

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

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

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

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

14 *Plaintiff,*

15 v.

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

19 *Defendants.*

Case No.: 23CV028375

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

DEMAND FOR JURY TRIAL

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 RH US, LLC (“RH US”), Restoration Hardware, Inc. (“RHI”) and RH,
6 which will do business in California as Restoration Hardware Holdings, Inc., (“RH”) (collectively
7 “Defendants”) on behalf of the State of California to collect statutory penalties as a result of
8 Defendants’ systematic violations of California labor law with respect to Defendants’ current and
9 former non-exempt, hourly workers in 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. Upon information and belief, RH US is a subsidiary of RH and RHI which was the direct
19 employer of Plaintiff and at least a portion of the Aggrieved Employees.

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

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

8 8. 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 in a day or over
10 forty hours in a week that results in hundreds of Aggrieved Employees performing services for the
11 benefit of Defendants while off-the-clock.

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

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

25 11. As a result of these policies and/or practices, Plaintiff and the Aggrieved Employees are
26 denied minimum wage and overtime compensation, which they are lawfully owed pursuant to
27 California Labor Code § 1182.12. California’s hourly minimum wage for employers with twenty-six
28 (26) or more employees is currently \$15.50 effective January 1, 2023; the hourly minimum wage

1 applicable to Defendants was \$15.00 from January 1, 2022 to December 31, 2022, and \$14.00 from
2 January 1, 2021 to December 31, 2021.

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

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

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

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

1 statements alone the compensation owed to them.

2 16. As a result of the above violations, Defendants have also failed to pay Plaintiff and
3 Aggrieved Employees all wages due during employment and following their separation from
4 employment.

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

8 **PARTIES**

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

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

14 20. Plaintiff was employed by Defendants as a non-exempt facilities porter starting April
15 2022. Plaintiff's last day working for Defendants was in October 2022. Plaintiff worked for
16 Defendants in Corte Madera, California.

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

24 22. Plaintiff is informed, believes, and thereon alleges that RHI is a Delaware corporation
25 headquartered in Corte Madera, California. RHI is registered to do business in California, does
26 business in California and employs and/or employed hourly, non-exempt employees, including
27 Plaintiff and the Aggrieved Employees in California. RHI may be served with process by serving its
28 registered agent, Corporation Service Company which will do Business in California as CSC –

1 Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California,
2 95833.

3 23. Plaintiff is informed, believes, and thereon alleges that RH is a Delaware corporation
4 headquartered in Corte Madera, California. RH is registered to do business in California, does
5 business in California and employs and/or employed hourly, non-exempt employees, including
6 Plaintiff and the Aggrieved Employees in California. RH may be served with process by serving its
7 registered agent, Corporation Service Company which will do Business in California as CSC –
8 Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California,
9 95833.

10 24. Plaintiff is informed, believes, and thereon alleges that Defendants jointly employ
11 and/or employed the Aggrieved Employees, among other hourly employees, in this county and
12 throughout the state of California.

13 25. Defendants employ and/or employed Plaintiff and the Aggrieved Employees because
14 Defendants, directly or indirectly, control the employment terms, pay practices, timekeeping
15 practices, and daily work of Plaintiff and the Aggrieved Employees.

16 26. Plaintiff is informed, believes, and thereon alleges that Defendants jointly exercise
17 control over Plaintiff and the Aggrieved Employees with respect to their employment.

18 27. Plaintiff is informed, believes, and thereon alleges that each and every one of the acts
19 and omissions alleged herein were performed by, and/or attributable to, Defendants, each acting as
20 agents and/or employees, and/or under the direction and control of each of the other, and that said
21 acts and failures to act were within the course and scope of said agency, employment and/or direction
22 and control.

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

1 29. At all relevant times, Defendants have done business under the laws of California, have
2 had places of business in California, including in this judicial district, and have employed the
3 Aggrieved Employees in this judicial district. Defendants are “persons” as defined in Labor Code
4 § 18 and Business and Professions Code § 17201. Defendants are also “employers” as that term is
5 used in the Labor Code and IWC Wage Orders.

6 **JURISDICTION AND VENUE**

7 30. Venue is proper in this County pursuant to Code of Civil Procedure §§ 393 and/or
8 395(a). Defendants conduct business and employ Aggrieved Employees in this County and within
9 the state of California.

10 31. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.
11 The Court also has jurisdiction over Defendants because they are authorized to do business in the
12 State of California, are authorized to do business and employ workers in the State of California, and
13 are registered with the California Secretary of State.

14 **FACTUAL ALLEGATIONS**

15 32. Defendants are part of the public housekeeping industry and the mercantile industry.
16 Defendants provide home furnishing and hardware products through galleries, outlets, and restaurants
17 across the United States. RHI rebranded its name to RH in 2012. RH US is a subsidiary of RHI and
18 RH. RHI, RH, and RH US have an active status with the California Secretary of State. Plaintiff is
19 informed, believes, and thereon alleges that Defendants employed hundreds of hourly, non-exempt
20 workers similarly situated to Plaintiff in California.

21 33. Plaintiff has worked for Defendants as a facilities porter in Corte Madera, California
22 from April 2022 to October 2022. Plaintiff’s primary duties include but are not limited to cleaning
23 offices, vacuuming, sanitizing, and taking out trash. Plaintiff is classified as an hourly, non-exempt
24 employee and was paid an hourly rate of \$23.00.

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

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

4 36. Plaintiff is informed, believes, and thereon alleges that Aggrieved Employees are
5 required to follow and abide by common work, time, and pay policies and procedures in the
6 performance of their jobs and duties.

7 37. Plaintiff is informed, believes, and thereon alleges that at the end of each pay period, the
8 Aggrieved Employees receive wages from Defendants that are determined by common systems and
9 methods that Defendants select and control.

10 38. Plaintiff is informed, believes, and thereon alleges that Defendants maintain a policy
11 and/or practice of failing to properly compensate Plaintiff and the Aggrieved Employees for work
12 related tasks performed while “off-the-clock,” giving rise to minimum wage and overtime violations.
13 This includes, but is not limited to, requiring Plaintiff and the Aggrieved Employees to work shifts
14 longer than eight hours per day while adjusting their time to reflect only eight hours’ worked to avoid
15 paying Plaintiff and the Aggrieved Employees overtime. This time spent working over eight hours
16 goes unrecorded and therefore uncompensated, even though it should be compensated at overtime
17 rates under California law.

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

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

27 41. Throughout the relevant time period, Plaintiff and the Aggrieved Employees have been
28 denied proper payment for all hours worked, including overtime and minimum wages, for the time

1 spent working off-the-clock. For instance, Plaintiff and the Aggrieved Employees do not receive
2 overtime compensation for time spent working off-the-clock after eight hours or for time spent
3 working during noncompliant meal periods when the hours worked are in excess of eight (8) hours
4 per day and forty (40) hours per week. However, Defendants fail to pay for any of this work time,
5 including the required overtime premiums, in violation of the California Labor Code.

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

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

13 44. Plaintiff is informed, believes, and thereon alleges that Defendants utilize and apply
14 these time adjustments and unpaid on-duty meal break protocols, policies, and practices across all
15 Defendants' locations throughout California.

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

18 46. In addition to the above, Plaintiff is informed, believes, and thereon alleges that
19 Defendants regularly fail to provide Plaintiff and Aggrieved Employees with compliant meal and
20 rest breaks. Defendants' policies, practices, and procedures require Plaintiff and Aggrieved
21 Employees to routinely skip their meal and rest breaks, yet do not provide them with requisite
22 premium payments for missed meal and rest breaks.

23 47. Plaintiff is informed, believes, and thereon alleges that Plaintiff and Aggrieved
24 Employees are routinely denied legally compliant meal breaks for at least three reasons: (i)
25 Defendants do not provide or make available timely meal breaks to Plaintiff and Aggrieved
26 Employees; (ii) Plaintiff and Aggrieved Employees are often too busy with work during the day to
27 have time to take bona fide meal breaks; and (iii) Defendants are understaffed and therefore Plaintiff
28 and Aggrieved Employees are required to remain on-call performing tasks like cleaning the

1 bathroom, vacuuming, taking out trash, sanitizing, and cleaning the office space resulting in
2 interrupted meal breaks.

3 48. Plaintiff is informed, believes, and thereon alleges that when Plaintiff and Aggrieved
4 Employees do attempt to take a meal break, such meal breaks are untimely and/or shortened. As a
5 result, Plaintiff and Aggrieved Employees are not provided duty-free, uninterrupted, and timely
6 thirty-minute meal periods 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 meal break policies and practices across all Defendants' facilities throughout California.
9 Plaintiff and Aggrieved Employees are routinely denied legally authorized rest breaks for at least
10 two reasons: (i) Defendants do not provide or make available timely meal breaks to Plaintiff and
11 Aggrieved Employees and (ii) Plaintiff and Aggrieved Employees are often too busy with work
12 during the day to have time to take bona fide rest breaks.

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

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

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

22 53. Plaintiff is informed, believes, and thereon alleges that Defendants do not provide
23 Plaintiff and the Aggrieved Employees with accurate wage statements as required by California law.
24 Plaintiff and the Aggrieved Employees receive wage statements that do not reflect all hours worked,
25 and thus Defendants have failed to record hours that Plaintiff and the Aggrieved Employees worked
26 off-the-clock, as well as the work performed during non-compliant meal periods. The wage statements
27 do not include the correct amount of minimum wages and overtime pay to which Plaintiff and
28 Aggrieved Employees are entitled or the premium pay for missed meal and rest periods. As a result,

1 Plaintiff and Aggrieved Employees cannot readily determine from the wage statements alone the
2 compensation owed to them.

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

9 55. Plaintiff is informed, believes, and thereon alleges that Defendants are well aware that
10 their policies and practices deprive Plaintiff and the Aggrieved Employees of compensation for all
11 hours worked, including overtime compensation and minimum wages, and that Plaintiff and
12 Aggrieved Employees do not receive legally compliant meal and rest periods. Thus, Defendants'
13 denial of wages, compliant meal and rest periods, and premium payments is and/or was deliberate and
14 willful.

15 56. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct
16 has been widespread, repeated, and consistent as to the Aggrieved Employees and throughout
17 Defendants' locations in California.

18 57. On information and belief, Defendants' conduct described above has occurred at all
19 relevant times and is ongoing.

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

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

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

27 60. Labor Code § 2699(a) provides:

28 "Notwithstanding any other provision of law, any provision of this code
that provides for a civil penalty to be assessed and collected by the Labor
and Workforce Development Agency or any of its departments,

divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.”

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

62. 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.”

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

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

65. Labor Code § 226(a) provides:

“Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employer may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form,

properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.”

66. Labor Code § 226.3 provides:

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

67. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, as alleged above, to timely pay all wages owed to Plaintiff and the Aggrieved Employees in compliance with Labor Code §§ 201-202.

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

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

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

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

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

73. 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)

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

75. Labor Code § 2699(f) provides:

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

76. 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.”

77. 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....”

78. IWC Wage Orders 5-2001(2)(K) and 7-2001(2)(G) define 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.”

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

80. Labor Code § 510 provides, in relevant part:

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

1 81. Labor Code § 1182.12 provides, in relevant part:

2 ...

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

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

9 ...

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

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

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

16

17 82. Labor Code § 1197 provides:

18 The minimum wage for employees fixed by the commission or by any
19 applicable state or local law, is the minimum wage to be paid to
20 employees, and the payment of a lower wage than the minimum so fixed
21 is unlawful. This section does not change the applicability of local
22 minimum wage laws to any entity.

23 83. Labor Code § 1194 provides, in relevant part:

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

84. Labor Code §§ 226.7 and 512 and IWC Wage Orders 5-2001 and 7-2001 require
Defendants to authorize, permit, and/or make available timely and compliant meal and rest periods
to its employees. Labor Code §§ 226.7 and 512 and IWC Wage Orders 5-2001 and 7-2001 prohibit
employers from employing an employee for more than five hours without a meal period of not less
than thirty minutes, and from employing an employee more than ten hours per day without providing
the employee with a second meal period of not less than thirty minutes. Section 226.7 and IWC Wage
Orders 5-2001 and 7-2001 also require employers to authorize and permit employees to take ten
minutes of net rest period time per four hours, or major fraction thereof of work, and to pay

employees their full wages during those rest periods. Unless the employee is relieved of all duty during the thirty-minute meal period and ten-minute rest period, the employee is considered “on duty” and the meal or rest period is counted as time worked under the applicable wage orders.

85. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and the Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff 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).

86. On December 5, 2022, pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff served the California Labor and Workforce Development Agency (“LWDA”) with notice of her intention to file this PAGA action. Sixty-five calendar days have passed without notice from the LWDA. On the same day, Plaintiff served Defendants’ registered agent with a courtesy copy of the notice via certified mail. As such, Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(f).

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

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

89. Wherefore, Plaintiff requests relief as hereinafter provided.

///

///

///

///

///

1 **PRAYER FOR RELIEF**

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

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

14
15 Date: April 12, 2023

Respectfully submitted,

16
17
18 

19 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

20
21
22
23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Date: April 12, 2023

De la

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*