



1 Timothy D. Cohelan, Esq. (SBN 60827)
 Isam C. Khoury, Esq. (SBN 58759)
 2 Michael D. Singer, Esq. (SBN 115301)
 J. Jason Hill, Esq. (SBN 179630)
 3 **COHELAN KHOURY & SINGER**
 605 C Street, Suite 200
 4 San Diego, CA 92101-5305
 Telephone: (619) 595-3001
 5 Facsimile: (619) 595-3000

6 Christopher J. Hamner, Esq. (SBN 197117)
 Amy T. Wootten, Esq. (SBN 188856)
 7 **HAMNER LAW OFFICES, LP**
 15760 Ventura Blvd., Suite 860
 8 Encino, CA 91436
 Telephone: (818) 386-0444
 9 Facsimile: (818) 386-0050

FILED
 ALAMEDA COUNTY
 JUL 30 2009
 CLERK OF THE SUPERIOR COURT
 Deputy

10 Attorneys for Plaintiff ROBERT BILLS, on behalf of
 himself, the general public, and all others similarly-situated

11 **SUPERIOR COURT OF CALIFORNIA**
 12 **COUNTY OF ALAMEDA**

13 ROBERT BILLS, on behalf of
 14 himself, the general public, and all others
 15 similarly-situated,

) CASE NO. **RG 09465894**
) **CLASS ACTION COMPLAINT FOR**
) **DAMAGES, RESTITUTION AND**
) **PENALTIES**

16
 17 Plaintiff,

-) 1. Failure to Pay Overtime Wages (Lab. Code §§204, 510, 1194);
-) 2. Failure to Provide Meal Periods or Compensation in Lieu Thereof (Lab. Code §§226.7, 512);
-) 3. Failure to Provide Paid Rest Periods or Compensation in Lieu Thereof (Lab. Code §§226.7, 512);
-) 4. Failure to Timely Pay Wages at Separation (Lab. Code §§201-203);
-) 5. Intentional Failure to Provide Accurate Itemized Wage Statements (Lab. Code §226);
-) 6. Unfair Business Practices (Bus. & Prof. Code §§17200-17208)

18
 19 v.

20 SUTTER HEALTH, a California Corporation,
 23 and DOES 1 through 100, Inclusive,

24
 25 Defendants.

) **DEMAND FOR JURY TRIAL**

26
 27
 28

1 Plaintiff ROBERT BILLS, on behalf of himself, the general public, and all others similarly-
2 situated, complains and alleges as follows:

3 I.

4 **INTRODUCTION**

5 1. This case arises out of Defendant's mis-classification of proposed class members
6 as exempt from overtime pay, resulting in the non-payment of overtime compensation and failure
7 to provide compliant rest and meal periods to certain California Information-Technology (IT)
8 employees of Defendant SUTTER HEALTH (hereinafter referred to as "SUTTER" or
9 "Defendant"). The job titles for these proposed SUTTER class members may have changed
10 through the years encompassed by this action, though job tasks have changed very little, if at all.
11 The proposed plaintiff Class covers all persons having job titles, job codes or descriptions of
12 "EHR Data Analyst," "EHR Systems Analyst," "EHR Technical Analyst," "Programmer
13 Analyst," "EHR Reporting Analyst" and/or similar titles or positions that primarily engaged in the
14 installation, configuration, updating, monitoring, and troubleshooting of Defendant's hardware
15 and software computer network and systems relating to the implementation of "Sutter Connect"
16 and the Electronic Health Record ("EHR") initiative. The positions run across similar job
17 families of EHR Application Support, EHR Technical Support, EHR Testing/Implementation and
18 the EHR Ambulatory Team Support. Although the system and software differs, the functional
19 aspects of the job titles and codes are virtually identical and all were classified by Defendant as
20 exempt from overtime without justification. Like BILLS, persons in these positions that were
21 based in the State of California spent a majority of their work time engaged in non-exempt
22 functions for the Defendant and were mis-classified as exempt employees during the "Class
23 Period," which is defined as four years prior to the filing of the Complaint through the date of
24 trial.

25 2. By this action, BILLS, on behalf of himself, on behalf of the general public, and on
26 behalf of all other similarly situated employees based in California, seeks damages and restitution
27 in the recovery of unpaid overtime wages for hours worked in excess of 8 per day and/or 40 per
28 week for himself and each of the putative class members. BILLS also seeks payment of "premium

1 wages” for non-compliant meal periods and rest periods, “waiting time” penalty wages for
2 formerly employed putative class members who were not paid all wages due at the time of
3 separation from SUTTER, penalties for Defendant’s failure to provide accurate itemized wage
4 statements, penalties, in a representative capacity, as provided by the Private Attorney General
5 Act (“PAGA”) and declaratory/injunctive relief, to the extent permitted by law, that the positions
6 identified and the tasks/duties performed fail to plainly and unmistakably meet the requirements
7 of any recognized exemption under California law.

8 3. Plaintiff brings this as a class action pursuant to California Code of Civil
9 Procedure Section 382 and under the Unfair Competition Law, California Labor Code sections
10 201-204, 226, 226.7, 510-512, and 1194, applicable Wage Orders of the Industrial Welfare
11 Commission (IWC), Title 8 of the California Code of Regulations, section 11050 et seq., and
12 pursuant to Business & Professions Code, section 17200, et seq. The Class sought to be certified
13 consists of the following:

14 All Defendant’s California-based employees having job titles, job codes
15 and/or descriptions of “EHR Data Analyst,” “EHR Systems Analyst,” “EHR
16 Technical Analyst,” “Programmer Analyst,” “EHR Reporting Analyst” (including
17 employees who perform identical functions under similar circumstances under
18 different job descriptions or titles) who, from the period of 4 year prior to the
commencement of this action until the date of trial, were classified by Defendant as
“exempt” and who were not paid the at legally requisite overtime rate for all hours
worked in excess of eight (8) hours per workday and/or forty (40) hours per
workweek.

19 4. The “Overtime Subclass” includes Class members who worked in excess of 8
20 hours per day and/or 40 hours per week and who were not paid overtime compensation as
21 required by applicable orders of the Industrial Welfare Commission (“IWC.”) The “Meal Period”
22 Subclass includes Class members who worked periods exceeding five hours without an
23 uninterrupted, off-duty, 30-minute meal period and/or periods in excess of ten hours without a
24 second uninterrupted off-duty, 30-minute meal period and were denied commensurate pay under
25 Labor Code sections 226.7 as well as applicable Wage Orders of the Industrial Welfare
26 Commission (“IWC.”) The “Rest Period Subclass” includes Class members who worked periods
27 of four hours or a major fraction thereof without a rest period of at least 10-minutes and were
28 denied commensurate pay under Labor Code section 226.7. The “Waiting Time Subclass”

1 includes those class members who ended their employment with the Defendant during the Class
2 Period, but who were not timely paid all wages owed as required by the Labor Code are entitled to
3 “premium wage” payments equivalent to 30-days pay at their last hourly rate pursuant to
4 California Labor Code section 203.

5 5. As used herein, the term “Plaintiff” means ROBERT BILLS, who is the named
6 Plaintiff Class representative; the term “Plaintiff Class” includes the Plaintiff and all members of
7 the proposed Class and Subclasses. Plaintiff held positions for which recovery is sought and
8 worked hours of overtime in excess of 8 per day and/or 40 per week without commensurate pay as
9 required by the California Labor Code and/or applicable Wage Orders of the IWC. Further,
10 Plaintiff was not provided with compliant meal periods, nor was he authorized and permitted to
11 take requisite rest breaks. Plaintiff separated from his employment in January 2009, and was not
12 paid all wages owed, nor had Defendant properly and accurately itemized his wage statements
13 during his employment with SUTTER. In short, Plaintiff has suffered loss as a result of
14 Defendant’s conduct and mis-classification and Defendant has unjustly retained wages such that
15 recovery for said sums, plus interest at the legal rate, are due. Plaintiff’s injury in fact provides
16 him standing to sue both on his own behalf, and as a proposed class representative on behalf of
17 others similarly situated in the proposed Class and Subclasses.

18 6. Plaintiff has substantially complied with California Labor Code §2699 under the
19 Private Attorney General Act (“PAGA”) by submission of a letter to Defendant and to the
20 applicable agency of the State of California to act as a party representative for which recovery of
21 penalties is now authorized as set forth in Labor Code §2699, et seq, as more fully set forth in the
22 Prayer for relief below.

23 7. Plaintiff seeks damages and restitution for compensation for work performed and
24 moneys due himself and the Plaintiff Class and Subclasses during the “Class Period,” which is
25 defined as four years prior to the filing of this action through the trial date. Based upon
26 information and belief that the Defendant’s unlawful acts are continuing and will continue,
27 Plaintiff may elect to seek declaratory, and/or injunctive relief for the benefit of the proposed class
28 he represents.

1 II.

2 JURISDICTION AND VENUE

3 8. The California Superior Court has jurisdiction in this matter due to Defendant's
4 violations of Labor Code §201, et seq., Labor Code §500, et seq., Labor Code §1194, Business
5 and Professions Code §17200, et seq., the IWC Wage Order(s) and related common law
6 principles.

7 9. Venue is proper in this Judicial district and the County of Alameda because, upon
8 information and belief, Defendant resides in, is located in and/or is domiciled in this county and
9 maintains offices and transacts business in this county, and work was performed by members of
10 the class made the subject of this action in the County of Alameda, California. Venue is also
11 proper in Alameda County pursuant to CCP §395(b) and/or CCP §395.5 in that Plaintiff is a
12 resident of said county and the county is the place where the harm occurred. Lastly, the unlawful
13 acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of
14 California and within Alameda County, as well as other counties located in the central and
15 northern portions of California.

16 10. On information and belief, the California Superior Court has primary and original
17 jurisdiction in this matter because there is no federal question at issue as the issues herein are
18 based solely on California statutes and law including the California Labor Code, Industrial
19 Welfare Commission Wage Orders, Code of Civil Procedure, Rules of Court, and Business and
20 Professions Code. No diversity jurisdiction exists sufficient for any removal of action to federal
21 district court, either under 28 U.S.C. §1332 or §1332(d) pursuant to the Class Action Fairness Act
22 ("CAFA"). Plaintiff is informed and believes, and based thereupon alleges, that because the
23 individual members of the classes herein have sustained damages under the seventy-five thousand
24 dollar (\$75,000.00) jurisdictional threshold and that the aggregate claim is under the five million
25 dollar (\$5,000,000.00) threshold, removal under the CAFA would be improper.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

THE PARTIES

A. The Plaintiff

11. Plaintiff ROBERT BILLS was an employee of the Defendant and is entitled to overtime compensation, rest and meal period compensation, wage statement penalties, waiting time penalties, and PAGA penalties from the Defendant. ROBERT BILLS was employed by the Defendant for a period of time during the Class Period in a salaried position, deemed exempt from the requirement to pay overtime by his employer. SUTTER utilized a systematic and uniform classification policy applicable to all class members without review or audit of tasks and duties, that, taken in combination with other uniform policies, business practices, and procedures applicable to the proposed Class and Subclasses, render the action well suited for class action procedures and treatment as permitted by Code of Civil Procedure §382 and Rules of Court.

12. Each of the Plaintiff Class members are identifiable persons who were employed by SUTTER in the positions of “EHR Data Analyst,” “EHR Systems Analyst,” “EHR Technical Analyst,” “Programmer Analyst,” “EHR Reporting Analyst” and/or similar titles or positions that primarily engaged in the installation, implementation, configuration, updating, monitoring, and troubleshooting of Defendant’s hardware and software computer network and systems related to its EHR and Sutter Connect systems implementation. None of the employees spent a majority of their work time either engaged in scientific research, nor did they design, develop, write, draft or create hardware or software solutions for SUTTER. Most of their tasks involved merely serving a maintenance and implementation of new hardware/software/network systems deployed by SUTTER during the Class Period, over which, the proposed Class had very little or no input.

B. The Defendants

13. Plaintiff is informed and believes, and based thereon alleges, that SUTTER is a California corporation with its principal place of business in California and is and was the employer of Plaintiff and the members of Plaintiff Class and Subclasses during the Class Period. SUTTER maintains and transacts business as a health care delivery system operating in Alameda and other Northern and Central California counties.

1 restitution in a court of competent jurisdiction. Violations of the California Labor Code in
2 connection with an employer's obligation to pay wages serves as a legitimate predicate for
3 implication of the UCL.

4 18. During all, or a portion, of the Class Period, Plaintiff and each member of the
5 Plaintiff Class were employed by Defendants, and each of them, in the State of California.

6 19. Plaintiff and each Plaintiff Class member were non-exempt employees covered
7 under one or more Industrial Welfare Commission (IWC) Wage Orders, including Wage Order 4-
8 2000, 4-2001 ("Wage Orders"), Labor Code section 510, and/or other applicable wage orders,
9 regulations and statutes, and each Plaintiff Class member was not subject to an exemption for
10 computer, executive, administrative or professional employees, which imposed an obligation on
11 the part of the Defendant to pay Plaintiff and Plaintiff Class members lawful overtime
12 compensation at the requisite legal rate for hours worked in excess of 8 hours per week and/or 40
13 per week, and were denied rest and meal period compensation for non-compliant missed, late or
14 interrupted meals and rest periods throughout the Class Period.

15 20. During the Class Period, Defendant was obligated to pay Plaintiff and the Plaintiff
16 Class overtime compensation for all hours worked over eight (8) hours of work in one (1) day or
17 forty (40) hours in one week. Defendant regularly required Plaintiff and the Plaintiff Class to
18 work overtime hours without overtime compensation.

19 21. Plaintiff and each Plaintiff Class member primarily performed non-exempt work in
20 excess of the maximum regular rate hours set by the IWC in the above Wage Orders, regulations
21 or statutes, and therefore entitled the Plaintiff and Plaintiff Class members to overtime
22 compensation at the rate of time and one-half, and when applicable, double time rates as set forth
23 by the above Wage Orders, regulations and/or statutes.

24 22. During the Class Period, the Defendants, and each of them, required Plaintiff and
25 Plaintiff Class members to work overtime without lawful compensation, in violation of the
26 various above applicable Wage Orders, regulations and statutes, and the Defendants: (1) willfully
27 failed and refused, and continue to fail and refuse to pay lawful overtime compensation to the
28 Plaintiff Class members; and (2) willfully failed and refused, and continue to fail and refuse to pay

1 wages promptly when due upon termination of employment to each of the Plaintiff Class
2 members.

3 23. During the Class Period, the Defendants, and each of them, required members of
4 the Plaintiff Class to work without being given paid 10-minute rest periods as required by law and
5 without being given a 30-minute meal period and second 30-minute meal periods as required by
6 law, during which Plaintiff Class members were relieved of all duties and free to leave the
7 premises. Plaintiff was not provided with compliant meal periods during the Class Period nor did
8 Defendant pay Plaintiff or any Class member one hour's pay at the employee's regular rate of pay
9 as premium pay compensation for failure to provide rest and/or meal periods.

10 24. Plaintiff Class members performed primarily non-exempt functions for the
11 Defendant and were mis-classified as exempt employees. They do not qualify under the corporate
12 professional exemption because they are not paid statutory minimum pay to qualify for this
13 exemption. They are not employed to manage Defendant's enterprise in managerial duties. They
14 do not perform work related to Defendant's general business operation but primarily perform
15 functions related to the product or service provided by Defendant and do not exercise discretion
16 and/or independent judgment to be exempt in an administrative capacity. Further, they are not
17 employed on an hourly basis with pay not less than the statutory rate set by the IWC Wage Orders
18 and premium overtime pay. Hence, the work performed in these employee positions is not
19 exempt work but rather is non-exempt work.

20 25. Class members who ended their employment during the Class Period, but were not
21 paid the above due overtime compensation timely upon the termination of their employment as
22 required by Labor Code sections 201-203, are entitled to penalties as provided by California Labor
23 Code section 203.

24 26. Class members are likewise entitled to penalties for Defendant's failure to provide
25 accurate itemized wage statements concerning hours worked and meal periods taken.

26 ///

27 ///

28 ///

1 V.

2 **CLASS ACTION ALLEGATIONS**

3 27. Plaintiff brings this action on behalf of himself, the general public and all other
4 similarly-situated persons as a class action pursuant to California Code of Civil Procedure section
5 382. The class which Plaintiff seeks to represent is composed of and defined as follows:

6 Plaintiff Class:

7
8 All Defendant's California-based employees having job titles, job codes
9 and/or descriptions of "EHR Data Analyst," "EHR Systems Analyst," "EHR
10 Technical Analyst," "Programmer Analyst," "EHR Reporting Analyst" (including
11 employees who perform identical functions under similar circumstances under
12 different job descriptions or titles), employed on or after four years prior to the
13 commencement of this action through the date of trial.

14 28. Further, Plaintiff seeks to certify a subclass of employees composed of and defined
15 as follows:

16 Plaintiff "Overtime Subclass" (Overtime):

17 All Defendant's California-based employees having job titles, job codes
18 and/or descriptions of "EHR Data Analyst," "EHR Systems Analyst," "EHR Technical
19 Analyst," "Programmer Analyst," "EHR Reporting Analyst" (including employees who
20 perform identical functions under similar circumstances under different job descriptions or
21 titles) who were classified as exempt employees and not paid at the legally requisite
22 overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty
23 (40) hours per workweek on or after four years prior to the commencement of this action
24 through the date of trial.

25 29. Further, Plaintiff seeks to certify a subclass of employees composed of and defined
26 as follows:

27 Plaintiff "Meal Period Subclass":

28 All of Defendant's California-based employees having job titles, job codes
and/or descriptions of "EHR Data Analyst," "EHR Systems Analyst," "EHR Technical
Analyst," "Programmer Analyst," "EHR Reporting Analyst" (including employees who
perform identical functions under similar circumstances under different job descriptions or
titles) job positions in California who, during the proposed Class Period, worked periods
exceeding five hours without an uninterrupted, off-duty, 30-minute meal period and/or
periods in excess of ten hours without a second uninterrupted, off-duty, 30-minute meal
periods, and who were not provided compensation of one hour's pay at the employee's
regular rate for each such day that a meal period was not provided.

///

///

///

1 30. Further, Plaintiff seeks to certify a subclass of employees composed of and defined
2 as follows:

3 Plaintiff "Rest Period Subclass":

4 All of Defendant's California-based employees having job titles, job codes
5 and/or descriptions of "EHR Data Analyst," "EHR Systems Analyst," "EHR Technical
6 Analyst," "Programmer Analyst," "EHR Reporting Analyst" (including employees who
7 perform identical functions under similar circumstances under different job descriptions or
8 titles) who, during the proposed Class Period, worked periods of four hours or a major
9 fraction thereof without a rest period of at least 10-minutes without compensation of one
10 hour's pay at the employee's regular rate for each such day that a rest period was not
11 permitted.

12 31. Further, Plaintiff seeks to certify a subclass of employees composed of and defined
13 as follows:

14 Plaintiff "Waiting Time Subclass":

15 All of Defendant's California-based employees having job titles, job codes
16 and/or descriptions of "EHR Data Analyst," "EHR Systems Analyst," "EHR Technical
17 Analyst," "Programmer Analyst," "EHR Reporting Analyst" (including employees who
18 perform identical functions under similar circumstances under different job descriptions or
19 titles), who, during the proposed Class Period, separated from their employment from
20 SUTTER by way of voluntary or involuntary discharge, and to whom the Defendant
21 knowingly failed to timely pay all wages due to said employees.

22 32. Further, Plaintiff seeks to certify a subclass of employees composed of and defined
23 as follows:

24 Plaintiff "Wage Statement Subclass":

25 All of Defendant's California-based employees having job titles, job codes
26 and/or descriptions of "EHR Data Analyst," "EHR Systems Analyst," "EHR Technical
27 Analyst," "Programmer Analyst," "EHR Reporting Analyst" (including employees who
28 perform identical functions under similar circumstances under different job descriptions or
titles), during the proposed Class Period, to whom SUTTER knowingly and intentionally
failed to provide accurate itemized wage statements showing all hours the said employee
was actually caused or suffered to work.

33. Plaintiff reserves the right under Rule 3.765(b), California Rules of Court, to
amend or modify the Class description with greater specificity or further division into subclasses
or limitation to particular issues.

34. This action has been brought and may be maintained as a class action pursuant to
Code of Civil Procedure section 382 because there is a well-defined common interest of many
persons and it is impractical to bring them all before the court.

1 35. **Ascertainable Class:** The proposed class and each subclass are ascertainable in
2 that their members can be identified and located using information contained in Defendant's
3 payroll and personnel records.

4 36. **Numerosity:** The potential quantity of members of the Class and Subclasses as
5 defined is so numerous that joinder of all members would be unfeasible and impractical. The
6 disposition of their claims through this class action will benefit both the parties and this Court.
7 The quantity of members of the Class and Subclasses is unknown to Plaintiff at this time,
8 however, it is estimated that each the Class and Subclasses number is in excess of 100 individuals.
9 The quantity and identity of such membership is readily ascertainable via inspection of
10 Defendant's records.

11 37. **Typicality:** The claims of Plaintiff BILLS for overtime wages, waiting time
12 penalties, interest, and attorneys' fees are typical of the claims of all members of the Class and
13 Subclasses mentioned herein because all members of the Class and Subclasses sustained similar
14 injuries and damages arising out of Defendant's common course of conduct in violation of law
15 and the injuries and damages of all members of the Class and Subclasses were caused by
16 Defendant's wrongful conduct in violation of law, as alleged herein.

17 38. **Adequacy:** Plaintiff ROBERT BILLS is an adequate representatives of the Class
18 and Subclasses herein, will fairly protect the interests of the members of the Class and Subclasses,
19 has no interests antagonistic to the members of the Class and Subclasses and will vigorously
20 pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of
21 this type. Class Counsel are competent and experienced in litigating large employment law class
22 actions.

23 39. **Superiority:** The nature of this action and the nature of laws available to Plaintiff
24 make use of the class action format a particularly efficient and appropriate procedure to afford
25 relief to Plaintiff for the wrongs alleged herein, as follows:

26 a. This case involves a large corporate Defendant and a sufficient numerous
27 group of individual Class Members with many relatively small claims and common
28 issues of law and fact;

1 b. If each individual member of each of the Class and Subclasses was required
2 to file an individual lawsuit, the large corporate Defendant would necessarily gain
3 an unconscionable advantage because Defendant would be able to exploit and
4 overwhelm the limited resources of each individual member of the Class and
5 Subclasses with Defendant's vastly superior financial and legal resources;

6 c. Requiring each individual member of each of the Class and Subclasses to
7 pursue an individual remedy would also discourage the assertion of lawful claims
8 by the members of the Class and Subclasses who would be disinclined to pursue an
9 action against Defendant because of an appreciable and justifiable fear of
10 retaliation and permanent damage to their lives, careers and well-being;

11 d. Proof of a common business practice or factual pattern, of which the
12 members of the Class and Subclasses experienced, is representative of the Class
13 and Subclasses herein and will establish the right of each of the members of the
14 Class and Subclasses to recover on the causes of action alleged herein;

15 e. The prosecution of separate actions by the individual members of the Class
16 and Subclasses, even if possible, would create a substantial risk of inconsistent or
17 varying verdicts or adjudications with respect to the individual members of the
18 Class and Subclasses against Defendant; and which would establish potentially
19 incompatible standards of conduct for Defendant; and/or legal determinations with
20 respect to individual members of the Class and Subclasses which would, as a
21 practical matter, be dispositive of the interest of the other members of the Class
22 and Subclasses who are not parties to the adjudications or which would
23 substantially impair or impede the ability of the members of the Class and
24 Subclasses to protect their interests; and

25 f. The claims of the individual members of the Class and Subclasses are not
26 sufficiently large to warrant vigorous individual prosecution considering all of the
27 concomitant costs and expenses attending thereto.

28 g. Furthermore, as the damages suffered by each individual member of the

1 class may be relatively small, the expenses and burden of individual litigation
2 would make it difficult or impossible for individual members of the class to redress
3 the wrongs done to them, while an important public interest will be served by
4 addressing the matter as a class action.

5 h. The cost to the court system of adjudication of such individualized
6 litigation would be substantial. Individualized litigation would also present the
7 potential for inconsistent or contradictory judgment.

8 i. Finally, the alternative of filing a claim with the California Labor
9 Commission is not superior, given the lack of discovery in such proceedings, the
10 availability of fewer remedies, and the fact that the losing party has the right to a
11 trial de novo in the Superior Court.

12 **40. Existence and Predominance of Common Questions of Fact and Law:** There
13 are common questions of law and fact as to the members of the Class and Subclasses which
14 predominate over questions affecting only individual members of the Class and Subclasses
15 including, without limitation:

16 a. Whether the Class Members qualify for exempt status under the
17 administrative exemption;

18 b. Whether the Class Members qualify for exempt status under the computer
19 professional exemption;

20 c. Whether the Class Members were improperly mis-classified by Defendant
21 without analysis as to job duties performed.

22 d. The extent to which Defendant analyzed the duties and responsibilities of
23 the Class Members before classifying them as exempt;

24 e. The number of hours per week and per day Class Members are expected to
25 work;

26 f. Defendant's expectations as to the duties and responsibilities of the Class
27 Members, and whether these expectations are reasonable under the circumstances;

28 g. Whether the various tasks performed by the Class Members qualify as

1 exempt or non-exempt tasks;

2 h. Whether Defendant's withholding of overtime pay and was willful under
3 the meaning of Labor Code Section 203.

4 i. Whether Defendant failed to keep adequate records for the members of the
5 Wage Statement Subclass pursuant to Labor Code 226(a) (and the consequence for
6 such statutory violations if Defendant did not);

7 j. Whether Defendant's conduct constitutes unfair competition within the
8 meaning of Business and Professions Code sections 17200 and 17203;

9 k. Whether members of the Class and Subclasses are entitled to compensatory
10 damages, and if so, the means of measuring such damages;

11 l. Whether the members of the Class and Subclasses are entitled to injunctive
12 and/or declaratory relief;

13 m. Whether the members of the Class and Subclasses are entitled to
14 restitution;

15 n. Whether Defendant is liable for pre-judgment interest; and

16 o. Whether Defendant is liable for attorneys' fees and costs.

17 41. **Manageability of Class and Common Proof:** The nature of this action and the
18 nature of laws available to Plaintiff make use of the class action format a particularly efficient and
19 appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein. Specifically, the
20 primary class turns upon Defendant's own uniform, systematic practice of classifying all affected
21 job positions as "salaried exempt" without any individual scrutiny of tasks and duties is in
22 compliance with Labor Code section 1194 and the presumptions against employees being deemed
23 "exempt" from overtime payment requirements. Therefore, the propriety of the classification
24 scheme applicable to all employees holding the job titles and positions is a predominant question
25 of fact that is easily cable of being discovered through manageable devices of common proof such
26 as statistical random sampling, survey evidence based on scientific principles, representative
27 testimony, documentary evidence and common practices/procedures of the Defendant in treating
28 each of the class members as a homogeneous group in the payment of their wages. Furthermore,

1 the Plaintiff subclass relating to current and former employees holding job titles, job codes or
2 descriptions of “EHR Data Analyst,” “EHR Systems Analyst,” “EHR Technical Analyst,”
3 “Programmer Analyst,” and/or “EHR Reporting Analyst” is also a narrowly defined group of
4 employees whose job duties, tasks and classification scheme can be readily achieved through
5 means of common proof. Once the predominant issue of exempt classification is determined,
6 then each of the derivative Subclass claims and damages, if any, suffered by each member is
7 capable of being shown by several means of common proof and limited by individual showings of
8 entitlement to recovery that can be professionally administered and tailored to the facts and
9 circumstances of the case.

10 **VI.**

11 **CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **Failure To Pay Overtime Wages [Labor Code §1194]
14 (Plaintiff and each Plaintiff Class Member against each Defendant)**

15 42. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

16 43. Plaintiff and the Plaintiff Class Members were regularly required to work
17 overtime hours and are entitled to overtime compensation for overtime work performed for the
18 Defendant, in an amount according to proof. Pursuant to Labor Code sections 1194 and 1198 and
19 IWC Wage Order 4-2001, the Plaintiff Class Members seek the payment of all overtime
20 compensation which they earned and accrued after four (4) years prior to filing of the Complaint,
21 according to proof.

22 44. Additionally, Plaintiff and Plaintiff Class Members are entitled to attorneys’ fees,
23 and costs, pursuant to California Labor Code § 1194 and prejudgment interest in an amount
24 according to proof.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
27 (Against each Defendant)**

28 45. Plaintiff incorporates all preceding paragraphs of this complaint as if fully alleged
29 herein.

46. By requiring Plaintiff and members of the Plaintiff Class to work periods

1 exceeding five hours without an uninterrupted, off-duty 30-minute meal period and to work
2 periods exceeding ten hours without a second uninterrupted, off-duty 30-minute meal period and
3 not compensating one hour of pay at their regular rate of compensation for each such occurrence,
4 as alleged above, Defendant willfully violated the provisions of Labor Code sections 226.7, 512
5 and IWC Wage Order Nos. 4-1998, 4-2000, and 4-2001. Pursuant to Labor Code sections 226.7
6 and 512, the Plaintiff Class members seek the payment of all meal period compensation which
7 they are owed, according to proof.

8 47. Additionally, Plaintiff and Plaintiff Class members are entitled to attorneys' fees,
9 and costs, and prejudgment interest.

10 **THIRD CAUSE OF ACTION**
11 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**
12 **(Against each Defendant)**

13 48. Plaintiff incorporates all preceding paragraphs of this complaint as if fully alleged
14 herein.

15 49. By requiring Plaintiff and members of the Plaintiff Class he seeks to represent to
16 work four hours or a major fraction thereof without a rest period of at least ten minutes, and
17 failing to provide appropriate compensation in lieu thereof, as alleged above, Defendant willfully
18 violated the provisions of Labor Code section 226.7 and IWC Wage Order Nos. 5-2000, and
19 5-2001. Plaintiff and the Class members he seeks to represent did not willfully waive through
20 mutual consent with Defendant such rest periods. Plaintiff and Plaintiff Class members are
21 entitled to an hour of pay for each day that Defendant failed to properly provide one or more rest
22 periods as set forth in the IWC wage orders, in an amount according to proof. Pursuant to Labor
23 Code section 226.7, the Plaintiff Class members seek the payment of all rest period compensation
24 which they are owed according to proof.

25 50. Additionally, Plaintiff and members of the Plaintiff Class are entitled to attorneys'
26 fees, and costs, and prejudgment interest.

27 **FOURTH CAUSE OF ACTION**
28 **Failure to Timely Pay Wages Due at Termination in Violation of**
California Labor Code § 203
(Plaintiff and the Waiting Time Subclass against each Defendant)

51. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

1 Labor Code section 226(a), Plaintiff and the Wage Statement Subclass are entitled to actual
2 damages or penalties not to exceed \$4000 for each employee pursuant to Labor Code section
3 226(b), together with interest thereon and attorneys' fees and costs.

4 **SIXTH CAUSE OF ACTION**
5 **Violations of the Unfair Competition Law**
6 **(Plaintiff and each Plaintiff Class Member and Subclass Member against each Defendant)**

6 60. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

7 61. The failure to pay lawful overtime compensation and timely pay all pay due upon
8 termination of employment to Plaintiff and each Plaintiff Class Member and Subclass Member, is
9 an unlawful and unfair business practice within the meaning of Business and Professions Code
10 section 17200, et seq., including but not limited to a violation of the applicable State of California
11 Industrial Welfare Commission Wage Orders, regulations and statutes, or is otherwise a practice
12 which is otherwise unfair and unlawful, including that the Defendant did not pay tax contributions
13 on the accrued overtime compensation in the form of FICA, Social Security, Medicare and
14 Unemployment Insurance.

15 62. This cause of action is brought under Business and Professions Code sections
16 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and
17 pursuant to Business and Professions Code section 17208, Plaintiff and all Plaintiff Class
18 Members seek restitution of overtime wages and other pay owed and, where applicable, penalties
19 under Labor Code section 203, where such wages were due each of the class members during the
20 Class Period, commencing four (4) years prior to filing of this complaint, according to proof.

21 63. This cause of action is brought as a cumulative remedy as provided in Business and
22 Professions Code section 17205, and is intended as an alternative remedy for restitution for
23 Plaintiff, each Plaintiff Class Member and each Plaintiff Subclass Member for the time period, or
24 any portion thereof, commencing within four (4) years prior to the filing of this complaint, and as
25 the primary remedy for Plaintiff, each Plaintiff Class Member and each Plaintiff Subclass Member
26 for the time period of the fourth year prior to the filing of this complaint, as such one year time
27 period exceeds the statute of limitations on statutory wage claims.

28 64. As a result of the Defendant's unlawful and unfair business practice of failing to

1 pay overtime and prompt payment of wages in violation of Labor Code sections 201 and 202,
2 each Plaintiff Class Member and Subclass Member has suffered damages and is entitled to
3 restitution in an amount according to proof.

4 65. Further, Plaintiff requests the violations of the Defendant alleged herein be
5 enjoined, and other equitable relief as this court deems proper including an order for the
6 reclassification of Class Members to non-exempt status and requiring payment by the Defendant
7 of tax contributions on the accrued overtime compensation in the form of FICA, Social Security,
8 Medicare, Unemployment Insurance or other appropriate payments.

9 66. Plaintiff is informed and believes, and thereon alleges, that some potential Class
10 Members are no longer employed and SUTTER's conduct in failing to timely pay all wages due
11 and owing was willful and as a consequence, those Class Members are owed waiting time
12 penalties under Labor Code sections 201-203.

13 **VI.**

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment as follows:

16 a. That the Court issue an Order that this action may be maintained as a class action
17 and certify the Class and subclasses herein, appointing the named Plaintiff(s) as representative of
18 all others similarly situated, and appointing the law firm representing the named Plaintiff as
19 counsel for the members of the Class and subclasses;

20 **As to the First Cause of Action for Failure to Pay Hourly and Overtime Wages:**

21 b. For damages, as set forth in Labor Code §1194(a) and the IWC Wage Order(s),
22 including IWC Wage Order 5, section 20, regarding wages due and owing, according to proof;

23 c. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code §1194(a)
24 and Civil Code §3287;

25 d. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
26 §218.5 and Labor Code §1194(a);

27 **As to the Second Cause of Action for Failure to Provide Meal Periods:**

28 e. For one (1) hour of pay at the regular rate of compensation for each member of the

1 due to unfair competition, including disgorgement of its wrongfully withheld wages pursuant to
2 California Business and Professions Code sections 17203 and 17204;

3 t. For an Order for a preliminary and/or permanent injunction prohibiting Defendant
4 from continuing the illegal course of conduct, alleged herein;

5 u. That Defendant further be enjoined to cease and desist from unfair competition in
6 violation of sections 17200, et seq. of the California Business and Professions Code;

7 v. That Defendant be enjoined from further acts of restraint of trade or unfair
8 competition;

9 w. For the creation of an administrative process wherein each injured member of the
10 Classes may submit a claim in order to receive his/her money;

11 x. For all other appropriate injunctive, declaratory and equitable relief;

12 y. For interest to the extent permitted by law;

13 z. For an award of attorneys' fees and costs incurred in the investigation, filing and
14 prosecution of this action pursuant to Civil Code §1021.5, Business and Professions Code
15 §17200, et seq., Labor Code §1194 and/or any other applicable provision of law;

16 **As to All Causes of Action:**

17 aa. For such other and further relief as this Court may deem just and proper; and

18 bb. For reasonable attorneys' fees and costs incurred.

19 cc. Penalties as provided, per violation, under the Private Attorney General Act
20 (PAGA) Labor Code section 2699, et seq.

21
22
23
24
25
26
27
28

**COHELAN KHOURY & SINGER
HAMNER LAW OFFICES, LP**

Dated: July 28, 2009

By: _____

Michael D. Singer
J. Jason Hill

Attorneys for Plaintiff ROBERT BILLS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

**COHELAN KHOURY & SINGER
HAMNER LAW OFFICES, LP**

Dated: July 28, 2009

By: _____
Michael D. Singer
J. Jason Hill
Attorneys for Plaintiff ROBERT BILLS