

ENDORSED
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ALAMEDA COUNTY

APR 02 2013

CLERK OF THE SUPERIOR COURT

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individually and on behalf of others similarly situated

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF ALAMEDA

13 JOSE F. ANDINO, individually and on behalf)
of himself and others similarly situated,)

CASE NO.: RG11580548

14)
15 Plaintiff,)

CLASS ACTION
SECOND AMENDED COMPLAINT FOR
DAMAGES, RESTITUTION AND
INJUNCTIVE RELIEF

16)
17 vs.)

1. Underpayment of Hourly Wages (Wage
Order 5-2002)

18)
19 KAISER FOUNDATION HOSPITALS, a)
California Corporation, and DOES 1 through)
20 100, inclusive,)

2. Underpayment of Overtime Wages (Labor
Code §§510, 1194, Wage Order 5-2002)

21)
22 Defendants.)

3.
. Failure to Provide Accurate Itemized Wage
Statements (Labor Code §226)

4. Failure to Timely Pay Wages to Terminated
Employees (Labor Code §§201- 203)

5. Violation of Unfair Competition Law
(Business & Professions Code §17200, et seq.)

6. Statutory Penalties (Labor Code §§558,
2699, subd. (f))

DEMAND FOR JURY TRIAL

FILED BY FAX

1 Plaintiff JOSE F. ANDINO (“Plaintiff”), individually and on behalf of himself and others
2 similarly situated, alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant KAISER FOUNDATION
5 HOSPITALS and DOES 1 through 100 (“Defendants” or “KAISER”) to recover underpaid
6 regular and underpaid overtime wages due to Defendants’ rounding of time entries. Plaintiff also
7 seeks penalties for Defendants’ failure to pay all wages due to all terminated or resigned
8 employees and failure to properly itemize wage statements.

9 **JURISDICTION AND VENUE**

10 2. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
11 Civil Procedure, section 395. Defendant KAISER is a California corporation with its principal
12 place of business in Alameda County, California. Defendants employ hospital employees and
13 conduct business in Alameda County, and each Defendant is within the jurisdiction of this Court
14 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
15 and those similarly situated within the State of California and within Alameda County. Defendants
16 employ numerous Class Members in Alameda County. There is no federal question at issue, nor is
17 there diversity of citizenship, as the issues herein are based solely on California statutes and law,
18 including the Labor Code, IWC Wage Orders, Code of Civil Procedure, Civil Code, and Business
19 and Professions Code and all parties are residents of California.

20 3. Further, Business and Professions Code, section 17203 provides that any person
21 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
22 Business and Professions Code, section 17204 provides that any person acting on his or her own
23 behalf may bring an action in a court of competent jurisdiction. Thus, the above entitled court
24 maintains appropriate jurisdiction to hear this matter.

25 **PARTIES**

26 4. Plaintiff JOSE F. ANDINO is a resident of the State of California. Plaintiff JOSE
27 F. ANDINO was employed by Defendants in the State of California as a Patient Transporter.
28 Plaintiff’s time records were rounded resulting in underpayment of straight time and overtime

1 hours worked. Plaintiff's time records show that he worked shifts greater than eight (8) hours
2 without overtime payment due to Defendants' rounding policies and practices . Defendants failed
3 to timely pay wages upon termination and failed to provide accurate, itemized wage statements.

4 5. Defendant KAISER is a California corporation and operates within California.
5 KAISER's principal place of business is in Alameda County and it employs numerous Class
6 Members in Alameda County. At each of its locations, KAISER employs hospital employees. As
7 a matter of company payroll practices, Defendant KAISER rounds time clock in/out records
8 incorrectly shorting employees of straight time and overtime worked. The rounding is neither
9 neutral on its face nor does it result in full compensation for all hours actually worked by
10 employees. Moreover, KAISER failed to provide accurate wage statements, and failed to timely
11 pay all wages owed to terminated or resigned employees.

12 6. Plaintiff is unaware of the true names, capacities, relationships, and extent of
13 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 100, but is
14 informed and believes and thereon alleges that said Defendants are legally responsible for the
15 wrongful conduct alleged herein and therefore sue these Defendants by such fictitious names.
16 Plaintiff will amend this complaint when their true names and capabilities are ascertained.

17 7. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
18 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
19 class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed
20 and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as
21 the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
22 pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

23 GENERAL ALLEGATIONS

24 8. During all, or a portion, of the Class Period, Plaintiff and each member of the
25 Plaintiff Class were employed by Defendants and each of them, in the State of California.

26 9. California Labor Code section 1194 provides that notwithstanding any agreement
27 to work for a lesser wage, an employee receiving less than the legal overtime compensation is
28 entitled to recover in a civil action the unpaid balance of their overtime compensation, including

1 interest thereon, reasonable attorneys' fees, and costs of suit.

2 10. Plaintiff and each Plaintiff Class member were non-exempt employees covered
3 under one or more Industrial Welfare Commission (IWC) Wage Orders, including 5-2002 ("Wage
4 Orders"), and Labor Code section 510, and/or other applicable wage orders, regulations and
5 statutes, and each Plaintiff Class member was not subject to an exemption for executive,
6 administrative, professional employees, or any other exemption, which imposed an obligation on
7 the part of the Defendants to pay Plaintiff and Plaintiff Class members lawful overtime
8 compensation.

9 11. During the Class Period, Defendants were obligated to pay Plaintiff and the
10 Plaintiff Class overtime compensation for all hours worked over eight (8) hours of work in one
11 day or forty (40) hours in one week.

12 12. Plaintiff and each Plaintiff Class member worked in excess of the maximum
13 regular rate hours set by the IWC in the above Wage Orders, regulations or statutes, and therefore
14 entitled the Plaintiff and Plaintiff Class members to appropriate overtime compensation at time
15 and a half (1 ½) rate of their regular pay, and when applicable, double time rates as set forth by the
16 above Wage Orders, regulations and/or statutes.

17 13. During the Class Period, the Defendants, and each of them, required the Plaintiff
18 and Plaintiff Class members to work overtime but did not pay lawful overtime compensation, in
19 violation of the various above applicable Wage Orders, regulations and statutes.

20 14. During the class period, the Defendants, and each of them, failed to provide
21 accurate, itemized wage statements to Plaintiff and members of the Plaintiff Class.

22 15. During the class period, the Defendants, and each of them, failed to pay all wages
23 owed to terminated members of the Plaintiff Class.

24 16. Business and Professions Code, section 17203 provides that any person who
25 engages in unfair competition may be enjoined in any court of competent jurisdiction. Business
26 and Professions Code, section 17204 provides that any person who has suffered actual injury and
27 has lost money or property as a result of the unfair competition may bring an action in a court of
28 competent jurisdiction.

1 CLASS ACTION ALLEGATIONS

2 17. Plaintiff brings this action on behalf of himself and all others similarly situated as a
3 class action pursuant to Code of Civil Procedure, section 382. The members of the Class are
4 defined as follows:

5 All individuals employed by Defendants in California as hourly hospital
6 employees whose time clock hours have been rounded for payment
7 purposes at any time beginning four years prior to the filing of this
complaint.

8 18. Further, Plaintiff brings this action on behalf of himself and all other similarly
9 situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

10 Plaintiff Subclass: All members of the Plaintiff class whose actual time
records show that they were not compensated for all time worked.

11 19. Further, Plaintiff brings this action on behalf of himself and all other similarly
12 situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

13 Plaintiff Subclass: All members of the Plaintiff class whose time records
14 show that they were not compensated for all time worked due to rounding
of time punch entries related to taking a meal period.

15 20. Further, Plaintiff brings this action on behalf of himself and all other similarly
16 situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

17 Plaintiff Subclass: All members of the Plaintiff class who were subject to a
company practice of failing to pay all straight time wages.

18 21. Further, Plaintiff brings this action on behalf of himself and all other similarly
19 situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

20 Plaintiff Subclass: All members of the Plaintiff class who were subject to a
company practice of underpayment of overtime wages.

21 22. Further, Plaintiff brings this action on behalf of himself and all other similarly
22 situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

23 Plaintiff Subclass: All members of the Plaintiff class who, within one year
24 of the filing of the Complaint, were subject to a company practice of
failing to accurately itemize wage statements.

25 23. Further, Plaintiff brings this action on behalf of himself and all other similarly
26 situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

27 Plaintiff Subclass: All members of the Plaintiff class who, within three
28 years of the filing of the Complaint, were subject to a company practice of
failing to timely pay wages at termination.

1 24. Further, Plaintiff brings this action on behalf of himself and all other similarly
2 situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

3 Plaintiff Subclass: All California Class members bringing wage claims
4 under the California Unfair Competition Law.

5 25. Further, Plaintiff brings this action on behalf of himself and all other similarly
6 situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

7 Plaintiff Subclass: All California Class members bringing claims who, as a
8 result of being subject to Defendants' policies and practices violating
9 various Labor Code provisions, are entitled to penalties under the
10 California Private Attorneys General Act.

11 26. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
12 applicable law to amend or modify the class definition with respect to issues or in any other ways.
13 Plaintiff is the Named Representative and is a member of the Plaintiff Class. Plaintiff seeks class-
14 wide recovery based on the allegations set forth in this complaint.

15 27. This action has been brought any may be maintained as a class action pursuant to
16 Code of Civil Procedure, section 382 because there is a well-defined community of interest in the
17 litigation and the proposed Class is easily ascertainable through the records Defendants are
18 required to keep.

19 28. Numerosity. The members of the Class are so numerous that individual joinder of
20 all of them as Plaintiff is impracticable. While the exact number of the Class members is
21 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there
22 are more than 10,000 Class members.

23 29. Commonality. Common questions of law and fact exist as to all Class members
24 and predominate over any questions that affect only individual members of the Class. These
25 common questions include, but are not limited to:

- 26 a. Did Defendants improperly round time entries resulting in underpayment of
27 straight time wages?
- 28 b. Did Defendants violate Labor Code sections 510 or 1194 by improperly
 rounding time entries resulting in underpayment of overtime time wages?
- c. Did Defendants violate Labor Code section 226 (a)(2) by knowingly and

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intentionally failing to list in writing accurate total hours worked by the employee on wage statements?

- d. Did Defendants violate Labor Code sections 201 and/or 202 by not paying Class Members who are no longer employed by Defendants all earned wages, including straight time wages and overtime wages, upon their termination of employment? If so, were such violations “willful” within the meaning of Labor Code section 203?
- e. Did Defendants violate the Unfair Competition Law, Business & Professions Code, section 17200, et seq., by engaging in the conduct alleged in this complaint?
- f. Whether Defendants violated California Labor Code §§558, 2699?
- g. What are the effects and the extent of any injuries sustained by the Plaintiff Class and Plaintiff Subclass members and appropriate type and/or measure of damages?
- h. What is the amount of restitution owed by the Defendants attributable to their violation of the Unfair Competition Law by failure to pay overtime compensation to the class members, and other wage violations?
- i. What is the appropriateness and nature of relief to each Plaintiff Class and Subclass member?
- j. What is the extent of liability of each Defendant, including DOE defendants, to each Plaintiff Class and Subclass member?
- k. Is injunctive relief appropriate to ensure Defendants’ compliance with the requirements of the Labor Code with respect to members of the Class who are still currently employed by Defendants?

30. Typicality. Plaintiff’s claims are typical of the claims of the other members of the Class. Plaintiff and other members of the Class were subject to the same policy and practice of rounding time entries, resulting in underpayment for straight time and overtime hours. . Defendants failed to provide accurate, itemized wage statements to Plaintiff and members of the

1 Plaintiff Class. Finally, Defendants failed to pay all wages owed to Plaintiff and Plaintiff Class
2 members upon termination of employment.

3 31. Adequacy. Plaintiff will adequately and fairly protect the interests of the members
4 of the Class. Plaintiff has no interest adverse to the interests of absent Class members. Plaintiff is
5 represented by attorneys who have substantial class action experience in wage-and-hour and class
6 action law.

7 32. Superiority. A class action is superior to other available means for fair and
8 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
9 Court. Class action treatment will allow a large number of similarly situated persons to prosecute
10 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
11 duplication of effort and expense that numerous individual actions would require. The damages
12 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
13 and the expense and burden of individual litigation would make it extremely difficult or
14 impossible for the individual Class members to seek and obtain individual relief. A class action
15 will serve an important public interest by permitting such individuals to effectively pursue
16 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
17 or contradictory judgments raised by individual litigation.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY REGULAR WAGES**

20 **(Plaintiff and Plaintiff Class against each Defendant)**

21 33. Plaintiff incorporates the preceding paragraphs.

22 34. By rounding time entries, Defendants willfully breached their agreement to pay
23 regular wages, violating the provisions of Wage Order 5-2002.

24 35. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
25 represent have been deprived of regular wages and/or other compensation in amounts to be
26 determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys'
27 fees, and costs.

28 36. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as

1 described below.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PAY OVERTIME WAGES**

4 **(Plaintiff and Plaintiff Class against each Defendant)**

5 37. Plaintiff incorporates the preceding paragraphs.

6 38. By rounding time entries, Defendants willfully breached their obligation pay
7 regular overtime wages, violating the provisions of Labor Code sections 510 and 1194 and Wage
8 Order 5-2002.

9 39. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
10 represent have been deprived of overtime wages and/or other compensation in amounts to be
11 determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys'
12 fees, and costs.

13 40. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
14 described below.

15 **THIRD**

16 **CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

18 **(Plaintiff and Plaintiff Class against each Defendant)**

19 41. Plaintiff incorporates the preceding paragraphs.

20 42. Labor Code section 226 subdivision (a) requires Defendants to itemize in wage
21 statements all deductions from payment of wages and to accurately report total hours worked by
22 Plaintiff and members of the Plaintiff Class. Because of Defendants' rounding policies and
23 practices, Defendants have knowingly and intentionally failed to comply with Labor Code section
24 226, subdivision (a) on each and every wage statement that should have been provided to Plaintiff
25 and members of the Plaintiff Class.

26 43. Wage Order 5-2002(7) requires Defendants to maintain time records showing,
27 including but not limited to, when the employee begins and ends each work period, meal periods,
28 split shift intervals and total daily hours worked in itemized wage statements, and must show all

1 deductions from payment of wages, and accurately report total hours worked by Plaintiff and
2 members of the Plaintiff Class. Because of Defendants' rounding policies and practices,
3 Defendants have knowingly and intentionally failed to comply with Wage Order 5-2002 (7).

4 44. WHEREFORE, Plaintiff and the Plaintiff Class he seeks to represent request relief
5 as described below.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PAY WAGES OWED AT TERMINATION**

8 **(Plaintiff and Plaintiff Class against each Defendant)**

9 45. Plaintiff incorporates the preceding paragraphs.

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

15 47. As alleged above, Plaintiff and the Class he seeks to represent are entitled to
16 compensation for regular pay and overtime pay, but to date have not received such compensation.

17 48. More than 30 days have passed since Plaintiff and certain members of the Plaintiff
18 Class have left Defendants' employ.

19 49. As a consequence of Defendants' willful conduct in not paying wages owed,
20 certain members of the Plaintiff Class are entitled to 30 days' wages as a penalty under Labor
21 Code section 203 for failure to pay legal wages, together with interest thereon and attorneys' fees
22 and costs.

23 50. WHEREFORE, Plaintiff and the members of the Plaintiff Class request relief as
24 described below.

25 **FIFTH CAUSE OF ACTION**

26 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

27 **(Plaintiff and Plaintiff Class against each Defendant)**

28 51. Plaintiff incorporates the preceding paragraphs.

1 52. The unlawful conduct of Defendants alleged herein constitutes unfair competition
2 within the meaning of Business & Professions Code, section 17200, et seq. Due to their unlawful
3 and unfair business practices in violation of the Labor Code Defendants have gained a competitive
4 advantage over other comparable companies doing business in the State of California that comply
5 with their obligations to properly pay employees for all earned wages as required by law.

6 53. As a result of Defendants' unfair competition as alleged herein, Plaintiff and other
7 members of the Class have suffered injury in fact and lost money or property. Plaintiff and other
8 members of the Class have been deprived of their rights to wages due as alleged herein.

9 54. Pursuant to Business & Professions Code, section 17203, Plaintiff and other
10 members of the Class are entitled to restitution of all wages and other moneys owed and belonging
11 to them, including interest thereon that Defendants wrongfully withheld from them and retained
12 for themselves by means of their unlawful and unfair business practices.

13 55. Pursuant to Business & Professions Code, section 17203, Plaintiff and other
14 members of the Class are entitled to injunctive relief to prevent the continuance of Defendants'
15 unlawful and unfair business practices.

16 56. Plaintiff and other members of the Class are entitled to recover reasonable
17 attorneys' fees pursuant to Code of Civil Procedure, section 1021.5, the substantial benefit
18 doctrine, and/or the common fund doctrine.

19 SIXTH CAUSE OF ACTION

20 STATUTORY PENALTIES

21 **(Plaintiff and Plaintiff Class against each Defendant)**

22 57. Plaintiff incorporates the preceding paragraphs.

23 58. The failure to pay all wages and overtime owed due to rounding time entries,
24 failure to provide accurate wage statements, failure to pay all wages owed to terminated or
25 resigned employees, and the knowing and intentional failure to provide accurate and itemized
26 wage statements subjects Defendant to civil penalties pursuant to California Labor Code sections
27 558 and 2699 subdivision (f).

28 59. Labor Code section 558 provides a penalty against any employer or other person

1 acting on behalf of the employer who violates or causes to be violated any provision regulating
2 hours and days of work contained in Labor Code general working hours chapter (Sections 500-
3 558), and Industrial Welfare Commission Wage Orders. Plaintiff alleges that Defendants' practices
4 and policies to deny Plaintiff and Plaintiff Class members straight time wages and overtime pay,
5 violate both the labor code and several provisions regulating the hours and days of work in the
6 Wage Order 5-2002. Accordingly, Plaintiff and members of the Class are entitled to statutory
7 penalties under Labor Code section 558.

8 60. As a result of the violations alleged herein, Plaintiff, as an aggrieved employee on
9 behalf of himself and other current and former hourly, non-exempt employees of Defendants,
10 seeks all civil penalties available pursuant to Labor Code sections 558 and 2699, et seq.
11 Therefore, pursuant to Labor Code sections 558 and 2699, et seq., Plaintiff, as an aggrieved
12 employee on behalf of himself and other hourly, non-exempt employees is entitled to collect all
13 civil penalties owed, attorneys' fees, expenses, and costs of suit.

14 61. Labor Code section 2699.5 identifies, inter alia, Labor Code sections 201-203, 226,
15 510, and 1194 as statutes to which Sections 2699.3's procedural requirements must be met before
16 a penalty may be assessed under Section 2699 subdivision (f). Plaintiff has complied with the
17 procedural requirements specified in Labor code section 2699.3 by providing written notice by
18 certified mail to the Labor and Workforce Development Agency (LWDA). No notice of intent to
19 investigate the alleged violation was provided within 33 calendar days of the postmark date of
20 Plaintiff's notice to the LWDA. As a consequence, Plaintiff has exhausted administrative
21 remedies, and on behalf of himself and all other aggrieved current and former employees of
22 Defendants. Plaintiff, therefore, pursues this cause of action as permitted by Labor Code sections
23 2699, et seq.

24 62. Enforcement of statutory provisions enacted to protect workers and to ensure
25 proper and prompt payment of wages due to employees is a fundamental public interest in
26 California. Consequently, Plaintiff's success in this action will result in the enforcement of
27 important rights as affecting the public interest and will confer a significant benefit upon the
28 general public. Private enforcement of the rights enumerated herein is necessary, as no public

1 agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing this action
2 and it would be against the interests of justice to require the payment of attorneys' fees and costs
3 from any recovery that might be obtained herein, pursuant to, inter alia, Labor Code sections
4 218.5, 226, 1194 and 2699, Wage Order 5-2002, and Code of Civil Procedure section 1021.5.

5 63. In addition, if Plaintiff succeeds in enforcing these rights affecting the public
6 interest, then attorneys' fees may be awarded to Plaintiff and against Defendant under Code of
7 Civil Procedure section 1021.5 and other applicable law in part because:

8 a. A successful outcome in this action will result in the enforcement of
9 important rights affecting the public interest by requiring Defendants to comply with the wage and
10 hour laws and California's unfair business practice law;

11 b. This action will result in a significant benefit to Plaintiff, the Class, and the
12 general public by bringing to a halt unlawful and/or unfair activity and by causing the return of
13 ill-gotten gains obtained by Defendants;

14 c. Unless this action is prosecuted, members of the Class and general public
15 will not recover those moneys, and many of Defendants' employees would not be aware that the
16 acts and practices they were subjected to by Defendants were wrongful;

17 d. Unless this action is prosecuted, Defendants will continue to mislead their
18 employees about the true nature of their rights and remedies under the wage and hour laws; and

19 e. An award of attorneys' fees and costs is necessary for the prosecution of this
20 action and will result in a benefit to Plaintiff, the Class, and to consumers in general by preventing
21 Defendants from continuing to circumvent the wage and hour statutes and frustrate the
22 long-standing recognition by the California legislature and the courts that such statutes, as pled
23 herein, are not merely a matter of private concern between employer and employee to be
24 eviscerated by considerations of waiver, contributory negligence, good or bad faith, and private
25 agreements. Rather, the wage and hour statutes have been described as a matter of public concern,
26 were designed to provide minimum substantive guarantees to individual workers, and are essential
27 to public welfare.

28 Wherefore, Plaintiff and Class members request relief as hereinafter prayed for.

1 PRAYER

2 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
3 relief and judgment against Defendants, jointly and severally, as follows:

- 4 A. For certification of this action as a class action;
5 B. For appointment of Plaintiff as the representative of the Class;
6 C. For appointment of counsel for Plaintiff as Class Counsel;
7 D. For unpaid overtime wages;
8 E. For unpaid regular wages;
9 F. For remedies under Labor Code section 203;
10 G. For remedies under Labor Code section 226(e) and (g);
11 H. For penalties for failure to timely pay wages to terminated or resigned employees;
12 I. For prejudgment interest;
13 J. For penalties pursuant to Labor Code section 558;
14 K. For penalties pursuant to Labor Code section 2699, subd. (f);
15 L. For reasonable attorneys' fees and costs of suit pursuant to Labor Code section
16 1194;
17 M. For reasonable attorneys' fees and costs of suit pursuant to Labor Code section
18 1021.5;
19 N. For injunctive relief; and
20 O. For such other relief the Court deems just and proper.

21
22 Dated: April 1, 2013

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

23
24
25 By: 

26 Kimberly D. Neilson

27 Attorneys for Plaintiff JOSE F. ANDINO,
28 individually and on behalf of others similarly
situated

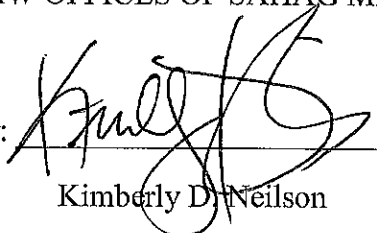
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DEMAND FOR JURY TRIAL

Plaintiff demands jury trial for all claims so triable.

Dated: April 1, 2013

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

By: 

Kimberly D. Neilson

Attorneys for Plaintiff JOSE F. ANDINO,
individually and on behalf of others similarly
situated

1 **PROOF OF SERVICE**

2 *Andino v. Kaiser Foundation Hospitals*
3 Alameda Superior Court Case No. RG11580548

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 States Postal Service; and that the
10 correspondence shall be deposited with United States Postal Service this same day in the ordinary
11 course of business.

12 On April 1, 2013, I caused to be served a copy of the foregoing document(s):

13 **SECOND AMENDED COMPLAINT**

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

15 **Counsel for Defendant**

16 Thomas Kaufman, Esq.
17 Gregg A. Fisch, Esq.
18 Sheppard Mullin Richter & Hampton
1901 Avenue of the Stars, 15th Floor
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Telephone: (310) 228-3700
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Co-counsel for Plaintiff

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Telephone: (818) 609-0807
Facsimile: (818) 609-0892

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

- 20 **BY MAIL:** I placed each for deposit in the United States Postal Service this same day,
at my business address shown above, following ordinary business practices.
- 21 **BY FAX:** I transmitted the foregoing document(s) by facsimile to the party identified above
by using the facsimile number indicated. Said transmission(s) were verified as complete
22 and without error.
- 23 **BY UNITED PARCEL SERVICE:** I placed each for deposit in the nearest
United Parcel Service drop box for pick up this same day and for "next day air" delivery.
- 24 **STATE:** I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

25 Executed April 1, 2013 at San Diego, California.

26
27 
28 Amber Worden