

1 Carolyn H. Cottrell (SBN 166977)
2 Caroline N. Cohen (SBN 278154)
3 Andrew D. Weaver (SBN 318935)
4 Heather G. Fuchs (SBN 335561)
5 SCHNEIDER WALLACE
6 COTTRELL KONECKY LLP
7 2000 Powell Street, Suite 1400
8 Emeryville, California 94608
9 Tel: (415) 421-7100
10 Fax: (415) 421-7105
11 ccottrell@schneiderwallace.com
12 ccohen@schneiderwallace.com
13 aweaver@schneiderwallace.com
14 hfuchs@schneiderwallace.com

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

17 **SUPERIOR COURT OF CALIFORNIA**

18 **COUNTY OF MARIN**

19 KATHRYN THOMPSON, on behalf of the State
20 of California, and Aggrieved Employees,

21 *Plaintiff,*

22 v.

23 RESTORATION HARDWARE, INC.; RH
24 WHICH WILL DO BUSINESS IN CALIFORNIA
25 AS RESTORATION HARDWARE HOLDINGS,
26 INC.; and DOES 1-100, inclusive,

27 *Defendants.*

Case No.: CIV 2201485

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

DEMAND FOR JURY TRIAL

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

*Thompson v. Restoration Hardware, Inc. and RH which will do Business in California as Restoration Hardware
Holdings, Inc.*

FILED

MAY 16 2022

**JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: N. Johnson, Deputy**

1 Plaintiff Kathryn Thompson, on behalf of the State of California and Aggrieved Employees
2 (collectively “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 Restoration Hardware, Inc. (“RHI”) and RH which will do business in
6 California as Restoration Hardware Holdings, Inc. (“RH”) (collectively “Defendants”) on behalf of
7 the State 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 workers in
9 California (the “Aggrieved Employees”).

10 2. Plaintiff and the Aggrieved Employees are current and former non-exempt, hourly
11 workers who have worked for Defendants in California throughout the relevant time period, defined
12 as March 8, 2021 through the final resolution of this action.¹

13 3. Upon information and belief, RHI provides home furnishing and hardware products
14 through galleries, outlets, and restaurants across the United States. RHI owns and operates galleries,
15 restaurants, and outlets throughout the State of California.

16 4. Upon information and belief, RH also provides home furnishing and hardware products
17 through galleries, outlets, and restaurants across the United States. RH owns and operates galleries,
18 restaurants, and outlets throughout the State of California.

19 5. Plaintiff challenges Defendants’ policies and practices of (1) failing to compensate
20 Plaintiff and the Aggrieved Employees for all hours worked; (2) failing to pay Plaintiff and the
21 Aggrieved Employees all minimum wages owed; (3) failing to pay Plaintiff and the Aggrieved
22 Employees overtime wages as required by law for hours worked over eight hours in a day and/or forty
23 hours in a week; (4) failing to authorize and permit Plaintiff and the Aggrieved Employees to take
24 rest breaks to which they are entitled by law and failing to make premium payments for those non-
25 compliant rest breaks; (5) failing to provide meal breaks to Plaintiff and Aggrieved Employees to
26

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 which they are entitled by law and failing to make premium payments for those non-compliant meal
2 breaks; (6) failing to provide Plaintiff and the Aggrieved Employees accurate, itemized wage
3 statements; and (7) failing to timely pay Plaintiff and the Aggrieved Employees full wages earned
4 during employment and upon separation.

5 6. Defendants maintain a policy and/or practice of failing to properly compensate Plaintiff
6 and the Aggrieved Employees for work related tasks performed while “off-the-clock,” giving rise to
7 minimum wage and overtime violations. This includes, but is not limited to, requiring Plaintiff and
8 the Aggrieved Employees to work shifts longer than eight hours while adjusting their time to reflect
9 only eight hours worked to avoid paying Plaintiff and the Aggrieved Employees overtime pay. This
10 time spent working over eight hours in a day goes unrecorded and therefore uncompensated, even
11 though it should be compensated at overtime rates under California law

12 7. Upon information and belief, Defendants, across California, institutes a similar policy
13 of not compensating employees for time worked during shifts longer than eight hours in a day or over
14 forty hours in a week that results in hundreds of Aggrieved Employees performing services for the
15 benefit of Defendants while off-the-clock.

16 8. As alleged herein, Defendants require Plaintiff and the Aggrieved Employees to clock
17 out for thirty-minute meal periods that they continue to work through. This policy results in Plaintiff
18 and the Aggrieved Employees working up to 30-minutes of unpaid, off-the-clock work every shift, in
19 addition to the other off-the-clock work performed. Defendants’ policy causes Plaintiff and the
20 Aggrieved Employees to work hours every week for the benefit of Defendants without any
21 compensation.

22 9. Throughout the relevant time period, Plaintiff and the Aggrieved Employees have been
23 denied proper payment for all hours worked, including overtime and minimum wages, for the time
24 spent working off-the-clock. For instance, Plaintiff and the Aggrieved Employees do not receive
25 overtime compensation for time spent working off-the-clock after eight hours in a day or for time
26 spent working during non-compliant meal periods when the hours worked are in excess of eight (8)
27 hours per day and forty (40) hours per week. Defendants fail to pay for any of this work time, including
28

1 the required overtime premiums, in violation of the California Labor Code.

2 10. Defendants pay Plaintiff and the Aggrieved Employees members below minimum wage
3 for hours worked on the clock at a rate of \$13.00 an hour plus tips. Additionally, Defendants fail to
4 pay Plaintiff and the Aggrieved Employees the appropriate overtime rate. For instance, Defendants
5 use Plaintiff and the Aggrieved Employees' hourly rate of pay of \$13.00, which is below minimum
6 wage, to calculate their overtime rate.

7 11. As a result of these policies and/or practices, Plaintiff and the Aggrieved Employees are
8 denied minimum wage and overtime compensation, which they are lawfully owed pursuant to
9 California Labor Code § 1182.12. California's hourly minimum wage for employers with twenty-six
10 (26) or more employees is currently \$15.00 effective January 1, 2022; the hourly minimum wage
11 applicable to Defendants was \$14.00 from January 1, 2021 to December 31, 2021, \$13.00 from
12 January 1, 2020 to December 31, 2020, \$12.00 from January 1, 2019 to December 31, 2019, and
13 \$11.00 from January 1, 2018 to December 31, 2018.

14 12. Defendants regularly fail to provide Plaintiff and the Aggrieved Employees with timely,
15 legally compliant meal and rest breaks, yet Defendants do not provide Plaintiff and the Aggrieved
16 Employees with premium pay for missed, late and/or interrupted meal and rest breaks. Plaintiff and
17 the Aggrieved Employees are routinely denied compliant meal breaks for multiple reasons.
18 Defendants do not provide or make available full, timely, and uninterrupted meal periods to Plaintiff
19 and the Aggrieved Employees. Plaintiff and the Aggrieved Employees are often too busy working to
20 take bona fide meal breaks. Further, Defendants are often understaffed and therefore Plaintiff and the
21 Aggrieved Employees are required to remain on-call performing tasks like running food to tables
22 resulting in interrupted meal breaks.

23 13. When Plaintiff and the Aggrieved Employees do attempt a meal break, such is untimely,
24 *i.e.*, does not occur before the fifth hour of work, and/or interrupted. As a result, Plaintiff and the
25 Aggrieved Employees are not provided duty-free, uninterrupted, and timely thirty-minute meal
26 periods during which they should be completely relieved of any duty, by the end of the fifth hour of
27 work.

14. In addition, for each day Plaintiff and the Aggrieved Employees work shifts of more than ten hours, Defendants systematically deny Plaintiff and the Aggrieved Employees a full, timely, and uninterrupted second meal break using the same policies and practices that deny Plaintiff the Aggrieved Employees their initial meal breaks as outlined above. Similarly, Plaintiff and the Aggrieved Employees do not receive requisite premium payments for these missed second meal breaks.

15. Further, Plaintiff and the Aggrieved Employees are routinely denied compliant rest breaks. Much like the reasons that Plaintiff and the Aggrieved Employees are denied compliant meal breaks, Plaintiff and the Aggrieved Employees do not receive compliant rest breaks because Defendants do not authorize or permit full, timely, and uninterrupted rest breaks to Plaintiff and the Aggrieved Employees, Plaintiff and the Aggrieved Employees are often too busy with work during the day to have time to take bona fide rest breaks, and Defendants are understaffed and therefore Plaintiff and the Aggrieved Employees are required to remain on-call performing tasks like running food to tables resulting in interrupted rest breaks.

16. The wage statements provided by Defendant do not accurately set forth all of the information required by California law. The wage statements fail to accurately report the hours worked and the amount of wages and overtime pay to which Plaintiff and Aggrieved Employees are entitled. As a result, Plaintiff and Aggrieved Employees cannot readily determine from the wage statements alone the compensation owed to them.

17. As a result of the above violations, Defendants have also failed to pay Plaintiff and Aggrieved Employees all wages due during employment and following their separation from employment.

18. 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 California Labor Code Private Attorneys General Act ("PAGA").

PARTIES

19. Plaintiff and the Aggrieved Employees are current and former non-exempt, hourly

1 employees who worked for Defendants during all relevant times throughout California. Defendants
2 employ and/or employed Plaintiff and the Aggrieved Employees.

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

5 21. Plaintiff was employed by Defendants as a non-exempt server from December 4, 2021,
6 to January 15, 2022. Plaintiff worked for Defendants in Corte Madera, California.

7 22. Plaintiff is informed, believes, and thereon alleges that RHI is a Delaware corporation
8 headquartered in Corte Madera, California. RHI is registered to do business in California, does
9 business in California and employs and/or employed hourly, non-exempt employees, including
10 Plaintiff and the Aggrieved Employees in California. RHI may be served with process by serving its
11 registered agent, Corporation Service Company which will do Business in California as CSC –
12 Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California,
13 95833.

14 23. Plaintiff is informed, believes, and thereon alleges that RH is a Delaware corporation
15 headquartered in Corte Madera, California. RH is registered to do business in California, does
16 business in California and employs and/or employed hourly, non-exempt employees, including
17 Plaintiff and the Aggrieved Employees in California. RH may be served with process by serving its
18 registered agent, Corporation Service Company which will do Business in California as CSC –
19 Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California,
20 95833.

21 24. Plaintiff is informed, believes, and thereon alleges that Defendants jointly employ
22 and/or employed the Aggrieved Employees, among other hourly employees, in this county and
23 throughout the state of California.

24 25. Defendants employ and/or employed Plaintiff and the Aggrieved Employees because
25 Defendants, directly or indirectly, control the employment terms, pay practices, timekeeping
26 practices, and daily work of Plaintiff and the Aggrieved Employees.

27 26. Plaintiff is informed, believes, and thereon alleges that Defendants jointly exercise
28

1 control over Plaintiff and the Aggrieved Employees with respect to their employment.

2 27. Plaintiff is informed, believes, and thereon alleges that each and every one of the acts
3 and omissions alleged herein were performed by, and/or attributable to, Defendants, each acting as
4 agents and/or employees, and/or under the direction and control of each of the other, and that said
5 acts and failures to act were within the course and scope of said agency, employment and/or direction
6 and control.

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

13 29. At all relevant times, Defendants have done business under the laws of California, have
14 had places of business in California, including in this judicial district, and have employed the
15 Aggrieved Employees in this judicial district. Defendants are “persons” as defined in Labor Code
16 § 18 and Business and Professions Code § 17201. Defendants are also “employers” as that term is
17 used in the Labor Code and IWC Wage Orders.

18 **JURISDICTION AND VENUE**

19 30. Venue is proper in this County pursuant to Code of Civil Procedure §§ 393 and/or
20 395(a). Defendants conduct business and employ Aggrieved Employees in this County and within
21 the state of California.

22 31. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.
23 The Court also has jurisdiction over Defendants because they are authorized to do business in the
24 State of California, are authorized to do business and employ workers in the State of California, and
25 are registered with the California Secretary of State.

26 **FACTUAL ALLEGATIONS**

27 32. Defendants are part of the public housekeeping industry and the mercantile industry.

1 Defendants provide home furnishing and hardware products through galleries, outlets, and restaurants
2 across the United States. RHI rebranded its name to RH in 2012. Both RHI and RH have an active
3 status with the California Secretary of State. Plaintiff is informed, believes, and thereon alleges that
4 Defendants employed hundreds of hourly, non-exempt workers similarly situated to Plaintiff in
5 California.

6 33. Plaintiff worked for Defendants as a server in Corte Madera, California from December
7 4, 2021, to January 15, 2022. Plaintiff's primary duties included but were not limited to serving tables.
8 Plaintiff was classified as an hourly, non-exempt employee, was paid an hourly rate of \$13.00, plus
9 average tips of \$25 to \$37.50 an hour, and was paid biweekly.

10 34. Like Plaintiff, the Aggrieved Employees are current and former non-exempt employees
11 of Defendants in California. Plaintiff is informed, believes, and thereon alleges that the Aggrieved
12 Employees perform work similar to Plaintiff, in that they support the operations of galleries, outlets,
13 and restaurants. Defendants pay the Aggrieved Employees, including Plaintiff, on an hourly rate basis.

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

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

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

21 38. Defendants maintain a policy and/or practice of failing to properly compensate Plaintiff
22 and the Aggrieved Employees for work related tasks performed while "off-the-clock," giving rise to
23 minimum wage and overtime violations. This includes, but is not limited to, requiring Plaintiff and
24 the Aggrieved Employees to work shifts longer than eight hours per day while adjusting their time to
25 reflect only eight hours' worked to avoid paying Plaintiff and the Aggrieved Employees overtime.
26 This time spent working over eight hours goes unrecorded and therefore uncompensated, even though
27 it should be compensated at overtime rates under California law.

1 39. Upon information and belief, Defendants, across California, institutes a similar policy
2 of not compensating employees for time worked during shifts longer than eight hours that results in
3 hundreds of Aggrieved Employees performing services for the benefit of Defendants while off-the-
4 clock.

5 40. As alleged herein, Defendants require Plaintiff and the Aggrieved Employees to clock
6 out for thirty-minute meal periods that they continue to work through. This policy results in Plaintiff
7 and the Aggrieved Employees working up to 30-minutes of unpaid, off-the-clock work every shift.
8 Defendants' policy causes Plaintiff and the Aggrieved Employees to work hours every week for the
9 benefit of Defendants without any compensation.

10 41. Throughout the relevant time period, Plaintiff and the Aggrieved Employees have been
11 denied proper payment for all hours worked, including overtime and minimum wages, for the time
12 spent working off-the-clock. For instance, Plaintiff and the Aggrieved Employees do not receive
13 overtime compensation for time spent working off-the-clock after eight hours or for time spent
14 working during noncompliant meal periods when the hours worked are in excess of eight (8) hours
15 per day and forty (40) hours per week. However, Defendants fail to pay for any of this work time,
16 including the required overtime premiums, in violation of the California Labor Code.

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

19 43. Defendants pay Plaintiff and the Aggrieved Employees below minimum wage for hours
20 worked on the clock at a rate of \$13.00 an hour plus tips. Additionally, Defendants fail to pay Plaintiff
21 and the Aggrieved Employees the appropriate overtime rate. For instance, Defendants use Plaintiff
22 and the Aggrieved Employees' hourly rate of pay of \$13.00 per hour which is below minimum wage
23 to calculate their overtime rate.

24 44. As a result of these policies and/or practices, Plaintiff and the Aggrieved Employees are
25 denied minimum wage and overtime compensation, which they are lawfully owed pursuant to
26 California Labor Code § 1182.12 California's hourly minimum wage for employers with twenty-six
27 (26) or more employees is currently \$15.00 effective January 1, 2022; the hourly minimum wage
28

1 applicable to Defendants was \$14.00 from January 1, 2021 to December 31, 2021, \$13.00 from
2 January 1, 2020 to December 31, 2020, \$12.00 from January 1, 2019 to December 31, 2019, and
3 \$11.00 from January 1, 2018 to December 31, 2018.

4 45. Plaintiff is informed, believes, and thereon alleges that Defendants utilize the same or
5 substantially similar timekeeping mechanisms throughout all their facilities in California.

6 46. Defendants regularly fail to provide Plaintiff and the Aggrieved Employees with timely,
7 legally compliant meal and rest breaks, yet Defendants do not provide Plaintiff and the Aggrieved
8 Employees with premium pay for missed, late and/or interrupted meal and rest breaks. Plaintiff and
9 the Aggrieved Employees are routinely denied compliant meal breaks for multiple reasons.
10 Defendants do not provide or make available full, timely, and uninterrupted meal periods to Plaintiff
11 and the Aggrieved Employees. Plaintiff and the Aggrieved Employees are often too busy working to
12 take bona fide meal breaks. Further, Defendants are often understaffed and therefore Plaintiff and the
13 Aggrieved Employees are required to remain on-call performing tasks like running food to tables
14 resulting in interrupted meal breaks.

15 47. When Plaintiff and the Aggrieved Employees do attempt a meal break, such meal break
16 is untimely, i.e., does not occur before the fifth hour of work, and/or is interrupted or short. As a result,
17 Plaintiff and the Aggrieved Employees are not provided duty-free, uninterrupted, and timely thirty-
18 minute meal periods during which they should be completely relieved of any duty, by the end of the
19 fifth hour of work.

20 48. In addition, for each day Plaintiff and the Aggrieved Employees work shifts of more
21 than ten hours, Defendants systematically deny Plaintiff and the Aggrieved Employees a compliant
22 second meal break as a result of the same policies and practices that deny Plaintiff the Aggrieved
23 Employees their initial meal breaks as alleged herein. Similarly, Plaintiff and the Aggrieved
24 Employees do not receive requisite premium payments of one hour of pay at the regular rate for these
25 missed second meal breaks.

26 49. Further, Plaintiff and the Aggrieved Employees are routinely denied compliant rest
27 breaks. For the same and similar reasons that Plaintiff and the Aggrieved Employees are denied
28

1 compliant meal breaks, Defendants do not authorize or permit timely rest breaks to Plaintiff and the
2 Aggrieved Employees because Plaintiff and the Aggrieved Employees are often too busy with work
3 during the day to have time to take bona fide rest breaks, Defendants are understaffed and therefore
4 Plaintiff and the Aggrieved Employees are required to remain on-call performing tasks like running
5 food to tables resulting in interrupted, non-compliant rest breaks.

6 50. Plaintiff is informed, believes, and thereon alleges that the same meal and rest period
7 policies and practices are in place across Defendants' locations in California.

8 51. Defendants do not provide Plaintiff and the Aggrieved Employees with accurate wage
9 statements as required by California law. Plaintiff and the Aggrieved Employees receive wage
10 statements that do not reflect all hours worked, and thus Defendants have failed to record hours that
11 Plaintiff and the Aggrieved Employees worked off-the-clock, as well as the work performed during
12 non-compliant meal periods. The wage statements do not include the correct amount of minimum
13 wages and overtime pay to which Plaintiff and Aggrieved Employees are entitled or the premium pay
14 for missed meal and rest periods. As a result, Plaintiff and Aggrieved Employees cannot readily
15 determine from the wage statements alone the compensation owed to them.

16 52. Defendants do not provide Plaintiff and the Aggrieved Employees with full payment of
17 all wages owed upon separation from employment. At the time their employment ends, Plaintiff and
18 the Aggrieved Employees are owed wages and premium pay for all time worked, overtime, and
19 missed meal and rest breaks; yet Defendants have failed to provide Plaintiff and the Aggrieved
20 Employees with such payments. As a result, and pursuant to the California Labor Code, Defendants
21 are subject to waiting time penalties.

22 53. Plaintiff is informed, believes, and thereon alleges that Defendants are well aware that
23 their policies and practices deprive Plaintiff and the Aggrieved Employees of compensation for all
24 hours worked, including overtime compensation and minimum wages, and that Plaintiff and
25 Aggrieved Employees do not receive legally compliant meal and rest periods. Thus, Defendants'
26 denial of wages, compliant meal and rest periods, and premium payments is and/or was deliberate and
27 willful.

54. 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' locations in California.

55. On information and belief, Defendants' conduct described above has occurred at all relevant times and is ongoing.

56. 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)
(On Behalf of the State of California and Aggrieved Employees)

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

58. 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.”

59. 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.

60. 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.”

61. 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.”

1 62. Labor Code § 225.5 provides that every person who unlawfully withholds wages due
2 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of
3 \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent
4 violation, or any willful or intentional violation, for each failure to pay each employee.

5 63. Labor Code § 226(a) provides:

6 “Every employer shall, semimonthly or at the time of each payment
7 of wages, furnish each of his or her employees, either as a detachable
8 part of the check, draft, or voucher paying the employee's wages, or
9 separately when wages are paid by personal check or cash, an
10 accurate itemized statement in writing showing (1) gross wages
11 earned, (2) total hours worked by the employee, except for any
12 employee whose compensation is solely based on a salary and who
13 is exempt from payment of overtime under subdivision (a) of
14 Section 515 or any applicable order of the Industrial Welfare
15 Commission, (3) the number of piece-rate units earned and any
16 applicable piece rate if the employee is paid on a piece-rate basis,
17 (4) all deductions, provided that all deductions made on written
18 orders of the employee may be aggregated and shown as one item,
19 (5) net wages earned, (6) the inclusive dates of the period for which
20 the employee is paid, (7) the name of the employee and his or her
21 social security number, (8) the name and address of the legal entity
22 that is the employer, and (9) all applicable hourly rates in effect
23 during the pay period and the corresponding number of hours
24 worked at each hourly rate by the employee. The deductions made
25 from payments of wages shall be recorded in ink or other indelible
26 form, properly dated, showing the month, day, and year, and a copy
27 of the statement or a record of the deductions shall be kept on file
28 by the employer for at least four years at the place of employment
or at a central location within the State of California.”

21 64. Labor Code § 226.3 provides:

22 “Any employer who violates subdivision (a) of Section 226 shall be
23 subject to a civil penalty in the amount of two hundred fifty dollars
24 (\$250) per employee per violation in an initial citation and one
25 thousand dollars (\$1,000) per employee for each violation in a
26 subsequent citation, for which the employer fails to provide the
27 employee a wage deduction statement or fails to keep the records
28 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.”

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

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

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

10 68. Pursuant to Labor Code § 2699.3(a)(1) and (2), on March 8, 2022, Plaintiff provided
11 the Labor and Workforce Development Agency (“LWDA”) with notice of her intention to file this
12 claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the
13 administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

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

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

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

20 **SECOND CAUSE OF ACTION**
21 **Penalties Pursuant to Labor Code § 2699(f)**
22 **(On Behalf of the State of California and Aggrieved Employees)**

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

25 73. Labor Code § 2699(f) provides:

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

1 employee per pay period for the initial violation and two hundred
2 dollars (\$200) for each aggrieved employee per pay period for
3 each subsequent violation.”

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

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

9 76. IWC Wage Orders 5-2001(2)(K) and 7-2001(2)(G) define hours worked as “the time
10 during which an employee is subject to the control of an employer and includes all the time the
11 employee is suffered or permitted to work, whether or not required to do so.”

12 77. Labor Code § 1198 makes it unlawful for employers to employ employees under
13 conditions that violate the Wage Order.

14 78. Labor Code § 510 provides, in relevant part:

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

28 79. Labor Code § 1182.12 provides, in relevant part:

...

(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.

....

80. 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.

81. 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.

82. Labor Code §§ 226.7 and 512 and IWC Wage Orders 5-2001 and 7-2001 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 Orders 5-2001 and 7-2001 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 Orders 5-2001 and 7-2001 also require employers to authorize and permit employees to take ten minutes of net rest period 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 orders.

83. To the extent than 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 §§ 201-203, 204, 226, 226.3, 226.7, 256, 510, 512, 1182.12, 1194, 1197, 1198, IWC
4 Wage Orders 5-2001 and 7-2001, and any other violation alleged herein does not carry penalties
5 under Labor Code § 2699(a).

6 84. On March 8, 2022, pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff served the
7 California Labor and Workforce Development Agency (“LWDA”) with notice of her intention to
8 file this PAGA action. Sixty-five calendar days have passed without notice from the LWDA. On
9 the same day, Plaintiff served Defendants’ registered agent with a courtesy copy of the notice via
10 certified mail. As such, Plaintiff satisfied the administrative prerequisites to commence this civil
11 action in compliance with § 2699.3(a), (f).

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

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

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

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees,
20 requests the following relief:

- 21 1. For the Court to declare, adjudge, and decree that Defendants have violated the
22 California Labor Code as alleged herein;
- 23 2. For an order awarding the State of California, Plaintiff, and the Aggrieved Employees
24 civil penalties provided for under the PAGA;
- 25 3. For interest on any penalties awarded, as provided by applicable law;
- 26 4. For an award of reasonable attorneys’ fees as provided by the California Labor Code,
27 including labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5,
28

and/or any other applicable law;

5. For all costs of suit, as provided in Labor Code § 2699(g)(1); and,

6. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: May 13, 2022



Carolyn H. Cottrell
Caroline N. Cohen
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*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
5 Date: May 13, 2022

Respectfully submitted,

6 

7
8 Carolyn H. Cottrell
9 Caroline N. Cohen
10 SCHNEIDER WALLACE
11 COTTRELL KONECKY LLP

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