

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

MAY 07 2021

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO

15 JUSTIN SPILLMAN, DEVIN GERARDY,  
16 TERESA CHASE, TRACY  
17 WOODMANCY, and SYE  
18 SMALLWOOD, on behalf of themselves  
and all others similarly situated,

19 Plaintiff,

20 v.

21 THE SALVATION ARMY, a California  
22 nonprofit corporation; and DOES 1  
23 THROUGH 25, inclusive,

24 Defendants.

Case No.

CGC -21-591364

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);  
(5) WAITING TIME PENALTIES (Labor  
Code §§ 201, 202, 203);

25 COMPLAINT FOR DAMAGES AND JURY DEMAND

FAXED

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**(6) VIOLATIONS OF UCL (Bus. & Prof. Code §17200 *et seq.*)**

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

**DEMAND FOR JURY TRIAL**



1 the Salvation Army pays them a “gratuity”—which is often only redeemable at the Salvation  
2 Army canteen and may be as little as a few dollars a week—even though participants are  
3 working forty hours, or more, each week. In so doing, the Salvation Army violates a host of  
4 California’s labor protections for workers.

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

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

21 8. Plaintiffs also intend to amend this complaint to pursue it as a representative  
22 action under the California Labor Code Private Attorneys General Act, Labor Code § 2698, *et*  
23 *seq.* (“PAGA”). *See* Labor Code § 2699.3(a) (plaintiff may amend complaint as matter of right to  
24 add PAGA claim if Labor and Workforce Development Agency has failed to respond to PAGA  
25 notice within sixty-five days). After the complaint is amended to add Plaintiffs’ PAGA claim,  
26 Plaintiffs will seek to recover civil penalties on behalf of themselves and other current and  
27 former participants in Salvation Army ARCs in California for Defendant’s violations of  
28 California Labor Code §§ 201–203, 204, 226, 226.3, 226.7, 246, 450, 510, 512, 558, 1174,

1 1174.5, 1194, 1194.2, 1197, 1197.1, and Industrial Welfare Commission Wage Order No. 7.

2 **JURISDICTION AND VENUE**

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

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

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

14 **THE PARTIES**

15 12. Plaintiff Justin Spillman was ordered by the Sonoma County Superior Court to  
16 participate in the San Francisco Salvation Army ARC on two occasions: the first from October 5,  
17 2017 until December 10, 2017, when he left the program, and the second from February 1, 2018  
18 until September 8, 2018, when he graduated from the program. During the entire time that  
19 Plaintiff Spillman participated in the San Francisco ARC, he was required to perform work for  
20 the Salvation Army, including working on the loading docks unpacking deliveries of donated  
21 goods; sorting donations in the warehouse; accompanying delivery drivers to pick up donations  
22 from homes and businesses; and working on the maintenance team to repair the warehouse and  
23 items in the warehouse. Plaintiff Spillman’s regular schedule was forty hours per week; however,  
24 he was required to work more than forty hours per week as punishment for infractions (for  
25 example, infractions included talking to a female participant or being late to a meeting, among  
26 others) or because his truck routes ran long. Plaintiff Spillman did not receive the California  
27 minimum wage for any of the work he performed. Rather, on a weekly basis, the Salvation Army  
28 provided him with what it called a “gratuity.” Plaintiff Spillman’s first week at the ARC he

1 received a “canteen card” worth \$1, which was redeemable only at the canteen at the San  
2 Francisco ARC. The next week he received \$1 in cash and a \$1 canteen card. The amount of the  
3 gratuity continued to increase each week Plaintiff Spillman participated in the program, until it  
4 reached a maximum of approximately \$12 in cash and \$12 in canteen cards.

5 13. Plaintiff Devin Gerardy was ordered by the San Diego County Superior Court to  
6 participate in the San Diego Salvation Army ARC. He participated in the program from February  
7 2019 until he graduated in September 2019. During the entire time that he participated in the San  
8 Diego ARC, he was required to perform work for the Salvation Army, including working in the  
9 warehouse sorting donated goods and cooking food for participants in the program. Throughout  
10 his time at the Salvation Army, Plaintiff Gerardy averaged approximately 45 hours of work per  
11 week, and he sometimes worked in excess of 50 hours a week. Plaintiff Gerardy did not receive  
12 the California minimum wage for any of his work for the Salvation Army. Rather, the Salvation  
13 Army provided him with a weekly “gratuity” that, when he first enrolled, started at \$5 in cash  
14 and \$5 in “duckets” redeemable at the Salvation Army canteen, and increased each week until it  
15 reached a maximum of \$12 in cash and \$13 in duckets per week.

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

28 15. Plaintiff Tracy Woodmancy voluntarily enrolled in the Anaheim Salvation Army

1 ARC. She participated in the program on three occasions: from August 2019 until February  
2 2020; from August 2020 until March 3, 2021; and from March 29, 2021 until April 27, 2021.  
3 During the entire time that she participated in the Anaheim ARC, she was required to work for  
4 the Salvation Army, where she performed tasks including sorting clothes, hanging clothes,  
5 sorting and separating accessories, sorting and folding linens, matching shoes, and pricing  
6 housewares. Her daily work schedule was from 7:45 a.m. to 3:45 p.m., Monday through Friday.  
7 Plaintiff Woodmancy did not receive the California minimum wage for any of her work. Rather,  
8 Salvation Army provided her with a weekly “gratuity” of \$7—four dollars of which was only  
9 redeemable at the Salvation Army canteen and three dollars of which was provided in cash. This  
10 amount increased over time, until she was ultimately provided \$25/week, with approximately  
11 half only redeemable at the canteen.

12 16. Plaintiff Sye Smallwood voluntarily enrolled in the Sacramento Salvation Army  
13 ARC. He participated in the program from approximately October 6, 2016 until approximately  
14 August 7, 2017. While at the Sacramento ARC, he was required to work for the Salvation Army  
15 and performed work in the warehouse sorting clothes and other items, then worked in the kitchen  
16 as a server. Plaintiff Smallwood typically worked forty hours per week but was occasionally  
17 required to work more than forty hours per week as needed. Plaintiff Smallwood, however, did  
18 not receive the California minimum wage for any of his work. Rather, the Salvation Army  
19 provided him with a weekly “ducket” of \$6—three dollars of which was only redeemable at the  
20 Salvation Army canteen and three dollars of which was provided in cash. This amount increased  
21 over time, until he was ultimately provided with a weekly ducket of approximately \$10 or \$11 in  
22 cash and \$7 or \$8 in ducket only redeemable at the canteen.

23 17. Defendant Salvation Army is a California nonprofit corporation, with its principal  
24 place of business in Rancho Palos Verdes, California, that, *inter alia*, operates approximately  
25 fifteen ARCs in California, including in Anaheim (1300 S. Lewis St.); Bakersfield (200 19th  
26 Street); Canoga Park (21375 Roscoe Boulevard); Chico (13404 Browns Valley Drive; Fresno  
27 (804 S. Parallel Avenue); Long Beach (1370 Alamitos Avenue); Oakland (601 Webster Street);  
28 Pasadena (56 W. Del Mar Boulevard); Perris (24201 Orange Avenue); San Bernardino (363 S.

1 Doolittle Road); San Diego (1335 Broadway); San Francisco (1500 Valencia Street); San Jose  
2 (702 W. Taylor Street); Santa Monica (1665 10th Street); and Stockton (1247 S. Wilson Way).  
3 In addition, the Salvation Army operated an ARC in Sacramento, California until 2019, when the  
4 Salvation Army closed that facility. The Salvation Army is, and at all relevant times was, an  
5 employer subject to California state wage-and-hour laws. It has the obligation to implement  
6 policies and practices to operate its ARCs in accordance with the laws of California and to  
7 remedy injuries caused by its unlawful conduct.

### 8 **FACTUAL ALLEGATIONS**

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

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

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

27 21. Furthermore, after admission into an ARC, a participant's refusal or inability to  
28 work provides grounds for the Salvation Army to expel the participant from the program. The



1 Salvation Army routinely expels participants from its ARC programs if the individual becomes  
2 unable to work because of illness or even injury suffered while performing work for the  
3 Salvation Army.

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

11 23. The Salvation Army thrift stores, which could not operate without the labor of  
12 ARC participants, generate hundreds of millions of dollars in revenue for the Salvation Army. In  
13 2019, the Salvation Army generated \$598,449,000 in revenue from sales at its thrift stores in the  
14 United States.

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

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

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

1 **CLASS ACTION ALLEGATIONS**

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

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

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

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

- 21 a. Whether Class Members were Defendant's employees under California law  
22 and the IWC Wage Orders;
- 23 b. Whether Defendant, in violation of California Labor Code §§ 1182.12, 1194,  
24 1197, and applicable Wage Orders, failed to pay Class Members minimum  
25 wage for all hours worked;
- 26 c. Whether Defendant, in violation of California Labor Code §§ 510, 1194,  
27 failed to pay Class Members overtime premiums for all hours worked in  
28 excess of eight in one day and forty in a week;

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

15 31. **Typicality:** Plaintiffs’ claims are typical of the claims of the Class. Plaintiffs and  
16 Class Members sustained damages arising out of Defendant’s aforementioned common practices.

17 32. **Adequacy of Representation:** Plaintiffs are adequate representatives of the Class  
18 in that their claims are typical of those of the Class. Plaintiffs have the same interests in the  
19 litigation of this case as Class Members; they are committed to vigorous prosecution of this case  
20 and have retained competent counsel experienced in class action and wage and hour litigation.  
21 Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to  
22 the Class as a whole and anticipate no management difficulties in this litigation.

23 33. **Predominance:** Defendant has engaged in a common course of wage-and-hour  
24 abuse toward Plaintiffs and Class Members. The common issues arising from this conduct that  
25 affect Plaintiffs and Class Members predominate over any individual issues. Adjudication of  
26 these common issues in a single action has important and desirable advantages of judicial  
27 economy.

28 34. **Superiority of Class Action:** Class treatment will permit a large number of

1 similarly situated persons to prosecute their common claims in a single forum simultaneously,  
2 efficiently, and without unnecessary duplication of effort and expense that numerous individual  
3 claims would entail. Class treatment will also avoid the risk of inconsistent or contradictory  
4 judgments.

5 35. Defendant has acted or refused to act in respects generally applicable to the class,  
6 thereby making appropriate relief with regard to the members of the Class as a whole, as  
7 requested herein.

8 **FIRST CAUSE OF ACTION**  
9 **FAILURE TO PAY CALIFORNIA MINIMUM WAGE FOR ALL HOURS WORKED**  
10 **(CALIFORNIA LABOR CODE §§ 1182.12, 1194, 1194.2, 1197 AND IWC WAGE ORDER**  
11 **NO. 7)**  
12 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)**

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

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

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

21 39. The minimum wage provisions of the California Labor Code are enforceable by  
22 private civil action pursuant to California Labor Code § 1194(a).

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

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

42. 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

1 amount to be determined at trial.

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

5 **SECOND CAUSE OF ACTION**  
6 **FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**  
7 **(CALIFORNIA LABOR CODE §§ 510, 1194, AND IWC WAGE ORDER NO. 7)**  
8 **(ON BEHALF OF PLAINTIFFS SPILLMAN, GERARDY, CHASE, SMALLWOOD,**  
9 **AND CLASS MEMBERS)**

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

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

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

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

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

27 49. As a direct and proximate result of Defendant's unlawful conduct as set forth  
28 herein, Plaintiffs and Class Members sustained damages, including loss of earnings for hours of  
overtime work, in an amount to be determined at trial. Pursuant to California Labor Code §  
1194(a), Plaintiffs and Class Members are entitled to recover their unpaid overtime and double

1 time compensation, including interest thereon. Plaintiffs are also entitled to recover reasonable  
2 attorneys' fees and costs.

3 50. Plaintiffs request relief as described below.

4 **THIRD CAUSE OF ACTION**  
5 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**  
6 **(CALIFORNIA LABOR CODE §§ 226.7, 1194, AND IWC WAGE ORDER NO. 7)**  
7 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)**

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

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

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

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

23 55. Upon information and belief, Defendant did not promulgate a compliant rest  
24 break policy.

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



1 amount of \$4,000.

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

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

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

19 67. Plaintiffs and Class Members may recover damages and penalties provided for  
20 under California Labor Code § 226(e), plus interest thereon, reasonable attorneys' fees, and  
21 costs.

22 68. Plaintiffs request relief as described below.

23 **FIFTH CAUSE OF ACTION**  
24 **WAITING TIME PENALTIES**  
25 **(CALIFORNIA LABOR CODE §§ 201, 202, 203)**  
26 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS WHO HAVE TERMINATED**  
27 **EMPLOYMENT WITH DEFENDANTS)**

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





1 minimum wage and overtime compensation to Plaintiffs in violation of California Labor Code §§  
2 510, 1194 et seq., and applicable IWC Wage Orders; failing to authorize and provide legally  
3 compliant paid rest breaks; and failing to pay all wages owed upon participants' termination or  
4 resignation.

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

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

14 80. Pursuant to California Business & Professions Code §§ 17200 et seq., Plaintiffs  
15 and Class Members are entitled to (i) restitution of all fees, wages, and compensation alleged  
16 herein that Defendant collected, withheld, and retained during the period commencing four years  
17 preceding the filing of this action, (ii) an award of reasonable attorneys' fees pursuant to Cal.  
18 Civ. Proc. Code § 1021.5 and other applicable law, and (iii) costs. All remedies are cumulative  
19 pursuant to California Business & Professions Code § 17205.

20 81. Plaintiffs request relief as described below.

21 **REPRESENTATIVE ACTION PURSUANT TO PRIVATE ATTORNEYS GENERAL**  
22 **ACT OF 2004**  
**(CALIFORNIA LABOR CODE §2698, ET SEQ.)**

23 82. Plaintiffs also intend to bring a claim under California Labor Code §§ 2698-99 in  
24 a representative capacity on behalf of all participants in any Salvation Army Adult Rehabilitation  
25 Center program in California in the past four years who performed work and were paid less than  
26 the applicable California minimum wage.

27 83. The California Labor Code Private Attorneys General Act of 2004 ("PAGA"),  
28 California Labor Code § 2698 et seq., grants California employees the right to bring a civil

1 action for the violation of any provision of the Labor Code on behalf of themselves and other  
2 current or former employees in order to recover civil penalties. PAGA is intended to assist in the  
3 achievement of maximum compliance with state labor laws by empowering aggrieved  
4 employees to act as private attorneys general in order to recover civil penalties for Labor Code  
5 violations that would otherwise be prosecuted by the state. *See Arias v. Super. Ct.* (2009) 46 Cal.  
6 4th 969, 980.

7 84. On May 6, 2021 pursuant to California Labor Code § 2699.3, Plaintiffs sent  
8 notice by certified mail to the Labor and Workforce Development Agency (LWDA) and  
9 Defendant of the specific provisions of the Labor Code that Plaintiffs allege Defendant has  
10 violated, including the facts and theories to support the violations. The LWDA received  
11 Plaintiffs' notice that same day: May 6, 2021. The sixty-five-day time limit for the agency to  
12 respond has not yet expired, and as such Plaintiffs have not yet exhausted their administrative  
13 remedies. When they do so, however, they intend to amend this complaint to plead a PAGA  
14 representative action.

15 85. PAGA permits an aggrieved employee to collect the civil penalty authorized by  
16 law and normally collectible by the California Labor and Workforce Development Agency. To  
17 address violations for which no penalty has been established, § 2699(f) creates a private right of  
18 action for aggrieved employees and a default penalty in the amount of \$100 for each aggrieved  
19 employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay  
20 period for each subsequent violation. *See Cal. Lab. Code § 2699(f)*. Plaintiffs will seek to collect  
21 these civil penalties for the Salvation Army's Labor Code violations under California Labor  
22 Code §§ 201-203, 204, 226, 226.3, 226.7, 450, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1,  
23 1174.5, and applicable wage orders.

24 86. The facts underlying Plaintiffs' allegations regarding their minimum wage,  
25 overtime, rest breaks, wage statements, and waiting time penalties are described above, and  
26 Plaintiffs seek PAGA penalties for these claims. In addition to these allegations, Plaintiffs allege  
27 as follows:  
28



1           5.     A declaratory judgment that Defendant has knowingly and intentionally violated  
2           the following provisions of law:

3           a.     Cal. Labor Code §§ 226.7, 1194, and applicable Wage Orders by failure to  
4           authorize and permit paid rest periods to Plaintiffs;

5           b.     Cal. Labor Code § 226 and applicable Wage Orders, by failing to provide  
6           Plaintiffs with itemized statements of total hours worked with each payment  
7           of wages;

8           c.     Cal. Labor Code §§ 1182.12, 1194, 1197, and applicable Wage Orders, by  
9           failing to pay minimum wage to Plaintiffs;

10          d.     Cal. Labor Code §§ 510, 1194, and applicable Wage Orders, by failing to pay  
11          proper overtime compensation to Plaintiffs;

12          e.     Cal. Labor Code §§ 201-203 by failing to pay all wages due upon termination  
13          or resignation of employees;

14          f.     Cal. Business and Professions Code §§ 17200-17208 by failing to authorize  
15          and permit paid rest breaks and/or missed rest break compensation to  
16          Plaintiffs, by failing to provide Plaintiffs with itemized wage statements  
17          showing all hours worked by Plaintiffs; by failing to pay Plaintiffs minimum  
18          wage; and by failing to pay Plaintiffs overtime premium pay;

19          6.     A declaratory judgment that Defendant’s violations as described above were  
20          willful and/or knowing and intentional;

21          7.     An award to Plaintiffs of damages in the amount of unpaid overtime and  
22          minimum wage compensation, and rest period compensation, including interest thereon subject  
23          to proof at trial;

24          8.     An award of liquidated damages to Plaintiffs and Class Members, in an amount  
25          equal to minimum wages unlawfully unpaid, according to proof, pursuant to California Labor  
26          Code § 1194.2;

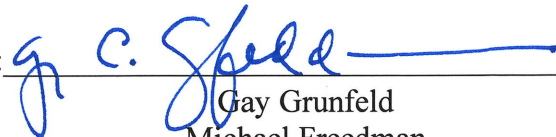
27          9.     An equitable accounting to identify, locate, and restore to all current and former  
28          Class Members the overtime and minimum wages due;



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Dated: May 6, 2021

ROSEN BIEN GALVAN & GRUNFELD LLP

By:   
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Michael Freedman  
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