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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CIVVS2400680

JORGE A. MORENO, an individual, on
behalf of himself and the State of California,
as a private attorney general; SARAH
UDOJI, an individual, on behalf of herself
and the State of California, as a private
attorney general,

Plaintiffs,

v.

JOHN STEWART COMPANY, a California
Corporation, and DOES 1 TO 50,

Defendants.

CASE NUMBER:

**PAGA REPRESENTATIVE ACTION
COMPLAINT :**

(1) PENALTIES UNDER THE PRIVATE
ATTORNEYS GENERAL ACT
("PAGA")

DEMAND FOR JURY TRIAL

1 Plaintiffs JORGE A. MORENO AND SARAH UDOJI, on behalf of themselves, the State
2 of California, as a private attorney general, and all other similarly situated aggrieved employees
3 within the State of California, complain and allege of defendants JOHN STEWART COMPANY
4 (“JSC”) and Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a representative action brought pursuant to the California Labor Code
7 Private Attorneys General Act of 2004 (“PAGA”), codified in California Labor Code §§2698
8 through 2699.6.

9 2. The “PAGA Period,” as used herein, is defined as the one-year period from the
10 mailing of the PAGA Notice to the Labor and Workforce Development Agency (“LWDA”) and
11 continuing into the present and ongoing.

12 3. This PAGA action is brought on behalf of Plaintiffs, the State of California as
13 private attorney general, and on behalf of the following aggrieved employees: *All individuals who*
14 *are or were employed by Defendants as non-exempt employees in California during the PAGA*
15 *Period* (the “Aggrieved Employees”).

16 4. Plaintiffs are informed and believe and thereon allege that the California Industrial
17 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage
18 Orders 5 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code
19 of Regs., tit. 8, §11050) Plaintiffs reserve the right to amend or modify the definition of
20 “Applicable Wage Order” with greater specificity or add additional IWC Wage Orders if additional
21 applicable wage orders are discovered in litigation.

22 **II. JURISDICTION & VENUE**

23 5. This Court has subject matter jurisdiction over all causes of action asserted herein
24 pursuant to Article VI, §10, of the California Constitution and Code of Civil Procedure §410.10
25 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
26 \$25,000, and because each cause of action asserted arises under the laws of the State of California
27 or is subject to adjudication in the courts of the State of California.
28

1 6. This Court has personal jurisdiction over JSC because JSC has caused injuries in
2 the County of SAN BERNARDINO and the State of California through their acts and by their
3 violation of the California Labor Code and California state common law. JSC transacts business
4 within the State of California. JSC's principal place of business is in California, as reflected in its
5 registration with the California Secretary of State. JSC owns, maintains offices, transacts
6 business, has an agent or agents within the County of SAN BERNARDINO, and/or otherwise are
7 found within the County of SAN BERNARDINO and JSC is within the jurisdiction of this Court
8 for purposes of service of process.

9 7. Venue as to JSC is proper in this judicial district, pursuant to §395 of the Code of
10 Civil Procedure. JSC operates within California and does business within SAN BERNARDINO
11 County, California. The unlawful acts alleged herein have a direct effect on Plaintiffs and all of
12 Defendants' employees identified above within SAN BERNARDINO County as well as
13 throughout the State of California where Defendants may operate.

14 **III. THE PARTIES**

15 **A. PLAINTIFFS**

16 8. At all relevant times, Plaintiffs, who are over the age of 18, were and currently are
17 citizens of California residing in the State of California. Defendants employed Plaintiffs as non-
18 exempt hourly employees.

19 9. Plaintiffs bring this action on behalf of themselves and the State of California, as a
20 private attorney general, and on behalf of the following group of aggrieved employees: *All*
21 *individuals who are or were employed by Defendants as non-exempt employees in California*
22 *during the PAGA Period* (the "Aggrieved Employees").

23 10. The Aggrieved Employees, at all times pertinent hereto, are or were employees of
24 Defendants during the relevant statutory period.

25 **B. DEFENDANTS**

26 11. Plaintiffs are informed and believe and thereon allege that Defendants were
27 authorized to do business in SAN BERNARDINO County and are and/or were the legal employer
28 of Plaintiffs and the other Aggrieved Employees during the applicable statutory periods. Plaintiffs

1 and the other Aggrieved Employees were, and are, subject to Defendants' policies and/or practices
2 complained of herein and have been deprived of the rights guaranteed to them by: California Labor
3 Code §§201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1185, 1194, 1194.2,
4 1197, 1197.1, 1198, 1198.5, 1199, 2802, and others that may be applicable; and the Applicable
5 Wage Order (Cal. Code of Regs., tit. 8, §11050).

6 12. Plaintiffs are informed and believe, and based thereon allege, that during the PAGA
7 Period, Defendants did (and continue to do) business in the State of California, County of SAN
8 BERNARDINO.

9 13. Plaintiffs do not know the true names or capacities, whether individual, partner, or
10 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said
11 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
12 amend this complaint when such true names and capacities are discovered. Plaintiffs are informed,
13 and believe, and thereon allege, that each of said fictitious defendants, whether individual,
14 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
15 and proximately caused Plaintiffs and the other Aggrieved Employees to be subject to the unlawful
16 employment practices, wrongs, injuries, and damages complained of herein.

17 14. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
18 herein, Defendants were and/or are the employers of Plaintiffs and the other Aggrieved Employees.
19 At all times herein mentioned, each of said Defendants participated in the doing of the acts
20 hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants,
21 and each of them, were the agents, servants, and employees of each and every one of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
23 within the course and scope of said agency and employment. Defendants, and each of them,
24 approved of, condoned, or otherwise ratified every one of the acts or omissions complained of
25 herein.

26 15. At all relevant times, Defendants, and each of them, were members of and engaged
27 in a joint venture, partnership, and common enterprise, and acting within the course and scope of
28 and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiffs are

1 informed, and believe, and thereon allege, that all Defendants were joint employers for all purposes
2 of Plaintiffs and the other Aggrieved Employees.

3 **IV. COMMON FACTS & ALLEGATIONS**

4 16. Plaintiffs and the other Aggrieved Employees (collectively, the “Aggrieved
5 Employees”) are, and were at all relevant times, employed by the Defendants within the State of
6 California.

7 17. The Aggrieved Employees are, and were, at all relevant times, non-exempt
8 employees for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other
9 claims alleged in this complaint.

10 18. Specifically, Defendants employed Plaintiffs within the statutory PAGA Period,
11 working as hourly, non-exempt employees. Plaintiff Moreno was a maintenance worker and
12 Plaintiff Udoji was a resident manager.

13 **A. MINIMUM WAGE VIOLATIONS**

14 19. Labor Code §1197 requires employees to be paid at least the minimum wage fixed
15 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
16 §1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a civil
17 action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable
18 Wage Order also obligates employers to pay each employee minimum wages for all hours worked.
19 (Cal. Code of Regs., tit. 8, §§11050) Labor Code §1198 makes unlawful the employment of an
20 employee under conditions that the IWC Wage Orders prohibit.

21 20. These minimum wage standards apply to each hour that employees work.
22 Therefore, an employer’s failure to pay for any particular time worked by an employee is unlawful,
23 even if averaging an employee’s total pay over all hours worked, paid or not, results in an average
24 hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

25 21. Here, Defendants failed to fully conform their pay practices to the requirements of
26 the law during the relevant statutory periods. Plaintiffs and other Aggrieved Employees were not
27 compensated for all hours worked including, but not limited to, all hours they were subject to the
28 control of Defendants and/or suffered or permitted to work under the California Labor Code and

1 the Applicable Wage Order. Among other violations, Plaintiffs and the Aggrieved Employees
2 were subject to the control of Defendants while off-the-clock and did not receive minimum wage
3 for each hour worked.

4 22. Defendants additionally failed to calculate all overtime hours worked and failed to
5 include all compensation when calculating the regular rate of pay used in overtime calculations
6 and when paying overtime. Specifically, Defendant failed to include compensation for lodging for
7 Plaintiffs and Aggrieved Employees who were partially compensated with a lodging allowance
8 when calculating their regular rate of pay including, without limitation, for overtime wages, meal
9 and rest period premiums, and/or sick leave.

10 23. Additionally, Plaintiffs and the Aggrieved Employees were periodically called
11 while off-duty for work-related purposes, but this time was not recorded and wages were not paid
12 for this off-the-clock work. This policy routinely failed to capture the entirety of the hours the
13 Plaintiffs and the Aggrieved Employees worked. As a result, Plaintiffs and the Aggrieved
14 Employees were regularly uncompensated for time spent working. This uncompensated time
15 violated California's requirement that employees be compensated for all hours worked. As a result
16 of this practice, Plaintiffs and the Aggrieved Employees were not compensated their minimum
17 wages for all hours worked.

18 24. Labor Code §§1194, subdivision (a), and 1194.2, subdivision (a), provide that an
19 employer who has failed to pay its employees the legal minimum wage is liable to pay those
20 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount
21 equal to the wages due and interest thereon.

22 25. When employees, such as Plaintiffs and the Aggrieved Employees, are not paid for
23 all hours worked under Labor Code §1194, they are entitled to recover minimum wages for the
24 time which they received no compensation. (See *Sillah v. Command International Security*
25 *Services* (N.D. Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime could
26 recover liquidated damages under Labor Code §1194.2 if they also showed they were paid less
27 than minimum wage].)
28

1 26. Labor Code §1197.1 authorizes employees who are paid less than the minimum
2 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among
3 other damages, as follows:

4 (1) “For any initial violation that is intentionally committed, one
5 hundred dollars (\$100) for each underpaid employee for each pay
6 period for which the employee is underpaid.”

7 (2) “For each subsequent violation for the same specific offense,
8 two hundred fifty dollars (\$250) for each underpaid employee for
9 each pay period for which the employee is underpaid regardless of
10 whether the initial violation is intentionally committed.” (Lab.
11 Code, § 1197.1, subd. (a).)

12 27. As set forth above, Defendants failed to fully compensate Plaintiffs and the
13 Aggrieved Employees for all minimum wages. Accordingly, Plaintiffs and the Aggrieved
14 Employees are entitled to recover unpaid wages, liquidated damages and civil penalties for
15 violations of Labor Code §§1194, 1194.2, and 1197.1.

16 **B. OVERTIME VIOLATIONS**

17 28. Labor Code §510 requires employers to compensate employees who work more
18 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked
19 on the seventh consecutive day no less than one and one-half times the regular rate of pay for an
20 employee. (Lab. Code, § 510, subd. (a).) Further, Labor Code §510 obligates employers to
21 compensate employees at no less than twice the regular rate of pay when an employee works more
22 than twelve hours in a day or more than eight hours on the seventh consecutive day of work. (Lab.
23 Code, § 510, subd. (a).) These rules are also reflected in the Applicable Wage Order.

24 29. In accordance with Labor Code §1194 and the Applicable Wage Order, Plaintiffs
25 and the Aggrieved Employees could not then agree and cannot now agree to work for a lesser wage
26 than the amount provided by Labor Code §510 or the Applicable Wage Order.

27 30. Here, Defendants violated their duty to accurately and completely compensate the
28 Plaintiffs and the Aggrieved Employees for all overtime worked. Plaintiffs and the Aggrieved

1 Employees periodically worked hours that entitled them to overtime compensation under the law
2 but were not fully compensated for those hours, including for time spent working while allegedly
3 taking meal breaks as well as work performed off-the-clock.

4 31. Moreover, during the relevant statutory periods, Defendants had a policy and
5 practice of failing to pay overtime wages at the proper rate when it actually paid overtime.
6 Specifically, when Defendants paid overtime wages to the Plaintiffs and the Aggrieved
7 Employees, Defendants failed to include all compensation when calculating the regular rate of pay
8 used in overtime calculations and when paying overtime.

9 32. For instance, Plaintiffs and the Aggrieved Employees would receive lodging
10 allowance as part of their compensation. Defendants, however, calculated the regular rate of pay
11 for Plaintiffs and the Aggrieved Employees without factoring into the regular rate of pay the
12 lodging allowance, and all other non-hourly pay earnings received during the pay period. As a
13 result, Plaintiffs and the Aggrieved Employees were underpaid overtime wages when they worked
14 in excess of eight hours in any workday and/or forty hours in a workweek when such additional
15 forms of remuneration were earned. By its practice of periodically requiring Plaintiffs and the
16 Aggrieved Employees to work in excess of eight hours in a workday and/or forty hours in a
17 workweek without compensating them at the rate of one and one-half (1½) their regular rate of
18 pay, Defendants willfully violated the provisions of Labor Code §§510, 1194, and 1199.

19 33. These actions were and are in clear violation of California's overtime laws as set
20 forth in Labor Code §§510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit.
21 8, §11050) As a result of Defendants' faulty policies and practices, Plaintiffs and the Aggrieved
22 Employees were not compensated for all hours worked or paid accurate overtime compensation.

23 **C. REST BREAK VIOLATIONS**

24 34. Pursuant to Labor Code §226.7 and the Applicable Wage Order, Defendants were
25 and are required to provide Plaintiffs and the Aggrieved Employees with compensated, duty-free
26 rest periods of not less than ten minutes for every major fraction of four hours worked. Under the
27 Applicable Wage Order, an employer must authorize and permit all employees to take ten-minute
28 duty-free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8,

1 §11050)

2 35. Likewise, Labor Code §226.7 provides that “[a]n employer shall not require an
3 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
4 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”
5 (Lab. Code, § 226.7, subd. (b).) Labor Code §226.7 also provides that employers must pay their
6 employees one additional hour of pay at the employee’s regular rate for each workday that a “meal
7 or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage Orders
8 set when and for how long the rest period must take place and the Labor Code establishes that
9 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must
10 pay their employees when employers fail to provide rest periods.

11 36. The California Supreme Court has held that, during required rest periods,
12 “employers must relieve their employees of all duties and relinquish any control over how
13 employees spend their break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
14 257, 260.) Relinquishing control over employees during rest periods requires that employees be
15 “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Id.* at
16 p. 275.) The *Brinker* Court explained in the context of rest breaks that employer liability attaches
17 from adopting an unlawful policy:

18 “An employer is required to authorize and permit the amount of rest break
19 time called for under the wage order for its industry. If it does not—if, for
20 example, it adopts a uniform policy authorizing and permitting only one rest
21 break for employees working a seven-hour shift when two are required—it
22 has violated the wage order and is liable.” (*Brinker Rest. Corp. v. Superior*
23 *Court* (2012) 53 Cal.4th 1004, 1033.)

24 37. Here, Defendants often did not permit Plaintiffs and the Aggrieved Employees to
25 take compliant duty-free rest breaks, free from Defendants’ control as required by Labor Code
26 §226.7, the Applicable Wage Order, and applicable precedent. (See *Augustus v. ABM Security*
27 *Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must
28 relieve employees of all duties and relinquish control over how employees spend their time.”].)

1 At all relevant times, Plaintiffs and the Aggrieved Employees were often not provided with legally
2 compliant and timely rest periods of at least ten minutes for each four hour work period, or major
3 fraction thereof due to Defendants' unlawful rest period policies/practices. Plaintiffs and the
4 Aggrieved Employees were often expected and required to continue working through rest periods
5 to meet the expectations of Defendants and finish the workday. In some cases when Plaintiffs and
6 the Aggrieved Employees worked more than ten hours in a shift, Defendants failed to authorize
7 and/or permit a third mandated rest period. As a result, Plaintiffs and the Aggrieved Employees
8 were periodically unable to take compliant rest periods.

9 38. In such cases where Defendants did not offer Plaintiffs and the Aggrieved
10 Employees the opportunity to receive a compliant off-duty rest period, "the court may not conclude
11 employees voluntarily chose to skip those breaks." (*Alberts v. Aurora Behavioral Health Care*
12 (2015) 241 Cal.App.4th 388, 410 (2015) ["If an employer fails to provide legally compliant meal
13 or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."];
14 *Brinker Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 ["No issue of waiver ever
15 arises for a rest break that was required by law but never authorized; if a break is not authorized,
16 an employee has no opportunity to decline to take it."].)

17 39. In addition to failing to authorize and permit compliant rest periods, Plaintiffs and
18 the Aggrieved Employees were not compensated with one hour's worth of pay at their regular rate
19 of compensation when they were not provided with a compliant rest period in accordance with
20 Labor Code §226.7, subdivision (c). Thus, Defendants have violated Labor Code §226.7 and the
21 Applicable Wage Order.

22 40. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
23 non-exempt employees, rest period premiums and penalties.

24 **D. MEAL BREAK VIOLATIONS**

25 41. Labor Code §512 and the Applicable Wage Order require employers to provide
26 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours
27 of work. (Lab. Code, § 512, subd. (a) ["An employer shall not employ an employee for a work
28 period of more than five hours per day without providing the employee with a meal period of not

1 less than 30 minutes”]; Cal. Code of Regs., tit. 8, §11050 [“No employer shall employ any
2 person for a work period of more than five (5) hours without a meal period of not less than 30
3 minutes”].) Additionally, an employee who works more than ten hours per day is entitled to
4 receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd.
5 (a) [“An employer shall not employ an employee for a work period of more than 10 hours per day
6 without providing the employee with a second meal period of not less than 30 minutes”].)

7 42. “An on-duty meal period is permitted only when the nature of the work prevents an
8 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
9 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement
10 must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the
11 California Department of Industrial Relations, Division of Labor Standards Enforcement
12 (“DLSE”) and courts have “found that the nature of the work exception applies: (1) where the
13 work has some particular external force that requires the employee to be on duty at all times, and
14 (2) where the employee is the sole employee of a particular employer.” (*Id.* at p. 945, internal
15 quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952,
16 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents
17 an employee from being relieved before requiring an employee to take an on-duty meal period.”
18 (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

19 43. Here, Plaintiffs and the Aggrieved Employees were never asked to sign any
20 enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of
21 their work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v.*
22 *The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants often did not
23 provide compliant off-duty meal periods within the first five hours of work for Plaintiffs and the
24 Aggrieved Employees.

25 44. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
26 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal
27 period’s duty-free nature its defining characteristic.”].) Relinquishing control over employees
28 during meal periods requires that employees be “free to leave the employer’s premises” and be

1 “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2
2 Cal.5th at p. 275.) Under Labor Code §512, if an employer maintains a uniform policy that does
3 not authorize and permit the amount of meal time called for under the law (as specified in the
4 Labor Code and/or applicable IWC Wage Order), “it has violated the wage order and is liable.”
5 (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033.)

6 45. During the applicable statutory periods here, Plaintiffs and the Aggrieved
7 Employees were periodically denied legally compliant and timely off-duty meal periods of at least
8 thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of
9 Defendants’ uniform meal period policies and practices, Plaintiffs and the Aggrieved Employees
10 were often not permitted to take complaint first meal periods before the end of the fifth hour of
11 work. Plaintiffs and the Aggrieved Employees were also periodically not permitted to take second
12 meal periods for shifts in excess of ten hours. Defendants thus violated Labor Code §512 and the
13 Applicable Wage Order by failing to advise, authorize, or permit Plaintiffs and the Aggrieved
14 Employees to receive thirty-minute, off-duty meal periods within the first five hours of their shifts.

15 46. Labor Code §226.7 provides that “[a]n employer shall not require an employee to
16 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
17 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, §
18 226.7, subd. (b).) Labor Code §226.7, subdivision (c), and the Applicable Wage Order further
19 obligate employers to pay employees one additional hour of pay at the employee’s regular rate of
20 compensation for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd.
21 (c); Cal. Code of Regs., tit. 8, §11050 [“If an employer fails to provide an employee a meal period
22 in accordance with the applicable provisions of this order, the employer shall pay the employee
23 one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal
24 period is not provided.”].)

25 47. Accordingly, for each day that Plaintiffs and the Aggrieved Employees did not
26 receive compliant meal periods, they were and are entitled to receive meal period premiums
27 pursuant to Labor Code §226.7 and the Applicable Wage Order of one hour’s worth of pay at their
28 regular rate of compensation. Defendants, however, failed to pay Plaintiffs and the Aggrieved

1 Employees applicable meal period premiums at the appropriate regular rate for many workdays
2 that the employees did not receive a compliant meal period. Thus, Defendants have violated Labor
3 Code §226.7 and the Applicable Wage Order.

4 48. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
5 non-exempt employees, meal period premiums and penalties.

6 **E. FAILURE TO REIMBURSE BUSINESS EXPENSES**

7 49. At all relevant times herein, Defendants were subject to Labor Code §2802, which
8 states that “an employer shall indemnify his or her employees for all necessary expenditures or
9 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
10 his or her obedience to the directions of the employer.” The purpose of this section is to “prevent
11 employers from passing along their operating expenses onto their employees.” (*Gattuso v. Harte-*
12 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.)

13 50. At all relevant times herein, Defendants were subject to Labor Code §2804, which
14 states that “any contract or agreement, express or implied, made by any employee to waive the
15 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
16 employee or her personal representative of any right or remedy to which he is entitled under the
17 laws of this State.”

18 51. Thus, Plaintiffs and the Aggrieved Employees were and are entitled to
19 reimbursement for the expenses they incurred during the course of their duties. The duty to
20 reimburse even extends to the use of equipment the employee may already own and would be
21 required to pay for anyway. (*Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137,
22 1144 [“The threshold question in this case is this: Does an employer always have to reimburse an
23 employee for the reasonable expense of the mandatory use of a personal cell phone, or is the
24 reimbursement obligation limited to the situation in which the employee incurred an extra expense
25 that he or she would not have otherwise incurred absent the job? The answer is that reimbursement
26 is always required. Otherwise, the employer would receive a windfall because it would be passing
27 its operating expenses on to the employee.”].)
28

1 52. Here, Defendants failed to fully reimburse Plaintiffs and the Aggrieved Employees
2 for necessary expenditures incurred as a direct consequence and requirement of performing their
3 job duties, including the costs associated with their personal cell phone Defendants knew, or
4 should have known, that Plaintiffs and the Aggrieved Employees would be required to use to
5 perform their work. Consequently, Defendants failed to comply with Labor Code §2802

6 **F. UNTIMELY WAGES DURING EMPLOYMENT**

7 53. Labor Code §204 expressly requires employers who pay employees on a weekly,
8 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following
9 the close of the payroll period.” Labor Code §210, subdivision (a), makes employers who violate
10 Labor Code §204 subject to a penalty of:

11 “(1) For any initial violation, one hundred dollars (\$100) for each
12 failure to pay each employee.

13 “(2) For each subsequent violation, or any willful or intentional
14 violation, two hundred dollars (\$200) for each failure to pay each
15 employee, plus 25 percent of the amount unlawfully withheld.”
16 (Lab. Code, § 210, subd. (a).)

17 54. Notably, the penalty provided by Labor Code §210 is “[i]n addition to, and entirely
18 independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
19 subd. (a).)

20 55. Due to Defendants’ failure to pay Plaintiffs and the Aggrieved Employees the
21 wages described above, along with rest and meal break premiums, Defendants failed to timely pay
22 Plaintiffs and the Aggrieved Employees within seven calendar days following the close of payroll
23 in accordance with Labor Code §204 on a regular and consistent basis.

24 **G. UNTIMELY WAGES AT SEPARATION**

25 56. Labor Code §203 provides “if an employer willfully fails to pay . . . any wages of
26 an employee who is discharged or who quits, the wages of the employee shall continue as a
27 penalty” for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487,
28 492.) As a result of Defendants’ failure to pay Plaintiff and the Aggrieved Employees for the

1 wages described above, along with rest and meal break premiums, Defendants violated and
2 continue to violate Labor Code §203.

3 57. Due to Defendants' faulty pay policies, Plaintiff and Aggrieved Employees whose
4 employment with Defendants concluded were not compensated for each and every hour worked
5 at the appropriate rate. Defendants have failed to pay Plaintiffs and the Aggrieved Employees
6 whose employment with Defendants concluded all wages owed, whose sums were certain at the
7 time of termination, within seventy-two hours of their resignation, and have failed to pay those
8 sums for thirty days thereafter.

9 **H. WAGE STATEMENT VIOLATIONS**

10 58. Defendants also failed to provide accurate itemized wage statements in accordance
11 with Labor Code §§226, subdivisions (a)(1), (2), (5), and (9). Labor Code §226, subdivision (a),
12 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
13 statement in writing showing:

- 14 (1) The gross wages earned;
- 15 (2) The total hours worked by the employee;
- 16 (3) The number of piece-rate units earned and any applicable piece rate
17 if the employee is paid on a piece rate basis;
- 18 (4) All deductions, provided that all deductions made on written orders
19 of the employee may be aggregated and shown as one item;
- 20 (5) The net wages earned;
- 21 (6) The inclusive dates of the period for which the employee is paid;
- 22 (7) The name of the employee and only the last four digits of his or her
23 social security number or an employee identification number other than a
24 social security number;
- 25 (8) The name and address of the legal entity that is the employer; and
- 26 (9) All applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each hourly rate by the employee.
28

1 59. Due to Defendants’ failure to pay Plaintiffs and the Aggrieved Employees properly
2 as described above, the wage statements issued do not indicate the correct amount of gross wages
3 earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect during
4 the pay period and the corresponding number of hours worked at each hourly rate. Thus,
5 Defendants have violated Labor Code §226, subdivisions (a)(1), (2), (5), and (9).

6 60. In addition to Labor Code §226, subdivision (a), Defendants also knowingly and
7 intentionally failed to provide Plaintiffs and the Aggrieved Employees with accurate itemized
8 wage statements in violation of Labor Code §226, subdivision (e). Defendants knew that they
9 were not providing Plaintiffs and the Aggrieved Employees with wage statements required by
10 California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett*
11 *v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and
12 intentionally violated Labor Code §226 because the “[d]efendant knew that it was not providing
13 total hours worked to plaintiff or other employees paid on commission” even though it believed
14 that employees paid solely on commission or commission and salary “are exempt and therefore
15 we do not record hours on a wage statement.”].)

16 **I. RECORDKEEPING VIOLATIONS**

17 61. Labor Code §226, subdivision (a), requires employers to keep an accurate record
18 of, among other things, all hours worked by employees. Labor Code §226.3 provides, in pertinent
19 part, as follows:

20 “Any employer who violates subdivision (a) of Section 226 shall be subject
21 to a civil penalty in the amount of two hundred fifty dollars (\$250) per
22 employee per violation in an initial citation and one thousand dollars
23 (\$1,000) per employee for each violation in a subsequent citation, for which
24 the employer fails to provide the employee a wage deduction statement or
25 fails to keep the records required in subdivision (a) of Section 226. The
26 civil penalties provided for in this section are in addition to any other
27 penalty provided by law.” (Lab. Code, § 226.3, emphasis added.)

28 62. Likewise, Labor Code §1174, subdivision (d), requires every employer, including

1 Defendants, to:

2 “Keep, at a central location in the state or at the plants or establishments at
3 which employees are employed, payroll records showing the hours worked
4 daily by and the wages paid to, and the number of piece-rate units earned
5 by and any applicable piece rate paid to, employees employed at the
6 respective plants or establishments. These records shall be kept in
7 accordance with rules established for this purpose by the commission, but
8 in any case, shall be kept on file for not less than three years. An employer
9 shall not prohibit an employee from maintaining a personal record of hours
10 worked, or, if paid on a piece-rate basis, piece-rate units earned.” (Lab.
11 Code, § 1174, subd. (d), emphasis added.)

12 63. As explained in detail above, Defendants failed to provide Plaintiffs and the
13 Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part, because
14 they failed to accurately track hours worked by Plaintiffs and the Aggrieved Employees.
15 Defendants have thus failed to keep accurate records of the “total hours worked by the
16 employee[s]” in violation of Labor Code §226, subdivision (a), and are therefore subject to the
17 penalties provided by Labor Code §226.3. These penalties are “in addition to any other penalty
18 provided by law.” (Lab. Code, § 226.3.)

19 64. The failure to accurately track hours worked also resulted in a failure of Defendants
20 to keep a record of all “payroll records showing the hours worked daily by” Defendants’
21 employees, including Plaintiffs and the Aggrieved Employees, in violation of Labor Code §1174,
22 subdivision (d).

23 **FIRST CAUSE OF ACTION**

24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **(Plaintiff and Similarly Aggrieved Employees Against All Defendants)**

26
27 52. Plaintiff re-alleges and incorporates by reference each and every allegation outlined
28 in the preceding paragraphs.

1 53. Defendants have committed several Labor Code violations against Plaintiffs and
2 other similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of
3 Labor Code § 2698 *et seq.*, acting on behalf of the State of California, brings this representative
4 action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and
6 (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each subsequent
7 violation per employee per pay period for those violations of the Labor Code for which no civil
8 penalty is specifically provided based on the following Labor Code violations:

9 a) Failing to pay Plaintiffs and similarly Aggrieved Employees for all minimum and
10 overtime wages for all hours worked or for which they were subject to the control of the employer;

11 b) Failing to provide Plaintiffs and other similarly Aggrieved Employees with all of
12 their statutorily mandated meal periods in violation of Labor Code §§ 204, 510, 1194 and 1198;

13 c) Failing to authorize and permit Plaintiffs and other similarly Aggrieved employees
14 with all of their statutorily-mandated rest periods in violation of Labor Code §§ 226.7 and 516;

15 d) Failing to timely pay all wages to Plaintiffs and other similarly Aggrieved
16 employees with all wages upon separation of employment in violation of Labor Code §§ 201-203;

17 e) Failing to furnish Plaintiffs and other similarly situated employees with complete,
18 accurate, itemized wage statements in violations of Labor Code § 226(a) and applicable Wage
19 Orders; and

20 f) Failing to pay final wages in a timely manner in violation of Labor Code §§ 201-
21 203 and applicable Wage Orders.

22 54. On or about July 15, 2024, Plaintiffs notified Defendants JOHN STEWART
23 COMPANY via certified mail and the California Labor and Workforce Development Agency
24 (“LWDA”) via its website of Defendants’ violations of the California Labor Code § 2698 *et. seq.*
25 with respect to violations of the California Labor Code identified in Paragraph 53 (a)-(e). Now that
26 sixty-five days (65) have passed from Plaintiff notifying Defendants of these violations, Plaintiff
27 has exhausted her administrative requirements for bringing a claim under the Private Attorneys
28 General Act with respect to these violations.

1 55. Plaintiff was compelled to retain the services of counsel to file this court action to
2 protect her interests and the interests of other similarly aggrieved employees and to assess and
3 collect the civil penalties owed by Defendants. Plaintiff has, therefore, incurred attorneys' fees and
4 costs, which she is entitled to receive under California Labor Code § 2699.

5
6 Dated: September 26, 2024

GOLDEN STATE EMPLOYMENT LAWYERS

7
8 By: 

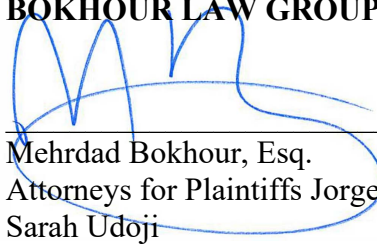
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Sarah Udoji

9
10
11 Dated: September 26, 2024

BOKHOUR LAW GROUP, P.C.

12
13 By: 

Mehrdad Bokhour, Esq.

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Sarah Udoji