

Carolyn Hunt Cottrell (SBN 166977)
Caroline N. Cohen (SBN 278154)
Andrew D. Weaver (SBN 318935)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100; Fax: (415) 421-7105
ccottrell@schneiderwallace.com
ccohen@schneiderwallace.com
aweaver@schneiderwallace.com

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

01/30/2023 at 10:24:42 AM

By: Angela Linhares,
Deputy Clerk

LEVONE HARRIS, on behalf of the State of
California and Aggrieved Employees,

Plaintiff,

vs.

SHIFT OPERATIONS, LLC; and SHIFT
TECHNOLOGIES, INC.,

Defendants.

Case No. 23CV026470

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

DEMAND FOR JURY TRIAL

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

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action on behalf of the State of California against
5 Defendants Shift Operations, LLC (“Shift Operations”) and Shift Technologies, Inc. (“Shift
6 Technologies”) (collectively “Defendants”) for its systematic violations of California labor law with
7 respect to Defendants’ current and former non-exempt hourly employees in California (the
8 “Aggrieved Employees”).

9 2. This Private Attorneys General Act (“PAGA”) action against Defendants challenges
10 its policies and practices of: (1) failing to pay Plaintiff and Aggrieved Employees the minimum wage
11 for all hours worked as required by California law ; (2) failing to pay Plaintiff and Aggrieved
12 Employees overtime wages as required by California law for hours worked over eight hours in a day
13 and/or forty hours in a week; (3) failing to authorize and permit Plaintiff and Aggrieved Employees
14 to take rest breaks as required under California law; (4) failing to provide meal breaks to Plaintiff and
15 Aggrieved Employees as required under California law; (5) failing to compensate Plaintiff and
16 Aggrieved Employees for all commission earned; (6) failing to provide Plaintiff and Aggrieved
17 Employees reimbursements for business expenditures as required under California law; (7) failing to
18 timely pay Plaintiff and Aggrieved Employees all wages upon separation; and (8) failing to provide
19 Plaintiff and Aggrieved Employees accurate, itemized wage statements.

20 3. Plaintiff and Aggrieved Employees are current and former non-exempt hourly
21 employees of Defendants who worked and currently work as concierges, car concierges, customer
22 advisors, customer ambassadors, customer service advisors, assistant team leads, and hub advisors.

23 4. At all relevant times, Defendants regularly failed to pay all hours worked at the
24 appropriate rate because they have failed to pay Plaintiff and Aggrieved Employees at the overtime
25 rate for their hours worked over eight in a day or over forty hours in a week and has failed to pay for
26 time spent performing work off-the-clock during meal periods and at the end of work shifts.

27 5. At all relevant times, Defendants have maintained a longstanding policy and practice
28

1 of failing to properly compensate non-exempt hourly employees for work performed during meal
2 periods and rest periods. Plaintiff and Aggrieved Employees are required to continue assisting
3 customers through their meal and rest periods because there are not enough staff available to relieve
4 them from their duties. These policies and practices deny Plaintiff and Aggrieved Employees payment
5 for all hours worked, including overtime, and deny Plaintiff and Aggrieved Employees meal and rest
6 periods that comply with California law. Defendants have failed to pay premium pay owed for missed
7 meal and rest periods.

8 6. At all relevant times, Defendants have maintained a longstanding policy and practice
9 of failing to properly compensate non-exempt hourly employees for off-the-clock work performed
10 after clocking out at the end of shifts. After clocking out, Plaintiff and Aggrieved Employees spend
11 time on various tasks, including answering emails and phone calls, assisting customers, and
12 completing paperwork, but such time is not paid.

13 7. Plaintiff and Aggrieved Employees are frequently denied meal and/or rest breaks for
14 three reasons: (i) Defendants does not make available or permit timely meal and/or rest breaks to
15 Plaintiff and Aggrieved Employees requiring they work through their breaks; (ii) Plaintiff and
16 Aggrieved Employees are often too busy with work during the day to have time to take a bona fide
17 meal and/or rest break because supervisors interrupt them to help with a customer or another
18 coworker, and (iii) Defendants do not provide an adequate number of staff so that Plaintiff and
19 Aggrieved Employees can get relief from their duties to take compliant meal and/or rest breaks.

20 8. Further, Defendants maintain a policy and/or practice of failing to properly
21 compensate Plaintiff and Aggrieved Employees for work related tasks performed while “off-the-
22 clock”. Defendants’ failure to compensate Plaintiff and Aggrieved Employees for work performed
23 during their meal periods results in a failure to pay for all time Plaintiff and Aggrieved Employees
24 spend working for Defendants’ benefit, including at minimum wage, overtime, and/or double time
25 under California law. Plaintiff worked eight to twelve hours each shift for approximately six to seven
26 days each week. He worked 60 hours per week, or more.

27 9. Plaintiff and Aggrieved Employees are also required to communicate with supervisors
28

1 and coworkers about work-related matters while off-the-clock outside of their scheduled shifts.
2 Further, Defendants do not factor in the commission earned into the premium pay for the time Plaintiff
3 and Aggrieved Employees worked during their meal periods. Defendants' policies cause Plaintiff and
4 Aggrieved Employees to work hours every week for the benefit of Defendants without any
5 compensation.

6 10. Defendants fail to properly compensate Plaintiff and Aggrieved Employees for all
7 commissions earned. Plaintiff and Aggrieved Employees' job requires them to purchase vehicle from
8 and sell vehicles to clients. Defendants agreed to pay commissions based on the vehicles bought and
9 sold but they only pay a portion of commission for vehicles bought and sold. Defendants failed to pay
10 Plaintiff and Aggrieved Employees for all commissions earned.

11 11. Defendants also fail to reimburse Plaintiff and Aggrieved Employees for all business
12 expenses incurred while on the job. Plaintiff and Aggrieved Employees must use their personal
13 cellphones and computers to access work-related documents, communicate with management and
14 other employees, communicate with customers, check inventory, and execute other job duties.
15 Defendants fail to reimburse Plaintiff and Aggrieved Employees for such "out-of-pocket" business
16 expenses in violation of Cal. Lab. Code Section 2802.

17 12. As a result of the above violations, Defendants fail to maintain true and accurate
18 records of the hours Plaintiff and Aggrieved Employees actually work, and also fails to pay all wages
19 due during employment and upon separation within the required time period.

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

23 **PARTIES**

24 14. Plaintiff and Aggrieved Employees are current and former non-exempt hourly
25 concierges, customer service advisors, customer advisors, car concierges, assistant team leads, hub
26 advisors, hub managers employed by Defendants during all relevant times throughout California.

27 15. Plaintiff Levone Harris is an individual over the age of eighteen, and at all times
28

1 mentioned in this Complaint was a resident of the State of California.

2 16. Plaintiff was employed by Defendants as a concierge and customer advisor. Plaintiff's
3 employment with Defendants began on January 8, 2022, to October 9, 2022. Plaintiff worked for
4 Defendants in San Francisco, California and Oakland, California.

5 17. Plaintiff is informed, believes, and based thereon alleges that Shift Operations, LLC
6 ("Shift Operations") is a Delaware corporation headquartered in San Francisco, California. Shift
7 Operations is registered to do business in California, does business in California and employs and
8 employed hourly, non-exempt employees in California, including Alameda County.

9 18. Plaintiff is informed, believes, and based thereon alleges that Shift Technologies, Inc.
10 ("Shift Technologies") is a Delaware corporation headquartered in San Francisco, California. Shift
11 Technologies is registered to do business in California, does business in California and employs and
12 employed hourly, non-exempt employees in California, including Alameda County.

13 19. At all relevant times, Defendants have done business under the laws of the California,
14 has had places of business in California, including in this judicial district, and has employed Aggrieved
15 Employees in this judicial district. At all relevant times, Defendants are a "person" as defined in Cal.
16 Lab. Code § 18 and Cal. Bus. & Prof. Code § 17201. Defendants are also an "employer" within the
17 meaning of the Labor Code and IWC Wage Orders

18 **SUBJECT MATTER JURISDICTION AND VENUE**

19 20. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA.
20 The Court also has jurisdiction over Defendants because Defendants do business in the State of
21 California, are authorized to do business in California, and Shift Operations is registered with the
22 California Secretary of State.

23 21. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
24 and/or 395.5. Defendants conduct business and employ Aggrieved Employees throughout the state of
25 California, including in the County of Alameda.

26 **FACTUAL ALLEGATIONS**

27 22. Defendants employ Plaintiff and Aggrieved Employees to buy from and sell vehicles
28

1 to clients through an online platform and through scheduled appointments.

2 23. Plaintiff and Aggrieved Employees are responsible for buying and picking up vehicles
3 from clients, selling and dropping off vehicles to clients, and processing documents for vehicle sales.

4 24. Like Plaintiff, the Aggrieved Employees are current and former non-exempt
5 employees of Defendants in California. Plaintiff is informed, believes, and thereon alleges that the
6 Aggrieved Employees support the daily functions of running Defendants' business.

7 25. Defendants regularly fail to provide Plaintiff and Aggrieved Employees compliant
8 meal breaks. Defendants' policies, practices, and procedures require Plaintiff and Aggrieved
9 Employees to routinely skip their meal breaks, or cut their meal breaks short, yet do not provide them
10 with the proper requisite premium payments for missed meal breaks.

11 26. Plaintiff and Aggrieved Employees are routinely denied compliant meal breaks for
12 multiple reasons. Defendants require that Plaintiff and Aggrieved Employees clock out for thirty
13 minutes for meal breaks, but demand that they stay onsite and continue their work assisting customers
14 with buying and/or selling vehicles. Plaintiff and Aggrieved Employees are often too busy working
15 to spare a few minutes to eat. Further, Defendants are often understaffed and cannot relieve Plaintiff
16 and Aggrieved Employees from their duties. For example, Plaintiff frequently worked through his
17 meal breaks because Defendants required him to remain on duty the entire shift to assist customers.
18 Defendants also request Plaintiff and Aggrieved Employees to go out into the field to assist customers
19 before taking their meal breaks.

20 27. When Plaintiff and Aggrieved Employees do attempt a meal break, such are untimely,
21 interrupted, and/or shortened, *i.e.*, after the end of the fifth hour of work and/or less than thirty
22 minutes. When Plaintiff and Aggrieved Employees do get a chance to take a meal break, Defendants
23 interrupt their meal breaks to assist customers. As a result, Plaintiff and Aggrieved Employees are not
24 provided duty-free, uninterrupted, and timely thirty-minute meal periods during which they are
25 completely relieved of any duty, by the end of the fifth hour of work.

26 28. In addition, for each day Plaintiff and Aggrieved Employees work shifts of more than
27 ten hours, Defendants systematically deny Plaintiff and Aggrieved Employees a compliant second
28

1 meal break using the same policies and practices that deny Plaintiff and Aggrieved Employees their
2 initial meal breaks outlined above. Plaintiff and Aggrieved Employees receive some premium
3 payments for these missed second meal breaks, but not at the appropriate rate.

4 29. Further, Defendants regularly fail to provide Plaintiff and Aggrieved Employees
5 compliant rest breaks. Defendants' policies, practices, and procedures require Plaintiff and Aggrieved
6 Employees to routinely skip their rest breaks, or cut their rest breaks short, yet do not provide them
7 with the proper requisite premium payments for missed rest breaks.

8 30. Plaintiff and Aggrieved Employees are routinely denied compliant rest breaks. Much
9 like the reasons that Plaintiff and Aggrieved Employees are denied compliant meal breaks, Plaintiff
10 and Aggrieved Employees do not receive compliant rest breaks because Defendants demand that they
11 remain on the jobsite to continue working, Defendants are too understaffed for Plaintiff and Putative
12 Class members to be relieved from their duties, and Defendants interrupt rest breaks to advise Plaintiff
13 and Aggrieved Employees to assist customers.

14 31. Plaintiff is informed, believes, and thereon alleges that Defendants utilize and apply
15 these meal and rest break policies and practices across all Defendants' facilities throughout California.

16 32. Defendants routinely require Plaintiff and Aggrieved Employees to perform work off-
17 the-clock and without compensation. This includes, but is not limited to, Plaintiff and Aggrieved
18 Employees performing tasks after clocking out during their meal breaks, performing tasks on their
19 days off, and performing tasks after clocking out for work. Plaintiff sometimes remained on duty for
20 up to an hour off-the-clock and would have no one to relieve him. This time spent working off-the-
21 clock goes unrecorded and therefore uncompensated.

22 33. Further, as mentioned above, Defendants require Plaintiff and Aggrieved Employees
23 to clock out for thirty-minute meal periods and/or second meal periods that they continue to work
24 through. This policy results in Plaintiff and Aggrieved Employees working up to an hour of unpaid,
25 off-the-clock work every shift. Defendants' policy causes Plaintiff and Aggrieved Employees to work
26 hours every week for the benefit of Defendants without any compensation.

27 34. Plaintiff is informed, believes, and thereon alleges that Defendants utilize the same or
28

1 substantially similar timekeeping mechanisms throughout all its facilities and locations in California.

2 35. Defendants routinely did not compensate and/or undercompensated Plaintiff and
3 Aggrieved Employees for their commissions earned from buying and/or selling vehicles to customers.
4 Plaintiff and Aggrieved Employees are also not provided with proper documentation of changes to
5 their commission structure. For instance, Defendants would only give Plaintiff and Aggrieved
6 Employees a portion of the commission earned for the vehicles bought and/or sold for the month and
7 fail to pay this commission in a timely manner.

8 36. Plaintiff is informed, believes, and based thereon alleges that Defendants utilize and
9 apply the same commission policies and practices across all Defendants' facilities in California,
10 including locations in San Francisco, Oakland, and Whittier.

11 37. Defendants' common course of wage-and-hour abuse also includes routinely failing to
12 maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees.

13 38. As a result of the aforementioned violations, Plaintiff and Aggrieved Employees are
14 provided with untrue and inaccurate wage statements as such statements do not include payment for
15 all hours worked, including minimum wages and overtime, and premium pay for missed meal and
16 rest breaks.

17 39. As a matter of common policy and/or practice, Defendants fail to provide Plaintiff and
18 Aggrieved Employees reimbursement for all necessary expenditures or losses incurred by Plaintiff
19 and Aggrieved Employees in direct consequence of the discharge of their duties, or as a result of their
20 obedience to the directions of Defendants. Defendants require Plaintiff and Aggrieved Employees to
21 use their personal cell phones to maintain work-related communications with customers, potential
22 customers, co-workers, and supervisors. Defendants do not reimburse Plaintiff and Aggrieved
23 Employees for any expenses related to their personal cell phones. Further, Defendants do not provide
24 Plaintiff and Aggrieved Employees with sufficient computers to access work related documents. For
25 Plaintiff and Aggrieved Employees to execute their job duties, they were required to use their personal
26 computers to access and/or process documents for transactions with customers.

27 40. Additionally, Plaintiff and Aggrieved Employees did not receive all wages during
28

1 employment and following separation from employment, including payment for time spent working
2 off the clock and during meal periods, as well as premium payments for noncompliant meal breaks,
3 rest breaks, and missed second meal breaks.

4 41. On information and belief, Defendants' conduct described above has occurred at all
5 relevant times and is ongoing.

6 42. On October 5, 2022, pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff served
7 the California Labor and Workforce Development Agency ("LWDA") with a notice of his intention
8 to file a PAGA action for violations of Labor Code §§ 204 (failure to compensate for all hours worked);
9 §§ 1182.12, 1194, 1197 & 1198 (failure to pay minimum wage); § 510 (failure to pay overtime wages
10 and/or double time wages); §§ 226.7 & 512 (failure to authorize and permit and/or make available
11 meal and rest periods); § 2802 (failure to reimburse business expenditures); § 204.1 and 2751 (failure
12 to pay commissions earned); § 226 & 226.3 (failure to provide timely and accurate itemized wage
13 statements), and §§ 201-203 & 256 (waiting time penalties). On the same day, Plaintiff served
14 Defendants' registered agent with a courtesy copy of the notice via certified mail. Sixty-five calendar
15 days have passed without notice from the LWDA of intent to pursue the claim. As such, Plaintiff has
16 satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a),
17 (f).

18 **FIRST CAUSE OF ACTION**
19 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 204,**
20 **1194, 1197, 1197.1, and 1198**
21 **(Failure to Pay Minimum Wages Owed)**
22 **(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On Behalf of All**
23 **Aggrieved Employees)**

24 43. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
25 herein.

26 44. Labor Code § 2699(f) provides:

27 For all provisions of this code except those for which a civil penalty is
28 specifically provided, there is established a civil penalty for a violation of
these provisions, as follows: . . . (2) If, at the time of the alleged violation,
the person employs one or more employees, the civil penalty is one hundred

1 dollars (\$100) for each aggrieved employee per pay period for the initial
2 violation and two hundred dollars (\$200) for each aggrieved employee per
3 pay period for each subsequent violation.

4 45. To the extent than any violation alleged herein does not carry penalties under Labor
5 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
6 Aggrieved Employees for each pay period in which he or she was aggrieved, in the amounts
7 established by Labor Code § 2699(f) as set forth above. Plaintiff seeks civil penalties under Labor
8 Code § 2699(f) for Defendants' violations of Labor Code §§ 204 and 1194.

9 46. Labor Code § 204 provides that "[a]ll wages...earned by any person in any employment
10 are due and payable twice during each calendar month...."

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

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

17 49. Labor Code § 200 defines wages as "all amounts for labor performed by employees
18 of every description, whether the amount is fixed or ascertained by the standard of time, task,
19 piece, commission basis or method of calculation."

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

24 51. Labor Code § 1198 provides that "[t]he maximum hours of work and the standard
25 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
26 conditions of labor for employees. The employment of any employee for longer hours than those fixed
27 by the order or under conditions of labor prohibited by the order is unlawful."

28 52. Labor Code § 1197 provides that: "The minimum wage for employees fixed by the

1 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
2 and the payment of a lower wage than the minimum so fixed is unlawful...”

3 53. Labor Code § 1197.1 provides that the payment of less than the minimum wage
4 “...shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee,
5 and any applicable penalties imposed pursuant to Section 203 as follows”:

6 (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for
7 each underpaid employee for each pay period for which the employee is underpaid. This
8 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated
9 damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to
10 Section 203.

11 (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
12 (\$250) for each underpaid employee for each pay period for which the employee is underpaid
13 regardless of whether the initial violation is intentionally committed. This amount shall be in
14 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to
15 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

16 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section
17 203, recovered pursuant to this section shall be paid to the affected employee.

18 54. Labor Code § 225.5 provides that every person who unlawfully withholds wages due
19 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of
20 \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent
21 violation, or any willful or intentional violation, for each failure to pay each employee.

22 55. Labor Code § 223 provides, in relevant part, that: “Where any statute or contract
23 requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower
24 wage while purporting to pay the wage designated by statute or by contract.”

25 56. By virtue of Defendants’ failures to provide compensation for off-the-clock work
26 performed during meal periods and after clocking out at the end of Plaintiff’s and Aggrieved
27 Employees’ shifts, Defendants have violated Labor Code §§ 204 and 1194.

28 57. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
notice of his intention to file a claim for violations of Labor Code §§ 204 and 1194 on October 5,
2022. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the
administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

58. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

59. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California 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.

60. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 510 and 1194 (Failure to Pay Overtime)
(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On Behalf of All Aggrieved Employees)

61. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

62. Labor Code § 510(a) provides:

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

63. IWC Wage Order 4-2001(3)(A)(1), & (3) and 7-2001(3)(A)(1) & (3) states that employees:

...shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than ... [o]ne and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek....

///

///

1 64. Labor Code § 1194(a) provides as follows:

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

8 65. Defendants have failed to pay all overtime wages owed to Plaintiff and Aggrieved
9 Employees by virtue of the Defendants’ requirement that they perform work and/or remain on duty
10 during meal and rest periods. Defendants’ policies and practices of requiring Aggrieved Employees to
11 perform work off-the-clock during meal periods are unlawful and results in overtime violations.
12 Additionally, Plaintiff and Aggrieved Employees would earn commission, but Defendants did not
13 factor the commission into their overtime rate. As a result of these unlawful policies and practices,
14 Aggrieved Employees have worked overtime hours for Defendants without being paid overtime wages
15 in violation of the Labor Code and the applicable IWC Wage Order.

16 66. Labor Code § 225.5 provides that every person who unlawfully withholds wages due
17 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of
18 \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent
19 violation, or any willful or intentional violation, for each failure to pay each employee.

20 67. Labor Code § 223 provides, in relevant part, that: “Where any statute or contract
21 requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower
22 wage while purporting to pay the wage designated by statute or by contract.”

23 68. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay
24 overtime wages in violation of Labor Code §§ 510 and 1194 throughout California on behalf of
25 himself, the State of California, and other Aggrieved Employees pursuant to Labor Code § 2699(f).

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

1 a civil penalty if, at the time of the violation, the employer employs one or more employees.

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

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

6 **THIRD CAUSE OF ACTION**
7 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 226.7**
8 **(Rest Period Violations)**
9 **(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On**
10 **Behalf of All Aggrieved Employees)**

11 72. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
12 herein.

13 73. Labor Code § 226.7 provides, in relevant part:

14 (b) An employer shall not require an employee to work during a meal or rest or recovery period
15 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the
16 Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the
17 Division of Occupational Safety and Health.

18 (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance
19 with a state law, including, but not limited to, an applicable statute or applicable regulation,
20 standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
21 Standards Board, or the Division of Occupational Safety and Health, the employer shall pay
22 the employee one additional hour of pay at the employee's regular rate of compensation for
23 each workday that the meal or rest or recovery period is not provided.

24 74. Defendants fail to authorize and permit rest periods by knowingly and willfully
25 requiring Plaintiff and Aggrieved Employees to perform work during rest periods, including subjecting
26 them to interruption during such times to assist customers.

27 75. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for each failure by
28 Defendants, alleged above, to provide Plaintiff and Aggrieved Employees rest periods in
compliance with Labor Code § 226.7.

76. Labor 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.

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

4 77. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
5 Employees, and himself as set forth in Labor Code § 2699(g)(i).

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

9 79. Wherefore, Plaintiff requests relief as hereinafter provided.

10 **FOURTH CAUSE OF ACTION**
11 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 512**
12 **(Meal Period Violations)**
13 **(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On**
14 **Behalf of All Aggrieved Employees)**

15 80. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
16 herein.

17 81. Labor Code § 512 provides, in relevant part: "An employer shall not employ an
18 employee for a work period of more than five hours per day without providing the employee with a
19 meal period of not less than 30 minutes..."

20 82. Defendants knowingly and willfully have required Plaintiff and Aggrieved Employees
21 to perform work and/or remain on duty during meal periods. Defendants require Plaintiff and
22 Aggrieved Employees to clock out for their unpaid meal periods, even though Plaintiff and Aggrieved
23 Employees remain on duty and are continuously subject to interruption during that time.

24 83. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for each failure by
25 Defendants, alleged above, to provide Plaintiff and Aggrieved Employees meal periods in
26 compliance with Labor Code § 512.

27 84. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each
28 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.

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

4 85. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
5 Employees, and himself as set forth in Labor Code § 2699(g)(i).

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

9 87. Wherefore, Plaintiff requests relief as hereinafter provided.

10 **SIXTH CAUSE OF ACTION**
11 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 204.1**
12 **and 2751**
13 **(Failure to Pay All Commission Earned)**
14 **(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On Behalf of**
15 **All Aggrieved Employees)**

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

18 89. Defendants do not compensate Plaintiff and Aggrieved Employees with the appropriate
19 commissions earned, as required by California law.

20 90. Cal. Lab. Code § 204.1 provides that:
21 Commission wages paid to any person employed by an employer licensed as a vehicle
22 dealer by the Department of Motor Vehicles are due and payable once during each
23 calendar month on a day designated in advance by the employer as the regular payday.
24 Commission wages are compensation paid to any person for services rendered in the
25 sale of such employer's property or services and based proportionately upon the
26 amount or value thereof.

27 91. Cal. Lab. Code § 2751 provides that:
28 (a) Whenever an employer enters into a contract of employment with an employee for
services to be rendered within this state and the contemplated method of payment of
the employee involves commissions, the contract shall be in writing and shall set forth
the method by which the commissions shall be computed and paid.
(b) The employer shall give a signed copy of the contract to every employee who is a
party thereto and shall obtain a signed receipt for the contract from each employee. In
the case of a contract that expires and where the parties nevertheless continue to work
under the terms of the expired contract, the contract terms are presumed to remain in

1 full force and effect until the contract is superseded or employment is terminated by
2 either party.

3 92. Defendants do not provide Plaintiff and Aggrieved Employees full compensation for
4 commissions earned. Plaintiff and Aggrieved Employees earn commissions based on the vehicles
5 purchased or sold on behalf of Defendants. However, Defendants have ceased paying the commissions
6 which Plaintiff and Aggrieved Employees expected and have refused to provide information necessary
7 to verify the amounts of commissions earned. For example, Defendant stopped providing Aggrieved
8 Employees members with records showing what they have sold for each month. Aggrieved
9 Employees do not receive all of their commission for vehicles that they have bought or sold. Instead,
10 Defendants only provide them with a portion of the compensation from the commission earned. Shift
11 Operations is a licensed as a vehicle dealer by the Department of Motor Vehicles. Defendants, both,
12 exercise control over Plaintiff and Aggrieved Employees with respect to their employment regarding
13 the buying and selling of vehicles.

14 93. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for each failure by
15 Defendants, alleged above, to compensate Plaintiff and Aggrieved Employees commissions earned in
16 compliance with Labor Code § 204.1 and 2751.

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

23 95. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
24 Employees, and himself as set forth in Labor Code § 2699(g)(i).

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

97. Wherefore, Plaintiff requests relief as hereinafter provided.

SEVENTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code §§ 204.1 and 2751 for Violations of Cal. Lab. Code § 2802

(Failure to Reimburse Necessary Business Expenditures)

(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On Behalf of All Aggrieved Employees)

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

99. Defendants also fail to reimburse Plaintiff and Aggrieved Employees for all business expenses incurred while on the job. For instance, Defendants require Plaintiff and Aggrieved Employees to use their personal cell phones and computers to access work-related documents, communicated with manager and other employees, communicated with customers, and execute job duties. Defendants fail to reimburse Plaintiff and Aggrieved Employees for such “out-of-pocket” business expenses.

100. 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.

101. 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.

102. Plaintiff seeks to recover civil penalties from Defendants for its failure to reimburse business expenditures in violation of Cal. Lab. Code § 2802 and the applicable wage orders throughout California on behalf of the State of California and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

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

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

105. Wherefore, Plaintiff requests relief as hereinafter provided.

EIGHTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code §§ 201-203 (Waiting Time Penalties)
(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On Behalf of All Aggrieved Employees)

106. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

107. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after she or he quits.

108. Labor 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 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

109. As a result of the Defendants' failure to pay all compensation owed at the appropriate rates, including minimum wages, overtime wages, commission pay and premium pay for missed meal and rest periods, Defendant failed to timely pay all wages owed upon separation in violation of Labor Code §§ 201 – 203.

110. Plaintiff seeks civil penalties pursuant to Sections 225.5 and 256 of the California Labor Code.

111. Labor Code § 256 provides that the Labor Commissioner shall impose a civil penalty

1 in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.

2 112. Labor Code § 225.5 provides that every person who unlawfully withholds wages due
3 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of
4 \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent
5 violation, or any willful or intentional violation, for each failure to pay each employee.

6 113. Labor Code § 223 provides, in relevant part, that: “Where any statute or contract
7 requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower
8 wage while purporting to pay the wage designated by statute or by contract.”

9 114. Plaintiff and some of the Aggrieved Employees have left their employment with
10 Defendants during the statutory period, at which time Defendants owed them unpaid wages. These
11 earned, but unpaid, wages derive from time spent working through their meal and rest breaks without
12 pay, and overtime compensation that was not accounted for as a result of Plaintiff and Aggrieved
13 Employees working off-the-clock during meal periods and after clocking out at the end of work shifts.

14 115. As alleged above, Defendants are aware that Plaintiff and Aggrieved Employees have
15 performed required off-the-clock work during meal periods and after clocking out at the end of work
16 shifts, Defendants still refuse to pay Plaintiff and Aggrieved Employees for the off-the-clock work
17 performed. As alleged above, Defendants are aware that Plaintiff and Aggrieved Employees have
18 performed work during rest periods without separate compensation, Defendants still refuse to pay
19 Plaintiff and Aggrieved Employees for the work performed during rest periods.

20 116. Accordingly, Defendants willfully refused and continues to refuse to pay those
21 Aggrieved Employees that left their employment with Defendants all the wages that were due and
22 owing them upon the end of their employment. As a result of Defendants’ actions, Plaintiff and the
23 Aggrieved Employees have suffered and continue to suffer substantial losses, including lost earnings,
24 and interest.

25 117. Defendants’ willful failure to pay Plaintiff and the aggrieved employees the wages due
26 and owing them constitutes a violation of Labor Code §§ 201-203.

27 118. On information and belief, Defendants’ conduct has been substantially the same at all
28

1 relevant times throughout the state of California.

2 119. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
3 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in
4 compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff
5 seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed for
6 herein. Plaintiff seeks to recover PAGA penalties, costs, and attorneys' fees pursuant to this section.

7 120. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
8 Employees, and himself as set forth in Labor Code § 2699(g)(i).

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

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

13 **NINETH CAUSE OF ACTION**
14 **Penalties Pursuant to Cal. Lab. Code § 2699(a) for Violations of Cal. Lab. Code § 226**
15 **(Failure to Provide Accurate, Itemized Wage Statements)**
16 **(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC.- On Behalf of**
17 **All Aggrieved Employees)**

18 123. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
19 herein.

20 124. Cal. Lab. Code § 226(a) provides that:

21 Every employer shall, semimonthly or at the time of each payment of wages, furnish
22 each of his or her employees, either as a detachable part of the check, draft, or voucher
23 paying the employee's wages, or separately when wages are paid by personal check or
24 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
25 total hours worked by the employee, except for any employee whose compensation is
26 solely based on a salary and who is exempt from payment of overtime under
27 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
28 Commission, (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 his or her 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 payments 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 or a record of the deductions shall

1 be kept on file by the employer for at least four years at the place of employment or at
2 a central location within the State of California.

3 125. The IWC Wage Orders also establishes this requirement. (See IWC Wage Orders 4-
2001(7) and 7- 2001(7).)

4 126. Cal. Lab. Code § 226(e) provides:

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

10 127. Defendant fails to provide timely, accurate, itemized wage statements to Plaintiff and
11 Aggrieved Employees in accordance with Labor Code § 226 and the IWC Wage Order. In particular,
12 the wage statements Defendant provides its employees, including to Plaintiff and Aggrieved
13 Employees, do not reflect the total hours, rate of compensation, or gross wages earned. This is because
14 Defendant fails to pay Plaintiff and Aggrieved Employees premiums for meal and rest periods. In
15 addition, Defendant does not count as "hours worked" the off-the-clock time its hourly, non-exempt
16 employees spend performing work activities outside of their scheduled paid shifts and other work-
17 related activities, such as time spent working through meal breaks and time spent working after they
18 have clocked out at the end of their shifts.

19 128. Plaintiff and Aggrieved Employees suffered injury as a result of Defendants' knowing
20 and intentional failure to provide timely, accurate itemized wage statements to Plaintiff and Aggrieved
21 Employees in accordance with Labor Code § 226. In particular, the injury stemming from Defendants'
22 violations is evidenced by this live and active dispute regarding unpaid wages, including, overtime
23 pay, between the parties. As alleged herein, as a result of Defendants' violations, Plaintiff and
24 aggrieved employees are required to undertake the difficult and costly task of attempting to reconstruct
25 Defendants' incomplete and inaccurate pay records to determine whether they are paid for all hours
26 worked as required by California law.

27 129. On information and belief, Defendants' conduct has been substantially the same at all
28

1 relevant times throughout the State of California.

2 130. Labor Code § 226.3 provides a civil penalty of two hundred fifty dollars (\$250) for
3 each aggrieved employee per pay period for the initial violation of a Labor Code provision that does
4 not provide a civil penalty if, at the time of the violation, the employer employs one or more
5 employees. Labor Code § 226.3 provides a civil penalty of one thousand dollars (\$1,000) for each
6 aggrieved employee per pay period for each subsequent violation of a Labor Code provision that does
7 not provide a civil penalty if, at the time of the violation, the employer employs one or more
8 employees.

9 131. Plaintiff seeks to recover civil penalties from Defendants' for their violations of Labor
10 Code § 226 throughout California on behalf of himself, the State of California, and other aggrieved
11 employees pursuant to Labor Code § 2699(f).

12 132. Defendants are liable to Plaintiff, the State of California, and aggrieved employees for
13 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award
14 of attorneys' fees and costs as set forth below.

15 133. Wherefore, Plaintiff requests relief as hereinafter provided.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees,
18 requests the following relief:

- 19 1. For the Court to declare, adjudge, and decree that Defendants have violated the
20 California Labor Code as alleged herein;
- 21 2. For an order awarding the State of California, Plaintiff and Aggrieved Employees civil
22 penalties to the full extent provided for under the PAGA;
- 23 3. For an award of reasonable attorneys' fees as provided by the California Labor Code,
24 including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5;
25 and/or any other applicable law;
- 26 4. For all costs of suit, as provided in Labor Code § 2699(g)(1);
- 27 5. For interest on any penalties awarded, as provided by applicable law; and

1 6. For such other and further relief as this Court deems just and proper.

2

3

Respectfully submitted,

4

Date: January 30, 2023



5

Carolyn H. Cottrell

6

Caroline N. Cohen

7

Andrew Weaver

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

8

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

9

10

11

DEMAND FOR JURY TRIAL

12

13 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
14 a jury.

15

Respectfully submitted,

16

Date: January 30, 2023



17

Carolyn H. Cottrell

18

Caroline N. Cohen

19

Andrew Weaver

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

20

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

21

22

23

24

25

26

27

28