casual workers are unlawful and to appropriate preliminary and permanent  
23 injunctive relief to stop Defendants' unlawful conduct.

24  
25 **SIXTH CAUSE OF ACTION**  
26 **Disparate Impact Discrimination Based on Sex/Pregnancy**  
27 **(Cal. Gov't. Code § 12940(a)-(b))**  
28 **On Behalf of All Plaintiffs, in their individual and representative capacities,**  
**and the Plaintiff Classes Against All Defendants**

255. Plaintiffs reallege and incorporate by reference all preceding paragraphs as

1 alleged above as if fully set forth herein.

2 256. Because women disproportionately become pregnant, and also may  
3 experience temporary disabilities due to pregnancy, childbirth, or related medical  
4 conditions, Defendants' policies and practices of failing to provide any light duty or other  
5 work duty modifications to casual workers, and instead offering only the options of  
6 working without modification or stopping work altogether and receiving neither wages nor  
7 seniority credit, has an unlawful disparate impact based on sex/pregnancy, in violation of  
8 Plaintiffs' rights pursuant to Cal. Gov't Code § 12940(a) and Cal. Code Regs. tit. 2  
9 § 11044(d)(1).

10 257. Because women disproportionately become pregnant, and also may  
11 experience temporary disabilities due to pregnancy, childbirth, or related medical  
12 conditions, Defendants' policies and practices of failing to award seniority credit to casual  
13 workers absent due to temporary disabilities or pregnancy, childbirth, or related medical  
14 conditions has an unlawful disparate impact on the basis of sex/pregnancy, in violation of  
15 Plaintiffs' and members of the Plaintiff Classes' rights pursuant to Cal. Gov't Code  
16 § 12940(a) and Cal. Code Regs. tit. 2 § 11044(d)(1).

17 258. Because women disproportionately become pregnant, and also may  
18 experience temporary disabilities due to pregnancy, childbirth, or related medical  
19 conditions, Defendants' policies and practices of limiting seniority credit to casual workers  
20 absent due to military service has an unlawful disparate impact on the basis of sex, in  
21 violation of Plaintiffs' and members of the Plaintiff Classes' rights pursuant to Cal. Gov't  
22 Code § 12940(a) and Cal. Code Regs. tit. 2 § 11044(d)(1).

23 259. Defendants' policies and practices of failing to provide any light duty or other  
24 work duty modifications for pregnant casual workers, and offering only the options of  
25 working without modification or stopping work altogether and receiving neither wages nor  
26 seniority credit, are not, and cannot be, justified by business necessity.

27 260. Defendants' policies and practices of failing to provide seniority credit to  
28 casual workers absent due to temporary disabilities or pregnancy, childbirth or related

1 medical conditions are not, and cannot be, justified by business necessity.

2 261. Even if any of these policies or practices could be justified by business  
3 necessity, less discriminatory alternatives exist and would equally serve any alleged  
4 necessity.

5 262. The above unlawful actions were also committed by the LA/LB Port  
6 Operating Entities. If not deemed to be an employer-agent of the LA/LB Port Operating  
7 Entities or a joint employer under the FEHA, Defendant PMA is still liable for its actions.  
8 Through its action above, Defendant PMA aided and abetted the LA/LB Port Operating  
9 Entities' discriminatory acts in violation of the FEHA. Cal. Gov't Code § 12940(i). Through  
10 the actions alleged above, the Union Defendants also aided and abetted the LA/LB Port  
11 Operating Entities' discriminatory actions in violation of the FEHA. Cal. Gov't Code  
12 § 12940(i). In addition, if Defendant PMA is found to be an employer-agent of the LA/LB  
13 Port Operating Entities or a joint employer under the FEHA, the Union Defendants aided  
14 and abetted Defendant PMA's unlawful actions alleged above in violation of the FEHA. Cal.  
15 Gov't Code § 12940(i). In the alternative, if Defendant PMA is not found to be an employer  
16 within the meaning of the FEHA, it aided and abetted Defendant ILWU's and Defendant  
17 Local 13's unlawful conduct in violation of the FEHA. Cal. Gov't Code § 12940(i).

18 263. As a direct and proximate result of these policies or practices, Plaintiffs and  
19 members of the Plaintiff Classes have suffered and continue to suffer injury, including but  
20 not limited to lost wages, lower wages, lost seniority, and other compensation and benefits  
21 in amounts to be proven at trial.

22 264. As a direct and proximate result of Defendants' conduct, Plaintiffs and  
23 members of the Plaintiff Classes have suffered and continue to suffer injury, including but  
24 not limited to emotional distress, entitling them to compensatory damages in an amount to  
25 be proven at trial. Plaintiffs and members of the Plaintiff Classes are entitled to reasonable  
26 attorneys' fees and costs pursuant to Cal. Gov't Code § 12965(b).

27 265. Plaintiffs and members of the Plaintiff Classes are also entitled to declaratory  
28 relief declaring that Defendants' policies and practices resulting in discriminatory disparate

1 impacts on pregnant casual workers are unlawful, and to appropriate preliminary and  
2 permanent injunctive relief to stop Defendants' unlawful conduct.

3  
4 **SEVENTH CAUSE OF ACTION**

5 **Interference with California Family Rights Act and Pregnancy Disability Leave Law**  
6 **(Cal. Gov't Code §§ 12945(a)(4), 12945.2(t); Cal. Code Regs. tit. 2 §§ 11044(d), 11092(d))**  
7 **On Behalf of all Plaintiffs, in their individual and representative capacities, and**  
8 **the Leave Class, Against All Defendants**

9 266. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
10 alleged above as if fully set forth herein.

11 267. Among other things, Government Code § 12945 makes it unlawful for an  
12 employer:

- 13 a. "to refuse to allow an employee disabled by pregnancy, childbirth, or a related  
14 medical condition to take a leave for a reasonable period of time not to exceed  
15 four months and thereafter return to work," *id.* at § 12945(a)(1);
- 16 b. "to refuse to provide reasonable accommodation for an employee for a  
17 condition related to pregnancy, childbirth, or a related medical condition,  
18 if the employee so requests, with the advice of the employee's health care  
19 provider," *id.* at § 12945(a)(3)(A);
- 20 c. to have a "collective bargaining agreement requiring or authorizing the  
21 transfer of temporarily disabled employees to less strenuous or hazardous  
22 positions for the duration of the disability [but] to refuse to transfer a  
23 pregnant employee who so requests," *id.* at § 12945(a)(3)(B); and
- 24 d. "to refuse to temporarily transfer a pregnant employee to a less strenuous or  
25 hazardous position for the duration of the pregnancy if the employee so  
26 requests, with the advice of the employee's physician, where that transfer can  
27 be reasonably accommodated," *id.* at § 12945(a)(3)(C).

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

1           269. Based on the factual allegations stated above, Plaintiffs and members of the  
2 Leave Class were entitled to leave based on pregnancy and/or pregnancy-related  
3 conditions pursuant to Cal. Gov't Code § 12945(a)(1).

4           270. Further, under Cal. Code Regs. tit. 2, § 11044(d), while an employee is on leave  
5 resulting from pregnancy, childbirth, or a related medical condition, the employee "shall  
6 accrue seniority . . . to the same extent and under the same conditions as would apply to  
7 any other unpaid disability leave granted by the employer for any reason other than a  
8 pregnancy disability," and further, "[i]f the employer's policy allows seniority to accrue  
9 when employees are on paid leave, such as paid sick or vacation leave, and/or unpaid leave,  
10 then seniority will accrue during any part of a paid and/or unpaid pregnancy disability  
11 leave." *Id.* § 11044(d)(1).

12           271. Moreover, Cal. Gov't Code § 12945.2 makes it unlawful for an employer "to  
13 refuse to grant a request by any employee with more than 12 months of service with the  
14 employer, and who has at least 1,250 hours of service with the employer during the previous  
15 12-month period, to take up to a total of 12 workweeks in any 12-month period for family  
16 care and medical leave." *Id.* § 12945.2(a).

17           272. In addition, Cal. Gov't Code § 12945.2(t) makes it unlawful "to interfere with,  
18 restrain, or deny the exercise of . . . any right provided under this section," i.e., the  
19 aforementioned clause.

20           273. Finally, under Cal. Code Regs. tit. 2 § 11092(d), while an employee is on family  
21 care and medical leave, the employee "is entitled to accrual of seniority . . . to the same  
22 extent and under the same conditions as would apply to any other leave granted by the  
23 employer for any reason other than CFRA leave," and further, "[i]f the employer's policy  
24 allows seniority to accrue when employees are out on paid leave, such as paid sick or  
25 vacation leave, then seniority will accrue during any part of a paid CFRA leave." *Id.*  
26 § 11092(d)(2).

27           274. Defendants interfered with Plaintiffs' and members of the Leave Class's  
28 ability to assert their rights to pregnancy-related workplace accommodations by, among

1 other things, effectively making unpaid leave the sole option for pregnant or pregnancy-  
2 affected casual workers in need of accommodation; failing to inform Plaintiffs and member  
3 of the Leave Class about their rights to reasonable accommodations, the procedures for  
4 requesting a reasonable accommodation, and a way to appeal a denial; failing to post and  
5 provide the notice required by Cal. Code of Regs. § 11049; and failing to adequately train  
6 employees with supervisory responsibilities regarding pregnant employees' rights under  
7 Cal. Gov't Code § 12945(a)(3).

8         275. The above unlawful actions were also committed by the LA/LB Port  
9 Operating Entities. If not deemed to be an employer-agent of the LA/LB Port Operating  
10 Entities or a joint employer under the FEHA, Defendant PMA is still liable for its actions.  
11 Through its action above, Defendant PMA aided and abetted the LA/LB Port Operating  
12 Entities' discriminatory acts in violation of the FEHA. Cal. Gov't Code § 12940(i). Through  
13 the actions alleged above, the Union Defendants also aided and abetted the LA/LB Port  
14 Operating Entities' discriminatory actions in violation of the FEHA. Cal. Gov't Code  
15 § 12940(i). In addition, if Defendant PMA is found to be an employer-agent of the LA/LB  
16 Port Operating Entities or a joint employer under the FEHA, the Union Defendants aided  
17 and abetted Defendant PMA's unlawful actions alleged above in violation of the FEHA. Cal.  
18 Gov't Code § 12940(i). In the alternative, if Defendant PMA is not found to be an employer  
19 within the meaning of the FEHA, it aided and abetted Defendant ILWU's and Defendant  
20 Local 13's unlawful conduct in violation of the FEHA. Cal. Gov't Code § 12940(i).

21         276. As a direct and proximate result of Defendants' interference in Plaintiffs' and  
22 members of the Leave Class's ability to assert their rights to pregnancy-related disability  
23 leave, Plaintiffs and members of the Leave Class have suffered and continue to suffer injury,  
24 including but not limited to lost wages, lower wages, lost seniority, and other compensation  
25 and benefits in amounts to be proven at trial.

26         277. As a direct and proximate result of Defendants' conduct, Plaintiffs and  
27 members of the Leave Class have suffered and continue to suffer injury, including but not  
28 limited to emotional distress, entitling them to compensatory damages in an amount to be

1 proven at trial.

2 278. Defendant committed the unlawful actions herein despicably, maliciously,  
3 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs and  
4 members of the Leave Class, from an improper and evil motive amounting to malice, and  
5 in conscious disregard of the rights of Plaintiffs and members of the Leave Class. Plaintiffs  
6 and members of the Leave Class are therefore entitled to recover punitive damages from  
7 Defendant in an amount to be proven at trial.

8 279. Plaintiffs and members of the Leave Class are entitled to reasonable attorneys'  
9 fees and costs pursuant to Cal. Gov't Code § 12965(b).

10 280. Plaintiffs and members of the Leave Class are also entitled to declaratory relief  
11 declaring that Defendants' policies and practices of interfering with the rights of casual  
12 dockworkers pursuant to the California Family Rights Act are unlawful, and to appropriate  
13 preliminary and permanent injunctive relief to stop Defendants' unlawful conduct.

14 **EIGHTH CAUSE OF ACTION**  
15 **Failure to Prevent Discrimination**  
16 **(Cal. Gov't. Code § 12940(k))**

17 **On Behalf of All Plaintiffs, in their individual and representative capacities,**  
18 **and the Plaintiff Classes Against All Defendants**

19 281. Plaintiffs reallege and incorporate by reference all preceding paragraphs as  
20 alleged above as if fully set forth herein.

21 282. Cal. Gov't Code § 12940(k) requires employers and labor organizations to  
22 "take all reasonable steps necessary to prevent discrimination and harassment from  
23 occurring," a mandate that includes the workplace discrimination based on sex, including  
24 pregnancy.

25 283. Through their above-described acts and omissions, Defendants failed in their  
26 affirmative duty to take all reasonable steps necessary to prevent discrimination against  
27 casual workers, including Plaintiffs and members of the Plaintiff Classes, based on sex,  
28 including pregnancy, in violation of Gov't Code § 12940(k).

284. Among other failures, Defendants' policies or practices have not and do not  
require that pregnant casual workers, casual workers with pregnancy-related conditions,

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

12       285. The above unlawful actions were also committed by the LA/LB Port  
13 Operating Entities. If not deemed to be an employer-agent of the LA/LB Port Operating  
14 Entities or a joint employer under the FEHA, Defendant PMA is still liable for its actions.  
15 Through its action above, Defendant PMA aided and abetted the LA/LB Port Operating  
16 Entities' discriminatory acts in violation of the FEHA. Cal. Gov't Code § 12940(i). Through  
17 the actions alleged above, the Union Defendants also aided and abetted the LA/LB Port  
18 Operating Entities' discriminatory actions in violation of the FEHA. Cal. Gov't Code  
19 § 12940(i). In addition, if Defendant PMA is found to be an employer-agent of the LA/LB  
20 Port Operating Entities or a joint employer under the FEHA, the Union Defendants aided  
21 and abetted Defendant PMA's unlawful actions alleged above in violation of the FEHA. Cal.  
22 Gov't Code § 12940(i). In the alternative, if Defendant PMA is not found to be an employer  
23 within the meaning of the FEHA, it aided and abetted Defendant ILWU's and Defendant  
24 Local 13's unlawful conduct in violation of the FEHA. Cal. Gov't Code § 12940(i).

25       286. As a direct and proximate result of Defendants' conduct, Plaintiffs and  
26 members of the Plaintiff Classes have suffered and continue to suffer injury, including but  
27 not limited to lost wages, lower wages, lost seniority, and other compensation and benefits  
28 in amounts to be proven at trial.





1 reasonable accommodation and to engage in a good-faith interactive  
2 process with Plaintiffs and member of the Lactation Class and the Other  
3 Accommodations Class to identify and implement their requested  
4 reasonable accommodations;

- 5 2. Requiring Defendants to grant reasonable pregnancy accommodations;
- 6 3. Prohibiting Defendants from treating Plaintiffs and members of the Leave  
7 Class less favorably than other, non-pregnant workers similar in their  
8 ability or non-ability to work;
- 9 4. Requiring Defendants to provide lactation accommodations compliant  
10 with California law;
- 11 5. Prohibiting Defendants from maintaining their policies and practices of  
12 denying work hours credit to casual workers who are absent due to  
13 pregnancy or pregnancy-related conditions, which disparately impact  
14 Plaintiffs and members of the Leave Class;

15 D. Wages, seniority rights, Class B registration, and other compensation and  
16 benefits denied to or lost by Plaintiffs and members of the Leave Class in an amount to be  
17 proven at trial;

18 E. Restitution to Plaintiffs and the Plaintiff Classes for deprivation of wages,  
19 compensation, benefits, or other equitable monetary relief as a result of Defendants'  
20 violations of the law to the extent that the UCL provides such remedies;

21 F. Exemplary and punitive damages in an amount commensurate with  
22 Defendants' ability to pay and to deter future conduct;

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

25 H. An award of penalties available under any applicable laws;

26 I. An award of reasonable attorneys' fees, costs, and expenses to the Plaintiffs  
27 and members of the Plaintiff Classes;

1 J. An order that this Court retain jurisdiction of this action until such time as the  
2 Court is satisfied that Defendants have remedied the practices complained of herein and are  
3 determined to be in full compliance with the law; and

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

5  
6 Dated: April 15, 2020

Respectfully submitted,

7  
8 By: /s/ Gillian Thomas

9 GILLIAN THOMAS  
10 (pro hac vice)  
11 ANJANA SAMANT  
12 (pro hac vice)  
13 The American Civil Liberties Union  
14 Foundation Women's Rights Project

15 /s/ Michael S. Morrison  
16 J. BERNARD ALEXANDER, III  
17 MARVIN E. KRAKOW  
18 MICHAEL S. MORRISON  
19 AMELIA ALVAREZ  
20 Alexander Krakow + Glick LLP

21 /s/ Aditi Fruitwala  
22 ADITI FRUITWALA  
23 MINOUCHE KANDEL  
24 AMANDA GOAD  
25 ACLU Foundation of Southern California

26 /s/ Brenda Feigen  
27 BRENDA FEIGEN  
28 Feigen Law Group

1 DEMAND FOR JURY TRIAL

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

3  
4 Dated: April 15, 2020

Respectfully submitted,

5  
6 By: /s/ Gillian Thomas

7 GILLIAN THOMAS  
8 (pro hac vice)  
9 ANJANA SAMANT  
10 (pro hac vice)  
11 The American Civil Liberties Union  
12 Foundation Women’s Rights Project

13 /s/ Michael S. Morrison  
14 J. BERNARD ALEXANDER, III  
15 MARVIN E. KRAKOW  
16 MICHAEL S. MORRISON  
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19 /s/ Aditi Fruitwala  
20 ADITI FRUITWALA  
21 MINOUCHE KANDEL  
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23 ACLU Foundation of Southern California

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

27 *Attorneys for Plaintiffs*  
28

1 **PROOF OF SERVICE**

2 I am over the age of 18 years, not a party to this action, and am employed in the  
3 County of Los Angeles, State of California. My business address is ALEXANDER  
4 KRAKOW + GLICK LLP, 1900 Avenue of the Stars, Suite 900, Los Angeles, California  
5 90067.

6 On, April 16, 2020, following the ordinary business practices of ALEXANDER  
7 KRAKOW + GLICK LLP as set forth below, I served a true and correct copy of the  
8 foregoing document described **FIRST AMENDED CLASS ACTION COMPLAINT FOR**  
9 **DAMAGES AND INJUNCTIVE RELIEF; ORDER GRANTING JOINT STIPULATION**  
10 **FOR LEAVE FOR PLAINTIFF TO FILE A FIRST AMENDED COMPLAINT** in a sealed  
11 envelope, with postage fully prepaid, addressed as follows:

12 **[SEE SERVICE LIST]**

- 13  BY MAIL. I am readily familiar with ALEXANDER KRAKOW + GLICK LLP's  
14 practice for collection and processing of correspondence for mailing with the  
15 U.S. Postal Service. Under that practice, in the ordinary course of business,  
16 correspondence would be deposited with the U.S. Postal Service on the same  
17 day with postage fully prepaid at ALEXANDER KRAKOW +GLICK LLP, 1900  
18 Avenue of the Stars, Suite 900, Los Angeles, California 90067. The above  
19 envelope was placed for collection and mailing on the above date following  
20 ALEXANDER KRAKOW +GLICK's ordinary business practice. I am aware that  
21 on motion of the party served, service is presumed invalid if the postal  
22 cancellation date or postage meter date is more than one day after date of  
23 deposition for mailing.
- 24  VIA FACSIMILE. I sent said documents via facsimile.
- 25  VIA EMAIL. I sent said document(s) via electronic mail to the addressee.
- 26  VIA UPS. I delivered said documents via next day overnight delivery.
- 27  BY PERSONAL SERVICE. I caused delivery of said envelope by hand to the  
28 offices of the addressee(s).
- 29  (STATE) I declare under penalty of perjury under the laws of the State of  
California that the foregoing is true and correct.
- 30  (FEDERAL) I declare that I am employed in the office of a member of the bar of  
this Court at whose direction the service was made.

s/ Gustin Ham

Dated: April 16, 2020

\_\_\_\_\_  
Gustin Ham

1 **SERVICE LIST**

2 **Co-Counsel for Plaintiffs:** *Endanicha Bragg, Tracy Plummer, and Marisol Romero*

3 **THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION WOMEN'S RIGHTS**  
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7 **Counsel for Defendants:** *International Longshore and Warehouse Union, and*  
8 *International Longshore and Warehouse Union Local 13*

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