

Carolyn H. Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
Andrew T. Cooledge (SBN 273909)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
dleimbach@schneiderwallace.com
acooledge@schneiderwallace.com
*Attorneys for Plaintiffs, on behalf of the
State of California and Aggrieved Employees*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JENNIFER BURSACK, MICHELLE MANESSE,
NATASHA GILMAN, CURTIS ALLEN,
JOSHUA PAVELKO, CONSTANCE GORMAN,
MELINDA GUERRERO, KENNETH CHUNG,
LISA FLOWER, EDWARD LIU, MARVIN
MENEFEE, HEATHER RANDRUP, JUNG SEO,
JASON SHUMSKI, JENNIFER TALLEY,
JENNIFER VENEGAS, FRANK VASQUEZ,
ROBERT RODRIGUEZ, LAURA BRIGHT,
RYAN LEONARDO, KARYN STEVENS, and
LUIS ROSSI, each as an individual and on behalf
of all other aggrieved employees,
Plaintiffs,
v.
LOANDEPOT.COM, LLC, a Delaware
corporation; and DOES 1-50, inclusive,
Defendant.

Honorable William Claster
Department CX101

Case No.: 30-2022-01298792-CU-OE-CXC

THIRD AMENDED COMPLAINT FOR:

- (1) **Penalties Pursuant to The Private Attorneys General Act [Labor Code § 2699(a)]; and**
(2) **Penalties Pursuant to The Private Attorneys General Act [Labor Code § 2699(f)].**

JURY TRIAL DEMANDED

1 **INTRODUCTION**

2 1. Plaintiffs Jennifer Bursack, Michelle Manesse, Natasha Gilman, Curtis Allen, Joshua
3 Pavelko, Constance Gorman, Melinda Guerrero, Kenneth Chung, Lisa Flower, Edward Liu, Marvin
4 Menefee, Heather Randrup, Jung Seo, Jason Shumski, Jennifer Talley, Jennifer Venegas, Frank
5 Vasquez, Robert Rodriguez, Laura Bright, Ryan Leonardo, Karyn Stevens, and Luis Rossi
6 (collectively “Plaintiffs”) bring this action as a representative action pursuant to the Private
7 Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”), on behalf of non-exempt
8 employees employed, or formerly employed, within the State of California by Defendant
9 LOANDEPOT.COM, LLC (“Defendant” or “Loan Depot”) and any subsidiaries or affiliated
10 companies (hereinafter, along with DOES 1 through 50, collectively referred to as “Defendants”).

11 2. Plaintiffs bring this action against Defendants for PAGA penalties and enforcement
12 based on violations of California wage and hour laws stemming from Defendants’ unlawful policies
13 and practices, including failing to pay all wages owed, including minimum and overtime wages;
14 failing to provide or make available meal periods and rest breaks entitled by law, and failing to pay
15 premium payments for non-compliant meal periods and/or rest breaks; failing to reimburse work-
16 related expenses incurred in the discharge of job duties; failing to provide accurate wage statements;
17 failing to pay all wages due upon termination; and failing to maintain accurate records of hours
18 worked and wages earned.

19 3. By this Third Amended Complaint, Plaintiffs assert PAGA claims on behalf of
20 Aggrieved Employees only. The Parties have reached a settlement in principle of Plaintiffs’
21 individual claims only, but have not settled Plaintiffs’ PAGA claims on behalf of Aggrieved
22 Employees. This settlement also includes the individual claims asserted by the plaintiffs (which
23 include Luis Rossi) in a related case, *Ekhmies et al. v. LoanDepot.com, LLC et al.*, Case No. 30-
24 2022-01244317. The Parties have agreed and stipulated that those Plaintiffs who still have PAGA
25 claims will pursue their representative PAGA claims in court by this action.

26 4. Accordingly, Plaintiffs add by this Third Amended Complaint Plaintiff Rossi, who
27 will participate in the case as a plaintiff and PAGA representative; and allege in this Third Amended
28 Complaint their representative PAGA claims only, on behalf of Aggrieved Employees, including

1 Luis Rossi and the other named Plaintiffs, consistent with PAGA case law including the California
2 Supreme Court’s decision in *Adolph v. Uber Technologies, Inc.*, 14 Cal. 5th 1104 (2023).

3 5. Plaintiff Luis Rossi’s claims in this Third Amended Complaint, by stipulation of the
4 Parties, relate back to Plaintiff Rossi’s PAGA notice dated June 1, 2022 and the First Amended
5 Complaint in *Ekhmies* with respect to Rossi’s PAGA claims against Defendants. Rossi’s claims in
6 the Third Amended Complaint and the *Ekhmies* First Amended Complaint rest on the same general
7 set of facts—Defendants’ alleged failure to pay for all hours worked, to pay all overtime wages due,
8 to provide compliant meal and rest breaks, and to reimburse all expenses necessarily incurred by
9 employees—and involve the same injuries, as they seek recovery for the same wages and violations
10 alleged in the *Ekhmies* complaint. Additionally or alternatively, in the interests of justice, the Parties
11 agree that Rossi’s statute of limitations shall be tolled with respect to the time between the filing of
12 the *Ekhmies* complaint and the complaint initiating this action. This shall not impact the claims
13 asserted by the other Plaintiffs in this case.

14 6. Plaintiffs seek penalties pursuant to PAGA based on Defendants’ violations of Labor
15 Code §§ 201-203, 210, 226, 226.3, 226.7, 558, 512, 1174.5, 2802, and 2698 *et seq*, and the
16 applicable Industrial Welfare Commission (“IWC”) Orders regulating wages including without
17 limitation IWC Order No. 4-2001 (hereinafter referred to for convenience as “Wage Order No. 4”);
18 as well as interest, attorney’s fees and costs, equitable relief, declaratory and/or injunctive relief, and
19 other relief as requested in this Third Amended Complaint and/or otherwise provided by law.

20 **THE PARTIES**

21 **Plaintiffs**

22 7. Plaintiff Jennifer Bursack is an individual over the age of eighteen, and at all times
23 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
24 information and belief, Plaintiff Bursack worked for Defendant as a non-exempt, hourly mortgage
25 banker in Foothill Ranch, California from approximately April 2020 to April 2022.

26 8. Plaintiff Michelle Manesse is an individual over the age of eighteen, and at all times
27 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
28 information and belief, Plaintiff Manesse worked for Defendant as a non-exempt, hourly employee

1 in Foothill Ranch, California from approximately October 25, 2021 to March 8, 2022.

2 9. Plaintiff Natasha Gilman is an individual over the age of eighteen, and at all times
3 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
4 information and belief, Plaintiff Gilman worked for Defendant as a non-exempt, hourly senior
5 account manager in Hollister, California from approximately September 2019 to April 2022.

6 10. Plaintiff Curtis Allen is an individual over the age of eighteen, and at all times
7 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
8 information and belief, Plaintiff Allen worked for Defendant as a non-exempt, hourly Mortgage
9 Loan Officer in California from approximately September 2021 to June 2022.

10 11. Plaintiff Joshua Pavelko is an individual over the age of eighteen, and at all times
11 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
12 information and belief, Plaintiff Pavelko worked for Defendant as a non-exempt, hourly Loan
13 Officer in California from approximately August 30, 2021 to April 15, 2022.

14 12. Plaintiff Constance Gorman is an individual over the age of eighteen, and at all times
15 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
16 information and belief, Plaintiff Gorman worked for Defendant as a non-exempt hourly Loan
17 Processor in California from approximately October 05, 2020 to May 13, 2022.

18 13. Plaintiff Melinda Guerrero is an individual over the age of eighteen, and at all times
19 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
20 information and belief, Plaintiff Guerrero worked for Defendant as a non-exempt hourly Loan
21 Processor in California from approximately April 12, 2021 to April 26, 2022.

22 14. Plaintiff Kenneth Chung is an individual over the age of eighteen, and at all times
23 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
24 information and belief, Plaintiff Chung worked for Defendant as a non-exempt hourly Mortgage
25 Loan Officer in California from approximately September 2021 to June 24, 2022.

26 15. Plaintiff Lisa Flower is an individual over the age of eighteen, and at all times
27 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
28 information and belief, Plaintiff Flower worked for Defendant as a non-exempt, hourly Underwriter

1 in California from approximately August 2019 to April 26, 2022.

2 16. Plaintiff Edward Liu is an individual over the age of eighteen, and at all times
3 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
4 information and belief, Plaintiff Liu worked for Defendant as a non-exempt hourly Mortgage
5 Underwriter in California from approximately June 2019 to March 2022.

6 17. Plaintiff Marvin Menefee is an individual over the age of eighteen, and at all times
7 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
8 information and belief, Plaintiff Menefee worked for Defendant as a Mortgage Closer Funder in
9 California from approximately June 2020 to March 25, 2022.

10 18. Plaintiff Heather Randrup is an individual over the age of eighteen, and at all times
11 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
12 information and belief, Plaintiff Randrup worked for Defendant as a non-exempt hourly Loan
13 Processing Team Leader in California from approximately August 2020 to June 2022.

14 19. Plaintiff Jung Seo is an individual over the age of eighteen, and at all times
15 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
16 information and belief, Plaintiff Seo worked for Defendant as a non-exempt hourly Loan Officer in
17 California from approximately February 2020 to April 2022.

18 20. Plaintiff Jason Shumski is an individual over the age of eighteen, and at all times
19 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
20 information and belief, Plaintiff Shumski worked for Defendant as a non-exempt hourly Senior
21 Account Manager in California from approximately October 20, 2020 to March 13, 2022.

22 21. Plaintiff Jennifer Talley is an individual over the age of eighteen, and at all times
23 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
24 information and belief, Plaintiff Talley worked for Defendant as a Loan Closer in California from
25 approximately October 26, 2020 to August 12, 2022.

26 22. Plaintiff Jennifer Venegas is an individual over the age of eighteen, and at all times
27 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
28 information and belief, Plaintiff Venegas worked for Defendant as a non-exempt hourly Loan

1 Officer in California from approximately July 2021 to May 2022.

2 23. Plaintiff Frank Vasquez is an individual over the age of eighteen, and at all times
3 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
4 information and belief, Plaintiff Vasquez worked for Defendant as a non-exempt hourly Senior Loan
5 Officer in California, including Irvine and Foothill Ranch, from approximately November 2018 to
6 November 2022.

7 24. Plaintiff Robert Rodriguez is an individual over the age of eighteen, and at all times
8 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
9 information and belief, Plaintiff Rodriguez worked for Defendant as a non-exempt, hourly Loan
10 Officer in California from approximately August 2020 to June 7, 2022.

11 25. Plaintiff Laura Bright is an individual over the age of eighteen, and at all times
12 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
13 information and belief, Plaintiff Bright worked for Defendant as a non-exempt hourly underwriter in
14 California from approximately November 2020 to August 2022.

15 26. Plaintiff Ryan Leonardo is an individual over the age of eighteen, and at all times
16 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
17 information and belief, Plaintiff Leonardo worked for Defendant as a non-exempt, hourly license
18 lending officer and mortgage banker in California from approximately May 2019 to October 2022.

19 27. Plaintiff Karyn Stevens is an individual over the age of eighteen, and at all times
20 mentioned in this Third Amended Complaint was a resident of the State of California. Upon
21 information and belief, Plaintiff Stevens worked for Defendant as a non-exempt, hourly loan
22 processor and later underwriter administrator in California from approximately September 2019 to
23 August 2022.

24 28. Plaintiff Luis Rossi (named in the *Ekhmies* complaint as Lou Rossi) is and was, at all
25 times relevant to this Complaint, an adult individual who lived in California and worked for
26 Defendant in the City of Lake Forest in the County of Orange, California. Defendant employed
27 Plaintiff Rossi as a Loan Officer from in or about October 01, 2020, until on or about March 31,
28 2022.

1 29. Aggrieved Employees are former hourly, non-exempt employees of Defendants,
2 including but not limited to loan officers, senior loan officers, lending officers, customer lending
3 representatives, business intelligence analysts, loan consultants, escrow administrators, mortgage
4 loan officers, mortgage consultants, mortgage bankers, loan specialists, loss mitigation specialists,
5 foreclosure specialists, tax specialists, and other employees with similar job duties, in California.

6 **Defendant**

7 30. Plaintiffs are informed and believe and thereon allege that Defendant
8 LoanDepot.com, LLC (“Defendant”) is a residential and consumer lending company. Defendant is a
9 Delaware limited liability company headquartered in Foothill Ranch, California. Defendant is
10 registered to do business in California, does business in California, and employs and employed
11 thousands of hourly, non-exempt employees, including Plaintiffs in California. Defendant may be
12 served with process by serving its registered agent, Registered Agent Solutions, Inc., 720 14th
13 Street, Sacramento, California 95814.

14 31. Plaintiffs are unaware of the true names or capacities of Defendants sued herein
15 under the fictitious names DOES 1–50, inclusive, but pray for leave to amend and serve such
16 fictitiously-named Defendants pursuant to California Code of Civil Procedure § 474 once their
17 names and capacities become known.

18 32. Plaintiffs are informed and believe and thereon allege that DOES 1–50, inclusive, are
19 the partners, agents, owners, shareholders, managers, principals or employees of Defendant and/or
20 were acting on behalf of Defendant in doing the acts and omissions alleged herein.

21 33. Plaintiffs are informed and believe and thereon allege that each and all of the acts and
22 omissions alleged herein was performed by or is attributable to Defendants, each acting as the agent
23 for the other, with legal authority to act on the other’s behalf. The acts of any and all Defendants
24 were in accordance with, and represent the policy of, Defendants.

25 34. At all times relevant herein, Defendants ratified each and every act or omission
26 complained of herein. At all times herein mentioned, Defendants aided and abetted the acts and
27 omissions of each and all of the other Defendants in proximately causing the damages herein
28 alleged.

35. Defendants, directly or indirectly, controlled at all relevant times the employment terms, pay practices, timekeeping practices, and daily work of Plaintiffs and Aggrieved Employees. Thus, each Defendant is an “employer” as that term is used in the Labor Code and IWC Wage Orders.

36. 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 Plaintiffs and Aggrieved Employees in California and in this judicial district. At all relevant times, each Defendant was a “person” as defined in Labor Code § 18 and Business and Professions Code § 17201.

37. Plaintiffs are informed and believe and thereon allege that Defendants are in some manner, intentionally, negligently or otherwise, responsible for the acts, omissions, occurrences and transactions alleged herein.

JURISDICTION AND VENUE

38. The civil penalties sought by Plaintiffs exceed the minimum jurisdiction limits of the Orange County Superior Court and will be established according to proof at trial.

39. This Court has jurisdiction of this action pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other courts.

40. This Court has jurisdiction over LoanDepot.com, LLC because it does business in California, is authorized to do business in the State of California, and is registered with the California Secretary of State.

41. This Court has jurisdiction over the violations alleged herein and over Defendants because upon information and belief, each party has sufficient minimum contacts in California or otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice. Defendant at all relevant times employed Plaintiffs and Aggrieved Employees who performed their work duties throughout the State of California, including in the County of Orange.

42. This Court has general jurisdiction over Plaintiffs' and the Aggrieved Employees'

claims pursuant to the California Labor Code Private Attorneys General Act.

43. Venue is proper in this Court because, upon information and belief, the named Defendant maintains an office in this county and the acts and omissions alleged herein took place in this county.

///

GENERAL ALLEGATIONS AND SUMMARY OF CLAIMS

44. Loan Depot is a residential and consumer lending company with locations throughout California, including the County of Orange.

45. Plaintiffs and Aggrieved Employees are current and former employees of Defendants in California, including but not limited to loan officers, senior loan officers, lending officers, customer lending representatives, business intelligence analysts, loan consultants, escrow administrators, mortgage loan officers, mortgage consultants, mortgage bankers, loan specialists, loss mitigation specialists, foreclosure specialists, tax specialists, and other employees with similar job duties. Plaintiffs' and Aggrieved Employees' job duties generally include but are not limited to providing customer service and support to Defendants' lending clients.

46. Plaintiffs are informed and believe and thereon allege that the policies and practices of Defendants have at all relevant times been similar for Plaintiffs and Aggrieved Employees, regardless of the particular job assignment or location.

47. The nature of Plaintiffs' and Aggrieved Employees' work, providing loan services to clients, is time-sensitive, rigorous, and nonstop. As such, Plaintiffs and Aggrieved Employees were frequently prevented from taking timely meal periods and rest breaks and were not relieved of all duties to take such breaks due to constant work demands and staffing shortages.

48. Plaintiffs and Aggrieved Employees were regularly and systematically prohibited by Defendants from taking timely, compliant, uninterrupted, unpaid 30-minute meal periods for every five hours worked as required by Labor Code § 512 and Wage Order No. 4, nor were Plaintiffs or Aggrieved Employees paid a one-hour premium wage at their regular rate of pay for each missed, short, late or interrupted meal period.

49. Plaintiffs and Aggrieved employees were regularly and systematically prohibited by

1 Defendants from taking timely, compliant, uninterrupted paid 10-minute rest periods for every four
2 hours worked or major fraction thereof as required by Labor Code §§ 226.7 and 512 and Wage
3 Order No. 4, nor were Plaintiffs or Aggrieved Employees paid a one-hour premium wage at their
4 regular rate of pay for each missed, short, late or interrupted rest period.

5 50. Defendants knew or reasonably should have known that Plaintiffs and Aggrieved
6 Employees were not timely relieved of all duties and were impeded or prevented from taking timely
7 all meal periods and rest breaks.

8 51. Defendants maintained a policy and/or practice of failing to properly compensate
9 Plaintiffs and Aggrieved Employees for work related tasks performed while “off-the-clock,” either
10 before/after their scheduled shifts or during their meal periods while clocked out. Defendants’ failure
11 to compensate Plaintiffs and Aggrieved Employees for work performed while off-the-clock results
12 in a failure to compensate Plaintiffs and Aggrieved Employees for all time spent working for
13 Defendants’ benefit, including at minimum wage, overtime, and/or double time under California
14 law.

15 52. Further, many Plaintiffs and Aggrieved Employees receive commission payments
16 from Defendant that are not factored into the regular rate for purposes of calculating overtime
17 compensation, resulting in them performing services for the benefit of Defendant without proper
18 compensation.

19 53. Plaintiffs are informed, believe, and thereon allege that Defendants utilize the same or
20 substantially similar timekeeping mechanisms throughout all of California.

21 54. As a result of these policies and/or practices, Plaintiffs and Aggrieved Employees are
22 denied compensation for all hours worked, including minimum wages and overtime.

23 55. Defendants’ common course of wage-and-hour abuse includes routinely failing to
24 maintain true and accurate records of the hours worked by Plaintiffs and Aggrieved Employees.
25 Defendants have failed to record hours that Plaintiffs and Aggrieved Employees work off-the-clock,
26 as well as non-compliant meal and rest periods.

27 56. Defendants do not provide Plaintiffs and Aggrieved Employees with accurate wage
28 statements as required by California law. Plaintiffs and Aggrieved Employees receive wage

statements that do not reflect all hours worked, premium pay for missed meal and rest periods, and applicable overtime premiums.

57. Defendants also fail to reimburse Plaintiffs and Aggrieved Employees for all business expenses incurred while on the job. Plaintiffs and Aggrieved Employees must use their personal cellphones and personal cell voice, text, and data plans for extensive, work-related communications, such as speaking with supervisors, clients, and coworkers about mortgage loans in process. Defendants fail to reimburse Plaintiffs and Aggrieved Employees for expenses incurred while using their home internet to complete required job duties. Defendants fail to reimburse Plaintiffs and Aggrieved Employees for such “out-of-pocket” business expenses in violation of Labor Code § 2802.

58. Defendants do not provide Plaintiffs and Aggrieved Employees with full payment of all wages owed upon separation from employment. At the time their employment ends, Plaintiffs and Aggrieved Employees are owed wages and premium pay for all time worked, overtime, and missed meal and rest breaks, whether their termination was voluntary or involuntary; yet Defendants fail to provide Plaintiffs and Aggrieved Employees with such payments. As a result, Defendants are subject to waiting time penalties pursuant to the California Labor Code.

59. Plaintiffs are informed and believe and thereon allege that Defendants are aware that their policies and practices deprive Plaintiffs and Aggrieved Employees of substantial pay for all time worked, including overtime compensation and minimum wages, and that their workers do not receive legally compliant meal and rest periods. Thus, Defendants’ denial of wages, compliant meal and rest periods, and premium payments is and was deliberate and willful.

60. Plaintiffs are informed and believe and thereon allege that Defendants’ unlawful conduct has been widespread, repeated, and consistent as to the Plaintiffs and Aggrieved Employees throughout Defendants’ operations in California.

61. Defendants’ conduct was willful, carried out in bad faith, and triggers significant civil penalties in an amount to be determined at trial.

62. Defendants’ company-wide policies and practices violate California law as pled herein. Plaintiffs seek penalties pursuant to PAGA based on Defendants’ violations of the Labor

Code alleged herein, interest, attorney’s fees and costs, injunctive and/or declaratory relief, and other relief as provided by law and/or requested in this Third Amended Complaint

///

///

///

///

///

FIRST CAUSE OF ACTION

1. PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT

2. [Labor Code § 2699(a)]

3. (Brought by All Plaintiffs on Behalf of Aggrieved Employees,

4. Against Defendant and Does 1-50, inclusive)

63. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth herein.

64. PAGA expressly establishes that penalties pursuant to any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (the “LWDA”), or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

65. Plaintiffs Curtis Allen, Jennifer Bursack, Kenneth Chung, Lisa Flower, Natasha Gilman, Constance Gorman, Melinda Guerrero, Edward Liu, Michelle Manesse, Marvin Menefee, Joshua Pavelko, Robert Rodriguez, Heather Randrup, Jung Seo, Jason Shumski, Jennifer Talley, Frank Vasquez, Jennifer Venegas, Laura Bright, Ryan Leonardo, Karyn Stevens, and Luis Rossi (collectively the “PAGA Plaintiffs”), by their employment with Defendants and Defendants’ violations of the Labor Code as alleged herein, are Aggrieved Employees with standing to bring an action under PAGA.

66. Defendants do not provide PAGA Plaintiffs and Aggrieved Employees with accurate itemized wage statements as required by California law, as a result of the meal and rest break, off-the-clock work, and overtime violations set forth above, and Defendants’ failure to provide premium

1 pay for the missed breaks.

2 67. Labor Code § 226(a) provides:

3 An employer, semimonthly or at the time of each payment of wages,
4 shall furnish to his or her employee, either as a detachable part of the
5 check, draft, or voucher paying the employee's wages, or separately if
6 wages are paid by personal check or cash, an accurate itemized
7 statement in writing showing (1) gross wages earned, (2) total hours
8 worked by the employee, except as provided in subdivision (j), (3) the
9 number of piece-rate units earned and any applicable piece rate if the
10 employee is paid on a piece-rate basis, (4) all deductions, provided that
11 all deductions made on written orders of the employee may be
12 aggregated and shown as one item, (5) net wages earned, (6) the
13 inclusive dates of the period for which the employee is paid, (7) the
14 name of the employee and only the last four digits of his or her social
15 security number or an employee identification number other than a
16 social security number, (8) the name and address of the legal entity that
17 is the employer ... and (9) all applicable hourly rates in effect during
18 the pay period and the corresponding number of hours worked at each
19 hourly rate by the employee ... The deductions made from payment of
20 wages shall be recorded in ink or other indelible form, properly dated,
21 showing the month, day, and year, and a copy of the statement and the
22 record of the deductions shall be kept on file by the employer for at
23 least three years at the place of employment or at a central location
24 within the State of California.

25 *See also* Wage Order No. 4.

26 148. Labor Code § 226(e)(1) provides:

27 An employee suffering injury as a result of a knowing and intentional
28 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.

68. Defendants' failure to provide PAGA Plaintiffs and Aggrieved Employees with
compliant meal and rest periods is and was in violation of Labor Code § 512 and Wage Order No. 4.

69. Due to Defendants' failure to pay one hour of premium pay to PAGA Plaintiffs for
each missed or noncompliant meal period, along with the off-the-clock work, and overtime
violations, the wage statements Defendants provided PAGA Plaintiffs did not reflect the actual gross
wages earned, actual net wages earned, or actual hours worked. Accordingly, Defendants have
knowingly and willfully failed to provide timely, accurate itemized wage statements to PAGA

1 Plaintiffs in accordance with Labor Code §§ 226, 226.3, and 226.6, and Wage Order No. 4.

2 70. On information and belief, Defendants violated Labor Code §§ 201-202, 510, 512,
3 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and Wage Order No. 4 pertaining to payment of wages,
4 including minimum wage, for all hours worked, including but not limited to failing to pay PAGA
5 Plaintiffs at no less than minimum wage for all time spent working for Defendants, and/or by failing
6 to pay the legal overtime rate as set forth above.

7 ///

8 71. Labor Code §§ 201-202 require employers to immediately pay wages earned and
9 unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he
10 or she quits, at the latest.

11 72. Defendants failed to timely pay PAGA Plaintiffs all wages owed pursuant to Labor
12 Code §§ 201-202. PAGA Plaintiffs seek civil penalties pursuant to section 2699(a) for Defendants'
13 failure to timely pay all wages owed to PAGA Plaintiffs in compliance with sections 201-202 in the
14 amounts established by sections 203 and 256. [See Labor Code §§ 201-203, 256, 2699(a).] PAGA
15 Plaintiffs seek such penalties as an alternative to the penalties available under section 203, as prayed
16 for herein.

17 73. On information and belief, Defendants violated Labor Code § 2802 and Wage Order
18 No. 4 pertaining to reimbursement of necessary business expenses, by failing and refusing to
19 reimburse PAGA Plaintiffs' expenses necessarily incurred in the discharge of job duties for
20 Defendants.

21 74. On information and belief, Defendants violated Labor Code § 1174(d) and IWC
22 Wage Order 4-2001(7) by failing to keep accurate records, making it difficult to calculate the
23 minimum wage compensation due to PAGA Plaintiffs.

24 75. Defendants did not pay PAGA Plaintiffs all wages when due under California law,
25 including but not limited to after the termination of PAGA Plaintiffs' employment, as a result of the
26 meal break, off-the-clock work, and overtime violations set forth herein and Defendants' failure to
27 provide premium pay for the noncompliant breaks. PAGA Plaintiffs left employment with
28

Defendants during the statutory period, at which time Defendants owed PAGA Plaintiffs unpaid wages for premium pay for missed and/or noncompliant meal periods.

76. Defendants willfully refused and continue to refuse to pay PAGA Plaintiffs all the wages that are due and owing to them, in the form of meal period premium pay and other wages due and owing, upon the end of their employment. Defendants' failure to pay all premiums required for noncompliant meal periods is and was in violation of Labor Code § 226.7.

77. As a result of Defendants' actions, PAGA Plaintiffs have suffered and continue to suffer substantial losses, including lost earnings, and interest.

78. Labor Code § 2699(a) provides:

5. 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.

79. Pursuant to Labor Code § 2699.3(a)(1) and (2), on August 31, 2022, PAGA Plaintiffs Jennifer Bursack, Michelle Manesse, Curtis Allen, Joshua Pavelko, Natasha Gilman, and Robert Rodriguez provided the LWDA with notice of their intention to file these claims, and 65 calendar days have passed without notice from the LWDA. These plaintiffs have satisfied the administrative prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

80. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 22, 2022, PAGA Plaintiffs Constance Gorman, Kenneth Chung, Heather Randrup, Jung Seo, Jennifer Venegas, Melinda Guerrero, Lisa Flower, Edward Liu, Marvin Menefee, Jason Shumski, and Jennifer Talley provided the LWDA with notice of their intention to file these claims, and 65 calendar days have passed without notice from the LWDA. These plaintiffs have satisfied the administrative prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

81. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 30, 2022, PAGA Plaintiff Frank Vasquez provided the LWDA with notice of his intention to file these claims, and 65 calendar days have passed without notice from the LWDA. Vasquez has satisfied the administrative prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

82. Pursuant to Labor Code § 2699.3(a)(1) and (2), on January 31, 2023, PAGA Plaintiffs Laura Bright, Ryan Leonardo, and Karyn Stevens provided the Labor and Workforce Development Agency (“LWDA”) with notice of their intention to file a claim under PAGA, and 65 calendar days have passed without notice from the LWDA. These plaintiffs have satisfied the administrative prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

83. PAGA Plaintiff Luis Rossi gave notice to the LWDA of his intention to file these claims on or about June 1, 2022, and 65 calendar days have passed without notice from the LWDA. Rossi has satisfied the administrative prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

84. Therefore, all PAGA Plaintiffs have satisfied all necessary administrative prerequisites to bring this action.

85. PAGA Plaintiffs seek civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, alleged above, to provide PAGA Plaintiffs accurate, itemized wage statements in compliance with section 226(a), additionally or alternatively to the penalties established by sections 226(e) and 226.3, as prayed for herein. PAGA Plaintiffs seek the maximum penalties provided by law for each violation of each provision of the Labor Code, on behalf of the State and Aggrieved Employees.

86. PAGA Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for Defendants’ other and/or further violations of the Labor Code and regulations thereunder, including but not limited to Labor Code §§ 201-203, 226.6, 226.7, 510, 512, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and Wage Order No. 4.

87. Defendants are liable to PAGA Plaintiffs, Aggrieved Employees, and the State of California for the civil penalties set forth in this Third Amended Complaint, with interest thereon. PAGA Plaintiffs are also entitled to an award of attorneys’ fees and costs as set forth below.

88. Based on the foregoing, PAGA Plaintiffs request the relief set forth below.

SECOND CAUSE OF ACTION
6. PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT
7. [Labor Code § 2699(f)]
8. (Brought by All Plaintiffs on Behalf of Aggrieved Employees,
9. Against Defendant and Does 1-50, inclusive)

1 89. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
2 herein.

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

6 10.

7 91. IWC Wage Order 4-2001(2)(K) defines “hours worked” as “the time during which an
8 employee is subject to the control of an employer and includes all the time the employee is suffered
9 or permitted to work, whether or not required to do so.”

10 92. Labor Code § 1198 makes it unlawful for employers to employ employees under
11 conditions that violate applicable Wage Order(s).

12 93. Defendants violated the Labor Code sections cited above as set out more fully above
13 in this Third Amended Complaint.

14 94. Labor Code § 2699(f) provides:

15 11. For all provisions of this code except those for which a civil
16 penalty is specifically provided, there is established a civil penalty for a
17 violation of these provisions, as follows: . . . (2) If, at the time of the
18 alleged violation, 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.

19 95. PAGA Plaintiffs seek penalties pursuant to Labor Code § 2699(f) for Defendants’
20 violations of section 2802.

21 96. To the extent that any violation alleged in this Third Amended Complaint does not
22 carry penalties under Labor Code § 2699(a), PAGA Plaintiffs seek civil penalties pursuant to section
23 2699(f) for each pay period in which he or she was aggrieved, in the amounts established by section
24 2699(f).

25 97. Pursuant to Labor Code § 2699.3(a)(1) and (2), on August 31, 2022, PAGA Plaintiffs
26 Jennifer Bursack, Michelle Manesse, Curtis Allen, Joshua Pavelko, Natasha Gilman, and Robert
27 Rodriguez provided the LWDA with notice of their intention to file these claims, and 65 calendar
28 days have passed without notice from the LWDA. These plaintiffs have satisfied the administrative

1 prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

2 98. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 22, 2022, PAGA
3 Plaintiffs Constance Gorman, Kenneth Chung, Heather Randrup, Jung Seo, Jennifer Venegas,
4 Melinda Guerrero, Lisa Flower, Edward Liu, Marvin Menefee, Jason Shumski and Jennifer Talley
5 provided the LWDA with notice of their intention to file these claims, and 65 calendar days have
6 passed without notice from the LWDA. These plaintiffs have satisfied the administrative
7 prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

8 99. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 30, 2022, PAGA
9 Plaintiff Frank Vasquez provided the LWDA with notice of his intention to file these claims, and 65
10 calendar days have passed without notice from the LWDA. Vasquez has satisfied the administrative
11 prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

12 100. Pursuant to Labor Code § 2699.3(a)(1) and (2), on January 31, 2023, PAGA Plaintiffs
13 Laura Bright, Ryan Leonardo, and Karyn Stevens provided the Labor and Workforce Development
14 Agency (“LWDA”) with notice of their intention to file a claim under PAGA, and 65 calendar days
15 have passed without notice from the LWDA. These plaintiffs have satisfied the administrative
16 prerequisites to commence this civil action in compliance with Labor Code § 2699.3(a).

17 101. PAGA Plaintiff Luis Rossi gave notice to the LWDA of his intention to file these
18 claims on or about June 1, 2022, and 65 calendar days have passed without notice from the LWDA.
19 Rossi has satisfied the administrative prerequisites to commence this civil action in compliance with
20 Labor Code § 2699.3(a).

21 102. Therefore, all PAGA Plaintiffs have satisfied all necessary administrative
22 prerequisites to bring this action.

23 103. PAGA Plaintiffs seek the aforementioned penalties on behalf of the State and
24 Aggrieved Employees as set forth in Labor Code § 2699(g)(1).

25 104. Defendants are liable to PAGA Plaintiffs, Aggrieved Employees, and the State of
26 California for the civil penalties set forth in this Third Amended Complaint, with interest thereon.
27 PAGA Plaintiffs are also entitled to an award of attorneys’ fees and costs as set forth below.

28 105. Based on the foregoing, PAGA Plaintiffs request the relief set forth below.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs pray for relief as follows:

3 1. Appropriate equitable relief to remedy Defendants' violations of California law
4 including, but not necessarily limited to, an order enjoining Defendants from continuing their
5 unlawful practices;

6 2. Damages and restitution according to proof at trial for all unpaid wages and other
7 injuries, as provided by the California Labor Code, California Business and Professions Code, and
8 other laws of the State of California;

9 3. Declaratory relief, and other and/or further injunctive relief, as provided by law;

10 4. An award of civil penalties to the full extent allowed by PAGA to the State of
11 California, PAGA Plaintiffs, and Aggrieved Employees;

12 5. Any other damages and/or restitution authorized by law;

13 6. Pre-judgment and post-judgment interest, as provided by law;

14 7. Such other relief as the Court may deem just and proper; and

15 8. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California
16 Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, Labor Code § 2699(g)(1), and
17 other applicable California law.

18
19 Dated: December 28, 2023

Respectfully Submitted,

20 

21 _____
22 Carolyn H. Cottrell
23 David C. Leimbach
24 Andrew T. Coledge
25 Michelle S. Lim
26 **SCHNEIDER WALLACE**
27 **COTTRELL KONECKY LLP**

28 *Attorneys for Plaintiffs on behalf of the State of
California and Aggrieved Employees*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims and issues for which Plaintiffs are entitled to a jury.

Dated: December 28, 2023

Respectfully Submitted,



Carolyn H. Cottrell
David C. Leimbach
Andrew T. Cooledge
Michelle S. Lim
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

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