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State of California and Aggrieved Employees*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

ALEXANDRIA BLACKWELL,
SKYMEISHA BUTTS, ROBERT
GREGORY, JUAN RODRIGUEZ, and
EDWARD SHUBIN, on behalf of the State
of California and Aggrieved Employees,

Plaintiffs,

v.

LOWE'S HOME CENTERS, LLC; and
DOES 1-50, inclusive,

Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

05/15/2023 at 03:51:13 PM

By: Angela Linhares,
Deputy Clerk

Case No.: **23CV03334**

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

DEMAND FOR JURY TRIAL

1 Plaintiffs Alexandria Blackwell, Skymeisha Butts, Robert Gregory, Juan Rodriguez, and
2 Edward Shubin, on behalf of the State of California and Aggrieved Employees, complain and allege
3 as follows:

4 **INTRODUCTION**

5 1. Plaintiffs Alexandria Blackwell, Skymeisha Butts, Robert Gregory, Juan Rodriguez,
6 and Edward Shubin (“Plaintiffs”) bring this enforcement action against Defendant Lowe’s Home
7 Centers, LLC (“Defendant”), on behalf of the State of California to collect civil penalties pursuant
8 to Section 2699(a) and (f) of the California Labor Code Private Attorneys General Act (“PAGA”)
9 as a result of Defendant’s systemic violations of California labor law with respect to current and
10 former hourly, salaried, exempt, and non-exempt employees of Defendant (“Aggrieved
11 Employees”).

12 2. Defendant maintains a longstanding policy and/or practice of failing to properly
13 compensate Plaintiffs and Aggrieved Employees for all hours worked, including minimum wage
14 and overtime payments. Additionally, Plaintiffs and Aggrieved Employees have been denied proper
15 meal and rest breaks and have been denied reimbursement for necessary business expenses.

16 3. As a result, Plaintiffs and Aggrieved Employees bring this action to challenge
17 Defendant’s policies and practices of: (1) failing to compensate Plaintiffs and Aggrieved Employees
18 for all hours worked; (2) failing to pay Plaintiffs and Aggrieved Employees all minimum wages
19 owed; (3) failing to properly pay Plaintiffs and Aggrieved Employees overtime wages; (4) failing
20 to authorize and permit Plaintiffs and Aggrieved Employees to take compliant meal and rest periods
21 to which they are entitled by law, and failing to properly pay premiums for those missed meal and
22 rest periods; (5) failing to reimburse Plaintiffs and Aggrieved Employees for necessary business
23 expenses; (6) failing to provide Plaintiffs and Aggrieved Employees accurate, itemized wage
24 statements; and (7) failing to timely pay all wages due upon separation from employment.

25 4. Plaintiffs, on behalf of the State of California, seek to recover penalties and
26 reasonable attorneys’ fees for these violations pursuant to Sections 2699(a) and (f) of the California
27 Labor Code Private Attorneys General Act (“PAGA”).
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13. Plaintiffs are informed, believe, and thereon allege that Lowe's Home Centers, LLC is a North Carolina limited liability company. Defendant is registered to do business in California, employs workers, including Plaintiffs and Aggrieved Employees, in California, and employs Aggrieved Employees in this County.

14. The true names and capacities, whether individual, corporate, associate, or otherwise, of Does 1-50, inclusive, are unknown to Plaintiffs, who therefore sue the Doe Defendants by fictitious names. Plaintiffs are informed, believe, and thereon allege that each of these fictitiously named Defendants is responsible in some manner for the occurrences and violations as herein alleged. Plaintiffs will amend this Complaint to show their true names and capacities when they have been ascertained. Defendants are jointly and severally liable for the civil penalties asserted.

15. At all relevant times, Defendant has done business under the laws of California, has had places of business in California, including in this county, and has employed Aggrieved Employees in this county, and elsewhere throughout California.

16. Defendant is a “person” as defined in Cal. Lab. Code § 18 and an “employer” as that term is used in the Cal. Lab. Code, the IWC Wage Orders regulating wages, hours, and working conditions, and the Cal. Bus. & Prof. Code § 17201.

FACTUAL ALLEGATIONS

17. Defendant owns and operates home improvement stores. Defendant operates throughout California and employs hundreds of hourly, salaried, exempt, and non-exempt employees in California.

18. Defendant employs Plaintiff Blackwell as a cashier from approximately July 2022 through the present in Antioch, California.

19. Defendant employed Plaintiff Butts as a merchandising associate from approximately March 2022 to July 2022 in Long Tree, California.

20. Defendant employed Plaintiff Gregory as a night crew stocker from approximately March 2020 to August 2022 in Oak Grove, California.

21. Defendant employed Plaintiff Rodriguez as a back end supervisor from approximately December 2005 to August 2021 in West Hills, California.

1 22. Defendant employed Plaintiff Shubin as a sales associate and department supervisor
2 from approximately March 2021 to December 2021 in Huntington Beach and San Clemente,
3 California.

4 23. Although Plaintiffs' shifts varied in length, they were usually scheduled to work 8
5 hours or more per shift, 5 shifts per work, for approximately 40 or more hours per week.

6 24. Plaintiffs are informed, believe, and thereon allege that Aggrieved Employees were
7 and are employed by Defendant throughout California, including in this County, and perform work
8 materially similar to Plaintiffs. Defendant pays and/or paid Aggrieved Employees, including
9 Plaintiffs, on an hourly rate or salaried basis.

10 25. Plaintiffs are informed, believe, and thereon allege that the policies and practices of
11 Defendant have at all relevant times been similar for Plaintiffs and Aggrieved Employees,
12 regardless of the facilities' location in California.

13 26. Plaintiffs and Aggrieved Employees are required to follow and abide by common
14 work, time, and pay policies and procedures in the performance of their jobs and duties.

15 27. At the end of each pay period, Plaintiffs and Aggrieved Employees receive wages
16 from Defendant that are determined by common systems and methods that Defendant selects and
17 controls.

18 28. As a matter of policy and/or practice, Defendant routinely fails to properly pay
19 Plaintiffs and Aggrieved Employees for all hours worked, including all minimum wages and
20 overtime. Defendant routinely requires Plaintiffs and Aggrieved Employees to perform work off-
21 the-clock and without compensation. Defendant's policies and practices cause Plaintiffs and
22 Aggrieved Employees to have to work after their shifts, while they are not clocked in.

23 29. For instance, Plaintiffs routinely performed duties while off-the-clock, including but
24 not limited to Defendant's requirement that some Plaintiffs and Aggrieved Employees continue to
25 work to cover the staffing shortage outside of their regularly scheduled shifts, without tracking and
26 compensating for those hours work.

27 30. Because this time spent working off-the-clock occurs during shifts when Plaintiffs
28 and Aggrieved Employees are working at least 8 hours on-the-clock, the additional work that goes

1 unrecorded and uncompensated should be paid at the overtime rate. As a result of these policies
2 and/or practices, Defendant denies Plaintiffs and Aggrieved Employees compensation which they
3 are lawfully owed.

4 31. Defendant also regularly fails to authorize and permit Plaintiffs and Aggrieved
5 Employees to take legally compliant meal and rest periods. Plaintiffs and Aggrieved Employees
6 regularly do not receive proper, timely, uninterrupted meal and rest breaks. Understaffing and work
7 demands often prevented Plaintiffs and Aggrieved Employees from taking proper meal and rest
8 breaks; they were often required to assist customers and perform other work during their meal and
9 rest breaks. This often resulted in missed, late, interrupted, and short meal and rest breaks.

10 32. Despite these violations, Defendant fails to pay the required premium pay for all
11 noncompliant meal and rest periods.

12 33. Plaintiffs are informed, believe, and thereon allege that Defendant utilizes and applies
13 these same meal and rest period policies and practices across all Defendant's facilities throughout
14 California.

15 34. Plaintiffs and Aggrieved Employees are also required to pay out of pocket for
16 necessary business expenses incurred as a result of their work for Defendant, but they are not
17 reimbursed for these expenses. For example, Defendant required Plaintiffs and Aggrieved
18 Employees to contact supervisors, to communicate with other employees on shift, to text
19 supervisors, to contact customers, to scan products, and to look up inventories for customers. In
20 addition, certain Aggrieved Employees are expected to download the "Kronos" application to keep
21 track of their schedules, to download the "Workday" application to track their pay and time records,
22 and to download a Lowes application to scan products, look up inventories for customers, and
23 contact customers. However, they are not compensated for the same.

24 35. Defendant's common course of wage-and-hour abuse also includes routinely failing
25 to maintain true and accurate records of the hours worked by Plaintiffs and Aggrieved Employees.
26 In particular, Defendant fails to record the hours Plaintiffs and Aggrieved Employees worked off-
27 the-clock.

28 36. As a result of the aforementioned violations, Plaintiffs and Aggrieved Employees are

1 provided with inaccurate wage statements as such statements do not include payment for all hours
2 worked, including minimum wage and overtime for off-the-clock work, as well as premium pay for
3 noncompliant meal and rest periods.

4 37. Additionally, Plaintiffs and Aggrieved Employees did not receive all wages during
5 employment and following separation from employment, including payment for time spent working
6 off-the-clock and during meal periods, as well as premium payments for noncompliant meal and
7 rest periods.

8 38. Plaintiffs are informed, believe, and thereon allege that Defendant is well aware that
9 its policies and practices deprive Plaintiffs and Aggrieved Employees of substantial pay for all time
10 worked and that Plaintiffs and Aggrieved Employees do not receive legally compliant meal and rest
11 periods.

12 39. Plaintiffs are informed, believe, and thereon allege that Defendant's unlawful conduct
13 has been widespread, repeated, and consistent throughout Defendant's California facilities.

14 40. Defendant's conduct is and/or was willful, carried out in bad faith, and causes
15 significant civil penalties in an amount to be determined at trial.

16 **FIRST CAUSE OF ACTION**

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

18 **For Violations of Cal. Lab. Code §§ 204, 1194, and 1198**

19 **(Failure to Pay for all Hours Worked)**

20 41. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
21 herein.

22 42. Cal. Lab. Code § 204 provides in part that "all wages . . . earned by any person in any
23 employment are due and payable twice during each calendar month..."

24 43. Cal. Lab. Code section 1194(a) provides as follows:

25 Notwithstanding any agreement to work for a lesser wage, any employee receiving
26 less than the legal minimum wage or the legal overtime compensation applicable to
27 the employee is entitled to recover in a civil action the unpaid balance of the full
28 amount of this minimum wage or overtime compensation, including interest thereon,
reasonable attorneys' fees, and costs of suit.

1 44. Cal. Lab. Code Section 200(a) defines wages as “all amounts for labor performed by
2 employees of every description, whether the amount is fixed or ascertained by the standard of time,
3 task, piece, commission basis, or other method of calculation.”

4 45. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
5 conditions that violate the Wage Orders.

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

9 47. In violation of California law, Defendant knowingly and willfully refuses to perform
10 its obligations to provide Plaintiffs and Aggrieved Employees with compensation for all time
11 worked. Defendant regularly fails to track the time Plaintiffs and Aggrieved Employees actually
12 work and fails to compensate them for all hours worked, as alleged above.

13 48. Therefore, Defendant committed, and continues to commit, the acts alleged herein
14 knowingly and willfully, and in conscious disregard of Plaintiffs’ and Aggrieved Employees’ rights.

15 49. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100)
16 for each Aggrieved Employee per pay period for the initial violation of a Cal. Lab. Code provision
17 that does not provide a civil penalty if, at the time of the violation, the employer employs one or
18 more employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200)
19 for each Aggrieved Employee per pay period for each subsequent violation of a Labor Code
20 provision that does not provide a civil penalty if, at the time of the violation, the employer employs
21 one or more employees.

22 50. Plaintiffs seek to recover civil penalties from Defendant for its failure to pay for all
23 hours worked in violation of Cal. Lab. Code §§ 204, 1194, and 1198 throughout California on behalf
24 of themselves, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code
25 § 2699(f).

26 51. Pursuant to Cal. Lab. Code § 2699.3(a)(1) and (2), Plaintiffs provided the Labor and
27 Workforce Development Agency (“LWDA”) notice of their intention to file their claims. Sixty-five
28 (65) calendar days have passed without notice from the LWDA. Plaintiffs therefore satisfied the

1 administrative prerequisites for this civil action in compliance with Cal. Lab. Code § 2699.3(a).

2 52. Defendant is liable to Plaintiffs, the State of California, and Aggrieved Employees
3 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiffs are also entitled to
4 an award of attorneys' fees and costs as set forth below.

5 53. Wherefore, Plaintiffs request relief as hereinafter provided.

6 **SECOND CAUSE OF ACTION**

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

8 **For Violations of Cal. Lab. Code §§ 1182.12, 1194, and 1197**

9 **(Failure to Pay Minimum Wage)**

10 54. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
11 herein.

12 55. Defendant fails to compensate Plaintiffs and Aggrieved Employees with at least
13 minimum wage for all hours worked or spent in Defendant's control.

14 56. During the applicable statutory period, Cal. Lab. Code §§ 1182.12 and 1197, and the
15 Minimum Wage Order were in full force and effect, and required that Defendant's hourly employees
16 receive the minimum wage for all hours worked irrespective of whether nominally paid on a piece
17 rate, or any other basis, at the rate of fifteen dollars (\$15.00) per hour commencing January 2022;
18 and at the rate of fifteen dollars and fifty cents (\$15.50) commencing January 1, 2023.

19 57. Cal. Lab. Code §1194 states:

20 Notwithstanding any agreement to work for a lesser wage, any employee receiving
21 less than the legal minimum wage or the legal overtime compensation applicable to
22 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.

23 58. IWC Wage Order 7-2001(2)(G) define hours worked as "the time during which an
24 employee is subject to the control of an employer and includes all the time the employee is suffered
25 or permitted to work, whether or not required to do so."

26 59. Defendant maintains policies and procedures which create a working environment
27 where hourly employees are routinely compensated at a rate that is less than the statutory minimum
28 wage. Plaintiffs and Aggrieved Employees routinely work time off-the-clock without

1 compensation. For instance, Plaintiffs and Aggrieved Employees are not compensated for time
2 spent working after clocking out, and during unpaid meal periods, as described above.

3 60. As a direct and proximate result of the unlawful acts and/or omissions of Defendant,
4 Plaintiffs and Aggrieved Employees have been deprived of minimum wages as required by law.

5 61. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100)
6 for each Aggrieved Employee per pay period for the initial violation of a Cal. Lab. Code provision
7 that does not provide a civil penalty if, at the time of the violation, the employer employs one or
8 more employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200)
9 for each Aggrieved Employee per pay period for each subsequent violation of a Labor Code
10 provision that does not provide a civil penalty if, at the time of the violation, the employer employs
11 one or more employees.

12 62. Plaintiffs seek to recover civil penalties from Defendant for its failure to pay
13 minimum wages in violation of Cal. Lab. Code §§ 1182.12, 1194, and 1197 throughout California
14 on behalf of themselves, the State of California, and other Aggrieved Employees pursuant to Cal.
15 Lab. Code § 2699(f).

16 63. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiffs provided the LWDA
17 notice of their intention to file their claims. Sixty-five calendar days have passed without notice
18 from the LWDA. Plaintiffs therefore satisfied the administrative prerequisites for this civil action
19 in compliance with Cal. Lab. Code § 2699.3(a).

20 64. Defendant is liable to Plaintiffs, the State of California, and Aggrieved Employees
21 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiffs are also entitled to
22 an award of attorneys' fees and costs as set forth below.

23 65. Wherefore, Plaintiffs request relief as hereinafter provided.
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1 California's overtime requirements, including those set forth above.

2 72. Defendant regularly requires Plaintiffs and Aggrieved Employees to work in excess
3 of 8 hours per day, and/or 40 hours per week, but does not compensate them at the appropriate
4 overtime rates for all this work, as described above.

5 73. Plaintiffs and Aggrieved Employees work overtime hours for Defendant without
6 being paid overtime premiums in violation of the Cal. Lab. Code, applicable IWC Wage Orders,
7 and other applicable law.

8 74. Defendant knowingly and willfully refused to perform its obligation to provide
9 Plaintiffs and Aggrieved Employees with premium wages for all overtime work.

10 75. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100)
11 for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that
12 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
13 employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for
14 each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision
15 that does not provide a civil penalty if, at the time of the violation, the employer employs one or
16 more employees.

17 76. Plaintiffs seek to recover civil penalties from Defendant for its failure to pay overtime
18 wages in violation of Cal. Lab. Code §§ 510 and 1194 throughout California on behalf of
19 themselves, the State of California, and other Aggrieved Employees pursuant to Labor Code §
20 2699(f).

21 77. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiffs provided the LWDA
22 notice of their intention to file their claims. Sixty-five calendar days have passed without notice
23 from the LWDA. Plaintiffs therefore satisfied the administrative prerequisites for this civil action
24 in compliance with Cal. Lab. Code § 2699.3(a).

25 78. Defendant is liable to Plaintiffs, the State of California, and Aggrieved Employees
26 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiffs are also entitled to
27 an award of attorneys' fees and costs as set forth below.

28 79. Wherefore, Plaintiffs request relief as hereinafter provided.

1 **FOURTH CAUSE OF ACTION**

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

3 **For Violations of Cal. Lab. Code §§ 226.7 and 512**

4 **(Meal Periods and Failure to Provide Premium Pay Therefrom)**

5 80. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
6 herein.

7 81. Defendant routinely fails to authorize, permit and/or make available compliant meal
8 periods to Plaintiffs and Aggrieved Employees.

9 82. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders require Defendant
10 to authorize and permit meal periods to its employees. Cal. Lab. Code §§ 226.7 and 512 and the
11 Wage Orders prohibit employers from employing an employee for more than five hours without a
12 meal period of not less than thirty minutes, and from employing an employee more than ten (10)
13 hours per day without providing the employee with a second meal period of not less than thirty
14 minutes.

15 83. Under Cal. Lab. Code § 226.7(b) and the applicable Wage Orders, an employer who
16 fails to provide a required meal period must, as compensation, pay the employee one hour of pay at
17 the employee's regular rate of compensation for each workday that the meal period was not
18 authorized and permitted.

19 84. Unless the employee is relieved of all duty during the thirty-minute meal period, the
20 employee is considered "on duty" and the meal period is counted as time worked under the
21 applicable Wage Orders.

22 85. Despite these requirements, Defendant knowingly and willfully refused to perform
23 its obligations to authorize and permit and/or make available to Plaintiffs and Aggrieved Employees
24 the ability to take the meal to which they are entitled. Work demands and understaffing, among
25 other issues, often made it difficult and/or impossible for Plaintiffs and Aggrieved Employees to
26 take compliant meal periods. As a result, these were often missed, late, short, or interrupted.

27 86. Plaintiffs and Aggrieved Employees do not receive the requisite premium pay for
28 their noncompliant meal periods as required by California law.

87. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

88. Plaintiffs seek to recover civil penalties from Defendant for its violations of the meal period requirements of Cal. Lab. Code §§ 226.7 and 512 throughout California on behalf of themselves, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

89. Pursuant to Cal. Lab. Code § 2699.3(a)(1) and (2), Plaintiffs provided the LWDA notice of their intention to file their claims. Sixty-five calendar days have passed without notice from the LWDA. Plaintiffs therefore satisfied the administrative prerequisites for this civil action in compliance with § 2699.3(a).

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

91. Wherefore, Plaintiffs request relief as hereinafter provided.

FIFTH CAUSE OF ACTION

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

for Violations of Cal. Lab. Code § 226.7

(Rest Breaks and Failure to Pay Premiums Therefrom)

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

93. Defendant routinely fails to make rest periods available to Plaintiffs and Aggrieved Employees. When available, if ever, their rest breaks are often not compliant. Instead, they are generally untimely, interrupted, and/or shortened. Plaintiffs and Aggrieved Employees also do not

1 receive premium pay for their missed rest breaks as required by California law.

2 94. Cal. Lab. Code §§ 226.7 and the applicable Wage Orders require employers to
3 authorize and permit non-exempt workers to take ten minutes of net rest time per four hours or
4 major fraction thereof of work, and to pay non-exempt workers their full wages during those rest
5 periods. Unless the employee is relieved of all duty during the ten-minute rest period, the employee
6 is considered “on duty” and the rest period is counted as time worked under the applicable Wage
7 Orders.

8 95. Under Cal. Lab. Code § 226.7(b) an employer must pay an employee denied a
9 required rest period is required to pay one hour of pay at the employee’s regular rate of
10 compensation for each workday that the rest period was not authorized and permitted and/or not
11 made available.

12 96. Despite these requirements, Defendant knowingly and willfully refuses to perform its
13 obligations to authorize and permit and/or make available to Plaintiffs and Aggrieved Employees
14 the ability to take compliant rest periods to which they are entitled. Defendant also fails to pay
15 Plaintiffs and Aggrieved Employees one hour of pay for each day Plaintiffs and Aggrieved
16 Employees are denied compliant rest periods. Defendant’s conduct described herein violates Cal.
17 Lab. Code § 226.7.

18 97. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100)
19 for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that
20 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
21 employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for
22 each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision
23 that does not provide a civil penalty if, at the time of the violation, the employer employs one or
24 more employees.

25 98. Plaintiffs seek to recover civil penalties from Defendant for its violations of the rest
26 period requirements of Cal. Lab. Code § 226.7 throughout California on behalf of herself, the State
27 of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

28 99. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiffs provided the LWDA

1 notice of their intention to file their claims. Sixty-five calendar days have passed without notice
2 from the LWDA. Plaintiffs therefore satisfied the administrative prerequisites for this civil action
3 in compliance with Cal. Lab. Code § 2699.3(a).

4 100. Defendant is liable to Plaintiffs, the State of California, and Aggrieved Employees
5 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiffs are also entitled to
6 an award of attorneys' fees and costs as set forth below.

7 101. Wherefore, Plaintiffs request relief as hereinafter provided.

8 **SIXTH CAUSE OF ACTION**

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

10 **For Violations of Cal. Lab. Code § 2802**

11 **(Reimbursement for Necessary Business Expenses)**

12 102. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
13 herein.

14 103. Defendant does not reimburse Plaintiffs and Aggrieved Employees for all necessary
15 business expenditures and losses incurred in direct consequence of the discharge of their work
16 duties.

17 104. Cal. Lab. Code § 2802 provides, in relevant part:

18 An employer shall indemnify his or her employee for all necessary expenditures or
19 losses incurred by the employee in direct consequence of the discharge of his or her
20 duties, or of his or her obedience to the directions of the employer, even though
21 unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful. ... For the purposes of this section, the term "necessary expenditures or
losses" shall include all reasonable costs, including, but not limited to, attorney's fees
incurred by the employee enforcing the rights granted by this section.

22 105. Defendant fails to provide Plaintiffs and Aggrieved Employees reimbursement for all
23 necessary expenditures or losses incurred by Plaintiffs and Aggrieved Employees in direct
24 consequence of the discharge of their duties, or as a result of their obedience to the directions of
25 Defendant. Defendant regularly requires Plaintiffs and Aggrieved Employees to pay out-of-pocket
26 expenses necessary to perform their daily work assignments. For example, Plaintiffs and Aggrieved
27 employees are required to use their personal cellular phones for work-related purposes, as described
28 above. However, Defendant does not reimburse these workers for these expenditures.

106. Defendant's failure to reimburse for necessary business expenses is a violation of Cal. Lab. Code § 2802.

107. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

108. Plaintiffs seek to recover civil penalties from Defendant for its failure to reimburse for all necessary business expenses in violation of Cal. Lab. Code §§ 2802 and the applicable wage on behalf of themselves, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

109. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiffs provided the LWDA notice of their intention to file their claims. Sixty-five calendar days have passed without notice from the LWDA. Plaintiffs therefore satisfied the administrative prerequisites for this civil action in compliance with Cal. Lab. Code § 2699.3(a).

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

111. Wherefore, Plaintiffs request relief as hereinafter provided.

SEVENTH CAUSE OF ACTION

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

for Violations of Cal. Lab. Code § 226

(Accurate, Itemized Wage Statements)

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

113. Defendant does not provide Plaintiffs and Aggrieved Employees with accurate,

1 itemized wage statements as required by California law.

2 114. Cal. Lab. Code § 226(a) provides that:

3 An employer, semimonthly or at the time of each payment of wages, shall furnish to
4 his or her employee, either as a detachable part of the check, draft, or voucher paying
5 the employee's wages, or separately if wages are paid by personal check or cash, an
6 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
7 worked by the employee, except as provided in subdivision (j), (3) the number of
8 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
9 rate basis, (4) all deductions, provided that all deductions made on written orders of
10 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
11 inclusive dates of the period for which the employee is paid, (7) the name of the
12 employee and only the last four digits of his or her social security number or an
employee identification number other than a 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 payment 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 and the record of the deductions shall be kept on file
by the employer for at least three years at the place of employment or at a central
location within the State of California.

13 115. The IWC Wage Order also establishes this requirement.

14 116. Cal. Lab. Code § 226(e) provides:

15 An employee suffering injury as a result of a knowing and intentional failure by an
16 employer to comply with subdivision (a) is entitled to recover the greater of all actual
17 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 exceeding an aggregate penalty of four thousand dollars (\$4,000) and is
entitled to an award of costs and reasonable attorney's fees.

18
19 117. Cal. Lab. Code § 226.3 provides:

20 Any employer who violates subdivision (a) of Section 226 shall be subject to a civil
21 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation
22 in an initial citation and one thousand dollars (\$1,000) per employee for each violation
23 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.

24 118. Due to the failure to pay one hour of premium pay to Plaintiffs and the Aggrieved
25 Employees for each missed or noncompliant meal or rest period, along with the off-the-clock work,
26 minimum wage, and overtime violations, the wage statements Defendant provides its employees,
27 including the Aggrieved Employees, do not reflect the actual gross wages earned, actual net wages
28 earned, or actual hours worked. Accordingly, Defendant knowingly and willfully failed to provide

1 timely, accurate itemized wage statements to Plaintiffs and the Aggrieved Employees in accordance
2 with Cal. Lab. Code §§ 226, 226.3 and the IWC Wage Order.

3 119. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty
4 to be assessed and collected by the LWDA for a violation of the Cal. Lab. Code on behalf of himself
5 or herself and other current or former employees pursuant to the procedures set forth in Cal. Lab.
6 Code § 2699.3. Cal. Lab. Code § 2699(a) provides:

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

13 120. Plaintiffs seek to recover civil penalties from Defendant pursuant to Cal. Lab. Code
14 § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiffs and Aggrieved
15 Employees an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the
16 amounts established by Cal. Lab. Code § 226.3. Plaintiffs seek such penalties as an alternative to
17 the penalties available under Cal. Lab. Code § 226(e), as prayed for herein.

18 121. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiffs provided the LWDA
19 notice of their intention to file their claims. Sixty-five calendar days have passed without notice
20 from the LWDA. Plaintiffs therefore satisfied the administrative prerequisites for this civil action
21 in compliance with Cal. Lab. Code § 2699.3(a).

22 122. Defendant is liable to Plaintiffs, the State of California, and Aggrieved Employees
23 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiffs are also entitled to
24 an award of attorneys' fees and costs as set forth below.

25 123. Wherefore, Plaintiffs request relief as hereinafter provided.

26 **EIGHTH CAUSE OF ACTION**

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

28 **For Violations of Cal. Lab. Code §§ 201-203**

(Waiting Time Penalties)

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

1 herein.

2 125. Defendant did not provide Plaintiffs and Aggrieved Employees who left their
3 employment with Defendant with their wages when due under California law after their
4 employment with Defendant ended.

5 126. Cal. Lab. Code § 201 provides:

6 If an employer discharges an employee, the wages earned and unpaid at the time of
7 discharge are due and payable immediately.

8 127. Cal. Lab. Code § 202 provides:

9 If an employee not having a written contract for a definite period quits his or her
10 employment, his or her wages shall become due and payable not later than 72 hours
11 thereafter, unless the employee has given 72 hours previous notice of his or her
intention to quit, in which case the employee is entitled to his or her wages at the time
of quitting.

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

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

16 129. Some Plaintiffs and some Aggrieved Employees left their employment with
17 Defendant during the statutory period, at which time Defendant owed them unpaid wages. These
18 earned, but unpaid, wages derive from time spent working for the benefit of Defendant, which went
19 unrecorded and/or uncompensated, and premium payments for noncompliant meal periods and rest
20 periods.

21 130. Defendant willfully refuses and continues to refuse to pay Plaintiffs and Aggrieved
22 Employees all the wages that are due and owing to them for the work performed, including but not
23 limited to, uncompensated off-the-clock work and overtime, and premium payments for missed
24 meal and rest periods, upon the end of their employment. As a result of Defendant's actions,
25 Plaintiffs and Aggrieved Employees have suffered and continue to suffer substantial losses,
26 including lost earnings, and interest.

27 131. Defendant's willful failure to pay Plaintiffs and Aggrieved Employees the wages due
28 and owing them constitutes a violation of Cal. Lab. Code §§ 201-202. As a result, Defendant is

1 liable to Plaintiffs and proposed Aggrieved Employees for all penalties owing pursuant to Cal. Lab.
2 Code §§ 201-203.

3 132. In addition, addition, Cal. Lab. Code § 203 provides that an employee's wages will
4 continue as a penalty up to thirty days from the time the wages were due. Therefore, Plaintiffs seek
5 to recover PAGA penalties, costs, and attorneys' fees pursuant to this section.

6 133. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty
7 to be assessed and collected by the LWDA for a violation of the Cal. Lab. Code on behalf of himself
8 or herself and other current or former employees pursuant to the procedures set forth in Cal. Lab.
9 Code § 2699.3. Cal. Lab. Code § 2699(a) provides:

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

16 134. Plaintiffs seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure
17 by Defendant, as alleged above, to timely pay all wages owed to Plaintiffs and Aggrieved
18 Employees in compliance with Cal. Lab. Code §§ 201-202 in the amounts established by Cal. Lab.
19 Code § 203. Plaintiffs seeks such penalties as an alternative to the penalties available under Cal.
20 Lab. Code § 203, as prayed for herein.

21 135. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), Plaintiffs provided the LWDA
22 notice of their intention to file their claims. Sixty-five calendar days have passed without notice
23 from the LWDA. Plaintiffs therefore satisfied the administrative prerequisites for this civil action
24 in compliance with Cal. Lab. Code § 2699.3(a).

25 136. Defendant is liable to Plaintiffs, the State of California, and Aggrieved Employees
26 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiffs are also entitled to
27 an award of attorneys' fees and costs as set forth below.

28 137. Wherefore, Plaintiffs request relief as hereinafter provided.

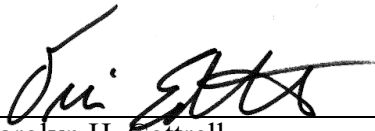
1 **PRAYER FOR RELIEF**

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

- 3 1. For the Court to declare, adjudge, and decree that Defendant has violated the Cal.
4 Lab. Code as alleged herein;
- 5 2. For an order awarding the State of California, Plaintiffs, and Aggrieved Employees
6 civil penalties to the full extent provided under the PAGA;
- 7 3. For interest on penalties awarded as provided by applicable law;
- 8 4. For an award of reasonable attorneys' fees;
- 9 5. For all costs of suit; and
- 10 6. For such other and further relief as this Court deems just and proper.

11
12 Dated: May 15, 2023

Respectfully Submitted,

13
14 

15 Carolyn H. Cottrell
16 Ori Edelstein
17 Eugene Zinovyev
18 Beth A. Christopher
19 Kristabel Sandoval
20 **SCHNEIDER WALLACE**
21 **COTTRELL KONECKY LLP**

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

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