

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer:

Carolyn H. Cottrell (SBN 166977)
Samantha S. Smith (SBN 233331)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
sasmith@schneiderwallace.com
tajones@schneiderwallace.com

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

SUPERIOR STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JOSHUA REYES, TIMOTHY VAN
NORTWICK, NICHOLAUS JAMES,
SALVADOR PULIDO, ONIKA JACK, and
LACRETIA DAVIS, on behalf of the State
of California and Aggrieved Employees,

Plaintiff(s),

vs.

PELOTON INTERACTIVE, INC., a
Delaware Corporation,

Defendant.

Case No. **22STCV35186**

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

1 Plaintiffs Joshua Reyes, Timothy Van Nortwick, Nicholaus James, Salvador Pulido, Onika
2 Jack, and Loretia Davis (“Plaintiffs”), on behalf of the State of California and Aggrieved
3 Employees, complain and allege as follows:

4 **INTRODUCTION**

5 1. Plaintiffs Joshua Reyes, Timothy Van Nortwick, Nicholaus James, Salvador Pulido,
6 Onika Jack, and Loretia Davis (collectively, “Plaintiffs”) bring this enforcement action against
7 Peloton Interactive, Inc. (“Defendant”) on behalf of the State of California to collect statutory
8 penalties as a result of Defendant’s systematic violations of California labor law with respect to
9 Defendant’s workers employed in California (the “Aggrieved Employees”).

10 2. Plaintiffs and the alleged Aggrieved Employees are all current and former similarly
11 situated workers, including but not limited to treadmill specialists, bicycle specialists, warehouse
12 associates, assemblers, drivers, thread operations specialists, technicians, field specialists,
13 outbounds, field operators, master technicians, field operations leads, assembly technicians,
14 warehouse builders, lead field operations specialists, service experts, service expert supervisors,
15 customer service associates, dispatchers, desk managers, sales associates and others with similar job
16 duties in California¹.

17 3. Plaintiffs and Aggrieved Employees bring this action to challenge Defendant’s
18 policies and practices (1) failing to compensate Plaintiffs and Aggrieved Employees for all hours
19 worked; (2) failing to pay Plaintiffs and Aggrieved Employees all minimum wages owed; (3) failing
20 to pay Plaintiffs and Aggrieved Employees all overtime and/or double time wages owed; (4) failing
21 to make available, authorize, and/or permit Plaintiffs and Aggrieved Employees to take timely and
22 compliant meal breaks to which they are entitled by law and failing to make premium payments for
23 those non-compliant meal breaks; (5) failing to make available, authorize, and/or permit Plaintiffs
24 and Aggrieved Employees to take timely and compliant rest breaks to which they are entitled by law
25 and failing to make premium payments for those non-compliant rest breaks; (6) failing to provide
26

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

1 Plaintiffs and Aggrieved Employees accurate, itemized wage statements; (7) failing to reimburse
2 Plaintiffs and Aggrieved Employees for all necessary expenditures incurred in direct consequence
3 of the discharge of their duties; and (8) failing to timely pay Plaintiffs and Aggrieved Employees
4 full wages earned during employment and upon termination or resignation.

5 4. Defendant regularly fails to provide Plaintiffs and Aggrieved Employees compliant
6 meal and rest breaks. Defendants' policies, practices, and procedures require Plaintiffs and
7 Aggrieved Employees to routinely skip their meal and rest breaks, or cut their meal and rest breaks
8 short, yet do not provide them with requisite premium payments for missed meal and rest breaks.

9 5. Plaintiffs and Aggrieved Employees are frequently denied meal breaks for three
10 reasons: (i) Defendant does not authorize, permit, and/or make available timely meal breaks to
11 Plaintiffs and Aggrieved Employees requiring they work through their breaks; (ii) Plaintiffs and
12 Aggrieved Employees are often too busy with work during the day to have time to take a bona fide
13 meal and/or rest break because Defendant interrupts their breaks and instructs them to complete
14 various tasks due to a high workload and a lack of staff; and (iii) Plaintiffs and Aggrieved Employees
15 are required to clock out for a meal break but must continue delivering and/or assembling
16 Defendant's products. Further, when Plaintiffs and Aggrieved Employees record an untimely meal
17 period, Defendants adjust the timecards to show that the meal period was timely taken before the
18 end of the fifth hour of work.

19 6. When Plaintiffs and Aggrieved Employees do attempt a meal break, such are untimely
20 and/or shortened, i.e., after the end of the fifth hour of work and/or less than thirty minutes. As a
21 result, Plaintiffs and the Aggrieved Employees are not provided duty-free, uninterrupted, and timely
22 thirty-minute meal breaks during which they should be completely relieved of any duty, by the end
23 of the fifth hour of work.

24 7. In addition, for each day Plaintiffs and Aggrieved Employees work shifts of more
25 than ten hours, Defendant systematically denies Plaintiffs and Aggrieved Employees a compliant
26 second meal break using the same policies and practices that deny Plaintiffs and Aggrieved
27 Employees their initial meal breaks as outlined above. Similarly, Plaintiffs and Aggrieved
28 Employees do not receive requisite premium payments for these missed second meal breaks.

1 8. Plaintiffs and Aggrieved Employees are routinely denied compliant rest breaks. Much
2 like the reasons that Plaintiffs and Aggrieved Employees are denied compliant meal breaks,
3 Plaintiffs and the Aggrieved Employees do not receive compliant rest breaks because Defendant
4 requires that they continue working, Defendant is too understaffed for Plaintiffs and Aggrieved
5 Employees to be relieved from their duties, and Defendant interrupts rest breaks to advise Plaintiffs
6 and Aggrieved Employees to complete tasks. For example, Plaintiff James estimates he typically
7 only received two compliant rest breaks during a 5–6-day workweek due to the amount of work
8 Defendant required he complete and the lack of staff to relieve him of his duties.

9 9. Defendant maintains a policy and/or practice of failing to properly compensate
10 Plaintiffs and Aggrieved Employees for work related tasks performed while “off-the-clock”.
11 Defendant’s failure to compensate Plaintiffs and Aggrieved Employees for work performed during
12 their meal periods results in a failure to pay for all time Plaintiffs and Aggrieved Employees spend
13 working for Defendant’s benefit, including at minimum wage, overtime, and/or double time under
14 California law. Plaintiffs and Aggrieved Employees are also required to attend meetings and
15 communicate with customers, supervisors, and coworkers about work-related matters while off-the-
16 clock outside of their scheduled shifts. Further, at the height of the COVID-19 pandemic, Plaintiffs
17 and Aggrieved Employees were required to undergo daily temperature screenings before they were
18 able to clock in for their shifts. These off-the-clock screenings routinely lasted 5-10 minutes and
19 went unpaid. Defendant’s policies cause Plaintiffs and Aggrieved Employees to work hours every
20 week for the benefit of Defendant without any compensation. For example, Plaintiff Van Nortwick
21 estimates he spent about 1.5 hours per week attending meetings, speaking with supervisors, and
22 undergoing temperature screenings while off-the-clock.

23 10. Defendant also fails to reimburse Plaintiffs and Aggrieved Employees for all business
24 expenses incurred while on the job. Plaintiffs and Aggrieved Employees must use their personal
25 cellphones and personal cell voice, text, and data plans for extensive, work-related communications,
26 such as coordinating delivery appointments with customers, speaking with supervisors and
27 coworkers about job duties and scheduling, and using the GPS on their personal phones to drive to
28 delivery locations. Some Aggrieved Employees are also required to use their personal vehicles to

1 travel between customers' homes, installation work sites, and/or work facilities to handle
2 installations and provide customer service without reimbursement. Defendant fails to reimburse
3 Plaintiffs and Aggrieved Employees for such "out-of-pocket" business expenses in violation of Cal.
4 Lab. Code Section 2802.

5 11. As a result of the above violations, Defendant fails to maintain true and accurate
6 records of the hours Plaintiffs and Aggrieved Employees actually work, and also fail to pay all wages
7 due during employment and upon separation within the required time period.

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

11 **PARTIES**

12 13. Plaintiff Joshua Reyes is an individual over the age of eighteen, and at all times
13 mentioned in this Complaint was a resident of the State of California. Plaintiff Reyes worked for
14 Defendant as a warehouse associate from approximately December 2020 to February 2022 at
15 Defendant's warehouse and distribution center in Perris, California.

16 14. Plaintiff Timothy Van Nortwick is an individual over the age of eighteen, and at all
17 times mentioned in this Complaint was a resident of the State of California. Plaintiff Van Nortwick
18 worked for Defendant as an assembly technician from approximately February 2021 to April 2022
19 at Defendant's warehouse and distribution center in Perris, California.

20 15. Plaintiff Nicholaus James is an individual over the age of eighteen, and at all times
21 mentioned in this Complaint was a resident of the State of California. Plaintiff James worked for
22 Defendant as a field specialist and lead field operations specialist from approximately December
23 2020 to February 2022 at Defendant's warehouse and distribution facilities in Richmond, San Jose,
24 and Newark, California.

25 16. Plaintiff Salvador Pulido is an individual over the age of eighteen, and at all times
26 mentioned in this Complaint was a resident of the State of California. Plaintiff Pulido worked for
27 Defendant as an assembly technician from approximately March 2021 to February 2022 at
28 Defendant's warehouse and distribution center in Perris, California.

1 17. Plaintiff Onika Jack is an individual over the age of eighteen, and at all times
2 mentioned in this Complaint was a resident of the State of California. Plaintiff Jack worked for
3 Defendant as a warehouse associate from approximately April 2020 to October 2021 at Defendant's
4 warehouse and distribution center in Richmond, California.

5 18. Plaintiff Loretia Davis is an individual over the age of eighteen, and at all times
6 mentioned in this Complaint was a resident of the State of California. Plaintiff Davis worked for
7 Defendant as a field assistant from approximately August 2019 to September 2021 at Defendant's
8 warehouse and distribution center in Richmond, California.

9 19. Aggrieved Employees are current and former hourly non-exempt employees of
10 Defendant, including but not limited to treadmill specialists, bicycle specialists, warehouse
11 associates, assemblers, drivers, thread operations specialists, technicians, field specialists,
12 outbounds, field operators, master technicians, field operations leads, assembly technicians,
13 warehouse builders, lead field operations specialists, service experts, service expert supervisors,
14 customer service associates, dispatchers, desk managers, sales associates, and other employees with
15 similar job duties, in California.

16 20. Plaintiffs are informed, believe, and thereon allege that Defendant Peloton Interactive,
17 Inc. is an exercise equipment and media company focusing on internet connected stationary bicycles
18 and treadmills. Defendant owns and operates warehouses and storefronts throughout the State of
19 California. Defendant is a Delaware corporation headquartered in New York City, New York
20 Defendant is registered to do business in California, does business in California and employs and
21 employed hundreds of hourly, non-exempt employees, including Plaintiffs and Aggrieved
22 Employees in California. Defendant may be served with process by serving its registered agent,
23 Corporation Service Company d/b/a CSC - Lawyers Incorporating Service, 2710 Gateway Oaks
24 Drive, Suite 150N, Sacramento, California 95833.

25 21. Defendant employs Plaintiffs and Aggrieved Employees because Defendant, directly
26 or indirectly, controls the employment terms, pay practices, timekeeping practices, and daily work
27 of Plaintiffs and Aggrieved Employees. Defendant is an "employer" as that term is used in the Labor
28 Code and IWC Wage Orders.

1 22. At all relevant times, Defendant has done business under the laws of the California,
2 has had places of business in California, including in this judicial district, and has employed
3 Aggrieved Employees in this judicial district. At all relevant times, Defendant is a “person” as
4 defined in Cal. Lab. Code § 18 and Cal. Bus. & Prof. Code § 17201. Defendant is also an “employer”
5 within the meaning of the Labor Code and IWC Wage Orders.

6 **JURISDICTION AND VENUE**

7 23. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393(a) and/or
8 395.5. Defendant conducts business and employs Aggrieved Employees in this County, and
9 therefore the liability and the cause or some part of the cause arose in this County.

10 24. This Court has jurisdiction over Plaintiffs’ claims for penalties pursuant to the PAGA.
11 The Court also has jurisdiction over Defendant because it is a company authorized to do business in
12 the State of California, and because Defendant does in fact do business and employs workers in the
13 State of California.

14 **FACTUAL ALLEGATIONS**

15 25. Defendant is an exercise equipment and media company focusing on internet
16 connected stationary bicycles and treadmills. Defendant owns and operates warehouses and
17 storefronts throughout the State of California and employ workers to work at those locations.

18 26. Plaintiffs’ job duties include but are not limited to assembling products and
19 troubleshooting equipment, making deliveries, maintaining inventory, streamlining the delivery
20 process, and customer service among other responsibilities assigned by Defendant.

21 27. Like Plaintiffs, the Aggrieved Employees are current and former non-exempt
22 employees of Defendant in California. Plaintiffs are informed, believe, and thereon allege that the
23 Aggrieved Employees perform work similar to Plaintiffs, in that they support the daily functions of
24 Defendant’s exercise equipment and media business.

25 28. Plaintiffs are informed, believe, and thereon allege that the policies and practices of
26 Defendant has at all relevant times been similar for Plaintiffs and Aggrieved Employees, regardless
27 of particular job assignment or location in California.

28 29. Aggrieved Employees are required to follow and abide by common work, time, and

1 pay policies and procedures in the performance of their jobs and duties.

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

4 31. Defendant regularly fails to provide Plaintiffs and Aggrieved Employees compliant
5 meal and rest breaks. Defendant's policies, practices, and procedures require Plaintiffs and
6 Aggrieved Employees to routinely skip their meal and rest breaks, or cut their meal and rest breaks
7 short, yet do not provide them with requisite premium payments for missed meal and rest breaks.

8 32. Plaintiffs and Aggrieved Employees are frequently denied meal breaks for three
9 reasons: (i) Defendant does not authorize, permit, and/or make available timely meal breaks to
10 Plaintiffs and Aggrieved Employees requiring they work through their breaks; (ii) Plaintiffs and
11 Aggrieved Employees are often too busy with work during the day to have time to take a bona fide
12 meal and/or rest break because Defendant interrupts their breaks and instructs them to complete
13 various tasks due to a high workload and a lack of staff; and (iii) Plaintiffs and Aggrieved Employees
14 are required to clock out for a meal break but must continue delivering and/or assembling
15 Defendant's products. Further, when Plaintiffs and Aggrieved Employees record an untimely meal
16 period, Defendant adjusts the timecards to show that the meal period was timely taken before the
17 end of the fifth hour of work.

18 33. When Plaintiffs and Aggrieved Employees do attempt a meal break, such are untimely
19 and/or shortened, i.e., after the end of the fifth hour of work and/or less than thirty minutes. As a
20 result, Plaintiffs and the Aggrieved Employees are not provided duty-free, uninterrupted, and timely
21 thirty-minute meal breaks during which they should be completely relieved of any duty, by the end
22 of the fifth hour of work.

23 34. In addition, for each day Plaintiffs and Aggrieved Employees work shifts of more
24 than ten hours, Defendant systematically denies Plaintiffs and Aggrieved Employees a compliant
25 second meal break using the same policies and practices that deny Plaintiffs and Aggrieved
26 Employees their initial meal breaks as outlined above. Similarly, Plaintiffs and Aggrieved
27 Employees do not receive requisite premium payments for these missed second meal breaks.

28 35. Plaintiffs and Aggrieved Employees are routinely denied compliant rest breaks. Much

1 like the reasons that Plaintiffs and Aggrieved Employees are denied compliant meal breaks,
2 Plaintiffs and the Aggrieved Employees do not receive compliant rest breaks because Defendant
3 requires that they continue working, Defendant is too understaffed for Plaintiffs and Aggrieved
4 Employees to be relieved from their duties, and Defendant interrupts rest breaks to advise Plaintiffs
5 and Aggrieved Employees to complete tasks. For example, Plaintiff James estimates he typically
6 only received two compliant rest breaks during a 5–6-day workweek due to the amount of work
7 Defendant required he complete and the lack of staff to relieve him of his duties.

8 36. Defendant maintains a policy and/or practice of failing to properly compensate
9 Plaintiffs and Aggrieved Employees for work related tasks performed while “off-the-clock”.
10 Defendant’s failure to compensate Plaintiffs and Aggrieved Employees for work performed during
11 their meal periods results in a failure to pay for all time Plaintiffs and Aggrieved Employees spend
12 working for Defendant’s benefit, including at minimum wage, overtime, and/or double time under
13 California law. Plaintiffs and Aggrieved Employees are also required to attend meetings and
14 communicate with clients, supervisors, and coworkers about work-related matters while off-the-
15 clock outside of their scheduled shifts. Further, at the height of the COVID-19 pandemic, Plaintiffs
16 and Aggrieved Employees were required to undergo daily temperature screenings before they were
17 able to clock in for their shifts. These off-the-clock screenings routinely lasted 5-10 minutes and
18 went unpaid. Defendant’s policies cause Plaintiffs and Aggrieved Employees to work hours every
19 week for the benefit of Defendants without any compensation. For example, Plaintiff Van Nortwick
20 estimates he spent about 1.5 hours per week attending meetings, speaking with supervisors, and
21 undergoing temperature screenings while off-the-clock.

22 37. Throughout the relevant time period, Plaintiffs and Aggrieved Employees have been
23 denied proper payment for all hours worked, including overtime and minimum wages, for the time
24 spent off-the-clock. As mentioned above, Plaintiffs and Aggrieved Employees do not receive
25 overtime compensation for time spent working off-the-clock when communicating with clients,
26 supervisors, and coworkers, for time spent going through temperature screenings before shifts, or
27 for time spent working during their meal periods when the hours worked are in excess of eight (8)
28 hours per day and forty (40) hours per week. Defendant fails to pay for any of this work time,

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

2 38. Plaintiffs are informed, believe, and thereon allege that Defendant utilizes the same
3 or substantially similar timekeeping mechanisms throughout all of its facilities in California.

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

6 40. Defendant's common course of wage-and-hour abuse includes routinely failing to
7 maintain true and accurate records of the hours worked by Plaintiffs and Aggrieved Employees.
8 Defendant has failed to record hours that Plaintiffs and Aggrieved Employees worked off-the-clock,
9 as well as non-compliant meal and rest breaks.

10 41. Defendant does not provide Plaintiffs and Aggrieved Employees with accurate wage
11 statements as required by California law. Plaintiffs and Aggrieved Employees receive wage
12 statements that do not reflect all hours worked, premium pay for missed initial meal breaks, second
13 meal breaks, and rest breaks, and applicable overtime premiums.

14 42. Defendant also fails to reimburse Plaintiffs and Aggrieved Employees for all business
15 expenses incurred while on the job. Plaintiffs and Aggrieved Employees must use their personal
16 cellphones and personal cell voice, text, and data plans for extensive, work-related communications,
17 such as coordinating delivery appointments with customers, speaking with supervisors and
18 coworkers about job duties and scheduling, and using the GPS on their personal phones to drive to
19 delivery locations. Some Aggrieved Employees are also required to use their personal vehicles to
20 travel between customers' homes, installation work sites, and/or work facilities to handle
21 installations and provide customer service without reimbursement. Defendant fails to reimburse
22 Plaintiffs and Aggrieved Employees for such "out-of-pocket" business expenses in violation of Cal.
23 Lab. Code Section 2802.

24 43. Defendant does not provide Plaintiffs and Aggrieved Employees with full payment
25 of all wages owed upon separation from employment. At the time their employment ends, Plaintiffs
26 and Aggrieved Employees are owed wages and premium pay for all time worked, overtime, and
27 missed meal and rest breaks, whether their termination was voluntary or involuntary; yet Defendant
28 fails to provide Plaintiffs and Aggrieved Employees with such payments. As a result, and pursuant

1 to the California Labor Code, Defendant is subject to waiting time penalties.

2 44. Plaintiffs are informed, believe, and thereon allege that Defendant is well aware that
3 its policies and practices deprive Plaintiffs and Aggrieved Employees of substantial pay for all time
4 worked, including overtime compensation and minimum wages, and that its workers do not receive
5 legally compliant meal and rest breaks. Thus, Defendant's denial of wages, compliant meal and rest
6 periods, and premium payments is and/or was deliberate and willful.

7 45. Plaintiffs are informed, believe, and thereon allege that Defendant's unlawful conduct
8 has been widespread, repeated, and consistent as to the Aggrieved Employees and throughout
9 Defendant's operations in California.

10 46. Defendant's conduct was willful, carried out in bad faith, and triggers significant civil
11 penalties in an amount to be determined at trial.

12 **FIRST CAUSE OF ACTION**
13 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**
14 **for Violations of Cal. Lab. §§ 226.7 and 512**
15 **(Meal Periods)**
16 **(Against All Defendants)**

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

19 48. Defendant fails to not only provide legally compliant meal breaks, but also to properly
20 compensate Plaintiffs and Aggrieved Employees for non-compliant meal breaks. As mentioned
21 above, Defendant fails to both compensate Plaintiffs and Aggrieved Employees for the time spent
22 working during missed meal breaks and also fails to make premium payments for each missed initial
23 meal break and second meal break, as required by law. Plaintiffs and Aggrieved Employees
24 regularly work eight or more hours a day yet are constantly required to work through their meal
25 breaks. Further, when Plaintiffs and Aggrieved Employees record an untimely meal break,
26 Defendant adjusts the timecards to show that the meal break was timely taken before the end of the
27 fifth hour of work.

28 49. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders require Defendant
to authorize and permit meal periods to its employees. Cal. Lab. Code §§ 226.7 and 512 and the

1 applicable Wage Orders prohibit employers from employing an employee for more than five hours
2 without a meal period of not less than thirty minutes, and from employing an employee more than
3 ten hours per day without providing the employee with a second meal period of not less than thirty
4 minutes. Unless the employee is relieved of all duty during the thirty-minute meal period, the
5 employee is considered “on duty” and the meal period is counted as time worked under the
6 applicable Wage Orders.

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

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

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

17 52. Despite these requirements, Defendant knowingly and willfully refuses to perform its
18 obligation to authorize and permit and/or make available to Plaintiffs and Aggrieved Employees the
19 ability to take the off-duty meal breaks to which they are entitled. Defendant has also failed to pay
20 Plaintiffs and Aggrieved Employees one hour of pay for each off-duty meal break that they were
21 denied. Defendant’s conduct described herein violates Cal. Lab. Code §§ 226.7 and 512.

22 53. On information and belief, Defendant’s conduct has been substantially the same at all
23 relevant times throughout the state of California.

24 54. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100)
25 for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that
26 does 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
2 more employees.

3 55. Plaintiffs seek to recover civil penalties from Defendant for its violations of the meal
4 period requirements of Cal. Lab. Code §§ 226.7 and 512 throughout California on behalf of the State
5 of California and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(g)(i).

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

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

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

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

21 **SECOND CAUSE OF ACTION**
22 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**
23 **for Violations of Cal. Lab. Code § 226.7**
24 **(Rest Breaks)**
25 **(Against All Defendants)**

26 60. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
27 herein.

28 61. Similar to Plaintiffs' and Aggrieved Employees' meal periods, Defendant fails to not
only provide legally compliant rest breaks, but also to properly compensate Plaintiffs and Aggrieved

1 Employees for non-compliant rest breaks by not providing premium payments as required by law.
2 Plaintiffs and Aggrieved Employees regularly work eight or more hours a day yet are constantly
3 interrupted during their rest breaks or required to work through the rest breaks to which they are
4 entitled.

5 62. Cal. Lab. Code §§ 226.7 and the applicable Wage Orders require Defendant to
6 authorize and permit rest breaks to their employees. Cal. Lab. Code § 226.7 and the applicable Wage
7 Orders require employers to authorize and permit employees to take ten minutes of net rest time per
8 four hours or major fraction thereof of work, and to pay employees their full wages during those rest
9 breaks. Unless the employee is relieved of all duty during the thirty-minute meal break and ten-
10 minute rest break, the employee is considered “on duty” and the meal or rest break is counted as
11 time worked under the applicable Wage Orders.

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

16 64. Despite these requirements, Defendant knowingly and willfully refuses to perform its
17 obligation to authorize and permit and/or make available to Plaintiffs and Aggrieved Employees the
18 ability to take the off-duty rest breaks to which they are entitled. Defendant has also failed to pay
19 Plaintiffs and Aggrieved Employees one hour of pay for each off-duty rest break that they were
20 denied. Defendant’s conduct described herein violates Cal. Lab. Code § 226.7.

21 65. On information and belief, Defendant’s conduct has been substantially the same at all
22 relevant times throughout the state of California.

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

employees.

67. Plaintiffs seek to recover civil penalties from Defendant for its violations of the rest break requirements of Cal. Lab. Code § 226.7 throughout California on behalf of the State of California and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(g)(i).

68. Plaintiffs also seek 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).

69. On August 15, 2022, Plaintiffs gave written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendant of their intent to pursue civil penalties for Defendant's violations of the meal period and rest break requirements of Cal. Lab. Code §§ 226.7 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to commence a PAGA action.

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

71. Wherefore, Plaintiffs request relief as hereinafter provided.

THIRD CAUSE OF ACTION
Penalties Pursuant to Cal. Lab. Code § 2699(f)
for Violations of Cal. Lab. Code §§ 204, 1194, and 1198
(Failure to Pay for all Hours Worked)
(Against All Defendants)

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

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

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

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

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

7 Notwithstanding any agreement to work for a lesser wage, any employee receiving
8 less than the legal minimum wage or the legal overtime compensation applicable to
9 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.

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

12 78. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an
13 employee is subject to the control of an employer and includes all the time the employee is suffered
14 or permitted to work, whether or not required to do so.”

15 79. In violation of California law, Defendant knowingly and willfully refuses to provide
16 Plaintiffs and Aggrieved Employees with compensation for all time worked. Defendant intentionally
17 and willfully requires Plaintiffs and Aggrieved Employees to undergo temperature screenings before
18 clocking into their shifts, attend meetings outside of their scheduled shifts, and to remain on duty
19 during their scheduled shifts, including during rest breaks and while clocked out for meal periods.
20 As a result of Defendant’s policies and practices, Aggrieved Employees are routinely denied the
21 opportunity to take legally compliant meal and rest breaks without compensation and are further
22 denied the overtime premiums resulting from the additional off-the-clock work performed during
23 initial meal breaks and second meal breaks. In addition, Plaintiffs and Aggrieved Employees are
24 also regularly required to call and text clients, supervisors, and coworkers off-the-clock, time which
25 Defendant neither records nor compensates them for. Defendant does not account for this off-the-
26 clock work when compensating Plaintiffs and Aggrieved Employees, resulting in widespread under-
27 compensation of Aggrieved Employees.

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

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

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

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

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

15 84. On August 15, 2022, Plaintiffs gave written notice to the LWDA and to Defendant of
16 their intent to pursue civil penalties for Defendant's failure to pay for all hours worked in violation
17 of Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since
18 Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received a response from the
19 LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have
20 satisfied the administrative prerequisites to commence a PAGA action.

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

24 86. Wherefore, Plaintiffs request relief as hereinafter provided.

25 //

26 //

27 //

28 //

FOURTH CAUSE OF ACTION
Penalties Pursuant to Cal. Lab. Code § 2699(f)
for Violations of Cal. Lab. Code §§ 1182.12, 1194, and 1197
(Failure to Pay Minimum Wage)
(Against All Defendants)

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

88. Defendant fails to compensate Plaintiffs and Aggrieved Employees with at least the minimum wage for all hours worked or spent in Defendant's control because they create a working environment where hourly employees are routinely compensated at a rate that is less than the statutory minimum wage. Plaintiffs and Aggrieved Employees routinely work time off-the-clock without compensation. For instance, Plaintiffs and Aggrieved Employees are not compensated for time spent undergoing temperature screenings, working during meal breaks, or time spent calling and texting customers, supervisors, and coworkers off-the-clock.

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

1 the wages, hours, or working conditions of any person. For purposes of this
2 subdivision, “employer” includes the state, political subdivisions of the state, and
3 municipalities.

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

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

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

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

15 93. Because of Defendant’s policies and practices with regard to compensating Plaintiffs
16 and Aggrieved Employees, Defendant has failed to pay minimum wages as required by law.
17 Plaintiffs and the Aggrieved Employees frequently perform work for which they are compensated
18 below the statutory minimum wage, as determined by the IWC.

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

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

96. Plaintiffs seek to recover civil penalties from Defendant for its failure to pay

1 minimum wages in violation of Cal. Lab. Code §§ 1182.12, 1194, and 1197 throughout California
2 on behalf of the State of California and other Aggrieved Employees pursuant to Cal. Lab. Code §
3 2699(f).

4 97. Plaintiffs also seek 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 98. On August 15, 2022, Plaintiffs gave written notice to the LWDA and to Defendant of
9 their intent to pursue civil penalties for Defendant's failure to pay minimum wages in violation of
10 Cal. Lab. Code §§ 558(a) and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiffs
11 provided the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or
12 Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the
13 administrative prerequisites to commence a PAGA action.

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

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

18 **FIFTH CAUSE OF ACTION**
19 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**
20 **for Violations of Cal. Lab. Code §§ 510 and 1194**
21 **(Failure to Pay Overtime Wages)**
22 **(Against All Defendants)**

23 101. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
24 herein.

25 102. Defendant does not properly compensate Plaintiffs and Aggrieved Employees with
26 appropriate overtime premiums, including time and a half premiums based on their regular rate of
27 pay, as required by California law.

28 103. 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

1 compensated at the rate of no less than one and one-half times the regular rate of
2 pay for an employee. Any work in excess of 12 hours in one day shall be
compensated at the rate of no less than twice the regular rate of pay for an
employee.

3 104. 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
amount of this minimum wage or overtime compensation, including interest
thereon, reasonable attorneys' fees, and costs of suit.

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

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

16 107. Defendant knowingly and willfully refuses to perform its obligations to compensate
17 Aggrieved Employees for all premium wages for overtime work.

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

25 109. Plaintiffs seek to recover civil penalties from Defendant for its failure to pay overtime
26 wages in violation of Cal. Lab. Code §§ 510 and 1194 and the applicable wage orders throughout
27 California on behalf of the State of California and other Aggrieved Employees pursuant to Cal. Lab.
28 Code § 2699(f).

110. Plaintiffs also seek 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 §§ 510 and 558(a).

111. On August 15, 2022, Plaintiffs gave written notice to the LWDA and to Defendant of their intent to pursue civil penalties for Defendant's failure to pay overtime wages in violation of Cal. Lab. Code §§ 510, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to commence a PAGA action.

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

113. Wherefore, Plaintiffs request relief as hereinafter provided.

SIXTH CAUSE OF ACTION
Penalties Pursuant to Cal. Lab. Code § 2699(f)
for Violations of Cal. Lab. Code § 2802
(Failure to Reimburse Necessary Business Expenditures)
(Against All Defendants)

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

115. Defendant also fails to reimburse Plaintiffs and Aggrieved Employees for all business expenses incurred while on the job. For instance, Defendant requires Plaintiffs and Aggrieved Employees to use their personal cell phones and personal cell voice, text, and data plans for extensive, regular work-related communications. Further, some Aggrieved Employees are also required to use their personal vehicles to travel between customers' homes, installation work sites, and/or work facilities to handle installations and provide customer service without reimbursement. Defendant fails to reimburse Plaintiffs and Aggrieved Employees for such "out-of-pocket" business expenses.

VI

1 116. Cal. Lab. Code § 2802(a) provides as follows:

2 An employer shall indemnify his or her employee for all necessary expenditures or
3 losses incurred by the employee in direct consequence of the discharge of his or her
4 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.

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

12 118. Plaintiffs seek to recover civil penalties from Defendant for its failure to reimburse
13 business expenditures in violation of Cal. Lab. Code § 2802 and the applicable wage orders
14 throughout California on behalf of the State of California and other Aggrieved Employees pursuant
15 to Cal. Lab. Code § 2699(f).

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

19 120. On August 15, 2022, Plaintiffs gave written notice to the LWDA and to Defendant of
20 their intent to pursue civil penalties for Defendant's failure to reimburse business expenditures in
21 violation of Cal. Lab. Code § 2802 pursuant to the PAGA. Over 65 days have passed since Plaintiffs
22 provided the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or
23 Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the
24 administrative prerequisites to commence a PAGA action.

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

122. Wherefore, Plaintiffs request relief as hereinafter provided.

SEVENTH CAUSE OF ACTION
Penalties Pursuant to Cal. Lab. Code § 2699(a)
for Violations of Cal. Lab. Code § 226
(Accurate, Itemized Wage Statements)
(Against All Defendants)

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

124. Defendant does not provide Plaintiffs and the Aggrieved Employees with accurate itemized wage statements as required by California law. The wage statements issued by Defendant do not accurately reflect the meal and rest break, off-the-clock work, and overtime violations set forth above, and Defendant's failure to provide premium pay for the missed breaks.

125. 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.

126. The IWC Wage Orders also establish this requirement. (See IWC Wage Order 4-2001).

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

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

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

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

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

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

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

25 132. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for the
26 unlawful conduct alleged herein, on behalf of the State and other Aggrieved Employees for
27 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§
28 226.3 and 558(a).

 133. On August 15, 2022, Plaintiffs gave written notice to the LWDA and to Defendant of
their intent to pursue civil penalties for Defendant's failure to provide accurate, itemized wage

1 statements in violation of Cal. Lab. Code §§ 226 and 558(a) pursuant to the PAGA. Over 65 days
2 have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received a
3 response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a),
4 Plaintiffs have satisfied the administrative prerequisites to commence a PAGA action.

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

8 135. Wherefore, Plaintiffs request relief as hereinafter provided.

9 **EIGHTH CAUSE OF ACTION**
10 **Penalties Pursuant to Cal. Lab. Code § 2699(a)**
11 **for Violations of Cal. Lab. Code §§ 201-203 (Waiting Time Penalties)**
12 **(Against All Defendants)**

13 136. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
14 herein.

15 137. Defendant does not provide Plaintiffs and the Aggrieved Employees with their wages
16 when due under California law after their employment with Defendant ends, as a result of the meal
17 and rest break, off-the-clock work, and overtime violations set forth above and Defendant's failure
18 to provide premium pay for the missed breaks.

19 138. Cal. Lab. Code § 201 provides:

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

22 139. Cal. Lab. Code § 202 provides:

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

28 140. Cal. Lab. Code § 203 provides, in relevant part:

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

1 141. Plaintiffs and many of the Aggrieved Employees have left their employment with
2 Defendant during the statutory period, at which time Defendant owed them unpaid wages for
3 premium pay for missed or noncompliant meal and rest periods.

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

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

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

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

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

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

 147. Plaintiffs also seek 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 §§ 256
3 and 558(a).

4 148. On August 15, 2022, Plaintiffs gave written notice to the LWDA and to Defendant of
5 their intent to pursue civil penalties for Defendant's failure to pay wages when due after the end of
6 employment in violation of Cal. Lab. Code §§ 201-203 and 558(a) pursuant to the PAGA. Over 65
7 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received
8 a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a),
9 Plaintiffs have satisfied the administrative prerequisites to commence a PAGA action.

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

13 150. Wherefore, Plaintiffs request relief as hereinafter provided.

14 **PRAYER FOR RELIEF**

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

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

24 //

25 //

26 //

27 //

28 //

DEMAND FOR JURY TRIAL

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

Dated: November 4, 2022

Respectfully Submitted,



Carolyn H. Cottrell
Samantha A. Smith
Taylor A. Jones
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**

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