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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

ASHLEY HALL, as an individual on behalf of herself and all other similarly situated individuals,

Plaintiff,

v.

CVS HEALTH CORPORATION, a Delaware corporation; CVS PHARMACY, INC., a Rhode Island corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 24CECG03967

CLASS ACTION

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF:

1. Violation of California Business & Professions Code §§ 16600, 16600.1, and 16600.5;
2. Violation of California's Unfair Competition Law (Business & Professions Code §§ 17200, *et seq*.); and
3. Retaliation in Violation of California Labor Code § 98.6.

DEMAND FOR JURY TRIAL

Plaintiff Ashley Hall ("Plaintiff") brings this class action on behalf of herself and all persons similarly situated against Defendants CVS Health Corporation, CVS Pharmacy, Inc., and DOES 1 through 50, inclusive (collectively, "Defendants"), on the following grounds:

INTRODUCTION

1. This class action is brought by Plaintiff on behalf of herself and all other similarly situated individuals who were presented with a "Restrictive Covenant Agreement" upon application for employment with Defendants in California.

2. Plaintiff asserts that during the relevant time period, Defendants engaged in a common pattern and practice of requiring Plaintiff and other applicants and/or employees to agree, in writing, to terms and conditions of employment prohibited by California law. Specifically, Defendants required their applicants and/or employees to sign (i) unlawful non-compete agreements; (ii) unlawful non-solicitation agreements; and (iii) unlawful assignment of inventions agreements. In doing so, Defendants engaged in unfair, unlawful, and fraudulent business practices proscribed by California Business & Professions Code ("Business & Professions Code") §§ 17200, *et seq*.

3. Defendants further engaged in a common pattern and practice of retaliating or otherwise taking adverse employment action against Plaintiff and other applicants and/or employees for engaging in conduct protected by the California Labor Code ("Labor Code"), including the conduct delineated in Labor Code § 96(k).

4. By and through this class action, Plaintiff seeks to recover all available remedies, including, but not limited to, damages and injunctive relief, as well as reasonable attorneys' fees and litigation costs, as provided under California law.

5. All allegations in this Complaint are based upon information and belief except those allegations that pertain to Plaintiff named herein, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

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JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") § 410.10. Pursuant to Business and Professions Code § 17203, Plaintiff brings this action on behalf of herself and all other similarly situated individuals.

7. This Court has personal jurisdiction over Defendants because Defendants conduct business in the state of California and have caused injuries in the county of Fresno, as well as throughout the state of California, through their acts, omissions, and violations of the Business & Professions Code and Labor Code.

8. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 395 and 395.5. Plaintiff's contract with Defendants was to be performed in Fresno County. Moreover, Defendants transact business in Fresno County and are otherwise in this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other similarly situated individuals within the county of Fresno and throughout the state of California.

9. Pursuant to rule 3.400 of the California Rules of Court, this case shall be deemed a complex action because it is filed as a class action that involves specialized case management, extensive discovery and evidence, difficult and/or novel issues, and is likely to require extensive post-judgment supervision.

THE PARTIES

I. PLAINTIFF

10. Plaintiff Ashley Hall at all material times mentioned herein:

a. Was and is a resident of Fresno County in the state of California.

b. Applied for Defendants' Registered Nurse – Cardiopulmonary Educator position in or around April 2024.

c. Received an offer of employment for the Registered Nurse – Cardiopulmonary Educator position on May 1, 2024, contingent upon her execution of a "Restrictive Covenant Agreement".

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d. Refused to sign the "Restrictive Covenant Agreement" due to several unlawful provisions contained therein.

e. Was not hired for the Registered Nurse – Cardiopulmonary Educator position because she refused to sign the "Restrictive Covenant Agreement".

f. Suffered actual damages, lost wages, and lost benefits as a result of Defendants' refusal to hire her.

g. Was subject to Defendants' unlawful, unfair, and fraudulent business practices.

h. Is a member of the classes defined herein.

II. DEFENDANT

11. Defendant CVS Pharmacy, Inc. is a Rhode Island corporation with its principal place of business located in Woonsocket, Rhode Island. CVS Pharmacy, Inc. is a healthcare company that provides healthcare services and operates a chain of retail pharmacies in California and across the United States. CVS Pharmacy, Inc. is a subsidiary of Defendant CVS Health Corporation, a Delaware corporation with its principal place of business located in Woonsocket, Rhode Island.

12. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

13. At all times mentioned herein, the acts alleged to have been done and/or caused by the named defendant are also alleged to have been done and/or caused by the fictitiously named defendants, and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

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14. At all times mentioned herein, each named defendant, including each fictitiously named defendant, is believed to have acted individually or as an officer, agent, or employee of the other defendants, including each fictitiously named defendant.

15. At all times mentioned herein, each named defendant, including each fictitiously named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of the other defendants, and in doing the things alleged herein, acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

16. At all times mentioned herein, the acts and/or omissions of each of the named defendants, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each named defendant, including each fictitiously named defendant, was and is acting with authority of each and every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

17. Each named defendant, including each fictitiously named defendant, is alleged to have caused each of the violations alleged herein.

18. Each named defendant, including each fictitiously named defendant, is jointly and severally liable for each of the violations alleged herein.

FACTUAL ALLEGATIONS

A. Plaintiff Refuses to Sign the RCA

19. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

20. Plaintiff is a Registered Nurse and sole owner of A1 Quality Healthcare Services, LLC ("A1"), a California limited liability company focused on providing education and resources for nurses, healthcare professionals, and the general public. Plaintiff formed A1 in 2021 and has since been working under the LLC by writing articles on healthcare topics and providing nursing

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services at facilities. Plaintiff is also in the process of developing a website for A1. The primary purpose of the website is to provide educational resources on a variety of healthcare topics. For example, Plaintiff plans to release articles explaining the causes and treatments for COVID-19, the flu, congestive heart failure, and other diseases. In addition, Plaintiff will provide articles and templates on the website for healthcare professionals to use in organizing patient assignments, choosing between travel nurse assignments, and planning time effectively, among other things. Plaintiff will also be launching a YouTube channel with videos discussing the nursing profession.

21. Plaintiff applied for Defendants' Registered Nurse – Cardiopulmonary Educator position in or around April 2024. This is an hourly position providing education, infusion therapy, and clinical support to patients with Pulmonary Arterial Hypertension ("PAH") in the county of Fresno and surrounding areas.

22. On May 1, 2024, Plaintiff received a conditional offer of employment for the Registered Nurse – Cardiopulmonary Educator position. As set forth in the offer letter, Plaintiff's offer of employment was contingent upon her execution of a "Restrictive Covenant Agreement" ("RCA") with Defendants. A true and correct copy of the RCA presented to Plaintiff for signature is attached hereto as **Exhibit 1**.

23. Upon review of the terms of the RCA, Plaintiff was concerned about the overbreadth of many of its provisions, including Section 5 ("Rights to Inventions, Works") in relation to the work she completes under her LLC, A1. Plaintiff believed that, if she agreed to the terms of the RCA, she would be restrained in launching the website for her LLC or performing other work under her LLC, even when she was no longer employed. It was also Plaintiff's understanding, based on Section 5 of the RCA, that the rights to any articles or templates she creates for A1 during her employment would be assigned to Defendants. Plaintiff could not agree to the RCA because it would preclude her from further developing and working under her LLC for a significant length of time, and would cause her to lose the rights to her written works.

24. Upon receiving the conditional offer of employment, Plaintiff emailed her points of contact at Defendants' Talent Acquisition Team, Dana Arredonda and Jenny De La Rosa, and requested that Section 5 of the RCA be modified. On May 14, 2024, Plaintiff was told that an

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exception to the RCA could not be made for her because all applicants and employees are required to sign the same version.

25. On May 15, 2024, Plaintiff informed Dana Arredonda that she will not sign the RCA. Plaintiff was informed that the offer of employment for the Registered Nurse – Cardiopulmonary Educator position was rescinded because she would not sign the RCA. Thus, Defendants refused to hire Plaintiff because she would not agree, as a condition of employment, to sign an agreement containing multiple unlawful provisions, including a non-compete clause and overbroad inventions assignment clause.

26. Plaintiff diligently searched for another job after Defendants' refusal to hire her. Approximately 5-6 weeks later, she secured a contract position as a Registered Travel Nurse for significantly less pay than what was offered by Defendants. In or around July 15, 2024, Plaintiff accepted a different contract position as a Registered Nurse at a higher rate of pay but no health benefits. To date, Plaintiff has not found a job with comparable pay and benefits as Defendants' Registered Nurse – Cardiopulmonary Educator position despite her best efforts. Thus, Plaintiff has suffered, and will continue to suffer, actual damages because she would not agree to abide by the unlawful terms of the RCA to secure employment with Defendants.

B. Defendants' Non-Compete and Illegal Restrictive Covenants

27. The RCA contains multiple illegal and void provisions in clear conflict with California's public policy in favor of open competition and employee mobility, codified at Business & Professions Code § 16600.

The Unlawful Customer Non-Solicit Provision

28. Section 2(a) of the RCA unlawfully purports to restrict Plaintiff and other similarly situated individuals for a period of 12 months after the termination of employment, from:

> interfer[ing] with the Corporation's relationship with its Business Partners by soliciting or communicating (regardless of who initiates the communication) with a Business Partner to: (i) induce or encourage the Business Partner to stop doing business or reduce its business with the Corporation, or (ii) buy a product or service that competes with a product or service offered by the Corporation's business.

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29. The "Corporation" is defined as "CVS Health Corporation, or one of its subsidiaries or affiliates, including Aetna Inc." Ex 1, § 1.

30. The RCA defines "Business Partner" to mean: "a customer (person or entity), prospective customer (person or entity), healthcare provider, supplier, manufacturer, agency, broker, hospital, hospital system, long-term care facility, insurance client/ customer, and/or pharmaceutical company with whom the Corporation has a business relationship" and with whom the applicant or employee "had business-related contact or dealings, or about which [they] received Confidential Information, in the two years prior to the termination of [their] employment with the Corporation." Ex 1, § 2(a). The RCA excludes from the definition of "Business Partner" the following entities: "a customer, supplier, manufacturer, agency, broker, hospital, hospital system, long-term care facility and/or pharmaceutical manufacturer that has fully and finally ceased doing any business with the Corporation" for at least 1 year prior to the employee's separation of employment, independent of that individual's conduct, communications, or breach of the agreement. *Id*.

31. This customer non-solicitation provision is void on its face. Subsection (ii), which prohibits Plaintiff and other similarly situated employees from soliciting the "Corporation's" customers to buy a product or service that competes with a product or service offered by the "Corporation", clearly infringes on the open competition protected by Business & Professions Code § 16600. CVS Health Corporation is a major national corporation, with hundreds of subsidiaries and affiliates across the nation, while Aetna Inc. is a major insurance provider. Moreover, "Business Partners" is broadly defined to encompass not just customers, but ***prospective*** customers, suppliers, agencies, and various healthcare facilities and providers with whom CVS Health Corporation or its subsidiaries do business with. There is no doubt that Plaintiff, and on information and belief, other similarly situated individuals would be restrained in practicing their professions under the terms of this customer non-solicit clause. For instance, Plaintiff would be prohibited from soliciting or communicating with the "Corporation's" customers to sell her own nursing or educational services under her LLC for a 12-month period following her termination. Thus, the RCA is in clear violation of California law and public policy.

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The Unlawful Employee Non-Solicit Provision

32. Section 2(c) of the RCA unlawfully purports to restrict Plaintiff and other similarly situated individuals for a period of 12 months after the termination of employment, from:

> interfer[ing] with the Corporation's relationship with any employee or contractor of the Corporation by: (i) soliciting or communicating with the employee or contractor to induce or encourage him or her to leave the Corporation's employ or engagement (regardless of who first initiates the communication); (ii) helping another person or entity evaluate such employee or contractor as an employment or contractor candidate; or (iii) otherwise helping any person or entity hire an employee or contractor away from the Corporation.

33. This employee non-solicitation clause is anti-competitive, anti-employee, and void as a restraint on trade under California law. Plaintiff and, on information and belief, other similarly situated employees would be restrained from hiring new recruits for their own enterprises (such as Plaintiff's LLC) if the recruits are current employees of the "Corporation." CVS Health Corporation, its subsidiaries, and its affiliates employ hundreds of thousands of employees across the United States. Plaintiff and other similarly situated individuals would be foreclosed from speaking to any of these employees about working for their own ventures, which would undoubtedly dissuade them from engaging in their professions. Moreover, by preventing Plaintiff and other similarly situated individuals from soliciting the "Corporation's" ***contractors***, this provision is more akin to a covenant not to compete. Under a plain reading of Section 2, Plaintiff and other similarly situated individuals would not be able to contract with consultants, accountants, or other contractors who are engaged with the "Corporation", thereby restricting their ability to perform essential business tasks at their own businesses. By way of this employee non-solicit clause, Defendants intend to restrain Plaintiff and other similarly situated individuals not just from hiring away Defendants' employees, but from launching ventures that compete with Defendants' businesses.

The Unlawful Non-Compete Clause

34. Section 2(b) of the RCA unlawfully intends to restrict Plaintiff and other similarly situated individuals for 12 months after the termination of their employment with "the

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Corporation" from "work[ing] on a Corporation account on behalf of a Business Partner or serv[ing] as the representative of a Business Partner for the Corporation."

35. Notably, the non-compete provision is unlimited in geographic scope.

36. Under the broad wording of the RCA, Plaintiff and other similarly situated individuals are prohibited from working for potentially thousands of potential employers. Plaintiff and other similarly situated individuals would not be able to work on behalf of a "Business Partner" (which is broadly defined) if they had "business-related contact or dealings" (which could encompass something as minor as a one-time service or sale) with that entity and their new job duties entail working on an "account" associated with the Corporation. Although "Corporation account" is not defined by the agreement, a reasonable reading would imply maintaining some kind of business relationship with Defendants, their subsidiaries, or affiliates. Assuming Plaintiff accepted the RCA and worked for Defendants, and while working for Defendants she was in contact with a particular hospital or facility to provide infusion therapy services, Plaintiff would be unable to work for that same hospital or facility in any role responsible for maintaining a business relationship with the Defendants so long as the hospital or facility and Defendants did not cease doing business within the year prior to her hypothetical termination. As another example, Plaintiff would be unable to provide nurse education services to a healthcare provider that is contracted with Aetna Inc. if she had business dealings with that healthcare provider while working for Defendants.

37. The effect of the RCA is to prevent Plaintiff and other similarly situated individuals from working for Defendants' clients, customers, suppliers, etc. following termination, which California law does not permit.

38. To escape liability, Defendants will likely rely on the language in Section 2 of the RCA, which states: "Without limiting the generality of the foregoing, nothing in this Agreement is intended to be nor shall be construed as a non-compete agreement prohibiting any employment during or subsequent to my employment with the Corporation." However, the express terms of the RCA state the exact opposite—they prohibit Plaintiff and similarly situated individuals from seeking employment with certain entities, and likewise restrain Plaintiff and similarly situated

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individuals from competing against Defendants by soliciting their clients or employees. To narrowly construe the terms of the RCA undermines "the policy of section 16600" in favor of competition; employees will honor these clauses in fear of being sued, while "[e]mployers would have no disincentive to use the broad, illegal clauses if permitted to retreat to a narrow, lawful construction in the event of litigation" *Kolani v. Gluska*, 64 Cal. App. 4th 402, 408 (Ct. App. 1998).

C. Defendants' Illegal Inventions Assignment Clause

39. Labor Code §§ 2870 and 2871 make it unlawful for an employer to make assignment of certain inventions by an employee a condition of employment or continued employment. Labor Code § 2870(a) outlines the permissible assignments as follows:

> Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) Result from any work performed by the employee for the employer.

40. Section 5(a) of the RCA requires, as a condition of employment, Plaintiff and similarly situated individuals make assignment of inventions exceeding that which is permitted by Labor Code § 2870. Specifically, Section 5(a) mandates:

> All inventions, original works of authorship, developments, concepts, improvements, designs, discoveries, ideas, trademarks or trade secrets, whether patentable or otherwise protectable under similar law, made, conceived or developed by me, whether alone or jointly with others, from the date of my initial employment by the Corporation and continuing until the end of any period during which I am employed by the Corporation, relating or pertaining in any way to my employment with or the business of the Corporation (collectively referred to as "Inventions") shall be promptly disclosed in writing to the Corporation. I hereby assign to the Corporation, or its designee, all of my rights, title and interest to such Inventions.

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41. First, this provision is unlawfully broad because it requires employees, as a condition of employment, to assign their inventions to entities that are not their employers. The provision incorporates the same definition of "Corporation" that is used throughout the RCA: "CVS Health Corporation or one of its subsidiaries or affiliates, including Aetna Inc." As it pertains to Plaintiff, she could be forced to assign her rights to Aetna Inc., who was not her prospective employer. Moreover, by using this broader definition of "Corporation," the RCA mandates assignment of inventions that relate not just to an employee's specific employer's "business," but also to the businesses of CVS Health Corporation and its hundreds of subsidiaries and affiliates.

42. Second, the RCA mandates assignment of inventions relating ***in any way*** to the employee's employment with the "Corporation" ***or*** the business of the "Corporation". Thus, the RCA purports to assign employees' inventions that are unrelated to their employer's business, so long as the inventions relate in a minor way to the employee's "employment." Similarly, the RCA does not provide that the invention must be the result of work performed by the employee. Thus, under the RCA, an employee could be forced to assign an invention that was created on their own time without using their employer's equipment, supplies, facilities, or trade secret information, but is unrelated to their employer's business and/or is not the product of work performed by the employee. This directly contravenes Labor Code § 2870.

43. For instance, Plaintiff would have been forced to assign her rights to any protectable works created for her YouTube channel because her videos discussing the nursing profession in general clearly relate in some way to the Clinical Registered Nurse Educator position. This is in despite of the fact that her YouTube videos and related content would be created on her own time and with her own materials, are not related to her prospective employer's business of providing patient education, clinical support, and infusion therapy for Pulmonary Arterial Hypertension and other illnesses, and similarly would not result from her work performed during employment. The same is true for articles and templates Plaintiff creates for her LLC on the topics of organizing patient assignments and planning time effectively as a nurse. These articles bear some relation to

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Plaintiff's employment as a Clinical Registered Nurse Educator, but are not related to Defendants' business of providing healthcare services.

44. Defendants further violated Labor Code § 2872 by failing to provide written notification to the employee that the agreement does not apply to an invention which qualifies fully under Labor Code § 2870. Indeed, although the RCA provides notice of invention carve-outs as it pertains to Illinois, Kansas, North Carolina, Utah, and Minnesota law, as included in Exhibit B, entitled "Notice Regarding Invention Assignment," it includes no mention of California law.

45. As a result of Defendants' common pattern and practice of requiring Plaintiff and other applicants and/or employees to agree, in writing, to terms and conditions of employment prohibited by California law, including unlawful non-compete agreements, unlawful non-solicitation agreements, and unlawful assignment of inventions agreements, Defendants engaged in unlawful, unfair, and fraudulent business practices.

46. Plaintiff believes that additional violations may be discovered and therefore reserves her right to allege additional violations of law as investigation and discovery warrants. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

CLASS DEFINITIONS

47. Plaintiff seeks to represent the following classes, which are defined as follows:

RCA Class:
All individuals who were presented with the Restrictive Covenant Agreement attached as Exhibit 1 as a condition of employment with Defendants in California during the period commencing on the date that is within three years prior to the filing of the Complaint through and including the last date of trial.

UCL Class:
All individuals who were presented with the Restrictive Covenant Agreement attached as Exhibit 1 as a condition of employment with Defendants in California during the period commencing on the date that is within four years prior to the filing of the Complaint through and including the last date of trial.

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48. A more precise definition of the RCA Class and UCL Class may be determined after further investigation and discovery. Plaintiff reserves her right to redefine the classes and/or create additional classes and/or sub-classes at any time prior to the court's order on Plaintiff's class certification motion as provided by law.

CLASS ACTION DESIGNATION

49. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

50. Plaintiff brings this action on behalf of herself and on behalf of all persons within the RCA Class and UCL Class defined herein.

51. This action is appropriately suited for a class action pursuant to Code of Civil Procedure § 382 because the following statutory requirements are met:

A. Numerosity

52. The members of the RCA Class and the UCL Class are sufficiently numerous to render the joinder of all their members impracticable. While Plaintiff has not yet determined the precise number of members of the RCA Class and the UCL Class, Plaintiff is informed and believes that the Classes likely consist of thousands of individuals.

53. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants' records.

B. Commonality

54. Common questions of law and fact exist as to all putative class members and predominate over any questions affecting only individual members of the RCA Class or the UCL Class. The common questions of law and fact that predominate include, but are not limited to:

a. Whether Defendants' policy and practice of including post-employment restrictive covenants in RCA Class Members' employment agreements violates Business & Professions Code §§ 16600, 16600.1, and 16600.5;

b. Whether the non-compete provision in the Restrictive Covenant Agreement presented to RCA Class Members violates Business & Professions Code §§ 16600, 16600.1, and 16600.5;

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c. Whether the customer non-solicitation provision in the Restrictive Covenant Agreement presented to RCA Class Members violates Business & Professions Code §§ 16600, 16600.1, and 16600.5;

d. Whether the employee non-solicitation provision in the Restrictive Covenant Agreement presented to RCA Class Members violates Business & Professions Code §§ 16600, 16600.1, and 16600.5;

e. Whether the "Assignment of Inventions" clause in the Restrictive Covenant Agreement presented to RCA Class Members violates Labor Code §§ 2870 and 2871;

f. Whether Defendants' policy or practice of denying employment or otherwise engaging in adverse actions against members of the RCA Class for refusing to agree to the Restrictive Covenant Agreement violates Labor Code § 98.6;

g. Whether Defendants engaged in unlawful and/or unfair business practices by conditioning UCL Class Members' employment on entering into unlawful non-compete and non-solicitation agreements; and

h. Whether Defendants engaged in unlawful and/or unfair business practices by conditioning UCL Class Members' employment on entering into an unlawful assignment of invention clause.

C. Typicality

55. Plaintiff's claims are typical of the claims of all putative class members because Plaintiff's and all putative class members' claims arise from the same agreements, practices and/or courses of conduct of Defendants. Plaintiff and all putative class members sustained injuries and damages as a result of Defendants' illegal agreements and/or common courses of conduct in violation of California laws and/or illegal, unfair, or fraudulent business practices.

56. Furthermore, Plaintiff's claims under the Business & Professions Code and Labor Code are typical of the RCA Class and the UCL Class because Defendants' failure to comply with the relevant provisions of California law entitles Plaintiff and each putative class member to similar damages, injunctive relief, and other relief. Accordingly, the legal theories underlying each

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cause of action are the same and the remedies sought by Plaintiff and all putative class members are the same.

D. Adequacy of Representation

57. Plaintiff is a member of the RCA Class and the UCL Class and she has no fundamental conflict of interest with the putative class members she seeks to represent.

58. Plaintiff will vigorously protect the interests of all putative class members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation due to her and the putative class members.

59. Plaintiff retained attorneys who are experienced employment law litigators with significant class action experience.

E. Superiority of Class Action

60. Plaintiff believes a class action is a superior method of litigation for the fair and efficient adjudication of this controversy. Individual joinder of all putative class members is not practicable. Class action treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

61. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the classes and will apply uniformly to every member of the RCA Class and UCL Class, and as a practical matter, be dispositive of the interests of the other members not party to the adjudication.

62. Plaintiff knows of no difficulty that might be encountered in the management of this suit, which would preclude maintenance as a class action, in that:

a. The persons who comprise the RCA Class and UCL Class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

b. The parties opposing the RCA Class and UCL Class have acted or have refused to act on grounds generally applicable to the classes, thereby making final injunctive relief or declaratory relief appropriate with respect to the classes as a whole; and

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c. Common questions of law and fact exist as to the members of the RCA Class and/or UCL Class and predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

i. The interests of class members in individually controlling the prosecution or defense of separate actions;

ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the RCA Class and/or UCL Class;

iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and

iv. The likely difficulties in the managing of a class action.

63. In sum, the Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure § 382 because:

a. Questions of law and fact common to the RCA Class and UCL Class are substantially similar and predominate over any questions affecting only individual members;

b. A class action is superior to any other available method for the fair and efficient adjudication of class members' claims;

c. The members of the RCA Class and UCL Class are so numerous that it is impractical to bring all class members before the Court;

d. Plaintiff's claims are typical of the claims of the RCA Class and/or UCL Class;

e. Class members will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

f. There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendants' actions have inflicted upon the Classes;

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g. Plaintiff can fairly and adequately protect the interests of the RCA Class and UCL Class;

h. There is a community of interest in ensuring that the combined assets and available insurance of Defendants are sufficient to adequately compensate the members of the RCA Class and UCL Class for the injuries sustained; and

i. Defendants have acted or refused to act on grounds generally applicable to the RCA Class and UCL Class, thereby making final injunctive relief appropriate with respect to the Classes as a whole.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 16600, 16600.1, 16600.5

(Alleged By Plaintiff, Individually and On Behalf of the RCA Class, Against All Defendants)

64. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

65. California has a long-standing prohibition against covenants not to compete. "[I]n 1872 California settled public policy in favor of open competition, and rejected the common law 'rule of reasonableness,' when the Legislature enacted the Civil Code…. In the years since its original enactment as Civil Code section 1673, our courts have consistently affirmed that section 16600 evinces a settled legislative policy in favor of open competition and employee mobility." *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 945-46 (Cal. 2008).

66. Business & Professions Code § 16600(a) states the following: "Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

67. Business & Professions Code § 16600(b)(1) further states:

> This section shall be read broadly, in accordance with Edwards v. Arthur Andersen LLP (2008) 44 Cal.4th 937, to void the application of any noncompete agreement in an employment context, or any

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> noncompete clause in an employment contract, no matter how narrowly tailored, that does not satisfy an exception in this chapter.

68. Pursuant to Business & Professions Code § 16600.1(a), "[i]t shall be unlawful to include a noncompete clause in an employment contract, or to require an employee to enter a noncompete agreement, that does not satisfy an exception in this chapter."

69. Business & Professions Code § 16600 "protects Californians and ensures 'that every citizen shall retain the right to pursue any lawful employment and enterprise of their choice.'" *Edwards*, 44 Cal. 4th at 946 (quoting *Metro Traffic Control, Inc. v. Shadow Traffic Network*, 22 Cal. App. 4th 853, 859 (Ct. App. 1994)).

70. In 2023, the California Legislature enacted SB 699, codified in California Business & Professions Code § 16600.5, which provides that "[a]ny contract that is void under this chapter is unenforceable regardless of where and when the contract was signed." Cal. Bus. & Prof. Code § 16600.5(a). "An employer shall not enter into a contract with an employee or prospective employee that includes a provision that is void under this chapter." *Id*., § 16600.5(e)(1). The statute further provides that an "employee, former employee, or prospective employee may bring a private action to enforce this chapter for injunctive relief or the recovery of actual damages, or both." *Id*., § 16600.5(e)(1).

71. To be void under Business & Professions Code § 16600, "a provision need not completely prohibit the business or professional activity at issue, nor does it need to be sufficient to dissuade a reasonable person from engaging in that activity. But its restraining effect must be significant enough that its enforcement would implicate the policies of open competition and employee mobility that animate section 16600." *Golden v. California Emergency Physicians Medical Group*, 896 F. 3d 1018, 1024 (9th Cir. 2018).

72. The prohibition of Business & Professions Code § 16600 extends not just to employment agreements prohibiting employees from working for their former employer's competitors, but also to non-solicitation clauses that have the effect of restraining employees from practicing their profession following termination. Specifically, in *Edwards*, 44 Cal. 4th at 948, the California Supreme Court applied Business & Professions Code § 16600 to invalidate a provision

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prohibiting an employee, for a year after termination, from soliciting their former employer's clients because it restricted the employee's ability to practice his accounting profession. In *Dowell v. Biosense Webster, Inc.*, 179 Cal. App. 4th 564, 575 (Ct. App. 2009), the court similarly held a non-solicitation clause, which prevented "the employees for a period of 18 months postemployment from soliciting any business from, selling to, or rendering any service directly or indirectly to any of the accounts, customers, or clients with whom they had contact during the last 12 months of employment", was void and unenforceable under section 16600 because it "retrain[ed] the employees from practicing their chosen profession."

73. In addition to customer non-solicitation clauses, courts have found employee non-solicitation clauses to be invalid under Business & Professions Code § 16600 if they inhibit employees from practicing their chosen profession for some length of time after termination of employment. *E.g.*, *AMN Healthcare, Inc. v. Aya Healthcare Services, Inc*., 28 Cal. App. 5th 923, 936-37 (Ct. App. 2018) (non-solicitation agreement invalid where former employees were prohibited from directly or indirectly soliciting or inducing any employee of the company to leave the service of the company for at least 12 months post-employment); *WeRide Corp. v. Kun Huang*, 379 F. Supp. 3d 834, 852 (N.D. Cal. 2019) (the court invalidated a non-solicitation provision with a one-year term in an employment agreement for a non-hiring role).

74. Here, as a condition of employment, Defendants required Plaintiff and other RCA Class Members to execute an RCA including numerous terms that are prohibited by Business & Professions Code § 16600.

75. First, the RCA contains an invalid customer non-solicitation clause. Section 2(a) of the RCA prohibits Plaintiff and other RCA Class Members, for 12 months following separation of employment, from interfering "with the Corporation's relationship with its Business Partners by soliciting or communicating (regardless of who initiates the communication) with a Business Partner to … (ii) buy a product or service that competes with a product or service offered by the Corporation's business." This provision clearly restrains Plaintiff and other RCA Class Members from practicing their chosen profession. Plaintiff and other RCA Class Members are prohibited from soliciting Defendants' customers to sell their own products or services that compete with

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those offered by Defendants after the end of their employment relationship. Such a restriction is overly broad and an unlawful restraint of trade in violation of Business & Professions Code § 16600.

76. Second, the RCA contains an invalid employee non-solicitation clause. Section 2(c) of the RCA prohibits Plaintiff and other RCA Class Members, for 12 months following separation of employment, from interfering "with the Corporation's relationship with any employee or contractor of the Corporation by: (i) soliciting or communicating with the employee or contractor to induce or encourage him or her to leave the Corporation's employ or engagement (regardless of who first initiates the communication)." Like the other provisions in the RCA, Section 2(c) inhibits Plaintiff and other RCA Class Members from engaging in their profession by prohibiting them from hiring Defendants' employees or contractors to work at their own enterprises. Indeed, the employee non-solicitation clause in the RCA is broader than the clause deemed to be invalid in *AMN Healthcare, Inc.*, 28 Cal. App. 5th at 936-37 because it encompasses not just Defendants' employees, but contractors as well.

77. Third, Section 2(b) of the RCA contains an invalid non-compete provision. Specifically, Plaintiff and other RCA Class Members cannot "work on a Corporation account on behalf of a Business Partner or serve as the representative of a Business Partner for the Corporation" for a 12-month period following termination. The RCA broadly defines the term "Corporation" to include Defendants' subsidiaries and affiliates, not just in California, but across the nation. The RCA likewise defines the term "Business Partner" to encompass customers, prospective customers, healthcare providers, suppliers, brokers, pharmaceutical companies, and numerous other entities with which the "Corporation" have a "business relationship" and the employee had "business-related contact or dealings". Given the breadth of the terms in Section 2(b)—which restrain employees from working for thousands of entities in the healthcare industry—the RCA substantially interferes with Plaintiff's and other RCA Class Members' ability to find and obtain employment.

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78. Thus, by mandating execution of Sections 2(a)-(c) of the RCA, Defendants seek to restrain Plaintiff and other RCA Class Members from pursuing a lawful profession of their choosing for 12 months following termination of employment with Defendants.

79. The narrow statutory exceptions set forth in Business & Professions Code § 16601, 16602, and 16602.5 do not apply to Plaintiff or other RCA Class Members.

80. Pursuant to Business & Professions Code § 16600.5(e)(1), Plaintiff and the RCA Class Members are entitled to, and now seek to recover, actual damages and injunctive relief.

81. Plaintiff, on behalf of herself and the RCA Class Members, is entitled to and seeks recovery of reasonable attorney's fees and costs as permitted by Business & Professions Code § 16600.5(e)(2).

82. Plaintiff, on behalf of herself and the RCA Class, requests further relief as described in the below prayer.

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW

[Business & Professions Code §§ 17200, *et seq*.]

(Alleged By Plaintiff, Individually and On Behalf of the UCL Class, Against All Defendants)

83. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

84. As codified in Business & Professions Code §§ 17200, *et seq*., California's Unfair Competition Law ("UCL") broadly prohibits "any unlawful, unfair or fraudulent business act or practice."

85. A cause of action may be brought under the UCL if a practice violates some other law. The "unlawful" prong of the UCL effectively deems a violation of the underlying law a per se violation of Business & Professions Code §§ 17200, *et seq*. *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co*., 20 Cal. 4th 163, 180 (Cal. 1999). Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for a section 17200 "unlawful" violation. *Farmers Ins. Exch. v. Superior Court*, 2 Cal. 4th 377, 383 (Cal. 1992).

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86. The "unfair" prong of the UCL does not require a practice to be specifically proscribed by any law. *Korea Supply Co. v. Lockheed Martin Corp*., 20 Cal. 4th 1134, 1143 (Cal. 2003). "A business practice is unfair within the meaning of the UCL if it violates established public policy or if it is immoral, unethical, oppressive or unscrupulous and causes injury to consumers which outweighs its benefits." *McKell v. Washington Mutual, Inc.*, 142 Cal. App. 4th 1457, 1473 (Ct. App. 2006) (internal citations omitted). Pursuant to the California Supreme Court, the "unfair standard" is intentionally broad to give maximum discretion to courts in prohibiting new schemes to defraud. *Cel-Tech Commc'ns, Inc.,* 20 Cal. 4th at 180-81.

87. Defendants' business practices violate the "unlawful" and "unfair" prongs of California's UCL.

Unlawful

88. As described herein, Defendants violated Business & Professions Code §§ 16600, 16600.1 and 16600.5 by requiring UCL Class Members, as a condition of employment, to enter into employment contracts containing unlawful non-compete and non-solicitation clauses.

89. Defendants violated Labor Code §§ 2870 and 2871 by predicating UCL Class Members' employment on the assignment of inventions not permitted under Labor Code § 2870(a), while also failing to provide written notice of rights afforded by § 2870 as required by Labor Code § 2872.

90. Defendants' violations of the Business & Professions Code and Labor Code are per se violations of the UCL. *Cel-Tech Commc'ns, Inc.,* 20 Cal.4th at 180; Business & Professions Code § 16600.1(c) ("A violation of this section constitutes an act of unfair competition within the meaning of Chapter 5 (commencing with Section 17200)."); *Dowell*, 179 Cal. App. 4th at 575 ("An employer's use of an illegal noncompete agreement also violates the UCL."); *Brown v. TGS Management Company, LLC*, 57 Cal. App. 5th 303, 314 (Ct. App. 2000) (same). Therefore, Defendants have clearly engaged in unlawful business practices pursuant to Business & Professions Code §§ 17200 *et seq*.

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Unfair

91. Defendants' practice of using unlawful non-compete agreements is an unfair business practice because Defendants violate California's established public policy in favor of open competition and employee mobility.

92. Defendants' practice of mandating, as a condition of employment, the assignment of inventions not permitted by Labor Code § 2870 constitutes an unfair business practice because Defendants force UCL Class Members to give up their rights under the Labor Code to secure employment. Defendants have acted unethically and oppressively by taking advantage of UCL Class Members' inferior bargaining power to assign itself rights to inventions not permitted by California law, thereby causing harm to UCL Class Members.

93. As a direct and proximate result of Defendants' unlawful and unfair business practices described herein, Plaintiff and the UCL Class have suffered economic injury in the form of lost money, wages, benefits, and intellectual property.

94. Plaintiff and the UCL Class are persons in interest under Business and Professions Code § 17203 to whom money and property should be restored. Business and Professions Code § 17203 states, in relevant part, that "any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of § 17204."

95. Plaintiff is a person who suffered injury in fact and lost money, wages, compensation, and benefits, as a result of Defendants' unfair competition. Thus, pursuant to Business and Professions Code §§ 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of herself and the UCL Class.

96. Pursuant to Business and Professions Code § 17203, "[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgment … as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition…."

97. The unlawful and unfair conduct alleged herein has continued, and there is no indication that Defendants will refrain from such activity in the future. Plaintiff believes and

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alleges that if Defendants are not enjoined from the conduct described herein, Defendants will continue to violate California law at the expense of UCL Class Members. Accordingly, Plaintiff requests that the Court issue an injunction voiding the post-employment restrictive covenants and assignment of inventions clause, and enjoining Defendants from enforcing the same.

98. Plaintiff and the UCL Class suffered and continue to suffer loss of wages, monies, and intellectual property, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

99. Plaintiff seeks all available remedies on behalf of herself and on behalf of the UCL Class Members including, but not limited to, injunctive relief, all in an amount to be shown according to proof at trial. All such remedies are cumulative of relief available under other laws, pursuant to Business & Professions Code § 17205.

100. Plaintiff, on behalf of herself and the UCL Class, requests further relief as described in the below prayer.

THIRD CAUSE OF ACTION

RETALIATION IN VIOLATION OF CALIFORNIA LABOR CODE § 98.6

(Alleged By Plaintiff, Individually and On Behalf of the RCA Class, Against All Defendants)

101. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

102. Labor Code § 98.6(a) provides, in relevant part: "A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, … or because of the exercise by the employee or applicant for employment on behalf of themselves or others of any rights afforded to them."

103. Labor Code § 98.6(b)(1) provides, in relevant part:

> Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and

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> conditions of their employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, … shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.

104. Further, Labor Code § 98.6(c)(1) states:

> Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, … shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

105. The conduct described in Labor Code § 96(k) is as follows: "lawful conduct occurring during nonworking hours away from the employer's premises." Courts have interpreted this language, based on the public policy statement in an uncodified portion of the statute, to protect only conduct that involves a recognized constitutional right. *Barbee v. Household Automotive Finance Corp.*, 6 Cal. Rptr. 3d 406, 414 (Ct. App. 2003); *Grinzi v. San Diego Hospice Corp.*, 120 Cal. App. 4th 72, 87 (Ct. App. 2004). One such right protected by the California Constitution is the right to pursue a lawful occupation, profession, or business. *See Chrysler Corp. v. New Motor Vehicle Bd.*, 153 Cal. Rptr. 135, 138-39 (Cal. Ct. App. 1979) ("California decisions have recognized that 'every individual possesses as a form of property the right to pursue any lawful calling, business or profession he may choose.' There is also no doubt that this right is one of constitutional dimension.") (citing *Edwards v. Fresno Community Hosp.*, 38 Cal. App. 3d 702, 705 (Ct. App. 1974) and California Constitution, Article I, § 7(a)); *Bautista v. Jones*, 25 Cal. 2d 746, 749 (Ct. App. 1944) ("The right to work, either in employment or independent business, is fundamental and, no doubt, enjoys the protection of the personal liberty guarantee of the Fourteenth Amendment to the federal Constitution, as well as the more specific provisions of our state Constitution. [T]his right…is also protected in some degree against arbitrary action by private organizations, including employers and labor unions.") (internal citations omitted).

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106. Indeed, the California Supreme Court held, in the context of a case brought by an employer to enjoin a former employee from soliciting the employer's customers:

> Equity will to the fullest extent protect the property rights of employers in their trade secrets and otherwise, but public policy and natural justice require that equity should also be solicitous for the right inherent in all people, not fettered by negative covenants upon their part to the contrary to follow any of the common occupations of life. Every individual possesses as a form of property, the right to pursue any calling, business or profession he may choose. A former employee has the right to engage in a competitive business for himself and to enter into competition with his former employer, even for the business of those who had formerly been the customers of his former employer, provided such competition is fairly and legally conducted.

Continental Car-Na-Var Corp. v. Moseley, 24 Cal. 2d 104, 110 (Cal. 1944) (emphasis added).

107. Courts have further interpreted the phrase "of any rights" in the final portion of Labor Code § 98.6(a) to refer to rights "otherwise protected by the Labor Code." *Grinzi*, 120 Cal. App. 4th at 87. Thus, to bring an actionable claim under Labor Code § 98.6(a) on the basis that an employee or applicable exercised "any rights afforded to them," the employee or applicant must have exercised a right protected by the Labor Code. *Id.*

108. During the relevant period, Defendants had a policy and practice of subjecting Plaintiff and other RCA Class Members to adverse employment actions, including refusal of employment, for exercising their rights protected under the Labor Code, including the conduct described in Labor Code § 96(k).

109. Plaintiff and, on information and belief, other RCA Class Members were refused employment or otherwise subjected to adverse actions for engaging in lawful conduct occurring during nonworking hours away from Defendants' premises that involves the assertion of a recognized constitutional right. Specifically, Defendants refused to employ Plaintiff because she would not agree to Defendants' RCA, which was presented to as part of Defendants' offer of employment and contained invalid covenants not to compete. In refusing to acquiesce to these unlawful provisions, Plaintiff was asserting her constitutional right to pursue a lawful occupation, profession, or business. Thus, Defendants violated Labor Code § 98.6(a) by taking adverse action

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against Plaintiff and other RCA Class Members for engaging in conduct described in Labor Code § 96(k).

110. Moreover, Plaintiff and, on information and belief, other RCA Class Members were refused employment or otherwise subjected to adverse actions for exercising their rights afforded to them under the Labor Code. Specifically, Plaintiff and, on information and belief, other RCA Class Members refused to agree to assign Defendants their inventions protected by Labor Code §§ 2870 and 2871.

111. Pursuant to Labor Code § 98.6(b)(1) and (c)(1), Plaintiff and the RCA Class Members are entitled to, and now seek to recover, reimbursement for lost wages and work benefits caused by the acts of Defendants.

112. Plaintiff, on behalf of herself and the RCA Class Members, is entitled to and seeks recovery of reasonable attorney's fees and costs as permitted by Code of Civil Procedure § 1021.5.

113. Plaintiff, on behalf of herself and the RCA Class, requests further relief as described in the below prayer.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendants in favor of the class action as follows:

a. For an order determining that this action may be maintained as a class action with the named Plaintiff as the class representative;

b. For the attorneys appearing on the above caption to be named class counsel;

c. Injunctive relief voiding the post-employment restrictive covenants contained in the RCA under California law and public policy, including Business & Professions Code §§ 16600, 16600.1, and 16600.5, and enjoining Defendants from enforcing same in court;

d. Actual damages arising Defendants' inclusion and maintenance of unlawful restrictive covenants and the requirement that Plaintiff and the RCA Class enter such agreements, as provided in Business & Professions Code § 16600.5(e)(1);

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e. For injunctive relief pursuant to Business & Professions Code § 17203, and/or other applicable law, voiding the post-employment restrictive covenants and inventions assignment clause and enjoining Defendants from enforcing same in court;

f. For all wages, benefits, and damages due to Plaintiff and the RCA Class members pursuant to Labor Code § 98.6(b)(1) and (c)(1);

g. For reasonable attorneys' fees and costs of suit pursuant to Business & Professions Code § 16600.5(e)(2); Code of Civil Procedure § 1021.5, the "common fund" theory, the "substantial benefit" theory, and/or other applicable law, theory or doctrine;

h. For a declaratory judgment that Defendants violated Business & Professions Code §§ 16600, 16600.1, 16600.5, and 17200, *et seq.*; Labor Code §§ 2870-2872; and Labor Code § 98.6;

i. For pre- and post- judgment interest as provided by California law;

j. For appropriate equitable relief pursuant to California law; and

k. For any other relief the Court may deem as just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues triable to a jury.

Dated: September 11, 2024

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By: Allison E. Schubert

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