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Superior Court of California,
County of Alameda

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

MILDRED ARRIAGA, on behalf of the State of
California, and Aggrieved Employees,

Plaintiff,

v.

OLIVE HOLDINGS, LLC d/b/a AVIARA
HEALTHCARE CENTER; PLUM
HEALTHCARE GROUP, LLC; and DOES 1-100,
inclusive,

Defendants.

Case No.: 22CV006835

**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 Mildred Arriaga, on behalf of the State of California and Aggrieved Employees
2 (“Plaintiff”), complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this Labor Code Private Attorneys General Act (“PAGA”) enforcement
5 action against Defendant Olive Holdings, LLC d/b/a Aviara Healthcare Center (“Olive”) and
6 Defendant Plum Healthcare Group, LLC (“Plum”) (collectively “Defendants”) on behalf of the State
7 of California to collect statutory penalties as a result of Defendants’ systematic violations of
8 California labor law with respect to Defendants’ current and former non-exempt, hourly employees
9 in California (the “Aggrieved Employees”).

10 2. Plaintiff and the Aggrieved Employees are current and former non-exempt, hourly
11 employees who have worked for Defendants in California.¹

12 3. Upon information and belief, Plum is part of the skilled nursing facilities industry. Plum
13 provides a coordinated continuum of care for post-acute patients. Plum operates skilled nursing
14 facilities, rehabilitation hospitals, and similar facilities across the United States, with extensive
15 operations in California, including through Olive.

16 4. Upon information and belief, Olive provides skilled care and rehabilitation services at
17 Aviara Healthcare Center, a skilled nursing facility located in Encinitas, California. Plaintiff seeks
18 civil penalties arising from Defendants’ violations of the Labor Code with respect to Aggrieved
19 Employees at Aviara Healthcare Center and Plum facilities throughout California.

20 5. Plaintiff challenges Defendants’ policies and practices of (1) failing to provide or make
21 available to Plaintiff and Aggrieved Employees the compliant meal breaks which they are entitled by
22 law, and failing to make premium payments for those non-complaint meal breaks; (2) failing to
23 authorize and permit Plaintiff and Aggrieved Employees to take rest breaks which they are entitled
24 by law, and failing to make premium payments for those non-complaint rest breaks (3) failing to pay
25 Plaintiff and the Aggrieved Employees all minimum wages owed; (4) failing to pay Plaintiff and the
26 Aggrieved Employees overtime wages; (5) failing to compensate Plaintiff and the Aggrieved

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

1 Employees for all hours worked; (6) failing to reimburse Plaintiff and the Aggrieved Employees for
2 necessary business expenditures; (7) failing to provide Plaintiff and the Aggrieved Employees
3 accurate, itemized wage statements; and (8) failing to timely pay Plaintiff and the Aggrieved
4 Employees full wages earned during employment and upon termination or resignation.

5 6. Defendants regularly fail to provide Plaintiff and the Aggrieved Employees with timely,
6 legally compliant meal and rest breaks, yet Defendants do not provide Plaintiff and the Aggrieved
7 Employees with premium pay for missed, late and/or interrupted meal and rest breaks. Plaintiff and
8 the Aggrieved Employees are routinely denied meal and rest breaks because (i) Defendants do not
9 authorize and permit rest breaks for Plaintiff and the Aggrieved Employees; (ii) Defendants fail to
10 provide or make available timely meal breaks and (iii) Plaintiff and the Aggrieved Employees are
11 often too busy with work during the day to have time to take bona fide meal and rest breaks. Plaintiff
12 and the Aggrieved Employees routinely work through their meal and/or rest breaks. When the
13 Aggrieved Employees attempt a meal break, such is untimely, *i.e.*, does not occur before the fifth hour
14 of work, and/or interrupted.

15 7. Defendants maintain a policy and/or practice of failing to properly compensate Plaintiff
16 and the Aggrieved Employees for work-related tasks performed while “off-the-clock,” including but
17 not limited to undergoing Covid-19 tests and screenings.

18 8. Plaintiff and the Aggrieved Employees perform off-the-clock work before paid shifts
19 and outside of normal scheduled work times.

20 9. Throughout the relevant time period, Plaintiff and the Aggrieved Employees have been
21 denied proper payment for all hours worked, including overtime and minimum wages, for the time
22 spent working off-the-clock. As Plaintiff and the Aggrieved Employees regularly work in excess of
23 eight hours per day and forty hours per week, a substantial amount of this off-the-clock work should
24 be compensated at overtime rates. However, Defendants fail to pay for any of this work time,
25 including the required overtime premiums, in violation of the California Labor Code.

26 10. Further, Defendants require Plaintiff and the Aggrieved Employees to utilize their
27 personal cell phones and pay out of pocket for scrubs, surgical masks, hand sanitizer, and other work
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1 equipment in the performance of their duties, yet Defendants do not reimburse or compensate Plaintiff
2 and the Aggrieved Employees for business related expenses incurred for the benefit of Defendants.

3 11. As a result of the above violations, Defendants fail to provide Plaintiff and the
4 Aggrieved Employees with accurate, itemized wage statements. Defendants have also failed to pay
5 all wages due during employment and upon separation, when the Aggrieved Employees, like Plaintiff,
6 voluntarily or involuntarily terminated their employment with Defendants.

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

10 **PARTIES**

11 13. Plaintiff and the Aggrieved Employees are current and former non-exempt, hourly
12 employees for Defendants in California. Defendants employ and/or employed Plaintiff and the
13 Aggrieved Employees.

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

16 15. Plaintiff was employed by Defendants as a non-exempt Nursing Assistant from
17 approximately June 2020 to approximately November 19, 2021.

18 16. Defendant Olive Holdings, LLC d/b/a Aviara Healthcare Center is a skilled nursing
19 facility, with a rehabilitation program specializing in orthopedic and neurological rehabilitation, in
20 Encinitas, California. Olive a California limited liability company with its principal address at 944
21 Regal Road, Encinitas, California 92024, and its mailing address at 140 N. Union Avenue, Suite 320,
22 Farmington, Utah 84025. In its Statement of Information, filed on December 27, 2021, with the
23 Secretary of State of the State of California, Olive lists Jason Murray and Mark Hancock as LLC
24 managers and Corporation Service Company d/b/a CSC – Lawyers Incorporating Service as its
25 registered agent.

26 17. Defendant Plum Healthcare Group LLC operates skilled nursing and other care
27 facilities, with extensive operations in California. Plum is a California limited liability company with
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1 its principal address at 140 N. Union Avenue, Suite 320, Farmington, Utah 84025, and its California
2 address at 2575 East 8th Street, National City, California 91950. In its Statement of Information, filed
3 on December 27, 2021, with the Secretary of State of the State of California, Plum lists Jason Murray
4 and Mark Hancock as LLC managers and Corporation Service Company d/b/a CSC – Lawyers
5 Incorporating Service as its registered agent.

6 18. Plaintiff is informed, believes, and thereon alleges that Defendants operate skilled
7 nursing and other care facility locations throughout California, including but not limited to Aviara
8 Healthcare Center. Plaintiff is informed, believes, and thereon alleges that Defendants operate facility
9 locations in Alameda County. Plaintiff is informed, believes, and thereon alleges that Defendants
10 employ non-exempt employees throughout California, including in Alameda County.

11 19. Plaintiff is informed, believes, and thereon alleges that Plum controls policies, practices,
12 and procedures at the facility locations throughout California, including but not limited to Aviara
13 Healthcare Center. Plaintiff is informed, believes, and thereon alleges that Plum controls the wages,
14 hours, and working conditions for the non-exempt, hourly employees at the facility locations
15 throughout California, including but not limited to Aviara Healthcare Center. Plaintiff is informed,
16 believes, and thereon alleges that Plum operates a cohesive network of facilities across California and
17 that there are common policies, practices, and/or procedures across the facility locations throughout
18 California, including but not limited to Aviara Healthcare Center. Plaintiff is informed, believes, and
19 thereon alleges that Plum directly controls the operations of its agents and managers at the facility
20 locations throughout California, including but not limited to Aviara Healthcare Center. Plaintiff is
21 informed, believes, and thereon alleges that Plum and Olive maintain an agency relationship.

22 20. The true names and capacities, whether individual, corporate, associate, or otherwise,
23 of Does 1-100, inclusive, are unknown to Plaintiff, who therefore sues the Doe Defendants by
24 fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these fictitiously
25 named Defendants is responsible in some manner for the occurrences and violations as herein alleged.
26 Plaintiff will amend this Complaint to show their true names and capacities when they have been
27 ascertained. Plum, Olive, and Does 1-100 are jointly and severally liable for the civil penalties
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1 asserted.

2 21. At all relevant times, Defendants have done business under the laws of California, have
3 had places of business in California, including in this judicial district, and have employed the
4 Aggrieved Employees in this judicial district. Defendants are “persons” as defined in Labor Code §
5 18 and Business and Professions Code § 17201. Defendants are also “employers” as that term is used
6 in the Labor Code and IWC Wage Order.

7 **JURISDICTION AND VENUE**

8 22. Venue is proper in this County pursuant to Code of Civil Procedure §§ 393(a) and/or
9 395(a). Defendants conduct business and employ Aggrieved Employees in this County. A substantial
10 portion of the events giving rise to these causes of action occurred in this County.

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

15 **FACTUAL ALLEGATIONS**

16 24. Plum is part of the skilled nursing facilities industry. Plum Healthcare operates
17 numerous skilled nursing facilities, rehabilitation hospitals, and other facilities in California and
18 employs workers to staff those facilities, including through and at Olive and Aviara Healthcare
19 Center.

20 25. Plaintiff worked for Defendants as a Nursing Assistant in Encinitas, California from
21 approximately June 2020 until approximately November 19, 2021. Her duties included, but were not
22 limited to, assisting patients with activities of daily living; aiding patients in eating, dressing, and
23 washing; providing other nursing care as needed; reporting patient status; and updating medical
24 histories. Excluding time worked off the clock, Ms. Arriaga typically worked eight hours or more per
25 shift, and up to five or six shifts per week, earning \$16.00 per hour.

26 26. Plaintiff and the Aggrieved Employees are current and former non-exempt employees
27 of Defendants in California. Plaintiff is informed, believes, and thereon alleges that the Aggrieved
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1 Employees perform work similar to Plaintiff, in that they support the operations of skilled nursing
2 and similar facilities. Defendants pay the Aggrieved Employees, including Plaintiff, on an hourly rate
3 basis.

4 27. Plaintiff is informed, believes, and thereon alleges that the policies and practices of
5 Defendants have at all relevant times been similar for Plaintiff and the Aggrieved Employees,
6 regardless of particular job assignment or facility location in California.

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

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

11 30. Plaintiff and Aggrieved Employees are routinely denied rest breaks because Defendants
12 do not authorize permit timely rest break periods. Plaintiff and Aggrieved Employees are too busy
13 with work during the day to have time to take bona fide rest breaks. Plaintiff and Aggrieved
14 Employees are unable to take rest breaks because Defendants are understaffed, and there are not
15 enough employees to cover the floor if they want to step away for a rest break. Plaintiff is informed,
16 believes, and thereon alleges that Aggrieved Employees are unable to take full, compliant,
17 uninterrupted meal periods for similar reasons. Plaintiff and Aggrieved Employees do not receive the
18 required penalty pay for all non-compliant meal periods and rest breaks.

19 31. Plaintiff is informed, believes, and thereon alleges that the same rest break and meal
20 period policies and practices are in place across Defendants' facilities throughout California.

21 32. Additionally, Defendants routinely fail to compensate Plaintiff and the Aggrieved
22 Employees for all hours worked. Plaintiff and the Aggrieved Employees are not permitted to log the
23 actual number of hours they work each week. Plaintiff and the Aggrieved Employees are not
24 compensated for all time worked and spent under the control and supervision of Defendants, *i.e.*, time
25 spent for the benefit of Defendants.

26 33. Defendants routinely require Plaintiff and Aggrieved Employees to perform work off-
27 the-clock and without compensation. This includes but is not limited to Defendants requiring Plaintiff
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1 and Aggrieved Employees to undergo Covid-19 tests and screenings for their work with Defendants
2 during unpaid time. Plaintiff and Aggrieved Employees are required to travel to testing sites where
3 they take Covid-19 tests, outside of scheduled shifts, while they are off-the-clock. Additionally,
4 Defendants require Plaintiff and Aggrieved Employees to undergo routine Covid-19 screenings at the
5 worksite, prior to clocking in for their scheduled shifts. These screenings involve temperature checks
6 and questionnaires and must be completed prior to employees clocking in. This time is
7 uncompensated.

8 34. Plaintiff and Aggrieved Employees perform other work-related activities for Defendants
9 off-the-clock without compensation, such as answering work-related calls and text messages on days
10 off and during non-work hours, among other off-the-clock work. Furthermore, Plaintiff is informed,
11 believes, and thereon alleges that Defendants require Aggrieved Employees that have completed their
12 shift to clock out, remain at the facility, and spend unpaid time meeting with incoming personnel to
13 discuss work-related matters, such as the proper way to perform certain tasks. All of these activities
14 are uncompensated and result in unpaid wages.

15 35. Plaintiff and Aggrieved Employees routinely work in excess of eight hours per day and
16 over 40 hours per week, thus, such unpaid off-the-clock work time should be compensated at overtime
17 rates.

18 36. As a result of these policies and/or practices, Plaintiff and Aggrieved Employees are
19 denied compensation for all hours worked, including minimum wages and overtime pay.

20 37. Plaintiff is informed, believes, and thereon alleges that Defendants utilize the same or
21 substantially similar timekeeping mechanisms throughout all their facilities in California. Plaintiff is
22 informed, believes, and thereon alleges that Defendants utilize and apply the same or substantially the
23 same “temperature check” and “COVID-19 screening” protocols, policies, and practices at
24 Defendants’ facilities throughout California.

25 38. Moreover, Defendants systematically fail to reimburse Plaintiff and the Aggrieved
26 Employees for business expenses that they routinely incur in the performance of their work duties.
27 For instance, Defendants require Plaintiff and the Aggrieved Employees to use their personal cell
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1 phones and personal cell voice, text, and data plans for regular work-related communications. In
2 addition, Defendants require Plaintiff and the Aggrieved Employees to regularly pay out-of-pocket
3 for scrubs, surgical masks, hand sanitizer, and other work equipment that is necessary for the
4 performance of their duties. However, Plaintiff and the Aggrieved Employees have not received
5 reimbursement from Defendants for all such business expenditures.

6 39. Plaintiff is informed, believes, and thereon alleges that Defendants institute the same or
7 substantially similar policy throughout their locations in California that result in Aggrieved
8 Employees not being reimbursed for business expenditures incurred for the benefit of Defendants.

9 40. Defendants' common course of wage-and-hour abuse includes routinely failing to
10 maintain true and accurate records of the hours worked by Plaintiff and the Aggrieved Employees.
11 Defendants have failed to record hours that Plaintiff and the Aggrieved Employees worked off-the-
12 clock, failed to record non-compliant meal and rest periods and time worked during such periods, and
13 failed to record out-of-pocket business expenditures incurred by Plaintiff and the Aggrieved
14 Employees.

15 41. Defendants do not provide Plaintiff and the Aggrieved Employees with accurate wage
16 statements as required by California law. Plaintiff and the Aggrieved Employees receive wage
17 statements that do not reflect all hours worked, premium pay for missed meal and rest periods,
18 applicable overtime premiums, and reimbursement for business expenses.

19 42. Defendants do not provide Plaintiff and the Aggrieved Employees with full payment of
20 all wages owed upon separation from employment. At the time their employment ends, Plaintiff and
21 the Aggrieved Employees are owed wages for all time worked, overtime, premium pay for missed
22 meal and rest breaks, and reimbursement of business expenses, whether their termination was
23 voluntary or involuntary; yet Defendants have failed to provide Plaintiff and the Aggrieved
24 Employees with such payments. As a result, and pursuant to the California Labor Code, Defendants
25 are subject to waiting time penalties.

26 43. Plaintiff is informed, believes, and thereon alleges that Defendants are well aware that
27 their policies and practices deprive Plaintiff and the Aggrieved Employees of substantial pay for all
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time worked, including overtime compensation and minimum wages, and that their workers involved with patient care do not receive legally compliant meal and rest periods. Defendants are further aware that Plaintiff and the Aggrieved Employees expend personal funds for business related events and activities yet are not reimbursed. Thus, Defendants' denial of wages, compliant meal and rest periods, and reimbursement of business expenditures to Plaintiff and the Aggrieved Employees is and/or was deliberate and willful.

44. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct has been widespread, repeated, and consistent as to the Aggrieved Employees and throughout Defendants' operations in California.

45. Defendant's conduct was willful, carried out in bad faith, and triggers significant civil penalties in an amount to be determined at trial.

FIRST CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)
(Against All Defendants On Behalf of the State of California and Aggrieved Employees)

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

47. Labor Code § 2699(a) provides:

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

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

49. Labor Code § 203 provides, in relevant part:

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

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

51. Labor Code § 225.5 provides that every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

52. Labor Code § 226(a) provides:

“Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher 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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.”

53. 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.”

54. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, as alleged above, to timely pay all wages owed to Plaintiff and the Aggrieved Employees in compliance with Labor Code §§ 201-202.

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

56. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each violation by Defendants of Labor Code § 225.5, 226.3, 256, and any other violation alleged herein that carries penalties under Labor Code § 2699(a).

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

58. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and herself as set forth in Labor Code § 2699.

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

60. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(Against All Defendants On Behalf of the State of California and Aggrieved Employees)

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

62. Labor Code § 2699(f) provides:

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

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

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

14 65. IWC Wage Order 5-2001(2)(K) defines hours worked as “the time during which an
15 employee is subject to the control of an employer and includes all the time the employee is suffered
16 or permitted to work, whether or not required to do so.”

17 66. Labor Code § 1198 makes it unlawful for employers to employ employees under
18 conditions that violate the Wage Order.

19 67. Labor Code § 510 provides, in relevant part:

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

68. Labor Code § 1182.12 provides, in relevant part:

(a) Notwithstanding any other provision of this part, on and after July 1, 2014, the
minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and
on and after January 1, 2016, the minimum wage for all industries shall be not less
than ten dollars (\$10) per hour.

(b) Notwithstanding subdivision (a), the minimum wage for all industries shall not be less than the amounts set forth in this subdivision, except when the scheduled increases in paragraphs (1) and (2) are temporarily suspended under subdivision (d). (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

- ...
(D) From January 1, 2020, to December 31, 2020, inclusive, —thirteen dollars (\$13) per hour.
(E) From January 1, 2021, to December 31, 2021, inclusive, —fourteen dollars (\$14) per hour.
(F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

(2) For any employer who employs 25 or fewer employees, the minimum wage shall be as follows:

- ...
(C) From January 1, 2020, to December 31, 2020, inclusive, —twelve dollars (\$12) per hour.
(D) From January 1, 2021, to December 31, 2021, inclusive, —thirteen dollars (\$13) per hour.
(E) From January 1, 2022, to December 31, 2022, inclusive, —fourteen dollars (\$14) per hour.
(F) From January 1, 2023, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

(3) For purposes of this subdivision, “employer” means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. For purposes of this subdivision, “employer” includes the state, political subdivisions of the state, and municipalities.

69. Labor Code § 1197 provides:

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

70. Labor Code § 1197.1 provides in relevant part:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover

underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

71. Labor 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.

72. Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001 require Defendants to authorize, permit, and/or make available timely and compliant meal and rest periods to its employees. Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001 prohibit employers from employing an employee for more than five hours without a meal period of not less than thirty minutes, and from employing an employee more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes. Section 226.7 and IWC Wage Order 5-2001 also require employers to authorize and permit employees to take ten minutes of net rest time per four hours, or major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless the employee is relieved of all duty during the thirty-minute meal period and ten-minute rest period, the employee is considered "on duty" and the meal or rest period is counted as time worked under the applicable Wage Order.

73. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

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

1 by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff
2 and the Aggrieved Employees for violations of Labor Code provisions including, but not limited, to,
3 Labor Code § 510, 1182.12, 1194, 1197, 1198, 204, 226.7, 512, 2802, IWC Wage Order 5-2001, and
4 any other violation alleged herein that does not carry penalties under Labor Code § 2699(a).

5 75. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
6 notice of his intention to file this claim. More than sixty-five calendar days have passed without
7 notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil
8 action in compliance with § 2699.3(a).

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

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

14 78. Wherefore, Plaintiff requests relief as hereinafter provided.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for relief as follows:

- 17 1. For the Court to declare, adjudge, and decree that Defendants have violated the
18 California Labor Code as alleged herein;
- 19 2. For an order awarding the State of California, Plaintiff, and the Aggrieved
20 Employees civil penalties provided under the PAGA;
- 21 3. For interest on penalties awarded as provided by applicable law;
- 22 4. For an award of reasonable attorneys' fees;
- 23 5. For all costs of suit; and
- 24 6. For such other and further relief as this Court deems just and proper.

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Respectfully submitted,

Date: February 10, 2022



Carolyn H. Cottrell
Caroline N. Cohen
Scott L. Gordon
SCHNEIDER WALLACE
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*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

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

4 Respectfully submitted,

5 Date: February 10, 2022

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7 _____
8 Carolyn H. Cottrell
9 Caroline N. Cohen
10 Scott L. Gordon
11 SCHNEIDER WALLACE
12 COTTRELL KONECKY LLP

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