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SUPERIOR STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ANGEL GALLARDO, FARIS HAMATI,
DANTE MADDOX, and JHOVANNY
NOLASCO, on behalf of the State of
California and Aggrieved Employees,

Plaintiffs,

vs.

GOBRANDS, INC., a Delaware
Corporation; GBL CALIFORNIA, LLC, a
Delaware Limited Liability Company and
GB LOGISTICS LLC d/b/a GOPUFF
LOGISTICS LLC, a Delaware Limited
Liability Company

Defendants.

Case No. 23CV041050

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

DEMAND FOR JURY TRIAL

1 Plaintiffs Angel Gallardo, Faris Hamati, Dante Maddox, and Jhovanny Nolasco (“Plaintiffs”),
2 on behalf of the State of California and Aggrieved Employees, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs bring this enforcement action against GoBrands, Inc., a Delaware
5 Corporation (“GoBrands”), GBL California, LLC, a Delaware Limited Liability Company (“GBL
6 California”) and GB Logistics LLC d/b/a Gopuff Logistics LLC, a Delaware Limited Liability
7 Company, (“GB Logistics”) (collectively and “Defendant(s)”) on behalf of the State of California
8 to collect statutory penalties as a result of Defendants’ systematic violations of California labor law
9 with respect to Defendants’ non-exempt hourly workers employed in California (the “Aggrieved
10 Employees”).

11 2. Plaintiffs and the alleged Aggrieved Employees are all current and former similarly
12 situated workers who Defendants misclassified as independent contractors, including but not limited
13 to Delivery Partners and others with similar job duties in California.

14 3. Plaintiffs and Aggrieved Employees bring this action to challenge Defendants’
15 policies and practices (1) failing to compensate Plaintiffs and Aggrieved Employees for all hours
16 worked; (2) failing to pay Plaintiffs and Aggrieved Employees all minimum wages owed; (3) failing
17 to pay Plaintiffs and Aggrieved Employees all overtime and/or double time wages owed; (4) failing
18 to make available, authorize, and/or permit Plaintiffs and Aggrieved Employees to take timely and
19 compliant meal periods to which they are entitled by law and failing to make premium payments for
20 those non-compliant meal periods; (5) failing to make available, authorize, and/or permit Plaintiffs
21 and Aggrieved Employees to take timely and compliant rest periods to which they are entitled by
22 law and failing to make premium payments for those non-compliant rest periods; (6) failing to
23 provide Plaintiffs and Aggrieved Employees accurate, itemized wage statements; (7) failing to
24 reimburse Plaintiffs and Aggrieved Employees for all necessary expenditures incurred in direct
25 consequence of the discharge of their duties; (8) failing to timely pay final wages to Plaintiffs and
26 Aggrieved Employees upon separation of employment; and (9) misclassifying Plaintiffs and
27 Aggrieved Employees as independent contractors instead of employees.

28 4. Defendants fail to not only provide legally compliant meal and rest breaks, but also

1 fail to make premium payments for each missed meal or rest period, as required by law. Plaintiffs
2 and Aggrieved Employees regularly work eight, ten, or more hours a day yet Defendants do not
3 provide any time for Plaintiffs and Aggrieved Employees to take first and second meal periods or
4 rest periods.

5 5. Defendants fail to pay Plaintiffs and Aggrieved Employees for all time spent working
6 for Defendants' benefit, including at minimum wage, overtime, and/or double time under California
7 law. Defendants pay Plaintiffs and Aggrieved Employees for time spent actively making deliveries,
8 but fail to pay for time spent returning to, or in many instances, waiting at Defendants' facilities to
9 receive new delivery assignments.

10 6. Defendants also fail to reimburse Plaintiffs and Aggrieved Employees for all business
11 expenses incurred while on the job. Plaintiffs and Aggrieved Employees must use their personal
12 cellphones for work-related communications, as well as paying for metered parking, vehicle repair
13 and upkeep. Defendants also do not reimburse Plaintiffs and Aggrieved employees' mileage for
14 using their personal vehicles at the legally-required rate. Defendants fail to reimburse Plaintiffs and
15 Aggrieved Employees for such "out-of-pocket" business expenses in violation of Cal. Lab. Code
16 Section 2802.

17 7. As a result of the above violations, Defendants fail to maintain true and accurate
18 records of the hours Plaintiffs and Aggrieved Employees actually work, and also fail to pay all wages
19 due during employment and upon separation within the required time period.

20 8. In addition, Defendants willfully misclassify Plaintiffs and Aggrieved Employees as
21 independent contractors to circumvent California wage and hour laws. Defendants exercise
22 substantial control over how and when Plaintiffs and Aggrieved Employees perform their work,
23 Plaintiffs and Aggrieved Employees perform work critical to Defendants' business, and Plaintiffs
24 and Aggrieved Employees are not customarily engaged in an independently established trade.
25 Further, Defendants do not provide Plaintiffs and Aggrieved Employees with the benefits required
26 for Plaintiffs and Aggrieved Employees to be classified as independent contractors under California
27 Proposition 22 ("Prop. 22"). Defendants' willful misclassification of Plaintiffs and Aggrieved
28 Employees results in substantial violations of California laws.

9. Plaintiffs, on behalf of the State of California, seek to recover penalties and reasonable attorneys' fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor Code Private Attorneys General Act ("PAGA").

PARTIES

10. Plaintiffs are individuals over the age of eighteen, and at all times mentioned in this Complaint were residents of the State of California.

11. Plaintiff Angel Gallardo has worked for Defendants as a delivery driver in Beverly Hills, California and West Hollywood, California from approximately August 2022 to the present. Plaintiff Gallardo was hired directly by Defendants and works for Defendants making deliveries for approximately eight to twelve hours per day.

12. Plaintiff Faris Hamati worked for Defendants as a delivery driver in Los Angeles, California from approximately January 2022 until December 2022. Plaintiff Hamati was hired directly by Defendants and worked for Defendants making deliveries for approximately eight to twelve hours per day.

13. Plaintiff Dante Maddox, worked for Defendants as a delivery driver in West Hollywood, California from approximately November 2022 to February 2023. Plaintiff Maddox was hired directly by Defendants and worked for Defendants making deliveries for approximately eight to twelve hours per day.

14. Plaintiff Jhovanny Nolasco worked for Defendants as a delivery driver in Los Angeles, California from approximately January 2022 until September 2022. Plaintiff Nolasco was hired directly by Defendants and worked for Defendants making deliveries for approximately ten to twelve hours per day.

15. Aggrieved Employees are current and former hourly non-exempt employees of Defendants, including but not limited to Delivery Partners or “Drivers,” and other employees with similar job duties, in California, including, other employees responsible for picking up delivery orders from Defendants’ warehouses and delivering those orders to customers in the surrounding area.

16. Plaintiffs are informed, believe, and thereon allege that GoBrands does business as

1 “Gopuff” and is part of the consumer goods and food delivery industry. GoBrands is a Delaware
2 corporation headquartered in Philadelphia, Pennsylvania. GoBrands operates in over 650 cities
3 across the United States through approximately 500 micro-fulfillment centers. GoBrands primarily
4 delivers goods typically found in convenience stores such as snacks, drinks, household items,
5 toiletries as well as pet and baby products like diapers. Beer, wine, and spirits are also available for
6 delivery in some markets. GoBrands is registered in the State of California and does business in the
7 State of California. GoBrands employs thousands of workers and conducts extensive activities in
8 the State of California.

9 17. Plaintiffs are informed, believe, and allege that GBL California, LLC is also part of
10 the consumer goods and food delivery industry. GBL is a Delaware corporation headquartered in
11 Philadelphia, Pennsylvania. GBL manages the logistical aspects of GoBrands’ delivery service in
12 California, connecting Delivery Partners with customers seeking deliveries of products of GoBrands
13 and its affiliates. Delivery Partners must sign an Agreement with GBL to begin making deliveries
14 for GoBrands. GBL is registered in the State of California and does business in the State of
15 California. GBL employs thousands of workers and conducts extensive activities in the State of
16 California.

17 18. Plaintiffs are informed, believe, and allege that GB Logistics, LLC is also part of the
18 consumer goods and food delivery industry. GB Logistics is a Delaware corporation headquartered
19 in Philadelphia, Pennsylvania. GB Logistics manages the logistical aspects of GoBrands’ delivery
20 service outside of California, connecting Delivery Partners with customers seeking deliveries of
21 products of GoBrands and its affiliates. Delivery Partners must also sign an Age-Restricted Product
22 Delivery Service Agreement provided by GB Logistics in order to deliver alcoholic beverages and
23 tobacco products for GoBrands. GB Logistics does business in the State of California. GB Logistics
24 employs thousands of workers and conducts extensive activities in the State of California.

25 19. At all times herein relevant, Defendants, and each of them, were the agents, partners,
26 joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and
27 assigns, each of the other, and at all times relevant hereto were acting within the course and scope
28 of their authority as such agents, partners, joint venturers, representatives, servants, employees,

1 successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly
2 committed with the ratification, knowledge, permission, encouragement, authorization and consent
3 of each defendant designated herein.

4 20. Defendants employ(ed) Plaintiffs and Aggrieved Employees because Defendants,
5 directly or indirectly, control the employment terms, pay practices, timekeeping practices, and daily
6 work of Plaintiffs and Aggrieved Employees. Defendants are “employer[s]” as that term is used in
7 the Labor Code and IWC Wage Orders.

8 21. At all relevant times, Defendants have done business under the laws of California,
9 have had places of business in California, including in this judicial district, and have employed
10 Aggrieved Employees in this judicial district. At all relevant times, Defendants are “persons” as
11 defined in Cal. Lab. Code § 18 and Cal. Bus. & Prof. Code § 17201. Defendants are also “employers”
12 within the meaning of the Labor Code and IWC Wage Orders.

13 22. Defendants will hereinafter collectively be referred to as “Defendants” or “Gopuff.”

14 **JURISDICTION AND VENUE**

15 23. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393(a) and/or
16 395.5. Defendants conduct business and employ Aggrieved Employees in this County, and therefore
17 the liability and the cause of some part of the cause arose in this County.

18 24. This Court has jurisdiction over Plaintiffs’ claims for penalties pursuant to the PAGA.
19 The Court also has jurisdiction over Defendants because they are companies authorized to do
20 business in the State of California, and because Defendants do in fact do business and employ
21 workers in the State of California.

22 **FACTUAL ALLEGATIONS**

23 25. Defendants operate as a delivery company that lets consumers order and quickly
24 receive a host of convenience items through Gopuff, Defendants’ smartphone application, including
25 college essentials, party supplies, alcohol, snacks, frozen foods, and household goods. To do this,
26 Defendants contract with Plaintiffs and the other Aggrieved Employees as Drivers¹ to deliver
27

28 ¹ Aggrieved Employees will be referred to as “Drivers” herein.

1 packages to people in their local area. The Drivers sign up with Defendants directly to provide these
2 services and report to centralized warehouses and/or stores operated by Defendants where they must
3 wait to start receiving orders. Indeed, Drivers are required to show up at Defendants' facilities at the
4 start of their official shifts because all deliveries come from Defendants' facilities rather than
5 restaurants or stores owned and operated by third parties. Once they pick up the order, Defendants
6 direct Drivers where to deliver the items. Once Drivers finish a delivery, they report back to
7 Defendants' facility and the process starts over again until they are finished with their shift.

8 26. Applicants can sign up to be a driver through Defendants' app or website. Applicants
9 must be at least 21 years old, have a valid U.S. driver's license, have a working vehicle, maintain
10 vehicle insurance and registration, own a smartphone to receive orders, and be willing and able to
11 pass a prepaid alcohol delivery training course.

12 27. Defendants have the authority to hire and terminate Plaintiffs and the other Drivers,
13 to set work rules and conditions governing Plaintiffs and the other Drivers, and to supervise their
14 daily employment activities.

15 28. Defendants directly hire and pay wages and benefits to Plaintiffs and the other
16 Drivers.

17 29. Every week, Defendants release a schedule of pre-scheduled shifts, or "blocks", that
18 Drivers sign up to perform deliveries during. Defendants contractually guarantee that Drivers
19 making deliveries during a pre-scheduled shift will make a minimum hourly rate for every pre-
20 scheduled hour spent online while at Defendants' facility and out delivering orders.

21 30. If not working a pre-scheduled shift, Drivers are still permitted to log on to
22 Defendants' application to receive and complete delivery assignments, but the Drivers are paid at a
23 much lower hourly rate according to only their engaged time, which is the time from when a delivery
24 is accepted to when the delivery is completed. Therefore, these Drivers are not compensated by
25 Defendants for all hours worked because they are not paid for time spent returning to or waiting at
26 Defendants' facilities to receive new delivery assignments. Drivers working in pre-scheduled shifts
27 are also paid for their engaged time but receive the benefit of being paid for time spent waiting at
28 Defendants' facilities and are generally assigned more deliveries than those not on a scheduled shift.

1 Thus, Drivers, such as Plaintiffs, are incentivized to sign up for shifts to maximize their earnings.

2 31. Drivers have no ability to reject or select orders and report to direct supervisors who
3 are in charge of their work and what assignments they receive. During the prescheduled shifts,
4 Drivers commit to working a set number of hours, during a set period of time. Drivers who do not
5 remain active and accept deliveries during their prescheduled shifts are subject to discipline,
6 including having their access to Defendants' app suspended or terminated. Plaintiffs Nolasco,
7 Maddox, and Gallardo were each reprimanded, including termination of Plaintiff Maddox'
8 employment, for being unable to receive deliveries during a scheduled block, rejecting a delivery,
9 being away for longer than expected, and/or failing to mark orders complete.

10 32. Defendants classify all Drivers as independent contractors. As such, Defendants do
11 not provide them with meal breaks, rest breaks, minimum wage, overtime, accurate itemized wage
12 statements, benefits, reporting time pay, timely wages during and after employment, reimbursement
13 for mileage and/or gas, or any other basic protection afforded to employees.

14 33. Defendants' Drivers are misclassified because they are under the control and direction
15 of Defendants in connection with the performance of their work, perform work that is part of the
16 usual course of Defendants' business, and are not customarily engaged in an independently
17 established trade, occupation, or business in the same nature of the work performed for Defendants.
18 Defendants employed Plaintiffs and the other Aggrieved Employees as Drivers and willfully
19 misclassified them as independent contractors.

20 34. Defendants also are not a "DNC" or "Delivery network company" as that term is
21 defined in the Cal. Bus. & Prof. Code § 7463. The Code defines a Delivery network company as
22 one that maintains an online-enabled application or platform used to facilitate delivery services "on
23 an on-demand basis." Cal. Bus. & Prof. Code § 7463. It further provides that deliveries are only on
24 an on-demand basis if drivers "are provided with the option to accept or decline each delivery request
25 and *the DNC does not require the DNC courier to accept any specific delivery request as a condition*
26 *of maintaining access to the DNC's online-enabled application or platform.*" *Id.* (emphasis added).

27 35. Defendants do not provide for delivery services to be performed on an on-demand
28 basis, and instead require Drivers to accept specific delivery requests as a condition of maintaining

1 access to Defendants' platform. As described above, Plaintiffs Nolasco, Maddox, and Gallardo each
2 faced repercussions from Defendants for not accepting delivery assignments.

3 36. Defendants also use the pre-scheduled shifts to set times, dates, and minimum hours
4 for Drivers to perform their work. When Drivers schedule shifts, they must show up on time and
5 work the entirety of the shift or face disciplinary action including restricted access to the delivery
6 platform and termination. This restricts Drivers' ability to perform work for other companies and/or
7 work in other lawful occupations. It also allows Defendants to fill a full schedule and assure that
8 they have Drivers working the dates, timeslots, and durations of Defendants choosing.

9 37. Defendants also do not afford Drivers with the required protections as set forth by
10 Prop. 22. Defendants do not provide drivers with 120% of the local minimum wage for engaged
11 time, do not properly compensate for mileage, and do not provide the required occupational accident
12 insurance or health insurance subsidies.

13 38. Defendants willfully misclassify their Drivers as independent contractors to deprive
14 them of fundamental employment rights, such as the right to minimum wages, the right to overtime,
15 the right to mandated meal breaks, the right to mandated rest breaks, the right to premium wages for
16 missed meal and rest breaks, the right to accurate itemized wage statements, the right to the prompt
17 payment of full wages within time limits designated by law, and the right to be reimbursed for
18 necessary business expenses.

19 39. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
20 or should have known that Plaintiffs and Aggrieved Employees were entitled to receive certain
21 wages for all work performed, including for overtime compensation.

22 40. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
23 or should have known that Plaintiffs and the other Aggrieved Employees were working over eight
24 (8) hours per day and were entitled to receive certain wages for overtime compensation and that they
25 were not receiving wages for overtime compensation.

26 41. Plaintiffs are informed and believe, and based thereon allege, that Defendants
27 engaged in a uniform policy and systematic scheme of wage abuse against their hourly paid
28 employees.

1 42. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed
2 to provide Plaintiffs and the other Aggrieved Employees the required rest and meal periods during
3 the relevant time period as required under the Industrial Welfare Commission Wage Orders and/or
4 applicable Labor Codes, thus are entitled to any and all applicable penalties.

5 43. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
6 or should have known that Plaintiffs and the other Aggrieved Employees were entitled to receive all
7 meal periods or payment of one additional hour of pay at Plaintiffs' and the other Aggrieved
8 Employees' regular rate of pay when a meal period was missed.

9 44. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
10 or should have known that Plaintiffs and the other Aggrieved Employees were entitled to receive all
11 rest periods or payment of one additional hour of pay at Plaintiffs' and the other Aggrieved
12 Employees' regular rate of pay.

13 45. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
14 or should have known that Plaintiffs and the other Aggrieved Employees were entitled to receive all
15 wages owed to them upon discharge or resignation.

16 46. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
17 or should have known that Plaintiffs and the other Aggrieved Employees were entitled to receive
18 complete and accurate wage statements in accordance with California law.

19 47. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
20 or should have known that they had a duty to compensate Plaintiffs and the other Aggrieved
21 Employees pursuant to California law, and that Defendants had the financial ability to pay such
22 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to
23 Plaintiffs and the other Aggrieved Employees that they were properly denied wages, all in order to
24 increase Defendants' profits.

25 48. At all material times set forth herein, Defendants regularly and consistently failed to
26 compensate Plaintiffs and the other Aggrieved Employees for all hours worked.

27 49. At all material times set forth herein, Defendants failed to fully comply with the
28 relevant provision of the Labor Code and the IWC orders to pay overtime wages to Plaintiffs and

1 the other Aggrieved Employees.

2 50. At all material times set forth herein, Defendants failed to fully comply with the
3 relevant provision of the Labor Code and the IWC orders to provide uninterrupted meal and rest
4 periods to Plaintiffs and the other Aggrieved Employees.

5 51. At all material times set forth herein, Defendants regularly and consistently failed to
6 provide complete and accurate wage statements to Plaintiffs and the other Aggrieved Employees.

7 52. At all material times set forth herein, Defendants regularly and consistently failed to
8 pay Plaintiffs and the other Aggrieved Employees all wages owed to them upon discharge or
9 resignation.

10 **FIRST CAUSE OF ACTION**

11 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**
12 **for Violations of Cal. Lab. Code §§ 226.7 and 512**

13 **(Meal Periods)**

14 **(Against All Defendants)**

15 53. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
16 herein.

17 54. Defendants fail to not only provide legally compliant meal periods, but also to
18 properly compensate Plaintiffs and Aggrieved Employees for non-compliant meal periods.
19 Defendants fail to pay Plaintiffs and Aggrieved Employees premium payments for each missed meal
20 period, as required by law. Plaintiffs and Aggrieved Employees regularly work eight, ten, or more
21 hours a day yet are constantly required to work through both their first and second meal periods.

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

28 56. Cal. Lab. Code § 512(a) provides:

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

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

10 58. Despite these requirements, Defendants knowingly and willfully refuse to perform
11 their obligation to authorize and permit and/or make available to Plaintiffs and Aggrieved
12 Employees the ability to take the off-duty meal periods to which they are entitled. Defendants have
13 also failed to pay Plaintiffs and Aggrieved Employees one hour of pay for each off-duty meal period
14 that they were denied. Defendants' conduct described herein violates Cal. Lab. Code §§ 226.7 and
15 512.

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

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

25 61. Plaintiffs seek to recover civil penalties from Defendants for their violations of the
26 meal period requirements of Cal. Lab. Code §§ 226.7 and 512 throughout California on behalf of
27 the State of California and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

28 62. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for the

1 unlawful conduct alleged herein, on behalf of the State and other Aggrieved Employees for
2 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§ 512
3 and 558(a).

4 63. On November 17, 2022, February 1, 2023, February 3, 2023, and February 15, 2023,
5 Plaintiffs Nolasco, Maddox, Gallardo, and Hamati, respectively, provided written notice to the Labor
6 and Workforce Development Agency ("LWDA") and to Defendants of their intent to pursue civil
7 penalties for Defendants' violations of the meal period requirements of Cal. Lab. Code §§ 226.7,
8 512, and 558 pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA
9 with notice, yet, Plaintiffs have not received a response from the LWDA or Defendants. Accordingly,
10 pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites
11 to commence a PAGA action.

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

15 65. Wherefore, Plaintiffs request relief as hereinafter provided.

16 **SECOND CAUSE OF ACTION**

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

18 **for Violations of Cal. Lab. Code § 226.7**

19 **(Rest Breaks)**

20 **(Against All Defendants)**

21 66. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
22 herein.

23 67. Similar to Plaintiffs' and Aggrieved Employees' meal periods, Defendants fail to not
24 only provide legally compliant rest periods, but also to properly compensate Plaintiffs and
25 Aggrieved Employees for non-compliant rest periods by not providing premium payments as
26 required by law. Plaintiffs and Aggrieved Employees regularly work eight, ten, or more hours a day
27 yet are constantly required to work through the rest periods to which they are entitled.

28 68. Cal. Lab. Code §§ 226.7 and the applicable Wage Orders require Defendants to

1 authorize and permit rest periods to their employees. Cal. Lab. Code § 226.7 and the applicable
2 Wage Orders require employers to authorize and permit employees to take ten minutes of net rest
3 time per four hours or major fraction thereof of work, and to pay employees their full wages during
4 those rest periods. Unless the employee is relieved of all duty during the thirty-minute meal period
5 and ten-minute rest period, the employee is considered “on duty” and the meal or rest period is
6 counted as time worked under the applicable Wage Orders.

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

11 70. Despite these requirements, Defendants knowingly and willfully refuse to perform
12 their obligation to authorize and permit and/or make available to Plaintiffs and Aggrieved
13 Employees the ability to take the off-duty rest periods to which they are entitled. Defendants have
14 also failed to pay Plaintiffs and Aggrieved Employees one hour of pay for each off-duty rest period
15 that they were denied. Defendants’ conduct described herein violates Cal. Lab. Code § 226.7.

16 71. On information and belief, Defendants’ conduct has been substantially the same at all
17 relevant times throughout the state of California.

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

25 73. Plaintiffs seek to recover civil penalties from Defendants for their violations of the
26 rest break requirements of Cal. Lab. Code § 226.7 throughout California on behalf of the State of
27 California and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

28 74. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for the

1 unlawful conduct alleged herein, on behalf of the State and other Aggrieved Employees for
2 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §
3 558(a).

4 75. On November 17, 2022, February 1, 2023, February 3, 2023, and February 15, 2023,
5 Plaintiffs Nolasco, Maddox, Gallardo, and Hamati, respectively, provided written notice to the Labor
6 and Workforce Development Agency ("LWDA") and to Defendants of their intent to pursue civil
7 penalties for Defendants' violations of the meal period and rest break requirements of Cal. Lab.
8 Code §§ 226.7 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided
9 the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or Defendants.
10 Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative
11 prerequisites to commence a PAGA action.

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

15 77. Wherefore, Plaintiffs request relief as hereinafter provided.

16 **THIRD CAUSE OF ACTION**

17 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**
18 **for Violations of Cal. Lab. Code §§ 204, 1194, and 1198**
19 **(Failure to Pay for all Hours Worked)**
20 **(Against All Defendants)**

21 78. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
22 herein.

23 79. Defendants willfully engaged and continue to engage in a policy and practice of not
24 compensating Aggrieved Employees for all hours worked or spent in Defendants' control.
25 Defendants regularly require Aggrieved Employees to perform uncompensated off-the-clock work.

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

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

3 82. Cal. Lab. Code § 1194(a) provides as follows:

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

7 83. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
8 conditions that violate the Wage Order.

9 84. IWC Wage Orders, 4-2001(2)(K) 7-2001(2)(G), and 9-2001(2)(H) define hours
10 worked as “the time during which an employee is subject to the control of an employer and includes
11 all the time the employee is suffered or permitted to work, whether or not required to do so.”

12 85. In violation of California law, Defendants knowingly and willfully refuse to provide
13 Aggrieved Employees with compensation for all time worked. Defendants intentionally and
14 willfully require Plaintiffs and Aggrieved Employees to remain on duty during their scheduled shifts
15 and do not pay Aggrieved Employees for time spent returning to Defendants’ facilities to receive
16 new delivery assignments or time spent waiting for new delivery assignments. As a result of
17 Defendants’ policies and practices, Aggrieved Employees are routinely denied the opportunity to
18 take legally compliant meal and rest breaks without compensation and are further denied the
19 overtime premiums resulting from the additional off-the-clock work performed while not actively
20 making a delivery. Defendants do not account for this off-the-clock work when compensating
21 Plaintiffs and Aggrieved Employees, resulting in widespread under-compensation of Aggrieved
22 Employees.

23 86. Therefore, Defendants committed, and continue to commit, the acts alleged herein
24 knowingly and willfully, and in conscious disregard of the Aggrieved Employees’ rights.

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

4 88. Plaintiffs seek to recover civil penalties from Defendants for their failure to pay for
5 all hours worked in violation of Cal. Lab. Code §§ 204, 1194, and 1198 throughout California on
6 behalf of the State of California and other Aggrieved Employees pursuant to Cal. Lab. Code §
7 2699(f).

8 89. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for the
9 unlawful conduct alleged herein, on behalf of the State, other Aggrieved Employees for Defendant's
10 violations of Labor Code provisions including but not limited to Cal. Lab. Code § 558(a).

11 90. On November 17, 2022, February 1, 2023, February 3, 2023, and February 15, 2023,
12 Plaintiffs Nolasco, Maddox, Gallardo, and Hamati, respectively, provided written notice to the
13 LWDA and to Defendants of their intent to pursue civil penalties for Defendants' failure to pay for
14 all hours worked in violation of Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA.
15 Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not
16 received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code §
17 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to commence a PAGA action.

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

21 92. Wherefore, Plaintiffs request relief as hereinafter provided.

22 **FOURTH CAUSE OF ACTION**

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

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

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

26 **(Against All Defendants)**

27 93. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
28 herein.

1 94. Defendants fail to compensate Plaintiffs and Aggrieved Employees with at least the
2 minimum wage for all hours worked or spent in Defendants’ control because they pay Plaintiffs and
3 the Aggrieved Employees at nominal rates at or just above the required California minimum, and
4 when the required premium payments for missed breaks, wages for off-the-clock work, and overtime
5 wages are factored in, the actual rate of pay often drops below the required California minimum.

6 95. Cal. Lab. Code § 1182.12 provides, in relevant part:

7 (a) Notwithstanding any other provision of this part, on and after July 1, 2014, the
8 minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and
9 on and after January 1, 2016, the minimum wage for all industries shall be not less
10 than ten dollars (\$10) per hour.

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

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

16 ...

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

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

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

23 (2) For any employer who employs 25 or fewer employees, the minimum wage shall
24 be as follows:

25 ...

26 (C) From January 1, 2020, to December 31, 2020, inclusive,—twelve dollars (\$12)
27 per hour.

28 (D) From January 1, 2021, to December 31, 2021, inclusive,—thirteen dollars (\$13)
per hour.

 (E) From January 1, 2022, to December 31, 2022, inclusive,—fourteen dollars (\$14)
per hour.

 (F) From January 1, 2023, and until adjusted by subdivision (c)—fifteen dollars (\$15)
per hour.

 (3) For purposes of this subdivision, “employer” means any person who directly or
indirectly, or through an agent or any other person, employs or exercises control over
the wages, hours, or working conditions of any person. For purposes of this
subdivision, “employer” includes the state, political subdivisions of the state, and
municipalities.

 96. IWC Wage Orders, 4-2001(2)(K) 7-2001(2)(G), and 9-2001(2)(H) define hours
worked as “the time during which an employee is subject to the control of an employer and includes

1 all the time the employee is suffered or permitted to work, whether or not required to do so.”

2 97. Cal. Lab. Code § 1194(a) provides as follows:

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

6 98. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under
7 conditions that violate the Wage Orders.

8 99. Because of Defendants’ policies and practices with regard to compensating Plaintiffs
9 and Aggrieved Employees, Defendants have failed to pay minimum wages as required by law.
10 Plaintiffs and the Aggrieved Employees frequently perform work for which they are compensated
11 below the statutory minimum wage, as determined by the IWC.

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

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

19 102. By failing to maintain adequate time records as required by Cal. Lab. Code § 1174(d)
20 and IWC Wage Orders 4-2001, 7-2011 and 9-2001, Defendants have made it difficult to calculate
21 the minimum wage compensation due to Plaintiffs and Aggrieved Employees.

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

104. Plaintiffs seek to recover civil penalties from Defendants for their failure to pay minimum wages in violation of Cal. Lab. Code §§ 1182.12, 1194, and 1197 throughout California on behalf of the State of California and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

105. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful conduct alleged herein, on behalf of the State and other Aggrieved Employees for Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code § 558(a).

106. On November 17, 2022, February 1, 2023, February 3, 2023, and February 15, 2023, Plaintiffs Nolasco, Maddox, Gallardo, and Hamati, respectively, provided written notice to the LWDA and to Defendants of their intent to pursue civil penalties for Defendants' failure to pay minimum wages in violation of Cal. Lab. Code §§ 558(a) and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to commence a PAGA action.

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

108. Wherefore, Plaintiffs request relief as hereinafter provided.

FIFTH CAUSE OF ACTION

**Penalties Pursuant to Cal. Lab. Code § 2699(f)
for Violations of Cal. Lab. Code §§ 510 and 1194
(Failure to Pay Overtime Wages)
(Against All Defendants)**

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

110. Defendants do not properly compensate Aggrieved Employees with appropriate overtime premiums, including time and a half premiums based on their regular rate of pay, as

1 required by California law.

2 111. Cal. Lab. Code § 510(a) provides as follows:

3 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
4 one workday and any work in excess of 40 hours in any one workweek and the first
5 eight hours worked on the seventh day of work in any one workweek shall be
6 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.

7 112. Cal. Lab. Code § 1194(a) provides as follows:

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

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

15 114. Defendants' policies and practices of requiring Aggrieved Employees to perform
16 work off-the-clock are unlawful and results in overtime violations. As a result of these unlawful
17 policies and practices, Aggrieved Employees have worked overtime hours for Defendants without
18 being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Orders,
19 and other applicable law.

20 115. Defendants knowingly and willfully refused to perform their obligations to
21 compensate Aggrieved Employees for all premium wages for overtime work.

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

1 117. Plaintiffs seek to recover civil penalties from Defendants for their failure to pay
2 overtime wages in violation of Cal. Lab. Code §§ 510 and 1194 and the applicable wage orders
3 throughout California on behalf of the State of California and other Aggrieved Employees pursuant
4 to Cal. Lab. Code § 2699(f).

5 118. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for the
6 unlawful conduct alleged herein, on behalf of the State and other Aggrieved Employees for
7 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§ 510
8 and 558(a).

9 119. On November 17, 2022, February 1, 2023, February 3, 2023, and February 15, 2023,
10 Plaintiffs Nolasco, Maddox, Gallardo, and Hamati, respectively, provided written notice to the
11 LWDA and to Defendants of their intent to pursue civil penalties for Defendants' failure to pay
12 overtime wages in violation of Cal. Lab. Code §§ 510, 558(a), and 1194 pursuant to the PAGA. Over
13 65 days have passed since Plaintiffs provided the LWDA with notice; yet, Plaintiffs have not
14 received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code §
15 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to commence a PAGA action.

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

19 121. Wherefore, Plaintiffs request relief as hereinafter provided.

20 **SIXTH CAUSE OF ACTION**

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

22 **for Violations of Cal. Lab. Code § 2802**

23 **(Failure to Reimburse Necessary Business Expenditures)**

24 **(Against All Defendants)**

25 122. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
26 herein.

27 123. Defendants also fail to reimburse Plaintiffs and Aggrieved Employees for all business
28 expenses incurred while on the job. Plaintiffs and Aggrieved Employees must use their personal

1 cellphones for work-related communications, as well as paying for metered parking, vehicle repair
2 and upkeep. Defendants also do not reimburse Plaintiffs and Aggrieved Employees' mileage for
3 using their personal vehicles at the legally-required rate. Defendants fail to reimburse Plaintiffs and
4 Aggrieved Employees for such "out-of-pocket" business expenses.

5 124. Cal. Lab. Code § 2802(a) provides as follows:

6 An employer shall indemnify his or her employee for all necessary expenditures or
7 losses incurred by the employee in direct consequence of the discharge of his or her
8 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful.

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

16 126. Plaintiffs seek to recover civil penalties from Defendants for their failure to pay
17 overtime wages in violation of Cal. Lab. Code § 2802 and the applicable wage orders throughout
18 California on behalf of the State of California and other Aggrieved Employees pursuant to Cal. Lab.
19 Code § 2699(f).

20 127. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for the
21 unlawful conduct alleged herein, on behalf of the State and other Aggrieved Employees for
22 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code § 2802.

23 128. On November 17, 2022, February 1, 2023, February 3, 2023, and February 15, 2023,
24 Plaintiffs Nolasco, Maddox, Gallardo, and Hamati, respectively, provided written notice to the
25 LWDA and to Defendants of their intent to pursue civil penalties for Defendants' failure to pay
26 overtime wages in violation of Cal. Lab. Code §§ 510, 558(a), and 1194 pursuant to the PAGA. Over
27 65 days have passed since Plaintiffs provided the LWDA with notice; yet, Plaintiffs have not
28 received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code §

1 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to commence a PAGA action.

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

5 130. Wherefore, Plaintiffs request relief as hereinafter provided.

6 **SEVENTH CAUSE OF ACTION**

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

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

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

10 **(Against All Defendants)**

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

13 132. Defendants do not provide Plaintiffs and Aggrieved Employees with accurate
14 itemized wage statements as required by California law. Plaintiffs and the Aggrieved Employees
15 can only view vague payment information through Defendants' app. Further, the wage information
16 that Plaintiffs and Aggrieved Employees can access does not accurately reflect the meal and rest
17 break, off-the-clock work, and overtime violations set forth above, and Defendants' failure to
18 provide premium pay for the missed breaks.

19 133. Cal. Lab. Code § 226(a) provides:

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

1 by the employer for at least three years at the place of employment or at a central
2 location within the State of California.

3 134. The IWC Wage Orders also establishes this requirement. (*See* IWC Wage Orders 4-
2001, 7-2001 and 9-2001).

4 135. Cal. Lab. Code § 226(e)(1) provides:

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

11 136. Defendants due not provide wage statements that break down Plaintiffs and the
12 Aggrieved Employees' hours worked and rates of pay. Further, due to the failure to pay one hour of
13 premium pay to Plaintiffs and the Aggrieved Employees for each missed or noncompliant meal or
14 rest period, along with the off-the-clock work, and overtime violations, the wage statements
15 Defendants provide their employees, including Plaintiffs and Aggrieved Employees, do not reflect
16 the actual gross wages earned, actual net wages earned, or actual hours worked. Accordingly,
17 Defendants have knowingly and willfully failed to provide timely, accurate itemized wage
18 statements to Plaintiffs and Aggrieved Employees in accordance with Cal. Lab. Code § 226 and the
19 IWC Wage Orders.

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

22 138. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty
23 to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of other
24 current or former employees pursuant to the procedures set forth in Cal. Lab. Code § 2699.3. Cal.
25 Lab. Code § 2699(a) provides:

26 Notwithstanding any other provision of law, any provision of this code that provides
27 for a civil penalty to be assessed and collected by the Labor and Workforce
28 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 ...
other current or former employees.

139. Plaintiffs seek to recover civil penalties from Defendants pursuant to Cal. Lab. Code

1 § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiffs and Aggrieved
2 Employees an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the
3 amounts established by Cal. Lab. Code § 226(e). Plaintiffs seek such penalties as an alternative to
4 the penalties available under Cal. Lab. Code § 226(e), as prayed for herein.

5 140. Plaintiffs also seek civil penalties pursuant to Cal. Lab. Code § 2699(a) for the
6 unlawful conduct alleged herein, on behalf of the State and other Aggrieved Employees for
7 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§
8 226.3 and 558(a).

9 141. On November 17, 2022, February 1, 2023, February 3, 2023, and February 15, 2023,
10 Plaintiffs Nolasco, Maddox, Gallardo, and Hamati, respectively, provided written notice to the
11 LWDA and to Defendants of their intent to pursue civil penalties for Defendants' failure to provide
12 accurate, itemized wage statements in violation of Cal. Lab. Code §§ 226 and 558(a) pursuant to the
13 PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice; yet, Plaintiffs
14 have not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab.
15 Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to commence a PAGA
16 action.

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

20 143. Wherefore, Plaintiffs request relief as hereinafter provided.

21 **EIGHTH CAUSE OF ACTION**

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

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

24 **(Waiting Time Penalties)**

25 **(Against All Defendants)**

26 144. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
27 herein.

28 145. Defendants do not provide Plaintiffs and the Aggrieved Employees with their wages

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

4 146. 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.

7 147. 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.

11 148. 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, 201.5, 202, and 205.5, any wages of an employee who is discharged
14 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.

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

18 150. Defendants willfully refused and continue to refuse to pay Plaintiffs and 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, Plaintiffs and Aggrieved Employees have suffered and continue to suffer substantial losses,
22 including lost earnings, and interest.

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

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

1 153. 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 Labor Code on behalf of other
3 current or former employees pursuant to the procedures set forth in Cal. Lab. Code § 2699.3. Cal.
4 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
9 recovered through a civil action brought by an aggrieved employee on behalf of ...
10 other current or former employees.

11 154. Plaintiffs seek 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 Plaintiffs and Aggrieved Employees
13 in compliance with Cal. Lab. Code §§ 201-202 in the amounts established by Cal. Lab. Code § 203.
14 Plaintiffs seek such penalties as an alternative to the penalties available under Cal. Lab. Code § 203,
15 as prayed for herein.

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

20 156. On November 17, 2022, February 1, 2023, February 3, 2023, and February 15, 2023,
21 Plaintiffs Nolasco, Maddox, Gallardo, and Hamati, respectively, provided written notice to the
22 LWDA and to Defendants of their intent to pursue civil penalties for Defendants' failure to pay
23 wages when due after the end employment with Defendants in violation of Cal. Lab. Code §§ 201-
24 203 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA
25 with notice, yet, Plaintiffs have not received a response from the LWDA or Defendants. Accordingly,
26 pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites
27 to commence a PAGA action.

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

158. Wherefore, Plaintiffs request relief as hereinafter provided.

NINTH CAUSE OF ACTION

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

for Violations of Cal. Lab. Code § 226.8

(Willful Misclassification)

(Against All Defendants)

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

160. Plaintiffs and Aggrieved Employees are misclassified because they are under the control and direction of Defendants in connection with the performance of their work, perform work that is part of the usual course of Defendants business, and are not customarily engaged in an independently established trade, occupation, or business in the same nature of the work performed for Defendants. Defendants employed Plaintiffs and the other Aggrieved Employees as Drivers and willfully misclassified them as independent contractors.

161. Defendants willfully misclassify Plaintiffs and Aggrieved Employees as independent contractors to deprive them of fundamental employment rights, such as the right to minimum wages, the right to overtime, the right to mandated meal breaks, the right to mandated rest breaks, the right to premium wages for missed meal and rest breaks, the right to accurate itemized wage statements, the right to the prompt payment of full wages within time limits designated by law, and the right to be reimbursed for necessary business expenses.

162. Defendants also misclassify Plaintiffs and Aggrieved Employees under Prop. 22 because Defendants prescribe dates, times, and minimum numbers of hours during which Plaintiffs and Aggrieved Employees must be logged into Defendants' application, require Plaintiffs and Aggrieved Employees to accept deliveries to maintain access to Defendants' application, and restrict Plaintiffs and Aggrieved Employees from performing rideshare or delivery services for another company and their ability to work in any other lawful occupation or business.

163. Further, Defendants do not provide Plaintiffs and Aggrieved Employees with the required protections prescribed by Prop. 22, such as paying 120% of the local minimum wage for

engaged time and offering occupational accident insurance and health insurance subsidies.

164. Cal. Lab. Code § 226.8(a)(1) prohibits any person or employer to willfully misclassify an individual as an independent contractor.

165. Cal. Lab. Code § 226.8(c) provides:

If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

166. Plaintiffs seek civil penalties in the amount established by Cal. Lab. Code § 226.8(c) for each Defendants' willful misclassification of Plaintiffs and Aggrieved Employees as independent contractors.

167. On November 17, 2022, February 1, 2023, February 3, 2023, and February 15, 2023, Plaintiffs Nolasco, Maddox, Gallardo, and Hamati, respectively, provided written notice to the LWDA and to Defendants of their intent to pursue civil penalties for Defendants' failure to pay wages when due after the end employment with Defendants in violation of Cal. Lab. Code §§ 201-203 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiffs provided the LWDA with notice, yet, Plaintiffs have not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiffs have satisfied the administrative prerequisites to commence a PAGA action

168. Plaintiffs seek the aforementioned penalties on behalf of the State and other Aggrieved Employees as set forth in Cal. Lab. Code § 2699.

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

170. Wherefore, Plaintiffs request relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for relief as follows:

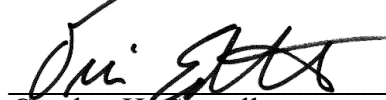
a. For the Court to declare, adjudge, and decree that Defendants violated the California

Labor Code as alleged herein;

- b. For an order awarding the State of California and Aggrieved Employees civil penalties provided under the PAGA;
- c. For interest as provided by applicable law;
- d. For an award of reasonable attorneys' fees;
- e. For all costs of suit; and
- f. For such other and further relief as this Court deems just and proper.

Dated: August 18, 2023

Respectfully Submitted,



Carolyn H. Cottrell

Ori Edelstein

Eugene Zinovyev

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

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

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Dated: August 18, 2023

Jim EHS

COTTRELL KONECKY LLP

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