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*Attorneys for Plaintiff, on behalf of the State
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ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

01/11/2022
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

SAMUELU LEALAO, on behalf of the State of
California and Aggrieved Employees;

Plaintiff,

v.

PRIMEFLIGHT AVIATION SERVICES, INC.;
MAJESTIC TERMINAL SERVICES, INC., d/b/a
PRIMEFLIGHT CARGO SERVICES;

Defendants.

Case No.: CGC-21-594937

**FIRST AMENDED 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 Samuelu Lealao (“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 Defendants PrimeFlight Aviation
5 Services, Inc. (“PrimeFlight” and Majestic Terminal Services, Inc. d/b/a PrimeFlight Cargo Services
6 (“Majestic”) (collectively “Defendants”) on behalf of the State of California to collect statutory
7 penalties for Defendants’ systematic violations of California labor law with respect to Defendants’
8 non-exempt, hourly workers employed in California (the “Aggrieved Employees”).

9 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly workers
10 employed by Defendants. Plaintiff and Aggrieved Employees are employed by Defendants as ramp
11 agents, line queue staff, baggage service agents, shuttle drivers, wheelchair attendants, truck drivers,
12 facilities cleaning agents, and other positions with similar job duties throughout California.¹

13 3. Upon information and belief, Defendant PrimeFlight is part of the airport operations
14 industry. PrimeFlight provides air carriers and airports with a wide range of aircraft, passenger, and
15 security services. PrimeFlight is a Delaware corporation with its principal place of business located in
16 Sugar Land, Texas. PrimeFlight employs over 1,100 employees across all its locations and generates
17 over \$122.57 million in sales. PrimeFlight Aviation is registered to do business in the State of
18 California, employs hundreds of its employees in the State of California, and conducts extensive
19 activities in the State of California.

20 4. Upon information and belief, Defendant Majestic is a subsidiary of PrimeFlight and is
21 also part of the airport operations industry. Majestic provides air carriers and airports with freight and
22 cargo handling services. Majestic is a Washington corporation with its principal place of business
23 located in Sugar Land, Texas. Majestic employs over 1,000 employees across all its locations and
24 generates over \$41.39 million in sales. Majestic is registered to do business in the State of California,
25 employs hundreds of its employees in the State of California, and conduct extensive activities in the
26 State of California.

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

1 5. Plaintiff and Aggrieved Employees bring this action to challenge Defendants' policies
2 and practices of: (1) failing to compensate Plaintiff and Aggrieved Employees for all hours worked;
3 (2) failing to pay Plaintiff and Aggrieved Employees all minimum wages owed; (3) failing to pay
4 Plaintiff and Aggrieved Employees all overtime wages owed; (4) failing to make available, authorize
5 and/or permit Plaintiff and Aggrieved Employees to take timely and compliant meal and rest periods
6 to which they are entitled by law and failing to make premium payments for those non-compliant meal
7 and rest periods; (5) failing to reimburse Plaintiff and Aggrieved Employees for all necessary
8 expenditures incurred in direct consequence of the discharge of their duties; (6) failing to provide
9 Plaintiff and Aggrieved Employees accurate, itemized wage statements; and (7) failing to timely pay
10 Plaintiff and Aggrieved Employees full wages earned during employment and upon separation from
11 employment.

12 6. Plaintiff and Aggrieved Employees routinely perform off-the-clock work before the start
13 of their shifts. Defendants maintain a longstanding policy and/or practice of failing to properly
14 compensate Plaintiff and Aggrieved Employees for work-related tasks performed while "off-the-
15 clock," such tasks include, but are not limited to, waiting in long lines and going through temperature
16 checks before clocking in for the start of their shift.

17 7. In response to the COVID-19 pandemic, Defendants implemented a policy and/or
18 practice of conducting temperature checks on their employees. These temperatures checks are
19 performed while Plaintiff and Aggrieved Employees wait in line to clock in at the start of their shifts.
20 It takes Plaintiff and Aggrieved Employees approximately 10 to 30 minutes to go through the line,
21 undergo temperature checks, and clock in. As a matter of policy, this time spent working while off-
22 the-clock went unrecorded and uncompensated even though it should have been compensated at
23 minimum wage and/or overtime rates under California law, giving rise to minimum wage and overtime
24 violations.

25 8. Upon information and belief, Defendants, across California, institute a similar policy of
26 not compensating employees for time spent waiting in temperature check lines and undergoing
27 temperature checks prior to clocking in, resulting in hundreds of Aggrieved Employees performing
28 services for the benefit of Defendants while off-the-clock.

9. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been denied proper payment for all hours worked for the time spent off-the-clock, including minimum wage and/or overtime. Defendants fail to pay for any of this time worked off-the-clock in violation of the California Labor Code.

10. Defendants also routinely fail to provide Plaintiff and Aggrieved Employees with timely, legally compliant meal and rest periods, yet Defendants fail to provide Plaintiff and Aggrieved Employees with the requisite premium pay for missed meal and rest periods.

11. Additionally, Defendants constantly require Plaintiff and Aggrieved Employees to use their personal cell phones in the performance of their work duties and do not reimburse Plaintiff and Aggrieved Employees for those expenditures.

12. As a result of the above violations, Defendants fail to maintain true and accurate records of the hours Plaintiff and Aggrieved Employees actually work, and also fail to pay all wages due during employment and upon separation within the required time period.

13. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable attorneys' fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor Code Private Attorneys General Act ("PAGA").

PARTIES

14. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly workers employed by Defendants. Plaintiff and Aggrieved Employees are employed by Defendants as airport and aircraft workers, including, but not limited to, ramp agents, line queue staff, baggage service agents, shuttle drivers, wheelchair attendants, truck drivers, facilities cleaning agents, and other hourly non-exempt position with similar job duties throughout California.

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

16. Defendant PrimeFlight is a Delaware corporation with its principal place of business located in Sugar Land, Texas. PrimeFlight is registered to do business in the State of California, does business in the State of California, and employs workers, including Plaintiff and Aggrieved Employees, in the State of California.

17. Defendant Majestic is a Washington corporation with its principal place of business located in Sugar Land, Texas. Majestic is a subsidiary of PrimeFlight. Majestic is also registered to do business in the State of California, does business in the State of California, and employs workers, including Plaintiff and Aggrieved Employees, in the State of California.

18. Plaintiff is informed, believes, and thereon alleges that Defendants provide a wide range of aircraft, passenger, and security services to air carriers and airports throughout California, including in San Francisco County. Plaintiff is informed, believes, and thereon alleges that Defendants employ Aggrieved Employees, throughout California, including in San Francisco County.

19. Plaintiff is informed, believes, and thereon alleges that Defendants jointly exercise control over Plaintiff and Aggrieved Employees with respect to their employment.

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

21. Defendants employ Plaintiff and Aggrieved Employees, because Defendants, directly or indirectly, controls the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff and Aggrieved Employees.

JURISDICTION AND VENUE

22. Venue is proper in this County pursuant to Code of Civil Procedure §§ 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.

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

FACTUAL ALLEGATIONS

24. Upon information and belief, Defendants are part of the airport operations industry.

1 PrimeFlight and Majestic provide air carriers and airports with a wide range of aircraft, passenger, and
2 security services. Defendants employ hundreds of employees and conduct extensive activities in the
3 State of California.

4 25. Plaintiff was employed as a non-exempt ramp agent by Defendants from approximately
5 September 2020 through May 2021. Plaintiff was compensated at an hourly rate of \$15.00 plus a \$2.00
6 COVID-19 emergency copay for a total hourly rate of \$17.00. While Plaintiff's shift varied in length,
7 Plaintiff worked approximately eight hours per shift, five days per week. Plaintiff was scheduled to
8 work approximately forty hours or more per week.

9 26. Plaintiff is informed, believes, and thereon alleges that Aggrieved Employees were and
10 are employed by Defendants in a similar manner throughout California, including in this County, and
11 perform work materially similar to Plaintiff. Defendants pay and/or paid Aggrieved Employees,
12 including Plaintiff, on an hourly rate basis.

13 27. Plaintiff is informed, believes, and thereon alleges that the policies and practices of
14 Defendants have at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless
15 of facility or location in California.

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

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

20 30. As a matter of policy and/or practice, Defendants routinely fail to compensate Plaintiff
21 and Aggrieved Employees for all hours worked and spent under the control and supervision of
22 Defendants, *i.e.*, time spent for the benefit of Defendants.

23 31. For instance, Defendants require Plaintiff and Aggrieved Employees to wait in long
24 lines of approximately 40 to 50 people in order to get their temperatures checked before being
25 permitted to clock in for the start of their shifts. Plaintiff and Aggrieved Employees routinely wait
26 approximately 10 to 30 minutes in these lines—Defendants do not compensate Plaintiff and Aggrieved
27 Employees for this off-the-clock work.

28 32. Plaintiff and Aggrieved Employees routinely work eight hours per day and forty hours

1 per week, or more. Thus, the majority of the off-the-clock time worked should be compensated at
2 overtime rates.

3 33. As a result of these practices, Defendants deny Plaintiff and Aggrieved Employees
4 compensation for all hours worked, including minimum wage and overtime compensation, resulting
5 from Plaintiff's and Aggrieved Employees' additional pre-shift off-the-clock work.

6 34. Plaintiff is informed, believes, and thereon alleges that Defendants' same temperature
7 check protocols are used across all Defendants' facilities throughout California.

8 35. Defendants also fail to provide legally compliant meal and rest periods to Plaintiff and
9 Aggrieved Employees. Defendants' policies, practices, and procedures require Plaintiff and Aggrieved
10 Employees to often skip and/or delay their meal and/or rest periods yet do not provide them with
11 premium payments. Plaintiff and Aggrieved Employees are often denied meal and/or rest periods for
12 three reasons: (i) Defendants do not always authorize, permit, and/or make available timely meal
13 and/or rest periods to Plaintiff and Aggrieved Employees; (ii) Plaintiff and Aggrieved Employees are
14 often too busy with work during the day to have time to take bona fide meal and/or rest periods; and
15 (iii) Defendants require Plaintiff and Aggrieved Employees to remain available via phone during all
16 meal and/or rest breaks (*i.e.*, to remain on duty during all meal and/or rest breaks).

17 36. Plaintiff and Aggrieved Employees are routinely denied a duty-free, uninterrupted, and
18 timely thirty-minute meal periods by the end of the fifth hour of work. Plaintiff and Aggrieved
19 Employees are required to complete certain tasks before they are permitted to take a meal period. For
20 example, these tasks include, without limitations, loading cargo onto flights and storing freight from
21 multiple flights in warehouses—tasks which often take several hours to complete. As a result, Plaintiff
22 and Aggrieved Employees are either not permitted to take meal periods or forced to take their meal
23 periods after the fifth hour of work (*i.e.*, untimely).

24 37. When Plaintiff and Aggrieved Employees attempt meal breaks, they are routinely
25 untimely, subject to interruptions and/or shortened. For instance, Plaintiff and Aggrieved Employees
26 are often required by managers and/or supervisors to return to work before the end of their meal period.
27 When Plaintiff and Aggrieved Employees leave the premises during meal breaks, managers and/or
28 supervisors frequently call Plaintiff and Aggrieved Employees on their personal cell phones and

1 require that they return to work before the end of their meal period.

2 38. Plaintiff and Aggrieved Employees are regularly denied a duty-free, uninterrupted, and
3 timely ten-minute rest period by the end of the fourth hour of work, and again by the end of the eighth
4 hour of work. As with the missed meal periods, Plaintiff and Aggrieved Employees are routinely
5 instructed by managers and/or supervisors not to take a rest break until certain tasks are completed.

6 39. Defendants also instruct Plaintiff and Aggrieved Employees to record a thirty-minute
7 meal period even when Defendants require Plaintiff and Aggrieved Employees to work during such
8 meal period. In this way, Plaintiff's and Aggrieved Employees' time spent working during meal and
9 rest periods goes unaccounted and uncompensated.

10 40. Despite these recurring violations, Defendants do not provide Plaintiff and Aggrieved
11 Employees premium pay for missed meal and rest periods.

12 41. Defendants instruct Plaintiff and Aggrieved Employees to report untimely, missed or
13 interrupted meal and rest periods to their managers and/or supervisors. However, despite Plaintiff and
14 Aggrieved Employees reporting missed meal and rest periods, Defendants do not correct their time
15 records nor provide requisite premium payments as required by law.

16 42. Plaintiff is informed, believes, and thereon alleges that Defendants' same meal and rest
17 period practices are used across all Defendants' locations throughout California.

18 43. Further, in response to the COVID-19 pandemic, Plaintiff and Aggrieved Employees
19 received a \$2.00 COVID-19 emergency copay as part of their regular rate of pay. However,
20 Defendants did not include this copay as part of Plaintiff's and Aggrieved Employees' regular rate of
21 pay when determining their overtime rates and/or the amount of their meal period premiums, in the
22 rare instances where a meal period premium was paid. Instead, Defendants calculated Plaintiff's and
23 Aggrieved Employees' overtime rates based on their regular rate of pay prior to the implementation
24 of the COVID-19 emergency copay. Accordingly, when applied, Defendants failed to pay Plaintiff
25 and Aggrieved Employees full overtime premiums and/or full meal breaks premiums. Plaintiff is
26 informed, believes, and thereon alleges that Defendants' same practices of paying improper premiums
27 rates are used across all Defendants' locations throughout California.

28 44. Additionally, Defendants deny Plaintiff and Aggrieved Employees proper

1 reimbursement for business expenditures. Plaintiff and Aggrieved employees are constantly required
2 to use their personal cell phones in the performance of their work duties. For instance, when Plaintiff
3 and Aggrieved Employees leave the premises during meal periods, Defendants' managers and
4 supervisors frequently call Plaintiff and Aggrieved Employees on their personal cell phones and
5 require that they return to work before the end of their meal period. However, Defendants do not
6 reimburse Plaintiff and Aggrieved Employees for such expenses.

7 45. Plaintiff and Aggrieved Employees use their personal cell phones in direct consequence
8 of the discharge of their duties for the benefit of Defendants. Therefore, such expenses should be fully
9 reimbursed under California law.

10 46. Defendants' common course of wage-and-hour abuse includes routinely failing to
11 maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees. In
12 particular, Defendants have failed to record hours that Plaintiff and Aggrieved Employees worked off-
13 the-clock.

14 47. Defendants' failure to record all hours worked results in Defendants' failure to provide
15 Plaintiff and Aggrieved Employees with itemized accurate wage statements as required by California
16 law. Plaintiff and Aggrieved Employees receive wage statements that do not reflect all hours worked,
17 including overtime premiums.

18 48. Further, Defendants do not provide Plaintiff and Aggrieved Employees with full
19 payment of all wages owed upon separation from employment. At the time their employment ends,
20 Plaintiff and Aggrieved Employees are owed wages for all time worked, including overtime, premium
21 pay for non-complaint meal and rest periods, and reimbursement of business expenditures, whether
22 their termination was voluntary or involuntary; yet Defendants have failed to provide Plaintiff and
23 Aggrieved Employees with such payments within the required time period. As a result, and pursuant
24 to the California Labor Code, Defendants are subject to waiting time penalties.

25 49. Plaintiff is informed, believes, and thereon alleges that Defendants are well aware that
26 their policies and practices deprive Plaintiff and Aggrieved Employees of substantial pay for all time
27 worked, including overtime compensation and minimum wages, that Plaintiff and Aggrieved
28 Employees do not receive legally compliant meal and rest periods, are not provided with premium pay

1 for such non-complaint meal and rest periods, and are not reimbursed for necessarily incurred business
2 expenditures. Thus, Defendants' denial of wages, premiums, compliant meal and rest periods, and
3 reimbursement for business expenditures to Plaintiff and Aggrieved Employees is and/or was
4 deliberate and willful.

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

7 51. Defendants' conduct was willful, carried out in bad faith, and triggers significant civil
8 penalties in an amount to be determined at trial.

9 **FIRST CAUSE OF ACTION**

10 **Penalties Pursuant to Labor Code § 2699(a)**

11 **(On Behalf of the State of California and Aggrieved Employees)**

12 52. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
13 herein.

14 53. Labor Code § 2699(a) provides:

15 Notwithstanding any other provision of law, any provision of this code that provides
16 for a civil penalty to be assessed and collected by the Labor and Workforce
17 Development Agency or any of its departments, divisions, commissions, boards,
18 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.

19 54. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and
20 unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he
21 or she quits, at the latest.

22 55. Labor Code § 203 provides, in relevant part:

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

26 56. Labor Code § 256 provides: "The Labor Commissioner shall impose a civil penalty in
27 an amount not exceeding 30 days' pay as waiting time under the terms of Section 203."
28

1 57. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
2 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and the Aggrieved Employees
3 in compliance with Labor Code §§ 201-202 and to pay wages owed at the end of employment to
4 Plaintiff and Aggrieved Employees in compliance with Labor Code § 203

5 58. Labor Code § 226(a) provides:

6 Every employer shall, semimonthly or at the time of each payment of wages, furnish
7 each of his or her employees, either as a detachable part of the check, draft, or voucher
8 paying the employee's wages, or separately when wages are paid by personal check or
9 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
10 total hours worked by the employee, except for any employee whose compensation is
11 solely based on a salary and who is exempt from payment of overtime under
12 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
13 Commission, (3) the number of piece-rate units earned and any applicable piece rate
14 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
15 deductions made on written orders of the employee may be aggregated and shown as
16 one item, (5) net wages earned, (6) the inclusive dates of the period for which the
17 employee is paid, (7) the name of the employee and his or her social security number,
18 (8) the name and address of the legal entity that is the employer, and (9) all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate by the employee.

21 59. Labor Code § 226(e)(1) provides, in relevant part:

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

28 60. Labor Code § 226.3 provides:

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

61. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage
statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226.3.

1 In addition, Plaintiff seeks penalties in the amount established by Labor Code § 226(e)(1), as prayed
2 for herein.

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

7 63. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
8 Employees, and himself as set forth in Labor Code § 2699.

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

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

13 **SECOND CAUSE OF ACTION**

14 **Penalties Pursuant to Labor Code § 2699(f)**

15 **(On Behalf of the State of California and Aggrieved Employees)**

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

18 67. Labor Code § 2699(f) provides:

19 For all provisions of this code except those for which a civil penalty is specifically
20 provided, there is established a civil penalty for a violation of these provisions, as
21 follows: . . . (2) If, at the time of the alleged violation, the person employs one or more
22 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.

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

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

28 70. IWC Wage Orders 4-2001(K) and 9-2001(H) define hours worked as “the time during

1 which an employee is subject to the control of an employer and includes all the time the employee is
2 suffered or permitted to work, whether or not required to do so.”

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

5 72. Labor Code § 510 provides, in relevant part:

6 Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one
7 workday and any work in excess of 40 hours in any one workweek and the first eight
8 hours worked on the seventh day of work in any one workweek shall be compensated
9 at the rate of no less than one and one-half times the regular rate of pay for an employee.
10 Any work in excess of 12 hours in one day shall be compensated at the rate of no less
11 than twice the regular rate of pay for an employee. In addition, any work in excess of
12 eight hours on any seventh day of a workweek shall be compensated at the rate of no
13 less than twice the regular rate of pay of an employee. Nothing in this section requires
14 an employer to combine more than one rate of overtime compensation in order to
15 calculate the amount to be paid to an employee for any hour of overtime work.

12 73. Labor Code § 1197 provides:

13 The minimum wage for employees fixed by the commission or by any applicable state
14 or local law, is the minimum wage to be paid to employees, and the payment of a lower
15 wage than the minimum so fixed is unlawful. This section does not change the
16 applicability of local minimum wage laws to any entity.

16 74. Labor Code § 1194 provides, in relevant part:

17 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
18 than the legal minimum wage or the legal overtime compensation applicable to the
19 employee is entitled to recover in a civil action the unpaid balance of the full amount
20 of this minimum wage or overtime compensation, including interest thereon,
21 reasonable attorney’s fees, and costs of suit.

21 75. Labor Code §§ 226.7, 512, and IWC Wage Orders 4-2001 and 9-2001 require
22 Defendants to authorize, permit, and/or make available timely and compliant meal and rest periods to
23 its employees. Labor Code §§ 226.7, 512, and IWC Wage Orders 4-2001 and 9-2001 prohibit
24 employers from employing an employee for more than five hours without a meal period of not less
25 than thirty minutes. Unless the employee is relieved of all duty during the thirty-minute meal period
26 and ten-minute rest period, the employee is considered “on duty” and the meal period is counted as
27 time worked under the applicable wage orders.

28 76. Labor Code § 2802 require Defendants to indemnify employees for all necessary

1 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
2 duties.

3 77. To the extent than any violation alleged herein does not carry penalties under Labor
4 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
5 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
6 by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff and
7 Aggrieved Employees for violations of Labor Code provisions including, but not limited, to, Labor
8 Code §§ 201-203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, IWC Wage Orders 4-2001 and
9 9-2001, and any other violation alleged herein that does not carry penalties under Labor Code §
10 2699(a).

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

15 79. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
16 Employees, and herself as set forth in Labor Code § 2699(g)(1).

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

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

21 **PRAYER FOR RELIEF**

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

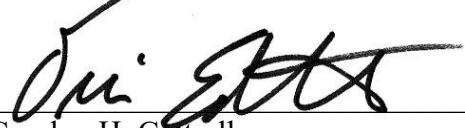
- 23 1. For the Court to declare, adjudge, and decree that Defendants have violated the
24 California Labor Code as alleged herein;
- 25 2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees
26 civil penalties provided under the PAGA;
- 27 3. For interest as provided by applicable law;
- 28 4. For an award of reasonable attorneys' fees;

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- 5. For all costs of suit; and
- 6. For such other and further relief as this Court deems just and proper.

Date: January 11, 2022

Respectfully Submitted,



Carolyn H. Cottrell
Ori Edelstein
Philippe M. Gaudard
Frank A. Perez
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

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

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Date: January 11, 2022

Carolyn H. Cottrell
Ori Edelstein
Philippe M. Gaudard
Frank A. Perez
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**

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

1 **PROOF OF SERVICE**

2
3 I, the undersigned, declare that I am, and was at the time of service of the papers herein
4 referred to, over the age of 18 years and not a party to the within action or proceeding. I am
employed at Schneider Wallace Cottrell Konecky LLP located at 2000 Powell Street, Suite 1400,
Emeryville, California 94608.

5 On January 11, 2022 I served the following document(s):

6 **FIRST AMENDED COMPLAINT FOR PENALTIES PURSUANT TO SECTIONS**
7 **2699(a) AND (f) OF THE CALIFORNIA LABOR CODE**
8 **PRIVATE ATTORNEYS GENERAL ACT**
9 **DEMAND FOR JURY TRIAL**

10 on the following person(s) listed below, as follows:

11 Collin D. Cook (SBN 251606)
12 Aaron M. Cargain (SBN 281336)
13 Albert C. Lin (SBN 304808)
14 FISHER & PHILLIPS LLP
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INC.**
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16 ☒ **BY EMAIL:** Eugene Huffman, Paralegal, has submitted an electronic version of the
17 above-referenced document to the person(s) whose email address(es) are known to me as
18 listed above.

19 I declare under penalty of perjury under the laws of the State of California and the
20 United States of America that the foregoing is true and correct.

21 Executed on January 11, 2022, in Los Angeles, California.

22
23 
24 Eugene Huffman