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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LAURA WERTH, CARL GOODMAN,
ANNA SCARPA, and GARFIELD
GRANETT, individually, on behalf of all
others similarly situated, and on behalf of
the general public

Plaintiffs,

vs.

HELLER, EHRMAN, WHITE, &
McAULIFFE LLP; HELLER, EHRMAN,
WHITE & McAULIFFE A
PROFESSIONAL CORPORATION;
HELLER, EHRMAN, WHITE &
McAULIFFE (WASHINGTON), P.S.;
HELLER, EHRMAN, WHITE &
McAULIFFE, A PROFESSIONAL
CORPORATION; HELLER, EHRMAN,
WHITE & McAULIFFE (OREGON), P.C.;
HELLER, EHRMAN, WHITE &
McAULIFFE (ALASKA), P.C.; HELLER
EHRMAN (CHINA), P.C.; and DOES 1-50,

Defendants.

Case No. 08-cv-4799 CW

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

- (1) Violation of the WARN Act (29 U.S.C. § 2101 et seq.)
- (2) Violation of the California WARN Act (Cal. Labor Code § 1400 et seq.)
- (3) Failure To Pay Vacation (Cal. Labor § 227.3)
- (4) Waiting Time Penalties (California Labor Code Sections 201-203)
- (5) Breach Of Contract As To The Washington Vacation Class
- (6) Promissory Estoppel As To The Washington Vacation Class
- (7) Breach Of Contract As To The New York Vacation Class
- (8) Promissory Estoppel As To The New York Vacation Class
- (9) Unfair Business Practices (Cal. Bus. Prof Code § 17200, et. seq.)

DEMAND FOR JURY TRIAL

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PRELIMINARY STATEMENT

1. This case arises out of the dissolution of Heller Ehrman White & McAuliffe, a nationwide law firm which began doing business in San Francisco in 1890. Plaintiffs and proposed class members are employees who seek wages that Defendants have refused to pay following the abrupt termination of their employment.

2. Through this action, Plaintiffs and other similarly situated employees of Defendants seek recovery of damages in the amount of 60 days' pay and ERISA benefits by reason of Defendants' violation of the Plaintiffs' rights under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (the "WARN Act") and the California WARN Act, Cal. Labor Code § 1400 et seq. (the "California WARN Act"). Plaintiffs were employees of Defendants and were terminated as part of, or as a result of, mass layoffs and/or plant closings ordered by the Defendants. Defendants violated federal law and state law by failing to give Plaintiffs and other similarly situated employees of the Defendants 60 days notice as required by State and Federal Law.

3. Plaintiffs and other similarly situated employees also seek recovery of unpaid wages, including vacation time, and waiting time penalties in the State of California, as a result of Defendants' failure to pay employees all wages, including vacation time, due and owing at the time of their terminations.

THE PARTIES

4. Individual and Representative Plaintiff Laura Werth is an individual residing in Vallejo, California (Solano County). She was employed by Defendants from September 1996 to October 10, 2008 as a Technology Assistant in Defendants' San Francisco office.

5. Individual and Representative Plaintiff Carl Goodman is an individual residing in Seattle, Washington. He was employed by Defendants from September 2005 to October 10, 2008 as a Senior Manager of Business Development in Defendants' Seattle, Washington office.

6. Individual and Representative Plaintiff Anna Scarpa is an individual residing in Franklin Square, New York. She was employed by Defendants from approximately October 16,

1 2006 to approximately October 17, 2008 as a Manager of Professional Services in Defendants'
2 New York office.

3 7. Individual and representative Plaintiff Garfield Granett is an individual residing in
4 San Francisco, California (San Francisco County). He was employed by Defendants from March
5 2005 to October 10, 2008 in the information technology department in Defendants' San Francisco
6 office.

7 8. Defendant Heller, Ehrman, White & McAuliffe LLP (the "Heller Ehrman
8 Partnership") is a limited liability partnership organized under the laws of the State of California.
9 The partnership maintains offices and conducts business in the State of California, including in
10 San Francisco.

11 9. Defendant Heller, Ehrman, White & McAuliffe, A Professional Corporation
12 ("Heller Ehrman California") is a domestic corporation organized under the laws of the State of
13 California. Heller Ehrman California is a parent company of the Heller Ehrman Partnership, and
14 maintains offices and conducts business in the State of California, including in San Francisco.

15 10. Defendant Heller, Ehrman, White & McAuliffe (Washington), P.S. ("Heller
16 Ehrman Washington") is a foreign corporation organized under the laws of the State of
17 Washington. Heller Ehrman Washington is a parent company of the Heller Ehrman Partnership.

18 11. Defendant Heller, Ehrman, White & McAuliffe, A Professional Corporation
19 ("Heller Ehrman New York") is a foreign corporation organized under the laws of the State of
20 New York. Heller Ehrman New York is a parent company of the Heller Ehrman Partnership.

21 12. Defendant Heller, Ehrman, White & McAuliffe (Oregon), P.C. ("Heller Ehrman
22 Oregon") is a foreign corporation organized under the laws of the State of Oregon. Heller
23 Ehrman Oregon is a parent company of the Heller Ehrman Partnership.

24 13. Defendant Heller, Ehrman, White & McAuliffe (Alaska), P.C. (Heller Ehrman
25 Alaska") is a foreign corporation organized under the laws of the State of Alaska. Heller Ehrman
26 Alaska is a parent company of the Heller Ehrman Partnership.

27 14. Defendant Heller, Ehrman (China), P.C. ("Heller Ehrman D.C.") is a foreign
28 corporation organized under the laws of the District of Columbia. Heller Ehrman D.C. is a parent

1 company of the Heller Ehrman Partnership. Defendants are referred to collectively herein as
2 “Heller Ehrman.”

3 15. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their
4 true names and capacities are unknown to Plaintiffs. When their true names and capacities are
5 ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities
6 herein. Plaintiffs are informed and believe and thereon allege that each of the fictitiously-named
7 defendants is responsible in some manner for the occurrences herein alleged, and that the
8 damages of Plaintiffs and the putative class members herein alleged were proximately caused by
9 such Defendants.

10 16. Plaintiffs are informed, believe, and thereon allege that each of the Defendants
11 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or
12 joint venturer of the remaining Defendants and was acting within the course and scope of the
13 relationship. Plaintiffs are further informed, believe, and thereon allege that each of the
14 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining
15 Defendants.

16 17. Plaintiffs are further informed, believe, and thereon allege that the Defendants
17 herein acted as a “single employer” at all relevant times for the purposes of the WARN Act. At
18 all relevant times, Defendants maintained and facilities across the country that qualified for
19 protection under the WARN Act (collectively the “Facilities”).

20 **JURISDICTION AND VENUE**

21 18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as this case
22 is being brought under the WARN Act, 29 U.S.C. § 2101 et seq.

23 19. This Court has original jurisdiction over Plaintiffs’ state law claims under 28
24 U.S.C. § 1332(d) (the “Class Action Fairness Act”). Plaintiffs bring this case as a class action, at
25 least one Plaintiff is a citizen of a different state than at least one Defendant, and the amount in
26 controversy exceeds \$5,000,000.

27 20. This Court also has supplemental jurisdiction over the state law claims pursuant to
28 28 U.S.C. § 1367.

1 21. Venue is proper in the United States District Court, Northern District of California
2 pursuant to 28 U.S.C. § 1391, because the Heller Ehrman Partnership and Heller Ehrman
3 California reside within this district, and because a substantial part of the events and omissions
4 giving rise to Plaintiffs' claims occurred in this District.

5 22. JURISDICTIONAL STATEMENT REQUIRED BY L.R. 3-5. Under L.R. 3-2(c),
6 this civil action arose in the County of San Francisco and is therefore properly assigned to either
7 the Oakland or San Francisco division of this District.

8 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

9 23. On or about September 25, 2008, Heller Ehrman announced that it was dissolving
10 its partnership. On that day it informed some employees that their final day would be November
11 28, 2008.

12 24. On or about October 3, 2008, Heller Ehrman announced that it would not be
13 paying employees for accrued but unused vacation when they ended their employment with
14 Heller Ehrman.

15 25. Upon information and belief, on October 10, 2008, Defendants terminated the
16 employment of over 100 Heller Ehrman employees nationwide.

17 26. Upon information and belief, on October 17, 2008, Defendants terminated the
18 employment of hundreds of Heller Ehrman employees nationwide.

19 27. Heller Ehrman maintains a vacation policy that applies to most of its United States
20 employees. Through that vacation policy, employees accrue vacation as they work for Heller
21 Ehrman.

22 28. Heller Ehrman also maintains a sabbatical program which provides additional
23 vacation to employees who have worked 10 years or more.

24 29. Heller Ehrman's vacation policy provides: "Employees who terminate or change
25 their status to on-call will receive a vacation payout of all accrued vacation at their hourly rate on
26 their last day of employment with the Firm."

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1 30. Starting approximately October 3, 2008, Heller Ehrman ceased paying employees
2 for their unused vacation at the time of termination. Upon information and belief, Heller Ehrman
3 has not paid unused vacation to employees whose employment ended on or after October 3, 2008.

4 31. Plaintiff Werth had vacation time available to her when she was involuntarily
5 terminated on October 10, 2008. Heller Ehrman has not paid her for this vacation.

6 32. Plaintiff Goodman had approximately 150 hours of vacation available to him when
7 he was involuntarily terminated on October 10, 2008. Heller Ehrman has not paid him for this
8 vacation.

9 33. Plaintiff Scarpa had over 100 hours of vacation available to her when she was
10 involuntarily terminated on October 17, 2008. Heller Ehrman has not paid her for this vacation.

11 34. Plaintiff Granett had over 50 hours of vacation available to him when his
12 employment ended on October 10, 2008. Heller Ehrman has not paid him for this vacation.

13 **CLASS ACTION ALLEGATIONS UNDER 29 U.S.C. § 2104 (WARN ACT)**

14 35. Plaintiffs and those they seek to represent herein were discharged without cause on
15 their part on or about October 10, 2008 or within 30 days of that date, as the reasonable
16 foreseeable consequence of the mass layoff or plant closing ordered by Defendants, and are
17 “affected employees” within the meaning on 29 U.S.C. §2101(a)(5).

18 36. Plaintiffs bring this action on their own behalf, pursuant to the WARN Act, and on
19 behalf of all other similarly situated former employees of Defendants who were terminated on or
20 about October 10, 2008, or within 30 days of that date, and thereafter who worked at one of the
21 Facilities until their termination.

22 37. During the 30 days starting October 10, 2008, Defendants terminated Plaintiffs’
23 employment as part of a mass layoff and/or a plant closing as defined by 29 U.S.C. § 2101 (a)(2),
24 (3) for which they were entitled to receive sixty (60) days advance written notice under the
25 WARN Act.

26 38. Defendants, as a single employer, did not give Plaintiffs the statutorily required
27 sixty (60) days notice of the mass layoff or termination in violation of the WARN Act.
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1 39. Upon information and belief, at or about the time that Plaintiffs were discharged,
2 on or after October 10, 2008, Defendants discharged hundreds of other employees at the Facilities
3 (the “Other Similarly Situated Former Employees”).

4 40. Pursuant to 29 U.S.C. § 2104(a)(5), Plaintiffs maintain this claim on behalf of
5 themselves and each of the Other Similarly Situated Former Employees.

6 41. Each of the Other Similarly Situated Former Employees is similarly situated to
7 Plaintiffs in respect to his or his rights under the WARN Act, in that, *inter alia*:

- 8 a. Plaintiffs and the Other Similarly Situated Former Employees were discharged
9 by Defendants without cause on their part.
- 10 b. Plaintiffs and the Other Similarly Situated Former Employees are “affected
11 employee(s)” within the meaning of the WARN Act 29 U.S.C. § 2101(a)(5).
- 12 c. Defendants were required by the WARN Act to give Plaintiffs and the Other
13 Similarly Situated Former Employees at least sixty (60) days advance written
14 notice of their respective terminations.
- 15 d. Prior to their termination, neither Plaintiffs nor the Other Similarly Situated
16 Former Employees received written notice that complied with the requirements
17 of the WARN Act.
- 18 e. Defendants failed to pay Plaintiffs and the Other Similarly Situated Former
19 Employees their respective wages, salary, commissions, bonuses, accrued
20 holiday, sabbatical, and vacation for sixty (60) calendar days following notice
21 of their terminations and failed to make the 401(k) contributions and provide
22 them with health insurance coverage and other employee benefits under
23 ERISA for sixty (60) calendar days from and after notice of their respective
24 terminations.

25 **CALIFORNIA WARN ACT ALLEGATIONS**

26 42. Plaintiff Werth and others similarly situated were employed at Defendants’
27 facilities in California until their employment was ended in violation of Cal. Labor § 1400, et
28 seq., within 30 days of October 10, 2008.

1 43. Plaintiff Werth and others similarly situated were employees of Defendants, and
2 Defendants were their employers, as those terms are defined in Cal. Labor § 1400.

3 44. Defendants operated facilities in California that were “covered establishment(s),”
4 as that term is defined in Cal. Labor § 1400, because they employed 75 or more persons in certain
5 facilities in the 12 months preceding October 10, 2008.

6 45. Plaintiff Werth and others similarly situated were subjected to a “mass layoff,”
7 “relocation,” or “termination,” as those terms are defined in Cal. Labor § 1400, within 30 days of
8 October 10, 2008.

9 46. Defendants failed to provide Plaintiff Werth and others similarly situated with the
10 proper notice required by Cal. Labor § 1401 prior to the mass layoff, relocation, or termination.

11 47. Defendants failed to provide Plaintiff Werth and others similarly situated with 60
12 days wages and benefits as required by Cal. Labor § 1402.

13 **WARN ACT CLASS ACTION ALLEGATIONS UNDER RULE 23**

14 48. Plaintiffs sue under Rules 23(a), (b)(1) and (b)(3) of the Federal Rules of Civil
15 Procedure on behalf of the following proposed WARN Classes:

16 **WARN Class:** All employees who worked at or reported to one of Defendants’
17 Facilities and were terminated without cause in the 30 days starting
18 October 10, 2008, or were terminated without cause as the
19 reasonable foreseeable consequence of the mass layoff or plant
20 closing ordered by Defendants on or about October 10, 2008, and
21 who are affected employees, within the meaning of 29 U.S.C. §
22 2101(a)(5).

23 **CA WARN Class:** All employees who worked at or reported to one of Defendants’
24 qualifying facilities in California and who were subject to a mass
25 layoff, relocation, or termination ordered by Defendants on or after
26 October 10, 2008.

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1 49. Numerosity: The Proposed Classes are so numerous that joinder of all members
2 is impracticable. Plaintiffs are informed and believe, and on that basis allege, that hundreds of
3 people satisfy the definition of the Proposed Classes.

4 50. Typicality: The Plaintiffs' claims are typical of the members of the Proposed
5 Classes. Plaintiffs, and proposed class members, were involuntarily terminated by Defendants
6 without proper notice under the WARN Act.

7 51. Superiority: A class action is superior to other available methods for the fair and
8 efficient adjudication of the controversy, especially in the context of WARN Act litigation, which
9 necessarily involves a single decision or set of decisions that affects the rights of hundreds of
10 employees.

11 52. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
12 Proposed Class, and have retained counsel experienced in representing employees in complex
13 class litigation.

14 53. Commonality: Common questions of law and fact exist to all members of the
15 Proposed Class and predominate over any questions solely affecting individual members of the
16 Proposed Class, including but not limited to:

- 17 a. whether Defendants were covered employers under the WARN Act and/or the
18 CA WARN Act;
- 19 b. whether all Class members were protected under the WARN Act and/or the
20 CA WARN Act;
- 21 c. whether all Class members' employment locations were covered Facilities
22 under the WARN Act and/or the CA WARN Act;
- 23 d. whether Defendants acted as a single employer in terminating Class Members'
24 employment;
- 25 e. whether Defendants gave at least 60 days advance written notice to the Class
26 members, as required by the WARN Act and/or the CA WARN Act; and
- 27 f. whether Defendants failed to pay the Class members wages and to provide
28 other employee benefits for the sixty day period following their respective

1 terminations.

2 54. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because
3 prosecution of actions by or against individual members of the class would result in inconsistent
4 or varying adjudications and create the risk of incompatible standards of conduct for Defendant.
5 Further, adjudication of each individual member's claim as a separate action would be dispositive
6 of the interest of other individuals not party to this action, impeding their ability to protect their
7 interests.

8 55. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because
9 questions of law and fact common to the Proposed Class predominate over any questions
10 affecting only individual members of the Proposed Class, and because a class action is superior to
11 other available methods for the fair and efficient adjudication of this litigation. Litigation of these
12 claims in one forum is efficient, especially in the context of WARN Act litigation, which
13 necessarily involves a single decision or set of decisions that affects the rights of hundreds of
14 employees. In addition, class certification is superior because it will obviate the need for unduly
15 duplicative litigation that might result in inconsistent judgments about Defendant's practices.

16 56. Plaintiffs intend to send notice to all members of the Proposed Class to the extent
17 required by Rule 23. The names and address of the Proposed Class are available from
18 Defendants.

19 **VACATION TIME CLASS ACTION ALLEGATIONS**

20 57. Plaintiffs sue under Rules 23(a), (b)(1), and (b)(3) of the Federal Rules of Civil
21 Procedure on behalf of the following proposed Vacation Classes:

22 **California Vacation Class:** All former employees of Defendants in the State of
23 California whose employment with Defendants ended on or after
24 October 3, 2008, through the trial of this case, and who had accrued
25 but unused vacation at the time of termination.

26 **Washington Vacation Class:** All former employees of Defendants in the State of
27 Washington whose employment with Defendants ended on or after
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1 October 3, 2008, through the trial of this case, and who had accrued
2 but unused vacation at the time of termination.

3 **New York Vacation Class:** All former employees of Defendants in the State of New York
4 whose employment with Defendants ended on or after October 3,
5 2008, through the trial of this case, and who had accrued but unused
6 vacation at the time of termination.

7 58. Additionally and in the alternative, Plaintiffs sue under Cal. Bus. Prof. Code §
8 17200, et. seq., on behalf of the following group of similarly situated individuals:

9 **17200 Class:** All employees nationwide whose employment with Defendants ended on
10 or after October 3, 2008, through the trial of this case, and who had accrued
11 but unused vacation at the time of termination.

12 59. Numerosity: The Proposed Classes are so numerous that joinder of all members
13 is impracticable. Plaintiffs are informed and believe, and on that basis allege, that hundreds of
14 people who satisfy the definition of the Proposed Classes.

15 60. Typicality: The Plaintiffs' claims are typical of the members of the Proposed
16 Classes. Plaintiffs are informed and believe that Heller Ehrman uniformly failed to pay accrued
17 vacation to individuals whose employment with Heller Ehrman ended on or after October 3,
18 2008.

19 61. Superiority: A class action is superior to other available methods for the fair and
20 efficient adjudication of the controversy here, where Defendants have failed to pay wages to
21 hundreds of employees, and Defendants' dissolution may shrink the assets available to pay
22 employees.

23 62. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
24 Proposed Class, and have retained counsel experienced in representing employees in complex
25 class litigation.

26 63. Commonality: Common questions of law and fact exist to all members of the
27 Proposed Class and predominate over any questions solely affecting individual members of the
28 Proposed Class, including but not limited to:

- 1 a. Whether Defendants maintained a policy of providing vacation to Class
- 2 Members;
- 3 b. Whether Defendants' vacation policy required that Defendants pay Class
- 4 Members for their unused vacation at the time of termination;
- 5 c. Whether Defendants uniformly and unlawfully failed to pay vacation time to
- 6 class members;
- 7 d. Whether Plaintiffs and Proposed Class Members who worked in California are
- 8 entitled to waiting time penalties pursuant to California Labor Code § 203;
- 9 e. Whether Defendants' conduct violated the California Unfair Practices Act set
- 10 forth in the Business and Professions Code § 17200 *et seq.* by violating state
- 11 and federal law as set forth herein; and
- 12 f. The proper measure of damages sustained by the Proposed Class.

13 64. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because
14 prosecution of actions by or against individual members of the class would result in inconsistent
15 or varying adjudications and create the risk of incompatible standards of conduct for Defendants.
16 Further, adjudication of each individual member's claim as a separate action would be dispositive
17 of the interest of other individuals not party to this action, impeding their ability to protect their
18 interests.

19 65. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because
20 questions of law and fact common to the Proposed Classes predominate over any questions
21 affecting only individual members of the Proposed Classes, and because a class action is superior
22 to other available methods for the fair and efficient adjudication of this litigation. Upon
23 information and belief, Defendants' vacation policy applied to all Class Members and Defendants
24 uniformly failed to pay unused vacation time to all Class Members. In addition, class
25 certification is superior because it will obviate the need for unduly duplicative litigation that
26 might result in inconsistent judgments about Defendant's practices.

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1 76. Plaintiffs and each of the other members of the WARN Class are “aggrieved
2 employees” of the Defendants as that term is defined in 29 U.S.C. §2104(a)(7).

3 77. Defendants failed to pay Plaintiffs and each of the other members of the WARN
4 Class their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued
5 vacation for 60 days following notice of their terminations and failed to make the pension and
6 401(k) contributions and provide employee benefits under ERISA, for 60 days following notice
7 of their respective terminations. Defendants are also liable to Plaintiffs for their reasonable
8 attorneys fees under 29 U.S.C. § 2104.

9 **SECOND CLAIM FOR RELIEF**

10 **Violation of the California WARN Act (Cal. Labor Code § 1400 et seq.)**

11 78. Plaintiffs allege and incorporate by reference the allegations in the preceding
12 paragraphs.

13 79. In the 12 months proceeding October 10, 2008, Defendants operated facilities in
14 California in which they employed 75 persons or more.

15 80. Defendants’ actions, as described above and as they occurred at Defendants’
16 qualifying facilities in California, constituted a “mass layoff,” “relocation,” or “termination,”
17 without proper notice, in violation of the California WARN Act, Cal Labor § 1400 et seq.

18 81. Defendants are therefore liable to the California WARN Class for back pay and
19 benefits for 60 days, as outlined in Cal. Labor § 1402, as well as attorneys’ fees under Cal. Labor
20 § 1404.

21 **THIRD CLAIM FOR RELIEF**

22 **(Failure To Pay Vacation Under Cal. Labor § 227.3)**

23 82. Plaintiffs allege and incorporate by reference the allegations in the preceding
24 paragraphs.

25 83. Cal. Labor § 227.3 requires that employers who provide employees with vacation
26 time must pay employees for all unused vacation at the time of termination of employment.

27 84. Defendant violated Cal. Labor § 227.3 by failing to pay Plaintiffs Werth, Granett
28 and the Proposed California Vacation Class the vacation time (including sabbatical time) due and

1 owing to them at the time of the termination of their employment.

2 85. As a result of Defendants' violation of law, Plaintiffs Werth, Granett and the
3 Proposed California Vacation Class have suffered damages, including loss of earnings for unpaid
4 vacation time in an amount to be established at trial, an award of attorneys' fees pursuant to Code
5 of Civil Procedure section 1021.5 and other applicable law, and costs.

6 **FOURTH CLAIM FOR RELIEF**

7 **(Waiting Time Penalties Under Cal. Labor § 203)**

8 86. Plaintiffs allege and incorporate by reference the allegations in the preceding
9 paragraphs.

10 87. California WARN Class and California Vacation Class Members have been
11 terminated, or have resigned, from their positions with Defendants. Defendants, however,
12 willfully failed to pay such Class Members all wages owed them, including vacation time and
13 their final week's pay, within the time limits set forth in California Labor Code sections 201 and
14 202.

15 88. Under Labor Code sections 201, 202, and 203, Class Members are entitled to
16 waiting time penalties for Defendants' willful failure to timely pay all wages owed upon
17 separation of their employment.

18 **FIFTH CLAIM FOR RELIEF**

19 **(Breach Of Contract As To The Washington Vacation Class)**

20 89. Plaintiffs allege and incorporate by reference the allegations in the preceding
21 paragraphs.

22 90. A contract, oral and written, express and implied, existed between Members of the
23 Washington Vacation Class (including Plaintiff Goodman) and Defendants.

24 91. By that contract, Defendants were required to pay employees all accrued vacation
25 time, including sabbatical leave, at the termination of employment.

26 92. Defendants violated that contract by failing to pay vacation time to Plaintiff
27 Goodman and Members of the Washington Vacation Class.

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1 93. As a result of Defendants' breach of contract, Plaintiff Goodman and Washington
2 Vacation Class Members suffered damages in the amount of their accrued but unpaid vacation
3 and sabbatical time, to be determined at trial.

4 **SIXTH CLAIM FOR RELIEF**

5 **(Promissory Estoppel As To The Washington Vacation Class)**

6 94. Plaintiffs allege and incorporate by reference the allegations in the preceding
7 paragraphs.

8 95. Defendants reasonably expected to induce Plaintiff Goodman and Washington
9 Vacation Class Members, and did induce Plaintiff Goodman and Washington Vacation Class
10 Members, to rely on promises relating to the payment of unused vacation and sabbatical time.

11 96. Plaintiff Goodman and Washington Vacation Class Members reasonably relied to
12 their detriment on promises and representations made to him by Defendants relating to the
13 payment of unused vacation.

14 97. Defendants have refused to honor the promises made to Plaintiff Goodman and
15 Washington Vacation Class Members.

16 98. As a result, Plaintiff Goodman and Washington Vacation Class Members are
17 entitled to an award in equity in the amount of their unused vacation and sabbatical time, to be
18 determined at trial.

19 **SEVENTH CLAIM FOR RELIEF**

20 **(Breach Of Contract As To The New York Vacation Class)**

21 99. Plaintiffs allege and incorporate by reference the allegations in the preceding
22 paragraphs.

23 100. A contract, oral and written, express and implied, existed between Members of the
24 New York Vacation Class (including Plaintiff Scarpa) and Defendants.

25 101. By that contract, Defendants were required to pay employees all accrued vacation
26 time, including sabbatical leave, at the termination of employment.

27 102. Defendants violated that contract by failing to pay vacation time to Plaintiff Scarpa
28 and Members of the New York Vacation Class.

1 103. As a result of Defendants' breach of contract, Plaintiff Scarpa and New York
2 Vacation Class Members suffered damages in the amount of their accrued but unpaid vacation
3 and sabbatical time, to be determined at trial.

4 **EIGHTH CLAIM FOR RELIEF**

5 **(Promissory Estoppel As To The New York Vacation Class)**

6 104. Plaintiffs allege and incorporate by reference the allegations in the preceding
7 paragraphs.

8 105. Defendants reasonably expected to induce Plaintiff Scarpa and New York
9 Vacation Class Members, and did induce Plaintiff Scarpa and New York Vacation Class
10 Members, to rely on promises relating to the payment of unused vacation and sabbatical time.

11 106. Plaintiff Scarpa and New York Vacation Class Members reasonably relied to their
12 detriment on promises and representations made to her by Defendants relating to the payment of
13 unused vacation.

14 107. Defendants have refused to honor the promises made to Plaintiff Scarpa and New
15 York Vacation Class Members.

16 108. As a result, Plaintiff Scarpa and New York Vacation Class Members are entitled to
17 an award in equity in the amount of their unused vacation and sabbatical time, to be determined at
18 trial.

19 **NINTH CLAIM FOR RELIEF**

20 **(Unfair Practice under the California Unfair Competition Act)**

21 109. Plaintiffs allege and incorporate by reference the allegations in the preceding
22 paragraphs.

23 110. Section 17200 of the California Business and Professions Code — California's
24 Unfair Competition Law — prohibits unfair competition by prohibiting, *inter alia*, any unlawful
25 or unfair business acts or practices. The foregoing conduct by Defendants, as alleged, constitutes
26 unlawful business actions and practices in violation of Section 17200, *et seq.*

27 111. Pursuant to Business and Professions Code § 17200 *et seq.*, Plaintiffs and 17200
28 Class Members are entitled to restitution of the vacation time and other unpaid wages and

1 premiums alleged herein that Defendants have improperly withheld, a permanent injunction
2 requiring Defendants to pay vacation time to all workers as defined herein, an award of attorneys'
3 fees pursuant to Code of Civil Procedure section 1021.5 and other applicable law, and costs.

4 **PRAYER FOR RELIEF**

5 112. WHEREFORE, Plaintiffs, on behalf of themselves and all members of the
6 Proposed Classes, pray for relief as follows:

- 7 A. That the Court determine that this action may be maintained as a class
8 action under Federal Rule of Civil Procedure 23;
- 9 B. That Defendants are found to have violated the provisions of the WARN
10 Act as to Plaintiffs and the Class;
- 11 C. That Defendants are found to have violated the provisions of the California
12 WARN Act as to Plaintiffs and the Class;
- 13 D. That Defendants are found to have violated Cal. Labor § 227.3 requiring
14 payment of unused vacation upon termination;
- 15 E. That Defendants are found to have breached a contract with Washington
16 and New York Vacation Class Members by failing to pay unused vacation
17 at the time of termination;
- 18 F. For an award, of damages or in equity, in the amount of unpaid vacation
19 owed to members of the California, Washington and New York Vacation
20 Classes;
- 21 G. That Defendants are found to have violated §§ 201, 202, and 203 of the
22 California Labor Code for willful failure to pay all compensation owed at
23 the time of separation to Plaintiffs and the Class;
- 24 H. An award to Plaintiffs and the Class for the amount of all unpaid wages
25 and compensation owed, including interest thereon, and penalties subject to
26 proof at trial;

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- I. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and the 17200 Class due to Defendants' unlawful activities, pursuant to Business and Professions Code §§ 17200-05;
- J. That Defendants further be enjoined to cease and desist from unlawful activities in violation of California Business and Professions Code § 17200;
- K. An award of reasonable attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5, Cal. Labor Code § 1404, 29 U.S.C. § 2104, and/or other applicable law;
- L. For leave to amend this complaint to add additional state law claims, including but not limited to claims in the District of Columbia, State of Oregon, State of Alaska, and the State of Wisconsin; and
- M. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

DEMAND FOR JURY TRIAL

113. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the Seventh Amendment of the United States Constitution, Plaintiffs, individually and on behalf of all others similarly situated, demand a trial by jury.

Dated: November 17, 2008

NICHOLS KASTER, LLP
By: s/Matthew C. Helland
Matthew C. Helland

NICHOLS KASTER, PLLP
ATTORNEYS FOR PLAINTIFFS AND THE
PUTATIVE CLASS