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FILED
Superior Court of California
County of San Francisco

OCT 15 2020

CLERK OF THE COURT

BY: ANGELICA SUNGA Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **SAN FRANCISCO COUNTY**

10 MICHAEL MORECI, an individual, on
behalf of himself and all other aggrieved
employees and the State of California,

11 **PLAINTIFF,**

12 vs.

13 JOHNSON CONTROLS, INC. and DOES 1-
100, inclusive,

14 **DEFENDANTS.**

Case No.: **CGC-20-587372**

COMPLAINT FOR

(1) LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT
VIOLATIONS (Labor Code §§
2698 *et seq.*)

DEMAND FOR JURY TRIAL

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19 **BY FAX**
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1 Plaintiff Michael Moreci ("Plaintiff") alleges as follows:

2 **SUMMARY OF CLAIMS**

3 1. Plaintiff was employed by Johnson Controls, Inc. ("JCI" or "Defendant") in San
4 Francisco and elsewhere in the Bay Area from approximately March 2013 to March 2, 2020. He
5 brings this action as a PAGA action on behalf of the State of California, and on behalf of himself
6 as an aggrieved employee and all other aggrieved employees employed by Defendant in
7 California ("Employees").

8 2. Plaintiff alleges that Defendant violated and continues to violate the California
9 Labor Code and Wage Order protections applicable to himself and Employees, including:

10 (a) Defendant's failure to pay Plaintiff and Employees all wages due them,
11 including failing to pay them for drive time at the start and end of their workdays pursuant to
12 Defendant's policy and failing to pay them the prevailing rates of wages for jobs on which
13 Defendant was required to pay Plaintiff and Employees the prevailing rates of wages;

14 (b) Defendant's failure to provide Plaintiff and Employees with complete and
15 accurate itemized wage statements and to keep proper payroll records;

16 (c) Defendant's failure to pay Plaintiff and other former Employees all wages
17 due at the time of discharge, termination or departure and for willfully failing to pay all wages
18 due at the time of discharge.

19 3. Due to Defendant's violations of the Labor Code as to Plaintiff and Employees,
20 they are aggrieved employees of Defendant pursuant to the Labor Code Private Attorneys General
21 Act of 2004, Labor Code §§ 2698 *et seq.* ("PAGA"). Plaintiff thus brings this action on behalf of
22 the State of California, himself as an aggrieved employee and all of Defendant's aggrieved
23 employees for civil penalties for violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a),
24 226.3, 226.6, 432, 510, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198,
25 1198.5, 1199, 1774, 1775, and 1776, and the applicable Wage Order of the California Industrial
26 Welfare Commission ("Wage Order").

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5. The Court has personal jurisdiction over this matter because Defendant conducts substantial business activity in California and engaged in the unlawful acts described herein in California.

THE PARTIES

7. Plaintiff Michael Moreci was employed as an hourly/non-exempt employee by JCI in San Francisco and other locations in the Bay Area from approximately March 2013 to March 2, 2020. His position was as a system designer of access control and intrusion systems for JCI's customers. He is a resident of California.

A. Johnson Controls, Inc.

9. Pursuant to the California Labor Code and the Wage Order, JCI has employed Plaintiff and Employees in California within the statutory period for PAGA liability.

10. DOES 1 through 100, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff at this time. When their true names and capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and capacities herein. Plaintiff is informed and believes, and thereon alleges that each of the fictitiously-named Defendants is responsible in some manner for the occurrences alleged herein, and that the

1 damages and penalties as alleged herein were actually and/or proximately caused by such
2 Defendants.

3 11. Plaintiff is informed and believes and thereon alleges that at all relevant times each
4 Defendant was the principal, agent, employer, owner, manager, managing agent, joint employer,
5 employee, partner, servant, joint venturer, officer, director, controlling shareholder, subsidiary,
6 affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of
7 the other Defendants, and was engaged with some or all of the other Defendants in a joint
8 enterprise for profit, and bore such other relationships to some or all of the other Defendants so as
9 to be liable for the conduct of them. Plaintiff is also informed and believes and thereon alleges
10 that pursuant to Labor Code § 558.1, each Defendant was an employer or other person acting on
11 behalf of an employer, who violated, or caused to be violated, any provision regulating minimum
12 wages or hours and days of work in any order of the Industrial Welfare Commission, or violated,
13 or caused to be violated, Labor Code §§ 203, 226, or 1194, and thus, may be held liable as the
14 employer for such violation. Plaintiff is further informed and believes and thereon alleges that
15 each Defendant acted pursuant to and within the scope of the relationships alleged above, that
16 each Defendant knew or should have known about, authorized, ratified, adopted, approved,
17 controlled, aided and abetted the conduct of all other Defendants, and that each Defendant acted
18 pursuant to an agreement to do the things alleged herein.

19 **FACTUAL ALLEGATIONS**

20 **I. Defendant's Failure to Pay Plaintiff or Employees for All Wages Due Them**

21 **A. Defendant violated its policy of paying Plaintiff and Employees for travel time
22 between their homes and jobsites**

23 12. Under Defendant's policy, employees who have been provided a company vehicle
24 are to be compensated for travel between the employees' homes and their jobsite locations when
25 such travel exceeds one (1) hour each way. Defendant provided a company vehicle to Plaintiff
26 and Employees but failed to pay them for travel between their homes and their jobsite locations
27 when such travel exceeded one (1) hour each way. Defendant thus failed to compensate Plaintiff
28 and Employees for wages due them for such travel time under Defendant's policy, violating

1 Labor Code sections 204, 210, 510, 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, and
2 the Wage Order.

3 **B. Defendant failed to pay Plaintiff and Employees prevailing rates of wages for**
4 **employment on public works**

5 13. "Workers employed by contractors or subcontractors in the execution of any
6 contract for public work are deemed to be employed upon public work." Labor Code § 1772.
7 "The contractor to whom the contract is awarded, and any subcontractor under him [or her], shall
8 not pay less than the specified prevailing rates of wages to all work[ers] employed in the
9 execution of the contract." Labor Code § 1774.

10 14. Defendant is a contractor or subcontractor with contracts for public work. While
11 employed by Defendant, Plaintiff and Employees were employed by Defendant in the execution
12 of Defendant's contracts for public work. Thus, Plaintiff and Employees were deemed to be
13 employed upon public work. Accordingly, Defendant was required to pay Plaintiff and
14 Employees not less than the specified prevailing rates of wages for their employment in the
15 execution of Defendant's contracts for public work. However, Defendant regularly paid Plaintiff
16 and Employees less than the specified prevailing rates of wages for their work on such contracts,
17 violating Labor Code sections 204, 210, 510, 558, 558.1, 1194, 1194.2, 1197, 1197.1, 1198, 1199,
18 1774, and 1775, and the Wage Order.

19 **II. Defendant's Failure to Provide Accurate Wage Statements, Personnel Files and**
20 **Employment Records**

21 15. Defendant did not pay Plaintiff and Employees their wages for travel time under
22 Defendant's policy and Defendant did not pay them the prevailing rates of wages for public work.
23 Consequently, Defendant provided Plaintiff and Employees with inaccurate wage statements that
24 did not show their gross wages earned, their total hours worked, their net wages earned, or all
25 applicable hourly rates in effect during the pay period and the corresponding number of hours
26 worked at each hourly rate by the employees. Defendant also failed to keep records, as required
27 by Labor Code section 226(a). Also, after Plaintiff requested his personnel files and employment
28 records from Defendant pursuant to Labor Code sections 226, 432, and 1198.5, Defendant failed

1 to provide him with such files and records. Defendant knowingly and intentionally violated the
2 requirements to provide Plaintiff and Employees with accurate wage statements or to keep copies
3 of wage statements with the required information. Defendant also failed to keep for at least three
4 years payroll records showing the hours worked daily by and the wages paid to Plaintiff and
5 Employees, as required by Labor Code section 1174(d). Defendant also willfully failed to
6 maintain accurate and complete records required by Labor Code section 1174(d). Defendant also
7 failed to maintain records of the wages and wage rates, job classifications, and other terms and
8 conditions of employment of Plaintiff and Employees for a period of at least three years, as
9 required by Labor Code section 1197.5(e). JCI also failed to keep accurate payroll records as
10 required by Labor Code section 1776(a). Thus, Defendant violated Labor Code sections
11 226(a)(1), (2), (5), and (9), 226.3, 226.6, 432, 558.1, 1174, 1174.5, 1197.5, 1198.5, 1199, and
12 1776, and the Wage Order.

13 **III. Defendant's Failure to Pay, and Its Willful Failure to Pay, All Wages Due to Plaintiff**
14 **and Employees at the End of Their Employment**

15 16. Upon the end of Defendant's employment of Plaintiff and other former
16 Employees, including by discharge and quitting, Defendant willfully failed to pay them all wages
17 earned and unpaid at the time of discharge or within 72 hours after quitting, including failing to
18 pay them the minimum wage, wages at their contractual rate of pay, the prevailing wage, and
19 overtime wages they earned. Thus, Defendant violated Labor Code sections 201, 202, 203, and
20 558.1.

21 **FIRST CLAIM FOR RELIEF**
22 **Private Attorneys General Act Violations**
23 **[Labor Code §§ 2698, et seq.]**
24 **(Brought by Plaintiff in His Representative Capacity Under PAGA Against Defendant)**

25 17. Plaintiff realleges and incorporates by reference all other paragraphs as if they
26 were set forth again herein.

27 18. Pursuant to Labor Code section 2699(c), an "aggrieved employee" means any
28 person who was employed by the alleged violator and against whom one or more of the alleged
violations was committed." PAGA provides that any provision of law under the Labor Code that

1 sets forth a civil penalty to be assessed and collected by the Labor and Workforce Development
2 Agency ("LWDA"), may, as an alternative, be recovered through a civil action brought by an
3 aggrieved employee on behalf of himself or herself and other current or former employees
4 pursuant to the procedures outlined in Labor Code § 2699.3. Labor Code § 2699(a).

5 19. As a result of the California Labor Code violations that Defendant committed
6 against Plaintiff and Employees of Defendant, Plaintiff and Employees are all "aggrieved
7 employees" of Defendant within the definition of Labor Code section 2699(c). As an aggrieved
8 employee, Plaintiff seeks, on behalf of himself and Employees and on behalf of the State of
9 California, to recover civil penalties from Defendant under Labor Code §§ 2699, 210, 226.3, 558,
10 1174.5, 1197.1, 1775, 1776, and the Wage Order for Defendant's violations set forth above,
11 including Defendant's violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3, 226.6,
12 432, 510, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199,
13 1774, 1775, and 1776, and the Wage Order.

14 20. Pursuant to Labor Code § 2699.3, an aggrieved employee may commence a civil
15 action arising under Labor Code § 2699 after the following requirements have been met:

- 16 a. The aggrieved employee or representative shall give written notice by filing online
17 with the LWDA and by certified mail to the employer of the specific provisions of the
18 Labor Code alleged to have been violated, including the facts and theories to support
19 the alleged violation. A \$75 filing fee should accompany the notice.
- 20 b. For violations of any provision listed in Labor Code § 2699.5, the LWDA shall notify
21 the employer and the aggrieved employee or representative by certified mail that it
22 does not intend to investigate the alleged violation within 60 calendar days of the
23 postmark date of the notice received. Upon receipt of that notice or if no notice is
24 provided within 65 calendar days of the postmark date of the notice, the aggrieved
25 employee may commence a civil action pursuant to Section 2699. For violations of
26 any provision other than those listed in Labor Code § 2699.5 or Division 5, the
27 aggrieved employee may commence a civil action pursuant to Section 2699 if the
28 employer has not cured the violations within 33 calendar days of the postmark date of

1 the notice.

2 21. On or about July 22, 2020, Plaintiff gave timely written notice by certified mail to
3 Defendant of Defendant's violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.3,
4 226.6, 432, 510, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5,
5 1199, 1774, 1775, and 1776, and the Wage Order alleged in this Complaint, including the facts
6 and theories to support the alleged violations, and Plaintiff filed the notice online with the
7 LWDA. Plaintiff also paid the accompanying filing fee of \$75.00. Plaintiff has complied with all
8 notice and exhaustion procedures as required by PAGA.

9 22. The LWDA did not provide notice of its intention to investigate Defendant's
10 violations of provisions listed in Labor Code § 2699.5 by the expiration of the 65-day waiting
11 time period. Defendant has not cured the violations of provisions other than those listed in Labor
12 Code § 2699.5 or Division 5 by the expiration of the 33-day period. Consequently, Plaintiff's
13 right to file the instant lawsuit then duly accrued.

14 23. Plaintiff has complied with all of the requirements set forth in Labor Code §
15 2699.3 to commence this representative action under PAGA.

16 24. Plaintiff, on behalf of himself, his fellow aggrieved employees, and on behalf of
17 the State of California, seeks civil penalties under PAGA, 75% of which will be distributed to the
18 State of California, and 25% of which will be distributed to Plaintiff and his fellow aggrieved
19 employees. Under this PAGA action, Plaintiff is also entitled to an award of reasonable
20 attorney's fees and costs.

21 25. Pursuant to Labor Code § 2699, Plaintiff is entitled to recover civil penalties in the
22 amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
23 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
24 subsequent violation, for Defendant's violations of Labor Code §§ 201, 202, 203, 204, 210,
25 226(a), 226.3, 226.6, 432, 510, 558, 558.1, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5,
26 1198, 1198.5, 1199, 1774, 1775, and 1776, and the Wage Order, as well as the civil penalties

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1 specifically provided in Labor Code §§ 2699, 210, 226.3, 558, 1174.5, and 1197.1, 1775, 1776,
2 and the Wage Order, plus reasonable attorney's fees and costs.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for relief as follows:

- 5 A. Civil penalties pursuant to PAGA;
6 B. Attorneys' fees pursuant to Labor Code § 2699;
7 C. Costs of suit pursuant to Labor Code § 2699; and
8 D. An appropriate service payment to Plaintiff for his service as PAGA
9 representative.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial on all causes of action and claims alleged herein.

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13 Respectfully submitted,

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15 Dated: October 14, 2020

16 By: 
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25 *Aggrieved Employees*
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