

1 Carolyn Hunt Cottrell (SBN 166977)
2 David C. Leimbach (SBN 265409)
3 SCHNEIDER WALLACE
4 COTTRELL KONECKY LLP
5 2000 Powell Street, Suite 1400
6 Emeryville, California 94608
7 Telephone: (415) 421-7100
8 Facsimile: (415) 421-7105
9 ccottrell@schneiderwallace.com
10 dleimbach@schneiderwallace.com

11 Attorneys for Plaintiff, Aggrieved Employees,
12 and the State of California

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 27 2020

BY Elisabeth Martinez
ELISABETH MARTINEZ, DEPUTY

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO**

11 HARVEY WICKER, on behalf of the State
12 of California and Aggrieved Employees,

13 Plaintiff,

14 vs.

15 WALMART, INC. d/b/a Walmart
16 Fulfillment Center,

17 Defendant.

Case No.: **CIV DS 2017999**

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

DEMAND FOR JURY TRIAL

28 **COMPLAINT FOR PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT AND DEMAND
FOR JURY TRIAL**

Harvey Wicker v. Walmart, Inc.

By Fax

1 Mr. Harvey Wicker ("Plaintiff"), on behalf of the State of California and Aggrieved
2 Employees, brings this Labor Code Private Attorneys General Act ("PAGA") enforcement action
3 against Walmart, Inc. d/b/a Walmart Fulfillment Center ("Defendant").

4 INTRODUCTION

5 1. In early 2020, a novel coronavirus ("COVID-19") developed into a pandemic.
6 Governments around the world, including in the United States and California, declared a public
7 health emergency. The highly contagious virus has infected at least 22.2 million people and killed
8 over 782,000 people worldwide.¹

9 2. COVID-19 has infected approximately 522,000 people and killed over 9,500 in
10 California. Medical experts estimate that the number of deaths and infections far exceed official
11 tallies.

12 3. There is no vaccine for COVID-19, which is highly contagious and easily transmitted
13 from person to person through respiratory droplets and smaller particles that can remain in the air
14 for hours and be inhaled or transferred through touch to surfaces.

15 4. The World Health Organization ("WHO"), the Centers for Disease Control ("CDC"),
16 doctors, scientists, and epidemiology and public health experts worldwide agree that COVID-19
17 infections can be minimized by slowing the spread of the disease, principally by limiting human-
18 to-human contact (including through physical distancing) and by taking other preventative
19 measures, such as the use of personal protective equipment ("PPE") and frequent handwashing and
20 sanitization of frequently touched surfaces and common spaces.

21 5. Since mid-March, public officials across California have issued public health orders
22 requiring increasingly strict measures to protect its population. On March 19, 2020, Governor Gavin
23 Newsom issued a state-wide shelter-in-place order ("California Shelter-In-Place Order").

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27 ¹ *Coronavirus Map: Tracking the Global Outbreak*, THE NEW YORK TIMES (updated Aug. 19, 2020),
28 <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

1 6. Throughout the public health crisis, certain “essential businesses,” have been
2 permitted to stay open, but are required to follow strict workplace safety and social distancing
3 protocols when doing so to mitigate the spread of infection.

4 7. Defendant is deemed an essential business as a seller of household goods. Defendant
5 is also one of the largest retailers in the world, with a fast-growing e-commerce presence. To keep
6 up with the demand of online orders, Defendant owns and operates fulfillment centers, which are
7 warehouses that serve as distribution centers where employees pick, pack, and ship orders. Due to
8 the California Shelter-In-Place Order, online orders for home-delivery have surged. As a result, e-
9 commerce dedicated fulfillment centers remain fully operational and have seen an increase in
10 activity as the virus has spread.

11 8. Plaintiff and Aggrieved employees are current and former hourly, non-exempt
12 employees who perform work for Defendant in its fulfillment center located at 6750 Kimball Ave.,
13 Chino, California 91708 (the “Chino Fulfillment Center”).

14 9. Defendant employs approximately 2,500 to 3,000 people at the Chino Fulfillment
15 Center and has required its employees to work at the facility throughout the pandemic.

16 10. The California Labor Code specifically requires employers to take affirmative steps
17 to maintain a safe and healthy workplace and to protect employees from infection.

18 11. Warehouses have been identified as high-risk workplaces for employees contracting
19 or transmitting COVID-19 infection because of their congested spaces and limited ventilation. The
20 CDC and the California Division of Occupational Safety and Health (“Cal/OSHA”) in conjunction
21 with the California Division of Public Health (“CDPH”) have provided additional workplace-
22 specific guidelines for logistics and warehousing facilities, which are discussed in detail below.

23 12. Defendant is well aware of the government regulations and emergency orders
24 requiring employers to take affirmative steps to mitigate the significant risk of spreading infection
25 during the pandemic. In fact, Defendant touts its knowledge and purported compliance with such
26 guidance on its website, claiming its top priority is the health and safety of its employees.²

27 ² John Furner and Kath McLay, *Additional Steps We’re Taking for the Health and Safety of Our Associates*,
28 WALMART, INC. (issued March 31, 2020 and updated Apr. 17, 2020),

1 13. Defendant's actual policies and practices show that the opposite is true. Despite its
2 knowledge of Federal and California health and safety guidelines and the risks to the health and
3 welfare of its employees, Defendant, as a matter of policy and/or practice, systemically endangers
4 its employees by maintaining practices that prioritize profit over the safety of its workforce.
5 Defendant's behavior has been slow, reactive rather than proactive, and woefully insufficient to
6 protect its employees and their families, customers, and the general public from the risk of
7 contracting COVID-19.

8 14. Defendant fails to provide sufficient personal protective equipment ("PPE") and
9 sanitation for its employees. Defendant fails to enact and enforce protocols, such as social
10 distancing policies, to effectively mitigate or prevent contagion within its facility. Defendant fails
11 to respond to concerns employees raise and actively dissuades employees from raising concerns
12 about the pandemic, their exposure to COVID-19, and infection among co-workers. In sum,
13 Defendant requires Plaintiff and Aggrieved Employees to work in an unhealthful, unsafe
14 workplace, which has resulted in illness.

15 15. The predictable result of Defendant's policies and practices (and lack thereof) has
16 been widespread infection in the workplace, subjecting employees to the imminent risk of
17 contracting the virus in the warehouse. To date, at least thirteen employees at the Chino Fulfillment
18 Center have contracted COVID-19.

19 16. For all the reasons discussed herein, Defendant has fails to do all of the following,
20 in contravention of applicable law: (1) furnish a place of employment that is safe and healthful as
21 required by California law; (2) provide and use safety devices and safeguards reasonably adequate
22 to render the employment and place of employment safe; (3) adopt and use methods and processes
23 reasonably adequate to render the employment and place of employment safe; (4) employ methods
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26 [https://corporate.walmart.com/newsroom/2020/03/31/additional-steps-were-taking-for-the-health-and-](https://corporate.walmart.com/newsroom/2020/03/31/additional-steps-were-taking-for-the-health-and-safety-of-our-associates)
27 [safety-of-our-associates](https://corporate.walmart.com/newsroom/2020/04/17/our-next-step-to-protect-you-our-customers-and-our-members); John Furner and Kath McLay, *Our Next Step to Protect You, Our Customers and*
28 *Our Members*, WALMART, INC. (Apr. 17, 2020), [https://corporate.walmart.com/newsroom/2020/04/17/our-](https://corporate.walmart.com/newsroom/2020/04/17/our-next-step-to-protect-you-our-customers-and-our-members)
[next-step-to-protect-you-our-customers-and-our-members](https://corporate.walmart.com/newsroom/2020/04/17/our-next-step-to-protect-you-our-customers-and-our-members).

1 reasonably necessary to protect the life, safety, and health of employees; and (5) to establish,
2 implement, and maintain an effective injury prevention program.

3 17. Plaintiff, as a proxy of the State of California on behalf of Aggrieved Employees,
4 seeks to recover penalties and reasonable attorneys' fees for these violations pursuant to Sections
5 2699(a) and (f) of the PAGA.

6 **PARTIES**

7 18. Plaintiff and Aggrieved Employees are current and former hourly, non-exempt
8 employees who perform work for Defendant at its fulfillment center located at 6750 Kimball Ave.,
9 Chino, California 91708.

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

12 20. Plaintiff worked for Defendant as a Stock Picker in the County of San Bernardino
13 from approximately October 2017 to the present.

14 21. Defendant Walmart, Inc. is a Delaware corporation with its principal place of
15 business in Bentonville, Arkansas. At all times relevant hereto, Defendant conducted business in
16 the state of California and has been registered to do business in the state of California.

17 22. Whenever reference is made in this Complaint to any act or omission thereof, deed,
18 or conduct of the Defendant, the allegation is that Defendant engages in the act(s), omission(s),
19 deed(s), or conduct by or through one or more of their officers, directors, agents, employees and/or
20 representatives who is/are actively engaged in the management, direction, control and/or
21 transaction of the ordinary business and affairs of Defendant.

22 23. All of the actions described in this Complaint are part of, and in furtherance of, the
23 unlawful conduct alleged herein, and are authorized, ordered, and/or done by Defendant's officers,
24 agents, employees, or other representatives within the course and scope of their duties and
25 employment, and/or with Defendant's actual, apparent, and/or ostensible authority.

26 24. At all relevant times, Defendant has done business under the laws of California, and
27 has employed Aggrieved Employees in this judicial district. Defendant is a "person" as defined in
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1 Labor Code § 18 and Business and Professions Code § 17201. Defendant is also an “employer” as
2 that term is used in the Labor Code, and IWC Wage Orders.

3 **JURISDICTION AND VENUE**

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

8 26. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 395.5.
9 Defendant employs Plaintiff and other employees in this County, transact business in this County,
10 and events complained of in this Complaint occurred in this County.

11 **FACTUAL ALLEGATIONS**

12 **A. COVID-19 Pandemic**

13 27. On December 31, 2019, the Wuhan Municipal Commission reported to the WHO a
14 cluster of pneumonia cases in Wuhan, Hubei Province, China. This led to the identification of a
15 novel coronavirus SARS COV-2, a respiratory illness known commonly as COVID-19. Since the
16 first reported case, COVID-19 spread rapidly and the WHO quickly declared the outbreak a “public
17 health emergency of international concern” by January 30, 2020.³

18 28. On March 4, 2020, California Governor Gavin Newsom declared a state of
19 emergency because of COVID-19.⁴

20 29. On March 11, 2020, the WHO declared COVID-19 a pandemic. The White House
21 declared a national emergency within days of that announcement.⁵

22 30. On March 19, 2020, Governor Newsom issued the California-Shelter-In-Place Order
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24 ³ Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, THE NEW YORK TIMES (Aug. 6, 2020),
<https://www.nytimes.com/article/coronavirus-timeline.html>.

25 ⁴ EXEC. DEPT. STATE OF CAL., PROCLAMATION OF A STATE OF EMERGENCY (Mar. 4, 2020),
26 <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

27 ⁵ *Rolling updates on coronavirus disease (COVID-19)*, WORLD HEALTH ORGANIZATION,
28 <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

1 requiring California residents to stay home. Governor Newsom's order does not apply to "essential
2 workers," such as Plaintiff and Aggrieved Employees, who provide necessary services to millions
3 of Californians. Days later, the federal government declared COVID-19 a major disaster in
4 California at Governor Newsom's request.

5 31. As early as April 2020, the CDC published research suggesting that a single person
6 with COVID-19 is likely to infect five or six other individuals absent aggressive physical distancing
7 practices.⁶ Furthermore, the CDC also reported that superspreading events, where one individual
8 alone may infect dozens of others, are likely in crowded environments.⁷ Symptoms may appear as
9 early as two, or as late as 14, days after initial exposure.⁸ A person with COVID-19 may be
10 contagious for 48 to 72 hours before experiencing symptoms.⁹ Research suggests that people may
11 be most likely to spread the virus to others during the 48 hours before they begin experiencing
12 symptoms.¹⁰

13 32. There is no vaccine for COVID-19, which is highly contagious and easily transmitted
14 from person to person through respiratory droplets and smaller particles that can remain in the air
15 for hours and be inhaled, or that can land in other individuals' eyes, noses, or mouths when in close
16 contact with infected individuals.¹¹ Research shows the virus also spreads through contact with

17 ⁶ See Steven Sanche, Yen Ting Lin, Chonggang Xu, Ethan Romero-Severson, Nick Hengartner, and Ruian
18 Ke, *High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus 2*,
CENTERS FOR DISEASE CONTROL AND PREVENTION (July 2020),
19 https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article?deliveryName=USCDC_333-DM25287.

20 ⁷ Thomas R. Frieden and Christopher T. Lee, *Identifying and Interrupting Superspreading Events—*
Implications for Control of Severe Acute Respiratory Syndrome Coronavirus 2, CENTERS FOR DISEASE
21 CONTROL AND PREVENTION (June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0495_article.

22 ⁸ *If you've been exposed to the coronavirus*, HARVARD HEALTH PUBLISHING (March 2020, updated Aug.
23 18, 2020), [https://www.health.harvard.edu/diseases-and-conditions/if-youve-been-exposed-to-the-](https://www.health.harvard.edu/diseases-and-conditions/if-youve-been-exposed-to-the-coronavirus#:~:text=The%20time%20from%20exposure%20to,before%20starting%20to%20experience%20symptoms)
24 [coronavirus#:~:text=The%20time%20from%20exposure%20to,before%20starting%20to%20experience%20symptoms](https://www.health.harvard.edu/diseases-and-conditions/if-youve-been-exposed-to-the-coronavirus#:~:text=The%20time%20from%20exposure%20to,before%20starting%20to%20experience%20symptoms).

25 ⁹ *Id.*

26 ¹⁰ *Id.*

27 ¹¹ CENTERS FOR DISEASE CONTROL AND PREVENTION (updated Aug. 4, 2020),
28 <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Basics>.

1 contaminated objects or surfaces.

2 33. Individuals infected with COVID-19 may be symptomatic or may not exhibit
3 symptoms at all (asymptomatic). Symptoms, which may range in severity, include fever or chills,
4 dry cough, fatigue, shortness of breath or difficulty breathing, body aches, headaches, new loss of
5 taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea.¹²

6 34. In severe cases, COVID-19 is known to cause potentially fatal respiratory problems
7 and viral pneumonia. Patients with severe symptoms often need ventilators to have any chance of
8 survival. COVID-19 patients may at first seem stable, but then rapidly go into complete respiratory
9 arrest, meaning they are unable to breathe at all. This is known as acute respiratory distress
10 syndrome, and means, essentially, that the lungs are filled with fluid. One respiratory therapist
11 described witnessing even relatively young, otherwise healthy COVID-19 patients “essentially
12 drowning in their own blood and fluids because their lungs [we]re so full.”¹³ For those fortunate
13 enough to survive this experience, COVID-19 often causes long-term lung damage.

14 35. COVID-19 may also cause, inter alia, acute kidney damage, blood clots, multi-system
15 organ failure, swollen toes, loss of taste and smell, strokes, cardiac injuries and arrest, nervous
16 system damage, and death. COVID-19 survivors may experience long-term health complications
17 beyond just lung damage, including limb amputation in the case of severe blood clots, heart damage,
18 and neurocognitive and mental health effects.

19 36. The pandemic has severely burdened mental health as well, with nearly half of adults
20 in the United States reporting high levels of stress due to COVID-19. Essential workers and their
21 families, who are at heightened risk of contracting the virus, experience significant anxiety and
22 trauma from potential exposure to the life-threatening condition. Panic attacks are common among
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25 ¹²*Symptoms of Coronavirus*, CENTERS FOR DISEASE CONTROL AND PREVENTION (updated May 13,
2020), <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

26 ¹³ Lizzie Presser, *A Medical Worker Describes Terrifying Lung Failure from COVID-19—Even in His*
27 *Young Patients*, PROPUBLICA (Mar. 21, 2020), <https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients>.
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1 those who are infected and those who fear becoming infected.¹⁴

2 37. The WHO, the CDC, doctors, scientists, and epidemiology and public health experts
3 worldwide agree that COVID-19 infections can be minimized only by slowing the spread of the
4 disease, principally by limiting human-to-human contact (including through physical distancing)
5 and by taking other preventative measures, such as the use of PPE and frequent handwashing and
6 sanitization of physical objects. The CDC and Cal/OSHA in conjunction with the CDPH have
7 provided additional workplace-specific guidelines.

8 38. On July 6, 2020, two scientists, with the explicit support of 237 colleagues, published
9 an article emphasizing the risks of airborne spread, noting in particular that “the problem is
10 especially acute in indoor enclosed environments, particularly those that are crowded and have
11 inadequate ventilation”¹⁵ – in other words, environments like Defendant’s Chino Fulfillment
12 Center. They further noted the apparent role of airborne transmission in recent superspreading
13 events.¹⁶ The authors noted that in addition to physical distancing and sanitization, attention must
14 be paid to “provid[ing] sufficient and effective ventilation . . . supplement[ing] general ventilation
15 with airborne infection controls . . . and avoiding overcrowding.”¹⁷

16 **B. Essential Worker Protection: Federal and State Guidelines**

17 39. OSHA has provided guidance for protecting employees from COVID-19 infection in
18 the workplace based on CDC recommendations.¹⁸ Furthermore, Cal/OSHA in coordination with
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20 ¹⁴ See *What It’s Like to Have Coronavirus*, THE NEW YORK TIMES (May 7, 2020),
21 <https://www.nytimes.com/article/coronavirus-symptoms.html>; Mike Stunson, *What does coronavirus feel*
22 *like? Here’s what survivors and patients say about it*, THE SACRAMENTO BEE (Mar. 20, 2020),
<https://www.sacbee.com/news/coronavirus/article241363476.html>.

23 ¹⁵ Lidia Morawska and Donald K. Milton, *It is Time to Address Airborne Transmission of COVID-19*,
24 OXFORD UNIVERSITY PRESS FOR THE INFECTIOUS DISEASES SOCIETY OF AMERICA (Jul. 6, 2020),
<https://doi.org/10.1093/cid/ciaa939>.

25 ¹⁶ *Id.*

26 ¹⁷ *Id.*

27 ¹⁸ *Guidance on Preparing Workplaces for COVID-19*, OSHA (March 2020),
28 <https://www.osha.gov/Publications/OSHA3990.pdf>; *Interim Guidance for Businesses and Employers*

1 the CDPH incorporated the OSHA and CDC guidelines to provide employers in specific industries
2 to protect their employees.¹⁹ The guidelines for essential workers in logistics and warehouse
3 facilities fall into five broad categories: (1) creating a written, workplace-specific COVID-19
4 prevention plan; (2) providing COVID-19-specific worker training; (3) implementing individual
5 control measures and screening; (4) implementing cleaning and disinfecting protocols; and (5)
6 implementing physical distancing protocols.²⁰

7 **a. Cal/OSHA Warehouse Facility Guidelines: Workplace-Specific Plans**

8 40. Under the warehouse facility workplace-specific prevention plan guideline,
9 Cal/OSHA directs that employers should: (1) establish a written, worksite-specific COVID-19
10 prevention plan at every facility, perform a comprehensive risk assessment of all work areas and
11 work tasks, and designate a person at each facility to implement the plan; (2) incorporate the CDPH
12 Face Covering Guidance into the plan and including a policy for handling exemptions to the general
13 requirement to wear facial coverings; (3) identify contact information for local health departments
14 (“LHD”) where workplaces are located for communicating information about COVID-19 outbreaks
15 among workers; (4) train and communicate with workers and worker representatives about the plan
16 and make the plan available to workers and their representatives; (5) regularly evaluate workplaces
17 for compliance with the plan and document and correct deficiencies identified; (6) investigate any
18 COVID-19 illness and determine if any work-related factors could have contributed to the risk of
19 infection, then update the plan as needed to prevent further cases; (7) implement the necessary
20 processes and protocols when a workplace has an outbreak, following CDPH guidelines; and (8)
21 identify close contacts (within six feet for 15 minutes or more) of an infected worker and take steps

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24 *Responding to Coronavirus Disease 2019*, CENTERS FOR DISEASE CONTROL AND PREVENTION (May 6,
2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

25 ¹⁹ *Cal/OSHA and Statewide Industry Guidance on COVID-19*, CALIFORNIA DEPARTMENT OF INDUSTRIAL
26 RELATIONS, <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>.

27 ²⁰ *COVID-19 Industry Guidance: Logistics and Warehousing Facilities*, CAL/OSHA and CDPH (July 29,
28 2020), <https://files.covid19.ca.gov/pdf/guidance-logistics-warehousing.pdf>.

1 to isolate COVID-19 positive worker(s) and close contacts.²¹

2 41. Per CDPH guidelines, when a workplace has an outbreak of COVID-19, an employer
3 should: (1) designate a workplace infection coordinator to implement COVID-19 infection
4 prevention procedures and to manage COVID-19-related issues among employees; (2) instruct
5 employees to stay home and report to the employer if they are having COVID-19 symptoms, were
6 diagnosed with COVID-19, or are awaiting test results for COVID-19; (3) identify contact
7 information for the LHD in the jurisdiction where the workplace is located; (4) notify the applicable
8 LHD if there is a known or suspected outbreak in the workplace or if there are laboratory confirmed
9 cases of COVID-19 at the workplace; (5) communicate with the LHD on how frequently the LHD
10 expects updates from the employer on newly identified cases and symptomatic employees in the
11 workplace; (6) share a roster of all employees with the applicable LHD; (7) identify additional
12 employee cases and close contacts of cases to control further spread in the workplace; (8) notify all
13 employees who were potentially exposed to individuals with COVID-19; and (9) determine when
14 it is appropriate for cases and contacts of cases to return to work.²²

15 **b. Cal/OSHA Warehouse Facility Guidelines: Illness Prevention Training**

16 42. For COVID-19-related worker training in the warehousing facilities, Cal/OSHA
17 directs that employers should inform and train employees, based on CDC guidelines, on the
18 following topics: (1) COVID-19, how to prevent it from spreading, and which underlying health
19 conditions may make individuals more susceptible to contracting the virus; (2) self-screening at
20 home, including temperature and/or symptom checks; (3) the importance of not coming to work if
21 a worker is experiencing symptoms, has been diagnosed, or has come into contact with someone
22 within the past 14 days who has been diagnosed with COVID; (4) when it is safe to return to work
23 after receiving a COVID-19 diagnosis; (5) when to seek medical attention; (6) the importance of
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25 ²¹ *Id.*

26 ²² Sonia Y. Angell, MD, MPH, Letter to Employers re. Responding to COVID-19 in the Workplace, CDPH
27 (June 16, 2020), <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Workplace-Outbreak-Employer-Guidance.aspx>.
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1 frequent handwashing with soap and water, including scrubbing with soap for 20 seconds (or using
2 hand sanitizer with at least 60% ethanol (preferred) or 70% isopropanol) when workers cannot get
3 to a sink or handwashing station; (6) the importance of physical distancing, both at home and at
4 work; (7) proper use of face coverings; and (8) what paid leave benefits workers may be entitled to
5 receive that would make it financially easier to stay home.²³

6 43. Furthermore, Cal/OSHA directs employers to make sure independent contractors,
7 temporary, or contract workers at the facility are also trained on the topics described herein.

8 **c. Cal/OSHA Warehouse Facility Guidelines: Individual Control Measures**
9 **and Screening**

10 44. Regarding individual control measures and screening, Cal/OSHA directs that
11 employers should provide temperature and/or symptom screenings for all employees who report to
12 a facility at the beginning of their shift or who must work their shift at a facility as well as any
13 vendors, contractors, or other workers entering the facility.²⁴ Cal/OSHA's guidelines further state
14 that employers *must* provide and ensure workers use all required protective equipment, including
15 eye protection and gloves where necessary.²⁵ Employers should consider where disposable glove
16 use may be helpful to supplement frequent handwashing or use of hand sanitizer.²⁶ Additionally,
17 employers should encourage workers who are sick or exhibiting symptoms of COVID-19 to stay at
18 home.²⁷

19 **d. Cal/OSHA Warehouse Facility Guidelines: Cleaning and Disinfecting**
20 **Protocols**

21 45. Cal/OSHA directs that warehouse employers should perform thorough cleanings in
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23 ²³ *COVID-19 Industry Guidance: Logistics and Warehousing Facilities*, CAL/OSHA and CDPH (July 29,
2020), <https://files.covid19.ca.gov/pdf/guidance-logistics-warehousing.pdf>.

24 ²⁴ *Id.*

25 ²⁵ *Id.*

26 ²⁶ *Id.*

27 ²⁷ *Id.*

1 high traffic areas such as break rooms, lunch areas, and areas of ingress and egress, and disinfect
2 commonly used surfaces with EPA-approved products for use against COVID-19.²⁸ Employers
3 should also have touchable surfaces cleaned between shifts or between users, whichever is more
4 frequent, including but not limited to working surfaces, machinery, tools, equipment, shelves,
5 storage rooms, handles, latches and locks, and controls on stationary and mobile equipment.²⁹
6 Employers should require workers to wash hands or use sanitizer between the use of shared
7 equipment and provide time for workers to follow these procedures during their shift.³⁰

8 46. Employers should ensure that sanitary facilities stay operational and stocked at all
9 times and provide additional soap, paper towels, and hand sanitizer when needed. If necessary and
10 practical, employers should provide additional sanitary facilities, such as portable toilets and
11 handwashing stations.³¹

12 47. Employers should stagger breaks to enable physical distancing and to provide the
13 chance for frequent sanitization of restrooms.³²

14 48. Cal/OSHA also encourages installing portable high-efficiency air cleaners,
15 upgrading the building's air filters to the highest efficiency possible, and making other
16 modifications to increase the quality of outside air and ventilation in work and break areas.³³

17 **e. Cal/OSHA Guidelines: Physical Distancing Protocols**

18 49. Cal/OSHA directs that employer should implement measures to ensure physical
19 distancing of at least six feet between workers, such as installing physical partitions or placing
20 visual cues to indicate where workers should stand, for example, through floor markings, colored
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22 ²⁸ *Id.*

23 ²⁹ *Id.*

24 ³⁰ *Id.*

25 ³¹ *Id.*

26 ³² *Id.*

27 ³³ *Id.*

1 tape, or signs. Other ways employers can ensure physical distancing is by reconfiguring
2 workspaces and shared outdoor spaces (or closing high congregation areas), limiting the numbers
3 of workers on the jobsite (e.g. staggered shifts and break), and adjusting meetings, whether by time
4 or size.

5 50. In enclosed spaces where physical distancing is difficult to maintain, Cal/OSHA
6 guidelines direct that employers should consider and implement the following hierarchy of
7 strategies: (1) Engineering controls: create physical or spatial barriers between workers, such as
8 Plexiglass or other sturdy and impermeable partitions; (2) Administrative controls: increase the
9 number of shifts to reduce the number of personnel present at one time and ensure adequate physical
10 distancing; and (3) PPE: use face shields, certain types of masks, and impermeable gloves.

11 **C. Defendant's Policies and Practices Endanger Employee Safety and Public Health**

12 51. Defendant is a large retail company with an expanding e-commerce organization that
13 has remained operational throughout the pandemic as an essential business. Defendant employs
14 warehouse associates, like Plaintiff, at the Chino Fulfillment Center, where online orders are
15 picked, packed, and shipped for delivery—a service which has increased in response to COVID-
16 19.

17 52. Defendant's response to the pandemic has been reactive rather than proactive, and
18 woefully insufficient to comply with the law or adequately protect its employees and the public.
19 Plaintiff's experiences, set forth below, exemplify Defendant's failures.

20 53. Throughout the pandemic, Defendant has largely ignored physical and social
21 distancing guidelines altogether. Physical distancing simply does not exist at the Chino Fulfillment
22 Center where Plaintiff and Aggrieved Employees must work in close proximity as a matter of
23 everyday routine. Defendant must follow the guidelines set out by Cal/OSHA. However, Defendant
24 fails to construct physical barriers to ensure that workers maintain at least six feet of distance from
25 one another. In fact, employees typically work within two feet from one another.

26 54. Defendant also fails to reduce the number of personnel working at one time. The
27 Chino Fulfillment Center is not only operating at capacity, with 2,500-3,000 employees, but
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1 Defendant continues to hire workers. Defendant also has a construction crew working on the
2 warehouse alongside Plaintiff and Aggrieved Employees—further limiting space and increasing the
3 difficulty to keep physical distance. Rather than staggering shifts or reducing or spreading out the
4 workload, Defendant requires Plaintiff and Aggrieved Employees to work longer and extra shifts
5 with more coworkers on the floor at a time.

6 55. Defendant does not provide sufficient PPE or implement cleaning and disinfecting
7 protocols to effectively reduce the spread of COVID-19 by co-workers and contaminated surfaces.

8 56. Defendant also neglects to provide gloves, even though they assist in preventing the
9 spread of COVID-19. Nor does Defendant provide sufficient hand sanitizer for the facility,
10 particularly in light of the increase in employees and activity in the warehouse as a result of
11 increased demand for delivery of household goods via E-Commerce, during the pandemic. The
12 hand sanitizer is located at only a few spots in the warehouse and it often runs out.

13 57. On one specific occasion—May 22, 2020—Plaintiff and Aggrieved Employees did
14 not have access to any hand sanitizer or hand-washing stations. Defendant shut off all of the water
15 for the building for the construction crew to work. The entire workforce—2,500 to 3,000 or more
16 employees, plus the construction crew—was unable to wash their hands and the hand sanitizer ran
17 out almost immediately. Furthermore, Defendant only had 15 portable toilets for the 2,500-3,000
18 employees to use for a whole 8-hour shift. The portable toilets were not cleaned at all on that day.

19 58. Defendant also fails to provide disinfectant wipes or any type of cleaning products
20 for employees to wipe down their area or equipment before, after, or in-between shifts. Without
21 gloves or sanitization products, Plaintiff and Aggrieved Employees routinely must touch potentially
22 contaminated surfaces, including packages, pallets, machinery, such as forklifts and conveyor belts,
23 and equipment such as radios and the timeclock—all of which are frequently touched by numerous
24 coworkers throughout the shifts. Even if Plaintiff and Aggrieved Employees were to have access to
25 disinfectants, it is unlikely they have enough time between shifts to clean surfaces in accordance
26 with the Cal/OSHA guidelines.

27 59. Defendant has not updated or improved the ventilation system in the warehouse. The
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1 air flow is controlled by ceiling fans, which do not provide adequate ventilation or ensure the flow
2 of air from inside to outside and vice versa. The result is stagnant air that is recirculated throughout
3 the warehouse, exposing workers to potentially infectious aerosolized particles that linger in the air.

4 60. When Defendant found out about the first employee with a confirmed COVID-19
5 infection, Defendant did not take the appropriate steps provided by Cal/OSHA, such as identify
6 employees who had close contacts and notify them of potential exposure to isolate the outbreak. In
7 fact, employees were not told anything until much later. By May 27, 2020 at least three employees
8 had confirmed cases. A month later, there were at least thirteen confirmed and reported cases in the
9 warehouse.

10 61. By March 2020, if not earlier, Defendant was aware of life-threatening dangers posed
11 by exposure to COVID-19, including the risk that this deadly and highly contagious virus could
12 easily spread among workers in the confined indoor warehouse, especially if potentially infected
13 employees did not have adequate PPE, proper training, ability to keep physical distance, and
14 regularly sanitized equipment and common areas.

15 62. However, Defendant, as a matter of policy and practice, failed and continues to fail
16 to: (1) implement a workplace-specific plan; (2) provide employees with training on COVID-19
17 prevention; (3) implement physical distancing protocols or to structure the workday and worksite
18 in a way that makes it possible; (4) sanitize common areas and bathrooms with sufficient regularity;
19 (5) provide employees with appropriate disinfectants, such as EPA-approved cleaning solutions or
20 sanitizing wipes to clean their surfaces; (6) update its ventilation systems; and (7) provide sufficient
21 PPE, among other acts and omissions that endanger its employees. Furthermore, Defendant
22 discourages employees from raising risks and concerns about their safety. In sum, Defendant has
23 failed to follow public health guidelines or comply with the law to provide for a safe and healthful
24 work environment.

25 **D. Defendant's Policies and Practices are Unlawful**

26 63. The California Labor Code requires that employers take steps to protect workers from
27 any safety hazard, including diseases like COVID-19, which is widespread in the community. The
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1 Defendant's policies violate each of the following provisions of the California Labor Code:

- 2 i. Section 6400, which requires that every employer shall furnish employment
3 and a place of employment that is safe and healthful for the employees
4 therein;
- 5 ii. Section 6401, which requires that every employer shall furnish and use
6 safety devices and safeguards, and shall adopt and use practices, means,
7 methods, operations, and processes which are reasonably adequate to render
8 such employment and place of employment safe and healthful and shall do
9 every other thing reasonably necessary to protect the life, safety, and health
10 of employees;
- 11 iii. Section 6401.7, which requires every employer to establish, implement, and
12 maintain an effective injury prevention program in writing;
- 13 iv. Section 6402, which requires that no employer shall require or permit an
14 employee to go or be in any employment or place of employment which is
15 not safe and healthful;
- 16 v. Section 6403, which requires that no employer shall fail or neglect to
17 provide and use reasonably adequate safety devices and safeguards, adopt
18 or use reasonably adequate methods and process, or to do every other thing
19 reasonably necessary to protect the life, safety, and health of employees;
- 20 vi. Section 6404, which requires that no employer shall occupy or maintain any
21 place of employment that is not safe and healthful; and
- 22 vii. Section 6407, which requires that every employer must comply with the
23 occupational safety and health standards, within section 25910 of the Health
24 and Safety Code, and with all rules, regulations, and orders pursuant to this
25 division, which are applicable to his own actions and conduct.

26 64. General Industry Safety Orders propagated by Cal/OSHA establish minimum
27 standards and apply to all employments and places of employment as defined by California Labor
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1 Code section 6303. Cal. Code Regs. Tit. 8, § 3202 (1974).

2 65. Defendant's policies and practices regarding COVID-19 violate the following Safety
3 and Health Standards set forth by Cal/OSHA in the California Code of Regulations, Title 8:

- 4 i. Section 3203, which requires that all employers have a written Illness
5 Prevention Program (IPP) to protect employees from workplace hazards
6 and to implement measures to prevent or reduce infection hazards and
7 provide training thereon;
- 8 ii. Section 3366, which requires that employers provide washing facilities for
9 maintaining cleanliness;
- 10 iii. Section 3380, which requires that employers conduct a hazard assessment
11 to determine if COVID-19 is a hazard in the workplace necessitating the use
12 of PPE and, given that it was and is, provide exposed employees with
13 properly fitting PPE;
- 14 iv. Section 5141, which requires employers to use controls to prevent the
15 harmful exposure of hazardous substances to employees; and
- 16 v. Section 8414, requiring employers to provide employees who are exposed
17 to hazards in the workplace, which cannot be eliminated through
18 engineering and administrative controls are not effective in eliminating the
19 hazards, with PPE including head protection, hand protection, and body
20 protection.

21 **E. Defendant's Unlawful Conduct Continues Despite Plaintiff's and Aggrieved**
22 **Employees' Complaints**

23 64. On July 8, 2020, Plaintiff filed a complaint with Cal/OSHA, with copies to the Labor
24 and Workforce Development Agency ("LWDA") and Defendant, per California Labor Code
25 section 2699.3(b), notifying them of the violations set forth throughout this Complaint. Under
26 California Labor Code section 2699.3(b), Cal/OSHA has 14 days to notice its intent to investigate,
27 before Plaintiff may submit an amended notice of his intent to file a complaint. As of July 23, 2020,
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1 Cal/OSHA had not provided notice that it intended to investigate. Defendant had an opportunity to
2 cure the unsafe conditions within 33 days of the amended notice, but as of August 25,
3 2020, Defendant has not provided any cure notice. As of the date of this Complaint, Defendant has
4 taken not taken or promised any remedial action, and Cal/OSHA has not issued a citation or
5 investigated Plaintiff's complaint within the time permitted under the Labor Code. Plaintiff seeks
6 civil penalties on behalf of the State, himself, and Aggrieved Employees pursuant to California's
7 Private Attorney General Act, Labor Code § 2698.

8
9 **CAUSE OF ACTION**
Penalties Pursuant to §§ 2699(a) and (f) of the Private Attorneys General Act

10 65. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
11 herein.

12 66. Labor Code sections 6300 *et seq.* authorize the enforcement of effective standards to
13 maintain safe and healthy work environments. These sections are part of Division 5 of the Labor
14 Code.

15 67. Pursuant to Labor Code § 2699.3(b), Plaintiff provided notice by online filing to the
16 Division of Occupational Safety and Health ("DOSH") and by certified mail to the employer, with
17 a copy to the Labor and Workforce Development Agency ("LWDA") the specific provisions of
18 Division 5 alleged to have been violated, including the facts and theories to support the alleged
19 violations. The statutory period for inspection or investigation has passed without any notice of
20 intent to investigate by DOSH or intent cure by Defendant. Further, 33 days have passed since
21 the expiration of the statutory period for inspection or investigation by Cal OSHA, and Defendant
22 has not issued any notice stating that the unsafe conditions have been cured. Therefore, Plaintiff
23 satisfied the administrative prerequisites in compliance with § 2699.3(b) to commence this civil
24 action pursuant to subdivision (a) of Section 2699.

25 68. The PAGA and Cal/OSHA notices included the specific provisions of the Labor Code
26 alleged to have been violated, including the facts and theories to support the alleged violations of
27 Sections 6400, 6401, 6401.7, 6402, 6403, and 6404, as well as Occupational Safety and Health
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Standards set forth by Cal/OSHA in the California Code of Regulations, Title 8, sections 3203, 3366, and 5141.

69. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, 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.

70. Plaintiff hereby seeks to collect civil penalties for the Labor Code violations described herein.

71. Labor Code Sections 6428-6430 require DOSH to impose civil penalties for serious, willful, or repeat violations or where an employer fails to correct violations in a timely manner. The alleged violations of the Labor Code provided are deemed serious in accordance with Labor Code § 6432.

72. Labor Code § 6428 provides:

Any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, if that violation is a serious violation, shall be assessed a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation. Employers who do not have an operative injury prevention program shall receive no adjustment for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.

73. Labor Code § 6429(a)(1) provides:

Any employer who willfully or repeatedly violates any occupational safety or health, order, or special order, or Section 25910 of the Health and Safety Code, may be assessed a civil penalty of not more than one hundred twenty-four thousand seven hundred nine dollars (\$124,709) for each violation, but in no case less than eight thousand nine hundred eight dollars (\$8,908) for each willful violation.

74. Labor Code § 6430(a) provides:

Any employer who fails to correct a violation of any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, within the period permitted for its correction shall be assessed a civil penalty of not more than fifteen thousand dollars (\$15,000) for each day during which the failure or violation continues.

1 75. Labor Code § 6427 provides:

2 Any employer who violates any occupational safety or health standard,
3 order, or special order, or Section 25910 of the Health and Safety Code, and
4 the violation is specifically determined not to be of a serious nature, may be
 assessed a civil penalty of up to twelve thousand four hundred seventy-one
 dollars (\$12,471) for each violation.

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

7 77. Labor Code § 2699(f) provides:

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

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

16 79. Pursuant to Labor Code § 2699.3(b), Plaintiff provided notice by online filing to the
17 Division of Occupational Safety and Health ("DOSH") and by certified mail to the employer, with
18 a copy to the Labor and Workforce Development Agency ("LWDA") the provisions of Division 5
19 alleged to have been violated, including the facts and theories to support the alleged violations. The
20 statutory period for inspection or investigation has passed without any notice of intent to investigate
21 by DOSH or intent cure by Defendant. Therefore, Plaintiff satisfied the administrative prerequisites
22 in compliance with § 2699.3(b) to commence this civil action pursuant to subdivision (f) of Section
23 2699.

24 80. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
25 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
26 award of attorneys' fees and costs as set forth below.

27 81. Wherefore, Plaintiff requests relief as hereinafter provided.
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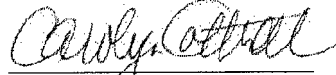
1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff prays for relief as follows:

- 3 1. For the Court to declare, adjudge, and decree that Defendant has violated the
4 California Labor Code as alleged herein;
- 5 2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees
6 civil penalties provided under the PAGA;
- 7 3. For interest on penalties awarded as provided by applicable law;
- 8 4. For an award of reasonable attorneys' fees;
- 9 5. For all costs of suit; and
- 10 6. For such other and further relief as this Court deems just and proper.

11
12 Dated: August 27, 2020

Respectfully submitted,

13 

14 Carolyn Hunt Cottrell
15 David C. Leimbach
16 SCHNEIDER WALLACE
COTTRELL KONECKY LLP

17 Attorneys for Plaintiff, Aggrieved Employees,
18 and the State of California
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