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14 *of California and Aggrieved Employees*

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

HA NGUYEN, ALEX BHAGATRAM, ALICIA
TAYLOR, SORAYA LODIN, and MICHAEL
WEBSTER; on behalf of the State of California,
and Aggrieved Employees,

Plaintiffs,

v.

BLOOMINGDALE'S, LLC, an Ohio Limited
Liability Company,

Defendant.

Case No.: CGC-22-603379

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

DEMAND FOR JURY TRIAL

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

06/09/2023
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

1 Plaintiffs Ha Nguyen, Alex Bhagatram, Alicia Taylor, Soraya Lodin, and Michael Webster
2 (“Plaintiffs”), on behalf of the State of California and Aggrieved Employees (“Plaintiff”), complain
3 and allege as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this California Labor Code Private Attorneys General Act (“PAGA”)
6 enforcement action against Defendant Bloomingdale’s, LLC (“Defendant”) on behalf of the State of
7 California to collect statutory penalties as a result of Defendant’s systematic violations of California
8 labor law with respect to Defendant’s non-exempt, hourly workers in California (the “Aggrieved
9 Employees”).

10 2. Plaintiffs and Aggrieved Employees are current and former non-exempt, hourly workers
11 employed by Defendant in California.¹

12 3. Upon information and belief, Bloomingdale’s, a subsidiary of Macy’s, Inc., is an
13 American luxury department store chain that sells clothing, shoes, cosmetics, jewelry, and other
14 fashion accessories at its retail locations throughout the State of California.

15 4. Plaintiffs challenge Defendant’s policies and practices of: (1) failing to compensate
16 Plaintiffs and Aggrieved Employees for all hours worked; (2) failing to pay Plaintiffs and Aggrieved
17 Employees minimum wage for all hours worked; (3) failing to pay Plaintiffs and Aggrieved Employees
18 overtime wages; (4) failing to authorize and permit Plaintiffs and Aggrieved Employees to take meal
19 and rest periods to which they are entitled by law, and failing to pay premium compensation for missed
20 meal and rest periods; (5) failing to provide Plaintiffs and Aggrieved Employees true and accurate
21 itemized wage statements; (6) failing to pay Plaintiffs and Aggrieved Employees all wages owed upon
22 separation from employment; and (7) failing to provide reimbursement for necessary business
23 expenditures.

24 5. Defendant regularly fails to provide Plaintiffs and Aggrieved Employees compliant meal
25 periods. Defendant’s policies, practices, and procedures require Plaintiffs and Aggrieved Employees
26 to routinely skip their meal periods, or cut their meal periods short, yet do not provide them with
27

28 ¹ Although some Plaintiffs are former employees, the Aggrieved Employees include current and former employees. For ease of discussion, the allegations herein are made in the present tense.

1 requisite premium payments for missed meal periods.

2 6. Similarly, Plaintiffs and Aggrieved Employees are routinely denied compliant rest
3 periods. Defendant interrupts rest periods to instruct Plaintiffs and Aggrieved Employees to help with
4 customers, and Plaintiffs and Aggrieved Employees are often required to call and/or text prospective
5 customers during their rest periods to facilitate sales.

6 7. Further, Defendant maintains a policy and/or practice of failing to properly compensate
7 Plaintiffs and the Aggrieved Employees for work related tasks performed while “off-the-clock”.
8 Defendant automatically deducts thirty minutes from Plaintiffs and Aggrieved Employees’ time
9 records for meal periods, regardless of whether Plaintiffs or the Aggrieved Employees receive a
10 compliant meal period. Plaintiffs and Aggrieved Employees are unable to put this time back on their
11 timeclocks, resulting in Plaintiffs and Aggrieved Employees working hours per week for the benefit
12 of Defendant without any compensation.

13 8. Additionally, Plaintiffs and Aggrieved Employees are required to attend online
14 conferences and/or trainings to learn about new products and work policies while off-the-clock outside
15 of their scheduled shifts. Plaintiffs and Aggrieved Employees must also communicate with prospective
16 customers outside of their scheduled shift.

17 9. As a matter of common policy and/or practice Defendant fails to pay Plaintiffs and
18 Aggrieved Employees full earned overtime wages because Defendant incorrectly calculates overtime
19 wages using lower base hourly rates instead of regular rates. Defendant does not factor in commission
20 bonus pay when calculating the regular rate for Plaintiffs’ and Aggrieved Employees’ overtime
21 payments.

22 10. Throughout the relevant time period, Plaintiffs and 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. Plaintiffs and Aggrieved Employees do not receive overtime
25 compensation for time spent working off-the-clock when the hours worked are in excess of eight (8)
26 hours per day and forty (40) hours per week. Defendant fails to pay for any of this work time, including
27 the required overtime premiums, in violation of the California Labor Code.

28 11. As a result of the above violations, Plaintiffs and Aggrieved Employees do not receive

1 accurate, itemized wage statements, and do not receive all wages during employment and following
2 separation from employment.

3 12. In addition to the above, Plaintiffs and Aggrieved Employees are required to use their
4 personal cell phones for all work-related communications without reimbursement. Defendant does
5 not reimburse Plaintiffs and Aggrieved Employees for the use of their personal cell phones, which are
6 routinely used for the benefit of Defendant in the discharge of their job duties. Plaintiffs and Aggrieved
7 Employees are further required to use their personal computers and internet data to attend online
8 conferences and trainings as mandated by Defendant. Defendant does not reimburse Plaintiffs and
9 Aggrieved Employees for the use of their personal computers and/or internet data plans that are
10 utilized for these work-related functions.

11 13. Plaintiffs, on behalf of the State of California, seek to recover penalties and reasonable
12 attorneys' fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor Code
13 Private Attorneys General Act ("PAGA").

14 **PARTIES**

15 14. Plaintiffs and Aggrieved Employees are current and former non-exempt, hourly
16 employees of Defendant in the State of California. Among other positions, the Aggrieved Employees
17 work as sales associates, seasonal associates, retail sales associates, beauty consultants, cosmetics
18 managers, sales professionals and other positions with similar job duties in California.

19 15. Plaintiff Ha Nguyen is an individual over the age of eighteen, and at all times mentioned
20 in this Complaint was a resident of the State of California. Plaintiff was employed by Defendant as a
21 sales associate from approximately March 2019 to November 2021. Plaintiff worked at Defendant's
22 retail store located in Costa Mesa, California.

23 16. Plaintiff Alex Bhagatram is an individual over the age of eighteen, and at all times
24 mentioned in this Complaint was a resident of the State of California. Plaintiff was employed by
25 Defendant as a sales associate from approximately March 2008 to the present. Plaintiff works for
26 Defendant in San Francisco, California.

27 17. Plaintiff Alicia Taylor is an individual over the age of eighteen, and at all times
28 mentioned in this Complaint was a resident of the State of California. Plaintiff was employed by

1 Defendant as a sales associate from approximately 2019 to the present. Plaintiff works for Defendant
2 in San Francisco, California.

3 18. Plaintiff Soraya Lodin is an individual over the age of eighteen, and at all times
4 mentioned in this Complaint was a resident of the State of California. Plaintiff was employed by
5 Defendant as a sales associate from approximately November 2007 to the present. Plaintiff works for
6 Defendant in San Francisco, California.

7 19. Plaintiff Michael Webster is an individual over the age of eighteen, and at all times
8 mentioned in this Complaint was a resident of the State of California. Plaintiff was employed by
9 Defendant as a sales associate from approximately April 15, 2022 to the present. Plaintiff works for
10 Defendant in San Francisco, California.

11 20. Plaintiffs are informed, believe, and thereon allege that Bloomingdale's is an Ohio
12 limited liability corporation headquartered in Long Island City, New York. Bloomingdale's is
13 registered to do business in California, does business in California and employs hourly non-exempt
14 employees, including Plaintiffs and Aggrieved Employees, in California.

15 21. Defendant employs and/or employed Plaintiffs and Aggrieved Employees because
16 Defendant, directly or indirectly, controls the employment terms, pay practices, timekeeping practices,
17 and daily work of Plaintiffs and Aggrieved Employees.

18 22. At all relevant times, Defendant has done business under the laws of the State of
19 California, has operated places of business in California, including in this judicial district, and has
20 employed Plaintiffs and Aggrieved Employees in this judicial district and elsewhere throughout
21 California. Defendant is a "person" as defined in Labor Code § 18. Defendant is also an "employer"
22 as that term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working
23 conditions.

24 **JURISDICTION AND VENUE**

25 23. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393(a) and/or 395(a).
26 Defendant conducts business and employ Aggrieved Employees in this County. A substantial portion
27 of the events giving rise to these causes of action occurred in this County.

28 24. This Court has jurisdiction over Plaintiffs' claims for penalties pursuant to the PAGA.

1 The Court also has jurisdiction over Defendant because it is a company authorized to do business in
2 the State of California, and because Defendant does in fact do business and employ workers in the
3 State of California.

4 **FACTUAL ALLEGATIONS**

5 25. Plaintiffs are current and former hourly, non-exempt employees of Defendant, including
6 but not limited to sales associates and inventory control specialists in Costa Mesa, California and San
7 Francisco, California. Plaintiffs' primary duties included but were not limited to communicating with
8 potential and existing customers, selling designer clothing and accessories, assisting customers within
9 the store, and conducting counts of inventory. Although Plaintiffs' and Aggrieved Employees' shifts
10 may vary in length, they are usually scheduled to work seven (7) to eight (8) hours per shift, five (5)
11 shifts per week. Plaintiffs and Aggrieved Employees are typically scheduled to work approximately
12 thirty-five (35) to forty-five (45) hours per week.

13 26. Like Plaintiffs, Aggrieved Employees are current and former, non-exempt, hourly
14 employees of Defendant in the State of California. Plaintiffs are informed, believe, and thereon allege
15 that Aggrieved Employees perform work similar to Plaintiffs, in that they support the operations of
16 Defendant's luxury department stores. Defendant pays Aggrieved Employees in sales positions
17 including Plaintiffs, on an hourly rate and commission basis.

18 27. Plaintiffs are informed, believe, and thereon allege that the policies and practices of
19 Defendant have at all relevant times been similar for Plaintiffs and Aggrieved Employees, regardless
20 of particular job assignment or facility location in California.

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

23 29. At the end of each pay period, the Aggrieved Employees receive wages from Defendant
24 that are determined by common systems and methods that Defendant selects and controls.

25 30. Defendant regularly fails to provide Plaintiffs and Aggrieved Employees compliant meal
26 and rest periods. Defendant's policies, practices, and procedures require Plaintiffs and Aggrieved
27 Employees to routinely skip their meal and rest periods, or cut their meal and rest periods short, yet
28 do not provide them with requisite premium payments for missed meal and rest periods.

1 31. Plaintiffs and Aggrieved Employees are routinely denied compliant meal periods for
2 three reasons: (i) Defendant does not provide an adequate number of staff so that Plaintiffs and
3 Aggrieved Employees can get relief from their duties to take meal periods, causing Plaintiffs and
4 Aggrieved Employees to skip meal periods entirely or to take them after the fifth hour of work; (ii)
5 due to Defendant's high expectations for Plaintiffs and Aggrieved Employees to provide quality
6 customer service, Defendant demands that Plaintiffs and Aggrieved Employees cut short or work
7 through their meal periods to help with customers in person; and (iii) Plaintiffs and Aggrieved
8 Employees are required to call and/or text with prospective customers during their meal periods to
9 increase sales.

10 32. When Plaintiffs and Aggrieved Employees do attempt a meal period, such are untimely,
11 shortened, or interrupted i.e., after the end of the fifth hour of work and/or less than thirty minutes. As
12 a result, Plaintiffs and Aggrieved Employees are not provided duty-free, uninterrupted, and timely
13 thirty-minute meal periods during which they should be completely relieved of any duty, by the end
14 of the fifth hour of work.

15 33. Similarly, Plaintiffs and Aggrieved Employees are routinely denied compliant rest
16 periods. Much like the reasons that Plaintiffs and Aggrieved Employees are denied compliant meal
17 periods, Plaintiffs and Aggrieved Employees do not receive compliant rest periods because Defendant
18 is too understaffed for Plaintiffs and Aggrieved Employees to be relieved from their duties, Defendant
19 interrupts rest periods to instruct Plaintiffs and Aggrieved Employees to help with customers, and
20 Plaintiffs and Aggrieved Employees are often required to call and/or text prospective customers during
21 their rest periods to facilitate sales.

22 34. Plaintiffs are informed, believe, and thereon allege that Defendant's same meal and rest
23 period policies and practices are in place across all of Defendant's facilities throughout California.

24 35. Further, Defendant maintains a policy and/or practice of failing to properly compensate
25 Plaintiffs and Aggrieved Employees for work related tasks performed while "off-the-clock".
26 Defendant automatically deducts thirty minutes from Plaintiffs and Aggrieved Employees' time
27 records for meal periods, even when they work through the meal periods as outlined above. Plaintiffs
28 and Aggrieved Employees are unable to put this time back on their timeclocks, resulting in Plaintiffs

1 and Aggrieved Employees working hours per week for the benefit of Defendant without any
2 compensation.

3 36. Additionally, about once per month Defendant mandates that Plaintiffs and Aggrieved
4 Employees attend online conferences and/or trainings to learn about new products and work policies
5 while off-the-clock outside of their scheduled shifts. Plaintiffs and Aggrieved Employees must also
6 call and text with managers and coworkers and meet Defendant's high customer service expectations
7 by communicating with prospective customers via cell phone outside of their scheduled shift. This
8 time spent by Plaintiffs and Aggrieved Employees attending online conferences and trainings and
9 communicating with customers, coworkers, and managers outside of scheduled shifts amounts to
10 between approximately five to ten hours of additional work per week done for the benefit of Defendant
11 that goes unrecorded and therefore uncompensated.

12 37. As a matter of common policy and/or practice, for any overtime work that Defendant
13 does record, Defendant fails to pay Plaintiffs and Aggrieved Employees full earned overtime wages
14 because Defendant incorrectly calculates overtime wages using lower base hourly rates instead of
15 regular rates, as required by California law. Plaintiffs and many Aggrieved Employees earn
16 commission bonuses based on any sales that they facilitate. Defendant does not factor in commission
17 bonus pay when calculating the regular rate for Plaintiffs' and Aggrieved Employees' overtime
18 payments.

19 38. Throughout the relevant time period, Plaintiffs and Aggrieved Employees have been
20 denied proper payment for all hours worked, including overtime and minimum wages, for the time
21 spent working off-the-clock. As mentioned above, Plaintiffs and Aggrieved Employees do not receive
22 overtime compensation for time spent working off-the-clock when the hours worked are in excess of
23 eight (8) hours per day and forty (40) hours per week. Defendant fails to pay for any of this work time,
24 including the required overtime premiums, in violation of the California Labor Code.

25 39. As a result of these policies and/or practices, Plaintiffs and Aggrieved Employees are
26 denied compensation for all hours worked, including minimum wages and overtime.

27 40. Plaintiffs are informed, believe, and thereon allege that Defendant utilizes the same or
28 substantially similar timekeeping mechanisms throughout all its facilities in California.

1 41. Defendant's common course of wage-and-hour abuse includes routinely failing to
2 maintain true and accurate records of the hours worked by Plaintiffs and Aggrieved Employees. In
3 particular, Defendant has failed to record all hours that Plaintiffs and Aggrieved Employees work in
4 excess of eight hours per day and/or forty hours per week, including overtime, and has failed to record
5 noncompliant or missed meal and rest periods.

6 42. As a result of the above violations, Plaintiffs and Aggrieved Employees do not receive
7 accurate, itemized wage statements reflecting the hours they actually work, and the amount of wages,
8 including overtime premiums and premium payments for missed and noncompliant meal and rest
9 periods, to which they are entitled, and for which they should be compensated.

10 43. Consequently, Plaintiffs and Aggrieved Employees do not receive all wages during
11 employment and following separation from employment, including payment for time spent working
12 during meal periods and outside of their scheduled shifts, as well as premium payments for
13 noncompliant meal and rest periods. As a result, and pursuant to the California Labor Code, Defendant
14 is subject to waiting time penalties.

15 44. In addition to the above, Plaintiffs and Aggrieved Employees are required to use their
16 personal cell phones for all work-related communications without reimbursement. Plaintiffs and
17 Aggrieved Employees are constantly required to use their personal cell phones to communicate with
18 managers, coworkers and customers, and to look up Defendant's products to facilitate sales. At no
19 time has Defendant reimbursed Plaintiffs and Aggrieved Employees for the use of their personal cell
20 phones, which are routinely used for the benefit of Defendant in the discharge of their job duties.
21 Plaintiffs and Aggrieved Employees are further required to use their personal computers and internet
22 data to attend online conferences and trainings as mandated by Defendant. Defendant does not
23 reimburse Plaintiffs and Aggrieved Employees for the use of their personal computers and/or internet
24 data plans that are utilized for these work-related functions.

25 45. Plaintiffs are informed, believe, and thereon allege that Defendant is well aware that its
26 policies and practices deprive Plaintiffs and Aggrieved Employees of substantial pay for all time
27 worked, including overtime compensation and minimum wages, and that its workers do not receive
28 legally compliant meal and rest periods. Thus, Defendant's denial of wages, compliant meal and rest

1 periods, and premium payments is and/or was deliberate and willful.

2 46. Plaintiffs are informed, believe, and thereon allege that Defendant's unlawful conduct
3 has been widespread, repeated, and consistent as to the Aggrieved Employees and throughout
4 Defendant's operations in California.

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

7 **FIRST CAUSE OF ACTION**

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

9 **for Violations of Cal. Lab. §§ 226.7 and 512**

10 **(Meal Periods)**

11 48. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
12 herein.

13 49. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders require Defendant to
14 authorize and permit meal periods to its employees. Cal. Lab. Code §§ 226.7 and 512 and the
15 applicable Wage Orders prohibit employers from employing an employee for more than five hours
16 without a meal period of not less than thirty minutes. Unless the employee is relieved of all duty during
17 the thirty-minute meal period, the employee is considered "on duty" and the meal period is counted as
18 time worked under the applicable Wage Orders.

19 50. Cal. Lab. Code § 512(a) provides:

20 An employer shall not employ an employee for a work period of more than five hours
21 per day without providing the employee with a meal period of not less than 30 minutes,
22 except that if the total work period per day of the employee is no more than six hours,
23 the meal period may be waived by mutual consent of both the employer and employee.
24 An employer shall not employ an employee for a work period of more than 10 hours
per day without providing the employee with a second meal period of not less than 30
minutes, except that if the total hours worked is no more than 12 hours, the second meal
period may be waived by mutual consent of the employer and the employee only if the
first meal period was not waived.

25 51. Under Cal. Lab. Code § 226.7(b) and the applicable Wage Orders, an employer who
26 fails to authorize, permit, and/or make available a required meal period must, as compensation, pay
27 the employee one hour of pay at the employee's regular rate of compensation for each workday that
28 the meal period was not authorized and permitted.

1 52. Despite these requirements, Defendant knowingly and willfully refuses to perform its
2 obligations to authorize and permit and/or make available to Plaintiffs and Aggrieved Employees the
3 ability to take the off-duty meal periods to which they are entitled.

4 53. Plaintiffs and Aggrieved Employees are denied compliant meal periods because
5 Defendant does not provide enough staff to relieve Plaintiffs and Aggrieved Employees from their
6 duties so that they can take compliant meal periods, Defendant interrupts meal periods to demand
7 Plaintiffs and Aggrieved Employees to help with customers in the store, and Plaintiffs and Aggrieved
8 Employees are required to maintain cell phone communication with customers during meal periods.
9 As such, Defendant does not provide Plaintiffs and Aggrieved Employees with duty-free,
10 uninterrupted, and timely thirty-minute meal periods during which Plaintiffs and Aggrieved
11 Employees should be completely relieved of any duty, by the end of the fifth hour of work. Plaintiffs
12 are informed, believe, and thereon allege that this policy and practice applies to all Aggrieved
13 Employees.

14 54. Defendant also fails to pay Plaintiffs and Aggrieved Employees one hour of pay for each
15 off-duty meal period that they are denied. Defendant's conduct described herein violates Cal. Lab.
16 Code §§ 226.7 and 512.

17 55. On information and belief, Defendant's conduct has been substantially the same at all
18 relevant times and to all Aggrieved Employees throughout the state of California.

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

26 57. Plaintiffs seek to recover civil penalties from Defendant for its violations of the meal
27 period requirements of Cal. Lab. Code §§ 226.7 and 512 throughout California on behalf of
28 themselves, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code §

1 2699(f).

2 58. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(f) for the unlawful
3 conduct alleged herein, on behalf of the State, other Aggrieved Employees, and themselves, for
4 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§ 512.

5 59. On April 29, 2022, Plaintiff Nguyen provided her initial written notice to the Labor and
6 Workforce Development Agency ("LWDA") and Defendant of her intent to pursue civil penalties
7 pursuant to the PAGA. On December 12, 2022, Plaintiff Nguyen, and on February 13, 2023, all
8 Plaintiffs, gave further written notice to the LWDA and to Defendant of their intent to file an amended
9 action to pursue civil penalties for Defendant's violations of the meal period requirements of Cal. Lab.
10 Code §§ 226.7, 512, and 558 pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided
11 the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or Defendant.
12 Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative
13 prerequisites to file this First Amended Complaint.

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

17 61. Wherefore, Plaintiffs request relief as hereinafter provided.

18 **SECOND CAUSE OF ACTION**

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

20 **for Violations of Cal. Lab. Code § 226.7**

21 **(Rest Periods)**

22 62. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
23 herein.

24 63. Cal. Lab. Code §§ 226.7 and the applicable Wage Orders require Defendant to authorize
25 and permit rest periods to its employees. Cal. Lab. Code § 226.7 and the applicable Wage Orders
26 require employers to authorize and permit employees to take ten minutes of net rest time per four hours
27 or major fraction thereof of work, and to pay employees their full wages during those rest periods.
28 Unless the employee is relieved of all duty during the ten-minute rest period, the employee is

1 considered “on duty” and the rest period is counted as time worked under the applicable Wage Orders.

2 64. Under Cal. Lab. Code § 226.7(b) and the applicable Wage Orders, an employer must
3 pay an employee denied a required rest period one hour of pay at the employee’s regular rate of
4 compensation for each workday that the rest period was not authorized and permitted and/or not made
5 available.

6 65. Despite these requirements, Defendant knowingly and willfully refuses to perform its
7 obligations to authorize and permit and/or make available to Plaintiffs and Aggrieved Employees the
8 ability to take the off-duty rest periods to which they are entitled.

9 66. Plaintiffs and Aggrieved Employees do not receive compliant rest periods because
10 Defendant is too understaffed for Plaintiffs and Aggrieved Employees to be relieved from their duties,
11 Defendant interrupts rest periods to advise Plaintiffs and Aggrieved Employees to help with customers,
12 and Plaintiffs and Aggrieved Employees are often required to call and/or text prospective customers
13 during their rest periods to facilitate sales. As a result of Defendant’s policies and practices, Aggrieved
14 Employees are routinely denied the opportunity to take legally compliant rest periods. Plaintiffs are
15 informed, believe, and thereon allege that this policy and practice applies to all Aggrieved Employees.

16 67. Defendant also fails to pay Plaintiffs and Aggrieved Employees one hour of pay for each
17 off-duty rest period that they are denied. Defendant’s conduct described herein violates Cal. Lab. Code
18 § 226.7.

19 68. On information and belief, Defendant’s conduct has been substantially the same at all
20 relevant times for all Aggrieved Employees throughout the state of California.

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

27 70. Plaintiffs seek to recover civil penalties from Defendant for its violations of the rest
28 period requirements of Cal. Lab. Code § 226.7 throughout California on behalf of themselves, the

1 State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

2 71. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful
3 conduct alleged herein, on behalf of the State, other Aggrieved Employees, and themselves, for
4 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code § 558(a).

5 72. On April 29, 2022, Plaintiff Nguyen provided her initial written notice to the LWDA and
6 Defendant of her intent to pursue civil penalties pursuant to the PAGA. On December 12, 2022,
7 Plaintiff Nguyen, and on February 13, 2023, all Plaintiffs, gave further written notice to the LWDA
8 and to Defendant of their intent to file an amended action to pursue civil penalties for Defendant's
9 violations of the meal period and rest period requirements of Cal. Lab. Code §§ 226.7 and 558(a)
10 pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet,
11 Plaintiffs have not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal.
12 Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to file this First
13 Amended Complaint.

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

17 74. Wherefore, Plaintiffs request relief as hereinafter provided.

18 **THIRD CAUSE OF ACTION**

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

20 **for Violations of Cal. Lab. Code §§ 204, 1194, and 1198**

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

22 75. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
23 herein.

24 76. Defendant willfully engaged and continues to engage in a policy and practice of not
25 compensating Plaintiffs and Aggrieved Employees for all hours worked or spent in Defendant's
26 control. Defendant regularly requires Aggrieved Employees to perform uncompensated off-the-clock
27 work.

28 77. 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 78. 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 79. Cal. Lab. Code § 1194(a) provides as follows:

6 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
7 than the legal minimum wage or the legal overtime compensation applicable to the
8 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 attorneys’ fees, and costs of suit.

9 80. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
10 conditions that violate the Wage Order.

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

14 82. In violation of California law, Defendant knowingly and willfully refuses to provide
15 Aggrieved Employees with compensation for all time worked. Defendant intentionally and willfully
16 requires Plaintiffs and Aggrieved Employees to remain on duty during their scheduled shifts, including
17 during rest periods and while clocked out for meal periods. As a result of Defendant’s policies and
18 practices, Aggrieved Employees are routinely denied the opportunity to take legally compliant meal
19 and rest periods without compensation and are further denied the overtime premiums resulting from
20 the additional off-the-clock work performed during meal periods.

21 83. In addition, Plaintiffs and Aggrieved Employees are also regularly required to work off-
22 the-clock, time which Defendant neither records nor compensates them for. For example, Plaintiffs
23 and Aggrieved Employees are required to communicate with customers off-the-clock outside of their
24 scheduled shifts, and Plaintiffs and Aggrieved Employees are mandated to attend online trainings and
25 conferences while off-duty. Defendant does not account for this off-the-clock work when
26 compensating Plaintiffs and Aggrieved Employees, resulting in widespread under-compensation of
27 Aggrieved Employees.

28 84. Therefore, Defendant committed, and continues to commit, the acts alleged herein

1 knowingly and willfully, and in conscious disregard of the Aggrieved Employees' rights.

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

9 86. Plaintiffs seek to recover civil penalties from Defendant for its failure to pay for all hours
10 worked in violation of Cal. Lab. Code §§ 204, 1194, and 1198 throughout California on behalf of
11 themselves, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code §
12 2699(f).

13 87. On April 29, 2022, Plaintiff Nguyen provided her initial written notice to the LWDA and
14 Defendant of her intent to pursue civil penalties pursuant to the PAGA. On December 12, 2022,
15 Plaintiff Nguyen, and on February 13, 2023, all Plaintiffs, gave further written notice to the LWDA
16 and to Defendant of their intent to file an amended action to pursue civil penalties for Defendant's
17 failure to pay for all hours worked in violation of Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant
18 to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs
19 have not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code
20 § 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to file this First Amended
21 Complaint.

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

25 89. Wherefore, Plaintiffs request relief as hereinafter provided.
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1 **FOURTH CAUSE OF ACTION**

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

3 **for Violations of Cal. Lab. Code §§ 1182.12, 1194, and 1197**

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

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

7 91. Defendant fails to compensate Plaintiffs and Aggrieved Employees with at least the
8 minimum wage for all hours worked or spent in Defendant's control because it pays Plaintiff and the
9 Aggrieved Employees at nominal rates at or just above the required California minimum, and when
10 the required premium payments for missed periods, wages for off-the-clock work, and overtime wages
11 are factored in, the actual rate of pay often drops below the required California minimum.

12 92. Cal. Lab. Code § 1197 provides:

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

17 93. IWC Wage Orders 7-2001(2)(K) defines hours worked as "the time during which an
18 employee is subject to the control of an employer, and includes all the time the employee is suffered
19 or permitted to work, whether or not required to do so."

20 94. Cal. Lab. Code § 1194(a) provides as follows:

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

26 95. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
27 conditions that violate the Wage Orders.

28 96. Because of Defendant's policies and practices with regard to compensating Plaintiffs
and Aggrieved Employees, Defendant fails to pay minimum wages as required by law. Plaintiff and
the Aggrieved Employees frequently perform work for which they are compensated below the
statutory minimum wage, as determined by the IWC.

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

8 98. Plaintiffs seek to recover civil penalties from Defendant for its failure to pay minimum
9 wages in violation of Cal. Lab. Code §§ 1182.12, 1194, and 1197 throughout California on behalf of
10 themselves, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code §
11 2699(f).

12 99. On April 29, 2022, Plaintiff Nguyen provided her initial written notice to the LWDA and
13 Defendant of her intent to pursue civil penalties pursuant to the PAGA. On December 12, 2022,
14 Plaintiff Nguyen, and on February 13, 2023, all Plaintiffs, gave further written notice to the LWDA
15 and to Defendant of their intent to file an amended action to pursue civil penalties for Defendant's
16 failure to pay minimum wages in violation of Cal. Lab. Code §§ 558(a) and 1194 pursuant to the
17 PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have
18 not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code §
19 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to file this First Amended
20 Complaint.

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

24 101. Wherefore, Plaintiffs request relief as hereinafter provided.
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1 **FIFTH CAUSE OF ACTION**

2 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**
3 **for Violations of Cal. Lab. Code §§ 510 and 1194**
4 **(Failure to Pay Overtime Wages)**

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

7 103. Defendant does not properly compensate Plaintiffs and Aggrieved Employees with
8 appropriate overtime premiums, as required by California law. Defendant fails to pay overtime rates
9 for the off-the-clock work performed by Plaintiffs and Aggrieved Employees. Defendant also
10 incorrectly calculates overtime wages using lower base hourly rates instead of regular rates, as required
11 by the Labor Code. Plaintiffs and many Aggrieved Employees earn commission bonuses based on any
12 sales that they facilitate. Defendant does not factor in commission bonus pay when calculating the
13 regular rate for Plaintiffs' and Aggrieved Employees' overtime payments.

14 104. Cal. Lab. Code § 510(a) provides as follows:

15 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
16 workday and any work in excess of 40 hours in any one workweek and the first eight
17 hours worked on the seventh day of work in any one workweek shall be compensated
18 at the rate of no less than one and one-half times the regular rate of pay for an employee.
Any work in excess of 12 hours in one day shall be compensated at the rate of no less
than twice the regular rate of pay for an employee.

19 105. Cal. Lab. Code § 1194(a) provides as follows:

20 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
21 than the legal minimum wage or the legal overtime compensation applicable to the
22 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 attorneys' fees, and costs of suit.

23 106. Cal. Lab. Code § 200 defines wages as "all amounts of labor performed by employees
24 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
25 commission basis or other method of calculation." All such wages are subject to California's overtime
26 requirements, including those set forth above.

27 107. Defendant's policies and practices of requiring Plaintiffs and Aggrieved Employees to
28 perform work off-the-clock are unlawful and result in overtime violations. As a result of these unlawful

1 policies and practices, Plaintiffs and Aggrieved Employees have worked overtime hours for Defendant
2 without being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage
3 Orders, and other applicable law.

4 108. Defendant knowingly and willfully refuses to perform its obligations to compensate
5 Plaintiffs and Aggrieved Employees for all premium wages for overtime work.

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

13 110. Plaintiffs seek to recover civil penalties from Defendant for its failure to pay overtime
14 wages in violation of Cal. Lab. Code §§ 510 and 1194 and the applicable wage orders throughout
15 California on behalf of themselves, the State of California, and other Aggrieved Employees pursuant
16 to Cal. Lab. Code § 2699(f).

17 111. On April 29, 2022, Plaintiff Nguyen provided her initial written notice to the LWDA and
18 Defendant of her intent to pursue civil penalties pursuant to the PAGA. On December 12, 2022,
19 Plaintiff Nguyen, and on February 13, 2023, all Plaintiffs, gave further written notice to the LWDA
20 and to Defendant of their intent to file an amended action to pursue civil penalties for Defendant's
21 failure to pay overtime wages in violation of Cal. Lab. Code §§ 510, 558(a), and 1194 pursuant to the
22 PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have
23 not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code §
24 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to file this First Amended
25 Complaint.

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

113. Wherefore, Plaintiffs request relief as hereinafter provided.

SIXTH CAUSE OF ACTION

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

for Violations of Cal. Lab. Code § 226

(Accurate, Itemized Wage Statements)

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

115. Defendant does not provide Plaintiffs and Aggrieved Employees with accurate itemized wage statements as required by California law, as a result of the meal and rest period, off-the-clock work, and overtime violations set forth above, and Defendant's failure to provide premium pay for the missed periods.

116. Cal. Lab. Code § 226(a) provides:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and 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.

117. The IWC Wage Orders also establishes this requirement. (*See* IWC Wage Order 7-2001).

118. Cal. Lab. Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

1 119. Due to the failure to pay one hour of premium pay to Plaintiffs and Aggrieved
2 Employees for each missed or noncompliant meal or rest period, along with the off-the-clock work,
3 and overtime violations, the wage statements Defendant provides its employees, including the
4 Aggrieved Employees, do not reflect the actual gross wages earned, actual net wages earned, actual
5 hours worked, or the appropriate applicable hourly rates. Accordingly, Defendant has knowingly and
6 willfully failed to provide timely, accurate itemized wage statements to Plaintiffs and Aggrieved
7 Employees in accordance with Cal. Lab. Code § 226 and the IWC Wage Orders.

8 120. On information and belief, Defendant's conduct has been substantially the same at all
9 relevant times throughout the state of California.

10 121. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty
11 to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of themselves
12 and other current or former employees pursuant to the procedures set forth in Cal. Lab. Code § 2699.3.
13 Cal. Lab. Code § 2699(a) provides:

14 Notwithstanding any other provision of law, any provision of this code that provides
15 for a civil penalty to be assessed and collected by the Labor and Workforce
16 Development Agency or any of its departments, divisions, commissions, boards,
17 agencies or employees, for a violation of this code, may, as an alternative, be recovered
18 through a civil action brought by an Aggrieved Employee on behalf of himself or
19 themselves and other current or former employees.

20 122. Plaintiffs seek to recover civil penalties from Defendant pursuant to Cal. Lab. Code §
21 2699(a) for each failure by Defendant, alleged above, to provide Plaintiffs and Aggrieved Employees
22 an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts
23 established by Cal. Lab. Code § 226(e). Plaintiffs seek such penalties as an alternative to the penalties
24 available under Cal. Lab. Code § 226(e), as prayed for herein.

25 123. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure
26 by Defendant, alleged above, to provide Plaintiffs and Aggrieved Employees an accurate, itemized
27 wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts established by Cal. Lab.
28 Code § 226.3. In addition, Plaintiffs seek penalties in the amount established by Cal. Lab. Code §
226(e)(1).

124. On April 29, 2022, Plaintiff Nguyen provided her initial written notice to the LWDA and

1 Defendant of her intent to pursue civil penalties pursuant to the PAGA. On December 12, 2022,
2 Plaintiff Nguyen, and on February 13, 2023, all Plaintiffs, gave further written notice to the LWDA
3 and to Defendant of their intent to file an amended action to pursue civil penalties for Defendant's
4 failure to provide accurate, itemized wage statements in violation of Cal. Lab. Code §§ 226 and 558(a)
5 pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet,
6 Plaintiffs have not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal.
7 Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to file this First
8 Amended Complaint.

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

12 126. Wherefore, Plaintiffs request relief as hereinafter provided.

13 **SEVENTH CAUSE OF ACTION**

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

15 **for Violations of Cal. Lab. Code §§ 201-203**

16 **(Waiting Time Penalties)**

17 127. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
18 herein.

19 128. Defendant does not provide Plaintiffs and Aggrieved Employees with their full wages
20 when due under California law after their employment with Defendant ends, as a result of the meal
21 and rest period, off-the-clock work, and overtime violations set forth above and Defendant's failure to
22 provide premium pay for the missed meal and rest periods.

23 129. Cal. Lab. Code § 201 provides:

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

26 130. Cal. Lab. Code § 202 provides:

27 If an employee not having a written contract for a definite period quits his or her
28 employment, his or her wages shall become due and payable not later than 72 hours
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.

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

2 If an employer willfully fails to pay, without abatement or reduction, in accordance
3 with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who
4 is discharged 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.

5 132. Some Plaintiffs and many Aggrieved Employees have left their employment with
6 Defendant during the statutory period, at which time Defendant owed them unpaid wages for premium
7 pay for missed or noncompliant meal and rest periods.

8 133. Defendant willfully refused and continues to refuse to pay Plaintiffs and Aggrieved
9 Employees all the wages that are due and owing them, in the form of meal and rest period premium
10 pay and other wages due and owing, upon the end of their employment. As a result of Defendant's
11 actions, Plaintiffs and Aggrieved Employees have suffered and continue to suffer substantial losses,
12 including lost earnings, and interest.

13 134. Defendant's willful failure to pay Plaintiffs and Aggrieved Employees the wages due
14 and owing them constitutes a violation of Cal. Lab. Code §§ 201-203. In addition, § 203 provides that
15 an employee's wages will continue as a penalty up to thirty days from the time the wages were due.
16 Plaintiffs seek to recover PAGA penalties, costs, and attorneys' fees pursuant to this section.

17 135. On information and belief, Defendant's conduct has been substantially the same at all
18 relevant times throughout the state of California.

19 136. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty
20 to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself or
21 themselves and other current or former employees pursuant to the procedures set forth in Cal. Lab.
22 Code § 2699.3. Cal. Lab. Code § 2699(a) provides:

23 Notwithstanding any other provision of law, any provision of this code that provides
24 for a civil penalty to be assessed and collected by the Labor and Workforce
25 Development Agency or any of its departments, divisions, commissions, boards,
26 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
themselves and other current or former employees.

27 137. Plaintiffs seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by
28 Defendant, as alleged above, to timely pay all wages owed to Plaintiffs and Aggrieved Employees in

1 compliance with Cal. Lab. Code §§ 201-202 in the amounts established by Cal. Lab. Code § 203.
2 Plaintiffs seek such penalties as an alternative to the penalties available under Cal. Lab. Code § 203,
3 as prayed for herein.

4 138. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful
5 conduct alleged herein, on behalf of the State, other Aggrieved Employees, and themselves, for
6 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§ 256
7 and 558(a).

8 139. On April 29, 2022, Plaintiff Nguyen provided her initial written notice to the LWDA and
9 Defendant of her intent to pursue civil penalties pursuant to the PAGA. On December 12, 2022,
10 Plaintiff Nguyen, and on February 13, 2023, all Plaintiffs, gave further written notice to the LWDA
11 and to Defendant of their intent to file an amended action to pursue civil penalties for Defendant's
12 failure to pay wages when due after the end of employment with Defendant in violation of Cal. Lab.
13 Code §§ 201-203 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided
14 the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or Defendant.
15 Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative
16 prerequisites to file this First Amended Complaint.

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

20 141. Wherefore, Plaintiffs request relief as hereinafter provided.

21 **EIGHTH CAUSE OF ACTION**

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

23 **for Violations of Cal. Lab. Code § 2802**

24 **(Failure to Reimburse Necessary Business Expenditures)**

25 142. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
26 herein.

27 143. Defendant fails to reimburse Plaintiffs and Aggrieved Employees for all business
28 expenses incurred while on the job. Plaintiffs and Aggrieved Employees must constantly use their

1 personal cellphones for work-related communications to consistently remain in touch with managers,
2 customers, and potential customers. Further, Plaintiffs and Aggrieved Employees must use their
3 personal computers and home internet data to attend online trainings and conferences. Defendant fails
4 to reimburse Plaintiffs and Aggrieved Employees for such “out-of-pocket” business expenses.

5 144. Cal. Lab. Code § 2802(a) provides as follows:

6 An employer shall indemnify his or her employee for all necessary expenditures or
7 losses incurred by the employee in direct consequence of the discharge of his or her
8 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful.

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

16 146. Plaintiffs seek to recover civil penalties from Defendant for its failure to reimburse
17 necessary business expenses in violation of Cal. Lab. Code § 2802 and the applicable wage orders
18 throughout California on behalf of the State of California and other Aggrieved Employees pursuant to
19 Cal. Lab. Code § 2699(f).

20 147. On April 29, 2022, Plaintiff Nguyen provided her initial written notice to the LWDA and
21 Defendant of her intent to pursue civil penalties pursuant to the PAGA. On December 12, 2022,
22 Plaintiff Nguyen, and on February 13, 2023, all Plaintiffs, gave further written notice to the LWDA
23 and to Defendant of their intent to file an amended action to pursue civil penalties for Defendant’s
24 violations of Cal. Lab. Code § 2802 pursuant to the PAGA. Over 65 days have passed since Plaintiffs
25 provided the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or
26 Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the
27 administrative prerequisites to file this First Amended Complaint.

28 148. Defendant is liable to the State of California and Aggrieved Employees for the civil

1 penalties set forth in this Complaint, with interest thereon. Plaintiffs are also entitled to an award of
2 attorneys' fees and costs as set forth below.

3 149. Wherefore, Plaintiffs request relief as hereinafter provided.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiffs pray for relief as follows:

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

14
15 Respectfully Submitted,

16 Date: May 16, 2023

17 

18 Carolyn H. Cottrell

19 Ori Edelstein

Eugene Zinovyev

20 **SCHNEIDER WALLACE**

COTTRELL KONECKY LLP

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

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DEMAND FOR JURY TRIAL

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

Respectfully Submitted,

Date: May 16, 2023



Carolyn H. Cottrell

Ori Edelstein

Eugene Zinovyev

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

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

1 **PROOF OF SERVICE**

2
3 I, the undersigned, declare that I am, and was at the time of service of the papers herein
4 referred to, over the age of 18 years and not a party to the within action or proceeding. I am
employed at Schneider Wallace Cottrell Konecky LLP located at 300 S Grand Avenue, Suite
2700, Los Angeles, CA 90071.

5 On June 9, 2023 I served the following document(s):

6 **FIRST AMENDED COMPLAINT**

7 on the following person(s) listed below, as follows:

8
9 Cary G. Palmer (SBN 243570)
Erika M. Barbara (SBN 215702)
10 Keelia K. Lee (SBN 346549)
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17
18 Michael C. Christman (SBN 319758)
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20 Tel: (314) 342-6334

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21 ☒ **BY ELECTRONIC SERVICE:** Eugene Huffman, Paralegal, has submitted an
22 electronic version of the above-referenced document to the person(s) whose email
23 address(es) are known to me as listed above.

24 I declare under penalty of perjury under the laws of the State of California and the
United States of America that the foregoing is true and correct.

25 Executed on June 9, 2023, in North Hollywood, California.

26
27 
28 Eugene Huffman

PROOF OF SERVICE