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PAGE]

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

14 JANICE PAGE; DORENE HANSEN;
15 LETICIA GONZALEZ, and SERVICE
EMPLOYEES INTERNATIONAL UNION
16 CALIFORNIA STATE COUNCIL,

17 Plaintiffs,

18 v.

19 ACTING ADMINISTRATIVE DIRECTOR
OF THE DIVISION OF WORKERS'
20 COMPENSATION GEORGE PARISOTTO,
in his official capacity; THE DIVISION OF
21 WORKERS' COMPENSATION; DIRECTOR
OF INDUSTRIAL RELATIONS CHRISTINE
22 BAKER, in her official capacity; THE
CALIFORNIA DEPARTMENT OF
23 INDUSTRIAL RELATIONS; THE
WORKERS' COMPENSATION APPEALS
24 BOARD; WORKERS' COMPENSATION
APPEALS BOARD MEMBERS FRANK M.
25 BRASS, DEIDRA E. LOWE, JOSÉ H.
RAZO, MARGUERITE SWEENEY, AND
26 KATHERINE ZALEWSKI, in their official
capacities; SECRETARY OF THE LABOR
27 AND WORKFORCE DEVELOPMENT
AGENCY DAVID LANIER, in his official
capacity, and DOES 1-20, inclusive,
Defendants.

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Attorneys for Plaintiffs

Case No.

CLASS ACTION COMPLAINT FOR

1. **VIOLATION OF ARTICLE I, SECTION 7(a) OF THE CALIFORNIA CONSTITUTION;**
2. **VIOLATION OF CALIFORNIA GOVERNMENT CODE SECTION 11135;**
3. **VIOLATION OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION, 42 U.S.C. § 1983;**
4. **NEGLIGENT TRAINING AND/OR SUPERVISION UNDER CALIFORNIA COMMON LAW AND GOVERNMENT CODE § 815.2; and**
5. **VIOLATION OF CALIFORNIA CODE OF CIVIL PROCEDURE § 526a**

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Attorney for Plaintiff SEIU California State Council

1 Plaintiffs Janice Page and Dorene Hansen, as injured workers and taxpayers, and Plaintiffs Leticia
2 Gonzalez and Service Employees International Union California State Council, as injured parties
3 and taxpayers on behalf of themselves and a class of similarly situated women workers, bring this
4 action against Acting Administrative Director of the Division of Workers' Compensation George
5 Parisotto, in his official capacity; the Division of Workers' Compensation; Director of Industrial
6 Relations Christine Baker, in her official capacity; the California Department of Industrial
7 Relations; the Workers' Compensation Appeals Board; Workers' Compensation Appeals Board
8 members Frank M. Brass, Deidra E. Lowe, José H. Razo, Marguerite Sweeney, and Katherine
9 Zalewski, in their official capacities; Secretary of the California Labor and Workforce
10 Development Agency David Lanier; and Does 1 through 20 (collectively, "Defendants").
11 Plaintiffs' allegations against Defendants are based upon information and belief unless otherwise
12 indicated.

13 INTRODUCTION

14 1. For decades, women workers labored under a legal regime that excluded women
15 from job positions deemed to be beyond their capacities, penalized women based on stereotypes
16 about women's roles as caregivers, and denied women equal pay for equal work. This
17 discrimination on the basis of sex is now antithetical to the equal protection of the laws guaranteed
18 by our Constitution. Our laws reflect a commitment to a fair and inclusive workplace and
19 society—one in which workers are considered and compensated based on their individual merits
20 and circumstances, and not on the basis of outmoded assumptions or generalizations about the
21 capacities or roles of women as a group.

22 2. California's system of workers' compensation perpetuates the type of overt sex
23 discrimination that is a relic of a past era. It deprives women workers of fair compensation on the
24 basis of stereotypes about gender and women's reproductive biology. Specifically, the workers'
25 compensation system unlawfully discriminates on the basis of sex in the calculation of permanent
26 disability benefits—benefits intended to compensate injured workers for long-term physical loss
27 and the loss of earning capacity—in two ways:

28 • ***First***, the permanent disability benefits to which injured women workers are entitled are

1 reduced for no reason other than the worker's gender. Women's permanent disability
2 benefits are routinely reduced because women's injuries are "apportioned"—that is,
3 attributed in part—to the "risk factor" or "predisposing condition" of the female gender or
4 women's reproductive biology. These discriminatory apportionment determinations are
5 made by state-trained and -certified Qualified Medical Evaluators, and ratified by Division
6 of Workers' Compensation employees and officials. In contrast, men's benefits are not
7 reduced on the basis of gender, and conditions unique to male reproductive biology are not
8 assumed to be a basis for paying lower benefits to men than to women.

- 9 • **Second**, women receive fewer permanent disability benefits than the extent of their injuries
10 merit because harm unique to women is ignored. Specifically, when determining the
11 extent of permanent disability, the workers' compensation system assigns a negligible—
12 and in some cases, *zero*—disability rating to breast cancer and the loss of a breast. In
13 contrast, similar harms unique to men are not assigned a negligible or zero disability
14 rating.

15 3. This discrimination is a direct result of policies and practices permitted and
16 condoned by Defendants. Defendants California Department of Industrial Relations and Division
17 of Workers' Compensation are responsible for administering the state system of workers'
18 compensation. The medical evaluators Defendants have appointed to make benefits
19 determinations are overwhelmingly male—in some areas and specialties, for example, less than
20 3% of the medical evaluators are women. And though the highly disproportionate number of male
21 medical evaluators should make the need to address gender bias particularly apparent to
22 Defendants, no portion of the system of medical evaluator training, certification, or continuing
23 education system established by Defendants addresses or is designed to remediate gender
24 discrimination. Nor do Defendants have a policy or practice of sanctioning or disciplining
25 medical evaluators or other employees who engage in unlawful sex discrimination in the
26 determination of permanent disability benefits.

27 4. By permitting and condoning the distribution of workers' compensation benefits on
28 the basis of sex, the State of California sends a clear message that women's work is worth less,

1 and that Plaintiffs—many of whom have worked for decades as one of the few women in a male
2 dominated field—are valued less than their male colleagues. Such a message denigrates the
3 contributions of women to the workplace and perpetuates women’s unequal status.

4 5. This suit is brought on behalf of a class of injured women workers challenging the
5 unlawful sex discrimination to which they have been subjected, who seek judicial recognition of
6 the discriminatory harms they have suffered and systemic reform of the workers’ compensation
7 system.

8 6. **Plaintiff Leticia Gonzalez** has been a technician with the same
9 telecommunications company since 1998. For seventeen years, Ms. Gonzalez spent 8 hours a day,
10 five days a week, working on a computer in order to carry out her job duties. The repetitive nature
11 of this heavy computer use began to cause her significant discomfort, and eventually the pain and
12 numbness in her hands and shoulders had become so extreme that she was unable to sleep for
13 more than four or five hours a night or perform many self-care activities and work-related duties.
14 Ms. Gonzalez filed a claim for workers’ compensation and began seeking medical care. Her
15 conditions did not improve with conservative treatment, and she underwent surgery on her right
16 hand. Although the surgery alleviated the severe pain and numbness in her right wrist, the pain in
17 her neck, right shoulder, right arm, and left wrist has only gotten worse, and it continues to impact
18 both her work and her sleep.

19 7. In 2014 a Qualified Medical Examiner (QME) deemed her permanent and
20 stationary and diagnosed her with, *inter alia*, carpal tunnel syndrome and “neuropathy”—or nerve
21 damage. The QME report confirmed that these injuries were caused by the physical demands of
22 her occupation and concluded that she was entitled to permanent disability benefits. However,
23 based on one, fifteen-minute examination, the QME apportioned 20% of her disability to non-
24 industrial factors, concluding, “*she has multiple risk factors for carpal tunnel syndrome*
25 *primarily age and gender,*” and noting, “*Carpal tunnel compression neuropathy is almost*
26 *ubiquitous in the female population in her age demographic.*” In other words, the QME
27 concluded that Ms. Gonzalez should receive 20% less in disability benefits for no reason other
28 than stereotypes about her gender and age.

1 8. Ms. Gonzalez’s experience reflects a practice that is pervasive throughout
2 California’s workers’ compensation system. Indeed, Defendant Department of Industrial
3 Relations has conceded that up to **11,000 California women** may be subjected to such
4 discriminatory apportionment determinations annually. By way of example, below are the key
5 findings from the medical evaluations of additional representative California women who have
6 been subjected to discriminatory apportionment determinations:

- 7 • 80% of carpal tunnel syndrome apportioned to nonindustrial causes including gender: ***“The most significant factor in development of carpal tunnel syndrome is simply gender. Females have considerably higher incidence, probably in the five to six times range compared to males.”***
- 8
- 9
- 10
- 11 • 90% of carpal tunnel syndrome apportioned to “an accumulation of stresses ***plus the risk factor of the female gender. . . .***”
- 12
- 13 • 40% of carpal tunnel syndrome apportioned to “***preexistent non-industrial factors***” including
14 ***“female gender, age [and] post-menopausal status.”***
- 15 • 10% of carpal tunnel syndrome apportioned to pregnancy, based on a finding that ***“risk factors for carpal tunnel syndrome include female sex [and] pregnancy.”***
- 16
- 17 • Degenerative joint disease in shoulders apportioned in part to “***innate genetic predisposition***”
18 because “***[c]alcific deposits in the rotator cuff tendons are common in women*** and often
19 associated with rotator cuff tendinitis.”
- 20 • 40% of carpal tunnel syndrome apportioned to “***preexistent non-industrial factors***” including
21 ***“female gender, age [and] post-menopausal status.”***
- 22 • 50% of carpal tunnel syndrome apportioned to “***the fact that she is a postmenopausal, slightly***
23 ***overweight woman,***” because “***the apportionable disability is based on the fact that the***
24 ***highest incidence of carpal tunnel syndrome is in postmenopausal women.”***
- 25 • 80% of psychiatric injury apportioned to “***perimenopausal symptoms.***” 15% of psychiatric
26 injury attributed to “***chronic gynecological issues, including excessive menstruation,***
27 ***abdominal pain, fatigue, anemia, ovarian cyst, history of prior abdominal surgery for ovarian***
28 ***cyst with post-operative adhesions, and menopause.”***

- 1 • 65% of pelvic organ prolapse apportioned to non-industrial causes, including “*multiple (4)*
2 *vaginal deliveries*” and “older age.”

3 9. Since 2004, permanent disability ratings in California have been determined with
4 reference to the percentage assigned to the relevant impairment under the American Medical
5 Association *Guides to the Evaluation of Permanent Impairment* (the “AMA Guides”). The
6 version of the AMA *Guides* used by California assigns a mastectomy resulting from work-induced
7 breast cancer an impairment rating—a figure that represents how affected she is by the injury—of
8 *zero percent* for women past childbearing age and a maximum of 5% for women who can still
9 bear children. In contrast, the removal of a male prostate as a result of prostate cancer generally
10 receives an impairment rating of 16%-20%.

11 10. **Plaintiff Dorene Hansen** has worked as a police officer for 19 years. Since 1997,
12 Officer Hansen has been a member of a K-9 unit, responsible for training and working with police
13 dogs. Officer Hansen’s job duties have included searching laboratories where chemical tests were
14 being conducted, traffic control and investigations at major vehicle accidents and hazardous
15 material spills, and crowd control, evacuations, and evidence collection at the scenes of car, home,
16 and business fires—including a fire at a dry cleaning facility. For the first 3 years of her
17 employment, she was exposed to significant second-hand smoke in the police station and patrol
18 car.

19 11. Officer Hansen developed bleeding from her left nipple and, after undergoing a
20 mammogram and breast biopsy, was diagnosed with stage four cancer in her left breast. Officer
21 Hansen then underwent a double mastectomy that included the removal of the lymph nodes along
22 her left side. Officer Hansen learned that there were certain cancer diagnoses that presumptively
23 fell within the parameters of California’s workers’ compensation system and proceeded to file a
24 claim. Officer Hansen then underwent reconstructive surgery, received chemotherapy, and began
25 taking the hormone therapy Tamoxifen. Both the cancer and the necessary treatment she has
26 received have significantly impacted her life. To this day, she continues to experience
27 chemotherapy-induced numbness in her hands and feet. The hormone therapy induced early
28 menopause and creates a heightened risk of ovarian cancer, requiring Officer Hansen to undergo

1 frequent invasive checkups. Although her breasts have been reconstructed, they have scarring, no
2 nipples, and are completely numb. As a result, she is self-conscious about romantic intimacy and
3 has no sexual feeling when someone touches her breasts. While her surgeon attempted to recreate
4 the appearance of nipples through skin manipulation and tattooing, the effect was temporary. Due
5 to the removal of her lymph nodes on her left side, Officer Hansen is prone to infection from even
6 small cuts and is at constant risk of lymphedema. As such, she must wear a compression sleeve
7 whenever she flies or reaches high altitudes. She also experiences periodic pain down her left
8 side, especially when putting something under her arm, such as a toy when training her police dog.
9 She still has not been able to return to her pre-diagnosis exercise routine or physical shape.

10 12. Her employer's workers' compensation insurer instructed her to see a Qualified
11 Medical Examiner. Despite concluding that Officer Hansen's breast cancer was caused by her
12 employment, the Qualified Medical Examiner assigned her a permanent disability rating of **zero**.
13 Officer Hansen, who was not represented by an attorney, subsequently signed a stipulation
14 approved by a Workers' Compensation Administrative Law Judge that ratified the 0% permanent
15 disability rating. In short, the workers' compensation system determined that Officer Hansen was
16 not entitled to any permanent disability compensation for the loss of both of her breasts and the
17 attendant consequences she has endured, many of which continue to plague her to this day.

18 13. **Plaintiff Janice Page** has worked in law enforcement for 26 years. She began her
19 law enforcement career as a secretary on specialized unit. Subsequently, she successfully applied
20 to become a Corrections Officer, and was repeatedly promoted until she attained her current
21 position of Sergeant. In the course of her duties as a law enforcement officer, Sgt. Page was
22 exposed to numerous carcinogenic toxins, including vehicle fires, ammunition, exhaust fumes,
23 gasoline, diesel fuels, structure fires, and narcotics.

24 14. In 2012, Sgt. Page was diagnosed with breast cancer. She underwent a total of five
25 surgeries, including a unilateral mastectomy to remove her right breast. For months afterwards,
26 she felt sharp pain in her armpit from the nerves that had been cut during surgery that would wake
27 her up at night, and she underwent many months of physical therapy.

28 15. The breast cancer and resulting mastectomy have caused enduring, concrete

1 physical consequences that affect Sgt. Page on a daily basis. She has significant scar tissue and
2 feels no sensation in her right breast. The implant in her right breast does not match her left
3 breast, because it is smaller and sits higher. Her clothes fit her differently, and she requires special
4 undergarments. Sgt. Page continues to experience pain and numbness on her right side. Sgt. Page
5 is very physically active, and while she used to be able to lift approximately 20 pound weights
6 with her right arm, she can no longer do so. In addition to the physical changes, the loss of her
7 breast has affected her relationships and sense of self. The loss of her breast has made her feel
8 differently about herself, embarrassed about her appearance, and devastated at the removal of a
9 body part.

10 16. Sgt. Page filed a claim for workers' compensation, and the breast cancer was
11 determined to be caused solely by work-related exposures to cancer-causing toxins. However, she
12 was evaluated by a medical evaluator who, applying the *AMA Guides*, determined that she had a
13 permanent disability rating of **zero**. Despite the physical loss of her breast and the attendant
14 consequences she endured, the workers' compensation system presumed that she had not
15 experienced *any* long-term consequences.

16 17. The denial of appropriate compensation for workplace injuries that Plaintiffs have
17 experienced reflects national trends of decreasing employer liability for workplace injuries. The
18 Occupational Safety & Health Department at the U.S. Department of Labor ("OSHA") recently
19 reported that employers now cover only a small fraction—about 20%—of the overall financial
20 cost of workplace injuries and illnesses through workers' compensation. David Michaels, *Adding*
21 *Inequality to Injury: The Costs of Failing to Protect Workers on the Job*, Occupational Safety &
22 Health Administration 8 (June 2015), available at [http://www.dol.gov/osha/report/20150304-](http://www.dol.gov/osha/report/20150304-inequality.pdf)
23 [inequality.pdf](http://www.dol.gov/osha/report/20150304-inequality.pdf). A recent study at University of California Davis has shown that, in turn, the
24 remaining 80%—\$198 billion annually—falls on individual employees, their private insurers, and
25 taxpayers. UC Davis Health System Newsroom (May 25, 2012), available at [http://www.ucdmc.](http://www.ucdmc.ucdavis.edu/publish/news/newsroom/6621)
26 [ucdavis.edu/publish/news/newsroom/6621](http://www.ucdmc.ucdavis.edu/publish/news/newsroom/6621). OSHA's director, David Michaels, has expressed
27 concern that the ability to avoid the full cost of workplace injuries disincentivizes employers from
28 preventing such injuries from occurring in the first place. See Michael Gabel, "OSHA Report

1 Echoes ProPublica and NPR’s Workers’ Comp Findings,” ProPublica, Mar. 6, 2015.

2 18. When injured workers are denied the workers’ compensation they deserve, the cost
3 falls on workers and families. **Plaintiff SEIU California State Council** represents over 700,000
4 workers in California—including approximately 497,000 women workers—many of whom are
5 low-wage women workers who suffer disproportionately from the inequities in the workers’
6 compensation system. For example, local union SEIU Local 2015 represents over 300,000 home
7 care and nursing home workers, who provide essential services—such as medication monitoring,
8 daily exercise, and physical therapy—to the elderly or disabled. Low-wage workers like Plaintiff
9 SEIU California State Council’s members are less likely to have the resources to hire a private
10 attorney during the workers’ compensation process, and many lack the financial resources to make
11 up for shortfalls in awarded workers’ compensation. Some injured workers have no choice but to
12 turn to government benefits such as MediCal or Social Security Disability Insurance, for which
13 taxpayers are ultimately liable.

14 19. Reducing the compensation due to women workers on the basis of stereotypes
15 about women’s roles and capacities has no place in our State or in our constitutional system.
16 California’s failure to address and correct the above-described sex discrimination in California’s
17 workers’ compensation scheme violates state and federal anti-discrimination laws, including the
18 equal protection guarantees found in the California Constitution, the U.S. Constitution, and
19 California statutes.

20 20. Defendants must take affirmative steps to root out and eliminate pernicious gender-
21 based stereotypes in the workers’ compensation system to ensure that women workers are afforded
22 fair compensation and equal status in the workplace. Plaintiffs seek injunctive relief, requiring
23 Defendants Parisotto, Division of Workers’ Compensation, Baker, Department of Industrial
24 Relations, and Lanier to take reasonable and effective steps to eliminate the apportionment of
25 permanent disability awards to risk factors of gender or female reproductive biology, including,
26 but not limited to, menopause and pregnancy history including by directing their employees and
27 agents that permanent disability awards may not be apportioned to gender-based risk factors, and
28 establishing a system of accountability to ensure that permanent disability awards are not

1 apportioned to gender-based risk factors, including by establishing appropriate training,
2 continuing education, and certification requirements, monitoring and identifying potential
3 violations, and imposing commensurate sanctions, disciplinary action, or disqualification.
4 Plaintiffs also seek a declaration that these discriminatory practices violate the California
5 Constitution, the U.S. Constitution, and California Government Code § 11135.

6 21. During hearings in 2015 for legislation that would have addressed some of these
7 issues within California's workers' compensation scheme, one senator dismissed the proponents
8 as "making a gender issue out of this workmen's comp situation." Indeed, such statements
9 demonstrate why Plaintiffs are doing exactly that.

10 **PARTIES**

11 *Plaintiffs*

12 22. **Plaintiff Janice Page** is a woman resident of California. She has worked in law
13 enforcement for a single employer for 26 years. As a result of her work activities, in which she
14 was exposed to numerous carcinogenic toxins, including vehicle fires, ammunition, exhaust
15 fumes, gasoline, diesel fuels, structure fires, and narcotic, Sgt. Page developed breast cancer and
16 underwent a mastectomy. Sgt. Page has experienced numerous physical and psychological long-
17 term consequences from the breast cancer and mastectomy, including loss of her breast, scar
18 tissue, loss of sensation, pain, numbness, and harm to her sense of self. Sgt. Page submitted a
19 claim for workers' compensation in 2012. In 2013, the medical evaluator designated to write the
20 workers' compensation medical-legal report applied the *AMA Guides* and found that though her
21 cancer was 100% work-related, she had a permanent disability rating of **zero percent**. As a result
22 of this discriminatory disability rating, Sgt. Page was forced to undergo the expense and time of
23 hiring a lawyer to challenge the report. Sgt. Page settled her workers' compensation claim by a
24 Stipulation with Request for Reward in January 2016. Her settlement may be re-opened for "new
25 and further disability" and her award may be "rescind[ed], alter[ed], or amend[ed]" by the
26 Workers' Compensation Appeals Board for "good cause" within five years. *See* Cal. Lab. Code
27 §§ 5410, 5803-04. Sgt. Page is a taxpayer who has paid an assessed property tax within the past
28 year.

1 23. **Plaintiff Dorene Hansen** is a woman who resides in Alameda County. She has
2 worked as a police officer for a single employer in Santa Clara County for 19 years. As a result of
3 her work activities, which exposed her to known carcinogens such as gasoline and diesel fumes,
4 exhaust, smoke from car and apartment fires, smoke from a dry-cleaning business fire, and
5 second-hand tobacco smoke, as well as toxic chemicals from hazardous spills, laboratory searches,
6 and pesticide sprays, Officer Hansen developed breast cancer and underwent a double
7 mastectomy. Officer Hansen has experienced numerous physical and psychological long-term
8 consequences from her breast cancer and mastectomy, including loss of both of her breasts, loss of
9 sexual sensation, pain, numbness, increased risk for other cancers, early menopause, increased risk
10 of infection, and harm to intimate relationships and her sense of self. Officer Hansen submitted a
11 claim for workers’ compensation in 2007 and in 2008, a Qualified Medical Evaluator (QME)
12 determined that though her breast cancer was directly caused by her employment, she had a
13 permanent disability rating of **zero percent**. Subsequently, unrepresented by an attorney, Officer
14 Hansen settled her workers’ compensation claim with a stipulation that ratified the 0% rating.
15 Despite the physical loss of both of her breasts, in addition to a number of attendant consequences,
16 Officer Hansen has never received any permanent disability benefits. Officer Hansen is a taxpayer
17 who has paid an assessed property tax within the past year.

18 24. **Plaintiff Leticia Gonzalez** is a woman who resides in Riverside County. Since
19 1998, she has worked as a technician for a single telecommunications company in offices in
20 Orange, San Diego, and Riverside counties. As a result of her work activities, which require
21 computer use for approximately eight hours per day, Ms. Gonzalez developed cervical strain,
22 tendinitis, nerve damage, and carpal tunnel syndrome in both hands. Ms. Gonzalez submitted a
23 claim for workers’ compensation. In 2014, she was evaluated by a Qualified Medical Examiner
24 (QME), who found that her injuries were caused by her employment and assigned her a 7%
25 permanent disability rating. The qualified medical examiner apportioned 20% of the permanent
26 disability caused by carpal tunnel to the fact that “she has multiple *risk factors* for carpal tunnel
27 syndrome *primarily age and gender*.” He further justified his apportionment on the grounds that
28 “[c]arpal tunnel compression neuropathy is *almost ubiquitous in the female population* in her age

1 demographic.” As a result of this improper and discriminatory apportionment finding and
2 Defendants’ failure to address and eliminate gender discrimination in the workers’ compensation
3 system, the workers’ compensation to which Ms. Gonzalez was entitled was reduced on account of
4 her gender. On the basis of the medical evaluation that included the discriminatory apportionment
5 finding, Ms. Gonzalez settled her workers’ compensation claim by a Stipulated Award in 2014.
6 Her award may be “rescind[ed], alter[ed], or amend[ed]” by the Workers’ Compensation Appeals
7 Board for “good cause” within five years. *See* Cal. Lab. Code §§ 5803-04. Plaintiff Gonzalez is a
8 taxpayer who has paid an assessed property tax within the past year.

9 25. **Plaintiff SEIU California State Council**, which brings suit in its own capacity and
10 on behalf of its members, represents approximately 700,000 California workers—including
11 approximately 497,000 women workers—located in all 58 counties in the State of California,
12 including more than 210,000 workers in Los Angeles County. Plaintiff SEIU California State
13 Council is comprised of 19 local labor unions active in California, and its mission is to improve
14 the lives of working people and their families by advocating for fair compensation, benefits, and
15 safe conditions for all workers, and in particular workers who often work in fields in which
16 workplace injuries are frequent and commonplace, including health care, long-term care, public
17 services, and building services. Its members include homecare workers, nurses, janitors,
18 classroom aides, security officers, health care workers, and nursing home workers, among many
19 other occupations. For example, SEIU Local 2015 represents over 300,000 home care and nursing
20 home workers, who provide essential services—such as medication monitoring, daily exercise,
21 and physical therapy—to the elderly or disabled. Likewise, SEIU-United Healthcare Workers
22 (SEIU-UHW) represents 85,000 healthcare workers in California, including respiratory care
23 practitioners, dietary, environmental services and nursing staff who work in private hospitals and
24 clinics. And SEIU-United Service Workers West (SEIU-USW) represents more than 40,000
25 janitors, security officers, airport service workers, and other property service workers across
26 California.

27 26. As a result of Defendants’ discriminatory apportionment practices that reduce the
28 compensation awarded to women workers on the basis of stereotypes about the female gender and

1 female reproductive biology, **Plaintiff SEIU California State Council's** members have been
2 subjected to, and will imminently be subjected to, illegal reduction in workers' compensation on
3 account of their gender. In addition, SEIU California State Council expends resources to advocate
4 on behalf of California workers' entitlement to fair compensation and benefits, and it provides
5 support to members subject to discriminatory employment practices. Plaintiff SEIU California
6 State Council is a taxpayer who has paid an assessed property and sales tax within the past year.
7 Plaintiff SEIU California State Council also represents at least one member who is a taxpayer and
8 has paid, or is liable to pay, assessed property tax within the past year.

9
10 *Defendants*

11 27. **Defendant George Parisotto**, sued here in his official capacity, is Acting
12 Administrative Director of the Division of Workers' Compensation. The Division of Workers'
13 Compensation is a division of the Department of Industrial Relations and the department of State
14 government responsible for protecting the interests of injured workers who are entitled to the
15 timely provision of compensation. With the exception of the work of the Workers' Compensation
16 Appeals Board, the Administrative Director exercises supervision over and has responsibility for
17 of all personnel of the division and coordinates all work of the division. Cal. Lab. Code § 111.
18 The Administrative Director is responsible for appointment and reappointment of qualified
19 medical examiners (QMEs) and establishing education, licensing, training, and assessment
20 requirements for such examiners. Cal. Code Regs. Tit. 8, § 11; Cal. Lab. Code § 139.2. The
21 Administrative Director is empowered to adopt, amend, or repeal rules necessary to govern the
22 activities of the division, Cal. Gov't Code § 11152; Cal. Lab. Code § 5307.3, and oversees the
23 Disability Evaluation Unit of the DWC, which issues permanent disability ratings. Cal. Code
24 Regs. Tit. 8, § 10150; *see also* Cal. Lab. Code § 4061(e). As Acting Administrative Director,
25 Defendant Parisotto is charged with administration and enforcement of the laws regulating
26 California's workers' compensation system and is obligated to take all necessary steps to ensure
27 that the workers' compensation system complies with the federal Constitution, the California
28 Constitution, and State laws. Defendant Parisotto is aware, or should be aware, of systemic
gender-based discrimination in the workers' compensation system.

1 28. **Defendant Division of Workers’ Compensation (“DWC”)** is a division of the
2 Department of Industrial Relations and the division of State government responsible for protecting
3 the interests of injured workers who are entitled to the timely provision of compensation. It is
4 specifically responsible for monitoring the administration of California’s workers’ compensation
5 system. There are a number of units within the DWC, including the Audit Unit, the Disability
6 Evaluation Unit, the Information and Assistance Unit, the Research Unit, the Medical Unit, and
7 the Workers’ Compensation Appeals Board. The Disability Evaluation Unit of the DWC is tasked
8 with issuing permanent disability ratings. Cal. Code Regs. Tit. 8, § 10150; *see also* Cal. Lab.
9 Code § 4061(e). As the department of State government responsible for protecting the interests of
10 injured workers who are entitled to the timely provision of compensation, Defendant DWC is
11 obligated to take all necessary steps to ensure that California’s workers’ compensation system
12 complies with the federal Constitution, the California Constitution, and State laws. Defendant
13 DWC is aware, or should be aware, of systemic gender-based discrimination in the workers’
14 compensation system.

15 29. **Defendant Christine Baker**, sued here in her official capacity, is the Director of
16 California’s Department of Industrial Relations. The Department of Industrial Relations is the
17 department of State government responsible for administering and enforcing laws governing, *inter*
18 *alia*, workplace safety and health and for overseeing the administration of the state system of
19 workers’ compensation. Cal. Lab. Code § 3201. As Director of the Department of Industrial
20 Relations, Defendant Baker appoints, exercises supervision over and is responsible for the
21 Administrative Director of the Division of Workers’ Compensation. Cal. Lab. Code § 57. As
22 Director of the Department of Industrial Relations, Defendant Baker is obligated to take all
23 necessary steps to ensure that the workers’ compensation system complies with the federal
24 Constitution, the California Constitution, and State laws. Defendant Baker is aware, or should be
25 aware, of systemic gender-based discrimination in the workers’ compensation system.

26 30. **Defendant Department of Industrial Relations (“DIR”)** is the department of
27 State government responsible for administering and enforcing laws governing, *inter alia*,
28 workplace safety and health and for overseeing the administration of the state system of workers’

1 compensation. Cal. Lab. Code § 3201. The Division of Workers' Compensation is a division of
2 the DIR. Defendant DIR is obligated to take all necessary steps to ensure that California's
3 workers' compensation system complies with the federal Constitution, the California Constitution,
4 and State laws. Defendant DIR is aware, or should be aware, of systemic gender-based
5 discrimination in the workers' compensation system.

6 31. **Defendant Workers' Compensation Appeals Board ("WCAB")** is a department
7 of State government that exercises all judicial powers vested in it by the Labor Code with respect
8 to the adjudication of claims for workers' compensation. Cal. Lab. Code § 111. Defendant
9 WCAB is a unit within the Division of Workers' Compensation. Defendant WCAB is responsible
10 for all "duties, powers, jurisdiction, responsibilities, and purposes" of the Division of Workers'
11 Compensation that are not subject to the supervision of the Administrative Director. Cal. Lab.
12 Code § 111; *see also* Cal. Lab. Code § 133. Defendant WCAB is charged with the final approval
13 of all permanent disability findings and settlement agreements and is obligated to take all
14 necessary steps to ensure that the adjudication of workers' compensation claims complies with the
15 federal Constitution, the California Constitution, and State laws. Defendant WCAB is aware, or
16 should be aware, of systemic gender-based discrimination in the workers' compensation system.

17 32. **Defendants Frank M. Brass, Deidra E. Lowe, José H. Razo, Marguerite**
18 **Sweeney, and Katherine Zalewski**, sued here in their official capacities, are the current members
19 of the Workers' Compensation Appeals Board (WCAB). Defendants Brass, Lowe, Razo,
20 Sweeney, and Zalewski are aware, or should be aware, of systemic gender-based discrimination in
21 the workers' compensation system.

22 33. **Defendant David Lanier**, sued here in his official capacity, is Secretary of the
23 California Labor and Workforce Development Agency. The Labor and Workforce Development
24 Agency is a cabinet-level agency responsible for overseeing the Department of Industrial
25 Relations. As Secretary of the California Labor and Workforce Development Agency, Defendant
26 Lanier is obligated to take all necessary steps to ensure that California's workers' compensation
27 system complies with the federal Constitution, the California Constitution, and State laws.
28 Defendant Lanier is aware, or should be aware, of systemic gender-based discrimination in the

1 workers' compensation system.

2 34. Plaintiffs are ignorant of the true names and capacities of defendants sued in this
3 complaint as **Does 1 through 20**, inclusive, and therefore sue these defendants by such fictitious
4 names. Plaintiffs will amend this complaint to allege their true names and capacities when
5 ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitiously
6 named Defendants is responsible in some manner for the occurrences alleged in this complaint.

7 35. Defendants George Parisotto, Division of Workers' Compensation, Christine
8 Baker, Department of Industrial Relations, Workers' Compensation Appeals Board, Frank M.
9 Brass, Deidra E. Lowe, José H. Razo, Marguerite Sweeney, Katherine Zalewski, and Does 1
10 through 20, are herein collectively referred to as "Defendants."

11 **CLASS ACTION ALLEGATIONS**

12 36. The Plaintiffs challenging Defendants' discriminatory apportionment
13 determinations seek to bring this action as a class action. This action is maintainable as a class
14 action under California Code of Civil Procedure section 382.

15 37. **Plaintiffs Leticia Gonzalez and SEIU State Council** represent the
16 "**Apportionment Class**" consisting of all female, workers' compensation claimants who have in
17 the past five years suffered compensable injury and who have been, or who will in the future, be
18 subject to a reduction in permanent disability benefits as a result of apportionment to risk factors
19 based on gender or female reproductive biology (including, but not limited to, menopause and
20 pregnancy history) (collectively, "gender-based risk factors").

21 38. There is a well-defined community of interest among **Apportionment Class**
22 members in that there exist questions of law and/or fact common to the entire class and which
23 predominate over any individual question. Common questions of law and/or fact include, without
24 limitation: (1) whether the apportionment of permanent disability awards to gender-based risk
25 factors violates the prohibitions on sex discrimination under Article I, section 7(a) of the
26 California Constitution, the Equal Protection Clause of the federal Constitution, California
27 Government Code § 11135, and/or the Equal Protection Clause of the 14th Amendment of the
28 California Constitution, and (2) whether Defendants' deliberate indifference has proximately

1 caused the denial of permanent disability benefits to which female workers' compensation
2 claimants are entitled because of their sex.

3 39. The **Apportionment Class** is so numerous that joinder of all members or
4 individual actions by each class member is impracticable. Based on the Department of Industrial
5 Relations' own estimates, the class may include up to 11,000 members annually. Moreover, the
6 inclusion in the class of future members and the dispersal of the class across the state of California
7 make joinder impracticable.

8 40. Each member of the **Apportionment Class** has claims that are typical of the claims
9 of the class. All named Plaintiffs are members of the class they seek to represent and have
10 suffered or will suffer discrimination on account of their sex due to discriminatory apportionment
11 to gender-based risk factors in the calculation of the permanent disability benefits to which they
12 are entitled under the workers' compensation system.

13 41. **Plaintiffs Leticia Gonzalez and SEIU State Council** will fairly and adequately
14 protect the interests of the class. Plaintiffs and the putative class are represented by experienced
15 counsel who will adequately represent the interests of the class.

16 42. Defendants have acted and/or refused to act on grounds generally applicable to the
17 **Apportionment Class**, thereby making appropriate final injunctive relief and/or corresponding
18 declaratory relief with respect to the class as a whole.

19

20

FACTUAL ALLEGATIONS

21 43. The California workers' compensation scheme discriminates against women
22 workers with respect to the calculation of permanent disability benefits. California women injured
23 in the workplace are subject to discrimination in both the apportionment and disability rating
24 process. Federal and state antidiscrimination law clearly provide that women workers may not be
25 denied full benefits of the workers' compensation system on the basis of stereotypes about the
26 female gender or women's reproductive biology.

27 44. The gender discrimination rampant in California's workers' compensation system
28 is the latest chapter in our country's long history of institutionally and systematically undervaluing

1 inequities brought about by the industrial revolution. As low-wage workers increasingly took on
2 high-risk jobs, society recognized that the burdens of the often-unsafe workplace were
3 disproportionately borne by the workers. From the beginning, even this unfair distribution of risk
4 was framed in gendered language. In 1907, President Theodore Roosevelt remarked, “it is a bitter
5 injustice that it should be the wage-worker himself and his wife and children who bear the whole
6 penalty.” By the early 1920s, almost every state had implemented a workers’ compensation
7 scheme premised on a “grand bargain:” workers surrendered the right to bring an action in tort
8 against employers for injuries that occurred on the job and, in exchange, workers were guaranteed
9 financial compensation for the hardships wrought by workplace injuries.

10 47. Legislative reforms of the past decade have undermined the worker-protective
11 origins of workers’ compensation schemes, and a report issued by the Occupational Safety &
12 Health Administration (OSHA) within the United States Department of Labor in 2015 found that
13 employers only cover about 20% of “the overall financial cost of workplace injuries and illnesses
14 through workers’ compensation.” The remaining costs, an estimated \$198 billion, “are paid by
15 employer-provided health insurance, Medicare, Medicaid, Social Security and other disability
16 funds, employees and other payers.” In 2015, the director of OSHA, David Michaels, expressed
17 concern that this redistribution of costs disincentivizes employers from preventing workplace
18 injuries from occurring in the first place.

19 48. The California workers’ compensation system, introduced in 1911, is codified into
20 law through the California Constitution and the California Labor Code. The California
21 Constitution mandates that the legislature “create and enforce a liability on the part of any or all
22 persons to compensate any or all of their workers for injury or disability.” Cal. Const. art. XIV,
23 § 4. In turn, the legislature has laid out a “complete system of workers’ compensation,”
24 administered by the California Department of Industrial Relations. Cal. Lab. Code § 3201. The
25 Labor Code requires that all employers demonstrate proof of workers’ compensation insurance of
26 some form and, in exchange, workers’ compensation is, with few exceptions, the exclusive
27 remedy for an employee injured on the job. Cal. Lab. Code §§ 3600, 3602, 3700.

28 49. As President Roosevelt’s remark suggests, from its inception, California’s workers’

1 compensation system has been based on a default assumption that workers are male. It was
2 legally referred to as “workmen’s compensation,” until California Labor Code § 3200 was passed
3 into law in 1974, providing: “[t]he Legislature hereby declares its intent that the term ‘workmen’s
4 compensation’ shall hereafter also be known as ‘workers’ compensation.’”

5 ***b. Permanent Disability Benefits: Disability Rating and Apportionment***

6 50. There are multiple categories of benefits available to injured employees and their
7 families through the workers’ compensation system. The discrimination identified here pertains
8 solely to permanent disability benefits. Within workers’ compensation terminology, the
9 employee’s “disability” is distinct from her “injury.” “Injury” refers to the actual incident and
10 resultant medical care necessary to treat the injury. After the injured worker has reached the point
11 at which she will no longer improve, with or without medical treatment, any remaining
12 impairment is referred to as the “permanent disability.” For example, if an employee broke her leg
13 at work, the broken leg would be the injury and the fact that, after reaching maximum recovery,
14 she will never be able to put all her weight on that leg again would be the permanent disability.
15 As the California Supreme Court explained, “permanent disability is understood as ‘the
16 *irreversible residual of an injury.*’” *Brodie v. Workers’ Comp. App. Bd.* (2007) 40 Cal. 4th 1313,
17 1320 (emphasis added). Within the “panoply of benefits the [workers’ compensation] system
18 provides . . . , permanent disability payments are intended to compensate workers for both
19 physical loss and the loss of some or all of their future earning capacity.” *Id.*

20 51. When a worker is deemed “permanent and stationary” following a workplace
21 injury—that is, when the injured worker has reached the point at which she will no longer
22 improve, with or without medical treatment—she is given an impairment rating that represents
23 how disabled she is as a result of the injury. This rating is expressed as a percentage—0%
24 indicating no long-term physical loss or impact on future earning capacity, 100% indicating a
25 disability that will prevent the employee from ever working again.

26 52. This impairment rating is then adjusted to reflect the extent to which the workplace
27 injury “caused” the resultant disability. This “apportionment determination,” which is also
28 expressed as a percentage, represents the percent of the disability for which the employer is liable.

1 In other words, if the employee were given an impairment rating of 40% and her medical
2 evaluator found that 50% of the long-term disability was caused by non-industrial factors, such as
3 a pre-existing illness, then the final disability rating would be 20%. Based on this final rating, the
4 worker is assigned a compensation award. When any aspect of the case is contested, and the
5 employee is not represented by an attorney, the impairment rating will, in almost all cases, be
6 determined by a state-certified Qualified Medical Examiner (“QME”). If the applicant is
7 represented, or the application for workers’ compensation is in no way contested, the impairment
8 determination may be provided by a QME, Agreed Medical Evaluator (“AME”), or treating
9 physician.

10 53. Prior to 2004, a worker’s total disability rating was based on a series of subjective
11 and objective factors. The legislature found that this process produced unpredictable and
12 inconsistent disability determinations, and, in 2004, passed Senate Bill Number 899. SB 899
13 mandates that all disability determinations rely on the percentage assigned the relevant impairment
14 under the American Medical Association *Guides to the Evaluation of Permanent Impairment* (the
15 “AMA *Guides*”) as prima facie evidence of the injured employee’s impairment rating. This
16 “impairment rating” is then adjusted into a disability rating based on factors such as age,
17 occupation, and apportionment.

18 54. SB 899 also significantly changed the laws governing apportionment. “Until 2004
19 . . . [a]pportionment based on causation was prohibited. . . . Instead, a disability resulting from
20 industrial and nonindustrial causes was apportionable only if the board [found] that part of the
21 disability would have resulted from the normal progress of the underlying nonindustrial disease.”
22 *Brodie*, 40 Cal. 4th at 1326 (2007). Thus, for example, if a work-related injury left an employee
23 wheelchair-bound, prior to 2004 the total disability rating could only have been apportioned if the
24 employee would have eventually been wheelchair-bound regardless of the work-related injury.
25 This might be the case if, for example, the employee had a degenerative bone disease that would
26 have manifested independent of any injury.

27 55. Following passage of SB 899, however, apportionment is now based on
28 “causation.” Cal. Lab. Code § 4664. Under the causation standard, the medical examiner must

1 estimate what percentage of the disability resulted from factors other than the work-related injury,
2 including “apportionment based on pathology and *asymptomatic* causes.” *Brodie*, 40 Cal. 4th at
3 1327 (emphasis added). Under this regime, a worker could have her total disability award reduced
4 for an underlying condition that she never knew she had, and would never have known she had,
5 but for the work-related injury.

6 56. Medical examiners are required to assign an apportionment percentage in order for
7 workers’ compensation medical reports to be “considered complete.” Cal. Lab. Code § 4663(c).
8 Despite the professed goals of objectivity and uniformity that accompanied adoption of the AMA
9 *Guides* into the disability rating process, the apportionment determination is completely at the
10 discretion of the medical examiner, so long as it is supported by substantial evidence. *Id.* Even
11 the Labor Code recognizes that such a determination is necessarily an “approximation.” *Id.*

12 57. In 2012, California passed Senate Bill 863, which mandated there “shall be no
13 increases in impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder,
14 or any combination thereof, arising out of a compensable injury” with few exceptions for extreme
15 circumstances. Cal. Lab. Code § 4660.1.

16 ***c. Process for Determination of Permanent Disability Benefits***

17 58. Whenever there is a question concerning appropriate workers’ compensation
18 benefits in an individual case, including permanent disability benefits, the worker must be
19 evaluated by a QME or, if the worker has an attorney and the attorney is able to reach an
20 agreement with the claims administrator, by an AME. The “medical-legal” and “Permanent and
21 Stationary” reports generated by QMEs are the primary basis for most permanent disability
22 determinations.

23 59. QMEs are certified by the Division of Workers’ Compensation Medical Unit, and
24 the Administrative Director of the Department of Workers’ Compensation (“Administrative
25 Director”) is responsible for QME appointments. Cal. Code Regs. Tit. 8, § 11. To receive QME
26 certification, a physician must meet educational and licensing requirements, Cal. Lab. Code
27 § 139.2, Cal. Code Regs. Tit. 8, § 11; pass the QME Competency Examination—a test that is
28 “written and administered by the administrative director for the purpose of demonstrating

1 competence in evaluating medical-legal issues in the workers' compensation system;" complete a
2 "course of at least 12 . . . hours in disability evaluation report writing," the "curriculum [of which]
3 shall be specified by the Administrative Director;" "and participate in ongoing education on the
4 workers' compensation evaluation process." Cal. Code Regs. Tit. 8, §§ 11, 11.5. In order to be
5 reappointed as a QME, a medical evaluator must complete "at least 12 hours of continuing
6 education in impairment evaluation or workers' compensation-related medical dispute evaluation
7 approved by the administrative director" every two years. Cal. Lab. Code § 139.2(d)(4).

8 60. When a QME is requested, the State of California assigns a computer-generated,
9 random list of three potential QMEs within a 25-mile radius of the injured worker's zip code.
10 While QMEs are supposed to be neutral parties, they are usually paid by the employer's workers'
11 compensation insurer. Moreover, they are overwhelmingly male. For example, within 25 miles of
12 Ontario, CA, for the five most frequently utilized specialties:

- 13 • In orthopedics, out of 195 examiners, approximately 5 are women
- 14 • In pain medicine, out of 19 examiners, approximately 0 are women
- 15 • In neurology, out of 37 examiners, approximately 3 are women
- 16 • In internal medicine, out of 555 examiners, approximately 5 are women
- 17 • In psychiatry, out of 76 examiners, approximately 10 are women

18 **II. Women Workers' Permanent Disability Benefits Are Reduced on the Basis of Gender**
19 **Stereotypes in the Apportionment Process**

20 61. Defendants' failure to address and eliminate gender discrimination in California's
21 workers' compensation system systemically reduces the compensation provided to women
22 workers in the apportionment process. Defendants have a policy and practice of reducing the
23 permanent disability benefits due to women workers by permitting, condoning, and ratifying
24 discriminatory apportionment determinations that are based on stereotypes about women's
25 capacities and reproductive biology. In contrast, there is no such policy and practice of
26 discriminatory apportionment determinations based on stereotypes or assumptions about the
27 capacities and biology of men.

28 62. As discussed in paragraph 52, *supra*, after a worker's injury is deemed "permanent

1 and stationary”—that is, after the condition will no longer improve any further—a medical
2 examiner must determine what proportion of the permanent impairment was caused by the
3 workplace injury, and what proportion should be apportioned to non-industrial factors. The
4 employee is entitled to permanent disability benefits only for the portion of the permanent
5 impairment that was caused by the workplace injury.

6 63. When medical examiners make apportionment determinations that direct the
7 quantity of permanent disability benefits to which female workers are entitled, they frequently
8 reduce women’s compensation by attributing the permanent impairments experienced by women
9 to “non-industrial factors” that are based on stereotypes about gender and women’s reproductive
10 biology. These findings are not made pursuant to an individualized determination specific to the
11 injured worker herself. Instead, they are generalizations and assumptions about what women as a
12 group are like.

13 64. Many medical reports reflecting gender-discriminatory apportionment
14 determinations expressly premise the apportionment determination on stereotypes and
15 generalizations about women as a group, with no pretense of making an individualized
16 determination. These reports frequently reduce women’s compensation on the basis that the
17 female gender itself or female reproductive biology is a “risk factor” or a “predisposing
18 condition.”

19 65. For example, based solely on general statistics that indicate the incidence of carpal
20 tunnel syndrome is higher in women than in men, medical examiners routinely reduce the
21 permanent disability benefits due to women suffering from carpal tunnel on the ground that being
22 a woman is deemed a “risk factor” for its development. In each of the following five cases, for
23 example, women with carpal tunnel syndrome received discriminatory apportionment
24 determinations on this basis:

- 25 • “[R]isk factors for carpal tunnel syndrome include female sex [and] pregnancy.”
- 26 • “She has multiple risk factors for carpal tunnel syndrome, primarily age and gender.”
- 27 • “[Carpal tunnel syndrome attributed in part to] the risk factor of the female gender.”
- 28 • “The most significant factor in development of carpal tunnel syndrome is simply gender.

1 Females have considerably higher incidence, probably in the five to six times range
2 compared to males.”

- 3 • “[T]he apportionable disability is based on the fact that the highest incidence of carpal
4 tunnel syndrome is in postmenopausal women.”

5 66. Other medical reports apportion women workers’ permanent impairment rating to
6 female reproductive biology—for example, the consequences of menopause or pregnancy—on the
7 basis of stereotypes about women as a group and their capacities as workers. For example,
8 medical examiners attribute depression or other psychiatric injuries in women to menopause,
9 “perimenopause,” or “gynecological issues” in cases where the record lacks any individualized
10 basis for such a finding. These discriminatory determinations are based on conclusory, biased,
11 and/or stereotyped assumptions about women as a group.

12 67. While all apportionment determinations premised on gender-based stereotypes are
13 impermissible, the practices in California’s workers’ compensation system are particularly
14 offensive because these stereotypes are employed to disadvantage women exclusively. The
15 awards of male workers are not reduced due to the “risk factor” or “predisposing condition” of the
16 male gender or male reproductive biology. As a consequence, women workers alone are deprived
17 of the permanent disability benefits to which they are otherwise entitled, depriving women of
18 compensation equal to that of similarly situated men.

19 68. This practice is so rampant that when **Monique Sloan**, a customer service
20 representative at a major California utility, developed tendinitis and carpal tunnel syndrome, her
21 employer sent a letter to both QMEs with whom she had scheduled appointments, asking the
22 QMEs to “please address the following medical conditions that the Mayo Clinic Website has
23 outlined as key risk factors for injuries to the upper extremity.” (Emphasis added). The list
24 includes: “*Genetics in women*”; “*Age of female*”; “*Female gender*,” specifying “*women 3x as*
25 *likely as men to get the condition. Incidence peaks after menopause*”; “*Menopause*”;
26 “*Pregnancy*”; and “*Women taking birth control pills*.”

27 69. **Plaintiff Leticia Gonzalez** experienced such a discriminatory apportionment
28 determination. As described in paragraphs 6-7, *supra*, **Plaintiff Leticia Gonzalez’s** permanent

1 disability award for severe carpal tunnel syndrome and nerve damage was based on a 20%
2 reduction for her “multiple **risk factors** for carpal tunnel syndrome, **primarily age and gender.**”

3 70. Ms. Gonzalez’s experience is not unique. Defendants have conceded that these
4 discriminatory apportionment practices are widespread and pervasive throughout California’s
5 workers’ compensation system. In May 2016, Defendant Department of Industrial Relations
6 reported to the State Assembly Committee on Appropriations that annually, “out of 90,000
7 permanent disability cases, 11,000 cases are women and include apportionment.” Defendant
8 Department of Industrial Relations further conceded a prohibition on the use of gender-related
9 characteristics in the calculation of permanent disability benefits may affect up to 11,000 of these
10 cases.

11 71. The following representative examples reflect the experiences of women workers
12 and putative class members whose entitlement to permanent disability benefits has been
13 diminished for no reason other than their gender:

14 72. **Theresa Menjivar** is a mechanical designer who has worked for a single company
15 since 1987. Ms. Menjivar, who is the only woman in her role at her company, has worked on a
16 computer for approximately eight hours per day for almost three decades on behalf of her
17 employer. As a result of the repetitive stress of the prolonged computer use required by her job
18 duties, Ms. Menjivar began experiencing symptoms of pain and numbness in her hands. The pain
19 increased with time, until her hands ached constantly and kept her up at night. Ms. Menjivar was
20 diagnosed with severe carpal tunnel syndrome and arthritis; one doctor told her it was the worst
21 case of carpal tunnel syndrome he had ever seen. Ms. Menjivar’s symptoms did not improve with
22 traditional treatment, and she ultimately underwent surgery on both hands. The surgery has
23 significantly improved Ms. Menjivar’s condition, but she continues to feel pain when she performs
24 repetitive tasks for a long duration.

25 73. Ms. Menjivar submitted a claim for workers’ compensation. She was evaluated by
26 a qualified medical examiner who confirmed that her carpal tunnel syndrome and arthritis were
27 caused by her workplace activities and that she was entitled to permanent disability benefits.
28 However, the qualified medical examiner attributed 40% of Ms. Menjivar’s permanent disability

1 to “**preexistent non-industrial factors**” including “*female gender, age [and] post-menopausal*
2 *status.*” In short, the qualified medical examiner determined that Ms. Menjivar’s employer was
3 responsible for only 60% of the long-term harm Ms. Menjivar suffered, simply because she is a
4 woman.

5 74. **Evangelina Undaneta** worked as a bilingual school aide in Sonoma County for
6 nearly 10 years. In the course of her employment with the school district, she experienced three
7 significant work-related back injuries between 2006 and 2013. Ms. Undaneta filed claims to
8 obtain workers’ compensation to cover the medical costs to treat these injuries. But delays in
9 obtaining workers’ compensation caused delays in treatment for her injuries, and, to date, Ms.
10 Undaneta has not received necessary back surgery. As a result of the delay in treating her physical
11 injuries, Ms. Undaneta has suffered increasingly severe pain leading to debilitating depression.

12 75. The QME that evaluated Ms. Undaneta’s psychiatric injury determined that the
13 cause of her psychiatric injury was industrial, but apportioned 80% to nonindustrial factors,
14 including “*perimenopausal factors.*” This finding had no basis in the medical record. Ms.
15 Undaneta continues to menstruate and has not gone through menopause. She has never
16 experienced any symptoms of menopause. Her medical record shows “contraceptive
17 management” as an active condition. Indeed, the QME met with Ms. Undaneta for only
18 approximately 15 minutes before making this finding, and during this time “perimenopausal”
19 symptoms were not discussed. This finding was wholly premised on stereotypes about women
20 and the consequences of their reproductive biology.

21 76. Ms. Undaneta’s case is ongoing. She has been unable to return to work.

22 77. **Jennifer Clark** was employed by the County of Sonoma for 18 years. She began
23 performing data entry in 1995, rose through the ranks, and was ultimately promoted to the position
24 of Information Specialist II in the Information Technology Department. Over time, staffing in Ms.
25 Clark’s department declined until she was doing the work formerly performed by eight people.
26 Beginning in 2010, as a result of extreme overwork, Ms. Clark suffered severe depression,
27 anxiety, and burnout. Over a period of three to four years, she declined psychologically. She
28 began to withdraw, stopped going to social events, and stopped regularly showering. She suffered

1 physical manifestations of extreme stress, including uncontrollable diarrhea when she got into her
2 car for work in the morning and panic attacks when she approached the exit for work off the
3 highway, and contracted pneumonia on two occasions. In 2013, a triggering event at work caused
4 her to suffer an episode that she initially believed was a stroke; she experienced symptoms of
5 numbness and short-term memory loss. Her doctor determined that she could not go back to work
6 for at least six months. For months afterwards, Ms. Clark was impaired in her ability to eat, sleep,
7 shower, and perform regular activities of daily living. She was admitted to an outpatient therapy
8 program at St. Joseph’s Health. Ms. Clark remains in psychological treatment today and is unable
9 to return to work.

10 78. Ms. Clark submitted a claim for workers’ compensation and was evaluated by a
11 QME who found that 85% of her psychological injury was caused by her employment. However,
12 the QME attributed 15% of her injury to “*chronic gynecological issues, including excessive*
13 *menstruation, abdominal pain, fatigue, anemia, ovarian cyst, history of prior abdominal surgery*
14 *for ovarian cyst with post-operative adhesions, and menopause.*” This finding had no basis in the
15 medical record. It was wholly premised on stereotypes about women and the consequences of
16 their reproductive biology. As Ms. Clark informed the QME, she experienced no symptoms of
17 depression or anxiety prior to 2010, and “gynecological issues” had never interfered with her
18 work. She had ovarian cysts removed in 1989 and 2003 and experienced no associated
19 psychological consequences.

20 79. Ms. Clark’s case is ongoing. Because Ms. Clark has been unable to return to work
21 and has been unable to obtain the workers’ compensation to which she is entitled, she has been
22 unable to afford her medical bills and household expenses. She has switched to publicly
23 subsidized health insurance under Covered California.

24 80. **Veronica Kelley** has worked in the special events department at Fox Broadcasting
25 Company since she graduated from college in 2006. In her current position as Director of Special
26 Events, Ms. Kelley spends between 6 and 12 hours a day typing on either her computer or her
27 phone.

28 81. In or around March 2013, Ms. Kelley began experiencing pain, tingling, and

1 numbness in her wrists and fingers. The sensation became so extreme she was unable to sleep and
2 believed she was experiencing nerve damage. However, her treating physician diagnosed her with
3 carpal tunnel syndrome stemming from extensive computer use in the course of her employment.
4 Due to delays in the workers compensation system, months elapsed before Ms. Kelley was able to
5 see an appropriate specialist, and by the time she did, in August 2014, over a year after the
6 symptoms first appeared, she had become pregnant.

7 82. On February 25, 2015, Ms. Kelley attended an evaluation with a QME in the hopes
8 of moving towards settlement of her case. At the time she was on maternity leave and, since her
9 husband was working full time and she was unable to get child care that day, she brought her four-
10 month-old daughter to the appointment. The QME expressed annoyance that she had brought her
11 infant to the examination and made multiple comments about the baby's presence in the office.
12 During the examination, the QME asked Ms. Kelley multiple questions about whether or not she
13 was breastfeeding and the impact the breastfeeding had had on the pain in her wrists and thumbs.
14 In response, Ms. Kelley repeatedly emphasized that her carpal tunnel symptoms had started long
15 before her pregnancy and had not been impacted by breastfeeding one way or the other.

16 83. The QME report stated that Ms. Kelley's bilateral carpal tunnel syndrome was
17 "either the result of or aggravated by her pregnancy and breast feeding" and had been
18 "significantly influenced by her pregnancy and breast feeding and possibly her work activity"
19 (emphasis added). The QME report also stated that her condition "should be expected to improve
20 with the simple passage of time including when she stops breast feeding her infant." These
21 findings had no basis in the medical record. Both the initial filing date of Ms. Kelley's workers'
22 compensation claim and Ms. Kelley's repeated statements to Dr. Sherman indicated that the
23 symptoms of carpal tunnel syndrome had begun long before her pregnancy. Ms. Kelley did, in
24 fact, stop breastfeeding in September, 2015, and, to date, her symptoms have not improved. She
25 still experiences discomfort and pain when sleeping, managing the steering wheel of her car
26 during her three-hour, round-trip commute, and when holding her daughter's hands.

27 **III. Gender Discrimination in the Disability Rating for Breast Cancer**

28 84. In addition to its discriminatory apportionment practices, California's workers'

1 compensation scheme also discriminates against women workers by assigning an irrationally
2 low—and in some cases, **zero percent**—disability rating to breast cancer and the consequences of
3 breast cancer treatment, including radical mastectomy. This disability rating has no rational
4 relationship to the profound physical, psychological, and emotional consequences that surviving
5 breast cancer and a mastectomy can entail. It is predicated on gender bias, disregard for women’s
6 bodies, and stereotypes about women’s roles as mothers.

7 85. According to the American Cancer Society, although it is possible for men to get
8 breast cancer, “breast cancer is about 100 times less common among men than among women.”
9 Moreover, the harm of surgery due to breast cancer is often significantly greater for women than
10 for men. In particular, the loss of a breast may also have a significant impact on a woman’s
11 sexuality and sense of identity. In sum, the undervaluation of breast cancer and its sequelae has
12 the effect of disproportionately reducing workers’ compensation awards received by women, as
13 compared to the workers’ compensation awards received by men.

14 86. As discussed above, permanent disability benefits are intended to compensate
15 injured workers for long-term physical loss in addition to the loss of earning capacity. *See Brodie*
16 *v. Workers’ Comp. App. Bd.* (2007) 40 Cal. 4th 1313, 1320. Because the workers’ compensation
17 scheme precludes a remedy at tort for injuries occurring in the course of employment, even when
18 caused by an employer’s negligence, workers’ compensation is the exclusive remedy for
19 employees injured as a consequence of their work. As a result, the permanent disability benefits
20 afforded by the workers’ compensation system are the only compensation that injured workers
21 will ever receive for the long-term consequences of the harms they have suffered.

22 87. Since 2004, disability ratings in California have been determined with reference to
23 the percentage assigned to the relevant impairment under the fifth edition of the American Medical
24 Association *Guides to the Evaluation of Permanent Impairment* (the “AMA Guides”). The AMA
25 *Guides* currently assign a double mastectomy resulting from work-induced breast cancer an
26 impairment rating of **zero percent** for women past childbearing age and a maximum of 5% for
27 women who can still bear children.

28 88. The irrationally low disability rating assigned to breast cancer reflects a profound

1 undervaluation of harms that uniquely affect women. In contrast, California’s workers’
2 compensation scheme does not assign negligible or zero percent disability ratings to similar harms
3 unique to men. For example, prostate cancer and its sequelae, a disability that exclusively impacts
4 men, is assigned an impairment rating of between 16% and 20%. To assign breast cancer and its
5 sequelae, a disability that almost exclusively impacts women, an irrationally low impairment
6 rating, reflects a discriminatory indifference to injuries suffered by women that is absent with
7 respect to conditions peculiar to men.

8 89. The denial of any significant or long-term consequences of breast cancer
9 irrationally ignores the concrete and medically-documented harms of breast cancer and the loss of
10 a breast. Medical evidence reflects that many women who lose a breast due to breast cancer not
11 only experience the physical loss of one or both breasts, but also suffer long-term physical
12 consequences including disfigurement, scar tissue, asymmetry, lymphedema, premature arthritis of
13 the spine, chronic pain, loss of sensation, and loss of sexual function. Women who require
14 chemotherapy may experience loss of cognitive function, hair loss, and changes in vaginal flora
15 that may result in vaginal dryness and bleeding during bowel movements. Moreover, because a
16 woman’s breasts are part of her female identity, both physically and psychologically, the loss of a
17 breast can exact a heavy psychological toll. Breast cancer surgery can affect an individual’s sense
18 of identity, confidence, body image, sexuality, and intimate relationships.

19 90. For example, as a result of the work-related breast cancer and resulting mastectomy
20 that **Plaintiff Janice Page** experienced, she has suffered long-term physical consequences that
21 affect her daily. She has significant scar tissue and feels no sensation in her right breast. The
22 implant in her right breast does not match her left breast, because it is smaller and sits higher. Her
23 clothes fit her differently, and she requires special undergarments. Sgt. Page continues to
24 experience pain, and numbness on her right side. Sgt. Page is very physically active, and while
25 she used to lift 20-pound weights with her right side when working out, she can no longer do so.
26 It has made her feel differently about herself, embarrassed about her appearance, and devastated at
27 the removal of a body part. Yet, when Sgt. Page met with a medical evaluator, she was assigned a
28 permanent disability rating of **zero percent**.

1 91. **Plaintiff Dorene Hansen** has similarly suffered numerous long-term physical and
2 personal repercussions as a result of her work-induced breast cancer and consequent double
3 mastectomy. The courses of chemotherapy and hormone therapy Officer Hansen had to endure in
4 order to effectively combat the cancer have induced early menopause and left her with numbness
5 in her feet and at a heightened risk of ovarian cancer. The radical mastectomy of her left breast
6 included the removal of seventeen lymph nodes along her left side, including sentinel nodes,
7 leaving her prone to infection and at constant risk of lymphedema. Although her breasts have
8 been reconstructed, they are completely numb, have scarring, and do not have nipples. Her
9 discomfort about the physical appearance of her breasts has discouraged her from getting involved
10 in a romantic relationship. She continues to experience pain down her left side, especially when
11 she puts something under her arm. As a member of the K-9 unit, she is frequently training her
12 police dog, which often requires her to put a training toy under her arm. While she was previously
13 in excellent shape, Officer Hansen has been unable to return to her pre-diagnosis exercise routine
14 or get back into the physical shape that was once central to her identity as one of few women on
15 the police force. Despite all of these long-term consequences, Officer Hansen was assigned a **zero**
16 **percent** impairment rating after being evaluated by a QME, a determination that was ultimately
17 ratified by the settlement of her workers' compensation claim.

18 92. The fact that the *AMA Guides* state that only those women who are able to bear
19 children are entitled to recover any compensation at all for the loss of a breast reflects outdated
20 and impermissible stereotypes about women's traditional roles as mothers. Under California's
21 disability rating system, a woman who cannot bear children is assigned a 0% impairment rating
22 for the loss of a breast, while a woman who can is assigned up to a 5% impairment rating for the
23 very same injury. This rating scheme reflects a judgment that a woman's breast has *no value*,
24 except to enable women to breastfeed children. This view of women's roles and the purpose of
25 women's bodies is antithetical to the understanding of women as equal citizens and participants in
26 the workforce that is enshrined in our state and federal constitutions.

27 93. Although the zero to five percent disability rating is based on the rating assigned to
28 breast cancer and loss of a breast in the *AMA Guides*, the *Guides* are not "neutral" with respect to

1 gender. The AMA *Guides* themselves have long been influenced by stereotypes about women's
2 roles and capacities contemporary to the publication of the earlier editions, and many of these
3 stereotypes continue into the version of the AMA *Guides* used by California today. Although the
4 6th Edition of the AMA *Guides* was published in 2008, the 5th Edition is the version currently
5 incorporated into California's workers' compensation system by law. Cal. Lab. Code §§ 4660,
6 4660.1. Yet an official, copyrighted presentation comparing the 5th and 6th Editions, published by
7 the AMA and available on the Defendant DIR's website, acknowledged that a "frequent criticism"
8 of the AMA *Guides* is "gender bias" and explained that the 6th Edition responded to concerns that
9 prior editions "did not provide a comprehensive, valid, reliable, and unbiased-based rating
10 system." The 6th Edition of the AMA *Guides* provides an increased impairment rating of 10-15%
11 for breast cancer leading to a single mastectomy in a woman past childbearing age.

12 94. The 5th Edition of the AMA *Guides* includes hundreds of individual examples to
13 demonstrate how the impairment principles outlined in the *Guides* should be applied. Both the
14 individual examples, and the body of examples considered as a whole, demonstrate that the AMA
15 *Guides* is steeped in gender stereotypes. For example:

- 16 • Of the approximately 412 instructional examples contained in the *Guides* that identify the
17 subject's gender, approximately 255 feature male subjects, whereas only approximately 157
18 use female subjects.
- 19 • The occupations listed in these examples reflect stereotyped assumptions about women's
20 activities, capacities, and social roles. In the approximately 19 examples of female subjects in
21 which the subject's profession is clearly identified, for example, five are teachers, one is a
22 seamstress, one is a librarian, one is a department store salesperson, and one is a part-time
23 social worker. There are no examples in the entire AMA *Guides* of a female doctor, lawyer,
24 public safety or military officer, or farmer.
- 25 • In contrast, of the approximately 35 examples with male subjects in which the subject's
26 profession is clearly identified, three are doctors, four are public safety officers or military
27 personnel, two are attorneys, two are farmers, and four work with heavy machinery. Only one
28 is a teacher (voice teacher and singer).

- 1 • Of the examples in which the subject is female, seven mention housework or child care
2 including, for example, “breathlessness increased during daily activities such as climbing
3 stairs, mopping, or cleaning,” “individual has difficulty shopping for groceries, cooking,
4 cleaning, and helping her children with their homework,” “head trauma while doing laundry in
5 cellar,” and “aching pain in the right groin toward the end of the day, after household activities
6 and caring for her children.”
- 7 • In contrast, there are only three examples with a male subject in which housework or children
8 are mentioned. Of these three, one mentions only the inability of the husband to “play[] with
9 his children,” and one states, “the man shops for his mother, engages in household chores,
10 answers the phone, dresses himself appropriately, and accompanies his parents to family
11 gatherings.”

12 95. The chapter on impairment of reproductive organs likewise embodies offensive
13 gender stereotypes. For example, the ratings summary for “penile disease” directs the medical
14 evaluator to consider sexual function, difficulty of erection, difficulty of ejaculation, and
15 sensation. Thus, a male for whom “sexual function [is] possible but with varying degrees of
16 sensation” could receive a disability rating between 0 and 10%. In contrast, the ratings summary
17 for “vulval or vaginal disease or deformation” only directs the medical evaluator to consider
18 whether sexual intercourse is possible. In other words, when evaluating a reproductive organ
19 impairment in a man, his ability to enjoy sexual intercourse is relevant to the compensation he
20 receives. For a woman, only her ability to provide men with the pleasure of sexual intercourse is
21 relevant, regardless of whether she herself derives any sexual pleasure from that or any other
22 sexual activity.

23 96. This bias is not new to the 5th Edition. In fact, a 1990 article in the Harvard Law
24 Review cited many of these same examples to demonstrate gender bias in the third edition of the
25 *AMA Guides*. Moreover, the American Medical Association *cites to this same article* in its
26 presentation mentioned in paragraph 92 above, when discussing allegations of gender bias in past
27 editions.

28 97. Moreover, other disability systems assign a much higher rating to breast cancer.

1 For example, the Veteran’s Administration’s Schedule for Rating Disabilities (“VA Schedule”),
2 which provides the basis for disability benefits awards for men and women injured while serving
3 in the military, serves a purpose analogous to that of the disability rating scale in the California
4 workers’ compensation system. The VA’s “percentage ratings represent as far as can practicably
5 be determined the average impairment in earning capacity resulting from such diseases and
6 injuries and their residual conditions in civil occupations.” 38 C.F.R. § 4.1. The purpose of
7 California’s permanent disability awards is, if anything, more encompassing: within the “panoply
8 of benefits the [workers’ compensation] system provides . . . permanent disability payments are
9 intended to compensate workers for both physical loss and the loss of some or all of their future
10 earning capacity.” *Brodie*, 40 Cal. 4th at 1320 (emphasis added). Yet the VA system assigns the
11 removal of breasts a percentage rating that ranges from 30% for a simple mastectomy of one
12 breast, up to 80% for a radical mastectomy of both breasts. 38 C.F.R. § 4.116 (7626).

13 **IV. Defendants Have Acted With Deliberate Indifference in Failing to Address**
14 **Gender Discrimination in the Workers’ Compensation System**

15 98. Defendants’ administration of the workers’ compensation system has not only
16 failed to prevent or prohibit the impermissible gender discrimination described above, it has
17 affirmatively contributed to a policy and practice of gender bias in the system. The discriminatory
18 benefits determinations described above are both produced by and reflective of systemic gender-
19 based discrimination that is proximately caused by the State’s deliberate indifference.

20 *a. Defendants Have Long Been Aware of the Systemic Gender Discrimination*
21 *in the Workers’ Compensation Scheme*

22 99. Defendants Department of Industrial Relations and Division of Workers’
23 Compensation, as the entities responsible for administering the system of workers’ compensation
24 and ensuring it complies with the California constitution and state laws, are aware of the identified
25 gender discrimination in the workers’ compensation scheme, or reasonably should be. In fact,
26 DWC has statutory and regulatory responsibilities to maintain data monitoring the workers’
27 compensation system, and periodically audit insurers to determine compliance with state laws.
28 Although DWC has, in the past, audited insurers who repeatedly fail to make required payments or

1 send required notices, DWC has never audited an insurer or its own department to ensure
2 compliance with laws that prohibit discrimination on the basis of gender.

3 100. Likewise, Defendant WCAB is charged with the final approval of all permanent
4 disability findings and settlement agreements and is obligated to ensure that adjudication of claims
5 for workers' compensation complies with California anti-discrimination law. Having reviewed
6 numerous settlement agreements that reflect apportionment based in part on gender, the WCAB is
7 undoubtedly aware of the presence and prevalence of gender discrimination in the workers'
8 compensation system.

9 101. Moreover, gender discrimination in the workers' compensation system, including
10 many of the specific incidents described here, has been the subject of substantial legislative
11 testimony. During the 2015-2016 legislative session, the State legislature considered AB 305,
12 proposed legislation introduced by Assemblymember Lorena Gonzalez that would have addressed
13 much of the gender discrimination in the workers' compensation system identified in this
14 Complaint. The bill was passed by both houses of the state legislature, but vetoed by the
15 Governor. During the extensive legislative testimony put forth in support of the potential
16 legislation, substantial evidence regarding gender bias in the workers' compensation system, as
17 well as numerous specific incidents of sex discrimination, were made known to the State. For
18 example:

- 19 • At a hearing of the Assembly Insurance Committee on May 6, 2015, Christel Schoenfelder
20 testified on behalf of the California Applicants' Attorneys Association regarding gender
21 discrimination in apportionment determinations. She specifically identified the example of
22 **Theresa Menjivar**, whose "permanent disability compensation for carpal tunnel syndrome
23 [was reduced] by 40%, due to "nonindustrial predisposing conditions such as female gender
24 and post-menopausal status."
- 25 • At a hearing of the Senate Labor and Industrial Relations Committee on June 24, 2015, Ms.
26 Schoenfelder provided additional examples, including, examples of "taking away 50% of an
27 injured woman's disability for her innate genetic predisposition because calcific deposits in the
28 rotator cuff tendons are common in women," and "reducing an injured woman's disability by

- 1 50% due to the fact that she is a post-menopausal woman.”
- 2 • At the May 6, 2015 Assembly Insurance Committee Hearing, the June 24, 2015 Senate Labor
3 and Industrial Relations Committee hearing, and an Assembly Information Hearing on
4 February 23, 2016, **Plaintiff Janice Page** testified that she was assigned a permanent
5 impairment of 0% by a medical evaluator. She stated, “Life is not the same; the loss of my
6 breast has been devastating . . . My right breast . . . has been left scarred, distorted, and
7 changed, and a sensation of constant numbness. . . . I should not be discriminated against and
8 have my disability compensation reduced because of the bias against women. I carry the same
9 weight on my duty belt as my male colleagues, confront the same dangers, work just as hard,
10 and it is not fair for me and my female peace officers to be penalized because of our gender.”
 - 11 • At the February 23, 2016 Assembly Information Hearing, further testimony was submitted
12 regarding the history of gender bias in the *AMA Guides*. Medical professionals and breast
13 health specialists Dr. Cass Brown Capel and Dr. Claudia de Young testified regarding the long
14 term consequences of breast cancer, including disfigurement, asymmetry, chronic pain,
15 lymphedema, and impact on self-esteem, body image, and sexuality. Dr. de Young testified
16 that, in her medical opinion, California’s disability rating for breast cancer “does not reflect the
17 real life impact that breast cancer surgery and breast cancer treatment can have on a woman.”
18 And veterans’ law attorney Katrina Eagle testified regarding the substantially higher disability
19 rating assigned to breast cancer in the federal Veterans’ Affairs system.

20 102. In addition, complaints about gender discrimination in the workers’ compensation
21 system have been reported extensively in the news media. For example, on March 4, 2015, the
22 San Francisco Chronicle published an article entitled, “Gender Bias Rampant in Workers’ Comp
23 Cases, Women’s Groups Charge,” that described at length gender discrimination in the
24 apportionment process and in the disability rating assigned to breast cancer.

25 103. The California statutes and regulations require Defendants to affirmatively evaluate
26 settlements, and no settlement is valid unless approved. Cal. Lab. Code § 5001. The presiding
27 workers compensation administrative law judge of the office of the appeals board designated by
28 the Disability Evaluation Unit is charged with reviewing every apportionment determination made

1 by a QME if the employee is not represented by counsel to determine whether it is inconsistent
2 with the law. 8 CCR § 10162. In this regard and others, every settlement and award including an
3 apportionment is ratified by the Department of Industrial Relations and the Administrative
4 Director of the Division of Workers' Compensation.

5 b. *Despite This Knowledge, Defendants Have Failed To Take Reasonable*
6 *Steps to Address and Eliminate Gender Discrimination in the Workers'*
7 *Compensation System*

8 104. As discussed in paragraph 59, Defendant Division of Workers' Compensation is
9 responsible for training, testing, certifying, and providing continuing education to all QMEs
10 practicing in California's workers' compensation system. Yet, despite substantial notice and
11 awareness that impermissible gender bias occurs amongst QMEs in the permanent disability
12 apportionment process, the DWC has no policy or practice of training QMEs not to discriminate
13 on the basis of gender or sex.

14 105. Defendant DWC engages in substantial training, education, and oversight of
15 QMEs, yet it uses none of these opportunities to address gender bias or even to articulate that
16 apportionment on the basis of gender-based risk factors is impermissible. In order to become a
17 QME, a qualified physician must take the QME Competency Examination, a test that is "written
18 and administered by the Administrative Director [of the DWC] for the purpose of demonstrating
19 competence in evaluating medical-legal issues in the workers' compensation system." Cal. Lab.
20 Code § 139.2; Cal. Code Regs. Tit. 8, § 11. The DWC publishes two guides on its website that it
21 specifically suggests physicians planning to take the QME exam review: *The Physician's Guide to*
22 *Medical Practice in the California Workers' Compensation System* ("Physician's Guide"), the
23 Fourth Edition of which was just released in March 2016, and the *DWC Medical Unit,*
24 *Competency Examination Study Guide* ("Study Guide"). In addition, the DWC Medical Unit
25 prints a QME Competency Examination Information Booklet ("Information Booklet").

26 106. In the 127 pages that make up the *Physician's Guide*, there is only one, brief
27 mention of the fact that QMEs are not permitted to "discriminate against or be biased against
28 anyone because of race, sex, national origin, religion, or sexual preference or because of whether

1 the worker is represented by an attorney.” There is no explanation as to what constitutes bias or
2 discrimination, and, although the *Physician’s Guide* claims that “if any physician’s reports show a
3 pattern of bias or other unsupported opinions, the administrative director will report this to the
4 appropriate licensing body,” *id.*, the DIR does not have a policy or practice of doing so.

5 107. The Study Guide is even less informative. The only mention of discrimination or
6 bias in the entire publication is in the context of explaining that an injured worker may terminate
7 an examination if, *inter alia*, the “evaluator displays discriminatory conduct . . . towards the
8 worker based on race, sex, national origin, religion, or sexual preference” However, this only
9 applies to the physical examination experience, not the ultimate QME report. Similarly, the
10 Information Booklet includes no mention of gender discrimination or bias.

11 108. In addition to the QME examination and relevant study guides, the DWC requires
12 medical evaluators to complete “at least 12 hours of continuing education in impairment
13 evaluation or workers’ compensation-related medical dispute evaluation approved by the
14 administrative director,” every two years in order to be reappointed as a QME. Cal. Lab. Code
15 § 139.2(d)(4). On February 25-26, 2016 in Los Angeles, and March 3-4, 2016 in Oakland, the
16 DWC put on its 23rd Annual Educational Conference, an event that the DWC describes as “the
17 largest workers’ compensation educational event in the state.” The 2016 Conference provided 8
18 hours of QME and Mandatory Continuing Legal Education credits. The DWC has made the
19 materials from the conference available on its website, including the presenters’ PowerPoint
20 presentations and handouts. None of these materials, including the 79-page handout
21 accompanying the “Apportionment” workshop or the PowerPoint presentation accompanying the
22 “QME Update” workshop, mention gender bias or discrimination. In fact, the Apportionment
23 handout even discusses a case, *Hernandez v. WIS International*, 2015 Cal. Wk. Comp. PD. Lexis
24 525, in which the quoted portion of the QME report demonstrates that gender discrimination
25 occurred, and fails to comment on the discrimination altogether.

26 109. The DWC is aware of the significance of training as the mechanism for ensuring
27 compliance with California workers’ compensation law. The *AMA Guides* specify that “[t]he
28 skills required for impairment evaluation are usually not taught during basic medical training

1 . . . ,” 5th Edition at 18, and, in the press release explaining the importance of the 4th Edition of the
2 *Physician’s Guide*, Dr. Raymond Meister, DWC Executive Medical Director, is quoted as stating
3 that “[p]hysician understanding of the workers’ compensation system is critical to helping deliver
4 appropriate care to injured workers.” And although the *Physician’s Guide* notes that “[t]he DWC
5 believes that education is the most effective course of action in resolving less serious regulatory
6 violations,” *Physician’s Guide* at 86, the DWC has no policy or practice of providing training or
7 education that covers gender discrimination, as discussed above.

8 110. The DWC also has a number of opportunities to inform workers’ compensation
9 applicants of their rights to be free from gender discrimination in permanent disability
10 determinations, including:

- 11 • The DWC publication, *Workers’ Compensation in California: A Guidebook for Injured*
12 *Workers*, which takes injured employees through the workers’ compensation process and
13 includes sections that describe the worker’s right to be free from employment discrimination
14 for filing a workers’ compensation claim.
- 15 • The “Benefits Notice Instructional Manual,” which dictates the content of the forms that
16 claims adjusters must send to applicants;
- 17 • The FAQ and Fact Sheets made available on the DIR website, such as “Answers to Your
18 Questions About QMEs and AMEs” and “Answers to Your Questions About Permanent
19 Disability Benefits”;
- 20 • DEU forms, such as the “Special Notice to Unrepresented Injured Workers.”

21 111. Yet none of these publications expressly mention the applicant’s right to be free
22 from gender discrimination, nor do they explain the way that gender discrimination might
23 manifest in the apportionment or disability rating process.

24 112. The DIR and DWC likewise do not have a policy or practice of disciplining QMEs
25 who engage in discrimination on the basis of gender, although they have both the authority and the
26 obligation to do so. In particular, the DWC Medical Unit is responsible for ensuring QMEs
27 comply with the laws and regulations that govern the QME process, and available disciplinary
28 actions include “formal reprimand, suspension of the QME appointment, or revocation of a

1 physician's QME status." *Physician's Guide* at 86; *see also* Cal. Code Regs. Tit. 8 § 65.

2 113. This failure to properly train QMEs, inform applicants of their rights, or discipline
3 QMEs who engage in gender bias is of particular concern given that QMEs are used whenever an
4 insurance company disputes a claim for workers' compensation and the applicant is *not*
5 represented by an attorney. Thus, those applicants who do not have the assistance of someone
6 versed in the particulars of state and federal law are most dependent on the medical evaluators
7 whom the state has failed to properly train or discipline concerning compliance with laws
8 prohibiting gender discrimination.

9 114. Under these circumstances, it is reasonably foreseeable that QMEs will continue to
10 discriminate based on gender in their recommendations regarding apportionment, causing female
11 workers' compensation applicants to be deprived of compensation to which they are entitled
12 because of their sex.

13 **CLAIMS FOR RELIEF**

14 **First Cause of Action – Violation of Article I, Section 7(a) of the California Constitution** 15 **(Against All Defendants)**

16 115. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as
17 though fully set forth herein.

18 116. Defendants' conduct violates the rights of Plaintiffs and those similarly situated to
19 the equal protection of the laws, as secured by Article I, Section 7(a) of the California
20 Constitutions.

21 117. Defendants' administration of California's workers' compensation system causes
22 the Plaintiffs' permanent disability payments to be reduced based on impermissible stereotypes
23 about the female gender and female reproductive biology in violation of the Equal Protection
24 Clause of the California Constitution.

25 118. Defendants' implementation and enforcement of an irrationally low impairment
26 rating for breast cancer and its sequelae causes Plaintiffs' permanent disability payments to be
27 reduced on the basis of gender and is not even rationally related to a legitimate government
28 interest, in violation of the Equal Protection Clause of the California Constitution.

1 though fully set forth herein.

2 126. Defendants George Parisotto and Christine Baker, acting in their official capacity,
3 are persons against whom injunctive relief may be sought.

4 127. Defendants are acting under color of state law when they administer and enforce
5 California's workers' compensation scheme.

6 128. Defendants' failure to adequately train, educate, and discipline QMEs, Disability
7 Evaluation Unit employees, and Administrative Law Judges concerning gender discrimination in
8 the workers' compensation system's permanent disability assessments causes Plaintiffs to be
9 denied their constitutionally protected right to be free from discrimination under the Equal
10 Protection Clause of the federal Constitution in violation of 42 U.S.C. § 1983.

11 129. Defendants' failure to ensure that workers' compensation apportionment
12 procedures, as administered, do not discriminate on the basis of gender has proximately caused the
13 Plaintiffs to be deprived of their constitutionally protected right to be free from impermissible
14 gender-based classifications under the Equal Protection Clause of the federal Constitution.

15 130. Defendants' implementation and enforcement of an irrationally low impairment
16 rating for breast cancer and its sequelae causes Plaintiffs' permanent disability payments to be
17 reduced on the basis of gender, and is not even rationally related to a legitimate government
18 interest, proximately causing Plaintiffs to be deprived of their constitutionally protected right to be
19 free from discrimination under the Equal Protection Clause of the federal Constitution.

20 **Fourth Cause of Action – Negligent Training and/or Supervision under California Common**
21 **Law and Government Code § 815.2**
22 **(Against Defendants Department of Industrial Relations, Division of Workers'**
23 **Compensation, George Parisotto, Christine Baker, and David Lanier, in Their Official**
24 **Capacities, and Does 1-20)**

25 131. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as
26 though fully set forth herein.

27 132. Under the California Government Code, a public entity "is liable for injury
28 proximately caused by an act or omission of an employee of the public entity within the scope of

1 his employment if the act or omission would, apart from this section, have given rise to a cause of
2 action against that employee or his personal representative.” Cal. Gov. Code § 815.2.

3 133. Employees of the DIR and the DWC, including but not limited to Acting
4 Administrative Director George Parisotto and Director Christine Baker, have engaged in acts
5 and/or omissions which would give rise to a cause of action against each of them for common law
6 negligent training and/or supervision.

7 134. Defendants Parisotto and Baker and their subordinate employees have a duty to
8 exercise due care in their training and supervision of employees of the DIR and the DWC,
9 including but not limited to Disability Evaluation Unit employees and Administrative Law Judges,
10 and in the training and supervision of QMEs certified by the DWC. This duty of care requires
11 Defendants Parisotto and Baker and their subordinate employees to ensure that (a) the
12 aforementioned employees are trained in the manner in which they must conduct themselves in
13 order to comply with applicable laws, including 42 U.S.C. § 1983, the California Constitution, and
14 California Government Code § 11135, and (b) the aforementioned employees are supervised to
15 ensure that they comply with these laws, and that disciplinary or other appropriate corrective
16 action is taken when necessary.

17 135. Defendants Parisotto and Baker, and as their subordinate employees, breached their
18 duty to exercise due care in the training and/or supervision of the aforementioned employees
19 through acts and/or omissions in the scope of their employment, as set forth in paragraphs 98
20 through 114.

21 136. As a direct, foreseeable, and proximate result of the acts and omissions of
22 Defendants Parisotto and Baker and their subordinate employees, Plaintiffs’ constitutional and
23 statutory rights have been violated, causing them economic loss and dignitary and emotional
24 injury.

25 137. Under California Government Code § 815.2, the DIR and DWC are liable for the
26 Defendants Parisotto and Baker and their subordinate employees’ negligent training and
27 supervision of Disability Evaluation Unit employees, Administrative Law Judges, and QMEs.

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- a. Article I, section 7(a) of the California Constitution;
- b. California Government Code section 11135; and
- c. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution,

145. A declaration that Defendants George Parisotto, Division of Workers’ Compensation, Christine Baker, Department of Industrial Relations, David Lanier, and Does 1 through 20 through their negligent training and/or supervision violate California common law and California Government Code § 815.2;

146. Injunctive relief requiring Defendants George Parisotto, Division of Workers’ Compensation, Christine Baker, Department of Industrial Relations, David Lanier, and Does 1 through 20 to take reasonable and effective steps to eliminate the apportionment of permanent disability awards to risk factors of gender or female reproductive biology, including, but not limited to, menopause and pregnancy history (collectively, “gender-based risk factors”), including by:

- a. directing all employees and agents (including, but not limited to, medical evaluators), by reasonable and effective means, that permanent disability awards may not be apportioned to gender-based risk factors; and
- b. establishing a system of accountability to ensure that permanent disability awards are not apportioned to gender-based risk factors, including by:
 - i. establishing appropriate training, continuing education, and certification requirements;
 - ii. monitoring and identifying potential violations; and
 - iii. imposing commensurate sanctions, disciplinary action, or disqualification;

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1 147. An award of costs, disbursements, and reasonable attorneys' fees and expenses
2 pursuant to California Code of Civil Procedure section 1021.5 and any other applicable provisions
3 of law; and

4 148. Such other relief as this Court deems just and proper.
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6 DATED: July 6, 2016

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