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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

WENDY RINCON on behalf of the State
of California and Aggrieved Employees,

Plaintiff,

vs.

VITAMIN SHOPPE INDUSTRIES, LLC;
and DOES 1 through 100, inclusive,

Defendant(s),

Case No. 23CV033934

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

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
05/22/2023 at 04:37:04 PM
By: Darnekia Oliver,
Deputy Clerk

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

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Vitamin Shoppe Industries, LLC
5 (“Defendant”), on behalf of the State of California and the Aggrieved Employees to collect statutory
6 penalties as a result of Defendant’s systematic violations of California labor law with respect to
7 Defendant’s non-exempt, hourly workers employed as store managers, assistant managers, and
8 keyholders in the State of California (“Aggrieved Employees”).

9 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
10 workers who have worked for Defendant in California.¹

11 3. This action stems from Defendant’s policies and practices of: (1) failing to
12 compensate Plaintiff and Aggrieved Employees for all hours worked; (2) failing to pay Plaintiff and
13 Aggrieved Employees minimum wage for all hours worked; (3) failing to pay Plaintiff and
14 Aggrieved Employees overtime wages; (4) failing to authorize and permit Plaintiff and Aggrieved
15 Employees to take meal periods to which they are entitled by law, and failing to pay premium
16 compensation for missed meal periods; (5) failing to authorize and permit Plaintiff and Aggrieved
17 Employees to take rest periods to which they are entitled by law, and failing to pay premium
18 compensation for missed rest periods; (6) failing to provide Plaintiff and Aggrieved Employees true
19 and accurate itemized wage statements; (7) failing to reimburse Plaintiff and Aggrieved Employees
20 for necessary business expenses; and (8) failing to timely pay Plaintiff and Aggrieved Employees
21 full wages during employment and upon separation from employment.

22 4. Plaintiff, on behalf of the State of California, seeks to recover penalties and
23 reasonable attorneys’ fees for these violations pursuant to Sections 2699(a) and (f) of the California
24 Labor Code Private Attorneys General Act (“PAGA”).

25 **PARTIES**

26 5. Plaintiff is an individual over the age of eighteen, and at all times mentioned in this
27

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

1 Complaint was employed by Defendant as a resident of the State of California.

2 6. Plaintiff was employed by Defendant as a health enthusiast from approximately
3 August 2020 to January 2021, as a key holder from approximately February 2021 to October 2021,
4 and as an assistant manager from approximately November 2021 to August 2022. Plaintiff worked
5 for Defendant in Irvine, California.

6 7. The Aggrieved Employees are all current and former non-exempt, hourly employees
7 who work for Defendant as health enthusiasts, sales associates, key holders, store managers,
8 assistant managers, and other employees with similar job duties in the State of California.

9 8. Plaintiff is informed, believes, and thereon alleges that Vitamin Shoppe Industries,
10 LLC is a New York limited liability corporation headquartered in Secaucus, New Jersey. Vitamin
11 Shoppe is registered to do business in California, does business in California and employs and
12 employed hourly, non-exempt employees, including Plaintiff and Aggrieved Employees in
13 California.

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

17 10. Plaintiff is informed, believes, and thereon alleges that each and every one of the acts
18 and omissions alleged herein were performed by, and/or attributable to, Defendant, and that said
19 acts and failures to act were within the course and scope of said agency, employment and/or
20 direction and control.

21 11. At all material times, Defendant has done business under the laws of California, has
22 had places of business in California, including in this County, and has employed Aggrieved
23 Employees in this County and elsewhere throughout California. Defendant is a “person” as defined
24 in Cal. Lab. Code § 18 and an “employer” as that term is used in the Labor Code, the IWC Wage
25 Orders regulating wages, hours, and working conditions.

26 **JURISDICTION AND VENUE**

27 12. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393(a) and/or
28 395.5. Defendant conducts business and employs Aggrieved Employees in this County, and

1 therefore the liability and the cause or some part of the cause arose in this County.

2 13. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA.
3 The Court also has jurisdiction over Defendant because it is authorized to do business in the State
4 of California, and because Defendant does in fact do business and employ workers in the State of
5 California.

6
7 **FACTUAL ALLEGATIONS**

8 14. Plaintiff worked for Defendant as a health enthusiast from approximately August
9 2020 to January 2021, as a key holder from approximately February 2021 to October 2021, and as
10 an assistant manager from approximately November 2021 to August 2022. Plaintiff worked for
11 Defendant in Irvine, California. Plaintiff's primary duties as a health enthusiast included but were
12 not limited to stocking shelves with inventory, helping customers in-store, working the store
13 telephone, and checking out customers at the register. When Plaintiff worked as a key holder and
14 assistant manager, her primary duties included but were not limited to coordinating and supervising
15 team members, opening and closing the store, receiving shipments, accepting and organizing
16 inventory, reviewing sales records and metrics, and assisting and checking out customers. Plaintiff
17 was at all times classified as an hourly, non-exempt employee and was paid hourly rates between
18 approximately \$13.50 to \$18.68. Although Plaintiff's shifts varied in length, when Plaintiff worked
19 as a health enthusiast, she was usually scheduled to work eight or nine hours per shift, five shifts
20 per week, for a total of approximately 40 to 45 hours per week. As a key holder and assistant
21 manager, Plaintiff was usually scheduled to work eight to ten hours per shift, five shifts per week,
22 for a total of approximately 40 to 50 hours or more per week.

23 15. Defendant employs and has employed hundreds, if not thousands, of hourly, non-
24 exempt workers similar to Plaintiff in California, including but not limited to health enthusiasts,
25 sales associates, key holders, store managers, assistant managers, and other employees with similar
26 job duties.

27 16. Defendant employs Aggrieved Employees in a similar manner throughout California,
28 including in this County, and Aggrieved Employees perform work materially similar to Plaintiff.

1 Defendant pays Aggrieved Employees, including Plaintiff, on an hourly rate basis.

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

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

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

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

13 21. Plaintiff and Aggrieved Employees are routinely denied compliant meal periods for
14 at least three reasons: (1) Defendant does not provide an adequate number of staff so that Plaintiff
15 and Aggrieved Employees can get relief from their duties to take meal periods; (2) Defendant
16 requires Plaintiff and Aggrieved Employees to remain on duty during their meal periods and to be
17 available to assist customers in the store or help other coworkers; and (3) Plaintiff and Aggrieved
18 Employees are often too busy with customers to have time to take bona fide meal periods.

19 22. Further, since the beginning of the COVID-19 pandemic, Defendant has had issues
20 keeping its stores properly staffed, causing Defendant to send employees to the most understaffed
21 stores and resulting in many stores, like Plaintiff's, to have just enough staff members on duty to
22 remain open. Due to this shifting of employees, Defendant's stores often have the minimal number
23 of staff on duty and Plaintiff and Aggrieved Employees cannot get the relief they need to take
24 compliant meal and rest periods.

25 23. When Plaintiff and Aggrieved Employees do attempt to take a meal period, they are
26 not provided duty-free, uninterrupted, and timely thirty-minute meal periods during which they
27 should be completely relieved of any duty, by the end of the fifth hour of work. When Plaintiff did
28 take a meal period, it was interrupted, untimely, and/or short, *i.e.*, she was constantly pulled from

1 the break room to assist with associates and customers, their meal periods were after their fifth hour
2 of work, or they were less than 30 minutes.

3 24. Additionally, Plaintiff and Aggrieved Employees are routinely denied compliant rest
4 periods. Much like the reasons that Plaintiff and Aggrieved Employees are denied compliant meal
5 periods, Plaintiff and Aggrieved Employees do not receive compliant rest periods because they are
6 too busy to find the time for rest periods, Defendant is too understaffed for Plaintiff and Aggrieved
7 Employees to be relieved from their duties, and Defendant requires that Plaintiff and Aggrieved
8 Employees cut their rest periods short to assist with customers and sales associates.

9 25. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes and applies
10 these meal and rest period policies and practices across all Defendant's facilities throughout
11 California.

12 26. Further, Defendant maintains a policy and/or practice of failing to properly
13 compensate Plaintiff and the Aggrieved Employees for work related tasks performed while "off-
14 the-clock." As mentioned above, Defendant requires Plaintiff and Aggrieved Employees to clock
15 out for thirty-minute meal periods even though they are on-call, and they continue to work. This
16 policy results in Plaintiff and Aggrieved Employees working up to 30 minutes of unpaid, off-the-
17 clock work every shift.

18 27. Further, Defendant also requires Plaintiff and Aggrieved Employees to perform
19 uncompensated and unrecorded work outside of their scheduled shifts. Defendant requires
20 Aggrieved Employees to clock out at the end of their shifts but still requires that they complete their
21 assignments for the day, assist with customers, and/or remain available to receive, take inventory
22 of, and organize incoming shipments of products. For example, Plaintiff estimates she spent up to
23 four hours per week receiving and organizing shipments of inventory after clocking out at the end
24 of her shift.

25 28. Moreover, Plaintiff and Aggrieved Employees work up to approximately one
26 additional hour off-the-clock per week which they spend calling and texting with supervisors and
27 coworkers about various work-related issues that arise at Defendant's stores concerning customers,
28 vendors, and/or scheduling. However, Defendant refuses to record this time as hours worked, and

1 therefore does not compensate Plaintiff and Aggrieved Employees for all hours worked.
2 Additionally, Defendant requires Plaintiff and Aggrieved Employees to complete further
3 miscellaneous tasks from home on their days off while off-the-clock, such as, *inter alia*, drafting
4 employee performance reviews.

5 29. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been
6 denied proper payment for all hours worked, including overtime and minimum wages, for time spent
7 working off-the-clock. For instance, Plaintiff and Aggrieved Employees do not receive overtime
8 compensation for time spent working off-the-clock outside of their scheduled shifts and during
9 noncompliant meal periods when the hours worked are in excess of eight hours per day and/or 40
10 hours per week. However, Defendant fails to pay for any of this work time, including the required
11 overtime premiums, in violation of California laws.

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

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

16 32. Defendant's common course of wage-and-hour abuse includes routinely failing to
17 maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees.
18 Defendant fails to record hours that Plaintiff and Aggrieved Employees work off-the-clock, as well
19 as non-compliant meal and rest periods.

20 33. Defendant's failure to record all hours worked results in Defendant's failure to
21 provide Plaintiff and Aggrieved Employees with itemized and accurate wage statement as required
22 by California law. Plaintiff and Aggrieved Employees receive wage statements that do not reflect
23 all hours worked, including overtime and premiums for non-compliant meal and rest periods.

24 34. Defendant also fails to provide Plaintiff and Aggrieved Employees reimbursement
25 for all necessary expenditures or losses incurred by Plaintiff and Aggrieved Employees in direct
26 consequence of the discharge of their duties, or as a result of their obedience to the directions of
27 Defendant. Defendant regularly requires Plaintiff and Aggrieved Employees to pay out-of-pocket
28 expenses necessary to perform their daily work assignments. For example, Plaintiff was required

1 to use her personal cell phone to look up ingredients and products for customers. Plaintiff also used
2 her personal home computer and home internet data to sign off on and finalize staff reviews.

3 35. Further, Defendant does not provide Plaintiff and Aggrieved Employees who are
4 former employees of Defendant with full and timely payment of all wages owed upon separation
5 from employment. At the time their employment ends, Plaintiff and Aggrieved Employees are owed
6 wages for all time worked, overtime, and missed meal and rest periods, whether their termination
7 was voluntary or involuntary; yet Defendant has failed to provide Plaintiff and Aggrieved
8 Employees with such payments within the required time period. As a result, and pursuant to
9 California laws, Defendant is subject to waiting time penalties.

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

15 37. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct
16 has been widespread, repeated, and consistent as to Aggrieved Employees throughout California.

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

19 **FIRST CAUSE OF ACTION**

20 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**
21 **for Violations of Cal. Lab. Code §§ 204, 1194, and 1198**
22 **(Failure to Pay for all Hours Worked)**

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

25 40. Plaintiff alleges that Defendant willfully engages in a policy and practice of not
26 compensating Aggrieved Employees for all hours worked or spent in Defendant's control.
27 Defendant regularly requires Aggrieved Employees to perform uncompensated off-the-clock work.

28 41. Cal. Lab. Code § 200 defines wages as "all amounts for labor performed by

employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

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

43. 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.

44. IWC Wage Orders, 7-2001(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.”

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

46. In violation of California law, Defendant knowingly and willfully refuses to provide Aggrieved Employees with compensation for all time worked. Defendant intentionally and willfully requires Plaintiff and Aggrieved Employees to perform tasks while off-the-clock outside of their scheduled shifts and to remain on duty during their scheduled shifts, including during rest periods and while clocked out for meal periods. Plaintiff and Aggrieved Employees are regularly required to work off-the-clock, time which Defendant neither records nor compensates them for. Defendant does not account for this off-the-clock work when compensating Plaintiff and Aggrieved Employees, resulting in widespread under-compensation of Aggrieved Employees.

47. Therefore, Defendant committed, and continues to commit, the acts alleged herein knowingly and willfully, and in conscious disregard of the Aggrieved Employees’ rights.

48. 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

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

3 49. Plaintiff seeks to recover civil penalties from Defendant for its failure to pay for all
4 hours worked in violation of Cal. Lab. Code §§ 204, 1194, and 1198 throughout California on behalf
5 of themselves, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code
6 § 2699(f).

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

11 51. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of
12 her intent to pursue civil penalties for Defendant's failure to pay for all hours worked in violation
13 of Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since
14 Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA
15 or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
16 administrative prerequisites to commence a PAGA action.

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

20 53. Wherefore, Plaintiff requests 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 §§ 1182.12, 1194, and 1197**

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

25 54. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
26 herein.

27 55. During the applicable statutory period, Cal. Lab. Code §§ 1182.12 and 1197, and the
28 Minimum Wage Order were in full force and effect, and required that Defendant's hourly employees

1 receive the minimum wage for all hours worked irrespective of whether nominally paid on a piece
2 rate, or any other basis, at the rate of fourteen dollars (\$14.00) commencing January 1, 2021; and at
3 the rate of fifteen dollars (\$15.00) commencing January 1, 2022.

4 56. IWC Wage Order 7-2001(2)(G) 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 57. Cal. Lab. Code § 1194 provides as follows:

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

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

16 59. Because of Defendant’s policies and practices with regard to compensating Plaintiff
17 and Aggrieved Employees, Defendant has failed to pay minimum wages as required by law. For
18 instance, Plaintiff and the Aggrieved Employees frequently perform work off-the-clock and during
19 noncompliant meal periods for which they are compensated below the statutory minimum wage, as
20 determined by the IWC.

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

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

1 Code § 2699(f).

2 62. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of
3 her intent to pursue civil penalties for Defendant's failure to pay minimum wages in violation of
4 Cal. Lab. Code §§ 558(a) and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff
5 provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or
6 Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
7 administrative prerequisites to commence a PAGA action.

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

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

12 **THIRD CAUSE OF ACTION**

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

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

18 66. Defendant does not properly compensate Aggrieved Employees with appropriate
19 overtime premiums, as required by California law. For instance, Plaintiff and Aggrieved Employees
20 do not receive overtime compensation for time spent working off-the-clock outside of their
21 scheduled shifts and during noncompliant meal periods when the hours worked are in excess of
22 eight (8) hours per day and forty (40) hours per week.

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

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

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

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

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

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

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

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

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

30 74. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of

her 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 Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

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

76. Wherefore, Plaintiff requests relief as hereinafter provided.

FOURTH CAUSE OF ACTION

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

for Violations of Cal. Lab. Code §§ 226.7 and 512

(Meal Periods)

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

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

79. Cal. Lab. Code § 512(a) provides:

An employer shall not employ an employee for a work period of more than five hours 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, the meal period may be waived by mutual consent of both the employer and employee. 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.

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

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

8 82. Plaintiff and Aggrieved Employees are routinely denied compliant meal periods for
9 at least three reasons: (1) Defendant does not provide an adequate number of staff so that Plaintiff
10 and Aggrieved Employees can get relief from their duties to take meal periods; (2) Defendant
11 requires Plaintiff and Aggrieved Employees to remain on duty and available to assist customers in
12 the store or help other coworkers; and (3) Plaintiff and Aggrieved Employees are often too busy
13 with customers to have time to take bona fide meal periods. As such, Defendant does not provide
14 Plaintiff and Aggrieved Employees with duty-free, uninterrupted, and timely thirty-minute meal
15 periods during which Plaintiff and Aggrieved Employees should be completely relieved of any duty,
16 by the end of the fifth hour of work. Plaintiff is informed, believes, and thereon allege that this
17 policy and practice applies to all Aggrieved Employees.

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

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

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

1 more employees.

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

5 87. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for the
6 unlawful conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself,
7 for Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§
8 512.

9 88. On January 5, 2023, Plaintiff gave written notice to the Labor and Workforce
10 Development Agency ("LWDA") and to Defendant of her intent to pursue civil penalties for
11 Defendant's violations of the meal period requirements of Cal. Lab. Code §§ 226.7, 512, and 558
12 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice,
13 yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to
14 Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence
15 a PAGA action.

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

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

20 **FIFTH CAUSE OF ACTION**

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

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

23 **(Rest Periods)**

24 91. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
25 herein.

26 92. Cal. Lab. Code § 226.7 and the applicable Wage Orders requires Defendant to
27 authorize and permit rest periods to their employees. Cal. Lab. Code § 226.7 and the applicable
28 Wage Orders require employers to authorize and permit employees to take ten minutes of net rest

1 time per four hours or major fraction thereof of work, and to pay employees their full wages during
2 those rest periods. Unless the employee is relieved of all duty during the ten-minute rest period, the
3 employee is considered “on duty” and the rest period is counted as time worked under the applicable
4 Wage Orders.

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

9 94. Despite these requirements, Defendant knowingly and willfully refuses to perform its
10 obligation to authorize and permit and/or make available to Plaintiff and Aggrieved Employees the
11 ability to take the off-duty rest periods to which they are entitled. Much like the reasons that Plaintiff
12 and Aggrieved Employees are denied compliant meal periods, Plaintiff and Aggrieved Employees
13 do not receive compliant rest periods because they are too busy to find the time for rest periods,
14 Defendant is too understaffed for Plaintiff and Aggrieved Employees to be relieved from their
15 duties, and Defendant requires that Plaintiff and Aggrieved Employees cut their rest periods short
16 to assist with customers and coworkers.

17 95. As a result of Defendant’s policies and practices, Plaintiff and Aggrieved Employees
18 are routinely denied the opportunity to take legally compliant rest periods. Plaintiff is informed,
19 believes, and thereon alleges that this policy and practice applies to all Aggrieved Employees.

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

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

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

1 Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision that
2 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
3 employees.

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

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

11 101. On January 5, 2023, Plaintiff gave written notice to the Labor and Workforce
12 Development Agency ("LWDA") and to Defendant of her intent to pursue civil penalties for
13 Defendant's violations of the meal period and rest period requirements of Cal. Lab. Code §§ 226.7
14 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA
15 with notice, yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly,
16 pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to
17 commence a PAGA action.

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

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

22 **SIXTH CAUSE OF ACTION**

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

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

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

26 104. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
27 herein.

28 105. Defendant does not provide Plaintiff and the Aggrieved Employees with accurate

1 itemized wage statements as required by California law, as a result of the meal and rest period, off-
2 the-clock work, and overtime violations set forth above, and Defendant's failure to provide premium
3 pay for the missed meal and rest periods.

4 106. Cal. Lab. Code § 226(a) provides:

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

16 107. The IWC Wage Orders also establish this requirement. (*See* IWC Wage Order 7-
17 2001).

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

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

26 109. Due to the failure to pay one hour of premium pay to Plaintiff and the Aggrieved
27 Employees for each missed or noncompliant meal or rest period, along with the off-the-clock work,
28 and overtime violations, the wage statements Defendant provides its employees, including the
Aggrieved Employees, do not reflect the actual gross wages earned, actual net wages earned, actual
hours worked, or the appropriate applicable hourly rates. Accordingly, Defendant has knowingly

1 and willfully failed to provide timely, accurate itemized wage statements to Plaintiff and the
2 Aggrieved Employees in accordance with Cal. Lab. Code § 226 and the IWC Wage Orders.

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

5 111. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty
6 to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of herself
7 and other current or former employees pursuant to the procedures set forth in Cal. Lab. Code §
8 2699.3. Cal. Lab. Code § 2699(a) provides:

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

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

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

23 114. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of
24 her intent to pursue civil penalties for Defendant's failure to provide accurate, itemized wage
25 statements in violation of Cal. Lab. Code §§ 226 and 558(a) pursuant to the PAGA. Over 65 days
26 have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a
27 response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a),
28 Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

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

116. Wherefore, Plaintiff requests relief as hereinafter provided.

SEVENTH CAUSE OF ACTION

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

for Violations of Cal. Lab. Code § 2802

(Business Expenditures)

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

118. Defendant fails to reimburse Plaintiff and Aggrieved Employees for all business expenses incurred while on the job. Defendant requires Plaintiff and Aggrieved Employees use their personal cellphone to look up information on ingredients and products for customers and use their personal computers and home internet data to finalize staff reviews and schedules. However, Defendant does not reimburse their workers for these expenditures.

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

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

120. 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.

121. Plaintiff seeks to recover civil penalties from Defendant for its failure to reimburse necessary business expenses in violation of Cal. Lab. Code § 2802 and the applicable wage orders

1 throughout California on behalf of the State of California and other Aggrieved Employees pursuant
2 to Cal. Lab. Code § 2699(f).

3 122. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of
4 her intent to pursue civil penalties for Defendant's violations of Cal. Lab. Code § 2802 pursuant to
5 the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff
6 has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code
7 § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

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

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

12 **EIGHTH CAUSE OF ACTION**

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

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

15 **(Waiting Time Penalties)**

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

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

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

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

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

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

hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

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

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

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

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

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

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action

brought by an Aggrieved Employee on behalf of himself or herself and other current or former employees.

135. 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.

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

137. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of her intent to pursue civil penalties for Defendant's failure to pay wages when due after the end employment with Defendant in violation of Cal. Lab. Code §§ 201-203 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

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

139. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendant have violated the California Labor Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA;
3. For interest as provided by applicable law;

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