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9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO**

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

12/09/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

CGC-22-603379

12 HA NGUYEN, on behalf of the State of
California and Aggrieved Employees,

13 *Plaintiff,*

14 v.

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

17 *Defendant.*

Case No.:

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

DEMAND FOR JURY TRIAL

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

3 **INTRODUCTION**

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

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

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

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

23 5. Defendant regularly fails to provide Plaintiff and Aggrieved Employees compliant meal
24 and rest periods. Defendant’s policies, practices, and procedures require Plaintiff and Aggrieved
25 Employees to routinely skip their meal and rest periods, or cut their meal and rest periods short, yet
26 do not provide them with requisite premium payments for missed meal and rest periods.

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

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

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

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

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

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

27 11. As a result of the above violations, Plaintiff and Aggrieved Employees do not receive
28 accurate, itemized wage statements, and do not receive all wages during employment and following

1 separation from employment.

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

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

13 **PARTIES**

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

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

20 16. Plaintiff was employed by Defendant as a sales associate from approximately March
21 2019 to November 2021. Plaintiff worked at Defendant's retail store located in Costa Mesa, California.

22 17. Plaintiff is informed, believes, and alleges that Defendant Bloomingdale's, LLC is an
23 Ohio limited liability corporation headquartered in Long Island City, New York. Defendant is
24 registered to do business in California, does business in California and employs hourly non-exempt
25 employees, including Plaintiff and Aggrieved Employees, in California.

26 18. Plaintiff is informed, believes, and thereon alleges that Defendant jointly employ and/or
27 employed the Aggrieved Employees, among other hourly employees, in this county and throughout
28 the state of California.

19. Defendant employs and/or employed Plaintiff and Aggrieved Employees because Defendant, directly or indirectly, controls the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff and Aggrieved Employees.

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

JURISDICTION AND VENUE

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

22. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendant because it is a company authorized to do business in the State of California, and because Defendant in fact does business and employs workers in the State of California.

FACTUAL ALLEGATIONS

23. Plaintiff worked for Defendant as a sales associate in Costa Mesa, California, from approximately March 2019 to November 2021. Plaintiff's primary duties included, but were not limited to, communicating with potential and existing customers, selling designer clothing and accessories, assisting customers within the store, and conducting counts of inventory. Plaintiff was classified as an hourly non-exempt employee and was paid an hourly rate of approximately \$19.00, plus commission.

24. Like Plaintiff, Aggrieved Employees are current and former, non-exempt, hourly employees of Defendant in the State of California. Plaintiff is informed, believes, and thereon alleges that Aggrieved Employees perform work similar to Plaintiff, in that they support the operations of Defendant's luxury department stores. Defendant pays Aggrieved Employees in sales positions

1 including Plaintiff, on an hourly rate and commission basis.

2 25. Plaintiff is informed, believes, and thereon alleges, that the policies and practices of
3 Defendant has at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless of
4 particular job assignment or facility location in California.

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

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

9 28. Defendant regularly fails to provide Plaintiff and Aggrieved Employees compliant meal
10 and rest periods. Defendant's policies, practices, and procedures require Plaintiff and Aggrieved
11 Employees to routinely skip their meal and rest periods, or cut their meal and rest periods short, yet
12 do not provide them with requisite premium payments for missed meal and rest periods.

13 29. Plaintiff and Aggrieved Employees are routinely denied compliant meal periods for
14 three reasons: (1) Defendant does not provide an adequate number of staff so that Plaintiff and
15 Aggrieved Employees can get relief from their duties to take meal periods, causing Plaintiff and
16 Aggrieved Employees to skip meal periods entirely or to take them after the fifth hour of work; (2)
17 due to Defendant's high expectations for Plaintiff and Aggrieved Employees to provide quality
18 customer service, Defendant demands that Plaintiff and Aggrieved Employees cut short or work
19 through their meal periods to help with customers in person; and (3) Plaintiff and Aggrieved
20 Employees are required to call and/or text with prospective customers during their meal periods to
21 increase sales.

22 30. When Plaintiff and Aggrieved Employees do attempt a meal period, such are untimely,
23 shortened, or interrupted i.e., after the end of the fifth hour of work and/or less than thirty minutes. As
24 a result, Plaintiff and Aggrieved Employees are not provided duty-free, uninterrupted, and timely
25 thirty-minute meal periods during which they should be completely relieved of any duty, by the end
26 of the fifth hour of work.

27 31. Similarly, Plaintiff and Aggrieved Employees are routinely denied compliant rest
28 periods. Much like the reasons that Plaintiff and Aggrieved Employees are denied compliant meal

1 periods, Plaintiff and Aggrieved Employees do not receive compliant rest periods because Defendant
2 is too understaffed for Plaintiff and Aggrieved Employees to be relieved from their duties, Defendant
3 interrupts rest periods to instruct Plaintiff and Aggrieved Employees to help with customers, and
4 Plaintiff and Aggrieved Employees are often required to call and/or text prospective customers during
5 their rest periods to facilitate sales.

6 32. Plaintiff is informed, believes, and thereon alleges that Defendant's same meal and rest
7 period policies and practices are in place across all of Defendant's facilities throughout California.

8 33. Further, Defendant maintains a policy and/or practice of failing to properly compensate
9 Plaintiff and Aggrieved Employees for work related tasks performed while "off-the-clock". Defendant
10 automatically deducts thirty minutes from Plaintiff and Aggrieved Employees' time records for meal
11 periods, even when they work through the meal periods as outlined above. Plaintiff and Aggrieved
12 Employees are unable to put this time back on their timeclocks, resulting in Plaintiff and Aggrieved
13 Employees working hours per week for the benefit of Defendant without any compensation.

14 34. Additionally, about once per month Defendant mandates that Plaintiff and Aggrieved
15 Employees attend online conferences and/or trainings to learn about new products and work policies
16 while off-the-clock outside of their scheduled shifts. Plaintiff and Aggrieved Employees must also call
17 and text with managers and coworkers and meet Defendant's high customer service expectations by
18 communicating with prospective customers via cell phone outside of their scheduled shift. This time
19 spent by Plaintiff and Aggrieved Employees attending online conferences and trainings and
20 communicating with customers, coworkers, and managers outside of scheduled shifts amounts to
21 between approximately five to ten hours of additional work per week done for the benefit of Defendant
22 that goes unrecorded and therefore uncompensated.

23 35. As a matter of common policy and/or practice, for any overtime work that Defendant do
24 record, Defendant fails to pay Plaintiff and Aggrieved Employees full earned overtime wages because
25 Defendant incorrectly calculates overtime wages using lower base hourly rates instead of regular rates,
26 as required by California law. Plaintiff and many Aggrieved Employees earn commission bonuses
27 based on any sales that they facilitate. Defendant does not factor in commission bonus pay when
28 calculating the regular rate for Plaintiff's and Aggrieved Employees' overtime payments.

1 36. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been
2 denied proper payment for all hours worked, including overtime and minimum wages, for the time
3 spent working off-the-clock. As mentioned above, Plaintiff and Aggrieved Employees do not receive
4 overtime compensation for time spent working off-the-clock when the hours worked are in excess of
5 eight (8) hours per day and forty (40) hours per week. Defendant fails to pay for any of this work time,
6 including the required overtime premiums, in violation of the California Labor Code.

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

9 38. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes the same or
10 substantially similar timekeeping mechanisms throughout all its facilities in California.

11 39. Defendant's common course of wage-and-hour abuse includes routinely failing to
12 maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees. In
13 particular, Defendant has failed to record all hours that Plaintiff and Aggrieved Employees work in
14 excess of eight hours per day and/or forty hours per week, including overtime, and has failed to record
15 noncompliant or missed meal and rest periods.

16 40. As a result of the above violations, Plaintiff and Aggrieved Employees do not receive
17 accurate, itemized wage statements reflecting the hours they actually work, and the amount of wages,
18 including overtime premiums and premium payments for missed and noncompliant meal and rest
19 periods, to which they are entitled, and for which they should be compensated.

20 41. Consequently, Plaintiff and Aggrieved Employees do not receive all wages during
21 employment and following separation from employment, including payment for time spent working
22 during meal periods and outside of their scheduled shifts, as well as premium payments for
23 noncompliant meal and rest periods. As a result, and pursuant to the California Labor Code, Defendant
24 is subject to waiting time penalties.

25 42. In addition to the above, Plaintiff and Aggrieved Employees are required to use their
26 personal cell phones for all work-related communications without reimbursement. Plaintiff and
27 Aggrieved Employees are constantly required to use their personal cell phones to communicate with
28 managers, coworkers and customers, and to look up Defendant's products to facilitate sales. At no

1 time has Defendant reimbursed Plaintiff and Aggrieved Employees for the use of their personal cell
2 phones, which are routinely used for the benefit of Defendant in the discharge of their job duties.
3 Plaintiff and Aggrieved Employees are further required to use their personal computers and internet
4 data to attend online conferences and trainings as mandated by Defendant. Defendant does not
5 reimburse Plaintiff and Aggrieved Employees for the use of their personal computers and/or internet
6 data plans that are utilized for these work-related functions.

7 43. Plaintiff is informed, believes, and thereon alleges that Defendant is well aware that its
8 policies and practices deprive Plaintiff and Aggrieved Employees of substantial pay for all time
9 worked, including overtime compensation and minimum wages, and that their workers do not receive
10 legally compliant meal and rest periods. Thus, Defendant's denial of wages, compliant meal and rest
11 periods, and premium payments is and/or was deliberate and willful.

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

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

17 **FIRST CAUSE OF ACTION**

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

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

20 **(Meal Periods)**

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

23 47. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders requires Defendant
24 to authorize and permit meal periods to its employees. Cal. Lab. Code §§ 226.7 and 512 and the
25 applicable Wage Orders prohibit employers from employing an employee for more than five hours
26 without a meal period of not less than thirty minutes. Unless the employee is relieved of all duty during
27 the thirty-minute meal period, the employee is considered "on duty" and the meal period is counted as
28 time worked under the applicable Wage Orders.

1 48. Cal. Lab. Code § 512(a) provides:

2 An employer shall not employ an employee for a work period of more than five hours
3 per day without providing the employee with a meal period of not less than 30 minutes,
4 except that if the total work period per day of the employee is no more than six hours,
5 the meal period may be waived by mutual consent of both the employer and employee.
6 An employer shall not employ an employee for a work period of more than 10 hours
7 per day without providing the employee with a second meal period of not less than 30
8 minutes, except that if the total hours worked is no more than 12 hours, the second meal
9 period may be waived by mutual consent of the employer and the employee only if the
10 first meal period was not waived

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

15 50. Despite these requirements, Defendant knowingly and willfully refuses to perform its
16 obligation to authorize and permit and/or make available to Plaintiff and Aggrieved Employees the
17 ability to take the off-duty meal periods to which they are entitled.

18 51. Plaintiff and Aggrieved Employees are denied compliant meal periods because
19 Defendant does not provide enough staff to relieve Plaintiff and Aggrieved Employees from their
20 duties so that they can take compliant meal periods, Defendant interrupts meal periods to demand
21 Plaintiff and Aggrieved Employees to help with customers in the store, and Plaintiff and Aggrieved
22 Employees are required to maintain cell phone communication with customers during meal periods.
23 As such, Defendant does not provide Plaintiff and Aggrieved Employees with duty-free, uninterrupted,
24 and timely thirty-minute meal periods during which Plaintiff and Aggrieved Employees should be
25 completely relieved of any duty, by the end of the fifth hour of work. Plaintiff is informed, believes,
26 and thereon alleges that this policy and practice applies to all Aggrieved Employees.

27 52. Defendant also fails to pay Plaintiff and Aggrieved Employees one hour of pay for each
28 off-duty meal period that they are denied. Defendant's conduct described herein violates Cal. Lab.
Code §§ 226.7 and 512.

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

54. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for

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

7 55. Plaintiff seeks to recover civil penalties from Defendant for its violations of the meal
8 period requirements of Cal. Lab. Code §§ 226.7 and 512 throughout California on behalf of herself,
9 the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

10 56. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for the unlawful
11 conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself, for
12 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§ 512

13 57. On April 29, 2022, Plaintiff gave written notice to the Labor and Workforce
14 Development Agency ("LWDA") and to Defendant of her intent to pursue civil penalties for
15 Defendant's violations of the meal period requirements of Cal. Lab. Code §§ 226.7, 512, and 558
16 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet,
17 Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal.
18 Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA
19 action.

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

23 59. Wherefore, Plaintiff requests relief as hereinafter provided.

24 **SECOND CAUSE OF ACTION**

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

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

27 **(Rest Periods)**

28 60. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth

1 herein.

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

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

12 63. Despite these requirements, Defendant knowingly and willfully refuses to perform its
13 obligation to authorize and permit and/or make available to Plaintiff and Aggrieved Employees the
14 ability to take the off-duty rest periods to which they are entitled.

15 64. Plaintiff and Aggrieved Employees do not receive compliant rest periods because
16 Defendant is too understaffed for Plaintiff and Aggrieved Employees to be relieved from their duties,
17 Defendant interrupts rest periods to advise Plaintiff and Aggrieved Employees to help with customers,
18 and Plaintiff and Aggrieved Employees are often required to call and/or text prospective customers
19 during their rest periods to facilitate sales. As a result of Defendant’s policies and practices, Aggrieved
20 Employees are routinely denied the opportunity to take legally compliant rest periods. Plaintiff is
21 informed, believes, and thereon alleges that this policy and practice applies to all Aggrieved
22 Employees.

23 65. Defendant also fails to pay Plaintiff and Aggrieved Employees one hour of pay for each
24 off-duty rest period that they are denied. Defendant’s conduct described herein violates Cal. Lab. Code
25 § 226.7.

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

28 67. Cal. Lab. § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each

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

6 68. Plaintiff seeks to recover civil penalties from Defendant for its violations of the rest
7 period requirements of Cal. Lab. Code § 226.7 throughout California on behalf of herself, the State of
8 California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(g)(1).

9 69. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful
10 conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself, for
11 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code § 558(a).

12 70. On April 29, 2022, Plaintiff gave written notice to the Labor and Workforce
13 Development Agency ("LWDA") and to Defendant of her intent to pursue civil penalties for
14 Defendant's violations of the meal period and rest period requirements of Cal. Lab. Code §§ 226.7
15 and 558(a) pursuant to the PAGA. Over sixty-five (65) days have passed since Plaintiff provided the
16 LWDA with notice; yet, Plaintiff has not received a response from the LWDA or Defendant.
17 Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative
18 prerequisites to commence a PAGA action.

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

22 72. Wherefore, Plaintiff requests relief as hereinafter provided.

23 **THIRD CAUSE OF ACTION**

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

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

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

27 73. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
28 herein.

1 74. Defendant willfully engaged and continues to engage in a policy and practice of not
2 compensating Aggrieved Employees for all hours worked or spent in Defendant's control. Defendant
3 regularly requires Aggrieved Employees to perform uncompensated off-the-clock work.

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

7 76. Cal. Lab. 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 77. Cal. Lab. Code § 1194(a) provides as follows:

10 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
11 than the legal minimum wage or the legal overtime compensation applicable to the
12 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.

13 78. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
14 conditions that violate the Wage Order.

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

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

25 81. In addition, Plaintiff and Aggrieved Employees are also regularly required to work off-
26 the-clock, time which Defendant neither record nor compensate them for. For example, Plaintiff and
27 Aggrieved Employees are required to communicate with customers off-the-clock outside of their
28 scheduled shifts, and Plaintiff and Aggrieved Employees are mandated to attend online trainings and

1 conferences while off-duty. Defendant does not account for this off-the-clock work when
2 compensating Plaintiff and Aggrieved Employees, resulting in widespread under-compensation of
3 Aggrieved Employees.

4 82. Therefore, Defendant committed, and continues to commit, the acts alleged herein
5 knowingly and willfully, and in conscious disregard of the Aggrieved Employees' rights.

6 83. 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 84. Plaintiff seeks to recover civil penalties from Defendant for its failure to pay for all
14 hours worked in violation of Cal. Lab. Code §§ 204, 1194, and 1198 throughout California on behalf
15 of herself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code §
16 2699(f).

17 85. On April 29, 2022, Plaintiff gave written notice to the LWDA and to Defendant of her
18 intent to pursue civil penalties for Defendant's failure to pay for all hours worked in violation of Cal.
19 Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff
20 provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or
21 Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
22 administrative prerequisites to commence a PAGA action.

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

26 87. Wherefore, Plaintiff requests 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 88. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
6 herein.

7 89. Defendant fails to compensate Plaintiff 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 90. 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 91. 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 92. 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 93. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
27 conditions that violate the Wage Orders.

28 94. Because of Defendant's policies and practices with regard to compensating Plaintiff and
Aggrieved Employees, Defendant has failed 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.

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

96. Plaintiff seeks to recover civil penalties from Defendant for its failure to pay minimum wages in violation of Cal. Lab. Code §§ 1182.12, 1194, and 1197 throughout California on behalf of herself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

97. On April 29, 2022, Plaintiff gave written notice to the LWDA and to Defendant of her intent to pursue civil penalties for Defendant's failure to pay minimum wages in violation of Cal. Lab. Code §§ 558(a) and 1194 pursuant to the PAGA. Over sixty-five (65) days have passed since Plaintiff provided the LWDA with notice; yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

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

99. Wherefore, Plaintiff requests relief as hereinafter provided.

FIFTH CAUSE OF ACTION

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

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

101. Defendant does not properly compensate Aggrieved Employees with appropriate overtime premiums, as required by California law. Defendant fails to pay overtime rates for the off-

1 the-clock work performed by Plaintiff and the Aggrieved Employees. Defendant also incorrectly
2 calculates overtime wages using lower base hourly rates instead of regular rates, as required by the
3 Labor Code. Plaintiff and many Aggrieved Employees earn commission bonuses based on any sales
4 that they facilitate. Defendant does not factor in commission bonus pay when calculating the regular
5 rate for Plaintiff's and Aggrieved Employees' overtime payments.

6 102. Cal. Lab. Code § 510(a) provides as follows:

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

13 103. Cal. Lab. Code § 1194(a) provides as follows:

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

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

23 105. Defendant's policies and practices of requiring Aggrieved Employees to perform work
24 off-the-clock are unlawful and results in overtime violations. As a result of these unlawful policies
25 and practices, Aggrieved Employees have worked overtime hours for Defendant without being paid
26 overtime premiums in violation of the Labor Code, the applicable IWC Wage Orders, and other
27 applicable law.

28 106. Defendant knowingly and willfully refuses to perform its obligations to compensate
Aggrieved Employees for all premium wages for overtime work.

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

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

5 108. Plaintiff seeks to recover civil penalties from Defendant for its failure to pay overtime
6 wages in violation of Cal. Lab. Code §§ 510 and 1194 and the applicable wage orders throughout
7 California on behalf of herself, the State of California, and other Aggrieved Employees pursuant to
8 Cal. Lab. Code § 2699(f).

9 109. On April 29, 2022, Plaintiff gave written notice to the LWDA and to Defendant of her
10 intent to pursue civil penalties for Defendant's failure to pay overtime wages in violation of Cal. Lab.
11 Code §§ 510, 558(a), and 1194 pursuant to the PAGA. Over sixty-five (65) days have passed since
12 Plaintiff provided the LWDA with notice; yet, Plaintiff has not received a response from the LWDA
13 or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
14 administrative prerequisites to commence a PAGA action.

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

18 111. Wherefore, Plaintiff requests relief as hereinafter provided.

19 **SIXTH CAUSE OF ACTION**

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

21 **for Violations of Cal. Lab. Code § 226**

22 **(Accurate, Itemized Wage Statements)**

23 112. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
24 herein.

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

114. 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.

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

116. 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.

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

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

119. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty

1 to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of herself and
2 other current or former employees pursuant to the procedures set forth in Cal. Lab. Code § 2699.3.
3 Cal. Lab. Code § 2699(a) provides:

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

10 120. Plaintiff seeks to recover civil penalties from Defendant pursuant to Cal. Lab. Code §
11 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees
12 an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts
13 established by Cal. Lab. Code § 226(e). Plaintiff seeks such penalties as an alternative to the penalties
14 available under Cal. Lab. Code § 226(e), as prayed for herein.

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

20 122. On April 29, 2022, Plaintiff gave written notice to the LWDA and to Defendant of her
21 intent to pursue civil penalties for Defendant's failure to provide accurate, itemized wage statements
22 in violation of Cal. Lab. Code §§ 226 and 558(a) pursuant to the PAGA. Over sixty-five (65) days
23 have passed since Plaintiff provided the LWDA with notice; yet, Plaintiff has not received a response
24 from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has
25 satisfied the administrative prerequisites to commence a PAGA action.

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

124. Wherefore, Plaintiff requests relief as hereinafter provided.

1 **SEVENTH CAUSE OF ACTION**

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

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

4 **(Waiting Time Penalties)**

5 125. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
6 herein.

7 126. Defendant does not provide Plaintiff and Aggrieved Employees with their full wages
8 when due under California law after their employment with Defendant ends, as a result of the meal
9 and rest period, off-the-clock work, and overtime violations set forth above and Defendant's failure to
10 provide premium pay for the missed meal and rest periods.

11 127. Cal. Lab. Code § 201 provides:

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

14 128. Cal. Lab. Code § 202 provides:

15 If an employee not having a written contract for a definite period quits his or her
16 employment, his or her wages shall become due and payable not later than 72 hours
17 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.

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

19 If an employer willfully fails to pay, without abatement or reduction, in accordance
20 with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who
is discharged or who quits, the wages of the employee shall continue as a penalty from
21 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.

22 130. Plaintiff and many Aggrieved Employees have left their employment with Defendant
23 during the statutory period, at which time Defendant owed them unpaid wages for premium pay for
24 missed or noncompliant meal and rest periods.

25 131. Defendant willfully refused and continue to refuse to pay Plaintiff and the Aggrieved
26 Employees all the wages that are due and owing them, in the form of meal and rest period premium
27 pay and other wages due and owing, upon the end of their employment. As a result of Defendant's
28 actions, Plaintiff and the Aggrieved Employees have suffered and continue to suffer substantial losses,

1 including lost earnings, and interest.

2 132. Defendant's willful failure to pay Plaintiff and the Aggrieved Employees the wages due
3 and owing them constitutes a violation of Cal. Lab. Code §§ 201-203. In addition, Cal. Lab. Code §
4 203 provides that an employee's wages will continue as a penalty up to thirty days from the time the
5 wages were due. Plaintiff seeks to recover PAGA penalties, costs, and attorneys' fees pursuant to this
6 section.

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

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

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

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

24 136. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful
25 conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself, for
26 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§ 256
27 and 558(a).

28 137. On April 29, 2022, Plaintiff gave written notice to the LWDA and to Defendant of her
intent to pursue civil penalties for Defendant's failure to pay wages when due after the end
employment with Defendant in violation of Cal. Lab. Code §§ 201-203 and 558(a) pursuant to the

1 PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has
2 not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code §
3 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

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

7 139. Wherefore, Plaintiff requests relief as hereinafter provided.

8 **EIGHTH CAUSE OF ACTION**

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

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

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

12 140. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
13 herein.

14 141. Defendant fails to reimburse Plaintiff and Aggrieved Employees for all business
15 expenses incurred while on the job. Plaintiff and Aggrieved Employees must constantly use their
16 personal cellphones for work-related communications to consistently remain in touch with managers,
17 customers, and potential customers. Further, Plaintiff and Aggrieved Employees must use their
18 personal computers and home internet data to attend online trainings and conferences. Defendant fails
19 to reimburse Plaintiff and Aggrieved Employees for such "out-of-pocket" business expenses.

20 142. Cal. Lab. Code § 2802(a) provides as follows:

21 An employer shall indemnify his or her employee for all necessary expenditures or
22 losses incurred by the employee in direct consequence of the discharge of his or her
23 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.

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

1 that does not provide a civil penalty if, at the time of the violation, the employer employs one or more
2 employees.

3 144. Plaintiff seeks to recover civil penalties from Defendant for its failure to reimburse
4 necessary business expenses in violation of Cal. Lab. Code § 2802 and the applicable wage orders
5 throughout California on behalf of the State of California and other Aggrieved Employees pursuant to
6 Cal. Lab. Code § 2699(f).

7 145. On April 29, 2022, Plaintiff gave written notice to the LWDA and to Defendant of her
8 intent to pursue civil penalties for Defendant's violations of Cal. Lab. Code § 2802 pursuant to the
9 PAGA. Over sixty-five (65) days have passed since Plaintiff provided the LWDA with notice; yet,
10 Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal.
11 Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA
12 action.

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

16 147. Wherefore, Plaintiff requests relief as hereinafter provided.

17 **PRAYER FOR RELIEF**

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

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

Date: December 9, 2022



Carolyn H. Cottrell

Ori Edelstein

Eugene Zinovyev

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

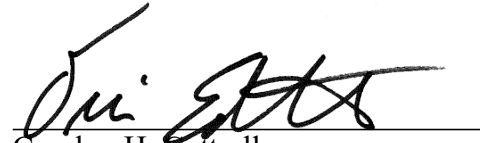
*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

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 Respectfully Submitted,

5 Date: December 9, 2022

6 

7 Carolyn H. Cottrell

8 Ori Edelstein

9 Eugene Zinovyev

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

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