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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JUSTIN SPILMAN, TERESA CHASE,
NICHOL VAN STRALEN, and JACOB
TYLER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

THE SALVATION ARMY, a California
nonprofit corporation; and DOES 1
through 25, inclusive,

Defendants.

Case No. CGC-21-591364

**THIRD AMENDED CLASS ACTION
COMPLAINT**

(UNLIMITED CIVIL CASE)

COMPLAINT FOR DAMAGES

- (1) Failure to Pay California Minimum Wages (Labor Code §§ 1182.12, 1194, 1197);**
- (2) California Unpaid Overtime Compensation (Labor Code §§ 410, 1194, et seq.);**
- (3) Failure to Authorize and Permit Paid Rest Periods (Labor Code §§ 226.7, 1194);**
- (4) Failure to Furnish Accurate Wage Statements (Labor Code §§ 226, 226.3);**

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

10/27/2022
Clerk of the Court

BY: JUDITH NUNEZ
Deputy Clerk

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(5) Waiting Time Penalties (Labor Code §§ 201, 202, 203);

(6) Violations of UCL (Bus. & Prof. Code §§ 17200 *et seq.*)

**Representative Action Complaint for
Civil Penalties Under Labor Code
Private Attorneys General Act**

DEMAND FOR JURY TRIAL

1. On behalf of themselves and all others similarly situated, Plaintiffs Justin Spilman, Teresa Chase, Nichol Van Stralen, and Jacob Tyler (“Plaintiffs”) complain against Defendant The Salvation Army (“Salvation Army” or “Defendant”) and Does 1 through 25, inclusive, as follows:

NATURE OF THE CASE

2. The Salvation Army operates approximately fifteen adult drug and alcohol rehabilitation centers and adult rehabilitation programs (“ARCs” and “ARPs,” collectively “ARCs”) in California, in which thousands of individuals seeking to conquer their addictions enroll annually. Some participants enroll voluntarily, while others are court-ordered to attend.

3. Regardless of the way in which participants enroll in the ARCs, the cornerstone of all of the Salvation Army's rehabilitation programs is "work therapy," through which the Salvation Army requires that, to remain in its treatment program, all participants must work for the Salvation Army forty hours per week—and frequently more. The participants in the Salvation Army's drug and alcohol rehabilitation programs primarily perform jobs that benefit, and further the operation of, the Salvation Army's dozens of thrift stores throughout California. These jobs are physically grueling and sometimes dangerous, ranging from sorting through mountains of donated clothing and goods to operating heavy machinery in large warehouses to driving large trucks to pick up donated furniture from homes and businesses to working long hours in the Salvation Army kitchen.

4. The Salvation Army controls all aspects of participants' work assignments, including, but not limited to, their working hours, their pay (or lack thereof), job duties, location of work, standards of performance, and all other conditions of their work.

5. Notwithstanding the substantial benefits the Salvation Army derives from the labor of the individuals who have come to its programs seeking treatment for substance abuse, for at least the last four years, the Salvation Army has maintained an across-the-board policy of failing to treat its participants as employees—even though they are plainly

1 its employees under California law and the Industrial Welfare Commission (“IWC”) Wage
2 Orders. And as a result of its unlawful policy, participants do not receive California
3 minimum wage for their labor. Rather, the Salvation Army pays them a “gratuity”—which
4 is often only redeemable at the Salvation Army canteen and may be as little as a few
5 dollars a week—even though participants are working forty hours, or more, each week. In
6 so doing, the Salvation Army violates a host of California’s labor protections for workers.

7 6. By failing to treat Plaintiffs and similarly situated participants as employees,
8 the Salvation Army has sought to avoid various duties and obligations owed to employees
9 under California’s Labor Code and IWC wage orders. Through this action, Plaintiffs
10 challenge the Salvation Army’s policy of failing to meet (a) the duty to pay state minimum
11 wage for all hours worked and the duty to pay overtime compensation for hours worked in
12 excess of eight hours in a day or forty hours in a week (Cal. Labor Code §§ 510, 1194,
13 1194.2, 1194.5, 1197; IWC Wage Order No. 7, §§ 3-4); (b) the duty to authorize and
14 provide rest periods (Cal. Labor Code §§ 226.7, 1194; IWC Wage Order No. 7, § 12);
15 (c) the duty to furnish accurate wage statements (Cal. Labor Code §§ 226, 1174; IWC
16 Wage Order No. 7, § 7); and (d) the duty to pay an employee all wages owed upon
17 termination (Cal. Labor Code §§ 201-203). Plaintiffs accordingly bring claims for unpaid
18 wages, overtime pay, liquidated damages, statutory and civil penalties, interest, and
19 attorneys’ fees and costs.

20 7. These claims are brought pursuant to Code of Civil Procedure § 382 on
21 behalf of a class of all participants in any Salvation Army ARC in California in the four
22 years prior to the filing of this action (“Class Period”) who performed work and were paid
23 less than the applicable California minimum wage.

24 8. Plaintiff Chase is also pursuing a representative action under the California
25 Private Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”). *See* Labor Code
26 § 2699.3(a) (plaintiff may amend complaint as matter of right to add PAGA claim if Labor
27 and Workforce Development Agency has failed to respond to PAGA notice within sixty-
28 five days). Plaintiff Chase seeks to recover civil penalties on behalf of herself and other

1 current and former participants in Salvation Army ARCs in California for Defendant's
2 violations of California Labor Code §§ 201–203, 204, 226, 226.3, 226.7, 246, 450, 510,
3 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and Industrial Welfare Commission
4 Wage Order No. 7.

5 **JURISDICTION AND VENUE**

6 9. This Court has jurisdiction over all causes of action asserted herein vested by
7 the California Constitution, Article VI § 10, which grants this Superior Court original
8 jurisdiction in all cases except those given to other trial courts. The Court also has
9 jurisdiction over certain causes of action pursuant to Business & Professions Code
10 §§ 17203 and 17204, which provide for exclusive jurisdiction for enforcement of this
11 statute in any court of competent jurisdiction.

12 10. Plaintiffs and the proposed Class Members seek damages exceeding the
13 jurisdictional minimum of this Court.

14 11. Venue in the County of San Francisco is proper under California Code of
15 Civil Procedure § 395.5 and Business & Professions Code § 17203 because the unlawful
16 conduct at issue in this case occurred in part in this County. In addition, Defendant
17 conducted and continues to conduct substantial business in this County and its liability
18 arose, in part, in this County.

19 **THE PARTIES**

20 12. Plaintiff Justin Spilman was ordered by the Sonoma County Superior Court
21 to participate in the San Francisco Salvation Army ARC on two occasions: the first from
22 October 5, 2017 until December 10, 2017, when he left the program, and the second from
23 February 1, 2018 until September 8, 2018, when he graduated from the program. During
24 the entire time that Plaintiff Spilman participated in the San Francisco ARC, he was
25 required to perform work for the Salvation Army, including working on the loading docks
26 unpacking deliveries of donated goods; sorting donations in the warehouse; accompanying
27 delivery drivers to pick up donations from homes and businesses; and working on the
28 maintenance team to repair the warehouse and items in the warehouse. Plaintiff Spilman's

1 regular schedule was forty hours per week; however, he was required to work more than
2 forty hours per week as punishment for infractions (for example, infractions included
3 talking to a female participant or being late to a meeting, among others) or because his
4 truck routes ran long. Plaintiff Spilman did not receive the California minimum wage for
5 any of the work he performed. Rather, on a weekly basis, the Salvation Army provided
6 him with what it called a “gratuity.” Plaintiff Spilman’s first week at the ARC he received
7 a “canteen card” worth \$1, which was redeemable only at the canteen at the San Francisco
8 ARC. The next week he received \$1 in cash and a \$1 canteen card. The amount of the
9 gratuity continued to increase each week Plaintiff Spilman participated in the program,
10 until it reached a maximum of approximately \$12 in cash and \$12 in canteen cards.

11 13. Plaintiff Teresa Chase enrolled in the Chico Salvation Army ARP through
12 the Butte County Alternative Custody Supervision program. She participated in the ARP
13 program from approximately June 10, 2020 until September 1, 2020. Plaintiff Chase was
14 required to work to participate in the ARP, and her jobs included operating the warehouse
15 baling machine, compacting rag-out clothing into 900-1000 pounds bales, and working at
16 the front desk of the Chico Salvation Army ARP. When Plaintiff Chase worked at the
17 warehouse, her work schedule was 7:00 a.m. until 3:30 p.m. Monday through Friday, plus
18 an additional three hours of work on Saturdays. When Plaintiff Chase worked at the front
19 desk, she worked from approximately 7:30 a.m. until 4:00 p.m. Tuesday through Saturday.
20 Plaintiff Chase did not receive the California minimum wage for any of her work for the
21 Salvation Army. Instead, the Salvation Army paid her a “gratuity.” Plaintiff Chase’s
22 gratuity started at approximately \$9 weekly, and then, over time, it increased to \$25
23 weekly.

24 14. Plaintiff Nichol Van Stralen was ordered by the Orange County Superior
25 Court to participate in the Anaheim Salvation Army ARC. She participated in the program
26 from approximately October 10, 2019 until approximately January 31, 2020. During the
27 entire time that she participated in the Anaheim ARC, she was required to work for the
28 Salvation Army in the clothing department, where she sorted clothes. Her daily work

1 schedule was from 7:30 a.m. to 4 p.m., Monday through Friday. Plaintiff Van Stralen did
2 not receive the California minimum wage for any of her work. Rather, Salvation Army
3 provided her with a weekly “tip” of approximately \$8-\$12.

4 15. Plaintiff Jacob Tyler voluntarily enrolled in the Stockton Salvation Army
5 ARC. He participated in the program from approximately February 25, 2019 to late May
6 2019. While at the Stockton ARC, he was required to work for the Salvation Army and
7 performed work in the warehouse unloading boxes of donations off of trucks; organizing
8 donated items, including by placing clothes on hangers and racks; and then working the
9 front desk. Plaintiff Tyler routinely worked at least 50 hours per week, Monday through
10 Saturday, and sometimes worked approximately 60 or more hours per week. Plaintiff
11 Tyler did not receive the California minimum wage for any of his work. Rather, Salvation
12 Army provided him with a weekly “gratuity” that when he first enrolled, started at \$2 or \$3
13 in cash and the same amount in “duckets” redeemable at the Salvation Army canteen. This
14 gratuity increased each week until it reached a maximum of approximately \$7 in cash and
15 the same amount in duckets per week

16 16. Defendant Salvation Army is a California nonprofit corporation, with its
17 principal place of business in Rancho Palos Verdes, California, that, *inter alia*, operates
18 approximately fifteen ARCs in California, including in Anaheim (1300 S. Lewis St.);
19 Bakersfield (200 19th Street); Canoga Park (21375 Roscoe Boulevard); Chico (13404
20 Browns Valley Drive; Fresno (804 S. Parallel Avenue); Long Beach (1370 Alamitos
21 Avenue); Oakland (601 Webster Street); Pasadena (56 W. Del Mar Boulevard); Perris
22 (24201 Orange Avenue); San Bernardino (363 S. Doolittle Road); San Diego (1335
23 Broadway); San Francisco (1500 Valencia Street); San Jose (702 W. Taylor Street); Santa
24 Monica (1665 10th Street); and Stockton (1247 S. Wilson Way). In addition, the Salvation
25 Army operated an ARC in Sacramento, California until 2019, when the Salvation Army
26 closed that facility. The Salvation Army is, and at all relevant times was, an employer
27 subject to California state wage-and-hour laws. It has the obligation to implement policies
28 and practices to operate its ARCs in accordance with the laws of California and to remedy

1 injuries caused by its unlawful conduct.

2 **FACTUAL ALLEGATIONS**

3 17. The Salvation Army is one of the largest providers of adult drug and alcohol
4 rehabilitation services in California. All of the Salvation Army's ARCs in California
5 utilize the same "work therapy" model. This model requires that participants perform full-
6 time work for the Salvation Army without being paid the California minimum wage for
7 their labor—instead, the only compensation of any kind that the Salvation Army offers is a
8 "gratuity" that often could be redeemed only at the Salvation Army canteen and was as
9 little as a few dollars a week.

10 18. Individuals may participate in the Salvation Army ARCs either voluntarily or
11 pursuant to court order. Once in the program, the rules that apply to the two groups are
12 identical. Although participants are not charged a fee to attend the ARCs, the Salvation
13 Army requires all participants to sign up for food stamps, which they must then relinquish
14 to the Salvation Army. The Salvation Army then provides room and board for all
15 participants.

16 19. The Salvation Army requires that participants in its ARCs work a minimum
17 of forty hours a week at jobs to which the Salvation Army assigns them. The Salvation
18 Army touts this requirement on its website, explaining that a person can only participate in
19 a Salvation Army ARC if the person is "[a]ble to perform a work therapy assignment for
20 eight hours a day." The Salvation Army will not accept a person into an ARC program if
21 he or she is not capable of working at least eight hours a day. And if an individual misses
22 his or her scheduled work shifts, those hours must be rescheduled and made up at a later
23 date.

24 20. Furthermore, after admission into an ARC, a participant's refusal or inability
25 to work provides grounds for the Salvation Army to expel the participant from the
26 program. The Salvation Army routinely expels participants from its ARC programs if the
27 individual becomes unable to work because of illness or even injury suffered while
28 performing work for the Salvation Army.

1 21. The jobs performed by the participants at the ARCs each primarily benefit
2 the Salvation Army. The jobs—menial in nature—do not provide job or skills training for
3 the participants but rather further the operation of the Salvation Army’s many thrift stores
4 in California. For example, participants accept and sort donations and operate heavy
5 machinery, among other related tasks necessary to the operation of the thrift stores. If
6 participants did not perform these tasks, it would be necessary for the Salvation Army to
7 hire other individuals to perform the work.

8 22. The Salvation Army thrift stores, which could not operate without the labor
9 of ARC participants, generate hundreds of millions of dollars in revenue for the Salvation
10 Army. In 2019, the Salvation Army generated \$598,449,000 in revenue from sales at its
11 thrift stores in the United States.

12 23. The Salvation Army controls and has controlled every element of the jobs
13 performed by participants, including, but not limited to, the dates on which participants
14 must work, the start time of shifts, the end times of shifts, the location of work, the job
15 duties for each position, the manner in which participants perform the job duties, standards
16 of performance, the rate of pay (or lack thereof) for each of the positions, and all other
17 working conditions.

18 24. Despite the enormous budget of the Salvation Army and the revenue
19 generated from the ARC participants’ work, the Salvation Army does not pay and has not
20 paid participants California minimum wage for their labor. Instead, all that the Salvation
21 Army provides to participants is what the Salvation Army calls a “gratuity” of as little as a
22 few dollars per week—which often can only be spent at the Salvation Army canteen.

23 25. Participants stop participating in the Salvation Army ARC programs when
24 they complete (i.e., “graduate”), leave, or are expelled from the program. Upon
25 information and belief, only a small percentage of participants successfully graduate from
26 the Salvation Army’s ARC programs, with most participants leaving the program prior to
27 completion.

CLASS ACTION ALLEGATIONS

26. This class action is brought on behalf of the following proposed class: all participants in any Salvation Army Adult Rehabilitation Center or Program in California in the past four years who performed work and were paid less than the applicable California minimum wage.

27. This action is brought, and may properly be maintained, as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable. This action presents questions of common interest and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of this provision.

28. **Numerosity:** The Class is so numerous that the individual joinder of all of its members is impracticable. While Plaintiffs do not presently know the exact number of Class Members, Plaintiffs are informed and believe, and thereon allege, that substantially in excess of one thousand persons have been subjected to the unlawful practices alleged herein within four years preceding the filing of this action. Upon information and belief, the precise identity of the Class Members can be determined by records maintained by the Salvation Army.

29. **Commonality:** Common questions of fact and law exist as to all members of the Class that predominate over any questions affecting only individual Class Members. These common questions, which may be determined without reference to the individual circumstances of any Class Member, include, but are not limited to, the following:

- a. Whether Class Members were Defendant's employees under California law and the IWC Wage Orders;
- b. Whether Defendant, in violation of California Labor Code §§ 1182.12, 1194, 1197, and applicable Wage Orders, failed to pay Class Members minimum wage for all hours worked;
- c. Whether Defendant, in violation of California Labor Code §§ 510, 1194, failed to pay Class Members overtime premiums for all hours

- 1 worked in excess of eight in one day and forty in a week;
- 2 d. Whether Defendant has failed to provide Class Members with paid
- 3 rest periods and failed to separately compensate Class Members for
- 4 each hour worked in violation of California Labor Code §§ 226.7,
- 5 1194, and IWC Wage Order No. 7;
- 6 e. Whether Defendant, in violation of California Labor Code § 226,
- 7 systematically failed to provide accurate and itemized statements of
- 8 all the hours worked by Plaintiffs and Class Members;
- 9 f. Whether Defendant, in violation of California Labor Code §§ 201-203
- 10 failed to timely pay Plaintiffs and Class Members all wages due upon
- 11 termination or resignation;
- 12 g. Whether Plaintiffs and Class Members are entitled to “waiting time”
- 13 penalties pursuant to California Labor Code § 203;
- 14 h. What amounts Plaintiffs and Class Members are entitled to receive in
- 15 interest on unpaid compensation due and owing them.

16 30. **Typicality**: Plaintiffs’ claims are typical of the claims of the Class.

17 Plaintiffs and Class Members sustained damages arising out of Defendant’s

18 aforementioned common practices.

19 31. **Adequacy of Representation**: Plaintiffs are adequate representatives of the

20 Class in that their claims are typical of those of the Class. Plaintiffs have the same

21 interests in the litigation of this case as Class Members; they are committed to vigorous

22 prosecution of this case and have retained competent counsel experienced in class action

23 and wage and hour litigation. Plaintiffs are not subject to any individual defenses unique

24 from those conceivably applicable to the Class as a whole and anticipate no management

25 difficulties in this litigation.

26 32. **Predominance**: Defendant has engaged in a common course of wage-and-

27 hour abuse toward Plaintiffs and Class Members. The common issues arising from this

28 conduct that affect Plaintiffs and Class Members predominate over any individual issues.

1 Adjudication of these common issues in a single action has important and desirable
2 advantages of judicial economy.

3 33. **Superiority of Class Action:** Class treatment will permit a large number of
4 similarly situated persons to prosecute their common claims in a single forum
5 simultaneously, efficiently, and without unnecessary duplication of effort and expense that
6 numerous individual claims would entail. Class treatment will also avoid the risk of
7 inconsistent or contradictory judgments.

8 34. Defendant has acted or refused to act in respects generally applicable to the
9 class, thereby making appropriate relief with regard to the members of the Class as a
10 whole, as requested herein.

11 **FIRST CAUSE OF ACTION**
12 **Failure to Pay California Minimum Wage For All Hours Worked**
13 **(California Labor Code §§ 1182.12, 1194, 1194.2, 1197 and IWC Wage Order No. 7)**
 (On Behalf of Plaintiffs and Class Members)

14 35. The allegations of each of the preceding paragraphs are re-alleged and
15 incorporated herein by reference as though fully set forth herein.

16 36. The IWC Wage Orders and California Labor Code §§ 1194 and 1197 require
17 employers to pay employees at least minimum wage for all hours worked.

18 37. California Labor Code § 1182.12, as well as the IWC Wage Orders, provide
19 that the California minimum wage was \$10.50 per hour effective January 1, 2017; \$11.00
20 per hour effective January 1, 2018; \$12.00 per hour effective January 1, 2019; \$13.00 per
21 hour effective January 1, 2020; \$14.00 per hour effective January 1, 2021; and \$15.00 per
22 hour from January 1, 2022 to the present.

23 38. The minimum wage provisions of the California Labor Code are enforceable
24 by private civil action pursuant to California Labor Code § 1194(a).

25 39. As described herein, Defendant maintained a policy and/or practice of failing
26 and refusing to pay Plaintiffs and Class Members the state minimum wage for all hours
27 worked, and Plaintiffs and Class Members performed work for which they were not paid
28 the applicable state minimum wage.

40. Defendant's actions were willful, in bad faith, and without reasonable grounds for believing that the acts or omissions were not in violation of state law.

41. As a direct and proximate result of Defendant's unlawful conduct as set forth herein, Plaintiffs and Class Members have sustained damages, including lost wages, in an amount to be determined at trial.

42. In addition to recovering unpaid wages, Plaintiffs and Class Members are entitled to recover interest and liquidated damages, and reasonable attorneys' fees and costs, pursuant to California Labor Code § 1194(a) and 1194.2(a).

SECOND CAUSE OF ACTION
Failure to Pay California Overtime Compensation
(California Labor Code §§ 510, 1194, and IWC Wage Order No. 7)
(On Behalf of Plaintiffs Spilman, Chase, and Class Members)

43. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference as though fully set forth herein.

44. Defendant maintained a policy and practice of scheduling Plaintiffs and Class Members for work in excess of eight hours in a day and/or forty hours in a week, as part of their regularly scheduled hours, due to special events occurring at the facility, and as punishment for infractions. Plaintiffs and Class Members accordingly regularly worked more than eight hours in a day and forty hours in a week; yet, Defendant also had a common policy of failing to pay an overtime rate of pay for those hours.

45. As a result, as described herein, during the Class Period, Defendant had a policy and practice of requiring Plaintiffs and Class Members to work in excess of eight hours in a workday and/or 40 hours in a work week and failing to pay overtime compensation, in violation of California Labor Code §§ 510, 1194 and applicable IWC Wage Orders. The precise number of overtime hours will be proven at trial.

46. Defendant had a policy and practice of not paying overtime premium compensation for overtime hours worked.

47. Defendant's actions were willful, in bad faith, and in knowing violation of the California Labor Code.

1 48. As a direct and proximate result of Defendant's unlawful conduct as set forth
2 herein, Plaintiffs and Class Members sustained damages, including loss of earnings for
3 hours of overtime work, in an amount to be determined at trial. Pursuant to California
4 Labor Code § 1194(a), Plaintiffs and Class Members are entitled to recover their unpaid
5 overtime and double time compensation, including interest thereon. Plaintiffs are also
6 entitled to recover reasonable attorneys' fees and costs.

7 49. Plaintiffs request relief as described below.

8 **THIRD CAUSE OF ACTION**
9 **Failure to Authorize and Permit Rest Breaks**
10 **(California Labor Code §§ 226.7, 1194, and IWC Wage Order No. 7)**
11 **(On Behalf of Plaintiffs and Class Members)**

12 50. The allegations of each of the preceding paragraphs are re-alleged and
13 incorporated herein by reference as though fully set forth herein.

14 51. California Labor Code § 226.7 states in relevant part, "An employer shall not
15 require an employee to work during a meal or rest or recovery period mandated pursuant to
16 an applicable ... order of the Industrial Welfare Commission."

17 52. IWC Wage Order No. 7 provides here in relevant part: "(A) Every employer
18 shall authorize and permit all employees to take rest periods, which insofar as practicable
19 shall be in the middle of each work period. The authorized rest period time shall be based
20 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
21 hours or major fraction thereof. However, a rest period need not be authorized for
22 employees whose total daily work time is less than three and one-half (3 ½) hours.
23 Authorized rest period time shall be counted as hours worked for which there shall be no
24 deduction from wages."

25 53. If an employer fails to provide an employee a rest period in accordance with
26 the applicable provisions of this order, the employer shall pay the employee one hour of
27 pay at the employee's regular rate of compensation for each work day that the rest period
28 is not provided.

 54. Upon information and belief, Defendant did not promulgate a compliant rest

1 break policy.

2 55. Plaintiffs and Class Members have regularly worked in excess of four hours
3 a day without Defendant authorizing and permitting them to take at least a 10-minute paid
4 rest period as required by Labor Code § 226.7 and applicable wage orders. *See e.g., Ibarra*
5 *v. Wells Fargo Bank, N.A.*, 809 F. App'x. 361, 363-64 (9th Cir. Apr. 15, 2020) (failure to
6 separately compensate employees for rest breaks violates the wage orders and gives rise to
7 one hour of premium pay).

8 56. Plaintiffs and Class Members were not paid for all hours worked and were
9 not separately compensated for rest periods. Indeed, Defendant maintained a policy and
10 practice of not separately compensating Plaintiffs and Class Members for rest breaks.
11 Moreover, Defendant maintained no system for the recording of rest periods.

12 57. Because Defendant failed to authorize and permit Plaintiffs and Class
13 Members compliant rest periods, it is liable to Plaintiffs and Class Members for one hour
14 of additional pay at the regular rate of compensation for each workday that the compliant
15 rest periods were not provided, attorneys' fees, penalties, and interest, pursuant to Labor
16 Code §§ 226.7(b), 218.5, and 1194, and applicable wage orders.

17 58. Plaintiffs request relief as described below.

18 **FOURTH CAUSE OF ACTION**
19 **Failure to Furnish Accurate Wage Statements**
20 **(California Labor Code §§ 226 and IWC Wage Order No. 7)**
21 **(On Behalf of Plaintiffs and Class Members)**

22 59. The allegations of each of the preceding paragraphs are re-alleged and
23 incorporated by reference as though fully set forth herein.

24 60. Pursuant to California Labor Code § 226(a) and applicable Wage Orders,
25 Defendant has at all relevant times been required, semimonthly or at the time of each
26 payment of wages, to furnish Plaintiffs and Class Members accurate, itemized written
27 statements containing all the information described in § 226 and applicable Wage Orders,
28 including, but not limited to, the total hours worked by the employees.

61. Defendant has knowingly and intentionally failed to comply with § 226 by

1 knowingly and intentionally failing to furnish Plaintiffs and Class Members with accurate,
2 itemized written statements showing their actual and total hours worked. Indeed,
3 Defendant failed to provide Plaintiffs and Class Members with any wage statements.

4 62. Under California Labor Code § 226(e), an employee suffering injury as a
5 result of knowing and intentional failure of an employer to comply with § 226(a) is entitled
6 to recover the greater of all actual damages or fifty (\$50) for the initial pay period in which
7 a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay
8 period, up to a maximum amount of \$4,000.

9 63. Under California Labor Code § 226(e)(2)(B), an employee is deemed to have
10 suffered injury if a wage statement does not include the information required by California
11 Labor Code § 226(a)(1)-(9) and the employee cannot promptly and easily determine from
12 the face of the wage statement any of the following: the total hours worked; all rates of
13 pay in effect in the pay period; or the hours worked at each rate of pay.

14 64. In addition, upon information and belief, and in violation of applicable Wage
15 Orders, Defendant has failed to keep the required payroll records showing the actual hours
16 worked each day by Plaintiffs and Class Members. As a direct and proximate result of
17 Defendant's actions, Plaintiffs and Class Members have suffered economic harm as they
18 have been precluded from accurately monitoring the number of hours worked and thus
19 seeking all accrued overtime pay.

20 65. As a direct and proximate result of Defendant's unlawful conduct as set forth
21 herein, Plaintiffs and Class Members have been injured by not receiving wage statements,
22 not receiving the information required by California Labor Code § 226(a), not being paid
23 their overtime hours, not having records showing their total hours worked, not being able
24 to ascertain from their wage statements whether or how they have been lawfully
25 compensated for all hours worked, among other things, in an amount to be determined at
26 trial.

27 66. Plaintiffs and Class Members may recover damages and penalties provided
28 for under California Labor Code § 226(e), plus interest thereon, reasonable attorneys' fees,

1 and costs.

2 67. Plaintiffs request relief as described below.

3 **FIFTH CAUSE OF ACTION**
4 **Waiting Time Penalties**
5 **(California Labor Code §§ 201, 202, 203)**
6 **(On Behalf of Plaintiffs and Class Members Who Have Terminated**
7 **Employment With Defendants)**

8 68. The allegations of each of the preceding paragraphs are re-alleged and
9 incorporated by reference as though fully set forth herein.

10 69. California Labor Code § 201 states that an employer is required to provide
11 an employee who is terminated all accrued wages and compensation at the time of
12 termination.

13 70. California Labor Code § 202 states that an employer is required to provide
14 an employee who resigns all unpaid wages within 72 hours of their resignation, or upon
15 resignation if the employee has provided at least 72 hours' notice.

16 71. California Labor Code § 203 states that if an employer willfully fails to pay
17 compensation promptly upon discharge, as required by § 201 and § 202, then the employer
18 is liable for waiting time penalties equivalent to the employee's daily wage, for a
19 maximum of 30 days.

20 72. Plaintiffs and numerous Class Members who were employed by Defendant
21 during the Class Period voluntarily left the program, were expelled, or graduated—i.e.
22 resigned or were terminated. Upon resignation or termination, Defendant failed to pay
23 them all wages due within the statutory time period. Defendant willfully failed and
24 refused to pay timely compensation and wages for, among other things, unpaid minimum
25 and overtime wages and unpaid rest periods.

26 73. As a direct and proximate result of Defendant's willful conduct in failing to
27 pay Plaintiffs and former Class Members for all hours worked, Plaintiffs and affected
28 members of the Class are entitled to recover "waiting time" penalties of up to thirty (30)
days' wages pursuant to § 203, with interest thereon, and reasonable attorneys' fees and
costs.

SIXTH CAUSE OF ACTION
Violations of the Unfair Competition Law (UCL)
(California Business & Professions Code §§ 17200-09)
(On Behalf of Plaintiffs and Class Members)

74. The allegations of each of the preceding paragraphs are re-alleged and incorporated herein by reference as though fully set forth herein.

75. California Business & Professions Code § 17200, *et seq.* (“UCL”) prohibits “unfair competition” in the form of any unlawful, unfair, or fraudulent business act or practice.

76. Defendant has engaged in unfair competition as defined by the UCL by, and as further described above: failing to provide complete and accurate itemized wage statements in violation of California Labor Code §§ 226 & 1174 and applicable Wage Orders; failing to pay minimum wage and overtime compensation to Plaintiffs in violation of California Labor Code §§ 510, 1194 *et seq.*, and applicable IWC Wage Orders; failing to authorize and provide legally compliant paid rest breaks; and failing to pay all wages owed upon participants’ termination or resignation.

77. Defendant’s knowing failure to adopt policies in accordance with and/or to adhere to these laws, all of which are binding upon and burdensome to its competitors, engenders an unfair competitive advantage to Defendant thereby constituting an unfair business practice under California Business & Professions Code §§ 17200-17208.

78. Plaintiffs and Class Members suffered injury in fact and have lost money as a direct and proximate result of Defendant’s unfair competition, including, but not limited to, money due to them as overtime compensation, minimum wages, compensation for rest periods, and waiting time penalties, which money has been acquired by Defendant by means of their unfair competition within the meaning of the UCL.

79. Pursuant to California Business & Professions Code §§ 17200 *et seq.*, Plaintiffs and Class Members are entitled to (i) restitution of all fees, wages, and compensation alleged herein that Defendant collected, withheld, and retained during the period commencing four years preceding the filing of this action, (ii) an award of

1 reasonable attorneys' fees pursuant to Cal. Civ. Proc. Code § 1021.5 and other applicable
2 law, and (iii) costs. All remedies are cumulative pursuant to California Business &
3 Professions Code § 17205.

4 80. Plaintiffs request relief as described below.

5 **REPRESENTATIVE ACTION PURSUANT TO**
6 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**
7 **(California Labor Code §2698, *et seq.*)**
8 **(On Behalf of Plaintiff Teresa Chase)**

9 81. The allegations of each of the preceding paragraphs are re-alleged and
10 incorporated herein by reference as though fully set forth herein.

11 82. The California Labor Code Private Attorneys General Act of 2004
12 (“PAGA”), California Labor Code § 2698 *et seq.*, grants California employees the right to
13 bring a civil action for the violation of any provision of the Labor Code on behalf of
14 themselves and other current or former employees in order to recover civil penalties.
15 PAGA is intended to assist in the achievement of maximum compliance with state labor
16 laws by empowering aggrieved employees to act as private attorneys general in order to
17 recover civil penalties for Labor Code violations that would otherwise be prosecuted by
18 the state. *See Arias v. Super. Ct.*, 46 Cal. 4th 969, 980 (2009).

19 83. On May 6, 2021 pursuant to California Labor Code § 2699.3, Plaintiff Chase
20 submitted to the Labor and Workforce Development Agency (LWDA) through the
21 LWDA’s website a notice of the specific provisions of the Labor Code that Plaintiff Chase
22 alleges Defendant has violated, including the facts and theories to support the violations.
23 The LWDA received Plaintiff Chase’s notice that same day: May 6, 2021. Also on
24 May 6, 2021, Plaintiff Chase sent to Defendants by certified mail a copy of the same
25 notice. As of the date of the filing of the First Amended Complaint, Plaintiff Chase had
26 not received any notice from the LWDA that it intended or did not intend to investigate the
27 alleged violations set forth in Plaintiff Chase’s notice. Accordingly, since sixty-five days
28 had passed since Plaintiff Chase mailed the notice, Plaintiff Chase can commence a civil
action pursuant to California Labor Code § 2699. *See* Cal. Labor Code

1 § 2699.3(a)(2)(A) & (B).

2 84. PAGA permits an aggrieved employee to collect the civil penalty authorized
3 by law and normally collectible by the California Labor and Workforce Development
4 Agency. To address violations for which no penalty has been established, § 2699(f)
5 creates a private right of action for aggrieved employees and a default penalty in the
6 amount of \$100 for each aggrieved employee per pay period for the initial violation, and
7 \$200 for each aggrieved employee per pay period for each subsequent violation. *See* Cal.
8 Lab. Code § 2699(f). Plaintiff Chase will seek to collect these civil penalties for the
9 Salvation Army's Labor Code violations under California Labor Code §§ 201-203, 204,
10 226, 226.3, 226.7, 246, 450, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and
11 applicable wage orders.

12 85. The facts underlying Plaintiff Chase's allegations regarding her minimum
13 wage, overtime, rest breaks, wage statements, and waiting time penalties are described
14 above, and Plaintiff Chase seeks PAGA penalties for these claims. In addition to these
15 allegations, Plaintiff Chase alleges as follows:

16 86. California Labor Code § 204 states that an employer is required to pay all
17 wages "twice during each calendar month, on days designated in advance by the employer
18 as the regular paydays." Salvation Army failed to pay Plaintiff Chase and aggrieved
19 employees all wages (and indeed only paid them "gratuity"), in violation of this provision.
20 As a result, Plaintiff Chase and aggrieved employees are entitled to recover penalties under
21 Labor Code § 210.

22 87. Labor Code § 450 states that "No employer ... may compel or coerce any
23 employee ... to patronize his or her employer, or any other person, in the purchase of
24 anything of value ... [including] instances where an employer requires payment of a fee or
25 consideration of any type" Salvation Army pays employees in part through "duckets"
26 or slips that employees can use for goods such as soda or chips provided by Salvation
27 Army at its canteen. In doing so, it has violated § 450 by compelling Plaintiff Chase and
28 aggrieved employees to patronize Salvation Army.

88. Labor Code § 246 provides that California employees who work for an employer for more than thirty days “shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked.” Salvation Army failed to provide Plaintiff Chase with any paid sick leave in violation of Labor Code § 246.

89. Plaintiff Chase is an “aggrieved employee” as defined by PAGA and seeks to represent all participants in any Salvation Army Adult Rehabilitation Center or Program in California from May 6, 2020 through the date of judgment in this matter who are also aggrieved employees.

PRAYER FOR RELIEF

Based on the above allegations, Plaintiffs respectfully request entry of judgment against Defendant, as follows:

1. Certification of the above-described Class as a class action, pursuant to California Code of Civil Procedure § 382;
2. Appointment of Plaintiffs as Class Representatives;
3. Appointment of Plaintiff's Counsel as Class Counsel;
4. Provision of class notice to all Class Members;
5. A declaratory judgment that Defendant has knowingly and intentionally violated the following provisions of law:
 - a. Cal. Labor Code §§ 226.7, 1194, and applicable Wage Orders by failure to authorize and permit paid rest periods to Plaintiffs;
 - b. Cal. Labor Code § 226 and applicable Wage Orders, by failing to provide Plaintiffs with itemized statements of total hours worked with each payment of wages;
 - c. Cal. Labor Code §§ 1182.12, 1194, 1197, and applicable Wage Orders, by failing to pay minimum wage to Plaintiffs;
 - d. Cal. Labor Code §§ 510, 1194, and applicable Wage Orders, by failing to pay proper overtime compensation to Plaintiffs;
 - e. Cal. Labor Code §§ 201-203 by failing to pay all wages due upon

- 1 termination or resignation of employees;
- 2 f. Cal. Business and Professions Code §§ 17200-17208 by failing to
- 3 authorize and permit paid rest breaks and/or missed rest break
- 4 compensation to Plaintiffs, by failing to provide Plaintiffs with
- 5 itemized wage statements showing all hours worked by Plaintiffs; by
- 6 failing to pay Plaintiffs minimum wage; and by failing to pay
- 7 Plaintiffs overtime premium pay;
- 8 6. A declaratory judgment that Defendant's violations as described above were
- 9 willful and/or knowing and intentional;
- 10 7. An award to Plaintiffs of damages in the amount of unpaid overtime and
- 11 minimum wage compensation, and rest period compensation, including interest thereon
- 12 subject to proof at trial;
- 13 8. An award of liquidated damages to Plaintiffs and Class Members, in an
- 14 amount equal to minimum wages unlawfully unpaid, according to proof, pursuant to
- 15 California Labor Code § 1194.2;
- 16 9. An equitable accounting to identify, locate, and restore to all current and
- 17 former Class Members the overtime and minimum wages due;
- 18 10. An award to Plaintiffs of statutory penalties because of Defendant's failures
- 19 to provide Plaintiffs with itemized wage statements that comply with the requirements of
- 20 Cal. Labor Code section 226, subject to proof at trial;
- 21 11. Injunctive relief pursuant to California Labor Code § 226(h) to ensure
- 22 compliance with Labor Code § 226;
- 23 12. An award to Plaintiffs and the Class Members of premium wages for rest
- 24 periods, according to proof;
- 25 13. An award of penalties owed, pursuant to Labor Code § 203, to Plaintiff and
- 26 all Class Members who resigned or whose employment was terminated by Defendant
- 27 without receiving all compensation owed at the time of separation;
- 28 14. An order requiring Defendant to pay restitution of all amounts owed to

1 Plaintiffs for Defendant's failure to pay legally required rest period pay, unpaid minimum
2 wages, unpaid overtime, and interest thereon, in an amount according to proof, pursuant to
3 Business & Professions Code section 17203;

4 15. An award of civil penalties pursuant to PAGA;

5 16. An award to Plaintiffs of reasonable attorneys' fees and costs, pursuant to
6 Cal. Code of Civil Procedure section 1021.5 and Cal. Labor Code sections 218.5, 226,
7 1194, 2699(g), and/or other applicable law;

8 17. Pre-judgment and post-judgment interest on all sums at the maximum legal
9 rate provided by law; and

10 18. Such other and further relief as this Court deems just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs demand a trial by jury.

13
14 DATED: October 27, 2022

Respectfully submitted,

15 RUKIN HYLAND & RIGGIN LLP

16
17 By: 

18 _____
Jessica Riggins
Valerie Brender

19
20 DATED: October 27, 2022

ROSEN BIEN GALVAN & GRUNFELD LLP

21
22 By: 

23 _____
Gay Crosthwait Grunfeld
Michael Freedman
Priyah Kaul

24 Attorneys for Plaintiffs
25
26
27
28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I
4 am employed in the County of San Francisco, State of California. My business address is
101 Mission Street, Sixth Floor, San Francisco, CA 94105-1738.

5 On October 27, 2022, I served true copies of the following document(s), with an
6 *unsigned* copy of this proof of service, described as:

7 **THIRD AMENDED CLASS ACTION COMPLAINT**

8 on the interested parties in this action as follows:

9 Jaime Laurent, Esq.
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15 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or
16 an agreement of the parties to accept service by e-mail or electronic transmission, I caused
17 the document(s) to be sent from e-mail address lwoo@rbgg.com to the persons at the e-
mail addresses listed in the Service List. I did not receive, within a reasonable time after
18 the transmission, any electronic message or other indication that the transmission was
unsuccessful.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.

21 Executed on October 27, 2022, at San Francisco, California.

22 
23 Linda Woo