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13 Attorneys for Plaintiffs and Plaintiff Class

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF SAN FRANCISCO

16 ROBERT MCCAFFREY a/k/a BROKE)
17 BECK, NEIL HOLLOWAY, TAMARA)
18 FRANKHOUSER, SANDRA MOORE,)
19 BARBARA CHANEY, CLARE M.)
20 HUNTENBURG, SCOTT ERIC KESSLER,)
21 CHARLENE A. CARNELL, LYNN)
22 CLECKER, LYNETTE L. CRAIG-HARRIS,)
23 QUERLYN ESTHER MORON, JEAN A.)
24 RAMOS, PATRICIA ENGLISH, CINDY)
25 MILTON, DENNIS GRASSER, LISA L.)
26 HOLLAND, CHRISTOPHER ALKSNIS,)
27 TERRY ZIEGLER, KATHLEEN)
28 MCWILLIAMS, LAURENCE W. TINSLEY,)
DAVID LIEBENDORFER, LINDA L.)
TURNER, KATHERINE WOOD, CHRIS)
BENDER, STEVEN S. WHITE, MARK)
HARTWELL, REGINA I. RODRIGUEZ,)
JAMES K. LEWIS, JAYNE LOUGHRY,)
ELIZABETH HARDWOOD, CHERYL)
HAMILL, HECTOR CARLOS, LESLIE H.)
EVANS and KEVIN M. COLLINS on behalf)
of themselves, the general public and all others)
similarly situated,)

Plaintiff,

vs.

Case No.:

Complaint for Violation of California State
Warn Act, Unfair Competition Law, and
Request for establishment of equitable and
legal lien under *Jewel v. Boxer*, 156
Cal.App.3d 171 (1984)

California Labor Code Section §1400,
Business & Professions Code § 17200
And California Civil Code §§ 2881 and 3439
et seq.

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BROBECK, PHEGLER & HARRISON, LLP
and MORGAN, LEWIS & BOCKIUS, and
Does 1 -99,

Defendants

1 Comes now Robert McCaffrey a/k/a Broke Beck, Neil Holloway, Tamara
2 Frankhouser, Sandra Moore, Barbara Chaney, Clare M. Huntenburg, Scott Eric Kessler,
3 Charlene A. Carnell, Lynn Clecker, Lynette L. Craig-Harris, Querlyn Esther Moron, Jean A.
4 Ramos, Patricia English, Cindy Milton, Dennis Grasser, Lisa L. Holland, Christopher Alksnis,
5 Terry Ziegler, Kathleen McWilliams, Laurence W. Tinsely, David Liebendorfer, Linda L.
6 Turner, Katherine Wood, Chris Bender, Steven S. White, Mark Hartwell, Regina I. Rodriguez,
7 James K. Lewis, Jayne Loughry, Elizabeth Hardwood, Cheryl Hamill, Hector Carlos, Leslie H.
8 Evans and Kevin M. Collins, on behalf of themselves, the general public and all others similarly
9 situated, and alleges:

11 JURISDICTION AND VENUE

12 1. This Court has original jurisdiction over this a class action claim for violation of
13 the California State Workers Adjustment and Retraining Notification Act (California State Warn
14 Act) claims, California Labor Code Section 1400 et seq. pursuant to Labor code Section 1404
15 which states: "A person, including a local government or an employee representative, seeking to
16 establish liability against an employer may bring a civil action on behalf of the person, other
17 persons similarly situated, or both, in any court of competent jurisdiction. The court may award
18 reasonable attorney's fees as part of costs to any plaintiff who prevails in a civil action brought
19 under this chapter."

20 2. Venue is proper in this County because the employer transacts business and the
21 violation has occurred within this county. At the time of the terminations, San Francisco was the
22 principle place of business and main office of Defendant Brobeck Phleger & Harrison, LLP, A
23 California Limited Liability Partnership, and a majority of the employees of Defendant Brobeck
24 Phleger & Harrison continue to work at the same location doing the same tasks for the same
25 clients with the same equipment on the payroll of Defendant Morgan, Lewis & Bockius.

26 3. Pursuant to Civil Code Section 2881, and the Uniform Fraudulent Transfer Act,
27 inter alia, this Court has jurisdiction and venue, and payments are received in the Defendants
28 San Francisco office and Plaintiffs are seeking relief of foreclosure of its lien on all fees paid

1 and/or earned on all matters of all clients on cases formerly handled by attorneys employed by
2 and/or partners of, and/or are "of counsel" to Defendant Brobeck, Phegler & Harrison LLP who
3 are now employed by and/or partners of, and/or "of counsel" to Defendant Morgan, Lewis &
4 Bockus, LLP, including new work on existing matters under the California rule in *Jewel v.*
5 *Boxer* (1984) 156 Cal.App.3d 171.

6 **PARTIES**

7 4. At all times relevant herein, Defendant Brobeck, Phegler & Harrison, LLP
8 (hereinafter Defendant Brobeck) and Defendant Morgan, Lewis & Bockius, LLP (herein after
9 Defendant Morgan Lewis) are each and both, individually and/or severally, employers, joint
10 employers, alter egos, successors, seller and/or purchaser of part of the business, and were and
11 are engaged in an integrated enterprise for the commercial operation of the practice of law and
12 the operation of the business of a law firm in the State of California, and elsewhere.

13 5. Defendants are also each and both a "person" as defined in California Labor Code
14 Section 18 and an "employer" as that term is used in California Labor Code Section 1400 et seq.,
15 and in particular, as it pertains to Defendant Morgan Lewis, an employer who indirectly owned
16 and also operated in fact the establishment at the time of the terminations and/or layoffs under
17 California Labor code Section 1400(b).

18 6. Plaintiffs are each persons who have standing to maintain a class action under
19 California Labor Code Section 1400 et. seq. because they were entitled to sixty days notice, or
20 sixty days severance pay in lieu of notice, as a result of the plant closing and/or mass layoff
21 which occurred on or about January and February 2003 but did not receive such notice, or
22 severance pay in lieu of notice as required by Section 1401 of the California Labor Code.

23 7. Plaintiffs also bring this action on behalf of the general public pursuant to
24 California Business & Professions Code Section 17200 et seq.

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1 **COMMON FACTS**

2 8. Defendants and each of them are and were an the integrated enterprise and the
3 employer as that term is for purposes of liability under California Labor Code Section 1400 et
4 seq.

5 9. Among other things, Defendants share a (i) common ownership, (ii) common
6 directors and/or officers, (iii) de facto exercise of control, (iv) unity of personnel policies
7 emanating from a common source, and v) the dependency of operations. From some time in
8 January, until and after the terminations in February, 2003, there was an interrelation of
9 operations, common management, centralized control of labor relations, and common ownership
10 and/or financial control of Defendant Brobeck with Defendant Morgan Lewis.

11 10. Upon information and belief, Defendant Brobeck was a limited liability
12 partnership engaged in the business of providing legal services for many years under the laws of
13 the State of California, with its main offices in San Francisco, California.

14 11. On or before January 30, 2003, Defendant Morgan Lewis began assuming active
15 control of the management, clients, records and labor relations of Defendant Morgan Lewis.

16 12. Upon information and belief, in January 2003, Brobeck partners began using
17 "Morgan Lewis" as the name of their firm on hotel reservations and receipts. Defendant Brobeck
18 reimbursed these expenses.

19 13. On or about January 29, 2003, Defendant Morgan Lewis was in the offices of
20 Brobeck, overseeing the day to day operations.

21 14. On January 30, 2003, Defendant Brobeck announced it was terminating its
22 partnership.

23 15. On or about January 30, 2003, Defendant Brobeck announced the closing of the
24 firm at in the near future, and requested employees to continue working until further notice. No
25 date or time for termination was announced.

26 16. On the same day, employees of Defendant Brobeck were requested by attorneys
27 formerly with Defendant Brobeck to begin downloading to CD ROMs data, including client
28 information, from Defendant Brobeck's computers for use by those same attorneys at Defendant

1 Morgan Lewis. Upon information and belief, much of the data was downloaded without first
2 obtaining client permission.

3 17. On or about January 31, 2003, Defendant Brobeck's Chairman Richard Odom
4 issued a memo to all employees in which he stated "As part of the transition period mentioned
5 yesterday, we need everyone to continue working and to know you will be paid until such time
6 as you are notified not to come to work."

7 18. Upon information and belief, Defendant Brobeck ceased and/or terminated its
8 Medical Spending Account along with the ceasing and/or termination of other benefits effective
9 January 31, 2003.

10 19. On or about February 4, 2003, Defendant Brobeck issued a memo to all staff
11 employees that "the Firm will be ceasing operations at some point in the very near future,
12 although we do not have a final closure date yet."

13 20. Upon information and belief, on Wednesday and Thursday, February 5 and 6,
14 employees of Defendant Brobeck were notified that Defendant Morgan Lewis would be the new
15 employer.

16 21. Defendant Morgan Lewis's management team was at the Defendant's San
17 Francisco offices the week of February 9th, 2003.

18 22. On February 12, 2003, Defendant Morgan Lewis announced to all employees that
19 it was in charge of the San Francisco operations of Defendant Brobeck. As can be seen from a
20 press release issued by Defendants on February 13, 2003, Defendant Morgan Lewis stated that
21 "Morgan Lewis, one of the 10 largest U.S. law firms, announced effective February 12, the firm
22 is significantly expanding on the West coast, opening three new California offices and adding
23 approximately 150 lawyers, including approximately 150 lawyers, Defendant Morgan, Lewis &
24 Bockius, LLP retained over 100 support and clerical employees from Brobeck, Phegler &
25 Harrison, LLP." At the time of this announcement, only a few employees of Defendant Brobeck
26 had been terminated.

27 23. The three new offices referred to in the press release were in fact the offices of
28 Brobeck Phleger & Harrison, LLP.

1 24. As the February 12, 2003 press release continues, "Among those joining
2 [Defendant Morgan Lewis from Defendant Brobeck] are: Los Angeles litigator and immediate
3 past Brobeck chairman Richard Odom; leading trial lawyer and past Brobeck chairman Steven
4 Snyder; John Larson, also a former Brobeck Chairman...Ronald Moskovitz...Franklin
5 Brockway ("Brock") Gowdy...and Steven Finn...'We [Morgan Lewis] will be able to provide
6 our clients with excellent service from the same great lawyers they have worked with, operating
7 from a much larger platform with the highest level of legal skills, ' said new Morgan Lewis
8 Litigation Partner Brock Gowdy."

9 25. At approximately 3:16 pm, on February 12, 2003, Defendant Brobeck's
10 Programming Development Manager Richard John issued a memo to all Defendant Brobeck
11 employees "Subject: Morgan Lewis Time Entry."

12 26. On or about 6 pm, February 12, 2003, Defendant Morgan Lewis Partner Steven
13 Snyder, also Chair of the Brobeck Phleger & Harrison Liquidation Committee, sent a memo to
14 all Defendant Brobeck employees that stated, in part: "The Firm anticipates that the bank will not
15 release sufficient funds to meet payroll beyond a few more days. Accordingly, the Firm has no
16 choice other than to inform you that your last day of work will be this Friday, February 14,
17 2003."

18 27. On Feb 13 and the visitor sign-in sheet read "Morgan, Lewis & Bockius, LLP
19 LLP" at the top. There were placards in the conference rooms that read the same. There were
20 signed with the words "Morgan Lewis" taped over the name of "Brobeck Phleger & Harrison,
21 LLP".

22 28. At the same day, IT professionals from Defendant Morgan Lewis met in the
23 computer room and, upon information and belief, began adopting or converting Defendant
24 Brobeck files for use by Defendant Morgan Lewis. Defendant Morgan Lewis secured Defendant
25 Brobeck's main computers for use in its practice.

26 29. Some time during that week and continuing to date, Defendant Morgan Lewis
27 assumed control over cases for clients represented by Defendant Brobeck. Defendants signed
28 and filed with various courts substitution of attorney forms.

1 30. Defendants terminated approximately two hundred employees on the afternoon of
2 Friday, February 14, 2003 without any prior notice as required by law.

3 31. At the time of their termination, all the aforementioned attorneys and support staff
4 and almost all of the Plaintiff class was employed, or suffered to work, by Defendants, and in
5 particular, Defendant Morgan Lewis.

6 32. As can be seen from the final paycheck, those who worked until February 14,
7 2003, were paid by checks issued by Defendant Brobeck. However, as was stated above,
8 Defendant Morgan physically occupied and announced it was in control as of February 12, 2003.

9 33. Neither Defendant Brobeck nor Defendant Morgan Lewis gave sixty days
10 advance notice of termination to these employees, nor did it unconditionally provide sixty days
11 of pay in lieu of such notice, as required by law.

12 34. Upon information and belief, from January 2003 to the date of the filing of this
13 complaint, Defendant Morgan Lewis' employees who were once employed by Defendant
14 Brobeck, were still using their same offices, their same fax numbers as well as the same phone
15 numbers that they used while they were employed by Defendant Brobeck doing the same work
16 on mostly the same matters for the same clients. In some communications, the fax legend
17 specifically stated it was sent from Defendant Brobeck, while the letterhead indicated it was sent
18 from Defendant Morgan.

19 35. Upon information and belief, from January 2003 to the date of the filing of this
20 complaint, the voicemails for former Defendant Brobeck employees were still active but
21 managed and maintained by Defendant Morgan Lewis.

22 36. Upon information and belief, Defendant Morgan Lewis acquired the computers
23 used by Defendant Brobeck, including all billing and client related information contained
24 thereon.

25 **CLASS ACTION ALLEGATIONS**

26 37. The class consists of all employees of Defendants within the last year who were
27 entitled to sixty days notice, or sixty days severance in lieu of notice, as a result of the plant
28

1 closing or mass layoff on or about January and February 2003 but did not receive such notice, or
2 severance pay in lieu of notice as required by Section 1401 of the California Labor Code.

3 38. Upon information and belief, there are over two hundred people within the
4 class, and the class is so numerous that joinder is impractical.

5 39. In the alternative, if Defendant Morgan Lewis is not the successor, purchaser of
6 a part of, alter ego, joint and/or single employer with Defendant Brobeck, or is not otherwise
7 the continuation of Defendant Brobeck for the purposes of Labor Code Section 1400 et seq,
8 then the class is approximately twice as large because all those who were hired by Defendant
9 Morgan Lewis are entitled to severance from Defendant Brobeck as well.

10 40. There is a well-defined community of interest in the questions of law and fact
11 affecting the class Plaintiffs represent as a whole. Each class member is entitled to and was not
12 given sixty days of notice, or severance in lieu of notice, stemming from the same occurrence
13 or event, the termination resulting from the plant closing and mass layoffs in late January
14 through February 2003.

15 41. The California Warn Act presumes a class action to be appropriate in such a
16 case.

17 42. Common questions of law and fact apply to all class members as stated herein,
18 and a class action is superior to individual forms of action. The conduct in question is
19 Defendants' actions, and therefore common questions of fact predominate.

20 43. Plaintiffs will fairly and adequately represent the interest of the class, have
21 consented in writing to bringing this lawsuit, have informed themselves of their obligations as
22 a class representative and have claims that are typical of those in the class.

23
24 **FIRST CAUSE OF ACTION**
25 **State WARN Act**
26 **(California Labor Code Section 1400 et seq.)**

27 44. Plaintiffs hereby incorporate each and every allegation contained above, and
28 reallege said allegations as if fully set forth herein.

45. Defendants, and each of them, are employers who operate "covered
establishments" as that term is defined by California Labor Code Section 1400.

1 51. Violations of California Labor Code Section 1400 et seq are an unlawful, unfair
2 and/or fraudulent business act or practice.

3 52. California Business & Professions Code Section 17203 states: “Any person who
4 engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court
5 of competent jurisdiction. The court may make such orders or judgments, including the
6 appointment of a receiver, as may be necessary to prevent the use or employment by any person
7 of any practice which constitutes unfair competition, as defined in this chapter, or as may be
8 necessary to restore to any person in interest any money or property, real or personal, which may
9 have been acquired by means of such unfair competition.”

10 53. Pursuant to Business & Professions Code Section 17204, Plaintiffs bring this
11 action as a person acting for the interests of itself, its members and/or the general public.

12 54. Therefore, Plaintiffs seek restitution of 60 days of pay and benefits under the
13 provisions of California Business & Professions Code Section 17200.

14
15 **THIRD CAUSE OF ACTION**
16 **Establishment of Lien Pursuant To *Jewel v. Boxer***
(Civil Code § §§ 2881 and 3439 et seq.)

17 55. Plaintiffs hereby incorporate each and every allegation contained above, and
18 reallege said allegations as if fully set forth herein.

19 56. Under California law, the fees earned by attorneys from Defendant Brobeck
20 who continue working on existing matters at a new firm, remain the property of Defendant
21 Brobeck, and must be used first to pay expenses of the former firm, and then divided in
22 proportion to the capital accounts. See, e.g. *Jewel v. Boxer*, 156 Cal.App.3d 171 (1984).

23 57. Upon information and belief, Defendant Morgan Lewis has not remitted to
24 Defendant Brobeck all fees earned and/or paid for work, especially new work, on existing
25 matters of former clients of Defendant Brobeck.

26 58. The liability for failure to give notice or sixty-days of severance pay in lieu of
27 notice as set forth above constitutes an obligation or debt of the Defendant Brobeck, whether or
28 not the sum is also a liability of Defendant Morgan Lewis.

1 59. California Civil Code Section 2881 states that “A lien is created: 1) By contract
2 of the parties; or, 2) By operation of law.”

3 60. The time for performance of the legal obligation to pay sixty days of pay and
4 benefits in lieu of notice was at the time of termination, in late January through Mid-February
5 2003.

6 61. Under Civil Code Section 3439.02, Defendant Brobeck is insolvent because it is
7 not paying its obligations as they become due.

8 62. Under Civil Code 3439.07, Plaintiffs seek attachment of the property of
9 Defendant Brobeck now in the hands of Defendant Morgan Lewis, including all future
10 payments of such fees earned and/or paid by former Defendant Brobeck clients to former
11 Brobeck attorneys now working on existing matters, including new work, for former Brobeck
12 clients at Defendant Morgan Lewis.

13 63. In addition to all other remedies permitted by law, Plaintiffs pray for an order that
14 all sums due and owing as a result of Defendant Brobeck’s failure to give sixty days notice,
15 should be considered a lien on any monies paid to Defendant Morgan Lewis and/or Defendant
16 Brobeck by any former client of Defendant Brobeck on any matter pending before January 30,
17 2003, including work on the same matter after January 30, 2003 performed by attorneys formerly
18 partners of, employed by, or of counsel to Defendant Brobeck.

19
20 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of
21 them according to proof, as follows:

- 22 1. For compensatory damages according to proof, representing the sixty days of
23 pay plus sixty days of the cost of benefit coverage owed to Plaintiffs and
24 Plaintiff class members plus interest at the statutory rate under the California
25 State WARN Act, Labor Code Section 1400 et seq.;
- 26 2. For restitution according to proof, representing the sixty days of pay plus sixty
27 days of the cost of benefit coverage owed to Plaintiffs and Plaintiff class
28

1 members plus interest at the statutory rate under California Business &
2 Professions Act 17200 et seq.

- 3 3. For the issuance of an order directing that that all sums received by Defendants
4 on account of any work on any matter on which Defendant Brobeck was
5 counsel before January 30, 2003, including sums received for work by former
6 attorneys of Defendant Brobeck on those matters after January 30, 2003 be held
7 in trust for the benefit of Plaintiff class until the amount claimed above is
8 satisfied in full.
- 9 4. For reasonable attorneys fees and costs of the suit herein;
- 10 5. For such other relief as the Court deems just and proper.

11 Dated this 14th day of March, 2003.

12 **THIERMAN LAW FIRM**

13 By: _____

14 Mark R. Thierman Cal SB# 72913

15 **HOFFMAN & LAZEAR**

16
17 By: _____

18 H. Tim Hoffman SB# 49141
19 Arthur Lazear SB# 83603