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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DAVID HORTON, on behalf of the State
of California and Aggrieved Employees,

Plaintiff,

vs.

RES-CARE, INC.; RSCR, CALIFORNIA,
INC.; and DOES 1 through 100, inclusive,

Defendant(s),

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento

08/07/2024

By: R. San Miguel Deputy

Case No. **24CV015822**

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

DEMAND FOR JURY TRIAL

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

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against RES-CARE, INC.; RSCR,
5 CALIFORNIA, INC. (Collectively “ResCare” or “Defendants”), on behalf of the State of California
6 and the Aggrieved Employees to collect statutory penalties as a result of Defendant’s systematic
7 violations of California labor law with respect to Defendant’s non-exempt, hourly workers
8 employed in the State of California (“Aggrieved Employees”).

9 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
10 workers who have worked for Defendant in California.¹

11 3. This action stems from Defendants’ policies and practices of: (1) failing to
12 compensate Plaintiff and Aggrieved Employees for all hours worked; (2) failing to pay Plaintiff and
13 Aggrieved Employees minimum wage for all hours worked; (3) failing to pay Plaintiff and
14 Aggrieved Employees overtime wages; (4) failing to authorize and permit Plaintiff and Aggrieved
15 Employees to take meal periods to which they are entitled by law, and failing to pay premium
16 compensation for missed meal periods; (5) failing to authorize and permit Plaintiff and Aggrieved
17 Employees to take rest periods to which they are entitled by law, and failing to pay premium
18 compensation for missed rest periods; (6) failing to provide Plaintiff and Aggrieved Employees true
19 and accurate itemized wage statements; (7) failing to reimburse Plaintiff and Aggrieved Employees
20 for necessary business expenses; and (8) failing to timely pay Aggrieved Employees full wages
21 during employment and upon separation from employment.

22 4. Plaintiff, on behalf of the State of California, seeks to recover penalties and
23 reasonable attorneys’ fees for these violations pursuant to Sections 2699(a) and (f) of the California
24 Labor Code Private Attorneys General Act (“PAGA”).

25 **PARTIES**

26 5. Plaintiff David Horton is an individual over the age of eighteen, and at all times
27

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

1 mentioned in this Complaint was a resident of the State of California.

2 6. Plaintiff was employed by Defendants as a Direct Service Provider from
3 approximately November 2023 to December 27, 2023. Plaintiff worked for Defendants in San Luis
4 Obispo, California.

5 7. The Aggrieved Employees are all current and former non-exempt, hourly employees
6 who work for Defendant as caregivers, direct care professionals, nurses, direct service providers,
7 case managers, housing navigators, residential care coordinators, business services consultants,
8 program coordinators, program assistants, business coordinators, clerks, customer service
9 representatives, and other positions with similar job duties in California, and other employees with
10 similar job duties in the State of California.

11 8. Plaintiff is informed, believes, and thereon alleges that ResCare Workforce Services
12 does business in California and employs and employed hourly, non-exempt employees, including
13 Plaintiff and Aggrieved Employees throughout California, including in the cities of Sacramento,
14 San Luis Obispo, Glendale, Rancho Cucamonga, Orange, and National City, amongst others.

15 9. Plaintiff is informed, believes, and thereon alleges that Res-Care, Inc. is a Kentucky
16 corporation headquartered in Louisville, Kentucky. ResCare, Inc. does business in California and
17 employs and employed hourly, non-exempt employees, including Plaintiff and Aggrieved
18 Employees throughout California.

19 10. Plaintiff is informed, believes, and thereon alleges that RSCR, California, Inc. does
20 business in California and employs and employed hourly, non-exempt employees, including
21 Plaintiff and Aggrieved Employees in California.

22 11. Defendants employ and/or employed Plaintiff and Aggrieved Employees because
23 Defendants, directly or indirectly, control the employment terms, pay practices, timekeeping
24 practices, and daily work of Plaintiff and Aggrieved Employees.

25 12. Plaintiff is informed, believes, and thereon alleges that each and every one of the acts
26 and omissions alleged herein were performed by, and/or attributable to, Defendants, and that said
27 acts and failures to act were within the course and scope of said agency, employment and/or
28 direction and control.

13. Plaintiff is informed, believes, and thereon alleges that Defendants are the agents, partners, joint venturers, joint employers, representatives, servants, employees, co-conspirators and assigns, each of the other, and at all times relevant hereto have acted within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, co-conspirators and/or assigns, and all acts or omissions alleged herein have been duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant.

14. At all material times, Defendants have done business under the laws of California, have had places of business in California, including in this County, and have employed Aggrieved Employees in this County and elsewhere throughout California. Defendants are “persons” as defined in Cal. Lab. Code § 18 and “employers” as that term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions.

JURISDICTION AND VENUE

15. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393(a) and/or 395.5. Defendants conduct business and employ Aggrieved Employees in this County, and therefore the liability and the cause or some part of the cause arose in this County.

16. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendants because they are authorized to do business in the State of California, and because Defendants do in fact do business and employ workers in the State of California.

FACTUAL ALLEGATIONS

17. Plaintiff worked for Defendants as a caregiver. Plaintiff was employed by Defendants from approximately November 2023 to December 27, 2023 in California.

18. Plaintiff's primary duties included, but were not limited to, providing personal care needs such as bathing, dressing, grooming, providing transportation, preparing meals, and housekeeping for individuals with mental and physical disabilities.

19. Plaintiff was classified as an hourly, non-exempt employee and was paid an hourly rate of \$18.00.

1 20. Defendants employ and have employed hundreds, if not thousands, of hourly, non-
2 exempt workers similar to Plaintiff in California, including but not limited to caregivers, direct care
3 professionals, nurses, direct service providers, case managers, housing navigators, residential care
4 coordinators, business services consultants, program coordinators, program assistants, business
5 coordinators, clerks, customer service representatives, and other positions with similar job duties in
6 California, and other employees with similar job duties.

7 21. Defendants employ Aggrieved Employees in a similar manner throughout California,
8 including in this County, and Aggrieved Employees perform work materially similar to Plaintiff.
9 Defendant pays Aggrieved Employees, including Plaintiff, on an hourly rate basis.

10 22. Plaintiff is informed, believes, and thereon alleges that the policies and practices of
11 Defendants have at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless
12 of job title, facility, or location in California.

13 23. Aggrieved Employees are required to follow and abide by common work, time, and
14 pay policies and procedures in the performance of their jobs and duties.

15 24. At the end of each pay period, Aggrieved Employees receive wages from Defendants
16 that are determined by common systems and methods that Defendants select and control.

17 25. Defendants regularly fail to provide Plaintiff and Aggrieved Employees compliant
18 meal and rest periods. Defendants' policies, practices, and procedures require Plaintiff and
19 Aggrieved Employees to routinely skip their meal and rest periods, yet do not provide them with
20 requisite premium payments for missed meal and rest periods.

21 26. Plaintiff and Aggrieved Employees are routinely denied compliant meal periods for
22 at least three reasons: (1) Defendants do not provide an adequate number of staff so that Plaintiff
23 and Aggrieved Employees can get relief from their duties to take meal periods; (2) Defendants
24 require Plaintiff and Aggrieved Employees to remain on duty during their meal periods and to be
25 available to assist clients; and (3) Plaintiff and Aggrieved Employees are often too busy attempting
26 to complete the work assigned to them by Defendants to have time to take bona fide meal periods.

27 27. When Plaintiff and Aggrieved Employees do attempt to take a meal period, they are
28 not provided duty-free, uninterrupted, and timely thirty-minute meal periods during which they

1 should be completely relieved of any duty, by the end of the fifth hour of work. When Plaintiff did
2 take a meal period, it was interrupted, untimely, and/or short, *i.e.*, she was constantly pulled from
3 the off-duty meal period to assist with a client, his meal periods were after his fifth hour of work, or
4 they were less than 30 minutes.

5 28. Additionally, Plaintiff and Aggrieved Employees are routinely denied compliant rest
6 periods. Much like the reasons that Plaintiff and Aggrieved Employees are denied compliant meal
7 periods, Plaintiff and Aggrieved Employees do not receive compliant rest periods because they are
8 too busy to find the time for rest periods, Defendants are too understaffed for Plaintiff and Aggrieved
9 Employees to be relieved from their duties, and Defendants require that Plaintiff and Aggrieved
10 Employees cut their rest periods short to assist with clients or complete further work tasks.

11 29. Plaintiff is informed, believes, and thereon alleges that Defendants utilize and apply
12 these meal and rest period policies and practices across all Defendants' facilities throughout
13 California and across all Aggrieved Employee job titles.

14 30. Further, Defendants maintain a policy and/or practice of failing to properly
15 compensate Plaintiff and the Aggrieved Employees for work related tasks performed while "off-
16 the-clock." As mentioned above, Defendants require Plaintiff and Aggrieved Employees to clock
17 out for thirty-minute meal periods even though they are on-call, and they continue to work. This
18 policy results in Plaintiff and Aggrieved Employees working up to 30 minutes of unpaid, off-the-
19 clock work every shift. Additionally, Defendants refuse to authorize Aggrieved Employees to work
20 overtime hours, but still require Aggrieved Employees to finish their immense daily workload,
21 which forces Aggrieved Employees to complete their assignments off-the-clock outside of their
22 scheduled shifts or face repercussions. Defendants' policies cause Plaintiff and Aggrieved
23 Employees to work hours every week for the benefit of Defendants off-the-clock that goes
24 unrecorded and therefore uncompensated.

25 31. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been
26 denied proper payment for all hours worked, including overtime and minimum wages, for the time
27 spent working off-the-clock. For instance, Plaintiff and Aggrieved Employees do not receive
28 overtime compensation for time spent working off-the-clock outside of their scheduled shifts and

1 during noncompliant meal periods when the hours worked are in excess of eight hours per day and
2 forty hours per week. However, Defendants fail to pay for any of this work time, including the
3 required overtime premiums, in violation of the Cal. Lab. Code.

4 32. As a result of these policies and/or practices, Plaintiff and Aggrieved Employees are
5 denied compensation for all hours worked, including minimum wages and overtime.

6 33. Plaintiff is informed, believes, and thereon alleges that Defendants utilizes the same
7 or substantially similar timekeeping mechanisms throughout all their facilities in California.

8 34. Defendants' common course of wage-and-hour abuse includes routinely failing to
9 maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees.
10 Defendants fail to record hours that Plaintiff and Aggrieved Employees work off-the-clock, as well
11 as non-compliant meal and rest periods.

12 35. Defendants' failure to record all hours worked results in Defendants' failure to
13 provide Plaintiff and Aggrieved Employees with itemized and accurate wage statement as required
14 by California law. Plaintiff and Aggrieved Employees receive wage statements that do not reflect
15 all hours worked, including overtime and premiums for non-compliant meal and rest periods.

16 36. Defendants also fail to provide Plaintiff and Aggrieved Employees reimbursement
17 for all necessary expenditures or losses incurred by Plaintiff and Aggrieved Employees in direct
18 consequence of the discharge of their duties, or as a result of their obedience to the directions of
19 Defendants. Defendants regularly require Plaintiff and Aggrieved Employees to pay out-of-pocket
20 expenses necessary to perform their daily work assignments. For example, Plaintiff was required
21 to use his personal cell phone to clock in and out of Defendants' timekeeping system. Plaintiff also
22 used his personal cell phone to communicate with clients and supervisors regarding his work-related
23 duties.

24 37. Further, Defendants do not provide Plaintiff and Aggrieved Employees who are
25 former employees of Defendants with full and timely payment of all wages owed upon separation
26 from employment. At the time their employment ends, Plaintiff and Aggrieved Employees are owed
27 wages for all time worked, overtime, and missed meal and rest periods, whether their termination
28 was voluntary or involuntary; yet Defendants have failed to provide Plaintiff and Aggrieved

1 Employees with such payments within the required time period. As a result, and pursuant to the Cal.
2 Lab. Code, Defendants are subject to waiting time penalties.

3 38. Plaintiff is informed, believes, and thereon alleges that Defendants are well aware
4 that their policies and practices deprive Plaintiff and Aggrieved Employees of substantial pay for
5 all time worked, including overtime compensation and minimum wages, and that their workers do
6 not receive legally compliant meal and rest periods. Thus, Defendants' denial of wages, compliant
7 meal and rest periods, and premium payments is and/or was deliberate and willful.

8 39. Plaintiff is informed, believes, and thereon alleges that Defendants' unlawful conduct
9 has been widespread, repeated, and consistent as to Aggrieved Employees throughout California.

10 40. Defendants' conduct is willful, carried out in bad faith, and triggers significant civil
11 penalties in an amount to be determined at trial.

12 **FIRST CAUSE OF ACTION**

13 **Penalties Pursuant to Cal. Lab. Code § 2699(f)** 14 **for Violations of Cal. Lab. Code §§ 204, 1194, and 1198** 15 **(Failure to Pay for all Hours Worked)**

16 41. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
17 herein.

18 42. Plaintiff alleges that Defendants willfully engages in a policy and practice of not
19 compensating Aggrieved Employees for all hours worked or spent in Defendants' control.
20 Defendants regularly require Aggrieved Employees to perform uncompensated off-the-clock work.

21 43. Cal. Lab. Code § 200 defines wages as "all amounts for labor performed by
22 employees of every description, whether the amount is fixed or ascertained by the standard of time,
23 task, piece, commission basis or method of calculation."

24 44. Cal. Lab. Code § 204(a) provides that "[a]ll wages ... earned by any person in any
25 employment are due and payable twice during each calendar month...."

26 45. Cal. Lab. Code § 1194(a) provides as follows:

27 Notwithstanding any agreement to work for a lesser wage, any employee receiving
28 less than the legal minimum wage or the legal overtime compensation applicable to
the employee is entitled to recover in a civil action the unpaid balance of the full

1 amount of this minimum wage or overtime compensation, including interest thereon,
2 reasonable attorneys' fees, and costs of suit.

3 46. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
4 conditions that violate the Wage Order.

5 47. The applicable IWC Wage Orders define hours worked as "the time during which an
6 employee is subject to the control of an employer, and includes all the time the employee is suffered
7 or permitted to work, whether or not required to do so."

8 48. In violation of California law, Defendants knowingly and willfully refuse to provide
9 Aggrieved Employees with compensation for all time worked. Defendants intentionally and
10 willfully require Plaintiff and Aggrieved Employees to perform tasks while off-the-clock outside of
11 their scheduled shifts and to remain on duty during their scheduled shifts, including during rest
12 periods and while clocked out for meal periods. Plaintiff and Aggrieved Employees are regularly
13 required to work off-the-clock, time which Defendants neither record nor compensates them for.
14 Defendants do not account for this off-the-clock work when compensating Plaintiff and Aggrieved
15 Employees, resulting in widespread under-compensation of Aggrieved Employees.

16 49. Therefore, Defendants committed, and continue to commit, the acts alleged herein
17 knowingly and willfully, and in conscious disregard of the Aggrieved Employees' rights.

18 50. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100)
19 for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that
20 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
21 employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for
22 each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision
23 that does not provide a civil penalty if, at the time of the violation, the employer employs one or
24 more employees.

25 51. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay for
26 all hours worked in violation of Cal. Lab. Code §§ 204, 1194, and 1198 throughout California on
27 behalf of himself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab.
28 Code § 2699(f).

52. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful conduct alleged herein, on behalf of the State, other Aggrieved Employees, and himself, for Defendants' violations of Labor Code provisions including but not limited to Cal. Lab. Code § 558(a).

53. On March 12, 2024, Plaintiff gave written notice to the LWDA and to Defendants of his intent to pursue civil penalties for Defendants' failure to pay for all hours worked in violation of Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

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

55. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(f)

for Violations of Cal. Lab. Code §§ 1182.12, 1194, and 1197

(Failure to Pay Minimum Wage)

56. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

57. During the applicable statutory period, Cal. Lab. Code §§ 1182.12 and 1197, and the Minimum Wage Order were in full force and effect, and required that Defendant's hourly employees receive the minimum wage for all hours worked irrespective of whether nominally paid on a piece rate, or any other basis, at the rate of fourteen dollars (\$14.00) commencing January 1, 2021; and at the rate of fifteen dollars (\$15.00) commencing January 1, 2022.

58. Cal. Lab. Code § 1194(a) provides as follows:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full

1 amount of this minimum wage or overtime compensation, including interest thereon,
2 reasonable attorneys' fees, and costs of suit.

3 59. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
4 conditions that violate the Wage Orders.

5 60. Because of Defendants' policies and practices with regard to compensating Plaintiff
6 and Aggrieved Employees, Defendants have failed to pay minimum wages as required by law. For
7 instance, Plaintiff and the Aggrieved Employees frequently perform work off-the-clock and during
8 noncompliant meal periods for which they are compensated below the statutory minimum wage, as
9 determined by the IWC.

10 61. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100)
11 for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that
12 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
13 employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for
14 each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision
15 that does not provide a civil penalty if, at the time of the violation, the employer employs one or
16 more employees.

17 62. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay
18 minimum wages in violation of Cal. Lab. Code §§ 1182.12, 1194, and 1197 throughout California
19 on behalf of himself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab.
20 Code § 2699(f).

21 63. On March 12, 2024, Plaintiff gave written notice to the LWDA and to Defendants of
22 his intent to pursue civil penalties for Defendants' failure to pay for all hours worked in violation of
23 Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since
24 Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA
25 or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
26 administrative prerequisites to commence a PAGA action.

27 64. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees
28 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to

1 an award of attorneys' fees and costs as set forth below.

2 65. Wherefore, Plaintiff requests relief as hereinafter provided.

3 **THIRD CAUSE OF ACTION**

4 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**
5 **for Violations of Cal. Lab. Code §§ 510 and 1194**
6 **(Failure to Pay Overtime Wages)**

7 66. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
8 herein.

9 67. Defendants do not properly compensate Aggrieved Employees with appropriate
10 overtime premiums, as required by California law. For instance, Plaintiff and Aggrieved Employees
11 do not receive overtime compensation for time spent working off-the-clock outside of their
12 scheduled shifts and during noncompliant meal periods when the hours worked are in excess of
13 eight (8) hours per day and forty (40) hours per week.

14 68. Cal. Lab. Code § 510(a) provides as follows:

15 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
16 one workday and any work in excess of 40 hours in any one workweek and the first
17 eight hours worked on the seventh day of work in any one workweek shall be
18 compensated at the rate of no less than one and one-half times the regular rate of pay
19 for an employee. Any work in excess of 12 hours in one day shall be compensated at
20 the rate of no less than twice the regular rate of pay for an employee.

21 69. Cal. Lab. Code § 1194(a) provides as follows:

22 Notwithstanding any agreement to work for a lesser wage, any employee receiving
23 less than the legal minimum wage or the legal overtime compensation applicable to
24 the employee is entitled to recover in a civil action the unpaid balance of the full
25 amount of this minimum wage or overtime compensation, including interest thereon,
26 reasonable attorneys' fees, and costs of suit.

27 70. Cal. Lab. Code § 200 defines wages as "all amounts of labor performed by employees
28 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
commission basis or other method of calculation." All such wages are subject to California's
overtime requirements, including those set forth above.

71. Defendants' policies and practices of requiring Aggrieved Employees to perform
work off-the-clock are unlawful and result in overtime violations. As a result of these unlawful

1 policies and practices, Aggrieved Employees have worked overtime hours for Defendants without
2 being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Orders,
3 and other applicable law.

4 72. Defendants knowingly and willfully refuse to perform their obligations to compensate
5 Aggrieved Employees for all premium wages for overtime work.

6 73. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100)
7 for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that
8 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
9 employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for
10 each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision
11 that does not provide a civil penalty if, at the time of the violation, the employer employs one or
12 more employees.

13 74. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay
14 overtime wages in violation of Cal. Lab. Code §§ 510 and 1194 and the applicable wage orders
15 throughout California on behalf of himself, the State of California, and other Aggrieved Employees
16 pursuant to Cal. Lab. Code § 2699(f).

17 75. On March 12, 2024, Plaintiff gave written notice to the LWDA and to Defendants of
18 his intent to pursue civil penalties for Defendants' failure to pay for all hours worked in violation of
19 Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since
20 Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA
21 or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
22 administrative prerequisites to commence a PAGA action.

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

26 77. Wherefore, Plaintiff requests relief as hereinafter provided.

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1 **FOURTH CAUSE OF ACTION**

2 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**

3 **for Violations of Cal. Lab. §§ 226.7 and 512**

4 **(Meal Periods)**

5 78. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
6 herein.

7 79. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders requires Defendants
8 to authorize and permit meal periods to its employees. Cal. Lab. Code §§ 226.7 and 512 and the
9 applicable Wage Orders prohibit employers from employing an employee for more than five hours
10 without a meal period of not less than thirty minutes. Unless the employee is relieved of all duty
11 during the thirty-minute meal period, the employee is considered “on duty” and the meal period is
12 counted as time worked under the applicable Wage Orders.

13 80. Cal. Lab. Code § 512(a) provides:

14 An employer shall not employ an employee for a work period of more than five hours
15 per day without providing the employee with a meal period of not less than 30 minutes,
16 except that if the total work period per day of the employee is no more than six hours,
17 the meal period may be waived by mutual consent of both the employer and employee.
18 An employer shall not employ an employee for a work period of more than 10 hours
per day without providing the employee with a second meal period of not less than 30
minutes, except that if the total hours worked is no more than 12 hours, the second
meal period may be waived by mutual consent of the employer and the employee only
if the first meal period was not waived

19 81. Under Cal. Lab. Code § 226.7(b) and the applicable Wage Orders, an employer who
20 fails to authorize, permit, and/or make available a required meal period must, as compensation, pay
21 the employee one hour of pay at the employee’s regular rate of compensation for each workday that
22 the meal period was not authorized and permitted.

23 82. Despite these requirements, Defendants knowingly and willfully refuse to perform
24 their obligations to authorize and permit and/or make available to Plaintiff and Aggrieved
25 Employees the ability to take the off-duty meal periods to which they are entitled.

26 83. Plaintiff and Aggrieved Employees are routinely denied compliant meal periods for
27 at least three reasons: (1) Defendants do not provide an adequate number of staff so that Plaintiff
28 and Aggrieved Employees can get relief from their duties to take meal periods; (2) Defendants

1 require Plaintiff and Aggrieved Employees to remain on duty during their meal periods and to be
2 available to assist clients; and (3) Plaintiff and Aggrieved Employees are often too busy attempting
3 to complete the work assigned to them by Defendants to have time to take bona fide meal periods.
4 As such, Defendants do not provide Plaintiff and Aggrieved Employees with duty-free,
5 uninterrupted, and timely thirty-minute meal periods during which Plaintiff and Aggrieved
6 Employees should be completely relieved of any duty, by the end of the fifth hour of work. Plaintiff
7 is informed, believes, and thereon alleges that this policy and practice applies to all Aggrieved
8 Employees.

9 84. Defendants also fail to pay Plaintiff and Aggrieved Employees one hour of pay for
10 each off-duty meal period that they are denied. Defendants' conduct described herein violates Cal.
11 Lab. Code §§ 226.7 and 512.

12 85. On information and belief, Defendants' conduct has been substantially the same at all
13 relevant times and to all Aggrieved Employees throughout the state of California.

14 86. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100)
15 for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that
16 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
17 employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for
18 each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision
19 that does not provide a civil penalty if, at the time of the violation, the employer employs one or
20 more employees.

21 87. Plaintiff seeks to recover civil penalties from Defendants for their violations of the
22 meal period requirements of Cal. Lab. Code §§ 226.7 and 512 throughout California on behalf of
23 himself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code §
24 2699(f).

25 88. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for the
26 unlawful conduct alleged herein, on behalf of the State, other Aggrieved Employees, and himself,
27 for Defendants' violations of Labor Code provisions including but not limited to Cal. Lab. Code §§
28 512.

89. On March 12, 2024, Plaintiff gave written notice to the LWDA and to Defendants of his intent to pursue civil penalties for Defendants' failure to pay for all hours worked in violation of Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

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

91. Wherefore, Plaintiff requests relief as hereinafter provided.

FIFTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(f)

for Violations of Cal. Lab. Code § 226.7

(Rest Periods)

92. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

93. Cal. Lab. Code § 226.7 and the applicable Wage Orders require Defendants to authorize and permit rest periods to their employees. Cal. Lab. Code § 226.7 and the applicable Wage Orders require employers to authorize and permit employees to take ten minutes of net rest time per four hours or major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless the employee is relieved of all duty during the ten-minute rest period, the employee is considered “on duty” and the rest period is counted as time worked under the applicable Wage Orders.

94. Under Cal. Lab. Code § 226.7(b) and the applicable Wage Orders, an employer must pay an employee denied a required rest period one hour of pay at the employee's regular rate of compensation for each workday that the rest period was not authorized and permitted and/or not made available.

95. Despite these requirements, Defendants knowingly and willfully refuse to perform

1 their obligation to authorize and permit and/or make available to Plaintiff and Aggrieved Employees
2 the ability to take the off-duty rest periods to which they are entitled. Much like the reasons that
3 Plaintiff and Aggrieved Employees are denied compliant meal periods, Plaintiff and Aggrieved
4 Employees do not receive compliant rest periods because they are too busy to find the time for rest
5 periods, Defendants are too understaffed for Plaintiff and Aggrieved Employees to be relieved from
6 their duties, and Defendants require that Plaintiff and Aggrieved Employees cut their rest periods
7 short to assist with clients or complete further work assignments.

8 96. As a result of Defendants' policies and practices, Aggrieved Employees are routinely
9 denied the opportunity to take legally compliant rest periods. Plaintiff is informed, believes, and
10 thereon alleges that this policy and practice applies to all Aggrieved Employees.

11 97. Defendants also fail to pay Plaintiff and Aggrieved Employees one hour of pay for
12 each off-duty rest period that they are denied. Defendants' conduct described herein violates Cal.
13 Lab. Code § 226.7.

14 98. On information and belief, Defendants' conduct has been substantially the same at all
15 relevant times for all Aggrieved Employees throughout the state of California.

16 99. Cal. Lab. § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each
17 Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not
18 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.
19 Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each
20 Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision that
21 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
22 employees.

23 100. Plaintiff seeks to recover civil penalties from Defendants for their violations of the
24 rest period requirements of Cal. Lab. Code § 226.7 throughout California on behalf of himself, the
25 State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

26 101. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the
27 unlawful conduct alleged herein, on behalf of the State, other Aggrieved Employees, and himself,
28 for Defendants' violations of Labor Code provisions including but not limited to Cal. Lab. Code §

1 558(a).

2 102. On March 12, 2024, Plaintiff gave written notice to the LWDA and to Defendants of
3 his intent to pursue civil penalties for Defendants' failure to pay for all hours worked in violation of
4 Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since
5 Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA
6 or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
7 administrative prerequisites to commence a PAGA action.

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

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

12 **SIXTH CAUSE OF ACTION**

13 **Penalties Pursuant to Cal. Lab. Code § 2699(a)**

14 **for Violations of Cal. Lab. Code § 226**

15 **(Accurate, Itemized Wage Statements)**

16 105. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
17 herein.

18 106. Defendants do not provide Plaintiff and the Aggrieved Employees with accurate
19 itemized wage statements as required by California law, as a result of the meal and rest period, off-
20 the-clock work, and overtime violations set forth above, and Defendants' failure to provide premium
21 pay for the missed meal and rest periods.

22 107. Cal. Lab. Code § 226(a) provides:

23 An employer, semimonthly or at the time of each payment of wages, shall furnish to
24 his or her employee, either as a detachable part of the check, draft, or voucher paying
25 the employee's wages, or separately if wages are paid by personal check or cash, an
26 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
27 worked by the employee, except as provided in subdivision (j), (3) the number of
28 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
rate basis, (4) all deductions, provided that all deductions made on written orders of
the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
inclusive dates of the period for which the employee is paid, (7) the name of the
employee and only the last four digits of his or her social security number or an
employee identification number other than a social security number, (8) the name and

address of the 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 payment 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 and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

108. The applicable IWC Wage Orders also establish this requirement.

109. Cal. Lab. Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

110. Due to the failure to pay one hour of premium pay to Plaintiff and the Aggrieved Employees for each missed or noncompliant meal or rest period, along with the off-the-clock work, and overtime violations, the wage statements Defendants provides their employees, including the Aggrieved Employees, do not reflect the actual gross wages earned, actual net wages earned, actual hours worked, or the appropriate applicable hourly rates. Accordingly, Defendants have knowingly and willfully failed to provide timely, accurate itemized wage statements to Plaintiff and the Aggrieved Employees in accordance with Cal. Lab. Code § 226 and the IWC Wage Orders.

111. On information and belief, Defendants' conduct has been substantially the same at all relevant times throughout the state of California.

112. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself and other current or former employees pursuant to the procedures set forth in Cal. Lab. Code § 2699.3. Cal. Lab. 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.

113. Plaintiff seeks to recover civil penalties from Defendants pursuant to Cal. Lab. Code § 2699(a) for each failure by Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts established by Cal. Lab. Code § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Cal. Lab. Code § 226(e), as prayed for herein.

114. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts established by Cal. Lab. Code § 226.3. In addition, Plaintiff seeks penalties in the amount established by Cal. Lab. Code § 226(e)(1).

115. On March 12, 2024, Plaintiff gave written notice to the LWDA and to Defendants of his intent to pursue civil penalties for Defendants' failure to pay for all hours worked in violation of Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

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

117. Wherefore, Plaintiff requests relief as hereinafter provided.

SEVENTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(f)

for Violations of Cal. Lab. Code § 2802

(Failure to Reimburse Necessary Business Expenditures)

118. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

119. Defendants fail to reimburse Plaintiff and Aggrieved Employees for all business expenses incurred while on the job. Defendants require Plaintiffs and Aggrieved Employees use

1 their personal cellphone to clock in and out of Defendants' timekeeping system and to communicate
2 with clients and supervisors about work-related topics. However, Defendants do not reimburse their
3 workers for these expenditures.

4 120. Cal. Lab. Code § 2802(a) provides as follows:

5 An employer shall indemnify his or her employee for all necessary expenditures or
6 losses incurred by the employee in direct consequence of the discharge of his or her
7 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful.

8 121. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100)
9 for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that
10 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
11 employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for
12 each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision
13 that does not provide a civil penalty if, at the time of the violation, the employer employs one or
14 more employees.

15 122. Plaintiff seeks to recover civil penalties from Defendants for their failure to reimburse
16 necessary business expenses in violation of Cal. Lab. Code § 2802 and the applicable Wage Orders
17 throughout California on behalf of the State of California and other Aggrieved Employees pursuant
18 to Cal. Lab. Code § 2699(f).

19 123. On March 12, 2024, Plaintiff gave written notice to the LWDA and to Defendants of
20 his intent to pursue civil penalties for Defendants' failure to pay for all hours worked in violation of
21 Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since
22 Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA
23 or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
24 administrative prerequisites to commence a PAGA action.

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

28 125. Wherefore, Plaintiff requests relief as hereinafter provided.

EIGHTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(a)

for Violations of Cal. Lab. Code §§ 201-203

(Waiting Time Penalties)

126. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

127. Defendants do not provide Plaintiff and Aggrieved Employees with their full wages when due under California law after their employment with Defendants ends, as a result of the meal and rest period, off-the-clock work, and overtime violations set forth above and Defendants' failure to provide premium pay for the missed meal and rest periods.

128. Cal. Lab. Code § 201 provides:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

129. Cal. Lab. Code § 202 provides:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

130. Cal. Lab. Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

131. Plaintiff and many Aggrieved Employees have left their employment with Defendants during the statutory period, at which time Defendants owed them unpaid wages for premium pay for missed or noncompliant meal and rest periods.

132. Defendants willfully refused and continue to refuse to pay Plaintiff and the Aggrieved Employees all the wages that are due and owing them, in the form of minimum wages, overtime wages, meal and rest period premium pay, and other wages due and owing, upon the end of their employment. As a result of Defendants' actions, Plaintiff and the Aggrieved Employees have

1 suffered and continue to suffer substantial losses, including lost earnings, and interest.

2 133. Defendants' willful failure to pay Plaintiff and the Aggrieved Employees the wages
3 due and owing them constitutes a violation of Cal. Lab. Code §§ 201-203. In addition, § 203
4 provides that an employee's wages will continue as a penalty up to thirty days from the time the
5 wages were due. Plaintiff seeks to recover PAGA penalties, costs, and attorneys' fees pursuant to
6 this section.

7 134. On information and belief, Defendants' conduct has been substantially the same at all
8 relevant times throughout the state of California.

9 135. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty
10 to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself
11 or herself and other current or former employees pursuant to the procedures set forth in Cal. Lab.
12 Code § 2699.3. Cal. Lab. Code § 2699(a) provides:

13 Notwithstanding any other provision of law, any provision of this code that provides
14 for a civil penalty to be assessed and collected by the Labor and Workforce
15 Development Agency or any of its departments, divisions, commissions, boards,
16 agencies or employees, for a violation of this code, may, as an alternative, be recovered
17 through a civil action brought by an Aggrieved Employee on behalf of himself or
18 herself and other current or former employees.

19 136. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by
20 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees
21 in compliance with Cal. Lab. Code §§ 201-202 in the amounts established by Cal. Lab. Code § 203.
22 Plaintiff seeks such penalties as an alternative to the penalties available under Cal. Lab. Code § 203,
23 as prayed for herein.

24 137. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the
25 unlawful conduct alleged herein, on behalf of the State, other Aggrieved Employees, and himself,
26 for Defendants' violations of Labor Code provisions including but not limited to Cal. Lab. Code §§
27 256 and 558(a).

28 138. On March 12, 2024, Plaintiff gave written notice to the LWDA and to Defendants of
his intent to pursue civil penalties for Defendants' failure to pay for all hours worked in violation of
Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since

1 Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA
2 or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
3 administrative prerequisites to commence a PAGA action.

4 139. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees
5 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to
6 an award of attorneys' fees and costs as set forth below.

7 140. Wherefore, Plaintiff requests relief as hereinafter provided.

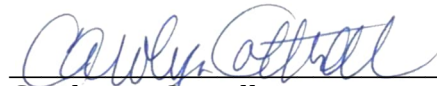
8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays for relief as follows:

- 10 1. For the Court to declare, adjudge, and decree that Defendants have violated the
11 California Labor Code as alleged herein;
- 12 2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees
13 civil penalties provided under the PAGA;
- 14 3. For interest as provided by applicable law;
- 15 4. For an award of reasonable attorneys' fees as provided by the Cal. Lab. Code §
16 2699(g)(1); Cal. Code Civ. Proc. § 1021.5; and/or any other applicable law;
- 17 5. For all costs of suit; and
- 18 6. For such other and further relief as this Court deems just and proper.

19
20 Respectfully Submitted,

21 Date: August 7, 2024

22 

23 Carolyn H. Cottrell

24 Ori Edelstein

25 Stuart H. Kluff

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

26 *Attorneys for Plaintiff, on behalf of the State of*
27 *California and Aggrieved Employees*

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