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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

ETHAN ADLER, AL ROGERS, SAM
RODRIGUEZ, SCOTT POE, RONALD
MENDEZ, ARUB SOHAIL, ANGELINA
PORTER, AND BRANDON COOLEY, on
behalf of the State of California, and
Aggrieved Employees,

Plaintiffs,

vs.

BEST BUY STORES, L.P., a Virginia
limited partnership; and DOES 1 through
50, inclusive,

Defendant.

Case No. 23CV028792

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

Complaint Filed: March 3, 2023

1 Plaintiffs Ethan Adler, Al Rogers, Sam Rodriguez, Scott Poe, Ronald Mendez, Arub Sohail,
2 Angelina Porter, and Brandon Cooley, on behalf of the State of California and Aggrieved
3 Employees (“Plaintiffs”), complain and allege as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this enforcement action against Defendant Best Buy Stores, L.P.
6 (“Defendant” or “Best Buy”) and any subsidiaries or affiliated companies (hereinafter, along with
7 DOES 1 through 50, collectively referred to as “Defendant”), on behalf of the State of California
8 to collect civil penalties as a result of Defendant’s systematic violations of California labor laws
9 with respect to themselves and other non-exempt employees employed, or formerly employed, by
10 Defendant within the State of California (“Aggrieved Employees”) pursuant to the Private
11 Attorneys General Act of 2004, Cal. Lab. Code §§ 2698 *et seq.* (“PAGA”).¹

12 2. Upon information and belief, Defendant Best Buy is a multinational consumer
13 electronics retailer at locations throughout the State of California.

14 3. Defendant maintains a longstanding policy and practice of failing to properly
15 compensate non-exempt employees for work performed during meal periods, for work performed
16 while “off-the-clock,” and for missed rest and meal periods. These policies deny Plaintiffs and
17 Aggrieved Employees payment for all hours worked, including overtime, and deny Plaintiffs and
18 Aggrieved Employees meal and rest periods that comply with California law.

19 4. Defendant violated California law by knowingly and willfully requiring Plaintiffs
20 and Aggrieved Employees to perform work and/or remain on duty during meal and rest breaks,
21 subjecting them to interruptions during those times. While Defendant requires Plaintiffs and
22 Aggrieved Employees to clock in and out for meal periods, Plaintiffs and Aggrieved Employees
23 remain on duty and are continuously subject to interruption during that time.

24 5. Plaintiffs and Aggrieved Employees bring this claim to challenge Defendant’s
25 policies and practices of: (1) failing to pay Plaintiffs and Aggrieved Employees minimum wage;
26 (2) failing to pay Plaintiffs and Aggrieved Employees overtime wages; (3) failing to authorize and
27

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

1 permit Plaintiffs and Aggrieved Employees to take meal and rest breaks to which they are entitled
2 by law; (4) failing to compensate Plaintiffs and Aggrieved Employees for all hours worked; (5)
3 failing to provide Plaintiffs and Aggrieved Employees accurate, itemized wage statements; (6)
4 failing to timely pay Plaintiffs and Aggrieved Employees full wages upon termination or
5 resignation; and (7) failing to reimburse Plaintiffs and Aggrieved Employees for necessary
6 business expenses.

7 6. Plaintiff Rogers brings this claim in a representative capacity only.

8 **THE PARTIES**

9 7. Plaintiff Ethan Adler is and at all relevant times herein, an individual over the age
10 of eighteen and is a resident of Woodland, California in the County of Alameda. He was formerly
11 employed by Defendant as a full-time, hourly, non-exempt, Warehouse Staff Member from August
12 1, 2017 to January 21, 2022 at the Best Buy retail store in Woodland, California.

13 8. Plaintiff Al Rogers is and at all relevant times herein, an individual over the age of
14 eighteen and is a resident of Sacramento, California in the County of Sacramento. He was formerly
15 employed by Defendant as a full-time, hourly, non-exempt, Small Parcel Deliverer from November
16 2021 to November 2022 at the Best Buy retail store in Elk Grove, California.

17 9. Plaintiff Sam Rodriguez is and at all relevant times herein, an individual over the
18 age of eighteen and is a resident of Winchester, California in the County of Riverside. He was
19 formerly employed by Defendant as a full-time, hourly, non-exempt, Senior Consultant from
20 March 2005 to April 2022 at the Best Buy retail store in Moreno Valley, California.

21 10. Plaintiff Scott Poe is and at all relevant times herein, an individual over the age of
22 eighteen and is a resident of Corona, California in the County of Riverside. He was formerly
23 employed by Defendant as a full-time, hourly, non-exempt, Appliance Lead, Supervisor, and Sales
24 Manager from April 2015 to December 2021 at the Best Buy retail store in Yorba Linda, California.

25 11. Plaintiff Ronald Mendez is and at all relevant times herein, an individual over the
26 age of eighteen and is a resident of Simi Valley, California in the County of Ventura. He was
27 formerly employed by Defendant as a full-time, hourly, non-exempt, Appliance Sales Lead from
28 2018 to 2020 at the Best Buy retail store in Woodland Hills, California.

1 12. Plaintiff Arub Sohail is and at all relevant times herein, an individual over the age
2 of eighteen and is a resident of Stockton, California in the County of San Joaquin County. She was
3 formerly employed by Defendant as a full-time, hourly, non-exempt, Customer Service Specialist
4 and Smart Home Expert from June 2, 2018 to October 13, 2020 at the Best Buy retail store in
5 Stockton, California.

6 13. Plaintiff Angelina Porter is and at all relevant times herein, an individual over the
7 age of eighteen and is a resident of Bakersfield, California in the County of Kern. She was formerly
8 employed by Defendant as a full-time, hourly, non-exempt, Asset Protection from November 6,
9 2010 to March 23, 2020 at the Best Buy retail store in Bakersfield, California.

10 14. Plaintiff Brandon Cooley is and at all relevant times herein, an individual over the
11 age of eighteen and is a resident of San Bernardino, California in the County of San Bernardino.
12 He was formerly employed by Defendant as a full-time, hourly, non-exempt, Geek Squad Agent
13 from November 2016 to July 2020 at the Best Buy retail store in Moreno Valley, California.

14 15. Plaintiffs are informed, believe, and thereon allege that Defendant Best Buy is a
15 multinational consumer electronics retailer; is a Virginia limited partnership headquartered in
16 Fredericksburg, Virginia; employs approximately 100,000 employees and conducts extensive
17 operations in the State of California; and is registered to do business in California, does business
18 in California, and employs, or formerly employed, thousands of hourly, non-exempt employees,
19 including Plaintiffs and Aggrieved Employees throughout California.

20 16. The true names and capacities, whether individual, corporate, associate, or
21 otherwise, of DOES 1 through 50, inclusive, are unknown to Plaintiffs, who therefore sue the Doe
22 Defendants by fictitious names. Plaintiffs are informed, believe, and thereon allege that each of
23 these fictitiously-named Defendants is responsible in some manner for the occurrences and
24 violations as herein alleged. Plaintiffs pray for leave to amend and serve such fictitiously-named
25 Defendants pursuant to Cal. Code Civ. Proc. § 474 once their names and capacities become known.
26 Defendants are jointly and severally liable for the civil penalties asserted.

27 17. At all relevant times, Defendant has done business under the laws of California, has
28 had places of business in California including in this judicial district, and has employed Plaintiffs

1 and Aggrieved Employees in California and in this judicial district. At all relevant times, Defendant
2 is a “person” as defined in Cal. Lab. Code § 18 and Cal. Bus. & Prof. Code § 17201. Defendant is
3 also an “employer” as that term is used in the Labor Code and IWC Wage Orders.

4 **SUBJECT MATTER JURISDICTION AND VENUE**

5 18. This Court has jurisdiction over Plaintiffs’ claims for penalties pursuant to the
6 PAGA. The Court also has jurisdiction over Defendant because it does business in California, is
7 authorized to do business in the State of California, is registered with the California Secretary of
8 State, and because Defendant in fact does business and employs Aggrieved Employees, in
9 California.

10 19. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 393.
11 Defendant conducts business, employ Aggrieved Employees, and has jobsites in this County.
12 Plaintiffs are informed, believe, and thereon allege that events giving rise to these causes of action
13 occurred in this County, and some part of these causes of action arose in this County.

14 **FACTUAL ALLEGATIONS**

15 20. Defendant is a multinational consumer electronics retailer with locations
16 throughout California, including Alameda County, California. Defendant employs hundreds of
17 hourly non-exempt workers similarly situated to Plaintiffs across these facilities.

18 21. Plaintiff Ethan Adler worked at Best Buy as a Warehouse Staff Member from
19 August 1, 2017 through January 21, 2022. He was paid at an hourly rate of \$17.15 and regularly
20 worked in excess of eight hours a day and forty hours per week, usually working approximately
21 40 to 50 hours per workweek.

22 22. Plaintiff Al Rogers worked at Best Buy as a small Parcel Deliverer from November
23 2021 through November 2022. He was paid at an hourly rate of \$18.04 and regularly worked in
24 excess of eight hours a day and forty hours per week, usually working approximately 36 to 38
25 hours per workweek.

26 23. Plaintiff Sam Rodriguez worked at Best Buy as Senior Consultant from March 2005
27 through April 2022. He was paid at an hourly rate of \$37.50 and regularly worked in excess of
28 eight hours a day and forty hours per week, usually working approximately 40 to 45 hours per

workweek.

24. Plaintiff Scott Poe worked at Best Buy as an Appliance Lead, Supervisor, and Sales Manager from April 2015 through December 2021. He was paid at an hourly rate of \$28.65 and regularly worked in excess of eight hours a day and forty hours per week, usually working approximately 40 to 50 hours per workweek.

25. Plaintiff Ronald Mendez worked at Best Buy as an Appliance Sales Lead from 2018 to 2020. He was paid at an hourly rate of \$17.00 and regularly worked in excess of eight hours a day and forty hours per week, usually working approximately 50 hours per workweek.

26. Plaintiff Arub Sohail worked at Best Buy as a Customer Service Specialist and Smart Home Expert from June 2, 2018 through October 13, 2020. She was paid at an hourly rate of \$15.00 and regularly worked in excess of eight hours a day and forty hours per week, usually working approximately 45 to 50 hours per workweek.

27. Plaintiff Angelina Porter worked at Best Buy as an Asset Protection from November 6, 2010 through March 23, 2020. She was paid at an hourly rate of \$16.32 and regularly worked in excess of eight hours a day and forty hours per week, usually working approximately 40 hours per workweek.

28. Plaintiff Brandon Cooley worked at Best Buy as a Geek Squad Agent from November 2016 through July 2020. He was paid at an hourly rate of \$16.00 and regularly worked in excess of eight hours a day and forty hours per week, usually working approximately 33 to 38 hours per workweek.

29. As a matter of policy, Defendant requires Plaintiffs and Aggrieved Employees to remain on duty during their scheduled shifts, including during rest breaks and while clocked out for meal periods. Defendant does not compensate Plaintiffs and Aggrieved Employees for work performed while clocked out for meal periods.

30. Specifically, work was rigorous and often nonstop and staffing shortages often meant that Plaintiffs and Aggrieved Employees are simply unable to take their breaks because there was no one available to relieve them for a rest or a meal break. If they receive a break at all, they are required to wait for someone else to come in to cover them for their breaks, thus any such

breaks are taken late, long after the fifth hour of labor performed, and are frequently interrupted. As a result of Defendant's policies and practices, Plaintiffs and Aggrieved Employees are routinely denied the opportunity to take legally-compliant meal and rest breaks.

31. Plaintiffs are informed, believe, and thereon allege that this policy and practice applies to all Aggrieved Employees.

32. Despite these recurring violations, Defendant does not provide Plaintiffs and Aggrieved Employees premium pay for missed breaks and meal periods.

33. Plaintiffs are informed, believe, and thereon allege that Defendant and its store managers and supervisors are aware that Plaintiffs and Aggrieved Employees are not receiving their full, timely, and off-duty meal and rest breaks.

34. Plaintiffs are informed, believe, and thereon allege that at no time did Plaintiffs and Aggrieved Employees ever validly waive their right to take their meal breaks.

35. As a result of these policies, Defendant denies Plaintiffs and Aggrieved Employees meal and rest periods to which they are statutorily entitled, as well as the overtime premiums resulting from the additional off-the-clock work performed during meal breaks.

36. Defendant also maintains a policy and/or practice of failing to properly compensate Plaintiffs and Aggrieved Employees for work-related tasks, including but not limited to making sales, customers service, and coordinating delivery and installation of products, that were performed while "off-the-clock," either before or after their scheduled shifts, or during their meal periods, while clocked out. Defendant's failure to compensate Plaintiffs and Aggrieved Employees for work performed while off-the-clock results in Defendant's failure to compensate Plaintiffs and Aggrieved Employees for all time spent working for Defendant's benefit, including at minimum wage, overtime, and/or double time under California law.

37. Defendant's common course of wage-and-hour abuse includes routinely failing to maintain true and accurate records of the hours worked by Plaintiffs and Aggrieved Employees. In particular, Defendant fails to record hours that Plaintiffs and Aggrieved Employees worked during missed meal breaks, as well as hours worked off the clock.

38. Defendant's failure to record all hours worked also results in a failure to provide

1 Plaintiffs and Aggrieved Employees with accurate itemized wage statements as required by
2 California law. The wage statements Defendant provides are not accurate because they do not
3 reflect the actual hours worked by Plaintiffs and Aggrieved Employees. The wage statements do
4 not contain work performed by Plaintiffs and Aggrieved Employees while off-the-clock, including
5 during meal breaks. Further, the wage statements are inaccurate because they do not include wages,
6 including overtime owed to Plaintiffs and Aggrieved Employees, and premium pay owed to
7 Plaintiffs and Aggrieved Employees for missed breaks.

8 39. Further, Defendant does not provide Plaintiffs and Aggrieved Employees with full
9 payment of all wages owed at the end of employment. As these workers are owed for off-the-clock
10 work, unpaid overtime, and premium pay when their employment ends, and these amounts remain
11 unpaid under Defendant's policies and practices, Defendant failed to pay all wages due upon
12 termination. As a consequence, Defendant is subject to waiting time penalties.

13 40. Finally, Defendant does not reimburse or compensate Plaintiffs and Aggrieved
14 Employees for business expenses incurred for Defendant's benefit. At all relevant times, as a
15 matter of operational policy and business practice, Defendant requires Plaintiffs and Aggrieved
16 Employees to utilize their personal cell phones, as they are not provided company cell phones, and
17 at no time has Defendant ever reimbursed Plaintiffs and Aggrieved Employees for their expenses
18 incurred in the routine and daily use of a personal cell phone and personal internet services to
19 perform work related duties and communications. Plaintiffs and Aggrieved Employees are
20 required by Defendant to use their personal cellphones to perform their daily "Wellness Check"
21 before work, to perform daily job-related tasks and duties, and to communicate with co-workers
22 and supervisors regarding issues at store locations, product questions, scheduling, and for
23 communications regarding shift coverage requests. Defendant also requires Plaintiffs and
24 Aggrieved Employees to download multiple apps onto their personal cell phones including
25 GroupMe, the BestBuy Employee app, and a BestBuy Scanner app used to scan barcodes of
26 products for customers for product information (e.g., price, inventory or availability of that
27 particular item at other Best Buy locations). The GroupMe app is the app designated and utilized
28 by Defendant to enable group messaging with co-workers and supervisors, regarding store issues,

1 policies, promotional updates, and scheduling.

2 **FIRST CAUSE OF ACTION**

3 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§**
4 **226.7 and 512 (Meal Periods)**

5 **(On Behalf of the State of California and Aggrieved Employees, Including Plaintiffs**
6 **Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley)**

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

9 42. Plaintiffs and Aggrieved Employees are routinely denied timely, full, off-duty meal
10 periods because Defendant does not provide enough staff to relieve Plaintiffs and Aggrieved
11 Employees from their duties so that they can take compliant meal periods, Defendant interrupts
12 meal periods to demand Plaintiffs and Aggrieved Employees to help with customers in the store,
13 and Plaintiffs and Aggrieved Employees are required to be responsive to text messages and phone
14 calls received from customers and third-party delivery service providers during meal periods. As
15 such, Defendant does not provide Plaintiffs and Aggrieved Employees with duty-free,
16 uninterrupted, and timely thirty-minute meal periods during which Plaintiffs and Aggrieved
17 Employees should be completely relieved of any duty, by the end of the fifth hour of work.
18 Plaintiffs are informed, believe, and thereon allege that this policy and practice applies to all
19 Aggrieved Employees.

20 43. Defendant does not pay Plaintiffs and the Aggrieved Employees one hour of
21 premium pay for the missed or noncompliant meal breaks.

22 44. Labor Code §§ 226.7 and 512 and the applicable Wage Orders requires Defendant
23 to authorize and permit meal periods to their employees. Labor Code §§ 226.7 and 512 and the
24 applicable Wage Orders prohibit employers from employing an employee for more than five hours
25 without a meal period of not less than thirty minutes. Unless the employee is relieved of all duty
26 during the thirty-minute meal period, the employee is considered “on duty” and the meal period is
27 counted as time worked under the applicable Wage Orders.

28 45. Labor Code § 512(a) provides:

An employer shall not employ an employee for a work period of
more than five hours per day without providing the employee with

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

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

11 47. Despite these requirements, Defendant knowingly and willfully refused to perform
12 their obligation to authorize and permit and/or make available to Plaintiffs and aggrieved
13 employees the ability to take the off-duty meal periods to which they are entitled. Defendant has
14 also failed to pay Plaintiffs and aggrieved employees one hour of pay for each off-duty meal period
15 that they were denied. Defendant's conduct described herein violates Labor Code §§ 226.7 and
16 512.

17 48. Plaintiffs are informed, believe, and thereon allege that Defendant's conduct has
18 been substantially the same at all relevant times throughout the state of California.

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

26 50. Plaintiffs seek to recover civil penalties from Defendant for its violations of the
27 meal period requirements of Labor Code §§ 226.7 and 512 throughout California on behalf of
28 Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley; the State of California; and

1 other Aggrieved Employees pursuant to Labor Code § 2699(g)(i).

2 51. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for the
3 unlawful conduct alleged herein, on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail,
4 Porter, and Cooley; the State of California; and other Aggrieved Employees, for Defendant's
5 violations of Labor Code provisions including but not limited to Labor Code §§ 512 and 558(a).

6 52. On December 22, 2022, and as amended on January 12, 2023 and January 19, 2023,
7 Plaintiffs gave written notice to the Labor and Workforce Development Agency ("LWDA") and to
8 Defendant of their intent to pursue civil penalties for Defendant's violations of the meal period
9 requirements of Labor Code §§ 226.7, 512, and 558 pursuant to the PAGA. Over 65 days have
10 passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received a response
11 from the LWDA or Defendant. Accordingly, pursuant to Labor Code § 2699.3(2)(a), Plaintiffs have
12 satisfied the administrative prerequisites to commence a PAGA action.

13 53. Defendant is liable to Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and
14 Cooley; the State of California; and other Aggrieved Employees; the State of California; and
15 Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon.
16 Plaintiffs are also entitled to an award of attorneys' fees and costs as set forth below.

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

18 **SECOND CAUSE OF ACTION**

19 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 226.7**
20 **(Rest Breaks)**

21 **(On Behalf of the State of California and Aggrieved Employees, Including Plaintiffs**
22 **Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley)**

23 55. Plaintiffs re-allege and incorporates the foregoing paragraphs as though fully set
24 forth herein.

25 56. Plaintiffs and Aggrieved Employees are routinely denied timely, full, off-duty rest
26 breaks. As a matter of policy, Defendant requires Plaintiffs and Aggrieved Employees to remain
27 on duty during their scheduled shifts, including during rest breaks. Plaintiffs and Aggrieved
28 Employees' work was rigorous and often nonstop and staffing shortages often meant that Plaintiffs
and Aggrieved Employees were unable to take their breaks because there was no one available to

1 relieve them to take a rest break. If they receive a break at all, they are required to wait for someone
2 else to come in to cover them for their breaks, thus any such breaks are taken late, long after the
3 fourth hour of labor performed. When Plaintiffs and Aggrieved Employees are able to take their
4 rest breaks, they are frequently interrupted. As a result of Defendant's policies and practices,
5 Plaintiffs and Aggrieved Employees are routinely denied the opportunity to take legally-compliant
6 rest breaks. Plaintiffs are informed, believe, and thereon allege that this policy and practice applies
7 to all Aggrieved Employees.

8 57. Defendant does not pay Plaintiffs and Aggrieved Employees one hour of premium
9 pay for the missed or noncompliant rest breaks.

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

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

21 60. Despite these requirements, Defendant knowingly and willfully refuses to perform
22 their obligation to authorize and permit and/or make available to Plaintiffs and Aggrieved
23 Employees the ability to take the off-duty rest periods to which they are entitled. Defendant has
24 also failed to pay Plaintiffs and Aggrieved Employees one hour of pay for each off-duty rest period
25 that they were denied. Defendant's conduct described herein violates Labor Code § 226.7.

26 61. Plaintiffs are informed, believe, and thereon allege that Defendant's conduct has
27 been substantially the same at all relevant times throughout the state of California.

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

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

7 63. Plaintiffs seek to recover civil penalties from Defendant for their violations of the
8 rest break requirements of Labor Code § 226.7 throughout California on behalf of Plaintiffs Adler,
9 Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley; the State of California; and other Aggrieved
10 Employees pursuant to Labor Code § 2699(g)(i).

11 64. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for the
12 unlawful conduct alleged herein, on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail,
13 Porter, and Cooley; the State of California; and other Aggrieved Employees, for Defendant's
14 violations of Labor Code provisions including but not limited to Labor Code § 558(a).

15 65. On December 22, 2022, and as amended on January 12, 2023 and January 19, 2023,
16 Plaintiffs gave written notice to the Labor and Workforce Development Agency ("LWDA") and
17 to Defendant of their intent to pursue civil penalties for Defendant's violations of the meal period
18 and rest break requirements of Labor Code §§ 226.7 and 558(a) pursuant to the PAGA. Over 65
19 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received
20 a response from the LWDA or Defendant. Accordingly, pursuant to Labor Code § 2699.3(2)(a),
21 Plaintiffs have satisfied the administrative prerequisites to commence a PAGA action.

22 66. Defendant is liable to Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and
23 Cooley; the State of California; and other Aggrieved Employees; the State of California; and
24 Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon.
25 Plaintiffs are also entitled to an award of attorneys' fees and costs as set forth below.

26 67. Wherefore, Plaintiffs request relief as hereinafter provided.
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THIRD CAUSE OF ACTION

**Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 204, 1194, and 1198 (Failure to Pay for all Hours Worked)
(On Behalf of the State of California and Aggrieved Employees, Including Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley)**

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

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

70. 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."

71. 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...."

72. 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.

73. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

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

75. In violation of California law, Defendant knowingly and willfully refuses to provide Plaintiffs and Aggrieved Employees with compensation for all time worked. Defendant intentionally and willfully requires Plaintiffs and Aggrieved Employees to remain on duty during their scheduled shifts, including during rest breaks and while clocked out for meal periods.

Defendant also maintains a policy and/or practice of failing to properly compensate Plaintiffs and Aggrieved Employees for work related tasks performed while “off-the-clock,” either before/after their scheduled shifts or during their meal periods while clocked out. Defendant’s failure to compensate Plaintiffs and Aggrieved Employees for work performed while off-the-clock results in a failure to compensate Plaintiffs and Aggrieved Employees for all time spent working for Defendant’s benefit, including at minimum wage, overtime, and/or double time under California law.

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

77. 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.

78. Plaintiffs seek to recover civil penalties from Defendant for its failure to pay for all hours worked in violation of Labor Code §§ 204, 1194, and 1198 throughout California on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley; the State of California; and other Aggrieved Employees pursuant to Labor Code § 2699(f).

79. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for the unlawful conduct alleged herein, on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley; the State of California; and other Aggrieved Employees, for Defendant’s violations of Labor Code provisions including but not limited to Labor Code § 558(a).

80. On December 22, 2022, and as amended on January 12, 2023 and January 19, 2023, Plaintiffs gave written notice to the LWDA and to Defendant of his intent to pursue civil penalties for Defendant’s failure to pay for all hours worked in violation of Labor Code §§ 204,

558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or Defendant. Accordingly, pursuant to Labor Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative pre-requisites to commence a PAGA action.

81. Defendant is liable to Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley; the State of California; and other 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.

82. Wherefore, Plaintiffs request relief as hereinafter provided.

FOURTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 1182.12, 1194, and 1197 (Failure to Pay Minimum Wage)
(On Behalf of the State of California and Aggrieved Employees, Including Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley)

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

84. Defendant failed to compensate Plaintiffs and Aggrieved Employees with at least the minimum wage for all hours worked or spent in Defendant's control because it pays Plaintiffs and Aggrieved Employees at nominal rates at or just above the required California minimum, and when the required premium payments for missed breaks, wages for off-the-clock work, and overtime wages are factored in, the actual rate of pay often drops below the required California minimum wage rate.

85. During the applicable statutory period, Labor Code §§ 1182.12, and 1197, and the Minimum Wage Order were in full force and effect and required that employees receive the minimum wage for all hours worked at the rate of twelve dollars (\$12.00) per hour commencing January 1, 2019; at the rate of thirteen dollars (\$13.00) per hour commencing January 1, 2020; at the rate of fourteen dollars (\$14.00) per hour commencing January 1, 2021; at the rate of fifteen dollars (\$15.00) per hour commencing January 1, 2022; and at the rate of fifteen dollars and fifty cents (\$15.50) per hour commencing January 1, 2023.

86. IWC Wage Order 4-2001 subsection 2(G) defines hours worked as "the time during

1 which an employee is subject to the control of an employer, and includes all the time the employee
2 is suffered or permitted to work, whether or not required to do so.”

3 87. Labor Code § 1194(a) provides as follows:

4 Notwithstanding any agreement to work for a lesser wage, any
5 employee receiving less than the legal minimum wage or the legal
6 overtime compensation applicable to the employee is entitled to
7 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.

8 88. Labor Code § 1198 makes it unlawful for employers to employ employees under
9 conditions that violate the Wage Order.

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

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

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

21 92. By failing to maintain adequate time records as required by Labor Code §1174(d)
22 and IWC Wage Order 4-2001(7), Defendant has made it difficult to calculate the minimum wage
23 compensation due to Plaintiffs and Aggrieved Employees.

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

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

3 94. Plaintiffs seek to recover civil penalties from Defendant for their failure to pay
4 minimum wages in violation of Labor Code §§ 1182.12, 1194, and 1197 throughout California on
5 behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley; the State of
6 California; and other Aggrieved Employees pursuant to Labor Code § 2699(f).

7 95. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for the
8 unlawful conduct alleged herein, on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail,
9 Porter, and Cooley; the State of California; and other Aggrieved Employees, for Defendant's
10 violations of Labor Code provisions including but not limited to Labor Code § 558(a).

11 96. On December 22, 2022, and as amended on January 12, 2023 and January 19, 2023,
12 Plaintiffs gave written notice to the LWDA and to Defendant of their intent to pursue civil penalties
13 for Defendant's failure to pay minimum wages in violation of §§ 558(a) and 1194 pursuant to the
14 PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs
15 have not received a response from the LWDA or Defendant. Accordingly, pursuant to Labor Code
16 § 2699.3(2)(a), Plaintiffs have satisfied the administrative pre-requisites to commence a PAGA
17 action.

18 97. Defendant are liable to Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter,
19 and Cooley; the State of California; and other Aggrieved Employees for the civil penalties set forth
20 in this Complaint, with interest thereon. Plaintiffs are also entitled to an award of attorneys' fees
21 and costs as set forth below.

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

23 **FIFTH CAUSE OF ACTION**
24 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§**
25 **510**
26 **and 1194 (Failure to Pay Overtime Wages)**
27 **(On Behalf of the State of California and Aggrieved Employees, Including Plaintiffs Adler,**
28 **Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley)**

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

1 100. Defendant does not properly compensate Plaintiffs and Aggrieved Employees with
2 appropriate overtime premiums, including time and a half premiums based on their regular rate of
3 pay, as required by California law.

4 101. Labor Code § 510(a) provides as follows:

5 Eight hours of labor constitutes a day's work. Any work in excess
6 of eight hours in one workday and any work in excess of 40 hours
7 in any one workweek and the first eight hours worked on the seventh
8 day of work in any one workweek shall be compensated at the rate
9 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.

10 102. IWC Wage Order 4-2001(3)(A)(1), & (3) states that employees:

11 ...shall not be employed more than eight (8) hours in any workday
12 or more than 40 hours in any workweek unless the employee
13 receives one and one-half (1 ½) times such employee's regular rate
14 of pay for all hours worked over 40 hours in the workweek. Eight
15 (8) hours of labor constitutes a day's work. Employment beyond
16 eight (8) hours in any workday or more than six (6) days in any
17 workweek is permissible provided the employee is compensated for
18 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....

19 103. Labor Code § 1194(a) provides as follows:

20 Notwithstanding any agreement to work for a lesser wage, any
21 employee receiving less than the legal minimum wage or the legal
22 overtime compensation applicable to the employee is entitled to
23 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.

24 104. Labor Code § 200 defines wages as "all amounts of labor performed by employees
25 of every description, whether the amount is fixed or ascertained by the standard of time, task,
26 piece, commission basis or other method of calculation." All such wages are subject to California's
27 overtime requirements, including those set forth above.

28 105. Defendant's policies and practices of requiring aggrieved employees to perform

1 work off-the-clock are unlawful and results in overtime violations. As a result of these unlawful
2 policies and practices, Plaintiffs and Aggrieved Employees have worked overtime hours for
3 Defendant without being paid overtime premiums in violation of the Labor Code, the applicable
4 IWC Wage Orders, and other applicable law.

5 106. Defendant knowingly and willfully refuse to perform their obligations to
6 compensate Plaintiffs and Aggrieved Employees for all premium wages for overtime work.

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

14 108. Plaintiffs seek to recover civil penalties from Defendant for its failure to pay
15 overtime wages in violation of Labor Code §§ 510 and 1194 and the applicable wage orders
16 throughout California on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and
17 Cooley; the State of California; and other Aggrieved Employees pursuant to Labor Code § 2699(f).

18 109. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for the
19 unlawful conduct alleged herein, on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail,
20 Porter, and Cooley; the State of California; and other Aggrieved Employees, for Defendant's
21 violations of Labor Code provisions including but not limited to Labor Code §§ 510 and 558(a).

22 110. On December 22, 2022, and as amended on January 12, 2023 and January 19, 2023,
23 Plaintiffs gave written notice to the LWDA and to Defendant of their intent to pursue civil penalties
24 for Defendant's failure to pay overtime wages in violation of Labor Code §§ 510, 558(a), and 1194
25 pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice,
26 yet, Plaintiffs have not received a response from the LWDA or Defendant. Accordingly, pursuant
27 to Labor Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative pre-requisites to
28 commence a PAGA action.

111. Defendant is liable to Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley; the State of California; and other 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.

112. Wherefore, Plaintiffs request relief as hereinafter provided.

SIXTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code § 226
(Accurate, Itemized Wage Statements)
(On Behalf of the State of California and Aggrieved Employees, Including Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley)

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

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

115. Labor Code § 226(a) provides:

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

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

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

5 117. Labor Code § 226(e)(1) provides:

6 An employee suffering injury as a result of a knowing and
7 intentional failure by an employer to comply with subdivision (a) is
8 entitled to recover the greater of all actual damages or fifty dollars
9 (\$50) for the initial pay period in which a violation occurs and one
10 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.

11 118. Due to Defendant's failure to pay one hour of premium pay to Plaintiffs and the
12 Aggrieved Employees for each missed or noncompliant meal or rest period, as well as wages for
13 all work performed while off-the-clock work and resulting overtime violations, Defendant
14 provides inaccurate wage statements to Aggrieved Employees that do not reflect the actual gross
15 wages earned, actual net wages earned, or actual hours worked. Accordingly, Defendant knowingly
16 and willfully fails to provide timely, accurate itemized wage statements to Plaintiffs and the
17 Aggrieved Employees in accordance with Labor Code § 226 and the IWC Wage Order.

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

20 120. Labor Code § 2699(a) permits an aggrieved employee to recover any civil penalty
21 to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of
22 themselves and other current or former employees pursuant to the procedures set forth in Labor
23 Code § 2699.3. Labor Code § 2699(a) provides:

24 Notwithstanding any other provision of law, any provision of this
25 code that provides for a civil penalty to be assessed and collected by
26 the Labor and Workforce Development Agency or any of its
27 departments, divisions, commissions, boards, agencies or
28 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.

121. Pursuant to Labor Code § 2699(a), Plaintiffs seek to recover civil penalties on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley; the State of California; and other Aggrieved Employees, for each failure by Defendant, as 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(e). Plaintiffs seek such penalties as an alternative to the penalties available under Labor Code § 226(e), as prayed for herein.

122. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for the unlawful conduct alleged herein, on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley; the State of California; and other Aggrieved Employees, for Defendant's violations of Labor Code provisions including but not limited to Labor Code §§ 226.3 and 558(a).

123. On December 22, 2022, and as amended on January 12, 2023 and January 19, 2023, Plaintiffs gave written notice to the LWDA and to Defendant of their intent to pursue civil penalties for Defendant's failure to provide accurate, itemized wage statements in violation of Labor Code §§ 226 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or Defendant. Accordingly, pursuant to Labor Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative pre-requisites to commence a PAGA action.

124. Defendant is liable to Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley; the State of California; and other 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.

125. Wherefore, Plaintiffs request relief as hereinafter provided.

SEVENTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code §§
201-203 (Waiting Time Penalties)
(On Behalf of the State of California and Aggrieved Employees, Including Plaintiffs Adler,
Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley)

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

127. Labor Code § 201 provides:

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

128. Labor Code § 202 provides:

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

129. Labor Code § 203 provides, in relevant part:

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

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

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

132. Plaintiffs are informed, believe, and thereon allege that Defendant's conduct has been substantially the same at all relevant times throughout the state of California.

133. Labor Code § 2699(a) permits an aggrieved employee to recover any civil penalty to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of themselves and other current or former employees pursuant to the procedures set forth in Labor Code § 2699.3. Labor Code § 2699(a) provides:

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

9 134. Defendant's willful failure to pay Plaintiffs and Aggrieved Employees the wages
10 due and owed to them constitutes a violation of Labor Code §§ 201-203. In addition, § 203
11 provides that an employee's wages will continue as a penalty up to thirty days from the time the
12 wages were due.

13 135. Plaintiffs seek civil penalties on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez,
14 Sohail, Porter, and Cooley; the State of California; and other Aggrieved Employees, pursuant to
15 Labor Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages
16 owed to Plaintiffs and Aggrieved Employees in compliance with Labor Code §§ 201-202 in the
17 amounts established by Labor Code § 203. Plaintiffs seek such penalties as an alternative to the
18 penalties available under Labor Code § 203, as prayed for herein.

19 136. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for the
20 unlawful conduct alleged herein, on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail,
21 Porter, and Cooley; the State of California; and other Aggrieved Employees, for Defendant's
22 violations of Labor Code provisions including but not limited to Labor Code §§ 256 and 558(a).

23 137. On December 22, 2022, and as amended on January 12, 2023 and January 19, 2023,
24 Plaintiffs gave written notice to the LWDA and to Defendant of their intent to pursue civil penalties
25 for Defendant's failure to pay wages when due after the end employment with Defendant in
26 violation of Labor Code §§ 201-203 and 558(a) pursuant to the PAGA. Over 65 days have passed
27 since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received a response from
28 the LWDA or Defendant. Accordingly, pursuant to Labor Code § 2699.3(2)(a), Plaintiffs have
satisfied the administrative pre-requisites to commence a PAGA action.

138. Defendant is liable to Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and
Cooley; the State of California; and other Aggrieved Employees for the civil penalties set forth in

1 this Complaint, with interest thereon. Plaintiffs are also entitled to an award of attorneys' fees and
2 costs as set forth below.

3 139. Wherefore, Plaintiffs request relief as hereinafter provided.

4 **SEVENTH CAUSE OF ACTION**
5 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §**
6 **2802 (Necessary Business Expenditures)**
7 **(On Behalf of the State of California and Aggrieved Employees, Including Plaintiffs**
8 **Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and Cooley)**

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

11 141. California Labor Code § 221 provides that it shall be unlawful for any employer to
12 collect or receive any part of wages theretofore paid by said employer to said employee.

13 142. California Labor Code § 2802 provides that an employer must reimburse an
14 employee for necessary expenditures and losses incurred by an employee in the direct consequence
15 of the discharge of his or her duties.

16 143. Defendant requires Plaintiffs and Aggrieved Employees to incur numerous work-
17 related expenses, including but not limited to tools and supplies like their personal cell phones and
18 their personal internet services to perform their work duties. However, Defendant does not
19 compensate Plaintiffs and Aggrieved Employees for the expenses required to perform their work-
20 related tasks.

21 144. Because of Defendant's failure to comply with the provisions of the applicable
22 Wage Order and California Labor Code §§ 221 and 2802, Plaintiffs and Aggrieved Employees
23 suffered damages. Plaintiffs and Aggrieved Employees seek reimbursement for the necessary
24 expenditures they incurred in direct consequence of the discharge of their duties in an amount
25 according to proof at time of trial, with interest thereon, costs, applicable civil penalties and
26 attorneys' fees pursuant to California Labor Code § 2802 and the applicable Wage Order.

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

146. Labor Code § 2699(a) permits an aggrieved employee to recover any civil penalty
to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of

1 themselves and other current or former employees pursuant to the procedures set forth in Labor
2 Code § 2699.3.

3 147. Plaintiffs seek to recover civil penalties from Defendant pursuant to Labor Code §
4 2802 for each failure by Defendant, alleged above, to reimburse and indemnify Plaintiffs and
5 Aggrieved Employees for all necessary expenditures and losses by Aggrieved Employees in direct
6 consequence of the discharge of their duties.

7 148. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for the
8 unlawful conduct alleged herein, on behalf of Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail,
9 Porter, and Cooley; the State of California; and other Aggrieved Employees, for Defendant's
10 violations of Labor Code provisions including but not limited to Labor Code §§ 225.5 and 558(a).

11 149. On December 22, 2022, and as amended on January 12, 2023 and January 19, 2023,
12 Plaintiffs gave written notice to the LWDA and to July 1, 2019 of their intent to pursue civil
13 penalties for Defendant's failure to reimburse aggrieved employees for necessary business
14 expenses incurred in direct consequence of the discharge of their duties for Defendant in violation
15 of Labor Code §§ 558(a) and 2802 pursuant to the PAGA. Over 65 days have passed since Plaintiffs
16 provided the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or
17 Defendant. Accordingly, pursuant to Labor Code § 2699.3(2)(a), Plaintiffs have satisfied the
18 administrative pre-requisites to commence a PAGA action.

19 150. Defendant is liable to Plaintiffs Adler, Rodriguez, Poe, Mendez, Sohail, Porter, and
20 Cooley; the State of California; and other Aggrieved Employees for the civil penalties set forth in
21 this Complaint, with interest thereon. Plaintiffs are also entitled to an award of attorneys' fees and
22 costs as set forth below.

23 151. Wherefore, Plaintiffs request relief as hereinafter provided.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs, on behalf of the State of California and Aggrieved Employees,
26 requests the following relief:

- 27 1. For an order awarding civil penalties to the full extent provided for by the PAGA;
28 2. 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 any other applicable law;

3. For all costs of suit;
4. For interest on any penalties awarded, as provided by applicable law; and
5. For such other and further relief as this Court deems just and proper.

Dated: March 27, 2023

Respectfully Submitted,



Carolyn H. Cottrell
Ori Edelstein
Eugene Zinovyev
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

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

1 **DEMAND FOR JURY TRIAL**

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

4
5 Dated: March 27, 2023

Respectfully Submitted,

6
7 

8 Carolyn H. Cottrell

Ori Edelstein

Eugene Zinovyev

9 **SCHNEIDER WALLACE**

COTTRELL KONECKY LLP

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