

Filed
Superior Court of California,
Sacramento
05/18/2023
youngn
By _____, Deputy
23CV001916

Carolyn H. Cottrell (SBN 166977)
Ori Edelstein (SBN 268145)
Eugene Zinovyev (SBN 267245)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100
Fax: (415) 421-7105
ccottrell@schneiderwallace.com
oedelstein@schneiderwallace.com
ezinovyev@schneiderwallace.com

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

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

TONYA ROBERTS, on behalf of the State of
California, and Aggrieved Employees,

Plaintiff,

v.

TURNING POINT COMMUNITY
PROGRAMS, a non-profit corporation ,

Defendants.

Case No.

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

DEMAND FOR JURY TRIAL

BY FAX

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

3 **INTRODUCTION**

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

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

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

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

24 **PARTIES**

25 5. Plaintiff and Aggrieved Employees are all current and former non-exempt, hourly
26 employees of Defendant in the State of California. The Aggrieved Employees work as, among other
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.

positions, intern therapists, clinicians, assessment clinicians, assessment coordinators, behavioral coach, behavioral health associates, behavioral health clinicians, behavioral health specialists, counselors, housing specialist, family coordinators, mental health clinicians, mental health coordinators, certified registered nurses, technicians, janitorial staff, clerical staff, information technology staff, food services staff, and other hourly non-exempt employees in California.

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

7. Plaintiff was employed by Defendant as a case manager and then as an intern therapist from approximately October 28, 2019 through March 14, 2022. Plaintiff worked for Defendants in Fairfield, California.

8. Plaintiff is informed, believes, and alleges that Turning Point Community Programs is a non-profit corporation headquartered in Rancho Cordova, California. Turning Point is registered to do business in California, does business in California, and employs hourly non-exempt employees, including Plaintiff and Aggrieved Employees, in California.

9. Defendant employs and/or employed Plaintiff and Aggrieved Employees because Defendant, directly or indirectly, controls the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff and Aggrieved Employees.

10. At all relevant times, Defendant has done business under the laws of the State of California, has operated places of business in California, including in this judicial district, and has employed Plaintiff and Aggrieved Employees in this judicial district and elsewhere throughout California. Defendant is a "person" as defined in Cal. Lab. Code § 18. Defendant is also an "employer" as that term is used in the Cal. Lab. Code and the IWC Wage Orders regulating wages, hours, and working conditions.

JURISDICTION AND VENUE

11. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393(a) and/or 395.5. Defendant conducts business and employs Aggrieved Employees in this County. A substantial portion of the events giving rise to these causes of action and to Defendant's liability occurred in this County.

12. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA.

1 The Court also has jurisdiction over Defendant because they are a non-profit corporation authorized
2 to do business in the State of California, and because Defendant does in fact do business and employs
3 workers in the State of California.

4 **FACTUAL ALLEGATIONS**

5 13. Plaintiff worked for Defendants as a case manager and then as an intern therapist in
6 Fairfield, California, from approximately October 28, 2019 through March 14, 2022. Plaintiff's
7 primary duties included, but were not limited to, attending client appointments, coordinating with staff
8 and regional centers to schedule client services, and monitoring the overall well-being of her patients
9 Plaintiff was usually scheduled to work eight or more hours per shift, five shifts per week. Plaintiff
10 was scheduled to work approximately 40 hours or more per week.

11 14. Like Plaintiff, Aggrieved Employees are current and former, non-exempt, hourly
12 employees of Defendant in the State of California. Plaintiff is informed, believes, and thereon alleges
13 that Aggrieved Employees are subjected to the same policies, practices, and procedures that result in
14 violation of the California Labor Code. Defendants pay Aggrieved Employees including Plaintiff, on
15 an hourly basis.

16 15. Turning Point Community Programs is an organization operating mental and behavioral
17 health treatment centers throughout Northern California. Turning Point's more than twenty-five
18 locations offer a variety of treatment programs and services, including "Mental Health Urgent Care
19 Clinic" and "Therapeutic Behavioral Services."

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

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

25 18. At the end of each pay period, the Aggrieved Employees receive wages from Defendant
26 that are determined by common systems and methods that Defendant selects and controls.

27 19. Defendant regularly fails to provide Plaintiff and Aggrieved Employees with timely and
28 compliant meal periods. Defendant's policies, practices, and procedures cause Plaintiff and Aggrieved

1 Employees to routinely receive late meal periods well after their fifth hour of work. Plaintiff and
2 Aggrieved Employees are assigned a high number of clients that results in back-to-back appointments
3 that prevents them from taking complete meal and rest breaks without interruption. Due to the high
4 demands of their job and Defendant's chronic understaffing of the facilities, Plaintiff and Aggrieved
5 Employees are not provided uninterrupted off-duty meal periods.

6 20. Rather than relieving Plaintiff and Aggrieved Employees from their tasks to provide
7 timely meal periods, Defendant requires Plaintiff and Aggrieved Employees to remain on duty in that
8 they are required to respond to requests from their patients, doctors, patients' families, nursing and
9 clinic staff, attend to normal demands of the job, and otherwise respond to emergencies.

10 21. Defendant requires Plaintiff and Aggrieved Employees to remain on-call during their
11 meal periods by requiring they keep their cellphones with them to respond to calls from patients,
12 management, and/or other colleagues.

13 22. When Plaintiff and Aggrieved Employees do take their meal periods, these are late,
14 short, or interrupted by requests to assist patients, doctors, patients' families, and other staff members.

15 23. Plaintiff and Aggrieved Employees are also forced to work during meal periods to
16 complete required patient reports. Plaintiff and Aggrieved Employees are expected to complete patient
17 reports shortly after their scheduled appointments. Due to the back-to-back scheduling of
18 appointments system used by the Defendant, Plaintiff and Aggrieved Employees complete these
19 required reports during their meal periods. Therefore, Plaintiff and Aggrieved Employees are not fully
20 relieved of their duties and remain under the direction and/or control of Defendant during their unpaid
21 meal periods.

22 24. Plaintiff and Aggrieved Employees are required by Defendant to clock out for 30-minute
23 meal periods regardless of whether they take an actual meal period or remain on duty. If an employee
24 is unable to clock out for a meal period, the employee is expected to notify Defendant's payroll
25 department to adjust their time to reflect that a 30-minute meal period was taken. If an employee fails
26 to do so, the Defendant will "write-up" the employee for failing to take a 30-minute meal period.

27 25. Plaintiff and Aggrieved Employees do not receive premium pay for these non-compliant
28 meal periods.

1 26. Further, Defendant fails to provide Plaintiff and Aggrieved Employees with compliant
2 second meal periods when they work shifts lasting at least ten hours or longer. Defendant's policies,
3 practices, and procedures require Plaintiff and Aggrieved Employees to systematically skip their
4 second meal periods yet, do not provide them with premium payments for such missed second meal
5 periods. Plaintiff and Aggrieved Employees are not authorized to take a second meal period before the
6 tenth hour of work.

7 27. Plaintiff and Aggrieved Employees do not receive premium pay for these non-compliant
8 second meal periods.

9 28. Similarly, Plaintiff and Aggrieved Employees are routinely denied compliant rest
10 periods. Defendant frequently requires Plaintiff and Aggrieved Employees to work through their rest
11 periods to respond to calls from their patients, doctors, patients' families, nursing and clinic staff,
12 attend to normal demands of the job, and otherwise respond to emergencies. For example, Defendant
13 assigns Plaintiff with back-to-back patient appointments that prevent her from taking the rest periods
14 she was entitled to during her employment with Defendant because Defendant demanded she attend
15 all patient appointments and complete required daily tasks through her rest periods. Plaintiff and
16 Aggrieved Employees do not receive premium payment for these noncompliant rest periods.

17 29. Plaintiff is informed, believes, and thereon alleges that Defendant's same meal and rest
18 period policies and practices are in place across all of Defendants' facilities throughout California.

19 30. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been
20 denied proper payment for all hours worked, including overtime and minimum wages, for the time
21 spent working off-the-clock. As mentioned above, Plaintiff and Aggrieved Employees do not receive
22 compensation for time spent on-call during non-compliant meal periods and for work completed after
23 the conclusion of their scheduled shift, including overtime compensation when the hours worked are
24 in excess of eight (8) hours per day and forty (40) hours per week. Defendant fails to pay for any of
25 this work time, including the required overtime premiums, in violation of the Cal. Lab. Code.

26 31. Defendant's common course of wage-and-hour abuse includes routinely failing to
27 maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees.
28 Defendant fails to record hours that Plaintiff and Aggrieved Employees work off-the-clock as a result

1 of non-compliant meal and rest periods.

2 32. Defendant's failure to record all hours worked results in Defendant's failure to provide
3 Plaintiff and Aggrieved Employees with itemized and accurate wage statement as required by
4 California law. Plaintiff and Aggrieved Employees receive wage statements that do not reflect all hours
5 worked, including overtime and premiums for non-compliant meal and rest periods.

6 33. Consequently, Plaintiff and Aggrieved Employees did not receive all wages during
7 employment and following separation from employment, including payment for time spent under
8 Defendant's direction and control during meal periods, as well as premium payments for noncompliant
9 first meal periods, second meal periods, and rest periods.

10 34. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes the same or
11 substantially similar timekeeping mechanisms throughout all of their facilities in California.

12 35. Plaintiff is informed, believes, and thereon alleges that Defendant is well aware that
13 their policies and practices deprive Plaintiff and Aggrieved Employees of substantial pay for all time
14 worked, including overtime compensation and minimum wages, and that their workers do not receive
15 legally compliant meal and rest periods. Thus, Defendant's denial of wages, compliant meal and rest
16 periods, and premium payments is and/or was deliberate and willful.

17 36. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct
18 has been widespread, repeated, and consistent as to the Aggrieved Employees and throughout
19 Defendants' operations in California.

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

22 **FIRST CAUSE OF ACTION**

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

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

25 **(Meal Periods)**

26 38. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
27 herein.

28 39. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders requires Defendants

1 to authorize and permit timely and compliant meal periods to their employees. Cal. Lab. Code §§
2 226.7 and 512 and the applicable Wage Orders prohibit employers from employing an employee for
3 more than five hours without a meal period of not less than thirty minutes. Unless the employee is
4 relieved of all duty during the thirty-minute meal period, the employee is considered “on duty” and
5 the meal period is counted as time worked under the applicable Wage Orders.

6 40. Cal. Lab. Code § 512(a) provides:

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

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

16 42. Despite these requirements, Defendant knowingly and willfully refuses to perform their
17 obligations to authorize and permit and/or make available to Plaintiff and Aggrieved Employees the
18 ability to take the off-duty meal periods to which they are entitled.

19 43. Plaintiff and Aggrieved Employees are denied compliant meal periods because
20 Defendant’s policies, practices, and procedures cause Plaintiff and Aggrieved Employees to routinely
21 receive late meal periods well after their fifth hour of work. Rather than relieving Plaintiff and
22 Aggrieved Employees from their tasks to provide timely meal periods, Defendant requires Plaintiff
23 and Aggrieved Employees to continue working through their meal periods.

24 44. Further, Defendant requires Plaintiff and Aggrieved Employees to remain on-call during
25 their meal periods by requiring they keep their cellphones with them to respond to calls from patients,
26 management, and/or other colleagues. Therefore, Plaintiff and Aggrieved Employees are not fully
27 relieved of their duties and remain under the direction and/or control of Defendant during their unpaid
28 meal periods.

1 45. Defendant does not provide Plaintiff and Aggrieved Employees with duty-free,
2 uninterrupted, and timely thirty-minute second meal periods during which Plaintiff and Aggrieved
3 Employees should be completely relieved of any duty, by the end of the tenth hour of work.

4 46. Despite long workdays often lasting over at least ten hours, Plaintiff and Aggrieved
5 Employees are systematically and routinely denied second meal periods for several reasons, including:
6 (1) Defendant does not authorize, permit, and/or make available timely second meal periods to Plaintiff
7 and Aggrieved Employees; (2) Plaintiff and Aggrieved Employees are routinely too busy with work
8 during the day to have time to take bona fide second meal periods; and (3) Defendant does not give
9 Plaintiff and Aggrieved Employees the option to take a second meal period when they have previously
10 signed a document waiving their second meal periods.

11 47. Defendant fails to pay Plaintiff and Aggrieved Employees one hour of pay for each off-
12 duty meal period and/or second meal period that they are denied. Defendant's conduct described herein
13 violates Cal. Lab. Code §§ 226.7 and 512.

14 48. On information and belief, Defendant's conduct has been substantially the same at all
15 relevant times and to all Aggrieved Employees throughout the state of California.

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

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

26 51. On March 13, 2023, Plaintiff gave written notice to the Labor and Workforce
27 Development Agency ("LWDA") and to Defendant of her intent to pursue civil penalties for
28 Defendant's violations of the meal period requirements of Cal. Lab. Code §§ 226.7, 512, and 558

1 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet,
2 Plaintiff has not received a response from the LWDA or Defendants. Accordingly, pursuant to Cal.
3 Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA
4 action.

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

8 53. Wherefore, Plaintiff requests relief as hereinafter provided.

9 **SECOND CAUSE OF ACTION**

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

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

12 **(Rest Periods)**

13 54. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
14 herein.

15 55. Cal. Lab. Code §§ 226.7 and the applicable Wage Orders requires Defendants to
16 authorize and permit rest periods to their employees. Cal. Lab. Code § 226.7 and the applicable Wage
17 Orders require employers to authorize and permit employees to take ten minutes of net rest time per
18 four hours or major fraction thereof of work, and to pay employees their full wages during those rest
19 periods. Unless the employee is relieved of all duty during the ten-minute rest period, the employee is
20 considered "on duty" and the rest period is counted as time worked under the applicable Wage Orders.

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

25 57. Despite these requirements, Defendant knowingly and willfully refuses to perform their
26 obligations to authorize and permit and/or make available to Plaintiff and Aggrieved Employees the
27 ability to take the off-duty rest periods to which they are entitled.

28 58. Defendant fails to provide Plaintiff and Aggrieved Employees compliant rest periods

1 because Defendant frequently requires Plaintiff and Aggrieved Employees to work through their rest
2 periods to respond to calls from their patients, doctors, patients' families, nursing and clinic staff,
3 attend to normal demands of the job, and otherwise respond to emergencies. For example, Defendant
4 assigns Plaintiff with back-to-back patient appointments that prevent her from taking the rest periods
5 she was entitled to during her employment with Defendant because Defendant demanded she attend
6 all patient appointments and complete required daily tasks through her rest periods. Plaintiff is
7 informed, believes, and thereon alleges that this policy and practice applies to all Aggrieved
8 Employees.

9 59. Defendant also fails to pay Plaintiff and Aggrieved Employees one hour of pay for each
10 off-duty rest period that they are denied. Defendant's conduct described herein violates Cal. Lab. Code
11 § 226.7.

12 60. On information and belief, Defendant's conduct has been substantially the same at all
13 relevant times for all Aggrieved Employees throughout the state of California.

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

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

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

1 a PAGA action.

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

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

6 **THIRD CAUSE OF ACTION**

7 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**
8 **for Violations of Cal. Lab. Code §§ 204, 1194, and 1198**
9 **(Failure to Pay for all Hours Worked)**

10 66. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
11 herein.

12 67. Defendant willfully engages and continues to engage in a policy and practice of not
13 compensating Aggrieved Employees for all hours worked or spent in Defendant's control. Defendant
14 regularly requires Aggrieved Employees to perform uncompensated off-the-clock work.

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

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

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

21 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
22 than the legal minimum wage or the legal overtime compensation applicable to the
23 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.

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

26 72. IWC Wage Order, 5-2001(2)(K), defines hours worked as "the time during which an
27 employee is subject to the control of an employer, and includes all the time the employee is suffered
28 or permitted to work, whether or not required to do so."

1 73. In violation of California law, Defendant knowingly and willfully refuses to provide
2 Aggrieved Employees with compensation for all time worked. Defendant intentionally and willfully
3 requires Plaintiff and Aggrieved Employees to remain on duty during their scheduled shifts, including
4 during rest periods, while clocked out for meal periods, and at the conclusion of their scheduled shift.
5 As a result of Defendant's policies and practices, Aggrieved Employees are routinely denied the
6 opportunity to take legally compliant meal and rest periods without compensation and are further
7 denied the overtime premiums resulting from the additional off-the-clock work resulting from
8 remaining on call during meal periods and after the conclusion of their scheduled shift.

9 74. Therefore, Defendant committed, and continues to commit, the acts alleged herein
10 knowingly and willfully, and in conscious disregard of the Aggrieved Employees' rights.

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

18 76. Plaintiff seeks to recover civil penalties from Defendant for their failure to pay for all
19 hours worked in violation of Cal. Lab. Code §§ 204, 1194, and 1198 throughout California on behalf
20 of herself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code §
21 2699(f).

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

28 78. Defendant is liable to Plaintiff, the State of California, and Aggrieved Employees for the

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

79. Wherefore, Plaintiff requests relief as hereinafter provided.

FOURTH CAUSE OF ACTION

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

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

(Failure to Pay Minimum Wage)

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

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

82. IWC Wage Order 4-2001(2)(K) defines hours worked as "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

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

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 attorneys' fees, and costs of suit.

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

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

86. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for

1 each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does
2 not provide a civil penalty if, at the time of the violation, the employer employs one or more
3 employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for
4 each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision
5 that does not provide a civil penalty if, at the time of the violation, the employer employs one or more
6 employees.

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

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

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

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

20 **FIFTH CAUSE OF ACTION**

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

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

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

24 91. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
25 herein.

26 92. Defendant does not properly compensate Aggrieved Employees with appropriate
27 overtime premiums, as required by California law. Defendant fails to pay overtime rates for the off-
28 the-clock work performed by Plaintiff and the Aggrieved Employees. For instance, Plaintiff and

1 Aggrieved Employees do not receive overtime compensation for time spent on-duty during their meal
2 periods or for working off-the-clock after the conclusion of their scheduled shift when the hours
3 worked are in excess of eight (8) hours per day and forty (40) hours per week.

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

5 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
6 workday and any work in excess of 40 hours in any one workweek and the first eight
7 hours worked on the seventh day of work in any one workweek shall be compensated
8 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.

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

10 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
11 than the legal minimum wage or the legal overtime compensation applicable to the
12 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.

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

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

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

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

1 that does not provide a civil penalty if, at the time of the violation, the employer employs one or more
2 employees.

3 99. Plaintiff seeks to recover civil penalties from Defendant for their failure to pay overtime
4 wages in violation of Cal. Lab. Code §§ 510 and 1194 and the applicable wage orders throughout
5 California on behalf of herself, the State of California, and other Aggrieved Employees pursuant to
6 Cal. Lab. Code § 2699(f).

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

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

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

17 **SIXTH CAUSE OF ACTION**

18 **Penalties Pursuant to Cal. Lab. Code § 2699(a)**
19 **for Violations of Cal. Lab. Code § 226**
20 **(Accurate, Itemized Wage Statements)**

21 103. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
22 herein.

23 104. Defendant does not provide Plaintiff and the Aggrieved Employees with accurate
24 itemized wage statements as required by California law as a result of the meal and rest period, off-the-
25 clock work, and overtime violations set forth above, as well as Defendant's failure to provide premium
26 pay for noncompliant meal and rest periods.

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

28 An employer, semimonthly or at the time of each payment of wages, shall furnish to
his or her employee, either as a detachable part of the check, draft, or voucher paying

1 the employee's wages, or separately if wages are paid by personal check or cash, an
2 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
3 worked by the employee, except as provided in subdivision (j), (3) the number of piece-
4 rate units earned and any applicable piece rate if the employee is paid on a piece-rate
5 basis, (4) all deductions, provided that all deductions made on written orders of the
6 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
7 inclusive dates of the period for which the employee is paid, (7) the name of the
8 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
by the employer for at least three years at the place of employment or at a central
location within the State of California.

9 106. The IWC Wage Orders also establish this requirement. (See IWC Wage Order 4-2001).

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

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

14
15 108. Due to the failure to pay one hour of premium pay to Plaintiff and the Aggrieved
16 Employees for each missed or noncompliant meal or rest period, along with the off-the-clock work,
17 and overtime violations, the wage statements Defendant provides their employees, including the
18 Aggrieved Employees, do not reflect the actual gross wages earned, actual net wages earned, actual
19 hours worked, or the appropriate applicable hourly rates. Accordingly, Defendant has knowingly and
20 willfully failed to provide timely, accurate itemized wage statements to Plaintiff and the Aggrieved
21 Employees in accordance with Cal. Lab. Code § 226 and the IWC Wage Orders.

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

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

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

1 Development Agency or any of its departments, divisions, commissions, boards,
2 agencies or employees, for a violation of this code, may, as an alternative, be recovered
3 through a civil action brought by an Aggrieved Employee on behalf of himself or
4 herself and other current or former employees.

5 111. Plaintiff seeks to recover civil penalties from Defendant pursuant to Cal. Lab. Code §
6 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees
7 an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts
8 established by Cal. Lab. Code § 226.3. In addition, Plaintiff seeks penalties in the amount established
9 by Cal. Lab. Code § 226(e)(1).

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

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

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

20 **SEVENTH CAUSE OF ACTION**

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

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

23 **(Waiting Time Penalties)**

24 115. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
25 herein.

26 116. Defendant does not provide Plaintiff and Aggrieved Employees with their full wages
27 when due under California law after their employment with Defendant ends, as a result of the meal
28 and rest period, off-the-clock work, and overtime violations set forth above and Defendant's failure to
provide premium pay for the missed meal and rest periods.

117. Cal. Lab. Code § 201 provides:

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

3 118. Cal. Lab. Code § 202 provides:

4 If an employee not having a written contract for a definite period quits his or her
5 employment, his or her wages shall become due and payable not later than 72 hours
6 thereafter, unless the employee has given 72 hours previous notice of his or her
7 intention to quit, in which case the employee is entitled to his or her wages at the time
8 of quitting.

9 119. Cal. Lab. Code § 203 provides, in relevant part:

10 If an employer willfully fails to pay, without abatement or reduction, in accordance
11 with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who
12 is discharged or who quits, the wages of the employee shall continue as a penalty from
13 the due date thereof at the same rate until paid or until an action therefor is commenced;
14 but the wages shall not continue for more than 30 days.

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

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

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

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

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

Notwithstanding any other provision of law, any provision of this code that provides

1 for a civil penalty to be assessed and collected by the Labor and Workforce
2 Development Agency or any of its departments, divisions, commissions, boards,
3 agencies or employees, for a violation of this code, may, as an alternative, be recovered
4 through a civil action brought by an Aggrieved Employee on behalf of himself or
5 herself and other current or former employees.

6 125. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by
7 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in
8 compliance with Cal. Lab. Code §§ 201-202 in the amounts established by Cal. Lab. Code § 203.
9 Plaintiff seeks such penalties as an alternative to the penalties available under Cal. Lab. Code § 203,
10 as prayed for herein.

11 126. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful
12 conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself, for
13 Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§ 256
14 and 558(a).

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

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

24 129. Wherefore, Plaintiff requests relief as hereinafter provided.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff prays for relief as follows:

- 27 1. For the Court to declare, adjudge, and decree that Defendant has violated the
28 California Labor Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and the Aggrieved Employees
civil penalties provided under the PAGA;

3. For interest as provided by applicable law;
4. For an award of reasonable attorneys' fees;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Date: May 17, 2023



Carolyn H. Cottrell

Ori Edelstein

Eugene Zinovyev

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

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

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

DEMAND FOR JURY TRIAL

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

Respectfully Submitted,

Date: May 17, 2023



Carolyn H. Cottrell

Ori Edelstein

Eugene Zinovyev

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

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