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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

JEAN FLORES, on behalf of the State of
California and Aggrieved Employees;

Plaintiff,

vs.

POINT PICKUP TECHNOLOGIES, INC.,
POINT PICKUP ENTERPRISES, INC.;

Defendants.

Case No. **22CV007676**

**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 Jean Flores (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complaints and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Defendants Point Pickup Technologies,
5 Inc. (“Point Pickup Technologies”) and Point Pickup Enterprises, Inc. (“Point Pickup Enterprises”)
6 (collectively “Defendants”) on behalf of the State of California to collect statutory penalties as a result
7 of Defendants’ systematic violations of California labor law with respect to Defendants’ non-exempt
8 workers paid on a piece-rate basis employed in the State of California (the “Aggrieved Employees”).

9 2. Plaintiff and Aggrieved Employees are current and former non-exempt workers paid
10 on a piece-rate basis employed by Defendants, either individually or jointly, as delivery providers and
11 other positions with similar job duties throughout the State of California.

12 3. This action stems from Defendants’ policies and practices of: (1) misclassifying
13 Plaintiff and Aggrieved Employees as independent contractors instead of employees; (2) failing to
14 remit to Plaintiff and Aggrieved Employees all gratuity payments in compliance with Labor Code §
15 351; (3) failing to properly compensate Plaintiff and Aggrieved Employees paid on a piece-rate basis
16 for rest and recovery periods and other nonproductive time, and failing to provide them a wage
17 statement in compliance with Labor Code § 226.2; (4) failing to compensate Plaintiff and Aggrieved
18 Employees for all hours worked; (5) failing to pay Plaintiff and Aggrieved Employees minimum wage
19 for all hours worked; (6) failing to pay Plaintiff and Aggrieved Employees all overtime and/or double
20 time wages owed; (7) failing to make available, authorize and/or permit Plaintiff and Aggrieved
21 Employees to take timely and compliant meal and/or rest periods to which they are entitled by law and
22 failing to make premium payments for those non-compliant meal and rest periods; (8) failing to
23 reimburse Plaintiff and Aggrieved Employees for all necessary expenditures incurred in direct
24 consequence of the discharge of their duties; (9) failing to provide Plaintiff and Aggrieved Employees
25 accurate, itemized wage statements; and (10) failing to timely pay Aggrieved Employees all wages
26 earned during employment and upon separation from employment.

27 4. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable
28 attorneys’ fees for these violations pursuant to Sections 2699(a) and (f) of the Cal. Lab. Code Private

1 Attorneys General Act (“PAGA”).

2 **PARTIES**

3 5. Plaintiff and Aggrieved Employees are current and former non-exempt workers paid
4 on a piece-rate basis and employed by Defendants Point Pickup Technologies and Point Pickup
5 Enterprises, either individually or jointly, as delivery providers and other non-exempt positions
6 throughout the State of California.

7 6. Plaintiff Jean Flores is an individual over the age of eighteen, and at all times relevant
8 to this Complaint was a resident of the State of California.

9 7. Plaintiff has been employed as a delivery provider by Defendants in Sanger, California
10 and Dinuba, California since approximately August 2020.

11 8. Plaintiff is informed, believes, and thereon alleges that Defendant Point Pickup
12 Technologies is a Delaware corporation with its principal place of business in Stamford, Connecticut.
13 Point Pickup Technologies does business in the State of California. Point Pickup Technologies may
14 be served with process by serving its registered agent, Intertrust Corporate Services Delaware LTD.,
15 200 Bellevue Parkway, Suite 210, Wilmington, Delaware 19809.

16 9. Plaintiff is informed, believes, and thereon alleges that Defendant Point Pickup
17 Enterprises is a Delaware corporation with its principal place of business in Greenwich, Connecticut.
18 Point Pickup Enterprises does business in the State of California. Point Pickup Enterprises may be
19 served with process by serving its registered agent, Intertrust Corporate Services Delaware LTD., 200
20 Bellevue Parkway, Suite 210, Wilmington, Delaware 19809.

21 10. Upon information and belief, Defendant Point Pickup Technologies is the corporate
22 parent of Defendant Point Pickup Enterprises.

23 11. Plaintiff is informed, believes, and thereon alleges that Defendants are third-party
24 providers of delivery services in the Unites States, including in California. Defendants have a network
25 of approximately 250,000 delivery providers and other non-exempt positions in the Unites States.
26 Plaintiff is informed, believes, and thereon alleges that Defendants employ Aggrieved Employees,
27 including Plaintiff, among other piece-rate workers, throughout the United States, including in the
28 State of California.

1 12. Defendants use a multi-modal platform for all same-day delivery solutions (middle and
2 last-mile) to service a wide range of industries and company sies, with an emphasis on big-box retail,
3 grocery, liquor/specialty, industrial, pharmaceutical, and manufacturing businesses.

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

6 14. At all material times, Defendants have done business under the laws of California, have
7 places of business in the State of California, including in this County, and have employed Aggrieved
8 Employees in this County. Defendants are “person(s)” as defined in Cal. Lab. Code § 18 and Cal. Bus.
9 & Prof. Code § 17201. Defendants are also “employers” as that term is used in the California Labor
10 Code and the IWC Wage Orders.

11 15. Defendants employ Plaintiff and Aggrieved Employees because Defendants, directly
12 or indirectly, control the employment terms, pay practices, timekeeping practices, and daily work of
13 Plaintiff and Aggrieved Employees. Defendants are “employer[s]” as that term is used in the Labor
14 Code and IWC Wage Orders.

15 16. At all times herein relevant, Defendants, and each of them, were the agents, partners,
16 joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and
17 assigns, each of the other, and at all times relevant hereto were acting within the course and scope of
18 their authority as such agents, partners, joint venturers, representatives, servants, employees,
19 successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly
20 committed with the ratification, knowledge, permission, encouragement, authorization and consent
21 of each defendant designated herein.

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

25 **SUBJECT MATTER JURISDICTION AND VENUE**

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

19. This Court has jurisdictions 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 in fact do business and employ workers in the State of California.

FACTUAL ALLEGATIONS

20. Defendants are third-party providers of delivery services in the United States, including in California. Defendants have a network of approximately 250,000 delivery providers and other non-exempt positions nationwide. Defendants employ thousands of delivery providers and other piece-rate non-exempt workers similarly situated to Plaintiff in the State of California.

21. Plaintiff works for Defendants as a delivery provider in Sanger, California and Dinuba, California. Plaintiff has worked as a delivery provider since August 2020 to the present. Plaintiff's duties include, without limitations, picking up delivery orders from Defendants' business partners and delivering those orders to Defendants' patrons. On average, Plaintiff works fourteen (14) hours per shift, seven (7) days per week. Plaintiff works approximately ninety-eight (98) or more hours per week.

22. Plaintiff is informed, believes, and thereon alleges that Defendants employ, and have employed, thousands of non-exempt workers similarly situated to Plaintiff in the State of California, including but not limited to delivery providers and other employees with similar job duties.

23. Plaintiff is informed, believes, and based thereon, alleges that Aggrieved Employees are employed by Defendants in a similar manner throughout the State of California, including in this County, and perform work materially similar to Plaintiff.

24. Aggrieved Employees perform their jobs under Defendants' supervision using materials and technology approved and supplied by Defendants. For instance, Aggrieved Employees receive delivery orders, accept delivery orders and mark delivery orders as completed using Defendants' online platform.

25. Aggrieved Employees are required to follow and abide by Defendants' common work, time, and pay policies and procedures in the performance of their jobs.

26. At the end of each pay period, Aggrieved Employees receive wages from Defendants

1 that are determined by common systems and methods that Defendants select and control.

2 27. Defendants pay Aggrieved Employees, including Plaintiff, a piece-rate for each
3 delivery.

4 28. Plaintiff is informed, believes, and thereon alleges that Defendants' policies and
5 practices have at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless of
6 location in the State of California.

7 29. Plaintiff worked more than eight (8) hours in a day and forty (40) hours in a week for
8 at least one workweek during the one year before this Complaint was filed.¹

9 30. Upon information and belief, Aggrieved Employees worked more than eight (8) hours
10 per day and more than forty (40) hours in at least one workweek during the one year before this
11 Complaint was filed.

12 31. Defendants hire and misclassify Plaintiff and Aggrieved Employees as independent
13 contractors instead of employees. Defendants exercise substantial control over Plaintiff and Aggrieved
14 Employees such that Plaintiff and Aggrieved Employees have little to no discretion with regard to how
15 and when their work is performed and are required to strictly adhere to Defendants' internal policies
16 and procedures. For instance, Plaintiff must perform her work duties in strict adherence to Defendants'
17 common methods and systems, *e.g.*, Plaintiff is required to use Defendant's platform to receive
18 delivery orders, Plaintiff must accept each delivery order via Defendants' online platform and, if
19 necessary, communicate with Defendants' patrons via Defendants' online platform. Defendants also
20 determine in advance the location and time for deliveries pick up and require that Plaintiff follows
21 deliveries route which are decided by Defendants.

22 32. The work performed by Plaintiff and Aggrieved Employees is not outside the usual
23 course of Defendants' business, and Plaintiff and Aggrieved Employees and are not customarily
24 engaged in an independently established trade, occupation, or business in the same nature of the work
25 performed for Defendants. To the contrary, Plaintiff and Aggrieved Employees perform work that is
26 central and essential to Defendants' business, *i.e.*, picking up delivery orders from Defendants'

27 _____
28 ¹ On average, Plaintiff works fourteen (14) hours per shift, seven (7) days per week. Plaintiff works approximately ninety-eight (98) hours per week.

1 business partners and delivering those orders to Defendants' patrons.

2 33. Defendants' willful misclassification of Plaintiff and Aggrieved Employees as
3 independent contractors gives rise to substantial violations of the California Labor Code, *e.g.*, Cal.
4 Lab. Code § 226.8.

5 34. Until approximately September 2021, Plaintiff was compensated on a piece-rate basis,
6 that varied between \$9.65 and \$12.50 per delivery. Starting in approximately October 2021, Plaintiff's
7 piece-rate was reduced to approximately \$7.96 per delivery. In addition, prior to October 2021,
8 Plaintiff received approximately \$15.00 or more in gratuities per delivery. Plaintiff's gratuities
9 represent up to fifty percent, or more, of her income.

10 35. Defendants' patrons reasonably believe that the gratuities they leave for the delivery
11 providers are to be remitted to the delivery staff. It is customary in the delivery service industry that
12 patrons pay a gratuity in the range of 15% to 20% of the delivery bill. Additionally, California law
13 requires that gratuities be provided to the worker performing the service without deduction.
14 Defendants' website also states in the section for Delivery Providers to sign up that "You keep all your
15 tips*".² Thus, because of the way these gratuity payments are depicted to patrons, and the custom in
16 the delivery service industry that gratuities are paid for delivery service, patrons pay these charges
17 reasonably believing they were to be remitted to the delivery staff as gratuities.

18 36. However, since approximately October 2021, Defendants refuse to remit the proceeds
19 of these gratuity charges to Plaintiff and Aggrieved Employees. Instead, Defendants have
20 implemented a policy and/or practice of retaining for themselves all or parts of those gratuity charges
21 and/or using those gratuity charges to offset the regular pay of Plaintiff and Aggrieved Employees. As
22 a result, Plaintiff and Aggrieved Employees do not receive the total proceeds of the gratuities to which
23 they are entitled under California law.

24 37. Plaintiff is informed and believes and, based thereon, alleges that all Aggrieved
25 Employees throughout the State of California are subject to the same gratuity policy and practices.

26 38. Further, as piece-rate workers, Plaintiff and Aggrieved Employees are denied

27
28 ² See <https://drive.pointpickup.com/start-driving-now/>. As of February 28, 2022, no explanation is provided for
the asterisk in the statement.

1 compensation for rest and recovery periods and other non-productive time. Each delivery entails
2 receiving the order placed by one of Defendants' patrons via Defendants' online platform, accepting
3 the order, picking up the order at Defendants' business partners' location, and delivering the order to
4 Defendants' patron. While each delivery varies in time, on average Plaintiff spends between 30
5 minutes to one hour per delivery. As a matter of course, Defendants do not separately compensate
6 Plaintiff and Aggrieved Employees for any work performed beyond transporting orders from
7 Defendants' business partners location to Defendants' patrons. This includes, but is not limited to,
8 taking rest and recovery breaks, experiencing delivery delays that are beyond Plaintiff and Aggrieved
9 Employees control, and performing work not incidental to the piece-rate, such as waiting for orders to
10 be ready for pick up, attending trainings, monitoring orders via Defendants' online platform and/or
11 completing administrative tasks. This time spent working in addition to delivering orders goes
12 unrecorded and uncompensated, *i.e.*, Defendants require Plaintiff and Aggrieved Employees to
13 perform this work while "off-the-clock".

14 39. As a result of these policies and/or practices, Plaintiff and Aggrieved Employees are
15 denied compensation for all hours worked, including minimum wages, overtime and/or double time,
16 which they are lawfully owed.

17 40. Plaintiff is informed, believes, and thereon alleges that Defendants' policies and
18 practices of not recording as "hours worked" rest and recovery periods and other non-productive time
19 apply to all Aggrieved Employees throughout the State of California.

20 41. As a matter of policy and/or practice, Defendants also fail to authorize, permit and/or
21 make available compliant meal periods to Plaintiff and Aggrieved Employees. Plaintiff and Aggrieved
22 Employees are routinely denied meal breaks for three reasons: (1) Defendants misclassify Plaintiff
23 and Aggrieved Employees as independent contractors that are not entitled to meal and rest periods;
24 (2) Defendants do not authorize, permit, and/or make available timely meal breaks to Plaintiff and
25 Aggrieved Employees; and (3) Plaintiff and Aggrieved Employees are often too busy with work during
26 the day to have time to take bona fide meal breaks.

27 42. When Plaintiff and Aggrieved Employees attempt a meal break, such is often
28 interrupted and/or untimely, *i.e.*, Defendants do not provide Plaintiff and Aggrieved Employees with

1 duty-free, uninterrupted, and timely thirty-minute meal periods by the end of the fifth hour of work.

2 43. Further, Plaintiff and Aggrieved Employees routinely work long shifts of ten hours or
3 more, however, Defendants systematically deny Plaintiff and Aggrieved Employees a duty-free,
4 uninterrupted, and timely second meal break by the end of the tenth hour of work.

5 44. Despite these recurring violations, Plaintiff and Aggrieved Employees are not provided
6 with one (1) hour of premium pay for each day they do not receive a complaint meal break.

7 45. Similarly, Defendants regularly fail to make rest periods available to Plaintiff and
8 Aggrieved Employees. Defendants misclassify Plaintiff and Aggrieved Employees as independent
9 contractors and do not provide them with any rest periods. Additionally, Plaintiff and Aggrieved
10 Employees' schedules regularly prevent them from taking bona fide rest breaks throughout the day.
11 When available, if ever, such are often untimely and/or interrupted, *i.e.*, Defendants do not provide
12 Plaintiff and Aggrieved Employees with duty-free, uninterrupted, and timely paid ten-minute rest
13 periods by the end of the fourth hour of work, and again by the end of the eighth hour of work.

14 46. Plaintiff and Aggrieved Employees are also not provided with one (1) hour of premium
15 pay for each day they do not receive a complaint rest break.

16 47. Plaintiff is informed, believes and, based thereon, alleges that these meal and rest
17 periods policies and practices apply to all Aggrieved Employees throughout the State of California.

18 48. As a matter of practice, Defendants also deny Plaintiff and Aggrieved Employees
19 proper reimbursement for business expenditures. Plaintiff and Aggrieved Employees are constantly
20 required to use their personal vehicles and personal cell phones in the direct consequence of the
21 discharge of their duties. Defendants direct Plaintiff and Aggrieved Employees to use their personal
22 cell phones in order to log in Defendants' online platform and, *inter alia*, review, accept, and complete
23 delivery orders. Additionally, Plaintiff and Aggrieved Employees use their personal cell phones to
24 follow the delivery route Defendants require them to take while delivering orders. Moreover, Plaintiff
25 and Aggrieved Employees are further required to use their personal cell phones to complete various
26 administrative tasks, *e.g.*, updating their online profile on Defendants' website and/or online platform,
27 and attend trainings, *e.g.*, watching video tutorials on Defendants' website and online platform.
28 Plaintiff and Aggrieved Employees also constantly use their personal vehicles to complete deliveries

1 and pay for gas, parking and upkeep charges out-of-pocket.

2 49. Plaintiff and Aggrieved Employees therefore incur substantial business expenses for
3 the benefit of Defendants, yet Defendants fail to reimburse Plaintiff and Aggrieved Employees for
4 such expenditures.

5 50. Plaintiff is informed, believes and based thereon, alleges that Defendants' unlawful
6 business expenditures policies and practices apply to all Aggrieved Employees throughout California.

7 51. Defendants' common course of wage-and-hour abuse results in routinely failing to
8 maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees. As
9 outlined above, Plaintiff and Aggrieved Employees are unlawfully denied the gratuities that are paid
10 to delivery providers by patrons, are not compensated for rest and recovery periods and other non-
11 productive time, resulting in minimum wage, overtime and/or double time violations, and do not
12 receive premium payments for missed, interrupted and/or untimely meal and/or rest periods.

13 52. Defendants' failure to record all gratuity payments and all hours worked also results in
14 a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage statements as
15 required by California law. The wage statements Defendants provide are not accurate because they do
16 not reflect all hours worked, the actual wages earned, including minimum wage, overtime and/or
17 double time compensation, and all gratuity payments earned. Further, the wage statements are
18 inaccurate because they do not include premium pay for non-compliant meal periods and/or rest breaks
19 in violation of California law.

20 53. Further, Defendants do not provide Aggrieved Employees who are former workers of
21 Defendants with full payment of all wages owed upon separation from employment. At the time their
22 employment ends, Aggrieved Employees are owed wages for all time worked, including overtime
23 and/or double time, gratuity payments earned, and premium pay for non-compliant meal periods and
24 rest breaks, whether their termination was voluntary or involuntary; yet Defendants have failed to
25 provide Aggrieved Employees with such payments within the required time period. As a result, and
26 pursuant to the California Labor Code, Defendants are subject to waiting time penalties.

27 54. Plaintiff is informed, believes, and thereon alleges that Defendants' unlawful conduct
28 has been widespread, repeated, and consistent as to Aggrieved Employees and throughout Defendants'

1 operations in the State of California.

2
3 **FIRST CAUSE OF ACTION**

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

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

6 55. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
7 herein.

8 56. Cal. Lab. Code § 2699(a) provides:

9 Notwithstanding any other provision of law, any provision of this code that provides
10 for a civil penalty to be assessed and collected by the Labor and Workforce
11 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 herself or herself
and to other current or former employees.

12 57. Cal. Lab. Code §§ 201 and 202 require employers to immediately pay wages earned and
13 unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he
14 or she quits, at the latest.

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

16 If an employer willfully fails to pay, without abatement or reduction, in accordance
17 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged
18 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.

19 59. Cal. Lab. Code § 256 provides: “The Labor Commissioner shall impose a civil penalty
20 in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

21 60. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by
22 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and the Aggrieved Employees
23 in compliance with Cal. Lab. Code §§ 201-202 and in the amounts established by Cal. Lab. Code §
24 203.

25 61. Cal. Lab. Code § 226(a) provides:

26 Every employer shall, semimonthly or at the time of each payment of wages, furnish
27 each of his or her employees, either as a detachable part of the check, draft, or voucher
28 paying the employee's wages, or separately when wages are paid by personal check or
cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
total hours worked by the employee, except for any employee whose compensation is

solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of 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 his or her 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.

62. Cal. Lab. Code § 226(e)(1) provides, in relevant part:

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.

63. Cal. Lab. 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.

64. 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).

65. Cal. Lab. Code § 226.8(a)(1) prohibits any person or employer to willfully misclassify an individual as an independent contractor.

66. Cal. Lab. Code § 226.8(c) provides:

If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

67. Plaintiff seeks civil penalties in the amount established by Cal. Lab. Code § 226.8(c) for

1 each Defendants' willful misclassification of Plaintiff and Aggrieved Employees as independent
2 contractors.

3 68. Pursuant to Cal. Lab. Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
4 Workforce Development Agency ("LWDA") with notice of her intention to file this claim. At least
5 sixty-five calendar days have passed without response from the LWDA. Plaintiff satisfied the
6 administrative prerequisites to commence this civil action in compliance with Cal. Lab. Code §
7 2699.3(a).

8 69. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
9 Employees, and herself as set forth in Cal. Lab. Code § 2699.

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

13 71. Wherefore, Plaintiff requests relief as hereinafter provided.

14 **SECOND CAUSE OF ACTION**

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

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

17 72. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
18 herein.

19 73. Cal. Lab. Code § 2699(f) provides:

20 For all provisions of this code except those for which a civil penalty is specifically
21 provided, there is established a civil penalty for a violation of these provisions, as
22 follows: . . . (2) If, at the time of the alleged violation, the person employs one or more
23 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.

24 74. Cal. Lab. Code § 351 provides:

25 No employer or agent shall collect, take, or receive any gratuity or a part thereof that
26 is paid, given to, or left for an employee by a patron, or deduct any amount from wages
27 due an employee on account of a gratuity, or require an employee to credit the amount,
28 or any part thereof, of a gratuity against and as a part of the wages due the employee
from the employer. Every gratuity is hereby declared to be the sole property of the
employee or employees to whom it was paid, given, or left for. An employer that
permits patrons to pay gratuities by credit card shall pay the employees the full amount

of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

75. Cal. Lab. Code § 226.2 provides:

This section shall apply for employees who are compensated on a piece-rate basis for any work performed during a pay period. This section shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance. For the purposes of this section, “applicable minimum wage” means the highest of the federal, state, or local minimum wage that is applicable to the employment, and “other nonproductive time” means time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.

76. Cal. Lab. Code § 226.2(a)(1)-(2) provides:

For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation; (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable: (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; (B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

77. Cal. Lab. Code § 226.2(a)(3)(A), (B) provides:

(3)(A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods. (ii) The applicable minimum wage.

(B) For employers who pay on a semimonthly basis, employees shall be compensated at least at the applicable minimum wage rate for the rest and recovery periods together with other wages for the payroll period during which the rest and recovery periods occurred. Any additional compensation required for those employees pursuant to clause (i) of subparagraph (A) is payable no later than the payday for the next regular payroll period.

78. Cal. Lab. Code § 226.2(a)(4)-(5), (7) provides:

(4) Employees shall be compensated for other nonproductive time at an hourly rate that is no less than the applicable minimum wage.

(5) The amount of other nonproductive time may be determined either through actual records or the employer's reasonable estimates, whether for a group of employees or for a particular employee, of other nonproductive time worked during the pay period.

1 (7) An employer who, in addition to paying any piece-rate compensation, pays an
2 hourly rate of at least the applicable minimum wage for all hours worked, shall be
deemed in compliance with paragraph (4).

3 79. Cal. Lab. 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 80. Cal. Lab. Code § 204(a) provides that “[a]ll wages ... earned by any person in any
7 employment are due and payable twice during each calendar month....”

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

11 82. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
12 conditions that violate the Wage Orders.

13 83. Cal. Lab. Code § 510 provides, in relevant part:

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

24 84. Cal. Lab. Code § 1197 provides:

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

28 85. Cal. Lab. Code § 1194 provides, in relevant part:

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 amount
of this minimum wage or overtime compensation, including interest thereon,
reasonable attorney’s fees, and costs of suit.

86. Cal. Lab. Code §§ 226.7 and 512 and IWC Wage Order 9-2001 require Defendants to

1 authorize, permit, and/or make available timely and compliant meal and rest periods to its employees.
2 Cal. Lab. Code §§ 226.7 and 512 and IWC Wage Order 9-2001 prohibit employers from employing
3 an employee for more than five hours without a meal period of not less than thirty minutes, and from
4 employing an employee more than ten hours per day without providing the employee with a second
5 meal period of not less than thirty minutes. Unless the employee is relieved of all duty during the
6 thirty-minute meal period and ten-minute rest period, the employee is considered “on duty” and the
7 meal period is counted as time worked under the applicable wage orders.

8 87. Cal. Lab. Code § 2802 requires Defendants to indemnify employees for all necessary
9 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
10 duties.

11 88. Defendants’ policies and practices result in gratuities violations, rest and recovery and
12 other non-productive time violations, overtime and double time violations, meal and periods
13 violations, and business expenditures reimbursement violations.

14 89. To the extent than any violation alleged herein does not carry penalties under Cal. Lab.
15 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for each pay period
16 in which Plaintiff and an Aggrieved Employee was aggrieved, in the amounts established by Cal. Lab.
17 Code § 2699(f). Plaintiff seeks penalties pursuant to Cal. Lab. Code § 2699(f) for Plaintiff and
18 Aggrieved Employees for violations of Cal. Lab. Code provisions including, but not limited to, Cal.
19 Lab. Code §§ 204, 226.2, 226.7, 226.8, 351, 510, 512, 1194, 1197, 1198, 2802, IWC Wage Order 9-
20 2001, and any other violation alleged herein does not carry penalties under Cal. Lab. Code § 2699(a).

21 90. Pursuant to Cal. Lab. Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA
22 with notice of her intention to file this claim. At least sixty-five calendar days have passed without
23 response from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil
24 action in compliance with Cal. Lab. Code § 2699.3(a).

25 91. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
26 Employees, and herself as set forth in Cal. Lab. Code § 2699(g)(1).

27 92. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for
28 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees

1 and costs as set forth below.

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

3 **PRAYER FOR RELIEF**

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

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

13
14
15 Respectfully Submitted,

16 Date: February 28, 2022



17 Carolyn H. Cottrell
18 Ori Edelstein
19 Eugene Zinovyev
20 Andrew D. Weaver
21 Philippe M. Gaudard
22 **SCHNEIDER WALLACE**
23 **COTTRELL KONECKY LLP**

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

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DEMAND FOR JURY TRIAL

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

Date: February 28, 2022

Respectfully Submitted,



Carolyn H. Cottrell
Ori Edelstein
Eugene Zynovyev
Andrew D. Weaver
Philippe M. Gaudard
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA Branch Name: Rene C. Davidson Courthouse Mailing Address: 1225 Fallon Street City, State and Zip Code: Oakland CA 94612	
SHORT TITLE: FLORES vs POINT PICKUP TECHNOLOGIES, INC., et al. NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 22CV007676

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of ALAMEDA. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: One Legal ALA
 Reference Number: 17767694
 Submission Number: 22AA00026708
 Court Received Date: 02/28/2022
 Court Received Time: 2:07 pm
 Case Number: 22CV007676
 Case Title: FLORES vs POINT PICKUP TECHNOLOGIES, INC., et al.
 Location: Rene C. Davidson Courthouse
 Case Type: Civil Unlimited
 Case Category: Other Employment Complaint Case
 Jurisdictional Amount: Over \$25,000
 Notice Generated Date: 02/28/2022
 Notice Generated Time: 2:22 pm

<u>Documents Electronically Filed/Received</u>	<u>Status</u>
Complaint	Accepted
Summons	Accepted
Civil Case Cover Sheet	Accepted

Comments

Submitter's Comments:

Clerk's Comments:

Electronic Filing Service Provider Information

Service Provider: One Legal ALA

Contact: One Legal

Phone: