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County of Alameda

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

LONNAY TINSLEY, on behalf of the State of
California, and Aggrieved Employees,

Plaintiff,

v.

RESTORATION HARDWARE, INC.; RH
WHICH WILL DO BUSINESS IN CALIFORNIA
AS RESTORATION HARDWARE HOLDINGS,
INC.; and DOES 1-100, inclusive,

Defendants.

Case No.: 23CV028375

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

DEMAND FOR JURY TRIAL

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

3 **INTRODUCTION**

4 1. Plaintiff brings this Labor Code Private Attorneys General Act (“PAGA”) enforcement
5 action against Defendant Restoration Hardware, Inc. (“RHI”) and RH, which will do business in
6 California as Restoration Hardware Holdings, Inc., (“RH”) (collectively “Defendants”) on behalf of
7 the State of California to collect statutory penalties as a result of Defendants’ systematic violations of
8 California labor law with respect to Defendants’ current and former non-exempt, hourly workers in
9 California (the “Aggrieved Employees”).

10 2. Plaintiff and the Aggrieved Employees are current and former non-exempt, hourly
11 workers who have worked for Defendants in California throughout the relevant time period.

12 3. Upon information and belief, RHI provides home furnishing and hardware products
13 through galleries, outlets, and restaurants across the United States. RHI owns and operates galleries,
14 restaurants, and outlets throughout the State of California.

15 4. Upon information and belief, RH also provides home furnishing and hardware products
16 through galleries, outlets, and restaurants across the United States. RH owns and operates galleries,
17 restaurants, and outlets throughout the State of California.

18 5. Plaintiff challenges Defendants’ policies and practices of: (1) failing to pay Plaintiff and
19 Aggrieved Employees for all hours worked at minimum wage; (2) failing to pay Plaintiff and
20 Aggrieved Employees overtime wages; (3) failing to provide or make available to Plaintiff and
21 Aggrieved Employees the meal periods to which they are entitled by law, and failing to pay premium
22 compensation payment for non-compliant meal breaks; (4) failing to authorize and permit rest periods,
23 and failing to pay premium compensation payment for non-compliant rest periods (5) failing to
24 provide Plaintiff and Aggrieved Employees with accurate itemized wage statements; (6) failing to
25 timely pay all wages due upon separation from employment; and (7) and engaging in unfair business
26 practices.

27 6. Defendants maintain a policy and/or practice of failing to properly compensate Plaintiff
28 and the Aggrieved Employees for work related tasks performed while “off-the-clock,” giving rise to

1 minimum wage and overtime violations. This includes, but is not limited to, requiring Plaintiff and
2 the Aggrieved Employees to work shifts longer than eight hours while adjusting their time to reflect
3 only eight hours worked to avoid paying Plaintiff and the Aggrieved Employees overtime pay. This
4 time spent working over eight hours in a day goes unrecorded and therefore uncompensated, even
5 though it should be compensated at overtime rates under California law

6 7. Upon information and belief, Defendants, across California, institutes a similar policy
7 of not compensating employees for time worked during shifts longer than eight hours in a day or over
8 forty hours in a week that results in hundreds of Aggrieved Employees performing services for the
9 benefit of Defendants while off-the-clock.

10 8. As alleged herein, on information and belief, Defendants require Plaintiff and the
11 Aggrieved Employees to clock out for thirty-minute meal periods that they continue to work through.
12 This policy results in Plaintiff and the Aggrieved Employees working up to 30-minutes of unpaid,
13 off-the-clock work every shift, in addition to the other off-the-clock work performed. Defendants'
14 policy causes Plaintiff and the Aggrieved Employees to work hours every week for the benefit of
15 Defendants without any compensation.

16 9. Throughout the relevant time period, Plaintiff and the Aggrieved Employees have been
17 denied proper payment for all hours worked, including overtime and minimum wages, for the time
18 spent working off-the-clock. For instance, Plaintiff and the Aggrieved Employees do not receive
19 overtime compensation for time spent working off-the-clock after eight hours in a day or for time
20 spent working during non-compliant meal periods when the hours worked are in excess of eight (8)
21 hours per day and forty (40) hours per week. Defendants fail to pay for any of this work time, including
22 the required overtime premiums, in violation of the California Labor Code.

23 10. As a result of these policies and/or practices, Plaintiff and the Aggrieved Employees are
24 denied minimum wage and overtime compensation, which they are lawfully owed pursuant to
25 California Labor Code § 1182.12. California's hourly minimum wage for employers with twenty-six
26 (26) or more employees is currently \$15.50 effective January 1, 2023; the hourly minimum wage
27 applicable to Defendants was \$15.00 from January 1, 2022 to December 31, 2022, and \$14.00 from
28 January 1, 2021 to December 31, 2021.

1 11. Defendants regularly fail to provide Plaintiff and the Aggrieved Employees with timely,
2 legally compliant meal and rest breaks, yet Defendants do not provide Plaintiff and the Aggrieved
3 Employees with premium pay for missed, late and/or interrupted meal and rest breaks. Plaintiff and
4 the Aggrieved Employees are routinely denied compliant meal breaks for multiple reasons.
5 Defendants do not provide or make available full, timely, and uninterrupted meal periods to Plaintiff
6 and the Aggrieved Employees. Plaintiff and the Aggrieved Employees are often too busy working to
7 take bona fide meal breaks. Further, Defendants are often understaffed and therefore Plaintiff and the
8 Aggrieved Employees are required to remain on-call performing tasks like sanitizing and cleaning
9 offices resulting in interrupted meal breaks.

10 12. When Plaintiff and the Aggrieved Employees do attempt a meal break, such is untimely,
11 *i.e.*, does not occur before the fifth hour of work, and/or interrupted. As a result, Plaintiff and the
12 Aggrieved Employees are not provided duty-free, uninterrupted, and timely thirty-minute meal
13 periods during which they should be completely relieved of any duty, by the end of the fifth hour of
14 work.

15 13. Further, Plaintiff and the Aggrieved Employees are routinely denied compliant rest
16 breaks. Much like the reasons that Plaintiff and the Aggrieved Employees are denied compliant meal
17 breaks, Plaintiff and the Aggrieved Employees do not receive compliant rest breaks because
18 Defendants do not authorize or permit full, timely, and uninterrupted rest breaks to Plaintiff and the
19 Aggrieved Employees, Plaintiff and the Aggrieved Employees are often too busy with work during
20 the day to have time to take bona fide rest breaks, and Defendants are understaffed and therefore
21 Plaintiff and the Aggrieved Employees are required to remain on-call performing tasks like sanitizing
22 and cleaning offices resulting in interrupted rest breaks.

23 14. The wage statements provided by Defendant do not accurately set forth all of the
24 information required by California law. The wage statements fail to accurately report the hours
25 worked and the amount of wages and overtime pay to which Plaintiff and Aggrieved Employees are
26 entitled. As a result, Plaintiff and Aggrieved Employees cannot readily determine from the wage
27 statements alone the compensation owed to them.

28 15. As a result of the above violations, Defendants have also failed to pay Plaintiff and

1 Aggrieved Employees all wages due during employment and following their separation from
2 employment.

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

6 **PARTIES**

7 17. Plaintiff and the Aggrieved Employees are current and former non-exempt, hourly
8 employees who worked for Defendants during all relevant times throughout California. Defendants
9 employ and/or employed Plaintiff and the Aggrieved Employees.

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

12 19. Plaintiff has been employed by Defendants as a non-exempt facilities porter from April
13 2022 to the present. Plaintiff works for Defendants in Corte Madera, California.

14 20. Plaintiff is informed, believes, and thereon alleges that RHI is a Delaware corporation
15 headquartered in Corte Madera, California. RHI is registered to do business in California, does
16 business in California and employs and/or employed hourly, non-exempt employees, including
17 Plaintiff and the Aggrieved Employees in California. RHI may be served with process by serving its
18 registered agent, Corporation Service Company which will do Business in California as CSC –
19 Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California,
20 95833.

21 21. Plaintiff is informed, believes, and thereon alleges that RH is a Delaware corporation
22 headquartered in Corte Madera, California. RH is registered to do business in California, does
23 business in California and employs and/or employed hourly, non-exempt employees, including
24 Plaintiff and the Aggrieved Employees in California. RH may be served with process by serving its
25 registered agent, Corporation Service Company which will do Business in California as CSC –
26 Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California,
27 95833.

28 22. Plaintiff is informed, believes, and thereon alleges that Defendants jointly employ

1 and/or employed the Aggrieved Employees, among other hourly employees, in this county and
2 throughout the state of California.

3 23. Defendants employ and/or employed Plaintiff and the Aggrieved Employees because
4 Defendants, directly or indirectly, control the employment terms, pay practices, timekeeping
5 practices, and daily work of Plaintiff and the Aggrieved Employees.

6 24. Plaintiff is informed, believes, and thereon alleges that Defendants jointly exercise
7 control over Plaintiff and the Aggrieved Employees with respect to their employment.

8 25. Plaintiff is informed, believes, and thereon alleges that each and every one of the acts
9 and omissions alleged herein were performed by, and/or attributable to, Defendants, each acting as
10 agents and/or employees, and/or under the direction and control of each of the other, and that said
11 acts and failures to act were within the course and scope of said agency, employment and/or direction
12 and control.

13 26. The true names and capacities, whether individual, corporate, associate, or otherwise,
14 of Does 1-100, inclusive, are unknown to Plaintiff, who therefore sues the Doe Defendants by
15 fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these fictitiously
16 named Defendants is responsible in some manner for the occurrences and violations as herein alleged.
17 Plaintiff will amend this Complaint to show their true names and capacities when they have been
18 ascertained. Defendants and Does 1-100 are jointly and severally liable for the civil penalties asserted.

19 27. At all relevant times, Defendants have done business under the laws of California, have
20 had places of business in California, including in this judicial district, and have employed the
21 Aggrieved Employees in this judicial district. Defendants are “persons” as defined in Labor Code
22 § 18 and Business and Professions Code § 17201. Defendants are also “employers” as that term is
23 used in the Labor Code and IWC Wage Orders.

24 **JURISDICTION AND VENUE**

25 28. Venue is proper in this County pursuant to Code of Civil Procedure §§ 393 and/or
26 395(a). Defendants conduct business and employ Aggrieved Employees in this County and within
27 the state of California.

28 29. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.

1 The Court also has jurisdiction over Defendants because they are authorized to do business in the
2 State of California, are authorized to do business and employ workers in the State of California, and
3 are registered with the California Secretary of State.

4 **FACTUAL ALLEGATIONS**

5 30. Defendants are part of the public housekeeping industry and the mercantile industry.
6 Defendants provide home furnishing and hardware products through galleries, outlets, and restaurants
7 across the United States. RHI rebranded its name to RH in 2012. RHI and RH have an active status
8 with the California Secretary of State. Plaintiff is informed, believes, and thereon alleges that
9 Defendants employed hundreds of hourly, non-exempt workers similarly situated to Plaintiff in
10 California.

11 31. Plaintiff has worked for Defendants as a facilities porter in Corte Madera, California
12 from April 2022 to the present. Plaintiff's primary duties include but are not limited to cleaning
13 offices, vacuuming, sanitizing, and taking out trash. Plaintiff is classified as an hourly, non-exempt
14 employee and was paid an hourly rate of \$23.00.

15 32. Like Plaintiff, the Aggrieved Employees are current and former non-exempt employees
16 of Defendants in California. Plaintiff is informed, believes, and thereon alleges that the Aggrieved
17 Employees perform work similar to Plaintiff, in that they support the operations of galleries, outlets,
18 and restaurants. Defendants pay the Aggrieved Employees, including Plaintiff, on an hourly rate basis.

19 33. Plaintiff is informed, believes, and thereon alleges that the policies and practices of
20 Defendants have at all relevant times been similar for Plaintiff and the Aggrieved Employees,
21 regardless of particular job assignment or facility location in California.

22 34. Plaintiff is informed, believes, and thereon alleges that Aggrieved Employees are
23 required to follow and abide by common work, time, and pay policies and procedures in the
24 performance of their jobs and duties.

25 35. Plaintiff is informed, believes, and thereon alleges that at the end of each pay period, the
26 Aggrieved Employees receive wages from Defendants that are determined by common systems and
27 methods that Defendants select and control.

28 36. Plaintiff is informed, believes, and thereon alleges that Defendants maintain a policy

1 and/or practice of failing to properly compensate Plaintiff and the Aggrieved Employees for work
2 related tasks performed while “off-the-clock,” giving rise to minimum wage and overtime violations.
3 This includes, but is not limited to, requiring Plaintiff and the Aggrieved Employees to work shifts
4 longer than eight hours per day while adjusting their time to reflect only eight hours’ worked to avoid
5 paying Plaintiff and the Aggrieved Employees overtime. This time spent working over eight hours
6 goes unrecorded and therefore uncompensated, even though it should be compensated at overtime
7 rates under California law.

8 37. Upon information and belief, Defendants, across California, institutes a similar policy
9 of not compensating employees for time worked during shifts longer than eight hours that results in
10 hundreds of Aggrieved Employees performing services for the benefit of Defendants while off-the-
11 clock.

12 38. Plaintiff is informed, believes, and thereon alleges that Defendants require Plaintiff and
13 the Aggrieved Employees to clock out for thirty-minute meal periods that they continue to work
14 through. This policy results in Plaintiff and the Aggrieved Employees working up to 30-minutes of
15 unpaid, off-the-clock work every shift. Defendants’ policy causes Plaintiff and the Aggrieved
16 Employees to work hours every week for the benefit of Defendants without any compensation.

17 39. Throughout the relevant time period, Plaintiff and the Aggrieved Employees have been
18 denied proper payment for all hours worked, including overtime and minimum wages, for the time
19 spent working off-the-clock. For instance, Plaintiff and the Aggrieved Employees do not receive
20 overtime compensation for time spent working off-the-clock after eight hours or for time spent
21 working during noncompliant meal periods when the hours worked are in excess of eight (8) hours
22 per day and forty (40) hours per week. However, Defendants fail to pay for any of this work time,
23 including the required overtime premiums, in violation of the California Labor Code.

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

26 41. As a result of these policies and/or practices, Plaintiff and the Aggrieved Employees are
27 denied minimum wage and overtime compensation, which they are lawfully owed pursuant to
28 California Labor Code § 1182.12 California’s hourly minimum wage for employers with twenty-six

1 (26) or more employees is currently \$15.50 effective January 1, 2023; the hourly minimum wage
2 applicable to Defendants was \$15.00 from January 1, 2022 to December 31, 2022,

3 42. Plaintiff is informed, believes, and thereon alleges that Defendants utilize and apply
4 these time adjustments and unpaid on-duty meal break protocols, policies, and practices across all
5 Defendants' locations throughout California.

6 43. Plaintiff is informed, believes, and thereon alleges that Defendants utilize the same or
7 substantially similar timekeeping mechanisms throughout all its locations in California.

8 44. In addition to the above, Plaintiff is informed, believes, and thereon alleges that
9 Defendants regularly fail to provide Plaintiff and Aggrieved Employees with compliant meal and
10 rest breaks. Defendants' policies, practices, and procedures require Plaintiff and Aggrieved
11 Employees to routinely skip their meal and rest breaks, yet do not provide them with requisite
12 premium payments for missed meal and rest breaks.

13 45. Plaintiff is informed, believes, and thereon alleges that Plaintiff and Aggrieved
14 Employees are routinely denied legally compliant meal breaks for at least three reasons: (i)
15 Defendants do not provide or make available timely meal breaks to Plaintiff and Aggrieved
16 Employees; (ii) Plaintiff and Aggrieved Employees are often too busy with work during the day to
17 have time to take bona fide meal breaks; and (iii) Defendants are understaffed and therefore Plaintiff
18 and Aggrieved Employees are required to remain on-call performing tasks like cleaning the
19 bathroom, vacuuming, taking out trash, sanitizing, and cleaning the office space resulting in
20 interrupted meal breaks.

21 46. Plaintiff is informed, believes, and thereon alleges that when Plaintiff and Aggrieved
22 Employees do attempt to take a meal break, such meal breaks are untimely and/or shortened. As a
23 result, Plaintiff and Aggrieved Employees are not provided duty-free, uninterrupted, and timely
24 thirty-minute meal periods during which they should be completely relieved of any duty.

25 47. Plaintiff is informed, believes, and thereon alleges that Defendants utilize and apply
26 these meal break policies and practices across all Defendants' facilities throughout California.
27 Plaintiff and Aggrieved Employees are routinely denied legally authorized rest breaks for at least
28 two reasons: (i) Defendants do not provide or make available timely meal breaks to Plaintiff and

1 Aggrieved Employees and (ii) Plaintiff and Aggrieved Employees are often too busy with work
2 during the day to have time to take bona fide rest breaks.

3 48. Plaintiff is informed, believes, and thereon alleges that when Plaintiff and Aggrieved
4 Employees do attempt to take a rest break, such rest breaks are untimely and/or shortened. As a result,
5 Plaintiff and Aggrieved Employees are not provided duty-free, uninterrupted, and timely ten-minute
6 rest breaks during which they should be completely relieved of any duty.

7 49. Plaintiff is informed, believes, and thereon alleges that Defendants utilize and apply
8 these rest break policies and practices across all Defendants' facilities throughout California.

9 50. Plaintiff is informed, believes, and thereon alleges that Defendants' common course of
10 wage-and-hour abuse also includes routinely failing to maintain accurate records of the hours worked
11 by Plaintiff and Aggrieved Employees.

12 51. Plaintiff is informed, believes, and thereon alleges that Defendants do not provide
13 Plaintiff and the Aggrieved Employees with accurate wage statements as required by California law.
14 Plaintiff and the Aggrieved Employees receive wage statements that do not reflect all hours worked,
15 and thus Defendants have failed to record hours that Plaintiff and the Aggrieved Employees worked
16 off-the-clock, as well as the work performed during non-compliant meal periods. The wage statements
17 do not include the correct amount of minimum wages and overtime pay to which Plaintiff and
18 Aggrieved Employees are entitled or the premium pay for missed meal and rest periods. As a result,
19 Plaintiff and Aggrieved Employees cannot readily determine from the wage statements alone the
20 compensation owed to them.

21 52. Plaintiff is informed, believes, and thereon alleges that Defendants do not provide
22 Plaintiff and the Aggrieved Employees with full payment of all wages owed upon separation from
23 employment. At the time their employment ends, Plaintiff and the Aggrieved Employees are owed
24 wages and premium pay for all time worked, overtime, and missed meal and rest breaks; yet
25 Defendants have failed to provide Plaintiff and the Aggrieved Employees with such payments. As a
26 result, and pursuant to the California Labor Code, Defendants are subject to waiting time penalties.

27 53. Plaintiff is informed, believes, and thereon alleges that Defendants are well aware that
28 their policies and practices deprive Plaintiff and the Aggrieved Employees of compensation for all

1 hours worked, including overtime compensation and minimum wages, and that Plaintiff and
2 Aggrieved Employees do not receive legally compliant meal and rest periods. Thus, Defendants'
3 denial of wages, compliant meal and rest periods, and premium payments is and/or was deliberate and
4 willful.

5 54. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct
6 has been widespread, repeated, and consistent as to the Aggrieved Employees and throughout
7 Defendants' locations in California.

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

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

12 **FIRST CAUSE OF ACTION**
13 **Penalties Pursuant to Labor Code § 2699(a)**
14 **(On Behalf of the State of California and Aggrieved Employees)**

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

17 58. Labor Code § 2699(a) provides:

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

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

28 60. Labor Code § 203 provides, in relevant part:

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

1 61. Labor Code § 256 provides: “The Labor Commissioner shall impose a civil penalty in
2 an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

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

7 63. Labor Code § 226(a) provides:

8 “Every employer shall, semimonthly or at the time of each payment of
9 wages, furnish each of his or her employees, either as a detachable part
10 of the check, draft, or voucher paying the employee's wages, or
11 separately when wages are paid by personal check or cash, an accurate
12 itemized statement in writing showing (1) gross wages earned, (2) total
13 hours worked by the employee, except for any employee whose
14 compensation is solely based on a salary and who is exempt from
15 payment of overtime under subdivision (a) of Section 515 or any
16 applicable order of the Industrial Welfare Commission, (3) the number
17 of piece-rate units earned and any applicable piece rate if the employee
18 is paid on a piece-rate basis, (4) all deductions, provided that all
19 deductions made on written orders of the employee may be aggregated
20 and shown as one item, (5) net wages earned, (6) the inclusive dates of
21 the period for which the employee is paid, (7) the name of the employee
22 and his or her social security number, (8) the name and address of the
23 legal entity that is the employer, and (9) all applicable hourly rates in
24 effect during the pay period and the corresponding number of hours
25 worked at each hourly rate by the employee. The deductions made from
26 payments of wages shall be recorded in ink or other indelible form,
27 properly dated, showing the month, day, and year, and a copy of the
28 statement or a record of the deductions shall be kept on file by the
employer for at least four years at the place of employment or at a central
location within the State of California.”

21 64. Labor Code § 226.3 provides:

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

65. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by

1 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and the Aggrieved Employees
2 in compliance with Labor Code §§ 201-202.

3 66. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
4 Defendants, alleged above, to provide Plaintiff and the Aggrieved Employees an accurate, itemized
5 wage statement in compliance with Labor Code § 226(a).

6 67. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each violation
7 by Defendants of Labor Code § 225.5, 226.3, 256, and any other violation alleged herein that carries
8 penalties under Labor Code § 2699(a).

9 68. Pursuant to Labor Code § 2699.3(a)(1) and (2), on December 5, 2022, Plaintiff
10 provided the Labor and Workforce Development Agency (“LWDA”) with notice of her intention to
11 file this claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff
12 satisfied the administrative prerequisites to commence this civil action in compliance with §
13 2699.3(a).

14 69. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
15 Employees, and herself as set forth in Labor Code § 2699.

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

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

SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(On Behalf of the State of California and Aggrieved Employees)

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

22 73. Labor Code § 2699(f) provides:

23 “For all provisions of this code except those for which a civil penalty is
24 specifically provided, there is established a civil penalty for a violation of
25 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
26 the person employs one or more employees, the civil penalty is one
27 hundred dollars (\$100) for each aggrieved employee per pay period for
28 the initial violation and two hundred dollars (\$200) for each aggrieved
employee per pay period for each subsequent violation.”

74. Labor Code § 200 defines wages as “all amounts for labor performed by employees of

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

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

5 76. IWC Wage Orders 5-2001(2)(K) and 7-2001(2)(G) define hours worked as “the time
6 during which an employee is subject to the control of an employer and includes all the time the
7 employee is suffered or permitted to work, whether or not required to do so.”

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

10 78. Labor Code § 510 provides, in relevant part:

11 Eight hours of labor constitutes a day’s work. Any work in excess of eight
12 hours in one workday and any work in excess of 40 hours in any one
13 workweek and the first eight hours worked on the seventh day of work in
14 any one workweek shall be compensated at the rate of no less than one
15 and one-half times the regular rate of pay for an employee. Any work in
16 excess of 12 hours in one day shall be compensated at the rate of no less
17 than twice the regular rate of pay for an employee. In addition, any work
18 in excess of eight hours on any seventh day of a workweek shall be
19 compensated at the rate of no less than twice the regular rate of pay of an
20 employee. Nothing in this section requires an employer to combine more
21 than one rate of overtime compensation in order to calculate the amount
22 to be paid to an employee for any hour of overtime work.

23 79. Labor Code § 1182.12 provides, in relevant part:

24 ...

25 (b) Notwithstanding subdivision (a), the minimum wage for all industries
26 shall not be less than the amounts set forth in this subdivision, except
27 when the scheduled increases in paragraphs (1) and (2) are temporarily
28 suspended under subdivision (d).

(1) For any employer who employs 26 or more employees, the minimum
wage shall be as follows:

...

(D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen
dollars (\$13) per hour.

(E) From January 1, 2021, to December 31, 2021, inclusive,—fourteen
dollars (\$14) per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen
dollars (\$15) per hour.

....

80. Labor Code § 1197 provides:

1 The minimum wage for employees fixed by the commission or by any
2 applicable state or local law, is the minimum wage to be paid to
3 employees, and the payment of a lower wage than the minimum so fixed
4 is unlawful. This section does not change the applicability of local
5 minimum wage laws to any entity.

6 81. Labor Code § 1194 provides, in relevant part:

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

13 82. Labor Code §§ 226.7 and 512 and IWC Wage Orders 5-2001 and 7-2001 require
14 Defendants to authorize, permit, and/or make available timely and compliant meal and rest periods
15 to its employees. Labor Code §§ 226.7 and 512 and IWC Wage Orders 5-2001 and 7-2001 prohibit
16 employers from employing an employee for more than five hours without a meal period of not less
17 than thirty minutes, and from employing an employee more than ten hours per day without providing
18 the employee with a second meal period of not less than thirty minutes. Section 226.7 and IWC Wage
19 Orders 5-2001 and 7-2001 also require employers to authorize and permit employees to take ten
20 minutes of net rest period time per four hours, or major fraction thereof of work, and to pay
21 employees their full wages during those rest periods. Unless the employee is relieved of all duty
22 during the thirty-minute meal period and ten-minute rest period, the employee is considered "on
23 duty" and the meal or rest period is counted as time worked under the applicable wage orders.

24 83. To the extent than any violation alleged herein does not carry penalties under Labor
25 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and the
26 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
27 by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff
28 and the Aggrieved Employees for violations of Labor Code provisions including, but not limited, to,
Labor Code §§ 201-203, 204, 226, 226.3, 226.7, 256, 510, 512, 1182.12, 1194, 1197, 1198, IWC
Wage Orders 5-2001 and 7-2001, and any other violation alleged herein does not carry penalties
under Labor Code § 2699(a).

84. On December 5, 2022, pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff served

1 the California Labor and Workforce Development Agency (“LWDA”) with notice of her intention
2 to file this PAGA action. Sixty-five calendar days have passed without notice from the LWDA. On
3 the same day, Plaintiff served Defendants’ registered agent with a courtesy copy of the notice via
4 certified mail. As such, Plaintiff satisfied the administrative prerequisites to commence this civil
5 action in compliance with § 2699.3(f).

6 85. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
7 Employees, and herself as set forth in Labor Code § 2699(g)(1).

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

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

12 **PRAYER FOR RELIEF**

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

- 15 1. For the Court to declare, adjudge, and decree that Defendants have violated the
16 California Labor Code as alleged herein;
- 17 2. For an order awarding the State of California, Plaintiff, and the Aggrieved Employees
18 civil penalties provided for under the PAGA;
- 19 3. For interest on any penalties awarded, as provided by applicable law;
- 20 4. For an award of reasonable attorneys’ fees as provided by the California Labor Code,
21 including labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5,
22 and/or any other applicable law;
- 23 5. For all costs of suit, as provided in Labor Code § 2699(g)(1); and,
- 24 6. For such other and further relief as this Court deems just and proper.

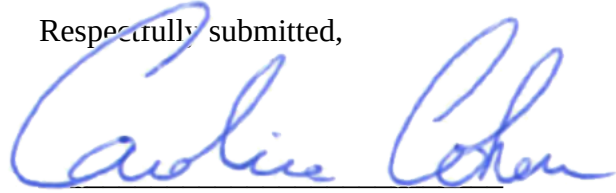
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1 Date: February 24, 2023

Respectfully submitted,



Carolyn H. Cottrell

Caroline N. Cohen

Andrew Weaver

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

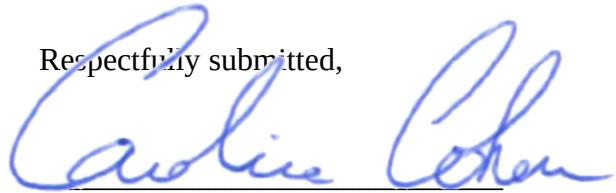
*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

10 **DEMAND FOR JURY TRIAL**

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

13 Date: February 24, 2023

Respectfully submitted,



Carolyn H. Cottrell

Caroline N. Cohen

Andrew Weaver

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

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