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Superior Court of California,
County of Alameda

12/26/2023 at 01:31:27 PM

By: Damaree Franklin,
Deputy Clerk

1 Carolyn H. Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
2 Scott L. Gordon (SBN 319872)
SCHNEIDER WALLACE
3 COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
4 Emeryville, California 94608
Tel: (415) 421-7100
5 Fax: (415) 421-7105
ccottrell@schneiderwallace.com
6 dleimbach@schneiderwallace.com
sgordon@schneiderwallace.com

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

10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF ALAMEDA**

13 DJAVAN CLEVELAND, individually and on
14 behalf of the State of California and Aggrieved
Employees,

15 *Plaintiff,*

16 v.

17 ALLSTATE INSURANCE COMPANY and
18 DOES 1-100, inclusive,

19 *Defendants.*

Case No.: **23CV057039**

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

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

3 **INTRODUCTION**

4 1. Plaintiff brings this individual action and Labor Code Private Attorneys General Act
5 (“PAGA”) enforcement action against Defendant Allstate Insurance Company (“Defendant”). With
6 the individual action, Plaintiff seeks recovery for her individual wage and hour claims against
7 Defendant under California law. With the PAGA enforcement action, Plaintiff seeks recovery on
8 behalf of the State of California to collect statutory penalties as a result of Defendant’s systematic
9 violations of California labor law with respect to non-exempt, hourly employees who work as
10 Adjusters for Defendant, including similar roles with different titles, in the State of California (the
11 “Aggrieved Employees”).

12 2. Plaintiff’s complaint against Defendant challenges its policies and practices of: (1)
13 failing to pay Aggrieved Employees for all hours worked; (2) failing to pay required minimum wage;
14 (3) failing to pay required overtime wages; (4) failing to authorize, permit, and/or make meal and rest
15 periods available, and failing to pay premium pay for these missed breaks; (5) failing to provide
16 accurate, itemized wage statements; and (6) failing to pay all wages after termination of employment.

17 3. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been
18 denied for payment for all hours worked, including overtime, and did not receive compliant meal or
19 rest breaks. This case implicates Defendant’s longstanding policies and practices, which fail to
20 properly compensate Adjusters for work performed “off-the-clock.”

21 4. Plaintiff is a former non-exempt, hourly employee who worked as a Virtual Triage
22 Adjuster for Defendant in Los Angeles, California. In this role, Plaintiff investigated auto insurance
23 claims to ascertain the extent of any liability on behalf of Defendant, who furnishes car insurance.

24 5. Plaintiff and Aggrieved Employees perform off-the-clock work for which they are not
25 adequately compensated.¹ Plaintiff and Aggrieved Employees must complete a certain number of
26 claims or inspections in their scheduled hours, and face pressure from Defendant to meet the number

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

1 of claims within the allotted hours during their shift, which often causes the Adjusters to work while
2 off-the-clock before the beginning of their paid time and after the end of their paid time for their shifts.
3 Failure to meet Defendant's claim requirements within scheduled hours negatively impacts the
4 performance metrics of Plaintiff and Aggrieved Employees, which can result in negative employment
5 consequences up to and including disciplinary action.

6 6. As a result of Defendant's pressure on Adjusters to meet the requisite number of claims
7 within the scheduled hours of paid time, Defendant routinely refuses to authorize, permit, and/or make
8 available full, timely, uninterrupted thirty-minute meal periods as required by California law. Instead,
9 Plaintiff and Aggrieved Employees regularly work past the end of the fifth hour of work without the
10 opportunity to take a meal period. Even when they do receive some form of meal break, it is often
11 interrupted and/or on-duty as Plaintiff and Aggrieved Employees are encouraged and often required
12 to perform work during their break.

13 7. Defendant likewise routinely fails to authorize, permit, and/or make available
14 compliant, off-duty, ten-minute rest breaks to Plaintiff and Aggrieved Employees as required by
15 California law.

16 8. Because of these issues, Defendant does not pay Plaintiff and Aggrieved Employees for
17 all hours worked, including minimum wage and overtime, in violation of California law. Defendant
18 also fails to pay Plaintiff and Aggrieved Employees for missed and/or non-compliant meal periods
19 and rest breaks, in violation of California law.

20 9. As a result of the above violations, Defendant fails to provide Plaintiff and Aggrieved
21 Employees with accurate, itemized wage statements. Defendant has also failed to pay all wages due
22 during employment and upon separation, when Aggrieved Employees, like Plaintiff, voluntarily or
23 involuntarily terminate their employment with Defendant.

24 10. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable
25 attorneys' fees and costs for these violations pursuant to Sections 2699(a) and (f) of the PAGA.
26 Plaintiff additionally seeks compensation for herself for all unpaid wages, unpaid overtime,
27 noncompliant meal and rest periods, waiting time penalties, premium pay, and wage statement

1 penalties.

2 **PARTIES**

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

5 12. Plaintiff was employed by Defendant as a non-exempt Adjuster in Los Angeles,
6 California. Plaintiff was employed by Defendant from approximately May 29, 2022 until
7 approximately August 4, 2023.

8 13. Plaintiff is informed, believes, and thereon alleges that Defendant is an Illinois
9 corporation, registered to do business in the State of California. Defendant does business throughout
10 the United States and maintains offices in California, in addition to its headquarters in Northbrook,
11 Illinois.

12 14. Plaintiff is informed, believes, and thereon alleges that Defendant controls the
13 operations and working conditions for Allstate agents, managers, and employees throughout locations
14 and operations in California.

15 15. Plaintiff is informed, believes, and thereon alleges that Defendant directly or indirectly
16 controls the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff and
17 Aggrieved Employees.

18 16. Plaintiff is informed, believes, and thereon alleges that Defendant employs and/or
19 employed Plaintiff and the Aggrieved Employees.

20 17. Plaintiff is informed, believes, and thereon alleges that Defendant operates one or more
21 facilities in California, and employs non-exempt employees throughout California, including in
22 Alameda County.

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

1 ascertained.

2 19. Defendant and Does 1-100 (together, “Defendants”) are liable for the monetary damages
3 and civil penalties sought by this Complaint.

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

9 21. Plaintiff is informed, believes, and thereon alleges that each and all of the acts and
10 omissions alleged herein were performed by, or are attributable to, Defendants, acting as the agent or
11 alter ego for the other, with legal authority to act on the other’s behalf. Plaintiff is informed, believes,
12 and thereon alleges, the acts of any and all Defendants were in accordance with, and represent, the
13 official policy of Defendants.

14 22. Plaintiff is informed, believes, and thereon alleges that at all relevant times, Defendants
15 acted within the scope of such agency or employment, or ratified each and every act or omission
16 complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts
17 and omissions of each and all of Defendants in proximately causing the damages herein alleged.

18 23. Plaintiff is informed, believes, and thereon alleges that each and all of Defendants are
19 in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
20 occurrences, and transactions alleged herein.

21 24. Plaintiff is informed, believes, and thereon alleges that, at all relevant times, Defendants
22 have done business under the laws of California, have had places of business in California, and have
23 employed Plaintiff and Aggrieved Employees in this judicial district. Defendants are “persons” as
24 defined in Labor Code § 18 and Business and Professions Code § 17201. Defendants are also
25 “employers” as that term is used in the Labor Code and IWC Wage Order.

26 **JURISDICTION AND VENUE**

27 25. Venue is proper in this County pursuant to Code of Civil Procedure §§ 393(a) and/or
28

1 395(a). Defendants conduct business and employ Aggrieved Employees in this County. A substantial
2 portion of the events giving rise to these causes of action occurred in this County.

3 26. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA
4 and Plaintiff's individual claims. The Court also has jurisdiction over Defendants because they do
5 business in the State of California, and employ workers in the State of California.

6 **FACTUAL ALLEGATIONS**

7 27. Defendants are in the business of providing vehicle insurance, property insurance, and
8 business insurance. Defendants operate in all fifty states, including California.

9 28. Plaintiff was employed by Defendants from May 29, 2022, until August 4, 2023. During
10 the relevant period, Plaintiff worked for Defendants as an Adjuster in Los Angeles, California

11 29. Plaintiff is informed, believes, and thereon alleges that Defendants employed numerous
12 Aggrieved Employees, in addition to Plaintiff.

13 30. The duties of Plaintiff and Aggrieved Employees include but are not limited to
14 processing insurance claims, calling customers, inspecting vehicles for collision and comprehensive
15 damages, issuance of claim payments, submitting reports online in real time, and driving to customer
16 homes or working in auto body shops to assess vehicle damage.

17 31. As Adjusters, Plaintiff and Aggrieved Employees are expected to meet Allstate's
18 requirement of processing or working on a certain number of claims or inspections and/or answering
19 a certain number of customer calls within a given period. Plaintiff is informed, believes, and thereon
20 alleges that the policies and practices of Defendants have at all relevant times been similar for Plaintiff
21 and the Aggrieved Employees, regardless of location in California.

22 32. While working for Defendants, Plaintiff and Aggrieved Employees are scheduled to
23 work approximately eight hours per day, five days a week, for a total of approximately 40 hours per
24 week. Plaintiff and Aggrieved Employees work these scheduled hours. However, Plaintiff and
25 Aggrieved Employees are regularly required by management to work additional hours for
26 Defendants' benefit beyond this scheduled time while off-the-clock and without receiving
27 compensation. Plaintiff and Aggrieved Employees typically work eight to ten hours per day to fulfill

1 the required workload and do not receive pay for all time worked. For numerous workweeks during
2 their employment by Defendants, Plaintiff and Aggrieved Employees worked off-the-clock and
3 without compensation during overtime hours (more than 8 hours a day in California).

4 33. Defendants disincentivize Plaintiff and Aggrieved Employees from reporting this off-
5 the-clock or unrecorded time because reporting such time would negatively impact Plaintiff and
6 Aggrieved Employees' productivity metrics and evaluations. If an employee does not meet the
7 required number of daily claims, inspections and/or customer calls, the consequence is being written
8 up, placed on probation, or assessed reduced performance metric scores (which cause negative
9 ramifications for pay increases and promotion opportunities).

10 34. In some instances, Plaintiff and Aggrieved Employees begin the workday prior to the
11 start of their paid scheduled shifts to perform work activities which include, among other tasks,
12 handling claims and calling customers and repair shops. This time worked is unpaid. Moreover, under
13 Defendants' company-wide practice, Defendants require Plaintiff and Aggrieved Employees to use
14 Defendants' online system to submit claims and other documentation, and perform other claims
15 activity, in real time. Therefore, Defendants know or should know that work is being performed
16 without compensation.

17 35. Plaintiff and Aggrieved Employees continue working after their shift ends to complete
18 tasks including, but not limited to, submitting paperwork and claims, and taking escalated customer
19 calls. These tasks are completed while being logged into Defendants' online system and are tracked
20 in real time. Plaintiff and Aggrieved Employees are not compensated for this time that Defendants
21 require and/or permits them to work. Again, Defendants know or should know that work is being
22 performed without compensation.

23 36. Defendants also require Plaintiff and Aggrieved Employees to work off-the-clock to
24 attend meetings, outside of their scheduled shifts and without pay.

25 37. In addition to claims and/or inspections quotas, Defendants utilize a performance rating
26 system that tracks volume, efficiency, and customer satisfaction in answering customer phone calls.
27 As a result, Plaintiff and Aggrieved Employees take customer calls before, during, and after scheduled
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1 shifts and must be available during their unpaid meal breaks as a means of keeping their performance
2 metrics high.

3 38. All of this time that Defendants require Plaintiff and Aggrieved Employees to work
4 without compensation deprives them of substantial amounts of pay to which they are entitled under
5 California law, including overtime premium pay for hours worked in excess of 8 in a workday or 40
6 in a workweek.

7 39. Moreover, Defendants routinely deny timely and compliant off-duty meal and rest
8 periods for two primary reasons: (1) Defendants do not authorize, permit, and/or make available
9 timely meal and rest breaks for Plaintiff and Aggrieved Employees; and (2) Defendants know or have
10 reason to know that Plaintiff and Aggrieved Employees are too busy with work during the day to have
11 time to take bona fide meal and rest breaks.

12 40. For example, Plaintiff and Aggrieved Employees are allocated a 30-minute meal break
13 to be taken at no specific time during a shift. But, due to Defendants' required workload, Plaintiff
14 and Aggrieved Employees are often unable to take such breaks at all. Even when they do receive some
15 form of meal break, Plaintiff and Aggrieved Employees are often interrupted to perform work or
16 answer customer calls, even though they are off-the-clock in Defendants' timekeeping records. In
17 fact, as a result of Defendants' compensation and performance metrics, as well as its expectations
18 concerning responsiveness to customers, Adjusters are always "on duty" during meal and rest breaks.
19 As a result, Plaintiff and Aggrieved Employees regularly work through unpaid time that is allocated
20 for a meal break. Defendants know or should know about such uncompensated work performed during
21 unpaid meal breaks.

22 41. In addition, on information and belief, Defendants and their managers routinely
23 manipulate the timecards of these employees to make it appear that they took a timely and compliant
24 meal break in order to avoid paying additional wages and penalties.

25 42. Plaintiff and Aggrieved Employees are routinely denied full, timely, and uninterrupted
26 rest periods as well. While Defendants deny compliant meal periods to Adjusters on most workdays,
27 it virtually never provides compliant rest periods for the same reasons.

1 43. When Plaintiff and Aggrieved Employees experience untimely, interrupted, and/or on-
2 duty meal and rest breaks, or do not receive these breaks at all, Defendants fail to pay them the
3 required premium pay.

4 44. Defendants do not provide Plaintiff and Aggrieved Employees with accurate wage
5 statements as required by California law. These workers receive wage statements that do not reflect
6 all hours worked, premium pay for missed meal and rest breaks, and applicable overtime premiums.

7 45. Defendants do not provide Plaintiff and Aggrieved Employees with full payment of all
8 wages owed at the end of employment. These workers are owed wages and premium pay for all time
9 worked, overtime, and missed meal and rest breaks when their employment ends. These amounts
10 remain unpaid after voluntary and involuntary termination. As a consequence, Defendants are subject
11 to waiting time penalties under the California Labor Code.

12 46. Defendants' conduct has been knowing, willful, and carried out in bad faith, and has
13 caused significant damages to Plaintiff and Aggrieved Employees in an amount to be determined at
14 trial. Defendants did not take requisite steps to ensure that Plaintiff and Aggrieved Employees were
15 paid for all time worked. Upon information and belief, Defendants did not conduct any study or audit
16 of its compensation practices to ensure that Plaintiff and Aggrieved Employees did not perform work
17 without compensation.

18 47. Plaintiff is informed, believes, and thereon alleges that Defendants knew or should have
19 known that their policies and practices deprive Plaintiff and Aggrieved Employees of substantial
20 compensation, including but not limited to pay for all hours worked, overtime compensation, and
21 minimum wages, and that Plaintiff and Aggrieved Employees do not receive legally compliant meal
22 and rest periods. Thus, Defendants' denial of wages and compliant meal and rest periods to Plaintiff
23 and Aggrieved Employees is and/or was deliberate and willful.

24 48. Plaintiff is informed, believes, and thereon alleges that Defendants' unlawful conduct
25 has been widespread, repeated, and consistent as to the Aggrieved Employees and throughout
26 Defendants' operations in California.

27 49. Defendants' conduct triggers significant civil penalties and individual damages in an
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1 amount to be determined at trial.

2 **FIRST CAUSE OF ACTION**
3 **Penalties Pursuant to Labor Code § 2699(a)**
4 **(Against All Defendants on Behalf of the State of California)**

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

7 51. Labor Code § 2699(a) provides:

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

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

15 53. Labor Code § 203 provides, in relevant part:

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

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

22 55. Labor Code § 225.5 provides that every person who unlawfully withholds wages due
23 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of
24 \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent
25 violation, or any willful or intentional violation, for each failure to pay each employee.

26 56. Labor Code § 226(a) provides:

27 Every employer shall, semimonthly or at the time of each payment
28 of wages, furnish each of his or her employees, either as a detachable

part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the 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 deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

57. Labor Code § 226.3 provides:

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

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

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

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

1 penalties under Labor Code § 2699(a).

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

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

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

11 64. Wherefore, Plaintiff requests relief as hereinafter provided.

12 **SECOND CAUSE OF ACTION**
13 **Penalties Pursuant to Labor Code § 2699(f)**
(Against All Defendants on Behalf of the State of California)

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

16 66. Labor Code § 2699(f) provides:

17 For all provisions of this code except those for which a civil penalty
18 is specifically provided, there is established a civil penalty for a
19 violation of these provisions, as follows: . . . (2) If, at the time of the
20 alleged violation, the person employs one or more employees, the
21 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.

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

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

27 69. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an
28

1 employee is subject to the control of an employer and includes all the time the employee is suffered
2 or permitted to work, whether or not required to do so.”

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

5 71. Labor Code § 510 provides, in relevant part:

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

19 72. Labor Code § 1182.12 provides, in relevant part:

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

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

27 (1) For any employer who employs 26 or more employees, the minimum wage shall
28 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.

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

...

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

(D) From January 1, 2021, to December 31, 2021, inclusive, —thirteen

dollars (\$13) per hour.

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

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

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

73. 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.

74. Labor Code § 1197.1 provides in relevant part:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

75. 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.

76. Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001 require Defendants to authorize, permit, and/or make available timely and compliant meal and rest periods to their employees. Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001 prohibit employers from employing an employee for more than five hours without providing and/or making available a meal period of not less than thirty minutes, and from employing an employee more than ten hours per day without providing and/or making available a second meal period of not less than thirty minutes. Section 226.7 and IWC Wage Order 4-2001 also require employers to authorize and permit employees to take ten minutes of net rest time per four hours, or major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless the employee is relieved of all duty during the thirty-minute meal period and ten-minute rest period, the employee is considered “on duty” and the meal or rest period is counted as time worked under the applicable Wage Order.

77. 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 Aggrieved Employees for each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees for violations of Labor Code provisions including, but not limited, to, Labor Code § 510, 1182.12, 1194, 1197, 1198, 204, 226.7, 512, IWC Wage Order 4-2001, and any other violation alleged herein that does not carry penalties under Labor Code § 2699(f).

78. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of her intention to file this claim. More than sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

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

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

81. Wherefore, Plaintiff requests relief as hereinafter provided.

THIRD CAUSE OF ACTION
Failure to Compensate for All Hours Worked
(Against All Defendants Individually)

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

83. Plaintiff alleges that Defendants willfully engaged and continue to engage in a policy and practice of not compensating Plaintiff for all hours worked or spent in Defendants' control. Detailed above, Defendants required, suffered, and/or permitted Plaintiff to perform work for the benefit of Defendants without compensation, with Defendants' knowledge.

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

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

86. California Labor 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.

87. IWC Wage Orders 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....”

88. In violation of California law, Defendants knowingly and willfully refuse to perform its obligation to provide Plaintiff with compensation for all time worked. Therefore, Defendants committed the acts alleged herein knowingly and willfully, and in conscious disregard of Plaintiff's

rights. Plaintiff is thus entitled to recover nominal, actual, and compensatory damages, plus interest, attorneys' fees, expenses and costs of suit.

89. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial.

90. Wherefore, Plaintiff requests relief as hereinafter provided.

FOURTH CAUSE OF ACTION
Failure to Pay Minimum Wage
(Against All Defendants Individually)

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

92. Defendants have maintained policies and procedures that forced Plaintiff to work off the clock, without compensation – let alone the minimum wage. Due to Defendants' systematic denial of payment for all hours worked, Plaintiff was routinely compensated at a rate that is less than the statutory minimum wage.

93. During the applicable statutory period, Labor Code §§ 1182.11, 1182.12, and 1197, and the Minimum Wage Order were in full force and effect and required that employees receive the minimum wage for all hours worked at the rate of twelve dollars (\$12.00) per hour commencing January 1, 2019, thirteen dollars (\$13.00) per hour commencing January 1, 2020, fourteen dollars (\$14.00) per hour commencing January 1, 2021, fifteen dollars (\$15.00) per hour commencing January 1, 2022, and fifteen dollars and fifty cents (\$15.50) starting on January 1, 2023 to present.

94. 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."

95. Labor 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.

1 96. Labor Code § 1194.2 provides that, in any action under § 1194 to recover wages
2 because of the payment of a wage less than minimum wage fixed by an order of the Commission, an
3 employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully
4 unpaid and interest thereon.

5 97. Plaintiff was not paid the statutory minimum wage for work performed prior to the
6 start of the shift/before logging in, work performed after the scheduled shift ends, and work
7 performed during unpaid meal periods, even though she was under Defendants' control and could
8 not effectively use the time to her own benefit. This time is compensable as a matter of law.

9 98. Defendants' unlawful compensation scheme denied Plaintiff the minimum wages to
10 which she was entitled under the law. As explained above, Plaintiff was routinely subject to the
11 Defendants' control without pay and performed work for which she was not compensated even at
12 the statutory minimum wage.

13 99. As a direct and proximate result of Defendants' unlawful acts and/or omissions,
14 Plaintiff has been deprived of minimum wages in an amount to be determined at trial, and is entitled
15 to a recovery of such amount, plus liquidated damages, plus interest thereon, attorneys' fees, and
16 costs of suit pursuant to Labor Code §§ 1194, 1194.2 and 1197.1.

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

18 **FIFTH CAUSE OF ACTION**
19 **Failure to Pay Overtime Wages**
20 **(Against All Defendants Individually)**

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

23 102. Defendants did not properly compensate Plaintiff with appropriate overtime
24 premiums, including time-and-a half premiums based on her regular rate of pay, as required by
25 California law.

26 103. California Labor Code § 510(a) provides as follows:

27 Eight hours of labor constitutes a day's work. Any work in excess of
28 eight hours in one workday and any work in excess of 40 hours in any
 one workweek and the first eight hours worked on the seventh day of

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

104. California Labor 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 attorney's fees, and costs of suit.

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

106. Defendants' policies and practices of requiring Plaintiff to perform work off-the-clock before and after her paid shifts and during unpaid meal periods are unlawful. Even absent this off-the-clock work, Plaintiff has worked over eight hours in a day and/or over forty hours in a week. Accordingly, as a result of Defendants' unlawful policy alleged herein of requiring Plaintiff to perform off-the-clock work before the beginning of paid shifts, while clocked out on meal periods, and at other times, Plaintiff worked overtime hours for Defendants without being paid overtime premiums in violation of the California Labor Code, applicable IWC Wage Orders, and other applicable law.

107. Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff for all premium wages for overtime work. Defendants are liable to Plaintiff for the unpaid overtime and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.

1 108. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
2 an amount according to proof at time of trial.

3 109. Wherefore, Plaintiff requests relief as hereinafter provided.

4 **SIXTH CAUSE OF ACTION**
5 **Failure to Authorize, Permit, and/or Make Available Meal and Rest Periods**
6 **(Against All Defendants Individually)**

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

9 111. Defendants failed to make available and prevented full, timely, uninterrupted, off-
10 duty, compliant meal periods and rest breaks for Plaintiff and required her to continue working during
11 these breaks.

12 112. Defendants also failed to compensate Plaintiff one hour of premium pay for missed
13 and/or non-compliant breaks.

14 113. California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Orders require
15 Defendants to authorize, permit, and/or make available timely and compliant meal and rest periods
16 to its employees. Labor Code §§ 226.7 and 512 and the IWC Wage Orders prohibit employers from
17 employing an employee for more than five hours without a meal period of not less than thirty
18 minutes, and from employing an employee more than ten hours per day without providing the
19 employee with a second meal period of not less than thirty minutes. Labor Code § 226.7 and the
20 applicable Wage Orders also require employers to authorize and permit employees to take ten
21 minutes of net rest time per four hours, or major fraction thereof of work, and to pay employees their
22 full wages during those rest periods. Unless the employee is relieved of all duty during the thirty-
23 minute meal period and ten-minute rest period, the employee is considered “on duty” and the meal
24 or rest period is counted as time worked under the applicable Wage Orders.

25 114. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer who fails
26 to authorize, permit, and/or make available a required meal period must, as compensation, pay the
27 employee one hour of pay at the employee’s regular rate of compensation for each workday that the
28 meal period was not authorized and permitted and/or not made available. Similarly, an employer

1 must pay an employee denied a required rest period one hour of pay at the employee's regular rate
2 of compensation for each workday that the rest period was not authorized and permitted and/or not
3 made available.

4 115. Despite these requirements, Defendants have knowingly and willfully refused to
5 perform their obligations to authorize and permit and/or make available to Plaintiff the ability to take
6 the timely and compliant off-duty meal periods and rest breaks to which she was entitled.

7 116. Defendants have also failed to pay Plaintiff one hour of pay for each timely, compliant,
8 off-duty meal period and/or rest break that she was denied.

9 117. Defendants' conduct described herein violates California Labor Code §§ 226.7 and
10 512 and the applicable Wage Order. Therefore, pursuant to Labor Code § 226.7(b), Plaintiff is
11 entitled to compensation for the failure to authorize and permit and/or make available meal periods
12 and rest breaks, plus interest, attorneys' fees, expenses, and costs of suit.

13 118. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
14 an amount according to proof at time of trial.

15 119. Wherefore, Plaintiff requests relief as hereinafter provided.

16 **SEVENTH CAUSE OF ACTION**
17 **Waiting Time Penalties Pursuant to Labor Code §§ 201-203**
18 **(Against All Defendants Individually)**

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

21 121. Plaintiff left her employment with Defendants during the statutory period, at which
22 time Defendants owed her unpaid wages. These earned, but unpaid, wages derive from unpaid work
23 performed prior to the start of the shift/before logging in, work performed after the scheduled shift
24 ends, and work performed during unpaid meal periods, even though Plaintiff was under Defendants'
25 control and could not effectively use the time to her own benefit. Plaintiff was also not paid overtime
26 compensation by Defendants and premium pay for missed and/or noncompliant meal periods and
27 rest breaks.

28 122. California Labor Code § 201 provides:

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

3 123. Labor Code § 202 provides:

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

9 124. Labor Code § 203 provides, in relevant part:

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

16 125. Defendants willfully refused, and continue to refuse, to provide Plaintiff with pay for
17 off-the-clock work. As alleged above, Defendants knew and continue to know that Plaintiff
18 performed off-the-clock work before and after her scheduled or paid shifts and during unpaid meal
19 periods. Defendants are aware Plaintiff missed or had interrupted meal and rest breaks as a result of
20 Defendants' unlawful policies and practices, but Defendants nevertheless refuse to pay for work
21 performed during meal breaks or to authorize premium pay for missed or interrupted meal and rest
22 periods.

23 126. Accordingly, Defendants willfully refused and continue to refuse to pay Plaintiff all
24 the wages that were due and owing to her upon the end of her employment. As a result of Defendants'
25 actions, Plaintiff suffered and continues to suffer substantial losses, including lost earnings and
26 interest.

27 127. Defendants' willful failure to pay Plaintiff the wages due and owing to her constitutes
28 a violation of Labor Code §§ 201-202. As a result, Defendants are liable to Plaintiff for all penalties
owing pursuant to Labor Code §§ 201-203.

128. Labor Code § 203 provides that an employee's wages will continue as a penalty up to thirty days from the time the wages were due. Therefore, Plaintiff is entitled to such penalties pursuant to Labor Code § 203, plus interest.

129. As a proximate result of the aforementioned violations, Defendants is liable to Plaintiff for the amounts described, with interest thereon, in an amount according to proof at time of trial.

130. Wherefore, Plaintiff requests relief as hereinafter provided.

EIGHTH CAUSE OF ACTION
Violations of Labor Code § 226 – Itemized Wage Statements
(Against All Defendants Individually)

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

132. Defendants did not provide Plaintiff with accurate itemized wage statements as required by California law.

133. California Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the 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 deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

134. The IWC Wage Orders also establish this requirement. (See IWC Wage Orders 4-2001(7)).

135. Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual 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 exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

136. Plaintiff seeks to recover actual damages, costs, and attorneys' fees under this section.

137. Defendants failed to provide timely, accurate, itemized wage statements to Plaintiff in accordance with Labor Code § 226(a) and the IWC Wage Orders. In particular, the wage statements the Defendants provided their employees, including to Plaintiff, do not accurately reflect the actual hours worked, actual gross wages earned, or actual net wages earned. This is because, in part, Defendants do not count as “hours worked” the off-the-clock time that Plaintiff spent performing work-related activities.

138. Defendants' failure to comply with Labor Code § 226(a) was and continues to be knowing and intentional. Although, as alleged herein, Defendants were aware that Plaintiff performed off-the-clock work outside of her scheduled and paid shifts, yet Defendants systematically failed to include this time worked in her wage statements.

139. Plaintiff has suffered injury as a result of Defendants' knowing and intentional failure to provide timely, accurate itemized wage statements to her in accordance with Labor Code § 226(a). As a result of Defendants' violations, Plaintiff was required to undertake the difficult and costly task of attempting to reconstruct Defendants' incomplete and inaccurate time and pay records to ensure that she was paid for all hours worked as required by California law.

140. As a proximate result of the aforementioned violations, Defendants are liable to Plaintiff for the amounts described, with interest thereon, in an amount according to proof at time of

1 trial. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below,
2 pursuant to Labor Code § 226(e).

3 141. Wherefore, Plaintiff requests relief as hereinafter provided.

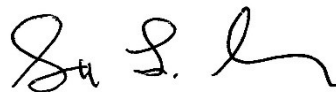
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for relief as follows:

- 6 1. For the Court to declare, adjudge, and decree that Defendants have violated the
7 California Labor Code as alleged herein;
- 8 2. For an order awarding the State of California, Plaintiff, and the Aggrieved
9 Employees civil penalties provided under the PAGA;
- 10 3. For interest on civil penalties awarded as provided by applicable law;
- 11 4. Damages and restitution according to proof at trial for all injuries as alleged herein
12 suffered by Plaintiff individually, including but not limited to including unpaid
13 wages; lost earnings and other employee benefits; statutory penalties; liquidated and
14 compensatory damages; interest thereon as provided by applicable law; and all other
15 sums of money owed to Plaintiff individually;
- 16 5. For an award of reasonable attorneys' fees;
- 17 6. For all costs of suit; and
- 18 7. For such other and further relief as this Court deems just and proper.

19
20 Date: December 26, 2023

Respectfully submitted,

21 

22 _____
Carolyn H. Cottrell
David C. Leimbach
Scott L. Gordon
23 SCHNEIDER WALLACE
24 COTTRELL KONECKY LLP

25
26 Attorneys for Plaintiff, on behalf of the State of
27 California and Aggrieved Employees