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21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
22 FOR THE COUNTY OF LOS ANGELES

23 BC409505

24 IVY M. BAKER, on behalf of herself )  
25 and those similarly situated )  
26 Plaintiff, )

27 v. )

28 VALLEY PRESBYTERIAN )  
HOSPITAL, a California public benefit )  
corporation; and DOES 1 through 10, )  
inclusive, )  
Defendants. )

Case No.

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATION OF LABOR CODE §§ 226.7(a) and 512(a) (Unpaid Missed Meal Breaks);
- (2) VIOLATION OF LABOR CODE §§ 226.7(a) (Unpaid Missed Rest Breaks);
- (3) VIOLATION OF LABOR CODE §§ 201-203 (Wages Not Paid Upon Termination);
- (4) VIOLATION OF LABOR CODE §§ 510, 1198 (Unpaid Overtime);
- (5) VIOLATION OF LABOR CODE § 226(a) (Accurate Itemized Wage Statements);
- (6) VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 et seq.; and
- (7) VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 et seq.

JURY TRIAL DEMANDED

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

MAR 12 2009

John A. Flacke, Executive Officer/Clerk  
By *[Signature]* Deputy  
DOROTHY SWAIN

1 Plaintiff, by her attorneys, alleges upon personal knowledge as to her own acts, and as to  
2 all other matters upon information and belief based upon, *inter alia*, the investigation made by  
3 and through her attorneys:

4 **NATURE OF THE CASE**

5 1. This is a class action brought on behalf of nurse employees of Valley Presbyterian  
6 Hospital who were improperly denied meal and rest breaks due to the hospital's routine practice  
7 of under-staffing nurses.

8 2. In 1999, the California Legislature and then Governor Gray Davis passed  
9 Assembly Bill 394 which empowered and required the State Department of Health Services  
10 ("DHS") to establish minimum specific and numerical licensed nurse-to-patient ratios for all  
11 general acute care hospitals. Health & Safety Code §1276.4.

12 3. As a result of this law, hospitals are required to maintain particular nurse-to-  
13 patient ratios at all times.

14 4. Nurses at Valley Presbyterian Hospital typically worked in 12-hour shifts. The  
15 California Labor Code, *inter alia*, provides that an employer may not employ an employee for a  
16 work period of more than five hours per day without providing the employee with a meal period  
17 of not less than 30 minutes. In order to accommodate timely meal breaks, the hospital had to be  
18 staffed with a sufficient number of break nurses to relieve nurses within five hours of the start of  
19 their shift, and still have enough nurses to maintain the state mandated nurse-to-patient ratios.

20 5. Valley Presbyterian Hospital routinely failed to employ enough break nurses to  
21 facilitate timely meal and rest breaks for their nurse employees. As a result, nurses often worked  
22 their shifts without taking meal or rest breaks.

23 6. Knowing that they would have to compensate nurses for missed meals and rest  
24 breaks, Valley Presbyterian Hospital exacerbated the wrongdoing by forcing nurses to clock out  
25 prior to the end of the fifth hour of work, despite knowing they could not take a timely meal  
26 break due to the DHS nurse-to-patient ratio requirements.

27 7. Valley Presbyterian Hospital's actions not only violate the labor code but  
28 fundamentally undermine the purpose and intent of A.B. 394 to protect nurses and ensure the

1 highest level of patient care.

2 **THE PARTIES**

3 8. Plaintiff Ivy Baker ("Plaintiff") is an individual residing in the County of Los  
4 Angeles, State of California. From her date of hire, on or around August 3, 2007, to the date of  
5 her resignation, on or about November 17, 2008, Plaintiff was employed as a non-exempt, hourly  
6 employee by Defendant Valley Presbyterian Hospital in the County of Los Angeles, State of  
7 California.

8 9. Valley Presbyterian Hospital ("VPH" or "Defendant") is a 350-bed facility and the  
9 largest acute care hospital in central San Fernando Valley. Plaintiff is informed and believes that  
10 Defendant was and is a California nonprofit, public benefit corporation, qualified to do business  
11 in California with its principal place of business in Los Angeles County.

12 10. At all relevant times, Defendant employed Plaintiff as a registered nurse and  
13 exercised control over Plaintiff's wages, hours, and working conditions.

14 11. The true names and capacities of the Defendants named herein as Does 1 through  
15 10, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious  
16 names. Plaintiff will amend this Complaint to show the Doe Defendants' true names and  
17 capacities when they have been ascertained. Plaintiff is informed and believes, and thereon  
18 alleges, that each fictitiously named Defendant is responsible in some manner for the acts and  
19 conduct alleged herein. Each reference in this Complaint to "Defendant" or "Defendants" also  
20 refers to all Defendants sued under such fictitious names.

21 12. At all times herein mentioned, each Defendant, including all Defendants sued  
22 under fictitious names, was and is the agent and employee of the remaining Defendants. In  
23 committing the acts and omissions and engaging in the conduct hereinafter mentioned, each  
24 Defendant was acting within the course and scope of such agency and employment, with the  
25 knowledge and consent of each other Defendant, and as authorized or ratified by each of the  
26 remaining Defendants.

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1 JURISDICTION AND VENUE

2 13. This Court has jurisdiction over this action pursuant to *Code of Civil Procedure*  
3 §410.10. This Court has jurisdiction over all causes of action asserted herein pursuant to the  
4 California Constitution, Article VI, Section 10, which grants the Superior Court "original  
5 jurisdiction in all causes except those given by statute to other courts." The statutes under which  
6 this action is brought do not specify any other basis for jurisdiction.

7 14. This Court has jurisdiction over Defendants because each Defendants is a  
8 corporation or other business entities authorized to do business in the State of California and  
9 registered with the California Secretary of State to do sufficient business with sufficient  
10 minimum contacts in California, and/or otherwise intentionally avails itself of the California  
11 market so as to render the exercise of jurisdiction over it by the California courts consistent with  
12 traditional notions of fair play and substantial justice.

13 15. Venue is proper in this Court pursuant to California Code of Civil Procedure  
14 §395.5 and because one or more of the named Defendants transact business or have offices in  
15 County of Los Angeles, and the acts and omissions alleged herein took place in this County.

16 CLASS ACTION ALLEGATIONS

17 16. Plaintiff brings this action on her own behalf, as well as on behalf of each and all  
18 other persons similarly situated, and thus seeks class certification under California Code of Civil  
19 Procedure Section 382.

20 17. The claims alleged herein arise under California law for which Plaintiff seeks  
21 relief authorized by California law.

22 18. The proposed class Plaintiff will seek to certify is currently composed of and  
23 defined as follows:

24 **All current and former California-based non-exempt, hourly**  
25 **nurse employees of Defendant within the past four years.**

26 19. There is a well defined community of interest in the litigation, and the class is  
27 easily ascertainable.

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1           20.    Numerosity: The members of the class (and each subclass, if any) are so numerous  
2 that joinder of all members would be unfeasible and impractical. The membership of the entire  
3 class is unknown to Plaintiff at this time, however, the class is estimated to be greater than fifty  
4 (50) individuals and the identity of such membership is readily ascertainable by inspection of  
5 Defendants' employment records.

6           21.    Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the  
7 interests of each Class Member with whom she has a well defined community of interest, and  
8 Plaintiff's claims are typical of the claims of all Class Members as demonstrated herein because  
9 all Class Members sustained damages arising out of Defendants' common course of conduct in  
10 violation of California law.

11          22.    Adequacy: Plaintiff is an adequate representative of all Class Members, will fairly  
12 protect the interests of all Class Members, has no interests antagonistic to the other Class  
13 Members, and will vigorously pursue this action via attorneys who are competent, skilled and  
14 experienced in litigation matters of this type.

15          23.    Superiority: The nature of this action makes the use of class action adjudication  
16 superior to other methods. A class action will achieve economies of time, effort and expense as  
17 compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues  
18 can be adjudicated in the same manner and at the same time for the entire class.

19          24.    Public Policy Considerations: Employers of the State of California violate  
20 employment and labor laws every day. Current employees are often afraid to assert their rights  
21 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions  
22 because they believe their former employers may damage their future endeavors through negative  
23 references and/or other means. Class actions provide the Class Members who are not named in  
24 the Complaint with a type of anonymity which allows for the vindication of their rights and at the  
25 same time protect their privacy.

26          25.    Existence and Predominance of Common Questions of Fact and Law: There are  
27 common questions of fact and law as to the members of the class which predominate over  
28 questions affecting only individual members, including, but not limited to:

- 1 a. Whether Defendants violated wage reporting requirements under  
2 California Labor Code Section 226;
- 3 b. Whether Defendants failed to pay all wages owned upon discharge or  
4 termination of employees, as required by California Labor Code Sections 201-203;
- 5 c. Whether Defendants violated the Labor Code by failing to provide its  
6 employees with timely meal breaks;
- 7 d. Whether Defendants violated the Labor Code by failing to provide its  
8 employees with timely rest breaks;
- 9 e. Whether Defendants conduct violated California Business and Professions  
10 Code Section 17200 et seq.;
- 11 f. The appropriate amount of damages, restitution, and/or monetary  
12 penalties.

13 **COMMON FACTUAL ALLEGATIONS**

14 26. Defendants employed Plaintiff as a non-exempt, registered nurse from on or about  
15 August 3, 2007 to on or about November 17, 2008.

16 27. At all times herein mentioned, Defendants employed Plaintiff and other nurses in  
17 the capacity of non-exempt or hourly paid workers.

18 28. Defendants continue to employ non-exempt or hourly paid workers within  
19 California.

20 29. Plaintiff is informed and believes and thereon alleges that, at all times herein  
21 mentioned, Defendants were advised by skilled lawyers and other professionals, employees, and  
22 advisors knowledgeable about California labor and wage law and employment and personnel  
23 practices, and about the requirements of California law.

24 30. Plaintiff is informed and believes and thereon alleges that Defendants knew or  
25 should have known that Plaintiff and other Class Members were entitled to receive premium  
26 wages for overtime compensation and that they were not receiving premium wages for overtime  
27 compensation.

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1 entitled to his or her wages at the time of quitting.

2 52. During all relevant periods of time, Defendants failed to pay Plaintiff and those  
3 Class Members who are no longer employed by Defendants their wages, earned and unpaid,  
4 either at the time of discharge or within 72 hours of their leaving Defendants' employ.

5 53. Defendants' failure to pay Plaintiff and those Class Members who are no longer  
6 employed by Defendants their wages earned and unpaid at the time of discharge, or within 72  
7 hours of their leaving Defendants' employ, is a violation of California Labor Code Sections 201  
8 and 202.

9 54. California Labor Code Section 203 provides that if an employer willfully fails to  
10 pay wages owed, in accordance with Sections 201 and 202, then the wages of the employee shall  
11 continue as a penalty from the due date, and at the same rate until paid or until an action is  
12 commenced; but the wages shall not continue for more than thirty days.

13 55. Plaintiff and other Class Members are entitled to recover from Defendants the  
14 statutory penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty  
15 day maximum pursuant to California Labor Code Section 203.

16 **FOURTH CAUSE OF ACTION**

17 (For Violation of California Labor Code §§ 510 and 1198)

18 56. Plaintiff realleges and incorporates herein by reference each and every allegation  
19 set forth in Paragraphs 1 through 33 hereinabove, inclusive, as though set forth at length herein.

20 57. California Labor Code Section 1198 provides that it is unlawful to employ  
21 persons for longer than the hours set by the applicable order of the California Industrial Welfare  
22 Commission. Industrial Wage Order 5-2001 provides that employees working for more than  
23 eight (8) hours in a day, or more than forty (40) hours in a workweek, are entitled to payment at  
24 the rate of time-and-one-half her or his regular rate of pay for all hours worked in excess of eight  
25 (8) hours in a day or more than forty (40) hours in a work week. An employee who works more  
26 than twelve (12) hours in a day is entitled to overtime compensation at a rate of twice her or his  
27 regular rate of pay.

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1 58. California Labor Code Section 510 codifies the right to overtime compensation at  
2 one-and-one half the regular rate for hours worked in excess of eight (8) hours in a day or forty  
3 (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to  
4 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)  
5 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

6 59. At all relevant times while employed by Defendants, Plaintiff and the other Class  
7 Members consistently worked in excess of eight (8) hours in a workday, forty (40) hours in a  
8 week, or in excess of twelve (12) hours in a workday.

9 60. At all relevant times while employed by Defendants, Defendants failed to pay all  
10 premium overtime wages owed to Plaintiff and the other Class Members.

11 61. At all relevant times while employed by Defendants, Plaintiffs and other Class  
12 Members regularly performed non-exempt work in excess of 50% of the time, and were thus  
13 subject to the overtime requirements of California law.

14 62. Defendants' failure to pay Plaintiff and other Class Members the unpaid balance  
15 of premium overtime compensation, as required by California state law, violates the provisions  
16 of California Labor Code Sections 510 and 1198, and is therefore unlawful.

17 63. Pursuant to California Labor Code Section 1194, Plaintiff and other Class  
18 Members are entitled to recover their unpaid overtime compensation, as well as interest, costs,  
19 and attorney's fees.

#### 20 **FIFTH CAUSE OF ACTION**

21 (For Violation of California Labor Code § 226(a))

22 64. Plaintiff realleges and incorporates herein by reference each and every allegation  
23 set forth in Paragraphs 1 through 33 hereinabove, inclusive, as though set forth at length herein.

24 65. California Labor Code Section 226(a) requires an employer to furnish to its  
25 employees an *accurate* itemized wage statement in writing showing, among other things, the  
26 gross wages earned and the total hours worked by the employee.

27 66. Defendants have knowingly and intentionally violated Section 226(a) by failing to  
28 furnish Plaintiff and other Class Members with complete and accurate itemized wage statements

1 which include, among other things, the actual total number of hours worked by Plaintiff and the  
2 other Class Members.

3 67. Plaintiff and the other Class Members are entitled to recover from Defendants the  
4 greater of their actual damages caused by Defendants' failure to comply with Section 226(a) or  
5 an aggregate penalty not exceeding four thousand dollars (\$4,000) and an award of costs and  
6 reasonable attorney's fees pursuant to Section 226(e).

7 **SIXTH CAUSE OF ACTION**

8 (Unfair Business Practices in Violation of

9 Business & Professions Code §§17200, *et seq.*)

10 68. Plaintiff realleges and incorporates herein by reference each and every allegation  
11 set forth in Paragraphs 1 through 33 hereinabove, inclusive, as though set forth at length herein.

12 69. The UCL defines unfair business competition to include any "unlawful, unfair or  
13 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading" advertising.  
14 Cal. Bus. & Prof. Code §17200.

15 70. A business act or practice is "unfair" under the Unfair Competition Law if the  
16 reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the  
17 harm to the alleged victims.

18 71. VPH has and continues to violate the "unfair" prong of the UCL by under staffing  
19 its hospital and not affording its nurses timely rest and meal breaks. The gravity of the harm to  
20 members of the Class resulting from such unfair acts and practices outweighs any conceivable  
21 reasons, justifications and/or motives VPH may have for engaging in such deceptive acts and  
22 practices. By committing the acts and practices alleged above, VPH has engaged, and continues  
23 to be engaged, in unfair business practices within the meaning of California Business and  
24 Professions Code §§17200 *et seq.*

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1 **SEVENTH CAUSE OF ACTION**

2 (Unfair Business Practices in Violation of  
3 Business & Professions Code §§17200, *et seq.*)

4 72. Plaintiff realleges and incorporates herein by reference each and every allegation  
5 set forth in Paragraphs 1 through 33 hereinabove, inclusive, as though set forth at length herein.

6 73. The UCL defines unfair business competition to include any “unlawful, unfair or  
7 fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising.  
8 Cal. Bus. & Prof. Code §17200.

9 74. A business act or practice is unlawful under the Unfair Competition Law if it  
10 actually deceives or is likely to deceive members of the consuming public.

11 75. Within each of the four years prior to the commencement of this action, Plaintiff  
12 is informed and believes and thereon alleges that Defendants have unlawfully failed to provide  
13 30-minute meal breaks and 10-minute rest periods to Plaintiff and the Class Members, failed to  
14 pay wages upon termination or resignation, failed to pay overtime, and failed to provide accurate  
15 itemized wage statements.

16 76. Defendants, by committing the acts and/or omissions as herein alleged, have  
17 engaged, and continue to engage, in unlawful and/or unfair business acts and practices within the  
18 meaning of California Business and Professions Code Section 17200 *et seq.*

19 77. Plaintiff is informed and believes and herein alleges that, as a result of  
20 Defendants’ acts and/or omissions as herein alleged, Defendants have unlawfully earned profits  
21 from such unlawful and/or unfair business practices.

22 78. California Business and Professions Code Section 17200 *et seq.* specifically  
23 authorizes a request for injunctive relief, restitution and for the disgorgement of unlawfully  
24 earned profits. Therefore, Plaintiff and the other Class Members are entitled to injunctive relief,  
25 restitution of the wages unlawfully withheld and retained by Defendants, and the disgorgement of  
26 all unlawfully earned profits obtained by Defendants as a result of their acts and omissions as  
27 herein alleged.

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1           10.    Such other and further relief as is just and proper.

2           **Third Cause of Action**

3           11.    For all actual, consequential and incidental losses and damages, according to  
4 proof;

5           12.    For statutory penalties pursuant to Labor Code Section 203 for Plaintiff and all  
6 other Class Members who have left Defendants' employ;

7           13.    For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289  
8 and Labor Code Section 218.6;

9           14.    For attorneys' fees and costs pursuant to Labor Code Section 218.5 or as  
10 otherwise permitted by statute;

11          15.    For costs of suit incurred herein; and

12          16.    Such other and further relief as is just and proper.

13          **Fourth Cause of Action**

14          17.    For general unpaid wages at overtime wage rates and such general and special  
15 damages as may be appropriate;

16          18.    For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289  
17 and Labor Code Section 218.6;

18          19.    For attorneys' fees and costs pursuant to Labor Code Section 1194(a) or as  
19 otherwise permitted by statute;

20          20.    For costs of suit incurred herein; and

21          21.    Such other and further relief as is just and proper.

22          **Fifth Cause of Action**

23          22.    For all actual, consequential and incidental losses and damages, according to  
24 proof;

25          23.    For statutory penalties pursuant to Labor Code Section 226(e);

26          24.    For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289  
27 and Labor Code Section 218.6;

28          25.    For attorneys' fees and costs pursuant to Labor Code Section 226(e) or as

1 otherwise permitted by statute;

2 26. For costs of suit incurred herein; and

3 27. Such other and further relief as is just and proper.

4 **Sixth and Seventh Causes of Action**

5 28. For an order compelling Defendants to restore unpaid wages, expenditures, losses,  
6 income, and other related benefits (in the form of restitution) to each of the members of the class  
7 who have suffered as a result of Defendants' unlawful and unfair business practices alleged  
8 herein;

9 29. For an order compelling Defendants to disgorge and pay over to each Class  
10 Member all profits and savings resulting from Defendants' unlawful and unfair business  
11 practices alleged herein;

12 30. For issuance of a permanent injunction enjoining Defendants from continuing to  
13 engage in the unlawful and unfair business practices alleged herein;

14 31. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289  
15 and Labor Code Section 218.6;

16 32. For attorneys' fees and costs pursuant to Labor Code Sections 218.5 and 2802,  
17 Code of Civil Procedure Section 1021.5, or as otherwise permitted by statute;

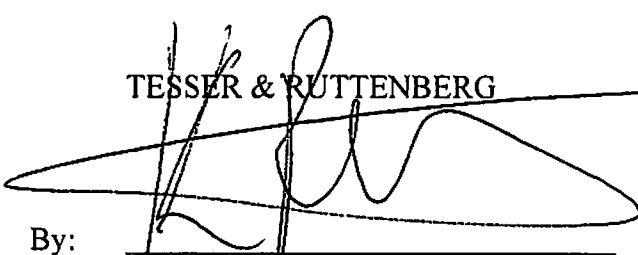
18 33. For costs of suit incurred herein; and

19 34. Such other and further relief as is just and proper.

20  
21 Dated: March 12, 2009

TESSER & RUTTENBERG

22  
23  
24 By:

  
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Attorneys for Plaintiff  
Ivy M. Baker