

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

BURGER AUTO GROUP, LLC, a California Limited Liability Company; and Does 1 through 50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JOSHUA PESAVENTO, in his representative capacity on behalf of the State of California and fellow Aggrieved Employees,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

05/26/2020 at 08:00:00 AM

Clerk of the Superior Court
By Chelsea Martinez, Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court, Hall of Justice
330 W. Broadway
San Diego, CA 92101

CASE NUMBER:

37-2020-00015742-CU-0E-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE: 05/27/2020
(Fecha)

Clerk, by C. Martinez, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):



JEAN-CLAUDE LAPUYADE (SBN 248676)
JCL LAW FIRM, APC
3990 OLD TOWN AVE. SUITE C204
SAN DIEGO, CA 92110
TELEPHONE: (619) 599-8292
FAX: (619) 599-8291
JLAPUYADE@JCL-LAWFIRM.COM

SHANI O. ZAKAY (SBN 277924)
ZAKAY LAW GROUP, APLC
5850 OBERLIN DRIVE, SUITE 230A
SAN DIEGO, CA 92121
TELEPHONE: (619) 255-9047
FAX: (858) 404-9203
SHANI@ZAKAYLAW.COM

ATTORNEYS FOR PLAINTIFF JOSHUA PESAVENTO

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

JOSHUA PESAVENTO, in his representative
capacity on behalf of the State of California and
fellow Aggrieved Employees,

Plaintiff,

vs.

BURGER AUTO GROUP, LLC, a California
Limited Liability Company; and Does 1
through 50, Inclusive,

Defendants.

Case No. 37-2020-00015742-CU-OE-CTL

COMPLAINT FOR:

- 1. VIOLATIONS OF THE
CALIFORNIA LABOR CODE
PRIVATE ATTORNEY GENERAL
ACT AT LABOR CODE §§ 2698 et
seq.**

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/26/2020 at 08:00:00 AM
Clerk of the Superior Court
By Chelsea Martinez, Deputy Clerk

1 Plaintiff JOSHUA PESAVENTO (“PLAINTIFF”), in his representative capacity on
2 behalf of the State of California and fellow current and former AGGRIEVED EMPLOYEES,
3 alleges based on information and belief, except for his own acts and knowledge which are based
4 on personal knowledge, the following:

5 **INTRODUCTION**

6 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
7 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
8 aggrieved employees of DEFENDANTS for engaging in a pattern and practice of wage and hour
9 violations under the California Labor Code.

10 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT decreased
11 their employment-related costs by systematically violating California wage and hour laws.

12 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order violations
13 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 14 a. Failure to provide compliant meal and rest periods;
- 15 b. Failure to pay all minimum, regular and overtime wages;
- 16 c. Failure to pay the correct rate of overtime pay;
- 17 d. Failure to maintain true and accurate records;
- 18 e. Failure to provide accurate itemized wage statements; and
- 19 f. Failure to timely pay wages due during, and upon termination of employment.

20 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of
21 himself and all other aggrieved employees of DEFENDANTS in California seeking all civil penalties
22 and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

23 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
24 California.

25 **THE PARTIES**

26 6. Defendant BURGER AUTO GROUP, LLC (“DEFENDANT”) is a California limited
27 liability company and at all relevant times mentioned herein conducted and continues to conduct
28 substantial and regular business throughout the State of California.

7. DEFENDANT owns and operates a new and used car dealership known as “CARL BURGER DODGE, CHRYSLER, JEEP, RAM, WORLD” located in the City of La Mesa, County of San Diego, State of California. In addition to selling a variety of used and new automobiles, DEFENDANT also provides parts and service through its Parts and Service Department.

8. PLAINTIFF was employed by DEFENDANT in California as an hourly non-exempt new and used car Sales Consultant from July 2019 to November 2019, entitled to non-discretionary flat sum bonuses and commission wages, minimum wages, overtime pay and, legally complaint meal and rest periods.

9. PLAINTIFF brings this action in his representative capacity on behalf of the State of California and on behalf of all of DEFENDANT’s current and former non-exempt employees employed in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANT between January 17, 2019 and the present (“PAGA PERIOD”).

10. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code § 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code violations committed by DEFENDANT.

11. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANT, within the meanings set forth in the California Labor Code and the applicable Industrial Welfare Commission Wage Order.

12. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts alleged in this Complaint.

13. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,

1 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days
2 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties
3 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

4 14. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
5 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
6 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
7 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
8 for each underpaid employee.

9 **JOINT EMPLOYER**

10 18. The Private Attorney General Act ("PAGA"), permits an aggrieved employee to enforce
11 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

12 19. Section 558 of the California Labor Code provides that "any employer or other person
13 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
15 be subject to a civil penalty..." (*Lab. Code* § 558(a).);

16 20. Section 1197.1 of the Labor Code provides that "[a]ny employer or other person acting
17 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
18 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
19 of the commission shall be subject to a civil penalty..." (*Lab. Code* § 1197.1(a).)

20 18. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
21 a corporate employer's owners, officers and directors, are subject to civil penalties for the employer's
22 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
23 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
24 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
25 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

26 19. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and
27 each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved
28

employees the appropriate wages as complained of herein and proximately caused the complaints, injuries, and damages alleged herein.

20. At all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of each other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of the other.

21. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's wages, working hours, and/or working conditions.

15. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the acts of each Defendant are legally attributable to the other DEFENDANTS.

THE CONDUCT

A. Regular Rate Violation

16. From time-to-time, during the PAGA PERIOD, DEFENDANT failed and continue to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their overtime hours worked. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working overtime without compensation at the correct overtime rates. DEFENDANT's uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct overtime rate for all overtime worked in accordance with applicable law is evidenced by DEFENDANT's business records.

17. State law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's performance and commissions generated from the sale of new and used cars.

18. DEFENDANT's flat-sum non-discretionary bonus program provided all AGGRIEVED EMPLOYEES, including PLAINTIFF, with a flat-sum bonus compensation when the employees met the various performance goals set by DEFENDANT. These flat-sum incentive payments are identified as, *inter alia*, "SPIFF" in the wage statements issued by DEFENDANT to PLAINTIFF and the other

1 AGGRIEVED EMPLOYEES.

2 19. DEFENDANT's commission compensation program provided all AGGRIEVED
3 EMPLOYEES, including PLAINTIFF, with commission compensation based on gross profit, as
4 calculated under DEFENDANT's commission compensation program, generated from new and used
5 car sales.

6 20. However, when calculating the regular rate of pay, in those pay periods where
7 PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime and earned this flat-sum non-
8 discretionary bonus and/or commission wages generated from new and used car sales, DEFENDANT
9 failed to accurately include the flat-sum non-discretionary bonus compensation and/or commission
10 wages as part of the employees' "regular rate of pay".

11 21. In other instances, when calculating the regular rate of pay, in those pay periods where
12 PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime and earned this flat-sum non-
13 discretionary bonus, DEFENDANT failed to (1) accurately include the flat-sum non-discretionary
14 bonus compensation into the regular rate of pay and/or (2) calculated all hours worked rather than just
15 all non-overtime hours worked into the regular rate of pay in violation of *Alvarado v. Dart* (2018) 4
16 Cal.5th 542.

17 22. Management and supervisors described the flat sum bonus program and commission
18 compensation program to potential and new employees as part of the compensation package for new
19 and used car salespersons including PLAINTIFF and other AGGRIEVED EMPLOYEES. As a matter
20 of law, the incentive and commission compensation received by PLAINTIFF and other AGGRIEVED
21 EMPLOYEES must be included and correctly calculated into the "regular rate of pay" for purposes of
22 overtime compensation. DEFENDANT's failure to do so has resulted in DEFENDANT's systematic
23 underpayment of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES.

24 **B. Meal and Rest Period Violations**

25 23. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor
26 Codes, an employer shall not employ an employee for a work period of more than 5 hours per day
27 without providing the employee with a meal period of not less than 30 minutes, except that if the total
28 work period per day of the employee is no more than 6 hours, the meal period may be waived by mutual

consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. If an employer fails to provide an employee with a mandated meal period, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

24. From time-to-time during the PAGA PERIOD, as a result of understaffing and their rigorous work schedule, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT from time-to-time failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period from time to time in which these employees were required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice. DEFENDANT failed to maintain adequate staffing levels while increasing the production levels for each employee at CARL BURGER DODGE, CHRYSLER, JEEP, RAM, WORLD.

25. Further, pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee suffered or permitted to work. DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under the DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off duty meal break due to PLAINTIFF's rigorous work schedule and DEFENDANT's understaffing. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. As a result, the

1 PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime
2 compensation by regularly working without their time being accurately recorded and without
3 compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy
4 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
5 evidenced by DEFENDANT's business records.

6 26. Pursuant to the Industrial Welfare Commission Wage Orders and the California Labor
7 Codes, an employer shall authorize and permit all employees to take a rest period, which so far as
8 practical shall be in the middle of each work period. Generally, an employer must provide ten (10)
9 minutes of paid rest for every four hours or major fraction thereof. If an employer fails to provide an
10 employee a rest period, the employer shall pay the employee one (1) hour of pay at the employee's
11 regular rate of pay for each workday that the rest period is not provided.

12 27. Additionally, during the PAGA PERIOD, as a result of DEFENDANT's understaffing
13 of CARL BURGER DODGE, CHRYSLER, JEEP, RAM, WORLD, PLAINTIFF and other
14 AGGRIEVED EMPLOYEES were from time-to-time required to work in excess of four (4) hours
15 without being provided duty-free, uninterrupted, ten (10) minute rest period. Further, for the same
16 reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts
17 worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes
18 for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period
19 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
20 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages in
21 lieu thereof.

22 **C. Wage Statement Violations**

23 28. From time-to-time during the PAGA PERIOD, when PLAINTIFF and other
24 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and
25 rest period premiums, or were paid overtime in the same pay period where they earned a non-
26 discretionary flat-sum bonuses or commission compensation, DEFENDANT also failed to provide
27 PLAINTIFF and the other AGGRIEVED EMPLOYEES with complete and accurate wage statements
28 which failed to show, among other things, the correct rates of pay, correct amount of gross wages earned

1 and correct amount of net wages earned. California Labor Code Section 226 provides that every
2 employer shall furnish each of his or her employees with an accurate itemized wage statement in writing
3 showing, among other things, gross wages earned and all applicable hourly rates in effect during the
4 pay period and the corresponding amount of time worked at each hourly rate. Aside from the violations
5 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement
6 that lists all the requirements under California Labor Code 226 et seq. As a result, from time to time
7 DEFENDANT provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage
8 statements which violated Cal. Lab. Code § 226.

9 29. By reason of this uniform conduct applicable to PLAINTIFFS and all AGGRIEVED
10 EMPLOYEES, DEFENDANT committed acts of unfair competition in violation of the California
11 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. (the “UCL”), by engaging in a
12 company-wide policy and procedure which failed to accurately record all missed meal and rest periods
13 by PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper recording of these employees’
14 missed meal and rest breaks is DEFENDANT’s burden. As a result of DEFENDANT’s intentional
15 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay
16 all required compensation for work performed by PLAINTIFF and AGGRIEVED EMPLOYEES and
17 violated the California Labor Code and regulations promulgated thereunder as herein alleged.

18 30. To date, DEFENDANT has not fully paid PLAINTIFF all wages still owed to them or
19 any penalty wages owed to them under Cal. Lab. Code § 203. The amount in controversy for
20 PLAINTIFF individually does not exceed the sum or value of \$75,000.

21 **JURISDICTION AND VENUE**

22 31. This Court has jurisdiction over this Action pursuant to California Code of Civil
23 Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF’s claims for civil penalties
24 under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

25 32. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
26 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times maintained
27 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
28 committed the wrongful conduct herein alleged in this County against the AGGRIEVED

1 EMPLOYEES.

2 **FIRST CAUSE OF ACTION**

3 **For Civil Penalties Pursuant to Private Attorneys General Act (“PAGA”)**

4 **[Cal. Lab. Code §§ 2698, et seq.]**

5 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

6 33. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
7 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

8 34. PAGA is a mechanism by which the State of California itself can enforce state labor laws
9 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
10 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
11 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
12 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
13 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified
14 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general
15 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
16 claims cannot be subject to arbitration.

17 35. PLAINTIFF brings this Representative Action on behalf of the State of California with
18 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
19 DEFENDANTS during the PAGA PERIOD.

20 36. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
21 similarly situated employees were aggrieved employees of DEFENDANTS within the meaning of
22 Labor Code Section 2699(c).

23 37. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
24 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
25 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

26 38. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
27 Section 2699.3. By certified letter, return receipt requested, dated January 17, 2019, PLAINTIFF gave
28 written notice to the Labor and Workforce Development Agency (“LWDA”) and to DEENDANTS of

the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

39. As of March 31, 2020, more than sixty-five (65) days after serving the LWDA with notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

40. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2804 in the following amounts:

a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];

b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars

1 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent
2 violation [penalty per Labor Code Section 558];

3 e. For violations of Labor Code Section 2269(a), a civil penalty in the
4 amount of two hundred fifty dollars (\$250) per AGGRIEVED
5 EMPLOYEE per violation in an initial citation and one thousand dollars
6 (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation
7 [penalty per Labor Code Section 226.3];

8 f. For violations of Labor Code Section 1174(d), a civil penalty in the
9 amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE
10 [penalty per Labor Code Section 1174.5].

11 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198
12 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per
13 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
14 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
15 for each subsequent violation [penalty per Labor Code Section].

16 41. For all provisions of the Labor Code for which civil penalty is not specifically provided,
17 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
18 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
19 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the
20 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
21 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

3 (a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including
4 pursuant to Labor Code § 2699, *et seq.*;

5 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
6 Private Attorneys General Act; and

7 (c) For such other relief as the Court deems just and proper.
8

9 Dated: April 14, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

11 By: 
12 Jean-Claude Lapuyade
13 Attorneys for Plaintiff

14 **DEMAND FOR JURY TRIAL**

15 PLAINTIFF demands jury trial on all issues triable to a jury.

16
17 Dated: April 14, 2020

Respectfully Submitted,
JCL LAW FIRM, A.P.C.

19 By: 
20 Jean-Claude Lapuyade
21 Attorneys for Plaintiff
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