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ENDORSED
FILED
Superior Court of California
County of San Francisco

DEC 11 2009

GORDON PARK-LI, Clerk
BY: ELIZABETH ZALDIVAR
Deputy Clerk

6 Attorneys for Plaintiffs
7 Rhonda Cherin, Joanne Underwood and Patricia
8 Thomas

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 RHONDA CHERIN, JOANNE
UNDERWOOD, and PATRICIA
12 THOMAS, on behalf of themselves and all
13 others similarly situated, and on behalf of
the general public,

14 Plaintiff,

15 v.

16 CATHOLIC HEALTHCARE WEST, a
California Corporation, and DOES 1
17 through 500, Inclusive,

18 Defendants.

Case No. CGC-08-471761

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES, INJUNCTIVE
AND DECLARATORY RELIEF AND
RESTITUTION**

- 1) Hourly and Overtime Wages (Lab. Code §§ 510, 1194)
- 2) Rest Periods or Compensation in Lieu Thereof (Lab. Code § 226.7; IWC Wage Order 5; Cal. Code Regs., Title 8 § 11050)
- 3) Meal Periods or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512; IWC Wage Order 5; Cal. Code Regs. Title 8 § 11050)
- 4) Timely Payment of Wages Due at Termination (Lab. Code §§ 201-203)
- 5) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions (Lab. Code § 226)
- 6) Violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200-17208)

DEMAND FOR JURY TRIAL

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25 Plaintiffs, Rhonda Cherin, Joanne Underwood, and Patricia Thomas, on behalf of
26 themselves and all others similarly situated, and on behalf of the general public, complain of
27 Defendants, and each of them, and for causes of action allege:

28 I.

INTRODUCTION

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2 1. This is a class action, pursuant to Code of Civil Procedure section 382, on behalf
3 of Plaintiffs and all Nurses, including, but not limited to, non-exempt, hourly Nurses subject to
4 Wage Order 5, including Registered Nurses (“RNs”), Licensed Vocational Nurses (“LVNs”), or
5 equivalent nurse job titles employed by or formerly employed within the State of California by
6 Catholic Healthcare West, any successors, subsidiaries, or affiliated companies who provide or
7 provided direct patient care at acute care facilities (“CHW Nurses”).

8 2. For at least four years prior to the filing of this action and through to the present
9 (“liability period”), Defendants have had a consistent policy of failing to pay legal hourly and
10 overtime wages to CHW Nurses in violation of California state wage and hour laws. Since
11 approximately January, 2004, Defendants paid CHW Nurses on an hourly basis without paying
12 all hours and overtime worked or paying for meal and rest period compensation. Since
13 approximately January 2004, Defendants have fraudulently and inaccurately provided wage
14 statements to CHW Nurses that did not correctly include payments for all hours, overtime and
15 meal and rest period compensation.

16 3. For at least four years prior to the filing of this action and through to the present
17 Defendants have also had a consistent policy of requiring CHW Nurses, including Plaintiffs, to
18 work periods of four hours or a major fraction thereof without a rest period of at least ten
19 minutes and failing to pay such employees one hour of pay at the employee’s regular rate of
20 compensation for each such workday, as required by California state wage and hour laws,
21 Industrial Welfare Commission (“IWC) Wage Orders, and Department of Labor Standards and
22 Enforcement interpretations and as calculated thereunder, and requiring CHW Nurses , including
23 Plaintiffs, to work at least five hours without an uninterrupted, off-duty, 30-minute meal period
24 and failing to pay such employee one hour of pay at the employee’s regular rate of compensation
25 for each such workday, as required by California state wage and hour laws.

26 4. Defendants also had a consistent policy during the liability period of requiring
27 CHW Nurses, including Plaintiffs, to work in excess of ten hours per day without a second
28 uninterrupted, off-duty 30-minute meal period and failing to pay such employees one hour of pay

1 at the employee's regular rate of compensation for each such workday as required by California
2 state wage and hour laws.

3 5. Plaintiffs, on behalf of themselves and all Class Members, bring this action
4 pursuant to Labor Code sections 203, 226, subdivision (b), 226.7, 512, 1194, and California
5 Code of Regulations, Title 8, section 11050 seeking unpaid hourly and overtime wages, unpaid
6 rest and meal period compensation, injunctive and other equitable relief and reasonable
7 attorneys' fees and costs. Plaintiffs, on behalf of themselves and all Class Members, pursuant to
8 Business and Professions Code sections 17200-17208, also seek injunctive relief, restitution, and
9 disgorgement of all benefits Defendants enjoyed from their failure to pay proper hourly and
10 overtime wages, and rest and meal period compensation.

11 II.

12 VENUE

13 6. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
14 Civil Procedure section 395. Defendant Catholic Healthcare West's principal place of business
15 in California is in San Francisco County, California. Defendant transacts business, has agents
16 and is doing business in San Francisco County and other counties in California, and each
17 defendant is within the jurisdiction of this Court for service of process purposes. The unlawful
18 acts alleged herein have a direct effect on Plaintiffs and those similarly situated within the State
19 of California and within San Francisco County.

20 III.

21 PARTIES

22 A. Plaintiffs

23 7. Plaintiffs Rhonda Cherin, Joanne Underwood, and Patricia Thomas, are residents
24 of Sacramento County, California. At all relevant times herein, they were employed by
25 Defendants as non-exempt nurses, registered nurses, or equivalent nurse job titles or similar
26 positions ("Nurses") providing patient care services in California, and have been employed by
27 CHW in a non-exempt capacity during the liability period through the present. As Nurses,
28 Plaintiffs were compensated as hourly employees and regularly required to: (1) work in excess of

1 eight hours in a workday and/or forty hours in a workweek or work in excess of twelve hours in
2 one workday and in excess of thirty six hours in a workweek without receiving all hourly and
3 overtime pay, (2) work through all or a portion of their meal periods; (3) work four hours or a
4 major fraction thereof without a rest period of at least ten minutes and not being compensated
5 one hour of pay at their regular rate of compensation for each such workday; and (4) work in
6 excess of five and/or ten hours per day without an uninterrupted, off-duty 30-minute meal and/or
7 second meal period and not being compensated one hour of pay at their regular rate of
8 compensation for each such occurrence, all in violation of California labor laws, regulations, and
9 wage orders. On information and belief, Defendants willfully failed to pay their employees and
10 members of the Plaintiff Class in a timely manner compensation, wages, overtime, and willfully
11 failed to pay rest and meal period compensation due and owing them upon termination of their
12 employment with Defendants.

13 **B. Defendants**

14 8. Defendant Catholic Healthcare West is a company which provides hospital and
15 related services, and engages in, among other things, providing nursing services at hospitals and
16 related facilities in San Francisco, California, and other counties and locations in California,
17 including, but not limited to, Folsom, Glendale, Grass Valley, Long Beach, Los Angeles,
18 Merced, Mt. Shasta, Northridge, Oakdale, Oxnard, Redding, Redwood City, Sacramento, San
19 Bernardino, San Francisco, San Gabriel, San Luis Obispo, Santa Cruz, Santa Maria, Stockton,
20 and Woodland. Plaintiffs are informed and believe and thereon allege that during the liability
21 period, Defendants employed CHW Nurses and exercised control over the wages, hours, and
22 working conditions of Plaintiffs and the members of the proposed Class. During the liability
23 period, Defendants employed Plaintiffs and similarly situated persons on an hourly basis within
24 California. On information and belief, CHW is incorporated under the laws of the State of
25 California and has its principal place of business in San Francisco, California and is conducting
26 business in good standing in California.

27 9. The true names and capacities, whether individual, corporate, associate, or
28 otherwise, of Defendants sued herein as DOES 1 through 500, inclusive, are currently unknown

1 to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil
2 Procedure section 474. Plaintiffs are informed and believe, and based thereon alleges, that each
3 of the Defendants designated herein as a DOE is legally responsible in some manner for the
4 unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to
5 reflect the true names and capacities of the Defendants designated hereinafter as DOES when
6 such identities become known.

7 10. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
8 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
9 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
10 Defendant are legally attributable to the other Defendants.

11 IV.

12 **FACTUAL BACKGROUND**

13 11. Defendants operate and, at all times during the liability period, have done
14 business in San Francisco County and elsewhere within California. Defendants provide hospital
15 nursing and related services and transact other business in San Francisco County and other
16 locations in California. Defendants have, among other things, employed RN's to facilitate the
17 care of patients at hospitals in San Francisco County and throughout California.

18 12. Upon information and belief, CHW is staffed, inter alia, by non-exempt Nurses
19 and similar positions. Upon information and belief, these employees work in non-exempt
20 positions servicing CHW hospital patients and have not been paid during the relevant liability
21 period the legal hourly and overtime pay pursuant to Labor Code sections 510 and 1194, IWC
22 Wage Order 5-2001 and other applicable Wage Orders; worked four hours or a major fraction
23 thereof without a rest period of at least ten minutes; and worked periods exceeding five hours
24 without an uninterrupted, off-duty, 30-minute meal period or periods exceeding ten hours
25 without a second uninterrupted, off-duty, 30-minute meal period. Plaintiffs are informed and
26 believe, and based thereon allege, Defendants currently employ, and during the relevant period
27 have employed, several thousand employees in the State of California in non-exempt positions,
28 such as Nurses and/or other similar positions.

1 13. CHW Nurses are, and at all times pertinent hereto, have been non-exempt
2 employees within the meaning of the California Labor Code, and the implementing rules and
3 regulations of the IWC California Wage Orders.

4 14. During the liability period, named Plaintiffs and members of the Plaintiff Class
5 were employed by Defendants as CHW Nurses and were paid on an hourly basis. Plaintiffs and
6 the members of the Plaintiff Class were regularly required to work through their daily meal
7 and/or second meal period(s), without CHW compensating them at their regular hourly rate or at
8 an overtime rate regardless of whether the on-duty meal period caused them to work in excess of
9 eight or twelve hours in one day, and/or forty hours in a workweek or longer than thirty six hours
10 if the nurses worked on alternative 12 hour shift for three days a week. During the liability
11 period, Plaintiffs and the members of the Plaintiff Class of CHW Nurses were regularly required
12 to work in excess of four hours without a rest period and were regularly required to work in
13 excess of five and/or ten hours per day, without an uninterrupted, off-duty, 30-minute meal
14 period and/or second meal, as mandated under the California Labor Code, and the implementing
15 rules and regulations of the IWC California Wage orders.

16 15. Defendants did not fully compensate CHW Nurses for all hourly and overtime
17 wages during the liability period and did not compensate CHW Nurses for rest and meal period
18 compensation during the liability period.

19 16. On information and belief, Defendants are and were well aware, and/or received
20 employee complaints, that it is improper: (1) to refuse to pay for all hours worked, (2) to require
21 employees a to work periods exceeding five hours without an uninterrupted, 30-minute, off-duty
22 meal period and/or periods exceeding ten hours without an uninterrupted, 30-minute, off-duty
23 second meal period, (3) to require employees to work periods of four hours or a major fraction
24 thereof in a workday without a 10-minute rest period, and (4) to require a non-exempt employee
25 to work through rest and meal periods without the proper legal compensation. On information
26 and belief, Defendants are and were well aware that they are obligated to: (1) compensate
27 employees for all hours worked and at the legal hourly and overtime rates, (2) allow rest periods
28 for each four hour period or a major fraction thereof worked or one hour's pay at the employee's

1 regular rate in lieu thereof, and (3) allow an uninterrupted off-duty, 30-minute meal period
2 and/or second meal period for each day worked in excess of five or ten hours respectively or one
3 hour's pay at the employee's regular rate in lieu thereof to all CHW Nurses. Defendants'
4 requirement that CHW Nurses work without payment for all hours worked, work through meal
5 periods, work through rest periods, and Defendants' failure to provide compensation for missed
6 rest or meal periods, and failure to correctly maintain records pursuant to Labor Code section
7 226, subdivision (b), during the liability periods was willful and deliberate.

8 17. Defendants' denial of legal compensation due to Plaintiffs and members of the
9 Plaintiff Class was deliberate, malicious, and oppressive, and showed a callous disregard for the
10 rights of Plaintiffs and members of the Plaintiff Class who relied on Defendants to compensate
11 them fairly.

12 18. On information and belief, Defendants willfully failed to pay hourly and overtime
13 wages, required employees to work through rest and meal periods during which, and willfully
14 failed to pay one hour's wages at the employee's regular rate of pay in lieu thereof to such
15 employees for denied rest, meal and second meal periods, when each such employee quit or was
16 discharged.

17 19. Defendants have failed to comply with Labor Code section 226, subdivision (a),
18 by itemizing in wage statements all hourly and overtime wages and all deductions from payment
19 of wages and accurately reporting total hours worked by Plaintiffs and the members of the
20 proposed Class. Plaintiffs and members of the Plaintiff Class are entitled to penalties not to
21 exceed \$4000 for each employee pursuant to Labor Code section 226, subdivision (b).

22 20. Defendants have failed to comply with IWC Wage Order 5-2001(7) by failing to
23 maintain time records showing when the employee begins and ends each work period, meal
24 periods, split shift intervals and total daily hours worked by itemizing in wage statements all
25 deductions from payment of wages and accurately reporting total hours worked by Plaintiffs and
26 the members of the proposed Class.

27 21. Defendants' failure to retain accurate records of work periods worked by CHW
28 Nurses, including Plaintiffs and members of the Plaintiff Class, was willful and deliberate, was a

1 continuous breach of Defendants' duty owed to Plaintiffs and members of the Plaintiff Class and
2 was designed to serve their policy of unlawfully denying legal overtime compensation to persons
3 employed in such positions.

4 22. Plaintiffs and the Class they seek to represent are covered by, inter alia, California
5 IWC Occupational Wage Nos. 5-98, 5-00 and 5-01, and Title 8, California Code of Regulations
6 section 11050.

7 V.

8 **CLASS ACTION ALLEGATIONS**

9 23. Plaintiffs bring this action on behalf of themselves and all others similarly situated
10 as a class action pursuant to section 382 of the Code of Civil Procedure. Plaintiffs seek to
11 represent a Class composed of and defined as follows:

12 All persons who are employed or have been employed by Defendants
13 in acute care facilities in the State of California who, within four (4)
14 years of the filing of this Complaint, as a non-exempt hourly Nurse
15 subject to Wage Order 5, who provide or provided direct patient care,
16 including but not limited to, Registered Nurse, Licensed Vocational
17 Nurse, and/or in any similar position excluding those in management
18 or administration such as Managers and Clinical Coordinators. and
19 have not been paid all wages including all hourly and overtime wages
20 at the legal rates for hours earned in a workday and/or workweek.

21 24. Plaintiffs seek to represent a subclass composed and defined as follows:

22 All persons who are employed or have been employed by Defendants
23 in the State of California who, within four (4) years of the filing of this
24 Complaint, as a Nurse subject to Wage Order 5, including but not
25 limited to, Registered Nurse, Licensed Vocational Nurse, and/or in any
26 similar position and have not been paid all wages including all hourly
27 and overtime wages at the legal rates for hours earned in a workday
28 and/or workweek.

29 25. Plaintiffs seek to represent a subclass composed and defined as follows:

30 All persons who are employed or have been employed by Defendants
31 in the State of California as a Nurse subject to Wage Order 5,
32 including but not limited to, Registered Nurse, Licensed Vocational
33 Nurse, and/or in any similar position within four (4) years of filing of
34 this Complaint, and worked periods of four hours or a major fraction
35 thereof without a rest period of at least ten minutes without
36 compensation of one hour's pay at the employee's regular rate for each
37 such day.

38 26. Plaintiffs seek to represent a subclass composed and defined as follows:

All persons who were employed or have been employed by
Defendants in the State of California as a Nurse subject to Wage Order
5, including but not limited to, Registered Nurse, Licensed Vocational
Nurse, and/or any similar position within four (4) years of the filing of

1 this Complaint, and worked periods exceeding five hours without an
2 uninterrupted, off-duty, 30-minute meal period and/or periods in
3 excess of ten hours without a second uninterrupted, off-duty, 30-
4 minute meal periods, and were not provided compensation of one
5 hour's pay at the employee's regular rate for each such day.

6 27. Plaintiffs reserve the right under Rule 3.765(b), California Rules of Court, to
7 amend or modify the Class description with greater specificity or further division into subclasses
8 or limitation to particular issues.

9 28. This action has been brought and may properly be maintained as a class action
10 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
11 defined community of interest in the litigation and the proposed class is easily ascertainable.

12 **A. Numerosity**

13 29. The potential members of the Class as defined are so numerous that joinder of all
14 the members of the Class is impractical. While the precise number of Class members has not
15 been determined at this time, Plaintiffs are informed and believe that Defendants currently
16 employ, and during the relevant time periods employed, several thousand employees in the State
17 of California in positions as CHW Nurses in San Francisco and other Counties and dispersed
18 throughout California during the liability period and who are or have been affected by
19 Defendants' policy of failing to pay for all hours worked, paying hours worked in excess of eight
20 in a workday and/or forty in a workweek without compensating such employees at the legal
21 hourly and overtime rate of pay, and for requiring such employees to work through meal periods
22 and not providing rest periods. Accounting for employee turnover during the relevant periods
23 necessarily increases this number substantially. Upon information and belief, Plaintiffs allege
24 Defendants' employment records would provide information as to the number and location of all
25 Class Members. Joinder of all members of the proposed Class is not practical.

26 **B. Commonality**

27 30. There are questions of law and fact common to the Class that predominate over
28 any questions affecting only individual Class Members. These common questions of
law and fact include, without limitation:

- a. whether Defendants violated Labor Code sections 510, 1194, and IWC

1 Wage Order 5-2001 and/or other applicable IWC Wage Orders, by requiring CHW Nurses to
2 work without payment for all hours worked, work in excess of eight hours in a workday and/or
3 forty hours in a workweek without compensating such employees at the hourly and overtime
4 rates of pay, and for failing to compensate CHW Nurses at the hourly overtime rate of pay for all
5 hours worked in excess of twelve in a workday.

6 b. whether Defendants violated Labor Code sections 226.7, Wage Order Nos.
7 5-2001 or other IWC Wage Orders, and Cal. Code Regs., Title 8, section 11050 by requiring
8 CHW Nurses to work four hours or a major fraction thereof without a rest period of at least ten
9 minutes or compensation in lieu thereof;

10 c. whether Defendants violated Labor Code sections 226.7 and 512, IWC
11 Wage Order Nos. 5-2001 or other IWC Wage Orders, and California Code of Regulations, Title
12 8, section 11050 by requiring CHW Nurses to work periods exceeding five hours without and
13 uninterrupted, off-duty, 30 minute meal period or compensation in lieu thereof;

14 d. whether Defendants' standardized procedures, including payroll,
15 administration, and premium pay procedures conform to the requirements of California law;

16 e. whether Class Members have been damaged by Defendants' common
17 behavior, customs and business practices and if so, the amount;

18 f. whether Defendants' centralized practices when evaluated on a class-wide
19 basis deprived class members of appropriate meal and rest periods or compensation under Labor
20 Code sections 226.7 and 512.

21 g. whether Defendants violated Labor Code sections 226.7, and 512, IWC
22 Wage Order Nos. 5-2001 or other IWC Wage Orders, and California Code of Regulations, Title
23 8, section 11050 by requiring CHW Nurses to work periods exceeding ten hours without an
24 uninterrupted, off-duty, 30 minute meal period or compensation in lieu thereof;

25 h. whether Defendants violated section 1174 of the Labor Code by failing to
26 maintain accurate records of hours worked by Class Members;

27 i. whether Defendants violated sections 201-203 of the Labor Code by
28 failing to pay all hourly and overtime wages and rest and meal period compensation due and

1 owing at the time that any Class Member's employment with Defendants terminated;

2 j. whether Defendants violated sections 226 of the Labor Code and IWC
3 Wage Order 5-2001(7) by failing to itemize in wage statements all hours worked and the correct
4 hourly rate compensation, and by failing to itemize deductions from wages and accurately report
5 total hours worked by Plaintiffs and the members of the proposed Class;

6 k. whether Defendants violated sections 17200 et seq. of the Business and
7 Professions Code by failing to pay legal hourly rate overtime wages for CHW Nurses , requiring
8 CHW Nurses to work periods of four hours or a major fraction thereof without a 10-minute rest
9 period, to work periods exceeding five hours without an uninterrupted, off-duty, 30-minute meal
10 period, to work periods exceeding ten hours with a second uninterrupted, off-duty, 30-minute
11 meal period, without compensating CHW Nurses one hour's pay in lieu thereof for each missed
12 period, failing to pay wages and rest and meal period compensation due and owing at the time a
13 Class Member's employment with Defendants terminated, and failing to keep accurate records of
14 Class Members' hours worked;

15 l. whether Defendants violated sections 17200 et seq. of the Business and
16 Professions Code and Labor Code sections 201-203, 226, 226.7, 512, 1194, IWC Wage Order 5-
17 2001 and other applicable IWC Wage Orders which violation constitutes a violation of
18 fundamental public policy; and

19 m. whether Plaintiffs and the members of the Plaintiff Class are entitled to
20 equitable and/or specific relief pursuant to Business and Professions Code sections 17200, et seq.

21 **C. Typicality**

22 31. The claims of the named Plaintiffs are typical of the claims of the Class.
23 Plaintiffs and all members of the Class sustained injuries and damages arising out of and caused
24 by Defendants' common course of conduct in violation of laws, regulations that have the force
25 and effect of law and statutes as alleged herein.

26 **D. Adequacy of Representation**

27 32. Plaintiffs will fairly and adequately represent and protect the interests of the
28 members of the Class. Counsel who represent Plaintiffs are competent and experienced in

1 litigating large employment class actions.

2 **E Superiority of Class Action**

3 33. A class action is superior to other available means for the fair and efficient
4 adjudication of this controversy. Individual joinder of all Class members is not practical, and
5 questions of law and fact common to the Class predominate over any question affecting only
6 individual members of the Class. Each member of the Class has been damaged and is entitled to
7 recovery by reason of Defendants' illegal policy and/or practice of failing to compensate Class
8 Members at the legal hourly overtime rates, and rest and meal period compensation.

9 34. Class action treatment will allow those similarly situated persons to
10 litigate their claims in the manner that is most efficient and economical for the parties and the
11 judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
12 management of this action that would preclude its maintenance as a class action.

13 **VI.**

14 **CAUSES OF ACTION**
15 **FIRST CAUSE OF ACTION**
16 **Hourly and Overtime Wages**
(Lab. Code § 510, 1194)
(Against All Defendants)

17 35. Plaintiffs incorporate paragraphs 1 through 36 as though fully set forth herein. By
18 their policy of requiring CHW Nurses to work without payment for all hours worked and in
19 excess of eight hours in a workday and/or forty hours in a week or to work in excess of twelve
20 hours in a workday without compensating such employees at the legal hourly and overtime rates,
21 Defendants willfully violated the provisions of the Industrial Welfare Commission Wage Orders
22 and Labor Code section 1194.

23 36. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek
24 to represent have been deprived of wages and/or overtime in amounts to be determined at trial,
25 and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, and costs,
26 pursuant to Labor Code section 1194.

27 WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
28 below.

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SECOND CAUSE OF ACTION
Rest Periods or Compensation in Lieu Thereof
(Lab. Code § 226.7, IWC Wage Order 5,
Cal. Code Regs., Title 8 § 11050)
(Against All Defendants)

37. Plaintiffs incorporate paragraphs 1 through 38 as though fully set forth.

38. By requiring CHW Nurses to work four hours or a major fraction thereof without a rest period of at least ten minutes, and failing to provide appropriate compensation in lieu thereof, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC Wage Order Nos. 5-2000, and 5-2001. Plaintiffs and the Class Members they seek to represent did not willfully waive through mutual consent with Defendants such rest periods.

39. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest hereon, attorneys' fees, and costs, under Labor Code sections 226.7, IWC Wage Orders 5-1998, 5-2000, and 5-2001.

WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

THIRD CAUSE OF ACTION
Meal Periods or Compensation in Lieu Thereof
(Lab. Code §§ 226.7, 512. IWC Wage Order 5,
Cal. Code Regs. Title 8 § 11050)
(Against All Defendants)

40. Plaintiffs incorporate paragraphs 1 through 41 as though fully set forth.

41. By requiring CHW Nurses to work periods exceeding five hours without an uninterrupted, off-duty 30-minute meal period and to work periods exceeding ten hours without a second uninterrupted, off-duty 30-minute meal period and not compensating one hour of pay at their regular rate of compensation for each such occurrence, as alleged above, Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and IWC Wage Order Nos. 5-1998, 5-2000, and 5-2001.

42. By failing to keep adequate time records required by sections 226 and 1174, subdivision (d), of the Labor Code, Defendants have made it difficult to calculate the unpaid meal and rest period compensation due Plaintiffs and members of the Plaintiff Class.

1 43. As a result of the unlawful acts of Defendants, Plaintiffs and the class they seek to
2 represent have been deprived of wages in amounts to be determined at trial, and are entitled to
3 recovery of such amounts, plus interest thereon, attorneys' fees, and costs, under Labor Code
4 sections 226.7, 512, IWC Wage Orders 5-1998, 5-2000, and 5-2001.

5 WHEEFORE, Plaintiffs and the Class they seek to represent request relief as described
6 below.

7 **FOURTH CAUSE OF ACTION**
8 **Timely Payment of Wages Due At Termination**
9 **(Lab. Code §§ 201, 202, 203)**
10 **(Against All Defendants)**

11 44. Plaintiffs incorporate paragraphs 1 through 45 as though fully set forth.

12 45. Sections 201 and 202 of the California Labor Code require Defendants to pay
13 their employees all wages due within 72 hours of termination of employment. Section 203 of the
14 Labor Code provides that if an employer willfully fails to timely pay such wages, the employer
15 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
16 full or an action is commenced. The penalty cannot exceed 30 days of wages.

17 46. As alleged above, Plaintiffs and the Class they seek to represent are entitled to
18 compensation for wages earned at the legal hourly and overtime rates, and missed rest periods
19 and meal periods, but to date have not received such compensation.

20 47. More than 30 days have passed since certain Class Members have left
21 Defendants' employ.

22 48. As a consequence of Defendants' willful conduct in not paying legal hourly and
23 overtime wages and rest and meal period compensation, Plaintiffs and certain Class Members are
24 entitled to up to 30 days' wages as a penalty under Labor Code section 203 for failure to pay one
25 hour's wages at the regular rate of pay in lieu thereof for denied rest and meal periods, together
26 with interest thereon and attorneys' and costs.

27 **FIFTH CAUSE OF ACTION**
28 **Knowing and Intentional Failure to Comply With Itemized**
Employee Wage Statement Provisions
(Lab. Code § 226)
(Against All Defendants)

49. Plaintiffs incorporate paragraphs 1 through 50 as though fully set forth herein.

1 50. Section 226, subdivision (a), of the California Labor Code requires Defendants to
2 itemize in wage statements all hourly and overtime compensation and deductions from payment
3 of wages and to accurately report total hours worked by Plaintiffs and the members of the
4 proposed Class. Defendants have knowingly and intentionally failed to comply with Labor Code
5 section 226, subdivision (a), on each and every wage statement provided to Plaintiffs and
6 members of the proposed Class.

7 51. As a consequence of Defendants' knowing and intentional failure to comply
8 with Labor Code section 226, subdivision (a), Plaintiffs and the Class they seek to represent are
9 entitled to penalties not to exceed \$4000 for each employee pursuant to Labor Code section 226,
10 subdivision (b), together with interest thereon and attorneys' fees and costs.

11
12 **SIXTH CAUSE OF ACTION**
13 **Violation of the Unfair Competition Law**
14 **(Bus. & Prof. Code § 17200 et seq.)**
15 **(Against All Defendants)**

16 52. Plaintiffs incorporate paragraphs 1 through 53 as though fully set forth herein.

17 53. Defendants' failure to pay legal hourly and overtime wages and rest and meal
18 period compensation, to Plaintiffs and the members of the Plaintiff Class, under the IWC Wage
19 Orders and under the California Labor Code, and failure to keep proper records, as alleged
20 above, constitute unlawful activity prohibited by Business and Professions Code sections 17200,
21 et seq. The actions of Defendants in failing to pay Plaintiffs and members of the Plaintiff Class
22 in a lawful manner, constitute false, unfair, fraudulent and deceptive business practices, within
23 the meaning of Business and Professions Code sections 17200, et seq.

24 54. Plaintiffs are entitled to an injunction, specific performance, and other equitable
25 relief against such unlawful practices in order to prevent future damage, for which there is no
26 adequate remedy at law, and to avoid a multiplicity of lawsuits.

27 55. As a result of their unlawful acts, Defendants have reaped and continue to reap
28 unfair benefits and illegal profits at the expense of Plaintiffs and the Class they seek to represent.
Defendants should be enjoined from this activity and made to disgorge these ill-gotten gains and
restore to Plaintiffs and the members of the Plaintiff Class the wrongfully withheld wages and

1 overtime pursuant to Business and Professions Code section 17203 and specific performance of
2 payment of penalties ordered under Business and Professions Code section 17202. Plaintiffs are
3 informed and believe, and thereon allege, that Defendants are unjustly enriched through their
4 failure to pay legal hourly and overtime wages, compensation for working through meal periods,
5 and rest and meal period compensation. Plaintiffs are informed and believe, and thereon allege,
6 that Plaintiffs and members of the Plaintiff Class are prejudiced by Defendants' unfair trade
7 practices.

8 56. As a direct and proximate result of the unfair business practices of Defendants,
9 and each of them, Plaintiff, individually and on behalf of all employees similarly situated, are
10 entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all
11 wages and overtime which have been unlawfully withheld from Plaintiffs and members of the
12 Plaintiff Class and specific performance of the payment of penalties as a result of the business
13 acts and practices described herein and enjoining Defendants to cease and desist from engaging
14 in the practices described herein.

15 57. The illegal conduct alleged herein is continuing, and there is no indication that
16 Defendants will not continue such activity into the future. Plaintiffs allege that if Defendants are
17 not enjoined from the conduct set forth in this Complaint, they will continue to fail to pay all
18 hourly and overtime wages, will continue to provide inaccurate hourly wage statements, will
19 continue to require employees to work during meal periods and rest periods or fail to provide
20 appropriate compensation in lieu thereof and will continue to fail to pay and to avoid paying
21 appropriate taxes, insurance, and unemployment withholdings.

22 58. Plaintiffs further request that the Court issue a preliminary and permanent
23 injunction prohibiting Defendants from requiring Plaintiffs and the Plaintiff Class to work
24 without compensation at the legal hourly and overtime rates of pay, from continuing to provide
25 inaccurate hourly wage statements, from continuing to require employees to work through meal
26 periods, and from continuing to require CHW Nurses to work periods of four hours or a major
27 fraction thereof without a rest period of at least ten minutes, periods exceeding five hours
28 without an uninterrupted, off-duty, 30-minute meal period or periods exceeding ten hours with a

1 second uninterrupted, off-duty, 30-minute meal period, or provide appropriate compensation in
2 lieu thereof.

3 **PRAYER**

4 WHEREFORE, Plaintiffs pray for judgment as follows:

- 5 1. That the Court determine that this action may be maintained as a class action;
- 6 2. For compensatory damages in an amount according to proof with interest thereon;
- 7 3. For economic and/or special damages in an amount according to proof with
8 interest thereon;
- 9 4. That Defendants be found to have engaged in unfair competition in violation of
10 sections 17200, et seq. of the California Business and Professions Code;
- 11 5. That Defendants be ordered and enjoined to make restitution to the Class due to
12 their unfair competition, including disgorgement of their wrongfully-withheld
13 wages pursuant to California Business and Professions Code section 17203 and 17204;
- 14 6. That an order of specific performance of all penalties owed be issued under
15 Business and Professions Code section 17202;
- 16 7. That Defendants be enjoined from continuing the illegal course of conduct,
17 alleged herein;
- 18 8. That Defendants further be enjoined to cease and desist from unfair competition
19 in violation of sections 17200, et seq. of the California Business and Professions Code;
- 20 9. That Defendants be enjoined from further acts of restraint of trade or unfair
21 competition;
- 22 10. For attorneys' fees, interest, and costs of suit; and
- 23 11. For such other and further relief as the Court deems just and proper.

24 DATED: December 11, 2009

COHELAN KHOURY & SINGER

25
26 By: 

27 Timothy D. Cohelan
28 Attorney for Plaintiffs Rhonda Cherin,
Joanne Underwood and Patricia Thomas


DEMAND FOR JURY TRIAL

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

DATED: December 11, 2009

COHELAN KHOURY & SINGER

By:



Timothy D. Cohelan
Attorney for Plaintiffs
Rhonda Cherin, Joanne Underwood and
Patricia Thomas

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1 **PROOF OF SERVICE**

2 *Cherin, et al. v. Catholic Healthcare West*
3 **S.F.S.C. Case No. CGC-08-471761**

4 I, Amber Worden, declare as follows:

5 I am over the age of 18 years and not a party to the within action. I am employed in the
6 County of San Diego, California, where the mailing occurs; and my business address is 605 "C"
7 Street, Suite 200, San Diego, California 92101-5305.

8 I further declare that I am readily familiar with the business' practice for collection and
9 processing of correspondence for mailing with United Parcel Service; and that the
10 correspondence shall be deposited with United Parcel Service this same day in the ordinary
11 course of business.

12 On December 11, 2009, I caused to be served a copy of the foregoing document(s):

13 **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES, INJUNCTIVE AND
14 DECLARATORY RELIEF AND RESTITUTION**

15 by placing a true copy of each document in a separate envelope addressed as follows:

16 **Counsel for Defendant**

17 Richard J. Simmons, Esq.
18 Geoffrey D. Deboskey, Esq.
19 SHEPPARD MULLIN RICHTER &
20 HAMPTON LLP
333 South Hope Street, 48th Floor
Los Angeles, CA 90071-1448
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mforsey@sheppardmullin.com

21 I then caused service of each document in the manner described below:

- 22 **BY MAIL:** I placed each for deposit in the United States Postal Service this same
- 23 **BY EMAIL:** I transmitted the foregoing document(s) electronically via the email
- 24 **BY UNITED PARCEL SERVICE:** I placed each for deposit in the nearest
- 25 United Parcel Service drop box for pick up this same day and for "next day air"
- 26 **STATE:** I declare under penalty of perjury under the laws of the State of California
- 27 that the foregoing is true and correct.

28 Executed December 11, 2009, at San Diego, California.


Amber Worden