

1 Carolyn H. Cottrell (SBN 166977)
2 Ori Edelstein (SBN 268145)
3 Eugene Zinovyev (SBN 267245)
4 **SCHNEIDER WALLACE**
5 **COTTRELL KONECKY LLP**
6 2000 Powell Street, Suite 1400
7 Emeryville, California 94608
8 Tel: (415) 421-7100
9 Fax: (415) 421-7105
10 ccottrell@schneiderwallace.com
11 oedelstein@schneiderwallace.com
12 ezinovyev@schneiderwallace.com

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

15 **SUPERIOR COURT OF CALIFORNIA**
16 **COUNTY OF ALAMEDA**

17 TIFFENY NANCE, on behalf of the State
18 of California, and Aggrieved Employees,

19 *Plaintiff,*

20 v.

21 RYDER INTEGRATED LOGISTICS,
22 INC., a Delaware Corporation; and
23 RYDER SYSTEM, INC., a Florida
24 Corporation,

25 *Defendants.*

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

05/26/2023 at 11:12:53 AM

By: Angela Linhares,
Deputy Clerk

Case No. **23CV034484**

**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 Tiffeny Nance, on behalf of the State of California and Aggrieved Employees
2 (“Plaintiff”), complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this California Labor Code Private Attorneys General Act (“PAGA”) enforcement action against Defendants Ryder Integrated Logistics, Inc. (“Ryder Integrated”) and
5 Ryder System, Inc. (“Ryder System”) (collectively “Employer(s)” and “Defendant(s)”) on behalf of
6 the State of California to collect statutory penalties as a result of Defendants’ systematic violations of
7 California labor law with respect to Defendants’ non-exempt, hourly workers in California (the
8 “Aggrieved Employees”).
9

10 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly workers
11 employed by Defendants in California.¹

12 3. Plaintiff challenges Defendants’ policies and practices of: (1) failing to authorize and
13 permit Plaintiff and Aggrieved Employees to take compliant meal periods to which they are entitled
14 by law, and failing to pay premium compensation for noncompliant meal periods; (2) failing to
15 authorize and permit Plaintiff and Aggrieved Employees to take rest periods to which they are entitled
16 by law, and failing to pay premium compensation for missed rest periods; (3) failing to compensate
17 Plaintiff and Aggrieved Employees for all hours worked; (4) failing to pay Plaintiff and Aggrieved
18 Employees minimum wage for all hours worked; (5) failing to pay Plaintiff and Aggrieved Employees
19 overtime wages; (6) failing to provide Plaintiff and Aggrieved Employees true and accurate itemized
20 wage statements; and (7) failing to pay Plaintiff and Aggrieved Employees all wages owed upon
21 separation from employment.

22 4. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable
23 attorneys’ fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor Code
24 Private Attorneys General Act (“PAGA”).

25 **PARTIES**

26 5. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
27

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

1 employees of Defendants in the State of California. Among other positions, the Aggrieved Employees
2 work as laborers, material, cargo and warehouse handlers, forklift operators, shipping and receiving
3 clerks, clamp operators, quality auditors, storeroom attendants, trailer inspectors, warehouse
4 coordinators, wave and inventory clerks, warehouse sanitation associates and other positions with
5 similar job duties in California.

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

8 7. Plaintiff was employed by Defendants as a material handler from approximately
9 September 2022 through November 2022. Plaintiff worked for Defendants in Stockton, California.

10 8. Plaintiff is informed, believes, and alleges that Ryder Integrated Logistics, Inc. is a
11 Delaware Corporation headquartered in Miami, Florida. Ryder Integrated is registered to do business
12 in California, does business in California, and employs hourly non-exempt employees, including
13 Plaintiff and Aggrieved Employees, in California.

14 9. Plaintiff is informed, believes, and alleges that Ryder System, Inc. is a Florida
15 Corporation headquartered in Miami, Florida. Ryder System does business in the State of California
16 notably through its subsidiary Ryder Integrated and employs hourly non-exempt employees, including
17 Plaintiff and Aggrieved Employees, in California,

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

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

24 12. At all relevant times, Defendants have done business under the laws of the State of
25 California, have operated places of business in California, including in this judicial district, and have
26 employed Plaintiff and Aggrieved Employees in this judicial district and elsewhere throughout
27 California. Defendants are “persons” as defined in Cal. Lab. Code § 18. Defendants are also
28 “employers” as that term is used in the Cal. Lab. Code and the IWC Wage Orders regulating wages,

1 hours, and working conditions.

2 **JURISDICTION AND VENUE**

3 13. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393(a) and/or 395.5.
4 Defendants conduct business and employ Aggrieved Employees in this County, and therefore the
5 liability and the cause or some part of the cause arose in this County.

6 14. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA.
7 The Court also has jurisdiction over Defendants because they are companies authorized to do business
8 in the State of California, and because Defendants in fact do business and employ workers in the State
9 of California.

10 **FACTUAL ALLEGATIONS**

11 15. Plaintiff worked for Defendants as a material handler in Stockton, California, from
12 approximately September 2022 through November 2022. Plaintiff's primary duties included, but were
13 not limited to, operating forklifts, inspecting deliveries, and unloading, stocking, and sorting
14 inventory.

15 16. Plaintiff was classified as an hourly non-exempt employee and was paid an hourly rate
16 of \$20.65. Plaintiff was usually scheduled to work eight to ten hours per shift, five shifts per week.
17 Plaintiff was scheduled to work approximately 40 to 50 hours or more per week.

18 17. Like Plaintiff, Aggrieved Employees are current and former, non-exempt, hourly
19 employees of Defendants in the State of California. Plaintiff is informed, believes, and thereon alleges
20 that Aggrieved Employees perform work similar to Plaintiff, in that they provide support and
21 assistance for Defendants' warehousing and logistics operations. Defendants pay Aggrieved
22 Employees including Plaintiff, on an hourly basis.

23 18. Ryder Integrated offers logistics, warehousing, shipping, distribution, freight
24 forwarding, brokerage, storage, cargo, supply chain management services, and transportation services.
25 Ryder Integrated is a subsidiary of Ryder System.

26 19. Ryder System is a major transportation and logistics company that specializes in fleet
27 management, supply chain management, and dedicated transportation management.

28 20. Plaintiff is informed, believes, and thereon alleges that the policies and practices of

1 Defendants have at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless
2 of particular job assignment or facility location in California.

3 21. Aggrieved Employees are required to follow and abide by common work, time, and pay
4 policies and procedures in the performance of their jobs and duties.

5 22. At the end of each pay period, the Aggrieved Employees receive wages from Defendants
6 that are determined by common systems and methods that Defendants select and control.

7 23. Defendants regularly fail to provide Plaintiff and Aggrieved Employees with timely and
8 compliant meal periods. Defendants' policies, practices, and procedures cause Plaintiff and Aggrieved
9 Employees to routinely receive late meal periods well after their fifth hour of work. Rather than
10 relieving Plaintiff and Aggrieved Employees from their tasks to provide timely meal periods,
11 Defendants require Plaintiff and Aggrieved Employees to continue working until a time Defendants
12 deem appropriate for Plaintiff and Aggrieved Employees to take their meal periods. Further,
13 Defendants require Plaintiff and Aggrieved Employees to remain on-call during their meal periods by
14 demanding that Plaintiff and Aggrieved Employees keep their cellphones with them to respond to
15 supervisors. Therefore, Plaintiff and Aggrieved Employees are not fully relieved of their duties and
16 remain under the direction and/or control of Defendants during their unpaid meal periods. Plaintiff
17 and Aggrieved Employees do not receive premium pay for these non-compliant meal periods.

18 24. Further, Defendants fail to provide Plaintiff and Aggrieved Employees compliant
19 second meal periods when they work shifts lasting at least ten hours or longer. Defendants' policies,
20 practices, and procedures require Plaintiff and Aggrieved Employees to systematically skip their
21 second meal periods yet, do not provide them with premium payments for such missed second meal
22 periods. Despite the long hours that Plaintiffs and Aggrieved Employees work, often more than ten
23 hours multiple times per week, Plaintiff and Aggrieved Employees are not authorized to take a second
24 meal period before the end of the tenth hour of work.

25 25. As a result, Plaintiff and Aggrieved Employees are denied compensation for all hours
26 worked, including minimum wages and overtime, which they are lawfully owed resulting from the
27 additional off-the-clock work in excess of eight (8) hours per day and forty (40) hours per week.

28 26. Similarly, Plaintiff and Aggrieved Employees are routinely denied compliant rest

1 periods. Defendants frequently require Plaintiff and Aggrieved Employees to work through their rest
2 periods if there is time-sensitive work to be completed, such as loading and/or unloading shipments.
3 For example, Defendants prevented Plaintiff from taking roughly 50% to 70% of the rest periods she
4 was entitled to during her employment with Defendants because Defendants demanded she continue
5 loading and/or unloading truckloads through her rest periods. Plaintiff and Aggrieved Employees do
6 not receive premium payment for these noncompliant rest periods.

7 27. Plaintiff is informed, believes, and thereon alleges that Defendants' same meal and rest
8 period policies and practices are in place across all of Defendants' facilities throughout California.

9 28. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been
10 denied proper payment for all hours worked, including overtime and minimum wages, for the time
11 spent working off-the-clock. As mentioned above, Plaintiff and Aggrieved Employees do not receive
12 overtime compensation for time spent on-call during not compliant meal periods when the hours
13 worked are in excess of eight (8) hours per day and forty (40) hours per week. Defendants fail to pay
14 for any of this work time, including the required overtime premiums, in violation of the California
15 Labor Code.

16 29. Defendants' common course of wage-and-hour abuse includes routinely failing to
17 maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees.
18 Defendants fail to record hours that Plaintiff and Aggrieved Employees work off-the-clock as a result
19 of non-compliant meal and rest periods.

20 30. Defendants' failure to record all hours worked results in Defendants' failure to provide
21 Plaintiff and Aggrieved Employees with itemized and accurate wage statement as required by
22 California law. Plaintiff and Aggrieved Employees receive wage statements that do not reflect all
23 hours worked, including overtime and premiums for non-compliant meal and rest periods.

24 31. Consequently, Plaintiff and Aggrieved Employees did not receive all wages during
25 employment and following separation from employment, including payment for time spent under
26 Defendants' direction and control during meal periods, as well as premium payments for noncompliant
27 first meal periods, second meal periods, and rest periods.

28 32. Plaintiff is informed, believes, and thereon alleges that Defendants utilize the same or

1 substantially similar timekeeping mechanisms throughout all of their facilities in California.

2 33. Plaintiff is informed, believes, and thereon alleges that Defendants are well aware that
3 their policies and practices deprive Plaintiff and Aggrieved Employees of substantial pay for all time
4 worked, including overtime compensation and minimum wages, and that their workers do not receive
5 legally compliant meal and rest periods. Thus, Defendants' denial of wages, compliant meal and rest
6 periods, and premium payments is and/or was deliberate and willful.

7 34. Plaintiff is informed, believes, and thereon alleges that Defendants' unlawful conduct
8 has been widespread, repeated, and consistent as to the Aggrieved Employees and throughout
9 Defendants' operations in California.

10 35. Defendants' conduct is 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 Cal. Lab. Code § 2699(f)**

14 **for Violations of Cal. Lab. §§ 226.7 and 512**

15 **(Meal Periods)**

16 36. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
17 herein.

18 37. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders requires Defendants
19 to authorize and permit timely and compliant meal periods to their employees. Cal. Lab. Code §§
20 226.7 and 512 and the applicable Wage Orders prohibit employers from employing an employee for
21 more than five hours without a meal period of not less than thirty minutes. Unless the employee is
22 relieved of all duty during the thirty-minute meal period, the employee is considered "on duty" and
23 the meal period is counted as time worked under the applicable Wage Orders.

24 38. Cal. Lab. Code § 512(a) provides:

25 An employer shall not employ an employee for a work period of more than five hours
26 per day without providing the employee with a meal period of not less than 30 minutes,
27 except that if the total work period per day of the employee is no more than six hours,
28 the meal period may be waived by mutual consent of both the employer and employee.
An employer shall not employ an employee for a work period of more than 10 hours
per day without providing the 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

1 period may be waived by mutual consent of the employer and the employee only if the
2 first meal period was not waived

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

7 40. Despite these requirements, Defendants knowingly and willfully refuse to perform their
8 obligations to authorize and permit and/or make available to Plaintiff and Aggrieved Employees the
9 ability to take the off-duty meal periods to which they are entitled.

10 41. Plaintiff and Aggrieved Employees are denied compliant meal periods because
11 Defendants' policies, practices, and procedures cause Plaintiff and Aggrieved Employees to routinely
12 receive late meal periods well after their fifth hour of work. Rather than relieving Plaintiff and
13 Aggrieved Employees from their tasks to provide timely meal periods, Defendants require Plaintiff
14 and Aggrieved Employees to continue working until a time Defendants deem appropriate for Plaintiff
15 and Aggrieved Employees to take their meal periods.

16 42. Further, Defendants require Plaintiff and Aggrieved Employees to remain on-call during
17 their meal periods by demanding they keep their cellphones with them to respond to supervisors.
18 Therefore, Plaintiff and Aggrieved Employees are not fully relieved of their duties and remain under
19 the direction and/or control of Defendants during their unpaid meal periods.

20 43. Defendants also do not provide Plaintiff and Aggrieved Employees with duty-free,
21 uninterrupted, and timely thirty-minute second meal periods during which Plaintiff and Aggrieved
22 Employees should be completely relieved of any duty, by the end of the tenth hour of work.

23 44. Despite long workdays often lasting over at least ten hours, Plaintiff and Aggrieved
24 Employees are systematically and routinely denied second meal periods for several reasons, including:
25 (1) Defendants do not authorize, permit, and/or make available timely second meal periods to Plaintiff
26 and Aggrieved Employees; (2) Plaintiff and Aggrieved Employees are routinely too busy with work
27 during the day to have time to take bona fide second meal periods; and (3) Defendants do not give
28 Plaintiff and Aggrieved Employees the option to take a second meal period when their shifts are more
than ten (10) but less than twelve (12) hours.

1 45. Defendants fail to pay Plaintiff and Aggrieved Employees one hour of pay for each off-
2 duty meal period and/or second meal period that they are denied. Defendants' conduct described
3 herein violates Cal. Lab. Code §§ 226.7 and 512.

4 46. On information and belief, Defendants' conduct has been substantially the same at all
5 relevant times and to all Aggrieved Employees throughout the state of California.

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

13 48. Plaintiff seeks to recover civil penalties from Defendants for their violations of the meal
14 period requirements of Cal. Lab. Code §§ 226.7 and 512 throughout California on behalf of herself,
15 the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

16 49. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for the unlawful
17 conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself, for
18 Defendants' violations of Cal. Lab. Code provisions including but not limited to Cal. Lab. Code § 512.

19 50. On February 13, 2023, Plaintiff gave written notice to the Labor and Workforce
20 Development Agency ("LWDA") and to Defendants of her intent to pursue civil penalties for
21 Defendants' violations of the meal period requirements of Cal. Lab. Code §§ 226.7, 512, and 558
22 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet,
23 Plaintiff has not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal.
24 Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA
25 action.

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

52. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(f)

for Violations of Cal. Lab. Code § 226.7

(Rest Periods)

53. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

54. Cal. Lab. Code §§ 226.7 and the applicable Wage Orders requires Defendants to authorize and permit rest periods to their employees. Cal. Lab. Code § 226.7 and the applicable Wage Orders require employers to authorize and permit employees to take ten minutes of net rest 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 ten-minute rest period, the employee is considered “on duty” and the rest period is counted as time worked under the applicable Wage Orders.

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

56. Despite these requirements, Defendants knowingly and willfully refuse to perform their obligations to authorize and permit and/or make available to Plaintiff and Aggrieved Employees the ability to take the off-duty rest periods to which they are entitled.

57. Plaintiff and Aggrieved Employees do not receive compliant rest periods because Defendants frequently require Plaintiff and Aggrieved Employees to work through their rest periods if there is time-sensitive work to be completed, such as loading and/or unloading shipments. For example, Defendants prevented Plaintiff from taking roughly 50% to 70% of the rest periods she was entitled to during her employment with Defendants because Defendants demanded she continue loading and/or unloading truckloads through her rest periods. Plaintiff is informed, believes, and thereon alleges that this policy and practice applies to all Aggrieved Employees.

1 58. Defendants also fail to pay Plaintiff and Aggrieved Employees one hour of pay for each
2 off-duty rest period that they are denied. Defendants' conduct described herein violates Cal. Lab. Code
3 § 226.7.

4 59. On information and belief, Defendants' conduct has been substantially the same at all
5 relevant times for all Aggrieved Employees throughout the state of California.

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

13 61. Plaintiff seeks to recover civil penalties from Defendants for their violations of the rest
14 period requirements of Cal. Lab. Code § 226.7 throughout California on behalf of herself, the State of
15 California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

16 62. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful
17 conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself, for
18 Defendants' violations of Cal. Lab. Code provisions including but not limited to Cal. Lab. Code §
19 558(a).

20 63. On February 13, 2023, Plaintiff gave written notice to the Labor and Workforce
21 Development Agency ("LWDA") and to Defendants of her intent to pursue civil penalties for
22 Defendants' violations of the meal period and rest period requirements of Cal. Lab. Code §§ 226.7
23 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with
24 notice, yet, Plaintiff has not received a response from the LWDA or Defendants. Accordingly, pursuant
25 to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence
26 a PAGA action.

27 64. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees for
28 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award

1 of attorneys' fees and costs as set forth below.

2 65. Wherefore, Plaintiff requests relief as hereinafter provided.

3 **THIRD CAUSE OF ACTION**

4 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**

5 **for Violations of Cal. Lab. Code §§ 204, 1194, and 1198**

6 **(Failure to Pay for all Hours Worked)**

7 66. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
8 herein.

9 67. Defendants willfully engage and continue to engage in a policy and practice of not
10 compensating Aggrieved Employees for all hours worked or spent in Defendants' control. Defendants
11 regularly require Aggrieved Employees to perform uncompensated off-the-clock work.

12 68. Cal. Lab. Code § 200 defines wages as "all amounts for labor performed by employees
13 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
14 commission basis or method of calculation."

15 69. Cal. Lab. Code § 204(a) provides that "[a]ll wages ... earned by any person in any
16 employment are due and payable twice during each calendar month...."

17 70. Cal. Lab. Code § 1194(a) provides as follows:

18 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
19 than the legal minimum wage or the legal overtime compensation applicable to the
20 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.

21 71. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
22 conditions that violate the Wage Order.

23 72. IWC Wage Order, 9-2001(2)(G), defines hours worked as "the time during which an
24 employee is subject to the control of an employer, and includes all the time the employee is suffered
25 or permitted to work, whether or not required to do so."

26 73. In violation of California law, Defendants knowingly and willfully refuse to provide
27 Aggrieved Employees with compensation for all time worked. Defendants intentionally and willfully
28 require Plaintiff and Aggrieved Employees to remain on duty during their scheduled shifts, including

1 during rest periods and while clocked out for meal periods. As a result of Defendants' policies and
2 practices, Aggrieved Employees are routinely denied the opportunity to take legally compliant meal
3 and rest periods without compensation and are further denied the overtime premiums resulting from
4 the additional off-the-clock work resulting from remaining on call during meal periods.

5 74. Therefore, Defendants committed, and continue to commit, the acts alleged herein
6 knowingly and willfully, and in conscious disregard of the Aggrieved Employees' rights.

7 75. Cal. Lab. 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 Cal. Lab. 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. Cal. Lab. 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 Cal. Lab. Code provision
12 that does not provide a civil penalty if, at the time of the violation, the employer employs one or more
13 employees.

14 76. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay for all
15 hours worked in violation of Cal. Lab. Code §§ 204, 1194, and 1198 throughout California on behalf
16 of herself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code §
17 2699(f).

18 77. On February 13, 2023, Plaintiff gave written notice to the LWDA and to Defendants of
19 her intent to pursue civil penalties for Defendants' failure to pay for all hours worked in violation of
20 Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since
21 Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA
22 or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
23 administrative prerequisites to commence a PAGA action.

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

27 79. Wherefore, Plaintiff requests relief as hereinafter provided.
28

1 **FOURTH CAUSE OF ACTION**

2 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**

3 **for Violations of Cal. Lab. Code §§ 1182.12, 1194, and 1197**

4 **(Failure to Pay Minimum Wage)**

5 80. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
6 herein.

7 81. During the applicable statutory period, Cal. Lab. Code §§ 1182.12 and 1197, and the
8 Minimum Wage Order were in full force and effect, and required that Defendants' hourly employees
9 receive the minimum wage for all hours worked irrespective of whether nominally paid on a piece
10 rate, or any other basis, at the rate of fourteen dollars (\$14.00) commencing January 1, 2021; and at
11 the rate of fifteen dollars (\$15.00) commencing January 1, 2022.

12 82. IWC Wage Order 9-2001(2)(G) defines hours worked as "the time during which an
13 employee is subject to the control of an employer and includes all the time the employee is suffered
14 or permitted to work, whether or not required to do so."

15 83. Cal. Lab. Code § 1194(a) provides as follows:

16 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
17 than the legal minimum wage or the legal overtime compensation applicable to the
18 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.

19 84. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
20 conditions that violate the Wage Orders.

21 85. Because of Defendants' policies and practices with regard to compensating Plaintiff and
22 Aggrieved Employees, Defendants have failed to pay minimum wages as required by law. Plaintiff
23 and the Aggrieved Employees frequently perform work for which they are compensated below the
24 statutory minimum wage, as determined by the IWC.

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

1 each Aggrieved Employee per pay period for each subsequent violation of a Cal. Lab. Code provision
2 that does not provide a civil penalty if, at the time of the violation, the employer employs one or more
3 employees.

4 87. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay
5 minimum wages in violation of Cal. Lab. Code §§ 1182.12, 1194, and 1197 throughout California on
6 behalf of herself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code
7 § 2699(f).

8 88. On February 13, 2023, Plaintiff gave written notice to the LWDA and to Defendants of
9 her intent to pursue civil penalties for Defendants' failure to pay minimum wages in violation of Cal.
10 Lab. Code §§ 558(a) and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff
11 provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or
12 Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
13 administrative prerequisites to commence a PAGA action.

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

17 90. Wherefore, Plaintiff requests relief as hereinafter provided.

18 **FIFTH CAUSE OF ACTION**

19 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**

20 **for Violations of Cal. Lab. Code §§ 510 and 1194**

21 **(Failure to Pay Overtime Wages)**

22 91. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
23 herein.

24 92. Defendants do not properly compensate Aggrieved Employees with appropriate
25 overtime premiums, as required by California law. Defendants fail to pay overtime rates for the off-
26 the-clock work performed by Plaintiff and the Aggrieved Employees. For instance, Plaintiff and
27 Aggrieved Employees do not receive overtime compensation for time spent on-duty during their meal
28 periods when the hours worked are in excess of eight (8) hours per day and forty (40) hours per week.

1 93. Cal. Lab. Code § 510(a) provides as follows:

2 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
3 workday and any work in excess of 40 hours in any one workweek and the first eight
4 hours worked on the seventh day of work in any one workweek shall be compensated
5 at the rate of no less than one and one-half times the regular rate of pay for an employee.
6 Any work in excess of 12 hours in one day shall be compensated at the rate of no less
7 than twice the regular rate of pay for an employee.

8 94. Cal. Lab. Code § 1194(a) provides as follows:

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

14 95. Cal. Lab. Code § 200 defines wages as "all amounts of labor performed by employees
15 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
16 commission basis or other method of calculation." All such wages are subject to California's overtime
17 requirements, including those set forth above.

18 96. Defendants' policies and practices of requiring Aggrieved Employees to perform work
19 off-the-clock are unlawful and result in overtime violations. As a result of these unlawful policies and
20 practices, Aggrieved Employees have worked overtime hours for Defendants without being paid
21 overtime premiums in violation of the Cal. Lab. Code, the applicable IWC Wage Orders, and other
22 applicable law.

23 97. Defendants knowingly and willfully refuse to perform their obligations to compensate
24 Aggrieved Employees for all premium wages for overtime work.

25 98. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for
26 each Aggrieved Employee per pay period for the initial violation of a Cal. Lab. Code provision that
27 does not provide a civil penalty if, at the time of the violation, the employer employs one or more
28 employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for
29 each Aggrieved Employee per pay period for each subsequent violation of a Cal. Lab. Code provision
30 that does not provide a civil penalty if, at the time of the violation, the employer employs one or more
31 employees.

32 99. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay

1 overtime wages in violation of Cal. Lab. Code §§ 510 and 1194 and the applicable wage orders
2 throughout California on behalf of herself, the State of California, and other Aggrieved Employees
3 pursuant to Cal. Lab. Code § 2699(f).

4 100. On February 13, 2023, Plaintiff gave written notice to the LWDA and to Defendants of
5 her intent to pursue civil penalties for Defendants' failure to pay overtime wages in violation of Cal.
6 Lab. Code §§ 510, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff
7 provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or
8 Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the
9 administrative prerequisites to commence a PAGA action.

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

13 102. Wherefore, Plaintiff requests relief as hereinafter provided.

14 **SIXTH CAUSE OF ACTION**

15 **Penalties Pursuant to Cal. Lab. Code § 2699(a)**

16 **for Violations of Cal. Lab. Code § 226**

17 **(Accurate, Itemized Wage Statements)**

18 103. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
19 herein.

20 104. Defendants do not provide Plaintiff and the Aggrieved Employees with accurate
21 itemized wage statements as required by California law, as a result of the meal and rest period, off-
22 the-clock work, and overtime violations set forth above, and Defendants' failure to provide premium
23 pay for noncompliant meal and rest periods.

24 105. Cal. Lab. Code § 226(a) provides:

25 An employer, semimonthly or at the time of each payment of wages, shall furnish to
26 his or her employee, either as a detachable part of the check, draft, or voucher paying
27 the employee's wages, or separately if wages are paid by personal check or cash, an
28 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

1 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
2 inclusive dates of the period for which the employee is paid, (7) the name of the
3 employee and only the last four digits of his or her social security number or an
4 employee identification number other than a social security number, (8) the name and
5 address of the legal entity that is the employer ... and (9) all applicable hourly rates in
6 effect during the pay period and the corresponding number of hours worked at each
7 hourly rate by the employee ... The deductions made from payment of wages shall be
8 recorded in ink or other indelible form, properly dated, showing the month, day, and
9 year, and a copy of the statement and the record of the deductions shall be kept on file
10 by the employer for at least three years at the place of employment or at a central
11 location within the State of California.

12
13 106. The IWC Wage Orders also establish this requirement. (*See* IWC Wage Order 9-2001).

14 107. Cal. Lab. Code § 226(e)(1) provides:

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

21
22 108. Due to the failure to pay one hour of premium pay to Plaintiff and the Aggrieved
23 Employees for each missed or noncompliant meal or rest period, along with the off-the-clock work,
24 and overtime violations, the wage statements Defendants provide their employees, including the
25 Aggrieved Employees, do not reflect the actual gross wages earned, actual net wages earned, actual
26 hours worked, or the appropriate applicable hourly rates. Accordingly, Defendants have knowingly
27 and willfully failed to provide timely, accurate itemized wage statements to Plaintiff and the Aggrieved
28 Employees in accordance with Cal. Lab. Code § 226 and the IWC Wage Orders.

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

110. Cal. Lab. 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 Cal. Lab. Code on behalf of herself
and other current or former employees pursuant to the procedures set forth in Cal. Lab. Code § 2699.3.
Cal. Lab. Code § 2699(a) provides:

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.

111. Plaintiff seeks to recover civil penalties from Defendants pursuant to Cal. Lab. Code § 2699(a) for each failure by Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts established by Cal. Lab. Code § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Cal. Lab. Code § 226(e), as prayed for herein.

112. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts established by Cal. Lab. Code § 226.3. In addition, Plaintiff seeks penalties in the amount established by Cal. Lab. Code § 226(e)(1).

113. On February 13, 2023, Plaintiff gave written notice to the LWDA and to Defendants of her intent to pursue civil penalties for Defendants' failure to provide accurate, itemized wage statements in violation of Cal. Lab. Code §§ 226 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

114. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees 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.

115. Wherefore, Plaintiff requests relief as hereinafter provided.

SEVENTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(a)

for Violations of Cal. Lab. Code §§ 201-203

(Waiting Time Penalties)

116. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

117. Defendants do not provide Plaintiff and Aggrieved Employees with their full wages

1 when due under California law after their employment with Defendants ends, as a result of the meal
2 and rest period, off-the-clock work, and overtime violations set forth above and Defendants' failure to
3 provide premium pay for the missed meal and rest periods.

4 118. Cal. Lab. Code § 201 provides:

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

7 119. Cal. Lab. Code § 202 provides:

8 If an employee not having a written contract for a definite period quits his or her
9 employment, his or her wages shall become due and payable not later than 72 hours
10 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.

11 120. Cal. Lab. Code § 203 provides, in relevant part:

12 If an employer willfully fails to pay, without abatement or reduction, in accordance
13 with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who
14 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.

15 121. Plaintiff and many Aggrieved Employees left their employment with Defendants during
16 the statutory period, at which time Defendants owed them unpaid wages for premium pay for missed
17 or noncompliant meal and rest periods.

18 122. Defendants willfully refused and continue to refuse to pay Plaintiff and the Aggrieved
19 Employees all the wages that are due and owing them, in the form of meal and rest period premium
20 pay and other wages due and owing, upon the end of their employment. As a result of Defendants'
21 actions, Plaintiff and the Aggrieved Employees have suffered and continue to suffer substantial losses,
22 including lost earnings, and interest.

23 123. Defendants' willful failure to pay Plaintiff and the Aggrieved Employees the wages due
24 and owing them constitutes a violation of Cal. Lab. Code §§ 201-203. In addition, § 203 provides that
25 an employee's wages will continue as a penalty up to thirty days from the time the wages were due.
26 Plaintiff seeks to recover PAGA penalties, costs, and attorneys' fees pursuant to this section.

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

1 125. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty
2 to be assessed and collected by the LWDA for a violation of the Cal. Lab. Code on behalf of himself
3 or herself and other current or former employees pursuant to the procedures set forth in Cal. Lab. Code
4 § 2699.3. Cal. Lab. Code § 2699(a) provides:

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

11 126. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by
12 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in
13 compliance with Cal. Lab. Code §§ 201-202 in the amounts established by Cal. Lab. Code § 203.
14 Plaintiff seeks such penalties as an alternative to the penalties available under Cal. Lab. Code § 203,
15 as prayed for herein.

16 127. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful
17 conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself, for
18 Defendants' violations of Cal. Lab. Code provisions including but not limited to Cal. Lab. Code §§
19 256 and 558(a).

20 128. On February 13, 2023, Plaintiff gave written notice to the LWDA and to Defendants of
21 her intent to pursue civil penalties for Defendants' failure to pay wages when due after the end
22 employment with Defendants in violation of Cal. Lab. Code §§ 201-203 and 558(a) pursuant to the
23 PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has
24 not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code §
25 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

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

 130. Wherefore, Plaintiff requests relief as hereinafter provided.

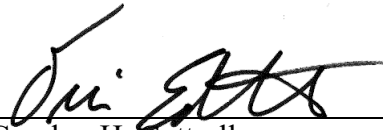
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendant has violated the California Labor Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and the Aggrieved Employees civil penalties provided under the PAGA;
3. For interest as provided by applicable law;
4. For an award of reasonable attorneys' fees;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Date: May 26, 2023



Carolyn H. Cottrell

Ori Edelstein

Eugene Zinovyev

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

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

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

Date: May 26, 2023


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

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