

Carolyn H. Cottrell (SBN 166977)
Ori Edelstein (SBN 268145)
Eugene Zinovyev (SBN 267245)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
odelstein@schneiderwallace.com
ezinovyev@schneiderwallace.com

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

SUPERIOR STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ERICA MEDRANO, on behalf of the State
of California and Aggrieved Employees,

Plaintiff(s),

vs.

GOBRANDS, INC., a Delaware
Corporation; GBL CALIFORNIA, LLC, a
Delaware Limited Liability Company and
GB LOGISTICS LLC d/b/a GOPUFF
LOGISTICS LLC, a Delaware Limited
Liability Company

Defendants.

Case No. **22CV013582**

**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 Erica Medrano (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff Erica Medrano brings this enforcement action against GoBrands, Inc., a
5 Delaware Corporation (“GoBrands”), GBL California, LLC, a Delaware Limited Liability Company
6 (“GBL California”), and GB Logistics LLC d/b/a Gopuff Logistics LLC, a Delaware Limited
7 Liability Company (“GB Logistics”), (collectively “Defendant(s)”) on behalf of the State of
8 California to collect statutory penalties as a result of Defendants’ systematic violations of California
9 labor law with respect to Defendants’ non-exempt hourly workers employed in California (the
10 “Aggrieved Employees”).

11 2. Plaintiff and the alleged Aggrieved Employees are all current and former similarly
12 situated workers who Defendants misclassified as independent contractors, including but not limited
13 to Delivery Partners and others with similar job duties in California.

14 3. Plaintiff and Aggrieved Employees bring this action to challenge Defendants’ policies
15 and practices (1) failing to compensate Plaintiff and Aggrieved Employees for all hours worked; (2)
16 failing to pay Plaintiff and Aggrieved Employees all minimum wages owed; (3) failing to pay
17 Plaintiff and Aggrieved Employees all overtime and/or double time wages owed; (4) failing to make
18 available, authorize, and/or permit Plaintiff and Aggrieved Employees to take timely and compliant
19 meal periods to which they are entitled by law and failing to make premium payments for those non-
20 compliant meal periods; (5) failing to make available, authorize, and/or permit Plaintiff and
21 Aggrieved Employees to take timely and compliant rest periods to which they are entitled by law
22 and failing to make premium payments for those non-compliant rest periods; (6) failing to provide
23 Plaintiff and Aggrieved Employees accurate, itemized wage statements; (7) failing to compensate
24 piece rate workers for rest and recovery periods and other nonproductive time, and/or to provide
25 compliant itemized wage statements for rest and recovery periods and other nonproductive time; (8)
26 failing to reimburse Plaintiff and Aggrieved Employees for all necessary expenditures incurred in
27 direct consequence of the discharge of their duties; (9) unlawful gratuity deductions and (10)
28 misclassifying Plaintiff and Aggrieved Employees as independent contractors instead of employees.

1 4. Defendants fail to not only provide legally compliant meal and rest breaks, but also
2 to properly compensate Plaintiff and Aggrieved Employees for non-compliant meal and rest periods.
3 Defendants fail to both compensate Plaintiff and Aggrieved Employees for the time spent working
4 during missed meal periods and also fail to make premium payments for each missed meal or rest
5 period, as required by law. Plaintiff and Aggrieved Employees regularly work eight, ten or more
6 hours a day yet are constantly required to work through both their first and second meal periods.

7 5. Defendants' failure to compensate Plaintiff and Aggrieved Employees for work
8 performed during their meal periods results in a failure to pay for all time Plaintiff and Aggrieved
9 Employees spend working for Defendants' benefit, including at minimum wage, overtime, and/or
10 double time under California law.

11 6. Defendants also fail to reimburse Plaintiff and Aggrieved Employees for all business
12 expenses incurred while on the job. Plaintiff and Aggrieved Employees must use their personal
13 cellphones for work-related communications, as well as paying for metered parking, vehicle repair
14 and upkeep. Defendants also do not reimburse Plaintiff and Aggrieved employees' mileage for using
15 their personal vehicles at the legally required rate. Defendants fail to reimburse Plaintiff and
16 Aggrieved Employees for such "out-of-pocket" business expenses in violation of Cal. Lab. Code
17 Section 2802.

18 7. Defendants unlawfully collect, take, or receive gratuities or a part thereof that is paid,
19 given to, or left for Plaintiff Aggrieved Employees by customers, unlawfully deduct amounts from
20 wages due to Plaintiff and Aggrieved Employees on account of a gratuity, and/or require Plaintiff
21 and Aggrieved Employees to credit the amount, or any part thereof, of a gratuity against and as a
22 part of the wages due to them in violation of Cal. Lab. Code § 351. Defendants provide Aggrieved
23 Employees with a base pay amount for each delivery. Customers are given the option to provide
24 Aggrieved Employees with a tip and/or gratuity. When a customer provides an Aggrieved
25 Employees with a gratuity, Defendants unlawfully use all or a portion of the gratuity to offset the
26 Aggrieved Employee's base pay amount. In this way, Defendants unlawfully deny Aggrieved
27 Employees the gratuities that are paid to them by customers in violation of Cal. Lab. Code § 351.

28 8. As a result of the above violations, Defendants fail to maintain true and accurate

1 records of the hours Plaintiff and Aggrieved Employees actually work, and also fails to pay all wages
2 due during employment and upon separation within the required time period.

3 9. In addition, Defendants willfully misclassify Plaintiff and Aggrieved Employees as
4 independent contractors to circumvent California wage and hour laws. Defendants' willful
5 misclassification of Plaintiff and Aggrieved Employees results in substantial violations of California
6 laws.

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

10 **PARTIES**

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

13 12. Aggrieved Employees are current and former hourly non-exempt employees of
14 Defendants, including but not limited to Delivery Partners or "Drivers," and other employees with
15 similar job duties, in California, including, other employees responsible for picking up delivery
16 orders from Defendants' warehouses and delivering those orders to customers in the surrounding
17 area.

18 13. Plaintiff is informed, believes, and thereon alleges that GoBrands does business as
19 "Gopuff" and is part of the consumer goods and food delivery industry. GoBrands is a Delaware
20 corporation headquartered in Philadelphia, Pennsylvania. GoBrands operates in over 650 cities
21 across the United States through approximately 500 micro-fulfillment centers. GoBrands primarily
22 delivers goods typically found in convenience stores such as snacks, drinks, household items,
23 toiletries as well as pet and baby products like diapers. Beer, wine, and spirits are also available for
24 delivery in some markets. GoBrands is registered in the State of California and does business in the
25 State of California. GoBrands employs thousands of workers and conducts extensive activities in
26 the State of California.

27 14. Plaintiff is informed, believes, and alleges that GBL California, LLC is also part of
28 the consumer goods and food delivery industry. GBL is a Delaware corporation headquartered in

1 Philadelphia, Pennsylvania. GBL manages the logistical aspects of GoBrands' delivery service in
2 California, connecting Delivery Partners with customers seeking deliveries of products of GoBrands
3 and its affiliates. Delivery Partners must sign an Agreement with GBL to begin making deliveries
4 for GoBrands. GBL is registered in the State of California and does business in the State of
5 California. GBL employs thousands of workers and conducts extensive activities in the State of
6 California.

7 15. Plaintiff is informed, believes, and alleges that GB Logistics, LLC is also part of the
8 consumer goods and food delivery industry. GB Logistics is a Delaware corporation headquartered
9 in Philadelphia, Pennsylvania. GB Logistics manages the logistical aspects of GoBrands' delivery
10 service outside of California, connecting Delivery Partners with customers seeking deliveries of
11 products of GoBrands and its affiliates. Delivery Partners must also sign an Age-Restricted Product
12 Delivery Service Agreement provided by GB Logistics in order to deliver alcoholic beverages and
13 tobacco products for GoBrands. GB Logistics does business in the State of California. GB Logistics
14 employs thousands of workers and conducts extensive activities in the State of California.

15 16. At all times herein relevant, Defendants, and each of them, were the agents, partners,
16 joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and
17 assigns, each of the other, and at all times relevant hereto were acting within the course and scope
18 of their authority as such agents, partners, joint venturers, representatives, servants, employees,
19 successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly
20 committed with the ratification, knowledge, permission, encouragement, authorization and consent
21 of each defendant designated herein.

22 17. Defendants employ(ed) Plaintiff and Aggrieved Employees because Defendants,
23 directly or indirectly, control the employment terms, pay practices, timekeeping practices, and daily
24 work of Plaintiff and Aggrieved Employees. Defendants are "employer[s]" as that term is used in
25 the Cal. Lab. Code and IWC Wage Orders.

26 18. At all relevant times, Defendants have done business under the laws of the California,
27 have had places of business in California, including in this judicial district, and have employed
28 Aggrieved Employees in this judicial district. At all relevant times, Defendants are "persons" as

1 defined in Cal. Lab. Code § 18 and Cal. Bus. & Prof. Code § 17201. Defendants are also “employers”
2 within the meaning of the Labor Code and IWC Wage Orders.

3 19. Defendants will hereinafter collectively be referred to as “Defendants” or “Gopuff.”

4 **JURISDICTION AND VENUE**

5 20. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393(a) and/or
6 395.5. Defendants conduct business and employ Aggrieved Employees in this County, and therefore
7 the liability and the cause of some part of the cause arose in this County.

8 21. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.
9 The Court also has jurisdiction over Defendants because they are companies authorized to do
10 business in the State of California, and because Defendants do in fact do business and employ
11 workers in the State of California.

12 **FACTUAL ALLEGATIONS**

13 22. Gopuff is a delivery company that lets consumers order and quickly receive a host of
14 convenience items through its smartphone application, including college essentials, party supplies,
15 alcohol, snacks, frozen foods, and household goods. To do this, Gopuff contracts with Plaintiff and
16 the other Aggrieved Employees as Drivers to deliver packages to people in their local area. The
17 Drivers sign up with Gopuff directly to provide these services and report to centralized warehouses
18 where they have wait to start receiving orders. Indeed, Drivers are required to show up at the
19 warehouses at the start of their official shifts because all deliveries come from the warehouses
20 instead of restaurants or stores. Once they pick up the order at the warehouse, Gopuff directs them
21 where they have to deliver the items. Once they are finished with a delivery, they report back to the
22 warehouse and the process starts over again until they’re finished with their shift.

23 23. The Drivers work on set shifts, have no ability to reject or select orders, and report to
24 direct supervisors who are in charge of their work and what assignments they receive. Drivers can
25 also be terminated if they miss a single shift or if they do not work the entirety of their pre-set shift.

26 24. Applicants can sign up to be a driver through the Gopuff app or its website.
27 Applicants must be at least 21 years old, have a valid U.S. driver’s license, have a working vehicle,
28 maintain vehicle insurance and registration, own a smartphone in order to receive orders, and be

1 willing and able to pass a pre-paid alcohol delivery training course.

2 25. Gopuff has the authority to hire and terminate Plaintiff and the other Aggrieved
3 Employees; to set work rules and conditions governing Plaintiff and the other Aggrieved Employees;
4 and to supervise their daily employment activities.

5 26. Gopuff directly hired and paid wages and benefits to Plaintiff and the other
6 Aggrieved Employees

7 27. Gopuff classifies all Drivers as independent contractors. As such, it does not provide
8 them with meal breaks, rest breaks, minimum wage, overtime, accurate itemized wage statements,
9 benefits, reporting time pay, timely wages during and after employment, reimbursement for mileage
10 and/or gas, or any other basic protection afforded to employees.

11 28. Gopuff's Drivers are misclassified because they are under the control and direction
12 of Gopuff in connection with the performance of their work, perform work that is part of the usual
13 course of Gopuff's business, and are not customarily engaged in an independently established
14 trade, occupation, or business in the same nature of the work performed for Gopuff. Defendants
15 employed Plaintiff and the other Aggrieved Employees as Drivers and willfully misclassified them
16 as independent contractors.

17 29. Gopuff willfully misclassifies its Drivers as independent contractors to deprive them
18 of fundamental employment rights, such as the right to minimum wages, the right to overtime, the
19 right to mandated meal breaks, the right to mandated rest breaks, the right to premium wages for
20 missed meal and rest breaks, the right to accurate itemized wage statements, the right to the prompt
21 payment of full wages within time limits designated by law, and the right to be reimbursed for
22 necessary business expenses.

23 30. In addition to the misclassification issues, Drivers are contractually guaranteed to
24 make an hourly rate depending on a variety of factors. When a package is delivered, customers are
25 given the option of tipping their driver. However, Gopuff counts tips toward meeting the minimum
26 hourly guarantee. Thus, the bigger the tip, the less Gopuff has to pay its Drivers. The only way a
27 driver can earn more than the minimum hourly guarantee is for a customer to tip more than the
28 minimum hourly guarantee. If that occurs, Gopuff pays the driver nothing.

1 31. This pay scheme violates Labor Code section 351 which states that “no employer or
2 agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an
3 employee by a patron, or deduct any amount from wages due an employee on account of a gratuity,
4 or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part
5 of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole
6 property of the employee or employees to whom it was paid, given, or left for. An employer that
7 permits patrons to pay gratuities by credit card shall pay the employees the full amount of the
8 gratuity that the patron indicated on the credit card slip, without any deductions for any credit card
9 payment processing fees or costs that may be charged to the employer by the credit card company.
10 Payment of gratuities made by patrons using credit cards shall be made to the employees not later
11 than the next regular payday following the date the patron authorized the credit card payment.”

12 32. The above pay scheme also violates Cal. Lab. Code Section 353 because it includes
13 customer tips in the minimum hourly guarantee and therefore does not keep accurate records of the
14 Drivers’ tips. It also does not allow driver to access records showing how much they have received
15 in tips.

16 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
17 or should have known that Plaintiff and Aggrieved Employees were entitled to receive certain wages
18 for all work performed, including for overtime compensation.

19 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
20 or should have known that Plaintiff and the other Aggrieved Employees were working over eight
21 (8) hours per day and were entitled to receive certain wages for overtime compensation and that they
22 were not receiving wages for overtime compensation.

23 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged
24 in a uniform policy and systematic scheme of wage abuse against their hourly paid employees,
25 including improper gratuity deductions.

26 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
27 to provide Plaintiff and the other Aggrieved Employees the required rest and meal periods during
28 the relevant time period as required under the Industrial Welfare Commission Wage Orders and/or

1 applicable Labor Codes, thus are entitled to any and all applicable penalties.

2 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
3 or should have known that Plaintiff and the other Aggrieved Employees were entitled to receive all
4 meal periods or payment of one additional hour of pay at Plaintiff's and the other Aggrieved
5 Employees' regular rate of pay when a meal period was missed.

6 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
7 or should have known that Plaintiff and the other Aggrieved Employees were entitled to receive all
8 rest periods or payment of one additional hour of pay at Plaintiff's and the other Aggrieved
9 Employees' regular rate of pay.

10 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
11 or should have known that Plaintiff and the other Aggrieved Employees were entitled to receive all
12 wages owed to them upon discharge or resignation.

13 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
14 or should have known that Plaintiff and the other Aggrieved Employees were entitled to receive
15 complete and accurate wage statements in accordance with California law.

16 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
17 or should have known that they had a duty to compensate Plaintiff and the other Aggrieved
18 Employees pursuant to California law, and that Defendants had the financial ability to pay such
19 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to
20 Plaintiff and the other Aggrieved Employees that they were properly denied wages, all in order to
21 increase Defendants' profits.

22 42. At all material times set forth herein, Defendants regularly and consistently failed to
23 compensate Plaintiff and the other Aggrieved Employees for all hours worked.

24 43. At all material times set forth herein, Defendants failed to fully comply with the
25 relevant provision of the Cal. Lab. Code and the IWC orders to pay overtime wages to Plaintiff and
26 the other Aggrieved Employees.

27 44. At all material times set forth herein, Defendants failed to fully comply with the
28 relevant provision of the Cal. Lab. Code and the IWC orders to provide uninterrupted meal and rest

1 periods to Plaintiff and the other Aggrieved Employees.

2 45. At all material times set forth herein, Defendants regularly and consistently failed to
3 provide complete and accurate wage statements to Plaintiff and the other Aggrieved Employees.

4 46. At all material times set forth herein, Defendants regularly and consistently failed to
5 pay Plaintiff and the other Aggrieved Employees all wages owed to them upon discharge or
6 resignation.

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 **(Against All Defendants)**

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

14 48. Defendants fail to not only provide legally compliant meal periods, but also to
15 properly compensate Plaintiff and Aggrieved Employees for non-compliant meal periods.
16 Defendants fail to both compensate Plaintiff and Aggrieved Employees for the time spent working
17 during missed meal periods and also fail to make premium payments for each missed meal period,
18 as required by law. Plaintiff and Aggrieved Employees regularly work eight, ten, or more hours a
19 day yet are constantly required to work through both their first and second meal periods.

20 49. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders require Defendants
21 to authorize and permit meal periods to their employees. Cal. Lab. Code §§ 226.7 and 512 and the
22 applicable Wage Orders prohibit employers from employing an employee for more than five hours
23 without a meal period of not less than thirty minutes. Unless the employee is relieved of all duty
24 during the thirty-minute meal period, the employee is considered “on duty” and the meal period is
25 counted as time worked under the applicable Wage Orders.

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

27 An employer shall not employ an employee for a work period of more than five hours
28 per day without providing the employee with a meal period of not less than 30 minutes,
except that if the total work period per day of the employee is no more than six hours,

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

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

11 52. Despite these requirements, Defendants knowingly and willfully refuse to perform
12 their obligation to authorize and permit and/or make available to Plaintiff and Aggrieved Employees
13 the ability to take the off-duty meal periods to which they are entitled. Defendants have also failed
14 to pay Plaintiff and Aggrieved Employees one hour of pay for each off-duty meal period that they
15 were denied. Defendants' conduct described herein violates Cal. Lab. Code §§ 226.7 and 512.

16 53. On information and belief, Defendants' conduct has been substantially the same at all
17 relevant times throughout the state of California.

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

25 55. Plaintiff seeks to recover civil penalties from Defendants for their violations of the
26 meal period requirements of Cal. Lab. Code §§ 226.7 and 512 throughout California on behalf of
27 the State of California and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(g)(i).

28 56. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the
unlawful conduct alleged herein, on behalf of the State and other Aggrieved Employees for
Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§ 512
and 558(a).

1 57. On April 22, 2022, Plaintiff gave written notice to the Labor and Workforce
2 Development Agency (“LWDA”) and to Defendants of her intent to pursue civil penalties for
3 Defendants’ violations of the meal period requirements of Cal. Lab. Code §§ 226.7, 512, and 558
4 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice,
5 yet, Plaintiff has not received a response from the LWDA or Defendants. Accordingly, pursuant to
6 Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence
7 a PAGA action.

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

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

12 **SECOND CAUSE OF ACTION**

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

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

15 **(Rest Breaks)**

16 **(Against All Defendants)**

17 60. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
18 herein.

19 61. Similar to Plaintiff and Aggrieved Employees’ rest periods, Defendants fail to not
20 only provide legally compliant rest periods, but also to properly compensate Plaintiff and Aggrieved
21 Employees for non-compliant rest periods by not providing premium payments as required by law.
22 Plaintiff and Aggrieved Employees regularly work eight, ten, or more hours a day yet are constantly
23 required to work through the rest periods to which they are entitled.

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

1 and ten-minute rest period, the employee is considered “on duty” and the meal or rest period is
2 counted as time worked under the applicable Wage Orders.

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

7 64. Despite these requirements, Defendants knowingly and willfully refuse to perform
8 their obligation to authorize and permit and/or make available to Plaintiff and Aggrieved Employees
9 the ability to take the off-duty rest periods to which they are entitled. Defendants have also failed to
10 pay Plaintiff and Aggrieved Employees one hour of pay for each off-duty rest period that they were
11 denied. Defendants’ conduct described herein violates Cal. Lab. Code § 226.7.

12 65. On information and belief, Defendants’ conduct has been substantially the same at all
13 relevant times throughout the state of California.

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

21 67. Plaintiff seeks to recover civil penalties from Defendants for their violations of the
22 rest break requirements of Cal. Lab. Code § 226.7 throughout California on behalf of the State of
23 California and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(g)(i).

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

28 69. On April 22, 2022, Plaintiff gave written notice to the Labor and Workforce

1 Development Agency (“LWDA”) and to Defendants of her intent to pursue civil penalties for
2 Defendants’ violations of the meal period and rest break requirements of Cal. Lab. Code §§ 226.7
3 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA
4 with notice, yet, Plaintiff has not received a response from the LWDA or Defendants. Accordingly,
5 pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to
6 commence a PAGA action.

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

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

11 **THIRD CAUSE OF ACTION**

12 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**
13 **for Violations of Cal. Lab. Code §§ 204, 1194, and 1198**
14 **(Failure to Pay for all Hours Worked)**
15 **(Against All Defendants)**

16 72. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
17 herein.

18 73. Plaintiff alleges that Defendants willfully engaged and continue to engage in a policy
19 and practice of not compensating Aggrieved Employees for all hours worked or spent in Defendants’
20 control. Defendants regularly require Aggrieved Employees to perform uncompensated off-the-
21 clock work.

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

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

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

28 Notwithstanding any agreement to work for a lesser wage, any employee receiving

less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

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

78. IWC Wage Orders, 4-2001(2)(K) 7-2001(2)(K), and 9-2001(2)(G) defines hours worked as "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

79. In violation of California law, Defendants knowingly and willfully refuse to provide Aggrieved Employees with compensation for all time worked. Defendants intentionally and willfully require Plaintiff and Aggrieved Employees to remain on duty during their scheduled shifts, including during rest breaks and while clocked out for meal periods. As a result of Defendants' policies and practices, Aggrieved Employees are routinely denied the opportunity to take legally compliant meal and rest breaks without compensation and are further denied the overtime premiums resulting from the additional off-the-clock work performed during meal breaks. In addition, Plaintiff and Aggrieved Employees are also regularly required to work off-the-clock, time which Defendants neither record nor compensate them for. Defendants do not account for this off-the-clock work when compensating Plaintiff and Aggrieved Employees, resulting in widespread under-compensation of Aggrieved Employees.

80. Therefore, Defendants committed, and continue to commit, the acts alleged herein knowingly and willfully, and in conscious disregard of the Aggrieved Employees' rights.

81. 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.

82. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay for

1 all hours worked in violation of Cal. Lab. Code §§ 204, 1194, and 1198 throughout California on
2 behalf of the State of California and other Aggrieved Employees pursuant to Cal. Lab. Code §
3 2699(f).

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

8 84. On April 22, 2022, Plaintiff gave written notice to the LWDA and to Defendants of
9 her intent to pursue civil penalties for Defendants' failure to pay for all hours worked in violation of
10 Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since
11 Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA
12 or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
13 administrative prerequisites to commence a PAGA action.

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

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

18 **FOURTH CAUSE OF ACTION**

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

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

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

22 **(Against All Defendants)**

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

25 88. Defendants fail to compensate Plaintiff and Aggrieved Employees with at least the
26 minimum wage for all hours worked or spent in Defendants' control because they pay Plaintiff and
27 the Aggrieved Employees at nominal rates at or just above the required California minimum, and
28 when the required premium payments for missed breaks, wages for off-the-clock work, and overtime

wages are factored in, the actual rate of pay often drops below the required California minimum.

89. Cal. Lab. Code § 1182.12 provides, in relevant part:

(a) Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.

(b) Notwithstanding subdivision (a), the minimum wage for all industries shall not be less than the amounts set forth in this subdivision, except when the scheduled increases in paragraphs (1) and (2) are temporarily suspended under subdivision (d).

(1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

...

(D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.

(E) From January 1, 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

(2) For any employer who employs 25 or fewer employees, the minimum wage shall be as follows:

...

(C) From January 1, 2020, to December 31, 2020, inclusive,—twelve dollars (\$12) per hour.

(D) From January 1, 2021, to December 31, 2021, inclusive,—thirteen dollars (\$13) per hour.

(E) From January 1, 2022, to December 31, 2022, inclusive,—fourteen dollars (\$14) per hour.

(F) From January 1, 2023, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

(3) For purposes of this subdivision, “employer” means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. For purposes of this subdivision, “employer” includes the state, political subdivisions of the state, and municipalities.

90. IWC Wage Orders, 4-2001(2)(K) 7-2001(2)(K), and 9-2001(2)(G) define hours worked as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

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

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full

amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

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

93. Because of Defendants' policies and practices with regard to compensating Plaintiff and Aggrieved Employees, Defendants have 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.

94. Cal. Lab. Code § 1194.2 provides that, in any action under § 1194 to recover wages because of the payment of a wage less than minimum wage fixed by an order of the commission, an employer shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

95. California law further requires that employers pay their employees for all hours worked at the statutory or agreed upon rate. No part of the rate may be used as a credit against a minimum wage obligation.

96. By failing to maintain adequate time records as required by Cal. Lab. Code §1174(d) and IWC Wage Orders 4-2001, 7-2011 and 9-2001, Defendants have made it difficult to calculate the minimum wage compensation due to Plaintiff and Aggrieved Employees.

97. 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.

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

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

100. On April 22, 2022, Plaintiff gave written notice to the LWDA and to Defendants of her intent to pursue civil penalties for Defendants' failure to pay minimum wages in violation of Cal. Lab. Code §§ 558(a) and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

101. Defendants are liable to 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.

102. 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)
(Against All Defendants)**

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

104. Defendants do not properly compensate Aggrieved Employees with appropriate overtime premiums, including time and a half premiums based on their regular rate of pay, as required by California law.

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

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated 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

1 compensated at the rate of no less than twice the regular rate of pay for an
2 employee.

3 106. Cal. Lab. Code § 1194(a) provides as follows:

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

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

13 108. Defendants' policies and practices of requiring Aggrieved Employees to perform
14 work off-the-clock are unlawful and results in overtime violations. As a result of these unlawful
15 policies and practices, Aggrieved Employees have worked overtime hours for Defendants without
16 being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Orders,
17 and other applicable law.

18 109. Defendants knowingly and willfully refused to perform their obligations to
19 compensate Aggrieved Employees for all premium wages for overtime work.

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

27 111. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay
28 overtime wages in violation of Cal. Lab. Code §§ 510 and 1194 and the applicable wage orders
throughout California on behalf of the State of California and other Aggrieved Employees pursuant
to Cal. Lab. Code § 2699(f).

112. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the

1 unlawful conduct alleged herein, on behalf of the State and other Aggrieved Employees for
2 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§ 510
3 and 558(a).

4 113. On April 22, 2022, Plaintiff gave written notice to the LWDA and to Defendants of
5 her intent to pursue civil penalties for Defendants' failure to pay overtime wages in violation of Cal.
6 Lab. Code §§ 510, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff
7 provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or
8 Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
9 administrative prerequisites to commence a PAGA action.

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

13 115. Wherefore, Plaintiff requests relief as hereinafter provided.

14 **SIXTH CAUSE OF ACTION**

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

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

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

18 **(Against All Defendants)**

19 116. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
20 herein.

21 117. Defendants also fail to reimburse Plaintiff and Aggrieved Employees for all business
22 expenses incurred while on the job. Plaintiff and Aggrieved Employees must use their personal
23 cellphones for work-related communications, as well as paying for metered parking, vehicle repair
24 and upkeep. Defendants also do not reimburse Plaintiff and Aggrieved employees' mileage for using
25 their personal vehicles at the legally-required rate. Defendants fail to reimburse Plaintiff and
26 Aggrieved Employees for such "out-of-pocket" business expenses.

27 118. Cal. Lab. Code § 2802(a) provides as follows:

28 An employer shall indemnify his or her employee for all necessary expenditures or

1 losses incurred by the employee in direct consequence of the discharge of his or her
2 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.

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

10 120. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay
11 overtime wages in violation of Cal. Lab. Code § 2802 and the applicable wage orders throughout
12 California on behalf of the State of California and other Aggrieved Employees pursuant to Cal. Lab.
13 Code § 2699(f).

14 121. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the
15 unlawful conduct alleged herein, on behalf of the State and other Aggrieved Employees for
16 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code § 2802.

17 122. On April 22, 2022, Plaintiff gave written notice to the LWDA and to Defendants of
18 her intent to pursue civil penalties for Defendants' failure to pay overtime wages in violation of Cal.
19 Lab. Code §§ 510, 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 Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
22 administrative prerequisites to commence a PAGA action.

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

26 124. Wherefore, Plaintiff requests relief as hereinafter provided.
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1 employer to comply with subdivision (a) is entitled to recover the greater of all actual
2 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
3 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.

4 130. Defendants due not provide wage statements that break down Plaintiff and the
5 Aggrieved Employees' hours worked and rates of pay. Further, due to the failure to pay one hour of
6 premium pay to Plaintiff and the Aggrieved Employees for each missed or noncompliant meal or
7 rest period, along with the off-the-clock work, and overtime violations, the wage statements
8 Defendants provide their employees, including the Aggrieved Employees, do not reflect the actual
9 gross wages earned, actual net wages earned, or actual hours worked. Accordingly, Defendants have
10 knowingly and willfully failed to provide timely, accurate itemized wage statements to Plaintiff and
11 the Aggrieved Employees in accordance with Cal. Lab. Code § 226 and the IWC Wage Orders.

12 131. On information and belief, Defendants' conduct has been substantially the same at all
13 relevant times throughout the state of California.

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

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

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

27 134. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the
28 unlawful conduct alleged herein, on behalf of the State and other Aggrieved Employees for

1 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§
2 226.3 and 558(a).

3 135. On April 22, 2022, Plaintiff gave written notice to the LWDA and to Defendants of
4 her intent to pursue civil penalties for Defendants' failure to provide accurate, itemized wage
5 statements in violation of Cal. Lab. Code §§ 226 and 558(a) pursuant to the PAGA. Over 65 days
6 have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response
7 from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff
8 has satisfied the administrative prerequisites to commence a PAGA action.

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

12 137. Wherefore, Plaintiff requests relief as hereinafter provided.

13 **EIGHTH 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 **(Against All Defendants)**

18 138. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
19 herein.

20 139. Defendants do not provide Plaintiff and the Aggrieved Employees with their wages
21 when due under California law after their employment with Defendants ends, as a result of the meal
22 and rest break, off-the-clock work, and overtime violations set forth above and Defendants' failure
23 to provide premium pay for the missed breaks.

24 140. Cal. Lab. Code § 201 provides:

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

27 141. Cal. Lab. Code § 202 provides:

28 If an employee not having a written contract for a definite period quits his or her

1 employment, his or her wages shall become due and payable not later than 72 hours
2 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.

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

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

7 143. Plaintiff and the Aggrieved Employees have left their employment with Defendants
8 during the statutory period, at which time Defendants owed them unpaid wages for premium pay
9 for missed or noncompliant meal and rest periods.

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

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

19 146. On information and belief, Defendants' conduct has been substantially the same at all
20 relevant times throughout the state of California.

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

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

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

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

150. On April 22, 2022, Plaintiff gave written notice to the LWDA and to Defendants of her intent to pursue civil penalties for Defendants' failure to pay wages when due after the end employment with Defendants in violation of Cal. Lab. Code §§ 201-203 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

151. Defendants are liable to 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.

152. Wherefore, Plaintiff requests relief as hereinafter provided.

NINTH CAUSE OF ACTION

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

for Violations of Cal. Lab. Code §§ 351 and 353

(Improper Gratuuity Deductions)

(Against All Defendants)

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

154. Defendants unlawfully collect, take, or receive gratuities or a part thereof that is paid, given to, or left for Plaintiff Aggrieved Employees by customers, unlawfully deduct amounts from

1 wages due to Plaintiff and Aggrieved Employees on account of a gratuity, and/or require Plaintiff
2 and Aggrieved Employees to credit the amount, or any part thereof, of a gratuity against and as a
3 part of the wages due to them in violation of Cal. Lab. Code § 351.

4 155. Defendants provide Aggrieved Employees with a base pay amount for each delivery.
5 Customers are given the option to provide Aggrieved Employees with a tip and/or gratuity. When a
6 customer provides an Aggrieved Employees with a gratuity, Defendants unlawfully use all or a
7 portion of the gratuity to offset the Aggrieved Employee's base pay amount. In this way, Defendants
8 unlawfully deny Aggrieved Employees the gratuities that are paid to them by customers in violation
9 of Cal. Lab. Code § 351.

10 156. Cal. Lab. Code § 351 provides:

11 No employer or agent shall collect, take, or receive any gratuity or a part thereof that
12 is paid, given to, or left for an employee by a patron, or deduct any amount from wages
13 due an employee on account of a gratuity, or require an employee to credit the amount,
14 or any part thereof, of a gratuity against and as a part of the wages due the employee
15 from the employer. Every gratuity is hereby declared to be the sole property of the
16 employee or employees to whom it was paid, given, or left for. An employer that
17 permits patrons to pay gratuities by credit card shall pay the employees the full amount
18 of the gratuity that the patron indicated on the credit card slip, without any deductions
19 for any credit card payment processing fees or costs that may be charged to the
20 employer by the credit card company. Payment of gratuities made by patrons using
21 credit cards shall be made to the employees not later than the next regular payday
22 following the date the patron authorized the credit card payment.

18 157. The above pay scheme also violates Cal. Lab. Code Section 353 because it includes
19 customer tips in the minimum hourly guarantee and therefore does not keep accurate records of the
20 Drivers' tips. It also does not allow driver to access records showing how much they have received
21 in tips.

22 158. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each instance
23 of an improper gratuity deduction by Defendants in violation of Cal. Lab. Code §§ 351 and 353.

24 159. On April 22, 2022, Plaintiff gave written notice to the LWDA and to Defendants of
25 her intent to pursue civil penalties for Defendants' failure to pay wages when due after the end
26 employment with Defendants in violation of Cal. Lab. Code §§ 201-203 and 558(a) pursuant to the
27 PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has
28 not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code §

1 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

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

5 161. Wherefore, Plaintiff requests relief as hereinafter provided.

6 **TENTH CAUSE OF ACTION**

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

8 **for Violations of Cal. Lab. Code § 226.8**

9 **(Willful Misclassification)**

10 **(Against All Defendants)**

11 162. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
12 herein.

13 163. Plaintiff and Aggrieved Employees are misclassified because they are under the
14 control and direction of Defendants in connection with the performance of their work, perform work
15 that is part of the usual course of Defendants business, and are not customarily engaged in an
16 independently established trade, occupation, or business in the same nature of the work performed
17 for Defendants. Defendants employed Plaintiff and the other Aggrieved Employees as Drivers and
18 willfully misclassified them as independent contractors.

19 164. Defendants willfully misclassify Plaintiff and Aggrieved Employees as independent
20 contractors to deprive them of fundamental employment rights, such as the right to minimum wages,
21 the right to overtime, the right to mandated meal breaks, the right to mandated rest breaks, the right
22 to premium wages for missed meal and rest breaks, the right to accurate itemized wage statements,
23 the right to the prompt payment of full wages within time limits designated by law, and the right to
24 be reimbursed for necessary business expenses.

25 165. Labor Code § 226.8(a)(1) prohibits any person or employer to willfully misclassify
26 an individual as an independent contractor.

27 166. Labor Code § 226.8(c) provides:

28 If the Labor and Workforce Development Agency or a court issues a determination

1 that a person or employer has engaged in any of the enumerated violations of
2 subdivision (a) and the person or employer has engaged in or is engaging in a pattern
3 or practice of these violations, the person or employer shall be subject to a civil penalty
4 of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand
5 dollars (\$25,000) for each violation, in addition to any other penalties or fines
6 permitted by law.

7 167. Plaintiff seeks civil penalties in the amount established by Cal. Lab. Code § 226.8(c)
8 for each Defendants' willful misclassification of Plaintiff and Aggrieved Employees as independent
9 contractors.

10 168. On April 22, 2022, Plaintiff gave written notice to the LWDA and to Defendants of
11 her intent to pursue civil penalties for Defendants' failure to pay wages when due after the end
12 employment with Defendants in violation of Cal. Lab. Code §§ 201-203 and 558(a) pursuant to the
13 PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has
14 not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code §
15 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action

16 169. Plaintiff seeks the aforementioned penalties on behalf of the State and other
17 Aggrieved Employees as set forth in Cal. Lab. Code § 2699.

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

21 171. Wherefore, Plaintiff requests relief as hereinafter provided.

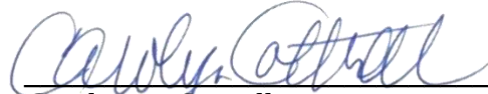
22 **PRAYER FOR RELIEF**

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

- 24 a. For the Court to declare, adjudge, and decree that Defendants violated the California
25 Labor Code as alleged herein;
- 26 b. For an order awarding the State of California and Aggrieved Employees civil
27 penalties provided under the PAGA;
- 28 c. For interest as provided by applicable law;
- d. For an award of reasonable attorneys' fees;
- e. For all costs of suit; and
- f. For such other and further relief as this Court deems just and proper.

1
2 Dated: June 29, 2022

Respectfully Submitted,

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Carolyn H. Cottrell

Ori Edelstein

Eugene Zinovyev

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

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7 *Attorneys for Plaintiff on behalf of the State of*
8 *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 Plaintiff is entitled to a jury.

Dated: June 29, 2022

Respectfully Submitted,



Carolyn H. Cottrell
Ori Edelstein
Eugene Zinoyyev
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

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