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FILED BY FAX

ALAMEDA COUNTY

January 26, 2021

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

RG21086975**SUPERIOR COURT OF CALIFORNIA****COUNTY OF ALAMEDA**

PRISCILLA SOLORIO, on behalf of the
State of California,

Plaintiff,

vs.

ABC PHONES OF NORTH CAROLINA,
INC.; and DOES 1-100, inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR PENALTIES PURSUANT
TO SECTIONS 2699(a) and (f) OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT****DEMAND FOR JURY TRIAL**

1 Plaintiff Priscilla Solorio, on behalf of the State of California and Aggrieved Employees
2 (“Plaintiff”), complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this Labor Code Private Attorneys General Act (“PAGA”)
5 enforcement action on behalf of the State of California to collect statutory penalties as a result of
6 defendant ABC Phones of North Carolina, Inc.’s (“Defendant”) systematic violations of
7 California labor law with respect to Defendant’s non-exempt, hourly Store Managers at
8 Defendant’s retail locations in California (“Aggrieved Employees”).

9 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
10 Store Managers who worked for Defendant at its retail locations in California.¹

11 3. Defendant is a retailer of cellular phones, other devices, and cellular plans, and has
12 numerous locations throughout California and the United States.

13 4. This PAGA action against Defendant challenges its policies and practices of (1)
14 failing to compensate Plaintiff and Aggrieved Employees for all hours worked; (2) failing to pay
15 Plaintiff and Aggrieved Employees overtime wages; (3) failing to authorize and permit Plaintiff
16 and Aggrieved Employees to take meal and rest breaks to which they are entitled by law and pay
17 premium compensation for missed breaks; (5) failing to reimburse Plaintiff and Aggrieved
18 Employees for necessary business expenditures; (6) failing to provide Plaintiff and Aggrieved
19 Employees accurate, itemized wage statements; and (7) failing to timely pay Plaintiff and
20 Aggrieved Employees wages owed upon the termination of employment.

21 5. Plaintiff and Aggrieved Employees provide services including, but not limited to,
22 managing Defendant’s retail stores, completing sales, and performing all of the tasks of rank-
23 and-file employees. Plaintiff and Aggrieved Employees work long and difficult hours, and
24 routinely work 60 hours per week and more.

25
26 ¹ Although Plaintiff is a former employee, the Aggrieved Employees include current and former
27 employees. For ease of discussion, the allegations herein are made in the present tense.

1 6. Plaintiff and Aggrieved Employees perform off-the-clock work for which they are
2 not adequately compensated. If they are working an opening shift, Plaintiff and Aggrieved
3 Employees have to disengage Defendant's alarm systems and unlock the store's doors, all of
4 which occurs off-the-clock. They then have to log in to the computer system and load the
5 necessary application before they are able to clock in for work via Defendant's timekeeping
6 system. Plaintiff and Aggrieved Employees routinely arrive at work before their schedule shift
7 times, to complete tasks such as counting inventories of cellular phones, but are instructed not to
8 clock in until their scheduled shift begins. If they are working a closing shift, Plaintiff and
9 Aggrieved Employees are required to spend additional time working off-the-clock. After they
10 clock out, Plaintiff and Aggrieved Employees have to engage Defendant's alarm systems and
11 lock the store's doors, which occurs off-the-clock. Plaintiff and Aggrieved Employees
12 additionally spend significant amounts of time at the store performing work for Defendant while
13 off-the-clock, on tasks including but not limited to completing sales, inventories, creating
14 reports, training new employees, and cleaning, before and after their scheduled shifts.

15 7. Moreover, Plaintiff and Aggrieved Employees routinely take work-related calls and
16 text messages outside of their shifts from Defendant and its employees, without pay. Plaintiff and
17 Aggrieved Employees spend large amounts of time on conference calls with Defendant's District
18 Managers, other managers, and rank-and-file employees, outside of their shifts and without pay.
19 These calls are often lengthy. Plaintiff and Aggrieved Employees also spend significant amounts
20 of time on work-related communications in group messaging applications, including but not
21 limited to WhatsApp and GroupMe, with Defendant's District Managers, other managers, and
22 rank-and-file employees, outside of their shifts and without pay.

23 8. Because of these issues, Defendant does not pay Plaintiff and Aggrieved Employees
24 for all hours worked, including overtime. Ultimately, the daily time that Defendant requires
25 Plaintiff and Aggrieved Employees to work without compensation deprives them of substantial
26 amounts of pay to which they are entitled under the laws of the State of California.

9. As Plaintiff and Aggrieved Employees regularly work in excess of eight hours per day and forty hours per week, at least some of this off-the-clock work should be compensated at overtime rates. However, Defendant fails to pay for any of this work time, including the required overtime premiums, in violation of the California Labor Code.

10. Plaintiff and Aggrieved Employees regularly work in excess of six hours per day and are routinely denied timely and compliant meal and rest periods, and the requisite pay for working through such breaks.

11. As a result of understaffing and Defendant's unrelenting pressure to keep labor costs down, Defendant routinely refuses to authorize, permit, and/or make available full, timely, uninterrupted thirty-minute meal periods as required by law. Instead, Plaintiff and Aggrieved Employees regularly work past the fifth hour of work without the opportunity to take a meal break. Even when they do receive some form of timely meal break, Plaintiff and Aggrieved Employees remain on call at all times. The break is often interrupted and Plaintiff and Aggrieved Employees are required to perform work during the break.

12. Defendant likewise routinely refuses to authorize or permit Plaintiff and Aggrieved Employees to take ten-minute rest periods as required by California law.

13. Plaintiff and Aggrieved Employees are also required to pay out of pocket for necessary business expenses accrued as a result of their work for Defendant, but they are not reimbursed for these expenses. Defendant requires Plaintiff and Aggrieved Employees to use their personal cellular phones for extensive work-related communications, but does not reimburse for these expenditures.

14. As a result of the above violations, Defendant fails to provide Plaintiff and Aggrieved Employees with accurate, itemized wage statements. Defendant has also failed to pay all wages due when these hourly employees, like Plaintiff, voluntarily or involuntarily terminated their employment with Defendant.

15. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable attorneys' fees for these violations pursuant to Sections 2699(a) and (f) of the PAGA.

PARTIES

16. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly Store Managers at Defendant's retail locations in California

17. Plaintiff is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California.

18. Plaintiff was employed by Defendant from approximately March 2018 to August 2019, and worked for Defendant as a Store Manager from approximately September 2018 until August 2019. Plaintiff worked for Defendant at its store locations in Delano, California and Fresno, California.

19. Defendant ABC Phones of North Carolina, Inc. is a North Carolina corporation with its Principal Executive Office in Raleigh, North Carolina. ABC Phones of North Carolina, Inc. is registered as a foreign corporation with the California Secretary of State and does business in the State of California. On information and belief, ABC Phones of North Carolina, Inc. is a retailer of wireless communications devices and plans.

20. Plaintiff is informed, believes, and thereon alleges that Defendant operates retail locations, including but not limited to stores under the "Victra" moniker. Plaintiff is informed, believes, and thereon alleges that Defendant operates retail locations throughout California, including in Alameda County. Plaintiff is informed, believes, and thereon alleges that Defendant employs non-exempt employees, including Store Managers, throughout California, including in Alameda County.

21. Defendant employs Plaintiff and the Aggrieved Employees.

22. The true names and capacities, whether individual, corporate, associate, or otherwise, of Does 1-100, inclusive, are unknown to Plaintiff, who therefore sues the Doe Defendants by fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these fictitiously-named Defendants is responsible in some manner for the occurrences and violations as herein alleged. Plaintiff will amend this Complaint to show their true names and

capacities when they have been ascertained. Defendants are jointly and severally liable for the civil penalties asserted.

23. At all relevant times, Defendants have done business under the laws of California, have had places of business in California, including in this judicial district, and have employed Aggrieved Employees in this judicial district. Defendants are “persons” as defined in Labor Code § 18 and Business and Professions Code § 17201. Defendants are also “employers” as that term is used in the Labor Code and IWC Wage Orders.

JURISDICTION AND VENUE

24. Venue is proper in this County pursuant to Code of Civil Procedure §§ 393(a) and 395(a). Defendant conducts business and employs Aggrieved Employees in this County. A substantial portion of the events giving rise to these causes of action occurred in this County.

25. This Court has jurisdictions over Plaintiff’s claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendant because it is a corporation authorized to do business in the State of California, and because Defendant in fact does do business and employ workers in the State of California.

FACTUAL ALLEGATIONS

26. Defendant is in the business of selling mobile telephone devices and services at its retail stores. Defendant operates its retail stores throughout the United States, including California.

27. Plaintiff is a former non-exempt, hourly employee, who worked as a Store Manager for Defendant. Plaintiff was paid approximately \$16 per hour, plus potential commissions and bonuses that she could earn based on sales. Plaintiff’s duties included, but were not limited to, selling and setting up cellular phones, devices, accessories, and related service plans, assisting customers with phone and service issues, troubleshooting equipment issues, monitoring customer traffic within the store, managing store employees and performance, interacting with District Managers, and tracking metrics.

28. Similar to Plaintiff, the Aggrieved Employees are current and former non-exempt,

1 hourly Store Managers at Defendant's retail locations in California. As Defendant's employees,
2 the Aggrieved Employees are expected to sell Defendant's products and services to customers in
3 Defendant's retail locations and handle managerial activities for the store. Plaintiff is informed,
4 believes, and thereon alleges that the policies and practices of Defendant have at all relevant
5 times been similar for Plaintiff and the Aggrieved Employees, regardless of store location in
6 California.

7 29. During Plaintiff's tenure with Defendant, she was typically scheduled to work eight
8 hours per day, five days a week, for a total of approximately 40 hours per week. Plaintiff in fact
9 worked these scheduled hours. However, Plaintiff was regularly required by management to
10 work additional hours far beyond this scheduled time. On some days, including but not limited to
11 around the holidays or other peak sales periods, Plaintiff worked ten hours per day and more.
12 Additionally, Plaintiff was regularly unable to take a meal break at the required time, and would
13 otherwise have to perform work and be under Defendant's control during breaks.

14 30. Defendant requires Plaintiff and Aggrieved Employees to perform work tasks
15 before the beginning and after the end of their paid shifts. This requirement results in
16 Defendant's non-exempt, hourly employees performing off-the-clock work, including overtime
17 work, which goes unrecorded and unpaid by Defendant.

18 31. Specifically, Defendant requires its Store Managers to arrive at the store prior to the
19 start of their paid shifts to perform work activities. Under Defendant's company-wide practice,
20 Defendant requires Plaintiff and Aggrieved Employees to log in to the company's computer
21 system by entering their credentials. The workers then log in to a timekeeping application to
22 clock in for their shift. This task alone routinely takes three to five minutes or more. This time is
23 unpaid.

24 32. The off-the-clock work is exacerbated when Plaintiff and Aggrieved Employees
25 work opening and closing shifts. When the employees work an opening shift, they have to
26 physically open, or unlock the store for the day, and disengage the alarm. They then have to log in
27 to the computer system and load the necessary application to clock in for work via Defendant's
28

1 timekeeping system. By the time they are “on-the-clock”, Plaintiff and Aggrieved Employees
2 have spent approximately five to ten minutes performing work-related duties. For closing shifts,
3 Plaintiff and Aggrieved Employees have to engage Defendant’s alarm systems and lock the
4 store’s doors after they clock out, which occurs off-the-clock. This time is unpaid.

5 33. Moreover, Plaintiff and Aggrieved Employees routinely arrive at work before their
6 schedule shift times, to complete tasks such as counting inventories of cellular phones, but are
7 instructed not to clock in until their scheduled shift begins. Plaintiff and Aggrieved Employees
8 additionally spend significant amounts of time at the store performing work for Defendant while
9 off-the-clock, on tasks including but not limited to completing sales, inventories, creating reports,
10 training new employees, and cleaning. This off-the-clock work occurs before and after their
11 scheduled shifts.

12 34. Plaintiff and Aggrieved Employees routinely perform additional work off-the-clock
13 while they are aware from the store location. Plaintiff and Aggrieved Employees take work-
14 related calls and text messages outside of their shifts from Defendant’s managers and employees,
15 without pay. Plaintiff and Aggrieved Employees spend large amounts of time on conference calls
16 with Defendant’s District Managers, other managers, and rank-and-file employees, outside of
17 their shifts and without pay. These calls are often lengthy. Plaintiff and Aggrieved Employees
18 also spend significant amounts of time on work-related communications in group messaging
19 applications, including but not limited to WhatsApp and GroupMe, with Defendant’s District
20 Managers, other managers, and rank-and-file employees, outside of their shifts and without pay.
21 These calls and messaging occur regularly and with Defendant’s knowledge. Plaintiff and
22 Aggrieved Employees are not compensated for this time that Defendant requires, suffers, and/or
23 permits them to work.

24 35. Defendant also requires Plaintiff and Aggrieved Employees to work off-the-clock to
25 review metrics and attend meetings, again outside of their schedule shifts and without pay.

26 36. All of this time that Defendant requires Plaintiff and Aggrieved Employees to work
27 without compensation deprives them of substantial amounts of pay to which they are entitled
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1 under California law. As Plaintiff and Aggrieved Employees work long hours, well in excess of
2 eight hours per day and 40 hours per week, this unpaid time is owed to them at both straight-time
3 and overtime rates.

4 37. Moreover, Defendant routinely denies timely and compliant off-duty meal periods
5 and routinely refuses to authorize or permit Plaintiff and Aggrieved Employees to take compliant
6 rest periods. Plaintiff and Aggrieved Employees typically work in excess of eight hours per day,
7 yet are routinely denied meal and rest periods for two reasons: (1) Defendant does not authorize,
8 permit, and/or make available timely meal and rest breaks for Plaintiff and Aggrieved Employees;
9 and (2) Defendant knows or has reason to know that Plaintiff and Aggrieved Employees are too
10 busy with work during the day to have time to take bona fide meal and rest breaks. Specifically,
11 Plaintiff and Aggrieved Employees are often too busy or not able to take meal and rest periods
12 because their managers instruct them to complete sales and to prioritize the breaks of non-
13 managerial employees. Management interrupts Plaintiff and Aggrieved Employees with other
14 work requests as well and also directs them to answer work-related calls on their telephones
15 during breaks.

16 38. As a result, Plaintiff and Aggrieved Employees regularly work past the fifth hour of
17 work without the opportunity to take a meal break. Often, they are working with a customer in a
18 lengthy interaction when the fifth hour of work strikes, but they are unable to hand off the
19 customer to another employee so that they can take their break.

20 39. Even when they do receive some form of meal break, it is often interrupted and
21 Plaintiff and Aggrieved Employees are required to perform work during the break. As a result of
22 these issues, Plaintiff and Aggrieved Employees spend time performing work for Defendant even
23 though they are off-the-clock on a meal break in Defendant's timekeeping records.

24 40. Defendant denies compliant meal periods to these workers on most workdays, and
25 virtually never provides compliant rest periods.

26 41. When Plaintiff and Aggrieved Employees experience untimely or interrupted meal
27 and rest breaks, or do not receive these breaks at all, Defendant fails to pay them the required
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1 premium pay.

2 42. Defendant's off-the-clock and meal and rest break violations for Store Managers are
3 borne of its policies and practices regarding labor hours and overtime in its stores. Defendant
4 enforces strict labor budgets in its stores, in which headcounts and labor hours are allocated and
5 closely monitored as a means to keep labor costs down. Defendant's managers, including but not
6 limited to District Managers, keenly monitor and enforce the amount of hours worked by each
7 employee in each store. When labor exceeds Defendant's budgeting, Defendant's managers
8 demand immediate explanations and corrective action from the Store Managers.

9 43. As a result of Defendant's labor budgeting policies and practices, there are regularly
10 insufficient employees in the retail stores to handle all customer traffic while allowing Plaintiff
11 and Aggrieved Employees to obtain pay for all hours worked and to take the meal and rest breaks
12 to which they are entitled. To keep labor hours down, Defendant expects Plaintiff and Aggrieved
13 Employees to work off the clock, and to provide break relief for rank-and-file employees.
14 Defendant's managers instruct Plaintiff and Aggrieved Employees to work off-the-clock and to
15 work through breaks.

16 44. Plaintiff and Aggrieved Employees are also required to pay out of pocket for
17 necessary business expenses accrued as a result of their work for Defendant, but they are not
18 reimbursed for these expenses. Defendant requires Plaintiff and Aggrieved Employees to use their
19 personal cellular phones and personal cellular voice, text, and data plans for extensive, regular
20 work-related communications. This usage includes, but is not limited to, usage of phones for
21 work calls, text messages, and group messaging applications, including but not limited to
22 WhatsApp and GroupMe. Defendant does not reimburse Plaintiff and Aggrieved Employees for
23 their work-related usage of personal cellular phones and personal cellular voice, text, and data
24 plans.

25 45. Defendant does not provide Plaintiff and Aggrieved Employees with accurate wage
26 statements as required by California law. These workers receive wage statements that do not
27 reflect all hours worked, premium pay for missed meal and rest breaks, and applicable overtime
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1 premiums.

2 46. Defendant does not provide Plaintiff and Aggrieved Employees with full payment of
3 all wages owed at the end of employment. These workers are owed wages and premium pay for
4 all time worked, overtime, and missed meal and rest breaks when their employment ends. These
5 amounts remain unpaid after voluntary and involuntary termination. As a consequence, Defendant
6 is subject to waiting time penalties under the California Labor Code.

7 47. Defendant is aware that it maintains policies and practices that deprive its Store
8 Managers of compensation for time worked, including overtime compensation, and of the fact
9 that its Store Managers do not get the meal and rest periods to which they are entitled. Therefore,
10 the denial of wages and compliant meal and rest periods to Plaintiff and Aggrieved Employees is
11 knowing and willful.

12 48. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful
13 conduct has been widespread, repeated, and consistent as to the Aggrieved Employees and
14 throughout Defendant's operations in California.

15 49. Defendant's conduct was willful, carried out in bad faith, and triggers significant
16 civil penalties in an amount to be determined at trial.

17
18 **FIRST CAUSE OF ACTION**
Penalties Pursuant to § 2699(a) of the Private Attorneys General Act

19 50. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
20 forth herein.

21 51. Labor Code § 2699(a) provides:

22 Notwithstanding any other provision of law, any provision of this code that provides for a
23 civil penalty to be assessed and collected by the Labor and Workforce Development
24 Agency or any of its departments, divisions, commissions, boards, agencies or employees,
25 for a violation of this code, may, as an alternative, be recovered through a civil action
brought by an aggrieved employee on behalf of himself or herself and other current or
former employees.

26 52. Labor Code §§ 201 and 202 require employers to immediately pay wages earned
27 and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours

1 after he or she quits, at the latest.

2 53. Labor Code § 203 provides, in relevant part:

3 If an employer willfully fails to pay, without abatement or reduction, in
4 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
5 who is discharged or who quits, the wages of the employee shall continue as a
6 penalty from the due date thereof at the same rate until paid or until an action
7 therefore is commenced; but the wages shall not continue for more than 30 days.

8 54. Labor Code § 256 provides: “The Labor Commissioner shall impose a civil penalty
9 in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

10 55. Labor Code § 225.5 provides that every person who unlawfully withholds wages
11 due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil
12 penalty of \$100 for any initial violation for each failure to pay each employee and \$200 for each
13 subsequent violation, or any willful or intentional violation, for each failure to pay each
14 employee.

15 56. Labor Code § 226(a) provides:

16 Every employer shall, semimonthly or at the time of each payment of wages, furnish
17 each of his or her employees, either as a detachable part of the check, draft, or voucher
18 paying the employee's wages, or separately when wages are paid by personal check or
19 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total
20 hours worked by the employee, except for any employee whose compensation is solely
21 based on a salary and who is exempt from payment of overtime under subdivision (a) of
22 Section 515 or any applicable order of the Industrial Welfare Commission, (3) the
23 number of piece-rate units earned and any applicable piece rate if the employee is paid
24 on a piece-rate basis, (4) all deductions, provided that all deductions made on written
25 orders of the employee may be aggregated and shown as one item, (5) net wages
26 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
27 of the employee and his or her social security number, (8) the name and address of the
28 legal entity that is the employer, and (9) all applicable hourly rates in effect during the
pay period and the corresponding number of hours worked at each hourly rate by the
employee. The deductions made from payments of wages shall be recorded in ink or
other indelible form, properly dated, showing the month, day, and year, and a copy of
the statement or a record of the deductions shall be kept on file by the employer for at
least four years at the place of employment or at a central location within the State of
California.

57. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil

1 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in
2 an initial citation and one thousand dollars (\$1,000) per employee for each violation in a
3 subsequent citation, for which the employer fails to provide the employee a wage
4 deduction statement or fails to keep the records required in subdivision (a) of Section
5 226. The civil penalties provided for in this section are in addition to any other penalty
6 provided by law.

7 58. Labor Code §§ 226.7 and 512 and IWC Wage Orders 4-2001 and 7-2001 require
8 Defendants to authorize, permit, and/or make available timely and compliant meal and rest
9 periods to its employees. Labor Code §§ 226.7 and 512 and IWC Wage Orders 4-2001 and 7-
10 2001 prohibit employers from employing an employee for more than five hours without a meal
11 period of not less than thirty minutes, and from employing an employee more than ten hours per
12 day without providing the employee with a second meal period of not less than thirty minutes.
13 Section 226.7 and IWC Wage Orders 4-2001 and 7-2001 also require employers to authorize and
14 permit employees to take ten minutes of net rest time per four hours, or major fraction thereof of
15 work, and to pay employees their full wages during those rest periods. Unless the employee is
16 relieved of all duty during the thirty-minute meal period and ten-minute rest period, the
17 employee is considered “on duty” and the meal or rest period is counted as time worked under
18 the applicable wage orders.

19 59. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
20 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees
21 in compliance with Labor Code §§ 201-202.

22 60. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
23 Defendant, alleged above, to provide Plaintiff and Aggrieved Employees compliant meal and
24 rest periods in compliance with Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001.

25 61. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure
26 by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate,
27 itemized wage statement in compliance with Labor Code § 226(a).

28 62. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each
violation of Labor Code § 510, alleged above, as well as any provision regulating hours and days

1 of work in any order of the IWC.

2 63. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
3 Workforce Development Agency (“LWDA”) with notice of her intention to file this claim.
4 Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the
5 administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

6 64. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
7 Employees, and herself as set forth in Labor Code § 2699(g)(i).

8 65. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California
9 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled
10 to an award of attorneys’ fees and costs as set forth below.

11 66. Wherefore, Plaintiff requests relief as hereinafter provided.

12 **SECOND CAUSE OF ACTION**

13 **Penalties Pursuant to § 2699(f) of the Private Attorneys General Act**

14 67. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
15 forth herein.

16 68. Labor Code § 2699(f) provides:

17 For all provisions of this code except those for which a civil penalty is specifically
18 provided, there is established a civil penalty for a violation of these provisions, as follows:
19 . . . (2) If, at the time of the alleged violation, the person employs one or more employees,
20 the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
21 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
22 pay period for each subsequent violation.

23 69. Labor Code § 200 defines wages as “all amounts for labor performed by employees
24 of every description, whether the amount is fixed or ascertained by the standard of time, task,
25 piece, commission basis or method of calculation.”

26 70. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
27 employment are due and payable twice during each calendar month....”

28 71. IWC Wage Orders 7-2001(2)(G) and 4-2001(2)(K) define hours worked as “the
time during which an employee is subject to the control of an employer, and includes all the time

1 the employee is suffered or permitted to work, whether or not required to do so.”

2 72. Labor Code § 1198 makes it unlawful for employers to employ employees under
3 conditions that violate the Wage Order.

4 73. Labor Code § 2802 requires employers to indemnify employees for all necessary
5 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
6 her duties.

7 74. To the extent than any violation alleged herein does not carry penalties under Labor
8 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
9 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts
10 established by Labor Code § 2699(f).

11 75. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA
12 with notice of her intention to file this claim. Sixty-five calendar days have passed without
13 notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this
14 civil action in compliance with § 2699.3(a).

15 76. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
16 Employees, and herself as set forth in Labor Code § 2699(g)(i).

17 77. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California
18 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled
19 to an award of attorneys’ fees and costs as set forth below.

20 78. Wherefore, Plaintiff requests relief as hereinafter provided.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for relief as follows:

23 a) For the Court to declare, adjudge, and decree that Defendant has violated the
24 California Labor Code as alleged herein;

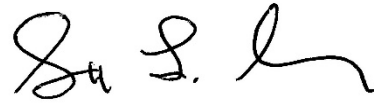
25 b) For an order awarding the State of California, Plaintiff, and Aggrieved Employees
26 civil penalties provided under the PAGA;

27 c) For interest on penalties awarded as provided by applicable law;

- 1 d) For an award of reasonable attorneys' fees;
2 e) For all costs of suit; and
3 f) For such other and further relief as this Court deems just and proper.
4

5 Dated: January 26, 2021

Respectfully submitted,

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8 _____
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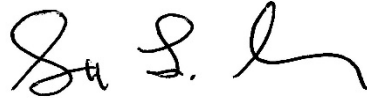
14 Attorneys for Plaintiff, Aggrieved Employees, and the
15 State of California
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2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled
4 to a jury.

5 Dated: January 26, 2021

6 Respectfully submitted,

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19 Attorneys for Plaintiff, Aggrieved Employees, and the
20 State of California
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