

APR 07 2022

BY 
MICHAEL WELCH II, DEPUTY

Carolyn Hunt Cottrell (SBN 166977)
Ori Edelstein (SBN 268145)
Eugene Zinovyev (SBN 267245)
Philippe M. Gaudard (SBN 331744)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100; Fax: (415) 421-7105
ccottrell@schneiderwallace.com
oedelstein@schneiderwallace.com
ezinovyev@schneiderwallace.com
aweaver@schneiderwallace.com
pgaudard@schneiderwallace.com

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

LUZ GOMEZ, on behalf of the State of
California and Aggrieved Employees,

Plaintiff,

vs.

4400 WE TECHNOLOGIES, INC. d/b/a
PATTERN JOBS; PATTERN LABS, INC.;
and RADIAL, INC.,

Defendants.

Case No. **CIV SB 2207056**

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

#435 SC-2022-25569 MW

DEMAND FOR JURY TRIAL

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

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Defendants 4400 WE Technologies,
5 Inc. d/b/a Pattern Jobs (“Pattern Jobs”), Pattern Labs, Inc. (“Pattern Labs”) and Radial, Inc. (“Radial”)
6 (collectively “Defendants”) on behalf of the State of California to collect penalties as a result of
7 Defendants’ systematic violations of California labor law with respect to Defendants’ non-exempt
8 hourly workers in the State of California (the “Aggrieved Employees”).

9 2. Defendants Pattern Jobs and Pattern Labs (collectively “Pattern”) are a staffing agency
10 that provides the companies with which they contract across the United States, including in California,
11 i.e., Pattern’s clients, with recruiting, onboarding, scheduling, and payroll services. Defendant Radial
12 is one of Pattern’s clients.

13 3. Plaintiff and Aggrieved Employees are current and former non-exempt hourly workers
14 employed by Pattern including, but not limited to, those assigned to work for Radial.

15 4. Plaintiff and Aggrieved Employees are jointly employed by Pattern, those Aggrieved
16 Employees, including Plaintiff, who perform work for Radial, are jointly employed by Pattern and
17 Radial.

18 5. Plaintiff and Aggrieved Employees are jointly employed by Pattern as, *inter alia*,
19 shipper receivers, picker packers, associate forklift operators, production workers, warehouse
20 associates, truck drivers, stockroom associates, customer service associates, sales associates, inventory
21 clerks, merchandising associates, event servers, cooks, bartenders, housekeepers, sanitation workers,
22 concession stand workers, coat check associates, and other similar positions.

23 6. Those Aggrieved Employees, including Plaintiff, who are jointly employed by Pattern
24 and Radial, include warehouse clerks, picking associates, fulfillment associates, shipping associates,
25 site routers, forklift operators, maintenance technicians, facilities technicians, inventory control
26 specialists, and other similar positions with similar job duties, commonly referred to as warehouse
27
28

associates throughout the State of California.¹

7. This action stems from Defendants' policies and practices of: (1) misclassifying Plaintiff and Aggrieved Employees as independent contractors instead of employees; (2) failing to compensate Plaintiff and Aggrieved Employees for all hours worked; (3) failing to pay Plaintiff and Aggrieved Employees minimum wage for all hours worked; (4) failing to pay Plaintiff and Aggrieved Employees all overtime wages owed; (5) failing to make available, authorize and/or permit Plaintiff and Aggrieved Employees to take timely and compliant meal and/or rest periods to which they are entitled by law and failing to make premium payments for those non-compliant meal and rest periods; (6) failing to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements, and (7) failing to timely pay Plaintiff and Aggrieved Employees all wages earned during employment and upon separation from employment.

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

PARTIES

9. Plaintiff Luz Gomez is an individual over the age of eighteen, and at all times relevant to this Complaint was a resident of the State of California.

10. Plaintiff worked for Defendants as a warehouse associate in Rialto, County of San Bernardino, California, from approximately September 2021 until December 2021.

11. Plaintiff is informed, believes, and thereon alleges that Defendant Pattern Jobs, is a Delaware corporation with its principal place of business located in New York, NY. Pattern Jobs is registered to do business in the State of California and does business in the State of California. Pattern Jobs may be served with process by serving its registered agent, Corpnet Incorporated, 31416 Agoura Rd., Suite 118, Westlake Village, California 91361.

12. Plaintiff is informed, believes, and thereon alleges that Defendant Pattern Labs is a Delaware corporation with its principal place of business located in Nederland, Colorado. Pattern Labs

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

1 does business in the State of California through its subsidiary Pattern Jobs. Pattern Labs may be served
2 with process by serving its registered agent, The Corporation Trust Company, Corporation Trust
3 Center, 1209 Orange Street, Wilmington, Delaware 19801.

4 13. Upon information and belief, Pattern Labs is the parent company of Pattern Jobs.
5 Pattern is part of the staffing services industry. Pattern provides the corporations with which they
6 contract across the United States, including in California, with recruiting, onboarding, scheduling, and
7 payroll services. Pattern employs hundreds of workers, including Plaintiff and Aggrieved Employees,
8 in the State of California.

9 14. Plaintiff is informed, believes, and thereon alleges that Defendant Radial is a
10 Pennsylvania corporation with its principal place of business located in King of Prussia, Pennsylvania.
11 Radial is registered to do business in the State of California and does business in the State of California.
12 Radial may be served with process by serving its registered agent, CSC – Lawyers Incorporating
13 Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95883.

14 15. Upon information and belief, Radial is part of the administrative services industry.
15 Radial provides its customers with order management, payment processing, order routing, fulfillment,
16 and analytics services. Radial provides its services throughout the United States, including in the State
17 of California. Radial employs hundreds of hourly, non-exempt workers, including Plaintiff and
18 Aggrieved Employees, in the State of California.

19 16. Plaintiff is informed, believes, and thereon alleges that Pattern provides Radial with
20 recruiting, onboarding, scheduling, and payroll services. For instance, Plaintiff was recruited and hired
21 by Pattern and assigned to work for Radial as a warehouse associate at Radial’s warehouse located in
22 Rialto, California.

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

25 18. At all material times, Defendants have done business under the laws of California, have
26 places of business in the State of California, including in this County, and have employed Aggrieved
27 Employees in this County. Defendants are “person(s)” as defined in Cal. Lab. Code § 18 and Cal. Bus.
28 & Prof. Code § 17201. Defendants are also “employers” as that term is used in the California Labor

1 Code and the IWC Wage Orders.

2 19. At all times herein relevant, Defendants, and each of them, were the agents, partners,
3 joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and
4 assigns, each of the other, and at all times relevant hereto were acting within the course and scope of
5 their authority as such agents, partners, joint venturers, representatives, servants, employees,
6 successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly
7 committed with the ratification, knowledge, permission, encouragement, authorization and consent
8 of each Defendant designated herein.

9 20. Defendants employ Plaintiff and Aggrieved Employees because Defendants, directly
10 or indirectly, control the employment terms, pay practices, timekeeping practices, and daily work of
11 Plaintiff and Aggrieved Employees.

12 **SUBJECT MATTER JURISDICTION AND VENUE**

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

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

20 **FACTUAL ALLEGATIONS**

21 23. Upon information and belief, Radial operates approximately twenty-five fulfillment
22 centers nationwide, including two fulfillment centers in the State of California respectively located in
23 Rialto and Montebello. Throughout its fulfillment centers, including Rialto and Montebello, Radial
24 provides its clients with a service to streamline orders and inventory management across distribution
25 centers and suppliers. Radial's warehouse associates, including Plaintiff and Aggrieved Employees,
26 are generally responsible for, without limitations, ensuring that every order is processed and filled
27 correctly, controlling, storing, packing, and unpacking inventories, and preparing and shipping orders.

28 24. Plaintiff worked for Defendants as a warehouse associate in Rialto, County of San

1 Bernardino, California from approximately September 2021 until December 2021. Plaintiff was
2 recruited and hired by Pattern and assigned to work for Radial. Plaintiff's duties included, without
3 limitations, storing, packing, unpacking, and controlling Defendants' inventory. While Plaintiff's
4 shifts varied in length, Plaintiff usually worked eight (8) hours or more per shift, five (5) days per
5 week. Plaintiff worked approximately forty (40) hours or more per week. During peak season, *i.e.*,
6 from approximately October until December, Plaintiff worked ten (10) hours or more per shift, five
7 (5) shifts per week for a total of fifty (50) hours or more per week.

8 25. Plaintiff was compensated at an hourly rate of \$15.00. During peak seasons, *i.e.*, from
9 approximately October until December, Plaintiff was compensated at an hourly rate of \$19.00.

10 26. Defendants pay Aggrieved Employees, including Plaintiff, on an hourly rate basis.

11 27. Plaintiff is informed, believes, and thereon alleges that Defendants employ and have
12 employed hundreds of hourly, non-exempt workers similarly situated to Plaintiff in California.

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

16 29. Aggrieved Employees perform their jobs under Defendants' supervision using materials
17 and technology approved and supplied by Defendants.

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

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

22 32. Plaintiff is informed, believes, and thereon alleges that Defendants' policies and
23 practices have at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless of
24 location and assignment in the State of California. Upon information and belief, Aggrieved Employees
25 worked more than eight (8) hours per day and more than forty (40) hours in at least one workweek
26 during the one year before this Complaint was filed.

27 33. Defendants hire and misclassify Plaintiff and Aggrieved Employees as independent
28 contractors instead of employees. Defendants exercise substantial control over Plaintiff and Aggrieved

1 Employees such that Plaintiff and Aggrieved Employees have little to no discretion with regard to how
2 and when their work is performed and are required to strictly adhere to Defendants' internal policies
3 and procedures. For instance, Plaintiff was required to follow a strict work schedule determined in
4 advance by Defendants' supervisor(s) and/or manager(s) and was required to report to her
5 supervisor(s) and/or manager(s) every day upon clocking in and before clocking out in order to review
6 daily job assignments, determine priorities and provide updates regarding orders' status. Plaintiff was
7 also required to use Radial' tools and equipment's in order to complete her work duties such as boxes,
8 tapes, blades, forklifts and other packaging machinery, and computers.

9 34. The work performed by Plaintiff and Aggrieved Employees for Pattern's clients,
10 including Radial, is not outside the usual course of the clients' business, and Plaintiff and Aggrieved
11 Employees and are not customarily engaged in an independently established trade, occupation, or
12 business in the same nature of the work performed for Radial or other Pattern's clients. To the contrary,
13 Plaintiff and Aggrieved Employees perform work that is central and essential to the business of Radial
14 and other Pattern's clients, *e.g.*, Plaintiff's work duties included, without limitation, ensuring that
15 every order is processed and filled correctly, controlling, storing, packing, and unpacking Radial's
16 inventory, and preparing and shipping orders.

17 35. Plaintiff is informed, believes, and thereon alleges that Defendants' misclassification
18 policies and practices have at all relevant times been similar for Plaintiff and Aggrieved Employees
19 regardless of location and assignment in California.

20 36. Defendants' willful misclassification of Plaintiff and Aggrieved Employees as
21 independent contractors gives rise to substantial violations of the California Labor Code, *e.g.*, Cal.
22 Lab. Code § 226.8.

23 37. As a matter of policy and/or practice, Defendants fail to authorize, permit and/or make
24 available compliant meal periods to Plaintiff and Aggrieved Employees. Plaintiff and Aggrieved
25 Employees are routinely denied meal breaks for four reasons: (1) Defendants misclassify Plaintiff and
26 Aggrieved Employees as independent contractors that are not entitled to meal periods; (2) Defendants
27 do not authorize, permit, and/or make available timely meal breaks to Plaintiff and Aggrieved
28 Employees; (3) Plaintiff and Aggrieved Employees are often too busy with work during the day to

1 have time to take bona fide meal breaks; and (4) Aggrieved Employees are subject to automatic meal
2 break deductions but continue working throughout their entire shift, including during meal breaks.

3 38. When Plaintiff and Aggrieved Employees attempt a meal break, such is often
4 interrupted and/or untimely, *i.e.*, Defendants do not provide Plaintiff and Aggrieved Employees with
5 duty-free, uninterrupted, and timely thirty-minute meal periods by the end of the fifth hour of work.

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

8 40. Further, for each day Plaintiff and Aggrieved Employees work longer shifts of ten
9 hours or more, Defendants frequently deny Plaintiff and Aggrieved Employees a duty-free,
10 uninterrupted, and timely second 30-minute meal break by the end of the tenth hour of work. Yet
11 again, Plaintiff and Aggrieved Employees do not receive premium payments for these missed second
12 meal breaks.

13 41. Similarly, Defendants regularly fail to make rest periods available to Plaintiff and
14 Aggrieved Employees. Plaintiff and Aggrieved Employees' schedules regularly prevent them from
15 taking bona fide rest breaks throughout the day. When available, if ever, such are often untimely and/or
16 interrupted, *i.e.*, Defendants do not provide Plaintiff and Aggrieved Employees with duty-free,
17 uninterrupted, and timely paid ten-minute rest periods by the end of the fourth hour of work, and again
18 by the end of the eighth hour of work.

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

21 43. Plaintiff is informed, believes, and thereon alleges that these meal and rest periods
22 policies and practices have at all relevant times been similar for Plaintiff and Aggrieved Employees
23 regardless of location and assignment in California.

24 44. Upon information and belief, in addition to requiring Plaintiff and Aggrieved
25 Employees to work during their entire shift, including during off-duty meal periods, Defendants
26 automatically deduct a 30-minute or a 1-hour unpaid lunch from Aggrieved Employees' pay each day
27 regardless of whether Aggrieved Employees, not including Plaintiff, actually receive a duty-free meal
28

1 period.² The time spent working through these automatically deducted meal breaks goes unrecorded
2 and uncompensated, even though it should be compensated at minimum wage and/or overtime rates
3 under California Law.

4 45. Moreover, Defendants also routinely deny Plaintiff and Aggrieved Employees
5 compensation for all hours worked, including minimum wage and overtime. Plaintiff and Aggrieved
6 Employees are regularly compensated for less than the total amount of hours they actually work.
7 Plaintiff and Aggrieved Employees are compensated daily via direct deposit for each shift they work,
8 however, the amount of pay issued to Plaintiff and Aggrieved Employees is often insufficient and
9 inconsistent. Defendants fail to accurately track the number of hours that Plaintiff and Aggrieved
10 Employees work and therefore Plaintiff's and Aggrieved Employees' pay does not reflect the total
11 amount of hours they actually work. Plaintiff and Aggrieved Employees also receive paystubs for each
12 shift they work, however such paystubs fail to indicate Plaintiff and Aggrieved Employees' hourly
13 rate, the corresponding pay period, the number of hours for which Plaintiff and Aggrieved Employees
14 are being compensated and whether Plaintiff and Aggrieved Employees are paid overtime premiums
15 for hours worked over eight hours per day. Because Defendants' paystubs lack essential requisite
16 information it is unreasonably difficult, if not impossible, for Plaintiff and Aggrieved Employees to
17 verify the accuracy of their pay. This results in Defendants underpaying Plaintiff and Aggrieved
18 Employees by routinely failing to compensate them for all time worked.

19 46. Further, Defendants charge a currency conversion fee to Plaintiff and Aggrieved
20 Employees as it converts their wages from Canadian dollars into U.S. dollars. Defendants' charge for
21 converting paid wages from Canadian dollars to U.S. dollars gives rise to unlawful withholdings of
22 wages which impacts the hourly rates of Plaintiff and Aggrieved Employees and results in further
23 failure to pay for all hours worked, including minimum wage and overtime.

24 47. In addition, during peak season, *i.e.*, from approximately October until December,
25 Plaintiff and Aggrieved Employees often work long shifts lasting ten (10) hours or more. However,
26

27 ² As of December 16, 2021, The Pattern Jobs' website (<https://help.patternjobs.com/hc/en-us>) explicitly advised
28 that "[Plaintiff and Aggrieved Employees] are not required to clock-out for [their] lunch break as [Defendants]
automatically account for [their] unpaid lunch break within [their] shift" as follows: (i) any shift under 6.5 hours
include a 30-minute unpaid lunch, and (ii) any shifts over 6.5 hours include a 1-hour unpaid lunch.

1 Defendants refuse to compensate Plaintiff and Aggrieved Employees at an overtime rate of one and
2 one half their regular rate of pay for all time worked above eight (8) hours per day and/or forty (40)
3 hours per week. Instead, Defendants continue to pay Plaintiff and Aggrieved Employees at their
4 regular rate of pay regardless of whether their time worked exceeds eight (8) hours per day and/or
5 forty (40) hours per week. As a result of these policies, Plaintiff and Aggrieved Employees are denied
6 substantial compensation for all hours worked, including minimum wage and overtime compensation,
7 which they are lawfully owed.

8 48. Plaintiff is informed, believes, and thereon alleges that these same timekeeping
9 mechanisms, wages conversion policies and unlawful compensation protocols and practices have at
10 all relevant times been similar for Plaintiff and Aggrieved Employees regardless of location and
11 assignment in California.

12 49. Defendants' common course of wage-and-hour abuse results in routinely failing to
13 maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees. In
14 particular, Defendants have failed to record all hours worked by Plaintiff and Aggrieved Employees,
15 including overtime.

16 50. Defendants' failure to record all hours worked also results in a failure to provide
17 Aggrieved Employees, including Plaintiff, accurate itemized wage statements as required by
18 California law. The wage statements Defendants provide are not accurate because they do not reflect
19 payment for all hours worked, including minimum wage and overtime compensation. Further, the
20 wage statements are inaccurate because they do not include premium pay for non-compliant meal
21 and/or rest periods in violation of California law.

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

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

FIRST CAUSE OF ACTION

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

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

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

54. Cal. Lab. Code § 2699(a) provides:

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

55. Cal. Lab. 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.

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

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 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.

57. Cal. Lab. 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.”

58. Plaintiff seeks civil penalties pursuant to Cal. Lab. 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 Cal. Lab. Code §§ 201-202 and in the amounts established by Cal. Lab. Code §§ 203 and 256.

59. Cal. Lab. 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

1 paying the employee's wages, or separately when wages are paid by personal check or
2 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
3 total hours worked by the employee, except for any employee whose compensation is
4 solely based on a salary and who is exempt from payment of overtime under
5 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
6 Commission, (3) the number of piece-rate units earned and any applicable piece-rate
7 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.

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

9 An employee suffering injury as a result of a knowing and intentional failure by an
10 employer to comply with subdivision (a) is entitled to recover the greater of all actual
11 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
12 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.

13 61. Cal. Lab. Code § 226.3 provides:

14 Any employer who violates subdivision (a) of Section 226 shall be subject to a civil
15 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation
16 in an initial citation and one thousand dollars (\$1,000) per employee for each violation
17 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.

18 62. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure
19 by Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
20 wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts established by Cal. Lab.
21 Code § 226.3. In addition, Plaintiff seeks penalties in the amount established by Cal. Lab. Code §
22 226(e)(1).

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

25 64. Cal. Lab. Code § 226.8(c) provides:

26 If the Labor and Workforce Development Agency or a court issues a determination that
27 a person or employer has engaged in any of the enumerated violations of subdivision
28 (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

1 (\$25,000) for each violation, in addition to any other penalties or fines permitted by
2 law.

3 65. Plaintiff seeks civil penalties in the amount established by Cal. Lab. Code § 226.8(c)
4 for each Defendants' willful misclassification of Plaintiff and Aggrieved Employees as independent
5 contractors.

6 66. Pursuant to Cal. Lab. Code § 2699.3(a)(1) and (2), on January 10, 2022, Plaintiff
7 provided the Labor and Workforce Development Agency ("LWDA") with notice of her intention to
8 file this claim. On January 14, 2022, Plaintiff served Defendants with a copy of such notice via
9 certified mail. At least sixty-five calendar days have passed without response from the LWDA.
10 Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with
11 Cal. Lab. Code § 2699.3(a).

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

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

17 69. Wherefore, Plaintiff requests relief as hereinafter provided.

18 **SECOND CAUSE OF ACTION**

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

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

21 70. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
22 herein.

23 71. Cal. Lab. Code § 2699(f) provides:

24 For all provisions of this code except those for which a civil penalty is specifically
25 provided, there is established a civil penalty for a violation of these provisions, as
26 follows: . . . (2) If, at the time of the alleged violation, the person employs one or more
27 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
28 per pay period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

72. Cal. Lab. Code § 200 defines wages as "all amounts for labor performed by employees

1 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
2 commission basis or method of calculation.”

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

5 74. Cal. Lab. Code § 221 provides that “[i]t shall be unlawful for any employee to collect
6 or receive from an employee any part of wages therefore paid by said employer to said employee.”

7 75. Cal. Lav. Code § 225.5 provides in relevant part:

8 In addition to, and entirely independent and apart from, any other penalty provided in
9 this article, every person who unlawfully withholds wages due any employee in
10 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as
11 follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
each employee. (b) For each subsequent violation, or any willful or intentional
violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
percent of the amount unlawfully withheld.

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

15 77. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
16 conditions that violate the Wage Orders.

17 78. Cal. Lab. Code § 510 provides, in relevant part:

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

24 79. 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 80. Cal. Lab. Code § 1194 provides, in relevant part:

1 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
2 than the legal minimum wage or the legal overtime compensation applicable to the
3 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.

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

12 82. Defendants' policies and practices result in payment of wage and overtime violations,
13 and meal and rest periods violations.

14 83. 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, 221, 225.5, 226.7, 510, 512, 1194, 1197, 1198, IWC Wage Order 4-2001, and any
20 other violation alleged herein which does not carry penalties under Cal. Lab. Code § 2699(a).

21 84. Pursuant to Cal. Lab. Code § 2699.3(a)(1) and (2), on January 10, 2022, Plaintiff
22 provided LWDA with notice of her intention to file this claim. On January 14, 2022, Plaintiff served
23 Defendants with a copy of such notice via certified mail. At least sixty-five calendar days have passed
24 without response from the LWDA. Plaintiff satisfied the administrative prerequisites to commence
25 this civil action in compliance with Cal. Lab. Code § 2699.3(a).

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

28 86. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for

1 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
2 and costs as set forth below.

3 87. Wherefore, Plaintiff requests relief as hereinafter provided.

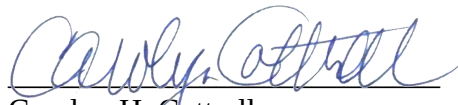
4 **PRAYER FOR RELIEF**

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

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

14
15
16 Respectfully Submitted,

17 Date: April 6, 2022

18 

19 Carolyn H. Cottrell

20 Ori Edelstein

21 Eugene Zinovyev

22 Philippe M. Gaudard

23 **SCHNEIDER WALLACE**

24 **COTTRELL KONECKY LLP**

25 *Attorneys for Plaintiff, on behalf of the State of*
26 *California and Aggrieved Employees*
27
28

1 **DEMAND FOR JURY TRIAL**

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

4 Respectfully Submitted,

5 Date: April 6, 2022

6 

7 Carolyn H. Cottrell

8 Ori Edelstein

9 Eugene Zinovyev

10 Philippe M. Gaudard

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

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