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Kern County Superior Court
By Edith Carrillo, Deputy

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN**

DEBBIE CLAGG, EUGENIA CORKER, and
VANISSA CHAMBERS-MITCHELL, on behalf
of themselves, the putative Class Members, the
State of California and the Aggrieved Employees;

Plaintiffs,

vs.

GOLDEN EMPIRE TRANSIT DISTRICT,

Defendant.

Case No. BCV-22-103413

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR VIOLATIONS OF:**

- (1) Failure to Authorize and Permit and/or Make Available Meal Periods (Labor Code §§ 226.7 and 512);
- (2) Failure to Authorize and Permit and/or Make Available Rest Periods (Labor Code §§ 226.7)
- (3) Failure to Provide Timely and Accurate Itemized Wage Statements (Labor Code § 226);
- (4) Failure to Reimburse for necessary Business Expenditures (Labor Code § 2802);
- (5) Waiting Time Penalties (Labor Code §§ 201-203)
- (6) Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);
- (7) Penalties Pursuant to § 2699(a) of the Private Attorneys General Act; and
- (8) Penalties Pursuant to § 2699(f) of the Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiffs Debbie Clagg, Eugenia Corker, and Vanissa Chambers-Mitchell (collectively “Plaintiffs”) bring this class and Private Attorney General Act of 2004 (“PAGA”) action on behalf of themselves and other similarly situated individuals who have worked for Defendant Golden Empire Transit District (“GET” or “Defendant”) as non-exempt, hourly employees, including but not limited to drivers, flex drivers, bus operators, and coach operators, to challenge Defendant’s violations of California labor laws.

2. This is a class and representative action against Defendant to challenge its policies and practices of: (1) failing to authorize and permit Plaintiffs, putative Class Members and Aggrieved Employees to take meal breaks as required under California law; (2) failing to authorize and permit Plaintiffs, putative Class Members and Aggrieved Employees to take rest breaks as required under California law; (3) failing to reimburse Plaintiffs, putative Class Members and Aggrieved Employees for business expenditures as required under California law; (4) failing to provide Plaintiffs, putative Class Members and Aggrieved Employees accurate, itemized wage statements; (5) failing to timely pay Plaintiffs, putative Class Members and Aggrieved Employees all wages owed upon separation from employment; and (6) unfair business practices.

3. As a result of these violations, Plaintiffs seek full compensation on behalf of themselves and all others similarly situated for all damages, penalties, and interest to the full extent permitted by the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

4. Defendant is also liable for violation the Unfair Competition Law, Business and Professions Code §§ 17200 *et seq.* (“UCL”).

5. Plaintiffs, on behalf of the State of California, also seek 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

6. Plaintiffs, the putative Class Members and Aggrieved Employees are current and former non-exempt hourly workers employed by Defendant as, without limitations, drivers, flex drivers, bus operators, and coach operators in the State of California.

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

3 8. Plaintiff Clagg was employed by Defendant as a coach operator in Bakersfield,
4 California from March 15, 2021, until October 19, 2021.

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

7 10. Plaintiff Corker was employed by Defendant as a coach operator and flex driver in
8 Bakersfield, California, from February 10, 2020, until February 4, 2022.

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

11 12. Plaintiff Chambers-Mitchell was employed by Defendant as a bus operator in
12 Bakersfield, California, from approximately December 2000 until August 2004 and again from
13 approximately November 2020, until June 2022.

14 13. Plaintiffs are informed, believe, and based thereon allege that Defendant is
15 headquartered in Bakersfield, California. Defendant does business in the State of California and
16 employs and/or employed hourly, non-exempt employees in the State of California.

17 14. At all relevant times, Defendant has done business under the laws of the State of
18 California, has had places of business in California, including in this judicial district, and has employed
19 putative Class Members and Aggrieved Employees in this judicial district. At all relevant times,
20 Defendant is a “person” as defined in Cal. Lab. Code § 18 and Cal. Bus. & Prof. Code § 17201.
21 Defendant is also an “employer” within the meaning of the Labor Code and IWC Wage Orders.

22 15. Defendant employs Plaintiffs, putative Class Members and Aggrieved Employees
23 because Defendant, directly or indirectly, controls the employment terms, pay practices, timekeeping
24 practices, and daily work of Plaintiffs, putative Class Members and Aggrieved Employees.

25 **SUBJECT MATTER JURISDICTION AND VENUE**

26 16. This Court has jurisdiction over Plaintiff’s claims pursuant to the California Labor
27 Code and Business and Professions Code. This Court has jurisdiction over Plaintiffs’ claims for
28 penalties pursuant to the PAGA. The Court also has jurisdiction over Defendant because Defendant is

1 authorized to do business in California, in fact does business in the State of California, and employs
2 workers in the State of California.

3 17. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 395.5
4 because Defendant's principal place of business is located in this County.

5 **FACTUAL ALLEGATIONS**

6 18. Defendant provides public transportation services in and around Bakersfield,
7 California.

8 19. Plaintiffs, putative Class Members and Aggrieved Employees are responsible for
9 operating Defendant's public buses, picking up and dropping off passengers at designated locations,
10 following a scheduled route predetermined by Defendant, helping disabled passengers get on and off
11 the bus, and keeping the bus clean and presentable to the public.

12 20. Like Plaintiffs, the putative Class Members and Aggrieved Employees are current and
13 former non-exempt employees of Defendant in California. Plaintiffs are informed, believe, and thereon
14 allege that the putative Class Members and Aggrieved Employees perform work similar to Plaintiffs,
15 in that they support the daily functions of running Defendant's business activities.

16 21. Plaintiffs are informed, believe, and thereon allege that Defendant employs, and has
17 employed, hundreds of non-exempt hourly workers in the State of California, including but not limited
18 to drivers, flex drivers, bus operators, and coach operators.

19 22. Plaintiffs are informed, believe, and based thereon, allege that putative Class Members
20 and Aggrieved Employees are employed by Defendant in a similar manner throughout this County.

21 23. Putative Class Members and Aggrieved Employees perform their jobs under
22 Defendant's supervision using materials and technology approved and supplied by Defendant.

23 24. Putative Class Members and Aggrieved Employees are required to follow and abide by
24 Defendant's common work, time, and pay policies and procedures in the performance of their job
25 duties.

26 25. At the end of each pay period, putative Class Members and Aggrieved Employees
27 receive wages from Defendant that are determined by common systems and methods that Defendant
28 selects and controls.

1 26. Plaintiffs are informed, believe, and thereon allege that Defendant's policies and
2 practices have at all relevant times been similar for Plaintiffs, putative Class Members and Aggrieved
3 Employees.

4 27. Plaintiffs worked more than ten hours in a day for at least one workweek during the
5 one year before this Complaint was filed.¹

6 28. Upon information and belief, putative Class Members and Aggrieved Employees
7 worked more than ten hours per day in at least one workweek during the one year before this Complaint
8 was filed.

9 29. As a matter of common policy and/or practice, Defendant systematically requires
10 Plaintiffs, putative Class Members and Aggrieved Employees to skip their meal and rest breaks. At
11 approximately 2 P.M. the day prior each shift, Defendant posts a route schedule which Plaintiffs,
12 putative Class Members and Aggrieved Employees are required to follow without any delays or
13 deviations. Defendant's route schedules simply do not account for meal and rest breaks. Instead, each
14 route schedule identifies a few specific bus stops which are called "time points." Only if Plaintiffs,
15 putative Class Members and Aggrieved Employees arrive at such time points a few minutes before
16 the scheduled arrival, then they are permitted to use these extra few minutes to take a break. These
17 breaks, if and when available, would, at best, last five to six minutes.

18 30. Further, when Plaintiffs, putative Class Members and Aggrieved Employees' route
19 schedules last 10 hours or more, Defendant does not account for nor permit Plaintiffs, putative Class
20 Members and Aggrieved Employees to take a second meal break before the tenth hour of work.

21 31. As a result of these policies and practices, Plaintiffs, putative Class Members and
22 Aggrieved Employees are systematically denied duty-free, uninterrupted, and timely 30-minute meal
23 periods during which they should be completely relieved of any duty, by the end of the fifth hour of
24 work, and again, by the tenth hour of work.

25
26
27
28 ¹ On average, Plaintiffs worked eight to 10 hours per shift, six to seven days per week. Plaintiffs
worked approximately 70 hours per week.

1 32. Similarly, Plaintiffs, putative Class Members and Aggrieved Employees are also
2 systematically denied duty-free, uninterrupted, and timely 10-minute rest breaks before the fourth hour
3 of work, and again, before the eighth hour of work.

4 33. Despite systematically failing to provide Plaintiffs, putative Class Members and
5 Aggrieved Employees compliant meal and rest breaks, Defendant does not provide them with requisite
6 one hour of premium pay for each non-compliant meal and rest break.

7 34. Plaintiffs are informed, believes, and thereon allege that all non-exempt hourly
8 employees of Defendant are subject to the same or similarly the same unlawful meal and rest break
9 policies and practices.

10 35. In addition, Defendant also fails to reimburse Plaintiffs, putative Class Members and
11 Aggrieved Employees for all necessary business expenditures. Defendant forces Plaintiffs, putative
12 Class Members and Aggrieved Employees to suffer the cost of the uniforms Defendant requires them
13 to wear while at work. For each pay period, Defendant deducts from Plaintiffs, putative Class Members
14 and Aggrieved Employees' pay between \$12.00 and \$15.00 for the cost of these uniforms. In practice,
15 it is Plaintiffs, putative Class Members and Aggrieved Employees who pay out-of-pocket for the costs
16 of these uniforms even though it should be fully reimbursed under California law.

17 36. Plaintiffs are informed, believes, and based thereon, alleges that all non-exempt hourly
18 employees of Defendant are subject to the same or similarly the same unlawful business expenditures
19 policies and practices.

20 37. Defendant's common course of wage-and-hour abuse results in routinely failing to
21 maintain true and accurate records of the hours worked by Plaintiffs, putative Class Members and
22 Aggrieved Employees. As outlined above, Plaintiffs, putative Class Members and Aggrieved
23 Employees do not receive one hour of premium pay for each missed meal and rest period.

24 38. The wage statements Defendant provides are not accurate because they do not include
25 one hour of premium pay for non-compliant meal and rest periods in violation of California law.

26 39. Further, Defendant does not provide putative Class Members and Aggrieved
27 Employees who are former workers of Defendant, including Plaintiffs, with full payment of all wages
28 during employment and following separation from employment. At the time their employment ends,

1 Aggrieved Employees, including Plaintiffs, are owed one hour of premium pay for each noncompliant
2 meal and rest periods, whether their termination was voluntary or involuntary; yet Defendant has failed
3 to provide putative Class Members and Aggrieved Employees, including Plaintiffs, with such
4 payments within the required time period. As a result, and pursuant to California Labor Code,
5 Defendant is subject to waiting time penalties.

6 40. Plaintiffs are informed, believe, and thereon allege that Defendant's unlawful conduct
7 has been widespread, repeated, and consistent as to all Aggrieved Employees and throughout
8 Defendants' operations in the State of California.

9 **CCP § 382 CLASS ACTION ALLEGATIONS**

10 41. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
11 herein.

12 42. Plaintiffs bring causes of action as a class action on behalf of themselves and all others
13 similarly situated pursuant to Civil Code of Procedure § 382. The California Class that Plaintiffs seek
14 to represent is defined as follows:

15 All current and former hourly, non-exempt workers employed by
16 Golden Empire Transit District throughout California any time starting
17 four years prior to the filing of this Complaint until resolution of this
18 action.

19 43. This action has been brought and may properly be maintained as a class action under
20 Civil Code of Procedure § 382 there is a well-defined community of interest in the litigation and the
21 proposed putative class is easily ascertainable.

22 44. **Numerosity**: The potential members of the Class are so numerous that joinder of all
23 the members of the class is impracticable. Plaintiffs are informed and believe that the number of
24 putative Class members exceeds 100. This volume makes bringing the claims of each individual
25 member of the Class before this Court impracticable. Likewise, joining each individual member of the
26 Class as a plaintiff in this action is impracticable. Furthermore, the identities of the Class will be
27 determined from Defendant's records, as will the compensation paid to each of them. As such, a class
28 action is a reasonable and practical means of resolving these claims. To require individual actions
would prejudice the Class and Defendant.

1 45. **Commonality**: There are questions of law and fact common to Plaintiffs and the Class
2 that predominate over any questions affecting only individual members of the Class. These common
3 questions of law and fact include, but are not limited to:

- 4 a. Whether Defendant fails to authorize and permit, make available, and/or provide
5 putative Class Members with compliant meal and rest periods to which they are
6 entitled in violation of the Labor Code and Wage Orders;
- 7 b. Whether Defendant fails to reimburse putative Class Members for necessarily
8 incurred business expenditures in violation of Labor Code;
- 9 c. Whether Defendant fails to provide putative Class Members with timely, accurate
10 itemized wage statements in violation of the Labor Code and Wage Orders;
- 11 d. Whether Defendant fails to pay all wages owed upon putative Class Members'
12 separation from employment;
- 13 e. Whether Defendant violates Business and Professions Code §§ 17200 *et seq.*, by:
 - 14 (a) failing to authorize and permit, make available, and/or provide putative
15 Class Members with compliant meal and rest periods to which they are
16 entitled;
 - 17 (b) failure to reimburse putative Class Members for necessarily incurred
18 business expenditures;
 - 19 (c) failing to provide putative Class Members with timely, accurate itemized
20 wage.
 - 21 (d) failing to pay putative Class Members for all wages owed upon separation
22 of employment.
- 23 f. The proper formula for calculating restitution, damages and penalties owed to
24 Plaintiffs and the Class as alleged herein.

25 46. **Typicality**: Plaintiffs' claims are typical of the claims of the Class. Defendant's
26 common course of conduct in violation of law as alleged herein caused Plaintiffs and putative Class
27 Members to sustain the same or similar injuries and damages. Plaintiffs' claims are thereby
28 representative of and co-extensive with the claims of the Class.

1 47. **Adequacy of Representation:** Plaintiffs seek relief for state law violations perpetrated
2 by Defendant. In that sense, Plaintiffs do not have any conflicts of interest with other putative Class
3 Members and will prosecute the case vigorously on behalf of the Class. Counsel representing Plaintiffs
4 is competent and experienced in litigating complex cases and large class actions, including wage and
5 hour cases. Plaintiffs will fairly and adequately represent and protect the interests of the putative Class
6 Members.

7 48. **Superiority of Class Action:** A class action is superior to other available means for
8 the fair and efficient adjudication of this controversy. Individual joinder of all proposed Class
9 Members is not practicable, and questions of law and fact common to the Class predominate over any
10 questions affecting only individual members of the Class. Each proposed Class Member has been
11 damaged and is entitled to recovery by reason of Defendant's illegal policies and/or practices. Class
12 action treatment will allow those similarly situated persons to litigate their claims in the manner that
13 is most efficient and economical for the parties and the judicial system.

14 49. In the alternative, the Class may be certified because the prosecution of separate actions
15 by the individual members of the Class would create a risk of inconsistent or varying adjudication
16 with respect to individual members of the Class which would establish incompatible standards of
17 conduct for Defendant.

18 50. If each individual Class Member was required to file an individual lawsuit, Defendant
19 would necessarily gain an unconscionable advantage because Defendant would be able to exploit and
20 overwhelm the limited resources of each member of the Class with Defendant's vastly superior
21 financial and legal resources.

22 51. Requiring each individual Class Member to pursue an individual remedy would also
23 discourage the assertion of lawful claims by the putative Class Members who would be disinclined to
24 pursue these claims against Defendant because of an appreciable and justifiable fear of retaliation and
25 permanent damage to their lives, careers and well-being.

FIRST CAUSE OF ACTION
Failure to Authorize and Permit and/or Make Available Meal Periods
Pursuant to Labor Code §§ 226.7 and 512
(On Behalf of the Class)

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

53. Defendant systematically fails to authorize, permit and/or make available complaint meal periods to Plaintiffs and putative Class Members. Despite long workdays often lasting at least ten hours, Plaintiffs and putative Class Members are systematically denied the opportunity to take a compliant meal break.

54. Plaintiffs and putative Class members are not paid one hour of premium pay for the missed or non-compliant meal breaks. Plaintiffs and putative Class members are required to follow a route schedule predetermined by Defendant which does not account for meal breaks. Instead, each route schedule identifies a few specific bus stops which are called “time points.” Only if Plaintiffs and putative Class Members arrive at such time points a few minutes before the scheduled arrival, then they are permitted to use these extra few minutes to take a break. These breaks, if and when available, would, at best, last five to six minutes.

55. As a result, Defendant does not provide Plaintiffs and putative Class Members with duty-free, uninterrupted, and timely thirty-minute meal periods during which Plaintiffs and putative Class Members should be completely relieved of any duty, by the end of the fifth hour of work, and again, by the end of the tenth hour of work.

56. Plaintiffs and putative Class Members are not provided with one hour of premium pay for each instance they do not receive a complaint meal break.

57. Labor Code §§ 226.7 and 512 and the applicable Wage Orders require Defendant to authorize and permit meal and rest periods to their employees. Labor Code §§ 226.7 and 512 and the Wage Orders prohibit employers from employing an employee for more than five hours without a meal period of not less than thirty minutes, and from employing an employee more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes. Unless the employee is relieved of all duty during the thirty-minute meal period [...] the employee is

1 considered “on duty” and the meal [...] period is counted as time worked under the applicable Wage
2 Orders.

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

7 59. Despite these requirements, Defendant has knowingly and willfully refused to perform
8 its obligations to authorize and permit and/or make available to Plaintiffs and putative Class Members
9 the ability to take the off-duty meal periods to which they are entitled.

10 60. Defendant has also failed to pay Plaintiffs and putative Class Members one hour of pay
11 for each day an off-duty meal period was denied. Defendant’s conduct described herein violates Labor
12 Code §§ 226.7 and 512. Therefore, pursuant to Labor Code § 226.7(b), Plaintiffs and putative Class
13 Members are entitled to compensation for the failure to authorize and permit and/or make available
14 meal periods, plus interest, attorneys’ fees, expenses and costs of suit.

15 61. As a proximate result of the aforementioned violations, Plaintiffs and putative Class
16 Members have been damaged in an amount according to proof at time of trial.

17 62. Wherefore, Plaintiffs and the putative Class request relief as hereinafter provided.

18
19 **SECOND CAUSE OF ACTION**
20 **Failure to Authorize and Permit and/or Make Available Rest Periods**
21 **Pursuant to Labor Code § 226.7**
22 **(On Behalf of the Class)**

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

25 64. Defendant systematically fails to authorize, permit and/or make available complaint
26 rest periods to Plaintiffs and putative Class Members. Despite long workdays often lasting at least ten
27 hours, Plaintiffs and putative Class Members systematically denied the opportunity to even take one
28 compliant rest break.

65. Plaintiffs and putative Class members are not paid one hour of premium pay for the
missed or non-compliant rest breaks. Plaintiffs and putative Class members are required to follow a

1 route schedule predetermined by Defendant which does not account for rest breaks. Instead, each route
2 schedule identifies a few specific bus stops which are called “time points.” Only if Plaintiffs and
3 putative Class Members arrive at such time points a few minutes before the scheduled arrival, then
4 they are permitted to use these extra few minutes to take a break. These breaks, if and when available,
5 would, at best, last five to six minutes.

6 66. As a result, Defendant does not provide Plaintiffs and putative Class Members with
7 duty-free, uninterrupted, and timely ten-minute rest periods during which Plaintiffs and putative Class
8 Members should be completely relieved of any duty, by the end of the fourth hour of work, and again,
9 by the end of the eighth hour of work.

10 67. Labor Code §§ 226.7 and the applicable Wage Orders require Defendant to authorize
11 and permit rest periods to their employees. Labor Code §§ 226.7 and the Wage Orders require
12 employers to authorize and permit employees to take ten minutes of net rest time per four hours or
13 major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless
14 the employee is relieved of all duty during the ten-minute rest period, the employee is considered “on
15 duty” and the rest period is counted as time worked under the applicable Wage Orders.

16 68. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer must pay
17 an employee who is denied a required rest period one hour of pay at the employee’s regular rate of
18 compensation for each workday that the rest period was not authorized and permitted and/or not made
19 available.

20 69. Despite these requirements, Defendant has knowingly and willfully refused to perform
21 its obligations to authorize and permit and/or make available to Plaintiffs and putative Class members
22 the ability to take the off-duty rest periods to which they are entitled.

23 70. Defendant has also failed to pay Plaintiffs and putative Class members one hour of pay
24 for each day an off-duty rest period was denied. Defendant’s conduct described herein further violates
25 Labor Code §§ 226.7. Therefore, pursuant to Labor Code § 226.7(b), Plaintiffs and putative Class
26 members are also entitled to compensation for the failure to authorize and permit and/or make
27 available rest periods, plus interest, attorneys’ fees, expenses and costs of suit.
28

1 71. As a proximate result of the aforementioned violations, Plaintiffs and putative Class
2 members have been damaged in an amount according to proof at time of trial.

3 72. Wherefore, Plaintiffs and the putative Class request relief as hereinafter provided.

4
5 **THIRD CAUSE OF ACTION**
6 **Failure to Reimburse Business Expenditures**
7 **Pursuant to Labor Code § 2802**
8 **(On Behalf of the Class)**

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

11 74. Defendant does not reimburse Plaintiffs and putative Class Members for necessary
12 business expenditures.

13 75. Labor Code § 2802 provides, in relevant part:
14 An employer shall indemnify his or her employee for all necessary
15 expenditures or losses incurred by the employee in direct consequence
16 of the discharge of his or her duties, or of his or her obedience to the
17 directions of the employer, even though unlawful, unless the employee,
18 at the time of obeying the directions, believed them to be unlawful. ...
19 For the purposes of this section, the term “necessary expenditures or
20 losses” shall include all reasonable costs, including, but not limited to,
21 attorney’s fees incurred by the employee enforcing the rights granted by
22 this section.

23 76. Defendant forces Plaintiffs and putative Class Members to suffer the cost of the
24 uniforms Defendant requires them to wear while at work. For each pay period, Defendant deducts
25 from Plaintiffs and putative Class Members between \$12.00 and \$15.00 for the cost of these
26 uniforms. In practice, it is Plaintiffs, putative Class Members and Aggrieved Employees who pay
27 out-of-pocket for the costs of these uniforms. Defendant does not reimburse Plaintiffs and putative
28 Class Members for these business expenditures.

77. Defendant is liable to Plaintiffs and putative Class Members for the unreimbursed
expenses and civil penalties, with interest thereon. Furthermore, Plaintiffs are entitled to an award
of attorneys’ fees and costs as set forth below.

78. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

FOURTH CAUSE OF ACTION
Failure to Provide Accurate Itemized Wage Statements
Pursuant to Labor Code § 226
(On Behalf of the Class)

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

80. Defendant does not provide Plaintiffs and putative Class Members with accurate itemized wage statements as required by California law.

81. Labor Code § 226(a) provides:

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

82. The IWC Wage Orders also establishes this requirement. (See IWC Wage Order 9-2001(6).)

83. Labor Code § 226(e) provides:

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

84. Defendant does not provide timely, accurate itemized wage statements to Plaintiffs and putative Class Members in accordance with Labor Code § 226(a) and the IWC Wage Orders. The wage statements Defendant provides its employees, including Plaintiffs and putative Class Members, do not accurately reflect premium payments for missed and noncompliant meal and rest periods.

1 85. Defendant is liable to Plaintiffs and the putative Class alleged herein for the amounts
2 described above in addition to the civil penalties set forth below, with interest thereon. Furthermore,
3 Plaintiffs are entitled to an award of attorneys' fees and costs as set forth below, pursuant to Labor
4 Code § 226(e).

5 86. Wherefore, Plaintiffs and the putative Class request relief as hereinafter provided.

6
7 **FIFTH CAUSE OF ACTION**
8 **Waiting Time Penalties**
9 **Pursuant to Labor Code §§ 201-203**
10 **(On Behalf of the Class)**

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

13 88. Defendant does not provide putative Class Members, including Plaintiffs, with their
14 wages when due under California law after their employment with Defendant ends.

15 89. Labor Code § 201 provides:
16 If an employer discharges an employee, the wages earned and unpaid at
17 the time of discharge are due and payable immediately.

18 90. Labor Code § 202 provides:
19 If an employee not having a written contract for a definite period quits
20 his or her employment, his or her wages shall become due and payable
21 not later than 72 hours thereafter, unless the employee has given 72
22 hours previous notice of his or her intention to quit, in which case the
23 employee is entitled to his or her wages at the time of quitting.

24 91. Labor Code § 203 provides, in relevant part:
25 If an employer willfully fails to pay, without abatement or reduction, in
26 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
27 employee who is discharged or who quits, the wages of the employee
28 shall continue as a penalty from the due date thereof at the same rate
until paid or until an action therefor is commenced; but the wages shall
not continue for more than 30 days.

29 92. Some of the putative Class Members, including Plaintiffs, left their employment with
30 Defendant during the statutory period, at which time Defendant owed them unpaid wages.

31 93. Defendant willfully refused and continues to refuse to pay Plaintiffs and putative Class
32 Members all premium payments for missed and noncompliant meal and rest periods, upon the end of
33 their employment as a result of Defendant's willful failure to provide compliant meal and rest periods.

1 As a result of Defendant's actions, Plaintiffs and putative Class members have suffered and continue
2 to suffer substantial losses, including lost earnings, and interest.

3 94. Defendant's willful failure to pay Plaintiffs and putative Class Members the wages
4 due and owing them constitutes a violation of Labor Code §§ 201-202. As a result, Defendant is
5 liable to Plaintiffs and putative Class members for all penalties owing pursuant to Labor Code §§
6 201-203.

7 95. In addition, Labor Code § 203 provides that an employee's wages will continue as a
8 penalty up to thirty days from the time the wages were due. Therefore, the Plaintiffs and putative
9 Class members are entitled to penalties pursuant to Labor Code § 203, plus interest.

10 96. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

11 **SIXTH CAUSE OF ACTION**
12 **Violation of California Business and Professions Code §§ 17200, *et seq.***
13 **(On Behalf of the Class)**

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

16 98. The UCL prohibits unfair competition in the form of any unlawful, unfair, or fraudulent
17 business acts or practices.

18 99. Business and Professions Code § 17204 allows a person injured by the unfair business
19 acts or practices to prosecute a civil action for violation of the UCL.

20 100. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce
21 minimum labor standards in order to ensure employees are not required to work under substandard
22 and unlawful conditions, and to protect employers who comply with the law from those who attempt
23 to gain competitive advantage at the expense of their workers by failing to comply with minimum
24 labor standards.

25 101. Beginning at an exact date unknown to Plaintiffs, but at least since the date four years
26 prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by
27 the UCL, by engaging in the unlawful, unfair, and fraudulent business acts and practices described in
28 this Complaint, including, but not limited to:

- a. violations of Labor Code §§ 226.7 and 512 and Wage Order 9-2001 pertaining to meal and rest breaks;
- b. violations of Labor Code § 2802 pertaining to reimbursement of business expenditures;
- c. violations of Labor Code § 226 regarding accurate, timely itemized wage statements; and
- d. violations of Labor Code §§ 201-203 pertaining to payment of all wages owed during employment and following separation from employment.

102. The violations of these laws and regulations, as well as of the fundamental California public policies protecting wages, serve as unlawful predicate acts and practices for purposes of Business and Professions Code §§ 17200, *et seq.*

103. The acts and practices described above constitute unfair, unlawful, and fraudulent business practices, and unfair competition, within the meaning of Business and Professions Code §§ 17200, *et seq.* Among other things, the acts and practices have taken from Plaintiffs and the Class wages rightfully earned by them, while enabling Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

104. Business and Professions Code § 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition.

105. As a direct and proximate result of the aforementioned acts and practices, Plaintiffs and putative Class Members have suffered a loss of money and property, in the form of unpaid wages, which are due and payable to them.

106. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition. Plaintiffs and putative Class Members are entitled to restitution pursuant to Business and Professions Code § 17203 for all wages and payments unlawfully withheld from employees during the four-year period prior to the filing of this Complaint. Plaintiffs' success in this action will enforce important rights affecting the public interest and, in that regard, Plaintiffs sue on behalf of themselves

1 as well as others similarly situated. Plaintiffs and putative Class Members seek and are entitled to
2 unpaid wage, declaratory relief and all other equitable remedies owing to them.

3 107. Plaintiffs herein takes upon themselves enforcement of these laws and lawful claims.
4 There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public
5 right, and it would be against the interests of justice to penalize Plaintiffs by forcing them to pay
6 attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of
7 Civil Procedure §1021.5 and otherwise.

8 108. Wherefore, Plaintiffs and the putative Class request relief as hereinafter provided.

9
10 **SEVENTH CAUSE OF ACTION**
Penalties Pursuant to Labor Code § 2699(a)
(On Behalf of All Aggrieved Employees)

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

13 110. Labor Code § 2699(a) provides:

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

18 111. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and
19 unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he
20 or she quits, at the latest.

21 112. Labor Code § 203 provides, in relevant part:

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

26 113. Labor Code § 256 provides: "The Labor Commissioner shall impose a civil penalty in
27 an amount not exceeding 30 days' pay as waiting time under the terms of Section 203."
28

114. Plaintiffs seek civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages owed to Plaintiffs and Aggrieved Employees in compliance with Labor Code §§ 201-202 and in the amounts established by Labor Code § 203.

115. Labor Code § 226(a) provides:

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

116. Labor Code § 226(e)(1) provides, in relevant part:

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

117. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

118. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiffs and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226.3. In addition, Plaintiffs seek penalties in the amount established by Labor Code § 226(e)(1).

119. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 2, 2022, Plaintiffs provided the Labor and Workforce Development Agency (“LWDA”) with notice of their intention to file this claim. At least sixty-five calendar days have passed without response from the LWDA. Plaintiffs satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

120. Plaintiffs seek the aforementioned penalties on behalf of the State of California, other Aggrieved Employees, and themselves as set forth in Labor Code § 2699.

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

122. Wherefore, Plaintiffs request relief as hereinafter provided.

EIGHTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(On Behalf of All Aggrieved Employees)

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

124. 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.

125. 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.”

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

127. IWC Wage Order 9-2001(2)(H) 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.”

1 128. Labor Code § 1198 makes it unlawful for employers to employ employees under
2 conditions that violate the Wage Orders.

3 129. Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001 require Defendant to
4 authorize, permit, and/or make available timely and compliant meal and rest periods to its employees.
5 Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001 prohibit employers from employing an
6 employee for more than five hours without a meal period of not less than thirty minutes, and from
7 employing an employee more than ten hours per day without providing the employee with a second
8 meal period of not less than thirty minutes. Unless the employee is relieved of all duty during the
9 thirty-minute meal period and ten-minute rest period, the employee is considered “on duty” and the
10 meal period is counted as time worked under the applicable wage orders.

11 130. Labor Code § 2802 requires Defendant to indemnify employees for all necessary
12 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
13 duties.

14 131. Defendant’s policies and practices result in meal and periods violations, and business
15 expenditures reimbursement violations.

16 132. To the extent than any violation alleged herein does not carry penalties under Labor
17 Code § 2699(a), Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f) for each pay period
18 in which Plaintiffs and an Aggrieved Employee was aggrieved, in the amounts established by Labor
19 Code § 2699(f). Plaintiffs seek penalties pursuant to Labor Code § 2699(f) for Plaintiffs and Aggrieved
20 Employees for violations of Labor Code provisions including, but not limited to, Labor Code 204,
21 226.7, 512, 1198, 2802, IWC Wage Order 9-2001, and any other violation alleged herein does not
22 carry penalties under Labor Code § 2699(a).

23 133. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 2, 2022, Plaintiffs
24 provided the LWDA with notice of their intention to file this claim. At least sixty-five calendar days
25 have passed without response from the LWDA. Plaintiffs satisfied the administrative prerequisites to
26 commence this civil action in compliance with § 2699.3(a).

27 134. Plaintiffs seek the aforementioned penalties on behalf of the State, other Aggrieved
28 Employees, and themselves as set forth in Labor Code § 2699(g)(1).

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

136. Wherefore, Plaintiffs request relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

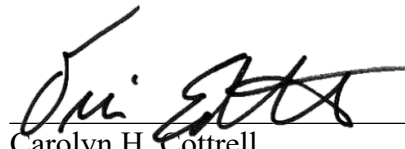
1. Damages and restitution according to proof at trial for all unpaid wages and other injuries, as provided by the California Labor Code and California Business and Professions Code;
2. For a declaratory judgment that Defendant has violated the California Labor Code and public policy as alleged herein;
3. For a declaratory judgment that Defendant has violated California Business and Professions Code §§ 17200, *et seq.*, as a result of the aforementioned violations of the California Labor Code and of California public policy protecting wages;
4. For an equitable accounting to identify, locate, and restore to all current and former employees the wages they are due, with interest thereon;
5. For an order awarding Plaintiffs and putative Class Members compensatory damages, including lost wages, earnings, liquidated damages, and other employee benefits, restitution, recovery of all money, actual damages, punitive damages, and all other sums of money owed to Plaintiffs and putative Class Members, together with interest on these amounts, according to proof;
6. For an order awarding civil penalties to the full extent provided for by the PAGA;
7. For an order awarding Plaintiffs and putative Class Members civil penalties pursuant to the California Labor Code, and provisions cited herein, with interest thereon;
8. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or other applicable law;
9. For all costs of suit;

1 10. For interest on any damages and/or penalties awarded, as provided by applicable law;
2 and

3 11. For such other and further relief as this Court deems just and proper.
4

5
6 Respectfully submitted,

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8 Date: March 1, 2023

9 

10 Carolyn H. Cottrell

11 Ori Edelstein

12 Philippe M. Gaudard

13 SCHNEIDER WALLACE

14 COTTRELL KONECKY LLP

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16 *Attorneys for Plaintiffs, on behalf of the putative Class,*
17 *the State of California and the Aggrieved Employees*
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Date: March 1, 2023


Carolyn H. Cottrell

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