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SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

TRACY SELBY, on behalf of the State of
California, and Aggrieved Employees;

Plaintiff,

v.

KPC GLOBAL MEDICAL CENTERS, INC.; and
DOES 1-100, inclusive;

Defendant.

Case No.: CVRI2302864

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

DEMAND FOR JURY TRIAL

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

3 **INTRODUCTION**

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

9 2. Plaintiff and the Aggrieved Employees are current and former non-exempt, hourly
10 workers who have worked for Defendant in California throughout the relevant time period,
11 defined as July 16, 2022 through the final resolution of this action.¹

12 3. Upon information and belief, Defendant owns and operates medical facilities in
13 California. Plaintiff is informed, believes, and thereon alleges that Defendant employs hundreds
14 of hourly, non-exempt workers similarly situated to Plaintiff in California.

15 4. Plaintiff challenges Defendant’s policies and practices of (1) failing to pay Plaintiff
16 and the Aggrieved Employees for all hours worked; (2) failing to pay Plaintiff and the Aggrieved
17 Employees all minimum wages owed; (3) failing to pay Plaintiff and the Aggrieved Employees
18 overtime wages as required by law for hours worked over eight hours in a day and/or forty hours
19 in a week; (4) failing to authorize and permit Plaintiff and the Aggrieved Employees to take rest
20 breaks to which they are entitled by law and failing to make premium payments for those non-
21 compliant rest breaks; (5) failing to provide meal breaks to Plaintiff and Aggrieved Employees to
22 which they are entitled by law and failing to make premium payments for those non-compliant
23 meal breaks; (6) failing to provide Plaintiff and the Aggrieved Employees accurate, itemized wage
24 statements; and (7) failing to timely pay Plaintiff and the Aggrieved Employees full wages earned
25 during employment and upon separation.

26 5. Defendant maintains a policy and/or practice of failing to properly compensate
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 Plaintiff and on information and belief, the Aggrieved Employees for work related tasks
2 performed while “off-the-clock,” giving rise to minimum wage and overtime violations. This
3 includes, but is not limited to, requiring Plaintiff and on information and belief, the Aggrieved
4 Employees to undergo Covid-19 screenings off-the clock without compensation, requiring
5 Plaintiff and on information and belief, Aggrieved Employees to perform work while off-the-
6 clock during meal periods, and failing to pay Plaintiff and on information and belief, Aggrieved
7 Employees for off-the-clock time worked beyond their scheduled shifts. This time spent working
8 off-the-clock goes unrecorded and therefore uncompensated.

9 6. Upon information and belief, Defendant institutes a similar policy of not
10 compensating employees for off-the-clock time worked beyond scheduled shifts that results in
11 hundreds of Aggrieved Employees performing services for the benefit of Defendant while off-
12 the-clock.

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

22 8. Upon information and belief Defendant imposes unlawful alternative workweeks in
23 some of its facilities. Defendant routinely requires Plaintiff and on information and belief,
24 Aggrieved Employees to work alternative work weeks under an unlawful policy. The alternative
25 workweeks’ policy established by Defendant requires Plaintiff and on information and belief,
26 Aggrieved Employees to work shifts of twelve hours, three times per week. Under their alternative
27 workweeks’ policy, Defendant did not pay Plaintiff and on information and belief, Aggrieved
28 Employees such time worked over eight hours worked in a workday at the overtime pay rate.

1 9. As a result of these policies and/or practices, Plaintiff and on information and belief,
2 Aggrieved Employees are denied compensation for all hours worked, including minimum wages
3 and overtime, which they are lawfully owed resulting from the off-the-clock work in excess of
4 eight (8) hours per day and forty (40) hours per week.

5 10. Defendant regularly fails to provide Plaintiff and on information and belief, the
6 Aggrieved Employees with timely, legally compliant meal breaks, yet Defendant does not provide
7 Plaintiff and on information and belief, the Aggrieved Employees with premium pay for missed,
8 late and/or interrupted meal and rest breaks. Plaintiff and on information and belief, the Aggrieved
9 Employees are routinely denied compliant meal breaks for multiple reasons. Defendant does not
10 provide or make available full, timely, and uninterrupted meal periods to Plaintiff and on
11 information and belief, the Aggrieved Employees. Plaintiff and on information and belief, the
12 Aggrieved Employees are often too busy working to take bona fide meal breaks. Further,
13 Defendant is often understaffed and therefore Plaintiff and on information and belief, the
14 Aggrieved Employees are required to remain on-call performing tasks like continuing to assist
15 and help with patients.

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

21 12. In addition, for each day Plaintiff and on information and belief, the Aggrieved
22 Employees work shifts of more than ten hours, Defendant systematically denies Plaintiff and on
23 information and belief, the Aggrieved Employees a full, timely, and uninterrupted second meal
24 break using the same policies and practices that deny Plaintiff and on information and belief, the
25 Aggrieved Employees their initial meal breaks as outlined above. Similarly, Plaintiff and on
26 information and belief, the Aggrieved Employees do not receive requisite premium payments for
27 these missed second meal breaks.

28 13. Further, Plaintiff and on information and belief, the Aggrieved Employees are

1 routinely denied compliant rest breaks. Much like the reasons that Plaintiff and the Aggrieved
2 Employees are denied compliant meal breaks, Plaintiff and on information and belief, the
3 Aggrieved Employees do not receive compliant rest breaks because Defendant does not authorize
4 or permit full, timely, and uninterrupted rest breaks to Plaintiff and on information and belief, the
5 Aggrieved Employees, Plaintiff and on information and belief, the Aggrieved Employees are often
6 too busy with work during the day to have time to take bona fide rest breaks, and Defendant is
7 understaffed and therefore Plaintiff and on information and belief, the Aggrieved Employees are
8 required to remain on-call performing tasks like continuing to assist and help with patients
9 resulting in interrupted rest breaks.

10 14. The wage statements provided by Defendant do not accurately set forth all of the
11 information required by California law. The wage statements fail to accurately report the hours
12 worked and the amount of wages and overtime pay to which Plaintiff and on information and
13 belief, Aggrieved Employees are entitled. Further, Defendant fails to report all premium pay owed
14 for non-compliant meal and rest periods. As a result, Plaintiff and on information and belief,
15 Aggrieved Employees cannot readily determine from the wage statements alone the compensation
16 owed to them.

17 15. As a result of the above violations, Defendant has also failed to pay Plaintiff and on
18 information and belief, Aggrieved Employees all wages due during employment and following
19 their separation from employment.

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

23 **PARTIES**

24 17. Plaintiff and the Aggrieved Employees are current and former non-exempt, hourly
25 employees who worked for Defendant during all relevant times throughout California. Defendant
26 employs and/or employed Plaintiff and the Aggrieved Employees.

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

1 19. Plaintiff was employed by Defendant as a non-exempt nurse from February 6, 2021,
2 to March 26, 2023. Plaintiff worked for Defendant in Hemet, California.

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

9 21. Plaintiff is informed, believes, and thereon alleges that Defendant employs and/or
10 employed the Aggrieved Employees, among other hourly employees, in this county and
11 throughout the state of California.

12 22. Defendant employs and/or employed Plaintiff and the Aggrieved Employees
13 because Defendant, directly or indirectly, control the employment terms, pay practices,
14 timekeeping practices, and daily work of Plaintiff and the Aggrieved Employees.

15 23. Plaintiff is informed, believes, and thereon alleges that Defendant exercises control
16 over Plaintiff and the Aggrieved Employees with respect to their employment.

17 24. Plaintiff is informed, believes, and thereon alleges that each and every one of the
18 acts and omissions alleged herein were performed by and/or attributable to Defendant.

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

26 26. At all relevant times, Defendant has done business under the laws of California, have
27 had places of business in California, including in this judicial district, and have employed the
28 Aggrieved Employees in this judicial district. Defendant is a “person” as defined in Labor Code

§ 18 and Business and Professions Code § 17201. Defendant is also an “employer” as that term is used in the Labor Code and IWC Wage Orders.

JURISDICTION AND VENUE

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

28. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendant because it is authorized to do business in the State of California, is authorized to do business and employ workers in the State of California, and is registered with the California Secretary of State.

FACTUAL ALLEGATIONS

29. Upon information and belief, Defendant owns and operates medical facilities in California. Plaintiff is informed, believes, and thereon alleges that Defendant employs hundreds of hourly, non-exempt workers similarly situated to Plaintiff in California.

30. Defendant was formally a Delaware corporation named Physicians for Healthy Hospitals, Inc. On August 11, 2020, an Articles of Incorporation with Statement of Conversion was filed with the Secretary of State of California converting the former Delaware corporation named Physicians for Healthy Hospitals, Inc. to a California corporation named KPC Global Medical Centers, Inc.

31. Plaintiff worked for Defendant as a nurse in Hemet, California from approximately February 6, 2021, to March 6, 2023 at Hemet Valley Medical Center aka Hemet Global Medical Center. Plaintiff is informed, believes, and thereon alleges that Hemet Valley Medical Center is owned and operated by Defendant. Plaintiff was classified as an hourly, non-exempt employee and was paid at hourly rates ranging from \$26.30 to \$46.82 throughout her employment.

32. Although Plaintiff’s shifts varied in length, Plaintiff usually worked between approximately twelve (12) hours or more per shift, for approximately three (3) or more days per week. Plaintiff’s weekly hours varied, but on average, Plaintiff worked approximately thirty-six (36) hours per week, or more. Such time was exclusive of all time worked off-the-clock, as alleged

1 herein.

2 33. Like Plaintiff, the Aggrieved Employees are current and former non-exempt
3 employees of Defendant in California. Plaintiff is informed, believes, and thereon alleges that the
4 Aggrieved Employees include non-exempt workers in California, including but not limited to,
5 licensed vocational nurses, certified registered nurses, nurses, technicians, janitorial staff, clerical
6 staff, information technology staff, food services staff, environmental services staff, pharmacy
7 staff, and other employees with similar job duties. Defendant pays the Aggrieved Employees,
8 including Plaintiff, on an hourly rate basis.

9 34. Plaintiff is informed, believes, and thereon alleges that the policies and practices of
10 Defendant have at all relevant times been similar for Plaintiff and the Aggrieved Employees,
11 regardless of particular job assignment or facility location in California.

12 35. On information and belief, Aggrieved Employees are required to follow and abide
13 by common work, time, and pay policies and procedures in the performance of their jobs and
14 duties.

15 36. At the end of each pay period, on information and belief the Aggrieved Employees
16 receive wages from Defendant that are determined by common systems and methods that
17 Defendant selects and controls.

18 37. Defendant routinely requires Plaintiff and on information and belief, Aggrieved
19 Employees to perform work off-the-clock and without compensation. This includes but is not
20 limited to Defendant requiring Plaintiff and on information and belief, Aggrieved Employees to
21 undergo Covid-19 screenings which included waiting in line, filling out a sign-in sheet including
22 Covid-19 symptoms, undergoing temperature checks, undergoing a Covid-19 swab test if
23 unvaccinated for Covid-19 bi-weekly, and obtaining a sticker certifying the Covid-19 screening
24 was completed as well as surgical mask, if necessary, from a security officer prior to clocking in
25 for the start of their shift. It takes Plaintiff and on information and belief, Aggrieved Employees
26 at least approximately three minutes and often longer to go through the line, undergo such
27 temperature and Covid-19 screening checks before being permitted to clock in for the beginning
28 of each shift.

1 38. Further, when Plaintiff and on information and belief, Aggrieved Employees were
2 unable to take their meal breaks, on information and belief, Defendant would adjust their clock
3 out times in order to give the appearance meal breaks were taken and therefore that no premium
4 pay was owed. Due to Defendant adjusting Plaintiff and on information and belief, Aggrieved
5 Employees' time records to reflect meal periods taken that were not in fact taken, this time worked
6 during meal periods went uncompensated.

7 39. Upon information and belief, Defendant imposes unlawful alternative workweeks in
8 at least some of its facilities. Defendant routinely requires Plaintiff and on information and belief,
9 Aggrieved Employees to work alternative work weeks under an unlawful policy. The alternative
10 workweeks policy established by Defendant requires Plaintiff and on information and belief,
11 Aggrieved Employees to work shifts of twelve hours, three times per week. Under their alternative
12 workweeks' policy, Defendant did not pay Plaintiff and upon information and belief, Aggrieved
13 Employees such time worked over eight hours worked in a workday at the overtime pay rate.

14 40. Defendant routinely calls on Plaintiff and on information and belief, Aggrieved
15 Employees to work extra shifts and/or stay beyond the hours scheduled in their shifts. However,
16 Defendant fails to pay Plaintiff and upon information and belief, Aggrieved Employees for the
17 entire time they spent working beyond their scheduled hours.

18 41. As a result of these policies and/or practices, Plaintiff and on information and belief,
19 Aggrieved Employees are denied compensation for all hours worked, including minimum wages
20 and overtime, which they are lawfully owed resulting from the off-the-clock work in excess of
21 eight (8) hours per day and forty (40) hours per week.

22 42. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes and
23 applies these Covid-19 screenings and similarly fails to pay for such time across all of Defendant's
24 facilities throughout California.

25 43. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes the same
26 or substantially similar timekeeping mechanisms and unlawful compensation protocols
27 throughout its facilities in California.

28 44. Defendant's common course of wage-and-hour abuse also includes routinely failing

1 to maintain accurate records of the hours worked by Plaintiff and on information and belief,
2 Aggrieved Employees. In particular, Defendant has failed to record all hours worked by Plaintiff
3 and on information and belief, Aggrieved Employees, including overtime and premium pay owed
4 for non-compliant meal and rest periods.

5 45. In addition to the above, Defendant regularly fails to provide Plaintiff and on
6 information and belief, Aggrieved Employees with compliant meal and rest breaks. Defendant's
7 policies, practices, and procedures require Plaintiff and on information and belief, Aggrieved
8 Employees to routinely skip their meal and rest breaks, yet do not provide them with requisite
9 premium payments for missed meal and rest breaks. In the occasions when premium payments
10 are made, on information and belief, such are not paid at Plaintiff's and Aggrieved Employees'
11 regular rate of pay.

12 46. Plaintiff and on information and belief, Aggrieved Employees are routinely denied
13 legally compliant meal breaks for at least three reasons: (i) Defendant does not provide or make
14 available timely meal breaks to Plaintiff and Aggrieved Employees; (ii) Plaintiff and Aggrieved
15 Employees are often too busy with patients during the day to have time to take bona fide meal
16 breaks; and (iii) Defendant is understaffed and therefore Plaintiff and Aggrieved Employees
17 continued to work through meal breaks continuing to assist and help with patients.

18 47. When Plaintiff and on information and belief, Aggrieved Employees do attempt to
19 take a meal breaks, such meal breaks are untimely and/or shortened. As a result, Plaintiff and on
20 information and belief, Aggrieved Employees are not provided duty-free, uninterrupted, and
21 timely thirty-minute meal periods during which they should be completely relieved of any duty.

22 48. For each day Plaintiff and on information and belief, Aggrieved Employees work
23 shifts of more than ten hours, Defendant systematically denies Plaintiff and on information and
24 belief, Aggrieved Employees with a full, uninterrupted, or otherwise compliant second meal
25 breaks. Similarly, Plaintiff and on information and belief, Aggrieved Employees do not receive
26 requisite premium payments for these missed second meal breaks.

27 49. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes and
28 applies these meal break policies and practices across all of Defendant's facilities throughout

1 California.

2 50. Plaintiff and on information and belief, Aggrieved Employees are routinely denied
3 legally authorized rest breaks for at least three reasons: (i) Defendant does not provide or make
4 available timely rest breaks to Plaintiff and Aggrieved Employees; (ii) Plaintiff and Aggrieved
5 Employees are often too busy with patients during the day to have time to take bona fide rest
6 breaks; and (iii) Defendant is understaffed and therefore Plaintiff and Aggrieved Employees
7 continue to work through rest breaks continuing to assist and help with patients.

8 51. When Plaintiff and on information and belief, Aggrieved Employees do attempt to
9 take a rest break, such rest breaks are untimely and/or shortened. As a result, Plaintiff and
10 Aggrieved Employees are not provided duty-free, uninterrupted, and timely ten-minute rest breaks
11 during which they should be completely relieved of any duty.

12 52. Defendant's failure to record all hours worked also results in a failure to provide
13 Plaintiff and on information and belief, Aggrieved Employees accurate itemized wage statements
14 as required by California law. The wage statements Defendant provides are not accurate because
15 they do not reflect payment for all hours worked, including minimum wage and overtime
16 compensation, and premium pay for missed meal breaks, rest breaks, and second meal breaks.

17 53. Additionally, Plaintiff and on information and belief, Aggrieved Employees did not
18 receive all wages during employment and following separation from employment, including
19 payments for work performed "off-the-clock," including minimum wage and overtime
20 compensation, overtime premiums denied by Defendant's alternative workweek policy, payments
21 for work performed beyond scheduled shifts, payments for work performed during meal breaks,
22 as well as premium payments for noncompliant missed meal breaks, rest breaks, and second meal
23 breaks.

24 54. On information and belief, Aggrieved Employees report to facilities owned,
25 operated, or managed by Defendant to perform their jobs.

26 55. On information and belief, Aggrieved Employees perform their jobs under
27 Defendant's supervision using materials and technology approved and supplied by Defendant.

28 56. On information and belief, Aggrieved Employees are required to follow and abide

1 by Defendant's common work, time, and pay policies and procedures in the performance of their
2 jobs.

3 57. On information and belief, at the end of each pay period, Aggrieved Employees
4 receive wages from Defendant that are determined by common systems and methods that
5 Defendant select and control.

6 58. On information and belief, Defendant's method of paying Plaintiff and Aggrieved
7 Employees on an hourly rate basis.

8 59. On information and belief, Defendant's method of paying Plaintiff Aggrieved
9 Employees is willful and not based on a good faith and reasonable belief that their conduct
10 complied with California law.

11 60. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful
12 conduct has been widespread, repeated, and consistent as to the Aggrieved Employees and
13 throughout Defendant's locations in California.

14 61. On information and belief, Defendant's conduct described above has occurred at all
15 relevant times and is ongoing.

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

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

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

23 64. Labor Code § 2699(a) provides:

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

65. Labor Code §§ 201 and 202 require employers to immediately pay wages earned

1 and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours
2 after he or she quits, at the latest.

3 66. Labor Code § 203 provides, in relevant part:

4 “If an employer willfully fails to pay, without abatement or
5 reduction, in accordance with Sections 201, 201.5, 202, and
6 205.5, any wages of an employee who is discharged or who
7 quits, the wages of the employees shall continue as a penalty
8 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.”

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

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

16 69. Labor Code § 226(a) provides:

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

1 deductions made from payments of wages shall be recorded in
2 ink or other indelible form, properly dated, showing the month,
3 day, and year, and a copy of the statement or a record of the
4 deductions shall be kept on file by the employer for at least four
5 years at the place of employment or at a central location within
6 the State of California.”

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12 70. Labor Code § 226.3 provides:

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

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

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

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

74. On March 27, 2023, pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff served
the California Labor and Workforce Development Agency (“LWDA”) with a notice of her
intention to file a PAGA action for violations of Labor Code §§ 200, 204, & IWC Wage Order
5-2001 (failure to compensate for all hours worked); §§ 1182.12, 1194, 1197 & 1198 (failure to
pay minimum wage). § 510 (failure to pay overtime wages); §§ 226.7, 512, and IWC Wage Order
5 (failure to make available meal periods); § 226 & 226.3 (failure to provide timely and accurate
itemized wage statements), and §§ 201-203 & 256 (waiting time penalties). On the same day,
Plaintiff served Defendant’s registered agent with a courtesy copy of the notice via certified mail.

Sixty-five calendar days have passed without notice from the LWDA of intent to pursue the claim. As such, Plaintiff has satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a), (f).

75. On April 6, 2023, pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff served the LWDA and Defendant with notice of their intent to amend this PAGA action and add claims or further detail claims for violations of California Labor Code § 200, 204, & IWC Wage Order 5-2001 (failure to compensate for all hours worked); §§ 1182.12, 1194, 1197 & 1198 (failure to pay minimum wage) and § 510 (failure to pay overtime wages); §§ 226.7, 512, and IWC Wage Order 5-2001 (failure to make available meal periods); and § 226.7 and IWC Wage Order 5-2001 (failure to authorize and permit rest periods). Sixty-five calendar days have passed without notice from the LWDA of intent to pursue the claim. As such, Plaintiff has satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a), (f).

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

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

78. Wherefore, Plaintiff requests relief as hereinafter provided.

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

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

80. Labor Code § 2699(f) provides:

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

1 81. Labor Code § 200 defines wages as “all amounts for labor performed by employees
2 of every description, whether the amount is fixed or ascertained by the standard of time, task,
3 piece, commission basis or method of calculation.”

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

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

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

11 85. Labor Code § 510 provides, in relevant part:

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

26 86. Labor Code § 1182.12 provides, in relevant part:

27 ...

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

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

...

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

(E) From January 1, 2021, to December 31, 2021, inclusive,—fourteen

dollars (\$14) per hour.

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

....

87. Labor Code § 1197 provides:

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

88. Labor Code § 1194 provides, in relevant part:

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

89. Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001 require Defendant to make available timely and compliant meal periods to its employees. Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001 prohibit employers from employing an employee for more than five hours without a meal period of not less than thirty minutes, and from employing an employee more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes. Unless the employee is relieved of all duty during the thirty-minute meal period, the employee is considered “on duty” and the meal period is counted as time worked under the applicable wage orders.

90. Labor Code § 226.7 and IWC Wage Order 5-2001 require employers to authorize and permit employees to take ten minutes of net rest period time per four hours, or major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless the employee is relieved of all duty during ten-minute rest period, the employee is considered “on duty” and the meal or rest period is counted as time worked under the applicable wage order.

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

1 established by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f)
2 for Plaintiff and the Aggrieved Employees for violations of Labor Code provisions including,
3 but not limited, to, Labor Code §§ 200, 201-203, 204, 226, 226.3, 226.7, 256, 510, 512, 1182.12,
4 1194, 1197, 1198, IWC Wage Order 5-2001, and any other violation alleged herein does not
5 carry penalties under Labor Code § 2699(a).

6 92. On March 27, 2023, pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff served
7 the California Labor and Workforce Development Agency (“LWDA”) with a notice of her
8 intention to file a PAGA action for violations of Labor Code §§ 200, 204, & IWC Wage Order
9 5-2001 (failure to compensate for all hours worked); §§ 1182.12, 1194, 1197 & 1198 (failure to
10 pay minimum wage). § 510 (failure to pay overtime wages); §§ 226.7, 512, and IWC Wage Order
11 5 (failure to make available meal periods); § 226 & 226.3 (failure to provide timely and accurate
12 itemized wage statements), and §§ 201-203 & 256 (waiting time penalties). On the same day,
13 Plaintiff served Defendant’s registered agent with a courtesy copy of the notice via certified mail.
14 Sixty-five calendar days have passed without notice from the LWDA of intent to pursue the
15 claim. As such, Plaintiff has satisfied the administrative prerequisites to commence this civil
16 action in compliance with § 2699.3(a), (f).

17 93. On April 6, 2023, pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff served
18 the LWDA and Defendant with notice of their intent to amend this PAGA action and add claims
19 or further detail claims for violations of California Labor Code § 200, 204, & IWC Wage Order
20 5-2001 (failure to compensate for all hours worked); §§ 1182.12, 1194, 1197 & 1198 (failure to
21 pay minimum wage) and § 510 (failure to pay overtime wages); §§ 226.7, 512, and IWC Wage
22 Order 5-2001 (failure to make available meal periods); and § 226.7 and IWC Wage Order 5-2001
23 (failure to authorize and permit rest periods). Sixty-five calendar days have passed without notice
24 from the LWDA of intent to pursue the claim. As such, Plaintiff has satisfied the administrative
25 prerequisites to commence this civil action in compliance with § 2699.3(a), (f).

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

28 95. Defendant is liable to Plaintiff, the Aggrieved Employees, and the State of

California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

96. Wherefore, Plaintiff requests relief as hereinafter provided.

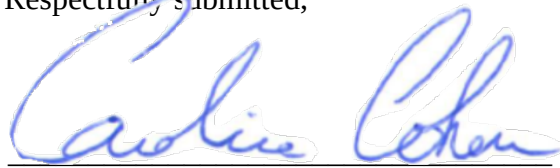
PRAYER FOR RELIEF

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

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 for under the PAGA;
3. For interest on any penalties awarded, as provided by applicable law;
4. For an award of reasonable attorneys' fees as provided by the California Labor Code, including labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or any other applicable law;
5. For all costs of suit, as provided in Labor Code § 2699(g)(1); and,
6. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: June 13, 2023



Carolyn H. Cottrell
Caroline N. Cohen
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

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

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Date: June 13, 2023

Carlie Cohen

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