

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

LEVONE HARRIS, ZACHARY BLACK,
JOSEPH DEWITT, TYLER DOWNEY,
RODOLFO FRIERA, CLINTON HENDRICKS,
and NAVID IRAVANI, on behalf of the State of
California and Aggrieved Employees,

Plaintiff,

vs.

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

Defendants.

Case No. 23CV026470

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

DEMAND FOR JURY TRIAL

FILED
Superior Court of California
County of Alameda

03/07/2023

Clad File, Executive Officer / Clerk of the Court

By: *Sheryl Clark* Deputy
C. Clark

1 Plaintiffs Levone Harris, Zachary Black, Joseph Dewitt, Tyler Downey, Rodolfo Frieria,
2 Clinton Hendricks, and Navid Irvani on behalf of the State of California and Aggrieved Employees
3 (collectively “Plaintiff”), complain and allege as follows:

4 **INTRODUCTION**

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

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

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

25 4. At all relevant times, Defendants regularly failed to pay all hours worked at the
26 appropriate rate because it has failed to pay Plaintiffs and Aggrieved Employees at the overtime rate
27 for their hours worked over eight in a day or over forty hours in a week and has failed to pay for time
28

1 spent performing work off-the-clock during meal periods and at the end of work shifts.

2 5. At all relevant times, Defendants have maintained a longstanding policy and practice
3 of failing to properly compensate non-exempt hourly employees for work performed during meal
4 periods and rest periods. These policies and practices deny Plaintiffs and Aggrieved Employees
5 payment for all hours worked, including overtime, and deny Plaintiffs and Aggrieved Employees meal
6 and rest periods that comply with California law. Defendants have failed to pay premium pay owed
7 for missed 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, Plaintiffs 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. Plaintiffs and Aggrieved Employees are frequently denied meal breaks for three
14 reasons: (i) Defendants does not authorize, permit, and/or make available timely meal breaks to
15 Plaintiffs and Aggrieved Employees requiring they work through their breaks; (ii) Plaintiffs and
16 Aggrieved Employees are often too busy with work during the day to have time to take a bona fide
17 meal break because Defendants interrupt them to help with a customer or another coworker, and (iii)
18 Defendants do not provide an adequate number of staff so that Plaintiffs and Aggrieved Employees
19 can get relief from their duties to take compliant meal breaks.

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

25 9. Plaintiffs and Aggrieved Employees are routinely denied compliant rest breaks. Much
26 like the reasons that Plaintiffs and Aggrieved Employees are denied compliant meal breaks, Plaintiffs
27 and Aggrieved Employees do not receive compliant rest breaks because Defendants demand that they

1 remain on the premises to continue helping customers and coworkers, Defendants are too understaffed
2 for Plaintiffs and Aggrieved Employees to be relieved from their duties, and Defendants interrupt rest
3 breaks to advise Plaintiffs and Aggrieved Employees to assist customers.

4 10. Further, Defendants maintain a policy and/or practice of failing to properly
5 compensate Plaintiffs and Aggrieved Employees for work related tasks performed while “off-the-
6 clock”. Defendants’ failure to compensate Plaintiffs and Aggrieved Employees for work performed
7 during their meal periods results in a failure to pay for all time Plaintiffs and Aggrieved Employees
8 spend working for Defendants’ benefit, including at minimum wage, overtime, and/or double time
9 under California law. Plaintiffs and Aggrieved Employees are also required to communicate with
10 supervisors and coworkers about work-related matters while off-the-clock outside of their scheduled
11 shifts. Further, Defendants do not factor in the commission earned by Plaintiffs and Aggrieved for
12 time worked during their meal periods. Defendants’ policies cause Plaintiffs and Aggrieved
13 Employees to work hours every week for the benefit of Defendants without any compensation.

14 11. Defendants fail to properly compensate Plaintiffs and Aggrieved Employees for all
15 commissions earned. Plaintiffs and Aggrieved Employees job requires them to purchase vehicle from
16 and sell vehicles to clients. Defendants agreed to pay commissions based on the vehicles bought and
17 sold but they only pay a portion of commission for vehicles bought and sold. Defendants failed to pay
18 Plaintiffs and Aggrieved Employees for all commissions earned.

19 12. Defendants also fail to reimburse Plaintiffs and Aggrieved Employees for all business
20 expenses incurred while on the job. Plaintiffs and Aggrieved Employees must use their personal
21 cellphones and computers to access work-related documents, communicate with management and
22 other employees, communicate with customers, check inventory, and execute other job duties.
23 Defendants fail to reimburse Plaintiffs and Aggrieved Employees for such “out-of-pocket” business
24 expenses in violation of Cal. Lab. Code Section 2802.

25 13. As a result of the above violations, Defendants fail to maintain true and accurate
26 records of the hours Plaintiffs and Aggrieved Employees actually work, and also fails to pay all wages
27 due during employment and upon separation within the required time period.

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

PARTIES

15. Plaintiffs and Aggrieved Employees are current and former non-exempt hourly employees employed by Defendants during all relevant times throughout California.

16. Plaintiffs are individuals over the age of eighteen, and at all times mentioned in this Complaint were residents of the State of California.

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

18. Plaintiff Zackary Black was employed by Defendants as a customer advisor. Plaintiff Black's employment with Defendants began in September 2021 and ended in October 2022. Plaintiff Black worked for Defendants in San Francisco, California and Oakland, California.

19. Plaintiff Joseph Dewitt was employed by Defendants as a concierge and a customer ambassador. Plaintiff Dewitt's employment with Defendants began on January 7, 2022 and ended on October 8, 2022. Plaintiff Dewitt worked for Defendants in San Francisco, California and Oakland, California.

20. Plaintiff Tyler Downey was employed by Defendants as a team lead. Plaintiff Downey's employment with Defendants began around September 13, 2021 and ended about August 24, 2022. Plaintiff Downey worked for Defendants in San Francisco, California and Oakland, California.

21. Plaintiff Rodolfo Frieria was employed by Defendants as a shuttle driver and in logistics. Plaintiff Frieria's employment with Defendants began in January 2022 and ended on October 9, 2022. Plaintiff Frieria worked for Defendants in San Francisco, California and Oakland, California.

22. Plaintiff Clinton Hendricks was employed by Defendants as a Customer Concierge. Plaintiff Hendricks' employment with Defendants began around February 9, 2022 and ended in

1 October 2022. Plaintiff Hendricks worked for Defendants in Oakland, California.

2 23. Plaintiff Navid Iravani was employed by Defendants as an assistant manager and
3 customer adviser. Plaintiff Iravani's employment with Defendants began in September, 2021 and
4 ended in October 2022. Plaintiff Iravani worked for Defendants in San Francisco, California and
5 Oakland, California.

6 24. Plaintiffs are informed, believe, and based thereon allege that Shift Operations, LLC
7 ("Shift Operations") is a Delaware corporation headquartered in San Francisco, California. Shift
8 Operations is registered to do business in California, does business in California and employs and
9 employed hourly, non-exempt employees in California, including Alameda County.

10 25. Plaintiffs are informed, believe, and based thereon allege that Shift Technologies, Inc.
11 ("Shift Technologies") is a Delaware corporation headquartered in San Francisco, California. Shift
12 Technologies is registered to do business in California, does business in California and employs and
13 employed hourly, non-exempt employees in California, including Alameda County.

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

19 **SUBJECT MATTER JURISDICTION AND VENUE**

20 27. This Court has jurisdiction over Plaintiffs' claims for penalties pursuant to the PAGA.
21 The Court also has jurisdiction over Defendants because Defendants does business in the State of
22 California, is authorized to do business in California, and is registered with the California Secretary
23 of State.

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

27 ///

1 **FACTUAL ALLEGATIONS**

2 29. Defendants employ Plaintiffs and Aggrieved Employees to buy from and sell vehicles
3 to clients through an online platform and through scheduled appointments.

4 30. Plaintiffs and Aggrieved Employees are responsible for buying and picking up
5 vehicles from clients, selling and dropping off vehicles to clients, and processing documents for
6 vehicle sales.

7 31. Like Plaintiffs, the Aggrieved Employees are current and former non-exempt
8 employees of Defendants in California. Plaintiffs are informed, believe, and thereon allege that the
9 Aggrieved Employees support the daily functions of running Defendants' business.

10 32. Defendants regularly fail to provide Plaintiffs and Aggrieved Employees compliant
11 meal breaks. Defendants' policies, practices, and procedures require Plaintiffs and Aggrieved
12 Employees to routinely skip their meal breaks, or cut their meal breaks short, yet do not provide them
13 with the proper requisite premium payments for missed meal breaks.

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

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

1 completely relieved of any duty, by the end of the fifth hour of work.

2 35. In addition, for each day Plaintiffs and Aggrieved Employees work shifts of more than
3 ten hours, Defendants systematically deny Plaintiffs and Aggrieved Employees a compliant second
4 meal break using the same policies and practices that deny Plaintiffs and Aggrieved Employees their
5 initial meal breaks outlined above. Plaintiffs and Aggrieved Employees receive some premium
6 payments for these missed second meal breaks, but not at the appropriate rate.

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

11 37. Plaintiffs and Aggrieved Employees are routinely denied compliant rest breaks. Much
12 like the reasons that Plaintiffs and Aggrieved Employees are denied compliant meal breaks, Plaintiffs
13 and Aggrieved Employees do not receive compliant rest breaks because Defendants demand that they
14 remain on the jobsite to continue working, Defendants are too understaffed for Plaintiffs and
15 Aggrieved Employees to be relieved from their duties, and Defendants interrupt rest breaks to advise
16 Plaintiffs and Aggrieved Employees to assist customers.

17 38. Plaintiffs are informed, believe, and thereon allege that Defendants utilize and apply
18 these meal and rest break policies and practices across all Defendants' facilities throughout California.

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

25 40. Further, as mentioned above, Defendants require Plaintiffs and Aggrieved Employees
26 to clock out for thirty-minute meal periods and/or second meal periods that they continue to work
27 through. This policy results in Plaintiffs and Aggrieved Employees working up to an hour of unpaid,
28

1 off-the-clock work every shift. Defendants' policy causes Plaintiffs and Aggrieved Employees to
2 work hours every week for the benefit of Defendants without any compensation.

3 41. Plaintiffs are informed, believe, and thereon allege that Defendants utilize the same or
4 substantially similar timekeeping mechanisms throughout all its facilities and locations in California.

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

11 43. Plaintiffs are informed, believe, and based thereon allege that Defendants utilize and
12 apply the same commission policies and practices across all Defendants' facilities throughout
13 California.

14 44. Defendants' common course of wage-and-hour abuse also includes routinely failing to
15 maintain true and accurate records of the hours worked by Plaintiffs and Aggrieved Employees.

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

20 46. As a matter of common policy and/or practice, Defendants fail to provide Plaintiffs
21 and Aggrieved Employees reimbursement for all necessary expenditures or losses incurred by
22 Plaintiffs and Aggrieved Employees in direct consequence of the discharge of their duties, or as a
23 result of their obedience to the directions of Defendants. Defendants require Plaintiffs and Aggrieved
24 Employees to use their personal cell phones to maintain work-related communications with
25 customers, potential customers, co-workers, and supervisors. Defendants do not reimburse Plaintiffs
26 and Aggrieved Employees for any expenses related to their personal cell phones. Further, Defendants
27 do not provide Plaintiffs and Aggrieved Employees with sufficient computers to access work related
28

1 documents. For Plaintiffs and Aggrieved Employees to execute their job duties, they were required to
2 use their personal computers to access and/or process documents for transactions with customers.

3 47. Additionally, Plaintiffs and Aggrieved Employees did not receive all wages during
4 employment and following separation from employment, including payment for time spent working
5 off the clock and during meal periods, as well as premium payments for noncompliant meal breaks,
6 rest breaks, and missed second meal breaks.

7 48. On information and belief, Defendants' conduct described above has occurred at all
8 relevant times and is ongoing.

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

21 50. On December 20, 2022, pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiffs
22 Harris, Black, Dewitt, Downey, Frieria, Hendricks and Iravani served the LWDA and Defendants with
23 notice of their intent to amend this PAGA action and add Plaintiffs Black, Dewitt, Downey, Frieria,
24 Hendricks and Iravani as additional representatives. Sixty-five calendar days have passed without
25 notice from the LWDA of intent to pursue the claim. As such, Plaintiffs have satisfied the
26 administrative prerequisites to commence this civil action in compliance with § 2699.3(a), (f).

27 ///

FIRST CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 204, 558 and 1194, 1197, 1197.1, 1198
(Failure to Pay All Hours Worked)
(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On Behalf of All Aggrieved Employees)

51. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

52. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is 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 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

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

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

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

56. IWC Wage Order 4-2001(2)(K) and 7-2001(2)(K) 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."

57. Labor 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."

58. Labor Code § 1194.2 provides that, in any action under § 1194 to recover wages

1 because of the payment of a wage less than minimum wage fixed by an order of the commission, an
2 employer shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully
3 unpaid and interest thereon.

4 59. Labor Code § 1198 provides that “[t]he maximum hours of work and the standard
5 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
6 conditions of labor for employees. The employment of any employee for longer hours than those
7 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

8 60. Under Labor Code § 558, any employer who violates “a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall
10 be subject to a civil penalty as follows”:

11 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
12 period for which the employee was underpaid in addition to an amount sufficient to recover
underpaid wages.

13 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
14 for each pay period for which the employee was underpaid in addition to an amount
sufficient to recover underpaid wages.

15 61. Labor Code § 1197 provides that: “The minimum wage for employees fixed by the
16 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
17 and the payment of a lower wage than the minimum so fixed is unlawful...”

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

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

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

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

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

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

65. By virtue of Defendants' failures to provide compensation for off-the-clock work performed during meal periods and after clocking out at the end of Plaintiffs' and Aggrieved Employees' shifts, Defendants have violated Labor Code §§ 204 and 1194.

66. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiffs have provided the LWDA with notice of their intention to file a claim for violations of Labor Code §§ 204 and 1194. Sixty-five calendar days have passed without notice from the LWDA. Plaintiffs satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

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

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

69. Wherefore, Plaintiffs request 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)

70. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

71. 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.

72. 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....

73. Labor 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.

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

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

76. Labor Code § 223 provides, in relevant part, that: "Where any statute or contract

1 requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a
2 lower wage while purporting to pay the wage designated by statute or by contract.”

3 77. Plaintiffs seek to recover civil penalties from Defendants for their failure to pay
4 overtime wages in violation of Labor Code §§ 510 and 1194 throughout California on behalf of
5 himself, the State of California, and other Aggrieved Employees pursuant to Labor Code § 2699(f).

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

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

15 80. Wherefore, Plaintiffs request relief as hereinafter provided.

16 **THIRD CAUSE OF ACTION**
17 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 226.7**
18 **(Rest Period Violations)**
19 **(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On**
20 **Behalf of All Aggrieved Employees)**

21 81. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth
22 herein.

23 82. Labor Code § 226.7 provides, in relevant part:

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

28 (c) If an employer fails to provide an employee a meal or rest or recovery period in
accordance with a state law, including, but not limited to, an applicable statute or
applicable regulation, standard, or order of the Industrial Welfare Commission, the
Occupational Safety and Health Standards Board, or the Division of Occupational Safety

1 and Health, the employer shall pay the employee one additional hour of pay at the
2 employee's regular rate of compensation for each workday that the meal or rest or
recovery period is not provided.

3 83. Defendants fail to authorize and permit rest periods by knowingly and willfully
4 requiring Plaintiffs and Aggrieved Employees to perform work during rest periods, including
5 subjecting them to interruption during such times to assist customers.

6 84. Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f) for each failure by
7 Defendants, alleged above, to provide Plaintiffs and Aggrieved Employees rest periods in
8 compliance with Labor Code § 226.7.

9 85. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for
10 each aggrieved employee per pay period for the initial violation of a Labor Code provision that does
11 not provide a civil penalty if, at the time of the violation, the employer employs one or more
12 employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each
13 aggrieved employee per pay period for each subsequent violation of a Labor Code provision that does
14 not provide a civil penalty if, at the time of the violation, the employer employs one or more
15 employees.

16 86. Plaintiffs seek the aforementioned penalties on behalf of the State, other Aggrieved
17 Employees, and himself as set forth in Labor Code § 2699(g)(i).

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

21 88. Wherefore, Plaintiffs request relief as hereinafter provided.

22 **FOURTH CAUSE OF ACTION**
23 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 512**
24 **(Meal Period Violations)**
25 **(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On**
26 **Behalf of All Aggrieved Employees)**

27 89. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth
28 herein.

90. Labor Code § 512 provides, in relevant part: "An employer shall not employ an

1 employee for a work period of more than five hours per day without providing the employee with a
2 meal period of not less than 30 minutes...”

3 91. Defendants knowingly and willfully have required Plaintiffs and Aggrieved Employees
4 to perform work and/or remain on duty during meal periods. Defendants require Plaintiffs and
5 Aggrieved Employees to clock out for their unpaid meal periods, even though Plaintiffs and Aggrieved
6 Employees remain on duty and are continuously subject to interruption during that time.

7 92. Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f) for each failure by
8 Defendants, alleged above, to provide Plaintiffs and Aggrieved Employees meal periods in
9 compliance with Labor Code § 512.

10 93. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for
11 each aggrieved employee per pay period for the initial violation of a Labor Code provision that does
12 not provide a civil penalty if, at the time of the violation, the employer employs one or more
13 employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each
14 aggrieved employee per pay period for each subsequent violation of a Labor Code provision that does
15 not provide a civil penalty if, at the time of the violation, the employer employs one or more
16 employees.

17 94. Plaintiffs seek the aforementioned penalties on behalf of the State, other Aggrieved
18 Employees, and himself as set forth in Labor Code § 2699(g)(i).

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

22 96. Wherefore, Plaintiffs request relief as hereinafter provided.

23 **FIFTH CAUSE OF ACTION**
24 **Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code §§ 1182.11,**
25 **1182.12, 1194, 1197, and 1197.1**
26 **(Minimum Wage Violations)**
27 **(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On Behalf of All**
28 **Aggrieved Employees)**

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

1 herein.

2 98. During the applicable statutory period, Cal. Lab. Code §§ 1182.12 and 1197, and the
3 Minimum Wage Order were in full force and effect, and required that Defendants' hourly employees
4 receive the minimum wage for all hours worked irrespective of whether nominally paid on a piece
5 rate, or any other basis, at the rate of ten dollars and fifty cents (\$10.50) per hour commencing
6 January 1, 2017; at the rate of eleven dollars (\$11.00) per hour commencing January 1, 2018; at the
7 rate of twelve dollars (\$12.00) per hour commencing January 1, 2019; at the rate of thirteen dollars
8 (\$13.00) per hour commencing January 1, 2020; at the rate of fourteen dollars (\$14.00) commencing
9 January 1, 2021; and at the rate of fifteen dollars (\$15.00) commencing January 1, 2022.

10 99. Cal. Lab. Code §1194 states:

11 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
12 than the legal minimum wage or the legal overtime compensation applicable to the
13 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 attorney's fees, and costs of suit.

14 100. IWC Wage Order 4-2001(2)(K) and 7-2001(2)(G) define 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."

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

21 102. Defendants have maintained policies and procedures which create a working
22 environment where hourly employees are routinely compensated at a rate that is less than the statutory
23 minimum wage. Plaintiffs and Aggrieved Employees routinely work time off-the-clock without
24 compensation for this time. For instance, Plaintiffs and Aggrieved Employees are not compensated
25 for time spent working during meal breaks that Defendants require them to clock out during, or for
26 time spent completing tasks after clocking out at the end of their shift.

27 103. As a direct and proximate result of the unlawful acts and/or omissions of Defendants,
28

1 Plaintiffs and Aggrieved Employees have been deprived of minimum wages in an amount to be
2 determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus
3 interest thereon, attorneys' fees, and costs of suit pursuant to Cal. Lab. Code §§ 1194, 1194.2 and
4 1197.1.

5 104. Wherefore, Plaintiffs and the Aggrieved Employees request relief as hereinafter
6 provided.

7 **SIXTH CAUSE OF ACTION**

8 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 204.1
and 2751**

9 **(Failure to Pay All Commission Earned)**

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

11 105. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
12 herein.

13 106. Defendants do not compensate Plaintiffs and Aggrieved Employees with the
14 appropriate commissions earned, as required by California law.

15 107. Cal. Lab. Code § 204.1 provides that:

16 Commission wages paid to any person employed by an employer licensed as a vehicle
17 dealer by the Department of Motor Vehicles are due and payable once during each
18 calendar month on a day designated in advance by the employer as the regular payday.
Commission wages are compensation paid to any person for services rendered in the
sale of such employer's property or services and based proportionately upon the
amount or value thereof.

19 108. Cal. Lab. Code § 2751 provides that:

20 (a) Whenever an employer enters into a contract of employment with an employee for
21 services to be rendered within this state and the contemplated method of payment of
22 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.

23 (b) The employer shall give a signed copy of the contract to every employee who is a
24 party thereto and shall obtain a signed receipt for the contract from each employee. In
25 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
full force and effect until the contract is superseded or employment is terminated by
either party.

26 109. Defendants do not provide Plaintiffs and Aggrieved Employees full compensation for
27 commissions earned. Plaintiffs and Aggrieved Employees earn commissions based on the vehicles
28

1 purchased or sold on behalf of Defendants. However, Defendants have ceased paying the
2 commissions which Plaintiffs and Aggrieved Employees expected, and have refused to provide
3 information necessary to verify the amounts of commissions earned. For example, Defendant stopped
4 providing Aggrieved Employees members with records showing what they have sold for each month.
5 Aggrieved Employees do not receive all of their commission for vehicles that they have bought or
6 sold. Instead, Defendants only provide them with a portion of the compensation from the commission
7 earned.

8 110. Plaintiffs seek the aforementioned penalties on behalf of the State, other Aggrieved
9 Employees, and himself as set forth in Labor Code § 2699(g)(i).

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

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

14 **SEVENTH CAUSE OF ACTION**

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

16 **(Failure to Reimburse Necessary Business Expenditures)**
17 **(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On Behalf of All**
18 **Aggrieved Employees)**

19 113. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
20 herein.

21 114. Defendants also fail to reimburse Plaintiffs and Aggrieved Employees for all business
22 expenses incurred while on the job. For instance, Defendants require Plaintiffs and Aggrieved
23 Employees to use their personal cell phones and computers to access work-related documents,
24 communicated with manager and other employees, communicated with customers, and execute job
25 duties. Defendants fail to reimburse Plaintiffs and Aggrieved Employees for such "out-of-pocket"
26 business expenses.

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

28 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

1 unlawful, unless the employee, at the time of obeying the directions, believed them to
2 be unlawful.

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

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

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

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

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

21 **EIGHTH CAUSE OF ACTION**
22 **Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code §§ 201-**
23 **203 (Waiting Time Penalties)**
24 **(Against SHIFT OPERATIONS, LLC and SHIFT TECHNOLOGIES, INC. - On Behalf of**
25 **All Aggrieved Employees)**

26 121. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth
27 herein.

28 122. 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.

1 123. Labor Code § 203 provides, in relevant part:

2 If an employer willfully fails to pay, without abatement or reduction, in accordance with
3 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
4 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.

5 124. As a result of the Defendants' violations of Labor Code §§ 204, 226.7 and 510,
6 Defendant failed to timely pay all wages owed upon separation in violation of Labor Code §§ 201 –
7 203.

8 125. Plaintiffs seek civil penalties pursuant to Sections 225.5 and 256 of the California
9 Labor Code.

10 126. Labor Code § 256 provides that the Labor Commissioner shall impose a civil penalty
11 in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.

12 127. Labor Code § 225.5 provides that every person who unlawfully withholds wages due
13 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of
14 \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent
15 violation, or any willful or intentional violation, for each failure to pay each employee.

16 128. Labor Code § 223 provides, in relevant part, that: "Where any statute or contract
17 requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a
18 lower wage while purporting to pay the wage designated by statute or by contract."

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

24 130. As alleged above, Defendants are aware that Plaintiffs and Aggrieved Employees have
25 performed required off-the-clock work during meal periods and after clocking out at the end of work
26 shifts, Defendants still refuse to pay Plaintiffs and Aggrieved Employees for the off-the-clock work
27 performed. As alleged above, Defendants are aware that Plaintiffs and Aggrieved Employees have
28 performed work during rest periods without separate compensation, Defendants still refuse to pay

1 Plaintiffs and Aggrieved Employees for the work performed during rest periods.

2 131. Accordingly, Defendants willfully refused and continues to refuse to pay those
3 Aggrieved Employees that left their employment with Defendants all the wages that were due and
4 owing them upon the end of their employment. As a result of Defendants' actions, Plaintiffs and the
5 Aggrieved Employees have suffered and continue to suffer substantial losses, including lost earnings,
6 and interest.

7 132. Defendants' willful failure to pay Plaintiffs and the aggrieved employees the wages
8 due and owing them constitutes a violation of Labor Code §§ 201-203.

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

11 134. Plaintiffs seek civil penalties pursuant to Labor Code § 2699(a) for each failure by
12 Defendants, as alleged above, to timely pay all wages owed to Plaintiffs and Aggrieved Employees
13 in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203.
14 Plaintiffs seek such penalties as an alternative to the penalties available under Labor Code § 203, as
15 prayed for herein. Plaintiffs seek to recover PAGA penalties, costs, and attorneys' fees pursuant to
16 this section.

17 135. Plaintiffs seek the aforementioned penalties on behalf of the State, other Aggrieved
18 Employees, and himself as set forth in Labor Code § 2699(g)(i).

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

22 137. Wherefore, Plaintiffs request relief as hereinafter provided.

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

28 138. Plaintiffs re-alleges and incorporates the foregoing paragraphs as though fully set

1 forth herein.

2 139. Cal. Lab. Code § 226(a) provides that:

3 Every employer shall, semimonthly or at the time of each payment of wages, furnish
4 each of his or her employees, either as a detachable part of the check, draft, or voucher
5 paying the employee's wages, or separately when wages are paid by personal check or
6 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
7 total hours worked by the employee, except for any employee whose compensation is
8 solely based on a salary and who is exempt from payment of overtime under
9 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
10 Commission, (3) the number of piece-rate units earned and any applicable piece rate if
11 the employee is paid on a piece-rate basis, (4) all deductions, provided that all
12 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
be kept on file by the employer for at least four years at the place of employment or at
a central location within the State of California.

13 140. The IWC Wage Orders also establishes this requirement. (See IWC Wage Orders 4-
14 2001(7) and 7- 2001(7).)

15 141. Cal. Lab. Code § 226(e) provides:

16 An employee suffering injury as a result of a knowing and intentional failure by an
17 employer to comply with subdivision (a) is entitled to recover the greater of all actual
18 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
19 one hundred dollars (\$100) per employee for 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.

20 Defendant fails to provide timely, accurate, itemized wage statements to Plaintiffs and Aggrieved
21 Employees in accordance with Labor Code § 226 and the IWC Wage Order. In particular, the wage
22 statements Defendant provides its employees, including to Plaintiffs and Aggrieved Employees, do
23 not reflect the total hours, rate of compensation, or gross wages earned. This is because Defendant
24 fails to pay Plaintiffs and Aggrieved Employees premiums for meal and rest periods. In addition,
25 Defendant does not count as "hours worked" the off-the-clock time its hourly, non-exempt employees
26 spend performing work activities outside of their scheduled paid shifts and other work-related
27 activities.

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

143. On information and belief, Defendants' conduct has been substantially the same at all relevant times throughout the State of California.

144. 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. Labor 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.

145. Plaintiffs seek to recover civil penalties from Defendants' for their violations of Labor Code § 226 throughout California on behalf of himself, the State of California, and other aggrieved employees pursuant to Labor Code § 2699(f).

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

147. Wherefore, Plaintiffs request relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of the State of California and Aggrieved Employees, request the following relief:

1 1. For the Court to declare, adjudge, and decree that Defendants have violated the
2 California Labor Code as alleged herein;

3 2. For an order awarding the State of California, Plaintiffs and Aggrieved Employees civil
4 penalties to the full extent provided for under the PAGA;

5 3. For an award of reasonable attorneys' fees as provided by the California Labor Code,
6 including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other
7 applicable law;

8 4. For all costs of suit, as provided in Labor Code § 2699(g)(1);

9 5. For interest on any penalties awarded, as provided by applicable law; and

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

11 Respectfully submitted,

12 Date: March 7, 2023



13 Carolyn H. Cottrell

14 Caroline N. Cohen

15 Andrew Weaver

16 SCHNEIDER WALLACE

17 COTTRELL KONECKY LLP

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

20 **DEMAND FOR JURY TRIAL**

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

23 Respectfully submitted,

24 Date: March 7, 2023



25 Carolyn H. Cottrell

26 Caroline N. Cohen

27 Andrew Weaver

28 SCHNEIDER WALLACE

 COTTRELL KONECKY LLP

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

I am over the age of eighteen years and not a party to the within entitled action. I am employed at Schneider Wallace Cottrell Konecky LLP located at 2000 Powell Street, Suite 1400, Emeryville, California 94608.

Ryan Eddings, Esq.
Littler Mendelson P.C.
5200 North Palm Avenue,
Suite 302
Fresno, CA 93704
REddings@littler.com

[✓] BY ELECTRONIC SERVICE by electronically mailing a true and correct copy in PDF format through SWCK's electronic mail system to the email address(s) set forth above from my email: sgcarter@schneiderwallace.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 7, 2023, at Los Angeles , California.


Silvia G. Carter