

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

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

28 ENDANICHA BRAGG, an individual,
TRACY PLUMMER, an individual,
MARISOL ROMERO, an individual,
KAIAUNNA SMITH, an individual
MEGAN RUSSO-KAHN, an
individual, and CLARISSA
HERNANDO AVILA on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

Case No. 19STCV35714

Assigned for all purposes to the Hon.
Upinder S. Kalra, Dept. 51

CORRECTED SECOND AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

- 1. Failure to Reasonably Accommodate
Pregnancy, Failure to Provide
Reasonable Advance Notice (Cal.
Gov't Code § 12945(a)(3), Cal. Code
Regs. tit. 2 § 11049(a))**

FILED
Superior Court of California
County of Los Angeles

10/24/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: A. Alba Deputy

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

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Defendants.

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. **L.A. Living Wage Ordinance (L.A. Admin Code, Art. 11, § 10.37, *et seq*)**
10. **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, Kaiaunna Smith,
2 Megan Russo-Kahn, and Clarissa Hernando Avila as individuals and on behalf of
3 themselves and all others similarly situated, allege as follows:

4 **SUMMARY OF CLAIMS**

5 1. Plaintiffs are six 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.¹ 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.²

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
24
25

26 ¹ 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.”).

² 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.³ 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.⁴ 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.⁵ 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.⁶

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.⁷

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.⁸ The top four officers of Defendant ILWU,⁹
20 and all but five of its twenty-member Executive Committee, are men.¹⁰ The President, Vice
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22 ³ 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 ⁴ Id.

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

26 ⁶ Stolberg, “Heavy-Duty Abuse,” *supra* note 2.

27 ⁷ 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-represents-growing-influence-of-women-at-local-ports/>.

⁸ Pac. Mar. Ass’n, *2018 Annual Report*, at 7-8.

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

¹⁰ 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.¹¹ All Local 13 dispatchers are men, as well.¹²

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-

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

¹² 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. The Los Angeles Living Wage Ordinance (the "LWO") requires entities that
9 have entered into public leases and permits with the City of Los Angeles to pay employees
10 the City's Living Wage (which consists of a cash wage rate and an employer's health benefits
11 contribution) and to provide at least 96 compensated hours off for sick leave and 80
12 uncompensated hours off for care of family members. L.A. Admin Code, Art. 11, §
13 10.37.2(b). It also requires employers to include in any sub-contract or sub-lease provisions
14 requiring any sub-contractor or sub-lessee to agree to comply with the LWO. *Id.* at §§ 10.37.1
15 (f), (m); 10.37.8.

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

19 13. Based on the claims described in this action, Plaintiffs bring this action on
20 behalf of themselves and others similarly situated as a class action for violations of the
21 FEHA, Cal. Gov't Code §§ 12900-12996; the PDLL, Cal. Gov't Code § 12945; the CFRA, Cal.
22 Gov't Code § 12945.2; the Los Angeles Living Wage Ordinance, L.A. Admin Code Art. 11,
23 §§ 10.37.2(b), 10.37.1 (f)(m), 10.37.8, and the UCL, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

26 15. In addition to other relief sought, Plaintiffs seek preliminary and permanent
27 injunctive relief to halt Defendants' unlawful actions.
28

1 **THE PARTIES**

2 **Plaintiffs**

3 16. Plaintiff Endanicha Bragg (“Bragg”) is an adult woman who resides in Los
4 Angeles County, California and was a casual dockworker at the LA/LB Port at times
5 relevant to this complaint.

6 17. Plaintiff Tracy Plummer (“Plummer”) is an adult woman who resides in Los
7 Angeles County, California and was a casual dockworker at the LA/LB Port at times
8 relevant to this complaint.

9 18. Plaintiff Marisol Romero (“Romero”) is an adult woman who resides in Los
10 Angeles County, California and is a casual dockworker at the LA/LB Port.

11 19. Plaintiff Kaiaunna Smith (“Smith”) is an adult woman who resides in Los
12 Angeles County, California and is a casual dockworker at the LA/LB Port.

13 20. Plaintiff Megan Russo-Kahn (“Russo-Kahn”) is an adult woman who resides
14 in Los Angeles County, California and is a casual dockworker at the LA/LB Port.

15 21. Plaintiff Clarissa Hernando Avila (“Avila”) is an adult woman who resides in
16 Los Angeles County, California and is a casual dockworker at the LA/LB Port.

17 **Defendants**

18 **Pacific Maritime Association**

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

27 23. Defendant PMA has more than five employees, and on information and belief,
28 Defendant PMA employs 50 or more employees within 75 miles of Plaintiffs’ workplace.

1 24. On information and belief, Defendant PMA is: (1) Plaintiffs' employer within
2 the meaning of the FEHA, Cal. Gov't Code § 12926(d), that jointly employs Plaintiffs,
3 and/or operates as an integrated enterprise with Union Defendants and the LA/LB Port
4 Operating Entities, and/or operates a joint venture with the LA/LB Port Operating Entities;
5 or (2) an agent of Plaintiffs' employers, the LA/LB Port Operating Entities, within the
6 meaning of the FEHA, Cal. Gov't Code § 12926(d). Alternatively, if not found to be either
7 an employer within the meaning of the FEHA or an employer-agent for the LA/LB Port
8 Operating Entities within the meaning of the FEHA, it should be deemed to have aided and
9 abetted the LA/LB Port Operating Entities' violations of the FEHA. If not found to be an
10 employer within the meaning of the FEHA, Defendant PMA should be deemed to have
11 aided and abetted the discriminatory actions taken by Defendant ILWU and Defendant
12 Local 13.

13 25. Defendant PMA negotiates, enters into, and administers on behalf of the
14 LA/LB Port Operating Entities collective bargaining agreements with ILWU and Local 13.
15 Amended and Restated Bylaws of Pacific Maritime Association. PMA has broad "power to
16 establish policies for its members and the corporation in all matters relating to labor
17 contracts and labor controversies." *Id.* It PMA also contracts with the LA/LB Port Operating
18 Entities to provide them with a wide range of human resource, labor relations, and payroll
19 and other administrative services for dockworkers at the Ports. PMA makes and issues
20 work assignments, work reassignments, and transfers of dockworkers to the LA/LB Port
21 Operating Entities, and oversees discipline of and complaints against dockworkers. PMA
22 maintains all dockworker personnel records, including dispatch summaries reflecting work
23 hours logged by each worker and for which Operating Entity. The Operating Entities
24 submit work requests via PMA to the dispatch halls, where dispatchers assign the requests
25 to workers waiting at the halls for a job that day.

26 26. At all relevant times, Defendant PMA was an employer for purposes of the
27 FEHA. California courts consider the following factors when determining whether an
28 employment relationship exists: (1) the payment of salary or other benefits; (2) the

1 ownership of the equipment used by the employee; (3) the location where the relevant work
2 is performed; (4) the responsibility of the employer to train the employee; (5) the authority
3 to promote or discharge the employee; and (6) the power to determine the schedule,
4 assignment, and amount of compensation earned by the employee. Defendant PMA meets
5 many of these factors.

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

15 28. At all relevant times, Defendant PMA operated an integrated enterprise with
16 LA/LB Port Operating Entities and Union Defendants and is an employer for purposes of
17 FEHA. California courts consider the following factors when determining whether an
18 integrated enterprise exists: (1) interrelation of operations; (2) common management;
19 (3) common control of labor relations; and (4) common ownership or financial control.

20 29. As alleged in greater detail below, Defendant PMA operates a single,
21 integrated enterprise with LA/LB Port Operating Entities and Union Defendants by, among
22 other things, jointly determining the composition of the Class A, Class B, and casual
23 workforces; jointly orienting and training the workforce; jointly funding, maintaining, and
24 operating the dispatch halls; jointly determining, appointing, and compensating the
25 personnel who oversee the dispatch halls, except for the individual dispatchers elected by
26 Local 13 members; and jointly developing and implementing reasonable accommodation
27 policies and protocols, including those concerning pregnancy and pregnancy-related
28 conditions such as lactation, through the Joint Port Labor Relations Committee, the Joint

1 Coast Labor Relations Committee and other joint labor relations entities.

2 30. At all relevant times, Defendant PMA operated a joint venture with LA/LB
3 Port Operating Entities and is an employer for purposes of FEHA. Under California state
4 law, a joint venture exists when there is an agreement under which the parties have (1) a
5 joint interest in a common business, (2) an understanding that profits will be shared, and (3)
6 a right to joint control. With respect to the second factor – *i.e.*, sharing of profits and losses,
7 California courts have held that the mode of participating in the fruits of the undertaking
8 may be left to the agreement of the parties.

9 31. As alleged in greater detail below, Defendant PMA operated a joint venture
10 with LA/LB Port Operating Entities and is an employer for purposes of FEHA. Defendant
11 PMA entered into a collective bargaining agreement on behalf of LA/LB Port Operating
12 Entities, which sets forth Defendant PMA and the LA/LB Port Operating Entities' joint
13 interest in, and joint right to control, the port operations and employment of longshore
14 workers at the West Coast Ports, including the LA/LB Ports. Defendant PMA relies on the
15 payment of assessments and dues from LA/LB Port Operating Entities, based on those
16 entities' tonnage and man-hour needs, to jointly fund certain central port operations,
17 including dispatch hall operations, the JPLRC, and other joint entity operations,
18 maintenance, and personnel.

19 32. In the alternative, Plaintiffs are informed and believe, and on that basis allege,
20 that if not found to be an employer within the meaning of the FEHA, Defendant PMA is an
21 employer-agent of Plaintiffs' employers, the LA/LB Port Operating Entities, within the
22 meaning of the FEHA. As the employer-agent of Plaintiffs' employers, Defendant PMA was
23 acting in the scope of Plaintiffs' employers' authority as the agent, servant, representative,
24 and/or affiliate and with the permission and consent of said employers.

25 33. In the alternative, by engaging in the foregoing conduct, Plaintiffs are
26 informed and believe, and on that basis allege, that if Defendant PMA is not found to be
27 either an employer within the meaning of the FEHA or an employer-agent for the LA/LB
28 Port Operating Entities within the meaning of the FEHA, it should be deemed to have aided

1 and abetted the LA/LB Port Operating Entities' violations of the FEHA. Under the FEHA,
2 it is an unlawful employment practice "to aid, abet, incite, compel, or coerce the doing of
3 any acts forbidden under [the FEHA], or to attempt to do so." Cal. Gov't Code § 12940(i).
4 Aiding and abetting occurs when one knows that the other's conduct constitutes a breach
5 of duty and gives substantial assistance or encouragement to the other to so act.

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

19 35. Plaintiffs are informed and believe, and on that basis allege, that if Defendant
20 PMA is not found to be an employer within the meaning of the FEHA, it should be deemed
21 to have aided and abetted Defendant ILWU and Defendant Local 13. Under the FEHA, it is
22 an unlawful employment practice "to aid, abet, incite, compel, or coerce the doing of any
23 acts forbidden under [the FEHA], or to attempt to do so." Cal. Gov't Code § 12940(i). Aiding
24 and abetting occurs when one knows that the other's conduct constitutes a breach of duty
25 and gives substantial assistance or encouragement to the other to so act. Defendant PMA
26 was aware of Defendant ILWU's and Defendant Local 13's duty to accommodate pregnancy
27 and pregnancy-related conditions for casual workers and provided substantial assistance
28 and encouragement in Defendant ILWU's and Defendant Local 13's breach of this duty.

1 Defendant PMA provided substantial assistance and encouragement to Defendant ILWU's
2 and Defendant Local 13's failure to provide light duty assignments, maintenance of a
3 discriminatory leave policy for casual workers who are pregnant or experiencing
4 pregnancy-related conditions, and the lack of procedures to accommodate breast pumping
5 and lactation. PMA could have prevented these violations of the law (and, in fact, has
6 represented to government agencies that it would rectify such problems, such as in a recent
7 settlement with the U.S. Equal Employment Opportunity Commission) but has not. This,
8 combined with the acts above, establishes Defendant PMA aided and abetted Defendant
9 ILWU and Defendant Local 13 in violations of the FEHA.

10 36. Defendant PMA is a "public lessee or licensee" under the LWO because it i)
11 holds leases with the City of Los Angeles for public property that advances the City's
12 proprietary interest, ii) performs at least one service on that property that could be
13 performed by City employees, and/or iii) leases public property that is in part visited by
14 the public. L.A. Admin Code, Art. 11, § 10.37.1(k).

15 37. Defendant is also an employer under the LWO. *See* L.A. Admin Code, Art. 11,
16 § 10.37.1(i) ("employer" includes any person who is a "public lessee or licensee").
17

18 **International Longshore and Warehouse Union (ILWU) and International Longshore and
19 Warehouse Union Local 13 (Local 13)**

20 38. Defendant International Longshore and Warehouse Union ("Defendant
21 ILWU") is a labor union and the bargaining representative for longshore workers in the
22 ports operated by Defendant PMA and its members, including the LA/LB Port. Some of
23 Defendant ILWU's members are citizens of the state of California. Because some of
24 Defendant ILWU's members are California citizens, ILWU is a citizen of the state of
25 California.

26 39. Defendant International Longshore and Warehouse Union Local 13
27 ("Defendant Local 13") is one of Defendant ILWU's local unions and is the representative
28 for longshore workers at the LA/LB Port. At least some of Defendant Local 13's members
are citizens of the state of California. As such, it is also a California citizen.

1 40. Defendants ILWU and Local 13 (collectively, "Union Defendants") are labor
2 organizations within the meaning of FEHA, Cal. Gov't Code § 12926(h).

3 41. On information and belief, Union Defendants are: (1) Plaintiffs' employers
4 within the meaning of the FEHA, Cal. Gov't Code § 12926(d), that acts as an integrated
5 enterprise with Defendant PMA and LA/LB Port Operating Entities; or (2) an agent of
6 Plaintiffs' employers, Defendant PMA and/or the LA/LB Port Operating Entities, within
7 the meaning of the FEHA, Cal. Gov't Code § 12926(d). Alternatively, if not found to be
8 either an employer within the meaning of the FEHA or an employer-agent for Defendant
9 PMA and/or the LA/LB Port Operating Entities within the meaning of the FEHA, Union
10 Defendants have aided and abetted PMA and the LA/LB Port Operating Entities. Under
11 the FEHA, it is an unlawful employment practice "to aid, abet, incite, compel, or coerce the
12 doing of any acts forbidden under [the FEHA], or to attempt to do so." Cal. Gov't Code §
13 12940(i). Aiding and abetting occurs when one knows that the other's conduct constitutes
14 a breach of duty and gives substantial assistance or encouragement to the other to so act.
15 The Union Defendants were aware of the LA/LB Port Operating Entities' duty to
16 accommodate pregnancy and pregnancy-related conditions for casual workers and
17 provided substantial assistance and encouragement in the LA/LB Port Operating Entities'
18 abdication of this duty. The Union Defendants provided substantial assistance and
19 encouragement to the LA/LB Port Operating Entities' failure to provide light duty
20 assignments, maintenance of a discriminatory leave policy for casual workers who are
21 pregnant or experiencing pregnancy-related conditions, and the lack of procedures to
22 accommodate breast pumping and lactation. The Union Defendants could have prevented
23 these violations of the law but have not. This, combined with the acts above, establishes
24 that the Union Defendants aided and abetted the LA/LB Port Operating Entities in
25 violations of the FEHA.

26 42. At all relevant times, Union Defendants operated an integrated enterprise
27 with Defendant PMA and LA/LB Port Operating Entities and are employers for purposes
28 of FEHA. California courts consider the following factors when determining whether an

1 integrated enterprise exists: (1) interrelation of operations; (2) common management;
2 (3) common control of labor relations; and (4) common ownership or financial control.

3 43. As alleged in greater detail below, Union Defendants operate a single,
4 integrated enterprise with Defendant PMA and LA/LB Port Operating Entities by, among
5 other things, jointly determining the composition of the Class A, Class B, and casual
6 workforces; jointly orienting and training workers; jointly funding, maintaining, and
7 operating the dispatch halls; jointly determining, appointing, and compensating the
8 personnel who oversee the dispatch halls, except for the individual dispatchers elected by
9 Local 13 members; and jointly developing and implementing reasonable accommodation
10 policies and protocols, including those concerning pregnancy and pregnancy-related
11 conditions (such as lactation), through the Joint Port Labor Relations Committee, the Joint
12 Coast Labor Relations Committee, and other joint labor relations entities.

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

21 45. To the extent Defendant PMA is determined to be an employer or employer-
22 agent of the LA/LB Port Operating Entities, the Union Defendants were aware of Defendant
23 PMA’s duty to accommodate pregnancy and pregnancy-related conditions for casual
24 workers and provided substantial assistance and encouragement in Defendant PMA’s
25 breach of this duty.

26 46. The Union Defendants provided substantial assistance and encouragement to
27 Defendant PMA’s failure to provide light duty assignments, maintenance of a
28 discriminatory leave policy for casual workers who are pregnant or experiencing

1 pregnancy-related conditions, and lack of procedures to accommodate breast pumping and
2 lactation. The Union Defendants could have prevented these violations of the law but have
3 not. This, combined with the acts above, establishes that the Union Defendants aided and
4 abetted Defendant PMA in violations of the FEHA.

5 47. The Union Defendants are also covered entities within the meaning of “labor
6 organization” under FEHA. *See* Cal. Gov’t Code § 12940(b) and § 12940(k). FEHA prohibits
7 labor organizations restricting their membership on the basis of sex, or discrimination on
8 the basis of sex against any member, employer, or any person employed by an employer.
9 Cal. Gov’t Code § 12940(b). FEHA also requires labor organizations to take all reasonable
10 steps necessary to prevent discrimination and harassment from occurring. Cal. Gov’t Code
11 § 12940(k).

12 48. As set forth below, the Union Defendants, with PMA, jointly developed and
13 administered policies and procedures concerning pregnancy and pregnancy-related
14 accommodation requests. These policies and procedures discriminated against pregnant
15 and lactating casuals, delaying their elevation to Class B status and membership in the
16 Union.

17 49. Defendant Local 13 is a “public lessee or licensee” under the Living Wage
18 Ordinance because it is a core component of the JPLRC. Local 13: i) holds a sublease with
19 the City of Los Angeles for public property that advances the City’s proprietary interest, ii)
20 performs at least one service on that property that could be performed by City employees,
21 and/or iii) leases public property that is in part visited by the public. L.A. Admin Code,
22 Art. 11, §§ 10.37.1(k)(l)(m).

23 50. Defendant Local 13 is also an employer under the LWO. *See* L.A. Admin
24 Code, Art. 11, § 10.37.1(i) (“employer” includes any person who is a “public lessee or
25 licensee”).

26 **Doe Defendants**

27 51. The true names and capacities of defendants named as Does 1-100, inclusive,
28 whether individual, corporate, associate, or otherwise, are unknown to Plaintiffs, who

1 therefore sue such defendants by such fictitious names. Plaintiffs will amend this Second
2 Amended Complaint to show true names and capacities when they have been determined.
3 The Does may be employers or agents of the employers of the Plaintiff Classes.

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

9 JURISDICTION AND VENUE

10 53. This Court has jurisdiction over this action under FEHA, the PDLL, the CFRA,
11 the LWO, and the UCL.

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

14 EXHAUSTION OF ADMINISTRATIVE REMEDIES

15 55. Plaintiffs have exhausted all administrative remedies.

16 56. Pursuant to Cal. Gov't Code § 12965(d)(2), Plaintiffs' time to commence a civil
17 action under the FEHA expires "when the federal right-to-sue period to commence a civil
18 action expires, or one year from the date of the right-to-sue notice by the Department of Fair
19 Employment and Housing, whichever is later." On July 9, 2019, Plaintiffs Bragg, Plummer,
20 and Romero received their right-to-sue letters from the U.S. Equal Employment
21 Opportunity Commission ("EEOC"), and proceeded to file the original complaint in this
22 action on October 7, 2019. On August 24, 2022, Plaintiffs Kaiaunna Smith, Megan Russo-
23 Kahn and Clarissa Hernando Avila received their right to sue letters from the California
24 Department of Fair Employment and Housing ("DFEH"), and together with Plaintiffs
25 Bragg, Plummer, and Romero timely filed this Second Amended Complaint.

26 FACTUAL ALLEGATIONS

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

28 57. The LA/LB Port is a "sprawling hub for thousands of freight-moving trucks,

1 trains and ships” that “handle[s] roughly 40% of the U.S. imports.”¹³

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

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

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

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

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

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

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

28 ¹⁴ 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 **II. Defendants' Joint Control and Management of the LA/LB Port Workforce and**
2 **Operations**

3 64. The collective bargaining agreement between Defendants PMA and Union
4 Defendants, the Pacific Coast Longshore Contract Document (the "Contract"), sets forth the
5 Defendants' joint interest in, and right to joint control of, the port operations and the
6 employment of dockworkers at the West Coast ports.

7 65. The Contract dictates policies and procedures concerning the employment of
8 longshore workers on the West Coast, including those at the LA/LB Port.

9 66. In addition to serving as the bargaining agent for the LA/LB Port Operating
10 Entities in connection with the Contract, Defendant PMA jointly controls the port areas
11 where longshore workers are employed with Union Defendants and LA/LB Port Operating
12 Entities.

13 67. Defendant PMA has the authority to have "bargaining relationships" with,
14 grant recognition to, or assign work that will be performed in the port areas to "bona fide
15 labor unions." (Contract ¶ 1.5(b).)

16 68. A body comprised of representatives of Defendants PMA and ILWU, the Joint
17 Port Labor Relations Committee ("JPLRC"), jointly determines the composition of the Class
18 A, Class B, and casual workforces.

19 69. Defendant PMA and Union Defendants, through the JPLRC, jointly exercise
20 control over the composition of the three tiers of workers (*i.e.*, casual, Class B, and Class A)
21 at the LA/LB Ports, and have the authority and power to admit as many or as few new
22 individuals to each worker class as it deems fit.

23 70. Defendant PMA and Union Defendants, through the JPLRC, jointly fund,
24 maintain, operate, and oversee dispatch halls in accordance with the terms of the Contract.

25 71. Defendant PMA and Union Defendants, through the JPLRC, jointly
26 determine, appoint, and maintain payroll for the personnel for the halls, except for the
27 individual dispatchers, who, on information and belief, are elected by the members of
28 Defendant Local 13.

1 72. Defendant PMA and Union Defendants jointly fund the JPLRC and dispatch
2 hall operations through dues and assessments paid by LA/LB Port Operating Entities to
3 Defendant PMA, based on those entities' tonnage and man-hours, and through periodic
4 dues and fees paid by Union members to Union Defendants.

5 73. Defendant PMA and Union Defendants, through the JPLRC, also jointly
6 determine the policies, protocols, and methods for dispatching workers. The shipping
7 companies serving the LA/LB Port submit work requests to the dispatch halls, where
8 individual dispatchers assign the requests to the workers waiting at the halls for a job on
9 that day.

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

13 75. Defendant PMA and Union Defendants, through the JPLRC, jointly develop
14 and implement the policies and procedures concerning requests for accommodation,
15 including those concerning pregnancy and pregnancy-related conditions (such as lactation).

16 76. Defendant PMA and Union Defendants, through the JPLRC, jointly hear and
17 issue determinations concerning requests for accommodations by casual, Class A, and Class
18 B workers. Based on these determinations, the JPLRC creates and distributes a list of
19 workers approved for light-duty assignments to the dispatch hall on a monthly basis.

20 77. Defendant PMA and Union Defendants, through the JPLRC, have the sole
21 authority to hire, register, discipline, transfer, suspend, deregister, or otherwise terminate
22 dockworkers.

23 78. The JPLRC is funded by assessments and dues to Defendant PMA from
24 LA/LB Port Operating Entities, based on their tonnage and man hours, and membership
25 dues to Union Defendants by their members.

26 79. Defendant PMA and Union Defendants exercise joint control over the
27 workforce operations of the LA/LB Port through the JPLRC and otherwise.

28 80. Defendant PMA and Union Defendants jointly participate in determining the

1 schedules, assignments, and amount of compensation for the Plaintiff Classes, and in
2 managing the docks by, among other things, recruiting, interviewing, and screening
3 prospective employees; onboarding and conducting orientation for new dockworkers;
4 developing and conducting regular and ongoing trainings for dockworkers; issuing work
5 assignments, reassignments, and transfers of dockworkers to member employers;
6 participating in the negotiations and enforcement of future and existing labor contracts;
7 addressing payroll issues, including corrections; and updating payroll and personnel
8 records; and addressing and resolving Operating Entity complaints against longshore
9 workers.

10 81. Defendant PMA performs human resources functions for workers at the
11 docks.

12 82. Additionally, Defendant PMA assists in developing safety policies and is
13 responsible for creating and conducting trainings to assure safety at the docks.

14 83. Under the Contract, Defendant PMA also is the disbursing agent responsible
15 for issuing dockworkers their paychecks and, at year's end, their W-2 forms for tax
16 purposes.

17 84. Defendant PMA's business and affairs are overseen by an eleven-member
18 Board of Directors, which is comprised of representatives from its LA/LB Port Operating
19 Entities.

20 85. In addition, Defendant PMA's business and affairs are managed in part by a
21 Coast Steering Committee, which is comprised of representatives from its LA/LB Port
22 Operating Entities who are appointed by Defendant PMA's Board of Directors. *Id.* at 10-11.
23 The Coast Steering Committee considers and makes determinations regarding, among other
24 things, the size of the workforce, additions to the workforce, and policies and practices
25 affecting the workforce, including policies and practices concerning requests for
26 accommodation.

27 86. Defendant PMA's Coast Steering Committee also oversees four regional Area
28 Sub-Steering Committees, which are comprised of representatives from LA/LB Port

1 Operating Entities. Area Sub-Steering Committees consider and make determinations
2 regarding, among other things, port operations and labor relations for each region.

3 **III. The Casual Worker**

4 87. The nearly 4,000 casual longshore workers at the LA/LB Port - of whom
5 roughly 40 percent are women - occupy the very bottom rung of the docks' hierarchy. At
6 the top are unionized longshore workers known as Class A workers, followed by registered
7 workers, deemed Class B, at the next level. Women make up approximately 20 percent of
8 Class A and Class B workers.

9 88. Class A longshore workers are members of the ILWU and at the LA/LB Port
10 are represented by Local 13. Class A workers are guaranteed a minimum income and are
11 eligible to obtain additional certifications entitling them to greater income and promotion
12 into supervisory roles.

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

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

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

27 92. At the start of each shift, Class A and Class B workers receive their
28 assignments from various dispatchers, according to their skill sets. Casual workers get the

1 jobs that remain available after the Class A and Class B workers have received their
2 assignments. The leftover jobs are distributed to casual workers, based on an alpha-numeric
3 code the casual worker was assigned by PMA and ILWU at the start of their career.

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

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

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

15 96. To remain in good standing, a casual worker must report for work at least
16 once in every 6-month period (the "availability for work requirement").

17 97. Requests to be excused from the availability for work requirement are
18 reviewed by the JPLRC.

19 **IV. Defendants' Policies Regarding Pregnancy, Childbirth, and Related Medical**
20 **Conditions**

21 98. Pregnancy is a fact of life for employers and employees alike. Close to 85
22 percent of women in the United States will have at least one pregnancy during their working
23 lives.¹⁵ A pregnancy typically lasts 40 weeks.¹⁶ After childbirth, six weeks for a vaginal birth
24

25 ¹⁵ U.S. Census Bureau, *Fertility of Women in the United States: 2016*, Table 6, "Completed Fertility for Women
26 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.

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

1 and eight weeks for a Cesarean section are recommended for recuperation.¹⁷ Complications
2 during pregnancy, childbirth, or following delivery can necessitate restrictions, including
3 bedrest and longer recovery periods.

4 99. The American Academy of Pediatrics recommends exclusive breastfeeding for
5 six months and continuation of breastfeeding supplemented by complementary foods for
6 at least first year of a baby's life.¹⁸ Workers who are breastfeeding and are away from their
7 babies need to express milk from their breasts (typically by using a breast pump) on roughly
8 the same schedule as their baby's feeding schedule, typically every two to three hours for
9 babies under six months old.¹⁹

10 100. Defendants do not offer any work accommodations, such as "light duty" job
11 assignments, for pregnant casual workers who may not be able to safely perform all aspects
12 of longshore work. They do not offer any accommodations, even though such
13 accommodations could be reasonably provided.

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

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

20 103. The pregnant casual worker who cannot safely accept the job assigned on a
21 given shift has only one option: go home. The worker cannot seek work again until their
22

23 ¹⁷ State of California Employment Development Dep't, "Paid Family Leave – Mothers," available at
https://www.edd.ca.gov/Disability/PFL_Mothers.htm, last visited March 4, 2020.

24 ¹⁸ 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 ¹⁹ 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 alpha-numeric code comes up again in the casual rotation.

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

5 105. Defendants provide casual workers no notice about their statutory right to
6 accommodation during pregnancy, nor do they engage in a good faith, interactive process
7 for identifying a suitable job assignment.

8 106. Pregnant casual workers know through word of mouth and their own
9 observations of other pregnant casual workers’ experiences that pregnancy
10 accommodations are not available for casual workers, and that it would be futile to request
11 them.

12 107. To the extent some Plaintiffs nevertheless asked Defendants about their
13 options during pregnancy, the responses confirmed this perception of futility.

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

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

20 110. Defendants do not award seniority credit for absences caused by Defendants’
21 failure to accommodate pregnancy and lactation, nor for absences necessitated by more
22 serious pregnancy-related conditions and by recovery from childbirth.

23 111. Under the Contract, a casual worker who stays home due to a temporary
24 physical limitation, including pregnancy, childbirth or pregnancy-related conditions,
25 receives no work hours credit.

26 112. In contrast, Defendants do award such credit to a casual worker who is absent
27 due to military service (as required by the Uniformed Services Employment and
28 Reemployment Rights Act, or USERRA). The policy provides for seniority credit to be

1 awarded for up to a total cumulative leave of five years.

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

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

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

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

17 117. Casual workers who fall short of the work hours cut-off for registration due
18 to absences related to pregnancy, childbirth or related medical conditions are not eligible
19 for such consideration.

20 118. These policies and practices deny seniority accrual to pregnant casual workers
21 for pregnancy disability leave and family leave-related absences while granting seniority
22 accrual to non-pregnant casual workers.

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

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

1 121. Defendants' policies and practices of refusing to credit work hours to casual
2 workers absent due to temporary physical impairments have a disparate impact based on
3 pregnancy.

4 122. Defendants' policies and practices of crediting work hours only to those casual
5 workers who are absent due to military leave have a disparate impact based on sex,
6 including pregnancy.

7 **V. Defendants' Policies Regarding Paid Time Off for Sick Leave**

8 123. Defendants denied casuals paid time off for pregnancy-related and other
9 medical conditions.

10 *The Los Angeles Living Wage Ordinance*

11 124. The LWO ensures that lessees or licensees of the City of Los Angeles pay their
12 employees a wage that allows them to afford life in the city.

13 125. In enacting the LWO, the City Council explained in its legislative findings:

14 The City holds a proprietary interest in the work performed by many employees of
15 City lessees and licensees and by their service contractors and subcontractors. In a
16 very real sense, the success or failure of City operations may turn on the success or
17 failure of these enterprises, for the City has a genuine stake in how the public
18 perceives the services rendered for them by such businesses. Inadequate
19 compensation of these employees adversely impacts the performance by the City's
20 lessee or licensee and thereby hinders the opportunity for success of City
21 operations. . . . This article is meant to cover all such employees not expressly
22 exempted.

23 L.A. Admin Code, Art. 11, § 10.37.

24 126. In addition to requiring payment of a minimum hourly rate, the LWO
25 requires that all covered employers must allow full-time employees who work 40-hours
26 per week to accrue 96 compensated hours per year for sick leave, vacation, or personal
27 necessity, plus 80 additional hours of uncompensated time off for family or personal
28 illness. For employees that work fewer than 40 hours per week, employers must provide
employees with compensated time off in increments proportional to that accrued full-time
employees. L.A. Admin Code, Art. 11, § 10.37.2(b)(1), (2). An employee must be eligible

1 to use accrued paid time off after the first 90 days of employment or pursuant to company
2 policy, whichever is sooner. *Id.* at § 10.37.2(b)(3)(i).

3 127. LWO obligations apply to holders of all public leases, licenses, subleases or
4 sublicenses of City property, where employees (1) perform work on premises “at least a
5 portion of which are visited by members of the public,” such as parking lots or (2)
6 perform any services that could feasibly be performed by City employees. L.A. Admin
7 Code, Art. 11, § 10.37.1(k). The LWO also cover other entities specifically found to further
8 the proprietary interests of the City by the Bureau of Contract Administration. *Id.*
9

10 128. The LWO also applies to an employer’s contractor or subcontractors. L.A.
11 Admin Code, Art. 11, § 10.37.8.

12 129. The Ordinance mandates a “liberal interpretation” and creates a “rebuttable
13 presumption” of coverage “so as to further the objectives of this article.” L.A. Admin
14 Code, Art. 11, § 10.37.13.
15

16 *Defendants’ public leases serve the City’s proprietary interests*

17 130. Defendants hold either a lease or sublease with the City of Los Angeles for
18 public property that strongly advances the City’s proprietary interest. They are covered
19 employers under the LWO because they perform at least one service on that property that
20 could be performed by City employees, and/or lease public property that is in part visited
21 by the public.
22

23 131. Defendants regularly conduct business on premises leased or licensed by the
24 City of Los Angeles. Defendants’ contracts with the City, which give them access to prime
25 locations at the ports, allow them to perform the critical functions of recruiting, training,
26 and dispatching labor for the LA/LB Port Operating Entities, the City’s other tenants at
27 the ports. Defendants’ services, in turn, serve the City’s proprietary interests by allowing
28

1 the ports to continue to handle an unparalleled volume of cargo compared to other ports
2 across the country.

3 132. The dispatch process, in particular, requires that Defendants have adequate
4 space at the ports to accommodate all the dockworkers – both Union members and casual
5 workers – that need to be assigned daily to tasks at the LA/LB Port Operating Entities.
6 Defendants first offer assignments to Union members at a union dispatch hall and then
7 offer the remaining assignments to casuals at a casual dispatch hall. Defendants’ contracts
8 with the City enable them to increase the volume of labor that rotates through both halls.
9

10 133. In 2011, PMA entered into a lease with the City for a 9-acre property in
11 Wilmington. The City agreed to lease the property to PMA for \$1 per year, subject to
12 future adjustments after a five-year period, provided that PMA 1) construct and maintain
13 a new dispatch hall (the “Wilmington hall”), 2) build a public bike path route on the
14 property, and 3) allow the City to acquire the property of the former casual dispatch hall
15 or use its former union dispatch facility for port-related meetings and events.
16

17 134. Construction of this new Wilmington hall allowed Defendants to create more
18 space for dispatch of both union and casual workers.
19

20 135. In recommending that the City Council approve the agreement, the Real
21 Estate Division of the Port of Los Angeles provided the following justification:

22 Due to its location away from major highways, space limitations, and on-site
23 parking restraints, the [JPLRC’S prior dispatch] facility is inefficient. With
24 anticipated cargo and labor growth, the [prior dispatch facility] will no longer meet
25 the PMA and ILWU's needs. These constraints must be resolved in order to ensure
26 the efficient dispatching of labor going forward to support future cargo growth and
27 customer needs at terminals and facilities at the Port of Los Angeles. . . . The new
28 hall would be operated by the JPLRC under the Sublease. The location of the
Premises is ideal, as it is centralized and in proximity to port terminals, adjacent to
major port access routes, located in an industrial area, and has adequate on-site
parking.

1 136. In 2014, PMA and the City amended the agreement to allow PMA to delay
2 creation of the bike path and to instead use the area for additional parking. In its report
3 recommending the City Council to adopt the amendment, the Officer of the City
4 Administrator confirmed that “the Port states that the services provided by the PMA and
5 ILWU, which comprise the JPLRC, are essential to ongoing port operations. There is
6 growing demand for longshore labor workforce and increase of workers.”

8 137. Defendants’ other contracts with the City include leases for nearby parking
9 lots. Defendants also regularly use public facilities and property to conduct dockworker
10 training.

11 138. These agreements include an express provision requiring LWO compliance,
12 which state in relevant part: “Charter Section 378 requires compliance with City's Living
13 Wage requirements, set forth at Section 10.37 et seq. of the Los Angeles Administrative
14 Code. Tenant shall comply with these policies wherever applicable. Violation of this
15 provision, where applicable, shall entitle City to terminate this Permit and otherwise
16 pursue legal remedies that may be available.”

17 139. Coverage of Defendants’ public leases under the LWO would thus advance
18 the legislative purpose of the Ordinance.

21 *Defendants’ employees perform work that can feasibly be performed by City employees*

22 140. The LWO applies to Defendants’ employees because they perform work that
23 could – and indeed would otherwise have to – be performed by City employees.

24 141. The Harbor Commission is responsible for construction, maintenance, and
25 operations of all facilities and infrastructure at the Port of Los Angeles and Long Beach.
26 Without the agreement charging PMA with responsibility for establishing and operating a
27 new dispatch hall in the Wilmington property, therefore, City employees could have
28

1 feasibly been responsible for maintenance of the premises. City employees could also have
2 been responsible for creation of a public bike path on the property and for beautification of
3 the surrounding areas.

4 142. In certain instances, the City and PMA also shared responsibility for
5 maintenance of the Wilmington dispatch hall property. In an amendment to the lease
6 agreement in 2012, both the City and PMA committed to investigating the extent of
7 underground pollution on the premises and remediating the damage. PMA agreed to
8 investigate and remediate soil contamination, while the City agreed to do the same for
9 groundwater contamination. PMA also agreed to contribute \$500,000 toward the City's
10 efforts to mitigate the damage from groundwater contamination. PMA and City
11 employees thus had similar responsibilities for addressing the effects of pollution on the
12 premises.
13
14

15 *The public visits at least a portion of the premises that Defendants lease from the City*

16 143. As an additional basis for LWO coverage, upon information and belief, at
17 least part of the properties that are leased to Defendants appears to be accessible to and
18 visited by the public.
19

20 144. At the Wilmington dispatch hall, the parking area appears to allow vehicles
21 from the public to enter. Upon information and belief, from time to time, food vendors are
22 permitted to conduct business on the premises.
23

24 145. The Wilmington dispatch hall also features a statue of the labor leader,
25 Harry Bridges, outside the entrance. Upon information and belief, the statue was created
26 by the noted Los Angeles-based artist, Eugene Daubs, and unveiled in a public ceremony
27 in summer 2019.
28

1 146. Several permits that allow Defendants to use public premises for parking
2 and dockwork trainings explicitly state that Defendants' use shall be non-exclusive.

3 *Defendants violated the Living Wage Ordinance*

4 147. Despite being required to provide employees with compensated sick leave
5 under the LWO, Defendants failed to meet these obligations. Defendants did not offer
6 casuals any paid time off related to qualifying pregnancy-related or other medical
7 conditions.
8

9 **VI. Defendants' Policies and Practices Harmed Plaintiffs**

10 148. Defendants' policies and practices have delayed Plaintiffs' and members of
11 the Plaintiff Classes' advancement through the Work Experience Group wage tiers, their
12 advancement to Class B registration, and their enjoyment of the full benefits of registered
13 status, if and when they ever reach it.

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

17 150. On information and belief, since April 2016, at least four additional Class B
18 registrations have occurred.

19 **Endanicha Bragg**

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

22 152. In or around June 2008, when Bragg was roughly seven months pregnant, she
23 stopped reporting for work after asking a PMA representative about policies for pregnant
24 casual workers and being told her that her only option was to go on leave and apply for
25 State Disability Insurance.
26

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

 154. Bragg had her baby in August 2008 and returned to work shortly thereafter,

1 in or around September 2008.

2 155. In 2013, Bragg became pregnant again. In September 2013, when she was
3 approximately five months pregnant, Bragg's doctor diagnosed her with a high-risk
4 pregnancy.

5 156. As directed by her doctor, Bragg needed to stop performing strenuous
6 physical labor. Knowing that Defendants do not provide modified duty work for pregnant
7 casual workers, Bragg had no option but to stop reporting for work.

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

10 158. Bragg had her baby in February 2014 and returned to work one month later,
11 in March 2014.

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

18 160. Bragg gave birth in November 2017 and returned to work in early January
19 2018.

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

24 162. Bragg never received any compensated time off from Defendants for personal
25 or medical-related reasons.

26 163. At all relevant time periods, Bragg maintained her eligibility to work.

27 164. Based on the hours accrued by her casual, non-pregnancy-affected peers
28 during the same time periods of her pregnancies, Bragg estimates that she lost at least 600

1 work hours and associated wages due to Defendants' failure to provide reasonable
2 accommodations for her pregnancy, childbirth or related medical conditions and their
3 denial of seniority accrual during her pregnancy disability leave and family leave-related
4 absences.

5 165. As of January 8, 2020, Bragg had accumulated roughly 6,714 work
6 hours.

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

14 167. On information and belief, the seniority Bragg lost due to Defendants' failure
15 to accommodate her pregnancy, childbirth or related medical conditions and their denial of
16 seniority accrual during her pregnancy disability leave and family leave-related absences
17 also delayed her from being registered as a Class B worker until April 2021.

18 168. The seniority Bragg lost due to Defendants' failure to accommodate her
19 pregnancy, childbirth or related medical conditions and their denial of seniority accrual
20 during her pregnancy disability leave and family leave-related absences delayed her Class
21 B registration and has caused her to lose the wages and benefits attendant to Class B
22 membership.

23 **Tracy Plummer**

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

26 170. In December 2014, Plummer learned she was pregnant. Knowing that
27 Defendants do not provide modified duty work for pregnant casual workers, Plummer
28 stopped regularly reporting for work and instead worked only the minimum number of

1 hours required to maintain good standing as a casual worker until late summer 2015.

2 171. At the time Plummer 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.

4 172. Plummer had her baby in late summer 2015 and returned to work in
5 November 2015. Upon returning to work, Plummer attempted to pump breast milk in her
6 car, but found her breaks too unpredictable, and the location of her job assignments too far
7 from the parking lot. Accordingly, Plummer stopped working regular hours until late
8 summer 2016 in order to continue breastfeeding at home.

9 173. Plummer was able to work, and if Defendants provided lactation-related
10 accommodations, she would have continued to work.

11 174. In or about June 2019, Plummer learned that she was pregnant again.

12 175. Based on her understanding that Defendants did not provide
13 accommodations for casual workers based on pregnancy or pregnancy-related medical
14 conditions, Plummer stopped working in late July 2019.

15 176. Due to pregnancy complications, Plummer was briefly hospitalized in early
16 October 2019 and again in late November 2019.

17 177. Plummer gave birth prematurely on November 28, 2019. Her daughter died
18 on December 6, 2019.

19 178. At all relevant time periods, Plummer maintained her eligibility to work.

20 179. Plummer never received any compensated time off from Defendants for
21 personal or medical-related reasons.

22 180. Plummer returned to work at the docks after her last pregnancy in July 2020.
23 She was registered as a Class B worker in the early 2022.

24 181. Based on the hours accrued by her casual, non-pregnancy-affected peers
25 during the same time periods of her pregnancies, Plummer estimates that she lost more than
26 1,700 work hours and associated wages due to Defendants' failure to accommodate her
27 pregnancy, childbirth or related medical conditions and their denial of seniority accrual
28 during her pregnancy disability leave and family leave-related absences.

1 182. As of July 18, 2019, Plummer had accumulated roughly 3,325 hours.

2 183. The seniority Plummer 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 causing
6 current and continuing harm to her wages. Plummer did not reach the second Work
7 Experience tier of 1,001 hours until January 2014; and the third Work Experience tier of 2,001
8 hours until Spring 2017.

9 184. On information and belief, the seniority Plummer lost due to Defendants'
10 failure to accommodate her pregnancy, childbirth or related medical conditions their denial
11 of seniority accrual during her pregnancy disability leave and family leave-related absences
12 delayed her advancement to Class B registration and has caused her to lose the wages and
13 benefits attendant to Class B membership.

14 **Marisol Romero**

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

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

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

28 188. Romero had her baby in early 2016, and she was cleared by her doctor to

1 return to work in or around April 2016.

2 189. Romero wanted to breastfeed her baby. If she had been able to receive a
3 lactation-related accommodation, she was willing and able to work at the LA/LB docks as
4 of spring 2016. Romero went back to work at Harbor UCLA Medical Center around May
5 2016 because she was able to pump there, but because there was no private, sanitary place
6 to pump breast milk at the LA/LB docks, Romero could not pick up shifts there until
7 September 2016.

8 190. At all relevant time periods, Romero maintained her eligibility to work.

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

12 192. Romero never received any compensated time off from Defendants for
13 personal or medical-related reasons.

14 193. Based on the hours accrued by her casual, non-pregnancy-affected peers
15 during the same time periods of her pregnancies, Romero lost work hours and associated
16 wages due to Defendants' failure to accommodate her pregnancy, childbirth or related
17 medical conditions and their denial of seniority accrual during her pregnancy disability
18 leave and family leave-related absences.

19 194. As of May 2022, Romero had accumulated 81 hours.

20 195. The seniority Romero lost due to Defendants' failure to accommodate her
21 pregnancy, childbirth or related medical conditions and their denial of seniority accrual
22 during her pregnancy disability leave and family leave has delayed her advancement to
23 higher-paying tiers among the Work Experience Groups, a delay causing current and
24 continuing harm to her wages. Romero has not yet reached the second Work Experience tier
25 of 1,001 hours.

26 196. On information and belief, the seniority Romero lost due to Defendants'
27 failure to accommodate her pregnancy, childbirth or related medical conditions and their
28 denial of seniority accrual during her pregnancy disability leave and family leave has

1 further placed her at a current and continuing disadvantage with respect to future rounds
2 of Class B registrations.

3 **Kaiaunna Smith**

4 197. Smith began training at the port of Los Angeles/Long Beach in February 2018,
5 while breastfeeding her third child. Smith does not recall receiving any paperwork or verbal
6 information regarding lactation accommodations, such as rest breaks to express milk,
7 sanitary and private locations to pump, paid family leave, or light duty work.

8 198. Smith's first job began in or around November 2018. Smith immediately asked
9 her superiors, including Local 13 union foremen, senior coworkers, and security guards,
10 about where she could pump. Smith was told to pump in her car or a bathroom. She was
11 not provided with a refrigerator for her breast milk. She asked bosses at several job sites for
12 places to pump, and none of them provided a room to pump. To the best of her recollection,
13 this included Fenix Marine Services, Yang Ming Corporation Services Company, Hanjin,
14 Maersk and China Shipping Container Line.

15 199. Smith was only allowed time to pump during her lunch break, rather than
16 every two hours, and, as a result, Smith experienced increased pain with pumping and
17 visibly leaked through her clothes. Smith was concerned that her milk supply would drop
18 or cease because she was not pumping frequently enough but had to remain working
19 because her family relied on the income. Smith missed some days at work so that she could
20 continue to breastfeed her baby. Smith was ultimately forced to stop breastfeeding earlier
21 than planned due to Respondents' refusal to provide any lactation accommodations.

22 200. In early 2019, Smith became pregnant again and continued working. She
23 asked approximately three bosses at Fenix Marine Services for light duty work, but was not
24 given any light duty work. They told her the only option was to not work and not get paid.

25 201. In the summer of 2019, Smith tried to perform her physically demanding job
26 while six months pregnant and suffered pelvic pain for a week afterwards. Smith's medical
27 provider immediately placed Smith on medical leave as a result.

28 202. On October 6, 2019, Smith gave birth to her fourth child. Smith returned to

1 work approximately a year later, in October 2020. She would have returned earlier but
2 Respondents offered no place for her to pump and she did not want to risk losing her milk
3 supply. When she returned, she asked co-workers where she might be able to pump and no
4 one knew of any lactation room. She tried to pump in her car during her lunch break but
5 there was no privacy. She ended up driving back and forth to her home during lunch to
6 pump.

7 203. Around December of 2020, Smith learned she was pregnant with her fifth
8 child. Around January of 2021, she informed a boss at Fenix Marine Services that she was
9 pregnant. Again, she could not get light duty assignments. Around February or March of
10 2021, she stopped working because she could not get light work and she did not feel it was
11 safe for her and her baby to keep working.

12 204. In September 2021, Smith gave birth to her fifth child. She returned to work
13 around April of 2022. She asked a supervisor at Hanjin where she could pump, and they
14 told her to use the bathroom. For the next two months, she asked for places to pump at
15 Fenix Marine, Yang Ming, and Hanjin and all the supervisors she asked told her there was
16 no place to pump. She had to pump in her car during breaks.

17 205. Smith did not receive "hours credit" for the time she lost due to pregnancy or
18 nursing.

19 206. At all relevant time periods, Smith maintained her eligibility to work.

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

23 208. Smith never received any compensated time off from Defendants for personal
24 or medical-related reasons.

25 209. Based on the hours accrued by her casual, non-pregnancy-affected peers
26 during the same time periods of her pregnancies, Smith lost work hours and associated
27 wages due to Defendants' failure to accommodate her pregnancy, childbirth or related
28 medical conditions and their denial of seniority accrual during her pregnancy disability

1 leave and family leave-related absences.

2 210. As of May 2022, Smith had accumulated 831 hours.

3 211. The seniority Smith lost due to Defendants' failure to accommodate her
4 pregnancy, childbirth or related medical conditions and their denial of seniority accrual
5 during her pregnancy disability leave and family leave has delayed her advancement to
6 higher-paying tiers among the Work Experience Groups, a delay causing current and
7 continuing harm to her wages. Smith has not yet reached the second Work Experience tier
8 of 1,001 hours.

9 212. On information and belief, the seniority Smith 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 has further placed
12 her at a current and continuing disadvantage with respect to future rounds of Class B
13 registrations.

14 **Megan Russo-Kahn**

15 213. Megan Russo-Kahn began her orientation to work at the LA/LB Port in 2018.
16 One of the other casuals in her orientation was pregnant and asked about getting an
17 accommodation for one of the tests they needed to take which was physically demanding.
18 The Vice President of Local 13, Gary Herrera, who was presenting, told her she could get
19 the test deferred but there were no other accommodations. He told the group that if they
20 got pregnant, they would lose hours and said, "Many women don't last here because they
21 want to have families." During her training, one of the other male longshore workers told
22 Russo-Kahn that she was "strong for a girl."

23 214. Russo-Kahn started her first job in 2019. She learned she was pregnant in
24 March of 2021. She worked until mid-October 2021, when she was about seven and a half
25 months pregnant. She had to turn down several jobs and miss work because she thought
26 the jobs were unsafe for her pregnancy. She stopped working sooner than she wanted to
27 because work was too risky, and she could not guarantee that she would get a job that
28 would be safe. She would have been able to do jobs like clerk or dock signal even late in

1 her pregnancy. She did not ask about getting a light duty job because she was aware that
2 casuals were not accommodated, and that their only option was to decline a job and miss
3 work.

4 215. Russo-Kahn's son was born on December 2, 2021. She breastfed him and,
5 with the exception of one shift in March 2022, did not go back to work until May 2022.
6 Russo-Kahn would have gone back sooner if she had been assured that her lactation needs
7 would have been met. But she knew she could not request jobs that worked with her
8 pumping schedule.

9 216. Russo-Kahn experienced the lack of support for lactating workers as part of
10 an overall workplace that was hostile to women. In July of 2022, one of her supervisors
11 told her, "You have to be able to keep up with the men because let's face it, you're not
12 physically able to do what a man can do; you're not smart enough to do what a man can
13 do."

14 217. Russo-Kahn did not receive "hours credit" for the time she lost due to
15 pregnancy or nursing.

16 218. At all relevant time periods, Russo-Kahn maintained her eligibility to work.

17 219. Russo-Kahn is still capable of having children and may become pregnant
18 again. In such a situation, she would continue to work with pregnancy and lactation
19 accommodations so long as able.

20 220. Russo-Kahn never received any compensated time off from Defendants for
21 personal or medical-related reasons.

22 221. Based on the hours accrued by her casual, non-pregnancy-affected peers
23 during the same time periods of her pregnancies, Russo-Kahn lost work hours and
24 associated wages due to Defendants' failure to accommodate her pregnancy, childbirth or
25 related medical conditions and their denial of seniority accrual during her pregnancy
26 disability leave and family leave-related absences.

27 222. As of May 2022, Russo-Kahn had accumulated 1,741 hours.

28 223. The seniority Russo-Kahn lost due to Defendants' failure to accommodate her

1 pregnancy, childbirth or related medical conditions and their denial of seniority accrual during
2 her pregnancy disability leave and family leave has delayed her advancement to higher-paying
3 tiers among the Work Experience Groups, a delay causing current and continuing harm to her wages.
4 Russo-Kahn has not yet reached the third Work Experience tier of 2,001 hours.

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

9 **Clarissa Hernando Avila**

10 225. Clarissa Hernando Avila began her orientation to work at the LA/LB Port in
11 2019.

12 226. Avila, a mother of three children, began working at the Port of Los
13 Angeles/Long Beach in June of 2019.

14 227. During orientation, Avila was not provided any training on the ADA process
15 or the process for requesting pregnancy or lactation accommodations at the orientation or
16 at any point thereafter. Similarly, Avila was not provided any information about rights
17 related to pumping at work if an individual was lactating. Avila had no knowledge of how
18 to seek lactation or pregnancy accommodations or whether there was a process to follow to
19 be excused from the availability-for-work requirements placed on casuals. Avila did not
20 receive any paperwork or verbal information regarding rest breaks to express milk, sanitary
21 and private locations to pump, paid family leave, or light duty work. At Avila's orientation,
22 she was told that if she could not take a particular job that was offered, her only option was
23 to decline the job and miss work for that day. Avila's family members are dockworkers who
24 are members in the Union, and they informed Avila of their understanding that casuals do
25 not receive pregnancy or lactation accommodations.

26 228. Avila learned she was pregnant in or around November 2020. She worked
27 until mid-April 2021, when she was about five months pregnant. She had to turn down
28 several jobs and miss work because she was concerned that the jobs were unsafe for her

1 pregnancy, and she was experiencing symptoms including nausea-induced vomiting,
2 headaches, and back pain. She stopped working sooner than she wanted to because she did
3 not want to risk her pregnancy, and she could not guarantee that she would get a job that
4 would allow her to maintain a healthy pregnancy. She would have been able to take clerk
5 jobs or other light duty jobs even late in her pregnancy. She did not ask about getting a light
6 duty job because she was aware based on what she was told at orientation and from other
7 dockworkers that casuals were not accommodated, and that their only option was to decline
8 a job and miss work.

9 229. Avila gave birth to her child in August 2021. She breast-fed her child and
10 continues to do so. However, Avila returned to work about a month later, in September
11 2021. Respondents' policies require that casuals work at least once every six months to avoid
12 getting deregistered. Thus, concerned that she would lose her ability to work as a casual if
13 she did not work at least one shift in six months, Avila felt compelled to pick up a shift just
14 to ensure she could keep her casual dispatch privileges. At that time, Avila was still
15 breastfeeding but had no information on whom to contact to be excused from the work
16 availability requirement or to seek accommodations for lactation.

17 230. Avila did not receive "hours credit" for the time she lost due to pregnancy or
18 nursing.

19 231. At all relevant time periods, Avila maintained her eligibility to work.

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

23 233. Avila never received any compensated time off from Defendants for personal
24 or medical-related reasons.

25 234. Based on the hours accrued by her casual, non-pregnancy-affected peers
26 during the same time periods of her pregnancies, Avila lost work hours and associated
27 wages due to Defendants' failure to accommodate her pregnancy, childbirth or related
28 medical conditions and their denial of seniority accrual during her pregnancy disability

1 leave and family leave-related absences.

2 235. As of August 2022, Avila had accumulated 1,983 hours.

3 236. The seniority Avila lost due to Defendants' failure to accommodate her
4 pregnancy, childbirth or related medical conditions and their denial of seniority accrual
5 during her pregnancy disability leave and family leave has delayed her advancement to
6 higher-paying tiers among the Work Experience Groups, a delay causing current and
7 continuing harm to her wages.

8 237. On information and belief, the seniority Avila lost due to Defendants' failure
9 to accommodate her pregnancy, childbirth or related medical conditions and their denial of
10 seniority accrual during her pregnancy disability leave and family leave has further placed
11 her at a current and continuing disadvantage with respect to future rounds of Class B
12 registrations.

13 **CLASS ACTION ALLEGATIONS**

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

17 (1) Other Accommodations Class: All employees, who are citizens of the state of
18 California, who have been, are, or will be employed as casual workers (i.e., non-
19 union, non-registered longshore workers who work at the LA/LB port) who have
20 been, are, or will become pregnant and were, are being, or will be denied other
21 accommodations due to pregnancy or related medical conditions, including but not
22 limited to light duty, job reassignment/transfer, and avoidance of toxins and
23 hazards, from October 7, 2015 until the final judgment (hereinafter "the Other
24 Accommodations Class Period").

25 (2) Leave Class: All employees, who are citizens of the state of California, who have
26 been, are, or will be employed as casual workers (i.e., non-union, non-registered
27 longshore workers who work at the LA/LB port) who have been, are, or will become
28 pregnant and have taken, are taking, or will take time off from work due to

1 pregnancy, childbirth, baby-bonding, or related medical condition(s), from October
2 7, 2015 until the final judgment (hereinafter “the Leave Class Period”).

3 (3) Living Wage Ordinance Leave Class: : All employees, who are citizens of the state
4 of California, who have been, are, or will be employed as casual workers (i.e., non-
5 union, non-registered longshore workers who work at the LA/LB port) who have
6 accrued paid time off under the LWO and who took and will take time off from work
7 due to pregnancy, childbirth, baby-bonding, or related medical condition(s), from
8 October 7, 2015 until the final judgment (hereinafter “the LWO Class Period”).

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

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

22 240. There are common questions of law and fact as to the Plaintiff Classes which
23 predominate over questions affecting only individual members, including, without
24 limitation:

- 25 • Whether Defendant PMA is an employer, is an employer-agent of the LA/LB
26 Port Operating Entities, or aided and abetted LA/LB Port Operating Entities’
27 unlawful conduct;
- 28 • Whether Defendant PMA aided and abetted the Union Defendants’ unlawful

1 conduct;

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

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

1 described above.

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

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

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

1 care provider.”

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

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

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

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

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

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

26 253. Pursuant to its across-the-board policy or practice of refusing work duty
27 modifications or temporary transfers to casual workers (including Plaintiffs and the Plaintiff
28 Classes) affected by pregnancy, Defendants violated and continue to violate FEHA’s

1 requirement that employers must provide reasonable accommodations for pregnant
2 employees who are willing and able to perform the essential function of some jobs.

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

8 255. 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).

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

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

1 264. In addition, Cal. Code Regs. tit. 2, § 11035(s) states that a “reasonable
2 accommodation,” as used in the failure to accommodate pregnancy statute, “may include,
3 ... providing a reasonable amount of break time and use of a room or other location in close
4 proximity to the employee’s work area to express breast milk in private as set forth in the
5 Labor Code.”

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

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

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

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

22 269. 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).

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

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

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

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

23 274. Plaintiffs and members of the Lactation Class are also entitled to declaratory
24 relief declaring that Defendants' policies and practices that fail to reasonably accommodate
25 lactating casual workers are unlawful and to appropriate preliminary and permanent
26 injunctive relief to stop Defendants' unlawful conduct.
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THIRD CAUSE OF ACTION
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))
On Behalf of All Plaintiffs, in their individual and representative capacities,
and the Plaintiff Classes Against All Defendants

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

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

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277. Pursuant to its across-the-board policies and practices of refusing work duty modifications or temporary transfers to casual workers affected by pregnancy, Defendants violated and continue to violate the FEHA’s requirement that employers engage in a good faith interactive process to identify reasonable accommodations for pregnant employees.

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

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

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).

3 280. 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.

7 281. 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.

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

15 283. 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**

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

29 285. 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.”

2 286. 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).

6 287. 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.

10 288. 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).

23 289. 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.

27 290. 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.

3 291. 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.

9 292. 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.

14 293. 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**

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

23 295. 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."

26 296. 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."

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

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

5 299. 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).

11 300. 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).

18 301. 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.

22 302. 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).

7 303. Through the actions alleged above, the Union Defendants also discriminated
8 against potential members and/or employees employed by an employer under Cal. Gov't
9 Code § 12940(b). The Union, with PMA, jointly developed and administered policies and
10 procedures concerning pregnancy and pregnancy-related accommodation requests. These
11 policies and procedures discriminated against pregnant and lactating casuals, delaying their
12 elevation to Class B status and membership in the Union.

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

17 305. Defendants committed the unlawful actions herein despicably, maliciously,
18 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs and
19 members of the Other Accommodations Class, from an improper and evil motive
20 amounting to malice, and in conscious disregard of the rights of Plaintiffs and members of
21 the Other Accommodations Class. Plaintiffs and members of the Other Accommodations
22 Class are therefore entitled to recover punitive damages from Defendants in an amount to
23 be proven at trial.

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

26 307. Plaintiffs and members of the Other Accommodations Class are also entitled
27 to declaratory relief declaring that Defendants' policies and practices of disparate treatment
28

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

3
4 **SIXTH CAUSE OF ACTION**

5 **Disparate Impact Discrimination Based on Sex/Pregnancy**
6 **(Cal. Gov't. Code § 12940(a)-(b))**

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

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

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

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

26 311. Because women disproportionately become pregnant, and also may
27 experience temporary disabilities due to pregnancy, childbirth, or related medical
28 conditions, Defendants' policies and practices of limiting seniority credit to casual workers
absent due to military service has an unlawful disparate impact on the basis of sex, in
violation of Plaintiffs' and members of the Plaintiff Classes' rights pursuant to Cal. Gov't

1 Code § 12940(a) and Cal. Code Regs. tit. 2 § 11044(d)(1).

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

6 313. Defendants' policies and practices of failing to provide seniority credit to
7 casual workers absent due to temporary disabilities or pregnancy, childbirth or related
8 medical conditions are not, and cannot be, justified by business necessity.

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

12 315. 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).

25 316. Through the actions alleged above, the Union Defendants also discriminated
26 against potential members and/or employees employed by an employer under Cal. Gov't
27 Code § 12940(b). The Union, with PMA, jointly developed and administered policies and
28 procedures concerning pregnancy and pregnancy-related accommodation requests. These

1 policies and procedures discriminated against pregnant and lactating casuals, delaying their
2 elevation to Class B status and membership in the Union.

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

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

12 319. Plaintiffs and members of the Plaintiff Classes are also entitled to declaratory
13 relief declaring that Defendants' policies and practices resulting in discriminatory disparate
14 impacts on pregnant casual workers are unlawful, and to appropriate preliminary and
15 permanent injunctive relief to stop Defendants' unlawful conduct.

16
17 **SEVENTH CAUSE OF ACTION**

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

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

24 321. Among other things, Government Code § 12945 makes it unlawful for an
25 employer:

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

1 if the employee so requests, with the advice of the employee's health care
2 provider," *id.* at § 12945(a)(3)(A);

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

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

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

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

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

25 325. Moreover, Cal. Gov't Code § 12945.2 makes it unlawful for an employer "to
26 refuse to grant a request by any employee with more than 12 months of service with the
27 employer, and who has at least 1,250 hours of service with the employer during the previous
28 12-month period, to take up to a total of 12 workweeks in any 12-month period for family

1 care and medical leave.” *Id.* § 12945.2(a).

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

5 327. Finally, under Cal. Code Regs. tit. 2 § 11092(d), while an employee is on family
6 care and medical leave, the employee “is entitled to accrual of seniority . . . to the same
7 extent and under the same conditions as would apply to any other leave granted by the
8 employer for any reason other than CFRA leave,” and further, “[i]f the employer’s policy
9 allows seniority to accrue when employees are out on paid leave, such as paid sick or
10 vacation leave, then seniority will accrue during any part of a paid CFRA leave.” *Id.*
11 § 11092(d)(2).

12 328. Defendants interfered with Plaintiffs’ and members of the Leave Class’s
13 ability to assert their rights to pregnancy-related workplace accommodations by, among
14 other things, effectively making unpaid leave the sole option for pregnant or pregnancy-
15 affected casual workers in need of accommodation; failing to inform Plaintiffs and member
16 of the Leave Class about their rights to reasonable accommodations, the procedures for
17 requesting a reasonable accommodation, and a way to appeal a denial; failing to post and
18 provide the notice required by Cal. Code of Regs. § 11049; and failing to adequately train
19 employees with supervisory responsibilities regarding pregnant employees’ rights under
20 Cal. Gov’t Code § 12945(a)(3).

21 329. 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).

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

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

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

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

23 334. Plaintiffs and members of the Leave Class are also entitled to declaratory relief
24 declaring that Defendants' policies and practices of interfering with the rights of casual
25 dockworkers pursuant to the California Family Rights Act are unlawful, and to appropriate
26 preliminary and permanent injunctive relief to stop Defendants' unlawful conduct.
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EIGHTH CAUSE OF ACTION
Failure to Prevent Discrimination
(Cal. Gov't. Code § 12940(k))
On Behalf of All Plaintiffs, in their individual and representative capacities,
and the Plaintiff Classes Against All Defendants

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

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

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

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

339. The above unlawful actions were also committed by the LA/LB Port Operating Entities. If not deemed to be an employer-agent of the LA/LB Port Operating

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

12 340. Through the actions alleged above, the Union Defendants also violated their
13 obligations as labor organizations to prevent to discrimination from occurring. The Union,
14 with PMA, jointly developed and administered policies and procedures concerning
15 pregnancy and pregnancy-related accommodation requests. These policies and procedures
16 discriminated against pregnant and lactating casuals, delaying their elevation to Class B
17 status and membership in the Union.

18 341. As a direct and proximate result of Defendants' conduct, 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.

22 342. Defendants committed the unlawful actions herein despicably, maliciously,
23 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs and
24 members of the Plaintiff Classes, from an improper and evil motive amounting to malice,
25 and in conscious disregard of the rights of Plaintiffs and members of the Plaintiff Classes.
26 Plaintiffs and members of the Plaintiff Classes are therefore entitled to recover punitive
27 damages from Defendants in an amount to be proven at trial.

28 343. Plaintiffs and members of the Plaintiff Classes are entitled to reasonable

1 attorneys' fees and costs pursuant to Cal. Gov't Code § 12965(b).

2 344. Plaintiffs and members of the Plaintiff Classes are also entitled to declaratory
3 relief declaring that Defendants' policies and practices failing to prevent discrimination
4 against pregnant casual workers are unlawful and to appropriate preliminary and
5 permanent injunctive relief to stop Defendants' unlawful conduct.

6
7 **NINTH CAUSE OF ACTION**

8 **Failure to Provide Leave**

9 **(L.A. Admin Code, Art. 11 §§ 10.37, et seq.)**

10 **On Behalf of All Plaintiffs, in their individual and representative capacities,
11 and the Plaintiff Classes Against PMA and Local 13**

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

14 346. The Living Wage Ordinance requires that all public licensees or lessees
15 provide employees with 96 compensated hours per year for sick leave, vacation, or personal
16 necessity, plus 80 additional hours of uncompensated time off for family or personal illness.
17 L.A. Admin Code, Art. 11, § 10.37.2(b). For employees that work fewer than 40 hours per
18 week, employers must provide employees with compensated time off in increments
19 proportional to that accrued full-time employees. *Id.* at § 10.37.2(b)(2).

20 347. Defendant PMA is a public lessee subject to the LWO because it i) holds leases
21 with the City of Los Angeles for public property that advances the City's proprietary
22 interest, ii) performs at least one service on that property that could be performed by City
23 employees, and/or iii) leases public property that is in part visited by the public. *See* L.A.
24 Admin Code, Art. 11, § 10.37.1(k).

25 348. Defendant Local 13 is a public lessee subject to the LWO because i) holds a
26 sub-lease with the City of Los Angeles for public property that advances the City's
27 proprietary interest, ii) performs at least one service on that property that could be
28 performed by City employees, and/or iii) leases public property that is in part visited by
the public. *See* L.A. Admin Code, Art. 11, §§ 10.37.1(k); 10.37.8.

349. As described herein, Defendants PMA and Local 13 violated the LWO by

1 failing to provide casual workers with compensated hours per year for sick leave, vacation,
2 or personal necessity.

3 350. As a direct and proximate result of Defendants' conduct, Plaintiffs and
4 members of the Plaintiff Classes have suffered and continue to suffer injury, including but
5 not limited to lost wages and other compensation and benefits in amounts to be proven at
6 trial. *See* L.A. Admin Code, Art. 11 § 10.37.6 (a).

7 351. Plaintiffs are entitled to treble damages because Defendants' violations were
8 willful. *See* L.A. Admin Code, Art. 11 § 10.37.6 (a)(4).

9 352. Plaintiffs and members of the Plaintiff Classes are entitled to reasonable
10 attorneys' fees and costs pursuant to L.A. Admin Code, Art. 11 § 10.37.6 (b).

11 **TENTH CAUSE OF ACTION**

12 **Unfair Competition in Violation of Unfair Competition Law**

13 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

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

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

18 354. Unfair practices prohibited by the UCL include "any unlawful, unfair or
19 fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200.

20 355. Defendants committed unlawful business practices by violating the FEHA,
21 including, but not limited to: failing to engage in an interactive process with Plaintiffs and
22 members of the Plaintiff Classes; failing to reasonably accommodate Plaintiffs' pregnancies,
23 pregnancy-related disabilities, lactation needs, and other related medical conditions;
24 discriminating against Plaintiffs and members of the Plaintiff Classes by treating them less
25 favorably in comparison to casual workers who are not affected by pregnancy or pregnancy-
26 related disabilities; and adopting policies that have a disparate impact on Plaintiffs and
27 members of the Plaintiff Classes in comparison to other, non-pregnant workers similar in
28 their ability or inability to work.

356. Defendants' acts and omissions, as alleged herein, also constitute unfair
business practices prohibited by Business & Professions Code §§ 17200 *et seq.* Defendants'

1 policies and practices are immoral, unethical, oppressive, unscrupulous, and offensive to
2 the established public policies of ensuring pregnant people, breastfeeding people, and
3 people with pregnancy-related conditions or disabilities are accommodated in the
4 workplace. As a result of their unfair business practices, Defendants have reaped and
5 continue to reap unfair and illegal profits at the expense of Plaintiffs and members of the
6 Plaintiff Classes.

7 357. Business & Professions Code § 17203 provides that the Court may restore to
8 any person in interest any money or property that may have been acquired by means of
9 unfair competition and order restitutionary damages by operation of the practices alleged
10 herein. Plaintiffs and members of the Plaintiff Classes are therefore entitled to restitution of
11 wages acquired by Defendants as a result of their unlawful policies and practices.

12 358. Pursuant to Code of Civ. Proc. § 1021.5, Plaintiffs and members of the Plaintiff
13 Classes are entitled to payment of their attorneys' fees, costs, and expenses incurred in
14 bringing this action.

15 359. Furthermore, injunctive and declaratory relief is necessary and proper to
16 prevent Defendants from repeating these wrongful practices as alleged above.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs asks that this Court issue judgment against the Defendants
19 PMA, ILWU, and ILWU Local 13, and grant relief as follows:

- 20 A. That the Court determines Causes of Action 1-10 may be maintained as a class
21 action;
- 22 B. A declaratory judgment that Defendants' policies, as described herein, violate
23 the FEHA, the PDLL, the CFRA, the LWO, and the UCL;
- 24 C. A preliminary and permanent injunction:
- 25 1. Requiring Defendants to give notice of Plaintiffs' and members of the
26 Lactation Class's and the Other Accommodation Class's right to
27 reasonable accommodation and to engage in a good-faith interactive
28 process with Plaintiffs and member of the Lactation Class and the Other

1 Accommodations Class to identify and implement their requested
2 reasonable accommodations;

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

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

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

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

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

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

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

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

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

2
3 Dated: October 24, 2022

Respectfully submitted,

4
5 By: /s/ Gillian Thomas

6 GILLIAN THOMAS
7 (*pro hac vice*)
8 LINDA MORRIS
9 (*pro hac vice*)
MING-QI CHU
The American Civil Liberties Union
Foundation Women's Rights Project

10
11 /s/ Michael S. Morrison
MICHAEL S. MORRISON
12 JACQUELINE GIL
13 NATALIE KHOURY
Alexander Morrison + Fehr LLP

14 /s/ Minouche Kandel
15
16 MINOUCHE KANDEL
AMANDA GOAD
17 ACLU Foundation of Southern California

18 /s/ Brenda Feigen
19 BRENDA FEIGEN
Feigen Law Group

20 /s/ Laboni Hoq
21 LABONI HOQ
22 HOQ LAW APC

1 DEMAND FOR JURY TRIAL

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

3
4 Dated: October 24, 2022

Respectfully submitted,

5
6 By: /s/ Gillian Thomas

7 GILLIAN THOMAS
8 (*pro hac vice*)
9 LINDA MORRIS
10 (*pro hac vice*)
11 MING-QI CHU
12 The American Civil Liberties Union
13 Foundation Women's Rights Project

14 /s/ Michael S. Morrison
15 MICHAEL S. MORRISON
16 JACQUELINE GIL
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18 Alexander Morrison + Fehr LLP

19 /s/ Minouche Kandel
20 MINOUCHE KANDEL
21 AMANDA GOAD
22 ACLU Foundation of Southern California

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

26 *Attorneys for Plaintiffs*

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 MORRISON + FEHR LLP, 1900 Avenue of the Stars, Suite 900, Los Angeles, California
90067.

5 On October 24, 2022, following the ordinary business practices of ALEXANDER
6 MORRISON + FEHR LLP as set forth below, I served a true and correct copy of the
7 foregoing document described **CORRECTED SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF** addressed as follows:

8 **[SEE SERVICE LIST]**

- 9 BY MAIL. I am readily familiar with ALEXANDER MORRISON + FEHR LLP's
10 practice for collection and processing of correspondence for mailing with the
11 U.S. Postal Service. Under that practice, in the ordinary course of business,
12 correspondence would be deposited with the U.S. Postal Service on the same
13 day with postage fully prepaid at ALEXANDER MORRISON + FEHR LLP, 1900
14 Avenue of the Stars, Suite 900, Los Angeles, California 90067. The above
15 envelope was placed for collection and mailing on the above date following
16 ALEXANDER MORRISON + FEHR's ordinary business practice. I am aware
17 that on motion of the party served, service is presumed invalid if the postal
18 cancellation date or postage meter date is more than one day after date of
19 deposition for mailing.
- 20 VIA FACSIMILE. I sent said documents via facsimile.
- 21 VIA EMAIL. Complying with Civil Code of Procedure 1013b(b)(1), my electronic
22 business address is pshaw@amflp.com and I caused such document(s) to be
23 electronically served for the above-entitled case to those parties on the Service
24 List and the email listed therein.
- 25 VIA UPS. I delivered said documents via next day overnight delivery.
- 26 BY PERSONAL SERVICE. I caused delivery of said envelope by hand to the
27 offices of the addressee(s).
- 28 (STATE) I declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.
- (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/ Preston Shaw

Dated: October 24, 2022

Preston Shaw

1 **SERVICE LIST**

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4 **WOMEN'S RIGHTS PROJECT**

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11 **ACLU FOUNDATION OF**
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