

FIRST AMENDED **SUMMONS**
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

HLT CONRAD DOMESTIC, LLC, a Delaware limited liability company; and DOES 1 through 50, Inclusive;

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

SALVADOR CHAVEZ, 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

08/20/2020 at 08:42:00 PM

Clerk of the Superior Court
By Regina Chanez, 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: 37-2020-00016193
(Número del Caso):

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: 08/21/2020
(Fecha)

Clerk, by _____
(Secretario)

R. Chanez
R. Chanez

_____, Deputy
(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)).

[SEAL]



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 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

JEAN-CLAUDE LAPUYADE (SBN 248676)

JLAPUYADE@JCL-LAWFIRM.COM

JCL LAW FIRM, APC

3990 OLD TOWN AVENUE, SUITE C204

SAN DIEGO, CA 92110

TEL: (619) 599-8292

FAX: (619) 599-8291

SHANI O. ZAKAY (SBN 277924)

SHANI@ZAKAYLAW.COM

ZAKAY LAW GROUP, APLC

5850 OBERLIN DRIVE, SUITE 230A

SAN DIEGO, CA 92121

TEL: (619) 255-9047

FAX: (619) 404-9203

ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

SALVADOR CHAVEZ, in his representative
capacity on behalf of the State of California and
fellow Aggrieved Employees,

Plaintiffs,

vs.

HLT CONRAD DOMESTIC, LLC, a Delaware
limited liability company; and DOES 1 through
50, Inclusive;

DEFENDANTS.

Case No.37-92020-00016193-CU-OE-CTL

[Action filed 5/26/2020]

FIRST AMENDED COMPLAINT FOR:

**1. VIOLATIONS OF THE CALIFORNIA
PRIVATE ATTORNEY GENERAL
ACT AT LABOR CODE §§ 2698 *ET*
SEQ.**

DEMAND FOR JURY TRIAL

1 Plaintiff SALVADOR CHAVEZ (“PLAINTIFF”) in his representative capacity on behalf of the
2 State of California and fellow Aggrieved Employees alleges based on information and belief, except for
3 his own acts and knowledge which are based on personal knowledge, the following:

4 **INTRODUCTION**

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

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

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

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

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

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

24 6. PLAINTIFF does not seek to recover anything other than penalties as permitted by
25 California Labor Code § 2699. To the extent that statutory violations are mentioned for wage violations,
26 PLAINTIFF does not seek underlying general and/or special damages for those violations in this action,
27 but simply the civil penalties permitted by California Labor Code § 2699. Notwithstanding,
28

1 PLAINTIFF is not abandoning his right to pursue their individual claims for, *inter alia*, Defendants'
2 alleged wage violations, and/or general or special damages arising from those violations, and he fully
3 intends to, at a future date, pursue claims for those individual claims and damages.

4 **THE PARTIES**

5 7. Defendant HLT CONRAD DOMESTIC, LLC ("DEFENDANT") is a Delaware limited
6 liability company that at all relevant times mentioned herein conducted and continues to conduct
7 substantial business in the state of California, county of San Diego, City of San Diego, owns, operates
8 and/or manages Hilton branded hotels including the San Diego Hilton Bayfront.

9 8. PLAINTIFF was employed by DEFENDANTS at the Hilton San Diego Bayfront as a
10 non-exempt carpenter and plant mechanic, paid on an hourly basis, entitled to certain non-discretionary
11 incentive compensation, bonuses, overtime pay and legally compliant meal and rest periods from
12 November 2008 until his constructive termination in August 2019.

13 9. PLAINTIFF brings this action in his representative capacity on behalf of the State of
14 California and on behalf of all of DEFENDANT's current and former non-exempt employees employed
15 in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et*
16 *seq.* (hereinafter "AGGRIEVED EMPLOYEES") and who worked for DEFENDANT between April 6,
17 2019 and the present ("PAGA PERIOD").

18 10. PLAINTIFF is an "AGGRIEVED EMPLOYEE" within the meaning of Labor Code §
19 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code
20 violations committed by DEFENDANT.

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

24 12. Each of the fictitiously named defendants participated in the acts alleged in this
25 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,
26 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth
27 the true names and capacities of these fictitiously named defendants when their true names are
28 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, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

JOINT EMPLOYER

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

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

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

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

1 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

2 19. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each
3 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
4 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
5 damages alleged herein.

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

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

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

15 **JURISDICTION AND VENUE**

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

19 24. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
20 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
21 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities in
22 this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct
23 herein alleged in this County against members of the AGGRIEVED EMPLOYEES.

24 **THE CONDUCT**

25 25. In violation of the applicable sections of the California Labor Code and the requirements
26 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
27 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
28 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other members of

the AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the AGGRIEVED EMPLOYEES for all time worked, and failed to issue to PLAINTIFF and the members of the AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

A. Meal Period Violations

26. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and AGGRIEVED EMPLOYEES members 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 is suffered or permitted to work. From time-to-time during the PAGA PERIOD, as a result of their overburdened work requirements, inadequate staffing and not being relieved of cordless communication devices during their shifts, DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. DEFENDANT required PLAINTIFF and members of the AGGRIEVED EMPLOYEES to carry cordless communication devices throughout their work shifts and to remain at the ready to respond to work related issues and tasks communicated through the cordless communication device. DEFENDANT did not have a policy or practice to relieve PLAINTIFF and the members of the AGGRIEVED EMPLOYEES of their communication device during what was supposed to be an off-duty meal period. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES members forfeited minimum wage and overtime

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

5 27. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
6 schedules, inadequate staffing and not being relieved of cordless communication devices, PLAINTIFF
7 and other AGGRIEVED EMPLOYEES members were from time to time unable to take thirty (30)
8 minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
9 other AGGRIEVED EMPLOYEES members were required from time to time to perform work as
10 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a meal
11 break. Further, DEFENDANTS from time to time failed to provide PLAINTIFF and AGGRIEVED
12 EMPLOYEES members with a second off-duty meal period for some workdays in which these
13 employees were required by DEFENDANTS to work ten (10) hours of work from time to time. The
14 nature of the work performed by the PLAINTIFF and the members of the AGGRIEVED EMPLOYEES
15 does not qualify for limited and narrowly construed "on-duty" meal period exception. PLAINTIFF and
16 other members of the AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional
17 compensation and in accordance with DEFENDANTS' strict corporate policy and practice.
18 DEFENDANTS failed to maintain adequate staffing levels while increasing the production levels for
19 each employee at the busy airports they provided services for.

20 **B. Rest Period Violations**

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

27 29. From time-to-time during the PAGA PERIOD, as a result of their overburdened work
28 requirements, inadequate staffing and not being relieved of cordless communication devices during their

1 shifts, PLAINTIFF and other AGGRIEVED EMPLOYEES members were also required from time to
2 time to work in excess of four (4) hours without being provided duty-free ten (10) minute rest periods.
3 Further, these employees were denied their first duty-free rest periods of at least ten (10) minutes for
4 some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period
5 of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
6 time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten
7 (10) hours or more from time to time. DEFENDANT required PLAINTIFF and members of the
8 AGGRIEVED EMPLOYEES to carry cordless communication devices and to remain at the ready to
9 respond to work related issues and tasks communicated through the cordless communication device
10 throughout their works shifts. DEFENDANT did not have a policy or practice to relieve PLAINTIFF
11 and the members of the AGGRIEVED EMPLOYEES of their communication device during what was
12 supposed to be an off-duty rest period. PLAINTIFF and other AGGRIEVED EMPLOYEES members
13 were also not provided with one-hour wages in lieu thereof.

14 **C. Overtime Regular Rate Violation**

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

22 31. State law provides that employees must be paid overtime at one-and-one-half times their
23 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES members were compensated
24 at an hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's
25 performance.

26 32. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES
27 members' compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
28 PLAINTIFF and other CLASS MEMBERS flat-sum incentive wages based on their performance for

1 DEFENDANTS. The flat-sum non-discretionary bonus program provided all employees paid on an
2 hourly basis with flat-sum bonus compensation when the employees met the various performance goals
3 set by DEFENDANTS. These flat-sum incentive payments are identified as “Shift Differ” and “Meal
4 Adds t” in the wage statements issued by DEFENDANTS to PLAINTIFF and the other AGGRIEVED
5 EMPLOYEES members.

6 33. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
7 where PLAINTIFF and other AGGRIEVED EMPLOYEES members worked overtime and earned this
8 flat-sum non-discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-
9 discretionary bonus compensation as part of the employees’ “regular rate of pay” and/or calculated all
10 hours worked rather than just all non-overtime hours worked. Management and supervisors described
11 the incentive/bonus program to potential and new employees as part of the compensation package. As
12 a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
13 EMPLOYEES members must be included in the “regular rate of pay.” The failure to do so has resulted
14 in a systematic underpayment of overtime compensation to PLAINTIFF and other AGGRIEVED
15 EMPLOYEES members by DEFENDANTS.

16 34. From time-to-time during the PAGA PERIOD, PLAINTIFF earned “Shift Differ”
17 compensation and worked overtime compensation throughout his employment with DEFENDANTS
18 including, but not limited to the pay period beginning on August 9 to August 22, 2019. Notwithstanding,
19 DEFENDANTS failed to accurately calculate the non-discretionary, flat-sum bonus entitled “Shift
20 Differ” into the regular rate pay for purposes of PLAINTIFF’s overtime compensation. The failure to
21 do so has resulted in an underpayment of overtime compensation to plaintiff PLAINITFF during this
22 pay period.

23 35. In violation of the applicable sections of the California Labor Code and the requirements
24 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
25 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the
26 other members of the AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime worked.
27 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of
28 the correct overtime compensation as required by California law which allowed DEFENDANTS to

1 illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent
2 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES members against
3 DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

4 **D. Meal Period Premium Violations**

5 36. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
6 to accurately calculate and pay PLAINTIFF and the other members of the AGGRIEVED EMPLOYEES
7 their missed meal and rest period premiums. As a result, PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES members forfeited wages due them for their missed meal and rest periods without
9 compensation at the correct missed meal and rest period rates. DEFENDANTS' uniform policy and
10 practice to not pay the AGGRIEVED EMPLOYEES members the correct rate for all missed meal and
11 rest period premium payment in accordance with applicable law is evidenced by DEFENDANTS'
12 business records.

13 37. State law provides that employees must be paid premium hour of pay at the employee's
14 "regular rate of compensation" for each workday that the meal or rest period is not provided.
15 PLAINTIFF and other AGGRIEVED EMPLOYEES members were compensated at an hourly rate plus
16 a non-discretionary incentive pay that was tied to specific elements of an employee's performance.
17 These non-discretionary incentive payments are identified as "Shift Differ" and "Meal Adds t" in the
18 wage statements issued by DEFENDANTS to PLAINTIFF and the other AGGRIEVED EMPLOYEES
19 members.

20 38. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES
21 members' compensation was DEFENDANTS' non-discretionary incentive program that paid
22 PLAINTIFF and other members of the AGGRIEVED EMPLOYEES incentive wages based on their
23 performance for DEFENDANTS. The non-discretionary incentive program provided all employees
24 paid on an hourly basis with incentive compensation when the employees met the various performance
25 goals set by DEFENDANTS. However, when calculating the regular rate of pay in order to pay missed
26 rest and meal period premiums to PLAINTIFF and other AGGRIEVED EMPLOYEES members,
27 DEFENDANTS failed to include the incentive compensation as part of the employees' "regular rate of
28 compensation" for purposes of calculating missed rest and meal period premiums. Management and

supervisors described the incentive program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES members must be included in the “regular rate of compensation.” The failure to do so has resulted in a systematic underpayment of premium pay for missed meal and rest periods to PLAINTIFF and other AGGRIEVED EMPLOYEES members by DEFENDANTS.

39. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the other members AGGRIEVED EMPLOYEES at the correct rate of pay for all missed meal and rest period premiums. This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of the correct missed meal and rest period premium compensation as required by California law which allowed DEFENDANTS to illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES members against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

E. Wage Statement Violations

40. California Labor Code Section 226 requires an employer to furnish its employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee’s social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

41. From time to time during the PAGA PERIOD, when PLAINTIFF and other AGGRIEVED EMPLOYEES members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were paid overtime in the same pay period where they earned a non-discretionary incentive award, DEFENDANTS also failed to provide PLAINTIFF and the other members of the AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed

1 to show, among other things, all applicable hourly rates in effect during the pay period and the
2 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or
3 missed meal and rest periods.

4 42. For instance, for the pay period between June 24, 2019 and June 27, 2019, PLAINTIFF
5 received remuneration from DEFENDANTS described as “Retro Active” in the gross amount of \$89.02.
6 DEFENDANTS violated California Labor Code Section 226 by failing to list the applicable hourly rate
7 and the corresponding number of hours worked at the applicable hourly rate for this line item of
8 remuneration described as “Retro Active”. PLAINTIFF, and all those similarly situated members of the
9 AGGRIEVED EMPLOYEES, suffered damage as a result of DEFENDANTS’ aforementioned
10 violation because he could not promptly and easily determine from the wage statement alone the
11 applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate for
12 this line item of remuneration described as “Retro Active”.

13 43. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
14 AGGRIEVED EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further,
15 DEFENDANTS’ violations are knowing and intentional, were not isolated or due to an unintentional
16 payroll error due to clerical or inadvertent mistake.

17 44. To date, DEFENDANT has not fully paid PLAINTIFF, and the other AGGRIEVED
18 EMPLOYEES that have separated employment with DEFENDANT, all the minimum, regular and
19 overtime compensation, and the meal and rest break premiums, owed at the time of their separation and
20 are thus in violation of Cal. Lab. Code § 203.

21 **FIRST CAUSE OF ACTION**

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

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

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

25 45. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
26 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

27 46. PAGA is a mechanism by which the State of California itself can enforce state labor laws
28 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law

1 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
2 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
3 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
4 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified
5 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to
6 recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
7 claims cannot be subject to arbitration.

8 47. PLAINTIFF brings this Representative Action on behalf of the State of California with
9 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
10 DEFENDANTS during the PAGA PERIOD.

11 48. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
12 similarly situated employees were aggrieved employees of DEFENDANTS within the meaning of Labor
13 Code Section 2699(c).

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

17 50. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
18 Section 2699.3. By certified letter, return receipt requested, dated April 20, 2020, PLAINTIFF gave
19 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANTS of
20 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
21 to support the alleged violations.

22 51. As of August 19, 2020, more than sixty-five (65) days after serving the LWDA with notice
23 of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its intent to
24 investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A).
25 Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may commence and is
26 authorized to pursue this cause of action.

27 52. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and similarly
28 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, 2802 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 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

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

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

[penalty per Labor Code Section 1174.5].

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

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

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

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

Dated: August 20, 2020

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

By: 
Jean-Claude Lapuyade
Attorneys for PLAINTIFF

1 **DEMAND FOR JURY TRIAL**

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

3
4 Dated: August 20, 2020

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

5
6 By: 
7 Jean-Claude Lapuyade
8 Attorneys for PLAINTIFF
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28